

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

Room E2.028
Capitol Extension
1500 North Congress Avenue
Austin, Texas

Tuesday,
November 13, 2012
10:00 a.m.

MEMBERS:

J. PAUL OXER, Chair
TOM GANN, Vice Chair
LOWELL KEIG, Member
JUAN MUÑOZ, Member
J. MARK McWATTERS, Member

TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342

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c) Presentation of the Department's 4th Quarter Investment Report in accordance with the Public Funds Investment Act (PFIA)	
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d) Presentation, discussion and possible action to approve Housing Tax Credit Amendments	
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authorizing the sale of mortgage certificates and redemption of bonds from Residential Mortgage Revenue Bonds Series 2003A

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- k) Presentation, Discussion, and Possible Action on the 2013 Section 8 Payment Standards for Housing Choice Voucher Program (HCVP)
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- n) Presentation, Discussion, and Possible Action on the 2013 State of Texas Consolidated Plan: One-Year Action Plan

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- p) Presentation, Discussion, and Possible Action to waive the Neighborhood Stabilization Program (NSP) requirements for loan repayment for The Works at Pleasant Valley (#2011-507)
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- t) Presentation, Discussion, and Possible Action on an order adopting the repeal of 10 TAC Chapter 60, Compliance Administration, Subchapter A, Compliance Monitoring, and an order adopting new 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter F, Compliance Monitoring, and directing their publication in the Texas Register
- u) Presentation, Discussion, and Possible Action on an order adopting new 10 TAC, Chapter 1, Administration, Subchapter A General Policies and Procedures, §1.5 and directing its publication in the Texas Register
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- w) Presentation, Discussion, and Possible Action on an order withdrawing the proposed repeal of 10 TAC, Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.19, Deobligated Funds, and withdrawing proposed new 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.19, Reobligation of Deobligated Funds and Other Related Sources of Funds and directing their publication in the Texas Register
- x) Presentation, Discussion, and Possible Adoption on an order amending 10 TAC Chapter 5, Community Affairs Programs, Subchapter H, Section 8 Housing Choice Voucher Program, §5.801, concerning

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PROCEEDINGS

MR. OXER: Good morning, everyone. Let's come to order. I'd like to welcome everyone to the November 13 meeting of the governing board for the Texas Department of Housing and Community Affairs.

We'll begin by, as we always do, by certifying quorum. Ms. Bingham is not here today. Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. Keig?

MR. KEIG: Here.

MR. OXER: Professor McWatters.

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I'm here. We have five present. We have a quorum so we're able to do business. Let's stand and salute the flag please.

(Pledge of Allegiance to United States and Texas Flag.)

MR. OXER: All right. Let be about our work here. All right. First of all, Michael, have we got any guests to identify -- recognize?

MR. LYTTLE: No, sir.

MR. OXER: No guests here. Good. We like it when

it doesn't attract much attention from the folks upstairs.
Okay.

Let's see. With respect to the -- we're going to go through -- we've got -- as I think everybody recognizes today we have a couple of items that we expect considerable discussion on, so we're going to address that in a little bit different form than maybe on the agenda.

But we want to go through the consent agenda reasonably quickly unless there's anything that needs to be taken out. So is there's any --

(Pause.)

MR. OXER: Well, okay. And one item on housekeeping here. I think everybody recognizes that we've got a row here in the front where Cynthia's just joined us -- good morning, Ms. Bast -- that is reserved for speakers on each item.

So as an item is called, we want you to line up and be in that row, which starts behind Jeff and Megan right there and goes across the first full row in the front here, so we'll know about how many are looking to speak on a particular item.

So with respect to the consent agenda we'll have to have a motion to consider first. Does any board member care to --

MR. IRVINE: Mr. Chairman, before you do, staff would like to pull one item off of the consent agenda.

MR. OXER: Okay.

MR. IRVINE: And that would be Item 1(b). As anybody who read the whole book can tell, we made a mistake and we put the wrong resolution under Tab 1(b).

VOICE: They're included here though. We brought them.

MR. IRVINE: Okay. Well --

MR. OXER: Yeah.

MR. IRVINE: -- I'm fine with your including it if you've had time to read it, but I didn't want to force you to --

MR. OXER: Actually, the -- and while -- is there anything contentious in 1(b) that requires urgency for signature today?

MR. IRVINE: No, sir.

MR. OXER: For consideration? Then keeping with our close adherence to the rules, I think good process always makes good process. I'd like to make sure we have a chance to read through that and consider it for the next meeting.

So I'll pull it for this -- pull it entirely for this meeting.

Okay. All right. Is there any other board member with an item to pull from the consent agenda?

(No response.)

MR. OXER: Okay. Motion to consider?

MR. GANN: I so move.

MR. OXER: Okay. Motion by Vice Chairman Gann to accept the consent agenda.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. We have a speaker in Ms. Bast.

MS. BAST: Good morning, gentlemen. I am Cynthia Bast from Locke Lord, and I'm here to speak briefly about the proposed compliance rules, which is Item 1(t).

This relates directly to the formation of utility allowances. As I'm sure you know, the IRS allows different methodologies for establishing utility allowances that are utilized in the rent calculations. It establishes those different methodologies so that owners can make a selection as to what works best in their area and for their property.

Over the past year or so I've been working with TDHCA on establishing some of these utility allowances for certain properties using different methodologies. One thing we certainly find is the different methodologies create different results.

And so I'm here to speak today on behalf of our client Diamond Property Consultants, which works with clients

literally all across the country in establishing utility allowances.

And it has to do with a new proposed Subsection M of Section 10.607, which says that the Department will review utility allowances for reasonableness by comparing the allowance to other available data. If the allowance does not appear reasonable or appears understated the Department may require additional support and/or deny the request to use that particular utility allowance.

The concern of our client is that while TDHCA understandably needs some discretion in looking at these utility allowances they certainly want to be able to avoid any fraud in the system or just outrageous utility allowances that would materially impact the residents.

The concern is that this gives perhaps so much discretion that it does not give enough clarity to the community. For instance, what is reasonable? You can have a situation literally where in the same county the city's housing authority and the county's housing authority produce utility allowances that are wildly divergent. Now, is that reasonable?

And then it says that they're going to compare the allowance to other available data. Well, what other available data? If the methodology is, for instance, the

engineer's model then are they only going to compare it to data available in that area from other engineers' models or are they going to compare it to other kinds of methodologies?

Because, as I mentioned, the different methodologies produce different results.

If the allowance does not appear reasonable or appears understated then they may need more information. What if it appears overstated? What if an owner presents an allowance that's been calculated and they say, Wait a minute, that one's way of on the other end of the spectrum.

So, just in general, the concern is that this language has a lot of discretion in it, may even allow the Department to prefer one methodology over another when we have guidance from the IRS in the 8823 guide that says, This is how you do the methodologies, and, for instance, with an engineer's for a local utility company estimate, you get the letter from the local utility company, you post it, you submit it, and then it becomes effective.

So Diamond Property Consultants believes that there are rules in place in the 8823 Guide that do give direction here and that having this much discretion -- some discretion we understand, but this much discretion could lead the Department to preferring one methodology over another or not giving clarity to the owners as to what they should

be doing in establishing utility allowances. And that is the concern that we wanted to express. Are there any questions?

MR. OXER: Are there questions from the board?

(No response.)

MR. OXER: I have a question, Cynthia.

What's the range of variation in the output from the various models that you would say?

MS. BAST: I can be large. I've seen them go twice as much --

MR. OXER: So a factor of two?

MS. BAST: -- like an example, 25 to 50 or something like that. I have heard quite divergent numbers. And of course that can impact residents. It could also impact the owners and their financial feasibility as well.

So what I've seen so far in working on this in the last year or so is that there's a lot of variation out there, and so that does create some uncertainty if the Department is allowed to have discretion in accepting it or not.

MR. OXER: So for the --

MS. BAST: If you go with the 8823 Guide that says you get the utility allowance letter from the utility provider, you turn it in, and that's your allowance, then

that's not discretionary at all. You turn in this utility allowance letter and that's your letter -- and that's your allowance. So that's the concern.

MR. OXER: Yeah, and I understand the concern. You have a thought, Counsel?

MS. DEAN: Well, the -- one thought that came to our mind is that you're going to have probably a lot of public comment on rules today. And if you choose to do so -- and you may want to do this -- to state for the record that you're going to reopen the record of the rule making -- because public comment period technically ended October 22 I think it was for these rules.

And -- but there is going to be a lot of public comment today. Because if you don't then -- we won't be able to make any changes based upon public comment and staff won't respond to it in their reasoned response. So you may want to just take care of that housekeeping item and open the record today for public comment for purposes of the rule making record.

MR. OXER: To reopen the public comment.

MS. DEAN: Yes.

MR. OXER: Okay.

MS. BAST: And I do have some --

MS. DEAN: To allow the comment to be considered.

MS. BAST: I do have some proposed language that we think might be helpful if that's beneficial.

MR. OXER: Well, I have a follow-up question. Why are you late?

MS. BAST: The owner -- I spoke with the owner of the company this morning, and he sincerely regrets being late. There have been some issues that he's been dealing with that --

MR. OXER: Throw him on the spikes; don't worry about yourself. Okay?

MS. BAST: -- took him to -- no, that's not my job. My job is to advocate for my client, and my client did have some circumstances that took his attention away, and he apologizes for that sincerely.

MR. OXER: We understand that that there are -- I mean, for adding comment into development of a policy on behalf of the board I can see -- our purpose is to make sure that everybody gets heard. And if there are valid comments that should be made we like to see that that happens.

I guess you're aware that there's a hard and fast date on deadlines for applications and those sorts of things.

We wouldn't open those. Okay? Just as a passing comment to everybody that's standing behind you over there. Okay.

MS. BAST: And even if a change is not made today

or -- I think that one goal here is just to present this concern -- that if this rule is adopted with this discretion in it that then the Department and the staff need to think carefully about how they utilize that discretion and how they --

MR. OXER: Think through its application?

MS. BAST: Right. And how they interpret this. Like I mentioned, available data -- what is available data. Well, if you can internally create a tight system for utilizing this discretion then I think that will be fine and acceptable. It's about transparency and it's about giving good direction to the community for how they do this.

MR. OXER: Thank you.

MS. BAST: Thank you.

MR. OXER: Refresh on those particular items, Tim, if you can. This is only a -- it's a rule, but the rule has been advertised. So this executes or implements the rule.

MR. IRVINE: It's the final adoption of a rule.

MR. OXER: Okay. All right. Are there any other comments from the board?

(No response.)

MR. OXER: Okay. Ms. Bast, comments have been heard. There's been a motion to accept the consent agenda including this rule by Vice Chairman Gann, seconded by Dr.

Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

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

We'll take your comment under consideration, Cynthia. We'll make sure that this is -- discretion of those is one of those things that's best -- is strongest when not used apparently. All right. Next item.

VOICE: Tim?

MR. OXER: And Tim Nelson is across the way at the Bond Review Board hearing this morning, so we're going to give him a pass on that one and take up number 3. So, Patricia.

MS. MURPHY: Good morning. Patricia Murphy, chief of compliance. I don't know about everybody else but I'm having trouble hearing. Are you microphones on?

MR. OXER: Can you -- Michael, let's do a -- while we're here let's do a quick mike check.

MS. MURPHY: Can you guys hear okay?

MR. OXER: Can we get any volume up?

MS. MURPHY: No. The microphones don't seem to be working well,.

MR. OXER: All right. Apparently we've had some

problem with this system earlier for this room -- on an earlier -- hello. That one seems to work.

MS. MURPHY: Okay.

MR. OXER: Can you hear that one? Can you hear this one? All right. Anybody in the back hear us? Can't hear us in the back. Okay.

MS. MURPHY: I'll talk loud. This next item is a request for reinstatement for an application that was terminated due to material noncompliance. There were actually two applications that were terminated for material noncompliance, and they have withdrawn one application but they are pursuing reinstatement for Edcouch Seniors. It's a 4 percent housing tax-credit and tax exempt bond property in Edcouch. It's application number 12411.

The application has been submitted by the Cesar Chavez Foundation, which currently owns and controls five properties in the state of Texas, one of which is in material noncompliance. It's Jardines de la Fuente. It's housing tax credit number 03013, and it currently has a compliance score of 50. And as you know the threshold for material noncompliance is 30 points, so they have exceeded that threshold.

At this time all of their issues of noncompliance have been corrected, so it's not possible for them to take

any other action to reduce their score at this time.

One of the considerations for a request for reinstatement is that the applicant has taken reasonable measures to remedy the cause for the termination. This particular property has had a history of material noncompliance. This property was in material noncompliance in 2009. At that time the Cesar Chavez Foundation was applying for funding and their application was terminated at that time as well because this particular property was in material noncompliance and they did not request reinstatement at that time, but we come back three years later and it's new issues of noncompliance that were identified that rose to the threshold to the material noncompliance.

And in addition, in preparing this board meeting I'm looking at their portfolio of properties. While their other properties are not in material noncompliance at this time they have had a history of noncompliance issues related to affirmative marketing, social services, utility allowances, overcharged rent, and, in particular, they have had issues with not being responsive to Department notices of noncompliance.

I did have a conference call with the owner and management company and their representatives last week, and they have worked on some plans to avoid this type of issue

in the future about, you know, making sure that they are familiar of what the Texas rules are and, you know, that they're going to respond to notices of noncompliance and whatnot, which is great, and I think they need to do those things.

At this time I would not say that I can see that their plan has worked because it would take time for us to go back and see how they're doing. They've admitted that they have some room for improvement and they're going to work on those things.

Another consideration for reinstatement is if it's in the best interest of the state to proceed with the application. And we note that the proposed development is in a qualified census tract. And so at this time staff's recommendation is to deny the request for reinstatement. Do you guys have any questions?

MR. OXER: Any questions from the board?
Professor McWatters?

MR. McWATTERS: Patricia, what would be the burden on the TDHCA staff -- on you and your staff if all of the other developers treated compliance in the, let's say, relaxed way that this developer has?

MS. MURPHY: It's obviously easier for us to write a monitoring letter if there are no findings, as a matter

of reporting to the IRS. There's also the issues about referring per administrative penalties that involve the legal staff and other Department committees. So it is a burden on TDHCA staff.

It's also a burden on Texans that don't get the services, don't get the marketing, you know, are overcharged rent, are burdened with unnecessary paperwork. So --

MR. OXER: What you're saying is there's a reason we have those rules.

MS. MURPHY: Yes, sir.

Mr. Keig.

MR. KEIG: The management company that you met with -- is it the same management company that was in place during these violations that needed corrected?

MS. MURPHY: Yes, it's owner managed.

MR. OXER: Then no turnover to a manager.

MR. KEIG: So it's owner managed.

MS. MURPHY: I believe that they actually have recently hired someone. That was on the call. I think there's some owner representatives here. And I do believe that there was one gentleman on the call that they've sort of recently hired -- maybe -- I can't remember 2008 or so -- I can't remember. They were saying he has experience with compliance and the tax-credit program.

MR. OXER: Hold on just a second. I've got a housekeeping item here, Patricia. Just so that everybody knows -- I think we've got a sound man in here -- but we can hear fine. These speakers seem to be working well here. Okay. Can you guys in the back hear? Is it straightened out now? Okay. Have you got a control over there, Penny, that lines all that up? Who knows? Okay. Smile at it. Okay? Make it happen. Okay. Patricia, I'm sorry for the interruption.

MS. MURPHY: I was just -- if you have any other questions I'd be happy to answer questions.

MR. OXER: So they've had essentially three years to get their act together and they're still out of compliance.

MS. MURPHY: When we were there three years ago it was different issues of noncompliance -- that they corrected those and we came back and now it's new issues that they were found out of compliance with.

MR. OXER: It sounds like they continue to be in a state of relaxed consideration for the compliance requirements. I know. Be quiet.

Okay. Mr. Keig.

MR. KEIG: I move that we deny the request for reinstatement.

MR. OXER: Okay. There's a motion by Mr. Keig

to accept staff recommendation to deny the request for reinstatement. Is there a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. Are there any other questions? Do we have any speakers on this item?

(No response.)

MR. OXER: Okay. All right. Here's what we're going to do. Do we have -- Michele, do we have the list up here from -- okay. When you come up, you're going to speak from over here; my left, your right. Okay. The second row -- just another reminder here. The four chairs -- these two and these two -- are reserved for staff who will be involved, and then the speakers are in that -- Jean, come up here just so we can keep our protocol straight, please. Here we go.

So when you come up decide amongst yourselves who's going to speak first, and then come up, state your name, sign in, and state your position.

MR. IZMAJTOVICH: Very good. My name is Alfredo Izmajtovich. I'm the executive vice president of the Cesar Chavez Foundation, and I'm in charge of housing and economic development for the foundation. So you want me to sign in now?

MR. OXER: Well, before you leave. But just make sure -- you can actually put it down there so -- put it down on this table and you can sign in there. We expect a long meeting today, so we're trying to be efficient with our time.

MR. IZMAJTOVICH: Okay. Very good. Thank you, Board, for taking the time to listen. I wanted to talk about the foundation and myself and what we're doing to correct these conditions.

I joined the foundation in 2011, so only a little bit -- about a year ago. And I've done affordable housing for about 25 years in various capacities, both on the developer side as well as on the government side. I used to be the housing manager for Los Angeles County in charge of the HOME program and their affordable housing programs back in the day. So I've come on to the foundation with the goal of restructuring the housing department and to help expand activities of the foundation.

It may be helpful for me to talk about the foundation and what we are about. We're one of the oldest non-profits out there. We've been around for about 50 years.

We came out of the labor movement back in the sixties. And the initial foundation was created to provide services for farm workers.

And since that time we've morphed into a very large

organization where we have housing as one component. We also have a public radio station division that owns nine public radio stations throughout the southwest. We have an education group that provides after school programs and educational services to underserved communities. And we also have a legacy group that basically deals with Cesar Chavez's library, his burial site, historical monuments, and so forth.

With respect to the issues at hand here, we own about 1,200 units throughout Texas, as was mentioned earlier.

And I've been working on building capacity back up in the department. The department has had issues with change of leadership, change in staffing over these years, and so these issues were brought to my attention a few months ago. We've been working on developing a plan to address them.

The key issue that I'm asking the board to consider is that one of the projects that we're working on -- this one here, Edcouch Seniors -- is unique is that it has an award from HUD for a HUD 202. And if you're familiar with that program, it's extremely rare financing, and it's very valuable financing, because it provides both a capital subsidy for the construction of the property as well as a long-term operating subsidy for the seniors that live at that property for 40 years.

So recognizing that the issues that we need to

correct, I asked for a meeting and a call last week with staff to talk about the merits of the project versus the compliance issues and that we would, you know, strive to correct all these matters. I even offered to provide third-party management while we correct these problems on this project with the goal of not sacrificing the subsidy that's in place for this development.

It will provide deeply affordable housing for seniors in the Edcouch community that is desperately needed.

So I guess what I'm saying is that we understand we made some mistakes, we want to correct those mistakes. We're just hoping that the sacrificing of this project is not the only means of correcting that.

And I respectfully -- I request that you reinstate the application. We've also brought folks from Edcouch here to talk about the project, and I'll go ahead and defer to them at this point. Thank you.

MR. OXER: We're going to interrupt the process here just briefly. We are -- we have a guest here in -- you okay? You want to take care of this other thing and then we'll go -- come to you? Sure. Any specific you want --

VOICE: No. I don't want to interrupt the process at all.

MR. OXER: Okay.

DR. MUÑOZ: I have a question for the speaker.

MR. OXER: Okay. Dr. Muñoz.

DR. MUÑOZ: You said -- thank you, Mr. Chair. You said you have 1,200 units in Texas. How many do you have elsewhere in California?

MR. IZMAJTOVICH: We have 4,300 units in the southwest.

DR. MUÑOZ: Okay. How many do you have in California?

MR. IZMAJTOVICH: About 1,600.

MR. OXER: Southwest includes?

MR. IZMAJTOVICH: We're in Texas, New Mexico, Arizona, and California.

MR. OXER: Okay.

DR. MUÑOZ: Okay. How often have you been out here to this particular development?

MR. IZMAJTOVICH: I've been out to Texas five times in the past year. We have a lot of developments in the Rio Grande Valley. I've been trying to see our portfolio, so I've been visiting all the different properties. I've also been meeting with staff out here -- different dignitaries to get, you know, a feel of what our portfolio is doing, and also to again look at expanding that.

DR. MUÑOZ: I appreciate the expansion idea. I'm

sure it would be beneficial to potential residents and the local economy that it takes place. But you heard the reservations that were articulated earlier by staff and this sort of history and neglect. And while it predates you -- and I presume that whoever might speak might come up -- might speak more directly to what's being planned to prevent that from happening.

MR. IZMAJTOVICH: Well, no, that would be me. Like I said, we provided this ten-point plan. There was a change in senior leadership in this group. So I came in last year. We hired a new head of property management. He's been there two years. So the two of us have been putting together an extensive approach in terms of how we evaluate our operations, how we improve our results -- and we're starting to see that now.

DR. MUÑOZ: Are you applying that same corrective ten-point plan to all of your 4,300 --

MR. IZMAJTOVICH: Everything. Yes, everything. I mean, the goal is to improve the overall portfolio. Absolutely.

DR. MUÑOZ: Right. There should be a disparate impact sort of on -- you know, or a preferential impact to California and elsewhere and less so in Texas. Do you agree? It should be uniform whatever the correction.

MR. IZMAJTOVICH: No, it is uniform. That's what I'm saying. The goal is to improve the operations overall, yes.

DR. MUÑOZ: All right.

MR. OXER: What's been the response of the tax credit programs in the other three states?

MR. IZMAJTOVICH: Well, candidly, it sounds to me that the histories are mainly here in Texas. Our local -- regional had to be let go a few years ago and we have new regional person who's in charge of the Texas area. So we haven't had these issues, at least to my knowledge. Now, we've done like an audit of all of this and it appears that the issues are here.

MR. OXER: So what's the impact -- what would be the -- let's restate the impact of the denial of this standing.

MR. IZMAJTOVICH: The main issue for us is that we have secured a grant from the HUD 202 program which will provide the financing for the construction -- the vast majority of it -- and also provide a long-term operating grant for year. So it really will target the deepest affordable levels for seniors in the Edcouch community.

And if you're familiar with Edcouch it's a rural area with -- it needs a lot of investments. It's been

underserved and this development will be a huge benefit to the community.

MR. OXER: Because this is a denial for an application, not for an existing project.

MR. IZMAJTOVICH: Correct. Right. Now, we have those grants, and if we fail to move forward, our concern is that the program -- the HUD 202 program has been suspended for the past two years. There is no guarantee it's going to ever come back, so if this award is lost, it's lost for good.

MR. OXER: I think given the current economic circumstances and conditions, any grant, federal or state or in any other fashion, that could be generally the condition for all of those from here on out.

MR. IZMAJTOVICH: That's correct, yeah.

MR. OXER: For the next couple of sessions anyway.

MR. IZMAJTOVICH: Correct. So that's why, as I said, I would hate to see that lost here in this situation.

I think, you know, there's alternatives that we could look at. For, like I said, we provide the plan. If the board sees fit to put a different management company in place while we correct these conditions that we're agreeable to that. I think we're willing to work at this again. I don't want to see the project self-sacrificed.

MR. OXER: Any comments from the board? Are there any others that wish to speak on their behalf.

DR. MUÑOZ: Well, just -- but you don't dispute some of the observations of the staff in terms --

MR. IZMAJTOVICH: No, not at all. Yeah. No, I think --

DR. MUÑOZ: -- the issue of noncompliance -- material noncompliance --

MR. OXER: So this -- I'm sorry to interrupt. Go ahead.

DR. MUÑOZ: No, no, no.

MR. IZMAJTOVICH: Yeah. No, we acknowledge that. And when Patricia went through it with us -- I'm really appreciated her taking the time to do that -- it was very helpful and enlightening for me to see that.

MR. OXER: We pride ourselves in Texas of having a pretty sharp monitoring compliance crew. The IRS likes the way we do this, by the way. It has a strong reputation amongst everybody else in this room about attention to detail and management's attention to the philosophy that we're trying to achieve in this.

So this is for an application, and it's not for an existing project. The implications would be there would be a loss of a -- potential loss of a grant. And this is

in an application that's still going to be -- one, it would be -- an application would be made for a competitive process next year. Is that correct?

DR. MUÑOZ: It's 4 percent.

MR. OXER: 4 percent deal. Okay.

MR. IZMAJTOVICH: Yeah. I mean, just to give you the magnitude, the grant is for 3.5 million on the capital side. The operating grant, which is for 40 years, would be almost \$5 million. So we're talking a significant amount of resources that would be lost.

MR. KEIG: Couple of questions.

MR. OXER: Mr. Keig.

MR. KEIG: The third-party compliance consultant -- would they be coming in to correct the problems or to make changes or recommend changes to --

MR. OXER: Would they recommend or control?

MR. KEIG: Yeah, compliance infrastructure.

MR. IZMAJTOVICH: Well, my -- we would use them to do both actually, because, again, the goal is to improve overall operations. So we would take their recommendations and make those modifications as to how we manage those properties.

MR. KEIG: Besides the unnecessary annual income recertifications, the failure to complete the Texas sales

certifications, what other issues do you recall you all having?

MR. OXER: We don't have to ask him. Patricia's here.

MR. KEIG: Yeah, that would be good.

MR. OXER: You stand your ground here until we're -- we're not through. I hate to say it like this, but we're not through with you yet. Okay.

MS. MURPHY: Patricia Murphy, chief of compliance. This particular property had findings of noncompliance for a failure to execute the required lease provisions that are required by our enabling legislation, failure to complete the annual eligibility certification, major violations of the uniform physical condition standards or local safety and building codes, and a pattern of minor violations of the UPCS standards.

MR. KEIG: And can you give me a little more --

MS. MURPHY: I'm sorry. They also had gross rents over the limit, they didn't provide supportive services, and failure to provide affirmative marketing.

MR. KEIG: Can you give us a little more detail on the -- what was the next to last year -- uniform --

MS. MURPHY: The UPCS for this property -- their report -- their last inspection was on November 7 of 2011.

They had damaged cabinets, damaged showers and tubs, litter, graffiti --

DR. MUÑOZ: Well, Patricia, when you say this property -- I mean, what they're before us to do is to ask to reinstate an application to construct.

MS. MURPHY: Right. So when I say this property --

DR. MUÑOZ: That's right.

MS. MURPHY: -- I'm talking about the one that's in material noncompliance.

DR. MUÑOZ: Okay.

MR. KEIG: If you took out the recertification issue would they still have been over the threshold for the score?

MS. MURPHY: No. That's what's pushing them over.

MR. OXER: So the certification was for?

MS. MURPHY: The certification is -- so in 2008 Congress passed the Housing and Economic Recovery Act and they changed the requirement regarding certifying low-income tenants.

So before that you had to certify every low-income household every single year where you get the application, documentation of income, the income certification, bank

statements -- all that stuff. And Congress eliminated that requirement four years ago, saying you don't have to do that any more if you're 100 low income.

But that same law requires state housing finance agencies to report certain demographic information to HUD on an annual basis. So to implement that provision of the law in Texas, we have this one-page annual eligibility certification that you ask the household to complete instead of this other time-consuming kind of intrusive process.

And we are very clear in compliance management rules where we say, if you are continuing to do this other process that's not required, we're not going to look at it, and you still have to do this one-page form.

MR. KEIG: Had they been notified -- well, my first question is did they do any self-certifications?

MS. MURPHY: No.

MR. KEIG: And second question --

MR. OXER: Out of how many -- what's the unit count here?

MS. MURPHY: There's 200 units and 180 low-income?

VOICE: I believe so.

MS. MURPHY: Something like that.

MR. KEIG: And have we notified them that that

was a requirement and they weren't getting it done in the past, or was this the first time for it to come up because of the change in the law?

MS. MURPHY: We have -- we notified owners about changes in the law through newsletters, through our compliance monitoring rules, through training. So part of their plan -- their ten-point plan is that they're going to read the compliance rules, which it's clear that that's a step that need to take.

MR. OXER: They're going to read them or they're going to comply with them?

MS. MURPHY: Both. They're going to do both.

MR. KEIG: Well, I was going to see whether they've been cited for this once already and then we got back in --

MS. MURPHY: No.

MR. KEIG: -- there and cited them again.

MS. MURPHY: But it's the same stuff. It's in the compliance monitoring rules that we do it this way. And, you know, I don't think they're having problems in other states because California still requires that you do that income certification. So I was wondering if maybe -- you know, like the idea of having one consistent approach -- each state does implement this program differently.

So they're going to have to say, well, what are

New Mexico's, you know, QAP state requirement sort of a thing.

So -- I'm sorry. Do you have any other questions?

MR. OXER: So they had 200 households -- 180 out of 200 households that they had to do this annual certification from.

MS. MURPHY: One piece of paper.

MR. OXER: One piece of paper per household or one for the entire --

MS. MURPHY: One piece of paper per household --

MR. OXER: Per household.

MS. MURPHY: -- per year.

MR. OXER: Okay.

MS. MURPHY: So we can report this data to HUD --

MR. OXER: They could walk down and do an audit. Somebody say, Hey, do this and just go door to door.

MS. MURPHY: Right. When you renew the person's lease, you say, I need you to fill out this piece of paper.

MR. OXER: Okay. Seems fairly simple.

MS. MURPHY: I've never managed tax-credit property, but it seems simpler than the whole process.

MR. OXER: Nor have I, for the record, but I have managed a property before.

MS. MURPHY: We tried to make it as simple as possible.

MR. OXER: Okay. All right.

MS. MURPHY: Any other questions?

MR. McWATTERS: Yeah. Patricia, how many other the developers have this problem that they haven't complied in a similar way?

MS. MURPHY: I looked, and there are other developers with this problem. This is typically a finding for like a second owner of a tax credit property that doesn't -- like isn't applying for new business and doesn't realize there's been a change in the program sort of thing.

It's something that comes up a lot like at the administrative penalty committee that they're not doing this because they don't -- they're not keeping up with, oh, this program changed sort of thing.

MR. McWATTERS: Okay. I mean, is it one out of ten don't comply? Is it one out of 50? Is it five out of ten? Or is it more or less when the projects turn over -- the management?

MS. MURPHY: I'm sorry. I --

MR. OXER: You don't really have a sense of it.
Okay.

MR. MURPHY: We definitely cite this as a finding of noncompliance.

MR. McWATTERS: Okay. But presumably there are

managers out there that would be able to comply with this rule.

MS. MURPHY: Definitely.

MR. McWATTERS: Definitely. So if a new management company came in and took over full tilt compliance on this project then presumably that new management company, if picked judiciously, could comply.

MS. MURPHY: Well, somebody asked are you going to take direction from them or is the management company going to control. And if it's a fee management company -- you know, a fee management company is just going to do what, you know, the owner says. So, you know, there are fee management companies who will call me and say, this property is out of compliance and we told this owner we have to reduce rent and they won't, you know, kind of thing. So that management company is going to be as successful as --

MR. OXER: It all gets down to the ownership, not to the management.

