

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room E1.016  
Capitol Extension  
1500 N. Congress  
Austin, Texas

Thursday,  
May 10, 2012  
10:00 a.m.

MEMBERS:

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

STAFF:

TIM IRVINE, Executive Director

A G E N D APAGE

CALL TO ORDER, ROLL CALL Kent Conine, Chairman  
CERTIFICATION OF QUORUM

## CONSENT AGENDA

1. Approval of the following items presented in the Board materials:
  - a) Presentation, Discussion, and Possible Action regarding the Board Minute Summaries for February 16, and April 12, 2012
  - b) Presentation of the Department's 2nd Quarter Investment Report
  - c) Presentation, Discussion, and Possible Action on Resolution No. 12-027 authorizing a Mortgage Credit Certificate Program (MCC) for first-time homebuyers (Program 80) along with related program documents to be administered by the Texas Department of Housing and Community Affairs
  - d) Presentation, Discussion, and Possible Action on Resolution No. 12-028 authorizing the purchase of warehoused mortgage backed securities with proceeds of Residential Mortgage Revenue Bonds, Series 2009C-3 (Program 77)
  - e) Presentation, Discussion, and Possible Action to approve a final order adopting the repeal of 10 TAC Chapter 54, §§54.1-54.3 concerning Disaster Recovery
  - f) Presentation, Discussion, and Possible Action regarding Approval of awards from the Notice of Funding Availability (NOFA) for the 2012 Community Services Block Grant (CSBG) State Discretionary Funds for Statewide, Migrant and Seasonal Farm Worker, and Native American projects
  - g) Presentation, Discussion, and Possible Approval of use of LIHEAP funds by Sheltering Arms Senior Services as a

*ON THE RECORD REPORTING*  
*(512) 450-0342*

supplement to WAP funds to optimize expenditures of ARRA WAP funds

- h) Presentation, Discussion, and Possible Action regarding the 2011 Single Family Homeowner Rehabilitation, Homebuyer Assistance, and Tenant Based Rental Assistance Programs contract award recommendations
- l) Presentation, Discussion, and Possible Action on a proposed Agreed Final Order with respect to Avalon Apartments (HTC 91036)
- j) Presentation, Discussion, and Possible Action on Housing Tax Credit Amendments
- k) Presentation, Discussion, and Possible Action on Housing Tax Credit Program Extensions 09941 Residences at Stalcup Fort Worth
- l) Presentation, Discussion, and Possible Action to Approve Neighborhood Stabilization Program - Program Income (NSP-PI) Reservation System Participants
- m) Presentation, Discussion, and Possible Action to approve a material amendment to the Land Use Restriction Agreement for Granada Apartments

#### REPORT ITEMS

The Board accepts the following reports:

1. Presentation and Discussion on a Status Report regarding the transfer of funds between subrecipients of the American Recovery and Reinvestment Act of 2009 (Recovery Act)
2. Report on the Transfers of American Recovery and Reinvestment Act of 2009 (Recovery Act)
3. Status Report on the HOME Program Contracts and Reservation System Participants
4. Status Report on the Contracts for Deed Prevalence Project with the University

of Texas at Austin

5. Update on the Status of the Preparation of the State of Texas Plan for Fair Housing Choice: Analysis of Impediments.
6. Status Report on 2012 Competitive Housing Tax Credit Cycle
7. TDHCA Outreach Activities, April 2012

#### ACTION ITEMS

2. Multifamily Finance Division
  - a) Presentation, Discussion, and Possible Action regarding Revision to the Lien Priority of Previously Awarded Multifamily Development Program HOME awards 14
  - b) Presentation, Discussion, and Possible Action regarding Possible Waivers of Ineligibility for Applications in the 2012 Competitive Housing Tax Credit Cycle 20
  - c) Presentation, Discussion, and Possible Action regarding the Neighborhood Stabilization Program Three (NSP3) Third Substantial Amendment to the One Year Action Plan 61
  - d) Presentation, Discussion, and Possible Action regarding Approval of Amendments to the NSP1-PI and NSP3 Notices of Funding Availability (NOFAs) and Contracts for Multifamily Developments 63
- ITEM 3: HOUSING RESOURCE CENTER:  
Status Report on the Comprehensive Analysis of Rural and Farmworker Housing in Texas 65
- ITEM 4: BOND FINANCE:  
Presentation, Discussion, and Possible Action on Resolution No. 12-029 authorizing the sale of mortgage certificates and redemption of bonds from Single Family Mortgage Revenue Bonds Series 2002ABCD and Residential Mortgage Revenue Bonds Series 2002A and the sale of mortgage certificates from Residential Mortgage Revenue Bonds Series 2001ABC 87
- ITEM 5: RULES:  
Presentation, Discussion, and Possible Action to approve the Final Order adopting new 10 TAC §1.25, Right of First Refusal at Fair Market

Value and Final Order adopting amendments to 10 TAC §1.9, Qualified  
Contract Policy 94

ITEM 6: APPEALS:

Timely Filed Appeals under any of the Department's Program or  
Underwriting Rules 95

ITEM 7: COMMUNITY AFFAIRS:

Presentation, Discussion, and Possible Action  
to approve the award of \$950,000 of Community  
Services Block Grant (CSBG) discretionary funds  
to Haven for Hope for a pilot program for job  
creation

167

PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS FOR WHICH  
THERE WERE POSTED AGENDA ITEMS.

178

EXECUTIVE SESSION

177

OPEN SESSION

ADJOURN

P R O C E E D I N G S

MR. OXER: Good morning, everyone. I'd like to welcome you to the May 10 meeting of the Governing Board of the Texas Department of Health and Community Affairs. We'll do, as we always do, the roll call. Okay. Ms. Bingham?

MS. BINGHAM-ESCARENO: Here.

MR. OXER: Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Mr. McWatters?

DR. McWATTERS: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I am here as well. We have a quorum. We're in business today. All right. Please join us in standing for the pledge of allegiance.

(Pledge of allegiance recited.)

MR. OXER: All right. All right. Let's recognize some guests we have. Representative Raney -- there you are. Thank you very much. Let's see.

Todd Jones from Senator Menendez' office. There he is back there. Vivica Martinez. We have to make sure it's not recited as Rebecca.

Do we have any others, Michael?

MR. LYTTLE: No, sir.

MR. OXER: Okay. Done. All right. Consent agenda -- are there any members of the Board who wish to pull items from the consent agenda?

MS. BINGHAM: I just have a question. Are we going all the way through M? My question is Item I under Legal Division part of the consent agenda.

MALE VOICE: Yes, it is.

MS. BINGHAM: Okay.

MR. OXER: It's part of the consent agenda, yes -- including the report items that follow. Okay. Are there any other questions from the Board?

(No response.)

MR. OXER: Any more comments?

MS. BINGHAM: Move to approve the consent agenda.

MR. OXER: Okay. Motion by Ms. Bingham to approve consent agenda.

MR. GANN: Second.

MR. OXER: Seconded by Vice Chairman Gann. Any other comments?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: Unanimous. Thank you. Okay. Before we start the action items we've had -- this is our first meeting where we're going to be working with a couple of new items, including our new communication policies, which is intended to make sure that everybody gets heard and to make sure that we're efficient in our use of time and resources. So, Tim, do you want to go over that?

MR. IRVINE: Sure, Mr. Chairman. The new public comment rule is in effect. It is a rule. and what we are doing now is for each called item, as the item is called, anybody who wishes to speak on it should come forward. We've reserved seats in the front row to make it easy.

You do not need to fill out a witness affirmation form. All you need to do is when it's your turn in the line come to the microphone, state your name so that the court reporter can record it, state on whose behalf you're active if you're speaking on behalf of an entity or organization, and make your comments.

There will be no formal limitation on the amount of time, depending on the length of the number of speakers, the complexity of the subject, and the hour of the day. It is within the Chair's discretion to impose limitations. Everyone is, as always, reminded that things that already been said that have presumably been heard and understood so repetition is not beneficial. But we do want everybody to have a chance.

We also want to let you know about a new process that have so that people who are here to express support or opposition for particular

activities have a way that their voices can be amplified and read into the record. Simply provide to Michelle -- Michelle, would you please raise your hand -- provide her a form that indicates that you wish to register support or opposition but do not wish to speak. And your name will be read into the record after everybody has spoken on that particular item.

We would also ask that any individuals -- obviously we know who the elected officials and representatives are here. We do have, under the rule, prerogative for the Chair to give those people special priority. We also want to be very mindful and accommodating to other folks especially who have traveled great distances or are under special time constraints. If you'll let Michelle know about it she will provide the information to the Chair so that he can accommodate you.

And then, as always, there is what we call at staff open mike time at the end of the agenda. So after the Board has considered all its business it can hear public comment on pretty much anything, on such things as requests to put items on future agendas or just general information or concerns that you wish to share with the Board. And we hope that by going through the process rather than the process of witness affirmation cards and strict three-minute time limits that we'll have a good, fair, and workable way to make sure that all Texans' voices are heard. So any questions?

MR. OXER: The only addition that I -- or comment I would make to that is recognize that in the open mike period we're taking information. We will not be allowed to make any decisions on that without having approached it for a formal agenda for the next agenda. So in the open

mike period you can register comments, but you can't expect us to make a decision on what you say.

MR. IRVINE: We really can't engage in discussion. You're simply presenting information, and the Board is not going to deliberate or discuss it.

MR. OXER: We're listening and you're getting it on the record on the transcript. Okay. Any other comments from the Board?

MR. IRVINE: One other thing I would like to clarify that Cynthia Bast pointed out to us on a seeming inconsistency between the rules and other practice. Historically we have gotten our Board book up and posted on the website six days in advance of the outstanding Board meeting.

And under our rule I believe we require that materials provided be given to us at least five working days in advance of the Board meeting. And there was a concern that there might be a situation where somebody would need to provide rebuttal information, especially on an appeal.

We have -- I assume the Chair agrees -- we'll absolutely work with and accommodate those kinds of situations. We do have flexibility under our statute if materials are provided very late to be able to provide them as written materials. We would take it upon ourselves the responsibility for making copies available so that the general public can see them. Also under the statute we do have the ability to post items on our Board book up to three days before a Board meeting.

So we are very aware of the fact that all of the materials necessary to make fair and balanced decisions need to be not only presented

to the Board but made available to the public for their scrutiny and input.

MR. OXER: Good. All right. As a courtesy to our elected representatives we'll hear from them first. Representative Raney is here to speak. Don, you get to be next, so come on. And for the record for everybody to know we've got this front row of chairs here. That's the on-deck circle in case there's a bunch of you that wind up wanting to speak on an item. You'll have to line yourself up there in terms of the order that you'd like to speak. So, Representative Raney.

REPRESENTATIVE RANEY: My name is John Raney. I'm a Representative for House District 14 from Bryan/College Station. I'm here on behalf of myself, and I'm speaking in favor of a project application number 12216. It's a project that I think is very worthy. It is a senior project. It's located next to The Med, and I think it's a very worthy project.

I don't want to take a lot of your time. I know you have all the information. I just wanted you to know that I come in support of the project.

MR. OXER: Good. Any questions from the Board? (No response.) We appreciate your coming to speak to us.

REPRESENTATIVE RANEY: Thank you.

MR. OXER: Any other legislators? Did I miss anybody? (No response.) Okay. Don?

MR. JONES: Good morning, Mr. Chairman. Thank you. For the record my name is Don Jones. I'm chief of staff for State Representative Jose Menendez from District 124 in San Antonio.

I believe you have the delegation's letter of support for the

community support block grant request from the Haven for Hope for later on in the agenda. I just wanted to let you know that --

MR. OXER: With all 12 signatures on it by the way.

MR. JONES: Yes, sir. We weren't able to get one -- he was out of town. But as the letter demonstrates there's tremendous support for Haven and for what it's doing in the community. And we just appreciate your consideration and hopefully support of the request for this special project that they've developed. It's just having a real significant impact on what else they're doing. If you don't need it read on the record then there's no point in taking up any additional time.

I'd also like to thank Tim and the staff for their efforts. They met earlier this week to -- from all the participating -- almost all the metropolitan areas who participated in the HHSC program and had a very, very good exchange of interchange of ideas on this results-oriented rules portion that the staff's working on. So I thank you for that. Subject to your questions?

MR. OXER: Any questions from the Board? (No response.)  
With respect to Haven for Hope I hope you'll pass on our best regards to Bill Greehey.

MR. JONES: Thank you.

MR. OXER: It's a memorable operation that's having extraordinarily positive results. We'd like to see more like that.

With that we'll start. Sounds like, Cameron, you're in the box.

MR. DORSEY: That was fast. Usually I'm at the end.

Cameron --

MR. OXER: We need more time for the blood to dry.

MR. DORSEY: -- Director of Multifamily Finance. This -- the first item that I'm going to speak on is with regard to the lien priority of two previously awarded HOME deals.

Village of Kaufman and Fox Run were both -- are both local issued 4 percent bond transactions. Both of them have 4 percent credits that we issued determination notices for. And we did this at two meetings, the most recent being the last meeting.

After gaining the Board's approval the applicant, with TDHCA's involvement, came to the conclusion that HUD simply wasn't going to allow the lien priority on which the HOME awards were conditioned.

Under our rules we are required to be in a lien position ahead of any cash flow loans. And both of these transactions are going through the HUD mark-to-market program.

And HUD rules explicitly state that when going through that program when the debt is bifurcated into a smaller must-pay component and then a secondary cash flow component it uses the word "second." So it doesn't say subordinate or something like that. It's very explicit in its language. And, as such, HUD is going to require a second lien position for that mark-to-market cash flow debt.

In order to be accommodating for these types of situations under the rules the Board can find that there is -- that the interest in doing the transaction outweighs the additional risk presented by that alternative lien

position.

What we're asking for is not so much a recognition that we're taking on more risk and that that's worth it, rather we would like to ask the Board's approval to give Tim and myself the ability to negotiate some alternative security that may include things like subordination of the HUD debt to our LURA so that any foreclosure that -- is unlikely to happen in the first place, but if it were to occur our LURA would remain in place.

Another alternative could be pursuing personal guarantees from the relatively well-capitalized development sponsor or some other combination thereof. And so we would like the Board approval to move forward with these HOME awards and negotiate some alternative.

MS. BINGHAM: I have a question.

MR. DORSEY: Sure.

MS. BINGHAM: I appreciate that you're asking for Board approval to do that. Have you already done research on those two options in terms of just viability? I mean, obviously one of them sounds like you had -- need the support of the developer, and you probably haven't done that. But in terms of the viability of just those two options are they viable?

MR. DORSEY: I think both are potentially viable. HUD -- when we had conversations about HUD's explicit requirement they expressed that they could most likely subordinate their payment to our payment. And so there are some alternatives. It's merely that the HUD rules prevent them from having a deed to trust that is in line behind our deed of trust. And so I think there's definitely some room there. We just need to

work out all the details as we approach closing.

MR. OXER: Our fundamental position is that --

MR. DORSEY: I think our fundamental position is a willingness to respect their requirement for second lien priority but to work out some sort of an agreement, whether it's an inter-creditors agreement or a subordination agreement or something else that recognizes the ultimate supremacy of the LURA as a continuing requirement on the property and our position with respect to scheduled cash flows.

MR. OXER: So State of Texas is first place and HUD second.

MR. DORSEY: In some respects but not --

MALE VOICE: On those issues.

MR. DORSEY: Well, and --

MR. OXER: On those issues.

MR. DORSEY: And I also say this is a bond deal and I guarantee you the bonds are in first.

MR. OXER: Right.

DR. MUÑOZ: All right, Cameron.

MR. DORSEY: Yes.

DR. MUÑOZ: I don't recall this sort of request coming before us in the past -- having to sort of discover alternatives to secure our traditional position.

MR. DORSEY: Since -- this rule was crafted in 2010 and we explicitly built in some Board authority to do this. Prior to that we had done this type of thing before. It was just the requirement for the debt to be must

pay and have that kind of second lien position was more of a policy than a rule previously. And we did it under that prior kind of policy. We haven't done it since the rule has been in place.

But these are unique circumstances that I think, you know, warrant our due consideration. We wouldn't be recommending this type of thing if it were a situation where, you know, there was a million-dollar first lien where we were a \$2 million second on a, you know, otherwise pretty conventional tax credit transaction. So this is kind of a unique situation.

MR. OXER: So what -- in how many instances do you expect that this would occur?

MR. DORSEY: It's probably --

MR. OXER: Percentage --

MR. DORSEY: Well, it's probably relatively few and far between. Like I said, you know, we haven't done it since the rule has been in place to my knowledge. And --

MR. OXER: And the rule was in place when?

MR. DORSEY: 2010.

MR. OXER: Okay.

MR. DORSEY: So --

MR. OXER: So this is a special little tool for us to pull out when we need it every once in a while.

MR. DORSEY: That's exactly right -- just a -- we wanted to acknowledge in the rule that there -- these things are moving targets, particularly when you're talking about the debt side of these transactions, and

some flexibility is kind of built in for the Board's consideration.

MR. OXER: Moving target. What -- another one? Okay.

MR. IRVINE: Well, I think it does present a policy issue that hopefully as we move under Dr. Muñoz's committee to develop broader loan policies we will specifically consider the appropriate policy direction and the now flexibility in working with layered support on these transactions.

MR. DORSEY: Right. And the other key thing here is the developer is really working with us on this. They aren't saying, No, we will accept nothing except a cash flow loan or anything like that. They are really -- we're really all working together to try --

MR. OXER: Everyone's at the table.

MR. DORSEY: Yes, everyone's at the table.

MR. OXER: Good. Are you comfortable with that, Dr. Muñoz?

DR. MUÑOZ: Exceedingly.

MR. OXER: Succinctness is a virtue in this case. All right. We'll entertain a motion.

MS. BINGHAM: I'll move staff's recommendation.

MR. OXER: Motion by Ms. Bingham for staff recommendation.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Any other questions from the Board? Are there any comments -- other comments? (No response.)

Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none -- unanimous. Thank you, sir.

MR. DORSEY: All right. The next item is an item that you all may be familiar with. It's a waiver of ineligibility for the -- for a 2012 competitive housing tax credit application, Barron's Branch, located in Waco.

This is an application that was submitted, you know, by the March 1 deadline -- is going through the competitive cycle. I'll keep it relatively brief.

Their unit mix does not meet the central business district unit mix requirements within the QAP which has a cap of 20 percent on the three-bedroom units. They exceed that cap. The cap -- their units are 26 to 27 percent I believe. And so they are seeking a waiver of that requirement.

Some of the previously posited arguments on the applicant's behalf were that there were some potential fair housing issues associated with this, as well as the fact that the City of Waco is firmly in support of and behind this transaction. I'll go ahead and defer, unless you all have questions, and let the next presentation's go ahead and then can answer questions.

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

(No response.)

MR. OXER: Our protocol is to have a motion on the floor so that it can be discussed.

MR. IRVINE: Before we comment there should be a motion and second on the floor.

MR. KEIG: Move to deny the appeal.

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

MS. BINGHAM: Second.

MR. OXER: Second by Ms. Bingham. All right. Those of you who have chosen -- or would like to speak I assume are in the front row up here. Good morning to each of you. Which way are we going to start? Okay.

For the record the way we're supposed to -- we're happy to have you.

(Pause.)

MR. OXER: That's okay. Probably get a protocol put together here so everybody gets a sense of this. So when you come if you guys will decide who's going to speak -- we'll go right to left across here. So you can self-organize. Okay?

(Simultaneous discussions.)

MR. OXER: All right. If you would, please.

MR. HERBERT: My name is Tony Herbert. I am a City Council representative from Waco, Texas. Do you need my address or just my -- just as a lightning refresher here, Parkside Village was originally built in the early '70s. And by the '80s when I moved to Waco it had already become problematic.

It was sold and renovated in the '90s as a 4 percent tax credit property. And because of some ownership problems the improvements that took place at that point in time didn't last long. And so the downward spiral

continued -- became even more problematic on a number of levels in the last ten years.

And at the same time it was under the oversight of TDHCA and HUD and the City of Waco really didn't have a way to get rid of the thing. I mean, that was kind of the top priority that we had for years, but because of all the tax credit restrictions and what have you, there was never any way to get rid of it.

When it went into foreclosure with HUD last year -- loan that it has with HUD -- an unexpected opportunity arose for us and fortunate to do something different here.

Fortunately we had gone through some extensive planning processes in possibly the most studied area of the city right now, the area right around this development. We had a downtown study of downtown and its surrounding neighborhoods, and then we had a study specifically of that area planned -- specifically that area -- a lot of community input.

And when this opportunity arose we had another extensive community input period and people were happy, believe me, to participate in that. This was such a problem for the neighborhood that rather than being a draw for the neighborhood it would have made the neighborhood over the years a neighborhood of last resort for us for so many reasons.

We used all the community input that we had to inform our decision as the City Council to invest a significant amount of time and staff resources and effort and lots of taxpayer money into this project.

And we actually -- we went through a process with HUD twice

because they allowed us to suggest some development criteria before they went out and tried to sell this property -- or sell their loan. We got no responses because we said we didn't want a rehab -- we wanted redevelopment -- zero responses.

So they started over. And at that point we just threw the City's resources into this project. We actually worked a deal where we bought the property. We agreed to put in a million dollars to clear the property and to do the asbestos abatement and to do demolition and clearance -- which we've done.

There's been another \$350,000 loan to the development from our local housing finance corporation now. So we've gone further with this housing project than with any other housing project that I'm -- in my memory -- and I've been there for almost 30 years -- because it's the most important project that we've had in that period of time because it was such a problem.

Our process began in 2010 -- the process that we had that we went into with HUD. And it was finalized within the community and with D-Squared before this rule change went into affect. And since this was our second go round with HUD I -- I mean, I don't even -- I don't know what would happen if we go back to them now and say, no, we need to start over and do this a different way.

But our part was done. We had chosen a plan, we had chosen a development, we had so much neighborhood input, we chose a developer -- we got a lot of response to our RFP the second time around,

because the City, you know, put over a million dollars into it. But we don't know what will happen if we try to start this over again.

I don't know exactly what the rule change was there to accomplish, but it seems like it was for large cities with high rise downtown development, which kind of cuts out the mid-size cities like Waco because our needs are for family development near the downtown and in the downtown because of the transportation and cultural and recreational amenities and the new jobs that are becoming available because our downtowns are finally reemerging. And so these -- this is our neighborhood of opportunity around there. So we need family housing there.

The new rule also doesn't fit the demographics of this particular area. My council district -- of course, we just went through redistricting and so we know a little more about our demographics than we would have any other time. But my council district ten years ago on 2000 was roughly one-third, one-third, one-third African-American, Hispanic, Anglo. And now it is 22 percent Anglo and over 50 percent Hispanic.

