

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room E1.028  
Capitol Extension  
1500 North Congress Avenue  
Austin, Texas

Thursday,  
February 16, 2012  
9:18 a.m.

MEMBERS:

J. PAUL OXER, Chair  
TOM H. GANN, Vice-Chair  
LESLIE BINGHAM ESCAREÑO (absent)  
LOWELL KEIG  
JUAN MUÑOZ

TIMOTHY K. IRVINE, Executive Director  
BARBARA DEANE, General Counsel

A G E N D A

PAGE

CALL TO ORDER, ROLL CALL  
CERTIFICATION OF QUORUM 7

CONSENT AGENDA 8

ITEM 1: Approval of the following items presented  
in the Board materials:

*Executive*

- a) Presentation, discussion and possible action regarding approval of the Board minutes summary for January 17, 2012

*Internal Audit*

- b) Presentation, discussion and possible action regarding approval of the 2012 Internal Audit Charter and Board Resolution (#12-018)

*Community Affairs*

- c) Presentation, discussion and possible action regarding the Notice of Funding Availability for the fiscal year 2012 Emergency Solutions Grants Program (ESG)
- d) Presentation, discussion and possible action regarding the FY 2012 Department of Energy (DOE) Weatherization Assistance Program (WAP) plan

*Compliance and Asset Oversight*

- e) Presentation, discussion and possible action on a material amendment to the Land Use Restriction Agreement for Village Park North Apartments

*HOME*

- f) Presentation, discussion and possible action regarding the 2011 Single Family Homeowner Rehabilitation, Homebuyer Assistance and Tenant Based Rental Assistance Programs contract award recommendations
- g) Presentation, discussion and possible action regarding 2011 Single Family Development contract

award recommendations

*Neighborhood Stabilization Program*

- h) Presentation, discussion and possible action regarding the draft Third Substantial Amendment to the Neighborhood Stabilization Program 3 Action Plan for publication in the *Texas Register*
- i) Presentation, discussion and possible action regarding the Neighborhood Stabilization Program 3 (NSP3) award recommendation

*Multifamily Finance*

- j) Presentation, discussion and possible action regarding Housing Tax Credit Program Extensions
- k) Presentation, discussion and possible action regarding Housing Tax Credit Amendments

ACTION ITEMS

ITEM 2: Financial Administration

- a) Presentation, discussion and possible action regarding the Amended FY2012 Operating Budget 12

ITEM 3: Internal Audit

- a) Report from the Audit Committee meeting 14
- b) Annual Financial Report 15

ITEM 4: Appeals

- a) Real Estate Analysis --
- b) Multifamily Finance 20

ITEM 5: Rules

- a) Presentation, discussion and possible action to withdraw 10 TAC §1.25, Right of First Refusal at Fair Market Value, as published in the December 30, 2011 issue of the *Texas Register* due to substantial revisions in response to public comment, and to publish a proposed new rule 10 TAC §1.25, Right of First Refusal at Fair Market 129

Value, for public comment in the *Texas Register*

- |  |     |
|--|-----|
| b) Presentation, discussion and possible action to publish proposed amendments to 10 TAC Chapter 5, Subchapter D, Comprehensive Energy Assistance Program, for publication in the <i>Texas Register</i>  | 135 |
| c) Presentation, discussion and possible action to publish the proposed repeal of the existing 10 TAC §1.24, Foreclosure Data Collection, and the proposal of a new 10 TAC §1.24, Foreclosure Data Collection, for public comment in the <i>Texas Register</i> | 104 |

ITEM 6: Community Affairs

- |  |     |
|--|-----|
| a) Presentation, discussion, and possible action regarding the Draft Substantial Amendment to the State of Texas Consolidated Plan, One Year Action Plan and to the Draft Substantial Amendment to the 2012 State of Texas Consolidated Plan, One Year Action Plan | 147 |
|--|-----|

ITEM 7: Multifamily Division Items - Tax Credit Program

- |  |     |
|--|-----|
| a) Status report on the 2012 Competitive Housing Tax Credit Cycle  | 150 |
| b) Presentation, discussion and possible action regarding Disclosure and possible Waivers of Ineligibility for applications in the 2012 Competitive Housing Tax Credit Cycle | 161 |
| c) Presentation, discussion and possible action regarding a Request for Refund for a Housing Tax Credit Commitment Fee   | 267 |

ITEM 8: Executive

- |  |     |
|--|-----|
| a) Presentation, discussion and possible action to authorize staff to procure one or more providers to enter into prepositioned contracts to provide emergency temporary housing | 273 |
|--|-----|

REPORT ITEMS

- |   |     |
|---|-----|
| 1. Status report on the implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) | 279 |
| 2. Presentation of the First Quarter Investment   | 281 |

## Report

3. Status report on the preparation of the State of Texas plan for Fair Housing Choice; Analysis of Impediments	284
4. Report on Organizational Changes	286
5. Status report on the Contracts for Deed Prevalence Project with the University of Texas at Austin	294
6. TDHCA Outreach Activities, January 2012	--
PUBLIC COMMENT	298
EXECUTIVE SESSION	125 212

1. The Board may go into Executive Session pursuant to Tex. Gov't. Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee
2. Pursuant to Tex. Gov't. Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
  - a) *The Inclusive Communities Project, Inc. v Texas Department of Housing and Community Affairs, et al.*, filed in federal district court, Northern District of Texas
  - b) *Heston Emergency Housing, LP and Naji Al-Fouzan v the Texas Department of Housing and Community Affairs, Michael Gerber, Martin Rivera, Jr., Marissa Callan and Timothy Irvine*; civil action
  - c) Complaint of James Reedom filed with US HHS/OCR (No. 09-99008)
  - d) *TDHCA v William Ross & Susan Ross*; Cause Number D-1-GN-11-002226, filed in district court, Travis County
3. Pursuant to Tex. Gov't. Code §551.071(2) for the purpose of seeking the advice of its attorney

about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Tex. Gov't. Code, Chapter 551

4. Pursuant to Tex. Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person
5. Pursuant to Tex. Gov't. Code, §2306.039(c), the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an Executive Session of the Board to discuss issues related to fraud, waste or abuse

OPEN SESSION

126  
212

ADJOURN            305

P R O C E E D I N G S

MR. OXER: Good morning, everyone.

(A chorus of greetings.)

MR. OXER: I'd like to welcome you to the February 16 meeting of the Texas Department of Housing and Community Affairs governing board. And we are at Room 1.028 in the Capitol -- I guess it's 1500 --

MALE VOICE: Yes, North Congress.

MR. OXER: -- 1500 North Congress, our formal address. Okay.

All right. We'll start with the roll call.

Ms. Bingham?

(No response.)

MR. OXER: Absent.

Okay. Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I am J. Paul Oxer. I am here.

We have a quorum, four present, we may safely begin.

We will begin with standing for the salute to the flag, the pledge.

(Pledge of Allegiance recited.)

MR. OXER: And remain standing for the Texas pledge, please.

(Texas Pledge of Allegiance recited.)

MR. OXER: That's much better than the last time, by the way. Thank you.

(General laughter.)

MR. OXER: I mean it's only 17 words, so even somebody slow like me, I should be able to get that right.

(Pause.)

MR. OXER: Okay. Mr. ED, any input until we start the -- before we start the consent agenda?

MR. IRVINE: Well, the only input I would have, first of all, we have confirmed a quorum, and as you know, it requires a majority of the present in order to take action, just for the record.

MR. OXER: Okay.

MR. IRVINE: Also, with respect to the consent agenda, we did have one correction in the minutes. For some reason it indicated Saleem Jafer was here on behalf of Fox, he was actually here on behalf of Odyssey Residential. So that correction was pointed out.

MR. OXER: With respect to the consent agenda, I have a minor amendment to the notes and summary that I don't

know rises to the need for pulling it. I'd just like to make sure that the notes -- the minute summary for each meeting reflects, at the end of it, the invitation to the public to speak to the Board on any issue they feel like needs to be addressed, and I'd like that added to the minutes. Is that --

MR. IRVINE: So noted.

MR. OXER: Okay.

All right. Are there any items that the Board members would like to pull from the agenda?

(No response.)

MR. OXER: Okay. Given that, I'll entertain a motion for consent agenda.

MR. GANN: I move we accept the consent agenda.

MR. KEIG: Second.

MR. OXER: Motion by Mr. Gann, second by Mr. Keig to accept the consent agenda. Is there any comments by the public?

(No response.)

MR. OXER: And may I add, as we're saying this, the current protocol we're observing, under a close interpretation of the law says that we have to consider an item, have a motion on the floor, and then invite public comment, hear the public comment, and then vote on the motion.

So is there any comment? Anybody see --

(No response.)

MR. OXER: Okay.

All right. We have two requests for public speaking. We'll have -- and consistent with what we've done before, I'll call a couple in a row. We'll have an on-deck circle here. We've got two speaking -- two locations to speak up here.

Do, Deborah Dennis and Nicholas Anderson, I invite you to speak.

And while they're taking their seats, I'll remind everyone that although we don't see the little red eye in the sky there, that Big Brother is typically watching, so -- and even if he's not, the recorder's listening, so every word comes down.

So good morning, Ms. Dennis.

MS. DENNIS: Good morning. My name is Deborah Dennis, and I traveled here today from Prairie View, Texas.

I want to acknowledge and give honor to all the Board members, and we're on the consent agenda, on Item G, which is WREM Literacy Group Community Housing Development Organization.

And we're here today for approval, and I just wanted to convey to the TDHCA that Prairie View has waited

a long time for this opportunity and to let you know how grateful we are.

And I brought flyers so you can know what this opportunity that you are giving us will produce. Can I give these to one of the Board members? Thank you.

And outside of saying thank you, to let you know how grateful we are, we're looking forward to this opportunity, we're looking forward to the collaborative effort between our community housing development organization and the Texas Department of Housing and Community Affairs.

MR. OXER: Thank you.

MR. ANDERSON: My name is Nick Anderson. I'm here on behalf of OHC Little Elm Partnership, and I'm here actually for Lee Anderson, who's the general partner. He was ill today, so I'm subbing for him. I'm on the agenda, Item K under Lakeside Manor, and I'm just here to answer any questions.

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

(No response.)

MR. OXER: Okay. We have a motion on the floor to approve the consent agenda.

MR. ANDERSON: Thank you.

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. Unanimous in favor. The consent agenda is approved.

All right. Hold on. As you all know, there's a sufficient enough amount of paperwork here to keep all this straightened out.

Okay. Action Item Number 2, David Cervantes on financial administration.

MR. CERVANTES: Good morning, Mr. Chair, members of the Board, Mr. Irvine. For the record, I'm David Cervantes, Director of Financial Administration.

And behind Tab 2A is a request to amend the 2012 operating budget. And if you recall, this was an item that we came to the Board at the previous Board meeting and it was tabled at that time. And at the Board's request we were asked to continue and have further discussion with other parties, including the Governor's office.

And so based on that request, we did follow through on that request of having additional discussions on the originally proposed amendment, and as a result we are coming back to the Board today to present a modified amendment request.

And just as a little bit of background regarding what the content was, if you recall, it included four Article IX temporary positions. Two of those positions related to the NSP program and two positions related to a new program associated with the Texas Department of -- with DADS, and those are for a new program, which is a \$50 million program associated with what's known as the MFP, Money Follows a Person Program.

And then there are also two FTEs that are associated with cap FTEs, and I think the questions that surfaced at the previous Board meeting were again for us to have further discussion and to revisit as far as management to see if we were comfortable with the request.

So today, again, there's four Article IX positions that are 100 percent federally funded, and two cap FTEs that we're coming to the Board today to request your consideration.

MR. IRVINE: And the cap FTEs are all within our appropriated cap as set forth in the General Appropriations Act.

MR. CERVANTES: That is correct.

MR. OXER: Any questions?

(No response.)

MR. IRVINE: We recommend adoption.

MR. OXER: Okay. Entertain a motion.

MR. KEIG: Move to approve.

MR. OXER: Okay. Motion by Mr. Keig to approve.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: And there are none. Unanimous.

MR. CERVANTES: Thank you very much.

MR. OXER: Thank you, David.

Okay. Sandy, internal audit. Welcome aboard,  
again.

And while you're coming to the chair, let me  
recognize Viveca Martinez from the Governor's office, who's  
over there hiding behind the flag from me again, so.

And Hasan Mack. Hasan? Oh, hey, there you are.  
Good morning. From the Lieutenant Governor's office.

Yes, Sandy, good morning.

MS. DONOHO: Okay. Good morning, Mr. Chairman,  
Board members, Mr. Irvine. For the record, I'm Sandy Donoho,  
Director of Internal Audit.

At this morning's audit committee meeting, we  
discussed the status of our 2012 audit plan, we've completed  
two audits from our plan, we have three underway, and we'll

report on these at the May audit committee meeting.

We have three more audits we'll be working on this summer. In addition, we completed several of our non-audit activities, including our quality assurance and self-assessment review, our annual revision of the Charter and Board Resolutions, which you just approved under the consent agenda.

The two audits we talked about this morning are contracting for services and the follow-up audit of the Neighborhood Stabilization Program.

We also talked about the audit results from the State Auditor's office. As you know, the Governor -- the Department's governing statutes require an audit of the Department's books and accounts, an annual audit of the housing trust fund, and an audit of the financial statements of the Housing Finance Division, and the supplemental bond schedules. These are required by the Department's bond indentures.

This year the State Auditor's office performed these audits under contract with the Department. Lisa Collier, Assistant State Auditor, and Amadou N'gaide, Managing Senior Auditor, are here from the State Auditor's office to talk about the results of their work.

MR. OXER: Good morning again to you both, and

thanks for being here really early this morning to tell the audit committee what your -- or the report of your findings.

Thank you for staying with us.

MS. COLLIER: Good morning. Thank you for having us.

MR. N'GAIDE: Good morning, Chairman, members. My name is Amadou N'gaide, and I was the project manager for --

MR. OXER: One of the things I want -- I have to point out for you, Amadou, you're going to have to tell the recorder how to spell your name. Okay?

MR. N'GAIDE: It's A-M-A-D-O-U -- all right. She has it.

(General laughter.)

MR. N'GAIDE: So I was the project --

MR. OXER: She did it to me too, don't worry about it.

MR. N'GAIDE: I was the project manager for the team that audited the Department's financial statements for fiscal year 2011.

And in our audit report dated December 20, 2011, we concluded that the Department's financial statements were materially correct and presented in accordance with the accounting principles generally accepted in the United States of America.

We also concluded that the revenue bond program enterprise financial statements were also materially correct and presented in accordance with principles generally accepted in the United States of America. The Department's computation of the unencumbered fund balance of its Housing Finance Division also complied with the Texas Government Code.

We also issued a report on internal control of financial reporting and on compliance and other matters. In addition to those financial statements, we also performed some agreed upon procedures to assist the Department in determining whether the submission of certain information to the US Housing -- to HUD, I'm sorry, complied with the hard copy documents, and we concluded that the submission was done correctly.

On December 28, also we issued a report to the Legislative Audit Committee summarizing the work that we did on the financial statements, and that is normal practice of our office to submit reports to the Legislative Audit Committee.

This presents my -- concludes my presentation. I'd be happy to answer any questions that you may have.

MR. OXER: Just a comment. Mr. Gann, in the absence of our audit chair, Ms. Bingham, Mr. Gann chaired the audit committee.

And so, Tom, do you have any comments or thoughts to make on this?

MR. GANN: No, I don't. It went pretty smooth.

MR. OXER: Good. I think I'd like to point out that I appreciate the independent nature of the internal audit that we have. We're happy to see the State Auditor's office come over and confirm what we all believe is correct, which is -- we've got a pretty tight ship, given the amount of funding that came through the Department last year and the -- let's say the digestion rate that we had to go through, I think it was a pretty -- I characterize it as an extraordinarily good audit report.

There are -- my impression on audits is -- or my position on audits is that audits are -- internal audits are a particularly good thing to help us figure out how to buff off, polish rough edges on our processes and procedures, all of which are intended to make us better.

So, Sandy, I appreciate the efforts that you go through and the excellence that your group has.

Tim, I appreciate the fact that everybody's trying to make these audits for us and achieve a measure of excellence. I don't think it happens in every agency, and I'd like everybody to look at them as a way to make ourselves collectively better.

So any other comments from the Board?

Okay. Mr. Executive Director?

MR. IRVINE: I just had one comment. At the audit committee there were some technical issues and concerns that didn't rise to the level of material weaknesses that were identified with respect to some IT issues. And Mr. Keig had asked for specifics regarding that. Unfortunately our Director of Information Systems is not available, and since we can't respond to the whole Board outside of Board meetings, I will have a formal update to you at the next Board meeting.

MR. OXER: Okay. And the only -- I think one of the things that came out of the audit committee meeting is that whatever findings, or points that the audit reveals, we know have a commitment on behalf of the staff that are involved in those to establish a schedule so that we know targets and dates. You'll find that we're going to be real big around here on rules and dates and edges and achievements and calendars

So, thank you for your help. Anything we could offer for you?

MS. COLLIER: No, thank you.

MR. OXER: Great. Thanks for coming to see us.

MR. N'GAIDE: Thank you.

MR. OXER: Okay. Item Number --

MR. GANN: Do you want me to move for approval of that recommendation?

MR. OXER: Yes, I think we need to move for approval. All right.

MR. GANN: I'll do that. I'm move to make recommendation to approve the staff recommendations.

MR. OXER: Okay. Motion by Vice-Chairman Gann to approve the staff recommendation on audits. Do I hear a second?

MR. KEIG: Second.

MR. OXER: Second from Mr. Keig. Any comments from those present?

(No response.)

MR. OXER: Okay. Hearing none, all in favor of the motion?

(A chorus of ayes.)

MR. OXER: Okay. Opposed?

(No response.)

MR. OXER: There are none. Four in favor, the motion passes.

Okay. Item Number 4, appeals. Let's see.

Good morning, Cameron.

MR. DORSEY: Good morning. How are you all?

MR. OXER: Is your cohort in crime going to help

you out, or is he going to -- no. The three of you are by yourself today, huh?

MR. DORSEY: That's right.

MR. OXER: Okay.

MR. DORSEY: Cameron Dorsey, Director of Multifamily.

All right. We've got five appeals on the agenda today. These are appeals of terminations of preapplications for the 2012 competitive housing tax credit cycle. All of the five appeals are on the same subject, they all dealt with -- they all deal with the amount requested and the fact that that amount requested on each of these exceeds the amount that they were allowed to request.

So let me kind of walk through what the rule is here, and then I'll walk you through a couple more things to consider.

During the rule-making process, one of the pretty high profile changes to the QAP was the addition of this limit on the amount an applicant to request to 150 percent of the estimated amount that would be available in the subregion as of December 1. This was a pretty change because before the maximum amount was \$2 million in any given subregion regardless of the amount that was available.

And so this resulted in a much smaller amount that

could be requested in many subregions. For example there are several subregions that have \$500,000 available, so the maximum that someone could request would be \$750,000.

There was a lot of discussion during the rule-making process about this rule, and like I said, it was a pretty high profile rule. The way the rule ultimately reads is -- it's in the ineligibility section of the QAP and the ineligibility section generally speaks to applications, not to preapplications. Okay. However, in the preapplication section it states that the preapplication must meet the requirements of an application.

So it's basically, if it's a requirement of an application and we're asking for it at preapp, you can't do some things that would not be allowed at application is conceptually what the deal is there.

Each of these folks requested more than that 150 percent number that we made available on December 1. And keep in mind these preapplications were due January 10, so we're talking about a pretty good lead time in terms of this data being available for folks.

Now, there are a couple of great attorneys that are going to get up and speak about this particular issue, and we sat down at the Department with all of our great attorneys and, you know, there are just a whole lot of good

legal arguments here to be heard. And I wanted to just take a moment to back up for a second, because at the end of the day, you know, you shouldn't have to get into this sentence dissection with a whole bunch of attorneys to be able to apply for this program.

The question is, what did we do to educate folks on this rule, in my mind, and how we were going to apply it.

And that's what I want to take a second to talk about.

We held -- well, the first thing I guess is making the data available. The rule said 150 percent of what's available in the subregion, and we could have left it at that, put the amounts out that were available in the subregion and just let them calculate the 150 percent. We didn't do that.

We put out the amount that was available in each subregion, and in a column next to that, in bold, I put Maximum Amount You Can Request, and then under that I put the hard number. So in a region where it was 500,000 I put 750,000.

I wanted to make sure that this was really evident, really out there, everyone had the opportunity to see that maximum amount.

And so you basically -- in order to not see that amount, you had to not go look at how much was available in the subregion to begin with. So that's one thing. And we put that out there on, I think, November 29, November 30.

Actually a day or two before the deadline.

The second really big thing we do every year is we hold application workshops. This year we held three application workshops, we held them in Dallas, we held one in Houston, we held one in Austin. The workshop is free. We send it out via the listserv, we post it on the website, we try to encourage everyone to attend.

You know, the QAP is a big document. It changes every year, so it's really important --

MR. OXER: Especially this year.

MR. DORSEY: Right. There were a lot of changes. So the purposes for us, staff, to let folks know what changed, what's going on, what do you all need to know about, and how are we going to actually apply these rules when it comes down to reviewing an application. That's the goal.

And so we put together a big PowerPoint, and we go through the PowerPoint and we present on each of these topics. This was something we covered. This is something we covered, and I know we covered it because I covered it at each of the workshops, and I covered it in a pretty direct manner. I think I said something to the effect of, Please do not request more than this amount. I had it up on the screen in the chart, the same chart that's posted on the website, Please don't request more than this.

You know, the rule provides for termination in this case, so if you request more than a dollar -- a dollar more than what that number is, according to the rule we terminate you. And there's not the opportunity for a correction here.

DR. MUÑOZ: Cameron?

MR. DORSEY: Yes.

DR. MUÑOZ: How many people attended those free trainings?

MR. DORSEY: Over 200 folks attended.

DR. MUÑOZ: Including the folks that --

MR. DORSEY: The folks that are appealing today, I do not believe any of the folks attended. I do believe the attorneys that are going to speak on their behalf attended, but I don't believe that the folks that are actually involved in the development teams that filled those preapps out attended.

DR. MUÑOZ: Were the materials that were -- that constituted the training available online following the training?

MR. DORSEY: Yes, they are, and they are still available online, with the chart and everything.

DR. MUÑOZ: And the bold lettering?

MR. DORSEY: That's right. That's right.

So -- yes?

MR. KEIG: If I may ask, you said there's not an opportunity to correct it. What if somebody truly made a typographical error, is that -- the nature, is that something that's in the nature of an administrative deficiency, or no, if no, why?

MR. DORSEY: The ineligibility criteria is kind of unique within the QAP. We actually -- the administrative deficiency process kind of generally applies to the QAP, but in the ineligibility section it actually -- we have a provision that allows for -- it basically addresses how we handle issues related to ineligibility and how we cure issues.

And it doesn't provide for a cure. What it says is, and I think Tim might be flipping there now, but basically what it says is we'll provide the applicant the opportunity to explain how their application is, in fact, eligible if staff believes it's ineligible.

So it doesn't provide for an opportunity to actually fix something, but it's like, you know, if staff misinterpreted something, we're going to give you the opportunity to explain how we misinterpreted it.

MR. OXER: They get to come make their argument to try --

MR. DORSEY: That's right. And we did that. We

sent everyone out a notice saying, you know, We think you're ineligible based on this number, can you explain --

DR. MUÑOZ: Hey, Cameron, hold on a second --

MR. DORSEY: Yes.

DR. MUÑOZ: -- I've got a question.

MR. DORSEY: Yes.

DR. MUÑOZ: So they have opportunity for redress, but there's no possibility of any kind of desirable consequence coming from explaining the error.

MR. DORSEY: Well, there is actually. For example, someone --

DR. MUÑOZ: Well, you said there's no remedy.

MR. DORSEY: Well, there's no remedy in terms of fixing the number, but there could be some other misunderstanding, or discrepancy in the application. For example we had someone that accidentally identified the incorrect region for their application. So in that case the correction was, Oh, look, you know, staff, I accidentally identified the wrong region. If I identify the correct region, my request actually isn't over 150 percent. That would be an example.

And it follows that it -- the rule actually states one specific instance where the applicant can cure, and so it lists the ineligibility -- the instance of ineligibility

that can be cured and how that can be cured, and it deals with a general contractor being ineligible. So it has nothing to do with this particular provision.

And so when we looked at it, we said, Well, by virtue of the fact that, first off, you know, this section has a very specific provision for dealing with issues of ineligibility and how we communicate with the applicant regarding those, and the fact that there's -- it specifically identifies the only thing that can be actually cured through, you know, changing something in the application.

We felt like this was the most defensive -- legally defensible and appropriate way to apply the rule. So, in any case, you know, we went through a pretty good educational process, I think, to make sure everyone was aware.

The last thing I want to say is, this cycle is an extremely competitive, an extremely competitive year. We received 388 preapplications requesting more than \$470 million, when we have a tenth of that available to actually allocate.

So the decision that's made today is going to not prevent them from submitting a full app, but it will allow them to access six points. If the appeal is granted, then they will be able to access six points. And what that will do is that will put them in a position to beat out a lot of

folks that, if they lose the appeal, they wouldn't beat. So it's a really pivotal decision from that perspective as well.

MR. OXER: In a very competitive solicitation, or application process, with six points, if I recall correctly, last year the difference from being in the money and not was an average of two points.

MR. DORSEY: That's right. And this year I can tell you that the number of applicants that identified the score of 179 in their application totals more than the total amount we have available to allocate. So --

DR. MUÑOZ: Yes, but --

MR. DORSEY: -- and there will be fallout and --

DR. MUÑOZ: -- but, Cameron, just -- but, you know, were we not sort of considering these appeals, and their interpretations had been accurate as they assumed it is, and they were granted the six points, they'd be more competitive than those other applications anyway.

MR. DORSEY: If they're granted the six points --

MR. OXER: We don't know that yet, Juan, because they haven't filed the application yet. We don't know.

MR. DORSEY: Well, we don't know how the whole -- the playing field is going to play out at the end of the day, right. But they will be able to access six points,

the same six points that everyone else that filled the preapp correctly would be able to access.

DR. MUÑOZ: So how would that put them ahead of some?

MR. DORSEY: Well, because let's say that there were five people that scored a 178 and these folks scored a 179, well, without the six points that would put them below five --

DR. MUÑOZ: Did those other people access the six points for the preapp?

MR. DORSEY: Those folks will have the opportunity to access those points because they filled the application out correctly -- preapp out correctly.

Now, you know, it may seem like an awful big repercussion here of putting an incorrect number in, but the last thing is, you know, we've got to remember what number this is. This is the number, this is the amount we're going to allocate. So this is like the number you shouldn't mess up. I think that's an important consideration here as well.

You know, understanding what your limitation is in terms of what you can request from the Department, the amount of funding we can give you, I think is a really fundamental piece to filling out any of these applications.

MR. OXER: When we went through the QAP review

and redraft last year, which was, as I gather, considerable and substantive, and there was, as I recall -- or there were eight iterations where it was put out and made available for public comment. And everybody had a chance to see it, including all the developers who are out there, and they would have a chance to be interested in pursuing this.

So the training sessions that you put on was not the first time this came up, and as I recall, in one of the meetings we had, in this hearing room, which was a training session on this, one of the fundamental things you brought out was 150 percent of the cap, don't push the limit.

MR. DORSEY: That's right. And it was actually lower to begin with in the original proposed draft, I believe it was 120 percent -- or one of the earlier drafts. So, you know, this went through a particularly, you know, high profile evolution, so.

MR. IRVINE: If I might, I'd like to just point out that it's always very useful to go back to statute. These provisions are in here because they are building upon precepts that are set out in the statute. Precept number one is that we'll allocate funds based on regional formula. Okay.

And what we're addressing through this 150 percent rule is the result of when people were applying for far more than was available in their region, in the statewide collapse

they would ultimately often be able to access those larger rewards, which basically meant that other regions were paying for the region in which that applicant resided, you know, they're paying for their funds.

The second point in the statute that I think bears a little bit of amplification is, the whole concept of an administrative deficiency is addressed in statute and it's something where we ask, the Department asks for the applicant to clarify or explain or respond to something. It does not provide for an applicant raised administrative deficiency.

So that really wasn't available as a way to address this.

And then finally, as Cameron did point out, this is the number. My personal view on the whole concept of the preapp is it's so that we do have a chance to look at it and also everybody else has an open and public chance to look at it, and they need to know exactly what they're looking at. If you're looking at something that's not even eligible, then that has some relevance.

MR. OXER: With respect to each one and the amount that they appealed -- or applied for, sort of what was the amount of variance beyond 150 percent?

MR. DORSEY: There are variations between each one.

MR. OXER: Kind of like 10 or 15 percent, twice

the amount?

MR. DORSEY: Well, I think in one case it was -- the limit was right around 930,000, they requested 950-. I think that's the smallest one, I think most everyone else exceeded it by quite a bit more than that.

MR. KEIG: Did Mr. Rue provide any background information to show that that truly was a typographical error?

MR. DORSEY: No, and, you know, just instinctually I'm not sure, it would probably be a pretty tough thing to do. A lot of times they haven't developed their whole cost schedule to kind of prove up that, Hey, our eligible basis wouldn't even make that amount available to us, so.

MR. KEIG: I mean he did put in his letter that for his other two applications he'd gotten it right on the money on the maximum amount. So he had some evidence that he intended to get a right number. It's a little bit different from somebody who just ignored the requirement and went way over. I mean --

MR. DORSEY: Right.

MR. KEIG: -- there's -- anyway.

MR. DORSEY: Right. Well, and that leads to the next thing. Each of these folks has -- it's the same issue at play, the same rule that was violated, but each of these folks has a slightly different variation in terms of what

they're position is and why the Board should consider their appeal.

So I think, you know, we can take them one-by-one, or we can hear them as a group and then make a decision, we can hear their -- it just depends on how you all want to do that. Do you want to hear all their arguments before you make a decision?

MR. OXER: Here's how we're going to do it, okay?

I wanted to hear a general assessment of the rules, some discussion with you, and on each if we're going to -- so that we don't set a precedent on the first one that has to be followed by the last one. I'm going to hear all of them --

MR. DORSEY: Great.

MR. OXER: -- and then vote on each one of them.

And owing to the fact that that's not going to accommodate a provision to have a motion on the floor before and then comment, that just doesn't seem like it's going to work logistically.

So we're going to go through this discussion, there's some letters we're going to read in from the legislature, and we're go through each one of them and listen, then we'll come back and vote on each one of them.

MR. DORSEY: Excellent.

MR. OXER: So does the Board have any other

comments on this?

(No response.)

MR. OXER: All right. I have -- on the --

MR. IRVINE: Mr. Chairman?

MR. OXER: Yes, sir.

MR. IRVINE: I'd like to just add one other piece of information, because I want the Board to be fully informed and know the tools that are available to it as it hears these matters and makes these decisions.

In 2306.6725(c) and (d) those are the provisions in the statute dealing with the scoring of applications, it does provide for the Board to make determinations that are inconsistent with staff recommendations.

Staff obviously recommends what it believes is a strict construction of the QAP, but it does provide the ability for the Board to make those decisions and to use appropriate discretion as long as it lays out the rationale if it does disagree with staff.

It also provides, indeed, that for each scoring criterion a range of points may be employed, and I would offer that the Board should be aware of that other tool.

MR. OXER: Thank you for that.

Was there -- Cameron, was there any opportunity for -- since the full cost schedule was not put together for

each one of these projects, this was an estimate, I'm sure, having done this myself, not on these kind of projects, but you put sort a block schedule together and add it all up then go back and refine all this as your project application matures. Okay. Was there any opportunity for any of the applicants to amend their preapplications to -- or they're required to simply live with what they sent you?

MR. DORSEY: Yes, they're required to live with what they sent us. We don't really have a process for amending the preapp. The whole idea of the preapp is, you know, you put it out there, it's noticed everyone of what you intend to do.

MR. OXER: So partly it's notifying everybody else in the community --

MR. DORSEY: That's right.

MR. OXER: -- about the amount --

MR. DORSEY: That's right.

MR. OXER: -- that they're going to apply for.

MR. DORSEY: That's right. And one last kind of consideration is, I told everyone kind of, you know, at the workshops, this is strictly how the rule is going to be applied. So there might be folks that are in line right behind these guys that have moved forward with the preparation of a full application on the basis that they think that these

guys are going to fall out because they requested too much.

So, you know, there are all kinds of moving parts here and considerations. I mean, you know, certainly a topographical error in the case where they submitted three apps, you know, two of them are dead on the money and then one, you know, is a little bit off can -- you know, I mean that's kind of a compelling case, but --

MR. OXER: Let me remind you, and just between talking between us, there was somebody that made an application here last year that was due at midnight on a particular date, and they got it in at noon the next day. And as I recall, Vice-Chairman Gann said, Every rule that doesn't have a hard edge on it is just a guideline.

So we denied that applicant the forbearance to allow that application in as I recall. If anybody has any better information, I'll open to that.

But what we're saying here is, and what's going to come out of this, is whatever -- despite whatever comes out of this in the Board vote and the discussion and deliberation on this, let it get into the record now that we see an application -- a preapplication as part of the application. We don't want to have to be an attorney to be able to differentiate the two, and when it comes down to it, 150 percent to the dollar is what is the limit on the

application.

Now, that's next year. Okay? For sure. And I don't want to be -- don't want anybody guessing here what the -- what's going to happen next year on that. Okay? This may be a little -- what were we calling it, this little quirk we found? Didn't we find some quirks in the QAP last year?

MALE VOICE: Anomaly.

MR. OXER: Okay. Anomalies, quirks, bugs, twists, cracks. Okay. We're going to seal some of those cracks up. Okay? Because we don't want people falling through them.

But also, we want you following the rules that we're putting out there. Now, there were, as I recall, here last year we had a fairly continuous stream of applicants and legislators that sat right there and said, We want hard edges on these rules so there's not too much guessing about where we're going. So by the time you get out of here today, there won't be any guessing on what we're going to do on this for the next one. Okay? Everybody hear that?

All right. Cameron, stay where you are. I'm sure we're going to maybe back up to that one because we're going to have some more.

All right. The first app -- any other comments from the Board?