MS. MURPHY: Right. And we still -- we write to the owner -- I mean, we do still see the management company, but the management company has got to take direction from the owner.

MR. OXER: Yeah, that's why the question about control versus advice.

MS. MURPHY: And we don't recommend one management company over another. They would have to go through the process.

MR. OXER: Sure. I understand that. All right. Okay. Any other questions of Patricia?

(No response.)

MR. OXER: Okay. Thanks, Patricia. All right. There are others who wish to speak. Good morning.

MR. CEDILLO: Good morning. My name is Juan Cedillo. I'm the city manager for the City of Edcouch. Obviously this is a -- this housing need for our community is a compelling need. I understand that there have been issues in the past -- that they had issues that could not be resolved and a corrective action plan be taken.

I do commend the work of the Texas TDHCA staff on compliance and monitoring regs. I would like you all to seriously consider working with them and then making sure that this application is reinstated. It would be a hardship loss to my community.

We do have a lot of seniors who are basically living in colonias in the area that would -- there's a benefit of being able to move into one of these new units. And we are trying to address that as we speak. I know the full history of this agency as far as what the issues are. I wish I had

had the opportunity to review them and perhaps come up with a recommendation to the board.

But I know that we can salvage this application and you can perhaps put this agency under a short leash and make sure monitoring is done regularly, and if anything comes up, let me know as well.

I have a history of working with the Texas Department of Housing and Community Affairs in different capacities that I've worked as an administrator, and I do value the good work of the staff.

And any time that I have been confronted with issues -- monitoring compliance issues, I have always taken the proactive approach and resolved them -- getting on the phone and writing letters before it becomes a federal case and we lose funding and so forth.

My board and mayor -- my mayor and board are very much in support of this application and asked me be here this morning in support of this application. And it would be a benefit to the Edcouch residents, because housing is a strategic need in the Rio Grande Valley. It is part of the long-term strategic plan to provide more affordable housing for elderly as well.

MR. OXER: Okay. Any other comments or questions?

MR. KEIG: It is considered rural?

MR. CEDILLO: Yes. As we speak, like I mentioned, we are trying to get funding to bring the substandard housing units in our community up to standard. And it takes -- it's a three-year window, so if we start applying now, we won't get any funding for three years down the road, as opposed to this application that could be implemented.

MR. OXER: Any other questions?

MR. KEIG: Yeah. When is --

MR. OXER: Mr. Keig.

MR. KEIG: -- the current application due date?

MR. CEDILLO: On the one that the city is applying for?

MR. KEIG: Yes.

MR. CEDILLO: We are applying with the Texas Water Development board, and we're going to be applying for the next cycle. So we're looking at two or three years down the road.

MR. KEIG: But the application is due when?

MR. CEDILLO: In --

MR. OXER: This is a 4 percent --

MR. CEDILLO: -- January.

MR. OXER: This is a 4 percent application --

MR. CEDILLO: Yes.

MR. KEIG: In January.

MR. OXER: -- that's due in January.

MR. KEIG: And then if you didn't apply in January, when would be the next --

MR. CEDILLO: In 2014. Of course, this is monies --

MR. OXER: Is it annual or is it --

MR. CEDILLO: It's this cycle, yes. But it's on a competitive basis. This would alleviate a substantial need and assist the community as we move forward in extending services to people who are living in substandard conditions in our community.

MR. OXER: Anything else? *Gracias, Alcalde.*

MR. CEDILLO: Thank you.

MR. OXER: Okay. Come on, Barry -- be signing you up. And, Mr. Mayor, make sure you sign in here too, if you would.

VOICE: We already did.

MR. OXER: Okay. You got in. Hold on a second, Barry. Because one of the things I wanted to -- just for purposes of the board discussion, the QAP has had considerable -- or there's been a couple of components of the QAP -- although this doesn't apply to that -- to look at not just the strength of an application and the sponsor's

capacity to do a tax credit deal, but also we're pressing ahead to try to prevent -- or my intent would be to prevent a requirement that you have Texas experience. And we do want to take into account the Texas history of noncompliance and nonperformance on this for people.

So I point that out for the members of the board to look at. This is an issue that -- there's been a noncompliance with this particular applicant which has consequences. So -- Barry, good morning.

MR. PALMER: My name is Barry Palmer with Coats Rose. We represent the foundation. And I wanted to point out a couple of points. The foundation was found in material noncompliance on one of its properties, and the reason for that is because they were using the wrong income certification form. They were using the two-page form that required more information than the one-page form. And, clearly, the Texas rules require the one-page form and they made a mistake using the wrong form. When --

DR. MUÑOZ: Barry, let me stop you there. So you're saying that the forms were turned in.

MR. PALMER: Yes.

DR. MUÑOZ: It was just --

MR. PALMER: They did the forms on every tenant. It's just a longer form that contains all the same information

that's on the state's one-page form but includes additional information.

DR. MUÑOZ: So it wasn't as if they were never submitted. It was just a less extensive document was submitted.

MR. PALMER: Correct.

MR. OXER: Actually, it was the other way.

MR. PALMER: The more -- it was a more extensive document that was --

DR. MUÑOZ: The less extensive -- right. The more extensive document.

MR. PALMER: And I think the important thing for everyone to know --

DR. MUÑOZ: I'm glad you were all listening, by the way. That was a little test.

MR. OXER: Michele, get him some coffee, will you?

MR. PALMER: And the important thing for you all to realize is that this happened two and a half years ago. And once it was discovered the management company immediately filled out the one-page forms on everyone and has been using the correct form since then.

But under the TDHCA's compliance rules, if you're found in material noncompliance that goes with you for three years. So you're barred from any programs for three years

if you make a mistake like this.

And a couple of years ago the staff and the board recognized that that's a pretty harsh result in some cases.

And so you instituted in your rules a procedure where an applicant could apply to be reinstated on a particular project if it's in the best interest of the state of Texas.

And that's what we have here, is we have a project in Edcouch where HUD has awarded \$3.5 million of grant funds to help build the project and 8 million -- or \$5 million of ongoing operating subsidy over the next 40 years for over \$8 million to the Edcouch community to build this property for seniors in an area that borders the Colonias. It's half a mile from a Colonias; it's a mile from three other Colonias.

We will be drawing tenants from the Colonias who are living in substandard housing to move into this brand new facility.

So that's the competing interest here. Granted, a mistake was made two and a half years ago. They have corrected that. They have adopted a plan for ongoing improving their compliance record. They have offered to use third-party management if that makes the Department more comfortable during the period that they are proving up the adherence to their new plan.

So you have that one side, and then you have on the other side \$8.5 million of federal funding that will go

away. It won't go to some other project in Texas. It will go away if we don't approve this item here today.

And they're here not asking for any of your competitive funds. They're not applying for 90 percent tax credits. They're not applying for HOME funds. All they're asking for is Texas bonds and 4 percent credits that are otherwise going to go unused.

DR. MUÑOZ: Barry, I recall Patricia saying that it was more than just this one document.

MR. PALMER: Well, there were other --

DR. MUÑOZ: But you seem to be representing as if this was sort of the only incident of noncompliance two and a half years ago --

MR. PALMER: No, we're not --

DR. MUÑOZ: -- which I think is a very compelling argument.

MR. PALMER: What I'm saying is that's the incident that put them in material noncompliance.

DR. MUÑOZ: I see.

MR. PALMER: They have had other compliance issues, as every developer probably in the room has had some compliance finding at one time or another. But you're only penalized in Texas if you're found in material noncompliance by having a score of over 30. And that's what -- but otherwise

they would not have been in material noncompliance if it weren't for the fact that they used the wrong form two and a half years ago.

DR. MUÑOZ: Let me stop you right there.

MR. OXER: Patricia, we have some scorekeeping to do. Thank you, Barry. We're not through yet.

DR. MUÑOZ: I mean, Patricia, do you dispute Barry's representation of this particular issue that the use of the wrong document is what placed them into the category of material noncompliance and that that took place two or more years ago?

MS. MURPHY: The law changed in 2008. We went to monitor them in 2011. So the required form was not completed in 2009 or in 2010. Once we went out there and told them what the rule was, then they fixed it.

We are very clear in the compliance monitoring role. 100 percent low income housing tax credit developments that continue to complete annual income recertification --

DR. MUÑOZ: Okay. Let --

MS. MURPHY: -- are required --

DR. MUÑOZ: Okay. And when you went out there they fixed it.

MS. MURPHY: They fixed it. So -- but their request for reinstatement -- so the issue has been resolved.

But to request reinstatement -- it's the cause for the noncompliance, so the particular compliance matter has been resolved. But has the cause been resolved? The cause appears to me that they don't read the rules and that they don't respond to Department notices of noncompliance.

So, yes, they have done the one-page certification and they have represented that they will read the rules and that they will respond to notices of noncompliance. But at this time I am not able to say that they've done that.

MR. OXER: They've been basically blowing it off and not respecting your request for information.

MR. KEIG: Yeah, I need clarification on that. I thought what you said was when they got monitored you uncovered it and you gave them a finding that they needed to comply with this self-certification rule.

MS. MURPHY: Yes.

MR. KEIG: But now you're saying that they need to read the notices we send them. Did they fail to correct it after a notice and then correct it after a second monitoring visit or a second notice or what?

MS. MURPHY: This particular property and issue they responded to our notice. In their portfolio of properties they have had several instances where they have not responded to notices of noncompliance for some very

significant compliance violations.

I sat in my office about to sign 8823s to kill one of their deals because they didn't meet the minimum set-aside the first year of the credit period and they didn't respond to the notice of noncompliance. And I sat there like, I cannot in good faith sign these 8823s. And I wrote to them and said, You haven't asked for an extension, but I am giving you one. You have got to respond to this.

So they've had this history of not responding, not reading the rules --

DR. MUÑOZ: When did that happen?

MS. MURPHY: That was in 2007. So they've had issues --

DR. MUÑOZ: And when you sat down in your office and you extended them that courtesy when did that happen?

MS. MURPHY: 2007, 2008.

DR. MUÑOZ: Okay.

MS. MURPHY: It was around that time.

DR. MUÑOZ: Okay. That was a long --

MS. MURPHY: Then they had issues in 2009 --

DR. MUÑOZ: That was a long time ago.

MS. MURPHY: -- and now they have issues in 2012. So they've had this history of significant issues.

MR. OXER: So --

MS. MURPHY: I think we've got their attention now and that they will comply.

MR. KEIG: But, you know, we've put them on double-secret probation for all those years, and it wasn't until it's, you know, like a death threat that they decide they'll come into full compliance.

MR. OXER: So it's actually --

MR. KEIG: Is that essentially what you're saying?

MR. OXER: It's not actually the gun to their head that makes them respond; it's when you pull the hammer back. Is that what you're talking about?

MS. MURPHY: They have presented a plan to go forward in a compliant manner and respond to termination of their application.

DR. MUÑOZ: Can I ask -- Barry, would you like to respond to Patricia? She's sketching out a much more complicated sort of pattern.

MR. OXER: And let me introduce something here too, Barry, just so I'm -- it seems like we're spending a lot of time on this on something -- you know, it's very important that we have a process or rule that we can all play by and make sure that, you know, the request of staff is respected. Okay? Particularly for something -- if it constitutes an existential threat to your project. Okay?

And it's -- I think every member up here, including the ones of our part of the staff, want to make sure that the staff is respected in terms of the things that we ask.

That said, there's \$8 million in the balance here so I want to make sure this gets aired out and we all make a good --

DR. MUÑOZ: That's right.

MR. OXER: This is worthy of the consideration that we're going give it in terms of the benefit to the state of Texas. So, with that, please.

MR. PALMER: I'm not going to dispute that they may have -- or did have compliance issues in 2007 and 2008.

The only thing that they're currently in material noncompliance on is this one project with the income certification forms. They have had a change in leadership at both the top and here locally. They have recommitted themselves to making compliance their top priority in Texas, developed a ten-point plan that they presented to Patricia, offered to hire third-party management -- doing whatever we can possibly do to make sure that this project in Edcouch doesn't get lost because of problems in the past.

So we would ask the board to reinstate this project, and if you wish to impose any conditions on third-party management or instruct the staff to follow up

with them on the ten-point plan or whatever conditions you feel are necessary. But let's give them a chance to go forward and develop this project and not have these funds get lost.

MR. OXER: Do you have a thought, Tim?

MR. IRVINE: Yes. Mr. Chairman, I would like to point out the rule has four specific things that require the board to make affirmative findings. I mean, it is simply an established fact that someone affiliated with the applicant was in material noncompliance. And, you know, you can parse the components that got you to material noncompliance and you can second guess the creation of the sort of penalty box aspect of the material noncompliance rules, but those are simply established facts.

So what you really need to do here is make four specific findings. And Patricia's going to need to chime in because I could only remember three. But one is that it doesn't present undue risks to the Department. Two is that they're acting in good faith. Three, it is in the best interest of the state to move forward. And four is?

MS. MURPHY: The applicant has taken reasonable measures within its power to remedy the cause for the termination.

MR. IRVINE: Right.

MR. OXER: All right.

MR. IRVINE: And on that point I -- it's certainly the board's province. If you want to impose conditions you may. But in terms of the finding, you've got to determine that what they've proposed, what they've said they're doing, the steps they're taking, the people they've hired and so forth make you comfortable.

MR. OXER: Okay. Could we have the first speaker come back? And stay right there, Barry; let's have you both at the mike here for a moment. Okay? The -- I think we can say that number three is a reasonably fair benefit that accrues to the state if this project goes. I mean, that's one of the four. Okay?

The -- you're about to make a statement of fact confirming your good faith in keeping these -- keeping the requirements of this and doing the monitoring. There has been a material noncompliance -- I mean, you said that. Granted, it was -- there are -- you were in material noncompliance, then the single-page reporting, parse the data, whatever you want -- there was -- you got in the penalty box. Okay? What was the second point there, Tim?

MR. IRVINE: Doesn't present a risk --

MR. OXER: Doesn't present a risk.

MR. IRVINE: -- acts in good faith, best interest --

MR. OXER: All right. The -- anybody got a thought on the risk side -- the risk --

MR. KEIG: Well, the -- I feel that there's a risk that they won't stay in compliance and not -- you know, I don't know what the --

MR. OXER: Well, there's a way to contain that risk. Okay? And the way to contain that risk is to make a -- it's called an existential risk. You basically get through the knothole. If you don't come out the right way on the other side, you don't get to come out. Okay? So how often is the -- this particular property monitored for compliance, Patricia?

MS. MURPHY: Every three years.

MR. OXER: Every three years. Here's a thought. Through the period in which you're going to do this, we're going to monitor it every three months.

MR. IRVINE: Well, Mr. Chairman, I would point out that we've got a quarter of a million units that we are monitoring, and it grows by about 5,000 units every year, and we simply do not have the resources to put in that kind of intensive effort.

DR. MUÑOZ: What about annually?

MR. OXER: I know. But they could review -- a third-party auditor that was sent to them -- we could review

the data that they paid for a third-party review to have it monitored under our program.

MR. IRVINE: Special treatment requires special staffing.

MR. OXER: That's my point, you know. Here's the other option? You go away and do something else. Okay? Patricia, did you have a comment?

MR. McWATTERS: Is it possible to have the project go forward but with a different developer?

MR. IZMAJTOVICH: Well, the award is to the foundation, so I'm not sure --

MR. OXER: The award is to the foundation --

MR. IZMAJTOVICH: Yeah.

MR. OXER: -- because it's the foundation that was found in material noncompliance.

MR. McWATTERS: There's no way to shift that. I'm just trying to find someone that will follow the rules.

MR. PALMER: No. But we could have a third-party management company on the Edcouch project -- on this project.

And -- that has experience in compliance and with instruction from the owners to follow the compliance rules. So there's no reason --

DR. MUÑOZ: And to report back in --

MR. PALMER: Right.

DR. MUÑOZ: -- in a different calendar -- either three months, six months, or annually.

MR. KEIG: I think what the Chairman was suggesting is what we call in health care, you know, an independent review organization that you all would have to pay for and do the compliance monitoring. And then it would be reviewed by TDHCA. I don't know if there's precedent for that --

MR. PALMER: And we would be agreeable to that and we could work out the details with staff in a way that makes it as little burden on them as possible and in a manner that would be acceptable to Patricia to have a third party do compliance, review, and training. And as part of our ten-point plan we're committing -- committed to additional training of our property managers in Texas. So the ten-point plan, which we have a property if any of you would like to see --

MR. OXER: I'd like the part where it says you're going to read the rules to be a little stronger -- more like comply with the rules.

MR. PALMER: Right. Not just read the rules but go to the training seminars that TDHCA and others put on to make sure that everyone understands the rules that they're reading.

MR. OXER: We'd like to see Texas become the demo state and invite people over here on how it's done -- to see how it's done. Okay?

MR. PALMER: Let's do that.

MR. KEIG: If -- go ahead.

MR. OXER: Go ahead. No, no, you go -- okay.

If the board does not approve reinstatement would you apply again the next year for the same type of deal?

MR. IZMAJTOVICH: No. The grant would go away.

MR. OXER: The --

MR. IZMAJTOVICH: The grant would go away.

MR. OXER: Go away. Okay. Now, let's ask another question here. In the event that -- when does that grant application go -- how long is that grant term for at this point?

MR. IZMAJTOVICH: It's three years --

MR. OXER: Three years.

MR. IZMAJTOVICH: -- and we're in the third year.

MR. OXER: So -- and what stage at you at in that grant?

MR. IZMAJTOVICH: Final firm commitment -- if you're familiar with the terminology that HUD uses.

MR. OXER: Okay.

MR. IZMAJTOVICH: In other words, we've done the

preliminary work. We've done all the plans, specs -- everything's been submitted in for final firm commitment. And so now they're just waiting for us to get the approval of our application to move forward of closing in the first quarter of 2013.

MR. OXER: First quarter -- okay. That's what I was looking -- all right.

MR. IRVINE: I would just point out that the other tool that you do have to help ensure prospective compliance is that if there are systemic and ongoing material noncompliance issues that could constitute grounds for a staff recommendation to debar.

MR. OXER: Will that constitute sufficiently existential threat if they really pay attention to this?

VOICE: I think so.

MR. OXER: Okay.

MR. McWATTERS: Well, why shouldn't this third-party monitor also monitor the existing projects of the developer since those are the ones that have historically had the noncompliance issues?

MR. OXER: Those are the ones that are at issue.

MR. McWATTERS: Monitor everything -- new ones, old ones.

MR. OXER: Well, it's the old ones that got them

in compliance which is -- absolutely -- or out of compliance. Absolutely.

Here is a way for the board to consider going forward on this since you're looking to go to a close in the first quarter of next year. Okay? I think this is a sufficient worth to consider for further consideration. I would offer up to the -- constitutes a path forward, at least for the near term -- table this until the next meeting, see if you can work out a plan. I mean, I think it's a blood oath's peer. Okay? So -- and trust me, Patricia will get the blood. Okay?

In terms of the satisfying those four criteria that Tim identified -- Tim and Patricia identified -- and come back to the next meeting and see if we can do a final resolution on this. That sound like something that would be appealing?

MR. KEIG: Yeah. I'll withdraw my motion and move to table.

MR. OXER: Okay.

DR. MUÑOZ: Have we done a motion?

MR. OXER: There's been -- yeah, there had to be a motion for us to take action. There was a motion by Mr. Keig, second by Professor McWatters to accept staff recommendation to deny the application. After discussion

there's been a withdrawal of the motion by Mr. Keig and a current motion to table this item for consideration at the December 15 meeting. Is that correct in terms of chronology? Okay. Is there a second to the table?

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz to table the motion. Second to table. We all have to consider that. Is there anybody speaking in opposition to this? Think everybody's on your side on this one? It's only us that seem to be opposing I guess is what you're saying. Okay. All right. All in favor to table the consideration for the next meeting?

(A chorus of ayes.)

MR. OXER: All those opposed?

(No response.)

MR. OXER: There are none. It's unanimous. We'll see you in four weeks.

MR. PALMER: Thank you.

DR. MUÑOZ: So we're directing the applicant --

MR. OXER: Blood, Patricia. Blood. All right. Tim Nelson back yet? Tim. Yes. Oh, I'm sorry. Representative Muñoz -- Menendez. Dr. Muñoz. He's after your seat, Jose. You were so quiet over there I lost you. So I'm sorry about that.

REPRESENTATIVE MENENDEZ: Good morning still.

Hey, you know what? The good thing is I know he doesn't live in my district.

So good morning, Chairman Oxer. Members of the board, good morning to all of you. And I'm going to try to keep my comments brief. I know you have a long agenda.

But I do want to compliment you on the difficulty mental gymnastics that you went through on that last item on your agenda. And I understand and I was listening to staff's concerns and I think it's valid that we have to be very careful how we differentiate between developers, but I also agree that the greater good of potentially losing the millions of dollars and the units -- and I did a brief Google on Edcouch because I was not familiar with Edcouch, Texas. 46 percent of the percent lives in poverty in Edcouch, Texas.

So the reason for my being here today -- I'd like to speak in support of the suggested changes to the QAP that have been made to the Department by the San Antonio Housing Authority. In the interest of time I'm not going to address all of their points, because I know that the staff has reviewed them, and I also -- but I just want to highlight what I believe are the most important issues and concerns.

The Department's draft proposes to limit the definition of instrumentality to cities and counties. Therefore, public housing funds that had been previously

allowed for points on a 9 percent tax credit application would no longer be allowed to count as a leveraged source of funds.

Currently, public housing authorities have the ability to provide replacement housing factor funds that are provided to replace those public housing units and the land as a source of funds. And those sources remain with each development; they don't move around.

Permitting a PHA federal dollars to count as leveraged sources of funds increases the availability of HOME funds that every city has that are limited already for other developments within the region and encourages additional affordable housing projects.

So my recommendation is that the replacement housing factor funds, public housing operating subsidies, Section 8 vouchers should continue to qualify as a potential source of funding. In San Antonio developments that the housing authority promotes many times are public/private partnerships and they support city initiatives and reinvestment in areas because they are sustainable developments and maintain a long-term affordability.

Developments by housing authorities bring true mixed income developments to communities providing units for families and seniors in the 30, 50, and 60 AMI -- area mean income -- and market rate apartments.

Examples include Sutton Oaks, 194-unit multifamily development that was completed on December 2010.

The units are 49 public housing units to serve those at 30 percent of AMI, 137 tax credits to serve 50 and 60 percent, and eight market units with no income restrictions.

This particular multifamily development sits across the highway from Fort Sam, and, as many of you know, Fort Sam and BAMC is an exploding, growing base where many of our enlisted would like to have, you know, a live they can place, and some of those income restrictions could play a role in they're not being able to live there.

So the next phase of that development, the Park at Sutton Oaks, started construction in October of this year.

And when it's completed it will have 208 units with 49 public housing units, 113 tax credit units, and 46 market rate units at the request of the local city councilwoman who sees this as a revitalization of the eastern side of the city.

Two other developments that would not have occurred -- and I believe at the time when these developments came before you I think it would just, Dr. Muñoz, who was on -- would be San Juan Square One and San Juan Square Two.

In one of those when they came forward -- if you may recall there was a veteran who came forward, a single

father who had a little girl, who in their original developments the pipes were exposed, and their unit in the interior without air conditioning -- cinder-block units built in the forties or fifties -- the temperature would get above 90 degrees.

So thanks to the ability of having these other replacement factor funds and the other leveraged funds, without that those four developments would not have occurred.

So I'd like to recommend also that in lieu of revitalization plans defined in the proposed QAP that there be an allowance for multiple overlapping planning efforts to be recognized as a community revitalization plan provided at least one of those efforts has been adopted by the city council and the projects are within a broader federal program initiative such as the Choice Neighborhoods, Hope Six, or Sustainable Communities Efforts.

In conclusion, public housing authorities have a vital role to play in how we promote and develop affordable housing opportunities in Texas. I believe the board should not allow the situation that the court has determined that is unique to one region of the state to drive how we do our tax credits in the whole state. I don't believe a one-size-fits-all approach is the way we should go.

I've also understood that there's been a good deal

of interest, and rightfully so, by some developers in doing veteran housing with tax credits. I think it's a good idea that we need to look at during the session to see about giving the Department the legislative authority necessary to provide for set-asides or specialty veteran housing developments using tax credits.

At this time though I don't believe the Department has the statutory authority to create such a set-aside in that it is pretty well established by how the other set-aside programs are provided for in the Code. Having said that, I also think the Department and the board should consider adding threshold criteria that credits an application that is tailored to serving veterans both at the market and lower income levels.

As you know, we have a growing population of veterans in Texas. And making every effort to provide them affordable housing opportunities to the men and women who served us I believe is the least we can do.

So I'd like to just say thank you for you taking all the time in traveling from long ways -- I'm not sure how long it takes to get here from Lufkin -- four hours. The rest of you all have it easy.

MR. OXER: It's only three for me.

REPRESENTATIVE MENENDEZ: So I'll be driving to

Houston this afternoon so I understand. But -- so anyway -- so any questions?

MR. OXER: Questions from the board? Thanks, Representative Menendez.

REPRESENTATIVE MENENDEZ: I just had the housing authority come by and said they were really concerned that this would literally tie their hands to the point that they would probably not be able to get some of the units done.

And what I like about the public/private partnerships that they do is that it keeps people with skin in the game -- private sector communities that maintain the properties for the long term and so we are able to provide public housing units that look just as good as the market rate stuff available.

So I think at the end of the day we can all look at developments -- and one of the things that I thought is very good about that last case -- the most egregious concern that I had when I was listening, when they're renting at higher rates than they're supposed to be that gives the tax assessors and -- the appraisers in the counties the ammunition they need to come after all affordable housing, because they already see some of these nice developments and they go, well, what's the difference between that and a market rate.

And so they're beating us up and they're beating

up the development community who are trying to provide affordable units, because as you all know, children don't know that they're poor until someone points it out to them.

And every child has an opportunity to do like every one of you on this board and get an education and, you know, excel and lead and live and achieve their dreams. And so I think it's incumbent upon us to provide them an environment that they can do that in.

So thank you.

MR. OXER: Great. Thanks very much. Okay. What's coming up next here? Tim, is this going to be fairly quick. Let's take care of this -- I'm sorry.

We'll do one more item and then take a quick break just for a couple of minutes so everybody knows what we're headed for. So good morning, Tim.

MR. NELSON: Good morning. My name is Tim Nelson, director of bond finance at the Department. The item that we have before you today is a presentation, discussion, possible action on Resolution Number 13-016 authorizing Taxable Down Payment Assistance Revenue Bonds Series 2012.

I also have with me today Gary Machak --

MR. OXER: Your co-conspirators, as it were?

MR. NELSON: -- Barton Withrow and Marc Krasner

with George K. Baum. They're our financial advisor. And we've got Elizabeth Bose with Bracewell & Giuliani, our bond counsel, if any legal questions come up. I'm not a bond lawyer, and I don't play one on TV, so we'll have to refer those to her.

I will point out to the board that the resolution that we have with you today -- that there's one change that we're -- staff is recommending that we -- if the board does approve this that we would like to reduce the approved size of the bond issue down to 6,875,000 as opposed as to a non-private placement where you could do parameters resolutions and not to exceed numbers. Because we're doing a private placement you do have to set the specific and approve the specific terms of the deal. And so I did want to mention that at the outset.

I think, as the board is aware, we've -- in our Program 77 for the last several years have been making down payment assistance loans available. We have funded I think over 22 million, but by the time we get done with the transaction it will be well over 22 million -- in second lien loans that have been advanced assisted probably 4,500 or 5,000 first time home buyers with that program. And that's great.

One of the things that we have been looking at is, of course, the -- we don't have an unlimited pot of money

in which to make these second lien loans, so we're always looking at ways to try to increase our liquidity. And that's really what this transaction is all about. We've advanced these loans. What we would like to do with this transaction is take a little under 1,100 of those loans that have been made over the last several years, along with a little under 300 loans that we made about ten years ago, and put those -- along with a DPA recovery fee that we've associated with these new loans, and put those into a new indenture that will free up by doing this transaction about \$7 million that will be available for us to advance for future loans.

So that's sort of the -- you know, why do we go about doing this? That's what we're trying to accomplish -- that we don't, again, have a bottomless pit of money that we can advance on those. I think, as I've reported to the board before, when we give people a choice between an assisted loan and an unassisted loan about 98 percent of the people choose to take the assisted loan. And that's a large part why we end up advancing about a million dollars a month in down payment assistance money. So --

MR. OXER: So that essentially absorbs all the liquidity you have in the program and this is something that basically buys back your liquidity essentially --

MR. NELSON: Right.

MR. OXER: -- to give you more capacity to rotate that money into --

MR. NELSON: That's correct. When you make one of these loans, in order to have liquidity either that person's going to have to pay that loan back, which could occur any time between month 1 and month 360, or you could do this type of transaction where you take the asset, place it off to the side, sell the bond against it, securitize it, take that cash, and then you could go through and do that type of transaction again. So --

MR. OXER: To capitalize on the cash flow essentially?

MR. NELSON: Yes. So that's sort of the good news. We're allowed to free up and make available now, you know, 7 million. The bad news, if there is any, is that this -- in particular in light of what's happened in the real estate market over the last four or five years, any type of real estate transaction -- very difficult to get done.

Five years ago the rating agencies would have rated probably on an A basis this type of transaction. Today they won't put a rating on it. So in order for us to make this money available we had to go with a non-rated approach -- we're not getting a rating from either S&P or Moody's as we typically would on these transactions.

And staff did explore extensively with the rating agencies trying to put a structure together that would meet their requirements. The other thing that we did is looked at bond insurance and other types of credit enhancement, again, because of what's happened in the real estate industry.

First of all, the number of players that are available to do that have really contracted, and the players that are out there are not interested in doing credit enhancement again on a real estate transaction, not -- they're definitely not looking at a transaction that's secured by these types of second lien notes.

But what staff and the working group though did do was decide we would do it as a private placement, so you -- and we're requiring that the investor be an accredited investor and somebody who's experienced in these matters -- invested in these types of transactions -- can come in, ask the questions that they believe are relevant.

And we've also put a transfer restrictions in on these bonds so that not only with the initial investor they have to sign these types of reps and warrants that they're a sophisticated investor and that they know what they're doing. But if they transfer these to any investors in the future those subsequent investors have to make those same

reps and warrants.

And so in the context of putting together that type of transaction we think we've put some safeguards in place that make sure that we don't have investors who have no business investing in this type of paper and assuming these types of risks getting involved with the transaction.

MR. OXER: And even with those risks you feel like this is a robust -- sufficiently robust structure that it can withstand considerable assault.

MR. NELSON: Well, it's certainly one that we're comfortable with. On these types of transactions there's two things typically that will create stress in your transaction. It's prepayments of the underlying assets and it's losses that occur typically through some kind of a foreclosure action on your underlying assets.