We have so many young families with children in the area now that weren't in the area in 2000 that we actually built two new elementary schools in that area. We're closing elementary schools in some of the other neighborhoods in the city, but this neighborhood is burgeoning with young families.

We had 120 three- and four-bedroom units in Parkside Villages. And we're not asking to replace all of those three- and four-bedroom units. But we would like a little more even mix than the 20 percent rule would allow

us here.

We -- our market study has shown that we have a need for over 600 three- and four-bedroom units citywide. And, of course, we're not trying to take care of all that, but this development that we're proposing will barely make a dent in that. And I can say without exaggeration that this is the single most important housing development in the city for the reasons that I've just given you.

This is going to be a make-or-break-it project for that neighborhood. It's -- it was burdened with this derelict property for so many years and it so much deserves better and it so much knows what it wants now. People in that neighborhood know what they want.

I can't -- I'm thinking that surely the TDHCA rule didn't intend to disqualify a development because it meets too many needs, or, in this case, the needs to too many types of households. We need senior housing, we need housing for young adults -- single young adults or two-person families. But we also need family housing. So I can't imagine that the rule was there to disqualify a project that met more needs than just for seniors and young adults.

The first purpose was to --

MR. OXER: I hate to interrupt you.

MS. HERBERT: I've got one --

MR. OXER: No, I'm not --

MS. HERBERT: You're not stopping me?

MR. OXER: I'm not stopping you.

MS. HERBERT: Oh.

MR. OXER: But I wanted to check with our reporter.

Penny, are we all right? You okay?

THE REPORTER: So far.

MR. OXER: Are we picking up everything?

THE REPORTER: We're working on it, yeah.

MR. OXER: Okay. We need a technical break here?

THE REPORTER: Not yet.

MR. OXER: All right.

MS. HERBERT: Do I need to start over?

MR. OXER: Tell her she does not need --

MALE VOICE: Please don't.

MS. HERBERT: And I'm almost through. The first purpose listed in TDHCA's statement of purposes is to assist local governments -- I'm telling you what you know -- but to assist local governments in providing essential public services for their residents and overcoming financial, social, and environmental problems.

That's a very direct statement. It doesn't sound like it's probably optional and it doesn't sound like just some idealized aspiration. And we're not asking the Board to step outside your authority or outside your normal process. I mean, this is a waiver process and it's part, you know, of what you have authority to do.

So I just hope that you look at this as a legitimate waiver request. It was submitted according to the rules and it was submitted to

address a unique set of circumstances and to assist a local government -- our local government -- as described in your charge. That's my presentation and I will be happy to entertain any questions.

MR. OXER: Good. Any questions for the Board?

MR. KEIG: Yes.

MR. OXER: Mr. Keig.

MR. KEIG: Staff has told us that the debt that staff has independently obtained or corroborated by the applicant's own market study shows that in the subject market percentage of large families is actually less than the percentage of three-bedroom units allowed by the established unit mix requirements.

Can you help me understand the inconsistency between the number that you were talking about in terms of families in that area versus what staff is telling you here with two different sets of data?

MS. HERBERT: Are you asking me about the market study or --

MR. KEIG: Uh --

MS. HERBERT: -- are you just asking me about what I know about the numbers?

MR. KEIG: Why don't I ask you about the market study because you may not know whatever data the staff --

MS. HERBERT: Well, I can't answer questions about the market study. I mean, we just didn't get -- you know, we brought on the consultant who did that, who got to that level of detail. We just didn't get

down to the data level on that. But I can tell you --

MR. KEIG: Can somebody else in your group address that?

MS. ANDRE: Sure, I'd be happy to answer. My name's Sarah Andre and I'm a consultant to the developer for Barron's Branch.

The market study that was submitted with the application is what staff used to come up with this number. And what they said was the percentage of large families in the market -- the whole market -- is less than the percentage of three-bedroom units established by the unit mix requirement.

Basically there's -- in the unit -- in the market area 13 percent of the families are large families -- quote, large families -- and we have proposed more than 13 percent of our unit mix be for large families.

But those are apples to oranges comparisons. Basically the percentage of large families in any market -- it doesn't have a relationship to whether or not those families are being served. There are 633 -- there's demand for 633 units for large families -- that's 13 percent of the population. But we're only providing 35 units, so we're only hitting 5-1/2 percent of that demand of 633 units.

So that comparison that staff made was really looking at two different factors that don't necessarily correlate. There are underserved markets across the state at any given time regardless of how many units are out there. If we didn't have underserved markets we wouldn't have an affordable housing agency or industry.

MR. OXER: Professor McWatters, do you have a question?

DR. McWATTERS: Thank you. Staff says that this issue was not raised until after the application deadline has passed. Is that true?

MS. HERBERT: You mean we didn't ask for the waiver until after the application deadline?

DR. McWATTERS: Well, I mean, you submitted an application that does not comply with rules, right?

MS. HERBERT: Yes.

DR. McWATTERS: Okay. And after the waiver -- after the application deadline passed then you came forward. And so I was wondering why the application was submitted incorrectly. Now, it would seem like a better argument will be to make, Hey, the application deadline is three weeks away. We're going to submit this and we know it's incorrect, but here are our policy reasons as to why. So we're going to come to you for a waiver.

MS. ANDRE: We would have loved to submit the waiver request earlier, and I would wholeheartedly agree that that is the one mistake we've made. If you look at our time line though, the City of Waco and the developer were very busy working with HUD getting the unit mix that satisfied both the community and HUD and then the QAP came out.

And if you look there were four changes to the QAP with the CDB issue coming in and out of the rule until -- right up until the last minute. And so the final QAP was presented in December. November was when -- November 16 -- and we have a letter from HUD showing that date -- was when the City of Waco got final sign-off from HUD.

So I agree we should have asked for it earlier, but if you look at

the rules on waivers in the QAP -- and that's I believe Section 50.16(d) -- it does say that a waiver can be brought at any time.

MR. OXER: Any other questions?

MS. BINGHAM: I just have one more to ask.

MR. OXER: Ms. Bingham.

MS. BINGHAM: So -- thank you, Mr. Chairman. So I understand your point about the number of large families is not necessarily indicative of what you need to put a development together. But, I mean, the whole purpose behind it is to frame relatively speaking what the need is for all of those different size units. So, given that, I mean, what would you say the need is for the smaller units?

MS. ANDRE: I don't have our market study demand in front of me -- actually, I do think I have it here. There's demand for the smaller units as well. Let's see what I have in front of me.

And this is in our market study that we presented to TDHCA. It was done according to TDHCA's guidelines for a market study. You can look up -- I have to add these three together very quickly, but there is a demand for six -- 1,200, 16 -- you know, 1,700 one-bedroom units and over a thousand two-bedroom units, and then there's a demand for 633 three-bedroom units.

And those are divided across the income bands of people at 30 percent of median income, people at 50 percent, and people at 60 percent. Each of those -- I mean, the capture rate -- the amount of -- the capture rate is basically the amount of units we're proposing -- how much of the market we're proposing to capture with our units.

It's well under 10 percent for every one of these -- it's under 7 percent for every one of these. And that's kind of your rule of thumb -- 10 percent is your rule of thumb where you start worrying about lease up and -- you know, that's TDHCA's guideline as well. You don't want to be above 10 percent.

MS. HERBERT: A more immediate number that we have as far as three-bedroom units -- three- and four-bedroom units go is as of last week we checked with the housing authority and they have 73 households on their waiting list for three- and four-bedroom units.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: I have a question for Cameron. Cameron, in your response to us you talked about the data that staff independently obtained and corroborated by their market study. What's the source of the data that you independently obtained to make this claim that less of the larger three-bedrooms are required.

MR. DORSEY: Sure. Let me make clear -- I think there is a bit of a misunderstanding. We're not saying that there's not saying that there's not demand for three-bedroom units. We're just saying that the 20 percent is not unreasonable and does not present a fair housing issue. So that's to address that claim.

The data we used was census data from American Community survey and addresses the population more broadly. Darrell Jack, who's a market analyst and is sitting behind me, actually had data that was for -- that's based on census data. And it looked at income-eligible tenants. So possible

actual tenants that are -- the folks that had the possibility of being tenants in the property, and that also was below the 20 percent. So that's what we were looking at there.

MR. OXER: Other questions? The only comment that I would have -- I think most of you who watched those ventures over the last six months -- we've had a number of people sit right there and say that they wanted sharp-edged rules that we had to enforce. I'll leave my comment at that. Any other comments from the Board?

Professor McWatters?

DR. McWATTERS: The only thing I would add is that in directing the QAPs -- it's a tedious process. And so if I was submitting one of these I would go through the QAP carefully and comply with it -- tick every box, dot every I, cross every T to the best of my ability to do that and then submit it.

Now, if you want to submit it with a letter that makes a policy argument of saying why this in particular area more three bedrooms are necessary than two bedrooms, then it seems to me that may be more appropriate fire for a waiver than one that is submitted after the fact. So I'll just leave it at that.

MR. OXER: Cameron, what would be -- because I think everybody in this room knows this is an incredibly competitive process in this round. What would be the effect of granting the waiver or denying the waiver, from both standpoints, since it -- if we deny waiver, then they're essentially out?

MR. DORSEY: That's right. There are several applications in line behind this one. None of them are in Waco, but all of them did gain the community support. In fact, Representative Raney, who spoke in public comment, was seeking in relation to another transaction in this same region competing against this development.

And so the impact would be that it could result in -- there would be probably one award, so if this one got it then no one else would versus it going to one of the other ones that, you know, has similar community support and state representative and senator support.

DR. MUÑOZ: How many others in the region?

MR. DORSEY: I believe there are four others in the region. If not four it's three or five.

MR. OXER: Just for purposes of making this a little easier we're going to take a very, very short break of about ten minutes so we can reset the -- our playing field here, plug them in and see what we're working on because we've have process issues of the transcript.

So, let's see. It's 12 minutes of now. We'll be back in our chairs and ready to go -- we're not leaving. We're not leaving. We're just taking a break. Be back in at eleven o'clock straight up.

(Whereupon, a short recess was taken.)

MR. OXER: Thank you, all of you, for allowing us -- Michelle, we kind of had a few problems. Thank you everybody for accommodating some modifications to repair for technical difficulties.

MS. HERBERT: I was just --

MR. OXER: Okay.

MS. HERBERT: -- sitting there waiting for questions.

MR. OXER: Okay. Sarah, were you up? Did you have anything else? Okay.

MS. ANDRE: I do have other things but I'll --

MR. OXER: Okay. Hold still.

Anybody from the Board have any more questions of these folks?

(No response.)

MR. OXER: Okay. Next, please.

MR. DUNCAN: Good morning, Chairman and Board. I'm Malcolm Duncan, Jr., mayor pro tem of Waco. I am here to speak for the citizens -- not the developer, not the consultant.

As a third-generation mayor there is a level of trust and commitment that goes beyond what words can express. Last month I appointed you with a burden on our government, police department, the code enforcement, and the citizens from the failed project at Parkside Village.

We have only endorsed one project, as my colleague has told you. We've ponyed up over a million dollar to remediate the site. We have selected this developer based on the due diligence of the council. There was lots of citizen input. And at the end of the day Parkside did not fail because it had three or four bedrooms. It didn't fail because of its location. It failed because of management.

And one of the first orders of business in securing a developer

was to vet the management process. The developer will hire an outside management team. We put a management performance review in our contract with this developer.

We don't want to be in this position again. We have been through a lot of trouble to get to this point. And, as my colleague said, we don't want to start over. We want to play by the rules, but we didn't know what the rules were when we negotiated with HUD.

So at the end of the day I just stand here and marvel at the wisdom of our state legislature that created the community of department -- the Department of Community Affairs. So I would ask you to exercise your authority and assist us in managing the affairs of our community. Thank you.

MR. OXER: Any questions? Questions for the Board?

(No response.)

MR. OXER: Thank you.

MR. JACK: Good morning. My name is Darrell Jack, and my firm is Apartment Market Data. We actually did the market feasibility study on this project, as well as many others this year.

Appreciate the program greatly. It does a great service for the people of Texas and the low-income people that just don't have an opportunity to have good quality housing around the state.

When I came this morning I thought I would stand in the back and meet a few clients and really had not expected to get up here today, but here I am. Following along with Mr. McWatters' questions about the market

study, just to kind of address a few key points of this project -- and then I'm happy to answer any of your questions.

One of the things that I was standing in the back listening was this 13 percent need for larger units in the Waco area. You know, during the writing of a project it's pretty fixed with TDHCA, and that's what one makes my job much easier.

I don't know that we've ever been questioned about an overall need in a market -- why this project, you know, has been presented. I don't find it as an underwriting criteria the project.

There are some real specific things like capture rate that the market study is designed to address. And the rule of TDHCA is that the capture rate can't exceed 10 percent. Basically that means that of the potential well of residents that you have you're not going to pull more than one out of every ten to have to fill your project. And ultimately it's designed to ensure that there's adequate depth to lease up the project.

And my role in all this is to make sure that there is a need in the project -- there's a third party looking at the market objectively.

So, you know, the 13 percent I did that maybe staff has presented really isn't one of your underwriting criteria. What is is a capture rate. And on this project it was extremely low at 1.6 percent. So, you know, that's one out of every -- well, 1.6 people out of every hundred that you would need in this market that would be income-qualified to actually lease the project up.

Probably the lowest I've ever seen is 1.3. So this on the scale

of projects that we work on and -- which is, you know, over the years many hundreds for the state -- this project's need score is very high and the depth of the market is very deep for potential residents.

To give you an idea, one of the unique things that we do that other companies like myself don't do is we database by individual units. But also for affordable projects we segregate out the 30, 40, 50, 60 percent units. So we can tell you, you know, to a very fine degree what other projects are doing in this market.

To give you an idea this project has four three-bedroom units that are going to serve the very lowest income people at 30 percent. We serve a 6,100 units, both market rate and affordable, in the trade area that we looked at. There are no units, either affordable or market rate, that someone could go and rent a three-bedroom unit if they made 30 percent of the median income.

This project has 12 at 50 percent -- three bedrooms. Again, there are no 50 percent three-bedroom, either market rate that would be getting comparable rent or affordable.

It has 19 60 percent units, and these are limited in the market. Looking at the report there's only about five projects out of 50 -- I see here that three of those were built before 1970. One project, Lakewood Villas, which is a tax-credit deal, is struggling with its three bedrooms, but it's struggling with all of its units because it's an older project that was built in 1982. In fact, the occupancy rate for the three bedrooms is higher than its one- and two-bedroom units.

The last project that was built in the trade area in 2009 was Historic Lofts at Waco High. Their three bedrooms are 100 percent occupied at 60 percent of the median income. And if you look at four bedrooms, in the entire market there's only project built in 1970 that even offers a four bedroom at a 60 percent rent level.

So, ultimately, my role in all this is to describe the need to the underwriters and ultimately to you of, you know, is there a need in the market for this project. And conclusively we determined that not only is there a need, there aren't any other units serving people at the lowest income levels of 30, 40, and 50. There's only a few units at 50 percent. And the ones in good condition -- those are virtually 100 percent occupied, if they're not.

So in conclusion, you know, the market study really proved up the need for these units, both, you know, the ones and twos, but especially the threes and fours by comparison to the market.

People who have low income that have larger sized families and -- out of 6,100 units, you know, there are no opportunities for them without this project coming to fruition. Be happy to answer any questions you might have.

MR. OXER: Any questions of the Board for Mr. Jack?

(No response.)

MR. OXER: Thank you.

MR. JACK: Thank you. Tony.

MS. JACKSON: Good morning, Board. My name is Tony Jackson, and I am here to speak on fair housing issues regarding this

development.

I have with me, based on a query last month, a letter that has been put together with the legal citations regarding the fair housing if the Board would like to have that letter. Mr. Chair -- or should I just --

MR. OXER: Let's hold on.

MR. IRVINE: Is that available for members of the public as well?

MS. JACKSON: No, sir. We actually sent it to the staff. We thought that it had been sent in and already provided. And Cameron just indicated that it had not been provided. We don't have to give it out, but it is basically the same letter that was submitted in your package last time. But Mr. Keig asked about legal citation and that's what we have added to it.

MR. OXER: You may just have to quote the citation on it.

MS. JACKSON: That's not a problem.

MR. OXER: Okay.

MS. JACKSON: Again, it is our position that the central business district unit meets limitations as it has been set out. It is a fair housing violation because it limits the units -- 80 percent of the units to one- and two-bedroom mix.

In the Fair Housing Act HUD has very specifically indicated that families with children must be provided the same protections as other classes or persons protected by the Fair Housing Act and that is appropriate to interpret the protection afforded families with children in the same manner.

That is, again, cited in the Fair Housing Act and can be found at

42 U.S.C.A. Section 3602(k).

We are -- it is our position that by limiting the number of units to one- and two-bedroom units in this particular district or jurisdiction -- there is a strong need for families and to have opportunities. And the opportunities for jobs is for those families. However, by limiting the -- to one- and two-bedroom units and not allowing more three- and four-bedroom units we have seen what we feel is that the Fair Housing Act shows that there is a prohibition here and that families, particularly minority families, are more adversely impacted.

You heard Council member Herbert indicate that there is a larger number of minorities in her district, and, therefore, that district -- there is a larger number of families that go with those numbers.

Because of that there is a stronger need for the three- and four-bedroom units. And we're asking that you waive the requirement of the central business district to allow more than 20 percent because we do feel that it is a direct prohibition against the Fair Housing Act. Thank you.

MR. OXER: Any questions from the Board? (No response.)  
Okay. Sarah, you have something else?

MS. ANDRE: I do.

MR. OXER: State your name again.

MS. ANDRE: Once again, my name is Sarah Andre. I'm a consultant to the project. I think we've really firmly established that there's a market for the project so I'm not going to talk about that anymore. I'd like to address some of the other issues that Board members and staff have brought

up.

First of all, staff in its denial of the waiver said that if they provided a waiver they -- we would have an advantage on the second tiebreaker, which is credits per bedroom. And I firmly believe where we rank in the current lineup is irrelevant to a waiver request. Would you be more likely to grant the request if we were at the bottom of the list and there was no chance of funding? That does not make sense to me.

If we had submitted this earlier and this is wrapped up with timing that wouldn't be an issue. You wouldn't know where we ranked.

And we have asked in the past -- my colleagues have asked the staff and the Board to create a very clear waiver process. We actually thought it would be wonderful if waivers had to go in at pre-ap so you would know if you needed to proceed. And the wisdom of the decision makers at that time was that was not what they wanted. And we've currently submitted our waiver request, perhaps with unfortunate timing, but according to the rules as they exist.

So if you'd like different rules in place, I think that's wonderful -- let's make different rules. But we've submitted under the current rules. And other waivers have been turned in and discussed post-application even this year. At last year's Board meeting -- or last month's Board meeting -- excuse me -- I believe also in March -- and some of those waivers have been for threshold requirements, some of them have been for point requirements, and some of them have been granted.

Finally, back to the tiebreaker, you know, regardless of

where -- of what you think about the tiebreaker I want to make it very clear that Barron's Branch is not currently ranked number one. So there's this assumption that we're going to be in a tiebreaker, but right now that's not even a known fact. So that argument seems a little premature to me.

On top of that our waiver deal -- our waiver request specifically asks that you remove any such advantage, whether it's a perceived advantage or a real advantage -- and we offered methods for doing that. So I don't think that's a really valid reason to deny the request.

All the other deals in this region are senior deals. And someone was here today talking about the community support that those deals have. Every deal that wins a tax credit award this year has community support. You simply have to have a letter from your legislator to get a project.

It's 18 points. There's no way you're going to win without that. And to get that support from your elected official you generally have to have community support at the local level, usually in the form of a resolution or a letter.

Waco has skin in the game -- and I'm not just talking about the million dollars that they have put forth to scrape the property. They have time invested. Our time line showed you how many months they have worked on this project with the community. They have community goodwill invested. It's not just money and it's not just community support.

I do want to take just another couple of minutes to talk about past precedent. The staff also said that you should deny this waiver because in the past similar waivers were denied.

And, really, the only thing that came to mind over and over with

that, it reminded me of my two daughters. I've got a 5-year-old and a 12-year-old. And the 5-year-old things that because the 12-year-old is allowed to drink Dr. Pepper and stay up late watching movies she should be able to too.

And that's exactly what this argument is. Each child is different; each development is different. They're unique and they should be judged based on their own characteristics.

If you look at the QAP -- and that's Section 50.16(b) -- waivers are not intended to be precedents. It says so right there. So what a particular project did in the past is really irrelevant. Whether you chose to deny or grant that waiver they all need to be judged on their merits, and that's really what we're asking you to do with Barron's Branch.

I have to point out, if you do want to use past precedent to deny I'm going to refresh your memory that one of the many reasons this Board denied a waiver for the sample project that staff put forward in its argument, which was Champion Homes at Copper Ridge, was that the project was a family deal and it only had one- and two-bedroom units. So here we are with a family deal that we're trying to get away from so many one- and two-bedroom units. And we're asking for a waiver on that.

Finally, staff recommended denial of the waiver on the basis that the applicant did not demonstrate that a waiver's necessary to fulfill the purposes of Chapter 2306. And that's our state statute that defines the role of the agency.

You know, that state statute can be a little bit nebulous. But

we've given you four reasons and four very specific purposes that this project helps fulfill. There's the preservation of affordable housing, furthering fair housing, providing for the housing needs of families, and then, finally -- and I think this is most important one because it's the one that is most particular to this project -- is assisting local governments.

And, once again, I'm going to reiterate in overcoming financial, social, and environmental problems. And that's what this project was -- a financial, social, and environmental problem.

And, you know, it's not enough to just argue that if this deal folds there's another one that's lined up to take its place. This is a replacement project for something that TDHCA funded and that failed under the watch of the Department. And that was not for any lack of effort or any lack of concern on the part of staff. Everyone was very concerned, as you, you know, can go through the record and read. But I do feel that it's incumbent upon the Department to help redeem the property if it can.

The City participated in a painstaking process we've had to clean up Parkside Village and to get to point where we can redevelop it today.

And I feel very strongly this is the unit mix the City wants, it's the unit mix the citizens of Waco wants, it's the unit mix I want, and it's a unit mix that has been validated by the market study.

If you choose to not grant the waiver I would respectfully ask that you allow us to amend our application. There is a precedent for that with a project in Galveston that received both a scoring and a threshold waiver and with Veteran's Place, which was a 2011 deal that came forward at exactly this

time last year in which Chairman Oxer preferred to allow the applicant to amend the application rather than grant a waiver.