(No response.)

MR. OXER: Any disagreement from the Board, any clarification, expansions?

(No response.)

MR. OXER: Okay.

MR. IRVINE: Mr. Chairman, I don't want to belabor it too much, but there's one sentence in the statute that I would really like to read. The Department may not award a number of points for a scoring criterion that is disproportionate to the degree to which a proposed project complies with that criterion.

MR. OXER: Expand on that.

MR. IRVINE: If we give you an eligibility for a certain amount of points for a specific item, such as the submittal of a preapp, you're eligible for up to six points. And the Board may not award those points in a manner that's disproportionate to the applicant's direct compliance with the requirements for that preapp.

MR. OXER: Did some lawyer write that?

(General laughter.)

MR. OXER: What would an engineer say on that? Okay? They went really over it, you can't bust them for their points. Is that what you're saying?

MR. IRVINE: I --

MR. OXER: You read -- I know, you read it.  
You're an attorney, so.

Is everybody clear on that? Mr. Keig, you're  
clear on that?

(General laughter.)

MR. KEIG: I'm clear on that.

MR. OXER: But then you're an attorney; I'd expect  
you to be clear on it.

DR. MUÑOZ: Mr. Chairman, I will remind the  
Board --

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: -- of, prior to that clarion clear  
statement --

(General laughter.)

DR. MUÑOZ: -- there was another part of the  
statute that provides the Board some discretion outside of  
the staff recommendation with a variability of points as well.  
And so I would remind us of that.

MR. OXER: And since we're gaining information  
on the nature of the "offenses" and the degree of latitude  
we have in addressing those, so.

Okay. No other comments?

(No response.)

MR. OXER: All right. Let's see here. This

would be on the appeal -- did we take this out of order?

All right. On Item 4B, we have requests for comment from Mr. Doak Brown, from Cynthia Bast, and next up would be Matt Fuqua and Tamea Dula. There are only five, so those are the first three. Everybody clear?

Cynthia, come on up.

MS. BAST: Yes, sir.

MR. OXER: Mr. Brown?

MR. BROWN: I yield my time to Cynthia.

MR. OXER: Oh, yes, you did. I'm sorry. So noted.

Okay. Cynthia, you've got five minutes.

And Matt Fuqua, you'll be next.

MS. BAST: Good morning. Cynthia Bast of Locke, Lord representing the applicant. This is for the Stardust Apartments in Uvalde. This is the one with the typographical error.

Our client does freely admit that instead of typing 930,000, he typed 950,000. And you get to decide whether this kind of mistake should lead to the termination of the preapplication and essentially make the application non-competitive for this round.

Now, Mr. Dorsey did emphasize the knowledge about this 150 percent rule, and again, I want to remind you that

it is clear that our client knew about the 150 percent rule.

Representatives of our client did attend the public workshops and they did file two other applications that fit within the 150 percent rule perfectly. So it's clear that they knew how to do that.

And while I appreciate Cameron's comment that we don't want to parse particular language in sentences in a rule, at the end of the day that's all we have. Intent is good, the intent of the staff is implementing this rule is great.

But, Mr. Keig, as you know, we're only as good in this competitive program as what the words on the page tell us. And that's why we need to look at them very carefully in this instance.

What staff is saying is that because our client made this error, the preapplication was not complete and therefore should be terminated. Section 50.7(c)(1) of the QAP states that a complete preapplication is one that meets all the Department's criteria for an application.

So what does that mean? Well, staff says that it meets -- it means compliance with all of the items in Section 50.4(c) with regard to eligibility of an application.

Now I disagree. I believe that because 50.7(c)(1) is talking about a complete preapplication, what it's really referring

to is the specific item in 50.4(c) that talks about complete applications where it talks about filling in all the blanks correctly and having all the exhibits and the readable CD and all that.

I think that's what it's trying to refer to, not this list of 10 items in 50.4(c) that refer to ineligibility.

And, in fact, if you look at those 10 items in 50.4(c) that talk about ineligibility of applications, seven of them relate to compliance with TDHCA programs. Yet TDHCA doesn't perform a previous participation review at the time of preapplication to check those seven items.

So those are some items on the list that's been identified by staff as things that constitute criteria for an application that aren't even being measured at the time of preapplication.

So what does the 150 percent rule say? It's in this list of 10, and it says that an applicant -- an application is ineligible if the applicant requests more than 150 percent of the credit amount available in the subregion at the time of the original submission of the application.

So according to the version of the QAP that was posted on TDHCA's website at the time these preapplications were filed --

MR. OXER: Which was when?

MS. BAST: Which was -- they were filed in early January.

MR. OXER: Okay.

MS. BAST: It says that the amount of credits is determined based upon looking at Volume 1, Tab 1, Part C, Funding Request of the application. So the eligibility item clearly is measured at a time certain, which is when the application is filed. It cannot be measured at the time the preapplication is filed because there is no Volume 1, Tab 1, Part C in the preapplication.

So, yes, our client's preapplication requested more than 150 percent of the credits available in the subregion by virtue of this typographical error. But why is the client being judged today by an eligibility criterion that, according to the plain language of the QAP, is not measured until the application is filed? Why is this eligibility item being treated differently than the other seven eligibility items related to compliance that aren't measured at the time of preapplication?

So considered on the whole, I believe that this interpretation is troubling because it seems to pick one item from a list of 10 and identify that as a criteria for an application that makes a preapplication complete. And if TDHCA had wanted to ensure that each preapplication stayed

within the 150 percent test, it could have easily stated that in the QAP, and it didn't.

But there's another thing that I find really troubling about this situation. You're going to hear more about this from Tamea Dula, but it relates to the fact that there was actually a change in the QAP from the version that was approved by the Board in November when the Board said, This is our QAP, staff, you can only make non-technical, non-substantive changes to ready it for final publication in the *Texas Register*. There was a change that we believe was substantive, that could have an impact on the interpretation of this particular rule.

Now, I do want to address the issue of administrative deficiencies because, Mr. Keig, you brought that up, and, Mr. Irvine, you did say that the administrative deficiency process would not be available because it cannot be initiated by the applicant, the applicants can't come in and say, I made a mistake.

But upon looking at this application and seeing 950 instead of something like 930, and knowing that this applicant submitted two other applications correctly, why couldn't the staff initiate an inquiry? Why couldn't they say, Hey, I think you may have gotten this one wrong? And, in fact, in past application rounds, I can tell you that

applications have -- applicants have requested more than the credit amount available, and have not been terminated. And that happened, I recall, in 2009.

So let's look at the big picture. What is the purpose of the preapplication process voiced in the statute, the QAP for why are we doing this? We are doing this to allow applicants to assess their competition. Our client making an error does not impact the competition because the competition knows that our client's going to be held to this 150 percent test.

The competition knows that, at the end of the day, they're going to have to request credits within a certain range. And if then they do not submit the correct amount at the time of application in accordance with the QAP, then the QAP does allow them to be terminated.

And so for these reasons we believe that this appeal should be granted. I would also like to note that Mr. Lyttle has received letters of support from Senator Uresti, Representatives Dutton and Gallego with regard to this same concept, that the intent of the preapplication process is not to pour someone out on a technicality of this particular nature, but to allow people to assess the competition in the overall round.

So I appreciate very much your thoughtful

consideration of this issue, and I'm happy to answer any questions.

MR. OXER: Any questions from the Board?

MR. KEIG: Yes.

MR. OXER: Mr. Keig.

MR. KEIG: Do you have any internal emails between Mr. Rue and his staff or anything like that that -- where they're discussing 150 percent for this particular project that would back up the claim that it was a typographical error?

MS. BAST: Certainly it is identified in the appeal, but I can ask Mr. Rue if there's any other correspondence? Sure, Doak?

This is Doak Brown, he does have a witness affirmation form.

MR. BROWN: Doak Brown. I'm with Brownstone. We -- the truth is I actually -- I made a mistake. I didn't even need 930. I was trying to go in at a point where we were maximizing to leave our options open, and our numbers.

So I don't have an email back and forth saying that I'm doing this, but my request would actually be in the high 100s, my real request probably.

MS. BAST: So you first identified that this was a typographical error when you received staff notification that the preapplication had been terminated. Is that

correct?

MR. BROWN: Well, I realized it after the fact when I was going back and looking through it. I actually contacted Cameron before -- well, before I received anything.

MS. BAST: Okay. So you did recognize the error and affirmatively contacted the Department before --

MR. BROWN: Uh-huh.

MS. BAST: -- terminated.

MR. OXER: Okay. Just sit tight.

Cameron, slip back up here, please.

You can -- that's all right, sit where you are. Stay right there.

You can roll that -- roll that chair up there, Cameron. We have options for this. Okay? We have more roller chairs in case we have to fill this whole rack up here. Okay.

In the preapplication, which apparently is basically staking a flag and saying, All right, they're telling everybody else in the neighborhood, we're showing up to compete too. Okay. That preapplication, the way it's being interpreted now by Ms. Bast, is that that's an entirely different event, it's not related to the application more or less.

That's what I'm hearing you say, Cynthia.

MS. BAST: They are clearly related, but --

MR. OXER: But separate.

MS. BAST: -- there's a difference between a preapplication and an application.

MR. OXER: All right.

MS. BAST: I do believe that there are differences in the two, and that the language of the QAP uses the word "preapplication" and uses the word "application" distinctly for different purposes.

DR. MUÑOZ: But, Cameron, didn't you reference that the preapplication indicates that if anything in the preapplication violates the application, then it becomes ineligible?

MR. DORSEY: That's right. And the idea there I think, you know, Ms. Bast laid out that, you know, we don't ask for a lot of the stuff, the other eligibility criteria for example. But it's because it's short, it's supposed to be short. The idea there is, if we do ask, it needs to comply. We're not going to ask you to fill out a whole application. That would defeat the entire purpose of the preapp.

But, you know, if we're going to put the request field there and ask you to put a number there, don't put a number that's going to be ineligible if you submitted it in the app. I mean that's kind of the intent.

MR. OXER: Okay. So the -- are they even linked as being like the first two pages of a full application, or this is just an entirely different venture?

MR. DORSEY: They have the same -- they're assigned a number at preapplication, that number follows them, obviously the points follow that number as well, it's a specific point item, so there are certain changes that you can make between a preapp and a full app that are laid out, you know, those types of things.

So I mean there's very clear -- I mean it's the beginning of a path you follow. If you don't submit a preapp in this kind of competitive environment, you don't submit a full app, so.

MS. BAST: But the two forms are not the same.

MR. DORSEY: That's right.

MS. BAST: If that was your question of are any of the pages of the preapp the same as the pages of the app, the pages themselves are not the same.

MR. OXER: Okay. I'm trying to get to some point -- I'm trying to see if there was an administrative mechanism to get to the point that those two pages are the first two pages of the application that just keeps going where you add it and then modify it or --

MR. DORSEY: No, we ask more in the -- we ask for

more stuff in the full app. It's kind of -- it's a summary, it's a brief summary, so we eliminated a bunch of stuff in the preapp so that they don't have to identify those things.

We want some flexibility there for folks to be able to change things.

And Ms. Bast indicated that there was a change in the QAP that we made. You know, I definitely noticed the change, but I can tell you why the change was made in the QAP. The change was made because I was trying to make the application more streamlined. I eliminated the whole concept of volumes. So referring to a volume made no sense anymore.

So, you know, that was entirely an effort to make it easier to apply.

MR. OXER: What's the application fee for preapp?

MR. DORSEY: The preapp fee, is it \$10, Ken? I forget.

MALE VOICE: Ten dollars a unit.

MR. DORSEY: Ten dollars a unit.

MR. OXER: It's not like it's 25,000 to get one of these in.

MR. DORSEY: No. No.

MR. OXER: Okay.

MR. DORSEY: The whole idea is that, you know, it's a fairly low barrier to entry so that people can, you

know, see their playing field before they spend 20-, \$50,000 on an app.

MR. OXER: Why are there points offered at all on it?

MR. DORSEY: To incentivize the submission of a preapp and to incentivize the minimal changes between the preapp and full app such that the preapp actually is a meaningful --

MR. OXER: And so you get --

MR. DORSEY: -- process.

MR. OXER: -- the points that are awarded to the preapplication provide an incentive which, you know, essentially engages everyone to file a preapplication, but then it tells everybody in the community, in the development community what kind of stick fight they're going to be in for this one.

And for the record, since we're having this much fun on the preapplication, I just can't wait and see what we're going to do --

(General laughter.)

MR. IRVINE: And there are also points awarded for preapp because 2306.6704 statutorily requires it.

MR. OXER: Well, there is the law too, you know.

(General laughter.)

MR. DORSEY: Right. And there's also notifications that go out to, you know, state reps, state senators, neighborhood organizations, et cetera at the time of preapp to give a, you know, really kind of preliminary heads-up that something might be coming into the area, et cetera.

MR. OXER: And since you mentioned Senator Uresti, Cynthia and Mr. Brown, I'd like to have Michael Lyttle read --

Do we have a letter, Michael?

MR. LYTTLE: Yes, sir.

MR. OXER: Okay. On this particular issue there are a couple of letters that have come in from legislators that we'll read into the record as we're considering each one of the applications.

So, Michael?

MR. LYTTLE: This letter is from -- the first letter is from Senator Carlos Uresti, addressed to Chairman Oxer.

"I am writing to express my concern with the administration of the preapplication process in the competitive housing tax credit program. In a recovering economy, competition for housing tax credits is extremely competitive, and as stewards of the taxpayers' money, we must strive to secure the greatest benefit from our public

investment.

"As you may be aware, I recently submitted a letter in support of the Stardust project in Uvalde, a project that is greatly needed in that area of my district and supported by the community. I later learned that due to an interesting and unique interpretation of the rules, the preapplication was terminated and no points would be awarded due to seemingly minor discrepancy in the preapplication process.

"Subsequently, I asked my staff to meet with agency staff to discuss the application process and in particular the dozens of projects that have been terminated in Texas for similar reasoning used to terminate the Stardust preapplication.

"During that meeting, the position of agency staff was that preapplications with minor typographical errors are to be terminated from contention due to a section of code intended to disqualify applications of applicants who have been convicted of offenses such as fraud, bribery or theft.

"As I understand the process, the purpose and benefit of submitting a preapplication is to provide notice to all candidates of potential competition in their particular region. This provides all candidates with a chance to assess whether their best interest is to move forward with the actual

application.

"As stated in the Texas Administrative Code, Title 10, Part 1, Chapter 50.7(c), the purpose of the preapplication is to enable applicants interested in pursuing the application, to assess generally who else is interested in submitting applications, and the nature of their proposed development. Based on an understanding of the potential competition, they can make a better and more informed decision whether they wish to proceed to prepare and submit an application.

"While the section states the preapplications should meet standards set out for applications, differences between the two criteria often prevent a perfect fit. When deciding which application criteria to apply to a preapplication, the Department should factor in a level of tolerance with the preapplication.

"I believe this is not being considered at this time, and the result has made the preapplication the de facto application with many competitive projects terminated unnecessarily and prematurely before an application has ever been submitted.

"If the intent is to hold a preapplication to the exact standards of an application, then serious consideration should be given to eliminating the redundant step of a

preapplication.

"The mission of the Department is to help Texans achieve a higher quality of life by building better communities. I trust that as you review your processes, you will continue to uphold not only your mission, but also to effectively utilize the preapplication process in the manner prescribed by the law.

"Thank you for your time and attention to this matter, and for your generous service to the state. As my staff related to agency staff, I look forward to continuing to work with you on this issue both in the interim and in the 83rd Session should statutory changes be needed.

"Please do not hesitate to contact me or my staff regarding this or any other matter. My capitol office staff can be reached at 512-463-0119. Sincerely, Carlos Uresti."

MR. OXER: And let me also add that Michael Ruggieri, who is here --

Michael? Is Michael here? Michael --

MALE VOICE: He left.

MR. OXER: Okay. He was here. He is the -- Senator Uresti's legislative director, so Big Brother is watching.

Okay. Any more, Michael?

MR. LYTTLE: There's -- regarding the Stardust

Apartments preapplication, there's one more -- actually two more letters --

MR. OXER: Let's have it.

MR. LYTTLE: -- that have been submitted.

Okay. The next letter is addressed to you, Mr. Chairman, from State Representative Pete Gallego.

"I am writing in support of the Stardust Apartments preapplication to build a housing development in Uvalde, Texas. I hope that the appeal of termination of the preapplication is carefully considered before the Board of TDHCA on Thursday, February 16, 2012.

"I do not believe that TDHCA staff's interpretation of TDHCA Number 12306 is accurate according to the 2012-2013 qualified allocation plan applying to the Stardust Apartments preapplication.

"My concern regards the staff's decision to terminate the Stardust preapplication due to a typographical error. The standard used primarily for the full application has been applied to the Stardust preapplication, which excludes rather than includes various applications in the bid process.

"These projects are judged on their merits in awarding low income housing tax credits to affordable housing projects in areas such as Uvalde, which have been established

in the QAP.

"As stated in the QAP, the purpose of the preapplication process is to enable applicants interested in pursuing the application process to assess generally who else is interested in submitting applications and the nature of their proposed development. Based on an understanding of the potential competition, an applicant can make a better and more informed decision whether they wish to proceed to prepare and submit an application.

"The preapplication and the application should be considered as two distinct and separate parts of the application process as outlined in Section 50.7(b) of the QAP. Consequently, preapplications should be judged by standards established for preapplications, not those reserved solely for applications.

"The preapplication for TDHCA Number 12306 for the Stardust Apartments in Uvalde, Texas was terminated by the Department due to a typographical error made in its preapplication. This typographical error resulted in an amount of tax credits being requested in the preapplication that exceeded the amount available in rural Region 11.

"In terminating the Stardust preapplication, TDHCA staff applied a standard to the Stardust preapplication that is intended solely for applications, as outlined in

50.4(c)(10), which reads, 'Ineligible Applications, the Department will terminate an application for those issues identified in paragraphs 1 through 10 of this subsection.'

The letter then references subsection 10, which reads, "'For applications submitted under the state housing tax credit ceiling, if more than 150 percent of the credit amount available in the subregion is requested at the time of the original submission of the application, based on estimates released by the Department on December 1. The Department will consider the amount in Volume 1, Tab 1, Part C, Funding Requests, to be the amount of housing tax credits requested.'

"As a result of the Department's termination, the Stardust Apartments project would not be eligible for preapplication incentive points. Although the project could still submit a full application, without preapplication incentive points, the application would not be competitive in its efforts to secure tax credits.

"Section 50.4(c)(10) is not included in the preapplication threshold criteria, nor was it intended to be included. By applying standards to preapplications reserved solely for applications, the Department is excluding the Stardust Apartments project from competing on its merits against other competitive applications in its region.

"It is my hope that the Board agrees that the merits of a project and then a typographical error in a preapplication determine whether a project best meets the criteria established in the QAP and receives an award of tax credits.

Once again, I ask you to give full consideration to the appeal of termination of preapplication, TDHCA Number 12306 for the Stardust Apartments in Uvalde, Texas.

"Please feel free to contact my office with any questions regarding this proposed housing development in my district. Sincerely, Pete P. Gallego."

The one more.

MR. OXER: Yes, please, won't you.

(General laughter.)

MR. LYTTLE: This letter is you, again, Mr. Chairman, from State Representative Harold Dutton.

"I write to express my concern about TDHCA staff's interpretation of the 2012-2013 qualified application plan resulting in the termination of several preapplications in this year's housing tax credit application cycle.

"In particular, my concern relates to staff's decision to terminate preapplication of developers that requested an amount of tax credits that exceeded the amount available in the region. Staff's decision results essentially in terminating these projects' ability to secure

an award of tax credits for no substantive or meaningful reason.

"As stated in the QAP, the purpose of the preapplication process is to enable applicants interested in pursuing the application, to assess generally who else is interested in submitting applications and the nature of their proposed development. Based on an understanding of the potential competition, an applicant can make a better and more informed decision whether they wish to proceed to prepare and submit an application."

The letter goes on to read, "The preapplication part of the application process is intended as an evaluation tool for developers to determine whether they wish to commit the financial and administrative resources necessary to prepare and submit a full application.

"Unfortunately, staff's decision to terminate these preapplications results in final evaluations of project being made based not on a detailed analysis of the merits of the project's application, but on a non-material error made during the evaluation phase of the application process.

"Without acquiring the preapplication incentive points, these projects will not be competitive in their attempts to secure an award of tax credits. What is more difficult to understand is the application of standards in

Section 50.4(c)(10) of the QAP to preapplications, which are clearly reserved for the far more extensive and detailed full application, as reasoning for terminating these projects.

"Section 50.4(c)(10) states", and it reads, "Ineligible Applications, the Department will terminate an application for those issues identified in paragraphs 1 through 10 of this subsection." Subsection 10 reading, "For applications submitting under the state housing tax credit ceiling, of more than 150 percent of the credit amount available in the subregion is requested at the time of the original submission of the application based on estimates released by the Department on December 1. The Department will consider the amount in Volume 1, Tab 1, Part C, Funding Requests, to be the amount of housing tax credits requested."

The letter goes on to read, "Affordable housing is in critical demand throughout the state of Texas, and I know the Board desires to promote policies and ensure these valuable housing projects are evaluated on their merits and are awarded to communities in areas that best meet the criteria established in the QAP.

"Moreover, I am sure the Board allows substantive issues to guide funding awards in placement of these housing assets rather than typographical or non-material administrative errors. These housing projects are too

important to the communities and the people they benefit not to be judged by substantive and meaningful measures.

"Finally, thank you and the Board for your service to the state of Texas in your efforts encouraging and supporting the development and preservation of affordable housing across the state. I would appreciate your consideration of my concerns as stated above. Should you have any questions or if I may be of further assistance, please don't hesitate to contact me. Best regards, Harold V. Dutton, Jr., Chairman, House Committee on Urban Affairs."

MALE VOICE: There you go then.

MR. OXER: Thank you.

All right. Cameron, I have some more questions. Only a couple. On an application, if somebody files an application and it's in excess of what is available in that region, what happens? This is not a preapplication which is that other --

MR. DORSEY: Sure.

MR. OXER: -- game everybody's playing.

MR. DORSEY: And we're assuming that it's not more than 150 percent, let's say it's 110 percent.

Right? Is that right?

It's just more than what's available in the subregion, what happens?

MR. OXER: Yes, let's go --

MR. DORSEY: Okay.

MR. OXER: -- let's go to the -- let's take both of those cases. Let's go to --

MR. DORSEY: Because I terminated the other one.

MR. OXER: Okay. Well, I mean the other one gets a hit in the back of the head and the other one gets the --

MR. DORSEY: Sure.

MR. OXER: -- consideration.

MR. DORSEY: Okay. Let's say that there's \$500,000 available in a subregion, and the high scoring application in that subregion requests 750,000. What we would do is, we would say, can we fund that application with the amount available. The answer is clearly no.

So we would go through and we would do that for each subregion. For a subregion like Dallas where you have -- or, you know, urban Region 3 where you have more than \$2 million, you probably hit several. But when you get to one where the amount left isn't enough to fund the next one, you stop. And so we go through that process for each subregion.

So during our kind of initial run-through, if someone -- if the high scoring application requested 750,000 and only 500- was available, nothing in that subregion would

get funded. What we would do is we would add up all of the amounts at the end, the amounts that we didn't award through that initial run through, so it would be -- we would take that entire \$500,000 from that subregion and we would add it to that pot and we'd add all of that pot up into one big pot and we would say, Okay --

MR. OXER: It's the statewide collapse section.

MR. DORSEY: Yes, I'm going to assume statewide collapse. There's a rural collapse, but it does the same thing. I'm just going to act like there's one collapse for simplicity here.

So we get all that money into a pot. And the next thing we do is we go back and we say, All right, who is the most underfunded, who didn't get an award, for example. So that subregion got no award, so they would be, on a percentage basis, 100 percent underfunded. And there's going to be a bunch of different subregions that are 100 percent underfunded.

And the hope is that we can hit at least all of those and then we keep going down, we would go to the 80 percent, you know, underfunded, 70 percent underfunded, just in order like that until we ran out of money. Usually we still have a little bit at the end, and at the end of the year we have to make a strategic decision regarding what to

do with that little left over amount.

But that's basically the process. The hope is that if someone requested 150 percent of what was available, or more than 100 percent, the hope is that they would be underfunded enough to get hit in that collapse so that at least they get one award.

But the deal there is you're taking money away from the subregions that were less underfunded, they didn't get their full amount, let's say they got 80 percent, they were only 20 percent underfunded. Well, they're probably not going to get hit, so that 20 percent -- that region loses that 20 percent to help make up the overage in the request for the one that was in the subregion --

MR. OXER: So the case presents itself that if somebody -- if there's 500,000 available in a region and somebody files for 600,000, okay, and they need their -- they need the 600,000 to make their project work, make the numbers work on it. Okay? One of the options would be you can only appeal for, apply for as much as is available.

MR. DORSEY: Right. That would be one solution to this whole how much can you apply for issue. When we discussed where to draw the line during the rule-making process, I think the argument was, Look, in some of these rural areas a \$500,000 credit amount just isn't enough to

achieve the economies of scale that makes doing a deal worthwhile.

MR. OXER: All right.

MR. DORSEY: So, you know, you could only do say, you know, 40 units --

MR. OXER: Right.

MR. DORSEY: -- and it just doesn't pan out.

MR. OXER: So with respect to the 150 percent rule, for those -- and could you or your crew give me -- give us any indication of what the widest disparity was?

So, Mr. Brown, you had one that was about --

MR. BROWN: 20,000 over.

MR. OXER: -- 20,000 out of basically 930-, 950-, something like. So you're 20,000 over. What's the largest amount -- and even though, Mr. Brown, even though you indicate that it was a typographical error, the 20,000, if it turns out that the 930- was the maximum that you could apply for and you applied for 950-, if you got knocked back to 930-, it wouldn't constitute a material impact on your project?

MR. BROWN: No, sir.

MR. OXER: Or if it did, it's got -- it's awfully thin on it finances. Okay.

MALE VOICE: You said the high eights.

MR. OXER: No, no, that's what I said, high eights,

because I was saying that's what you actually wanted to apply for, but if he had actually, in fact, applied for 930-, but just typoed and made 950-, if we just bumped it back down just because the 930- was what was available under the 150 percent rule --

MR. BROWN: I was trying to do the maximum credit request. The truth is I'm actually involved on seven applications in one way or another, preapplications.

MR. OXER: Lucky you.

MR. BROWN: Yes, exactly. And I was filling them all out and doing it quickly, and I made a mistake.

MR. OXER: Fair enough. We understand that. I'm just trying -- I'm trying to examine a variety of remedies here.

MR. GANN: It seems to me, and correct me when I get wrong, because I don't need to be there --

MR. OXER: Mr. Gann is speaking.

MR. GANN: -- the game, it seems, is a game get the most points you can out there. If you just need 830- or 899- or whatever you need, if you had got that marked, you'd have got this project without any problem.

And I think that's really where I'm looking at pretty serious is that too many of us are going for the top and playing that game trying to get that collapse, whatever

you want to call it, so you can get everything. And if we'd just be asking for what we need so we could all share it with the rest of the communities, and in this case you would have gotten this project without any further discussion.

MS. BAST: Mr. Gann, I certainly understand your point. I'd like to make the point, however, that at the preapplication stage there is a lot about a project that a developer doesn't know, and so they're going to prove up their number when they file an application.

MR. GANN: The principal --

MS. BAST: That's the whole point of the application.

MR. GANN: Yes, the principal purpose of the preapp is basically to say we're getting in the tournament.

MS. BAST: Right. Exactly. It's like an entry form. And so they're trying to put down a number that they think is reasonable and makes sense, but they just don't have enough information and they will prove that information on March 1.

MR. OXER: Okay. Hold on, Cam.

Dr. Muñoz?

DR. MUÑOZ: Okay. Cameron, how often does that number from the preapplication, when it gets proved up in the application, ever change?

MR. DORSEY: Oh, I'm certain it changes quite a bit.

DR. MUÑOZ: Okay.

MR. OXER: Okay. Go ahead. You had a comment?

MR. DORSEY: I did have a comment, because you asked --

MR. OXER: The difference.

MR. DORSEY: -- before the difference, and 134,000 --

MR. OXER: Out of?

MR. DORSEY: -- out of -- well --

MR. OXER: I mean it looked like 134,000 out of 900 or 130,000 out of 12 million.

MR. DORSEY: Yes, the limit was 936-; they requested 1,070,000. That's one of them.

MR. OXER: Okay.

MR. DORSEY: So it's a pretty big difference.

MR. OXER: Okay.

MR. GANN: I have another question. There's 370 or -80 applicants.

MR. DORSEY: 388.

MR. GANN: 388.

MR. DORSEY: There's been some changes, but --

MR. GANN: I get it, but it's just --

MR. DORSEY: Right.

MR. GANN: -- close enough. And how many more besides these went over that number?

MR. DORSEY: One, and they said, Oh, I messed up, I'll withdraw. So there were six out of 388.

MR. GANN: Okay. Thank you.

MR. OXER: Any other comments?

(No response.)

MR. OXER: Do we have any other letters, Michael?  
Are those just --

MR. LYTTLE: There's one other letter for a different application.

MR. OXER: That's -- okay.

MR. LYTTLE: Yes.

MR. OXER: Okay. Thank you, Ms. Bast.

Cameron, stay close.

Thank you, Mr. Brown.

Ms. Dula.

MS. DULA: Yes. Thank you. I think Matt Fuqua has ceded some time to me.

MR. OXER: He has indeed.

MS. DULA: Okay. My name is Tamea Dula. Good morning, I'm with Coates Rose law Firm, and here today on behalf of Chris Richardson and Blazer Residential who filed

two preapplications, one for Heritage Plaza, Number 12368, and one for Brazos Bend Senior Villas, Number 12369, and both of those preapplications have been terminated with regard to this issue of 150 percent rule. We were just trying to follow the rules as written down. When the Governor changed the QAP that was last published in the November Board book, it had to be republished with the *Texas Register*. When you last discussed this in the December 15 Board meeting, it was represented that the *Texas Register* might require some technical changes to format, but it was specifically represented that nothing else would change, and even grammatical errors would not be corrected.

The version that was approved by the Governor, which I'll call the Governor's QAP, was published on the website in December, and that was the only copy of the QAP that was made available for developers who were pursuing their preapplications.

MR. OXER: For the record, that's the only version of the QAP we get to play by.

MS. DULA: Well, no, that's not the case.

(General laughter.)

MS. DULA: The preapplications were due on January 10. On January 16 the final version of the QAP was published. And this is the one that was published in the *Texas Register*,

and this is the one that has different language in Section 5.04(c)(10) than was -- appeared in the Governor's QAP.

And I suggest that this language has not been announced, was never discussed, was never acknowledged or disclosed as being a change. It just appeared. I didn't find out about it myself until late January, comparing my appeal with Blake Rue's appeal, and I realized that we were looking at two different versions of the QAP.

When the January 16 QAP, the final one, came out, I threw away my electronic version of the Governor's QAP, but I had to go pull my hard copy out of the trash in order to confirm what he was saying, because at first I thought he was misquoting it.

But the Governor's QAP, which is what the developers were looking at, says, The Department will consider the amount in Volume 1, Tab 1, Part C, Funding Requests to be the amount of the housing tax credits requested. That is a specific direction to the application, not the preapplication.

It says that the application will be terminated if the 150 percent rule is violated. And for the purpose of determining whether that 150 percent rule is violated, you look to Volume 1, Tab 1, Part C of the application, not the preapplication.

This, to me, seems to be a case of changing the rules while you're in play. The new version of the QAP eliminates the reference to that volume, tab and page -- part number. And the question is, why? To me it seems that it might very well be an admission that it was not in compliance with how the TDHCA wished to interpret the preapplication as binding the application with regard to the 150 percent rule.

Now, the preapplication, historically you have not had to lock into the number of tax credits that's referenced in the preapp. You could increase the number or decrease the number when you file your application. It didn't matter.

In order to get those preapplication points, you had to have the same identical site, or something less but still identified as that site or a lesser amount of that site.

You had to meet the threshold criteria for the preapplication, you had to have the same target population shown in the preapplication, you have to have the same set-aside, although in the preapplication you can elect all of the set-asides and then reduce it to the one you really want, and you have to show a score that you think you can make when you look at your selection criteria. And to get the six points for the preapplication, your ultimate score

needs to be plus or minus nine points of that score that you showed to the world when you filed your preapp. That's all.

The threshold criteria for a preapplication says nothing at all about the credits requested. You have to have submitted a preapplication, you have to have a legal description of the land, and you have to have your notification certifications. That's the threshold criteria. Nothing about compliance with the rule, 150 percent rule.

Now, because this is a very complicated process, the TDHCA has published an application procedures manual that helps the developer go through the process of putting together the preapplication and the application. The procedures manual has two parts, the preapplication part and the application part.

The preapplication part makes no reference to the 150 percent rule. The preapplication form makes no reference to the 150 percent rule. When you get to the application part of the procedures manual, it's there, it's highlighted, it's starred, it's stated to be new. But it is not in the preapplication part.

And that is consistent with the Governor's QAP. It says that your credit request is made in the application, not in the preapp. And that is consistent with the historical

ability to change the number of credits that you have, up or down, after you file the preapplication.

And that's consistent with the requirements for getting the preapplication points. It has nothing to do with the credits. If you have the same site, same population, and same set-asides, you can get the preapp points, if you're plus or minus nine points.

So this is an effort to follow the rules. No, not everybody can get to the workshop. I did. I heard Cameron say, Be careful, follow this rule. I didn't prepare any applications this year, or any preapps either. I think that, regardless of what is said in the workshop, that it has to be consistent with what is published. And what is published shouldn't change in midstream.

The current version, the final version of the QAP says that an application will be terminated for applications submitted under the state housing tax credit ceiling if more than 150 percent of the credit amount available in the subregions requested at the time of the original submission of the application, that's a capital A for application, it's defined and does not include a preapp, based on estimates released by the Department on December 1. The Department will consider the amount in the funding request, and that's a capitalized term, funding request, of the application,

capitalized again, to be the amount of housing tax credits requested.

Now, I suggest that if we're going to be very exact and follow the rules, this rule needs to be clarified, because even now what is a funding request? It is not a defined term.