And we think that we've structured this to withstand what we think are high levels of both of those. On the prepayment front, our portfolios over time have prepaid at a level of about 150 percent PSA; that's Public Securities Association.

I think for the board you just need to know when people look at different types of mortgage collateral and they compare them, they assign these prepay multiples to them. And so, quite simply, a transaction that prepays at 300 PSA

will pay off twice as fast as one that's at 150.

Our historical experience has been about 150. This transaction has been structured to withstand a prepayment experience of 400 PSA -- so about two to three times what we've experienced.

MR. OXER: So you're basically at industry average.

MR. NELSON: Yes. The other level is, again, the foreclosure loss experience. Our portfolios have experienced losses anywhere between 8 to 14 percent, depending upon the age of the portfolio. Our average is about 10 percent. This deal has been structured to withstand a foreclosure experience of 20 percent --

MR. OXER: What kind of --

MR. NELSON: -- so, again, two to three times what our historical experience has been.

MR. OXER: What kind of coupon did it require to offer to get a private placement?

MR. NELSON: In order to entice a buyer we had to put a 10 percent coupon with an offering price of 99.25.

So this is definitely not our NIVP type issue which would have been down in the 3 to 4 percent range. But it is taxable.

That's the other thing I didn't point out earlier because of the fact that we're securitizing assets that have already

been originated. We can't do that on a tax exempt basis, so this has to be taxable.

It is non-rated. And so even if we could have gotten this rated, because of the subordinate nature and probably the fact that it couldn't have gotten more than an A rating, we probably would have been looking at rates in the 7 to 8 percent range.

And so this is certainly north of what you would see in that area. But fortunately the assets that back this, again, throw off sufficient cash flow that it can withstand these various stresses and still have surpluses involved in it. Again, you need to put that kind of a rate on it because of the type of buyers that are being involved and the private placement limited transfer nature of the underlying security.

So staff -- I've given you kind of the background on it, and we certainly would -- well, with that adjustment that I made to the bond issue size earlier staff would recommend approval. And I'd be more than happy to address any more questions. And we were just across the hall -- I apologize for being late, but we were across the hall making a presentation to Bond Review Board, and this hopefully will be taken up at their meeting on the 26th.

MR. OXER: Okay. Any questions for Tim? Okay.

MR. GANN: I have one question, Tim.

MR. NELSON: On the -- what's the duration of distribution for these funds? I mean, how far out there can you go?

MR. NELSON: Well, again, we do go through about a million a month. So we think, in addition to what we already have on hand, what this adds to it, is -- will probably take us out into 2014. So this is not a transaction that we would expect to do every month. It just helps supplement. We're generating funds through our daily and monthly activities. This just helps add to it.

With the TMP program that we just announced that's 600 million we're going to need 30 million in down payment assistance funds to fully fund that program. So this basically gives us 25 percent toward that and just helps us with liquidity. Liquidity is a good thing in these indentures, and I talk about it with senior management all the time -- that we have a several billion dollar portfolio and our unencumbered fund are less than \$10 million. And so we do a lot with very little.

So if you look at it from that standpoint this basically will double our unencumbered funds by doing this transaction.

MR. OXER: You're not wasting much time with cash

laying around is what you're saying. Right?

MR. NELSON: No. No. We turn it over very quickly.

MR. OXER: Good. All right. Any questions from the board?

(No response.)

MR. OXER: Okay. Motion to consider.

MR. GANN: I so move.

MR. OXER: Okay. There's motion by Vice Chairman Gann to accept the staff recommendation.

MR. GANN: On Resolution 13-016 and also on the Down Payment Assistance Revenue Bond 2012.

MR. OXER: As amended -- as modified in Tim's presentation.

MR. GANN: As reduced, yeah.

MR. OXER: Yeah. Okay. Second?

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. Is anybody who wants to speak on this item? Is there any comment from the public?

(No response.)

MR. OXER: Okay. There being none, all in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous. Good job, Tim. Thanks.

MR. NELSON: Thank you.

MR. OXER: All right. Here's what we're going to do, folks. We're going to take a ten-minute break. Let's be -- it's 25 after right now. Let's be back in our chairs at 25 until -- at 11:35. We're going to go until about 12:30 and then break for lunch.

(Whereupon, a short recess was taken.)

MR. OXER: All right. We'll get back to business here. Okay. Item 4 on our agenda here. Good morning.

MS. MOLINARI: Good morning. Mr. Chair, board members, Jennifer Molinari, Fair Housing Coordinator for TDHCA. Item 4 is an update on the progress on the State of Texas Plan for Fair Housing Choice: Analysis of Impediments.

Some of the highlights of our recent activities have included attendance at a HUD all grantee meeting in Austin in September where we gave a presentation on the current status of the AI. BBC has concluded all of our in-person focus groups and stakeholder interviews, and BBC has compiled chapters for the AI.

As you know from our periodic updates, the Phase 2 AI has been a tremendous undertaking. The compilation is

approximately 500 pages and we're reviewing it right now and we'll be coordinating with other state agencies to provide comments, questions, or additional direction to BBC in order to produce a document that is sufficiently developed and informed to solicit public comment.

Obviously this will be a major policy document and it's very important that we and the other state agencies have the opportunity for a thorough review before it's released for public comment.

Unfortunately, with pressing deadlines, we are a few weeks behind where we had hoped to be at this point.

We are currently anticipating release of the draft for public comment in late December or early January. And, with that, I'll take any questions.

MR. OXER: Uh-huh. Okay. Are there questions from the board? Can anybody identify Mr. Keig. Make sure he's not lost in space here somewhere. Okay. And the delays were a product of?

MR. IRVINE: I'll take the blame. I had the people that really needed to be working on this draft pretty focused on the QAP.

MR. OXER: The QAP's got to go out, so I understand that part. So what's the regulatory clock on the AI, Jennifer?

MS. MOLINARI: There is no regulatory clock on them, and, in fact, large AIs typically take about a year and a half or so. So we're well within our -- a good time line.

MR. OXER: Okay. So we're getting ready to release probably by, say, the first week in January?

MS. MOLINARI: Yes, sir. That's what we're anticipating.

MR. OXER: Yeah. I'd probably plan on that rather than trying to get it out in December because you get a lot more attention.

MS. MOLINARI: Yes, sir.

MR. OXER: Right. Okay.

MR. GANN: I have one question.

MR. OXER: Yes.

MR. GANN: Is that something we do every -- should have been doing every five years?

MS. MOLINARI: Yes, sir. That's the head guidance for updating an analysis of impediments, yes.

MR. OXER: And, as I recall, we had made sure that there was a really broad spectrum of entities who were canvassed for their position perspective on these issues. Is that right?

MS. MOLINARI: Yes, sir. Absolutely.

MR. OXER: Okay.

MR. IRVINE: And we had a very, very broad outreach process. And, frankly, that's part of why there's so much to digest here. And, you know, I'm not going to take complete disagreement with your professional views on it, but the way I look at it is it's, you know, at least five-year cycle is the planning cycle.

But, really, our obligation is to keep the thing current all the time. So if you identify new impediments or whatever then we've got to go back to the drawing board and, you know, for all we know some sort massive change could occur tomorrow that would necessitate review.

MR. OXER: Who is it that would make the decision on that likelihood that there would be -- I mean, do you keep track of this, Jennifer, and say, hey, here's something that happened that has potential implications for the AI?

MS. MOLINARI: Yes, we do have three staff at the agency -- at our agency that are particularly focused on fair housing.

MR. IRVINE: We also have a really good open channel of communication with our folks at the Fort Worth field office and the office of Fair Housing and Equal Opportunity. And, I mean, if we saw major changes coming down the pike we'd all be talking about it.

MR. OXER: So we have the capacity to take this as our sort of foundation document and make in course correction as we go within the next five years.

MS. MOLINARI: Absolutely.

MR. OXER: Good. Okay. Any questions from the board? Is there anyone -- we need a motion to consider here.

MR. IRVINE: Nope. It's just a report.

MR. OXER: Report item?

MR. IRVINE: Just a report.

MR. OXER: Good. Okay. Sounds like you did a great job keeping it in line. Thanks. Okay. Number 5.

MS. YEVICH: Is it still morning? It's still morning. Good morning, Mr. Chair.

MR. OXER: So far.

MS. YEVICH: For once I'm up here in the morning, not afternoon. Elizabeth Yevich, Director of Housing Resource Center.

The item before you now is Number 5, which is the presentation, discussion, and possible action on the 2013 Regional Allocation Formula Methodology. The Regional Allocation Formula, commonly known as the RAF, was created in 1999. The bill which created this directed TDHCA to use this formula in distributing Housing Trust Fund, HOME, and Housing Tax Credit Funds to the uniform state service regions

across the state. Since it's creation over 12 years ago the RAF has driven to objectively measure the affordable housing need and available resources in the state's 13 service regions.

As presented last month at the October 9 board meeting staff had shown that new information had become available, and after careful and thorough analysis, the remaining months of staff time and much public participation with an online discussion forum and a roundtable staff recommended substantial changes to increase the accuracy and transparency of the RAF recommending what has been referred to as the compounded need model.

Since last month's board meeting a RAF public comment period was opened with a hearing on October 24. And I am very pleased to recommend the final RAF methodology presented to you today which is that compounded need model.

This is the same methodology presented to you with clarity, yet in great detail, last month by Naomi Trejo.

During this late October public comment period five comments were received. No changes were made to the methodology as a result of these comments. All of these comments and responses are laid out in detail in your board book. And, with this, staff recommends approval of the compounded need model as the 2013 Regional Allocation Formula

Methodology. Any questions?

MR. OXER: Are there any questions for Elizabeth from the board?

(No response.)

MR. OXER: Okay. Motion to consider?

DR. MUÑOZ: So move.

MR. OXER: Okay. There's a motion by Dr. Muñoz to accept the staff recommendation to -- for the new RAF methodology. Is there a second?

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. Is there anyone who wishes to speak on this item?

(No response.)

MR. OXER: Okay. As the Chair I will offer up one comment that I was particularly impressed, Naomi, by the presentation you make. And it ranks second only to Cameron's carpet-bombing of the -- you know, we're developing a trend here, so when we have something really strong comes up, you know, we can -- I have to say that was as well prepared as I've seen anybody since Cameron showed us how to do the tax credit distribution this year. So that's compliment to the staff.

Are there any other comments? Okay. All in favor of the motion on the table?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

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

Thanks very much. Okay. Number 6(a).

MS. LATSHA: Good morning. Hi.

MR. OXER: How are you?

MS. LATSHA: I'm great. Thank you. Jean Latsha, and I'm Competitive Housing Tax Credit manager.

So 6(a) is regarding an unacceptable site determination for tax credit application Amberwood Place. This was a 2012 tax credit application. It might seem a little bit late for it to be presented at the board meeting, but this application was challenged back in June.

And the main part of that challenge was this explosion hazard summary that was prepared by Aaron & Wright Assessment, LLC and it detailed the proximity of the site to the Enbridge and Centerpoint pipeline pressurization facility.

So basically this proposed site is right next to some above-ground storage tanks, some above-ground pipelines.

We read the challenge and it was compelling. It had this engineer's report. It had some information regarding HUD acceptable safe distances and used terms like blast over

pressure that I still am not quite sure what that is supposed to mean. But supposedly, according to the challenger, this site did not meet acceptable safe distances per some HUD guidelines.

And so staff did quite a bit of research into this, but since none of us are engineers we still were a little bit unsure as to whether this really was an unacceptable site or not. We met also with the applicant. The applicant brought along Representative David Simpson, their attorney, City of Longview, and another engineer, all of which basically said the opposite of the challenger -- that the site was indeed acceptable.

The fire marshal gave us a letter stating that he did not think it was a fire hazard. The City of Longview basically stands -- basically says it's zoned for multifamily and zoned appropriately and it's an acceptable site. And Representative Simpson also emphasized the fact that these sorts of facilities are all over east Texas and other areas of Texas and that it's appropriate for housing to be built near or around them.

We also contacted the Railroad Commission, who monitors these types of sites. They were a little bit helpful in kind of explaining exactly what goes on there. There's been some controversy between the challenger and the applicant

as to what is in these above-ground storage tanks, whether or not they're pressurized. I think you'll probably hear from -- I thought you might hear from a couple of folks explaining one way or the other.

The conclusion we reached from the Railroad Commission conversations and some other engineering reports also was that these were likely not pressurized tanks, and also that the Railroad Commission doesn't really recommend whether or not you should build housing next to these facilities or not. They simply monitor based on what is built next to these facilities.

All of that being said, we reached an agreement with the applicant that they would provide a HUD site and neighborhood clearance and another report from an engineer or from the Railroad Commission basically stating whether or not the site was acceptable.

The applicant did produce both of those items. They didn't get a HUD site neighborhood clearance from HUD but from the City of Longview, which was actually appropriate in this instance and then also provided an independent engineer's report stating that the site was acceptable for multifamily housing.

Part of our agreement with the applicant was that we would actually present these materials to the board and

that it would be your decision as to whether or not that evidence was acceptable or not, which is what we're here to do today. Do you have any questions for me?

MR. OXER: Okay. Are there any questions of Jean on the presentation? And your recommendation on this is to -- staff recommendation is --

MR. KEIG: Neutral.

MR. OXER: -- neutral. So we're -- we get to decide. Is that what you're saying?

MS. LATSHA: I would suggest that the applicant did meet the requirements that we set forth but --

MR. OXER: Okay.

MS. LATSHA: -- but --

MR. OXER: As I recall from the last meeting, you felt like you were unqualified to make an assessment like that and that's why you asked for some third-party SMEs to come in.

MS. LATSHA: That's correct.

MR. OXER: Okay. And from what I can tell from the pictures there's only a couple of pressurized tanks in it -- only one big one, then the rest of them would be the compressor in-lines to the --

DR. MUÑOZ: Are they pressurized or aren't they? Do we have -- you know, the Chair's the resident engineer.

MS. LATSHA: Sure.

DR. MUÑOZ: Are they are --

MS. LATSHA: We have one engineer from the challenger who says that they are. We have an engineer plus an architect plus the Railroad Commission that indicated to me that they are not.

DR. MUÑOZ: That they are not. Of course. All right.

MR. OXER: Now, Juan, you -- you know, if this was easy anybody could do it.

MR. McWATTERS: But if we knew as a matter of fact they were pressurized tanks, how would that change any conclusion?

MS. LATSHA: My understanding from reading all of these reports from engineers and architects and not being an expert on this subject is that it would trigger that HUD guidelines for acceptable safe distance. And if they are not pressurized then you --

DR. MUÑOZ: It does not apply.

MS. LATSHA: -- you would -- right. It wouldn't apply. And, of course, you know, we don't necessarily apply that standard anyway, but it's the standard that both the challenger and the applicant were using to further their argument as to whether or not this was an acceptable site.

MR. McWATTERS: Okay. So if they are pressurized and that distance setback is triggered is the facility within the setback or outside the setback?

MS. LATSHA: It's much closer than the acceptable safe distance would be according to the challenger's engineer.

MR. OXER: Go ahead, Juan. I have a question -- or a comment actually.

DR. MUÑOZ: I mean, you know, the presumption is that the distance is required for a certain level of safety. How do we possibly decide on the matter without knowing definitively whether or not they are.

MR. OXER: Okay. I could point out to the -- because the property -- Amberwood Place property is immediately adjacent to the property line of the area that's of concern -- okay -- the site that's of concern, are all of the tank that's in the -- apart from the compressor line -- compressor station -- or the compressor units in here -- which is not a tank -- it's a compressor for pushing into a pipeline. The only potentially pressurized tank is on the far opposite side of the site, which appears to be -- just appears to be -- well beyond what the concern -- area of concern would be. So -- all right. Let's do this.

DR. MUÑOZ: I heard appears to be and I heard you

say it's well within.

MR. OXER: No. The site is immediately adjacent. That's why -- if it was -- if the site is -- according to what HUD says, from the way I understand this, if there is a unit on there and it's pressurized, if it's adjacent to the site it's right next to the site. But the unit that would be pressurized, if there are any on it --

DR. MUÑOZ: Is on the other --

MR. OXER: -- is on the far back side. Okay? Now, let's go through the summary on this, Jean. We've got the ones who are in favor of this being a site say they've got an independent engineer, they've got the city -- the city is in favor of this.

MS. LATSHA: Correct.

MR. OXER: The fire marshal has done an assessment of it.

MS. LATSHA: That's correct.

MR. OXER: It's properly zoned, so the city -- when the city allowed this to be placed here and zoned this for property they had to at least consider that for the -- for being next to this facility.

MS. LATSHA: That's right.

MR. OXER: Okay.

MR. McWATTERS: Are there any restrictions on the

owner of the tank farm to pressurize the tanks in the future?

I mean, are -- I'm just not an engineer. You know, much past third grade math and I get confused. So if -- I mean, if we have tanks out there and day after tomorrow or the day after the facility's built they become pressurized, I mean -- they may be grandfathered in and I appreciate that it may not be. I simply don't know. But I don't want to approve a facility and it can be in harm's way.

MS. LATSHA: The applicant's engineer report, which is the second one that we received after talking with them and trying to resolve this issue -- he actually addressed that. And because I'm not -- I can read from his report -- he was talking about -- I'll just go ahead and read it since I'm not -- I didn't write it.

In my review of the HUD guidelines for acceptable separation distance for unpressurized above-ground storage tanks facing only the heat radiation distance from the complex and people applies -- mainly, they need to make sure it's an acceptable safe distance for fire, not explosions. Using the HUD web-based electronic assessment tool the Amberwood Place site meets and exceeds the required calculated distances.

And then he talks about this other tank that is out of service. And he states, This tank was used to store

natural gas under pressure by Centerpoint Energy. This tank was taken out of service and has not been used for several years. In the event that Centerpoint Energy wants to put this tank back in service they will have to apply current regulations and standards as if it were a new installation and take into consider the future Amberwood Place complex in the reactivation of the tank.

Any reactivation of this tank after construction of Amberwood Place would have to be done in a manner that ensures the safety of the adjacent development and its residents.

MR. OXER: So essentially this one tank -- this one longitudinal -- it's basically a big gas -- you know, natural gas or gas liquids tank. Okay? If they're going to reuse that -- right now it represents a historical relic.

MS. LATSHA: That's kind of what it sounds like, yes.

MR. OXER: Right. Okay. Nothing in it, sitting out there; it's a white elephant. Actually it is a white tank. So if they're going to reuse that once they build this facility here, the tank would not be able to be reactivated to be able to use for pressurized from what I gather from what they're saying.

MS. LATSHA: From what I gather from this

statement --

MR. OXER: Okay.

MS. LATSHA: -- that's right.

MR. OXER: All right. Our protocol on something like this -- I mean, for decision making on it is to if there is staff recommendation we have to go up or down on the staff recommendation and then hear comment. But because we have to -- because we're in the process of figuring this out what the decision's going to be I'm -- as Chair, I'd like to hear the comment. Do we have speakers on this item?

MS. LATSHA: Yes.

MR. OXER: Okay. Just making sure. All right. We'll have speakers on this item and then entertain a motion by the board. Thanks, Jean. Stay nearby because we'll have some -- I'm sure we'll have you back. Okay?

MS. STEPHENS: Good morning -- or good afternoon now, I guess. I'm Lisa Stephens. I'm with Sagebrook Development, and I represent the applicant and owner of Amberwood Place.

And I'd like to say I appreciate all the time that Jean and Cameron have put into this. They've spent a significant amount of time researching it. None of us are engineers, but I think we've learned a lot through the process.

Jean mentioned that we actually did two

engineering reports. The first engineering report we prepared from our engineer, and it was in response to the initial challenge. The second engineering report was actually an engineer selected by TDHCA to be an independent third-party verification, and that's the report that Jean was reading from.

And that report actually cites a couple of things. One, it talks about the tank that is out of service, and that is the tank that could be pressurized within the facility today. It has been out of service for some period of time. And the question staff asked of us was what happens if it comes back into service.

The Railroad Commission and both our engineer provided information that these facilities are constantly monitor. And, as such, they're required to bring their facility up to the standards given the surrounding development uses. There isn't really a grandfathering in process for these facilities.

This facility was once rated what's known as a safety code level 1, which meant it was built at a time that there was no surrounding development around the facility. As development has occurred -- single family community, there's a golf course, there's a gas station, there's another apartment complex across the street -- as development has

occurred around this facility the facility has actually had to upgrade its safety standards to comply with residential development and other development types as it has come in.

Today the facility is rated a safety code class 3, and that safety code class is a facility that is safe for operations in proximity to developments that house or have populations of more than 20 persons in a building, which is what we qualify it for.

The next safety class code rating is a safety class code 4, and that's for residential buildings that are four stories or higher. Because we are a three-story and lower development we actually fit within that safety code class 3, and, as such, the facility is deemed to be regulated for proximity to that type of development.

Should the pressurized -- should Enbridge or Centerpoint want to bring that pressurized tank back online they would have to do so, and its post-construction of Amberwood Place, they would have to do only in a manner that continues that they comply with their safety code rating and that they don't violate it.

So there is not really a grandfathering in process in that we could build our facility and then they could at some point be deemed to not meet the applicable safety code.

They are in direct continual requirement to improve the safety standard of the facility based on the surrounding development.

The other item that I'll touch on just briefly -- we did use the HUD applicable separation distance guidelines as those really are the only guidelines for proximity of housing to these types of facilities. There were not any other types of federal regulations, as Jean said.

The Railroad Commission doesn't opine one way or the other as to whether or not housing should be adjacent to these facilities. They only opine as to the safety of the facility. They do their inspections. They make sure that the facilities are operated in compliance with the applicable regulations.

So, really, the only resource we had to go to was the HUD applicable separation distances. And there are two -- as Jean said, there are two types of calculations. One is if you are in proximity to a pressurized facility and then one if you're in proximity to an unpressurized facility.

Because the pressurized tank -- the tank that could be pressurized is not in operation and has not been in operation for multiple years we fall under the

nonpressurized facility, which means that we're looking at separation distance for fire, not for explosion. The only time the explosion separation distance comes into play is when you have an in-operation pressurized tank. And we meet, and we actually exceed, the applicable separation distances for fire risk.

The City of Longview has looked at this extensively. They did have their fire chief go out there -- reviewed the safety regulations. They looked at it from a fire hazard risk.

I think we've satisfied all of the requirements that staff set out in front of us. We've had an independent engineer, we've had our own engineer, we've actually talked with the HUD office about this and made sure we were doing the ASD calculations appropriately. We've done our site and neighborhood clearance. We've actually gotten information from Railroad Commission.

So I would ask that you consider granting approval of this site and allowing it to move forward.

MR. OXER: Sounds like you've done everything we asked you to do on this, plus the City takes that into consideration.

I have a question about sequencing on this because I'm inclined to accept your argument. The -- once this -- if

we -- tank's out of service now. Once you make -- Amberwood Place gets the approval to proceed on this then it becomes a -- once that application is in that becomes essentially a residential area. It doesn't require that it's constructed, but once the permit is there for it then it becomes a residential area.

MS. STEPHENS: Right.

MR. OXER: So once that permit is granted then they can't come out and -- I guess where I'm worried and what I'm concerned about, even if they came in and wanted to reuse that tank -- which probability is extraordinarily low apparently -- even if they wanted to come do that and they start applying to use that tank again between now and when you've got the facility constructed, that even then they would have to meet the more stringent standards because it constituted a residential facility because of the permit.

MS. STEPHENS: That is correct. The City of Longview actually approved the final PD, the plan development, application for this site last week. And they actually in a -- within two weeks of issuing building permits. Once those two things have happened, then that is a development --

MR. OXER: Residential development.

MS. STEPHENS: -- it is a residential development and the facility would have to be -- if they went in to

reactivate that tank -- to put in a new facility, to put in new tanks they would be required to take into consideration our adjoining use given that we are that far along in the process.

MR. OXER: Okay. Any questions from the board?

DR. MUÑOZ: They'd be required by whom? The City?

MS. STEPHENS: The Railroad Commission --

MR. OXER: Railroad Commission.

MS. STEPHENS: -- actually oversees the facility and the safety guidelines. And so when they apply for a license to operate or a renewal of their license or a new license to operate they have to go to the Railroad Commission to get that.

MR. McWATTERS: Are your engineers convinced that there are no other pressurized tanks currently in existence --

MS. STEPHENS: Yes.

MR. McWATTERS: -- that are currently pressurized?

MS. STEPHENS: Yes.

MR. McWATTERS: And they have told you that.

MS. STEPHENS: They have told me that. Enbridge and Centerpoint have also told me that. The only tank that is on site that could be pressurized is the one you mentioned -- the bullet tank. And that tank is the one that

is out of use and has been out of use for multiple years.

MR. McWATTERS: Looks like a big above-ground submarine sitting --

MS. STEPHENS: Looks like propane --

MR. McWATTERS: -- on a couple of posts --

MR. OXER: All right -- propane tank.

MR. McWATTERS: But there's nothing else out there that today could explode. It could burn, but not explode.

MS. STEPHENS: It could burn.

MR. OXER: Right.

MR. McWATTERS: Okay.

MR. IRVINE: Also I'd just like to clarify for the record, we did not select the engineer. The applicant selected two engineers, and, from that, we said this one would be --

MS. STEPHENS: Correct.

MR. IRVINE: -- preferable.

MS. STEPHENS: We provided a couple of names and staff selected.

VOICE: Very good.

MR. OXER: Okay. All right. We'll have to entertain a motion from the board to act.

MR. KEIG: All right. I move that the board accept the material submitted by the applicant as evidence

of -- make sure I get the language right. And now my -- just look at that -- that's real good. My computer is just flying all over the place with pages -- to establish a reasonable basis for determination that Amberwood Place is acceptable and that the board deny the challenge.

MR. OXER: Okay. Motion by Mr. Keig to deny the challenge and accept the information as presented by the applicant in satisfaction as what we asked them to do. So is there a second?

MR. GANN: Second.

MR. OXER: Second by Vice Chairman Gann. Are there any other speakers?

(No response.)

MR. OXER: Okay. There being none, all in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Congrats to your applicant.

MS. STEPHENS: Thank you.

MR. OXER: 6(b)

MS. LATSHA: All right. 6(b). 6(b) is the result of another challenge from this round. This is about Stonebridge at Kelsey Park. This is an application for a

development in the Lubbock area.

This applicant claimed four points under development location, claiming to be in a high opportunity area. In the 2012 QAP a high opportunity area was defined as being located in a census tract which has a median income that is above median for that county and that has a 15 percent or less poverty rate. And the applicant met these two requirements.

What's in question is whether or not the application met the third leg of being in a high opportunity area. And I'll read straight from the QAP. It states that the third leg -- they must be in an elementary school attendant zone that has an academic rating as of the beginning of the application acceptance period of exemplary or recognized or comparable rating if the rating system changes by the same date as determined by the Texas Education Agency.

An elementary attendant zone does not include elementary schools with district-wide possibility of enrollment or no defined attendant zones, sometimes known as magnet school. However, districts with district-wide enrollment and only one enrollment and only one elementary school are acceptable.

This is an unusual situation in this application.

MR. OXER: We get a lot of those.

MS. LATSHA: Yes. The QAP didn't specifically address new schools that were newly constructed and, therefore, didn't have a rating. And what happened in this district -- and this is what was represented in the application -- was they -- it's the Lubbock-Cooper School District -- they had three elementary schools.

And then in 2011 they built a fourth one -- didn't expand their boundaries of the actual district, but in anticipation of some growth -- I think partly because of this application -- built this fourth school and then pulled -- so then basically your three attendant zones become four. And so they -- part of this attendant zone A, B, and C all became part of attendant zone D.

And they also hired their teachers from within the district. I talked to the school district myself and they said that close to 100 percent of their teachers in the new elementary school came from the other three elementary schools. The other three elementary schools are all rated recognized or exemplary. In addition to that, the district is rated I think recognized -- either one -- recognized or exemplary.

Staff's inclination was to award the points because we felt that this really did meet the spirit of a high opportunity area. However, this does kind of fall

outside of the reading of the QAP because the QAP does not address schools that were newly constructed that did not have ratings.

So I hate to sound neutral again, but we are seeking the board's guidance. We felt that this need to be vetted in a public venue, if you will, because it really is outside of what the QAP contemplated. Are there any questions for me?

MR. OXER: What happens we don't award those points?

MS. LATSHA: If we don't award them we would actually go down to the next application, which is actually the same developer. I think -- and I think it's another one in the Lubbock area too. And we've -- we are in the process of reviewing that application.

MR. OXER: So it's not like the funds or the applicant -- or the application -- or the capacity to build these residences -- the tax credit residences -- it's not like it goes to another region.

MS. LATSHA: No.

MR. OXER: Okay. So it's -- if we don't do this the money still stays there. Essentially it's the same developer -- he just gets the funds someplace else.

MS. LATSHA: That's correct.

MR. OXER: Okay.

MS. LATSHA: But considering that his other application is all in order as well -- we're in the middle of reviewing that in the event that this decision went one way or the other.

MR. OXER: Okay. Any questions?

DR. MUÑOZ: Do you happen to know where the location of the other application is?

MS. LATSHA: I don't know exactly.

MR. GANN: Isn't this a case where we've actually not covered our bases in our QAP? In reality we could have had one more line in there saying if you have an average it would qualify -- or whatever the wording would be. And that's really -- this isn't going against our rule. This is just something that's left out there really.

MS. LATSHA: I would agree with that.

MR. GANN: Hasn't been answered to start with.

MR. OXER: It's a quirk -- another quirk we found in the -- another one of these damn quirks we've got. Okay.

DR. MUÑOZ: Yeah. You know, I happen to -- and most people know I live out in that area. The Lubbock-Cooper School District is south of the main city, and it's a growing district. It's not an affluent district, but it's very aspirational. It's a high-achieving district.

It's -- there's growth in that area and it's not surprising that it's a recognized school district. It's not a district of 100 campuses.

And so, you know, when you understand that a lot of the intellectual capital that feeds into the new school comes from the existing high-achieving school district it's -- you know, it's not a stretch to presume that the new school will be equally academically rigorous and recognized.

And I don't know how you anticipate this quirk though. I mean, school districts with population growth are always -- I mean, even the main school district in Lubbock is closing schools and opening new campuses -- state-of-the-art new campuses that haven't received a certification or a rating from TEA yet. But it's a brand-new, state-of-the-art facility. How do you anticipate that in the application?

MR. OXER: Well, that's -- and in your defense, Jean, that would have to be a rhetorical question because --

DR. MUÑOZ: Right. No, I don't think -- yeah.

MR. OXER: Yeah, exactly. And the point is that if it was easy you would have already decided. That's why you're here. Okay?

MS. LATSHA: Yes, sir.

MR. OXER: So that's why it's incumbent upon us to find that answer for this. So it sounds like they've got -- you know, I would be inclined to say this meets the spirit of what we were intending to do, and I think that's what your staff's consensus position that it meets the spirit of what was intended. But because these wording or interpretation it's just hard to make that application.