That is everything I have. Thank you so much for your consideration.

MR. KEIG: Quick question?

MR. OXER: Mr. Keig.

MR. KEIG: I heard for the first time today that when the development team went to negotiate with HUD that they did not know the 2012 QAP unit mix requirements. I want to make sure I understand the context. Did this Board pass the 2012 QAP after the development team negotiated its deal with HUD?

MS. ANDRE: Yes, they did. The QAP was amended, negotiated, revised over a period of months that started in September of this year. And as you know and as you can see on the time line the City of Waco began its process with HUD and began negotiations prior to that.

Now, there was a concurrent process that the QAP was in flux. We had four drafts this year and the CDB issue -- because, really, the unit mix we have fits the rules if you're not in the central business district. It's only if you're in a central business district that it varies. And that went in and out of the QAP during that time.

And so, you know, we've already got one line of reasoning going with HUD. This is up in the air. We don't know where it's going to fall. And once we did know where it's falling I do agree -- and I apologize that our timing has not been as quick as it should have been. But we -- you know,

we've done the best we could and we really couldn't, until December, know. And then we were going to have to go back to HUD and potentially face another six months of negotiation with an application in that we weren't sure if HUD was going to approve.

MR. OXER: Let me ask this. The -- we've had some conversation this round and prior rounds about the impact on the development community of having a -- what I call a short-shot QAP window, where you have to take this, get the project, and then scores and then out. You had a two-year window, would you had been able to see this sooner on the two-year QAP?

MS. ANDRE: Oh, hindsight is always 20/20. You know, I would love to see -- you know, there are rumors that this is not a 2012/2013 QAP. And I hope that those rumors are false because I think it's fabulous to have a two-year QAP. Yes, it gives you tons of time to plan and meet the criteria. And if you feel you're not going to be able to then you can come and address the Board earlier.

MR. OXER: Well, we're not -- we can't -- by virtue of process and protocol here we can't discuss the merits and demerits of a two-year QAP. But that's one of those things that moving the target farther out you would know sooner what you were getting into.

Given there's been a certain amount -- this has been a pretty rocky road here for the last eight months just getting this whipped into shape. And you talked about four drafts of the QAP before it went there. You missed two, because there were at least six that I knew of, besides the four that got to

the Governor and he gave us the last draft of it, which made seven. So the -- it had some substantive changes in that in the final version that came out of the Governor's Office.

So we're sensitive to the issue of the moving target problem. So, that said, one of the things we're considering is trying to figure out how to make that so it's a rolling project so that you're looking two years ahead, working on this one that should have been done last year. Just a comment more than a question.

Mr. Gann?

MR. GANN: Mr. Chairman, Tim, what -- I think I heard you say that you might could consider the change of your market mix.

MS. ANDRE: Well, we do not want to change our mix. There is a strong demand for these units, there's a strong need for family, you know, we've got architectural plans. We're moving down the river.

But rather than be kicked out, you know, we would take our chances with HUD. I don't care to do that but --

MR. GANN: I've got a second question over here. Well, where are we on that if that was a viable -- is a viable situation. We've done the amendments before.

MR. IRVINE: We have authorized amendments in the past. Now, here you've got the issue that -- first of all, you've got a rule. I think everybody would like it if the rule were upheld and followed. But you do have the issue of HUD's role on -- I think you said they're interested -- are willing to consider taking your chances with HUD.

You know, if you were going to consider authorizing and then you obviously have to pre-condition it on HUD concurrence.

MR. OXER: So what you're saying is rather than a bullet in the head you'd rather have just a pinch.

MS. ANDRE: I'd rather have no bullet.

MR. OXER: Well, here's where part of this comes down. Okay? And, as you rightly state, the purpose of the Board is to meet the -- fulfill the purpose and policies of Chapter 2306. And while I am sensitive to the arguments you made about providing the housing needs of individuals with families, maintaining affordable housing, assisting local government -- all those are entirely valid.

But if we didn't do that and there was one following behind it this is not the purpose and policies of 2306 to apply to Waco. We have to have purposes and policies of 2306 apply to Texas, which, painful as it is sometimes, requires us to make decisions that I, frankly, find painful.

And the problem is we're not looking for projects; we're looking for money. Okay? We're oversubscribed now.

What was the ratio, Cameron, when we -- our first round through this this year we were oversubscribed by a factor of ten -- just beyond ten. Right now we're oversubscribed by a factor of 3-1/2, Cameron, more or less 4 -- 3, 4 -- 3-1/2, 4?

So I'm personally wrestling with the idea. While I recognize all the arguments you make and I'm sensitive to these that the City of Waco has and the eloquent presentation of those arguments, we still meet our obligation

by funding another project or allowing you -- or would be allowing you -- would be doing so by simply allowing you to stay in the round and compete. That's more of a comment to the Board.

Unfortunately, we're here to make the hard decisions because all the easy ones have already been made.

MR. GANN: What would the mayor say to that?  
Would you be for changing market mix if that may be the only solution?

MR. OXER: You willing to take your chances wrestling with HUD?

MR. DUNCAN: Absolutely. If we can stay in consideration -- we do not want to see this withdrawn, which is what I understand would happen if we were not granted the waiver. Are those my two choices?

DR. MUÑOZ: Would that be consideration for a waiver or to pull the application back and amend it?

MR. OXER: That would be an amendment for their -- as I understand, Sarah, that's -- what you're asking -- that's all right. What we're saying -- what she's saying is, you know, if they don't get the waiver they would like the option to amend their application. Is that a fair statement?

MS. ANDRE: Yes, sir.

MR. OXER: Okay.

DR. MUÑOZ: Amend the application; that's not us amending the rule.

MR. OXER: No, no. That's her amending project -- you're not

getting the hook completely through your mouth.

MR. KEIG: Mr. Chair --

MR. OXER: Any more comments?

MR. KEIG: Yeah, Mr. Chair. Can we hear from -- any further comments from Mr. Dorsey if he has some?

MR. DORSEY: Sure. I just wanted to address -- and not under this QAP. I'm not sure there's a provision to allow an amendment before the application has been approved. However, it could still be done as a waiver I believe. I just want to make sure that there's a recognition that it's still a waiver. The --

MR. OXER: So we may be cutting some new trails with a compass and no map again.

MR. DORSEY: Right. The other thing I wanted to --

DR. MUÑOZ: Hold on, Cameron. Let me ask a clarifying question. So you're saying that we have to approve the waiver in order for the application to move forward and to recommend that they amend it.

MR. DORSEY: Well, I'm not --

MR. OXER: Hold on. That's all right. Go ahead, Cameron.

MR. DORSEY: So this came up five minutes ago. So in talking with Barbara, I mean, I think in order to fully consider exactly what actions would be necessary I think we have to look at it a little bit closer. We just didn't know that this was going to come up.

So I don't think we have a problem doing that at all. We don't mind looking at the QAP and then advising the Board of what action would be

necessary. We're, I mean, just not certain that that would be the action necessary.

MR. OXER: And that -- and you're not certain that that would be available or that would be necessary?

MR. DORSEY: I think that this can get done. I just want to make sure that the way that it goes into the record is reflective of how the Board actually has authority to do it.

MR. OXER: I think that's probably a good idea.

MR. IRVINE: I believe there are enough complexities and enough moving parts that if the Board wants to consider some sort of resolution along these lines it should be at least deferred while staff and counsel look at it. And perhaps the Board might take it up in executive session.

MR. OXER: Here's -- I'm sorry, Tim. Go ahead.

MR. IRVINE: I would also suggest that when you hearken back to a number of the issues that have been discussed, such as the issue of a tiebreaker action. To address that you would want to fashion -- if you move forward on that basis -- some sort of a comprehensive resolution that really does address that wrinkle.

MS. ANDRE: Might I add one clarification that I think will help. The word "amendment" as it's used in the QAP is typically applied to developments after they've been awarded. So I think I should change my word and say we'd like to provide a revision or clarification to our application.

MR. OXER: Fundamentally you're changing what --

MS. ANDRE: And that would be different from an amendment.

MR. OXER: Okay.

MR. DORSEY: That would probably constitute a material deficiency under the current QAP, because these are substantial changes, and that's my concern. I want to make sure that we work through this appropriately.

DR. MUÑOZ: Okay. I want to make it clear though also, Cameron, that sort of working through this and further examining the nuances of this case and making recommendations to the Board as to what it might or may not consider, is it some sort of indication of how it might ultimately vote?

MR. OXER: All right. Here's the Chair's request -- Professor McWatters, please.

DR. McWATTERS: Just one question, Cameron. On the date the application was submitted was it clear or was it not clear as to what the appropriate unit mix should be?

MR. DORSEY: It was clear on the date the application was awarded. I do believe that there was no effort to pursue an alternative with HUD. I did -- I'm pretty -- I have a degree in economics.

I can't predict the economy, you know, or anything, but I can, you know, see sometimes where the development community's going so I went ahead and called HUD after the last meeting and talked to them and they wouldn't have a problem considering a different unit mix. There was no requirement that this be the unit mix in the first place. And they indicated that it wouldn't be a substantially difficult process to get that done.

DR. McWATTERS: But if on the application date someone said, Geez, what's the unit mix for three bedrooms, someone could go to a rule book and objectively see it's 20 percent, not 27 percent. Or is that incorrect?

MR. DORSEY: No, that is absolutely correct. And that could have been known well in advance of March 1, three months in advance.

DR. McWATTERS: Okay. That's my question. So this was not a rule that became clear three days before the application was due.

MR. DORSEY: That's correct.

DR. McWATTERS: Okay. It was three months before the application was due. So we have a situation where the rule was clear -- and you may disagree -- okay? -- and I'd like hear your rejoinder if you have one -- that was clear and the rule was purposely not followed. Okay? And now there is a request to somehow go back and clarify or amend the application. Okay?

And all I would say to the Board is that we need to be cautious about this because we're setting a dangerous precedent, because if the rules are clear, the rules are objective -- you may disagree with them; you may think there's an FHA problem with them -- okay, that's a different issue -- and you purposely don't follow them and then you come in and ask for a clarification later I think we're going to have a lot of clarification requests.

MR. OXER: I'm expecting a lot of appeals on this on the -- okay.

MR. IRVINE: And I would also like to point out, because of the

open meetings act, the way that this particular item is posted today the Board's flexibility to take action on this would be limited to the granting or withholding of the waiver. And the other kind of larger, more comprehensive resolution would be under a different posting and take it up at a different meeting.

MR. KEIG: I'd like to call the question.

MR. OXER: Okay. The question will be called by Mr. Keig. Motion's on the floor to deny the appeal to grant the -- deny the appeal, which would be not grant the waiver. That correct? Okay. Motion by Mr. Keig, second by Ms. Bingham. Is that right? Okay. All in favor.

(A chorus of aye.)

MR. OXER: All opposed?

(No response.)

MR. OXER: Motion is denied.

MR. DORSEY: I was about to go home. I have two more.

MR. OXER: You don't -- hey, you don't go home till we say you go home.

MR. DORSEY: These two I'm going to let Eileen Manes present on. She is the manager of our multifamily loan programs. And she is doing a wonderful job helping get all of the stuff surrounding NSP multifamily transactions really clarified and organized. So these are all her.

MS. MANES: Thank you, Cameron. The first item that we want to talk about is --

MR. OXER: State your name please.

MS. MANES: I'm sorry -- Eileen Manes, multifamily loan program

MR. OXER: I know he just said who you were but you've got to say who you are.

MS. MANES: So the first item to discuss is the third substantial amendment to the one-year action plan for the NSP3 refunds. We brought this as a draft amendment to the Board back in February. And after that draft was approved and public comment was put out we discovered that the census tract that was posted in that was a little less broad than it needed to be and included block levels. We wanted to extend that to the entire census tract.

So we made a correction and we ran it in the Texas Register. And in your Board packet it says that we're rerunning that public comment from the 11th through the 25th of May. We actually didn't get it into that Texas Register so it's actually running again the 18th through the first of June.

So the only thing in this is the correct edition of the census tract. And we're asking that you approve that amendment contingent on the receipt of no negative public comment. To date we've received no public comment either way, positive or negative.

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

DR. MUÑOZ: Second.

MALE VOICE: A motion has been to approve and seconded.

MR. OXER: I'm sorry. Say it again.

MALE VOICE: Motion was made by --

MR. KEIG: Mr. Keig.

MR. OXER: Keig. Second by Dr. Muñoz to approve staff recommendation. Any other comments of the Board?

(No response.)

MR. OXER: Any other comments from the folks?

(No response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: It's unanimous. Thank you.

MS. MANES: Okay. So the next item -- still Eileen Manes, multifamily loan programs manager -- is -- it's a discussion about the NOFAs that were put out for NSP1-PI and NSP3 NOFAs and the contracts that were entered into for the NSP1 funds.

After all of those were put together, which have been over a course of two years, we were given some guidance by HUD that said that there needed to be a differential between subrecipients and developers.

All of our multifamily contracts are awarded under developer agreements, and they discussed both an allowance for developer fee and activity delivering cost. And the guidance that's been put out by HUD says that they're not entitled to both of those.

So the request that staff is making is that we are given the authority to amend the NOFAs as necessary as well as enter into

amendments for those contracts to correct the language based on HUD's guidance.

MR. OXER: So just giving you the authority to go do what you need to do.

MS. MANES: Exactly.

MR. OXER: Okay. Any comments from the Board? (No response.)

MR. OXER: Entertain a motion.

MS. BINGHAM: Move to approve.

MR. OXER: Motion by Ms. Bingham to approve staff recommendation.

MR. GANN: Second.

MR. OXER: Second by Vice Chairman Gann. Any other comments? (No response.) All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: Unanimously in favor.

MS. MANES: Thank you.

MR. OXER: Okay. Next?

MS. YEVICH: Good morning?

MR. OXER: Hi. How are you?

MS. YEVICH: I'm Elizabeth Yevich, director of the Housing Resource Center. And I'm here regarding item number 3, which is the status

report on the Comprehensive Analysis of Rural and Farmworker Housing in Texas.

And on May 23 of last year TDHCA entered into a contract with Bowen National Research to conduct this analysis. The Department plans to use this report to assist with program planning and that we share with community to demonstrate need and provide recommendations for the creation of affordable housing in rural Texas and for farmworkers in Texas.

And I am pleased to report that the study is not only in its final stages but that Patrick Bowen, president of Bowen National, is here with us today to talk about the study. Mr. Bowen has prepared and supervised thousands of market feasibility studies for all types of real estate products, including affordable family and senior housing, multifamily, and market rate housing.

And Patrick has worked closely before with many state and federal housing agencies to assist them with their market study guidelines. And I think Patrick would attest that he has worked closely with TDHCA on this current study.

We are very pleased to have contracted with Bowen and we look forward to possibly continuing and building on this work. And, with that, here is Patrick Bowen.

MR. BOWEN: Good morning, Mr. Chair and Board members. Again, I am Patrick Bowen of Bowen National Research, the principal of the firm. Our firm does about 400 market studies a year throughout the United States and our specialty is in affordable housing.

Our firm was retained, as Ms. Yevich said, by TDHCA in May of 2011 after we responded to an RFP to do two concurrent housing needs assessments. One study considered housing needs and development issues in rural counties of Texas. The second study considered housing needs and development issues for rural farmworker counties in the state.

The executive summary for the draft -- executive summary draft for the rural housing study I believe is included in your packets. And my understanding is last month before your Board meeting in your packets was the executive summary for the farmworker housing study.

I'd like to begin first talking about some of our key findings for the rural housing study. And if it's okay with you, Mr. Chairman, I'll follow that up with the findings from the farmworker study, and then I'll open it up to questions if that's okay.

Based on the criteria established in TDHCA's RFP for the rural study we evaluated those counties that were defined by -- as non-MSA counties identified by the Office of Management and Budget. Based on this definition 177 counties were evaluated across the state that met this criteria. And I think on the second page of that executive summary for the rural housing study is a map that shows the counties that were evaluated.

Our scope was pretty comprehensive. It was a very involved process. We evaluated demographic and economic characteristics and trends, the housing surveys -- conducted a housing survey on affordable housing, apartment rentals, for sale housing alternatives, manufactured home communities.

We also conducted over 200 stakeholder interviews across the state and identified barriers to development and completed a housing gap analysis for all 177 counties, as well as we aggregated some of that into the 13 service regions of Texas. And we concluded our report with recommendations.

It's important to understand, we reached out to over a thousand people across the state. So there was a lot of contact made. We got a lot of incredible input from a diverse group of people. So it's a fair, comprehensive study, and I think the findings will warrant that.

So I'd like to just discuss real quick with you just the findings from the rural study. Some of the key findings include demographic growth trends. Between 2010 and 2015 it is projected in rural Texas that population growth will be about 1.3 percent, household growth will be about 1.5 percent -- that's pretty small growth. For comparison purposes in urban areas of Texas the growth rate for each of those, whether it's population or households, is about seven times that rate. So not very much growth in rural Texas.

One of the more interesting findings that we had was -- or that we found was demographic trends and migration patterns indicated that younger people in rural Texas and families typically under the age of 25 appear to be leaving the rural areas of Texas.

The senior population -- the older population, age 55 and older, in rural Texas are growing rapidly. Rapid senior demographic growth trends in our opinion are likely going to lead to a greater need for senior-oriented

housing in rural Texas.

Historically, rural Texas regions -- the greatest demographic growth have been those with large metropolitan areas -- those regions that have large metropolitan areas contained within them -- primarily those located in the central corridor of the state. So any of those rural counties outside the MSA of Dallas/Fort Worth, Austin, San Antonio -- that's where a lot of rural counties are seeing the growth in terms of demographics.

Job growth in rural Texas between 2006 and 2011 has been modest, increasing by only 2.2 percent. That's about one-third of the job growth that you've seen in the urban areas of Texas.

And while rural Texas regions -- their economies have remained generally stable and just with some modest growth one of the key findings that we came across was that over the past five years over 55,000 jobs have been lost in rural Texas in the agricultural-related industries. And we'll see when I talk about the farmworker findings that has significant impact in some of our conclusions.

One of the things that we did goes beyond the scope of what we were asked to do but we thought was critical, we conducted a survey of 860 affordable housing properties in the state. So this is tax credit, it's HUD projects, public housing, USDA-financed projects.

And from that survey -- by the way, that's about 85, 90 percent of all affordable housing projects we identified, so it's pretty good coverage in terms of what we surveyed. Based on that survey the combined occupancy rate for those affordable housing projects was 97.3 percent. And that's a very

high number as I'm sure you all know.

One of the things that you need to understand is, you know, in a typical market, in a healthy market, a well-balance market, the market should be around 95 percent occupied. When you get into that 97 percent range or higher you start to have a housing problem, and that often leads to folks choosing to live in rent-overburdened housing situations -- substandard housing and things like that.

We also conducted a survey -- an inventory survey of for sale housing and manufactured homes. There is a good base of available for sale housing product that we identified in rural Texas, much of this product priced under \$100,000. So it would appear there's a lot of affordable product for folks in rural Texas.

But what we also found out is much of this product was built prior to 1960, so it's older product. And while we didn't physically go out and visit these properties, through the stakeholder interviews that we did the opinion was that a lot of this 50-year-old product was in poor condition and, while still available to low-income people, their housing choices are usually substandard or low quality for sale product.

One of the other things that we had done was completed a housing gap analysis. In doing this we followed some -- a similar methodology as the TDHCA requires on a typical 9 percent application process. And we looked at substandard housing, rent overburden, overcrowded housing. And from that analysis we created a housing gap estimate.

So, again, it's taking this universe of low-income households that live in certain housing situations and matching it up with the affordable housing supply, and what's left over is the housing gap. And we did this for all 177 counties in the state. From this we estimated a housing gap of 85,000 affordable rental housing units and over 33,000 affordable for-sale housing units.

In that executive summary that you folks have, on page 20 and 23 are the maps that show that housing gap for the rentals and for sale products respectively. Now, what these numbers mean -- doesn't mean that you need 85,000 new rental units of affordable housing in Texas, it doesn't mean that you need 33,000 new for-sale units. What it tells you is that you have, you know, this number of folks that are living in substandard, living in rent overburden housing situations in your state in the rural areas of the state.

And so those regions or counties that have the largest housing gaps will be those that in our opinion need to have most of the attention paid to, whether it's through financing or through developing community.

In summary in terms of the findings, we found that the greatest rural housing gaps are in the eastern half of the state in areas with the larger rural populations. We found that rural counties on the periphery of urban and metropolitan areas have the greatest need, as well as rural counties in southern Texas located along or near the U.S.-Mexico border.

And while all low-income segments that we evaluated -- and we looked at houses up to 80 percent of AMHI, or area median household income, renter household gaps were the largest among the households with

income that's below 30 percent of AMHI and the for sale housing gap seem to be the largest between -- with households with incomes between 31 percent and 80 percent of AMHI.

At the end of the executive summary for the rural housing study we made 15 recommendations. And I won't go into the specific recommendations because they can be very involved and could be a long conversation.

But, generally, we broke those into a few different sets. Some of those recommendations are programmatic or financial-related recommendations. Other recommendations related to structural or maintenance issues of existing housing. Some of those recommendations also involved building partnerships between private and public sectors. And then we have recommendations just providing general education and outreach efforts involving affordable housing.

The second study that we completed was a farmworker housing study. This considered the farmworker housing needs and issues in rural Texas, specifically associated with those with migrant and seasonal farmworkers.

And based on TDHCA's RFP we evaluated those rural counties of Texas with 1,000 or more migrant or seasonal farmworkers based on the 2000 migrant and seasonal farmworker enumeration profile study that was conducted in Texas. So that was the bar -- the initial screen of what we looked at.

And based on this criteria 49 counties were considered in our

analysis. And I know you don't have the executive summary probably from last month, but on page 2 of that executive summary is the map that would show which 49 counties of the study.

The scope of the farmworkers' study included inventory -- a survey of farmworker designated projects, also surveys of farmworker affordable housing alternatives available, for sale supply, manufactured homes.

Much like the rural study we also looked at demographics, economics, and those other metrics. And we provided estimates of farmworkers for all 49 counties that we studied. And we completed 50 stakeholder interviews directly associated with farmworker issues, identified barriers to development, and then provided recommendations at the end.

Some of the just quick key findings -- we estimated -- and I'd be glad to go through the process of how we estimated -- it was incredibly involved -- but we estimated there were 34,520 migrant or seasonal farmworkers in the 49 rural counties that we studied.