As it happens, there is a page in the application that's called Funding Request, but it's not a defined term in the QAP, and so for next year, for clarity, it needs to be made more specific as to what is going to be your credit request upon which any 150 percent rule is based.

We have five applications that are going to be terminated with regard to this rule. Termination is the death penalty for a project this year. Six points. Everybody has to have it or they won't be competitive. My client was trying to follow the rules as written, and I think that using the death penalty for something like this when the QAP he was looking at, the Governor's QAP, told him where to look for the credit request. That is just unfair.

How to educate, that was a question asked. Reflect that the application and the preapplication both must meet the 150 percent rule in your QAP, if that's what you intend to do.

Also, in the preapplication section of the procedures manual, the 150 percent rule should be referenced

so that somebody that goes through the manual one piece at a time -- I'm going to file a preapp and see where I stand and then decide whether I'm going to do an application, which is the way most people do it, they look at what is needed, they refer to the application procedures manual and they do it and file it. And this application procedures manual said nothing about the 150 percent rule.

Thank you. We request that you grant the appeals.

MR. OXER: Thank you, Ms. Dula. Sit tight for a minute. It's all right.

Cameron, do you have a thought or comment?

MR. DORSEY: Yes, I just wanted to comment about the -- our intent with changing that language between what the previous version was and what the final version is. Tamea alluded to that the idea -- you know, her thought is that our intent was to apply it in this way and we made the change with that in mind.

Frankly, you know, my job is, in part, to try to make this process easier. You know, we walk around talking about Volume 1, Tab 1, you know, that's easy when you do this every day. But the reality is that we sat down with, you know, our Director of Real Estate Analysis and looked at the application, and Brent has applied for credits from the Department before, and we sat down and we looked at it and

said, How do we make this easier.

And one of the ideas is, why don't we stop calling stuff volume, tab, blah, blah, blah. You know, let's just call it what it is. This is the operating expenses, this is the funding request, this is the rent schedule. So I mean that was my intent, to make things easier.

And, you know, so I just felt the need to address that. I'll take any questions about any of the other stuff.

MR. OXER: I'd like to -- as the Chair, I'd like to point out that we appreciate everybody's comments, and we recognize that there is an extraordinary amount of competition and that the points on something like this are critical to being successful in this because of the highly competitive filter, uber-competitive nature of this whole cycle.

So everybody, please recognize that we're doing the best we can do, making an effort to be fair and trying to get some clarity on this. And if nothing else, we'll use this discussion as a way to consider something that would be more formalized next year to clarify -- it takes this, you know, some of these rough edges we got are hard and sharp so we've got to buff at them for a while to get it buffed out.

But, you know, I recognize your point, Ms. Dula,

and we appreciate your comments.

Are there any comments from the Board?

MALE VOICE: No.

MR. OXER: Okay. All right. I have a question, Cameron, since the -- it seems that the principal intent, particularly given the fairly light cost of the application fee, the low amount of the application fee, the principal intent of the preapplication, and let's just separate the two, there's a preapplication and there's going to be an application. And while they're related, they're not linked. Okay.

If we assume that the -- if everybody in the room, as a developer, assumed that an application was going to be for the maximum amount of points and dollars, okay, the maximum amount of credits that were available, and didn't put a number at all. They simply said, We have property, we have a place, we're going to do a project, and we're saying we want to do this. Okay?

MR. DORSEY: Uh-huh.

MR. OXER: Then you have to assume that everybody here, as a developer, would assume that all the other guys in the game are going for a big project, from a strategic standpoint, from a competitive standpoint you'd have to assume that that was the was -- I'm looking at it from their -- trying

to see it from their point of view.

MR. DORSEY: Yes. You know, there are dozens of strategic decisions that get made throughout the process. You know, I get wind of strategic decisions constantly. And, you know, it's -- this is largely a game to figure out how to get the max points. In this case it's -- and this year it's a game to figure out how to win the tie-breakers as well.

So how big a project is, how much in credit they plan on requesting, I mean that's a strategic -- yes, it's a strategic consideration. You know, you have \$2 million in a region and someone has a higher preapp score than you and they say they're going to request a million, that might influence how much you put -- how you size your deal for the full application because you might not want to put a \$2 million app in because if you're second in line, you -- they might get down to you and you're requesting 2 million but only a million dollars will be left.

So you strategically size your deal accordingly. And there are dozens of those types of decisions at various stages during the development process.

MR. OXER: Okay. Ms. Dula.

MS. DULA: I would like to point out that those preapps that say 2 million could well come in an application at a million and a half, or 750,000.

MR. OXER: Yes, since the -- you know, I played basketball, I did a strategic head fake, head straight and you go someplace else. Okay. So if you put in a \$2 million -- the application is what defines the actual credits that will be applied under this funding yet request yet to be defined --

You are taking notes on what we're going to fix year. Right?

(General laughter.)

MR. OXER: Or this year. Apart from all of those, if everybody -- I'm trying to figure out a way that -- or I'm trying to see if there is a path to get a point where the preapplication was presumed to be at or near -- at the maximum amount and you don't put a number in, because if it doesn't count and you run it up or down anyway, it only counts in the application. Correct?

The amount that you apply for is only fixed in the application. In the preapplication it could go up or down as you go --

MR. DORSEY: There can be some change, yes.

MR. OXER: Right. So that's a squishy number to start with on the preapp.

MR. DORSEY: Sure. It's definitely a squishy number. In this case you're dealing with a kind of unique

circumstance because it's not just a number, it's the fact that they requested more than 150 percent that's part of the strategic play.

I mean someone in line in this region heard me say at the workshops that don't request more than 150 percent or we're going to terminate you. So there are other folks in the subregions right now and their strategic decision is, Hey, there might be one less app in this subregion because they're going to get terminated.

DR. MUÑOZ: Hey, Cameron, I've got a question. Of the 388, you know, just a rough estimate, how many do you believe may have applied for in excess of 100 percent, between 100 and 150? I mean does anybody ever request just kind of what they actually need?

MR. DORSEY: Oh, yes, absolutely.

(General laughter.)

MR. DORSEY: Well, and what you need is --

MR. OXER: What a concept.

MR. DORSEY: -- some people do need 150 percent as well, and they size their deal accordingly and they --

DR. MUÑOZ: In order to make their deals.

MR. DORSEY: -- develop their plans accordingly and all that kind of stuff. So it's not always just a game. They actually do try to size their deal.

MR. OXER: Because ultimately this is -- you know, I mean the amount that they apply for is based on -- if you just -- if you could erase the regional allocation formula, the amount that they would apply for would be defined by their economics of their deal.

Now, what's available is something totally unrelated. Okay. So they're applying for something and there's only so much available and it could be two to ten times that much. Right?

MR. DORSEY: Right.

MR. OXER: Okay. So that's --

DR. MUÑOZ: And without it their deal doesn't work.

MR. DORSEY: Right. That's the case in a lot of cases, and, you know, I can -- I know of an example from last year where there happened to have been a forward commitment in the subregion from the year before, and so the amount available left in the region was let's say a million dollars, and they knew that going into the collapse that wasn't going to be 100 percent underfunded because of that forward.

So an applicant sizes their request based on the million dollars because they didn't want to take the risk that they wouldn't get hit in the funding collapse. I mean there's, you know, I mean there's --

DR. MUÑOZ: Yes, there's got to be a way to sort of figure out --

MR. OXER: And that's what I'm trying to figure out, Juan, because where I was going with this earlier about the percentage, because Mr. Brown -- Mr. Brown's still there -- okay. He makes an application for 930-, 930- more or less. Okay. 390- and what he really wanted was 930-, and so he -- the typos take him to 950-. If, under that, under the preapplication you just said, No, there's not 950 available, it's only 930-, so you just enter him as 930-, period. Give him the six points. Okay. MR.

DORSEY: Sure. Sure. And in past years that was done and the rules were crafted differently and we just had the \$2 million maximum and we didn't have a criteria under the ineligibility section, and so that's kind of how it was dealt with. It's just, you know, this year we have a rule, it's in the ineligibility section --

MR. OXER: That was this year, and this was this year. I know.

MR. DORSEY: Right.

MR. OXER: And where I was trying to get to on that is, in the case of Mr. Brown's project, of the one we're considering, the one out of your seven, Mr. Brown, the -- in that particular case, knocking it down from 20 to 9 -- from

950- to 930- would not make a material difference in his economics, or if it did, you're really too close to the edge. Okay.

So you have to presume that that was there, not to mention the fact that it's a preapplication, so that when he filed the application, it could be 1150 as opposed to -- or it could be, as he said, 850-. Okay. So that's entirely different.

But the point of the preapplication is to put a stake in the ground and saying, I'm in the game, you've got to beat me to get there.

MR. DORSEY: That's right.

MR. OXER: Okay. All right. So that's one point. So where I'm going where this is Ms Dula is saying that the differentiation between the two is considerable.

All right. Before we -- all right. The Chair's going to exercise some discretion here and we're taking a 15-minute break to -- before these guys shoot me or we embarrass ourselves up here.

Okay. Be back here -- let's be back at 10 after, please.

(Whereupon, a short recess was taken.)

MR. OXER: Yes. Okay. Where were we, Karen?

All right. We have some others.

Ms. Dula, did you have anything else you'd like to say?

MS. DULA: No, I just wanted to remind you that we have a letter of support from the mayor of the city of Montgomery.

MR. OXER: Yes. Do we have that with us? Okay. We're about -- I think we're about to hear that one.

MS. DULA: Okay.

MR. OXER: So that's all right. We'll get to that in a minute, so.

MS. DULA: Are you finished with me then?

MR. OXER: The question is, are you finished with us?

(General laughter.)

MS. DULA: Thank you.

MR. OXER: Yes, I am.

Okay. That was the first one. Right, Cameron?

MR. DORSEY: Those -- right. These are the first appeals for this cycle, but we've covered three of the developments that are on the list there.

MR. OXER: Okay. So we have two more. We'd like to hear the -- let's see, we have a couple more -- let's do this.

Michael, let's get the letter in from the mayor

of Montgomery, see what he says, and then let me -- before you start, we'll have -- make sure I get this right -- Ms. Keen -- Keener -- Keen -- Keener.

Keener -- Kimberly, you'll be next. And then Darrell Marquett?

MR. MARQUEZ: David Marquez.

MR. OXER: David. Of course. I'm sorry. David, you're next, you two are next.

Okay. Michael.

MR. LYTTLE: This letter is addressed to Chairman Oxer. It reads, "Chris Richardson and Blazer Residential, Incorporated are considering developing a senior residential facility in the city of Montgomery.

"They have made presentations and gone to considerable effort to select a site in the city and collaborate with the city to determine the feasibility of the project. As you may know, the city of Montgomery has a need for affordable housing for seniors. The tax credits available through TDHCA are necessary to make a project like this work.

"It appears from correspondence that we have reviewed that the preapplication for the project has been rejected by TDHCA because of a recent change in the language of Chapter 50.4(c)(10) and confusion regarding the

applicability of this rule to the preapplication process. The developer mentioned above has appealed the decision to the Executive Director, as well as the Board.

"This project would benefit the city by bringing affordable housing to our area, which includes one of three historic African American communities in Montgomery County, as well as a significant number of low to moderate income seniors in several communities.

"It would be a shame for our citizens to lose this housing opportunity because of a technical preapplication failure caused by confusion due to vague and recently change in language in the rule. Very truly yours" signed "John Fox, Mayor, City of Montgomery."

MR. OXER: Okay. Kimberly, you've ceded your time to David.

So, David?

You've ceded your time, Kimberly. You get up here and take the bullets with him. Okay.

MR. MARQUEZ: Yes, that's right.

(General laughter.)

MS. KEENER: I have to escort him, he's a senior. He might need some help.

(General laughter.)

MR. MARQUEZ: Well, I'm going to tell everybody

how long you've been in the housing business. Okay?

MR. OXER: I'm going to be judiciously quiet over the senior things.

MR. MARQUEZ: Okay. I'm not an attorney, so I'm not going to read you the rules. What I am going to say is that, and I think it's been said, so --

MALE VOICE: David --

MR. OXER: David --

MALE VOICE: -- name --

MR. MARQUEZ: Oh.

MR. OXER: Who are you?

MR. MARQUEZ: David Marquez. Okay.

MR. OXER: We know, but she needs to know.

MR. MARQUEZ: Okay. M-A-R-Q-U-E-Z.

MR. OXER: There you go.

MR. MARQUEZ: Okay. I am working with Ms. Keener, who is a HUB, who's been in the housing business for 18 years.

I had to put that in there.

But one of the things that when we started --

MR. OXER: Since you were in high school. Right?

MS. KEENER: Yes.

MR. MARQUEZ: When we started was, I said, Hey, listen, whatever you do, read whatever you sign. Okay? And

so what happens is, you have 388 applications, five of them didn't read what they signed, 383 did. I remember last year I was in front of this Board, and it wasn't 150 percent, it was 1-1/2 percent. And Mr. Conine said, Hey, Dave, this is not your first rodeo, you've done this before. If you were 1-1/2 percent over, why did you sign it?

Hey, I just didn't review it close enough. I'm sorry. I missed it. A \$20 million deal and I think I was over \$13,000.

So one of the things that I keep telling Kimberly is that, Hey, as we review this, sign everything that you want to sign that you know about. If you don't know about it, and if it's not for sure, well, then don't sign it.

And so when we went to the QAP meetings, I remember Cameron sitting up there and said, Hey, this is the amount.

I don't know what the QAP says, I don't know what the Governor signed. I'm not that smart, I have to admit to you I'm not that smart. If he tells me it's 932, 936, I'm sorry. We put \$900,000.

And because we felt like we were in the running, okay, and because we did play by the rules, well, we had now spent collectively for architect, engineering, geo testing, and so -- our structural engineer, I mean they've all been out to the property. So we're the project that sits behind

the one that was talked about in Uvalde.

And so as I'm explaining to her that this is a very competitive process, and this is kind of a big boy's game, you know, you make a mistake, you're out. I don't know how much that project cost us in the Mexican American Community Council last year. But we were out.

We signed what we shouldn't have. And it becomes that simple. And if it's a typo, then I'm sorry. You shouldn't have signed it. And so it's not that complicated, it really isn't.

The other thing that I was asked, I was thinking about as we were talking, and Dr. Muñoz said that about the points and so forth, if you do agree, as it is your prerogative to do, to establish this application, then they should be one point behind the next scorers. And I think there are like three scorers that are all the same, 176, 176, so they should at least be penalized for not doing what they were supposed to, that the other 383 people did. So that's all I had to say.

MR. OXER: Any questions or comments from the Board?

MR. KEIG: Yes.

MR. OXER: Mr. Keig.

MR. KEIG: Mr. Dorsey, we don't have the

discretion to award five points versus six, do we?

MALE VOICE: Yes.

MR. DORSEY: I believe you do.

MR. KEIG: Okay.

MR. OXER: According to counsel, we have the discretion to alter the amount of points as an option, and we'll explore that. But part of what I want this to reflect, and as Dr. Muñoz commented during the break, the good news is, we're having a fairly robust discussion about all this because it is critical, it is a big game. This is serious.

Some of the staff around TDHCA have heard some of my pithy little metaphors about being able to have the capacity to deal with these projects, and one of the ones that I use is your tractor doesn't have enough horsepower.

No, I wasn't going to put it in the record, Tom.

You know, you've got to have something big enough to pull one of these projects. And so those that appeal -- or apply for these projects that have -- that don't have the capacity to manage and monitor and execute on these projects afterwards are the ones that really make this difficult, and wind up burning points and credits for projects that don't deliver for the state of Texas.

So we hear your point, we hear your comments, and

we're trying to find a way to make this work that encourages continued improvement and raising of the bar. All I have to say is, based on what I've heard, this program in the state compared to other states, that the bar is pretty high here.

So just right off my bat my compliments to everybody that's in this because when you ultimately get one of these, these are really good projects, so.

Okay. Any other comments from the Board?

Dr. Muñoz, did you have anything, anything else?

MR. GANN: I have one --

MR. OXER: Mr. Gann.

MR. GANN: -- one semi-related to what you're saying, and I just realized this a while ago when I noticed there was about 100 people in the room. And you calculate it out, that means on this project of 388, one person plus a share would have missed this dollar amount. One person in this room.

And to me, you know, if you want to think of it statistically or business-wise or whatever, that's a number that is very important on what we're trying to accomplish here. And 1 percent just missed it.

MR. OXER: Do we have any of the other -- we have any other -- we don't have any more -- there are no other comments on this in terms of -- yes, we have no other public

comments on this particular item.

So, David, thank you. And, Kimberly.

MR. MARQUEZ: Thank you.

MR. OXER: Appreciate it.

And before we get to the point of going through this, I want to spend some more time, a little more time looking at mechanisms to correct this for next year, since part of our deliberations are -- here, are not to simply be the striped shirts in the game here, so much it is to help create the rules that are fair and avoid some of this for next year.

You know, there was a fair amount of brain damage we went through last year that we corrected from the QAP that's probably not going to happen this year, that, you know, is a product of some continuous deliberation, a lot of public comment and a lot of public participation, which the Board and the staff very much appreciate on behalf of everybody out there who attended Cameron's workshops and the development workshops and that sort of stuff.

With that said, I want to spend some time here and look at -- see if we can create a path forward on this that achieves the purpose of the preapplication without opening it up to one of these death penalty issues.

So do you have any comments, Cameron?

MR. DORSEY: Sure. I mean I think there's quite

a bit of clean up we can do just in general. I mean, you know, in terms of what can change from preapp to app I think there's some things that are -- that remain in the rules with regard to what can change that are really relics of the past and we need to relook at those.

But, you know, it just -- when you're, you know, making such significant changes to the rules, some of that detail gets passed over for sure. And we need to go back and look at those things and make sure we clear those things up, which, you know, we're going to make a concerted effort to do.

MR. OXER: Well, I think it's clear that the QAP rewrite last year was, by all accounts, considerable and substantive. And Ms. Dula I think would recognize there was a lot of contribution to that. And there was some final twisting and polishing and buffing that, you know, represents one of these whole things, it was a crack that something that fell through. So I'm sensitive to those issues.

But I'm also trying to see if there's a way that -- well, let's take an example here. If you have an application that -- for which there's a million dollar cap in their region, or a million dollars in their allocation for their region. So the cap would be a million five. All right. Or currently under the 150 percent rule the cap --

MR. DORSEY: That's correct.

MR. OXER: -- the cap would be a million five. They couldn't apply for more than a million five.

On a preapplication, which is different from the application, yes, we accept that. Okay. At least as stated now. If you apply for a million six on that, it doesn't necessarily have any material relevance or linkage to your application, because from that you could go up or down.

And the principal purpose for the preapplication is to put a stake in the ground, you're in the game, you're going after a big project, and I have to assume all the developers here will have to assume every application is for the maximum. Okay. And to advise their legislative delegation that something's afoot, including those people who are out there who might be for or against any particular project.

Is that a fair summary on the --

MR. DORSEY: Yes, I think -- yes. I think there are, you know --

MR. OXER: All right. Are there material -- does it constitute a material change from a preapplication to an application or is there such, or is it only a material change in the application that is penalized? For example if they apply for a million six in the preapplication, or list a

million six, and then formally apply for 2 million in the application, does that have any impact in terms of the assessment of the points that are awarded?

MR. DORSEY: I don't want to speak off the cuff here, so let me --

MR. OXER: All right.

MR. DORSEY: -- flip to it. There are several items that can't change or that can only vary by a certain percentage.

MR. OXER: Okay. That's what I'm asking.

MR. DORSEY: Yes. So let me go look at those real quick.

MR. OXER: And where I was headed with this is that, if it comes down to in every application that comes in that's in excess of the 150 percent rule, you just presume that it's capped at 150 percent. So if --

MR. DORSEY: Right.

MR. OXER: -- you file a --

MR. DORSEY: That's right.

MR. OXER: -- preapplication, file a preapplication, I file it for a million six, then there's only a million five available so your preapps for a million five. Then if you go to the application, what is the impact of that decision on the application? That's where we're

headed, where I'm headed on this.

MR. DORSEY: Right.

MR. OXER: Okay.

MR. DORSEY: So the things that can change are that -- or that can't change are that you have to have the same development site or a smaller portion of the site at preapp.

MR. OXER: You can't move over to the next county.

MR. DORSEY: That's right. You have met the preapplication threshold criteria obviously. You can't change your target population. These things, by the way, are all to get the six points. They can obviously change these things, they just wouldn't get six points.

So you can change your target population. So if you went -- if you were doing a qualified elderly --

MR. OXER: You can't -- you are or are not?

MR. DORSEY: You cannot --

MR. OXER: Cannot.

MR. DORSEY: -- change.

MR. OXER: Just making sure it's clear on the --

MR. DORSEY: Yes. From qualified elderly to general population. You cannot add set-asides. So you can't say, I'm applying in Region 3 and then say, Oh, wait, no,

now I'm going to be at risk deal. So you can't add that set-aside from preapp to app. And you can't be awarded by the Department a score that is more than nine points greater or less than what you had in the preapp. And so if you look at what the idea behind those items is, it's let's make sure that there is some meaningful stuff they're providing in the preapp that helps people make strategic decisions. Frankly, the funding requests should probably have been one of those that it can't change by a certain percentage so that people have an idea of how much you're going to apply for. That's the type of clean up.

And those are policy decisions. Do you want to have that as an item or do you not? And if you don't want to have the funding requests in there as something that can't change by, you know, more than 5 percent, then why are we asking about these other things is another, you know, kind of policy type of question. So there's some clean up to be done.

MR. OXER: Okay. You know, we did a lot of work on this last year, that wasn't to say that was the last piece to be done, there's more to be done here, so.

Dr. Muñoz, did you have a thought on this? You were talking about points. Speak up. I've been the one carrying the ball here, so.

DR. MUÑOZ: No, no. We appreciate you doing that too.

(General laughter.)

MR. OXER: Yes, but all those little red lasers are on me right here.

DR. MUÑOZ: You know, one of the things that I said during the break, Cameron, is I think it's important and I appreciate -- you know, some people think that we may be belaboring the point, but, you know, a robust, thoughtful public engaged sort of discussion of this very nuance sort of anomaly that's occurred, I think is in the public's best interest.

You know, I'd like to try to come up with some sort of approach. You know, they seem to all be suffering from this sort of interpretation. If there were a way to recognize that there was, in fact, a deficiency in the preapp that was at least by your representation attempted to be brought to their attention on several occasions, both in private workshops as well as availability online continuously, if there was some sort of approach that we could recognize that, but not sort of execute the applications and permit them to go forward in some way in the best interest of the state and the possibility, not the inevitability, but the possibility that they would compete with the other

applicants in their respective regions would be, I think, a direction in everybody's best interest.

And this may be trying to appropriate what I understand legally to be our prerogative in some kind of variability of points, perhaps in the instance of these cases, something be done along those lines on this one occasion because as the Chair has clearly indicated, I do not believe that there will be any room for consideration of these exceptions in the future.

MR. OXER: Well, we're going to at least try to get to the point that the rules are clear, not clear enough, you know. I know everybody out there is making an intimate assessment of where the commas are placed in all of these, so the sort of close exegesis of the rule as it applies, it is something that you shouldn't have to be an attorney to be able to read this. You ought to be able to -- Counselor -- you should be able to say, you know, they said don't apply for more than 150 percent.

So what I'm looking at is -- I mean my own sense of this would be to put a 150 cap on the preapplication, and what I was trying to find out is, when looking at the material change from the preapplication to the application, if it went from when they were applying one six, or 1.6 million in this particular example, and you knock it down to 1.5, which you

presume that the preapplication can only be as much as is available as you have, you know, advertised on the web, made publicly available in the regional allocation formula, if you assume that that's the case, does that 100,000 in this case, which is about 6 percent, does that have a material impact on the application, and does it have any impact on the points awarded under the application?

Is there -- because if they had 1.6, what's the maximum -- apparently now we don't have a percentage increase differential that they could apply for on that. Is that correct?

MR. DORSEY: Uh-huh.

MR. OXER: Actually, that's true because if it's a 1.6, the maximum they could apply for is 2 million -- or 3 million this year.

MR. DORSEY: Right.

MR. OXER: Three million.

MR. DORSEY: Well, 2 million for the one application, but the applicant --

MR. OXER: That's right.

MR. DORSEY: Right.

MR. OXER: It's 2 million for one application. Okay. Noted. Good point. Three million for the developer cap, 2 million for an application cap. Correct?

MR. DORSEY: Right.

MR. OXER: Okay. She's listening, that's why I asked.

Okay. So if you go from the 1.6 and you knock them down to 150 percent, okay, and just presume that the preapplication, regardless of what number they put in there, okay, if it goes over that, that's just the number you put up at the top. If it's less than that, you put in what's less, but it's no more than whatever the 150 percent cap is in the application. Everything else applies. Okay?

MR. DORSEY: Uh-huh.

MR. OXER: Is there a material impact on the scoring under the application if the application credit amount, the funding amount, as soon to be defined in the regulation here, that funding amount, funding request is more than that, is there a percentage, or have we not considered by the Board yet? This is a little, tiny little split hair here. Okay. This is a frog hair and we're cutting again. All right.

MR. DORSEY: You know, these type of things are hard to answer on the spot. I can think of unintended consequences right now just with regard to --

DR. MUÑOZ: You can think of unintended --

MR. DORSEY: -- knocking someone down --

DR. MUÑOZ: -- consequences, but is there anything statutorily or in the QAP to prevent somebody from doing that, applying for more in the application than the 150?

MR. DORSEY: Right now there's -- it's in the QAP.

DR. MUÑOZ: It is.

MR. DORSEY: There's the 150 percent limit.

MR. OXER: In the QAP there is a limit to how much they can apply for. Right?

MR. DORSEY: Right.

MR. OXER: Okay. That's -- I mean but that's for the application proper. Right? Let's differentiate it from the preapplication. A different animal with stripes and this one's got spots. Okay? Then the preapplication, if we said whatever you apply to, if it's more than the 150 percent, we're going to put 150 percent in. Okay? You can apply for 27 million, it doesn't matter, we're going to put 150 percent of that regional allocation.

DR. MUÑOZ: That's the same figure that'll be in the application. Right?

MR. DORSEY: I'm sorry. I'm not sure I understand.

MR. OXER: That's all right. That's why we're going over this. We're going to make --

MR. DORSEY: We could make this a rule if you want.

We could make it a rule that you knock it down automatically, and that --

MR. OXER: That's what I'm trying --

MR. DORSEY: -- wouldn't violate statute.

MR. OXER: That's what -- I know, that's what I'm trying to figure out, is there a way to take a look at this, because we have the option right now of awarding zero points, six points, knocking their application down to 150 percent, or not applying -- not giving the appeal. Okay. I'm trying to be fair to everybody in this room, including the ones that read the regulation and read the report and did their applications properly.

So what I was going with is, in the future, not right this second, but in the future if we had one that just -- if the rule simply said that any application above 150 percent of what was available under the regional allocation formula for that region was simply considered to be 150 percent, is there any material change -- is there any implications on that once you go to the application? Because the application itself will be limited to 150 percent.

MR. DORSEY: No. I mean --

(Pause.)

MR. OXER: Fortunately I have a good general counsel that's slapping us up out of this ditch and back on

to the road again, so. I meant for this to be sort of a, you know, 90 second diversion into figuring out -- I didn't mean for it to take another 45 minutes looking at all these.

We need to post a rule about how -- or post an agenda item for consideration of this rule. But I was looking for something in the way of dealing with this so that we have some clarity in the application, or in the process next year, so.

MR. DORSEY: Well, next year we'll have clarity because you all are about to make a decision and we'll take that and we'll take your guidance and we'll put it out there.

DR. MUÑOZ: Well, we may well make a decision related to these appeals, which would be related but not entirely governing the decisions that we make next year related --

MR. OXER: Right.

DR. MUÑOZ: -- to how to clean this and make it clearer.

MR. DORSEY: Right. This will -- this can be up for consideration for next year to make it clearer.

MR. OXER: Dr. Muñoz, you want to formulate something?

I've got an idea, we can toss a piece or two out,

but my assessment -- here's what I -- if it was me, if it was just me, those applications get knocked to 150 percent, period.

They didn't read the -- they didn't listen, you know, they need -- and granted we had 99 percent of the team got this, but we're trying to get 100 percent. Okay. So deny them at least a portion of the six points. Okay. And then come back and do a rule making that clears this up under the QAP, under the 2013 edition of the QAP.

MR. DORSEY: We can do that.

MR. OXER: Okay.

DR. MUÑOZ: We would knock them down to 150 percent and then not allocate the full percentage, the full six points, for example, deduct a point.

MR. OXER: Do we have any --

MALE VOICE: Is that a motion?

MR. OXER: No, I'm asking for conversation, if there's any more consideration, I mean any thoughts into that. We haven't formulated a motion yet.

MALE VOICE: I don't have any this time.

MR. OXER: Okay. Would you care to put that into a motion, Dr. Muñoz?

DR. MUÑOZ: Yes, there's a difference between penalty and eliminating them from consideration, and given

what's been representative -- or represented as a very competitive cycle, I think that this is sufficient.

MR. OXER: Is your microphone on?

DR. MUÑOZ: Yes. So I move that we cap them at the 150 percent of what's available regardless of what they've asked, and in these instances of appeal, that the appeals be granted with a penalty of one point. So an allocation of five as opposed to six.

MR. OXER: Okay. The one point, we'd have a difference. I would look at that as two. I would take that as a motion of one point on the differential --

Just a second, we have a motion on --

MR. DORSEY: She's probably saying the same thing I was about to say.

DR. MUÑOZ: Great. She -- likely not. So therefore we are granting the appeal in part.

MR. DORSEY: Okay. They haven't submitted a full app yet, so it's only provided they move forward with a full app and that they meet the other criteria here they would be eligible for up to five this -- in other words, having requested too much at preapp would not disqualify them from getting five points at full app.

MS. DEANE: Oh, and one more question. Are we talking about all state -- I'm sorry. I'm sitting in the

background.

Barbara Deane, general counsel. Just one more question. Does this mean you are granting the appeals of all of the appellants?

MR. OXER: I was going to restate it for you.

MS. DEANE: Okay.

MR. OXER: Okay.

DR. MUÑOZ: I think -- yes.

MR. OXER: All right. The motion would be to grant the appeals for all appellants -- appealants?

MALE VOICE: Appellants.

MR. OXER: Appellants. You're the attorneys.

Appellants. Okay. With -- grant the appeals but with up to only five points rather than the six that would be given under a normal, given that they make the formal full application.

Okay. Motion by Dr. Muñoz to that effect. Do I hear a second?

(No response.)

MR. OXER: Apparently not.

MR. KEIG: Well, I'll second.

MR. OXER: Second by Mr. Keig. Okay.

MR. DORSEY: And even though there's been plenty of discussion, I would just like to --

MR. GANN: And we're up for discussion --

MR. OXER: That's -- we're -- we've made a motion, it's been seconded, opportunity for discussion, is there any conversation, discussion by the Board?

MR. GANN: I think I'm really in a position there needs to be more penalty than that.

MR. OXER: Okay. Then --

MR. GANN: But I'd like to hear more discussion.

MR. OXER: All right. Is there any public discussion, since we now have an active motion on the floor with a second?

(No response.)

MR. OXER: Does everyone think they've said their piece too?

(No response.)

MR. OXER: Okay. David, you got any --

MR. MARQUEZ: Don't ask me.

MR. OXER: I just -- then don't raise your hand, sport. Okay?

(General laughter.)

MR. OXER: You know, hands up around here is like a lightning rod. Okay? So, yes.

DR. MUÑOZ: Mr. Gann, what --

MR. GANN: I don't know. I just -- I'm sorry.

MR. OXER: No, go ahead.

MR. GANN: I'm just thinking closer to two points, if anything, so I'd like to amend your motion and I'd be agreeable to it if we go to two points.

MR. OXER: I'd be inclined to go to two points myself.

MR. GANN: Penalty points, in this particular case.

MR. OXER: Okay. Then we have a motion on the floor --

MR. GANN: I'm talking -- asking to amend the motion.

MR. OXER: I'm getting back to where we are. Okay? There's this protocol thing we've got to do.

(General laughter.)

MR. OXER: Motion on the floor to grant the appeals with the up to five points awarded if they apply -- make full application. That's the current motion on the floor. Mr. Gann has made a motion to change that -- to amend that motion up to four points. Do I hear a second?

(No response.)

MR. OXER: I have the option to second.

MR. GANN: Now, okay, repeat what you said this in?

MR. OXER: Basically what it says, you'll get up to four points, based on what you're saying --

MR. GANN: It makes it a two-point penalty.

MR. OXER: It's a two-point penalty.

MR. GANN: Right.

MR. OXER: We grant the appeals, two-point penalty, you get up to four points in the full application.

Do I hear a second?

MR. KEIG: Second.

(General laughter.)

MR. OXER: It was not exactly as robust as the discussion we've had, but. Okay. Second by Mr. Keig to amend the motion.

MALE VOICE: You all didn't have discussion on the --

MR. OXER: No, that's exactly right. Now we have discussion on the proposed amendment. My parliamentarian mentor would be proud that we're trying to keep up with this.

MR. GANN: I'd like --

MR. OXER: Okay.

MR. GANN: -- this over.

MR. OXER: That's -- all right.

MS. DULA: May I ask --

MR. OXER: Ms. Dula, please come --

MS. DULA: Yes, thank you.

MR. OXER: -- to the microphone.

MS. DULA: Tamea Dula once again. I would point out that a two-point penalty is equivalent to a death penalty here.

MR. OXER: Noted.

MS. DULA: We have instances here where there is truly a substantial question as to what the rule requires, and a two-point penalty is pretty rough when looking at all of the written materials that are available, you follow them and end up with a two-point penalty. Thank you.

MR. OXER: Noted.

Okay. We have a motion to amend on the floor. Is there any other discussion?

Mr. Keig, do you have a comment?

MR. KEIG: I wanted to see if Dr. Muñoz had any further comment.

MR. OXER: All right. Hold on.

DR. MUÑOZ: I remain comfortable with one point.

(General laughter.)

MR. OXER: Was there another comment?

Okay. Come to the mike, please, state your name.