MR. GANN: Do you want a motion?

MR. OXER: Put one out there, would you?

MR. GANN: I move we grant the points.

MR. OXER: Okay.

DR. MUÑOZ: Second.

MR. OXER: Okay. Motion by Vice President Gann to grant the points. Second by Dr. Muñoz. Is there any public comment on this item? All right. Have a seat, Jean, and hang out. First up. Left to right.

MR. GARRETT: Chairman Oxer and board, I'm Kelly Garrett, [indiscernible] Housing. We're the developer of the property. And just to reiterate what staff has done -- and they've done a great job in stating what I would have stated myself, so I won't take much of your time.

This is a picture of the school district right here. The orange is the new school district. So the green and the blue and the yellow were -- I'm sorry -- the

zone -- the zone for the elementary school. The other three -- you can see where they just created this right in the middle of all these other three schools. One of them is recognized; two are exemplary.

Like staff said, almost 100 percent of the teachers came from these schools to this facility. It's brand new, it's state-of-the-art, and in the spirit of what we're trying to do, anywhere you have a fast-growing school district there's a reason it's there, and that's because people are moving there because people want to be there and that's where we want our affordable housing is in the best possible location.

South of this is Kelsey Park. It's a 300-acre subdivision -- brand new. They just started building homes in there now. The school is right here. Our apartment project is right here, within 100 yards of it. And as the -- this is -- most of this is upscale -- nice homes. Like it's been said, the school district is so sought after and everybody wants to live there there's no place to live.

And as the Representative from San Antonio said earlier, poor kids don't know they're poor. I was one. I had no idea.

MR. OXER: I think we've all been there.

MR. GARNETT: Absolutely. And -- but by the

grace of God I'm standing in front of you. But, as I said, they don't know they're poor. But if they can have access to a top notch, top facility, brand new, state-of-the-art -- has everything under the sun -- all the bells and whistles in it -- this is the case.

This is where you want to be proud of a affordable housing project going into. And it's a one-time shot. If we don't do it it --

MR. OXER: You recognize that we did -- the motion was to offer the points. Right?

MR. GARNETT: I understand. I just want to be sure. I'm not overselling -- I'm just overselling. The other deal that is in question that's in second place now is also one of our deals. That's a senior deal, and you asked where it was at. Are you familiar with our other deal that's in Lubbock -- Stonebridge of Lubbock -- over by Bacon Crest at Milwaukee and 66th? It's right across the street from that. So it's about seven miles from here -- a different school district -- and it's a senior deal.

DR. MUÑOZ: There's that big tank there. Right? Across from Milwaukee?

MR. GARNETT: I don't have any tanks. But, anyway, if you have any questions, I'm available and I would appreciate the support for the deal.

MR. OXER: Make sure you sign in right there.

MR. GARNETT: It's going to be a great facility and a great deal for Lubbock. And the school district and the mayor and the city council -- we have all their support. I didn't bring all that with me. I didn't feel it was necessary, but we can get that.

DR. MUÑOZ: And a brand-new high school football stadium, that's nice.

MR. GARNETT: They're spending money out there. Real nice.

DR. MUÑOZ: They're spending money.

MR. OXER: There you go.

MR. GARNETT: Thank you all very much.

MR. OXER: Certainly. All right. Are there any other comments on this one?

MR. HOLDEN: Thank you. My name is Paul Holden with Wilhoit Properties. And pardon my voice. I've got a little cold today or allergy.

The question in front of you today is not whether this particular elementary school is going to be rated exemplary or recognized or whatever they may choose. The question in front of you is on March 1 of 2012 what was the rating. This school had no rating because it was a brand-new elementary that had been in business for six months.

As staff has said, most of the teachers did come from this particular school district -- most -- not all. But not all of the students were from -- transferred from this other school district. There were -- because this is a high growth area there have been other families that have moved into this area that may be from different walks of life and may not be enough to consider this a exemplary school.

You don't know because there was no information available at that time to quantify what the makeup of the students and the teachers was going to be.

Now, the question in front of you is, if you award these four points to this particular application you're guessing because. You're guessing that because the other schools within this district were considered recognized that this one will be also. That may be a good assumption, but you don't know because you're simply assuming.

The other issue is that if you award these four points have you disenfranchised other applications because you will be taking this particular application and holding it to a lower standard than you have any other application that was filed.

Now, I don't really have a dog in this fight because my application is down at the bottom and there are several above it, one of which will get the award if this one is not

awarded. However, I think you need to take a look at the rules and see what the rules say.

Now, I'd like for you to hold to the QAP and say this is what the QAP said -- it was silent on this particular issue. Let's hold to the standards of the QAP and in 2013 address this particular issue and decide how we're going to do it. I think that's a logical approach.

Otherwise, gentlemen, you're simply guessing. And I'm asking you not to guess and simply make an assumption based on no factual information. Thank you very much.

MR. OXER: Okay. Are there any questions of Mr. Holden?

(No response.)

MR. OXER: This is a comment from the Chair. One of the items that -- or one of the purposes of the board is to provide clarity where there is silence in the QAP. If it's silent on a particular -- and sometimes we have to infer. We have to make a best judgment on something like this.

The next -- if I understand this correct, Jean -- come back up; let's talk some more. As I understand this, if this one is -- if this particular project does not receive the points, the next one in line is the same developer; it's a senior deal in the same region, so the developer and the region don't suffer.

MS. LATSHA: That's correct.

MR. OXER: Okay. So then it becomes are we going to -- fundamentally, are we going to make an interpretive judgment to fund a school -- or a housing project for -- that will include something for children and for low income families near a school or do we fund an eldercare -- a seniors project. That's what it gets down to. I mean, is that the raw choice on this?

MS. LATSHA: That's a fair analysis, yes.

MR. OXER: Yeah, let's -- give us just a moment. All right. Is there -- okay. Have a seat, Jean. We've got one more that wants to talk here. I'm sorry. I didn't see any --

MR. CHILDRE: That's all right. I didn't raise my hand high enough.

MR. OXER: That's right. You've got to be noisy around here to be heard.

MR. CHILDRE: But I'm Dru Childre, and I'm representative of the applicant. And Mr. Holden is correct. You know, we don't know much about this new elementary school. But that is what I would like to give you some information upon.

As a father of a second and third grader myself I take this personally and I want to -- and I kind of put

myself in a parental position of if my kids would want to go to this school or not. Education is very important to me and my family for my kids, and so I took it upon myself to call and talk to the principal of the Lubbock-Cooper North -- Lubbock-Cooper Central Elementary School, which is the school in question -- the brand new school. Last year was its first year.

Some facts I want to give you about this new school.

The principal of this new school is Cynthia Paulk, and she has come from Lubbock-Cooper North. And Lubbock-Cooper North has -- when she was there back in '09-'10 they had an exemplary rating those -- both those two years. She moved to be the principal of this new school just this last year of the 2011-2012 year.

And so when she was there she was the assistant principal at that Lubbock-Cooper North school. The current assistant principal of the current new elementary school is Tyler Raspberry. He also came from Lubbock-Cooper North. She was a teacher there. They hired within. As staff had mentioned, this school district that is rated recognized or exemplary -- I can't really recall which one. Over the years it has changed. I know the TEA ratings have gotten tougher this past year. So most schools have dropped their rating over the entire state of Texas.

She was a teacher and now she is an assistant principal of this new Central Elementary School. The average age of teachers falls between 30 and 35, which means that this school -- it offers youthfulness and a mix of experience and youthfulness which leads to the teachers who are receptive to new and creative ideas.

Ones have mentioned that -- you had mentioned, Dr. Muñoz, the facilities that -- of these new high tech school offer. Well, this school is a school that almost most parents would strive to have their kids attend. They have something called the smart board equipment. And those of you that are in the educational field might know what the smart board equipment is. It is these -- in every room they have these -- I believe they're LCD TV screens that each teacher -- they have a clicker -- it's kind of like an iPad -- but they touch and they can maneuver -- it's kind of like the old chalkboards. Instead of being up there with the chalkboards or the screens they just write on this pad and it puts -- it portrays up there on these boards -- smart boards.

They have three computer labs. My kids go to a very good school district here in north Austin area and we only have one computer lab in our school -- elementary school. This elementary school will have three computer labs.

They have the televised announcements in every room. And every morning -- each room has their TV. They do televised announcements. They incorporate the students within those announcements and they actually do teachings and they get the students interacted into the program and on the TV and try to help them -- the students as well.

So this school -- even though Lubbock-Cooper might not have a rating they have the resources and potential to be the next exemplary school in the Lubbock-Cooper ISD.

MR. OXER: Good. Thank you.

MR. CHILDRE: Thank you.

MR. OXER: Make sure you sign in there. Oh, before you leave, are there any questions from the board?

Okay. Professor?

MR. McWATTERS: I guess I would disagree that we're dealing with a guess here. A guess denotes to me an element of randomness, of flipping a coin or something along those lines.

I mean, I think this is -- you have a fair amount of due diligence here. They have a pie with three different schools who are all exemplary -- they were all recognized. And we're cutting the pie into four slices.

And I appreciate that the fourth slice may have the teachers, the students, or whatever that take this school

below recognized or exemplary, but that's a risk that I'm willing to take.

If, on the other hand, there were three school districts, two of which were recognized or exemplary, and one was not and we were reshuffling the deck then I think I would have some pause on that.

MR. OXER: Okay. Is there any other comment from the public on this?

(No response.)

MR. OXER: There being none -- Mr. Keig, do you have a comment? Okay. All right. There is a -- who made the motion?

MR. GANN: I did.

MR. OXER: Motion by Vice Chairman Gann.

DR. MUÑOZ: I second.

MR. OXER: Motion by Vice Chairman Gann to award the points. This is point award -- is that right? Okay. To award the points for this. Second by Dr. Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous. Thank you. All right. I want everybody to sit still for

a minute and be quiet because one of the things we've had trouble with here recently was having a -- having our recorder not be able to hear -- we're getting to break for lunch. I've got a 30-second reading we've got to put into the record to make sure this is official. Okay?

The governing board of the Texas Department of Housing and Community Affairs will go into closed session at this time pursuant to the Texas Open Meetings Act to discuss pending litigation with its attorney under Section 551.071 of the Act to receive legal advice from its attorney under Section 551.071 of the Act, to discuss issues related to fraud, waste, or abuse under Section 2306.039(c) of the Texas Government Code. Closed session will be held in the banquet room of the cafeteria. Today is November 13, 2012, and the time is 12:33.

And, with that, we're adjourned until 1:30. See you after lunch.

(Whereupon, at 12:33 p.m., the meeting was adjourned to reconvene this same day, November 13, 2012, at 1:30 p.m.)

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

1:45 p.m.

MR. OXER: Okay. The board is now convened in open session again. It is 1:45. We met in executive session. No decisions were made. And we heard counsel from our legal counsel -- we heard advice from our legal counsel.

VOICES: Can't hear you.

MR. OXER: Thanks. Get all this plugged back in. The board is now reconvened in open session at 1:45. We heard comment and advice from our legal counsel. No decisions were made.

All right. We're down to Item Number 7 and all of its permutations for the next item. Do we want to do this first?

MR. IRVINE: Might not be bad idea.

MR. OXER: Okay. Cameron, just stay where you are. This is obviously going to be a little bit more comment than anything else we've had. But all the comments here -- they sort of fell -- or all the questions and comments -- or requests to speak -- sort of fall into a series of groups. So we'll have the opportunity index sort of thing, revitalization plans, development funding, cost per square foot, and then other components and all this.

Because of the time constraints that we

have -- it's quarter till 2:00 now; by 5:30 or so we're going to be losing our quorum -- we're looking at. So I'm trying to manage the time properly on this so everybody has an opportunity to speak and all the comments that are -- that you'd like to make are available.

So I'd like a show of hands amongst everybody here -- how many plan to speak on components of the opportunity index or things related to it -- poverty percentages, the schools -- that sort of thing. Count them up there, Cameron. How many have we got?

DR. MUÑOZ: Eight or nine.

MR. OXER: Okay.

MR. DORSEY: Yeah, eight or nine.

MR. OXER: All right. How about for revitalization plans?

DR. MUÑOZ: Five.

MR. DORSEY: Four maybe.

MR. OXER: Okay. Development funding and local political subdivision which -- oh there you were. Those were the best ones from outside. Right? Okay. So we have 20ish?

DR. MUÑOZ: 15 or 20.

MR. OXER: Okay. Cost per square foot, which seemed like it generated a lot of attention. One, two, three --

MR. DORSEY: Maybe ten.

MR. OXER: Okay. Is there anything that we didn't talk about somebody wants to speak about?

MR. DORSEY: Here, I've got one. Leveraging? Yeah, sponsor characteristics is another one.

MR. OXER: Okay.

MR. DORSEY: Who's on sponsor characteristics? Handful.

MR. OXER: Okay. What's the first part you have here on this, Cameron?

MR. DORSEY: (a) -- 7(a) is the uniform rule. It's Chapter 10. It is -- most of the stuff that -- well, it excludes the scoring and the, you know, really hot topics that are specific to competitive -- the competitive cycle.

MR. OXER: And (b) is?

MR. DORSEY: (b) is the hot topics.

MR. OXER: And (c) --

MR. DORSEY: Chapter 11. (c) is post-award and asset management. And there might be a few comments, but probably not too many related to right of first refusal.

MR. OXER: Okay. I think everybody here recognizes that by virtue of the -- is there a follow-on comment?

By virtue of the calendar we're working under,

we have to have the QAP done today. So whatever's going to -- whatever the QAP is going to look like we're going to see it at 5:30. Okay? Because it's got to go to the Governor by Thursday, the 15th. So that's why we're trying to make sure that all this gets put in, we have time to deliberate, and make whatever decisions have to be made.

Start with 7(a), we're going to get 7(c) out of the way -- and work those two and then we'll take all the hot topics here last -- so get everything cleaned off as much as we can before we take the big stuff. Okay?

MR. DORSEY: Sounds good. As I said, 7(a) is approval of the Uniform rule -- several subchapters of Chapter 10. It also includes the repeal of several rules in various places, including in Chapter 1, which was definitions and amenities, as well as certain pieces of Chapter 53, which was the HOME program rules, et cetera. This is kind of the big one that brought in rules from all over the place and put them in one place.

So pretty simple. Staff recommends approval as drafted and included in the board book.

MR. OXER: Okay. Is there a board motion to consider?

MR. GANN: I so move.

MR. OXER: Okay. Motion by Vice Chairman Gann

to accept staff recommendations and engage all these rules once -- in one location I assume is essentially the resolution.

MR. DORSEY: This is to approve those subchapters of Chapter 10 as reflected. It's a whole series. I could read it if you want me to but --

VOICE: It's on the agenda.

MR. OXER: It's in --

DR. MUÑOZ: Second.

MR. OXER: Okay. It's a part of the record.

Motion by Vice Chairman Gann. Second by Dr. Muñoz to approve staff recommendation. Is there any public comment? Is there any comment from the board before we start any public comment?

(No response.)

MR. OXER: Okay. Don't forget to sign in when you come up to speak.

MS. PALMER: I will. I'm Claire Palmer. I am an attorney and I'm here representing Stonelake Development.

And the only really comment I have about the rules -- I turned in probably three pages of comments about the definitions and rules, and I'm down to really only one at this point amazingly.

And that was something that was newly added between

the draft from I guess September and the draft that came out last week in the board materials. And that's where they've added the section for site design and development feasibility report.

And last year this feasibility was a point item. It requires you to have civil engineering and a lot of additional expensive items in your application. And while it made it due a month after application cycle it's still a huge expense. It probably adds 40- to \$50,000 to an application, which is not a small sum for these developers.

And it seems to me it's money a lot better spent in another area. I mean, if every developer spends 40- to \$50,000 putting together this information they could build a developer.

And, for that reason, it seems to me that if this is going to be in here it be a point selection item or it be simplified to not require a civil engineer to provide huge statements about compliance with ramps and topography, drainage, detention ponds, tie-ins, general placement of retaining walls, setbacks at off sites at application when all of those things will probably change by the time the site is finally designed.

And it also requires a civil engineer to give a

prepared statement describing the timing. And in April -- on April 1 in application cycle it's pretty difficult for anybody to put together with any degree of certainty to timing on construction that's not going to begin for another year.

So -- and this was newly added. It wasn't in the draft of the QAP until last Friday -- or Thursday when the QAP came out, so it came as a big surprise. That's my comment.

MR. OXER: Cameron, do you want to address these one at a time or do you want to get the -- let's see if there's any more in there. Let's see if we have -- is there anybody who wants to speak on 7(a)? Keep your sequence list, Cameron.

MR. BUMP: Good afternoon, Chairman and board members. Casey Bump with Bonner Carrington. And the item that I would like to talk about is the proximity to amenities that is now a threshold item.

The -- for urban areas you only have one mile now, and there's a list of about 20 amenities that you can be next to that are required. And you have to have -- out of those 20 or so you need six of them. Of those 20 or so amenities one is City Hall, one is a police station, one is a fire station. I really don't see how those are amenities that would help our residents other than it's just convenient if something goes on.

What we would like to see is just an option at

the end to say -- maybe to get some sort of pre-clearance or another way to have other amenities approved -- for example, if you're next to a bunch of restaurants. A McDonalds and a sit-down restaurant would fall in the same category, but those serve two different uses. So we would just like to see if there would be an option to have either additional amenities or get like a pre-clearance, Cameron. Thank you.

MR. OXER: Uh-huh. Don't forget to sign in.

MR. BUMP: Yes, sir. Barry?

MR. KAHN: Good afternoon. I'm going to speak on several positions. But initially --

MR. OXER: State your name.

MR. KAHN: I'm sorry. I'm Barry Kahn, and I'm speaking on behalf of TAP [phonetic]. And, as you know TAP represents approximately 275 members.

You have a handout I believe of various TAP recommendations. We'd like to thank staff for addressing some of the issues. There are some other issues which different people from TAP would like to speak on. Some were included in Section 10 versus Section 11, so we'll come back on 7(b).

And the consensus items are based on a consensus of the membership. And, clearly, not everybody agrees with

everything so that's -- individual members will be speaking on their own as well as on behalf of TAP.

And Dan Allgeier and Sarah Anderson are going to speak on some Section 10 items.

But we would like to thank staff for addressing 1, 5, 6, 8, 11, and 18 of the handout that's been presented to you.

MR. OXER: Well, handout's gone to Cameron because unless it was posted in the --

MR. KAHN: It was.

MR. DORSEY: It was. It's in your book as well. If you'd like to actually follow along in the handout I've got them right here.

MR. OXER: Okay. Well, as long as it's in the book --

MR. DORSEY: It was in the board book though.

MR. OXER: It is in the board book.

MR. DORSEY: It was in the board book.

MR. OXER: Okay. If that's the case --

(Simultaneous discussions.)

MR. OXER: I didn't find this and that's why I was -- was that the amendment that was posted?

DR. MUÑOZ: Yes.

MR. OXER: Okay.

MR. DORSEY: It was in the supplement.

MR. OXER: All right. Supplement. Okay. Hi, Sarah.

MS. ANDERSON: Hello.

MR. OXER: Okay. We're ready.

MS. ANDERSON: My name is Sarah Anderson and I'm actually here right now to speak on behalf of TAP and a couple of items that we have in the handout that we were discussing.

I'm sure there's no real irony here that I'm to discuss the undesirable site features because I think I've been before you for the last six months dealing with these issues.

We have two specific items in our letter -- I think they were number 3 and 4. While some of them have been addressed we want to reiterate some of our concerns with these two -- with these particular items. Just to familiarize yourself, there are two undesirable sections in this part of the rules. There are undesirable site features and then there are undesirable area features.

The site features were originally -- a couple of years ago were actually scoring items and were moved from the scoring -- or negative site features and they would dock your application if you were near 300 feet nearer these items.

Several years ago those were moved and put into

threshold and -- but it was all with the understanding at that time that the board said they would move them to threshold but would leave open a process by which developers could come forward and point out that we have these items and to go through a pre-clearance process.

What has actually ended up happening is rather than being a pre-clearance process it's been identified as being a waiver process. Well, there's a really big difference between pre-clearance and waiver. Pre-clearance is to -- for us to be able to show that it's not an issue and you guys to say we're okay with that. A waiver is where we have to ask you to waive your rules. And there's been a huge distinction between the two in the last couple of years.

For the undesirable area features, which came about as a result of the lawsuit, those are considered pre-clearance items. And I think what we would like to see is rather than the site features being waivable we'd like for them to be considered pre-clearance instead.

It's just -- I'm sure you know from your side it's a very different perception if we're asking you to pre-clear something or we're asking you to waive. And so we would ask that all of those features be considered pre-clearance as opposed to some being waivable and some being pre-clearance.

Also, we would like to bring up that there is no

specified deadline or time line associated with the pre-clearance. We're really excited that there's going to be a better pre-clearance process. Cameron has been talking about having a packet that we can submit. We know when we have to do it.

The process -- so now we know when they have to be submitted by. It's when we're going to hear back by that we don't know. As you know, when we turn these in the first week of January we really need to start almost the next day with our applications. We can't sit around unfortunately and wait a month to find out whether or not something has gotten a pre-clearance.

So we'd request that there be some time frame put in there that would say a week or something that would allow us to know a little bit sooner as we move forward. So those were my remarks.

MR. OXER: Great. How long --

MS. ANDERSON: Do you have any questions?

MR. OXER: How long is the average time to respond to a --

MR. DORSEY: It depends on how many I get. That's a big thing. This is a completely new kind of concept with a framework that -- and a series of items that we haven't dealt with before. They were derived from the remedial plan

and incorporated into the QAP.

The -- you know, if we get -- we will do them as fast as we possibly can. I mean, I can commit to that for sure. But I just don't know how many we're going to get. And since I can't hire 20 new people if I get 250 of them it's hard for me to guarantee a time frame.

MR. OXER: Okay. Thanks, Sarah.

DR. MUÑOZ: Cameron, you're talking about recommendation for the expedited review -- or both 3 and 4?

MR. DORSEY: On their --

DR. MUÑOZ: Yeah. I mean, the pre-clearance is one issue and then the expedited review is a second matter.

MS. ANDERSON: Correct.

DR. MUÑOZ: Right. Are you talking about having to hire additional to do the reviews? Or both?

MR. DORSEY: Both. The whole idea of the staff determination -- we created a couple of instances -- pretty limited -- where that's an avenue that can be taken to provide clarity to applicants as soon as we can in the application process.

I fear that expanding it will not only prevent us from providing that information timely, but, you know, it makes it even more unpredictable. And we're talking about high level reviews. This is me, Jean, Tim, and Barbara

sitting in an office. I don't know how many -- you know --

DR. MUÑOZ: I don't know the kind of complications that it produces for you and that group. But it seems to me, you know, just very reasonable to look at these as possibly the things that could be, you know, pre-cleared rather than having to come before this group -- this board. I mean, wouldn't you want an opportunity to say, you know, yes or no, we've reviewed this, it's reasonable based on these standards -- proceed -- rather than have to come, you know, before this --

MR. DORSEY: Sure. So -- okay. In the site amenities -- I'm sorry. In the undesirable site features versus area features -- in the site features that's a -- I mean, it's relatively black and white. I think that there are some uncertainty about what is heavy industrial and what --

DR. MUÑOZ: Well, wouldn't you want --

MR. DORSEY: -- is not heavy industrial.

DR. MUÑOZ: Wouldn't you want to be responsible for being able to say -- I mean, because currently we'd have to waive that. But if you were to review it and say, okay, you know, yes or no, and -- now, now, you know, if you didn't clear it they would still have the recourse of coming before this group for a waiver.

MR. DORSEY: The question I would have is on what basis would I pre-clear something that doesn't meet the rule.

I mean, I don't have a problem pre-clearing something in terms of, no, this is not heavy industrial use or we don't believe that this is heavy industrial use.

But if -- for example, let's take the railroad track one. If it's within 300 feet of a railroad track that is what it is. You know, it violates the rule. Now a waiver is necessitated.

You know, I don't know what I do with a pre-clearance -- I guess look at other substantive factors, but that would kind of require us changing the dynamics of this rule, which present two issues. One is I don't know that we can do that for urban region 3 and I don't know if we would want to treat the rest of the state differently.

You know, I think the pre-clearance is a good thing to introduce. I'm not sure that I want more authority and digression in looking at these issues and trying to consider all these other factors. I think it's pretty healthy to make sure as much as those kind of subjective decisions get made in a public forum rather than, you know, us hanging out in our offices and doing it.

MR. OXER: That adds to the transparency of the process. That should be one of our end goals.

MR. DORSEY: Sure.

MR. OXER: Of course. Okay. Walter.

MR. MOREAU: Walter Moreau, the director of Foundation Communities. In this section of the rules I think one of the most important things that you can do is to make the green building practices a requirement for part of the threshold.

Right now there is a menu -- depending on the size of your project you can do a pick-off-the-menu a certain number of amenities. You can get points now for a dog wash, for a gazebo. And there are menu items for green building, for water conservation, if you are LEED certified or Enterprise Green communities or National Association of Homebuilders.

I think there's three reasons this is really, really important. And my recommendation in talking with Cameron is that you could require that two of the points come from that green list. One is that affordable housing is not just the rent. If you've got cheap rent but high utility bills, that defeats the purpose of the program.

Second reason this is hugely important for Texas is that we just went through a devastating drought. Other state agencies are looking at water conservation -- ways to help with agriculture. This is a half billion dollar a year

construction program. I think you need to make sure that you're in sync with the water conservation efforts that are critical for the state.

Finally, now is the time to do this because the quality developers that are experienced that are long-term owners -- most of us are already incorporating green practices. It just makes sense. The costs are marginal. In some cases, you know, getting the architect to really design passive design right -- there's a whole lot of things you can do that don't add to the budget but make for a better quality to live in long run, which we should all be about.

I really urge you to make this small change that I think is -- makes the green building more meaningful in the whole program. Thanks.

MR. OXER: Okay. Don't forget to sign in, Walter.
Any other comments?

COMMANDER CANTRELL: Greetings again.

MR. OXER: Good afternoon.

COMMANDER CANTRELL: Commander Bill Cantrell, Navy Retired. I and Colonel Vicky Marsh came here today representing the Hill Country Veterans Alliance, a group of all the veterans organizations in Kerr County and the surrounding counties.

You probably know that Texas only follows California in the number of veterans in our state. But within our state there are certain pockets and areas that are much higher percentage. Kerr County is 13 percent. Right next it Gillespie County I believe is 12 percent. Just below it Bandera County -- 14 percent.

We came here today because we were under the impression that the TDHCA had discretion in setting set-asides. And that's why we came. We would like to have the veterans receive a little bit better chance in the competition. And, with that said, I'm going to turn it over to Colonel Marsh.

COLONEL MARSH: Good afternoon, gentlemen. Colonel Vicky Marsh, U.S. Marine Corps Retired. My husband and I served 26 years in the Marine Corps. I'm speaking today as a veteran, as a spouse, and as a caretaker -- full-time caretaker for my husband, who's a severely disabled Viet Nam veteran.

And we want to echo Representative Menendez's comments this morning about the need for legislation enabling a set-aside for veterans. There should be one specifically for housing targeted for veterans, a goal that is at least as important as preserving at-risk housing, which gets a 15 percent set-aside.

Given that over the last decade the longest period of sustained conflict in our country's history, less than 1 percent of the population served in a military unit. Most of the board members, like most Americans, have never served in the Armed Forces.

It's difficult to fully apprehend why senior veterans and disabled veterans, including those recently returning from Iraq and Afghanistan, need the services that would accrue from a set-aside for something like an enhanced use lease facility, which can tailor services to serve individual need in an affordable and safe environment -- in our case one protected by federal police -- also will assist their families and their caretakers by helping them ensure that their veterans receive the best care possible.

This gives all concerned priceless piece of mind. We veterans, like all patriotic citizens, owe a debt of gratitude to those who have served our nation by putting its interest first and their own second.

Veterans suffer the consequences of severe injuries or chronic illnesses at a much higher rate than their civilian counterparts. These injuries and illnesses stem from military service. Often, veterans' physical impairments and sometimes their mental limitations preclude them from advocating for themselves.

Frequently the families fulfill the demanding caretaking role on a 24/7 basis with little respite, thus few of them can advocate for the wounded warriors and their housing, and that's why we're here today.

There are both tangible and intangible reasons why it's essential for these veterans to reside close to where they receive their medical care. Foremost among the tangible reasons is providing veterans and their families with an improved standard of living that would not be available through -- for an affordable price in an existing independent care facility.

This fact, coupled with their being near a VA facility that provides their health care to them is simply unmatched. Few outside the Department of Veterans Affairs know that it maintains a complete electronic health care record on each veteran enrolled in its health care system.

This means that all medications, labs, diagnostic tests, and procedures and progress notes from other VA health care providers and specialist are readily accessible.

There's a huge intangible why granting this set-aside matters so much to veterans. Living among other veterans who enjoy mutual respect for what service to country means and intuitively understand the sacrifices and/or hardships endured without having to explain it transcends

all else. This would contribute immeasurably to their well being.

Serving in the military bonds us, even though we may have served in different military branches at different times and places with different experiences. Nonetheless, we enjoy the shared history that cannot be attained vicariously. It has to be lived to really get it.

Only those who have served or family members whose sacrifices made their service possible seem to fully appreciate the significance of military service. It remains a life changing, character building experience that initially helped define us as members of a larger organization working together for common goals and later as individuals.

The Marines use the term esprit de corps to define it, and esprit de corps is the animating spirit for speaking here today.

In closing, I implore the board members to close the gap between the protected and the protectors by giving veteran focused housing greater priority in the scoring criteria which at present provides greater rewards to public housing focused housing projects than it does to specifically targeted to serve veterans. Thank you. Any questions?

MR. OXER: Any questions for Colonel Marsh?

(No response.)

MR. OXER: Okay. Thank you. Are there others to speak? Okay. Cameron, you want to --

MR. DORSEY: All right. So the first comment was -- from Ms. Palmer was regarding the civil engineer feasibility study, which is in Chapter 10, Subchapter C. I don't have page numbers on mine -- so I wish I could direct you to the page.

But we -- it's actually now called site design and development feasibility report. We actually -- this was -- we couldn't have actually added this in as a whole new concept if it wasn't included in the draft. So let me first just say this was a modification of what was there and which was more far reaching. And I think we've actually backed up a little bit to allow the applicant to do more of the work themselves and so that less is actually paid for to a third party.

MR. OXER: So this was a logical extension of what was originally considered.

MR. DORSEY: Absolutely, yes.

MR. OXER: And essentially what you're saying is rather than this amount of cost, you backed it down so the external cost would be this and the sponsor could do a certain percentage of it themselves.

MR. DORSEY: That's right. We believe that this

will require the sponsor to incur less cost in outsourcing these issues.