And just to backtrack real quick just so you understand as I make a couple of references, the study geographically was broken up four ways. We had the Region 1 -- service Region 1, which is the High Plains area -- it's the Lubbock, north of Lubbock -- Region 11, which was the South Texas border region along the U.S.-Mexico border, Region 12, which was the West Texas service region which fell between those two previous mentioned region, and then there was the balance of state. So that was any county that fell out of these three regions that met the criteria for the farmworker study.

So the balance of state region, which includes 20 counties, and was the largest geographical area that we studied had the largest number of estimated farmworkers -- there was over 13,000 of those which represented about 40 percent of the farmworkers we estimated in the studied counties.

Our Region 1, that High Plains region near Lubbock, had 11,000 -- estimated 11,000 farmworkers. And then Region 11, the south Texas border, and Region 12, west Texas region, had about just under 5,000 estimated farmworkers.

One of the demographic findings that we had -- and I mentioned earlier for the rural study that we completed -- had to do with economics -- you know, the job losses in the agricultural-related fields. In the -- between 2000 and 2010 agricultural-related jobs -- job losses ranged from 1,200 in Region 12 to as many as 6,900 in Region 1.

Well, these job losses are not all among migrant and seasonal farmworkers. These declines support our belief and what we were getting through a lot of the stakeholder interviews is that the farmworker population is declining in Texas.

Generally farmworkers have relatively low incomes as evidenced by the fact that 90 percent of farmworkers make less than \$30,000 annually. Comparing this with -- well, and the largest share falling within the 10- to \$20,000 income range, which is about half of estimated farmworkers.

In comparing this with the rest of rural Texas, regardless of those farmworkers or not, 45 percent of all people or households make less than \$30,000. So it's clear farmworkers have a disproportionately high share

of low incomes thereby limiting most farmworkers to affordable housing alternatives.

Like we did in the rural study we also conducted a survey of rental housing in the four study regions. Most of the farmworker housing facilities that we identified typically are operating between 90 and 100 percent occupancy, although obviously during seasonal changes other factors such a drought, wildfires -- that occupancy rate can drop. But typically these properties are operating between 90 and 100 percent occupancy.

Of the non-farmworker but affordable housing projects that we surveyed -- again, this would be tax credit, HUD, public housing, and so forth -- the occupancy rate in the farmworker rural counties was 97.6 percent. So it's a very high occupancy rate. And what that is telling us that there are, again, not a lot of options available to farmworkers, even in non-farmworker designated housing projects.

Based on our for sale housing analysis we -- which included inventory of available for sale housing alternatives within the study area -- we identified over 1,100 housing units that were priced below \$100,000. Approximately 90 percent -- just to give you a perspective of who can afford that, approximately 90 percent of farmworkers making less than \$30,000 a year -- most of these farmworker households at best could afford a mortgage payment of about \$600 a month.

Based on our research the average home price in these rural counties would yield a mortgage payment of anywhere from about 700 to \$900 a month. So very few farmworker families would be able to afford for sale

housing alternatives without some kind of assistance.

We also completed a housing gap analysis as we did in the rural study. We took the universe of estimated farmworkers for each of the counties and matched that up with the existing housing supply of farmworker designated housing. And overall in these 49 counties there's a housing gap of 28,000 housing units that would -- could be needed for farmworker-designated housing.

While farmworkers have other non-farmworker-designated housing options from which they can choose, as shown in our survey of housing alternatives the high occupancy rates there truly are not very many available options to these folks.

And just to summarize, you know, while the number of farmworkers appear to be declining there remains a large base of farmworkers who are not housed in farmworker-designated housing. We have limited availability to afford housing options based on our survey.

Given the unique employment situation, short-term housing needs, transient housing needs often associated with farm work, many farmworkers have difficulty security affordable housing. And, as such, the affordable housing industry should continue to explore means to provided housing to meet the specific needs of farmworkers.

The last thing I'll say to you is we had a series of recommendations that was included at the end of that executive summary. And these were generally again categorized, and without going into the specifics had to do with physical structures or temporary housing needs of

migrant farmworkers, outreach and marketing efforts, and then programmatic or just housing development issues.

So, with that said, I'd be glad to answer any questions.

MR. OXER: With respect to the recommendations you make on this, do you offer up any suggestions about how to meet this demand that are results of your experience in other states?

MR. BOWEN: Well, I think, you know, any approach is going --

MR. OXER: Basically what I'm asking is you got any ideas that we've --

MR. BOWEN: You know what? Whatever needs to be done it's going to have to be multifaceted. There's not one answer that would be the solution. It's not like you create a housing program specifically for farmworkers and that's going to solve this problem.

Because there's a lot of programs that exist in your state farmworkers could have access to. But one of the problems is they don't know about these programs.

MR. OXER: Uh-huh.

MR. BOWEN: Support service providers may not know how to communicate how these programs work and the best uses of them. So our recommendations, as you'll see -- you know, there's a lot of good things that this state offers that can help meet the needs of affordable housing.

But then also, you know, you should explore some of the other alternatives that are available. We case-studied programs in Texas -- I'm

sorry -- Florida, California, Oregon, Washington -- and those states have some phenomenal farmworker housing programs.

And didn't include those in our recommendations. And the reason was is that Texas is, I think, in my opinion is behind these other states in terms of how you address the needs for farmworkers. And so our recommendations is to start with -- you know, start with basic issues, start with basic programs, and then explore some of these more advanced really innovative programs that some of these states offer because there are some great ones out there.

MR. OXER: Good. Thank you. Any questions for the Board?

MR. BOWEN: Thank you all very much.

MR. OXER: Elizabeth, you have anything to add to this? Okay. This is a report item only not requiring Board action on this item as I understand. Correct? Good. All right.

It's that time of the day, folks, and some of us need some calories to keep going. We have -- we do have a comment. That's what I asked and nobody stood up. So -- all right.

MS. TYLER: Thank you. My name is --

MR. OXER: My mistake. I didn't see you in the on deck circle there.

MS. TYLER: Well, my name is Kathy Tyler and I work for Motivation, Education, and Training, which works with farmworkers. And I work in affordable housing for farmworkers, so I really wanted a chance to

comment and appreciate the chance to comment.

This is the second time I've ever come before you, and the first time was January 20, 2010, to implore you to do more for farmworker housing.

And as a result the Board supported and the Department took on these studies, and we're so excited to have both the results of the farmworker study and housing study as well as the rural housing study.

We're not surprised by the gap -- the housing capacity gap that is shown and the need for farmworker housing. It's been our experience what we have seen. And we'd love to work on, as you said, what we can do to fix the issue.

We brought together over -- about 45 people together yesterday and Patrick Bowen presented to us the results of the farmworker housing study and we had some really great discussions and it was good to have the information provided.

And I would just urge the Board to really pay attention to the recommendations and figure out what the Department can do to follow the recommendations. It's so great to have the data and the ideas behind the study.

The group that met yesterday looked at the recommendations, brainstormed around how do we accomplish these recommendations and what do we do. My organization is really committed to doing whatever we can do to follow through on it.

And just a couple of ideas from yesterday and from looking at the recommendations, there's a huge need for preservation of the farmworker

housing that we do have. You know, we only have 552 housing units dedicated to farmworkers -- reserved for farmworkers in the state.

Most of those are very old. They were never built with amenities. They were built to be very modest and to provide just basic shelter. So they're old, they were never great to begin with, and they need to be preserved or redeveloped to provide the type of housing.

Seventy percent of those 552 units are publicly financed, most of them through USDA's Rural Development program, and they don't have the programs to keep them -- to bring them up to standard. And I think the preservation of what we have plus the redevelopment of what -- new development of what's needed would help.

As Mr. Bowen just said, one of the -- or many of the recommendations which is geared to how do we increase our capacity to work in farmworker housing -- the development community is not geared towards looking at farmworker housing. There's -- I think there needs to be more information, clearer ways of doing it, a reason to go develop the housing for farmworkers instead of we need those kinds of programs in place. And that's really important.

And as great as it is to have this study we were also very impressed by the gaping sort of limitation that it was -- they were only instructed to look at housing -- farmworker housing in rural areas and, as he said, looked at the housing that the enumeration showed -- looked at the counties where enumeration studies showed more than a thousand farmworker were residing in those communities.

And as we looked at it yesterday it's -- there's a glaring lack of information because two counties, Hidalgo County and Cameron County in southern Texas, according to the 2000 enumeration study, have 25 percent of our farmworkers. So our farmworkers are not located only in the rural areas. They're -- they may be working in the rural areas but they're living in our urban areas as well.

So it occurred to us that we really need to look at the farmworker housing issues statewide -- all counties -- not just 49 counties that the Bowen study was instructed to consider.

Again, we're very excited and we thank you for your commitment to it. We hope that this is a way to initiate a lot more. And we're here to do whatever we can do. We're ready to do our part. So thank you very much.

MR. OXER: Good. Thanks for your comments. Any comments from the Board -- questions from the Board?

DR. McWATTERS: On the recommendations -- there are 15. Should we looked at these as weighted equally? Are there two or three that you would move to the very top of the list? And this also applies to Mr. Bowen if he has any comments.

MS. TYLER: In your farmworker study there was nine recommendations and he described that they were broken out. I'm in favor of all nine. We talked about it in our group yesterday and tried to prioritize it. It was difficult to prioritize because all of them are so important.

I would think the easiest ones to do are -- were related to

outreach and education. And maybe those are -- since they're easier can be done quicker. The ones that require funding and maybe new programs might take longer. And I wouldn't suggest we delay on that -- I think we need to, you know, start considering that right away. But I don't expect a lot of the recommendations to be quick. Some of them take a long-time commitment.

MR. IRVINE: And I'll say it would be incumbent on staff to weigh in and also provide some recommendations on prioritization.

MR. OXER: Right.

MR. BOWEN: We didn't prioritize. We didn't rank them because it really ends up being, you know, what is the strategy to address these issues. And some of these, as Ms. Tyler said, are fairly simple. There are outreach -- there's things you could you do online to just build information systems -- things like that.

And then there's some of the stuff that's pretty comprehensive that's going to take a while to work your way through. So it just really depends on what your -- you know, the Board, the Agency's strategy is for addressing this need.

DR. McWATTERS: Thank you.

MR. OXER: Good. Any other comments from the Board?

(No response.)

MR. OXER: Yeah, and as these things go typically they take an earlier investment of intellectual capital to pave the way for future investment of financial capital to solve the housing capital.

Okay. Are there any other questions? Anybody else want to

speak? Is there anybody else in the row here -- on the on deck circle?

(Pause.)

MR. OXER: Good. All right. We're going to break for executive session.

And before we break I'd like to recognize Hashan Mack. Is he still here? From the Governor's -- Lieutenant Governor's Office? He may have stepped out. Anyway, we appreciate the attention and the interest from the folks here.

It's nine after noon right now. We're going to be -- let's get back in our chairs and be ready to go at 1:15 sharp.

(Whereupon, at 12:09 p.m., the meeting adjourned to reconvene this same day, Thursday, May 10, 2012, at 1:15 p.m.)

AFTERNOON SESSION

1:19 p.m.

MR. OXER: Okay. The Board is now reconvened in open session at 1:19.

We took up no action. It was only for discussion of legal issues. And the board took no formal action there. Any formal action to be taken will be taken in full Board before the public. So where are we? Are we on number 4?

MR. IRVINE: We are on item number 4.

MR. OXER: Item number 4. Tim.

MR. NELSON: My name is Tim Nelson. I'm the Director of Bond Finance.

The item that we have before you today is Resolution Number 12-029 authorizing the sale of mortgage certificates and redemption of related bonds from both our Single Family Mortgage Revenue Bonds Series 2002ABCD and our RMRB Series 2002A.

By way of background the Board, you know, should know from prior times that we've been before you that in almost all the single family transactions at least that we structure we build in a ten-year optional call right.

So these particular transactions were done in 2002. We're now in 2012. So you now have an opportunity to take a look at the economic environment that's out there now. If it makes economic sense to sell the underlying collateral, redeem the bonds, and reap that economic benefit at that point in time you're allowed to do that.

That is what we're seeking to do here. I will say this is not uncommon. The Board has authorized in the last two years four similar transactions. I would like to point out a particular interest of what we're looking for today, and it's in your write-up on page 2 and it's also in our resolution that we're proposing.

That in all of these transactions that we do, in order to effect the transaction and redeem the bonds we need to get from counsel a number of opinions. But one of the opinions is that the transaction that we're contemplating does not violate the taxable mortgage pool rules, which is the sub-regulations that the IRS put in place in the mid-'90s. It regulates debt transactions that the debt is being used to finance real estate-related mortgages, which is, of course, what we're dealing here.

In most of our transactions we don't have any issues with that. I will say that on the MDS sale that we're contemplating for the single family transaction -- the 2002ABCD deal -- in large part because we have participations in those pools that go to multiple series of bonds that counsel has advised us that they don't believe that given the facts that are in this present deal that they can give us a clean legal opinion with respect to the taxable mortgage pool.

And so we are asking the Board, you know, with your action today to authorize staff to work with counsel to approach the IRS to get a private letter ruling clarifying that -- because it's our belief that it was not the IRS's intent that with those regulations that they prevent the type of transaction that we're contemplating here.

But it's an area that has not been explored a whole lot in the past, so I think it's our recommendation that both -- because it would impact this transaction and several million dollars' worth of economic benefit that we have on this transaction. But, almost more importantly, because we have participations in just about every deal that we did in the early -- in sort of the '02 to '09 time frame we are going to run into this issue this year, next year -- I think every year through -- probably the last transaction that we have participations on is our '09 deal which would take us out to 2019.

So this is a transaction -- or this is an issue that's going to effect hundreds of millions of dollars worth of bonds that we have out there to potentially restructure over the next seven years. And so we think rather than just not doing anything that it would be most prudent that we approach the IRS and ultimately get clarification as to is this something that you wanted, you know, to prevent.

So, with that, I'll say that staff's recommending approval and I'll be more than happy to address any questions. We do have bond counsel with us today if you've got any questions that become more technical than what I can address.

MR. OXER: Okay. Any questions?

MR. KEIG: Quick question.

MR. OXER: Mr. Keig.

MR. KEIG: About how long does it take now to get a private letter ruling?

MR. NELSON: Well, it's an indeterminate amount of time, but

we've looked at similar types of private letter rulings that have been requested.

And I think the last one that we think is most on point -- I think it took them about 12 months. So if we were to move forward with this it's not something that we're going to get an answer by the fourth of July -- more likely it will be the fourth of July of next year. But the point is we're not ever going to get an answer unless you start down that path.

MR. OXER: You never get an answer until you ask the question.

MR. NELSON: Correct.

MR. OXER: I think glaciers have melted faster than that.

DR. McWATTERS: Is there any other interpretive guidance that we can rely on without going -- with the PLR?

MR. NELSON: Well, you can go back and look at the legislative history. You can go back and look at -- as always, as with rules that we promulgate, those get posted. They go out for public comment and people ask questions -- and there's that whole process.

We've looked at all of that. Again, the real problem that we have in this area is that, again, we're asking for a legal opinion. And the standards for that are very high and I think that -- and, again, I would invite bond counsel to maybe come up and address this a little bit as well.

But I think in order for them to gain comfort to the level of being able to give us an unqualified opinion I think they would need that clarification from the IRS even as they read some of those other materials. And, again, I'll let Elizabeth address that maybe more specifically.

MS. BOWES: Elizabeth Bowes with Bracewell & Giuliani. And, yes. I mean, that's exactly the problem. The requirement, because we've sold securities that are backed by these bonds, is that we need to be able to give an unqualified opinion that the sale isn't going to affect the tax exempt status of the bonds that are outstanding or result in treatment of this entire transaction as a taxable mortgage pool. You've sold securities based on clean legal opinions, and you'd have to get an unqualified opinion. It's not --

DR. McWATTERS: You have to render a "will" opinion. Right?

MS. BOWES: Absolutely.

DR. McWATTERS: A "will" opinion, not a "should" opinion, not a "more likely than not" opinion, but a "will" opinion. And you're saying that the only support for that "will" opinion that your firm is willing to rely on is a private letter ruling?

MS. BOWES: Yes. In this case based on the fact that there's very little guidance and definitive guidance. There is, of course, legislative history. But if you -- the argument and support of the position -- and we haven't started this research in, you know, the detail that we need to to submit a letter ruling request. But what we've looked at so far causes us to think that the policy arguments aren't on your side.

MR. KEIG: Are not or on?

MS. BOWES: There are policy arguments on the side of the conclusion that we want to reach here. But the technical language causes us

problems in several instances. So, you know --

MR. OXER: It's uphill but not steep.

DR. McWATTERS: Have other PLRs been issued on this same point?

MS. BOWES: On exactly this point? No.

DR. McWATTERS: Okay.

MR. OXER: Yeah, I was just going to say let's not get too much advice in open session.

DR. McWATTERS: Fair enough.

MR. OXER: Ms. Bingham?

MS. BINGHAM: Are you ready for a motion, Mr. Chair?

MR. OXER: Yes, apparently we are.

MS. BINGHAM: I'll move to resolve to approve the sale per staff recommendation.

MR. OXER: Okay. Motion by Ms. Bingham to approve staff recommendation to resolve for this sale.

MR. GANN: Second.

MR. OXER: Second by Vice Chairman Gann. Is there any other comment?

(No response.)

MR. OXER: Nobody wishes to speak? So with that, all in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: And there are none -- unanimous. Thank you.

MR. NELSON: Thank you.

MR. OXER: Yes, sir. Okay. Hi, Tom.

MR. GOURIS: Hi. It's been a while.

MR. OXER: It has.

MR. GOURIS: The next item --

MR. OXER: Welcome back.

MR. GOURIS: Thank you. Tom Gouris, Executive Deputy Director for Asset Analysis and Management. The next item is a possible approval -- discussion, presentation, and possible approve of two rules for -- final order for two rules, the right of first refusal rule and the qualified contract policy.

And these were brought to you last month and ended up being tabled because of some public comment with regard to the right of first refusal rule. We have had conversations with the folks that had the concern and have addressed I think their concern in that the scope of this rule doesn't cover all of the things that they were looking to cover but are things we will continue to consider as we process through future rules.

MR. OXER: Okay. Any questions from the Board? There are no speakers that have requested to speak. Okay.

MR. KEIG: Move to approve staff's recommendation.

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

MS. BINGHAM: Second.

MR. OXER: Second by Ms. Bingham. Any other comments?

(No response.)

MR. OXER: All in favor.

(A chorus of ayes.)

MR. OXER: All opposed.

(No response.)

MR. OXER: Unanimous.

MR. GOURIS: Thank you.

MR. OXER: Okay. Item number 6 on Appeals. Mr. Dorsey, how nice to have you back, sir.

For the folks that are aligning themselves in our front row in the one deck circle -- or on deck stripe here, I remind you that we're taking priority on this side -- my right, your left. You're going to be first in the box if you want that end seat. Okay? Do we have enough chairs for everybody? Okay. Cameron, have at it.

MR. DORSEY: If I can -- sorry. Cameron Dorsey, Director of Multifamily Finance. If I can indulge the Board for just one moment I just want to say one brief thing before I start on this.

I -- my role is to implement the rules that you all approve and that everyone is out there to play by. I want to make it real clear with both the transaction that came earlier as well as the ones that are about to come up that my comments are not related to the worthiness of any particular transaction or, you know, the good work that a lot of these folks do. If we

terminate an application it is simply that they didn't meet the rules per my reading as well as our general counsel.

MR. OXER: To echo that comment I would suggest from the Chair's point that all of these projects are worthy and they have need and we recognize that. Still in all we have a competitive process. We wind up having a set of rules we've got to apply. So, please continue.

MR. DORSEY: All right. So this first transaction is -- well, we're dealing with two appeals here. These are appeals of terminations of applications submitted under the 2012 competitive housing tax credit cycle.

The first appeal is for Freedom's Path at Kerrville, Application 12199. This application was submitted by the deadline of March 1.

However, when we began our review of the application it became clear that our review could not be completed because there were several critical missing -- pieces of missing information that encompassed the architectural plans, the title commitment, and several other documents in the application that are really critical to our review and underwriting of these developments.

The missing information effectively would have required that we stop our review, send one set of deficiencies to resolve just these missing pieces of information, and then get those back and kind of start the review again.

The reason we would have had to start it again is because our review covers, you know, eligibility items, threshold items, and selection criteria. And the missing information really cut across all of those reviews for various pieces.

There was a bit of a complication in this one because a challenge was received prior to our starting the review. We allowed the applicant to respond to that challenge, and the challenge brought up some of the missing pieces of information. So by the time we actually got to our review that information was in house, but per the rules it wasn't included in the application at the time it was submitted on March 1. And so that's how we're -- we're applying the rule as it was written and -- even though in response to the challenge some of the missing information had come in.

The termination was for a material deficiency in the application as well as missing parts -- several missing parts -- multiple missing parts to the application. A material deficiency is one that rises to the level of requiring -- where a resolution requires substantial reevaluation or re-review of the application.

And we felt given the architectural plans being missing and the title commitment being missing, and all of the various checks that occur with these elements of the application that it would constitute a material deficiency.

And that was reviewed with our general counsel and executive director. So that's the reason for the termination.

The applicant did appeal that termination and has expressed that -- and has provided documentation that I believe does indicate the -- they had the information prior to March 1. It simply did not correctly get included in the application itself.

I don't think that this was really a computer glitch per se. The -- I can't say with absolute certainty because these things can never be

confirmed with absolute certainty. But given the fact pattern I would suggest that there is a high likelihood that this was simply a user error that resulted in pieces of the application missing.

MR. OXER: Okay. Does the Board have any questions of Cameron before we proceed with public comment?

MR. DORSEY: Staff recommends denial.

MR. OXER: Okay.

MR. KEIG: I move to approve the appeal.

MR. OXER: And your position is to not deny the appeal, Cameron. Okay? Motion --

MR. DORSEY: Staff is recommending no.

MR. OXER: Okay. Motion by Mr. Keig to approve the appeal, which is counter the staff recommendation.

MR. KEIG: That's correct.

MR. OXER: Okay.

MS. BINGHAM: I'll second.

MR. OXER: Second by Ms. Bingham. Okay. We have public comment.

MR. TAYLOR: Good afternoon, Mr. Chairman and Board and staff. My name is Craig Taylor. I am the President of Communities for Veterans. We are the applicant for the Freedom's Path of Kerrville application.

I'd like to begin by saying a little bit about our process. We submit applications in a number of states around the U.S. Our process is the

same with every application. Before we do anything in submitting an application we collect the entire application in a hard copy in paper format.

Four sets of eyes review that application -- it's usually a very large stack of paper. We go through and ensure that every piece of paper -- every aspect of the application is there in fact and substance.

We then scan that application into our hard drive system. And then depending on the state -- well, further, we back that up with an electronic version of it -- either a thumb drive or a CD.