MR. IRVINE: You'll need to submit a witness affirmation form too.

MR. RUE: My name is Blake Rue, and I'm -- I guess I'm partly responsible for this flowing discussion we're having up here. I would just like to say if the Board should decide to initiate some sort of penalty to these preapplications, essentially they're saying that -- they're making a legal decision that 1 through 10 of the ineligible application section essentially applies to the preapps.

It's a real black-and-white issue. Either one through ten apply or they don't apply. Or even including the seven that Cynthia Bast, Ms. Bast indicated earlier that aren't really pursued or aren't really addressed at the preapplication stage.

So it's -- I mean legally I would just -- to me it looks like they either apply or they don't apply. So that's my comment. Thank you.

MR. OXER: Thank you for your comment.

Barry?

MR. PALMER: I'll make my comment.

MR. OXER: Sure. State your name and fill out --

MR. PALMER: Barry Palmer --

MR. OXER: -- do the paperwork game.

MR. PALMER: -- with Coats Rose. And I believe that Ms. Bast and Ms. Dula have pointed out that the clear reading of the QAP, which says that this -- you're ineligible

if you apply for more than this at the time of application.

That's what the QAP says.

I haven't heard any response to that other than it was the intent apparently of the Department for it to apply at the preapp. But that's not what the QAP says. And, you know, the Board has been insistent that we follow the rules, the language of the QAP in other instances, and then in this instance the language of the QAP is in favor of the people who are applying for the -- to be reinstated.

MR. OXER: Noted. Thanks.

Any more comment, Lowell?

MR. KEIG: (No verbal response.)

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: (No verbal response.)

MR. OXER: Okay. We have a motion to amend on the floor, so is there any other comment?

Did you have a question, Mr. ED?

MR. IRVINE: No, my only point was that when the Board finally --

MR. OXER: Gets it collective act together?

MR. IRVINE: -- gets a motion crystalized, that it's required on the record that at the time of the motion you summarize and state your rationale for deviating from staff recommendation and the specific factors that go into

the actual motion.

MR. OXER: Just one more wrinkle we'll have to iron out here, so, stay with it.

Would you be kind enough to simply read that into the record, Tim? Just read that so we can get that clear.

MR. IRVINE: Section 2306.6725, Subsection C, on awarding tax credit allocations -- obviously this is getting to the allocation issue -- the Board shall document the reasons for the process -- projects selection -- and this obviously affects their selection -- including an explanation of all discretionary factors used in making the determination and the reasons for any decision that conflicts with the recommendation of Department staff.

MR. OXER: Now, if this was easy, I guess we'd already be there, so the -- we have a motion on the floor to amend the earlier motion to grant the appeals. Let's deal with that one first. So they would --

MR. GANN: I want to deal with that one first and then we --

MR. OXER: Because we can't.

MR. GANN: Okay.

MR. OXER: Yours is the amendment to his, the -- from a parliamentary standpoint.

Is everybody clear on the amendment?

MR. GANN: Yes.

DR. MUÑOZ: Yes.

MR. OXER: Okay. All in favor?

(No response.)

MR. OXER: All opposed?

(A chorus of nays.)

MR. OXER: All right. That one's off, take the amendment off. So it doesn't go down to a two-point penalty. Okay. So at most right now it would be a grant of five points.

I understand the -- and while it was admirable that you wanted to make this clearer to clean it up, straighten it out, the point that Ms. Dula makes that -- on the differential between the two points -- the two filings and the two versions of the QAP have some differences in them.

And, yes, Barry, we have made a point and have had impressed upon us by those who work in this big round-topped building behind us that they wanted a clear set of rules on the application and what we -- and the mechanism that we use to apply them. So we've got to -- I'm going to try to see if there's a way to get this clearer.

So the motion is on the floor now to consider Dr. Muñoz's -- or it's on the floor now to consider Dr. Muñoz's

motion for grant of the appeals but with essentially a potential to grant of five points on the preapplication component of the application --

DR. MUÑOZ: Yes.

MR. OXER: -- which essentially constitutes a one-point penalty.

Is that a good summary?

DR. MUÑOZ: Yes.

MR. KEIG: Well, I believe we also have to state --

MR. OXER: We have to state why we would do that.

MR. KEIG: Right. And what I understand the rationale to be is that we do see a distinction between the preapp and the app. Is that correct?

MR. OXER: Yes, the distinction would be that we do see a distinction between the preapp and the app and we see, as pointed out by Ms. Dula, there were differences in the applicable versions of the QAP in which one that was filed and the one that was evaluated.

MR. KEIG: Anything further from our general counsel?

MR. OXER: Please.

MS. DEANE: Okay. Let me --

MR. OXER: You can do it up here.

DR. MUÑOZ: No, she's got her own private --

MR. OXER: Oh, she's got -- oh, okay. I got it. Just don't go down there, please.

MS. DEANE: All right. You know, granted, this is really confusing, and part of the problem is there were several different grounds made for appeal. I would say that, with regard to the argument about the rules -- well, first of all, let me say that staff basically did what they had to do here.

I believe, when reading the rules and that statute and the way they were -- I believe they were clearly written, I think staff had no choice but to rule the way they did and then bring this to the Board. I think if they're going to get any relief, it really needs to come from the Board in this instance.

I would caution against -- well, let me run down through the grounds just real quick. We've got a claim of a typographical or clerical error. And in that case they were asking that it be considered some kind of administrative deficiency or clerical error that could be fixed.

There's a claim that the ineligibility rule in 50.4 does not apply to preapplications. I would caution you, first of all, that's not my interpretation of the rule, that's not the way I read the rule. I feel that the rule clearly does apply.

Eligibility requirements, and let me tell you, one perhaps unintended consequence of going down that road, and that is, among the eligibility requirements are things like a felon applying, a Board member applying, falsified documents. So if you were to hold on the record that you believe that none of those eligibility requirements apply to preapps, you would be in the position potentially of having to award points, that you would not be able to apply that criteria, that ineligibility basis.

But putting that aside even, I believe that the way the rule is written, there's a discussion in the rule, first of all, that's been mentioned that it has to meet the requirements of the application, and then there's also a discussion that not all eligibility requirements may be caught at the preapplication stage, which tells me that eligibility requirements are a part of the analysis.

There's the QAP discrepancy that's been raised, and that is that the online QAP, the issue with the Volume 1, Tab 1 that, you know, that doesn't exist, the -- versus the final QAP, and the possibility that that may have caused some confusion, or that it may direct the -- you know, that you can't punish them under the rule for that amount because that amount doesn't exist in there. It was sort of a technical legal rule, but -- if it caused confusion.

And I would also say that there's probably an underlying current if you read the written appeals that were submitted, but also the comments that I've heard today, which to me seems to be kind of what the Board is picking up on, and that is that it's akin to inequitable argument, or a waiver argument because the -- what they're saying is that the purposes of 2306 -- of the preapplication in 2306 is to allow them to file preapps and to find out where the problems are, to make a trial run at it, they have an incentive for doing that.

And that to fulfill the purposes of 2306, perhaps there should be more leniency or more ability to get some kind of waiver or leniency when dealing with preapps as opposed to full applications. And so although they don't come right out and say it, I think that's kind of what I've heard this morning, and what I read underlying some of the documents that were filed.

And so that's why I believe that if the Board, in its discretion, wanted to provide some kind of relief, if they found it to be within the purposes, which is sort of what I'm hearing the Board say, found it to be within the purposes that we're going to look at preapplications a little bit differently in terms of the kinds of dispensation or relief that we might consider to be offered. And I may be off-base

on that, but I'm just saying there's different ways to approach this.

And I will also mention on the side there was another grounds and that was an ADA reasonable accommodation, but I don't believe that individual showed up today. But I assume they would be in the pot.

So, you know, that said, that's why I believe, based upon the other provisions that were cited this morning, that if you wanted to grant that, and I'll call it a waiver, grant the appeal in that limited manner and provide the ability for the preapplication to go ahead and be considered and to move forward, because it is a preapplication and so it gets a little bit more leniency or mercy, whatever, then you would have -- I believe that you would have the ability to say, Okay, we're going to allow it to move forward, if this is what you wanted to do.

I mean there's been discussion of, well, we'll rule that all of the preapps are automatically -- that went over are automatically reduced to 150 percent. You know, you could do that. You could reduce the points if you wanted to. I think you could do that under the statutes and the rules that have been cited.

MR. KEIG: So our rationale could be that we're going to treat all of these as administrative deficiencies

that will be subject to correction.

MS. DEANE: Well, you know, one of the problems is that administrative deficiency is defined in the statute, and so I don't know if I would use that terminology. But it's basically along those lines.

MR. KEIG: At this point, unless -- perhaps we should take this into Executive Session, because we're getting too much back and forth between us and our counsel about matters that we probably should treat as privileged discussions.

MR. OXER: All right. Then that's what we're going to do, we're going to go into Executive Session. It's right at twelve o'clock right now. Be back in your chairs at one o'clock. We'll have some consideration on the law on this, we'll be back and we'll rule on the motion when we come back.

MR. IRVINE: Read into the record --

MS. DEANE: Oh, yes.

MR. OXER: I'm trying to figure out which part of this I've got to read. Where is it? This one?

MS. DEANE: Yes.

MR. OXER: Okay. The governing board of the Texas Department of Housing and Community Affairs will go into closed session at this time pursuant to the Texas Open Meetings

Act to discussion pending litigation with its attorney under Section 551.071 of the Act to receive legal advice from its attorney under 551.071 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, to discuss certain real estate matters under Section 551.072 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.039 Section C of the Texas Government Code.

Closed session will be held in Room E1.024, and the time is exactly twelve o'clock noon.

(Whereupon, at 12:00 p.m., the Board met in Executive Session.)

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

(Time Noted: 1:00 p.m.)

MR. OXER: The Board is now reconvened in open session at one o'clock exactly. We'll take up a discussion on -- and action on any items that need so from the closed session, and any -- once all closed items -- or closed session items have been acted upon, we'll continue with the remaining agenda. There were no discussions or decisions made on the -- in the closed session, and we received counsel for -- or we were advised on by general counsel.

Okay. To restate where we are, we have -- from a parliamentary standpoint, we have a motion on the floor, the amendment has been defeated, the motion is on the floor to grant the appeals with a -- with up to five points in the application -- or for the preapplication as administered on the application.

We will need to take that up and deal with that one first with anything we have. So that motion is on the floor. All in favor?

(No response.)

MR. OXER: All opposed?

MR. KEIG: Well --

MR. OXER: Okay. The motion --

DR. MUÑOZ: Were we going to --

MR. KEIG: Can we try that again? Sorry.

DR. MUÑOZ: Were we going to restate --

MR. OXER: Yes, well, I mean from a parliamentary standpoint we have to kill that one --

DR. MUÑOZ: Okay.

MR. OXER: -- start over.

DR. MUÑOZ: All right.

MR. OXER: Okay. That's the discussion where we're -- that's where we're headed on this.

MR. KEIG: Well, I'll just withdraw my second to that motion.

MR. OXER: That would have the same effect, so. Okay. If you've withdrawn your second, as we have --

Then, Dr. Muñoz, would you care to restate your motion?

DR. MUÑOZ: Okay. Let me try to restate this a bit more clearly. My motion is that we move to deviate from staff's recommendation in order to achieve an equitable resolution of these appeals. Accordingly, I would grant the appeals to enable these applications to move forward due to the apparent confusion over the QAP.

Next, I would direct staff to make available up to five points awarded to these preapplications.

Furthermore, that these preapplications are deemed capped

at and reduced to no more than 150 percent of the credit available in the subregions.

And finally, I would also ask and note that the staff should, as practical and applicable and reasonable follow our adopted eligibility rules moving forward.

MR. OXER: Motion by Dr. Muñoz.

MR. KEIG: I will second that motion.

MR. OXER: Second by Mr. Keig. Okay. We're going adverse to the staff recommendation. We have to offer reasonable cause, which I think is stated in Dr. Muñoz's motion. Is there any other comment from the Board?

(No response.)

MR. OXER: Is there any other comment from those present?

(No response.)

MR. OXER: Is it clear to you what the motion is, Cameron?

MR. DORSEY: Yes.

MR. OXER: Good. All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: Thank you. That one passes. Is it clear to everyone here?

(No response.)

MR. OXER: It's clear to everyone here. It should be after we post this. Okay. The waivers are granted as defined.

Let's see, where are we? Okay. On Number 5, rule number -- Item Number 5.

Patricia.

MS. MURPHY: Good afternoon. Patricia Murphy, Chief of Compliance and Asset Oversight.

Item 5A is a request to withdraw the proposed rule about right of first refusals at fair market value that was published in the *Texas Register* on December 30, and put out for public comment a new right of first refusal at fair market value.

We had a public hearing on January 18 and received some pretty significant comment on it, so we've incorporated those changes and we want to take it back out for public comment. Since we have posted on -- since we posted the Board book we have gotten some questions about Section 1.25(c)(6), which is on page 6 of 8 of your write-up, and we would like to suggest the following clarifying language.

So right now the underlying part reads, "If the property is not transferred to the for-profit entity for any reason, the right of first refusal requirements will not be

satisfied."

And that would cause some confusion, so we want to suggest this language instead: "Following notice that the requirements have been met, if the property is not transferred to the for-profit entity at the price terms and conditions set out in the final sales contract, the owner must again offer the property to non-profits in accordance with this section prior to any transfer."

So we thought that language might help clarify what the intent of the rule is.

MR. OXER: Okay. Questions from the Board?

Mr. Keig?

MR. KEIG: No, I think that, you know -- thanks.

MR. OXER: Okay.

MS. MURPHY: We request your approval.

MR. OXER: Okay. There are no requests for comment from the public, so motion to consider.

MR. KEIG: I move to approve as --

MR. IRVINE: Somebody from the public --

MR. OXER: Oh.

MS. SILVA: I'm sorry. I'm kind of out of my league here. Yvonne Silva, and I am not with a developer or anything, and I really am not super familiar with what you're talking about, but I'm here to speak about problems

with non-profits acquiring our property for less than value.

So I just want that on the record because there's a serious problem, especially in Harris County, about foreclosures going to non-profits for less than property value and not transferring names. So that's part of the reason I'm here.

MR. OXER: Okay.

MS. MURPHY: Thank you.

MR. KEIG: If I understand correctly, the rule does not prescribe the price or anything, it just says you've got to offer it to them. Right?

MS. MURPHY: This rule addresses housing tax credit properties that were awarded in the 1995 cycle that agreed at the end of their compliance period to a right of first refusal for non-profits at fair market value. So the point of the rule is to establish procedures for saying, Well, what is fair market value.

So we have two options, one where they get an appraisal and the other where they market the property and they wait till there's an offer. So this is a rule to establish procedures for those LURAs and those land use restriction agreements only. And so this is for multifamily housing tax credit properties.

MR. OXER: It's only for multifamily properties -- only for multifamily properties -- tax credit properties.

MS. MURPHY: That is correct.

DR. MUÑOZ: To establish a fair market price.

MS. MURPHY: That is correct. And so that if a non-profit can meet the price, terms and conditions of the appraised value --

DR. MUÑOZ: They'd be given the first right of refusal.

MS. MURPHY: -- they get the -- they can purchase the property before it would be offered to a for-profit.

MR. KEIG: So I think that does address her concern.

MR. OXER: No.

MR. KEIG: No?

MS. MURPHY: I'm not really clear what her concern is, but this would establish -- it seemed like she had a concern about --

MR. OXER: This is -- Ms. Silva has a different question about single-family --

MS. MURPHY: Single-family I believe.

MS. SILVA: Well, but really the problem can be single-family or multifamily. And the very essence of a

non-profit is not to make money. So if they're acquiring real estate, they are making money. And I've also had a lot of issues with fair market value and the appraisal. In Harris County the appraisal can be whatever it is. That doesn't mean that's what you're going to sell it for, because of the housing debacle and everything else.

So, you know, you all receive money from HUD, and they should be protecting the right of the homeowner, not the non-profit, and I really don't know what you mean by non-profit, I'm assuming a homeowner association or whatever happens --

MR. OXER: No, it's a 501(c)(3), it's a non-profit --

MS. SILVA: Well, I mean and just the essence of a 501(3)(c) means you're not supposed to make money.

MR. KEIG: Well, but isn't it true that just because you acquire a piece of property does not mean you make a profit on it.

MS. SILVA: In Harris County, usually yes. And systemically that has been the problem. I mean when you're buying real estate for \$1600 and for less than what you bought it for, that's a profit.

MR. OXER: And, Ms. Silva, your issue is something we'll take up. This is for --

MS. SILVA: Yes, I understand. But i still think, you know, at the end of the day it all kind of -- everything -- everybody goes to bed together because multifamily --

MR. OXER: I don't know about you, but my wife says we don't, so.

(General laughter.)

MS. SILVA: Well, good. But, you know, housing issues are certainly -- overlap certain things, and that's what I meant, you know --

MR. OXER: Well, the rules that we're talking about here with Patricia are very specific --

MS. SILVA: Right. And I understand.

MR. OXER: -- very specific to multifamily housing tax credit supported policies. And yours is a different issue that we'll take up at another point. We received your request to speak and I'll make a point to see that you have an opportunity.

MS. SILVA: Okay. Thank you. And like I said, I mean, you know, I'm here also to represent the low income and that's what multifamily is. If you're having problems, it only escalates. You know, if you're having financial problems, it's not going to get better by having to be foreclosed on. So I'm sorry. And I might be -- but --

MR. OXER: That's okay. We appreciate your comments. We'll get to you. Okay?

MR. KEIG: I move to approve staff's recommendation as orally modified.

MR. OXER: Motion by Mr. Keig.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Motion carries. Unanimous.

Michael DeYoung. Good afternoon, sir.

MR. DeYOUNG: Do I have to announce myself, now that you've announced me?

MR. OXER: Well, you have to say who you are. That's just who I think who you are.

MR. DeYOUNG: Michael DeYoung, Community Affairs -- sometimes I wonder.

(General laughter.)

MR. DeYOUNG: Michael DeYoung, Community Affairs Division Director.

Item 5B relates to the Comprehensive Energy Assistance Program. You had a discussion on this item back a few Board meetings back. We are proposing a change to the

rules, and we want to go out to the *Texas Register* to publish a revised rule.

Basically the program for years has required the collection of medical records in an effort -- or in times when we want to provide, say, a refrigerator, or because of a health condition, we want to provide HVAC systems to the homeowner or the renter.

We've recently become aware that that creates a liability for these smaller agencies because it violates the Texas Health and Safety Code, Chapter 181, Medical Records Privacy. So we are going to propose in the rule that goes out in the *Texas Register* to remove that as a potential avenue to replace refrigerators or to provide HVAC systems and avoid creating a liability for our smaller community action -- well, for all of our community action agencies or small non-profits.

And there is a discussion also about how do we take care of individuals in this -- that have need for this.

That's a discussion that's probably going to take a little bit longer. But we want to remove this from the rule as it is now because we're creating a liability for our smaller agencies.

And then there's also one other change we want to talk about in the *Texas Register*, which is we want to meet the -- well, want to comply with the Personal Responsibility

Work Opportunity Reconciliation Act, which you all might know as PRWORA.

So we want to make those two changes now. This is unusual that we would come to you with a rewrite in mid-year, but we feel like these two issues need the attention now. We do our annual rewrite usually in August or September, but we feel like we need to deal with these issues as quickly as possible so that we can remove the risk for the community action agencies of collecting this data.

MR. IRVINE: And just for clarification, since PRWORA is sort of a case of acronym soup, this is the federal law having to do with the granting of benefits or assistance to individuals based on a consideration -- or having -- taking into consideration whether they're either citizens or are documented as in the United States lawfully.

And it's been my direction to staff that we should honor and uphold the law, and in that regard you will be seeing potentially several rule-making changes as we seek to implement as fully as appropriate that federal directive.

MR. KEIG: Can you clarify what -- the directive says you cannot take it into consideration or you're --

MR. IRVINE: The directive that --

MR. KEIG: -- supposed to?

MR. IRVINE: -- you're supposed to -- first of

all, with respect to federal programs, that there are certain very crisply defined situations where you cannot take those factors into consideration, you know, things like emergency assistance, stuff like that. Then --

MR. KEIG: But citizenship in particular.

MR. IRVINE: Citizenship or lawful --

MR. KEIG: It says you cannot take citizenship into consideration.

MR. IRVINE: On certain of those emergency type situations.

MR. KEIG: All right. And in taking out G, proof of citizenship, is not required for CEAP, we just want to get away from that discussion altogether. Is that the idea? Because it's not required here. It says it's not required.

MR. IRVINE: Correct. And we've had -- I believe Megan is here -- Megan Sylvester is our counsel -- has been working very closely with the program areas on this. You know, we've gotten into kind of a detailed analysis of which of the programs are we actually allowed to require that sort of analysis. We cannot, under the federal law, impose the requirement to verify citizenship or status on non-profits. So that's one of the problems that we've encountered along the way here.

Megan, do you have any comments or --

MS. SYLVESTER: I'm sorry, I was conferring on another issue --

MR. IRVINE: I'm sorry.

MS. SYLVESTER: -- and so I only heard half of what you said.

MR. IRVINE: This has to do with how we're handling PRWORA and the CEAP rules

MR. OXER: Come and sit up here, Megan.

MS. SYLVESTER: Hi, Megan Sylvester with TDHCA. And I'm the attorney that PRWORA matter.

And what was your question?

MR. KEIG: Well, the Section G, we're taking out the sentence, "Proof of citizenship is not required for CEAP."

That sounds -- that sentence sounds consistence with PRWORA, however you say it, rather than inconsistent with it, and so I was wondering why we're taking it out. Is it just so that it doesn't become an issue at all, we just -- is that why we're removing it?

MS. SYLVESTER: It is consistent currently, you are correct. But it is misleading that people would have to go through a certification process.

MR. KEIG: To begin with.

MS. SYLVESTER: Correct.

MR. KEIG: So we don't -- we won't even get near

it. Okay.

All right. Can I go ahead and move to accept staff's recommendation?

MR. OXER: Hold on a second.

Walk me through this, Mike. Okay?

MR. DeYOUNG: This is a legal discussion.

There --

MR. OXER: There's money going to be spent. That money comes out of CEAP, it's going to go to a project. Okay.

They need some help, they need a refrigerator, they need an air conditioner.

MR. DeYOUNG: This is -- from my experience this is one of the biggest in LIHEAP because we were told many years ago that we can't check from the federal guidance that was granted to us.

MR. OXER: Right.

MR. DeYOUNG: Then we were told, Well, you're going to have to check after an OIG audit.

MR. OXER: And this, of course, is the first conflict in federal law that you ever found. Right?

MR. DeYOUNG: Correct.

(General laughter.)

MR. DeYOUNG: And so we -- that's why we asked for some legal counsel to be involved in this because it

is -- we're being told in one meeting you need to check, in another meeting we're being told you're not to check. And it goes into a lot of definitions about federal public benefits and I guess there's 28 different statuses that you can have in order to qualify for some of this, it is --

MS. SYLVESTER: Citizenship is not a requirement.

You have to be a citizen, a naturalized -- someone that is considered a US citizen under the law, but they're not technically citizens, folks from the US Virgin Islands would be in that category, or otherwise qualify for federal public benefits.

MR. OXER: Okay.

MR. DeYOUNG: That's why we're going to be working over the next few months to come up with as clear definition of this as we can. Right now this is the first step, and as we come back with the substantial rewrite of our rules in August, we hope to make this clear because it is very difficult for staff even to understand all the avenues that this could go down. And we're not getting help from our federal oversight agencies.

MR. OXER: Really.

MR. DeYOUNG: Yes.

MR. OXER: What a surprise.

Yes, Lowell.

MR. KEIG: Are we potentially running into a situation where we take this out and then somebody thinks, Oh, well, they took it out now it is a requirement?

MR. OXER: So it's exclusionary.

MR. KEIG: See what I mean? Yes, well, they must have taken it out for a reason.

MR. DeYOUNG: I think we'll be entering into a dialogue with all of our CEAP agencies, all 44 agencies, about what our expectations are, and they'll be included in this dialogue with a chance to comment on the rules. This is merely to go out and get comment.

MR. OXER: Okay.

MR. DeYOUNG: And we will -- if comment comes back that we need to clarify, we will add clarification language. But we'll -- they're part of the dialogue always as we propose rule changes.

MR. OXER: So this is the first step in getting any --

MR. DeYOUNG: This is the first step.

MR. OXER: Okay.

MR. DeYOUNG: Let's get it out there --

MR. OXER: Okay.

MR. DeYOUNG: -- that we need to change this --

MR. OXER: All right.

MR. DeYOUNG: -- and we'll get public comment --

MR. OXER: All right.

MR. DeYOUNG: -- they can write, give us written public comment, and we'll work with that public comment and then we'll come back --

MR. OXER: Got it. Don't want anything --

MR. DeYOUNG: -- with a revised --

MR. OXER: -- I don't want anything locked down that's this fuzzy yet, of course.

MR. DeYOUNG: Fuzzy?

MR. KEIG: Right.

MR. OXER: Okay. Mr. Keig, did you have --

MR. KEIG: Move staff's recommendation.

MR. GANN: Second.

MR. OXER: Motion by Mr. Keig and second by Vice-Chairman Gann to accept staff recommendation. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: None. Passes unanimous.

Okay. Next point, Item 4C.

MALE VOICE: 5C.

MR. OXER: 5C. I'm sorry. You're right.

Corrected -- stand corrected. 5C.

Hi there.

MS. YEVICH: Hi there. I am Elizabeth Yevich, Director of the Housing Resource Center, and I am here on Item 5C, which is regarding foreclosure data collection, and a repeal of a rule and proposal of a new rule.

And the background on this is that during the last legislative session a bill was passed, Senate Bill 1233, and that amended Chapter 52 of the Property Code, and it required collection of certain data regarding foreclosures of residential property across the state.

Now, the bill named our Department as the agency to promulgate the rule and the forms and report quarterly to the legislature. And as you may recall, the Department created a rule last fall, we brought the draft to the September Board meeting, we took it out for public comment, and you all approved this during the November Board meeting.

So due to the limitations on resources, staff came up and developed a system articulated in that rule taken out for public comment requiring county clerks to report the data on a similar form. And the vast majority of the counties have complied with this. A few counties, mostly the ones, the larger urban areas, objected to this and they contended that the rule basically shifted the burden, administrative

burden to their offices.

So we met with the offices of the bill author with representatives of the counties, and those points -- we failed to resolve those and on January 26 a formal request for opinion was filed with the Attorney General. And rather than continue with what may have been a lengthy process of attempting to resolve these issues, we felt that we should recommend replacing the existing rule with a new rule that is more conducive to obtaining the information sought by the legislature.

So the proposed new rule provides the county clerks with a choice as to how they will transmit the required forms.

They can provide the originals, copies of the original, or still use the summary form if they so choose, and the Department will absorb the administrative cost for this during the next few years.

So upon approval of this Board, we're going to take this out again for public comment and then bring it back.

The proposed changes we felt were sufficiently extensive that it would be better to repeal the existing rule and proposed a new rule, and that is what staff recommends.

MR. OXER: So this is the beginning of another process.

MS. YEVICH: Yes.

MR. OXER: Okay.

MR. GANN: I move the staff's recommendation to publish in the *Texas Register*.

DR. MUÑOZ: Second.

MR. OXER: Okay. Motion by Mr. Gann, second by Dr. Muñoz to accept staff's recommendation. Is there any discussion from the Board?

(No response.)

MR. OXER: There's been no request for speaking on this, public speaking. So this is another one -- so the real crux of the issue was the data in certain counties --

MS. YEVICH: Correct.

MR. OXER: -- larger counties I'm gathering -- I'm guessing --

MS. YEVICH: Those that had in excess of several thousand foreclosures.

MR. OXER: Right. There was enough data generated in those that it was too much milling and grinding that they wanted you to do it instead of them?

MS. YEVICH: Correct.

MR. OXER: Okay. All right. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Unanimous consent.

Well, okay. Thanks, Elizabeth.

Okay. Community Affairs. And we won't guess who you are this time, you can tell us.

MR. DeYOUNG: Michael DeYoung, Community Affairs Division Director. Item 6, Mr. Chairman and members of the Board, is authorization for staff to submit a draft substantial amendment to the 2011 and '12 State of Texas Consolidated Plan.

We have a unique situation occurring. We have program rules being given out to states, they're interim draft rules that have been passed down in the middle of the year, and so the -- what used to be the Emergency Shelter Grants Program, ESGP, that you all voted on for years, is not the ESG Program, Emergency Solutions Grant.

And as part of receiving that funding, we have to make some modifications to our action plan. So we were going to come before you with -- asking for authorization to submit a draft substantial amendment.

We have to go out for public comment, and about two minutes ago I was made aware of they passed down some additional regulations, which we don't even know what these regulations are -- or additional requirements, not regulations I should say.

So I would ask that staff be approved to go out for a public comment period for 30 days, including any additional requirements that might have been included in today's email about ESG certifications, and that we will come back to the Board in April with a substantial amendment that will be submitted in a timely fashion.

The concern -- and, Megan, you may have to help me on this -- the concern is that we may have to have a public hearing on these new requirements which fall -- which could fall probably on the day of the next Board meeting, so we may have to have a small public comment period should we need to deal with this new regulation. Neither of us have read through this yet, we just got it, so.

(Off the record discussion.)

MR. DeYOUNG: Okay. As usual, Brooke's got a great idea. So we can integrate these changes into what we will post on the web for public comment. So we'll go back and start looking into any additional -- any addition to the proposed substantial amendment.

MR. OXER: Okay. So let me make sure I'm clear on what you're doing, Michael. There are -- you have a set of proposed changes that have been posted, or were -- you're asking us for you to post those today?

MR. DeYOUNG: Yes.

MR. OXER: So what we really want to do is you're saying you want to take those, add that to what you've already done --

MR. DeYOUNG: Should it require --

MR. OXER: -- should it require --

MR. DeYOUNG: -- should it require any changes.

MR. OXER: -- basically contingent on requirement. Okay. Post that, start that for public comment, and since we'll be back here in about three weeks --

MR. DeYOUNG: Right.

MR. OXER: -- we may have a public comment that day.

MR. DeYOUNG: Yes, if they require this portion of the new regulations to have a public hearing, because this is technically serving as a public hearing right.

MR. OXER: Today. Right.

MR. DeYOUNG: We may have to have a short one on this and then come back on April 12, the Board meeting, for final --

MR. OXER: For the final real --

MR. DeYOUNG: Right.

MR. OXER: -- approval. Okay.

Is that clear to everyone? Clear enough?

MR. DeYOUNG: And I'm not a lawyer.

MR. OXER: Clear enough to everyone? Close enough?

(No response.)

MR. OXER: Brooke, anything else?

MS. BOSTON: No.

MR. OXER: Okay. Okay. Comments?

MR. DeYOUNG: Could you restate that to me, please? No --

(General laughter.)

MR. OXER: Now, I told you I had that little red laser on me. Do you really want me to try that?

MR. DeYOUNG: No, I'm joking.

MR. OXER: Okay. We haven't had a motion yet, so whoever moves will have to state the motion.

All right --

MR. GANN: Well, I'll make a motion that we do the staff's recommendation as amended --

MR. OXER: As amended, as evolved. Okay.

MR. KEIG: Second.

MR. OXER: And second by Mr. Keig. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. Four zip. Thank you.

Okay. Item Number 7.

Cameron, how nice to see you again.

(General laughter.)

MR. DORSEY: I was really missing you guys.

MR. OXER: Yeah.

Okay. Let's start with 7A on the credit cycle, and we'll have a few questions on that, then --

MR. DORSEY: Sure.

MR. OXER: -- now this is comment -- I'm just stating this for everybody here. There at 7A, Cameron is going to give us some reports on what the game looks like for this tournament, and in this 7B, there are quite a number of requests for public comment, which I will get to you in order, and then we'll go to the last piece. So 7A.

MR. DORSEY: All right. Item 7A is --

MALE VOICE: You are?

MR. DORSEY: -- just a report item --

MALE VOICE: You are?

MR. DORSEY: I'm sorry. Cameron Dorsey, Director of Multifamily. Item 7A is just a report item on how the 2012 competitive tax credit cycle is going. We experienced a bit of how it's going just a little bit earlier.

MR. OXER: It sounds like it wasn't going right then.

(General laughter.)

MR. DORSEY: But I'll cover a couple more pieces.

So as of January 10, which was the preapplication deadline, we received 388 preapps. It's a 62 percent increase in preapplications from last year. And that's requesting over \$470 million, which is quite substantial given we have about 47 million to allocate based on current estimates.

Within three days of receiving those 388 preapps, we had those summarized in an Excel spreadsheet, posted it online, got it up as quickly as possible. I wanted to bring that your all's attention because we did get public comment requesting that that be added to the QAP. We denied it, but I still did it.

MR. OXER: With respect to the posting online, what was the request again? Say that again?

MR. DORSEY: The request was to get the preapplication log posted within three days of the application -- preapplication deadline of January 10. So, and we did it. We got it up in three days.

MR. OXER: Good job for that number.

MR. DORSEY: Thank you.

On January 24 we posted a 12-page frequently asked questions document. You know, the goal of -- one of our goals

is to try and make this as fair and as transparent process as possible. I get lots of email questions about how things are going to be applied or, you know, just how the QAP is going to work this year, and how cycle's going to work.

And so the goal is that when I respond to that, they aren't the only ones that get the benefit of that response. We tried to compile those into a frequently asked question, put it out there for everyone so that, you know, it's not just the folks emailing me that get the benefit of it.

So we put that out there on January 24. It's since been revised as well. That's a document that gets reviewed with both Tim and our general counsel before we post.

As of January 29 we had finished all of our preapplication reviews, we're through that process, so we're kind of looking forward right now at the March 1 deadline, which is the full application deadline. Fourteen days thereafter, or within 14 days after that date we're going to do another set of notifications that go out to state reps, state senators, to neighborhood organizations and other interested parties.

So I just wanted to kind of let you guys know where we're at right now.

I also wanted to cover a couple of changes that

we're going to do this cycle that I hope to implement to kind of make things a little bit smoother. One is that we are going to perform all three of the programmatic related reviews that happen to an application all at one time. And we're only going to do those on the high scoring applications.