We think it's really important to have some due diligence related to the development site done prior to the application being submitted. We do understand that -- you know, that there are a number of conceptual, you know -- a large amount of the application is conceptual and kind of, you know, preliminary in nature. A lot of the financing changes -- there are some changes to the site plan and other things after award.

However, site work and site related costs are one of the biggest areas of variability between the time of application and cost certification. And we're talking in a lot of instances by over 200 percent. And the reason is because site work costs are site specific and deal with, you know, topography, you know, soil conditions -- whether there's expansive clay or what have you.

So we think it's prudent to do some level of due diligence and be, you know, relatively educated about what the site work issues might -- that might be encountered after application are prior to structuring an application and submitting it to the Department. So we feel like we've pared it back to a fairly reasonable level.

I'll also say this. Last year I think every

applicant -- or virtually every applicant did this. It was a point item at that time. You know, when you kind of get 100 percent of the people actually doing the work is a point item that begs the question whether or not, you know, shifting it over to a threshold item makes sense. And so in this particular case that's what was done.

I talked a little bit about the pre-clearance stuff for undesirable site features. Casey -- Mr. Bump mentioned the pre-clearance for other types of amenities. You know, I talked a little bit about -- I'm just concerned, especially this being kind of the first year to launch this concept of pre-clearance in a really kind of robust way.

I think we need to look at how it works rather than, you know, continuing to expand it to other items in the QAP I think in terms of staff time as well as, you know, all kinds of issues that we may not know exist. You know, we need to go through that process first.

MR. OXER: All those unintended consequences?

MR. DORSEY: Yeah. Yeah, let's figure out what the quirks are, you know, quote, unquote, while the pool of, you know, pre-clearance options is smaller than expanding it right up front.

Let's see. The common amenities green features -- I don't have a problem with this conceptually.

I think -- I don't have a liquid bottle of why we shouldn't do it, in other words.

I think if we do it to be careful if we want to go down that road. The point item is structured such that the number of points is in the common amenities -- and there's a whole list of common amenities -- and then there's a list of green items under the common amenities.

So, depending on your development size, you might need to get a different amount of points than someone else.

So, for example, a development that's 40 units doesn't have to get the same number of points of a development that's 200 units has to get. Does that make sense?

It's not scoring; it's threshold. So it's like, you know, if you're -- this is an example, not actually out of the rule. But if you're 100 units you have to have ten points worth of common amenities.

I think Walter's suggestion is that maybe we say, you know, two points of the ten must come from the green features. If we did implement that I would suggest that we say for anything, you know, larger than 40 units, for example.

That's one of the cutoffs. Below 40 units you get into such small points that are required in the first place that it would necessitate green for all of your common amenities. Does that make sense?

So if you wanted to add that to a motion, for example, you could say any development that's larger than 40 units must have two points that come from the list of green amenity options in the common amenity section.

MR. OXER: And that's -- are you offering up the 40-unit cutoff or is that something you used just as an example?

MR. DORSEY: I'm offering it up, and then you could see if anyone else has an opinion on it since it's not something that was included in the draft and another board member might have an opinion about it that's stronger than mine.

MR. OXER: Well, I'd like -- you know, on my behalf I'd like to note that the green component of the amenities -- that's something I've been working on for pretty much the majority of my career for doing energy management, energy efficiency, and water efficiency particularly, because there's only so much water out there.

Texas this year is facing -- or this coming session is going to be facing a tremendous decision point about what to do about water. So we're not going to be using more water. We're going to be using the water we have more often.

So I'm in favor of anything that improves that because Walter's point is well taken, well made, that you can have a reduced rent -- you can reduce the rent

substantially but that's -- it's a consequence of cap ex for the project or your op ex going forward. If the electric charge goes out the roof or you cost too much for water, it doesn't do you any good to have cheap rent.

MR. DORSEY: Right. And just to let you know kind of how that would play out -- so a 41-unit development needs seven points' worth of common amenities. And so they would have to have two out of that seven that came from the list of green items.

MR. OXER: What's the range on the next -- what's each side of that?

MR. DORSEY: Sure. So 17 to 40 units is four points, and so that would be half, and that's why I say maybe we don't want to use that as the cutoff. Usually those are very small deals. So --

MR. OXER: Seems like the cost to implement a green component to those deals is actually cheaper too, doesn't it?

MR. DORSEY: It could be. I mean, I think -- frankly, I think a lot of the folks that are sitting in the room do at least two points worth of this stuff without us requiring it. But I think it makes sense to -- if the board so chooses to sort of codify this concept as, you know -- and, you know, just kind of as a more official nod

to the fact that we're trying to incorporate green features.

MR. OXER: Well, one of the things about the advancement of a philosophy on this is it's new and different -- the new -- and the new and innovative regresses as the norm catches up -- regresses to the point of expected and then moves to required after that. So what you're saying is we're getting into the required category --

MR. DORSEY: Right.

MR. OXER: -- for a threshold item.

MR. DORSEY: Right. That's right. Right now we have a huge list and your points can come from any of those options. And they could -- so they could choose all non-green items. But what we're talking about here is whether or not we should say, no, if you're above X number of units then at least a couple of those points needs to come from the list of green as well.

MR. OXER: Okay. Mr. Keig, you had a question?

MR. KEIG: Yeah. And this is not to indicate any position on this issue -- or this question. But how does this relate back to what has been proposed and/or the comments of the comment period -- the comments during the comment period.

MR. DORSEY: Sure. Walter, I believe, did make this comment during the public comment period. And within

the reasoned response we have a pretty in depth reasoned response, but I don't think that there's a specific -- something that specifically addresses why we weren't going to do this green amenities one. At least that's my recollection from my conversation with him yesterday.

MR. OXER: So this constitutes a logical extension of what was being discussed before.

MR. DORSEY: Well, first of all, it was a comment that was made during the public comment period. And I believe you've opened up the record -- no?

MR. OXER: No.

MR. DORSEY: Okay. You have not. I didn't know if you did at the beginning. Okay.

MR. OXER: So was it in that transcript --

MR. DORSEY: It was in the transcript --

MR. OXER: -- that Walter attended. Okay.

MR. DORSEY: The comment --

MR. OXER: Okay.

MR. DORSEY: The comment is incorporated into your board book right now. It was received before the -- well, during that official public comment period that ended on October 22.

MR. OXER: Okay. Thanks. All right. Go on.
Was there another --

MR. DORSEY: The veterans set-aside -- let me first say that there are -- kind of set-asides can be used as kind of term of art and it depends on what you mean. So you can have a set side within a deal, like 5 percent of the units on any given deal have to be leased to X type of population. Or you can have a set-aside in terms of like the at-risk set-aside where a certain portion of the overall allocation must go to certain deal types.

We do not have the statutory authority to create set-asides similar to the at-risk set-aside. The statute pretty much, you know, discusses what we have to do with 100 percent of the money. So that's not an option.

In terms of the set-aside for veterans specifically, like a percentage of the units in a given deal, we do have a point item for persons with special needs. Veterans and wounded warriors were added to that list of persons with special needs. I will say that it includes a number of other populations such as persons with disabilities.

And if one were to elect points under that item, which everyone in the room that submits an app probably will, they would be committing to set aside 5 percent of their units for a period of at least 12 months after the date they place in service, and they'll hold those units open for someone

that meets one of those special needs criteria.

MR. OXER: That sounds to be different from Colonel Marsh's hope that there would be a set-aside for a veterans' concentrated community, which was -- like a seniors community they're looking at a veterans community. Okay? Do we have a, quote, set-aside for seniors?

MR. DORSEY: No.

MR. OXER: Okay.

MR. DORSEY: We don't actually have set-asides that target specific populations --

MR. OXER: Okay.

MR. DORSEY: -- in the QAP as it is.

MR. OXER: Would they -- go ahead. I have a follow-up question.

MR. DORSEY: Well, let me tell you that we also require affirmative marketing to veterans to reach out and ensure that, you know, properties are actively marketing to those populations. So, for example, they would go through local veterans' groups or they would specifically contact those groups -- those types of things.

So in addition to the 5 percent set-aside for a year and veterans being listed as one of the special needs populations we also require affirmative marketing. I think it would be a pretty substantial change to actually craft

a new kind of point item for an actual set-aside. It probably extends beyond what we have the authority to accomplish within this meeting.

DR. MUÑOZ: What happens after 12 months once they've held those units -- no one's applied that falls within that range?

MR. DORSEY: They can lease them to other populations. And a conversation with Patricia -- I think virtually every property hits the 5 percent. They don't end up with those units open at the end of 12 months. They would have other lease-up issues if that were to happen.

MR. OXER: If a developer had an intent to provide this to the veterans community -- and, for the record, I'm entirely in favor. And for those of you who have an interest in this, on the public input on our strategic planning committee we've said that veterans -- addressing the issue of veterans returning now -- because of the population in this state is going to grow -- continue to grow. That's an issue this board is making an effort to address. Okay?

In the event that those tax credits deal with -- that a developer wanted to appeal specifically to the veterans community is there anything that prevents them from having a 95 percent set-aside for veterans?

MR. DORSEY: Maybe.

MR. OXER: Okay. So that's why I'm saying -- because they can't consider -- the restriction has to be for income strata as opposed to for specific individuals.

MR. DORSEY: I'll tell you this. I'm not going to point to any specific rule, but I would have to review a whole lot of laws and regulations related to targeting specific populations, including the general use provision that's in Section 42. It was opened up and expanded some with the Housing and Economic Recovery Act of 2008, but there's still a bunch of gray area there.

The IRS hasn't provided a whole lot of guidance in how to target specific populations versus targeting the general public. So I think we would want to do a lot of research. I'll say that.

MR. OXER: So essentially what we're saying now is we've made every effort we can under HERA and within the IRS guidelines to do -- to, well, accommodate every community we're trying to serve.

MR. DORSEY: Comfortably, yes.

MR. OXER: Within reasonable --

MR. DORSEY: I'm not --

MR. OXER: -- legal constraints.

MR. DORSEY: I'm not saying that it's -- you know, that -- you know, it's out -- definitely is a possibility.

I'm saying that it's sufficiently gray that I wouldn't feel comfortable doing that at this -- you know --

MR. OXER: You need to have some more work on it.

Let the record reflect that the Chair and I think the board would concur that, you know, we understand the issue associated with -- brought up by Colonel Marsh, and we, you know, are sensitive to those. But we are -- we're trying to navigate that gray area, and that's the one that's got some rocks and broken glass in it right now.

MR. DORSEY: Yeah. And the other one piece of information I would offer up is we -- scoring is so tight.

When we add a scoring item that an applicant kind of has the ability to elect and they -- it's not them asking someone else to approve something, but it's them saying, yeah, I'll do that, we almost necessitate everyone doing that. That's just the way the scoring works. And --

MR. OXER: If you want to be competitive you have to do that.

MR. DORSEY: You would have to do it regardless of whether it made sense for that deal -- whether it was -- you know, there are certainly circumstances where you're located in key locations near veterans hospitals, et cetera.

But there might also be developments where it's not appropriate to have a specific set-aside or it might

jeopardize the ongoing financial viability of that deal, or there's just not a huge veteran population in that particular town. I'm just saying there are unintended consequences of creating a point item that virtually everyone has to elect.

MR. OXER: Just wanted to get it on the record. Okay. Anything else?

MR. DORSEY: That's it on that one. So we have staff's recommendation, and then I offered up, if you would like, the possibility to make a change for the green features.

MR. OXER: I'll put that in there.

MR. KEIG: I --

MR. OXER: Mr. Keig.

MR. KEIG: I found the pages where Mr. Moreau had submitted an email -- you know, comments in writing and he testified at the open meeting. What had you all proposed with respect to that comment? I'm not finding that here.

MR. DORSEY: We had proposed no change based on the comment. I'm not sure if you'll find a specific elaborated response to just this concept.

MR. KEIG: Yeah, right. Okay. I just wanted --

MR. DORSEY: And for the --

MR. KEIG: I wanted to see, you know, what you had considered before. So if there's not something specific to it, then I understand.

MR. OXER: The biggest ongoing issues of the sort attending to the green issue tend to be in energy and water more or less. Okay? So any -- particularly given the current issues that face the state with respect to water, I think anything we can do to improve the efficiency of these projects with respect to water does us all good.

So I'm inclined to support anything that adds a couple of points in there because that helps us define a philosophy that we should have going forward.

MR. KEIG: So what would be your amended recommendation then?

MR. DORSEY: For any development exceeding 40 units in size two points under -- for common amenities must --

MR. OXER: Two out of the seven.

MR. DORSEY: Well, it's other --

DR. MUÑOZ: Two out of whatever it is must be selected from --

MR. DORSEY: Two out of whatever it is must be selected from the list of green building amenities.

MR. OXER: Okay. I'll entertain a comment -- or motion to action.

MR. KEIG: So moved.

MR. OXER: Okay. All right. Motion by Mr. Keig. Is there a second?

DR. MUÑOZ: Second.

MR. OXER: Okay. Second by Juan -- second by Dr. Muñoz to -- state that again, Cameron.

MR. DORSEY: That for any development exceeding 40 units in size --

MR. OXER: Exceeding meaning 41 or larger.

MR. DORSEY: 41 or larger, two points for common amenities must come from the list of green building amenities.

MR. OXER: Good. I like it. All right. Is there any other public comment? I don't guess so since we just had all that. All right. There being none, all in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous. Thank you. Okay. 7(a) -- I guess 7(a) is done. 7(c) -- we'll go to 7(c) now.

MS. GARCIA: Good afternoon. Cari Garcia, director of asset management. 7(c) is the repeal of two chapters of previous rule 1.9 and 1.25 and also the proposed new rule under the multifamily rules of Subchapter E.

And basically what this section is -- it brings together all post-award activities in asset management

requirements. And this includes a commitment in determination notices, carryover for origination, amendments -- basically anything that happens to a multifamily development post-award.

And so previously all of these sections were contained in different areas of different rules. We accepted comments through the public comment period. We also had a roundtable discussion on Section 10.407 of this rule, which was a section of the rule that received the most public comment. And that's on right of first refusal.

Basically right of first refusal was previously contained in 1.9 and 1.25. And what we've tried to do is bring it all together under 10.407 and provide one clear process for all types of right of first refusal. In previous LURAs the language for right of first refusal has been different, so we've had to try to create a rule that accommodates all the different variations of the language in the LURAs.

And basically what an owner should do is look at the LURA for the property, figure out what kind of right of first refusal is required under the LURA, and then go through the processes outlined in 10.407, which hopefully clarifies how to determine what the right of first refusal offer price will be either based on minimum purchase price or fair market

value. It tells you what the posting period of time will be -- either two years or 90 days -- and then provides information on the documents you have to provide and the process to post your property.

From our discussion a roundtable on October 17 we got some good feedback and information -- still questions out there about the type of organization that is eligible to purchase under a right of first refusal. And currently in the LURA it references Section 42(h)(5)(c) as the type of qualified nonprofit that is eligible to purchase under a right-of-first-refusal provision. The LURA also opens it up to a tenant organization that can purchase under this provision.

We tried to -- based on that comment we've tried to clarify even further in our rule to address that staying still within the guidelines of Section 42 and what is written in the LURA. Other than that I'm open for any questions.

MR. OXER: Okay. Are there any questions of the board -- from the board of Cari?

(No response.)

MR. OXER: Okay. I'll have a motion to proceed.

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

MR. OXER: Motion by Mr. Keig to adopt staff recommendation --

DR. MUÑOZ: Second.

MR. OXER: -- which was fairly complex, by the way. Second by Dr. Muñoz. Is there anybody who wishes to speak on this item? Okay. Walter, you're hiding behind there.

MR. MOREAU: Walter Moreau, the director of Foundation Communities. I just want to say we support the staff's recommendation. The ROFR, right of first refusal, language is exceedingly confusing. Owners need clarity; nonprofits need clarity. It's taken many -- how long -- a year or two to get to this point.

I think what we wanted is to make sure that a qualified nonprofit has a shot to exercise that right as covered in statute, Section 42, the QAPs of those years, and what they checked -- applicants check the box in the LURA. And I think we've got those rules in front of you.

Also, I think, as staff has said, we've got to keep monitoring these because of all the permutations of these deals coming through. We may find there's still a loophole six months or 12 months down the road that we didn't anticipate.

MR. OXER: What, another quirk?

MR. MOREAU: I think the probability is high. But we still need to pass these rules to the best of our ability

at this time.

MR. OXER: We've got to start with something and work on them.

MR. MOREAU: Yeah.

MR. OXER: The good news is I hope for everybody in here if you don't get what you're looking for this is not a static process. This is an exercise in continuous process improvement. So I expect we'll all be back here in another year trying to do this again too. So let's -- we're going to figure out what to try this time, see how that works, and then buff off some rough edges and improve it.

MR. MOREAU: Thank you.

MR. OXER: All right. Thanks for your comments. We appreciate anything that compliments the staff. All right. I believe there was a motion Mr. Keig, second by Dr. Muñoz to approve staff recommendation. No further public comment, all in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. That's unanimous. Thanks very much. Okay. Now we come to the fireworks. So it looks like -- you want to take the big one first?

MR. KEIG: Might as well.

MR. DORSEY: All right.

MR. OXER: Thank you, Cameron. We're going to start with you and hear some of this. But what I'm really going to do is try to get these comments out for these things in blocks. Okay? Now, folks, we've got three hours to do this. Okay? So --

MR. DORSEY: All right. Let's go.

MR. OXER: Get your shoes on and get buckled up here.

MR. DORSEY: So this is Chapter 11. This is the meat scoring criteria. This is, you know, what's created the most controversy. This is also what we -- what was most significantly rewritten from scratch.

Before I get into that I just want to say a couple of things. Jean and Teresa and Barbara -- Barbara is awesome. She is a great general counsel. Thank God for Barbara.

MR. OXER: See where she's sitting; she's sitting next to you.

MR. DORSEY: And Teresa and Jean too. And, by the way, my staff is at the office doing the regular work. You know, we've got to carry over of 45 awarded transactions from July, and that's -- the carryover is like the official allocation date -- you know, that's the accounting for the IRS that we send in at the end of every year and say, yeah,

we did what we were supposed to do.

And so while we're, you know, monkeying around with the rules for next year, they're taking care of all the work related to, you know, officially telling the IRS that we did our job.

MR. OXER: Seems so casual that we're up here.

DR. MUÑOZ: Hey, Cameron --

MR. DORSEY: Yes.

DR. MUÑOZ: -- you mentioned everybody, but not Tom?

MR. DORSEY: Well --

(General laughter.)

MR. DORSEY: You know, there's --

MR. OXER: Tom's sitting over there laughing.

MR. DORSEY: There's a bunch of other folks too. There's real estate analysis, there's Patricia's group, you know --

MR. OXER: Tom's sitting over there laughing.

MR. DORSEY: -- people that work for Tom. I don't know what Tom does though.

MR. OXER: He's sitting over there laughing because you're the one with the little laser beam on the back of your head.

MR. DORSEY: Yeah, he's really relaxed. I've

heard he sweats buckets.

No, you know, we've been focusing a significant amount of time and attention on this but there's a whole lot of regular business that gets carried on throughout the day, you know. We're closing loans, we're doing all kinds of stuff that's going on, you know, outside of this stuff that we're dealing with. Anyhow, just needed to say that.

So this is Chapter 11. We've talked a lot about how much public comment we -- how many opportunities for public comment we've provided. We had last board meeting to, you know, allow everyone to stand up and make public comment. We had the online forum. We had roundtables. I don't know how much more public comment I can personally handle. So --

MR. OXER: But there has been considerable opportunity for public comment to be made as I understand it. Because when you started last year it had seven iterations of the QAP and started out even more this time -- published this, you know, workshops, broadcast, billboards, social media. Michael even got in the game, didn't you?

MR. LYTTLE: Yes, sir.

MR. OXER: Just checking. You are awake.

MR. DORSEY: The other thing is I've probably

spent in excess of 15 hours on the phone just talking to a bunch of different development groups, attorneys, consultants that work in this program trying to figure out what they're experiencing on the ground -- Jean and Teresa have as well -- and making sure that these criteria aren't -- with the school thing that was talked about earlier, it's addressed. Jean figured it out. It's addressed. New school, tearing down a school, building a new one -- all that's addressed in this language.

So hopefully, you know -- there's stuff we're going to miss. There are going to be appeals and all that stuff. But we've tried to figure out as much of those quirks as we can and fix them up front.

There are still two more that I'm going to say that, you know, staff recommendation is consistent with what you'll find in the board book -- approval of that with two modifications for little issues and the new modified language we've proposed.

One, in defining "near expiration" for the at-risk set-aside we need to define it. We kind of revamped that section per the statute. Statute just uses the terms nearing expiration and we needed to define that. We propose that adding to staff's recommendation the modification that we define nearing expiration the same as we did in the 2012 QAP,

which is basically a 24-month -- subsidy's going to expire within a 24-month period and that's what helps qualify them for that set-aside. Without defining that I can certainly guarantee some appeals.

And in the sponsor characteristics point item, which incentivizes the inclusion in the ownership structure of historical underutilized businesses or qualified nonprofit organizations. We included in there a sentence that was intended to prevent folks from just getting their spouse to form a HUB and then including them in the ownership structure or various other kinds of related HUBs that are -- that might be created.

And to accomplish that effectively we would need to change the sentence that's there now to read, The principals of the HUB may not be related to any other principals of the applicant or the developer. The language that's in there now is kind of circular and you can almost get to the conclusion that a HUB isn't allowed to be related to itself. So that will clarify that issue.

So staff recommends what's in the board book with those two modifications. And let's do public comment unless you have questions.

MR. GANN: I've got a question. Related -- what does related mean?

MR. DORSEY: Related party is defined in statute. It includes a number of things. For example, 51 percent ownership of -- where's the statute? Definitely familial relationships are included.

MR. GANN: I'm okay with that. I'll look it up on my own.

MR. OXER: Okay. Long as it's defined -- it is defined.

MR. DORSEY: It is a defined term. That's right.

MR. OXER: Okay. The protocol for doing this -- just the normal course of protocol is they recommended to have certain components of this as described in the board book. We have to have a board action to consider. I can state that, put the motion on the record, and then file public comment. As we did last year we'll go through this. To the extent that we get some resolution for modification to those public comments we'll -- Cameron's going to keep a running tally of the mods we may make on this? So like what you did last year. Right?

MR. DORSEY: Uh-huh.

MR. OXER: Okay. So -- and at the end of that we'll put all this in motion and see if we can get us a QAP here. So at this point anybody want to launch the first

missile here?

MR. KEIG: Do we need a motion --

MR. OXER: We need a motion. I know what Barry's going to launch. Okay. We need --

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

MR. OXER: We have to get this on the record. So there's a motion by Mr. Keig to approve staff recommendation for changes to the QAP. Is there a second?

MR. GANN: Second.

MR. OXER: Second by Vice Chairman Gann. Okay. We have some letters to be read into the record that constitute public -- or public record and public comment. And these are mostly from legislators like -- okay. By virtue of their signature you'll get first shot at it, but let me -- while we're doing that I want to be able to start forming up here.

We'll take the big one first, which was the development funding from the local political subdivisions.

So those of you who wish to speak on this raise your hands again. This is going to get a good count. Okay. There's a whole bunch of you. That's more than our row here. Sitting in the first full row here -- we're going to take public comment from this side over to here.

I would encourage you -- and I will remind you of this again when Michael is finished -- but I would encourage you that if your comment has been made by a previous speaker and we've heard it we don't have to be -- you know, have it tattooed on the inside of our eyelids to be able to accept it and understand it. So if you just want to come up and state your name, put your record -- or name in the record, and say you concur with speaker such-and-such that will help us move this process along because we're going to be working a hard clock here. Okay?

Let's start with you, Michael. Start forming up here on this -- the -- on our speaker's row while we get Michael into the record.

MR. LYTTLE: The first letter is from Senator Leticia Van de Putte sent to Mr. Irvine. Thank you and your staff at the Department of Housing and Community Affairs for working so diligently on a 2013 Qualified Allocation Plan for the State of Texas Housing Tax Credit Program.

I read in support of comments submitted by entities from San Antonio, including the City of San Antonio, on the tax credit program. I understand the low income housing tax credits are very competitive and helpful for the development of quality low cost housing. Our state has great needs for low income housing, including

housing for our veterans, especially those homeless, disabled, and aging.

I support the submitted comments from the City of San Antonio on preserving the input by local entities who have developed plans for community revitalization. Public housing authorities should be eligible for points under the commitment of development funding since they typically develop long-term strategies to support additional development. Public housing authorities work with neighborhoods to develop comprehensive plans that take into consideration various community needs.

I also echo the concerns by the City of San Antonio on the effects of not allowing for the consideration of multiple plans which can be common in large communities like San Antonio. Communities like San Antonio develop various plans and strategies related to housing, economic development, transportation, and various other city planning tasks.

Thank you for allowing me to share my thoughts and concerns. Sincerely, Leticia Van de Putte, Texas Senator, District 26.

The next letter comes to the board from Senator Troy Fraser. It reads, I understand that the Texas Department of Housing and Community Affairs board will be finalizing

rules for the allocation of the 2013 housing tax credits at its November 13 meeting.

The proposed rules include allowing additional points for projects that are designed to assist our nation's veterans. I am writing to express my support for this additional provision in the 2013 housing tax credit point structure. By allowing affordable housing projects exclusive for veterans to receive additional points in the application process the state will help our veterans have better access to affordable housing.

Thank you for your favorable consideration of this proposed rule. If I can be of assistance please do not hesitate to call on me. Sincerely, Troy Frazer, Texas State Senator.

The next letter is actually -- we received two letters that have the same verbiage, so I guess I'll just read it and say that they come to us from State Representative Rafael Anchia and from State Representaive Eric Johnson.

The letter reads as follows: I'm requesting this letter be read into the record at the Tuesday, November 13, 2012, board meeting of the Texas Department of Housing and Community Affairs.

I continue to be concerned the TDHCA scoring criteria gives preference to projects in high opportunity

areas where conventional funding is available over projects in low income neighborhoods or qualified census tracts that are part of comprehensive revitalizations where conventional financing is not available.

Because the demand for low income housing tax credits is so much greater than the availability the board must prioritize. I am aware of Judge Fitzwater's ruling in the ICP case, but I concur with the Texas Attorney General's brief on behalf of TDHCA that the ruling is in error since the enabling legislation, according to the brief, states, quote, Section 42 of the IRC shows a clear Congressional preference for assisting those with the lowest incomes, serving low income tenants for long periods of times, and placing projects in QCTs.

Congress clearly intended that low income housing tax credits should be used to help low income tenants for long periods of time and to revitalize low income areas.

If TDHCA decides to follow the judge's order until court appeals are completed I believe TDHCA should to all it can to fulfill the language and intent of the enabling legislation.

Therefore, I am requesting TDHCA do the following.
Number one, appeal the federal district court decision.

Number two, revise your proposed 2013 Qualified

Allocation Plan as follows. The currently proposed Community Revitalization Plan should be included, but increase the maximum available points to seven, currently proposed at six points. This equalizes the maximized proposed points for the, quote, mandated opportunity index which prefers HOAs.

The QAP requires a set-aside for projects developed by nonprofits. Since nonprofits are often at the heart of revitalization efforts the QAP should be strengthened either in the sponsor characteristic scoring section or elsewhere by adding three points for projects majority-owned by a nonprofit.

The QAP provides additional points for projects with significant local government development funding. Projects in QCTs undergoing comprehensive revitalizations will be helped by increasing the spread of points between funding levels from the city. Rather than one point difference for each funding level have it at least two to three points different.

And, finally, the QAP has dropped points for projects near mass transportation such as TODs. Two points should be added for transport in development sites. Possibly add the points to the tenant services scoring section. Thank you for your consideration.

There you have it.

MR. OXER: Is that it? Okay. On this development funding for local political subdivisions -- we've got about 20 people that want to speak -- we've got a whole bunch of people that want to speak so we're going to run a hard clock here. Two minutes apiece. Okay. Be ready when you come up. You've had an opportunity to sign in, so first speaker. Welcome, and I don't mean to be cold, but we need to get going here.

MR. SPURLOCK: I understand. Good afternoon. My name is Michael Spurlock. I'm general counsel for the housing authority of the City of El Paso. And I'm here concerned about the provision that would prevent housing authorities from receiving credit points for their contributions to a project.

My concerns are legal. The state law directs TDHCA in how they should allocate points to the funds. There's a descending order of importance. The local funding provision says that TDHCA should provides points for funding by local political subdivisions.

You can see from the provision if you've read it it does much more than that. It ingrafts new elements in the funding from a unit of general local government and then goes on to talk about affiliates, instrumentalities, and makes a very confusing statutory framework to follow.

But I think that the real point of it is that that exceeds the statutory authority. There has been a previous Attorney General's opinion that says that these nine categories are mandatory and that TDHCA can't ingraft other provisions onto those, and that's what this provision does in an attempt to exclude public housing authorities.

There's another provision -- legal provision that in terms of the application of this regulation, cities have been considered in case law and by the Texas Attorney General as extensions of departments of the city. So it creates another problem in interpretation. Instead of creating certainty, which is what this role should do, it creates uncertainty.

And I believe that it should not be submitted in the way it is written, that the TDHCA should go back to the rule they had before and to the interpretation which allowed housing authorities to receive points.

MR. OXER: Good. Thank you. And, Nidia, you're keeping our clock at two.

MS. HIROM: Yes,

MR. OXER: Okay.

MS. HIROM: At two?

MR. OXER: Two.

MS. HOPKINS: Hello. I'm Dorothy Hopkins. I'm

with Frasier Revitalization, Inc.

MR. OXER: You can pull that down and pull it closer to you -- both of them.

MS. HOPKINS: I'll just lean in. And I'll be really brief. I just want to say that for the local government development funding scoring section I concur with Eric Johnson and Rafael Anchia in their point saying that I believe that the point difference in the levels of funding should be greater.

Right now it starts at 15,000 per units at 12 points. I believe --

(Timer sounds.)

MR. OXER: Sorry. Go ahead.

MS. HOPKINS: And I would suggest to have -- if you have -- actually I would suggest to increase that from 15- to \$20,000 per unit to be the highest scoring point of 12, and then graduate it downward there by at least two points difference between. Did I explain that?

MR. DORSEY: Uh-huh.

MR. OXER: Are you clear on that, Cameron?

MS. HOPKINS: Does that make sense?

MR. DORSEY: Uh-huh.

MR. OXER: Okay.

MS. HOPKINS: All right. Thank you.

MR. OXER: Good. Thanks for helping us with the clock there.

MR. ALLISON: Horace Allison, Harris County Housing Authority, Chief Development Officer. I would just like for you all to consider allowing the funds that would come from a housing authority to be contributed to the affiliates in the development of a project count for points as the match for -- and commitment for the unit of general government.

Small housing authorities have a difficult time as it is having resources to develop affordable housing. And so any money that they can put into a deal is helpful for us furthering the availability of affordable housing. Thank you.

MR. OXER: Good. Thank you. Granger?