And depending on the state we submit usually a hard copy paper copy and a CD or a thumb drive for that application. Texas is unique in that you only require the submission of one document -- or one format of the document, and that's in a CD.

We have no idea -- and I -- you know, we just don't what happened. But in our paper version of it -- our hard copy -- we have the entire application. On our computer -- on our hard drive we have the entire application. In our CD backup we have the entire application.

The only place that the entire application was not was on the CD submitted to you -- or at least in the upload of the CD that was submitted to you. And we have no clue as to why that happened.

Let me just add that I am a veteran myself. And I was -- served way back in the '70s. I was a missile launch officer -- nuclear missiles in North Dakota. And we had a system of redundancy -- a failsafe system -- make sure we didn't launch missiles wrongly.

And so my friendly comment to you all would be that having

only one aspect of an application does open the process up to some kind of glitch -- to some kind of error. And we're in a position where we cannot document to you proof that it didn't exist.

What we can document to you -- and so the second part of what we provided in our appeal request is that this thing did exist in its entirety prior to March 1 in every format that we have it.

So it was -- it's there. There was no reason whatsoever -- no gain in the system, no not having the information and hoping we could get it in, and then slip this in later or anything like that. It was all there when we submitted the application. And we don't know why it's not on the website when it's uploaded.

But it is. And so -- when we got the termination -- what do we do about that? So the next thing we did was look at -- well, what, in fact, does this mean. And the other side of not having but one piece of information which could be looked at as critical of your process. The other side of your process is it is very thorough. And so in your application the information that is requested is oftentimes redundant. It's duplicated in a number of areas.

So when we looked at that we found that instead of a material deficiency of a lot of information most of that information in the application is there. It may not -- have been in the appropriate tabs of the application but it is throughout the application.

And so in our appeal we noted any number of places where the information from zoning to amenities to unit mix to square footages to certifications from the architect and site amenities and so forth was in the

application.

So when you look at all of that and you distill it down you find that it is really not a large amount of material that is not in the application. It is, in fact, a very, very small amount of information that's not available throughout the application.

And so for that reason we felt like this was not a material deficiency but may be something that was an administrative deficiency and except for the provision of this document or that document the application would have been done in full.

I'd just like to conclude with more of an editorial comment in this regard. There has been some -- I mean, something did happen because it's not there. So on the one hand what we have is some kind of glitch. And we don't think it was user error. We have every belief that we had everything that was there. We don't know what happened, but there is some kind of glitch on the one hand.

On the other hand this project does have merit. There are 22 million veterans in the United States, only 7 percent of the population. For that population I think all of us would agree that much of the freedoms -- much of the opportunities that we all enjoy came from those veterans.

Nine million of those veterans are 65 years of age or over. Texas has the number two veteran population in the country, and many of those veterans are older veterans or disabled veterans who would be eligible to live in this housing.

We have a paucity. Compared to farmworkers' housing and

other kind of housing we have a paucity of housing for low income and disabled veterans. This is an opportunity to produce that housing on a V.A. Medical Center campus. It's an opportunity of a lifetime, if you will.

And so I want to contrast for you some kind of cyber gremlin -- some kind of computer glitch on the one hand and this opportunity to let this application live to compete in the whole cycle on the other. Thank you very much for your time.

MR. OXER: Thank you. Any comments from the Board?  
Any questions?

MR. BACON: Good afternoon. My name is Bill Bacon. I'm a Viet Nam veteran wounded in action during a gunfight with regular soldiers of the NVA, North Vietnamese Army, on July 30, 1970.

I represent the Hill Country Veterans Council based in Kerrville, as well as Heart of the Hills Chapter 814 of the Military Order of the Purple Heart.

First, I'd like to read a letter from Hill Country Veterans Council in support of Freedom's Path and Mr. Taylor. I believe you have a copy of this letter.

Dear Mr. Oxer, The 18,600 veterans of the Hill Country respectfully request the TDHCA Board to favorably consider the appeal submitted by the Freedom's Path of their Application 12199 for the award tax credits to funds veterans' housing project in Kerrville.

It is our opinion that a technology failure should not disqualify the application. This would unfairly penalize the veterans in need of housing

and life-enhancing programs the facilities will offer.

Your approval will provide the opportunity for the veterans' project to compete fairly with other projects. Thank you and the Board for consideration of this most worthy veterans' project.

I'd also like to add that the Hill Country Veterans Council represents ten veterans organization in the Texas Hill Country in working with Kerrville Medical Center and other related issues.

Further, I personally volunteer as a driver to Kerrville V.A. Med Center. Part of my duties are to drive out, pick up veterans who cannot drive or cannot get to their appointments at the hospital. We bring them in, they go to their appointments, we take them home.

One such veteran lives barely a mile away and you'd think he could easily walk, but his pulmonary problems won't allow him to walk that mile. So we pick him up and we bring him in and we take him home. His problems are exacerbated by leaks in his roof and substandard housing, by mold. And his landlord never seems to get around to repairing those problems.

He spent two years in the United States Army in country in Viet Nam. He is the type of person that will benefit from this project and we urge that you accept our appeal. Thank you very much for your consideration. Do you have any questions of me?

MR. OXER: Thank you. Questions from the Board? I do have something I'd like to say. Thank you very much for your service to our nation's defense and all you do out there.

MR. BACON: I did it for the money.

MR. OXER: Sounds like why I took this job.

MR. MILLER: Hello. My name's Gary Miller. I live in Center Point, Texas, which is Kerr County, Texas.

Like Mr. Bill Bacon before me I served in the United States Army in Viet Nam. However, I was drafted and I didn't make that much money. But I served anyway.

And I'd like to speak in favor of the Freedom's Path in Kerrville. I'm going to give you two versions of my explanation. The first version will be very short. The second version will probably take some time.

First version is I'd like to live there. The long version is I served eleven months in Viet Nam, was in the infantry out in the jungles and the mountains, and it was a very scary time for me. I'm not ashamed to say that. Many times I didn't think I was going to make it home.

I did make it home and I know one of the major reasons why I made it home was because the people I was with took care of me. There's no way in the world I could have done that by myself. And it came down to the fact that we knew what each other needed and we wanted everybody to go home. So we made sure if people needed something they got it.

A simple example of that is we'd go out on missions into the jungle -- you had to carry your food with you. You could take as much as you wanted to or you could take as little as you wanted to, but you had to carry it on your back. And in many cases you might skimp a little bit hoping that you're going to get a resupply in a few days.

Well, I ran out of food one night. And I don't know if I didn't take enough or I ate too much. But one of my buddies saw that I didn't have any food to eat and he opened a can of C rations, which is a little can of ham slices, and he offered me one of these ham slices. And I said, No, that's okay, I'm not going to take your food from you. It's my fault I didn't bring enough. And he insisted and I continued to say, no, I wouldn't. So finally he got me. He said, I'm going to take this can of ham slices and I'm going to dump them on the ground if you don't take any of it to eat. Well, I didn't want him not to eat, so I took a ham slice and I ate it and he ate some.

That's an example of how we took care of each other. Viet Nam veterans are now at least 57 years old, and that's going to be a baby Viet Nam veteran. I'm going to be 65 in October. We've got Viet Nam veterans that are probably in their 90s; served in World War II and they continued in Korea and went to Viet Nam on a third war.

We're getting old, we're getting ill. Many of us have done okay as far as finances go. We can take care of our medical and housing in good order. But many worked hard, they've struggled, they're going to need to have some help.

We're baby boomers. I'm an old baby boomer. You know what's happening with the population on baby boomers. We're all getting old at the same time, so there's going to be that pressure out there for affordable senior housing.

The beauty of the thing in Kerrville with the veterans housing there is, you see, the veteran gets two things that they need. They get a

place to live and they get their medical care and they get it at one place.

I brag on the medical care I get at Kerrville. My doctor's Dr. Swanson, and he's about five years older than me. I never want him to retire and I want to live to be 100 years old, so Dr. Swanson's going to be practicing medicine at 105.

Go out and ask how many people will brag on their doctors that they have and then ask them, Are you going to brag on your doctor in the V.A. system or in the government system? He's that good of a doctor.

I expect that the V.A. is going to demand that exacting performance from whoever operates and manages that housing out there. So why do I want to live there? I want to get the greatest medical care that I've ever gotten in my whole life and I want to live in a place that's full of veterans that are like my buddies were in Viet Nam and we can take care of each other again when we're old and we're sick and we need to have some support, even if it's just a little bit of word of encouragement from day to day.

So I ask you to approve this project in any form or way you can. If it wins hands down that's great. If there's a tie break the tie. And even if it's deficient in some manner show the preference share to the veterans. We want this, we need this, we appeal to you to approve it. Thank you very much.

MR. OXER: Thank you for your comment. Any questions from the Board?

(No response.)

MR. OXER: Cynthia.

MS. BAST: Good afternoon. I'm Cynthia Bast from Locke Lord. Mr. Chair, I do have a couple of handouts. And as --

MR. OXER: I assume that you brought 150 copies for everybody.

MS. BAST: Well, as Ms. Deane referenced this morning, the issue, of course, is that the rule requires five business days' advance delivery, which is concurrent with the publication of the Board book. And so it makes it very difficult to assemble something in that time frame.

However, I would like to say that these are simply your documents from your website, so they're already publicly available. If -- therefore, because they are already publicly available if you would you like to have these available to you I will make them available. If not, I will go without.

MS. DEANE: Your -- I believe your public comment rule allows you under exceptional circumstances to go ahead and allow documents. If they're your own documents you could always take, you know, official notice of them basically. They're already posted. It's discretionary with you if you want to utilize them and see them, and assuming she has copies to hand out to everybody.

MS. BAST: I do not have sufficient copies for everyone. As I mentioned it's on the website and --

MR. OXER: Will those be germane to your discussion? Do we need to see those?

MS. BAST: They are germane, but I can certainly quote from

them without you having to see them.

MR. OXER: Let's have you quote from them and we'll hold those.

MS. BAST: Absolutely.

MR. OXER: They are our own documents. We recognize that.

MS. BAST: Yes, sir.

MR. OXER: We posted them --

MS. BAST: Yes, sir.

MR. OXER: -- can see that they were public prior.

MS. BAST: My representation here today is for the developer --

MR. OXER: Hold on a second.

MS. BAST: I'm sorry.

MR. IRVINE: I would just like to ask, is there anybody in the audience that objects to these being provided to the Board?

MR. OXER: Since they're already public, is everybody all right with that?

MS. DEANE: I think the rule allows any Board member to object as well, so if any Board member --

MR. OXER: Okay. Does any Board member have any problem with that?

(No response.)

MR. OXER: Okay. So as long as we're not covered up, like

we used to get here last year -- we're hauling off a ton and a half of paper --

MS. DEANE: And this would only be because these are your own documents posted on your website. This is not --

MS. BAST: Yes, sir. And their only purpose is to highlight the specific rules to which I'm referring so that you have something immediately available to you so you can see those rules yourself.

MR. OXER: So without being too repetitious, we'll assume these are certifiable copies. Is that what you're saying?

MS. BAST: Yes, sir.

MR. OXER: Okay.

MS. BAST: The only modification has been, as I mentioned, the highlights that I put in. While she's passing those out, my representation here today is for the developer of Comfort Place, which is the only other application in rural Region 9.

So given the credit allocation for this region only one of these two applications is going to receive a credit commitment. And our client has just as much at stake in this appeal as the applicant.

I want to start by saying that this is not easy testimony to provide. Over the years here in Texas developers have been very reticent to speak publicly against one another in an appeal process because we try very hard in Texas to maintain a collegiality in our happy little family and to not be, perhaps, as cutthroat as some other states' tax credit competitions.

And this testimony is even harder because the Freedom's Path development is intended for veterans. And no one opposes housing for

veterans. No one wants to be seen as opposing housing for veterans. I respect and appreciate your service, and I hold you in the very highest regard.

But this is not about whether we should provide housing for veterans. This is about whether applicants for tax credits need to follow the rules that are clearly provided. There are no special preferences for any particular target population in this competition. And each applicant must follow the same rules.

So what you heard is that this application was terminated because Tabs 23 through 27 containing multiple forms and exhibits were omitted in the version of the application that was submitted to TDHCA.

And the applicant had tried in different ways to tell us that that noncompliance rule shouldn't matter. But absolutely it does. TDHCA has a standard form of application for a reason. It's carefully crafted to make sure that all of the elements of the statutes and the rules are incorporated.

And then TDHCA has a standard way to review this application. The staff members have certain procedures that they follow -- checking and cross-checking, going through their lists to make sure that all of the eligibility threshold and selection criteria are met.

For instance, with regard to the architectural plans, those are carefully checked against other elements of the application to make sure that the applicant's promises in the application about what they're going to be providing is actually what is going to be built.

So when an application fails to contain certain information or it's in the wrong place, that derails the staff review. And your staff has told you

that this application did not contain sufficient information for them to be able to complete the preliminary review.

So the applicant suggests that perhaps you should have just used a different review system -- one just for them -- that if you -- if the staff had gone and looked in these various other places in the application that they would have found what they needed. But to do this, by the applicant's own reference, they would have had to go to at least 20 different places in the application. And then they still wouldn't have had everything.

That's not the staff's job. With 162 applications in hand and limited personnel available TDHCA staff must be able to rely upon their standard procedures. If your staff were directed to go hunt for information when it's not in the proper place it would add hours and hours to the review process and it would make our competitive process run very inefficiently under those conditions.

Moreover, if you allow a special exception for just this application and how it should be reviewed then you don't maintain a level playing field for all of the other applicants who went to a great effort to put their applications in the right order in the right places.

The burden is on the applicant to present a complete application, and TDHCA makes that abundantly clear. And that's why I giving you these handouts. It starts in the application workshop when it says, Applicants are responsible for understanding all rules, statutes, and regulations applicable to the programs under which they apply.

It continues in the Application Procedures Manual where it

says, The procedures outlined within the application submissions manual must be followed exactly as stated for the application to be considered.

And then it goes on to say, The applicant must ensure execution of all necessary forms and supporting documentation and place them in the appropriate order according to this manual.

The QAP says, A complete application means an application that meets all of the Department's criteria for an application with all required information and exhibits provided pursuant to the manual.

And then the Application Procedures Manual goes on to tell the applicants exactly how they're supposed to save the file as a PDF and bring it to the CD. Both the manual and the QAP say that the application should be a single file.

The applicant has asserted that they saved this application as five PDF files. And so when they went to download those five PDF files from the source location to the CD all five files made it to the CD that they kept for a file copy. But one of those files, Tabs 23 through 27, didn't make it to the copy -- to the CD that went to TDHCA.

Now I don't know if you all have ever had that happen to you, but I've certainly had that happen to me where I've had multiple files that I'm trying to drag and drop and I miss one. And maybe that's why TDHCA's manual and QAP advises the applicant to save the PDF as one file.

And, finally, the Application Procedures Manual says, Double-check the CD to verify that it contains the properly named virus-free application files.

The applicant's appeal letter goes into great detail about how they saved these files and burned a CD. There's an affidavit from Ms. O'Grady who actually worked on this. Not once does the applicant say that they double-checked the CD.

So the applicant requests that you overlook these flaws and says that these omissions do not rise to the level of a material deficiency. But, again, the QAP is clear. It says the Department will terminate an application for these issues -- not may terminate -- and it will terminate the application if there are multiple parts of the application missing or it has a material deficiency.

So we know that Tabs 23 through 27 were missing. Those are multiple parts of the application. And I would assert that it rises to the level of a material deficiency because, as your staff has testified, they were unable to complete a review of this application.

To grant this appeal I believe would be to do a disservice to your staff and to the other applicants, particularly the one that we represent. 162 applications were submitted. Only one was terminated for being incomplete. So clearly the rules are not too burdensome to follow.

And, finally, if you grant this appeal and allow this application to move forward we believe that you might see it again on another appeal of either threshold or selection criteria.

As was noted by Mr. Dorsey's testimony there was a challenge submitted -- and we submitted that challenge -- and we think that there are several issues with this application that need to be addressed.

One issue is that a principal of the applicant was a principal of a -- by TDHCA definition of principal -- was a principal of another affordable housing developer that went out of business and terminated its position in various projects. We believe that that should have been disclosed. Now if it had been in the proper course of things we believe that it probably would have been cleared and they would have been allowed to go forward. But we believe that should have been disclosed.

There's also an issue with their site control which doesn't exactly meet the language of the QAP. This is because they're using the enhanced use lease program with the Veteran's Administration. And, again, it's the kind of thing that, since it doesn't quite meet the QAP, we believe that if they had come to you early on and said, You know, we're not sure that this meets the QAP, we'd like to either pursue a waiver or get an interpretation and make sure that it's right. I think that they probably would have been cleared to go forward, but they didn't do that.

And, finally, there's also at least some question as to whether TDHCA can grant credits in the first place comfortably to a veterans-only transaction and whether that would comply with the general public use exception in the Internal Revenue Code. In correspondence with Grace Robertson of the IRS a couple of weeks ago she told me that a private letter ruling would be necessary for TDHCA to be able to award the credits with that kind of certainty.

There's an obvious answer here. The obvious answer is that the applicant should assemble its materials and apply again next year. They

have a five-year lease with the Veteran's Administration which should give them some time. If they sit down with your staff and work through these issues I bet that they can present a competitive application next year. And I would really like to see them succeed.

It's not about what the rules should be. It's about what the rules are. And your rules we believe mandate termination of this application and we respectfully request that you deny the appeal.

MR. OXER: Thank you, Cynthia.

MS. BAST: Is there anything you would like me to address?

MR. OXER: Any question from the Board?

MR. KEIG: Yeah, I've got a couple of questions.

MR. OXER: Okay

MR. KEIG: You talk about a single file and the rule says under number 3 you have to submit a CD-R containing a PDF copy and an Excel copy of the complete application to the Department. It sounds like two files to me.

MS. BAST: There are two -- the PDF has to be a single file. The PDF is supposed to be a single file --

MR. KEIG: Right.

MS. BAST: -- and the Excel is supposed to be a single file.

MR. KEIG: And then we have a third file --

MS. BAST: They have five PDF files.

MR. KEIG: Okay. And then there's a third file under at least the procedure manual that you do the third-party reports.

MS. BAST: Correct.

MR. KEIG: So everybody's CD or -- how many CDs are you supposed to submit -- one or two? One?

MS. BAST: One CD.

MR. KEIG: Then you should have three files on there -- one Excel file, one PDF file of the application, and one of the third-party reports.

MS. BAST: Right.

MR. KEIG: In this application items 23 through 27 -- were those third-party reports or a mixture of different things?

MS. BAST: No, sir. It was part of the actual core application.

What they did is they took the core application, which I believe according to the rules should have been one PDF file, and they split it into chunks. And these chunks were what we call Tabs 23 through 27, which included things like a title commitment, architectural plans, and certain actual forms from the application.

DR. MUÑOZ: I've got a question. Where's Tim?

Tim, right here on what Cynthia provided us, page 12, full application for submission, it said, Hard copy to be submitted with the application. Do you get a hard copy along with that disk that contains multiple files?

MR. DORSEY: No, not of the application

DR. MUÑOZ: Okay. I've got a follow-up question.

Testimony just provided said that nowhere in the appeal letter did it describe anyone having double-checked. Does anybody want to stand up and say that

they did double-check? (No response.) And that gremlin might have appeared after you double-checked, sir.

MR. TAYLOR: The person who --

MR. OXER: I'm sorry. You have to restate your name.

MR. TAYLOR: I'm sorry. Okay. Craig Taylor, Communities for Veterans. The person who submitted the actual CD to the Agency, Ms. Kathleen O'Grady, is not here. And so I cannot speak for her. I was not here. The application actually was downloaded in Sarasota, Florida, to our hard drive. It was then uploaded through a share point here in Austin where Ms. O'Grady was. And then Ms. O'Grady burned the disk at that point and brought them to TDHCA.

And so it is our protocol to check at every step of the way and make sure the application is there. But I am not -- I mean, I know where your question is going. I can't stand here and say what Ms. O'Grady did. She's not here. But it is our protocol to check at every level.

And we did -- we believe that the application was full and complete when it was submitted to you. But, no, I can't do that myself.

MR. OXER: Mr. Keig.

MR. KEIG: Mr. Dorsey, I want to ask you a couple of questions. Do other applicants submit CD-ROMs that have more than the three files?

MR. DORSEY: Periodically we'll get one where the market study is separate from -- the different third-party reports are each individually submitted as separate files.

MR. KEIG: Do we reject --

MALE VOICE: With respect to the application itself.

MR. DORSEY: I don't -- I can't recall one where we had it submitted as, you know, five files like this or that it was split out like this.

MR. KEIG: So we've had at least some instance where it was more than the three though -- there might be a separate PDF.

MR. DORSEY: Right.

MR. KEIG: Did we reject that as an ineligible development under Subsection B?

MR. DORSEY: No.

MR. KEIG: No further questions right now.

DR. MUÑOZ: I've got a question.

MR. OXER: Okay. Dr. Muñoz.

DR. MUÑOZ: On their letter, Cameron -- page 4 of their April 20 letter, they refer to delivering a hard copy of the architectural certificate form was delivered to the TDHCA with the submission of the application packet. What does that consist of?

MR. DORSEY: The certification form?

DR. MUÑOZ: No, the application packet. That's not a hard copy?

MR. DORSEY: No. The full application is not submitted as a hard copy. We wouldn't accept it. We -- the way this works is -- it's a pretty intense process. On the day -- on March 1 we have six or -- between six and eight computers set up in our conference room. And my staff sits at each one

and tries to check each CD to the best that they can and make sure that it is compliant with the rule. And we will not accept it if we notice that there's an issue, and a lot of times that results in applicants scrambling back and forth.

It's -- you know, we oftentimes end up with lines of people submitting applications at the last moment. I've seen all kinds of ways that applicants mitigate the possibility of errors in the submission, which you can find them bringing their own laptops, bringing multiple CDs, oftentimes they have an alternative CD at their attorney's office that's down the street. There are all kinds of ways -- this is a big deal. You know, they spend 50,000 putting an application together. They make sure that they get it right. So in -- this is the only one this year we recognized as being -- as deficient.

DR. MUÑOZ: Here's my question. Maybe I'm not being as clear as I need to be.

MR. DORSEY: Okay.

DR. MUÑOZ: But when they submit their application packet --

MR. DORSEY: Uh-huh.

DR. MUÑOZ: -- you're saying that that's in electronic format.

MR. DORSEY: Yes.

DR. MUÑOZ: But in the line preceding it he says a hard copy of the architectural certificate form. So did they give you a disk and then a hard copy?