Historically what we did was we would do a selection, which is the points criteria, and eligibility review, which we dealt with earlier, on every single application that was submitted, which can be a pretty time-consuming process when you're substantially oversubscribed. That meant the threshold reviews, which often take more time, were done at a subsequent time and it resulted in multiple administrative deficiency notices going out during, you know, this several month review process.

We're going to kind of consolidate that, hope to do -- just review the highest scoring folks. We're going to obviously, you know, have a margin of error there, go a little bit deeper down the list in case some -- there's some fallout. But we're not going to do reviews on those that have self-scored as being the lowest scoring applications.

This will allow us to send out, hopefully, one deficiency notice per application, it'll hopefully create less back and forth, and it'll create a little bit of economies of scale and efficiency in that we're looking at the rent

schedule wants not three different times for three different purposes and --

DR. MUÑOZ: Cameron, how are you going to calculate that figure, how far down you go? Because I read in your summary 47 percent fall within a four-point range?

MR. DORSEY: That's right. Yes, so --

DR. MUÑOZ: You've got to let people know --

MR. DORSEY: That's right.

DR. MUÑOZ: -- how you're going to calculate that.

MR. DORSEY: That's right.

MR. OXER: It's pretty flat scoring this year because of the --

MR. DORSEY: It's quite flat scoring. One thing we're going to do, and this is the next change that I'll mention, is we're going to actually try and post a master tie-breaker list. So those that are tied will go through a tie-break process.

And since we're going to basically craft a tie-breaker list up front, it's all data driven based on what's in the application anyway, it's not that difficult to do, we're going to try to do that early in cycle and put it out there for everyone to see and say, Hey, here's how things shake out in the case of tie-breaks.

And so that will allow us to know who actually

wins tie-breaks early on, and everyone else will have a good idea as well and be able to -- we'll be able to address concerns about how that's done early in the cycle, so.

We've historically done a kind of margin of error type of process with the Real Estate Analysis Division. We don't underwrite every single application, and the same goes for the threshold review as well. So we're going to apply some -- a very similar methodology, it's just to the full review.

DR. MUÑOZ: Just make sure that the methodology is public, redundantly presented, otherwise you're going to have people, Oh, I wasn't informed --

MR. DORSEY: Right. Right.

DR. MUÑOZ: -- this wasn't brought to my attention.

MR. DORSEY: In addition to putting some of this information out there, in the Board book, and presenting it today, just a couple of days ago we posted a kind of an update of sorts. I call it just Multifamily Division Update. It's kind of the first of its kind, it's a little bit more informal communication, just shed some light on what's going on.

DR. MUÑOZ: I don't want to belabor the point, but when you change something, just make sure to communicate it, not to your satisfaction, but to their satisfaction so

that it's clear.

MR. DORSEY: Okay. Point taken.

MR. OXER: Communicate it sufficiently. It's not to anybody's satisfaction except ours to make sure it's been out there enough so that an intelligent individual will be aware of it.

MR. DORSEY: Sure. Sure.

With respect to the tie-breaks, I just wanted to mention, you know, we got -- we have a 183 that have self-identified self-scores at the time of preapplication between a 176 and 179, so we're talking about a lot of ties.

So some of that's going to shake out because we don't actually get some of the scoring resolved until May 1, and so, you know, things will shake out a little bit, but there will be quite a significant number of ties.

DR. MUÑOZ: A 62 percent increase in applications. Right? Is that what you said?

MR. DORSEY: In preapplications.

DR. MUÑOZ: Right. Preapplications. Is this sort of number of ties and percentage, is that kind of consistent? Just I'm asking you to just estimate.

MR. DORSEY: From a guesstimate perspective, no, this is unusual, and it's an unusual number of ties. It's the result of a pretty flat scoring system this year.

DR. MUÑOZ: Okay. Okay.

MR. DORSEY: That's kind of the update. I just wanted to run through a few things for your all's benefit.

MR. OXER: So we had 388 preapplications this year. We had how many last year? What does the curve look like, the trend look like? Obviously it's going up.

MR. DORSEY: Well, there's a 62 percent increase -- I can't do the math in my head, so --

MR. OXER: That's large. That's 240 --

MR. DORSEY: Yes.

MR. OXER: -- last year.

MR. DORSEY: Yes.

MR. OXER: Okay. What did we have the year before that, about?

MR. DORSEY: I didn't look at that. I wasn't in the Division then, I was in the HOME Division.

(General laughter.)

MR. OXER: Okay. Tom, you got any --

MALE VOICE: No, it's considerably less.

MR. OXER: Like 200, 160?

MALE VOICE: Two hundred.

MR. OXER: Okay. So it's in a geometric up curve.

MR. DORSEY: That's right. That's right. You know, it's the result of some changes in the rules, not

requiring site control was a big one, you know, that's something we'll look at again, so.

MR. OXER: Mr. ED?

MR. IRVINE: On your update, you got any new staff to introduce?

MR. DORSEY: Oh, yes, I do.

(General laughter.)

MR. DORSEY: I forgot that; I just didn't put it in here. Sorry.

I'll introduce two new staff members.

MR. OXER: They're the ones that are making you look good, sport. You need to make sure you --

MR. DORSEY: That's right. That's right. I hope so anyway.

Eileen Manes is right back here.

Here, stand up.

(General laughter.)

MR. DORSEY: Eileen just started a couple of weeks ago, and she's the Multifamily Loan Programs Manager, so she's going to be leading up all our multifamily HOME loans and SNP loans for multifamily deals, and we're talking, you know, from creation of the program and the rules all the way through final draw. So it's just fantastic that we've been able to bring her on board.

And then we've also got Jean Latsha, who has long been in the industry, and she is going to be taking over as manager of the Competitive Housing Tax Credit Program. So I think she kind of feels bad that she didn't start earlier so she could have been up here helping me earlier, but.

(General laughter.)

MR. OXER: Welcome aboard, Jean. We're glad to have the help. Okay?

MR. DORSEY: So they really round out our team. You know, we're -- I'm just really excited. You know, it was a little bit scary being down some staff, and Raquel having left. I mean Raquel was amazing, so, but, you know, we were able to bring some great people on board.

MR. OXER: Good. So 7A constitutes essentially a report item.

MR. DORSEY: That's right.

MR. OXER: Okay. Good.

MR. DORSEY: No action needed.

MR. OXER: Is there any comment from the Board?

(No response.)

MR. OXER: Okay. Let's do it --

MR. DORSEY: All right.

MR. OXER: -- 7B.

MR. DORSEY: 7B. 7B is -- this is a waivers item.

Okay. And so we've got six applications listed on your agenda, and each of them has at least one waiver that they disclosed in their preapplication. We do allow -- we do provide a form in the preapplication to allow folks to disclose things that they feel might warrant or need a waiver in order for them to move forward.

They're generally related to eligibility criteria, although there are some other ones listed in here as well. And so we're going to kind of go through each of these.

Now, before we kind of get into this nitty-gritty here, I wanted to do a quick update on the actual waiver rule, because it changed this year, kind of last minute based on the Governor's approval. And so I thought I'd go ahead and read it and then let you all know the key piece that was really removed that has an impact on how waivers are considered.

So here we go, it's in 50.16(b), "The Board, in its discretion, may waive any one or more of the rules provided herein if the Board finds that a waiver is necessary to fulfill the purposes or policies of Chapter 2306 of the Texas Government Code as defined by the Board, or, if the Board finds that such a waiver is in response to a natural federally declared disaster that occurs after the adoption of this qualified allocation plan."

To my knowledge, there hasn't been.

MR. OXER: Yet.

MR. DORSEY: That's right. That's right. Not to date.

"No waiver shall be granted to provide forward commitments. Any such waiver will be subject to all reasonable restrictions and requirements customarily applied by staff, including, as applicable but not limited to, underwriting, satisfactory previous participation reviews, scoring criteria, and receipt of required third-party approvals, including lender or investor approvals."

Now, the key piece that got removed was some language that allowed the Board to consider waivers for good cause. I think that's really the big key for the waivers you're about to hear today. So instead of having good cause, being able to consider a waiver for just good cause, it has to be -- find that the waiver is necessary to fulfill the purposes or policies of Chapter 2306 of the Texas Government Code.

So each of the folks that disclosed a waiver, we went back and we said, Hey, let us know how you all think this waiver is necessary to fulfill the purposes or policies of Chapter 2306, and provide us that input. We've provided their input behind the item. We sat down, Tim and Barbara

and I sat down and we walked through each of their responses and tried to give it its due consideration.

So now let's -- any questions before we kind of jump in?

MR. OXER: I mean are -- you're going to jump in and start the first one. All right. From a procedural standpoint, this is -- again, there's a number of these to consider, each of which may involve a different component. But what I think we'd like to do is walk through all of them.

MR. DORSEY: They're all very different.

MR. OXER: Okay.

MR. DORSEY: Well, if there is one that's very similar to one that's subsequent on the agenda, then I'll let you all know that there are two and maybe we can bring -- and we can talk about them together. Does that work?

MR. OXER: We can work that -- yes, we can do that then. Okay. So let's -- we'll do them one at a time, and we have requests for comment on individual items, so.

MR. DORSEY: Sure. The first one is on Application 12022, which is Galveston Initiative I. This is a transaction in Galveston that's part of their -- Galveston's initiative to replace housing that was destroyed in the -- by Hurricane Ike.

They're requesting two waivers. One is of the

requirements in the QAP related to construction in a floodplain. And the requirement is effectively that in the case of like a new construction transaction, like this one, that the building elevation, or the finished slab be at least 12 inches above the 100-year floodplain, and the parking and drive is not more than six inches below the floodplain.

The necessary kind of elevation to get to that point is substantial in this case. I think I recall it being around 12 feet or so, and so --

MR. OXER: So isn't most of Galveston, the whole island underneath the 100-year floodplain?

MR. DORSEY: I don't know how much is, but a lot of it is. And this is one of the -- this is the only one of the floodplain where we, as staff, thought that, you know, there was really a rational basis for the Board to consider approving a waiver of this item because of the widespread and disparate impact to a pretty populated area of the state, so.

MR. OXER: Hold on a second.

MR. KEIG: Yes, go ahead.

MR. OXER: Did you finish, Cameron?

MR. DORSEY: Sure. So that's really all I have on the floodplain, and I can move on to the other one, and then let those folks speak.

MR. OXER: Are those the -- are there two alike?

MR. DORSEY: This is two for the same transaction, so they're going to get up here and talk about both together I would --

MR. OXER: So I have three people who request to speak, so what I'll --

MR. DORSEY: Galveston Initiatives has two waiver requests for the same deal.

MR. OXER: Okay. Let's hear --

MR. KEIG: Okay.

MR. OXER: -- I want to hear the second one --

Or do you have a question, Lowell?

MR. KEIG: Yes. And maybe Tim or Tom can remember this. There was something that we had in the past few years where we had some requirements for houses that were going to be built, and I want to say there were some models, it was a model pilot program or something like that, but we were talking about raising them up high enough so that they wouldn't be subject to being washed away. And so I'm wondering why we're talking about not doing that in this case.

MR. IRVINE: Well, here we're, I believe, not talking about the housing specifically, we're talking about the elevation of parking.

MR. DORSEY: It's parking and I can describe

the -- I think that'll be really effective in describing the actual development plan.

MR. IRVINE: Yes, as regards the actual housing itself, it's got to comply with the national flood insurance requirements and be appropriately elevated. I think the particular program you were recalling was the Katrina and Rita response where we had the, you know, the proverbial homes on stilts that were --

MR. OXER: Yes.

MR. IRVINE: -- elevated 15 or 20 feet at times.

MR. KEIG: So this is just drives and parking.

MR. DORSEY: The units are designed such that the only thing below the floodplain will, from my understanding, be storage and a stairway access up to a higher floor where the actual living space will be. So things like bikes and, you know, lawn furniture will be actually stored below the floodplain. But the actual living quarters will be above the floodplain is my understanding.

MR. KEIG: Because the background write up does say the applicant stated, The cost associated with elevating the buildings to be at least 12 inches above the floodplain...would render the --

So it sounds like we are talking about more than just the driveway and the parking.

MR. DORSEY: Well, it's because a portion of the building is actually below the floodplain. The kind of -- the mitigating circumstance there --

MR. OXER: Well, they're basically putting the garage in the bottom floor --

MR. DORSEY: Right.

MR. OXER: -- and starting --

MR. DORSEY: Right. It's non-living space that's located --

MR. OXER: Okay.

MR. DORSEY: -- below the --

MR. OXER: All right.

MR. KEIG: Thanks.

MR. OXER: You good?

MR. DORSEY: Okay.

MR. OXER: Okay. And does that cover your second --

MR. DORSEY: That's --

MR. OXER: -- that's the first one.

MR. DORSEY: -- the floodplain.

MR. OXER: Okay.

MR. DORSEY: Okay.

MR. OXER: Let's hear the second.

MR. DORSEY: The next one is not so much an

eligibility thing that would throw them out of the cycle, but it's they want to be able to access points that they can't.

And so what they're asking is -- we have a definition for central business district, and that definition requires a population of \$50,000 for the municipality in which --

MR. OXER: Population.

MR. DORSEY: A 50,000 population within the municipality that the development site is located.

Galveston pre-Ike was 50,000 or more, and now is -- I think right now is somewhere in the realm of 47,000 in terms of population. And so they can't access those central business district --

MR. OXER: Right.

MR. DORSEY: -- points. In the scoring criteria, if you're located within a central business district, you can get four points.

And so that's what -- they're wanting a waiver of that population requirement so that they can -- just that piece of the definition, not in whole, but they want to be able to, with their population, to be able to qualify for the central business district points.

Our recommendation broadly on any of the ones -- this one and the remaining, the ones that follow, is we're recommending denial. The reason is because of the

substantial oversubscription.

When we were talking through, all right, you know, what is -- what constitutes necessity, you know, in accordance with the rule, we kind of got on the topic of, well, is it necessary to waive portions of points items when the Board is going to be able to satisfy the purposes or policies of Chapter 2306, given a 10 to 1 oversubscription.

We will allocate all of the credits, and all of the credits will be allocated in accordance with the regional allocation plan, and in accordance with the rules, et cetera.

So waiving a point item it seems the level -- you know, it rising to the level of necessity we felt was a difficult thing to establish.

So that's how we've addressed both the central business district one, which quite frankly is a little bit unique, but all of the remaining ones that we're going to talk about as well we're recommending denial on a similar basis.

MR. OXER: Yes, as we pointed out before, we're not looking for projects, we're looking for money --

MR. DORSEY: Right.

MR. OXER: -- you know, to meet those projects.

MR. DORSEY: Right. And the floodplain one is unique because it affects -- it's a widespread impact, it

doesn't affect just this development, but it impacts the entire Galveston Island, so all of the remaining ones really more or less impact the specific site and the specific application that's being submitted.

MR. KEIG: Mr. Chair?

MR. OXER: Mr. Keig.

MR. KEIG: So for the Galveston request, are there other preapplications in for Galveston Island projects that are -- this is not a seniors project, is it? MR. DORSEY: No, I don't believe so.

MR. OXER: You said there's a substantial oversubscription. Is there at least another project that would replace any of these if they got wiped?

MR. DORSEY: Okay. We -- yes, in this subregion, not on Galveston Island, which is why the floodplain, which is a widespread impact thing is really important and distinct from the central business district definition. There isn't another transaction proposed on Galveston Island. There's actually Galveston Island -- there's Galveston Initiatives I and Galveston Initiatives II.

They originally had a request in for II, it hasn't been formally withdrawn, but they've effectively stated that they aren't going to move forward with that application. So there is only one that's effectively going to move forward

on Galveston Island on which they're planning on moving forward on the island.

In the county there are other ones, and in the subregion there are definitely many more.

MR. KEIG: You're saying there's one other one besides the one that's requesting the waiver. Right?

MR. DORSEY: Right. But that one is the same applicant, and they're withdrawing --

MR. KEIG: Oh, okay.

MR. DORSEY: -- they're planning to withdraw --

MR. KEIG: There's other Galveston County ones, but no Galveston Island --

MR. DORSEY: That's right.

MR. OXER: Okay. All right. We'll need to take the waivers -- we'll need to take these up one at a time since they're so different, although they're the same area, they're still different.

MR. DORSEY: They're requesting a waiver under the same waiver provision, and we've addressed most of them under the same philosophy that due to the oversubscription, we don't think that this rises to the level of necessity. But each circumstance, they're wanting a waiver of a different rule.

MR. OXER: Okay. Any comments from the Board?

(No response.)

MR. OXER: I'll entertain a motion.

MR. IRVINE: Is there nobody testifying on this one then?

MR. OXER: Not until we have a Board motion.

MR. IRVINE: Okay.

MR. OXER: Board motion, second, comment?

MR. IRVINE: Generally speaking -- well, no, I'm sorry. I'm thinking of appeals, not waivers.

MR. OXER: Right. Okay. We have to act.

MR. GANN: I move we deny the waivers.

MR. OXER: Motion to follow staff recommendation to deny waivers by Mr. Gann.

MR. IRVINE: To clarify, staff was -- specifically recommended denial on the central business district waiver and was neutral --

MR. OXER: Neutral --

MR. IRVINE: -- on the waiver regarding the application of the floodplain and has stated in the Board materials potential if the Board wants to --

MR. OXER: So is this on the same project, or two separate projects?

MR. DORSEY: The same project.

MR. OXER: The same project. Okay. So they're

asking for two waivers, one of which Mr. Gann is saying we would offer and one not.

MR. GANN: Yes, if I need to clarify that a little bit, I'm talking --

MR. OXER: Please.

MR. GANN: -- the floodplain; I'm okay with the business district.

MR. KEIG: Just the motion -- it's just addressing the Galveston Initiative Number I. Correct?

MR. DORSEY: Yes.

MR. OXER: Project 12022. Is that correct?

MR. KEIG: Yes.

MR. OXER: Okay.

MR. KEIG: So restate the motion.

MR. OXER: All right. There's a motion to grant the waiver for the floodplain, but deny the waiver --

MR. GANN: I'm the other way around.

MR. OXER: All right. Then you restate it.

MR. GANN: To grant the waiver on the business district definition, and because I think that's a temporary situation, most people are just -- they're sitting off island waiting to come back. They don't have a house to come to.

MR. OXER: All right. In terms -- I'm sorry. Go ahead.

MR. GANN: And then denial of the waiver on the floodplain.

MR. OXER: So are they standing off -- I mean the population is expected to move back into -- and that 50,000 was a number that -- not arbitrary, but not fixed according to a criteria.

MALE VOICE: It's not statutory.

MR. DORSEY: That's right.

MR. OXER: Not statutory.

MR. DORSEY: That's right.

MR. OXER: It's something we were trying to figure -- it was either that or --

MR. DORSEY: We're trying to come up with a reasonable threshold.

MR. OXER: Right. A reasonable threshold. And 47, I can see being close to that, it's, you know -- although I'm hating being close to rules. I want to be one or the other.

MR. GANN: I really think if you read up on it, you'll see that those people are sitting off island --

MR. OXER: Right.

MR. GANN: -- waiting to come back. They don't have a work force there, they literally don't have places to come live.

MR. OXER: Okay. And were we to go adverse to the staff ruling, we would have to have the -- or demonstrate a need to meet provisions of 2306.

MR. DORSEY: That's right.

MR. OXER: Which this does not rise to, you think.

MR. DORSEY: This --

MR. OXER: Your position is it does not rise to that based on the fact --

MR. DORSEY: Staff's -- right. Staff's recommendation is denial based on the belief that, you know, we didn't feel that it rose to the level of necessity as required under the waiver provision of the rule.

MR. KEIG: But you were also neutral on the one --

MR. DORSEY: The floodplain.

MR. KEIG: -- the motion says we were okay with granting --

MR. DORSEY: I believe --

MR. KEIG: -- the floodplain.

MR. DORSEY: I believe that Mr. Gann wanted to not grant the one we were neutral on and actually grant the business -- central business district --

MR. KEIG: Definition.

MR. DORSEY: -- definition one which we were recommending denial.

MR. KEIG: Okay.

DR. MUÑOZ: I second.

MR. OXER: Okay. There's been a motion by Mr. Gann, second by Dr. Muñoz to deny the waiver --

DR. MUÑOZ: For parking.

MR. OXER: -- basically the floodplain waiver, and accept the waiver -- grant the waiver on the central business district.

DR. MUÑOZ: Definition.

MR. OXER: Did I get that right?

MR. GANN: Yes, sir. That's correct.

MR. OXER: Thank you.

Okay. Time out everybody. Motion, second on the floor. We have requests for public comment.

Okay. May I have Mike Duffy, Deyna Sims and Samson Babalola. Pardon me for butchering that, but.

Cameron, give them -- that's all right. They got two chairs.

Mr. Duffy.

MR. DUFFY: Thank you, sir.

My name is Mike Duffy. I'm from McCormack, Baron and Salazar. We were selected last summer as the development partner of the Galveston Housing Authority to help them achieve the conditions under the conciliation agreement the

state entered into to replace all 569 public housing units that were lost on the island.

What we are endeavoring to do -- first of all, I'd like to specifically say I appreciate the motion, Mr. Gann, for the central business district. I had a whole argument as to why I would agree with that motion, but now I don't -- I guess I could put that on the side.

So I'll focus on the floodplain issue. I just want to make sure everybody completely understands what we're talking about. The Housing Authority has three sites. The three sites are Magnolia, Cedar Terrace and Oleander, if you're familiar at all with the island.

And all three sites were wiped out by the hurricane because they were flooded out. They were not living areas above the floodplain. We have been asked to come in and help the Housing Authority determine the best way, the most responsible way to replace those units that were lost in those communities in such a way that we hope can ultimately get as much widespread public approval and public acceptance as possible.

These previous sites were 100 percent public housing sites, they had long been neglected, they were rife with poverty, with crime, with all sorts of problems.

McCormack, Baron has a method with our development

that we've employed across the country in more than 13,000 units of developing mixed income housing. And what that means is we take what was previously just a public housing, 100 percent public owned, managed, supported development and mixing those units in a private multi-income development. That's our proposal for Galveston Island.

In order to do that, and to be responsible in the neighborhoods in which we're developing, which are predetermined, because the Housing Authority has these sites, they have to rebuild on these sites, Galveston Initiative I is the Magnolia site, which is on the Strand, if you're familiar with Galveston. It's a little bit higher density of a neighborhood, but it backs up immediately to the historic district of the Galveston Island.

So what we have to do from a design standpoint is we can build a little bit higher density, and when I say higher density I mean higher number of stories, but as we develop back towards the historic district, which is Mechanic Street, just on the -- what is that, the south side of the site, we have to build to scale.

The floodplain waiver, the reason why it's absolutely necessary, we are not proposing to put one living area below the floodplain. A hundred percent of the units will be above the floodplain. What we have to do is we have

to build a 10-foot concrete podium under which is where the parking would be. All housing units begin at the base of that podium which is approximately 10 feet off the ground and up.

We can do four stories from the ground on the strand because that fits in to that part of the neighborhood. We cannot do that over along Mechanic Street. It won't be accepted by the Historic District, it won't be acceptable architecture and design.

So what we're proposing to do, what the waiver allows us to do is to build the housing above the floodplain in the context of the neighborhoods. The only thing that will be below the floodplain is the parking, and in our proposed waiver, we suggested to staff our evacuation plan and emergency plans we'll have in place with the residents so in the event of a hurricane, a pending hurricane, we can get their cars and their stuff moved either off island, or to higher elevations, higher parking garages.

So we respectfully request a reconsideration of the motion to deny the floodplain waiver, as we think it will make the projects very, very unfeasible. Thank you.

MR. BABALOLA: Mr. Chairman, I will -- I would like to yield my time to Deyna Sims --

MR. OXER: Okay.

Dana?

MS. HOBDY: My name is Deyna Sims Hobdy. I'm the Director of Real Estate and Development for the Galveston Housing Authority. I appreciate the opportunity to address the Board today. I'm here to speak on behalf of the waiver request regarding the definition of the central business district.

In 2008, prior to Hurricane Ike, the city of Galveston's population was, in fact, over 50,000 individuals.

Subsequently this natural disaster decreased the population to a little over 47,000, according to the 2010 census. This is, in fact, a population decline of 16 percent.

The Galveston Housing Authority and its partner, McCormack, Baron, Salazar believe that our development plan is in line with the purpose and policies of Chapter 2306 to provide for the housing needs of low, very low, and extremely low families, as well as to redevelopment neighborhoods and communities.

The former Magnolia home site, which is, in fact, the Galveston Initiative I, was devastated after Ike. The site was deemed uninhabitable and dangerous, which led the city to require that the site be demolished. Also, single-family dwellings that surrounded the site were heavily impacted by Ike.

Galveston Initiative I will help to redevelop the neighborhood, spur private investment, and replace government assisted housing occupied by individuals and families of very low and extremely low income.

It is important for me to note for you that there is a conciliation agreement which does require a one-for-one replacement of public housing on the island, and that would be 569 public housing units.

The need for quality affordable housing is great on the island. CDM, a former contract of the city reported in a housing study that there are 12,000 renter-occupied units in the city and approximately 5800 of those households pay more than 30 percent of their income towards rent.

The study also indicated that 50 percent of all renters were burdened by housing costs. And I present these facts to you today to evidence that there is a great need for affordable housing on the island.

The study also reported that 44 percent of the housing stock was built before 1960, and only 10 percent of the housing stock has been built since 1990. Moreover, 18 percent of the families who reside in Galveston live below the poverty line.

And lastly, 55 percent of the families on the island earn less than \$50,000. So Galveston Initiative I

will advance the legislature's policy to provide safe, decent and affordable housing in the neighborhood.

Many things have changed in Galveston since Hurricane Ike. The city and GHA alike have asked for considerations that normally would not be necessary. For example, the city of Galveston was grandfathered into entitlement eligibility for CDBG funds when the population dropped below 50,000.

We also note that the development -- that the Department can meet its purpose throughout our region. However, this deal is needed to meet the needs in Galveston as a result of Hurricane Ike.

By granting this waiver this Board would be working with GHA in a similar manner as the city to achieve common goals of the state and HUD. And those common goals being that GHA would be able to provide desperately needed housing to the low, to very low and extremely low income, as well as families of moderate income in the city of Galveston. Thank you.

MR. OXER: Thank you, Ms. Sims.

Dr. Muñoz?

DR. MUÑOZ: Mr. Duffy, you know, if the housing stock is so vital and so urgent, why would the historic commission, or whatever group is there, not be more flexible

in what they would permit to be built there? Because that's what you're requesting here, flexibility.

MR. DUFFY: Flexibility in the design. So what I wanted -- what I really want to emphasize is the Authority is under a tremendous amount of pressure to replace the 569. They're -- I can't say to you --

DR. MUÑOZ: You can't build it in the way that's required up to Mechanic Street because there would be resistance to the design being approved.

MR. DUFFY: That's right. I mean historic districts in general want site -- want development sites adjacent to them to complement and reflect that particular neighborhood. I can't say honestly today to you that there's absolutely no way we couldn't permit a development that was a six-, seven-, eight-story building that just happened to be across from the historic district. You're absolutely correct.

But in addition to having to do that, not only having to raise the parking above that floodplain so absolutely nothing would be below 10 feet, technically I've got to say that of course stairwells to enter that and elevator shafts, there will be elevators at Gray, there have to be, we've got to be 100 percent visible under the conciliation agreement as well, so there won't be nothing down there.

But there -- it will be very limited.

But to move that parking up and then to devise and develop the ramps that would get up to that level so that all the cars could be above the floodplain will do two things.

It will dramatically increase costs. You know, could it possibly happen? Yes.

But as you dramatically increase costs, it makes the Authority's ability to deliver on those 569 incredibly, if not absolutely impossible both from a cost standpoint and from a land standpoint. They only have so much land to develop on. And the more we have to fill that land with ramps and drives and such to bring parking above the grade, the fewer units you can build, and the cost per unit is that much higher because you're getting fewer units for the amount of building you're having to construct.

MR. OXER: From the engineering standpoint I can see the obvious merit in using, not below grade, but below floodplain level areas for parking, for things that are movable, and, yes, you'd have stairwells and that's yada, yada, yada.

MR. DUFFY: Right.

MR. OXER: Okay. But that's not living quarters on which there would be someone that potentially represented a risk or threat to them if they were hunkered down in their

house during a hurricane.

MR. DUFFY: Correct. We will be obligated -- after the hurricane design and construction standards have been dramatically increased for the island.

All of our housing structures will have to meet wind resistance of 140 miles per hour and above, the windows have to be hurricane-proof, the roofs have to be hurricane-proof.

So, yes, all the living areas will meet or exceed all of the codes relative to protecting individuals in a hurricane.

MR. OXER: All right. All right. And while I understand the merit of having the ground floor -- I mean this is common practice where I grew up in Florida.

MR. DUFFY: Right.

MR. OXER: Okay. That's everybody has a house that's, you know, one floor up --

MR. DUFFY: Right.

MR. OXER: -- they keep the Jeeps and the boats and whatever cars they've got there, and then they live on the first floor up.

MR. DUFFY: Right.

MR. OXER: The question on this is not whether that makes sense from a functional perspective, but whether or not the waiver rises to the requirement to meet the need under 2306 should we grant the waiver. And that's where we

having the -- that's what the struggle is right now --

MR. DUFFY: Right.

MR. OXER: -- to figure out if, yes, there's considerable public comment and discourse regarding the public housing on Galveston --

MR. DUFFY: Yes.

MR. OXER: -- and the need for folks to get there.

And, yes, those housing are needed, but with respect to what we're doing on this tax credit program, does that project represent one that rises to that level based on the regional suballocation that we have.

MR. DUFFY: Right.

MR. OXER: Is that a fair statement? Because we've got others there in the county. Right? There are other projects, there are plenty of other projects out there.

MR. DORSEY: Sure.

MR. OXER: Okay. Just a point for the record.

Mr. Gann?

MR. GANN: Out of curiosity, the cost per unit, have you got a guesstimate?

MR. OXER: Ballpark. Round number?

MR. GANN: Ballpark, yes.

MR. DUFFY: Well, honestly, it depends upon how you look at it. We consider some of these site-specific costs

as being extraordinary and would be considered out of the budget, but we're currently estimating that the project -- the project qualified under the QAP for up to \$97 per net rentable area. As it relates specifically to the housing costs, we believe we've got good estimates that we can build within your cost constraints the housing.

MR. OXER: The actual housing, not the substructure to get it up to the point -- the elevation --

MR. DUFFY: Correct.

MR. OXER: Okay. I have the advantage of having some engineering expertise to look at this and --

MR. DUFFY: We do -- I actually brought some pictures if I just wanted -- if you wanted to see --

MR. OXER: We know.

MR. DUFFY: -- the juxtaposition of what it would -- what we're talking about.

If I could -- could I respond briefly? I'm not an attorney and I don't have 2306 in front of me, but what I recall from reading -- I wrote the waivers -- is that 2306 seemed to be emphasizing that the TDHCA Board use public resources and create policies to use public resources in the most efficient manner. And also to encourage the mixing and blending of multiple public and private resources.

I think that the reason why this waiver does rise

to a level that really helps you achieve that goal is because it does allow -- I mean this deal will have, you know, CDBG disaster recovery funds and it will have insurance proceeds the Housing Authority received, it'll have capital funds the Housing Authority has, private investors, private equity, private debt. It will be layering a multitude of resources.

And to do it in the most efficient manner and to blend those public resources and deliver on the Housing Authority's requirement on the units, the waiver is absolutely necessary to really deliver on that in the most efficient manner.

MR. OXER: Okay. Mr. Irvine, do we have any -- my sense of this is that there is -- and from an engineering standpoint I would offer the waiver just, you know, just because I would, I know how that works. Okay. But then the question is, if the waiver is granted, what does that do in the competition for the rest of these, and what does it do in terms of implementing the state's policy and rising to the need to satisfy the needs of 2306, which is to make this housing available in the places where it is very much needed.

Is that a fair statement, Mr. ED? More or less, generally?

DR. MUÑOZ: Aren't there other -- Cameron, aren't

there other proposals that purport to do the same?

MR. OXER: Are they -- yes, but the question then becomes why are they in the concentrated area that got knocked out like Galveston?

MR. DORSEY: Right. Most folks pointed to the very general provisions of Chapter 2306 when we asked. Obviously I think they went there and weren't exactly sure how to deal with this because this is a new thing for them as well, and they said, Well, where is the word "purpose" and where is the word "policy," and so they looked at those and said, Oh, these must be what we need to rely on.

And they're pretty general. You know, it's providing affordable housing throughout the state type of generality.

MR. IRVINE: Well, not to put words in Mr. Duffy's mouth, but I believe what you're referring to is 2306.001, subsection 4. And that's assisting the Governor and the legislature in coordinating federal and state programs affecting local government.

Obviously the Governor and the legislature have placed responsibility for the disaster recovery, the administration of CDBG with the general land office, and what you're advocating I believe here is working with them to leverage the CDBG funds in this situation.

MR. DUFFY: That's absolutely right. And just a point of fact, I was looking through the Board book, because someone in a previous discussion today was actually reading a waiver that was submitted, the waiver that's actually included in your -- one of the two waivers, I can't remember if it's the central business district or the floodplain, was our previous letter. We actually submitted two waiver letters, and were reminded by staff that we had to submit the one justifying the 2306.

So there is language in final waivers that --

MR. IRVINE: That language is in your letter.

MR. DUFFY: Okay. Thank you.

Just a note, so the Galveston Housing Authority is the one that the obligation to replace to these particular public units. McCormack, Baron and Salazar were selected through a competitive process as their development partner to help them figure out how to do that and do that right.

None of the other deals either in the Houston region, and certainly there are none other coming from the island, will in any way be a part of achieving the obligations under the conciliation agreement. So, again, just as you're considering what I would humbly say is a unique circumstance.

This is really unique. The other deals will -- that are in the region are not positioned or not part of

the -- fulfilling the obligations under the conciliation agreement.

And I guess I'll also note there are several other sites that we'll be coming back to the Board. I had asked Cameron early on are we asking for a waiver for the entire development initiative, because this is a multi-phase initiative, and he said, No, we have to come each time. So the floodplain is going to impact currently all the sites the Housing Authority has to develop. This isn't just Magnolia specific, it's all the three and the others they have to purchase.