MR. MACDONALD: Good afternoon. Granger MacDonald, Kerrville, Texas. This is my seventeenth QAP, which only speaks to experience, not intelligence, for obvious reasons.

MR. OXER: You had hair when you did the first one. Right? Is that what you're saying?

MR. MACDONALD: And 180 pounds. We need to discuss the issue in rural areas of allowing HOME funds to be counted in this category. Right now what you've got with

the quartiles, we have people running around checking the quartile and seeing what rural areas have funds -- local funds.

So what you're going to have is development only in wealthier communities, and communities that really need affordable housing the most aren't going to be getting it because of the fact that they don't the access to HOME funds.

Now, these HOME funds -- you have to go to the county or the city and ask for permission -- get a resolution from them to act on their behalf. So it is truly an act of the city, but if the city or county says, We don't have any money -- we want you, we want you to work for us, we want you to do everything possible, but we don't have the funds to help you.

If you only go to the communities that have the funds on hand you're just putting housing in areas that really probably don't need it because they -- they're wealthier communities.

So I ask that the -- this QAP reflect the same nature as last year's QAP that HOME funds in the rural areas do count for leveraging. Thank you.

MR. OXER: Good. Thanks. We're going across.

MR. MACDONALD: I jumped ahead. Sorry, sir.

MR. OXER: As we clear these seats out if there's

anybody else who wants to speak we'll start back over here.

VOICE: So where is it? Right here?

MR. OXER: Uh-huh. Yeah, he's next.

MR. ALLGEIER: I'm Dan Allgeier. I'm here representing TAPS today; I'm with Nurock Companies.

The draft QAP indicates that the local government has to decide who gets funding by August 1 and provide that documentation to you. Particularly in big cities they get multiple applications and they typically don't fund projects that don't get an allocation. Some of these cities have to have another meeting in order to accomplish the final commitment.

TAPS suggests that you move the deadline from August 1 to the date -- the commitment acceptance date, which is a few weeks later. It gives you time for the local governments to have their meeting that they may have -- bylaws have to have. And, frankly, a hard date -- it may not change your allocation date, but you may do an allocation later because you've gotten money back and you can't make that date.

So we're suggesting you move it from August 1 to the commitment acceptance date.

MR. OXER: Which is about when?

MR. ALLGEIER: Oh, middle of the next month,

typically.

MR. OXER: Okay. So August 1 --

MR. ALLGEIER: Yeah, it's up to him when he gets his --

MR. OXER: -- so, what, six weeks back? MR.

ALLGEIER: -- when he gets his paperwork done.

MR. OXER: That's all right, Cameron.

MR. DORSEY: It's about September 15 --

MR. OXER: Okay.

MR. DORSEY: -- probably. I would probably just -- well, I'll respond to it.

MR. OXER: All right. You've got it in the list to respond to. Okay. Hold on. Actually, thanks.

MS. RAMIREZ: Good afternoon. I'm Lourdes Castro Ramirez, and I'm the president and CEO of the San Antonio Housing Authority, and this is my first time here.

MR. OXER: Welcome.

MS. RAMIREZ: Thank you. I first of all

just -- MR. OXER: Don't let the live ammo scare you away. Okay?

MS. RAMIREZ: All right. Great. First of all, I just wanted, you know, to express our appreciation for the partnership that we have with the TDHCA for many years. We have been working with TDHCA and a number of stakeholders

to develop affordable housing. And today I thank you for the opportunity to address you.

The San Antonio Housing Authority serves approximately 27,000 households, primarily through our major programs, our public housing program, Section 8, and our nonprofit housing portfolio, which is primarily comprised of mixed income housing communities funded through the tax credit program.

Today we have about 40,000 families or households on our waiting list. The majority of -- 90 percent of the families on our waiting list earn below \$10,000 a year. So we're talking about families that are extremely poor.

And, you know, just in the last three years the focus our housing authority has been to launch a number of self-sufficiency activities. But also we have been very successful in constructing just over 1,000 new housing units in the mixed income sustainable community environment for a total value of about \$130 million.

This has all been done with the assistance of the tax credit program. And I should say it has also been done in partnership with the development community. We don't do this alone. We partner with private developments to ensure that our approach is, you know, comprehensive.

I think you heard from State Representative

Menendez this morning about some of the great work that continues both with our newest development, The Park at Sutton Oaks.

I give you this background to highlight the fact that we consider the federal housing tax credit program one of the most crucial tools in the development of much needed affordable rental housing, but also very important too in the revitalization of neighborhoods.

The unmet need for affordable housing is so great that it requires effective collaborative partnerships with different stakeholders.

But the biggest concern that we have -- and I appreciate the change that has been made that allows housing authorities to be seen as instrumentality -- the biggest concern that we have at this point is that the funding that we bring to bear to enable us to create a true mixed-income community is basically seen of no value at this point and really penalizes and sets us back and just, you know, sets us back in terms of our ability to be able to compete and to continue to provide affordable housing in San Antonio.

So I ask for your reconsideration in allowing housing authorities to be able to use the funding that comes from the federal government, whether it be a funding that enables veterans to be provided with housing, replacement

housing, factor funds, or capital funds to be able to be used as leverage to advance, you know, the goals of affordable housing. Thank you for your time.

MR. OXER: Good. Thank you.

MR. WATERHOUSE: Good afternoon. My name is Stan Waterhouse, and I serve as the chief operating officer for the Housing Authority for the City of El Paso. I'm here to speak in opposition to the adoption of a couple of revisions, specifically the one that pertains to related parties.

It's somewhat similar to what Ms. Castro was speaking to in that -- just so you know, we've been in contact with the largest housing authorities across the state about this particular issue. While I don't speak for them I think there's consensus in the opinion about this particular issue.

The changes that are being proposed specifically to the -- as related to related parties really impact in a negative way the ability for PHAs to create multi-financed communities.

So you understand -- and I think it's critically important that you do -- is there's three components, if you will, in the communities that we're currently building. One is that very low income piece. And as Lourdes was talking to, it's a community that exists on less than \$10,000 a year in many of our cities.

The second component part of those mixed finance communities is an affordable piece, which is the next tier up there's a group socioeconomically -- economically who can afford a little bit more rental rate, and they pay that and that's where they live in those groups, and then obviously market it if that's part of the component part.

There seems to be concern that has been -- or not seems to be -- there's been concern expressed that PHAs have an advantage in their ability to fund projects. I believe this really reflects a complete misunderstanding of the PHAs role and their ability to finance projects.

As I've described before the board and to the staff on several occasions PHAs do not compete directly with a private developer as it relates to affordable communities.

It only competes -- and should get a consideration -- where we put monies into public housing as a component part of a mixed finance community.

And part of the reason for that is we're the only entity that can build those communities. A private developer does not have the wherewithal to have a contract with the -- with HUD to be able to fund these kind of communities.

So irrespective of what has been told they can't fund it -- they can't participate in it.

But there's a lot more to it -- but I appreciate

your time.

MR. OXER: Thank you for your courtesy on our schedule here. Okay.

MR. SANSA: Good afternoon. My name is Frank Sansa. I'm an attorney from El Paso. I'm also a counsel to investment builders.

I'm here to speak on 11.9.(d)(3), and particularly to the related party aspects of that. As I understand this proposed rule is that if a housing authority is in a public/private partnership with a private developer and is deemed to be a related party under the way this new rule works the applicant partnership will not qualify for the scoring under that particular section.

And I am here to point out that I think there is a serious legal impediment with this rule and I believe it is inconsistent with the Government Code, in particular 2306.6710(b), which is the operative rule, and this body, quite frankly -- I think everybody recognizes -- this cannot enact rules that are inconsistent with that section of the Government Code.

The pertinent provision there is that there is a scoring of nine particular items in a particular descending order, and one of them is the commitment of a development funding by a local political subdivision. And what is

happening here with this new proposed rule is that that provision is basically being compromised in the Government Code because housing authorities, which are local political subdivisions, are now being restricted from being able to achieve points when they're in this related party transaction.

Now, I realize that the staff has come forward with certain public policy goals that it wants to fulfill, but regardless of public policy the board cannot enact a rule that's inconsistent with the Government Code.

My recommendation is to please look at Attorney General Opinion GA0208, which was handed down in 2004. It's exactly pertinent to this issue and the Attorney General's held you can't do this. And so my recommendation would be do not include the revisions to 11.9(d)(3) in this draft that you intend to send forward to the Governor. Thank you.

MR. OXER: So your position is to keep it as it was in the last draft.

MR. SANSA: Keep it as it was the last time because you've been allowing housing authorities to --

MR. OXER: All right.

MR. SANSA: -- qualify for points.

MR. OXER: All right.

MR. KEIG: What was that cite to the Government

Code?

MR. SANSA: Here is the Government Code. Here is --

MR. KEIG: No, I've got mine. What number -- I didn't hear the number.

MR. SANSA: GA02 --

MR. KEIG: No, the Attorney General's opinion.

MR. SANSA: Oh, you're talking about to the Government Code. Excuse me. The citation to the Government Code is 2306.6710(b).

MR. KEIG: Thanks. That's the point scoring priority --

MR. SANSA: That's right.

MR. KEIG: -- not the distribution.

MR. OXER: Okay.

MR. MONTY: Yeah, good afternoon, Chairman Oxer. I'm obviously a partner up of the housing authority. You know, we believe that this rule has been part of the rules --

MR. OXER: What was your name?

MR. MONTY: Ike Monty.

MR. OXER: Stickler for detail.

MR. MONTY: Absolutely. We think -- we believe that this rule has been part of the QAP for the last, you know, many, many years. Quite frankly we won last year

because of this rule.

And at the end of the day the only way you can build low income housing for the very poor is by letting them partner up. And in our opinion we think you ought to just keep things the same. Thanks.

MR. OXER: Okay. Ms. Dula.

MS. DULA: Good afternoon.

MR. OXER: So far.

MS. DULA: I won't make it any worse. Tamea Dula with Coats Rose. I'm here today on behalf of the Houston Housing Authority. And I'd like to say that the Houston Housing Authority is in agreement with everyone that went before with regard to this.

I think that the best opportunity to take care of this situation is to go back to the 2012 QAP provision.

But failing that the removal of one sentence from the current language which reads, The Government instrumentality providing development funding under this scoring item may not be a related party to the applicant -- that one sentence would resolve many of the issues -- not the issue about whether or not this is in consistency with the Government Code, but the issues that housing authorities have with regard to being players in this transaction.

I'd like to point out that the Houston Housing

Authority is about to embark on a very large development program using the final tranche of Hurricane Ike financing, and they plan to do it with private developers. It's not like the housing authority's taking over the process and depriving private developers of the opportunity to get these credits. Thank you.

MR. OXER: Thanks. I got a question, Cameron? Why did we put that in there? What was the provision in that? Well, how did this show up in the first place? This sounds like we were trying to fix something that wasn't broke.

MR. DORSEY: Let's get to that. We drafted this completely from scratch. A reference to last year is like a reference to another language. So do you mind if we just -- we'll let the last one go, and then I'll kind of walk through?

MR. OXER: Yeah, I'm okay with that on this particular item.

MR. DORSEY: Okay.

MR. OXER: Bobby, let's go.

MR. BOWLING: Bobby Bowling, for the record.

And, Mr. Chairman --

MR. OXER: Hold on. Okay. Go on, Bobby.

MR. BOWLING: If I could ask for a little leeway. I'm going to try to rebut some testimony from about the last

eight speakers in two minutes, so I might go a little over and I ask maybe a little leeway. This is a very important point item and I think it needs to be laid out in a greater context to you.

I'm totally in support of the staff language. I think the staff language is attempting to address a problem that is beginning to creep into this program more and more.

And that is something that the Legislature never imagined or contemplated when they put this revision to Texas Government Code in -- on the books in 2003 and in 2002. I was a part of that process.

It was never supposed that an applicant could buy themselves a point from that list of nine items. And that's what's happening without this language. And if you don't adopt staff's language in this revised QAP you'll be allowing every PHA in this state to buy themselves this point.

I can't buy myself this point, and I would ask if you're going to let them buy themselves this point let every private developer in the room also buy themselves this point, because that's all that's happening here. A PHA is putting their own money into their own deal and buying themselves this point.

So there's about ten other public policy issues that I think need to be addressed here, but please focus on

that main issue here. It's an issue of fairness. If you do not adopt the staff language -- like Cameron said, the 2012 language -- if you went back to that I'm fine. It's competitive. The levels of subsidy that needed to be attained prior to this year's QAP were reasonable. Us private developers, even with PHAs putting their own points in -- or their own money in to get this point and buy this point, we could still compete with them because the levels of funding that we needed to go get were attainable.

Now the maximum level of funding is \$15,000 per unit. To put it into context on a 200-unit deal that's a \$3 million grant. I don't think there's a city in America that's got \$3 million that they want to put in a grant to a new affordable housing deal.

So I ask you -- that you support what staff is doing. The bringing to you here -- keep in mind, these are the agents of HUD -- these are the local HUD offices. And they're telling you that they have problems. And we all have problems. But is this really one of the goals of TDHCA to make sure that public housing authorities every year have enough funds to do future deals? Let them go to HUD. Let them make their case to HUD. They're HUD agents. Let them tell HUD they need more funding dollars to build new projects.

This program -- Section 42 created by Congress

in 1986 -- was always a private developer program. And this is still the state of Texas. We shouldn't as private developers have to come to the table and compete with our local governments and be at a disadvantage.

And I'm fine with them coming to compete with me.

I'm confident of my own abilities to compete on a level playing field. But if you don't adopt staff's recommendation and you follow their request you'll be creating an unlevel playing field that I can't compete with. You will start to see less and less private developers come before, and this will basically be a PHA program.

Yes, they have the ability to do public/private partnerships and develop -- and select their developer. But they can only select one this year for whatever project. So the question before you is do you want to hand this program over to the local PHAs in this state or do you want to have your staff continue to administer it through a QAP.

Which is -- the point level that's at stake here -- 13 points -- is insurmountable. We can't overcome it. So if you're going to give the PHAs that level, I mean, you'll be seeing a lot less of me and a lot less of the other private developers.

MR. OXER: I have a quick question while you're there. So this is a public housing authority -- if it

gives -- and there's a developer that wants to do a deal. Okay? We're not saying that -- well, let's for the moment assume that the public housing authority settled the issue in its local political subdivision. I get that. Okay? So if I can make financing -- making financing available to the product developer constitutes a component of the financing, but it's when they form the public/private partnership and put the money into it -- that's where the issue is.

MR. BOWLING: Correct, Mr. Chairman.

MR. OXER: Is that where you are?

MR. BOWLING: I somewhat can follow their logic --

MR. OXER: Why do they form the public/private partnerships rather than give it -- give the financing to the developer?

MR. BOWLING: That's the question. I don't know why they don't do that. That is what they should be doing.

And I think even if they can't operate their existing portfolio they ought to be able to start putting it out to bid and let developers take those properties off their hands that they don't have the funding to support and then let the private developers come in and apply for rehab credits or whatever it may be.

For whatever reason HUD has decided that they need to be cut back on their funding. So now they're coming here

and they're saying, Hey, our parent company won't give us funds any more. You, State of Texas, give us your tax credits.

This program was never designed for PHAs. It was a private developer program. It was intended to close a 1986 loophole of private developers building apartments for losses. In replacing that program they never intended to loop in PHAs to this program.

Now, that's fine if they want to come to the table.

All I'm asking you to do is let me compete with them on a fair playing field -- on a level playing field. Don't give them a point advantage going in that I can't get and none of the other private developers can get.

MR. OXER: Okay.

MR. BOWLING: Thank you.

MR. OXER: Thanks. Is there anybody else?

Michael?

MR. HARTMAN: Good afternoon, board, Mr. Chairman. Michael Hartman, Taos Housing. First off, I'd like to say I agree with everything that Bobby Bowling just told you. Everything that he told you is factually correct.

And let me tell you really -- this program -- where it came from. You know, we've always had market rate housing up here -- okay? -- people could afford. And then down the

bottom in the sixties and the seventies we had HUD housing for people who couldn't afford any rents and they needed assistance -- and that was fine.

The tax credit program was for those people specifically in the middle -- the people that are making \$35,000 a year for a family of four -- you know, they're struggling, they're living paycheck to paycheck. They can't really afford 1,000 bucks a month for a two-bedroom apartment or a three-bedroom apartment. They need something down in the 750, you know, level that they can afford. And that's what this program was about.

What's happened is is that HUD has cut back the funding for the PHAs. And, you know, that's the Government deciding how much they want to fund the PHAs. So what the PHAs have done is they've said, Okay, we've lost our funding source so now we're going to try and take the source that was never intended to serve our clientele. The clientele we're serving make 30 percent AMI. This program was designed for 50 and 60 percent AMI, because those people were not being served.

The fact that HUD has, you know, cut back on the PHAs -- and I can tell you -- I've seen it firsthand what they're doing to them and I sympathize with them -- does not mean that all of a sudden we need to take our funding source,

which was not designed to serve their clientele, and move it down to a lower level.

DR. MUÑOZ: What do you propose happens to those people in the 30 percentile? I mean, what's your solution? Your argument is it was designed for this population -- it should be restricted for this population and the others what?

MR. HARTMAN: I think the federal government's got to figure out what they want to do on a funding level --

DR. MUÑOZ: In the meanwhile --

MR. HARTMAN: -- if they want to replace it or what do they --

MR. OXER: Let me answer that, Michael. In the meanwhile TDHCA's program -- the tax credit program is a tool to address a need. It's not a tool to meet every need. Because eventually it's going to get to the point -- if we try to use those for everything we're going to wind up using a hammer on an electrical problem and it's not going to work. Okay? And there's only so many we can do on that.

DR. MUÑOZ: I appreciate that. There is a need in the lower income and there's a need in the 60 percentile.

MR. HARTMAN: I think what the Government's been doing right now -- for instance, in the last couple of years the housing authority that I'm chairman of -- they gave us stimulus funds. And we used that to update our properties

as best we could.

Now, is that a long-term solution? No. But until Congress decides to break the stalemate all we're going to get is short-term solutions out of them.

So I can appreciate the PHAs coming our way but I wanted to give you some context in the fact that, you know, this program -- there was a group here that was being served, there was a group here that's being served. It was the group in the middle that had nothing going for them. They were just stuck out there, as you say, with nothing to help them. And that's what this program came along to help.

DR. MUÑOZ: No, I appreciate that. But by your own admission, and even Bobby, that sort of lower group has been recently cut back and we --

MR. HARTMAN: Oh, it has been cut back.

DR. MUÑOZ: -- we have to be cognizant --

MR. HARTMAN: I agree with you 100 percent. I see it at my housing authority, believe me.

DR. MUÑOZ: And we have to be cognizant of that group having less resources, as well as that group for which this program was -- may have been originally intended.

MR. HARTMAN: Right. All I'm saying is there is some resources for the group that -- you know, that strata -- the lower strata. If we take those resources away

from the middle group there's not an alternative resource for them to go to. Okay? So they only have this resource.

At least the lower strata has what HUD is providing right now. So --

DR. MUÑOZ: However diminished.

MR. OXER: It's not cut off. It's just diminished.

MR. HARTMAN: It's diminished. It is diminished absolutely. So I understand why the PHAs are looking to this program to help them. I mean, right now short term it is the only way you're going to replace old units with new units. That is absolutely true.

But at the same time -- now, if we're going to say that, okay, I can -- you know, the PHA can take money out of their pocket and put it in the project and get points, you're not going to be able to get the same number of points -- or as Bobby's alternative solution was, let the developers pull it out of their pocket too and put it into the deal. It's the only other thing to make it fair I would think.

MR. OXER: Okay. We heard you.

MR. HARTMAN: Thank you.

MR. OXER: Who is -- which one of you was there first? Okay. Go ahead. Come one.

MS. KORMAN: Good afternoon.

MR. OXER: And don't forget to sign in.

MS. KORMAN: I will sign in. I'm Katherine Korman. I'm also with SAHA, head of development. And I was listening to the conversation and I had to stand up and speak because I was working in affordable housing in 1986 when this act was adopted, so I've been at this business a very long time.

And I know that the intent of this was to increase affordable housing in communities. And the other intent was to get private sector investment into these programs, and that's why it was set up as a tax credit so that people could take credits against their income taxes.

It was always conceived to be a public/private type partnership, not strictly just for the private sector.

Housing authorities serve households who earn 50 percent or less of AMI. It's not always the lowest of the low and the poorest of the poor. And for years we've been endeavoring to create mixed income communities because we know that those create better neighborhoods.

And, yes, we have lots of tools that we pull together -- lots of partnerships that we work with. And as a result of that we have very successful mixed income projects.

In some communities that I've been in you have developers that come forward -- private sector developers build all of their units at 60 percent of the AMI. That's market rate housing in a lot of places.

Here when housing authorities are involved with the deal you do use federal dollars as a source of equity to buy down the cost of those units so that they stay permanently affordable. They're always affordable at 30 percent of AMI done mostly on land we own. So if it's going to turn over it's also going to be very affordable, not just for the poorest of the poor but for what I call working households -- those folks that earn 10, \$15 an hour that are working in our communities and we want them to live and work in that area.

So I just felt it was important to say that this is an affordable housing program. This is not a public housing program -- that we need to bring all resources to bear in order to have very successful communities across the state.

MR. OXER: How would you balance the competition against the ones that do not have the public/private partnership contribution from PHA?

MS. KORMAN: Well, actually, the way that I see it is that since we have always worked with the private sector

that the private sector should be also working with public housing authorities. And that's your first point of selection in the competition -- are those private sector developers that are willing to work in partnership with local housing authorities to achieve multiple community housing goals. I think it's how you do that.

MR. OXER: Okay.

MS. KORMAN: Thank you.

MR. OXER: All right.

MS. ANDERSON: Good afternoon. I'm Terri Anderson with Anderson Capital. I just wanted to ditto basically what Bobby said and what Michael said, and in addition to that just remind the board that there are point scoring criteria that have every housing tax credit development that comes in under application set aside a certain number units for 30 percent AMI as well as 50 percent AMI. And that amount has actually increased significantly in order to achieve the maximum number of points.

MR. OXER: So the amount that you're -- so the strata that the PHA finance -- public/private partnership with the PHA finance deals would be serving -- or at least served in a percentage of the deals that are put together by the private developers that are not partners with a PHA. Is that correct?

MS. ANDERSON: The main difference is that the PHA is probably replacing older public housing using tax credits as well as other federal programs and putting their money into their own developments -- or strictly redeveloping a particular public housing development.

But there is an actual effort that's been made by the state, as well as developers, in order to achieve maximum points and achieve the goals of serving more 30 percent AMI households as well as 50 percent AMI households.

So it's not the same, but it's certainly creating new housing for individuals who previously -- and probably still do -- qualify to live in public housing. In addition to that --

MR. OXER: Well, to the point that Dr. Muñoz was raising, that sector was not being abandoned if we --

MS. ANDERSON: It is not.

DR. MUÑOZ: Your point is that your developments also accommodate -- maybe to a lesser extent -- but likely new properties, not rehabilitated properties --

MR. OXER: So --

DR. MUÑOZ: -- 30 and 50 percent --

MR. OXER: Yeah, the private sector jobs --

DR. MUÑOZ: -- to some extent.

MR. OXER: -- are -- look at the spectrum of

projects whereas one might be --

DR. MUÑOZ: Well, that's a good point.

MR. OXER: -- a specific strata.

MS. ANDERSON: That is correct. And it's also been an ongoing proposal that we have diversified communities, and the lady from SAHA just indicated that they do have more diverse income strata in their developments. And the idea is that we should have a broad spectrum of people living in all different types of residential areas to give various opportunities.

DR. MUÑOZ: But you concede that those population -- 30, 50 percent -- not to the extent that the PHAs --

MS. ANDERSON: Absolutely I would. Yes, sir.

DR. MUÑOZ: But it's something.

MS. ANDERSON: It is. And it's much more than it used to be.

MR. OXER: Or as they say in Lubbock, It ain't nothing. Okay?

MS. ANDERSON: Or a tumbleweed. So thank you.

MR. OXER: Okay. Are there any -- welcome aboard.

MS. RICKENBACKER: Thank you. Donna Rickenbacker with Marque. I wasn't planning on speaking to

this matter, but given the discussion this afternoon, I thought I would hop up here.

If there is -- if the board is contemplating making an adjustment in the scoring category I want to make sure everybody understands that this is a funding category and there are -- and where that funding is coming from. And there are other restrictions on the type of funding that's allowed to score these points, including the fact that what's not allowed is TDHCA HOME money to apply if in non-participating jurisdictions.

So I want to kind of put this all in perspective.

It's not just housing authorities and not being able to use their money. But this is a scoring category and where that funding is coming from. And there are other restrictions placed on where that funding is coming from that's being imposed on developments and developers out there. Thank you.

MR. OXER: Good. Thanks, Donna. Okay. Is there anybody that wants to speak to this? Okay. Just make sure it's quick. I'll give you another 60 seconds on this one. Okay?

MR. WATERHOUSE: I gave it to you quick the first time. I'll give it to you quick again.

MR. OXER: Okay.

MR. WATERHOUSE: Stan Waterhouse, COO for the

Housing Authority, City of El Paso. The Government Code, Title 10, general government defining what the role of this agency is -- it very specifically says 2306.001, purpose of -- provide for the housing needs of individuals and families of low, very low, and extremely low income and families of moderate income. So without question this agency has the right and also the obligation to look after those communities.

Secondly, some of the debate -- or some of the conversation this afternoon is about national issues. Unfortunately or fortunately we don't have to deal with those today. We don't have any ability to impact them at the moment.

MR. OXER: I think we dealt with those a week ago today, didn't we?

MR. WATERHOUSE: Well, exactly. Today is to deal with what's before us, and that's the QAP and the issues associated with it.

This tax reform act of 1980-something -- it was designed to put private funds into housing -- low income housing tax credits. It wasn't to put developers into business, it was to put funds that didn't exist in the governmental structure to go into public -- or for low income housing. That's what the monies were designed to do and that's what they've done. To characterize it otherwise is

incorrect.

Irrespective of the agenda of HUD, we're not agents of HUD. I told you before I live at the intersection of the federal government and the city. My job is geographic. It's around the City of El Paso. It doesn't exist beyond that.

My job is to house the very low income folks within my community -- that's what we do. And we'll do it with whatever -- we'll access whatever funds we need to.

We also work in conjunction closely with private developers. We have done that from day one. We have no interest in being in a situation without them. So they have an opportunity to participate if they so choose.

MR. OXER: Okay. Last shot, Bobby. Hold on.
Bobby?

MR. BOWLING: I just want to again refocus what this point item is. It's giving PHAs an unfair advantage. They have the ability to put their money in their deals -- make their deals better, make their deals more attractive to a syndicator, make their deals need less leveraging from a loan. They have all these built-in advantages.

We haven't even talked about the tax abatement and the property tax abatement, the sales tax abatement, the ability to put their own Section 8 vouchers in. They can

take Section 8 project base vouchers from the federal government, dedicate them entirely to a tax credit project, and never have to worry about collecting a dime in rent from the tenant theoretically.

Okay. These are tremendous advantages that are already built in to the program. We're not asking that you kick them out of the program or that you take away all these other advantages. This exact point is already kind of double covered in the leveraging program. If they put their own money into their deal they get the leveraging points. This is a specific point item on units of general local government.

I'm not a lawyer, but I know that your counsel has looked at this and deemed it legal the way staff has drafted it. And it's been out for almost three months now -- this language -- this idea. So the threat that it's somehow not legal I think is kind of a red herring.

But, again, I want to focus you on they have tremendous advantages. We're not saying don't let them in the program. We're just saying let the rest of us compete on a level playing field.

MR. OXER: Anybody else?

MS. DULA: Thank you. Tamea Dula, Coats Rose, on behalf of the Houston Housing Authority. I simply wanted to respond to the question that was asked of Mr. Bowling that

was not answered -- why the public/private partnership.

The reason for that is the housing authorities do have access to certain HUD funds, but they come with prohibitions and complications. For instance, public housing units are not permitted to bear the cost of debt. They are debt free.

So contrary to many, many years ago when the housing authorities created 100 percent public housing projects the more recent trend is to try to put public housing units in among other affordable housing units of a higher AMI. That way the public housing units can receive an operating subsidy which comes from HUD through the housing authority and provides the sufficient funds, in theory, to cover the operating expenses but no funds to pay debt coverage.

That's why a 100 percent public housing project doesn't work anymore unless you have a big Hope 6 plant, which is no more, or something of that nature.

Secondly, the reason for public and private partnerships is that the State of Texas has deemed it appropriate because Texas Legislature has found the providing of safe and affordable housing to lower income residents to be a public purpose. They have provided an ad valorem tax exemption which can be extended to a public/private partnership in the tax credit area if the housing authority

is in that deal as the general partner.

Accordingly, that's why the housing authorities are interested in the tax credit program. They can bring an ad valorem tax exemption to the table. It helps the project, especially if you've got public housing units in it that cannot cover debt. Any questions? Thank you.

MR. OXER: All seems pretty esoteric, but that's why we're here I guess. Okay. Are there any other comments?

Looks like you're up, Cameron, to rebut. And as a housekeeping item we're going to -- this is going to take a while, so we're going to keep going. There will be times when one or more of the -- no more than one of the board members will be gone at any time. Okay? Of course, if you need to -- if you have to stretch well do what you need to do. Take your own pit stops because we're not going to break till this is over. Cameron.

MR. DORSEY: All right. Let me knock a couple of the easier ones off first.

MR. OXER: And, for the record, we're not making a decision on this. This is just sort of congealing what the thought process is on all of this so far.

MR. DORSEY: Right. But in response to the TAP comment regarding the August 1 date, let me kind of clarify what the purpose of that date is.

When we receive an application and we get a little in there, say, from, you know, a city somewhere in Texas that says, Yes, we'll provide -- or this applicant has applied for funding from the city. What we ask is that they also include a statement that they will be able to make a funding decision by August 1.

The commitment doesn't actually have to be approved by that date. It's -- the date is there because it's easier than explaining what a tax credit commitment is when that's due. And it's partly subject to when the Department gets done drafting it and blah, blah, blah.

I don't have a problem moving the date, but it's inconsequential to the actual provision of the commitment.

The commitment can be approved right up -- the day before the commitment is actually due to the Department, which is somewhere close to September 15.

We just -- that date is to let the -- let local governments know, Hey, you know, you're going to have to make a funding decision at some point, you know, in the future pretty quick here. So it's to let -- to give them notice of that effectively and make sure they're aware that they're going to need to make a funding decision.

MR. OXER: Essentially know they're on the shot clock.

MR. DORSEY: Right. In fact, this year we had one -- for example, the letter came in -- an application that said, Yes, we expect to be able to make a decision by August 1. They didn't actually make the decision by August 1 -- they made the decision by the end of August, and that met the requirement because the commitment wasn't due until after the -- until some time in September.

Again, the reason why we use a date -- a hard date in there is because -- basically to prevent more explanation about what a tax credit commitment is and when it's due and the fact the deadline isn't explicit in QAP -- blah, blah, blah.