MR. DORSEY: Not of the whole -- they may have given us a -- one certification separately. But they would not have given us the entire application separately.

DR. MUÑOZ: But they would have given you this architecture certificate form as a hard copy accompanying the electronic application packet.

MR. DORSEY: I'm not actually sure what they actually gave us. I'm not sure what the architecture certificate form is. This architecture -- is it the certification from the architect?

DR. MUÑOZ: Architect certificate form --

MR. DORSEY: Okay.

DR. MUÑOZ: -- was delivered to the TDHCA with the submission. So I'm just trying, you know, just clarify that. The packet was in a hard copy along with the certification form. But you had the application packet on a CD, and then they handed you simultaneously this form.

MR. DORSEY: That's what it sound like.

DR. MUÑOZ: Is that what happened?

MR. TAYLOR: Yes, sir. It's been a number of years since we submitted an application in Texas. We have in the past, and this was our first after a number of years. But your rule states that you are to submit a architect certification. You can use a scanned copy -- and that was to be in, if I remember, Tab 24, Tab 25 of the application.

But your rule also states that that should be submitted in hard copy -- explicitly states that that one certification should be submitted in hard copy.

MR. OXER: Can somebody give us a citation on that?

DR. MUÑOZ: Which they're claiming they did in hard copy,

which would have been Tab -- what? -- 24, 25? So then only 23, 26, and 27 would be missing?

MR. DORSEY: I think that's in one tab. It's a single signed document.

MR. TAYLOR: If you don't mind give me half a second.

MR. OXER: Sure. Sorry. I have a lot memorized but it'll take more than a half a second to resolve this, so take your time.

MS. BAST: I believe there's at least one place in the manual -- and I didn't bring the entire manual -- that indicates that hard copies are not accepted. But if you look on the second page --

MR. OXER: Cynthia?

MS. BAST: -- of the --

MR. OXER: Restate your name.

MS. BAST: I'm sorry -- Cynthia Bast. Look on the second page of the PowerPoint -- full application submission -- the final slide. If you can actually read that it tells you exactly what needs to happen. The applicant must deliver one CD-R containing the Excel version file and the final PDF version. And then it lists the hard copies -- the completed payment receipt, qualified CHDO non-profit organization if you're applying for that, and then your electronic filing agreement. And then again reiterates that the application -- that PDF should be a single file. So --

MR. OXER: Is there any reason --

MS. BAST: -- I'm not aware of anything that requires the architectural certificate -- and this certainly doesn't indicate that it's supposed

to be submitted in hard copy.

MR. OXER: Is there anything that would prevent those things you just read off -- listed, Cynthia, from being copied as PDF files or on the third-party certification count? Would those normally show up on that -- in that cluster of files?

MR. DORSEY: No. The certification form is embedded in the document that gets PDF'd, so it's easy to PDF. Those other files are separate documents so that they don't get included in the PDF.

And the reason is, for example, the electronic filing agreement -- we need an original signature to accept the scanned signatures, effectively. It's kind of -- and that's a, you know, legal issue.

MR. OXER: But a resolution --

MR. DORSEY: So that's why --

MR. OXER: -- is you'll accept what they're sending in.

MR. DORSEY: Right. That's exactly right, and that we can accept the scanned versions of signatures. The only reason that I feel hesitant to say it's nowhere that they submit that in hard copies, because I'm not absolutely certain. But I am not aware of requiring a hard copy of that. It's all these very specific files that are submitted for specific -- in hard copy for specific reasons, and I can't think of one for the --

MR. OXER: So it's not required, but it could have happened. But the important thing is that those parts would have been embedded in the original file to start with.

MR. DORSEY: Right.

MR. OXER: Does that answer your question, Dr. Muñoz?

(No response.) Okay.

DR. McWATTERS: I think I have a question.

MR. OXER: Professor McWatters.

DR. McWATTERS: Cameron, have you or your staff ever lost or accidentally erased anything from a CD which people have called to your attention?

MR. DORSEY: We require a CD-R, which is different from a CD-RW. A CD-RW allows you to rewrite over files. The CD-R does not allow that. We do that with the explicit intention of ensuring that there is no staff error to delete anything. So nothing could have been deleted from that CD.

DR. McWATTERS: Okay. Has anyone ever brought this to your attention that they think that something that should have been there wasn't there? Is this a case of first impression as far as you can tell?

MR. DORSEY: This isn't the first encounter with this type of situation. We have had applicants in the past that have claimed other types of computer glitches that cause different things to happen. But it is relatively few and far between.

DR. McWATTERS: Okay. Let me ask just one more question. I was a little bit confused by Dr. Muñoz and the Chair and what we're saying here. Do we conclude that if you look at the CD and possibly other hard documents that were submitted it would together form a total application?

MR. DORSEY: No.

DR. McWATTERS: No. Okay. So even if you go back to the your office and you check and you find these other documents they will not equal a total application.

MR. DORSEY: I believe the applicant would -- you didn't submit a hard copy of the architectural plans or anything like that that you're aware of. Right? (No response.) Yeah. So there would still be missing --

MR. OXER: I think the answer to your question, Professor McWatters, is that's correct because the completed application would be the single PDF file that included all of that and regardless of whether or not they had provided additional hard documentation.

DR. McWATTERS: Okay. Now, you said that on March 1 you had these machines lined up and people going through them real quick just to see if everything is there. Is the idea to immediately contact where they can then develop -- or deliver what's missing by midnight on March 1?

MR. DORSEY: That's right. And -- well, by 5:00 p.m. on March 1, yes. Doors get locked. The process is really that we check for bookmarks and we try to check that the file will open and that we can read it. We don't actually -- it would take an actual kind of review that would take a lot more time to make sure every tab was included or something like that.

DR. McWATTERS: Okay.

MR. DORSEY: But we do do kind of a basic look at it to make sure it's a readable file and we -- yeah, we try to be a little helpful.

DR. McWATTERS: So this application would have passed

that review.

MR. DORSEY: That's right. I think it was a concern that there were multiple files, but I didn't think that there was really an alternative at that time. So we went ahead -- we could tell that the application was constructed in order -- it was just saved in separate files. So we didn't at that time say, No, we won't accept it. We went ahead and accepted it and -- we try not to be unreasonable if we can clearly tell what is going on. It probably would have taken us three minutes to combine those files. It wouldn't have resolved the missing information but --

DR. McWATTERS: Okay. Thank you.

[Craig Taylor talking to Cameron Dorsey.]

MR. DORSEY: He's pointing at something that indicates that a hard copy of the architect certification form is required in hard copy. I'd have to go look at that specific -- we -- that wouldn't resolve the fact that there's a lot of other missing information.

MR. OXER: Is it missing or is it just in other places?

MR. DORSEY: No, it's missing. I mean, you can claim things like, Well, the unit square footages are in the red schedule so you don't really need the architectural plans. You can, you know, make claims like that where you can -- or you can say, Go look at the Excel file.

The problem with the Excel file -- and the explicit reason we rely on the Excel file is because we have a data input transfer feature that populates our database with that information. That is, we do not in any way consider that an official document because we can accidentally change that

document.

DR. MUÑOZ: Cameron, when you get the file and you sort of just exercise a cursory review to see if the, you know, major elements of it are present has there ever been an instance where there was something that you quickly detected was missing and you contacted the applicant and asked whether they were aware that, you know, something was missing?

MR. DORSEY: I can't think of an instance where a review would have been deep enough to recognize like specific information within tabs missing.

MR. OXER: But there again the QAP is explicit in saying that the applicant has the obligation to ensure completeness and compliance with the QAP.

MR. DORSEY: Right. Yeah. We also -- it's -- actually on the next appeal this kind of happened. You know, our intents to be helpful are sometimes used against us. There's reasons, you know --

MR. OXER: Nothing good go unpunished. You understand that.

DR. McWATTERS: How long, Cameron, would it take if you burned this to a CD-R? How long would it take to review it and show that every document's on that before you put it in the mail?

MR. DORSEY: It wouldn't take that long. I think -- I mean, you would basically -- it depends on how it's constructed. But it shouldn't take -- it takes a long time to compile in the first place because there are a lot of documents that get included in between the Excel pieces and what have

you. But in terms of checking it, I would think you would have kind of a methodology for going through and checking it that allowed you to do it relatively quickly.

There are a number of things you can do. You can compare the megabytes of the actual file size of the PDF version to the one that you originally constructed. You can -- the number of pages within the document versus the number of pages. So I think probably every development team has different things they do to make sure they're submitting it correctly.

DR. McWATTERS: Would an hour -- one hour be sufficient?

MR. DORSEY: Yes.

MR. OXER: I have a point of consideration from the Chair.

And I'd like some help from the E.D. and from counsel here. This is an appeal, as differentiated from a waiver. And to offer a waiver -- for us to offer a waiver, we have to have a compelling need -- or demonstrate a compelling need to meet the requirements?

MR. IRVINE: We need to establish that it was necessary to carry out --

MR. OXER: Carry out the --

MR. IRVINE: -- for purposes of policy --

MR. OXER: -- purposes of 2306. Okay. And to -- in granting an appeal for whatever reason I think it's incumbent upon us as well, where we could do so, to state the purpose in carrying out that described under 2306 that appeal -- that granting that appeal offers. So I offer that question to Mr. Keig and to Ms. Bingham to be able to state that reason.

MR. KEIG: I withdraw my motion at this time.

MR. OXER: Speak up, Leslie.

MS. BINGHAM: I withdraw my second.

MR. OXER: Okay.

MALE VOICE: We've got some additional speakers.

MR. OXER: I understand that. Hold on a second. We're working through a little parliamentary structure here. That's not going to work through this.

DR. MUÑOZ: Chair, can I ask a follow-up question?

MR. OXER: Yes, sir.

DR. MUÑOZ: Before we get into the possibility of many motions there was a one point regarding the specificity of this population and whether that would be permissible. Are there any thoughts about that from E.D. or counsel?

MR. IRVINE: Yeah, I think the point is within the Internal Revenue Code provisions regarding Section 42 required that with limited exceptions, such as elderly transactions and SROs, general use developments must be made available to the general population.

I think the individual who is not a veteran showed up and said, I'm income eligible, I'd like to rent property here -- or a family or whatever -- you'd have to take them into consideration and make those units available to them.

MR. DORSEY: If I can add to that, we have had conversations with the IRS on this particular subject. And I'm not sure that I would be willing

to battle the IRS with -- say that this is not allowable. One of the provisions within the Housing and Economic Recovery Act that actually changed to this law specifically references populations served through other federal programs.

And veterans is clearly one.

So it would be an uphill battle for I think the IRS to determine that this didn't meet the requirements of Section 42 general use.

MR. IRVINE: I think that the point is simply we want to be certain that it was in compliance with the IRS requirements.

MR. OXER: Since you've spoken, Cynthia, you can come on back, got a point of parliamentary procedure here.

MS. BAST: Cynthia Bast. This is just to clarify again my point on that, which is I recognize that there is an exception to the general public use requirement for certain federal programs that are intended to provide housing. I -- it is possible that the enhanced use lease program with the Veterans Administration could fit within that exception.

At least in the past when I have approached TDHCA about the possibility of a veterans-only deal I have been told that the best bet to pursue that is to get a private letter ruling to ensure that it does meet the proper exception.

And so I contacted Grace Robertson at the IRS because I thought, well, this enhanced use lease program with the Veterans Administration has been used in other circumstances, so maybe there is already some precedent out there that indicates that that has been identified as an exception to the general public use requirement. So I asked her that

specifically and she said, No, and that the only way to be certain -- and I do have an e-mail from her that's been submitted to TDHCA in writing -- that she said that the only way to be certain would be to get a private letter ruling.

MR. OXER: For the record, we're going to have to limit conversations to this particular ruling. Okay.

MS. DEANE; Yeah, I just wanted to -- I think this goes without saying with this Board. But I know we've discussed the -- that there -- Ms. Bast mentioned there might be some pending challenges.

And, clearly, she's not asking you to make any ruling on those challenges today. And so just always be mindful that the decision that you're going to make on this appeal today has to be just on the merits of what's before you and not related to the merits of any other challenges.

MR. OXER: Understood. All right. The procedure we have -- or protocol that we have, there has to be -- for the item there has to be a motion on the floor and second before we'll have comments. We had a motion on the floor, seconded, and had comments. The motion and the second were rescinded.

And so now we've either got to have a motion -- we have to have some proposed Board action to consider continuing hearing comment.

MR. IRVINE: Since this is an appeal you do need to action.

MR. OXER: True. So --

MR. GANN: Well, I could say regretfully that I will make that motion to terminate

MR. OXER: Motion to terminate, which is to support the staff

recommendation. Second by the Chair. Any other comments? Any other comments from the Board? Okay.

MR. KEIG: Yeah, I have a comment.

MR. OXER: State your comment, sir. That's all right. We'll wait for you.

MR. KEIG: I don't like the fact that we had to rule the way we had to rule, but, as Ms. Bast has pointed out, I don't think we can get around it.

MR. OXER: Other comments? Mike's yours, sir.

MR. CANTRELL: I don't know. Sound like it's good.

MR. OXER: Excuse me. Technically we voted. But, you know --

MR. CANTRELL: Okay.

MR. OXER: We'd like -- we wish to hear you.

MR. CANTRELL: I'm not real comfortable up here and my blood's up a little bit. My name's Bill Cantrell. I am the post commander of the AMVETS Post in Kerrville, Texas.

Our post is named in honor of Corporal Jacob C. Light, Marine Corps, the one-thousandth U.S. casualty in Afghanistan. That's why our post name is 1000. He was born on the 4th of July and he was killed on Memorial Day weekend.

So I'm speaking more to honor him, but I'm retired Navy, I'm a combat veteran just like Bill and Gary.

MR. OXER: Deep breaths for all of us.

MR. CANTRELL: I brought a number of things, but I also want

to say a couple of things that -- after Ms. Bast told you all what you probably already knew anyway I've got to say I have been fighting for this Freedom's Path development from the beginning. I and one other member of my post accompanied Mr. Taylor when he walked the grounds on the V.A. property.

More importantly, it goes back further than that before my post was even started. I was one of the lone small groups in Kerrville of veterans that supported Justin McDonald [phonetic] when they had an EUL development. They were the developer for homeless veterans. At that time the veterans in the community were not supporting it. We were the small group that were.

So we got a head start on this one. We've been watching this one closely from the very start. I've seen the plans. I named a committee that looked at every aspect of this, and we thoroughly approve of it.

Now, Ms. Bast says that they can settle back on their haunches and wait until next year and start another one. But, now, Bill has kind of told his age and Gary's told his age. Well, I'm 73. I'm getting there. I don't want to wait till next year -- not that I would qualify to get in this housing -- my income level's too high. But I'll tell you, no matter what my income level, what I've seen of those plans I've love to be in there just like Gary said.

I brought a petition -- I started Tuesday night getting names on a petition. I've got 50 names. I'm representing not only AMVETS -- our members of the AMVETS post, but I'm representing all of VFW Post 1480, about I guess around 350, 400 members.

The veterans are onboard this -- all of Kerr County's onboard

this. You can ask around -- you can find out rather quickly. There are other people that are onboard. You've probably seen Senator Troy Frasier's approval of this development. I know you haven't seen in writing Representative Hildebran's approval. I talked to Representative Hildebran just the other day. He said he spoke to six of you requesting that you accept the appeal.

I talked to Senator Van de Putte, who's the chairman of the Veterans Affairs in Military Installations Committee. She's onboard. And I don't know if you've seen it, because she sent it last night, but I brought a copy of her letter addressed to you, sir, and all the Board. Have you received it?

MR. OXER: I did -- I have.

MR. CANTRELL: So I don't --

MR. OXER: We received it at the --

MR. CANTRELL: Has everybody read that? She's onboard. She's asked me --

MR. OXER: It will be read into the record -- we'll have it read into the record. You need not do so, but we'll have it read into the record.

MR. CANTRELL: Okay. So you have that one. But what you don't have -- you don't have my letter, which I brought with me, and I brought the letter from the AMVETS state commander representing 62 posts in this state, 4,526 members. And I can read that in the record or I can give it to you, whichever you prefer.

MR. OXER: Give it to Michelle who will have it on record. We're confident that everybody read it.

MR. CANTRELL: The other thing I think I want to say is Ms. Bast said that you'd be doing a disservice to your staff and would be going against your guidelines. There are times in all of our lives when we can go against guidelines because it's the right thing to do.

Now, I'll share something with you that I don't share openly, and none of my friends here have heard it before. I served in Viet Nam '67-'68. I was there during the Tet Offensive. During the Tet Offensive I was circling overhead and relaying information from our detachment on the Perfume River of Hue. I passed the word when their radio went dead to say that they're coming over the wire. We thought they were all killed or captured.

Instead, we found out about four or five days later that they had jumped in the Perfume River and swum down and made it to the Mac B Compound. The colonel in charge of Mac B Compound said he could get them all to the Hue Phu Bai airport if somebody would come pick them up. Well, that was me.

When I got there, the field was under fire. Our orders were protect our airplanes, protect our crew. Those are my rules. But I elected to go in; that's why I got my Distinguished Flying Cross.

There are times to go against rules. There are a lot of veterans out here, and they're going to come start pouring home, because this development will not just be for senior veterans with low incomes; it will also be for veterans in need that have lost arms or legs or traumatic brain injury. I want you to please think hard about that. Thank you.

MR. OXER: Thank you for your comments and concerns.

DR. MCVEY: Dr. Gary McVey, a member of the AMVETS Post 1000. I retired from the University of Minnesota in 1999. I build churches around the country for the Lutheran church. I also work with -- helped build 25 homes with Habitat for Humanity for a lot of veterans or the single Hispanic mothers.

One lady that I work with on Saturdays, when she did her volunteer work, was paying \$550 for a trailer, and when -- I forget his name but I could have written that report for you about housing in Texas. You didn't need to pay for that.

I built a church down in Weslaco, Texas, and there's a lot of colonias down there yet that need a sewer system. And there's a lot leaky roofs if it ever rains. But --

MR. OXER: We're celebrating rain these days in Texas.

DR. MCVEY: Yeah. And this lady paid \$550 a month for an old mobile home that was built prior to 1960. I can tell you because I owned one back then. And the bathroom didn't work for a year. She was so happy to get a three-bedroom Habitat home for \$35,000 and \$300 a month payments.

And that's the kind of housing a lot of Texans need. And our veterans -- I deliver Meals on Wheels on Tuesday mornings to a bunch of old run-down 50-year-old motels in east Kerrville. The veterans living -- I had better hog houses in Iowa than those veterans live in. Thank you.

MR. OXER: Barry?

MR. PALMER: Barry Palmer with Coats Rose. I wanted to

clear up what I think is a misconception here that by granting this appeal that you will not be following your rules. We do not see it that way. I want to be clear this is not a request for a waiver.

What's at issue here is there are two provisions in the QAP. One is a material deficiency and the other is an administrative deficiency. If you have a material deficiency in your application you get terminated. If you have an administrative deficiency in your application you have the ability to provide supplemental information and resolve that administrative deficiency. Almost all applications this year will have some administrative deficiencies.

The guideline between what is a material deficiency and what is a administrative deficiency is not so bright line. It's a subjective determination by the Department of what's a material deficiency versus administrative.

Initially that determination is made by the staff, but ultimately it's made by you the Board as to whether a deficiency is so material that it requires termination of the application or if it's something that can be easily fixed by administrative response.

Now, we didn't used to always have this concept. It used to be that you had to have a perfect application or you got terminated. But that was such a harsh system that a number of years ago the Board adopted this two-tier structure of material deficiency versus administrative deficiency.

And we would like you to look at this and make the determination that this is an administrative deficiency. We've already heard testimony that almost everything was in the application in one place or another. It might not have been behind the tab that it was supposed to be.

But the only two things that have been pointed out by staff as having not been in the application were a title commitment and the architectural drawings. And on the architectural drawings virtually all of the information contained in the architectural drawings were found elsewhere in the application. So the information was there to review the application. It wasn't a case where the application was so incomplete that it couldn't be reviewed.

A title commitment -- I don't know why we even require it. It's not that big a deal to have -- certainly not something that require termination of the application if you didn't have a title commitment.

So it's within your discretion not to make an exception to your rules but just to make a judgment call that this was an administrative deficiency. The information has already been provided to the Department.

So it serves no public policy or purpose to terminate this application. It's, again, just calling something a material deficiency as opposed to administrative deficiency that's driving the result.

MR. GANN: Mr. Chairman, it might be important or useful to read the definition by the Department of material deficiency if you'd like me to.

MR. OXER: Certainly.

MR. GANN: Any individual application deficiency or group of administrative deficiency which, if addressed, will require in the Department's reasonable judgment a substantial reassessment or reevaluation of the application or which are so numerous and pervasive as they indicated failure by the applicant to submit a substantially complete or accurate application.

DR. MUÑOZ: I recall somewhere in the appeals letter it talked about the total application is being about 7 percent -- more than 500-something pages. How do you define that as substantive and satisfying this definition?

MR. DORSEY: The issue at play and the reason why I brought this to Barbara and Tim's attention is because in virtually all other cases we were able to review -- we were able to fill our review sheet out and note missing items, and complete from the first check to the last check in each of our review sheets and the construct a list of deficiencies and send it out, get -- the goal is to eliminate the back and forth. Right?

In this case the unique situation is that we weren't able to complete that review. We had to stop. Then because there were too many items that we would have had to skip, and it would have required us to -- and the reason why we considered it a substantial re-review -- we would have had to get back and basically re-review a lot of different items in each of our review sheets.

MR. OXER: You have a comment, Tim?

MR. IRVINE: Yeah. I think at the heart of it it comes down to deciding whether this is an administrative deficiency or a material deficiency. And when you look at the real key concepts in those two terms an administrative deficiency is something to clarify or correct inconsistencies and a material deficiency is either this first paragraph -- first sentence or it's something that indicates that you didn't have a substantively complete application.

MR. PALMER: And we've already provided evidence that the applicant had a substantively complete application on March 1. Just because of technology glitch the title commitment and the architectural plans did not show up in the CD that the Department received. And it's something that was easily rectified. If it took an extra hour or two of staff time I would be surprised if that much.

MR. DORSEY: It's less about staff time than review time. So we've touched around 80 applications thus far. This kind of issue potentially adds up to five days to each review. If other applications did this each one would require up to an additional five days, which I fear would be unmanageable. We -- to meet the statutory deadlines with the manpower we have.

And that's why the creation of the material deficiency concept is there -- to ensure that, you know, we can still process applications in a timely manner in a relatively consistent process.

DR. MUÑOZ: Barry, if you can prove that you had all of the elements of the applications on the date that were due -- but were all of those elements in the possession of TDHCA staff?