MR. OXER: Hey, it's Galveston Island. Okay.

MR. DUFFY: Right. I think maybe if we had a site that's right behind the seawall and we could put all hundred, you know --

MR. OXER: I wouldn't bet on that either.

MR. DUFFY: Yes.

MR. OXER: -- but --

MR. DUFFY: There's not the land --

MR. OXER: Yes, because if you're going to do anything at all on Galveston Island, on which there is a continuously escalating demand for low income housing it seems, you know, we've got to either -- we've got to consider this -- we've got to consider the floodplain issue a fully

workable, technical solution to build this up, parking and movable facilities underneath, so basically it's got an open shell parking --

MR. DUFFY: Yes.

MR. OXER: -- keep your bikes and your lawn furniture down there.

MR. DUFFY: Yes.

MR. OXER: Okay. So from a technical standpoint that's the only way that's going to work in terms of meeting the requirements. Okay. But then trying to see if this rises to the -- to meet the need.

DR. MUÑOZ: Okay. Chairman, whatever we decide here, as I understand Mr. Duffy --

MR. OXER: We're going to have another go at this next year.

DR. MUÑOZ: Well, I mean I don't know how we have another go at this because I mean I don't know -- if you're basically the conditions and my argument will be the same for the other two developments, then how can we possibly deviate from this decision with respect to those --

MR. OXER: Well, that's right. And that's setting precedent.

MR. DORSEY: Well, I will state that it depends on how they're submitted as well, and oversubscription type

of issues. So if they're submitted as a bond transaction, which I think one of them at least is planned to be submitted as a bond transaction, and we have no oversubscription of bonds, then, you know, that's a different scenario than having a 23, you know, to one oversubscription or, you know, whatever the oversubscription is.

MR. OXER: So the potential exists for them to move out of the tax credits and over to the 4 percent bond program.

MR. DORSEY: Well, I believe that's the plan for at least one or two of the other ones.

MR. OXER: That's your fallback --

MR. DUFFY: It's not a fallback. So we have a five -- we currently have a five-phase proposal that's been approved by the Galveston Housing Authority Board. Of those five phases, I think we're anticipating that three would go through the 9 percent application rounds and two would be --

MR. OXER: Okay.

MR. DUFFY: There's 684 units that are proposed to be redeveloped in this initiative. So I will -- I mean I will note that I don't know that denial of the waiver of the floodplain prevents us from applying for credits. I think we could still move forward with at their 9 percent award. What it does is it creates extremely less efficient housing,

and much more expensive housing.

So just to be absolutely clear, I think a denial of the floodplain waiver doesn't preclude us from getting a 9 percent award, it's not a scoring criteria, it's just a matter of are we going to have the type of development that we all want to see done, or are we going to have an extremely expensive low yielding from a unit standpoint development on that particular site.

MR. OXER: Okay. You're going to build this with at-grade garage or are you going to build a sand pedestal and put it all on top of it.

MR. DUFFY: You got it.

MR. OXER: Yes.

MR. DUFFY: I mean like I said, there's technically an engineering way to raise the parking above it. But we're building for families, we're not building -- you know, we're not building highrise buildings. We, as a country, have moved away from building highrise housing for low income families. And so, you know, we really want to build it to family scale and this floodplain really helps achieve that. The floodplain waiver I should say.

MR. OXER: Okay. So it seems to me that the -- it boils down to we're assuming the central business district issue is not there. The question is, does this waiver for

this floodplain increase the stock of housing, affordable housing, reduce the cost per unit on those in Galveston, or does it jack the price up and we provide the tax credits.

So in other -- I mean what it's getting down to is that's the other option, to provide the tax credits to another deal that's more competitive because it didn't have to have the waiver elsewhere in that subregion.

MR. DORSEY: With respect to the central business district, and probably ultimately the cost issue if the floodplain waiver didn't go through, I mean it would impact their scoring and they wouldn't be as competitive against the other applications.

MR. OXER: Right. I mean it wouldn't be as cost competitive, so essentially the worst case scenario is they get knocked out of the competition, knocked out of the competitiveness on this round on the tax credits and that the tax credits then flow to -- or would be awarded to another project in that subregion. As you list there are more than a couple on our list because of the current state of oversubscription on the round.

Dr. Muñoz.

DR. MUÑOZ: I'd like to withdraw my second.

MR. KEIG: Second. And I want to speak, if I could.

DR. MUÑOZ: And I'm prepared to make a motion.

MR. OXER: Let's -- okay. Your second's withdrawn, Mr. Keig has seconded Mr. Gann's motion. Mr. Keig would like to speak.

MR. KEIG: Well, understand that, you know, maybe like in Florida and some other places, they have driveways and parking that's below what we're talking about here. But we did create these two different levels for floodplain requirements, and I hate to just throw them out the window.

And what I'm hearing you also say is that part of the problem is we're trying to build it on Mechanic Row, and it's just trying to meet the floodplain requirements doesn't work on Mechanic Row, but it might elsewhere on Galveston Island.

MR. DUFFY: Again, it does. I think from a technical standpoint what would happen is if we had to build the parking above the floodplain, we would not build any buildings on that portion of the site. What you've got to keep in mind here is the restriction on the Housing Authority's standpoint is that this is the land the Housing Authority has owned for 50-plus years, it's the land that the existing public housing was on. It's not like there's a limitless alternative --

MR. OXER: You don't have an option on another location.

MR. DUFFY: You got it. So I think -- yes, I think what would happen is just nothing would -- on that side of the site nothing would be built. So to my point you're getting fewer units per -- you know, to achieve the goals of the conciliation plan.

MR. OXER: And this is an area that was formerly populated by, if I get -- do I understand this correctly, that formerly had low income housing on it?

MR. DUFFY: It was 175 --

MS. HOBODY: Thirty-five units.

MR. DUFFY: -- 135 units of two-story walk-up --

MR. OXER: Okay.

MR. DUFFY: -- apartments.

MR. OXER: Okay.

MR. DUFFY: Could I say one more thing?

MR. OXER: Certainly.

MR. DUFFY: So you could imagine, when we were selected last summer, one of the first things we did is we went and looked at what the state requirements are under your QAP.

We met with staff about this particular issue last -- late summer, early fall, and what we understood from

staff's position was, their greatest concern had to do with what happens in the event a hurricane is coming, what happens to anything you've got that would be below the floodplain.

In our case we told them it would be strictly cars, a tiny bit of storage, bikes, or whatever.

And so what they encouraged us to do and what we've done since then, is we've begun developing the evacuation emergency plans that all the residents will be trained in, and we've also begun conversations with UTMB, which is our neighbor, that has a number of parking garages that are above the floodplain, to develop a program and a plan which we will do and implement to ensure that there will be a very, very limited loss of property in the event of an actual hurricane.

So I think the greatest concern and the reason why that provision is in your QAP is to ensure that there isn't a tremendous amount of loss of personal property in the event of these weather events.

DR. MUÑOZ: Okay. But, Mr. Duffy --

MR. DUFFY: Yes.

DR. MUÑOZ: -- you know, the transiency of some folks, you go out there, you train some homeowners, other homeowners come in, people move out, you know, the presumption that you will have a population of well-trained fully-informed occupants, you know, is unlikely. And even the negotiation

with the medical facility there, the medical school and the university, it's tentative, it's not finalized.

Right now you're suggesting that we're going to enter in a negotiation and we hope that the outcome -- it may not be a desirable outcome. They may not agree to it.

And so I mean these are all speculative. Sort of your mitigation of what could occur, the three that you offer, you know, right now are questionable at best.

MR. DUFFY: You're absolutely right. And you can make deals like that until you've got a deal -- a reason to do it. So you're absolutely right. They're not complete.

I will say that we've done a significant amount of development in New Orleans since Hurricane Katrina, we have a development of 460 units in the central city neighborhood there just west of the Super Dome. We have these plans in place. And what we see in our development in New Orleans, which is -- granted it's new, but it's been in operation for a good two years now, is that actually the population that would likely have the most trouble in evacuating and then taking care of their personal property, the lower income range of the residents, have the least turnover in the development.

So we actually do have a little bit of experience

with this and we do have a belief that the requisite training, the required training for those that are most vulnerable should be okay, because they end up being the least transient of our residents. It's really our higher-income residents that are the most that turn over.

MR. OXER: Mr. Gann.

MR. GANN: I've got a question for either counselor or director, either one. Don't we have some limitations on waivers that we can do in reference of cancelling something like a floodplain, giving a waiver for that which would increase the points to any particular project?

MR. IRVINE: Well, I mean like I said earlier, you certainly have to comply with the national floodplain insurance requirements, which this development would.

MR. GANN: How about in our guidelines that we've been given recently?

MR. OXER: Meaning?

MR. GANN: I mean where we give a waiver for any reason that would increase the points.

MR. IRVINE: Well, this is --

MR. GANN: This would increase points in reality.

MR. IRVINE: The CBD one would -- could increase the points. The floodplain one would simply be just a

requirement applicable to the development. It would not increase the scoring.

MR. OXER: Would not increase the scoring, but it'd allow it to have a higher density and lower cost --

MR. IRVINE: Yes, the question is basically whether the floodplain waiver is consistent with some of the express purposes behind 2306, and I think that --

MR. OXER: And to that end, let me read through Subchapter -- so Section 2306.6701, which is, I think, we were going to get to. Okay?

And these are the purposes, and we've got -- you know, the state says granting a waiver has to meet one of these purposes: Encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, affordable rental housing in the private marketplace; two, maximize the number of suitable affordable rental -- residential rental units added to the state's housing supply; three, prevent losses for any reason to the state's supply of suitable affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventative financial support to this -- under this subchapter; and, four, provide for the participation for for-profit organizations and provide for an encourage participation of non-profit

organizations in the acquisition, development and operation of affordable housing developments in urban and rural communities.

Now, the -- if we grant this, and it doesn't change the points, but it would change the cost per unit, essentially run down the cost per unit, which does make it more competitive, which we hope, and we want to keep those units as affordable as possible, rising to meet the need -- the question is, would granting this waiver rise -- or going counter to what the staff recommends rise to the definition of meeting the need to meet Section 2306.

MALE VOICE: Sure.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: I might just add that as I recall, staff's position on this is neutral.

MR. DORSEY: On the floodplain.

DR. MUÑOZ: That's right. It's neutral.

MR. OXER: Okay. So the floodplain's neutral, and you're saying deny the --

DR. MUÑOZ: No, no, no.

MR. GANN: [2:29:14].

MR. OXER: The motion is to deny the waiver on the floodplain, grant the waiver on the CBD. Is that correct?

MR. DORSEY: That's the --

DR. MUÑOZ: That's the current motion.

MR. OXER: That's the current motion.

MR. GANN: That's the current motion.

MR. OXER: Okay.

MR. GANN: And what I'm -- why would you be against the business district aspect?

MR. DORSEY: It's solely to provide a strategic advantage in terms of points over other competitive applications that meet the letter of the rule.

MR. OXER: So granting that one would increase the points.

MR. DORSEY: Yes.

MR. DUFFY: Can I speak to that?

MR. GANN: Yes, I think so.

MR. DUFFY: I prepared an argument about why I think the CDB waiver -- I might as well say it. There is no other city that we could find that was impacted by Hurricane Ike, which is the sole reason why the island is less than 50,000 today, that does not meet that definition because of that.

And so I think that rather than thinking it is giving this deal a competitive edge, what it actually is doing is allowing the central business district of the city of Galveston to compete equally with its peers in its subregion.

MR. OXER: It's not putting it ahead, it's bringing --

MR. DUFFY: It' not putting it ahead.

MR. OXER: -- it's bringing it back to the --

MR. DUFFY: I mean there's --

MR. OXER: -- equal line.

MR. DUFFY: -- undoubtedly -- no, I mean I think the other major central district we'd be competing against is Houston in the region. And so there are a number of deals that we would just be allowed to compete with equally.

MR. OXER: And this is in -- in what stage is this in in the entire process, Cameron?

MR. DORSEY: This is at the preapplication stage.

MR. OXER: Preapplication stage. So all we're saying is they get to stay in the game.

MR. DORSEY: Well, no, they can stay in the game even if you don't grant the waivers. We're providing them the ability to access points --

MR. OXER: Okay.

MR. DORSEY: -- with the central business district waiver. And then we're providing them the ability to structure their development plan in one way versus another way with the floodplain waiver, so. And the -- you know, with regard to the impact of the hurricane, it's a pretty

unique situation.

The problem is that -- we have a point item for disaster areas, and they do qualify for points under that item, the problem is that the entire state qualifies for points under that item because the Governor deemed the entire state a disaster area based on the wildfires and drought. So there is actually --

MR. OXER: No wonder we have --

MR. DORSEY: -- an item under 2306 to address disaster areas, it's just under 2306, it's every application that applied will probably be eligible for this.

DR. MUÑOZ: There's a motion.

MR. OXER: There is a motion on the floor.

MR. GANN: Get it up or get it down, move on to something if we need to.

MR. OXER: All right.

MR. GANN: Or we may be adjusting this before we get through the --

MR. OXER: Yes.

MR. GANN: And that's fine with me too.

MR. OXER: Well, there's a motion on the floor with a second to consider to offer to grant the waiver under the CBG -- CDB, central business district, CBD, and not grant, as you said --

MR. GANN: The floodplain.

MR. OXER: -- the floodplain. Okay. Seconded by Mr. Keig as I recall. Okay. And you had -- all right. Any other comment?

(No response.)

MR. OXER: All in favor?

MR. GANN: Aye.

MR. KEIG: Aye.

MR. OXER: All opposed.

DR. MUÑOZ: Aye.

MR. OXER: Nay. Two and two. All right. That one stands. We'll have to reconsider that one.

MR. IRVINE: No, the motion fails.

MR. OXER: The motion fails.

DR. MUÑOZ: I have a motion.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: I move that we grant the -- both waivers.

MR. OXER: Motion to grant both waivers by Dr. Muñoz. Is there a second?

(No response.)

MR. OXER: There appears to be no second. All right. We're running out of my parliamentary skills here. You got anything --

(General laughter.)

MR. GANN: I guess there's only one other choice, I guess.

MR. OXER: Like I used to say, where's Leslie when I need her? I mean, geez.

MR. KEIG: Maybe ask our general counsel, as a matter of parliamentary procedure, if we do not have a motion and a second, then the appeal -- or I'm sorry, the request for the waiver is not approved period --

MR. OXER: It's not approved. That's right.

MR. KEIG: -- if it's for an approval.

MR. OXER: Correct.

MR. KEIG: Or it just fails for lack of a motion.

MS. DEANE: That's correct.

MR. KEIG: Okay.

MR. OXER: So it's just -- so the -- yes, I could have -- I could, in fact, second a motion, but I could call for that and I'd know where that's going to go too -- call for the vote on that one. So --

MR. IRVINE: Mr. Chairman, the only other --

MR. OXER: Yes, sir.

MR. IRVINE: -- you were asking about other parliamentary tricks you might pull out. It is within the prerogative of the Chair to cast a second --

MR. OXER: Okay. And I would second Dr. Muñoz's vote -- or Muñoz's motion. Is there any conversation, any discussion?

(No response.)

MR. OXER: All in favor?

DR. MUÑOZ: Aye.

MR. OXER: Aye. All opposed?

MR. KEIG: Nay.

MR. GANN: Nay.

MR. OXER: Okay. That one fails. So the -- what's the nature -- when does this -- the waiver request then --

MR. IRVINE: The waivers simply are -- would not be granted, they would not receive the four points for development location for being in a central business district, and they would be required to comply with the elevation requirements for the entire development.

DR. MUÑOZ: Could we -- could a motion be made to vote on these separately?

MR. IRVINE: Absolutely.

DR. MUÑOZ: Let me offer a motion to vote to grant the waiver on the business district definition.

MR. OXER: Okay. Motion to -- by Dr. Muñoz.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. All in favor?

(A chorus of ayes.)

MR. OXER: There you go.

DR. MUÑOZ: We grant a motion.

MR. OXER: There's one of them. All right.

DR. MUÑOZ: A motion to grant the waiver on the floodplain.

MR. OXER: Okay. And what that will effectively do is give you those -- give you access to those points. You still have to qualify in the application. I suspect that, you know, your costs are going to be -- look different and your development will look different.

DR. MUÑOZ: Is there a second to my motion?

MR. OXER: To your motion?

MR. KEIG: Yes, he just moved to grant the waiver of the floodplain --

MR. OXER: Oh, okay. Yes, that was -- okay. Is there a second to that one?

(No response.)

MR. OXER: Second. Motion by Dr. Muñoz and my second to grant the waiver on the floodplain. All in favor?

DR. MUÑOZ: Aye.

MR. OXER: All opposed?

MR. KEIG: Nay.

MR. GANN: No.

MR. OXER: Okay. And that one fails. So one for two.

MR. DUFFY: Thank you very much for your time.

MR. OXER: Let the record reflect that the Board recognizes that this is an incredibly competitive event and those four points are going to be real valuable to them.

MR. DORSEY: All right. We've got the next one.  
(General laughter.)

MR. DORSEY: Is there hesitation in my voice?  
(General laughter.)

MR. DORSEY: The next waiver request was --

MR. OXER: Cameron, I just can't wait till the actual tax credit appeals show up.

(General laughter.)

MR. KEIG: Mr. Chairman --

MR. OXER: Yes, sir.

MR. KEIG: -- could we think about taking a break pretty soon?

MR. OXER: I think Mr. Keig wants to take a -- why don't we do this, we're at a break point here, let's take -- it's 25 until three o'clock, so be back in your seats by quarter of, please.

(Whereupon, a short recess was taken.)

MR. OXER: Now, we're going to get started here. We have a sort of an odd little thing to deal with here, so we're going to retire to Executive Session. It'll be very short, so I want you guys to sit still, but we're going to retire to Executive Session right over there. We won't be but a few minutes and we'll be back out. So I have to --

MS. DEANE: Read the script.

MR. OXER: -- read the script again.

MR. IRVINE: It's just 3071, conferring with counsel.

MR. OXER: Okay. The governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time pursuant to the Texas Open Meetings Act to receive legal advise from its attorney under Section 551.071 of the Act. Closed session will be held in --

MR. GANN: The restroom.

MR. OXER: -- that little restroom right over there.

(General laughter.)

MR. OXER: So everybody's requested to sit tight and we'll be back in a few minutes.

MS. DEANE: State the time.

MR. OXER: And the current time is 2:52.

(Whereupon, at 2:52 p.m., the Board met in

Executive Session.)

MR. OXER: All right. The Board is now reconvened in open session at 2:58. We'll take up discussion and action on any items from the closed session. Once those items have been acted, we'll continue with the remaining agenda. That's the formality we have to do first, so.

DR. MUÑOZ: Mr. Chair?

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: I'd like to request -- given that the -- that, in fact, the request for a waiver on the floodplain issue in Galveston wasn't voted down, I'd like to request that we --

MR. OXER: It was not voted down.

DR. MUÑOZ: It was not voted down.

MR. OXER: It just wasn't voted for.

DR. MUÑOZ: It wasn't -- right. I'd like to request the opportunity to reconsider the motion at our next meeting.

MR. OXER: Is that a motion to consider, or just a request to --

MR. IRVINE: A request that we place it on the agenda --

DR. MUÑOZ: That's right.

MR. IRVINE: -- and bring it back --

DR. MUÑOZ: For our next meeting.

MR. IRVINE: -- for more in depth consideration.

MR. OXER: Okay.

MR. KEIG: I'd support that and second that motion.

MR. OXER: Okay. Then all in favor?

(A chorus of ayes.)

MR. OXER: Okay. That's unanimous consideration, that we want to -- give us a chance to think about this in more -- and some more consideration, because --

DR. MUÑOZ: In other words, and also with this, the request -- their request for a waiver has not been denied.

MR. OXER: That's correct.

DR. MUÑOZ: And will provide us I think additional opportunity to gather information as well as if the appellants would like, it will help them marshal further evidence for their case.

MR. OXER: All right. Okay. And for the record, Madam Transcriber, the -- Madam Recorder, that was a motion by Dr. Muñoz and second by Mr. Keig, the unanimous vote.

Okay.

DR. MUÑOZ: I don't know if they're here, but I direct the ED or somebody to somehow notify them.

MR. OXER: Cameron --

MR. DORSEY: We'll give them a call.

FEMALE VOICE: I'm actually here and I'm his  
counsel.

MR. OXER: Oh, Toni, you're -- okay.

FEMALE VOICE: Yes. Thank you.

MR. DORSEY: All right. The second transaction  
up for waiver consideration is Cadillac Apartments. Cadillac  
Apartments is located in Urban Region 3, which is the  
Dallas-Ft. Worth area. These folks are asking for a waiver  
of a provision within the supportive housing definition so  
that they can be considered supportive housing under the QAP.

The specific provision that they're requesting  
a waiver of says that basically the developments characterized  
as supportive housing are "expected to be debt free or have  
no forecloseable or non-cash flow debt."

Okay. So the idea there is that if you're going  
to propose a transaction that's classified as supportive  
housing, you can't have, you know, a conventional type of  
debt on it, or other kind of debt that requires a regular  
repayment structure.

And the reason for that is supportive housing is  
a particularly unique type of housing that we fund oftentimes  
with the tax credit program that relies upon the  
organization's -- oftentimes a non-profit organization's

fundraising capacity and other financial resources outside of the transaction itself. So when we underwrite these types of deals, we consider things other than the real estate itself.

And when looking at this, again, we looked at the oversubscription rate within Urban Region 3, which is 23 to 1, a massive oversubscription of applications, and it's not entirely clear to me exactly why they need the waiver. I don't think that they fully addressed that, because there's not a point advantage inherent in being classified as supportive housing.

There are some benefits from an underwriting perspective, you don't have to meet some of the financial feasibility criteria, which if they're requesting a waiver for that reason, that's a bit disconcerting.

And then there are some -- there's some special treatment for unit mix, they don't have to meet the same unit mix requirements, and oftentimes they don't have to have the same amenities within their units, and they get kind of a slight -- a bump in terms of when they're considered for various things within the QAP. But there's no point item that says, If you're doing supportive housing, you get X points or anything like that.

So, but anyway that's the waiver request. Staff recommends denial based on it being substantial

oversubscription, it doesn't appear to be necessary or meet -- rise to that level of necessity.

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

(No response.)

MR. OXER: There are no requests for public comment on this item, on this particular application.

DR. MUÑOZ: Move staff's recommendation.

MR. KEIG: Second.

MR. OXER: Motion by Dr. Muñoz to accept staff recommendation, second by Mr. Keig. Any discussion?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. Unanimous.

Cameron, next one.

MR. DORSEY: Okay. The next waiver is for a development called Texas and Pacific Warehouse. This is a transaction located in Ft. Worth. It's proposed to be an adaptive reuse of an existing non-housing facility. They are requesting a couple of waivers. One is a waiver to the requirement that a bedroom -- it's within the definition of a bedroom -- that a bedroom have a window with exterior access.

I believe the design of the unit and kind of the structure of the building necessitates kind of a long unit configuration, and they will have a -- I believe that they will have a window in the bedroom, but it will just not be to the outside, it would be like to the living room, which will then have access to the outside. In any case, that's one waiver request.

The definition of a bedroom is actually in Chapter 1, Section 1.1(a)(7), and when looking at this particular request, the waiver provisions within the -- the waiver provision within the QAP doesn't -- we didn't feel like applied to those issues addressed in Chapter 1, and so we felt like that was a problem with considering a waiver of this particular requirement.

The second waiver of the \$95 per square foot cost threshold within the eighty scoring item in the QAP, which basically incentivizes cost effectiveness and has various thresholds, and if you propose a transaction with costs under these thresholds, then you access points.

They've basically indicated that it's an adaptive reuse transaction, it's unique, and that the 95 is not sufficient and they believe that that warrants a waiver to access those points.

This, again, is -- staff is recommending denial

of this one based on it being really more about a strategic -- giving the development a strategic advantage despite not meeting the rule rather than really furthering the purposes or policies of 2306 and meeting that kind of necessity requirement.

Adaptive reuse is contemplated in the QAP, and the \$95 threshold is intended to apply to adaptive reuse as well. So there wasn't -- it wasn't something we didn't consider. We did, we just wanted -- it applies.

So those are the two waiver requests; we're recommending denial on both accounts.

MR. KEIG: Move to accept staff's recommendation.

MR. GANN: Second.

MR. OXER: Motion by Mr. Keig, second by Mr. Gann to accept staff recommendation. Any comments?

(No response.)

MR. OXER: We have no request for public comment on this item. So all in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. Four zero. Next one.

MR. DORSEY: Okay. The next one is Gulf Coast Arms, it's Application Number 12252, and this is a

reconstruction of an existing development that is supported by Section 8 contract, Section 8 project based contract.

It's a development that is located -- the development site is located within 300 feet of an active railroad and high voltage powerline, at least one powerline, I don't know how many. But it's -- these are eligibility, or reasons for ineligibility under 50.4(d)(13).

There some kind of -- the circumstances of this are, and what the applicant lays out, is that this is an at-risk property, it's more than 40 years old, and if they did it as rehab transaction, it would, in fact, qualify, but by virtue of want to reconstruct, it doesn't, it's deemed ineligible.

And so they're requesting a waiver of the number of feet that they have to be away from these -- the active railroad and high voltage powerline.

They're in the at-risk set-aside, as I mentioned. There's a four-to-one oversubscription in the at-risk set-aside. At-rise is considered unique. It's drawn out as unique, and in statute and required to have its own set-aside.

But by virtue of the fact that the at-rise requirements within statute will be satisfied given the oversubscription without granting such a waiver, staff is recommending denial. The only other thing I would note is

it's at-risk, but there were also other at-risk applications for Urban Region 6.

MR. KEIG: I move to accept staff's recommendation.

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

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. Any other comment?  
(No response.)

MR. OXER: Okay. We have requests for public comment. There are three.

Come on, Toni.

Toni Jackson, Mr. Johnny Gant, and let see, make sure nobody -- Mr. Zeven said he yielded his time, but he didn't say to who, so.

FEMALE VOICE: Oh, he didn't --

MALE VOICE: Yes --

FEMALE VOICE: Actually we'd like to change the order, if you don't mind, Mr. Chair.

MALE VOICE: Okay. We being the developer.

MR. OXER: Hop up.

MR. ZEVEN: Mr. Chairman, Board, thank you for letting me speak. This is my first project, I picked a really fun one to start off with, and I knew --

MR. OXER: And for the record you need to state who you are.

MR. ZEVEN: Okay. I'm Lee Zeven, I'm president of Affordable Housing Group, and I'm representing the project that I'm buying, Gulf Coast Arms.

I have a background in having developed and built almost 100 high quality, high end homes, built one of the first lead Gold homes in Houston, first in Sugar Land. And about a year ago I had a change in heart and career path and decided that I wanted to get into multifamily and I wanted to own assets with continual income, but I also wanted to fulfill a mission in being able to help people and provide supportive services and provide people a better quality in my projects.

So I specifically made a choice to choose the path of purchasing Section 8 properties, especially older ones that I could rehab and then also provide community centers and partner with one of the largest non-profits in the state, Texas Center Faith Housing, to be able to bring in supportive services to help teach the people, the residents, educate them, provide them computers and computer literacy, et cetera.

So, as you know, my project is at-risk. This is a fully subsidized project. It can't go anywhere, I can't move it. It's been there almost 40 years, and it is going

to -- you know, it's at-risk, and if this does not get approved, it will probably lose its project vouchers, it's project-based, and the 160 families that live there will have to move on.

And so I'm asking that you will please consider supporting that. I would also say that if I do get your support, I plan on taking this project and making it something that sets and example for HUD, for TDHCA, and for the community in doing something great. I will -- I'm going -- I will lead-certify it, I'm going to try and lead-certify it at the platinum level.

I would like to follow in the footsteps the Sakowitz project. I visited it, and it is phenomenal, and I think I could do that and -- but I can't do that without your help.

And I would like to note that I do have letters of support from the local council members, Senator Ellis, Senator -- State Representative Dutton, as well as the Director of Multifamily in Houston, and then as well as Michael Backman, who is the HUB Director for HUD.

And I would like to read just a small excerpt from Mr. Backman, that wrote a letter. "Gulf Coast Arms has had a difficult history, and I hope that within the confines of your administrative policies there is an opportunity for the

proposed reconstruction to go forward. It would be a benefit to the current residents, who cannot move elsewhere without losing their rental assistance, and it would assist the HUD department -- it would assist the Department in our efforts to preserve every possible project-based contract.

"As you know, HUD has not issued new project-based contracts in nearly 30 years, and once they are lost, there's a real possibility, if Gulf Coast Arms is not reconstructed, that deep subsidy rental assistance is gone forever."

I could have tried to rehab this, and then I wouldn't have this issue. But the fact of the matter is, having had a background in construction, after assessing this project it needs reconstruction. It's 40-plus years old. It would be a waste of money to try and polish this project up, and be doing it again and again.

And so if I reconstruct this, they will put a 20-year contract on it, and these residents will have a much better quality of life. That's it.

MR. OXER: Great. All right. Sit tight.

Mr. Gant.

MR. GANT: Hello. My name is Johnny Gant. I'm representing the community. I'll scoot over a little bit closer.

MR. OXER: You can put that microphone to you.

MR. GANT: Okay. I am the president of Super Neighborhood 48, a civic oriented organization made up of stakeholders within the community. We are basically the liaisons between the government and the citizens.

I was born and raised in a neighborhood approximately a quarter of a mile from the Gulf Coast Arms Apartments. Many of my classmates and friends lived in those apartments. As a child I can remember hearing the trains pass on the railroads every day. The existence of the railroad tracks is an accepted reality for our predominantly minority community.

What is not an accepted reality is the substandard living conditions of the rundown buildings. Over the years I have heard about many maintenance issues in those apartments. To reconstruct the apartments will help many families have better living conditions.

This project will most certainly help our community in most every way. Many families are cramped into the existing small apartment units, and they will be able to function better with a renewed outlook on life. Everyone within the community, including the other civic clubs, are supportive of this major project planned for our area, which haven't seen any new development in all my life.

Based on the information from the developer, there

will be controlled access to the apartments to try to help keep these seriously negative influences away from the premises. There are a lot of students, a lot of kids that live in that development there.

The community believes this development will help in our efforts to encourage more new residential development because we need that in our community. We also believe the morale of the community will be significantly increased and the civic associations will set out the community -- try to seek out the community to get more involvement within that complex there.

Right now we do not have a presence as a civic entity on that property, and we will definitely seek that out to try to establish a better relationship with those residents there.

And last, but not least, as a fellow civil engineer, licensed engineer with deep roots in this community, words cannot express to you how deeply we need this project.

MR. OXER: Good.

MR. ZEVEN: Can I add one thing?

MR. OXER: Yes, sir.

MR. ZEVEN: Okay. I apologize.

MR. OXER: That's okay.

MR. ZEVEN: So I left out two things that are very important. One is you made a comment earlier about, you know, this arena is not an easy one to participate in, and I think you referred to it as a tractor, so if you're going to bring a tractor, you need to bring a serious tractor.

And so for doing that I've surrounded myself with the type of people that can get projects like this done. My partner in this project is the NRP Group, one of the largest in the nation. And without them I'd not be here today to be able to achieve that. And Toni's one of my other partners.

And so why that is important is we realize there are railroad tracks there, and so we've already begun looking at how we would mitigate that. Right now there's no mitigation period. People listen to that sound day in, day out.

Like some of the other projects, like we would put up sound barrier walls and make it nice and so that -- and appealing and then also put in certain types of insulation and noise barriers with the doors and the windows to mitigate that sound and make it better for the residents.

With respect to the high tension powerlines, I think the way the rule reads is that it is the structures that support the lines that is of concern. In the reconstruction, we will make it our -- we cannot guarantee

this, but we will make our best efforts to reconstruct the building so that -- in a manner that they are not in the way should one of these large high tension power structures fall.

So I wanted to say that because I thought it was important.

MR. OXER: All right. We've had other issues -- well, I'll get to that in a minute.

Ms. Jackson?

MR. ZEVEN: And they run -- the high tension powerlines are on the side of the property, not down the middle of the property.

MR. OXER: Not down the middle. Okay. And cycle line there on steel towers --

MR. ZEVEN: They're about the same as from the project last year that addressed this in an appeal.

MR. OXER: Right. Okay. So they're a lattice-work tower as opposed to a single pole. Okay. They're down the sides of the --

DR. MUÑOZ: What did we do last year?

MR. OXER: Do I hear an echo in here --

(General laughter.)

MR. OXER: Okay. Ms. Jackson.

MS. JACKSON: Good afternoon. My name is Antoinette Jackson, known by all of you as Toni Jackson.

Thank you for having me today. My client has actually gone over a number of the points that I was here to make, so I just would like to wrap up for you.

As each of you know, this is actually a new criteria that was just started last year with the Board. In the past we -- this was considered a negative point item as opposed to the ineligibility item. And so we ask that the Board give really big consideration to that because, as we have already indicated, this is a development that can't be moved.

HUD is deeply committed to this development. They are vested in this development. They have project-based vouchers here and they have already committed to 20 more years of vouchers at this development upon reconstruction. And so that is a very big commitment on HUD's part, and we recognize that.

Also, as each of you know, the support of not just the neighborhood, but all elected officials, always is something that's very big and very strong, and we do have that here.

As much as I respect staff, I do disagree with the fact that Cameron is using oversubscription as a reason today to deny us. I ask that we be able to stand on our own and that be given the opportunity to continue to compete.

If we are not able to compete -- if we're

considered ineligible because of reasons different than this, I can appreciate that. However, simply because of the number of applications that we now have, an oversubscription, I don't think that is a reason to deny the fact that this is a development that is badly needed.

And although we recognize these as negative site development criteria, they are criteria that this Board has recognized before, it was already -- Sakowitz was one of the developments that was already mentioned, and Joy indicated that we could use that development and talk about how that is a very popular and well-done development, lead platinum certified, that is built right next to train tracks.

So we have shown in this industry that this is something that can be done, it can be done in a very powerful way, in a way that is acceptable, and we ask that you consider that and approve our application. Thank you.