MR. OXER: So by doing this -- and if they -- they're not having to make a decision by August 1. They're being advised that by August 1 the decision has to be made before the commitment date.

MR. DORSEY: By -- they need to be able to expect to make a pretty quick decision is the purpose of it. We can move that date to August 15, September 1. It's fine. It just needs to be most definitely before the commitment's going to be due.

MR. OXER: But -- I mean, the point of moving it -- right now they've got basically six weeks essentially. If you move it up to September 1, once you advise them, they've

got two weeks. So they had less latitude in there to schedule?

MR. DORSEY: It's purely a thing that goes -- it's an acknowledgment that goes in the letter that we receive at the time of application.

MR. OXER: What they're saying when they sign it is they understand that as of -- that August 1 there's something coming and they're going to have to meet that requirement.

MR. DORSEY: Effectively, yes.

MR. OXER: Okay. If you moved it to September 1 --

MR. DORSEY: They're all laughing at us I think.

MR. OXER: There's some little tiny thin hairs that have been divided here so --

MR. DORSEY: Let me do this. Let me make this easy. I'm going to add --

MR. OXER: Please.

MR. DORSEY: -- add to the staff's recommendation -- you guys would have to accept it as part of your --

MR. OXER: Modify --

MR. DORSEY: Modify your --

MR. OXER: Resolution.

MR. DORSEY: But I don't mind -- I think, you know,

it's pretty easy to add. Let's make the date September 1.

MR. OXER: Bottom line on this one.

MR. DORSEY: Let's replace August 1 with September 1 in the rule. I'll add that to Scott's recommendation.

Granger mentioned -- well, okay. Granger mentioned the addition of TDHCA HOME funds being available to meet the point requirements under this item. That is something that we feel exceedingly uncomfortable with.

We did modify the point item to clarify that if TDHCA were to sub-grant money to a city and the city were to fund an applicant then that would be an allowable method of financing and achievement points on this item.

We currently don't have a process to do that. That would be a decision that we would need to make in relation to the HOME funds and how we fund deals with HOME funds. I'll go out on a limb and tell you that that's an incredibly risky endeavor for the Department. However, I think we are going to be discussing that over the next couple of months.

We don't feel we can just directly award the applicant and by virtue of this resolution that it automatically kind of become city funds. We have discussed this extensively internally with Barbara and we feel like what we've got is the best that we can do given the statutory constraints.

All right. With regard to the whole public housing authority issue let me start with what last year was and kind of how we changed this item. We rewrote this item from scratch. And the reason is because it had become a little bit unwieldy and we didn't feel like it was really accomplishing what it was supposed to accomplish.

We literally had some government instrumentalities that were charging origination fees that, you know, were in multiples of what a private lender would charge -- a conventional lender, you know. It was counter to the interest of the development and the financial viability of the development itself to accept the loan. But they needed to. There was that kind of activity going on.

The thresholds were very hard thresholds. We had like \$1,000 a unit and \$2,000 a unit, as an example, and it didn't matter about the size of the city. But what made up for it -- you know, the size of the city not counting is you could come and get TDHCA HOME funds or you could go to larger regional entity -- governmental entities and get funding from them.

And so it was really a different playing field -- to use the whole level playing field, you know, thing.

It was really a different playing field. P.E. Chase could provide funding for their own developments by -- there were

so many options available to a private -- a for-profit developer not partnered with a housing authority that it was kind of okay in the end. You know, it all came out in the wash and everyone was able to compete effectively with each other, and so there was no kind of advantage in that item for PHAs. There was no kind of inherent built-in advantage. We've --

MR. OXER: Uh-huh. So -- let me -- point of clarification here. So what you're saying is there were -- there's already points in here, but by virtue of the nature of the characterization not everybody's going to be able to qualify for it.

MR. DORSEY: I don't know if everyone's going to get -- everyone got max points last year. I mean --

MR. OXER: Well, I mean, what we're trying to find is things where people -- we don't want everybody to qualify --

MR. DORSEY: Right.

MR. OXER: -- for every point.

MR. DORSEY: Right.

MR. OXER: Because then there's no differentiation.

MR. DORSEY: Right.

MR. OXER: So are there points in there -- I think

you just said, but tell me the points -- or the nature of some of the points here that private developers would be able to access that the PHA private -- public/private partnerships could not access.

DR. MUÑOZ: And vice versa.

MR. OXER: And vice versa. Well, we just saw one where one funding of a deal. Is there one where the -- Bobby's got a deal. Is there one the PHA public/private partnership can't get that he could?

MR. DORSEY: So I promised myself that I would try to answer a yes or no questions yes or no. But I see every shade of gray possible, so I'm going to answer the shade of gray really quick.

I have seen one development over -- I don't know -- I've been here since 2006 -- one time where a PHA contributed project based vouchers to a for-profit developer -- it happened like two years ago -- where they public housing authority wasn't in the development. So that's one circumstance where the housing authority doing their own deal, getting those vouchers wouldn't count under this item.

But, like I said, I've never -- it's extremely rare. Public housing authorities like to make sure their resources go into deals where they have ownership interest.

And so it's -- that's a very rare circumstance. So 90 percent the answer is yes.

Basically everyone who participates under this scoring item has an equal burden to bear. They all have to go talk -- they all have to go talk to a city, talk to someone who's not related to themselves, and access funding from them.

And it's tough -- it's extremely difficult to do.

And we've raised that bar this year. Last year, like I said, it was kind of inconsequential. Everyone got max points. Everyone moved on down the road -- didn't matter if PHAs contributed to their own deal. This year -- different -- completely different.

And so the PHA was able to contribute money to their own deal and get their two points. It's very, very difficult for -- it is going to be very, very difficult for for-profit developers to match that that aren't partnered with PHAs.

Here's a couple of other things I'll say. We are not discouraging public/private partnerships. Actually I would argue that every tax credit development is a public/private partnership -- TDHCA partners with all these guys to get tax credits. We monitor compliance. They, you know, try to comply, et cetera. They're all public/private partnerships.

Second, you know, I -- we're not trying to express any view regarding who public housing authorities serve. This point item actually has nothing to do with who's being served. This point item is about getting funding from a local government -- from a local point of political subdivision.

MR. OXER: Which was partly the purpose to say that the community embraced the project.

MR. DORSEY: Sure. Sure. That's certainly part --

MR. OXER: As I recall, the first admonition I got in this business was, you know, is there a need for the project, does the community embrace the project, do the numbers work.

MR. DORSEY: Right. And it's tough. This requires cities and counties to make tough decisions. This is a hard decision to make. It's not as hard to say I'm going to put money in my own deal. It's just not.

There is a provision in here that prohibits a for-profit -- that prohibits any developer from going to a city and saying, Hey, city, I'll give you \$100,000 and you give me that money back and that will count for points. There's a provision in here that prohibits anyone from doing that.

And there's the provision that prohibits the

applicant from being a related party to the government entity providing the funding. There is --

MR. OXER: Does the public/private partnership fall within or beyond that preclusion?

MR. DORSEY: It's totally allowed under the point item. There's nothing to discourage it nor -- I mean, it's encouraged that a city provide funding in the deal when -- to the extent that that's a partnership between a city and a developer then that's encouraged. Certainly it's a point item.

But, I mean, we're not really expressing any views regarding public housing or the efficacy of public housing subsidies or stuff like that. You know, public housing authorities -- as Tamea mentioned, public housing authorities do have access to some resources that for-profit developers don't have access to.

All we're trying to make sure is that this item isn't a referendum on what kind of developers are worthy of, you know, scoring points. This is about the local contribution and we're not trying to express an interest in funding one type of development over another type of development group. That's for elsewhere. That's sponsor characteristics. That's another point item.

We've also got a point item for rent levels. We've

also got an item for income levels.

DR. MUÑOZ: Yeah, but, Cameron, let me ask a question.

MR. DORSEY: Sure.

DR. MUÑOZ: I mean, this is a more obtuse question, because I'm going to ask about these point values. But as I hear you say that though, I mean -- you know, I mean, Bobby's comments about, you know, a 13-point possible -- you know, I don't want to -- maybe not advantage, but acquisition, you know, makes it virtually -- you know, I think his words were insurmountable for some of these private developers.

I mean, how do you come up with 12, 11, 10 for these points -- I mean, these pointed items? I mean, how -- you know, those seem like high amounts.

MR. DORSEY: The points or --

DR. MUÑOZ: Yes, the points -- where you can obtain 13 -- you know, or 12, 11, 10, 9, 8, 7 -- and then 1 point may be added for points in a clause, et cetera. In what -- you know, where did you come up with those?

MR. DORSEY: Sure. The -- so the highest points you can get is 13 under a point item. And that's merely a function of what's above it and below it. That's a function of statute and the top ten scoring criteria having to fall in line with, you know, a certain priority.

But we generally have in our scoring items various levels that may not meet that maximum point level because -- just because you can't, you know, get 15,000 a unit doesn't mean there's not value in some less amount of funding from a city. So we, you know, developed thresholds that --

DR. MUÑOZ: Below it.

MR. DORSEY: Yeah, below it. And we try to make sure that there is a sufficient number that accommodates all kinds of different circumstances. In this particular case we also tried to accommodate the size of cities so that a city of 10,000 people won't have to contribute even remotely as much as, you know, the fourth largest city in the country. So it tries to balance all kinds of different priorities.

I would also say that this conceptually was developed during a roundtable. You know, we were really struggling with how to accommodate rural areas and, you know, make sure that, you know, they didn't have these, you know, \$15,000 a unit thresholds that they couldn't hit.

And, you know, within urban areas there's smaller cities within urban -- I mean, if you look at -- you know, Georgetown would be an example -- Round Rock -- they're not as big as Austin and so -- but they're competing against deals in Austin. And so we didn't want to say, well, you've got

to contribute the exact dollar amount as Austin to get the same amount of points. So we're trying to balance a lot of different interests here.

And then there's also what goes into, Well, why didn't you say instead of 7, 8, 9, 10, 11, 12, 13 -- why didn't we include more spaces between those. Well, the easy answer to that is we don't want any one scoring criteria to be the absolute determinant of you getting an award.

So there's value in funding from the local government and we try to come out with point levels for that.

But just because you get less funding from a local government than someone else we didn't want there to be such a, you know, gap that you had to cover through all the other scoring items that it was an insurmountable thing.

DR. MUÑOZ: Isn't that Bobby -- but isn't that his point -- that you can't do that?

MR. DORSEY: If public housing authorities could contribute to their own deals, I would argue that, yes, it would be insurmountable. It would be very difficult. It would be -- it would be very hard to compete with.

And there are -- the other thing to consider is, you know, you look at the state of Texas. This is an incredibly diverse state. Look at Region 8 for example. In Region 8 urban you've got College Station, you've got Bryan,

you've got Waco, you've got Belton, you've got Temple, you know. So all those -- it's not just that a for-profit developer within Waco is competing against the Waco Housing Authority.

What it is is, you know, Waco might have a lot of interest in just incentivizing a for-profit developer to come in with no housing authority and do a deal, but they could appeal that significant disadvantage to another city that said, No, we're putting our support behind the housing authority.

And so it's not just within a city that you're encountering this. It would kind of throw the balance off regionally. There are several regions like that. You know, there's the one with Midland in it, you know.

So a lot of thought went into why the scoring item is crafted like this. And it's easy to say, Just strike this language so that it's like last year. But the whole point item is so different than last year -- and the outcomes and what can be expected based on how it's structured are -- it's apples and oranges.

DR. MUÑOZ: Tim.

MR. IRVINE: You know, I think that it might just have to sort of crystallize in specific things that staff was looking to achieve. One, when we looked at statutory

language it our clear impression that what the Legislature intended was, you know, is the local government sufficiently invested in this deal that it's going to put its resources into -- it's going to make an investment to make this deal happen.

MR. OXER: More than just a letter.

MR. IRVINE: Certainly more than just a letter.

And also that the possibility of, you know, creating some instrumentality that goes off and isn't fully aligned with the local elected government -- you know, we wanted to make sure that, you know, the local elected officials made the ultimate call as to whether they really were on board with this deal. We wanted to make sure that they would put funding in that, you know, ran through their fingers -- gave them some residual responsibility for the funding.

And we wanted to provide for differentiating -- somebody putting, you know, multiple millions of dollars into a deal should get more points than somebody putting a pittance into a deal. We also didn't want to prejudice smaller, less wealthy communities, vis a vis, very large and wealthier communities.

So those were the three things that we were trying to achieve here. You know, I certainly appreciate all of the, you know, upsetting effects that it has. But we were

really just trying to do what we thought the statute was directing us to do.

MR. DORSEY: Just real quick. And here's what it does not do. It does not say -- it does not have a negative impact on public housing authorities. It does not have a negative impact. They're in the same boat as everyone else as crafted.

DR. MUÑOZ: That's not what I've listened to.

MR. OXER: No, I think what you're saying is does not have a negative impact on the public housing authorities.

MR. DORSEY: It doesn't incentivize them but it also --

MR. OXER: He's saying that he heard the others say that the private developers are having a negative impact.

Is that what you said?

DR. MUÑOZ: Yes.

MR. OXER: Is that what I'm reading, Tom?

MR. DORSEY: I think if the language was removed that there would be an adverse impact on --

MR. OXER: On the public housing.

MR. DORSEY: -- on -- not on the public housing authority deals.

MR. OXER: Okay. Okay. Those are your rebuttals of the first block of comments. Is that correct?

MR. DORSEY: Yes.

MR. OXER: Okay. Next block. And for this -- let's see. That's the big one out of the way. All right. How many of you wanted to talk on the cost per square foot? Okay. We'll say about five. Okay. Get in line over here again. And, for the record, the vice chairman has the com. I'll be right back. Have at it.

MR. GANN: Don't forget to sign in.

MR. KAHN: Hello. My name is Barry Kahn. I'm speaking on behalf of TAP on dollars per square foot.

And it's item that has virtually unanimous consent from everyone in TAP -- that we're opposed to the current structure and request it be returned to last year's format.

First, it does not have the legislative intent or the statutory language which was established solely for the purpose of limiting tax credit requests. That's why there has always been a flat dollar amount.

Secondly, the properties developed in Texas are very diverse in terms of costs, both based on the construction of single family cottage, multistory elevator buildings, multistory buildings with structured garages, single-family, and even developments with two types of construction -- and on the development versus, such as urban versus rural, hurricane prone areas versus inland, the mean is not

reflective as true cost necessarily.

For instance, the costs of garages for single family houses adds significantly more per square foot of rental space than the cost of a couple of elevator in a 100-unit, four-story seniors development that gets credits for quarter space. Yet they're in the same comparison category.

And this could be endless with lots of comparisons.

Despite the dollar cost per square foot cap contained in the last eight QAPs TDHCA has seen a variety of costs based on the various construction types. And that is why several different dollar caps have been developed for different situations over the years.

Further, this proposed change may result in housing with the potential for inferior construction quality.

Unfortunately, some developers just seek points over quality and real market needs to score. The score will be a perception, whether right or wrong, to keep projected building costs low and try to reduce budgets.

Since I'm speaking on behalf of the whole organization, give me -- a couple of more minutes would be appreciated. We're in a new age to push high opportunity areas, which require higher quality developments. Otherwise, needed support for applications would not be

granted in these higher income areas.

Developers would be discouraged from implementing innovative designs that may cost more than average. Examples of such innovative designs that would be encouraged would be building that encourage LEED certification, incorporating mixed building or mixed use concept, or simply meeting higher architectural standards.

Along the same line, the program seeks long-term housing that is restricted up to 40 years. This mandates higher quality construction products that improve long-term durability.

If developers feel being penalized on cost they will by their very nature use inferior products resulting in lesser quality developments which will result in more deferred maintenance over the years, clearly not a goal of the program.

Added security features, not require amenities, will further be discouraged. Developers can increase the size of their rooms which will bring the cost per square foot, which will actually result in higher credit demand as overall costs increase due to the added square footage. We trust this is not an intent of the Department.

Many of our areas are susceptible to natural disasters which can occur between application and actual

construction and cause price spikes. If a development is impacted and no additional relief is available higher costs would simply reduce the quality.

As we progress we have learned that, you know, we need higher quality units with lower maintenance costs.

And, as I said, virtually the entire TAP community support going back to last year's language. Thank you.

MR. GANN: Thank you very much. Who's next? Joy?

MS. BROWN: Good afternoon. I'm Joy Horeth Brown, executive director of New Hope Housing in Houston, Texas. And thanks to the assistance of the staff and of this board we today manage almost 800 units of supportive single room occupancy housing.

I'm here to speak to the cost per square foot. And if you want to talk about how there are different types of developments with different costs then we're probably the poster child of that because every 225 square feet or so we build another bathroom and another kitchenette.

Now, we also build expensive community spaces, and we're required in order to offer supportive services to build offices for social service providers. That's necessary for the population we serve -- the homeless veteran. The homeless women -- the first ten women to move into our property

that opened two weeks ago came from the floor of a shelter literally and all have a mental disability -- they need services. We provide all of this, and I believe that we provide it in a quality and life-stabilizing way. But it's not a part of net rentable square footage.

Now, in the past the staff has recognized this and we do have an extra 50 square feet per unit. That means now that every 275 square feet or so I build another bathroom and another kitchenette. I very much appreciated the assistance, but it isn't enough.

And I do have a suggestion to offer, and it has some precedent. Once years ago when we were doing the Canal Street Apartments, I worked with Tom Gouris. And Tom began to realize that there was some operating cost differences for single-room occupancy housing and he built a database that he could operate off of to understand the building type.

I spoke recently with Cameron about employing that same idea with a cost per square foot, their cost-cert figures.

I have a receipt construction contract. I would be happy to build the database.

My fear is that supportive housing will be shut out altogether of the program. There is no way to house the people that we work with otherwise. They don't qualify to work, to live in the usual tax credit deal.

And so on behalf of the individuals who are moving into our most recent building and the more than 7,000 lives you've helped us touch I ask for some consideration of the ideas that I've put forward. Thank you very much.

MR. GANN: Good comments. Come ahead.

MS. PALMER: I'm Claire Palmer again. I echo all of the TAP's comments and I'm not going to go through those again. I do have two additional comments.

One is specifically on the urban versus rural, which is not one of the subcategories that's broken down. And I can everyone can recognize that the cost differential between building an urban and building a rural project is significant, and, yet, those two are lumped together.

And my second is on -- this is a new category and new don't know what the mean is going to look like. But the way it's drafted currently, if you get a deficiency, even on some other item which allows your cost to go up and you go within the category, you can't get points.

So if for some reason your application was outside, you get a deficiency notice, you correct, and it puts you in to the points you don't get to get the points. But if you get a deficiency that throws you out of the points you do lose the points. So it's sort of a lose-lose for developers in a new category that hasn't been here before.

MS. ANDERSON: Good afternoon. Terri Anderson with Anderson Capital again. I do want to echo everything that Barry Kahn indicated for TAP, as well as just personally from my own perspective.

I know that the QAP is clearly designed at this point to go into high opportunity areas. And in doing such it's just important to recognize that a 100 percent cementitious development or masonry development could be anything from a 100 percent fiberboard development to a 100 percent brick development.

So instead of using HardiePlank in one location, high opportunity areas, quite frankly, require that you tend to have more masonry and that brick as well as stone-type elevation is what they consider to be a masonry, even though technically speaking TDHCA considers the Hardie board as masonry as well.

So when we're looking at a 100 percent masonry development from an application perspective, if everyone is coming in and we're all lumped into one group a city may not accept the bare minimum masonry as an acceptable base level.

And obviously the cost of Hardie board is significantly cheaper than the cost of brick or stone.

And when you're going in and trying to fit within a category, if you're not -- if you're just a standard family

development going into a high opportunity area attempting to provide housing for families and you have 85 percent brick and stone requirements on your property and you're put into the same average category with another property that may be in a less high opportunity area that has 100 percent Hardie you're just not going to be able to score well.

So I understand that there is a minimum score that you're able to get where, as long as your costs are at \$80 per square foot or less then you'd get eight points. But you're trying to get the additional two points. If you have to go and build brick and stone it's probably going to be more 85 to -- 84 to \$85 range. So thank you.

MR. GANN: Thank you for you comments. Next.

MS. SISAK: Hi. Good afternoon. Janine Sisak. I'll keep my comments brief. Terri kind of touched on the point that I wanted to make. It's about, you know, what this rule kind of does to the design.

You know, I've been pleasantly surprised in working with high opportunity areas in the last year. And, you know, the message I've heard, which is a good message, is less concerned about who lives there but what is it going to look like.

So going into this round the, you know, kind of best practices excellent design is the best tool we have in

working with high opportunity areas. And I'm very concerned that, you know, this rule discourages us from kind of going into cities with our best design.

You know, in certain occasions I think to myself, Oh, you know, I can deliver this good design, and then I think, Wait, can I really do that and keep all the points and be competitive? So I don't want to be in a position where we're all kind of dumbing down our design for fear that we're going to lose these points.

You know, also just kind of big picture, I think what we're going to see this year is a whole bunch of deals in community revitalization areas and then a whole bunch of deals in HOA areas. And, you know, in my opinion the CRP route is -- has fewer pitfalls, especially if it's easier for some organizations in community revitalization areas to get the the local political subdivision funds.

You know, these deals are going to be very close.

On the high opportunity side there are so many pitfalls -- we might not get the money from this city, we're not allowed to use HOME funds, we might get neighborhood opposition, we might not get state senator support. There are so many pitfalls for high opportunity areas that I'm really concerned that this will be yet another pitfall and we might end up with, you know, no HOA deals. So those are my comments.

Thank you.

MR. GANN: Thank you. Anybody else?

MS. SARAH ANDERSON: Yep. Sorry. I'll make it fast. Two points I'd like to bring up. First, my name is Sarah Anderson.

And I'd like to talk about first going back to intent. We've had a lot of discussion today about legislative intent. Cost per foot was one of those where the top nine that came through that's been discussed sort of ad nauseam over the last couple of years.

To me, the clearest identification of what that intent was was the year after it was implemented. You look at the 2004 application of 2004 QAP -- it was cost per foot was designed to be -- to minimize the amount of credits that we were putting out.

Now eight years later or nine years later we're saying, Okay, wait a second, cost per foot isn't about spreading more credits out and putting a cap. Now it's about getting the real cost per deals.

And I would disagree that that's what this does.

The real cost, when you look at the way this is written -- if I put in what I say my real cost is, if underwriting disagrees with me they'll change what my real cost is, either to the betterment of the application or the detriment of the

application.

So it's not -- the implication isn't really that you want to know my cost. You want to know how close my cost is to what underwriting is doing. And if that's what we're doing then just have underwriting tell us what they want that number to be and we'll come in at it.

So I know Cameron has -- I know we've been back and forth on this for months and he has his rebuttal for that.

My other point is that I don't think the regional differences have been taken into account. We're talking about different types of development. I'll give you an example. I have two deals that are close to each other regionally. They're a couple of hundred miles apart -- almost the exact same deal. They have come in \$1 million apart in cost.

There are true regional differences. And having a statewide number just doesn't make sense.

MR. GANN: Thank you.

MR. OXER: Good timing.

MR. GANN: Any more comments? Cameron?

MR. DORSEY: All right. I really love this one. All right. Well, you know, legislative intent. It's hard to argue. I don't know what the legislative intent was, but I can tell you this. There's a lot easier ways to say lower

your tax credit request than put it in there as a manage the cost of development by square foot. So we didn't read in that the intent of that was to lower the tax credit request.

I think there would have been a lot easier ways to say it.

Another thing I heard is post-application spike in costs. As drafted, if your costs change post-application we're not going to say, Aha, you should have known that. Now you lose points and we're taking your award back. As draft, once underwritten or award occurs -- underwriting or award occurs that's a point at which, you know, we're not going to go back and reassess points if your costs change based on disasters hitting and those types of things. There's not this look-back like that.

This is a -- when the application comes in, you know, this is what our costs are. Then we're going to look at that in relation to what other similar types of deals' costs are.

The idea of not being able to increase your points but your points being able to go down -- let's talk a little bit about that. So I submit an application and I say my costs are 80 bucks a foot, and I'm not in the highest point category and I'm in second place.

And I get a deficiency. What am I going to do? If I can increase my points in this item I might increase

my costs so that can increase my points. Because I already know the guy I have to beat now. They're points are up there on an application log.

Increasing points after something is submitted -- very slippery slope. We dealt with this type of thing last year. We talked about it some and, you know, it's not something that I want to try to manage. You know, getting points after you know what everyone else's points are is just not a good kind of precedent to set I don't think.

Why can the points go down? Well, if you didn't submit your actual costs then we want your actual costs. So if you have to change them to show us what your actual costs are then that's what your points should be based on. Right? So that's why the points can go down.

So if you gave us 85 bucks a foot and you -- during the review process you said, Yeah, I guess it was 80 -- I guess it's more like \$80 a foot, then that throws you outside of the points you originally elected, then we're going to give you the lower points.

The idea of REA -- if -- this is kind of like a rhetorical statement. I don't know what that is but it's rhetorical statement. Nothing against Sarah or the concept or anything, but if you have to ask Brent what your costs

should be, you probably shouldn't be using this program.

Go out, figure out what your real costs are. Brent's a reasonable guy. When they look at the application all they want and understand is how did you get there -- how did you get to your costs. He wants explanation.

We use benchmarks. So something to clue us is -- maybe something's off so we have a costing handbook called Marshall & Swift. So we'll go through and cost out what Marshall & Swift says it is. But that doesn't mean Brent's like, Aha, you have to be at -- this book says your development should cost X, and you're not there so we're underwriting you at X. Nor does Brent change your costs. Brent doesn't change costs. Brent talks to you and if you agree your costs are different then you can change them. So those are some of those basic dynamics.

Okay. Now let's talk about some of the issues surrounding -- all right. Well, we have all these different development types and those types of things. I agree. We do have a lot of different development types. We -- they cost different amounts, cost different amounts to build different things. You know, people want to add garages -- it's going to increase the price -- whatever.

The problem with the previous year was that was not evident. And so the costs that came in looked like they

were targeted at whatever threshold we stuck out there. We had an \$85 threshold. The number of applications that were within a buck per foot of that threshold was unreal. I mean, it was significant.

And I used to be the manager of real estate analysis, so I know what that was like. It's like -- you know, it's clear. And all you want to say is, Guys, all I want to know is what this is going to cost to build you so that we can underwrite what your real costs are. And so the previous system did not accomplish that goal of conveying what, you know, things are actually going to cost.

What we did do was we tried to create a window. We just said, Look, we're going to look at all the applications. We're going to throw them into certain categories. They're very similar categories that we had last year for the 85 level and the 95 level. And we're going to say if you're within a reasonable range of that mean then you're getting X points, and if you're outside of that you get slightly less, and if you're outside of that you get slightly less.

Now, I do understand that this is a new scoring item and that there's a lot of concern out there about it.

So I think I'm open to expanding the range a little bit. So if I just had to kind of recommend an option I would say

instead of -- right now it's between 5 percent -- it can be up to 5 percent higher or 8 percent lower than the mean and get max points.

That might have a downward effect. At least people are concerned that there might -- that might have a downward effect on the mean and the quality of the housing.

So let's eliminate the 5 and 8 and let's go with -- if you're within 10 percent you get 10 and then go down from there. Let's -- we can create a 10 percent, a 15 percent -- something like that.

But I don't think throwing the baby out with the bath water is the way to go here. Because the scoring item that we had last year didn't accomplish the goal of trying to understand what you're building and how much it's going to cost to build it.

The one thing I can say about this is, you know, if an applicant submits their real cost and they're not within the threshold that's -- for the highest point category, that's going to be disappointing. And I get that. But, you know what? I think that there should be a risk that you're not going to get max points if you try to monkey with your costs and not give us your -- what you think your real costs are going to be.

So the point item as drafted I think -- you know,

this is a really difficult one to do because I don't think the government setting thresholds for what things should cost makes real sense. I don't think -- I'm not comfortable doing it and I was never real comfortable with the thresholds we created. And, like I said, it created problems for REA.

This is an alternative we came up with. I haven't heard of many other ones. So, you know, I would stick with at a minimum this concept. If we wanted to increase the ranges a little bit then that would accommodate some concerns about cost variation. Although I think the windows are not unreasonable right now.

MR. GANN: Give us that figure and tell us if you can make that part of your recommendation.

MR. DORSEY: Okay. So why don't we make it simple? Let's say -- right now there's up to ten points. So -- and then there's a 10 point, 9 point, 8 point, 7 point, 6 point, 5 point item. And then there's also -- and if you're under 80 bucks a foot you just get 8 right off the bat. That was kind of like a hold harmless level -- you get 8 points.

So you don't just -- you're not just blown out of the water because you're not within the mean. You get 8 just for being under 80 bucks a foot. But that was a concession that made kind of during the drafting process.

But what if we just said, All right, we'll leave

that 80 bucks a foot there for 8 points and said, And to get 10 points you have to be within 10 percent of the mean for your category -- and just left it at that.

It would widen that range a little bit so that, you know, I think maybe there would be a little bit less fear about, you know, coming in outside of it. I certainly don't think it provides an incentive to, you know, dumb down your costs or to build product that, you know, is less high quality -- lower quality.

The main reason is because a good number of folks in this room build good stuff. And so the mean is going to be for that good stuff. So I think that that would be a reasonable kind of accommodation.

MR. GANN: You'd make that as one of your recommendation changes then?

MR. DORSEY: Sure. I'll make that a recommendation change --

MR. GANN: Okay.

MR. DORSEY: -- add to staff recommendation.

MR. GANN: Any other comments on this item? Mr. Chairman, I'll let you go to the next category.

MR. OXER: Please continue. You seem to be doing such a lovely job.

MR. GANN: I'll be glad to let you have it back.

MR. OXER: Okay. Let's get the opportunity index. How many have we got on that one? There were quite a few there. That's like the next larger one -- next largest one. So opportunity index, poverty percentages, school -- that sort of thing. So if you haven't spoken and you'd like to speak -- Dennis, come on up here. You can be first -- get signed in. Anybody else want to speak? Granger, line up. Our usual murderer's row down there.

MR. HOOVER: Good afternoon. I want to express appreciation again to the staff for their hard work and their reception. Most of the time I can get them on the phone and talk to them. And, I mean, that's big. It really is. And they listen -- don't always do everything I say. They should learn by now that I've been around longer than they have.

Anyway, I want to talk about the opportunity index. I'm representing the Edinburg Housing Authority. They bought a piece of land five years ago. And if you were to describe the opportunity index to them -- and I have -- they said, Great, that's where our property is. It's in the second quartile. It's in the better part of town. It's in the part of town they picked out they want to develop in. It's close to exemplary schools.

The only trouble is that the amount of poverty in -- the level of poverty in the whole Rio Grande Valley,

particularly in Region 11, is just so much more than the rest of the state. And I think staff recognized this -- or other comments did back in August. The rest of the state poverty just -- just the poverty percentage of the opportunity index is 15 percent.