MR. PALMER: Well, I think, as we testified earlier, that the disk that TDHCA has did not have certain elements. And most of the information was other places in the application where it was called for in more than one place.

And there were two instances where the information -- the title commitment and the architectural plans were not in the application, but the

information from the architectural plans was in the application in other places. And those have since been provided to the Department.

DR. MUÑOZ: If those two items were not part of the application and the administrative -- the definition of an administrative deficiency is that you would then require possibly some sort of clarification of some deficiency that's contained in the packet and these elements were not contained in the packet then how can it be an administrative deficiency?

MR. PALMER: Well, the administrative deficiency also talks in terms of supplementing the information in the application to clarify --

DR. MUÑOZ: Let's hear it.

MR. PALMER: Information requested by the Department that is required to clarify or correct inconsistencies in an application may be cured by supplemental information or explanation which will not necessitate a substantial reassessment.

MR. OXER: But supplemental means additional information, not the original information. Is that correct?

MR. PALMER: I take it to mean additional information beyond what you already have.

MR. OXER: Which was in this particular case Tabs 23 through 27 was nothing.

MR. PALMER: Right. But the -- right. As we said before most of that information was in the application. The only thing that was needed to be supplemented was the title commitment and the architectural plans.

DR. McWATTERS: Cameron, of the 80 or so applications that you've reviewed how would this rank? Would this be among the most tedious, cumbersome ones to review? Or does it rank in the middle? Or does it rank dead last?

MR. DORSEY: That's a tough one. We have some really unique structures that are sometimes very difficult to get through, but the application is complete. This one's a little unique. It's not that -- well, this one is not one of those kind of really unusual unique structures that's really difficult for our staff to get through. It comes down to the missing documentation.

And I'll just mention real quick -- it was not just terminated for the material deficiency, but both the missing -- multiple missing parts and material deficiency.

DR. McWATTERS: What about organization? I'm hearing that if you did a hunt and search and took the time you could find the missing -- some missing parts in places where they shouldn't be.

MR. DORSEY: It's less about stuff being where it shouldn't be as it is about, you know -- for example, the architectural certification form is in the Excel version. Now, that's not the signed version but it's in the Excel version, as is the development amenities information that's in the Excel version. We don't rely on that version.

Frankly, I would -- from a reviewer perspective I would --

MR. OXER: The Excel version is only for you to pick up data and populate your --

MR. DORSEY: Yeah. From a review perspective I'd prefer missing information than information scattered throughout an application. It is simply impossible. These things are over 300 pages apiece. And it would -- I would rather it just be missing entirely.

MS. BINGHAM: I'm --

MR. OXER: Yes, ma'am.

MS. BINGHAM: You know, this is -- I'm going to be self-critical. Here's my heartburn, and I may be misunderstanding. It sounds like to me we -- our staff out of the kindness of their hearts try to set up some little parachutes or little, you know, ways to catch --

MR. OXER: Safety nets.

MS. BINGHAM: -- safety nets -- ways to catch things that might be incomplete. And my concern is that some applications benefit from that, and then unfortunately some applications don't. But it's out of the kindness of our heart that we set up eight computers and that we look at stuff when it comes in and we try to catch what we can, and that unfortunately some applications that are incomplete benefit from that and then some, because we're humans too, and we miss or we don't have the time to go through in such detail and try to catch, don't.

That's the only thing. I get it. I mean, unfortunately it sounds like to me it's immaterial -- it was materially incomplete. It sounds like it. I mean, there's stuff that they needed that was missing.

But I guess the part that I struggle with -- and I -- you know, I know we need to follow the rules, but that's the part I struggle with. And I

don't know if that's something that legal counsel can help us with in executive session or if somebody would just like to make another motion and see how it goes.

MR. OXER: Cameron, go ahead.

MR. DORSEY: I was just going to maybe address that a moment. We do actually look at very specific things to make sure we consistently look at the exact same things when we review the applications that are submitted. That is worked out in a staff meeting that's prior to the submission deadline.

And so they actually are consistently looking at, you know, the same three or four issues. And they don't really try to expand out, mostly because it's kind of a race. Like you're --

MS. BINGHAM: I got you.

MR. DORSEY: Yeah.

MS. BINGHAM: So can I just ask you this then? Everybody has an equal chance to have the same things caught? In our safety net effort everybody has the same opportunity to have the same glitches caught and addresses?

MR. DORSEY: I don't think I could ever make that claim, whether it be with respect to the submission or review process. It's simply always room for human error or just someone that happens to identify something outside of the scope of the normal review that is material.

MS. BINGHAM: So -- and I'm not at all being critical. We're just being asked to apply rules consistently. And, for me, that's just

something that I'm struggling with.

MR. OXER: Yeah, I have a question regarding timing and process here, Cameron -- and you too, Barry. These were due -- the applications are due May 1 -- or March 1.

MR. DORSEY: That's right.

MR. OXER: Is that correct? If somebody delivers an application to you April 25 you don't look at it until March 1.

MR. DORSEY: You --

MR. OXER: I'm sorry. February --

MR. DORSEY: Obviously February.

MR. OXER: Yeah, February. If they give it to you a week ahead of time you don't look at it until March 1, or do you?

MR. DORSEY: No, we do. We try to get ahead of the curve, and so we'll load this CD. On March 1 we also have someone upstairs looking at the ones that come in via mail, but we will -- we may open it up beforehand or we may open it up right there on March 1.

It's always incumbent upon folks to submit it before March 1 -- and we try to emphasize that. But -- so is there definitely --

MR. OXER: Like you don't want to be standing in line at the post office on April 15 trying to get the mail in to go to the IRS.

MR. DORSEY: That's exactly right.

MR. OXER: All right. So the question is would this have been remediable had they submitted it before March 1?

MR. DORSEY: This particular issue would simply not have

been caught because it took looking it within the context of a full review.

MR. OXER: Okay. Excuse us just a moment. I need to confer with counsel here just for a second.

(Discussion was held off the record.)

MR. OXER: Okay. Did you have another comment?

MR. TAYLOR: Yes, sir. May I?

MR. OXER: Please.

MR. TAYLOR: Again, Craig Taylor with Community for Veterans. Actually, I wanted to just make a few salient points. No excuse on our part, but you probably are aware that when this application was initially submitted to the City of Kerrville it declined to support the project and the application.

It is explicitly because of our commitment to serve veterans only and a tremendous amount of research that we did to make sure that that was a legally permissible effort on our part that we went back to the City and, based on that commitment, we were able to get a resolution of support.

That resolution of support occurred the night -- two nights before the application was to be submitted. And the meeting lasted late into the evening. So there was an issue in terms of getting that support into the application and so forth. And that's why some of the timing was late in terms of submittal.

The second thing is our application -- we didn't know -- I mean, I can tell you the same -- we didn't know there was any deficiency in the application. And the application sat with the Agency for 40 days. And it

really only surfaced as far as we're aware by the challenge that Mr. McDonald filed to our application and the revelation that this information was not available that we became aware of any deficiency. We, to my knowledge, were not notified of a deficiency prior to that. Immediately in response to that challenge, we provided the information.

A third salient point -- the plans that are submitted with an application are totally schematic. They have not been engineered, they are not the final plans, they have not been submitted to any regulatory authority for review -- not the city permitting department, not the fire marshal, or anyone. So those plans are purely a way of proposing what may be built and has not been vetted by any authority which is going to make the determination as to what the final plans and specs are.

So what we're trying to say is in the application we had full-blown civil engineering drawings to show our readiness to proceed.

So the salient points that are in an application -- where is the building going to be located, how many parking spaces, what kind of building are you going to build, are you going to have elevators, how many units are you going to build, what are the square footages of those units, what is the unit mix.

All of those matters are available in the application. So there's virtually nothing in the plans and specs as provided in the application that is not available in other parts of the application. That's what I meant by the redundancy.

The other thing is, this is a development on federal property. It

was known to be a development on federal property. So the idea of a title commitment -- it's very clear who owns this property and this property is going to be lien free.

So the purpose -- not to diminish -- it says we should have a title commitment -- we had a title commitment. I don't know where it went. But the salience of a title commitment on this project is not what it might be on another type of free-standing real estate transaction. Thank you.

MR. OXER: Thank you, Mr. Taylor.

Let me ask this too, Cameron, from a process standpoint. I think there's enough of us in here that have doing Adobe Acrobat for quite a while. Even if it's in multiple separate files, those five separate files in this particular case could have been aggregated into a single PDF booklet.

MR. DORSEY: Uh-huh.

MR. OXER: Okay. Is that correct?

MR. DORSEY: Yes.

MR. OXER: Okay. So --

MR. DORSEY: I want to make one quick comment. My staff is not provided the challenge for use during their review, ever. So my staff reviewed the application without knowledge of the challenge. I had knowledge of the challenge but explicitly do not go give my staff the challenge for use during their review.

MR. OXER: They review the merits, period.

MR. DORSEY: Right.

MR. OXER: I have to say that I concur with Ms. Bingham that

the hard part that I've got on this -- and when we take a break I'm going to looking for a jar of Maalox somewhere. But the hard part off of this is this was apparently so easily avoidable. Yes, sir.

MR. CANTRELL: Just a few short words. As I told you before I was -- my team was keeping track of this whole process. When the developer came to town we notified everybody there that he was coming to give a briefing on this development. He briefed the Hill Country Veterans Council. Two of our city commissioners attended.

The City Council was invited -- they didn't show up. I was kept informed that multiple calls and e-mails to the City Council members and the city manager were not answered. We responded by letters to the editors. We took out a half-page ad. All of the veterans organizations signed onto that ad -- helped pay for it.

With that the City Council decided to their mind and had a meeting. But they went by their regular meeting day, which was February 28. You needed this by March 1. That isn't much time. You say you do look back at things, but, you know, you've got to admit that that put everybody in kind of a rush to get this turned in.

MR. OXER: I'd like for those -- is Isaac Alvarado in the room?

Isaac, did you have anything you wanted to say on this? Did you want to speak on this? Okay. You're representing Representative Hilderbran's office. Okay. I just want to make sure that's in the record that you were here.

Michelle, you have some comments that you'd like to get in?

And under our new communication policy, so everybody knows what's going on here, there are some people who have registered their position for and against. We're asking, if you want to just say that, give that to Michelle. She'll read your name in and say you're for or against, and we'll tally those up.

MS. ATKINS: Michelle Atkins, assistant Board secretary. We have two that have signed up that don't wish to speak. Ken Bowron, and he is against the staff recommendation; he's representing Freedom's Path at Kerrville. And then Tamea Dula, representing the applicant, is also against staff recommendation.

MR. OXER: Okay. If I could get her letter to read into the record from Senator Van de Putte.

MR. LYTTLE: Yes, sir. Letter is directed to Chairman Oxer and Board members. It reads, It has come to my attention that Application Number 12199 for an allocation of 2012 low-income housing tax credits was terminated.

I understand that the termination was due to an electronically caused technical deficiency that rendered a portion of the application unavailable. I also understand that this information was provided to your agency immediately upon notification of the deficiency and that the majority of the information was available in other portions of the application.

Understanding the urgent need for housing for our aging and disabled veterans I would hope that if indeed the error was a technical glitch that it would not be allowed to preclude the consideration of a proposal to provide housing for our veteran population and greatest need.

As you know, Texas has the second largest population of veterans in the United States. We are proud of our veterans and the contributions they have made to defend the freedoms we all enjoy. As Texans we are especially pleased that so many have chosen to make our state their home. We're also committed to ensuring that the veterans who have chosen Texas as their home are afforded every opportunity to live out their years with dignity, respect, and comfort.

The project known as Freedom's Path being proposed at the south Texas V.A. Health Care system, Kerrville Division, would certainly provide much-needed housing for many veterans.

I appreciate the hard work that you and the Board members have put into this final issue. Sincerely, Leticia Van de Putte, Senator and Chair of the Senate Committee on Veterans Affairs and Military Installations.

MR. OXER: Any more comments from the Board?

(No response.)

MR. OXER: Any more comments from the floor?

(No response.)

MR. OXER: All right. We're going to take an unusual tack here. Cynthia, would you like to say something at this point?

MS. BAST: Cynthia Bast. Again, I'm sitting here and I'm listening to these gentlemen. And it's very difficult to present this.

But, again, I just want to remind you that this is not about providing housing for veterans. This is about a competitive process. And that's what we're really looking at in appeal on here. And this is about the

processes that you have in house. You had 161 applications, and I sincerely appreciate how difficult this is because this is a meritorious application.

And I -- if it is terminated, which we, of course, recommend then I sincerely hope that they will apply next year.

MR. OXER: Thank you for your comment.

DR. MUÑOZ: Mr. Chairman, I just might add that, well, you know, with all due respect I appreciate that a part of this discussion has to do with the procedures. But in this instance it has to do with veterans.

MR. OXER: Comment noted. We have a motion on the floor. We can resolve in executive session if we have a question on legal -- or any other legal questions?

(No response.)

MR. OXER: Are there any other comments from the Board?

(No response.)

MR. OXER: Any other comments from the floor?

(No response.)

MR. OXER: All right. The motion on the floor by Vice Chairman Gant is to support in favor of staff recommendation to deny the appeal. Seconded by me as a -- which supports our rule process. Okay. All in favor -- which would deny the appeal -- all in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(Two noes.)

MR. OXER: Okay. Four-two. The appeal is denied. The

opposition was by Mr. Keig and by Dr. Muñoz. And, with that, we're going to take a break. Be back in our chairs at 20 after.

(Whereupon, a short recess was taken.)

MR. OXER: Cameron, how nice to see you back again.

MR. DORSEY: All right. Cameron Dorsey, Director of Multifamily Finance. We've got one more appeal. This is related to a market study that was submitted I believe 21 minutes late. And I'm going to leave it at that. I think the applicant intends to withdraw, but I believe they just want to speak on the record.

MR. HUTH: Thank you, Cameron. Tom Huth, president and CEO of Palladium USA.

Mr. Chairman, honorable Board members, respected guests, we just went through a heart-wrenching one hour or so, and I have to stand here before you and tell you how proud I am. I stand through a lot of civic committee meetings; I do this fairly often. And to see a Board that is dedicated and as knowledgeable and as professional as I've seen here today it's something I don't see very often. So I want to commend you on that.

Our development, KIRON at Wilshire Boulevard, market study was submitted 20 minutes late. And the rules are the rules, and we saw it here today. But it doesn't matter if they're a little bit out of the rules or what, the rules are the rules, and I think that we need to stand by those.

As Mr. Dorsey said, I am withdrawing our appeal for reinstatement of KIRON at Wilshire Boulevard. This is our first foray into the affordable housing arena. We've been developing market rate deals for 130

years, and we do everything from high rise, mid-rise, garden, mixed use; run the gamut.

And I can tell you that the passion that we have for the affordable housing is not going to go away. Okay. We are going to be back. Okay. We're going to be back year after year after year because we need affordable housing.

The NIMBYism that we've seen throughout the past year in talking to the cities and talking to homeowner associations is not only severe but it is truly real. And we've got to conquer that. Okay. We've got to keep pushing forward and keep doing the right now.

As a Board, I know you are. My fellow developers behind me, I know they are. Thank you for your time today.

MR. OXER: Mr. Huth, stand your ground for a second. Are there any comments from the Board?

MR. GANN: I appreciate the comments; I'll tell you that. Thank you, sir, for those.

MR. OXER: Right, but could you pass the Maalox up here, by the way?

(General laughter.)

MR. OXER: We look forward to seeing you on the next round. And continuing the discussion and the line of questions I had on the last one, if this is due March 1, give it to Cameron about the middle of February and let him tell you what's missing. Okay? Just do it.

Cameron, do you have any more to add to this?

MR. DORSEY: No.

MR. OXER: Okay. Do we have any other comments on this?

(No response.)

MR. OXER: All right. Item Number 7, Mr. de Young.

MICHAEL DE YOUNG: Michael De Young, Community Affairs Division director. Mr. Chairman and members of the Board, Item 7 on the agenda is the presentation, discussion, and possible action to approve the award of \$950,000 of Community Services Block Grant discretionary money for Haven for Hope for a pilot program for job creation.

Your Board packet Exhibit A contains detailed information regarding the pilot program which Haven for Hope operates today. As some of you have seen firsthand for yourselves this organization has done some extraordinary work in San Antonio, and it is a program which has gained the attention of legislative leaders.

Haven for Hope has come to the Department with a request that indicates that without these funds their program operations will be disrupted and this effort and effective pilot program will likely end.

Because at this time we do have CSBG discretionary funds available for this purpose. We can ensure that this program continues, and with data being collected by the organization we can use it to provide a best practices model for other organizations in the state addressing this issue of homelessness. Staff recommends that you approve the request.

MR. OXER: Thank you. Stand there for a second. Staff

recommending a motion from the Board.

MS. BINGHAM: Move staff's approval.

DR. MUÑOZ: Second.

MR. OXER: Okay. Motion by Ms. Bingham to approve staff recommendation. Seconded by Dr. Muñoz. Is there any comments from the Board?

Mr. Keig, you were there. You and I visited Haven for Hope. So please --

MR. KEIG: Yeah, just -- I'm in favor of it. I got to see it firsthand. I am a little concerned -- and maybe they're here, they can address it -- but if they don't get the money now they'd have to stop the program. What happens next year and what's the contingency plan?

MR. OXER: It's okay. You're welcome to stand there if you're comfortable doing that. but we've got to have -- before we'll accept -- we have the motion and the second, so we can take the comment. My question to the staff -- Michael, I'm sure you can answer this. This is money that's discretionary money that's available in our Community Services Block Grant.

MR. DE YOUNG: Correct.

MR. OXER: And is that something that will impinge on the funding for other HHSP grants around the state?

MR. DE YOUNG: Correct.

MR. OXER: Okay. With that, you're welcome to comment, sir.

MR. BLOCK: Thank you. My name is George Block,

B-L-O-C-K, president and CEO, Haven of Hope of Bexar County.

I'd be remiss if I didn't start by saying thank you to all of you because Haven for Hope wouldn't exist without this organization. Your grants let us finish our campus and your grants let us build one of the most important buildings on our campus and start one of the most important programs on our campus. And that was our in-house recovery program.

Probably one of the things that makes homelessness a little different in San Antonio than everywhere else that we looked at in the country was our rates of alcoholism and addiction are probably 25 percent -- 20 to 25 percent higher than the rest of the country.

And we had completely underestimated that and your 2011 grant let us start a program -- 80 beds for men, 24 for women -- to start a residential in-house recovery program.

And that program led us to some incredible findings that we're operating on now. What we started to see was that the folks who came into our campus worst off -- the addicts, the junkies, the alcoholics -- when they finished their program of recovery were outperforming, as we call them, the regular members of our campus academically, in job training, and OJT, and then once they hired out in the community.

And it became striking that those that has gone through recovery were totally outperforming who hadn't gone through recovery. And so we started to look at this and say, Are there any other homeless programs in the country that are experiencing this? And we couldn't find any anywhere in the literature.

And so I asked my vice president in charge of our transformational program, Can you look and see what's out there just in recovery-oriented systems and care. And we found them obviously in addictions and alcoholism. We found some in mental health. Now, unfortunately with the veterans returning from the Middle East, we're finding a lot in traumatic brain injury and we're even seeing the health care system shifting to patient-centered planning, a recovery-oriented system of care.

And so we said, Well, we're going to do something that nobody else is doing, and we're going to shift to this recovery-oriented system of care.

And it's already had remarkable results. We're -- just sort of depending on how you count, either a little more than two years old or a little less than two years old.

But when we first started -- folks leave our campus one of two ways, either with a benefit check or a paycheck. And our first graduation was about 80 percent benefit check, 20 percent paycheck.

And now after two years and piloting this program, it's flipped. We're about 80 percent paychecks and 20 percent benefit checks. People are getting jobs, people are sustaining jobs, and people are keeping those sustainable housing and sustainable incomes 93 percent for a year in our community.

And you say, You know, what's different? How is this going to be different in a year? Haven for Hope was sort of an odd duck. We were born as an adult. We didn't grow normally as a nonprofit; start with a couple of volunteers with an idea. This was a big community idea driven by some

big community leaders. It approached a serious problem in our community in a different way.

And so we started as a full-grown nonprofit. I often talk to our staff that we're a large tree with no roots. To make the root problem just a little bit worse for those who visited the campus -- I know many of the Board and staff visited the campus -- we have 45 partners on our campus delivering services every day.

In order to entice everyone onto campus we made a promise that for the first three years we wouldn't fundraise in our community, so we would do no fundraising inside of Bexar County for three years. That was the year of construction and the first two years of operation. Well, depending on how you count that either ended April 30 or it will end June 30, so it's just about to end.

We're in the process of hiring a director of development, chief operating officer, so the CEO can shift from operations to fundraising, and within a quarter will be a very typical nonprofit going out and doing all the typical fundraising that every nonprofit does in their community.

So I think what you'll see is a year from now we'll have a full-blown typical fundraising operation going and two years from now it will be a very healthy and successful fundraising operation and our tree will have put down some serious roots.

But the roots are going to be down, thanks to the trust that you have in us and the risk that you let us take by being the only homeless center in the country to have a residential treatment unit, and that led us to see the

power in a recovery-oriented system of care. Thank you.

MR. OXER: Mr. Block, can you give us any -- can you tell us why that area has such a higher percentage of addiction-related issues, so to speak? I mean, is there anything that supports that? What's the foundation of that?

MR. BLOCK: I think all I can do is speculate, but my speculation is that since we have a treatment center on campus, that people know that addiction won't disqualify them from coming onto campus, and so they're not afraid to show up and they're not afraid to self-report.

My gut says that we're probably no different than the rest of the country, but our people are willing to self-report because they know they can get treatment.

MR. OXER: Okay. Mr. Keig, do you have a question or a comment?

Mr. Keig and I and Executive Director Irvine visited your campus -- and Michael visited the campus, you know. And I would have to say; I put it on the record last time.

I was most impressed and I would continue to encourage you to do what you have in the last sort of plenary discussion while we were there.

Keep gathering the data, because nothing makes an argument as strong as the numbers to show that you're making a difference.

MR. BLOCK: Well, Mr. Chairman, just this last week we came to an agreement with the U.T. Health Science Center of San Antonio to do third-party evaluations of all of our data. They'll have an open back door into

all of our data, and they're using their statisticians and economists to evaluate both our data, our continuum of care data, and the center of health care services data. So we're going to have an independent third-party evaluation by a research team ongoing based on your comments.

MR. OXER: Great. Glad to hear that. Okay. Any other comments? Any questions for Mr. Block?

(No response.)