MR. OXER: Thank you, Ms. Jackson.

Just as an observation, this is for an existing -- Cameron, this is for an existing project, it's been there for 40 years, you know, these folks knew there was a -- they knew there was a train track there, they knew there was a powerline there.

It was something -- I can see if you had a problem -- I wouldn't go pick a new spot next to a railroad

and a powerline certainly, but for one that's been there for 40 years, I can see some consideration being given to a project like this.

MR. DORSEY: Sure. And, you know, I don't necessarily disagree with the fundamentals of that. It's --

MR. OXER: I understand. And your point is that there are needs that are there --

MR. DORSEY: It's not just that, it's this is in a set-aside of existing deals. Every deal in the set-aside is probably an existing deal that does meet all of the requirements. And as do -- many of them have Section 8 contracts, many of them, you know, have existing tenants, many of them have very similar characteristics.

And, you know, developers go out and a lot of them probably avoided transactions that were similar to this and went and tried to find ones that met the rules. So it's -- you know, if this one gets a waiver, there's someone doing something very similar in the exact same set-aside a little bit down the line that's not going to get done even though they do meet the rules.

MR. OXER: Hold on a second.

MS. JACKSON: Uh-huh.

(Pause.)

DR. MUÑOZ: While they're doing research I've got

a question, Cameron.

MR. DORSEY: Sure.

DR. MUÑOZ: In one of their photographs they -- it's hard to tell, but there's an arrow that seems -- and they seem to suggest that there's a tax credit or some kind of property adjacent. Do you know what I'm talking about?

MR. DORSEY: I don't. I pulled a lot of that stuff out so I could flip quickly between --

MR. ZEVEN: While you explain -- I put the picture there. You want me to tell what it is?

MR. OXER: Go for it, Mr. Zeven.

MALE VOICE: Let me ask --

DR. MUÑOZ: I'm asking Cameron what it is.

(Pause.)

MR. DORSEY: Oh, it's -- okay. It looks like it's showing a previous transaction that was done in close proximity to a rail line and high-tension powerlines where they did use similar mitigation to what is being proposed by the applicant.

DR. MUÑOZ: You don't know when?

MR. DORSEY: I'm not sure what project -- what's that?

MS. GUERRERO: It's the Cevallos Lofts in San

Antonio, which is -- this is last year --

MR. IRVINE: Do you want to step forward and identify yourself for now --

MS. GUERRERO: All right.

MR. IRVINE: -- Debbie. You'll have to sign a witness affirmation form.

MS. GUERRERO: Hi. Sorry.

MR. OXER: Somebody from staff bring another one of those roller chairs for her.

MS. GUERRERO: No, no, I'll leave after this.

MR. OXER: No, we can --

MS. GUERRERO: My name is Deborah Guerrero. I'm with the NRP Group. And the photograph that you're referring to is Cevallos Lofts, which is in San Antonio, Texas. It was a private activity bond transaction with tax credits. It also has TCAP, NSP and HOME monies.

DR. MUÑOZ: When was it done?

MS. GUERRERO: We just completed it in December of this last year.

MS. JACKSON: And one point I would like to make is that based on our current rules, as my client stated earlier, if we were doing a rehab, this would be acceptable.

But what that is saying is that this Board is simply, just as the saying goes, putting lipstick on a pig, but not creating

a better situation for our tenants. And that is what we are asking to do.

DR. MUÑOZ: But, you know --

MR. OXER: Toni, that sounds like something I'd say.

(General laughter.)

DR. MUÑOZ: You know what --

MS. JACKSON: I've been working on that Texas saying for a while.

DR. MUÑOZ: You know, Toni, then the criticism is, you know, then the criticism is you enabled a project for low income people, perhaps people of color, next to very unattractive structures like a train track, like powerlines and so, you know, you invariably sort of relinquish them to just this kind of continued existence. And then that's the criticism.

MS. JACKSON: And believe me, as a minority, as a black woman, I fully understand that criticism. I go into communities all the time and I recognize that criticism. But I also understand and recognize that too often in our neighborhoods we're not getting new developments. And you have tenants who do want to stay home, that do want to stay in their neighborhoods, and this is the opportunity for them to get a new home.

DR. MUÑOZ: Okay. I appreciate that. But Cameron indicates that there are other projects where you would have populations that are low income of all backgrounds in the same general area that wouldn't have to be -- you know, wouldn't have to suffer the constant presence of these high voltage lines and train tracks.

And coming -- and having grown up, you know, 50 feet from a train track, it never kept me up at night, so I really -- me personally, you know, it was all --

MS. JACKSON: You and me both.

DR. MUÑOZ: -- it was all good. But I'm just saying too, but, you know, you have other possible projects that nevertheless would be accessible and available to these same groups that wouldn't have these probably less desirable sort of constant, you know, presences.

MR. OXER: All right. Let me add something to the discussion here, because this is an existing project, or an existing community, which after 40 years constitutes its own community. Is that not correct? In your mind, Mr. Gant?

MR. GANT: (No verbal response.)

MR. OXER: Okay. So there's an existing community there. Anybody that's grown up at or near or around a railroad -- when I left home to go to school -- I used to

wake up at 2:36 in the morning because that's when the train that went by my house didn't come by the door and I wanted to know where it was.

In meeting the need to satisfy 2306, there are three components to that, and it says, The Department shall administer low income housing tax credit program to, Part 3, prevent losses for any reason to the state's supply of suitable affordable residential rental units by enabling the rehabilitation of rental housing or by providing other preventative financial support under this subchapter.

Now, HUD's in favor of this project, you know, the community's in favor of this project. I'm willing to bet you that the legislative delegation is in favor of this project. Mr. Zeven's been willing to wade off in the deep end of this pool and figure it out -- and I'm warning you, there's sharks out there. Okay. So be careful about that. You've got everybody in favor of taking this on.

MR. ZEVEN: Council member.

MR. OXER: Council member --

MS. JACKSON: State rep and state --

MR. ZEVEN: State senator.

MS. JACKSON: -- senator.

MR. OXER: You know, I mean we're back to the fundamental requirements for making one of these projects

work, is there a demand for the housing, and there is because there are people in it right now. Okay.

MR. ZEVEN: It's 100 percent occupied.

MR. OXER: It's 100 percent occupied. I mean is there a demand for the housing, does the community embrace the project. Well, they've been living there for 40 years, so I think we can say that's fairly affirmed, you know. And do the numbers work.

The problem is, the community numbers don't work if they don't get this help, which I think rises to the definition of 2306, Section 3, that we should grant the waiver.

MALE VOICE: That sounds like a motion.

MR. OXER: But I can't move as Chair.

MR. KEIG: Mr. Chairman, I have a question. How far away are the powerlines?

MR. ZEVEN: Can I answer that?

MR. OXER: Yes.

MR. ZEVEN: Okay. The powerlines, we estimate that the height of the powerlines is approximately 55 to 65 feet in height, and the closest building right now is approximately 60 feet away.

MR. OXER: From a safety standpoint the issue is not with the -- I mean it's not a safety issue at this point any more so than it has been for the last 40 years. And I'm

sure there, you know, is some sort of restrictive barriers on the railroad.

The only question is about the noise on the railroad. Okay. So from a safety standpoint, you know, I don't see a safety issue, apart from anything -- the redevelopment of the site's not going to create a safety issue that has existed -- that hasn't existed before.

MR. KEIG: If we were to approve the waiver on the train, could we make it a requirement, a contingency that they have to do some sound barrier work?

MR. OXER: As he suggested that they would.

MS. JACKSON: Yes, and that actually is a HUD requirement. HUD actually has more strict requirements than TDHCA as it relates to sound mitigation.

MR. ZEVEN: I can look all of you in the eye and tell you that, if I get this waiver, that this project would be something that we really would be proud of and will win awards and will be of high quality, that if you guys visit it when I'm done --

MR. OXER: You know, for the record, we've got somebody keeping a transcript over here.

MR. ZEVEN: That's fine.

(General laughter.)

MR. ZEVEN: I don't do stuff that I can't walk

on and be proud of. That's my history.

MR. GANT: Can I add something real quick?

MR. OXER: Yes, sir, Mr. -- please come back -- come forward again.

MR. GANT: I just wanted to say, as one of the youngest people that has been involved in the civil entities in the community for the last four years, I can tell you that this project will tremendously help our community. We have an elementary, a middle school and a high school, which I attended, less than a quarter of a mile down the street that I walked to through my, you know, my grade school years.

And we need this development. A lot of those students, they go to those schools, live there in that Gulf Coast Arms Apartments. And he has already promised to us that they're going to do a community center that's going to definitely help the students, which currently they don't have.

MR. ZEVEN: Afterschool programs. I've committed to fund to bring services, I already have the non-profit, you know, places for the kids to play. Right now it's like they all just hang out there with nothing to do.

MR. OXER: For purposes of my own edification, if you were to simply begin a project like this, what's your cost per unit, ballpark. I'm not looking for the last dime

on it. Okay? But how does it compare to the rehabilitation? How does rehabilitation compare to building comparable facilities?

MR. ZEVEN: So if I -- because we looked at some costs and if we were just a straight rehab and not reconstructed, which is, I think, what you're asking --

MR. OXER: Right.

MR. ZEVEN: -- it would still be pretty costly to rehab it, and that's why I actually made the decision with NRP. We could have tried to skate in as a rehab. I'm just being honest. But to do it right, and to put in the correct sound barriers and to change out the old wiring and the piping and put in new types of systems, you would end up spending as much on a rehab pretty close to what you would as a reconstruction.

It's just that old. It's 40-plus years old, and very outdated. The wiring -- it needs to be gutted. And so new insulation, and so when you start looking at that -- and I went as far as to look up the code on what the definition of what a rehab is, and even under the IRS Code, and it's basically -- and I confirmed this with George Littlejohn -- 70 percent of the structure would need to stay in place to qualify as a rehab.

And there have been several projects that have

gone in under that moniker and been able to achieve. And they were large, large projects. But they just went in under as a rehab and left some of the exterior walls in place and, you know, changed certain things and they were able to get it done, but the cost was still very expensive on these projects.

And, Cameron, I think you're aware of one, I mean --

MR. OXER: Just from a pure quality standpoint, they're going to get a better product by going in and doing what you plan to do.

MR. ZEVEN: They're going to get a much better product. This is significant. The units are going to be increased in almost -- on average 35 percent in size. They're tiny. A four bedroom right now is around 900 square feet. When we're done, a four bedroom I think is going to be close to 1350, something like that. I mean they're tiny. It's very inadequate.

MR. OXER: So they'll maintain an existing location, existing community.

MR. ZEVEN: Yes --

MR. KEIG: Mr. Chairman, may I be recognized?  
Based upon the -- is that a yes?

MR. OXER: You look like Mr. Keig.

(General laughter.)

MR. KEIG: Based upon the testimony that we've heard and the representations that we don't have a safety issue with the powerlines, they're going to hit the building, and that the representation that there will be sound mitigation for the trains, I'm going to withdraw my motion and move that we approve the two requested waivers.

MR. OXER: Motion by Mr. Keig to approve the waivers.

MR. GANN: I withdraw my second.

MR. OXER: From the earlier motion. Okay.

Okay. So there's a withdrawal of the earlier parliamentary process. Motion by Mr. Keig to approve the waivers.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. All right. Conversation and discussion here since we haven't had any already.

(No response.)

MR. OXER: And the reasoning would be that this rises to the definition of satisfying the need under 2306, Part 3. Okay.

MR. DORSEY: That sounds like what you laid up for, yes.

MR. OXER: Since I read it right out of here, I'm pretty sure that's what it was.

(General laughter.)

MR. OXER: All right.

MR. GANN: Where is that in Houston?

MR. ZEVEN: It's off of Hirsch Road, right off --

MR. GANT: The northeast side.

MR. ZEVEN: The northeast side.

MR. GANT: North of 610, just north of that.

MR. GANN: Thank you. Thank you.

MR. ZEVEN: Not that this has a huge effort, but they're already trying to work to put a new library up one block over, and this will help spur that revitalization.

MR. GANN: Thank you.

MR. OXER: Do we have any public comment requests for -- no, those are all different.

Okay. Motion on the floor to approve the waivers.  
All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: Congratulations. You have your waivers.

MS. JACKSON: Thank you very much.

MR. ZEVEN: Thank you.

MR. OXER: You get some dry towels in the back where you can wipe your sweat off.

(General laughter.)

MR. OXER: Cameron?

MR. DORSEY: All right. The next waiver is for 12291, which is Stonebridge of Sulphur Springs. They're asking for a waiver of the requirement within the high opportunity area definition, because they would like the Department to not use the census data that we're relying on and that has been posted and published for everyone to see. They would like to rely on data from the Federal Financial Institution's Examination Council.

When we looked at this, really what I looked at is, is this better data. And the answer that I -- the conclusion that I came to is, no. it's not better data, it's actually older data, it's actually based on the 2000 census long form data. Our data is based on the 2005 to 2009 American Community Survey data, which is the effective replacement for the census long form.

And not only did I look at the 2006-2009, but after the posting of our data and the approval of the QAP, the -- I'm sorry 2006 to 2010 data was released, and I went and looked at that and it wouldn't qualify as a high opportunity area

based on the most recently available census data.

So on that basis we're recommending denial of the waiver request. It just doesn't make sense to use a data source based on extrapolations rather than the most current data available.

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

(No response.)

MR. OXER: All right. Entertain a motion?

DR. MUÑOZ: Move staff recommendation.

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

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. We have one request for public comment by Dru Childre.

MR. CHILDRE: Good afternoon, Chairman, Board members, Mr. Irvine. My name is Dru Childre. I'm with State Street Housing, and I'm here to represent the applicant.

When we first started doing the site selection before the QAP and before the data that TDHCA provided to everybody, we went to certain cities that we felt were in need of additional housing, and we checked the locations of the census tracts, and we did our research based on the HUD User GIS census maps, and the FFIAC to check the poverty rate and the income levels.

And based on that information, both of those sources, they list the 2011 HUD estimated median family income, and also the percents of poverty level, and they fit the discussion that TDHCA was trying to pass for the QAP in regards to the 15 percent poverty level and the income levels of a census tract greater than the county. So we moved forward with this particular site.

Once the QAP was finalized and the data information as submitted from TDHCA, we noticed that income levels and poverty rates were not -- did not qualify as a high opportunity area. And so we just wanted to get with you.

We feel that -- it was our understanding that staff's information was going off of older data, and we were going off of what HUD and FFIAC stated was the 2010-2011 information. So we felt that that area was, and should be, considered a high opportunity area due to the income levels and poverty rates.

MR. OXER: Do you have a response, Cameron?

MR. DORSEY: Yes, I just wanted to address the timing of things here. The data was made available before the QAP was actually finalized. I made a very specific intentional effort during the public comment period to actually release the data on the website that would be used to support the high opportunity area definition.

And so I know that people were out trying to select sites, but this is the only case that actually wasn't able to -- that has actually asked for accommodation to use other data sources. And I don't really think that -- I mean the data was available as soon as humanly possible effectively and posted.

And this is also the type of thing where we actually went census tract by census tract, so it is a spreadsheet with every single census tract in the state listed, along with the calculation done for the applicant pool.

MR. OXER: Were you helping any judges draw any maps recently by any chance?

(General laughter.)

MR. CHILDRE: And I want to say I do agree with you, Cameron. The data information was submitted long before the QAP was approved, so I'm not saying those -- they weren't submitted at the same time, because they were submitted by staff in an earlier, quite a bit earlier time frame.

I'm saying when we started site searching, you know, back in the third quarter of 2011, that was before the data was submitted to the public.

DR. MUÑOZ: Cameron, did you say that your data source was almost a decade more current than what they relied on?

MR. DORSEY: Well, they're relying on data that is based on extrapolations from the 2000 census, so demographers that do this stuff for a living have said, All right, this is our kind of guesstimate based on old, decade old data, what the population and poverty rates and et cetera would be today. You know, there's a pretty tremendous margin of error there given the small, you know, census tract level we're looking at.

And that's what's the cause for this problem here is that this Census Bureau, when they actually went out and looked, they're saying, Well, no, that's not right.

MR. IRVINE: So aren't there really two issues present? One is obvious one set of data may be better than the other set of data, but everybody needs to apply using the same set of data.

MR. DORSEY: Right. I mean I think there was -- it was kind of site selection based on speculation of what the final QAP was going to look like, and that's a tough thing. You know, I'm aware of the problem just generally with trying to select sites and timing that with the QAP approval. But, you know, it's an expectation we have of everyone, so.

MR. OXER: It's a hard game, Dru.

MR. CHILDRE: I know.

MR. OXER: Okay. All right. Any comments from the Board?

(No response.)

MR. OXER: And we'll entertain a motion since it's --

DR. MUÑOZ: Mr. Chairman --

MR. OXER: Oh, we have a motion. We have a motion to deny the waiver. Is that correct?

DR. MUÑOZ: Correct.

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Four zero.

MR. CHILDRE: Thank you.

MR. DORSEY: Okay. The last -- sorry, speaker -- the last waiver request is for Application 127 -- sorry, 12375, Cypress Creek at Westheimer. This is a waiver of the negative site features within the eligibility portion of the QAP.

This is a transaction in Houston, it's a new construction transaction playing in the regional pool, Urban Region 6, which has a ten-to-one oversubscription based on the preapplications.

They are located within 300 feet of a concrete -- commercial concrete-mixing facility, and they were -- they disclosed this in hopes that we would not classify this as a heavy industrial use, because a heavy industrial use is -- that is located within 300 feet of a site is an ineligible site feature.

So we -- staff determined that it was -- based on staff's view of this, a heavy industrial use and that this site did not meet the eligibility criteria. So we've brought it to you for -- as a waiver. We're recommending denial.

MR. OXER: And questions from the Board?

(No response.)

MR. OXER: Entertain a motion.

MR. GANN: I move staff's recommendation to deny.

MR. OXER: Okay. Motion by Mr. Gann to -- staff recommendation to deny the waiver.

MR. KEIG: Second by Mr. Keig. We have a couple of requests for public comment, and they are -- let me make sure I get them all out here. Hold on. There are three. Mr. Stewart Shaw, Barry Palmer and Casey Bump.

MR. BUMP: Yes, sir. Mr. Shaw had to leave --

MR. OXER: Well, and I'm sorry, I had a message here that he was -- or at least a note here that you guys --

MR. BUMP: Yes, we have a switch. I'm Casey Bump

and I can --

MR. OXER: He's yielding time to you. Is that correct?

MR. BUMP: Yes, sir, if that's okay.

MR. OXER: That's certainly okay.

(Pause.)

MR. BUMP: Ready?

MR. OXER: Go for it.

MR. BUMP: Good afternoon, Mr. Chairman, Board members. My name is Casey Bump and I am here representing Bonner, Carrington and Stewart Shaw on behalf of Cypress Creek at Westheimer.

As part of this application, we just want to clarify that we do not really think that we are in front of you for a waiver. We are actually in front of you, as Cameron mentioned, for what the definition of having industrial use is.

As part of the preapplication, we went ahead and notified staff that we were adjacent to a facility that we did not believe was a heavy industrial use, but we just wanted to disclose it because we don't like surprises and we don't think you do either.

So as part of that process, we looked at the QAP and the QAP for negative site features that would render a

development ineligible, it really appears that these heavy industrial uses are defined as -- or there's a section that says, Heavy industrial uses such as blasting facility, manufacturing plants, there's also talk of railroads, there's also talk of the powerlines falling.

And in our interpretation, those are all features that would really negatively affect a resident. In this case, we do not think that the facility, the concrete-mixing facility that's located adjacent to us, meets the intent or letter of that rule.

As part of the process, we went ahead and spoke with the neighbors around the site, the -- including the Southern Star Concrete Mixing facility operators itself. And our understanding of this facility is materials are delivered, they're dropped off in the yard, a piece of equipment brings them to a mixer, they're loaded into a truck, they leave.

The facility operation has said they'd never had any complaints from neighbors about noise or operations. The closest thing we could think this would compare to would be a warehouse where delivery trucks drop off materials, you know, like a Fed Ex shipping facility, materials are dropped, combined, leave the next morning.

One of the closest neighbors to this site is called

The Concierge Healthcare and Rehabilitation Center that houses seniors. Our site touches the southwest corner of this mixing facility and The Concierge Seniors actually shares quite a sizeable piece of their boundary with the actual mixing facility.

So we called over to The Concierge and just asked them if they had any problems. And they said they've been in operation for six years, this is a high end market rate senior facility with people that actually live there while they're being rehabbed, have never had a problem. And I'd like to read their letter into the record real quick.

And this letter is from Jennifer Nixon, Director of Marketing for The Concierge. "Dear Mr. Shaw and Mr. Bump, Pursuant to your request, The Concierge Healthcare and Rehabilitation Center located at 2310 South Eldridge Parkway, Houston, Texas 77077, is a luxury healthcare and rehabilitation facility whose goal is to provide the highest level of healthcare and skilled nursing care in an environment of unparalleled ambience, comfort and elegance.

"This Italian-style building is surrounded by our private park. The Concierge is located adjacent to the Southern Star Concrete Mixing facility. The Concierge has been operating next to the mixing facility for six years and has never received a complaint from the senior citizen

residents or from staff regarding operations, noise or for any other disruption coming from the mixing facility.

"Should you have any questions, please contact me." It's signed Jennifer Nixon, Director of Marketing, The Concierge.

So in -- one other piece that we wanted to show you here is I have a little illustration. There is an aerial in your -- I don't know if everyone can kind of see this, but -- Barry, can you hold that.

So on this map -- could I stand here -- on this map here is our site in yellow. This is the mixing facility on our corner, the red is The Concierge, and then the blue down here is retail.

As you can see our site and this mixing facility is surrounded by multifamily apartments, the senior facility, retail, single-family homes. We just really do not believe that this is a heavy industrial area. We're in the energy corridor, we're in a path of growth.

There happens to be a couple of infill sites that are, you know, going to be built on at some point. And we just do not think this is a heavy industrial area, and hope you agree.

DR. MUÑOZ: What's right there?

MR. BUMP: I'm sorry?

DR. MUÑOZ: See where your spot is? Where your spot --

MR. BUMP: Right here?

DR. MUÑOZ: -- keep going to the right. Right -- keep going. There.

MR. BUMP: That is a retail outlet on the corner of Westheimer and Eldridge. It's a retail center, stores.

DR. MUÑOZ: What kind?

MR. BUMP: I do not know. It just is like a strip center. There's not a large anchor. The large anchors are actually beyond here. This is a brand new Target and Sam's Club.

DR. MUÑOZ: Okay. What's between where I just asked you to and your spot?

MR. BUMP: This?

DR. MUÑOZ: Go down low. Right there.

MR. BUMP: Right here?

DR. MUÑOZ: Yes. What is that, sir?

MR. BUMP: I think it's just a little -- I don't know the exact location, but it's probably just a small little business.

MR. OXER: It's Westheimer and Eldridge.

DR. MUÑOZ: Okay.

MR. OXER: I know that's --

DR. MUÑOZ: It's not a small little industrial business --

MR. OXER: No, it's not an industrial --

MR. BUMP: It's not a refining facility or anything like that, it's just a --

MR. OXER: No blast furnace there for steel -- pouring steel?

MR. BUMP: No, sir. No fall zones.

MR. OXER: All right.

MR. BUMP: Just trucks coming in and out.

MR. OXER: Yes.

MR. BUMP: Material is not even processed there, it's just dropped off.

MR. GANN: How does that entry go into the --

MR. BUMP: Well, there's going to be --

MR. GANN: Not to yours, but --

MR. BUMP: There's a city street --

MR. GANN: -- the ready mix?

MR. BUMP: -- a city street. In our site we'll just have an exit on that city street as a secondary exit.

DR. MUÑOZ: You don't have any idea what might be developed just left of your spot there?

MR. BUMP: Right here?

DR. MUÑOZ: Right there, because, you know, the

wrong thing is put --

MR. OXER: It's residential around there, Juan, so -- and the back side of it is not --

MR. BUMP: We actually have tried to contact that land owner, and he's not really interested in selling, so we really don't know. We're just hoping it would be in a -- consistent with what's already in the area.

MR. OXER: Well, consistent with the, let's just say the zoning patterns, that are showing up in Houston with the liquor stores next to the churches, the --

(General laughter.)

MR. OXER: -- this doesn't seem inconsistent with a lot of what goes on, not to mention the fact that having done a lot of work around heavy industrial facilities, this doesn't quite rise to that definition, in my estimation, but that's my estimation, so.

All right.

MR. BUMP: So just in conclusion, just we hope that we can clarify what the definition of heavy industrial is in this particular case, and thank you for your time.

MR. OXER: Okay. Barry?

MR. PALMER: Barry Palmer, Coats Rose. I just want to re-emphasize a couple of the points that Casey made. This is in Houston at the intersection of Westheimer and

Eldridge, obviously not an industrial, heavy industrial area by any means.

The facility that we are next to, a concrete-mixing facility, is more of a light industrial type use, more akin to a warehouse or distribution center. You know, concrete mixing, this is in the city of Houston, there are, you know, hundreds of locations where concrete mixing goes on in Houston, it goes on in the backyards of a lot of people in Houston.

So it's really not a heavy industrial use to be mixing concrete, and it's not what the QAP was designed to prevent, which is putting affordable housing in an undesirable location with some of these other undesirable features that are listed in the QAP. A heavy industrial use, such as a refinery or heavy manufacturing, clearly we wouldn't want to put affordable housing in next door to that. But that's not what we have in this case.

And the difference in this case, from some of the others we've looked at, is it really doesn't require a waiver because the QAP only prohibits heavy industrial use. It's just an acknowledgment by the Board that this is not a heavy industrial use would allow this project to go forward without the need for a waiver or dealing with, you know, the justifications for a waiver.

MR. OXER: Okay. The mixing facility or --

MR. PALMER: Yes, sir.

MR. OXER: -- or facility there that you're talking about, okay, are there any structures on the site?

MR. BUMP: In driving by it looks like they have a temporary office, and then they have the equipment it uses to mix the aggregate and distribute it.

MR. OXER: Yes, where I was going with that, you know, were these typically -- what these typically look like are just a clear piece of property that's -- and it's the low grade commercial equivalent of a parking lot, that's just something they put there to generate a little revenue until they build what they want on it.

And I would almost bet that this facility is there, there's no -- it's probably got a gravel pad laid on it, just rolled --

MR. BUMP: Yes, sir.

MR. OXER: -- you know, so that when they get ready, they knock that little building off and they build the commercial -- or the residential part that they want. So this is not a long term play on this property. I could -- I know that part of town. That's not a long term play in that part of town.

MR. BUMP: When we called the Southern Star

facility, we -- I asked them if it was for sale, and the plant manager said, Not at this time, but wanted to know if we were interested.

MR. OXER: Yes, but by the way, when are you interested in selling.

DR. MUÑOZ: I have a question.

MR. OXER: Yes, sir.

DR. MUÑOZ: In that photograph, which is actually very helpful, what kind of neighborhood, what's the -- I mean is this a middle class, lower middle working class? I mean I see some swimming pools there. I'm just --

MR. BUMP: We actually think it's middle to upper middle class, and given the retail across the street where you have a Target and a Sam's Club, those guys are just not going to go into --

DR. MUÑOZ: Right.

MR. BUMP: -- an area where there's certainly not a path of growth.

DR. MUÑOZ: Okay.

MR. BUMP: And given the seniors facility right next door, since it's market rate, I mean they're probably commanding some pretty good rents for that type of facility, as well as there's all the apartment --

DR. MUÑOZ: Schools?

MR. BUMP: -- communities around us are market --

DR. MUÑOZ: The quality of the schools in the area?

MR. OXER: Yes, that district's got some good schools.

MR. BUMP: We hope so.

MR. OXER: Well, there's some reasonably good schools there, as I recall, and there's transportation available, bus lines right up and down Westheimer.

Yes.

MR. GANN: I'm just curious. Are you in way kin to the lady that wrote that letter?

MR. BUMP: No, sir. I will actually -- and I actually have copies of the letter that I could leave with Cameron, or you.

MR. GANN: That's fine. I was just joking.

MR. BUMP: There's not that many Bumps in this world.

(General laughter.)

DR. MUÑOZ: So can I ask general counsel, so --

MR. IRVINE: Sure.

DR. MUÑOZ: -- a question, so are we in a position to determine that it's not a high industrial area, in which case --

MR. OXER: So your request under the DAR was

what --

DR. MUÑOZ: There would be no request because there'd be no request -- no need for a waiver, as I understand it.

MR. OXER: So there's no waiver, the question is -- your question is, did he define this -- what would we define it as.

DR. MUÑOZ: That's right.

MR. OXER: I wouldn't define it as heavy commercial -- or industrial --

MR. DORSEY: Well, I mean I'm not legal counsel, but what Barry said made sense to me. I mean if you guy say that it's not, if you guys determine that it's not a heavy industrial use, we'll write it down and add that to the list of what's not a heavy industrial use and --

MR. KEIG: Mr. Chairman?

MR. OXER: Mr. Keig.

MR. KEIG: I did a little light research on the internet --

(General laughter.)

MR. KEIG: -- and there's some references to concrete mixing being a light industrial use, and there's some to it being a heavy industrial use. So I'm not sure that it's really a definitive --

MR. OXER: And if the actual mixing occurs there and they slurry the cement and put it together and cut it to the truck and then haul it out, yes, that's true. But what they're doing is bringing -- collecting the aggregate, storing and sending it off in a truck. And there's no -- and for it to be heavy industrial, there would probably be some heavy -- far larger and heavier --

MR. KEIG: Machinery.

MR. OXER: -- structure or machines, pads, that sort of stuff, some sort of facility on site that rose to the standard of heavy. Okay. And some steel and some concrete that made this -- this is a temporary facility that they're doing something on until they can sell it later. Am I guessing that's right?

MR. BUMP: That's what we hope. Certainly they have no room to expand, it's a relatively small facility relatively small facility --

MR. OXER: Right.

MR. BUMP: -- relative -- I mean our site is about nine acres and so their site's a little bit smaller, so --

MR. OXER: They probably put that in over there to mix the cement going down in that Target.

MR. BUMP: And it's been -- it's actually been there for quite some time and they haven't -- it's been there

for almost 30 years, and so they were way out in the middle of nowhere when this first started.

And clearly they're not going to -- I don't think they own much more land than what they have right there right now, so expanding, especially given the single-family homes, especially the ones with the lakes surround it and the apartments and everything that's coming in, it's probably not the best use for them to expand that facility given the prices for land in that part of the world.

MR. OXER: I would have bet that the, let's just say the tax valuation on that property is not sitting still.

MR. BUMP: I wouldn't think so.

MR. OXER: Right. So, okay.

All right. Everybody have their questions answered?

MR. KEIG: Well, I'd just like to make one comment is, if we approve a waiver, I would like it not to be something blanket that's written down as this is an exception. I want it fact specific to this --

MR. DORSEY: Got it.

MR. KEIG: -- specific location.

MR. DORSEY: Got it.

MR. OXER: So I mean as opposed to saying cement mixing is not heavy industrial, we're saying we're offering

an industrial -- or we're offering a waiver on this one based on the fact that this one is probably not heavy industrial.

DR. MUÑOZ: No, I understand it differently.

MR. OXER: That's why we're asking --

DR. MUÑOZ: We're not offering a waiver, we're simply identifying that this location doesn't rise to the definition of heavy industrial.

MR. OXER: This location only.

DR. MUÑOZ: This location only. If that's the case, then a waiver isn't being requested.

MR. OXER: It's not considered.

DR. MUÑOZ: It's not necessitated.

MR. OXER: Does that constitute a requirement -- or do we have a motion -- requirement for a motion on that, Madam Counsel?

MS. DEANE: Well, I would go ahead, you know, since it's come before the Board, I would go ahead and take a vote on it, but the vote would basically be instead of, We hereby approve the waiver, the vote would be that the Board finds that this specific facility is not heavy industrial use --

MR. OXER: So that does not --

MS. DEANE: -- as contemplated by the rule.

MR. OXER: All right. So that doesn't -- does that -- that doesn't have to be constituted as a motion, or

does it?

MR. IRVINE: Yes.

MS. DEANE: I would vote on it because it's come before you.

MR. OXER: Okay.

MR. KEIG: There's a motion on the table that I seconded. I'll withdraw my second.

MR. OXER: Okay. Juan, restate your motion.

DR. MUÑOZ: Well, I move that the area --

MR. OXER: Let me offer up a piece of support here for you, just because I think I've got it. The Board -- your motion is that the Board not consider this property adjacent to the project property in question be not considered heavy industrial.

DR. MUÑOZ: Correct.

MR. KEIG: I second.

MS. DEANE: If I could suggest, the Board finds --

MR. OXER: The Board finds --

MS. DEANE: -- the Board finds that this --

MR. OXER: -- the Board finds -- the Board's --

MS. DEANE: -- specific piece of property is not heavy industrial.

MR. OXER: We're always looking for suggestions from counsel, I assure you.

So the Board finds, according to -- Dr. Muñoz's motion, please state it.

DR. MUÑOZ: The Board finds -- let me state it -- the Board finds that this property adjacent to the development is not a high industrial area.

MR. KEIG: Second.

MR. OXER: And second by Mr. Keig. Is there any additional discussion?

(No response.)

MR. OXER: Any other questions?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Good job.

MR. BUMP: Thank you all for your time.

MR. DORSEY: All right. That concludes the waivers of ineligibility.

Item 7C is a request for a refund of a housing tax credit commitment fee for Application -- well, it's for Evergreen Residences, it was Application 10232.

In 2010 it received the Board's approval of a forward commitment from the 2011 tax credit ceiling.

Subsequent to that approval staff sent out a tax credit commitment, a commitment for that award. And that commitment provided 30 days for them to respond and provide their firm commitment for the local government funding, the funding from a, you know, local government, and they were not able to do so.

My understanding of the circumstances are that the local government in this case didn't recognize that they would get a forward, so they kind of had already made funding decisions based on the July awards and then when this one came along and got a forward, they didn't have -- they weren't able to commit funding to it. It's not that they weren't in support of committing funding to it, they just no longer had the funding to commit.