MR. OXER: Thank you, sir.

MR. BLOCK: Thank you, sir.

MR. JANSEN: Mr. Chairman, members of the Board. I'm Dick Jansen, and I represent the Venetian Gardens 12204 in Joshua, which is just south of Burluson and part of the Fort Worth metropolitan area.

Just want to make a couple of comments and do not want to drag it out, because it's been a long afternoon for everybody here.

But we went out with the new QAP; have to identify good high-quality opportunity areas in which to try and develop --

MR. OXER: I'm sorry to interrupt you, but I have to -- there's a policy and procedure issue I have to take up with you. Does this relate to the Item Number 7 on Haven for Hope?

MR. JANSEN: No.

MR. OXER: Okay. Just making sure here, because we've got an active motion on the floor we've got to contend with. If you're speaking --

MR. JANSEN: Do you mind if I stand?

MR. OXER: Help him with his seat, Michael.

If you wish to -- you know, if you wish to speak on that item, we're glad to have you here and we'd like to --

MR. JANSEN: No, no problem.

MR. OXER: We've got to deal with this one first. All right.

Are there any public comments with respect to Haven for Hope?

(No response.)

MR. OXER: Okay. We have a motion on the floor to approve staff recommendation for the funding. Motion by Ms. Bingham and second by Dr. Muñoz. Any other questions or comments?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

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

Mr. Block, you all pass on our best regards to Mr. Greene and the rest of the staff down there.

MR. BLOCK: Really, I think you just made his day. Thank you.

MR. OXER: Okay. We expect to come back and see some big numbers next year. You understand that.

MR. BLOCK: Count on it.

MR. OXER: Okay. Let's see. Where are we at on this thing? Sam, you'd like to speak at the public --

MALE VOICE: Yes.

MR. OXER: Okay. Well, that's -- we've got one more item to deal with yet, so you may want to take a quick seat there. Okay.

Last item on the published agenda is Item Number 8, which is an executive item that I will report and remind everyone that it was discussed in executive session. It has to do with the litigation engaged in by the Department or by the Agency -- or by the Department with respect to the ICP versus TDHCA.

So, with that, is there any other discussion or questions from the Board?

(No response.)

MR. OXER: Then we'll entertain a motion.

MR. KEIG: So move.

MR. OXER: Okay. There's a motion to authorize the staff, specifically Mr. Irvine and general counsel, to negotiate with ICP with respect to the remedial plan related to litigation that's before us.

MALE VOICE: Second.

MR. IRVINE: I'd just like to clarify. It's not to negotiate; it's simply to authorize the oversight of the submittal of --

MR. OXER: Of the plan --

MR. IRVINE: -- proposed remedial plan --

MR. OXER: Okay.

MR. IRVINE: -- and comply with the court order.

MR. OXER: But you're not negotiating with respect to that. You're not negotiating. We're just creating this, which we hope satisfies the court's request.

MR. IRVINE: Right. And our staff activity is subject to coordination with the Chair of the ICP Committee --

MR. OXER: Professor McWatters. Good. All right. There's been a motion to accept by Mr. Keig?

MR. KEIG: Yes.

MR. OXER: Okay. Do I hear a second?

MS. BINGHAM: I'll second.

MR. OXER: Second by Ms. Bingham. Is there any other comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. It's unanimous. Thank you very much. That closes the formal specific action item agenda. We have open session now.

Mr. Jansen, would you now like to speak?

MR. JANSEN: Thank you, sir.

MR. OXER: I'm sorry for the --

MR. JANSEN: No, I didn't mean to --

MR. OXER: No, no, it's not your --

MR. JANSEN: But, anyway, as I said, I'm Dick Jansen and I'm the local representative for Venetian Gardens, and that's 12204.

And one of the things that is called for in the QAP is that we need to develop in higher opportunity areas. And that has created a little bit of -- not a problem, but a challenge. And to go out and find properties that are within this area you've got to really work very hard.

We were lucky enough we found something in Joshua, which I mentioned is south of Burleson and is part of the Fort Worth area as far as people working and what have you.

And before we even submitted our application we normally go out and meet with the city, the mayor, the councilmen, and everyone else. If they tell us no don't even bother coming in -- there's no reason to submit an application.

So, anyway, we met with the mayor, the -- couple of city council people, economic development, and the city manager -- and that was in December. And they were very, very excited about what we were trying to do.

We came back -- we submitted and we came back in January, sat down again, went through everything that we wanted to do, including the seller was with us and what have you, and they just got permission to build a Brookshire grocery store and what have you.

The property we found was directly across the street from the

high school. We got the homeowner's association, we got the education people all behind us, including, as QAP calls for, four other -- three other recommendations.

To make a long story short we went -- and it was in the early March and we met with the state rep, who happens to be Robert Orr. And we went through exactly what Joshua wanted to do, and the fact that when we went back down to Joshua and they actually gave us a recommendation. They set it up where we got a resolution from the city and what have you.

And we presented that to Mr. Orr to tell him, you know, exactly what we wanted to do. Didn't want to build a -- wanted to build a family, but only 96 units. By rights we could have gone up to 252 -- actually 200 because that's what the market study said.

Mr. Orr didn't make comments one way or the other. In the meantime the mayor and a number of other people from Joshua went up to meet with Mr. Orr a number of times.

And, finally, through a lot of different e-mails that went back and forth it turned out Mr. Orr said, no, he's not going to do it. And he did not feel that Joshua needed to have any affordable housing, and he said that it would be -- it would hurt the other apartment owners in the city.

The mayor tried to go through all his reasons why he wanted it besides the tax base, besides the fact that they do need affordable housing, the fact that the newest property was built back in 1970. Most of them were only something like 42 units. The biggest one is like -- I think it's 110 units. The mayor went on to say, We do not have to give them any abatement or

anything else.

And so finally Mr. Orr came back and said, Well, I'll reconsider it. So, again, we kept going back and forth and everything else. And the mayor visited with him -- I guess it was four more times trying to convince him why Joshua really wants and would like to have this particular property.

Well, after many visits and everything else it got down to a letter -- or an e-mail sent from Representative Orr to us, to the mayor, and to TDHCA. And, if I can, I'd like to read what the response was.

"I am not going to sign this letter of support because I should not be in the middle of picking winners and losers. I know you told me you have a lot invested, but I do not believe your project should be penalized or jeopardized because I will not sign a letter of support. I have always believed that marketing should determine if the project will work, and the folks at TDHCA should evaluate those projects based on that." And it's signed Robert Orr.

Now, I realize the -- I cannot do anything. We didn't lose any points but we didn't gain the points. We were second in the region -- in the number three region -- with Joshua's project. Of course, without the 16 points we're not going to be anywhere near the top.

But the mayor of Joshua and the couple of councilmen and the city manager and everything would like to have the opportunity to come up next Board meeting in June to express their opinion of the project and also to plead with the Board and trying to ask for an exception.

I told them that I would speak today and see if we can set

something up for the next meeting and try and get them on the Board to -- I mean, on the agenda so that they can speak to the Board.

I think they're very disappointed because it's not a matter of saying, Well, we'll submit next year. The thing is that we have a state rep who does not believe in what he calls government-subsidized housing. So we're kind of at a standstill.

However, my partners came back with -- to the mayor and to a number of other people that if we cannot get an exception to this if we went in to build out 200 units under the 4 percent bond program we don't need the state representative's approval. And in a way that's kind of sad.

So, anyway, that's the comment -- or my comment. I'm going to ask that you give them an opportunity to come in and speak at the next Board meeting.

MR. OXER: Thank you, Mr. Jansen. As you're -- as I think everybody here is aware -- and I'll repeat again -- this period on the agenda is for people to make comments about things we would like -- they would like to have taken up on the next agenda. We're not at liberty to deliberate or even question, but your request is noted.

MR. JANSEN: Okay. Thank you. Appreciate it.

MR. OXER: All right. Are there others?

MS. ELLER: I'm Debbie Eller, and I am the Community Development Manager from the City of College Station. And I am here on behalf of our mayor. She sincerely regrets that she can't be here, but she's actually with a group from our Chamber of Commerce in Washington, D.C., on

a legislative trip. But she really, really, wanted to be here.

MR. OXER: She can have my chair.

MS. ELLER: I wanted to be here today to present a letter from her in support of College Station's new development application number 12216 located in Region 8 urban.

At your last Board meeting there were some questions regarding some of the processes that some of the other applicants went through in that same region, so I wanted to clear up a little bit about our process and what we did in College Station.

In our 2010 consolidated plan for HUD we identified affordable senior housing as a high priority need. And so we proceeded with planning according to our consolidated plan.

Additionally, in conjunction with our consolidated plan, the City initiated a medical corridor planning committee who is looking at the same area where this project is proposed to be located. And that committee also identified affordable senior housing as a high priority need for that area.

So, therefore, our council directed us to go through an RFP process, which we did two years -- or a year ago. And we received several applications in response to that RFP.

And we selected this one, the College Station Senior Development, because of the design and the amenities, the developer experience, and the location, which was in this medical corridor. It's a win-win for our city. It will not only provide, you know, affordable housing for our growing senior population, but it will also help in the economic development in

that area.

Our city council highly supported this proposal. They adopted a resolution to support the application along with executing a funding agreement in the amount of \$1 million in HOME funds. So they are very much onboard with this project and are very much in support of it.

Since the selection of the developer we have worked hand-in-hand with the developer to ensure that this application receives all the points that it can. It's been a long process and we've enjoyed working with them. And we have a lot of community support for the project. And we did follow all the rules and requirements of the QAP.

So we just want to stress the importance of this senior development to the city of College Station. We have a huge growing senior population. All of those old Aggies are wanting to move back to College Station and we need a place for them to reside. So --

MR. OXER: They all eventually come home, don't they?

MS. ELLER: They do. They do. It's a great place. So, anyway --

MR. OXER: April 21.

MS. ELLER: Yes. Yes, sir. Definitely. So, anyway, this application would provide much needed affordable state housing for our senior population.

MR. OXER: Good.

MS. ELLER: Thank you very much.

MR. OXER: Thanks for your time. Okay. Granger?

MR. MACDONALD: I'm Granger MacDonalD, Kerrville. Last time I spoke to you about the lottery. And at Dr. Muñoz's suggestion I went out to see where the other states were that were giving it a try.

First of all, Michigan had a lottery and cancelled it. The reason why they did was they had no threshold. They just had a lottery. And what they found out was happening was that one applicant might put in 50 lottery balls or 75 and stacked the date so that they'd be sure to get some.

Now, Florida, on the other hand, after they went through a long period of time where all the developers cut each other up, did all sorts of nasty tricks to one another to try to get ahead -- they adopted the lottery. And what they did was very similar to what I discussed last month. They used their QAP -- their existing QAP and set a threshold number, and then limited the number of projects that anybody could be a participant at any level -- contractor, consultant, whatever. I think the number's six.

But, anyway, so -- and they are very happy with their lottery and very happy with the results. And it's cut down on a lot of infighting, making jobs a lot easier and highly recommend it.

MR. OXER: You understand we can't comment on it.

MR. MACDONALD: I understand.

MR. OXER: Comments are on the record.

MR. MACDONALD: The second item I'd like to put on the record is I'd like to ask the Governor to reconsider his decision on having no forward commitments.

MR. OXER: Good luck, sport.

MR. MACDONALD: I understand. But you guys were all witnesses here today to a perfect example of how there's some very good projects -- and you come from right up there today put it on the agenda for next month to give those guys a forward commitment to veterans housing in Kerrville, Texas.

And you really need to have that mechanism because there are deals that sometimes won't score that are flawed, that have got problems. We have got to somehow lobby the Governor's Office to allow that procedure because it has to happen on some limited basis.

No doubt it was completely out of hand. No doubt that if you got completely haywire -- it was 300 people asking for forwards last year. I mean -- and that system couldn't last. But today that could change.

MR. OXER: Comment noted. Thank you for those. Ladies?

MS. HOPKINS: Mr. Chairman, I represent the --

MR. OXER: Pull it down a little bit. Help her out, Michelle.

MS. HOPKINS: I got it. Hello. My name is Dorothy Hopkins. I'm the interim president of Frazier Revitalization, Inc., a 501(c)(3) organization in Dallas, speaking on behalf of the Hatcher Square project, Number 12159. And can I just say up front you guys have a really hard job. You all really do. So thank you.

I'm here to express my opinion and that of the Frazier community, and I suspect the opinion of any other large city in Texas that has low income areas that are in need of assistance from the state in the form of 9 percent low-income housing tax credits.

When you're considering the proponents of the remedial plan and the litigation of ICP versus the TDHCA to be presented to Judge Fitzwater's court later this month I urge you to take the following items under consideration.

As a result of the changes to the QAP look where the scoring is this year. To be competitive projects have to be outside of a qualified census tract. ICP believes that fighting in court for the rights of minorities to move to other less economically disadvantaged and more racially diverse areas is an inherently legitimate goal. And it may be except when the outcome leaves already disadvantaged communities at a still greater disadvantage.

What about the residents in these low income areas? What about the racial minority left behind when people move out of their neighborhood? How will they rebuild their communities if more subsidies and funding get diverted from sustainable development in their neighborhoods?

ICP promotes housing choices for minorities, but shouldn't minorities who choose to stay in their communities have housing choices as well?

Under the new QAP the proposed Hatcher Square project has no chance. It's not a typical for-profit tax developer driven project. It's a development that's part of a comprehensive revitalization effort in a low-income area in southern Dallas spearheaded by a nonprofit organization that meets the enterprise community partner definition of a sustainable community.

If there were a scoring criteria used by the TDHCA to measure

support for a sustainable community Hatcher Square would do really well. Sustainable communities refers to planning and building activities that address social equity, environmental stewardship, and economic development. This long-term and holistic approach includes housing, infrastructure, public transportation, and supportive services.

It is the way community comes together to assure that neighborhood stakeholders work together to empower the community to sustain transformational efforts.

As an example, in 2009 we worked with neighborhood leaders, neighborhood associations, crime watch groups, the police department, the neighborhood schools, nonprofit development corporations, the city's community prosecutor's office, and the faith-based organization to share resources and to cooperate and coordinate at every opportunity.

Our plan of action and our development strategies focused on renewed civic engagement, improved educational opportunities, family, health, and social well being, law enforcement and crime prevention programs, quality and affordable housing, economic development, and job creation.

Because of our neighborhood efforts we can see tangible results -- lower crime rates, improved reading rates in the schools, construction of affordable housing for ownership opportunities, and more opportunities for after-school programs within the community.

The tragic flaw as I see it of the new QAP is so evident. Here we have a neighborhood effectively coming together to provide for a sustainable community that would be an example for the rest of the nation to

follow. Our project was next in line for award last year and this year we're dead last in the scoring system because we're in a QAP.

Hatcher Square is part of a sustainable effort. It's a worthy project. It has all the components that it should have to further revitalization effort already in process.

It has community and legislative support. It has the support of the City of Dallas. It is a TOD site across the street from a newly-opened light rail station, but it's in the qualified census tract and, therefore, not competitive in scoring.

Do you not find it ironic that projects in low-income communities are not eligible for low-income housing tax credits? The remedial action plan needs to address the situation. Yes, low-income wage earners, minority or not, should have a choice as to where to live. But it has to include the choice of fit and affordable housing in low-income areas as well.

This is a struggle. It's a problem that's not going away. Low-income areas are here to stay. There is no conventional financing for projects in low-income areas. And without subsidies the ghettos will remain ghettos forever.

There needs to be a solution or there needs some resolved in the remedial plan. And this remedial plan actually gives you the opportunity to address these issues from another perspective. So I thank you for the opportunity to speak and thank you for your support.

MR. OXER: Thank you for your comments. So noted, and, of course, the ICP litigation of remedial effort is underway and that's what we

have to tell you. So it's underway.

Okay. Just as a point of protocol here I would remind everybody if you want to speak then we're starting right to left. So don't sit over there on the left or I'm going to start calling people from the right.

MALE VOICE: Well, there's no more room on the right.

MR. OXER: Well, I know. That's all right. So go on.

MR. ONION: Good afternoon. My name's Robert Onion. I'm an affordable housing consultant.

What I'd like for the Board to consider is increasing a multifamily HOME award from \$2 million to 3 million so that it could be better used for private activity, multifamily, tax exempt bonds.

The good cause here -- and I have to kind of go back and explain the private activity tax exempt program. Each state receives a certain amount of tax exempt authority from the federal government based upon \$85 per capita. In the state of Texas that's \$2 billion.

The Bond Review Board administers that and further breaks that down into certain categories. Obviously the Board is familiar with the single family bonds, which they see each time. Also there's multifamily that's 22 percent of \$2 million total. You've got 29 percent that is all other issues and you have student loans and qualified small issues as some of the others.

Of those categories that I have mentioned there is only one category which is the tax exempt multifamily bonds that the federal government, in addition to accessing those tax exempt bonds you receive non-competitive 4 percent credits.

So that basically means that for every dollar that you utilize in private activity bonds you receive an additional 30 percent -- or 30 cents in 4 percent non-competitive tax credits.

This is a tool that you probably haven't seen within the last five to seven years because the numbers simply haven't worked. If the developers could utilize the HOME funds as I have indicated there's a long ways towards accessing this additional tool that could be used to build affordable housing.

Four or five years ago the tax exempt multifamily bond program was actually larger than the 9 percent. So it's a tool that, as the numbers start to work, could be used to build additional affordable housing.

So I guess bottom line what I'd like for you to consider is the increase -- also just remember private activity multifamily tax exempt bonds and a tool that can be used to build additional affordable housing.

I understand and I talked to staff that they're going to bring up another NOFA -- a HOME NOFA, and I certainly can make additional comments at that time. I just wanted to make you aware of that. Thank you.

MR. OXER: Thank you.

MS. ADAMI: Good afternoon. My name is Melissa Adami with Odyssey Residential in Dallas. I just kind of wanted to echo what Mr. Onion said.

Nine percent credits can only take us so far in this high demand market. No forwards -- no problem. Let's put that bond money to work. We've just got to figure out a way to make it work with these projects that

we're all working on.

I mean, as you know, demand in Texas has exploded in two different ways. You know, when we had the fires in Bastrop and tornadoes in Dallas. But on the other hand areas in West Texas like Lubbock, Midland, Odessa, we have an exploding oil and gas industry there. And there is a huge demand for housing. People are living in motels and trailers -- wherever they can find a spot on the floor.

This fierce demand for workforce housing in cities where booming economic conditions have pushed rents also above the heads of those families who can't afford it -- that's where, you know, they need our help.

And since, you know, our activities are limited with this 9 percent money, you know, we just need to work together to find a universally beneficial way to put that 4 percent bond money to work in Texas. And that's all. Thank you.

MR. OXER: Melissa, you're asking that we put this as an agenda item on the next meeting.

MS. ADAMI: Just -- maybe we need to just talk to staff about making the HOME money also viable for that kind of gap there to make it work.

MR. OXER: Yes, there is an obvious gap in the housing availability, and particularly in the shale gas area.

MS. ADAMI: Yes, definitely.

MR. OXER: That's an issue that frankly our strategic plan committee was checking out ideas.

MS. ADAMI: Right.

MR. OXER: No discussion, but let's note it. We're on it.

Okay.

MR. HARTMAN: Good afternoon, Mr. Chairman, members of the Board. My name is Michael Hartman with Tejas Housing here in Austin.

I've been developing tax credits in both Florida and Texas since 1993 and I've watched the systems evolve in both states. And with all due respect to Granger, who I love to compete with and who I also love to have those collegial nights with that sometimes last a little long into the morning, you don't want to go to Florida; you don't want to go near their system.

Like I say, I started in 1993 before they had lottery. And there was problems. I mean, developers -- if you think anything you've seen here today, you haven't seen anything. I've seen people lose because one line was cut off the bottom of one form. It didn't matter a hill of beans as to whether or not that deal was viable or not. And it got that bad.

So then they evolved the lottery. Everybody had a perfect score and there was a lottery. And I can tell you, nobody liked the lottery. What Granger just described to you was the 2008 QAP.

In their latest QAP, which they are currently holding their 2012 cycle on, they finally got rid of the lottery. And what they did was they expanded -- they give proximity for services just like we do here, but they expanded it from six points to 37 points. And they made the distances so short that nobody could score a perfect score.

Now a perfect score in the proximity tiebreaker would be 37

points. Most people were able to score somewhere between 32 and 34 points. In certain parts of southern Florida they were able to score 36-1/2 points. So I can tell you the lottery is not a good thing and people will find out that you don't want it.

But at the same time it's hard to come up sometimes with differentiations. You know, I've been back and forth on lottery. I developed in Michigan -- I've developed in 16 states. Michigan had kind of the same thing. They set a threshold of points, and once you hit that threshold of points you were in a lottery because it is hard to say that a deal that scores 218 points is better than a deal that scores 217 points.

I mean, they're both deals that need to be built. They're both good deals. So how do you differentiate between them? Unfortunately there are going to be winners and losers and that one point is going to make the difference. And this year it's going to be our second tiebreaker that's going to make the difference for the most part.

In that regard, one thing I would suggest is that when you're looking at the support per unit one thing that Florida do right is they don't take into account just the amount of tax credits per unit or tax credits per person.

What they do is they take the tax credits requested times -- and it could be any factor, so let's say it times eight reflecting an average price of 80 cents. Then they take and add on any other subsidy requested from Florida housing, such as HOME -- or in their case they have a program called SALE. So they add that on and then divide that total number by the number of people served.

So then that way you don't get the skewing that we had this year. You know, in the past you've probably had eight or ten HOME apps. This year I think we had 68 HOME apps out of 162 tax credit applications. So everybody tried to figure out, Well, here's a loophole -- they're not counting the HOME when they're figuring out that tiebreaker instead.

So just a suggestion maybe as to how you can incorporate other support that you're giving to these deals into them. Thank you very much.

MR. OXER: Good. Thanks, Michael. All right. Is there any other request for public comment?

(No response.)

MR. OXER: We've come to the end of our agenda. Does any member of the Board have anything else they would like to speak on or say or bring up?

(No response.)

MR. OXER: Okay. In that case I'll entertain a motion to adjourn.

DR. MUÑOZ: So move.

MR. OXER: Motion by Dr. Muñoz to adjourn. Second by?

MS. BINGHAM: Second.

MR. OXER: Second by Ms. Bingham. All in favor?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: There are none. We stand adjourned. Thanks,  
folks.

(Whereupon, at 4:10 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: May 10, 2012

I do hereby certify that the foregoing pages, numbers 1 through 168, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

05/15/2012  
(Transcriber) (Date)

On the Record Reporting  
3307 Northland, Suite 315  
Austin, Texas 78731