So, you know, the commitment fee was a pretty hefty fee -- let me see real quick -- it's 5 percent of the award amount, and I actually don't have it right here in front of me, but it can be fairly large. Yes. And so they've requested a refund.

Now, this is a kind of unusual situation. Let me tell you what the QAP -- how we've applied -- how we've been able to refund fees in the past, the commitment fee in the past. Under the 2010 QAP a 50 percent refund was available to -- of the commitment fee if the return was done by November

1 of that year.

Okay. So in 2010 let's say all the normal awards are made in July, we send out a tax credit commitment, they pay the fee, but they return it before November 1 then -- return the tax credits, then they could get up to a 50 percent refund of their commitment fee.

And the idea there is, you know, we don't want folks to hold on to the money when they can't use it. We want to be able to take it back and re-award it that same year to the next deal in line. And by incentivizing them to go ahead and return it by November 1, we were able to do that.

In this case, they didn't return it by November 1. In fact, they probably didn't get the forward until right up on top of November 1, and then so they returned it ultimately -- or it was rescinded later on and -- tax credit commitment was rescinded later on.

They've requested a refund, and if the Board wanted to consider a refund, I want to just offer up we're actually -- staff is neutral on the subject, but if you wanted to consider a refund, you could say, Well, that November 1, the whole idea of them being required to return by that date was to be able to reallocate the credits the same year.

In the case of a forward, if they return by November

1, it just would have been returned. We wouldn't have reallocated the credit because it was actually the next year's credit. And when they -- they did actually return it before November 1 of the following year, and so we were able to go through the normal award process with that money in the year it was from, you know, so that's kind of a unique circumstance.

It's kind of confusing with all the different years and stuff, but --

MR. OXER: Just one more good reason to get rid of forwards, huh?

(General laughter.)

MR. DORSEY: Right.

MR. OXER: So the staff's request is?

MR. DORSEY: Staff's recommendation is neutral.

This isn't really the type of thing we would normally recommend. I can tell you we did do work on the application.

Of course we do work on applications that get awarded and then return credits as well. But the idea here is that a 50 percent refund is an appropriate incentive to go ahead and return as quickly as possible.

MR. KEIG: Move to approve that suggestion, since it's not a recommendation.

MR. OXER: I want -- hold on to your motion --

MR. KEIG: Okay.

MR. OXER: -- for a second.

Did you have something, Mr. ED?

MR. IRVINE: No, I think a recommendation to refund 50 percent is --

MR. OXER: In line.

MR. IRVINE: -- in line.

MR. OXER: Okay. All right.

MR. IRVINE: I mean we did significant work, but we also reallocated the units and --

MR. OXER: And we reallocated --

MR. IRVINE: -- presumably got another fee.

MR. OXER: -- we recognize their contribution.

Okay. I'm sorry, Lowell. Your --

MR. KEIG: So move to approve a \$30,000, 50 percent refund.

MR. OXER: Okay. Motion by Mr. Keig to refund 50 percent, which is 30,000 of their original 60-. Do I hear a second?

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: Four zero -- all opposed?

MR. KEIG: Oh, we forgot to ask for public comment.

MR. OXER: That's true, we did. But since they got what they wanted, I'm guessing that Mr. Jordan's going to say he's okay with it.

MR. JORDAN: Is it time for me to speak?

MR. OXER: It's time for you to speak, Mr. Jordan.

MR. JORDAN: Thank you.

Buddy Jordan, representing First Presbyterian Church of Dallas. We, through our wholly owned subsidiary, we are the managing general partner and majority owner of that applicant.

Cameron well described the situation. We did receive the notice on October 29 of 2010, and we had 10 days to respond. We did -- I think it's \$58,000 we sent in, and we sent in a conditional commitment from the city of Dallas, and he well-described the situation the rest of the way as to what transpired.

By about February, if I remember my facts correctly, we were not able to get a firm commitment, so we -- from the city of Dallas, so we turned it back and it was reallocated in 2011 in Region 3 as he said.

We did not fully understand how much processing had been done based on that and our non-profit status. We were requesting a full refund initially, or in the worse case, you know, at least 50 percent or something in between, so.

But I appreciate your consideration, and welcome any other questions.

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

(No response.)

MR. OXER: The motion has been made and approved. Are there any motions to reconsider?

(No response.)

MR. OXER: It looks like you got 50 percent back.

MR. JORDAN: Thank you.

MR. OXER: Okay.

MR. DORSEY: That's it for me.

MR. OXER: Whew.

(General laughter.)

MR. GANN: It's been a long hard day.

MR. OXER: All right. We have completed Execution Session. Let's see, Item 8, an executive item. Mr. Executive Director.

MR. IRVINE: Yes, Mr. Chairman and members, Item 8A regards House Bill 4409, which was enacted, not in the 82nd, but actually in the 81st Legislature, and in that law this Agency was directed to enter into preposition contracts for emergency temporary housing to be used in the event of a natural disaster, and authorized that should those types

of contracts be accessed, it was permissible to use the Governor's Emergency Recovery Fund as a way to cover some of those expenses.

Which is a long way of saying that we were given some very specific marching orders by the legislature, but no current funding to accomplish this.

Very early on when we attempted to procure these preposition contracts, we were strongly interested in some sort of a comprehensive solution, you know, like a, you know, not to drop names or advertise anybody, but somebody like Shaw, you know, a large logistically capable firm that could come and, you know, provide for the delivery, the positioning, have the units, you know, stored and ready to go, et cetera.

And we received several very good responses. The problem was that they asked for a couple hundred million dollars to do it because they did not have compliant units just lying around, and even if they did, they would have costs of storage and maintenance and everything to have those units at the ready. So we were unsuccessful in our first effort.

What occurred to me was, first of all, there are some kinds of units that are out there, we know. For example, there are Park Model Homes, there are manufactured homes. These are sitting on retail lots and they are ready to be distributed and installed right away. Of course in,

especially in urban settings these are not particularly good situations because of their size and also just because of, frankly, some local concerns about the installation of manufactured homes as disaster recovery responses.

We're not aware of other significant types of housing that are out there. The first thing that leaps to everybody's mind I guess would be things like recreational vehicles or, you know, camper type situations. Those are certainly not well-suited to long term residential situations, plus the inventory that is often on people's lots and available for redeployment is older inventory that might not meet the current formaldehyde standards, the ones that were precipitated by the FEMA situation a couple of years ago.

So what staff is requesting is Board authorization to go ahead and develop and put out there a general procurement seeking, whatever types of compliant housing might be available within our constraints. You know, it's basically, like I said, a no-money forward type of situation where if somebody has a solution and they're willing to enter into a contract with the state to make that solution available in the event of a disaster, we would like to enter into those contracts.

We would also like the ability to differentiate

in the procurement whether the proposed solutions that anybody offers would just be general solutions or whether they might be solutions that would meet the criteria, potentially for FEMA reimbursement.

We had a lot of discussions with the other agencies that are involved in emergency responses, including the Division of -- Department of Emergency Management. We really, unfortunately, do not believe that they are really any more prepared to jump in and handle the logistics of these housing issues than we are.

So this is going to be a significant logistical challenge, even if we are successful in procuring the contracts. But, you know, spring is right around the corner, which means that hurricane season is coming. We've been very, very fortunate for several years that we haven't been by hurricanes or anything of the like, but other than obviously the wildfires.

But we would like authority to go ahead and enter into a procurement effort to seek whatever solutions might be out there.

MR. OXER: So for the record, despite the fact that the GLO now has responsibility for housing recovery --

MR. IRVINE: Well, they have responsibility to administer the disaster recovery, which is really long term

disaster recovery.

MR. OXER: Long term recovery. But the emergency recovery, as the emergency response essentially, regardless of what it -- where it seems like it should fit, or would fit better, at this point it's clearly in our shop.

MR. IRVINE: At this point the legislature has assigned it to us, and we do not yet have contracts in place.

MR. OXER: Okay. Well, I don't want to get to the point that we have something happen and not have any paper in place. So the staff recommendation, or request is to proceed with a process for procuring at least information on those who would have suitable housing to meet those needs. And you could include, in doing that, even going to speak to Dr. Vanegas at A&M at the architecture school, who has a huge amount of background in that sort of thing.

So this is just to develop that procurement and begin the procedure --

MR. IRVINE: This is to get that procurement out there on the most open-ended possible basis to see what, if any, existing private sector or other solutions might be out there, and if --

MR. OXER: Run the flag up and see who salutes it.

MR. IRVINE: Yes, see who salutes it. And if

there's somebody out there that's got a responsive product, we'd like to be able to go ahead and lock down preposition contracts.

MR. OXER: Okay. And the request is that you do that from the Board. So the motion would constitute an authority for you to do so.

MR. IRVINE: Correct.

MR. OXER: Okay.

MR. KEIG: Just one question. It's a modification of the written request whereby you're not seeking Board approval to enter into an MOU --

MR. IRVINE: We're not.

MR. KEIG: -- or TDEM at this time.

MR. IRVINE: We're not seeking any approval to enter into MOUs or anything, we're simply seeking to procure and then select --

MR. OXER: Development the procurement and we'll go to the --

MR. IRVINE: -- one or more preposition contracts for the actual products.

MR. KEIG: And I wouldn't be necessarily opposed to an MOU, but that would be something that I would hope that if we go down that road, that we coordinate that with the Governor's office.

MR. IRVINE: Oh, absolutely.

MR. OXER: Oh, boy, will we.

MR. IRVINE: I assure you that the Governor's office and TDM and GLO and all the agencies that have any involvement in these disaster response issues, that we are in constant contact with them about these things.

MR. KEIG: I move to approve initiating a procurement process.

MR. OXER: Okay. Motion by Mr. Keig to initiate the process for procurement. Second by?

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. Any other discussion?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Unanimous. Good. Good job.

Okay. We have some report items.

Brooke, you're up first. Welcome back.

MS. BOSTON: Thank you.

Brooke Boston with TDHCA. Looking at the item that you have behind Board Reports, Section 1, I just wanted

to give you some updated information for the Weatherization Program. We actually just exceeded 300 million in expenditures, which is awesome, for those doubters out there.

So we have just under 27 million to finish getting out, and we -- about a third of our subrecipients are already done with their units, are not seeking contract extensions, so we're just using close out time for them to get their books in order and then get some of the grant accounting finished up.

We also will be submitting an amendment to our plan with DOE, that's the Department of Energy. That's something that we've kind of periodically done as we keep moving the amounts of money.

When you're dealing with that much money, there were times when we had to move among subrecipients, or in some cases move it between our administrative expenses and the subrecipients to ensure that it was going to get spent.

So the closer we get to a smaller number, the more we're able to figure out exactly who needs what left. So we'll be submitting that.

As mentioned earlier during the audit discussion, DOE has done another monitor visit. They are feeling really good about us, which is great.

The Homelessness Prevention and Rapid Rehousing

Program, as you'll see we're at 98.37 percent. We have just under -- we have just about 600,000 left to spend on that one, and that one will definitely finish by our target date of March 31.

And then, as we talked about before, CSBG is done.

And then the great news is that from the time you guys had your report before, TCAP, the Tax Credit Assistance Program, has actually finished, we're 100 percent. Awesome. So huge kudos to Tom and Lisa Vecchietti, who I actually think left.

But she was a huge force behind that and a lot of multifamily time and energy went into that so.

And then as we've reported before, the Exchange Program is also complete. So we have, at this point, drawn more than 1.1 billion on this program, and across all of the Recovery Act we have already achieved 96.87 percent completion. So huge and awesome. So we'll keep reporting until we finish out, but we don't have any reason to believe we won't finish up completely.

MR. OXER: But you're on schedule.

MS. BOSTON: Yes.

MR. OXER: Great. God bless you for it.

Okay. David.

MR. CERVANTES: David Cervantes, Director of Financial Administration. The second report item that you

have pertains to the Public Funds Investment Act, or Chapter 2256, Section 023. And according to the Public Funds Investment Act, what you have behind that tab is our submission of the first quarter investment report for the state fiscal year.

And I'll be brief with my remarks in terms of the content of the report. But the highlights basically are what we have in the portfolio is a portfolio built of \$1.5 billion portfolio. The makeup of the portfolio is 80 percent incorporated with mortgage-backed securities and then the remaining portion has to do with guaranteed investment contracts, investment agreements, and then some mutual funds and money market investments that we have for the Department.

The other thing that's required by the Act is that we periodically report any unrealized gains or losses. And according to the first quarter we had an additional unrealized gain of \$7 million associated with the portfolio.

The final thing is parity, and the parity, as you look at assets to liabilities, or interest expense versus interest income, the ratios are all sitting in a good position in terms of parity and coverage for the portfolio as a whole.

And that concludes my remarks on the investment report.

MR. OXER: So the parity and the interest differential is in a good rate. Is there a trend direction

on it or --

MR. CERVANTES: You find a range probably in the range of a hundred and -- a little over 100, ranging as high as -- I think this particular reports -- let me just make sure I don't misstate. The range for -- you know, as you're looking at the assets to liabilities, the low end of the range is about 99 percent as to as high as about 103, on average about 101 percent ratio there. And then in respect to the interest income to interest expense, your low range is about 100 percent parity and your high end is as high as about 121 percent --

MR. OXER: So it's building up a little bit --

MR. CERVANTES: It's building a little bit, yes.

The other thing that I would report on this item is originations. As you've heard, Mr. Nelson approached the Board at times talking about the warehouse, and one of the things that we had here were originations over \$100 million in this quarter, and those are pretty much mortgage-backed securities that we lifted from the warehouse and brought onto the books and into the portfolio this quarter.

As far as payoffs of loans, there was about \$18 million worth of payoffs that we observed during the first quarter of this fiscal year. And so that concludes my report.

MR. OXER: So basically we have a net balance sheet gain around 80 to 85 million.

MR. CERVANTES: That's correct.

MR. OXER: Okay. And how does that 100 million compare with previously? Is there a trend, did we go down through it and just --

MR. CERVANTES: Yes, as far as the --

MR. OXER: -- years housing and then we're coming back up out of it or --

MR. CERVANTES: Well, interest rates of course as you know are still low, so again, we're still kind of sitting in a suppressed market. So again, we haven't seen what you would call would be a significant lift in terms of that.

But one of the up-tick things, then you'll see our -- you'll see us swing the other way slightly and start headed towards, you know, unrealized losses. But that's not necessarily a bad thing because, again, our product gets more attractive as we go.

MR. OXER: All right.

MR. CERVANTES: Okay.

MR. OXER: Okay.

MR. CERVANTES: Any other questions?

MR. OXER: Any other questions from the Board?

(No response.)

MR. OXER: Thanks.

MR. CERVANTES: Thank you, sir.

MR. OXER: Okay. Let's see, Report Item 3.

Brenda. Is she here?

MR. IRVINE: Mr. Chairman, Brenda is not here.

In your Board materials under Item -- Report Item Number 3, we do have a very high level summary of activity taken with respect to the Phase 2 AI. It's mainly prep work, you know --

MR. OXER: You got somebody in to do the work.

MR. IRVINE: -- prep work for jumping into the real meat, frankly, of the public input processes, and we are asking BBC to come and address the Board directly March 6 and thereafter, to come and directly address the Board at least quarterly.

You know, we are extremely excited about the work that BBC's doing. We think they're jumping into this doing exactly the right things. HUD has so far been pleased and energized by the work. We want to make this, you know, not just a great product, but a great process and one that's not driven by any particular small agenda, but by broad input from all stakeholders.

MR. OXER: Great. Well, it sounds like this is just an indicator of more substantive and detailed information to come in three weeks.

MR. IRVINE: I look forward to a pretty in-depth report at the March 6 meeting.

MR. OXER: What are we doing, because that was a report item, I'd like to have that on as an action item to consider that on the AI rather than wait till the report item side.

MR. IRVINE: Okay. I'm --

MR. OXER: I want to make sure we hear them before the last part of the day.

MR. IRVINE: Okay. We'll -- in other words, move them up in the agenda.

MR. OXER: Right.

MR. IRVINE: Right. Okay. We will do that.

MR. OXER: Okay. Well, from the organizational changes that you're here to speak about, I would bet almost everybody here knows about them already.

MR. IRVINE: Well, I will be very quick, Mr. Chairman. I mainly want the Board to understand, frankly, what I'm doing here. So this is my personal report item to each of you.

MR. OXER: I get to back up and let you guys take this.

MR. IRVINE: Okay. You know, when you undertake a reorganization, you need to have reasons to do it, and you

need to have clear objectives in mind. And I'm really approaching this from several different perspectives.

First of all, from a user perspective, people don't come in and say, Gee, I'd like some NSP or some CSBG or whatever they say, I need help building a house, I need help fixing a house, I need help paying my rent. So we've organized on product lines that make sense, multifamily, single-family and community affairs activities on the programmatic side, and created a situation in which there will be coordination and planning among our activities.

Just an example, there probably aren't a lot more examples like this, but this one is so significant that I keep singing it out over and over, we had, you know, three or four different down payment assistance products out there that were frankly kind of in competition with each other. And I said, That makes -- it may make sense, but it also may not make sense. Let's start talking across the silos in coordinating this.

I'm very excited that our team of single-family activities are now coordinating closely. And what we've created is a situation there where they will have sort of a convenor, a person who will say, All right, here are our most pressing challenges, and I'm going to take the responsibility, in addition to my daily job responsibilities,

to bring you guys together and figure out what the best path forward is.

And Homero Cabello is going to be taking on that mantle. He is going to be in a structure where he is going to be reporting to Brooke as the deputy for the single-family and community affairs programs. And a new element has been injected there, and it's program planning and metrics.

You've heard Brooke come up here and report month after month about the success of the ARRA programs. A big part of that success is then Brooke and her team have taken a metrics approach to how we're doing this. She wanted to be able to look at what people were doing, use that as a basis for projecting forward where they were going to be and using it as, frankly, kind of a foot in their back to make sure that if you needed more money, you got more money, and if you weren't spending what you had, we were looking at taking that and putting it in the pot to be reallocated.

So this is a very intentional effort to focus on moving money faster. Nobody has parties because they sign contracts. People have parties because they handed somebody the keys, you gave them home ownership, or, you know, a replaced roof, or accessibility or whatever. So this is all about focusing on speed of expenditure.

With the kinds of cross-cutting processes that

we've got in place, people like Homero are going to be working with our teams to find ways to expedite and streamline and make more uniform our processes.

Okay. That is the thumbnail sketch on what's going on in the programmatic delivery side for single-family and community affairs. You've already had a day with Cameron, you know what's going on in multifamily.

We also have focused on the fact that, you know, there's allocation and expenditure, but once you've done that thing, you still got 30 years of hard work ahead of you. And we've asked -- Tom Gouris is the deputy to take over a combined shop that looks at asset management issues, asset resolution issues for the ones that struggle and need to be restructured or whatever, the real estate analysis issues and the post-carryover activity that our multifamily developments encounter.

So Tom has got a very, very full plate there. That involves taking some of the compliance and asset oversight functions, mainly the asset management pieces, that were in Patricia Murphy's shop previously. And how are we going to keep Patricia really busy? Well, we are going to consolidate as soon as ARRA finishes up all of our monitoring activity in one single monitoring area, and that's going to be Patricia's new incredibly tall order.

So look for, I think, greater checks and balances, more traditional banking type organizational realignments, be looking for more efficiency, more metrics.

And this is all kind of a setup to what I think is the real focus. We can reorganize, and we can re-energize, and we can talk about changing our processes and approaches, but we are faced with significant funding reductions that are out there on the federal horizon.

It's no secret, for example, that HOME will probably reducing on the magnitude of 38 percent. We need to look at ways to manage this ever-growing portfolio, ways to speed our expenditures, and ways to do it more effectively and more efficiently.

We are not a direct administration type agency. We administer things through local partners, we use subrecipients. When you look at our subrecipient network, you put a big area of the state up on a map, you might have one area that's handling weatherization, another area -- another provider handling CSBG, you might have little dots where Housing Trust Fund or HOME or NSP were available.

So if you're a Texan and you need assistance, first of all, you may have to talk to multiple people. Second, depending on where you reside, you may not even be eligible to access all of the state's programs. If you aren't, for

example, in a jurisdiction that has a contract to administer HOME, you don't have the ability to go and procure, you know, HOME assistance directly through us.

What we want to create is improvement in migration to a more robust network of fewer larger providers who are capable of administering our programs in way where all eligible Texans can access all of our programs.

You know, one of the real vulnerabilities I see out there in a decreasing fund situation is we do have a lot of very small providers who perhaps are, you know, disproportionately, perhaps even exclusively reliant on just one or two funding sources. But if they're in consortiums and partnerships and moving into more robust relationships where they've got multiple funding sources coming in, then they have a greater chance of stability, a greater chance of success.

And, you know, I also look at the lessons learned from ARRA. The ones that really stumbled, the ones that had problems were the ones that were very, very small, didn't have enough administrative funding coming in to have good internal controls, you know, somebody putting out the money, somebody accounting for the money, somebody doing the monitoring, good IT systems, all of those kinds of things.

We think that by encouraging consolidation within

our network, it will be more manageable for us, even as we have reducing resources, it will be more stable locally, and it will be more able to address the complexities of administering complex -- you know, these intricate federal programs.

So, you know, it's a vision, it's different. I've got to say though, ultimately reorganization is not about moving the deck chairs, it's about changing attitudes. And, you know, we've had really great attitudes for a long time and we've done incredible things. The fact that we moved through ARRA so successfully is, you know, a real testimonial to many, many, many people.

But, you know, we've got to be more nimble, we've got to find ways to do it even better, and I'm convinced that with this organizational structure, and frankly, empowering the people that are on our team to do more, contribute more and to find better ways to get these things done, we'll be more successful even with the distressed financial straits ahead.

So I'd be glad to try to answer any questions.

MR. OXER: Principally from the Board.

Anything from the Board?

(No response.)

MR. OXER: It'll take a while for you to digest

this to see where it's all going, but fundamentally the entire -- I gather from discussion with Tim, that the entire intent is to create something that's more adaptable and nimble and flexible and capable of evolving quickly into what it needs to be without too much stasis in the structure. Okay.

MR. IRVINE: Yes.

MR. OXER: We want it to be very capable of adapting to what comes ahead of us because I suspect that the funding issues are going to be continued variability in the funding on the programs we're managing.

DR. MUÑOZ: I've got a question.

MR. OXER: Yes, sir.

DR. MUÑOZ: So, Mr. ED, so with Homero's expanded role, are we ever going to have the privilege of hearing him up here?

MR. IRVINE: I sure hope so.

DR. MUÑOZ: All right. Very good.

MR. IRVINE: I'll carry out that threat.

(General laughter.)

MR. IRVINE: Yes. And just my concluding comment on it, you know, I'm intentionally not the smartest guy in the room. I always try to have around me people who are more knowledgeable and smarter than I am. And I really am

committed to freeing them up to come up with better ideas.

MR. OXER: Good. Thanks, Tim.

Okay. Report Item 5. Elizabeth. Wake up.

FEMALE VOICE: Wake up.

(General laughter.)

MS. YEVICH: You know, it's after 4:30, I think it's officially good evening now.

MR. OXER: As long as it's not after dark --

MS. YEVICH: Yes, I don't think so, we don't know about that.

Elizabeth Yevich, Director of the Housing Resource Center, and this is about the contract for deed. Last August the Department entered into an agreement with the University of Texas in Austin, and it's to fulfill a project that the 2010 Texas Sunset Commission recommended, and that's "to conduct a one-time study on the current prevalence of contracts for deed in Texas Colonias" and to report the results to the legislature by December, first of this year.

The project's going to be completed in three phases, and we have professors, staff and students with UT from their School of Public Affairs and the School of Law.

Phase One started in September, and that's going to generate the number of contract for deeds in each of the counties selected for the study. Phase Two just started up

last month, and that's currently in progress, and that's going to result in estimates of the unrecorded contracts for deed.

And then the third phase will involve extensive interviewing of Colonia residents to understand more fully the land practices taking place that have developed in response to legislation -- regulation of contract for deed. And that team is currently planning focus groups with residents.

Actually the third briefing that we're going to have with UT is taking place tomorrow. I was just given a rather lengthy -- I couldn't open it on my BlackBerry -- summary. So I recommend that we come back in May and give you a more -- better update, because the final report's going to be submitted by August, and there'll be a 90-day close out period for revisions.

But it's really too early right now in the project to draw any meaningful conclusions, but I wanted to let you know where everything stood.

MR. OXER: Are we underway and on schedule?

MS. YEVICH: We are underway and right on schedule.

MR. OXER: Good.

MS. YEVICH: Going very well.

MR. KEIG: I have questions.

MS. YEVICH: Yes, sir.

MR. OXER: Mr. Keig.

MR. KEIG: Since we finished Phase One, what are the number of recorded contracts for deed, if you remember?

MS. YEVICH: I don't have any of that with me right now.

MR. KEIG: All right. Can we hear that back at --

MS. YEVICH: Sure.

MR. KEIG: -- the next time we have a report on this? I'd like to --

MS. YEVICH: Okay.

MR. KEIG: -- hear back even the next meeting, if we could.

MS. YEVICH: Okay. In the March 6 meeting -- you want to --

MR. OXER: Yes.

MS. YEVICH: -- come back in the March 6 meeting with all of that? As I said, I've just got the --

MR. KEIG: Right.

MS. YEVICH: -- third report yesterday, so.

MR. KEIG: And when is Phase Two supposed to end?

MS. YEVICH: Phase Two, they're down there right now. Let's see, February 9 through 12, I guess we've already done that. They added 56 students and six faculty, they traveled to five counties, they were in El Paso, Webb, Starr,

and Hidalgo.

MR. KEIG: But they've already traveled there?

MS. YEVICH: They have already done that, a total of 1,076 surveys have been completed to date with very good response rate.

MR. KEIG: All right. So the written report talks about practicing in Guadalupe, Travis and Bastrop County. That's old news. They've already gone to some of the South Texas locations.

MS. YEVICH: Correct.

MR. KEIG: Okay. I feel better now about that.

MS. YEVICH: Oh, yes, they're down there.

MR. KEIG: So I was just -- this is the -- we're still practicing, you know, here in town. I was worried we were not going to make these deadlines --

MS. YEVICH: Oh, no, no, no.

MR. KEIG: -- the end of the year deadline.

MS. YEVICH: No, they're right on track.

MR. KEIG: Okay. Thanks.

MS. YEVICH: Certainly.

MR. OXER: Good. Any other questions?

MS. YEVICH: Questions?

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: (No verbal response.)

MR. OXER: Thanks, Elizabeth.

MS. YEVICH: Certainly.

MR. OXER: Okay. We've reached the point of the agenda for public comment. As we've noted we have public comment for items that are not listed on the agenda for now with Yvonne Silva and Ms. Adams, Sylvia Adams.

So, Yvonne, since you suggested this is your first one of these meetings, our protocol is to give you three minutes to say anything you'd like to say, and the clock's running over there as soon as you start.

So state your name and tell us who are and --

MS. SILVA: My name is Yvonne Silva, and that's who I am. I would like to thank the Board for listening to me. I know that I'm out of the box right now, but I do believe --

MR. OXER: No, this is exactly the box you're supposed to be in. You're right on time where you are.

MS. SILVA: Okay. Well, I think, Mr. Oxer, first I'd like to commend you for such a professional meeting. And I know that I've called you several times, and thank you for accepting my calls. I've called several members, probably all of you. My issues are the same, and if the Texas Legislature had addressed them, I wouldn't be here.

When I contact the Governor's office, they tell

me I'm bugging them. Well, I'm sorry. I was foreclosed on twice for less than property value -- that's why I jumped up here -- by my homeowner association, which is a non-profit, and then again by the bank, because of problems with the HOA foreclosure, such as not transferring the name, not assuming the loan, but buying the house for \$1600 and leaving me with -- and my parents as co-signers, holding the bag.

The legislature is well aware of issues, but they refuse to do anything. And since this committee receives federal funds for helping people, I'm coming to you, I'm begging you. I need the Governor to step up to the plate instead of I'm bugging them.

Well, you know what, my home was pretty much already paid for when I was foreclosed on, and this was all about I want to see how the fees that you're forcing me to pay, where they're going. I asked your CFO to review the records, and he didn't tell me it was none of my business, like my homeowner association did.

We're all, in Harris County, suffering a lot of issues. I don't know if you're aware, but the very people that are supposed to be looking after Harris County also have their own issues right now, and I think that that affects us as homeowners. It's like, you know what, if you can't trust the people in power to do the right thing, and the ethical

thing, then it just falls, you know, down. It affects all of us.

I know that you come from Houston and from Sugar Land, and that's where the problems really are. Dallas, Houston, for sure those.

I'm not going to shut up because my home of 104 -- valued at \$104,000 was foreclosed for 1600 by the non-profit. Once again, they didn't pay the first lien, which to me is real estate 101. First lien position means that.

But they -- lawyers -- I don't mean to offend anyone -- but these attorneys have left loopholes that are really affecting low income, and I consider myself low because I'm really not middle anymore, especially since I'm homeless.

I'm not going to shut up, and I really am hoping that you as a Board will say, There are some serious issues and they do need to be addressed and resolved is the main thing. I've called the Sunset Commission and it doesn't fall under their jurisdiction.

There's my three minutes. But thank you very much, and everyone in your agency has been very helpful and I appreciate that, and I hope that you all will step up to the plate. A lot of you are in real estate and you know. I mean what would you be doing if your home was stolen from you, because that's what it was. Thank you.

MR. OXER: Yes. We appreciate your comments. Thank you for your testimony. Just from a procedural standpoint I'll tell you that, as best I understand --

And, Tim, I'll take this from your -- take a lead from you too.

The provisions for what TDHCA is, does, has and is responsible for are defined under 2306 of the Texas statutes, which -- I understand that you have an issue. Again, I'm not trying to dodge it, but I'm not sure that we have much that we could do that hasn't been done.

You know, we understand your point and we appreciate you for coming a long way to make it. When you called before I said this is how you make that comment made and it gets on the record, and, you know, your legislator will be made aware of it also.

MS. SILVA: Well, they know, they just don't want to, I mean, you know. You know, everybody knows. They know what I have to say, but they don't want to resolve the issue because of conflicts of interest. And I have a problem with that. It's like, you know what, if somebody's making money off this scam, it needs to stop. I don't care what, so.

MR. OXER: Okay.

MS. SILVA: But I appreciate it. And like I said, I mean you all deal with the Governor and I need to get Governor

Perry to step down to the plate. He can certainly pick up the phone and have the State Bar find a lawyer. I've been through so many attorneys, an attorney put me in this position and I complained and really, I'm sorry, but the whole state of Texas has failed not only me, but everybody that has been foreclosed on by an HOA.

And I want to leave it on the note of, after attending the foreclosure meetings at Harris County, it is a joke what's going on down there. And as an American citizen, I resent that our properties are being sold to foreign investors. And it's like, you know, what's happening, because I don't really get it --

MR. OXER: Yes.

MS. SILVA: -- as far as home ownership and property rights. And as I said to all of you before, you all are all -- when I bought my home, no one was allowed to foreclose except the Tax Assessor, and HOA has managed to put themselves in second position lien, never accountable for any penny that they collect, and that's just not fair to the middle and low income people that \$200, \$400 makes or breaks us any given month. So --

MR. OXER: Yes. All right.

Any questions --

MS. SILVA: -- thank you very much.

MR. OXER: You're quite welcome.

Any questions from the Board?

(No response.)

MR. OXER: Okay.

MS. SILVA: I guess I can't call you all anymore.

MR. OXER: Well, you've already called us, so --

(General laughter.)

MR. OXER: All right. Are there any other requests for public comment?

(No response.)

MR. OXER: Okay. That said, we've reached the --

FEMALE VOICE: Hold on a second.

MR. OXER: There we go. You are the other one.

Ms. Adams.

MS. ADAMS: Yes. My name is Sylvia Silva Adams, and obviously I'm Yvonne's mother. And I am here to approach proprietary lendings since you're also going to be in the single-family thing.

I co-signed for Yvonne because she was 21 years old when she purchased her house. And at the time I was not working, and they told me I had to sign because I was married and as a married person. Her dad tried to pay off the first time they foreclosed on her, as a co-signer. The money was not accepted.

I tried to pay off the second time, if they cleared the title, and they said that they would clear the title if I would put it in somebody else's name. Well, I was dealing with Fannie Mae and the attorneys for PNC.

They requested an extension on the foreclosure, it was faxed to them on Thursday, on Tuesday they foreclosed, and I happened to be down in the Valley and was never aware that they were going to foreclose, that they had not accepted it.

I had the money to pay them off if they cleared the title. I did not see why I should clear the title, pay off something that I was not going to own. And that's really all that I'm going to say. That if you're going to continue with this, that is something that needs to be better regulated.

And like I told you earlier, I think that you run a very efficient meeting, and I thank the Board members, because I was watching all of you; not a single one of you got up and left, because we've been here numerous times and everybody comes --

MR. OXER: As many times as they've wanted to get up and leave, I made sure --

MS. ADAMS: Exactly. But I really appreciate that, and I'm sure that the people that were here discussing

their different problems that they had or whatever it was that they wanted, and I think that everybody paid exceptional interest to everybody's concerns. And I think that you all are to be commended for that, and I'm sure that your staff members also are to be commended for it. Thank you very much.

MR. OXER: Thank you for your comments. We appreciate the commendations on these. It's, like we said before, it's not hard some of the time up here, it's always hard up here.

(General laughter.)

MR. OXER: Okay. That -- now that seems to satisfy all the current requests for public comment. Anybody know of anything else that needs to come before the Board?

(No response.)

MR. OXER: Any Board members have a final comment they would like to make?

(No response.)

MR. OXER: There being none, I'll entertain a motion to adjourn.

DR. MUÑOZ: So move.

MR. GANN: Second.

MR. OXER: Motion by Dr. Muñoz to adjourn, second by Mr. Gann. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Okay. See you in three weeks.

MR. GANN: Good night everybody.

(Whereupon, at 4:50 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board of Trustees

LOCATION: Austin, Texas

DATE: February 16, 2012

I do hereby certify that the foregoing pages, numbers 1 through 306, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy H. King before the Texas Department of Housing and Community Affairs.

02/23/2012  
(Transcriber) (Date)

On the Record Reporting  
3307 Northland, Suite 315  
Austin, Texas 78731