And that approximates around the state about 50 percent of the census tracts. It varies from region to region and very greatly for Region 11. In fact, Region 11 and Region 13 were raised to 35 percent. Still, 50 percent of the census tracts in Region 11 would not qualify just on the poverty level. And Bryan/Temple/Waco -- it's 36 percent.

And staff's answer to this would be that, Well, fine, everybody has to deal with 36 percent. Or in Region 13 it's 71 percent would qualify for the poverty level just by itself.

But what that does -- if everything in the region qualifies or if none qualifies both blunt or negate the effect of the opportunity index. It should be somewhere -- it should be 50 percent, just like the quartiles are.

And so our argument is exactly site specific because they've already -- they've bought their land. It's a site specific argument. It is. And that's part of staff's rebuttal to it. But it's because they've already bought their

land in the good part of town in a second quartile with great schools -- it still doesn't qualify because poverty in the Lower Rio Grande Valley is so high.

That's all -- we've got -- recommendation is there to raise it to 18 percent for Region 2, 20 percent for Region 8 -- Bryan/Temple/Waco -- 17 percent for the Corpus area, and 37 percent for Region 11. This is the poverty index. So that in every region 50 percent of the census tracts would qualify just on the poverty level.

Again, if there are two -- if they all qualify or none qualify -- it's too far -- then you're blunting the effect of the opportunity index.

MR. OXER: Good point. Okay. Thank you. I'll remind the speakers as you come up -- you know, two minutes.

MR. MACDONALD: I'm still Granger MacDonald.

MR. OXER: And you're still here.

MR. MACDONALD: I'm afraid so.

MR. OXER: So are we.

MR. MACDONALD: We've got a situation with the opportunity index that's discriminating against elderly housing. There's no way for the elderly housing to compete in the rural areas.

I realize you need to be doing this because of the remedial plan, et cetera. But I think that you need to

take this whole thing and be sure that you take a big broader look at what's happening to the elderly.

My view of it is the elderly will lose anywhere from three to five points based on this plan. I would ask that on page 22 of your little I and little II -- double I -- that you add elderly behind the word supportive housing.

Right now you're asking for the points to be set up for general population or supportive housing, and I would like to see the elderly added to there on both of those items.

And again in B(1) and B(2) elderly be added, especially where it says the development target generation population supportive housing income and the census tract -- it needs to be -- also have the elderly there as well.

And then on development tracts -- general population supportive housing -- add elderly -- and the income tract so the top two quartile of median household income to work.

If you don't do that you won't see any elderly housing make it this next year -- end of sentence. And I think that's discriminatory. And we can have a long argument about whether seniors have the right to move into a family project or if that's what they need or not. And I don't think that that's meaningful at this point, but I do think it's

something that needs to be considered.

MR. OXER: Okay.

MR. KEIG: Wait.

MR. OXER: Good point. Hold on, Granger.

MR. KEIG: You threw out there that something was discriminatory. How specifically do you think it's discriminatory?

MR. MACDONALD: Specifically because elderly are a protected class under the constitution.

MR. KEIG: And how is what is proposed --

MR. OXER: Under what constitution?

MR. MACDONALD: The one in the United States.

MR. OXER: It's protects elderly?

MR. MACDONALD: Yes, they're a protected class.

MR. KEIG: And do you have any kind of legal opinion to present to us that you think is -- that the way it's proposed has a discriminatory effect?

MR. MACDONALD: Well, if you're -- you're basically saying that you won't be able to build elderly housing, which has gone down the ladder for the last 15 years of being a set-aside -- all the way down to, you know, have points added to for elderly. And now you're taking them away and you're going to make it so that you can't produce elderly housing.

MR. KEIG: I don't have any further questions right now.

MR. OXER: Okay. All right. We were just -- to remind everybody -- okay -- we were going to go left to right from my -- no, no, no. That's okay. I'm happy to have you up here. I just want everybody -- don't -- when you come up here and sit down don't sit down in the middle of the row over here if you want to speak first. That's the first one to fill up. Okay? I'm busting Donna's chops. Go ahead.

MR. COUCH: Good afternoon, board and Chairman. I'm Jot Couch from Texas Interfaith Housing, which now is the -- I'm now the executive director of Portfolio Resident Services.

Portfolio Resident Services is the nation's largest third-party provider of resident services. So I wanted to get a chance to talk to you about some of the experiences that we've had in the field relative to seniors and multifamily properties.

I for one thought that it was a cool idea to blend and to expect seniors to work in a nurturing way with multifamily. But our experience over 15 years has been they want to and they don't do well in the sense of health and all the rest of the things that they really are looking for in this housing.

They do in one or two exceptions to the rule -- in a multifamily property where there's a relationship within the family then that's a really nice cohesive unit because it's a grand --

MR. OXER: So it's an extended family but not necessarily a multi-generational community.

MR. COUCH: That's exactly right.

MR. OXER: Okay.

MR. COUCH: And then the other statement that I had really was just about the equality relative to the seniors issues, some of which Granger just touched on. But that I just noted over the last three years that seniors' allocations have been going less percentage wise each other and the rural seniors also significantly less -- so on both directions. So just the equality is something we'd like to see.

MR. OXER: Understood and recognize. Okay.

MR. LAWSON: I'm Hank Lawson. And I don't know if I'm speaking for the right group, but I want to speak about comprehensive revitalization as opposed to this high opportunity area.

MR. OXER: We'll be happy to have your comments right now, Mr. Lawson.

MR. LAWSON: Okay. I live and work in an inner city neighborhood in Dallas, and we have worked very, very

hard to put in place a comprehensive revitalization plan. And for the last ten years -- last decade we had to work very, very hard just to stabilize the neighborhood to stop the decline.

And we believe we've done that. And we did it primarily with the provision of affordable housing -- with a large mix of single family on scattered sites and some high density housing -- but still affordable housing.

And along the way we've worked with schools, the police, gangs, neighborhood associations to try to achieve exemplary and recognized schools, which we've done. We've reduced crime. In our elementary schools we targeted our African-American male students -- are scoring higher than the district in the state level in their respective grades.

Much, if not all, affordable housing was done with the support of federal programs, including the tax credit program. And now we move to undertake our signature project, Hatcher Square, a transfer development project, with the capacity to draw in mixed income. Okay.

Mixed income back into our neighborhood that is so desperately needed. We've seen decline. We've seen the mixed income -- high income groups move out, and we felt we set the table for them to come back.

Now we find ourselves stymied by the change in

the QAP and the awarding of points. Seven years of dedicated efforts to achieve this revitalization are now in jeopardy because of these changes, and we believe our families in our kind of neighborhoods are in most need of this tax credit resource impact.

And what I'm here today is to talk about that their hopes and aspirations ride on the continued access of this program. Any pause in our ability to continue down the road of revitalization may have some bad consequences. We may find ourselves battling the decline again.

So I'm asking you, when you talk about proposed scoring that talks about high opportunity areas versus revitalization areas just keep in mind the spirit of the law that these policies were designed to deal with the rights of these people. Do the right things by this here effort.

Seven years could be harm -- all these efforts to revitalize the schools, the gangs, the drugs -- all that stuff -- comes into account. And if we can't sustain it with development all that has a chance to come back. Thank you very much.

MR. OXER: Thank you, Mr. Lawson. I think it's -- just a general comment. I think everybody in this room knows that we are engaged in a legal event that, by virtue of that and the fact that it's an ongoing case, some of the things that you're seeing in here -- or in the QAP are a

response to that. So I'll have to leave it at that because of this prod I'm getting over here from counsel saying, I've got to keep my mouth shut basically.

MR. LAWSON: Well, can I say -- okay. Well, can I say in response to that, Mr. Oxer, because I really appreciate your earlier comments about this has been a very fluid conversation about the kind of changes that are needed.

So that when we get beyond this point then maybe we can come back to that. I mean, we've submitted four years now and have come up zero.

MR. OXER: Right.

MR. LAWSON: Fifth and sixth year we might be going on the decline.

MR. OXER: I understand your point.

MR. LAWSON: Okay.

MR. OXER: And this is a work in progress for all of us. So we're hoping that --

MR. LAWSON: All right. Thank you very much.

MR. OXER: It ain't over when this one's done. Okay? We've got another one to play next year. Okay. Who's next?

MS. MCGUIRE: Ginger McGuire. I'm speaking on behalf of the Rural Rental Housing Association. I want to talk about seniors. I have spoken on this issue before, but

because that hasn't changed in the QAP I'm back to discuss it.

Our members of the Rural Rental Housing Association own and manage approximately 26,000 units of housing in rural Texas. It is the second largest number of rural units of 515 units -- 515 units -- in the country. And nationally there are almost 60 percent of the residents in the 515 projects are seniors.

And so that is our specific issue with the seniors. It's a big population for us. The 515s --

MR. OXER: Eventually we will all be part of it, you know. Right?

MS. MCGUIRE: We hope, yes.

MR. OXER: Those of us that aren't already. Okay?

MS. MCGUIRE: Right. And that.

MR. OXER: I think I'm already there actually. So go ahead.

MS. MCGUIRE: And many of the rest of us are too. But the -- it's a unit -- the 515s are very difficult to point out. You know, they just -- they -- it's hard to get high scores with the 515s, particularly when you're rehabbing.

USDA has more and more relied on the tax credit program to be their preservation program. And so it just -- by putting seniors three points down from the

beginning it makes it very hard to rehab, to maintain, and to build more seniors units. Also the Texas market analysis did show that seniors were the increasing and stable population in rural areas. So thank you for letting me talk about this again.

MR. OXER: Thank you for your comments. Okay.

MS. PALMER: Hi.

MR. OXER: Hi, Claire.

MS. PALMER: Claire Palmer again. I just want to talk to you again about -- this is an elderly issue. And the elderly has started out -- elderly developments have started out this year three point -- with three points that they cannot get that other developments can. One is in this high opportunity area.

Supportive housing was added to the maximum allowable points between a couple of the drafts. So now the general population and supportive housing can get max points.

It's only elderly developments that cannot get the maximum points under high opportunity areas at this point.

We've heard a lot from Viet Nam veterans here today, and I know the board is very supportive of veterans' projects and trying to find housing for veterans. That is our senior population in large measure.

And to put an elderly development in a situation

where they cannot compete on a level playing field with a general population development is going to create an increasing disparity in the number of elderly units that get developed.

While -- the fair housing issue is that elderly is a protected class under the Fair Housing Act. And that's 40 and above, and it means that they can't be discriminate against. It doesn't mean -- and the point that Cameron has made, which is a good one, is that that means that the general population housing -- multifamily -- can't turn someone away based on the fact that they're an elderly person.

But the fact is an elderly person is not going to show up at that multifamily housing to even look for a place to live. And that's where the disparity in housing starts to develop for elderly people. Thank you.

MR. OXER: Thanks. Okay. Donna, let's --

MS. RICKENBACKER: Hello. Donna Rickenbacker, Marquee. My comments -- I don't think people are going to like my comments because they're contrary to what's been spoken to so far.

With respect to high opportunity and school excellence points and underserved areas, we're speaking to implementation of the remedial plan. And I believe that the high opportunity index and the school excellence categories

were meant to target and apply to general population communities.

If you look at the opportunity index chart in the remedial plan the two highest point values apply solely to developments targeting the general population. But the current draft of the QAP expands the target population eligible for these point values to include now supportive housing.

And, additionally, there's only a two point difference between a general and an age restricted development if you're proposing in the highest opportunity areas. The two point spread can be made up if the elderly housing is being proposed in an area that gets the maximum three school points since the school excellence points are based on the development site, not the population being served.

As a result, I think that the Department is going to see more applications targeting senior housing in the highest opportunity areas. They can achieve the maximum school points. These applications will be competitive and potentially the majority of the applications funded.

I recommend that the board revisit these below-the-line scoring categories. The opportunity index points should be limited to only those target populations identified in the remedial plan.

I also recommend that only family developments receive the school excellence points. The only tenant population that benefits from schools are families with children. These adjustments are consistent with the intent of the remedial plan and would hopefully yield the optimal number of successful family applications in these desired areas. Thank you very much.

MR. OXER: Okay. Thanks. And while the next speaker's coming up I've just got a comment to make. One of the reasons that the seniors without children wind up paying school property taxes is because they believe -- typically the cities believe that every one in the community benefits by having quality schools.

MR. ALLGEIER: Dan Allgeier, New Rock Companies, speaking again in favor of better point system for the elderly. Speaking on behalf of New Rock, but probably also on myself since I qualify for all these properties.

Not only in this high opportunity area but also in the underserved areas elderly properties are at a point disadvantage -- not on a level playing field. In the underserved areas it's because there is an actual point differential. Cameron can address it better. But the elderly need a level playing field.

New Rock's the sixteenth largest affordable

housing development in the country. And we build a lot of family properties; we build a lot of elderly properties.

An elderly person, somebody over 55, which is not elderly, can live in a family project if they choose. There's nothing to keep them from doing that if that's their choice.

As Mr. Couch mentioned, if they choose to do that because of grandkids more power to them.

We do a survey when people move in -- why did you move here? Well the rent's are a big reason. That's frank.

That's the truth. But mostly it's they want the property designed for them -- with the amenities designed for them, with the services designed for them. We do aerobics in the pool with, you know, tai chi and stuff like that. We don't have kids' days in the pool, and they don't want the issues with the family property -- the noise. When you have a wonderful family property it's still noisy -- there's still a bunch of kids. Thank you.

MR. OXER: Got it. Okay. Who else do we have? We have a letter to read in, Michele?

MS. ATKINS: Michele Atkins, assistant board secretary. Mike Sugrue had to leave and asked that we read this -- his -- he's against the staff recommendation concerning senior housing. He said it should be on a level playing field -- same points.

He said price -- he also commented that price per square foot should be fixed to protect the quality of the product.

MR. OXER: Okay. Good. Thanks. All right. You got an -- is there anybody else that wants to talk to those issues? Apparently not. Okay. Cameron, do you want to add anything -- make -- counselor, do you have something you want to --

(Pause.)

MR. OXER: Okay. All right. While they're conferring there we're going to -- Cameron's going to take this up. But I'd like to -- is there anybody here -- those who want to speak specifically to the revitalization plans who have not yet spoken and made those comments? Okay. All right.

That's all right. We've got them, so line them up here. All right. Looks like we're -- anybody else? Let's start here.

VOICE: Veronica's closer.

MR. OXER: Oh, okay. Just sit down because we've got Cameron back here. So the three of you get ready. Cameron, go for it.

MR. DORSEY: Do you want to take a break?

MR. IRVINE: We need to talk about that.

MR. OXER: So do we need -- hold on a second. Hold on a second. Do we need to take a break? Stop? Confer on this?

MR. IRVINE: We can wait. We've got it all together.

MR. OXER: Okay.

MR. DORSEY: Okay. So opportunity index. The -- Dennis had some concerns about the poverty where he went through kind of an explanation of Region 11 needing a slightly higher poverty percentage to allow more sites to qualify as high opportunity.

And he also acknowledged that it really is kind of a site specific issue. There's a site in mind. I can tell you I cannot stand up here and recommend a change in the QAP to benefit a specific site. That's just not what my job is.

I think from kind of backing out I think my concern about kind of the argument that, you know, we need to adjust so that 50 percent of the tracts fit within this specific criteria within a region -- I guess I would say, you know, this is one factor a three-factor scoring item. And while you might say, Okay, let's set it so that 50 percent of the tracts qualify under this specific prong of this scoring. That has no bearing on -- well, I mean, it has some bearing,

but, I mean, it's only one piece of the equation. And so at the end of the day how many actual tracts qualify in a given region is, you know, a three-factor -- it requires three factors aligning.

And so it doesn't make really sense to change the scoring item based on the fact that one criteria -- one piece of this whole scoring criteria would produce equality when you're not looking at the ultimate outcome.

The reality is that we can't very effectively look at the ultimate outcome because the ultimate outcome is a factor of zoning, of where good schools are located, what those attendant zones are, how those overlap with census tracts that meet the poverty percentage, et cetera, et cetera.

So it would just be kind of picking off a little piece of it and saying let's adjust this one to get, you know, some kind of equity here when it's a multi-factor criterion.

The other thing I would say is, you know, the regional allocation formula was specifically developed and put in statute to address the fact that there are differences in -- between regions. The -- you know, Region 13 and Region 11 have different issues going on than in Region 6 or Region 3 or what have you.

I can actually take any given scoring criterion and tell you -- and identify for you what the differential

impact will be based on what region you're in. You know, rents and income levels -- well, rents and income levels are, you know, different depending on where you're proposing your development.

We don't have a different criterion for every region of the state though. We try to craft an item that accommodates the, you know, statewide issues. We do have areas where we differentiate between urban or rural and some things like that. But we try to minimize where that occurs so that we don't have, you know, 26 QAPs.

The fact is that a Region 11 deal will compete against other Region 11 deals. The exception to that is in the at-risk set-aside. But Region 11 deals will compete against other Region 11 deals, and so the same number of census tracts that qualify are available to both of those applicants.

In this case it's a site specific issue -- so I know that they purchased this site but I just can't recommend changing the rules to benefit one site.

The overall impact of increasing the poverty rate from, you know, 35 to 37 will basically be the inclusion of 18 additional census tracts. No one else has made the comment that this has some kind of sweeping effect on the region or anything else. The only thing I could really identify is that it deals with a specific site.

Granger mentioned the, you know, issue of elderly versus general. I think we tried to craft a plan that -- let me back up here for a second. So I've routinely stated that age is not a protected issue in the Fair Housing Act -- and that is true. There's -- it's actually an -- there's an exception in the Fair Housing Act to allow you to create an age-restricted property, but it doesn't protect, quote, unquote, the elderly. The protection is actually for families and -- you know, there are several other protected classes in the Fair Housing Act. So that's one issue right off the bat.

But the other thing is the playing field seems to be tilted as it is. That's the problem. We're trying to kind of get it level. We're having to do that through points, which is something I'd prefer not to do. But it's a reality we're dealing with.

Some communities in Texas seem to be more receptive to elderly housing, and so if there's no point incentive for a developer to continue to try and promote a general population deal in that area then the fact is that they're going to convert to doing an elderly deal and that's -- you know, and if that happens across the board then we've got an issue. So I'll leave that at that.

I would say we did put in a recent response that

it is true that someone -- an elderly household can live in a general population development -- and that is true.

Granger mentioned to me at the break -- and I just want to acknowledge, you know, something -- Granger mentioned to me at the break -- he's like, you know, you put your grandmother in family tax credit deal.

And I just felt like, you know -- I recognize that older households have different needs and different services may, you know, accommodate them more appropriately and living in a property where there are other folks that are age -- certainly achieves an ability for a developer and owner to provide services across the board that meet those needs rather than, you know, just having a few elderly households in a deal and you can't obviously have a big supportive housing -- or supportive service menu just for a small group of households.

But my grandmother actually did live in a tax credit property that was restricted for the elderly. It was across the street from the sister property that was a family property, and she chose the elderly one because it meets her needs better.

But, that being said, you know, we don't have a level playing field as it is and we're trying to achieve it. That's a very difficult thing to do. It kind of requires

me to sit there -- me and Jean and Teresa were sitting there kind of trying to predict the future.

What we've got -- you know, on the other hand, Donna said -- was concerned that the point differential may not be big enough to incentivize folks to keep going down the general population deal route. I have that concern as well. Not so much in rural areas but specifically in urban area I do. I have that concern as well.

I have a lot of concerns about what the ultimate outcome of the scoring will be. What we've proposed is what we believe will accomplish those goals. I think if I were to suggest any change among those changes I would tend to err on the side of being conservative and ensuring we get enough general population deals done. And that way I think I sympathize more with Donna's comment.

But, in any case, I mean, that's kind of what we're dealing with. And to the other issue of mixed income and revitalization I think, you know, you answered that.

MR. OXER: Okay. All right. Let's have -- any more comments?

MS. HOPKINS: Hello again. Dorothy Hopkins, Frasier Revitalization, Inc. I wanted to again reiterate what State Representative Anchia and Eric Johnson said about the Congressional intent of the low income tax credits. And

I'm not going to rehash that because I've said it a lot of times and I've created a lot of different letters and in the interest of being brief.

What I wanted to talk about was the community revitalization plan and the fact that the maximum points available in the proposed QAP this year are seven, but -- oh, no, I'm sorry, they are six. But what I wanted to ask about and request is can we make them seven, because that's actually what the remedial had said that was proposed and which the judge has adopted. And now the judge has gone back and amended his order to say that the community revitalization plan can be adopted -- or can be put into the QAP. It was seven in the remedial plan, so why is it now six. I'd urge you to change it back to seven. So that's one comment.

And then the second is a comment about -- and I don't really know where to put it -- I'm not -- because it's not in the QAP any longer -- TOD sites or transportation. And I wanted to point out, as Walter Moreau nearly said, that if you have cheap rents but high transportation costs then that's a real affordability issue.

And so if there is somewhere that we can have points for TOD sites or for proximity to mass transit then I think that would be important for affordability -- maybe not this year, I understand, but hopefully in the future.

MR. OXER: Okay. Message received with respect to both of those. The -- with respect to the remedial plan it will be what it will be. Okay? That's going to have to be between us and the judge.

With respect to the transportation-oriented districts, unless -- this is something entirely new that was not in the QAP. It was taken out, but we're not going to be -- we can't take that up after the public comment close.

MS. HOPKINS: I understand. Right.

MR. OXER: If you want you can add it nothing year if you want to think about.

MS. HOPKINS: I do it. Thank you.

MR. OXER: Okay.

MS. JONES: I am Veronica Chase Jones. I'm a deputy director with the City of Houston Housing Redevelopment Department. I'm responsible for planning and grants management. And my area's are actually the compliance shop and the equivalent to the housing resource center here at TDHCA.

I've already provided a written comment, but I actually wanted to comment on new language, and I have two separate comments related to the community revitalization plan.

So my first comment is specific to language

actually that Representative Menendez discussed earlier today, which was talking about how there were different types of plans for revitalization. And I've seen this firsthand with working with the City.

The paragraph says that generally because revitalization must identify specific matters -- da, da, da -- it talks about, for example, staff will review neighborhood for the presence of existing aging structures and infrastructure, et cetera.

What I wanted to recommend was that staff consider adding language that allows them to utilize some of the revitalization plans that are established in other federal HUD programs. So examples that I can give you are Choice Neighborhoods, sustainable communities -- right now there's a regional planning grant through the [indiscernible] area council that does that.

By allowing some simple language at the end of the section which says, The three standards that you must meet in order to qualify for the certification -- I was going propose adding a D, which says that the plan has been approved by another state or federal agency for the purpose of community development or revitalization and approval is documented with plan approval or award.

So what this would allow staff to do is be able

to leverage a revitalization plan that has already met these standards, gone through the same similar kind of planning process, but maybe it's operating another HUD silo in another federal agency. So this would just help with that certification piece and allow us to leverage existing work that staff has done with regards to revitalization at the local level.

The second comment that I wanted to include was specifically regarding the point structure under -- let's see -- Chapter 11.9(d)6)(a)(ii) when it talks about the two points in addition to the subclauses where the city or county can identify one single development during each application round for additional points.

This was new language that was added since I submitted public comment on the 22nd. And I didn't want on behalf of the city discussed that the city's 625 square miles to pick one application during an application round is very difficult, especially because we have different types of revitalization and economic strategies that we participate in.

So, for example, I was going to ask that the board consider allowing us to allow for uniqueness in the category or type. Maybe it's one elderly or one family or allow for a special category for special needs which would allow for

us to not have to pick between a homelessness SRO in the northern part of the city and a family transaction on the west side of town.

We want to make sure that we're able to really reflect what's happening in the city and to prioritize deals that aren't even the same -- not even the same deck of cards.

We just -- again, the recommendation would be to allow for a typology uniqueness in category or perhaps even allowing for the city to establish as a part of its revitalization plan what those priorities would be. That way the burden isn't there -- the burden is on the data being provided in the plan. And we would recommendations for those categories, such as homeless and public housing as well.

MR. OXER: Good. Thank you. Okay. Barry.

MR. KAHN: Hi. My name is Barry Kahn. On this comment I'm speaking on my own behalf.

And I would like support expanding the eighth part of the community revitalization plan to the greatest extent -- or the b(1) part, which is subparagraph A -- the greatest extent possible. The City of Houston and certain other disaster impacted areas have a unique opportunity -- in the case of the City of Houston has over \$71 million, Harris County got over \$40 million I believe. And it's a great chance -- the language is written broadly enough to leverage

tax credits with soft dollars and maximize the use of dollars available for affordable housing.

Secondly, if there are any issues that, you know, are unclear -- or maybe what we need is some saving language for staff to have a little bit of flexibility on, you know, expanding the subparagraph A after the board approval. And, if so, you know, they try to work out things with communities.

Then the community revitalization plan will be due with the applications rather than the pre-application period. Thank you.

MR. OXER: Uh-huh. Good. Granger?

MR. MACDONALD: Granger MacDonald. Many communities have as part of their revitalization plans elderly housing. In your underserved areas we still have a two-point award for general and supportive housing areas if they are going into a established area that hasn't had -- previously had a tax credit deal, and seniors properties only get one point in the same areas -- in underserved.

So I'd ask you to at least put that back where it's two points for either group -- general, supportive housing, or seniors -- to keep -- at least -- at least you've already kicked the hell out of the elderly on the high opportunity zone. I'll ask you not to kick them again and at least put this back in balance.

MR. OXER: Message received. All right. Cameron? So we're getting down to leverage the last couple of components here. Do you want to address any of this and then for summary?

MR. DORSEY: I'm going to keep my comments really brief on this item.

MR. OXER: Okay.

MR. DORSEY: We've crafted this item to ensure that we continue to accomplish the goals set out in our remedial plan and as ordered by the court. I can't really recommend changes.

MR. OXER: Got it. Okay. All right. There were several people who wanted to speak on sponsor characteristics. Okay. Granger, we're just going to reserve you a seat up here. Okay?

MR. MACDONALD: I'll let Bobby go first.

MR. OXER: Bobby, you can go at it.

MR. BOWLING: Okay. Bobby Bowling, builder/developer from El Paso. Just to take a step back, I know you all got a lot of comment on this at the last board meeting. I kind of think those of us that were in support of the experience item were kind of at a disadvantage because we didn't have an organized effort to come down to speak on the item when it wasn't posted for discussion and action like

it is today. So I'd like to give you kind of the other side of that.

You all heard for an hour this morning about kind of a serial violator of compliance requirements in Texas. And for somebody that this is my fourteenth QAP -- I'm about three behind Granger -- but I've never come close to having a compliance issue. And right there's nothing in the QAP that acknowledges that experience or recognizes that.

I understand keeping a level playing field by all means, and if the issue is out-of-state developers are at a disadvantage, well, I still can have a personal bias towards how difficult the Texas program is. But if we're setting that item aside I still think you all need to have some sponsor characteristic item for experience.

Diana McIver in her public comment I thought had a good solution -- or a compromise on this issue, which was bring it just back to 8609s. If you're not comfortable comparing scores on UCPS, physical inspections, and things like that which probably bears some merit, go back to the strict completed developments having maybe three 8609s or six 8609s if you're from out of state or just make it fair across the board.

But please put something back in for this item because this has now morphed into what began at a roundtable

discussion as an experience criterion item. It's now morphed into giving points for HUBs and nonprofit developments only.

And I don't think, in and of itself, was really an item of focus when you were at roundtable and or when you were taking public comment.

So I'd ask that you relook and put something in there that puts experienced developers at a level playing field with now HUBs and nonprofits.

MR. OXER: Got it. Okay. Granger?

MR. MACDONALD: I completely agree with what Bobby just said. You had a poster child for why you need experience points this morning.

And if you want to move it back to the 8609s I'd say you need to give experience points for either HUBs, not-for-profits, or for-profit developers. But there has to be something in there -- there has to be a number -- three 8609s, six -- whatever the number is -- there has to be something that will encourage these folks who are new to the business who don't know what they're doing to possibly partner with somebody and get some help so they don't make the silly mistakes that you spent two hours on this morning.

MR. OXER: Okay. Hold on, Michael. Donna was next.

MR. HARTMAN: I'm sorry.

MR. OXER: That's all right.

MS. RICKENBACKER: Hi. Donna Rickenbacker from Marquee. Sponsor characteristics, as you all know, has now been limited to HUB participation or nonprofit ownership in your transaction, as long as they are -- have at least 80 percent of a combination of cash flow developer fee.

And, you know, I'm a HUB, and I think a qualifying HUB. And I think 80 percent is -- I would love to take 80 percent of somebody's deal, but I think it's over prescriptive and it's very unfair to that developer applicant that has the experience and is bringing that obviously to the deal, as well as all the guarantee obligations associated with getting these deals across the finish line under construction managing them all the time.

I understand that we're wanting to increase HUB capacity. I heard you all loud and clear. I respect it. I think it's a good thing. But I think that we should make an adjustment from that 80 percent such that -- at a minimum let the parties structure the development terms and the agreements among themselves based on the HUB's level of participation and the experience that that HUB is bringing to the deal.

Also, obviously, we've now taken out the experience component to this scoring category. And if that's

the desires of the board and the direction you want to go then at least let's have an experience requirement in affordable housing to be a threshold requirement.

Right now all that's required to be able to develop in this program is that you have -- you can demonstrate that you've been participatory in at least the development of 150 units, and that doesn't have to be 150 tax credit units.

This is a very complex program, and I think personally it takes more than just somebody that was in a deal to whatever extent and can prove up 150 units giving them the ability to participate in this program or meet threshold for experience I think is inadequate and we should take a look at that. Thank you.

MR. OXER: Okay. Thanks. Okay. Michael.
Welcome back.

MR. HARTMAN: Michael Hartman, Tejas Housing Group. I have to tell you that the reason I'm glad that the sponsor characteristics is out as it was written is that I'm on my 21st QAP. I developed my first deal in Texas in the tax credits in 1993 and I wouldn't qualify to be an experienced developer and get those points. Okay?

What it does, in a lot of cases the actual people who are doing the work have to find money partners because it takes hundreds of thousands, if not millions, of dollars

to get a development company started. And so the money partners who would qualify without ever having done a day's worth of work because they own 60, 70, 80 percent of the company. And the people who are actually developing the housing own 10 percent, maybe 20 percent of the company.

So the way the rule was written -- I don't think that it really reflected reality of what happens in a lot of cases with a lot of developers.

Is experience important? Absolutely it is. This is a very complex program, and I agree with that. But the way the rule was written it didn't work for a lot of people who have been in this business for a lot of years. I think we need to go back and revisit it. But as it is now to bring back what was there I think would be -- take a lot of developers who do have a lot of experience and push them out of the program. Thank you.

MR. OXER: Got it. Claire?

MS. PALMER: Claire Palmer. I had not planned to speak on this issue because I like the new language a lot and I appreciate that staff took into consideration all the comments they were given.

And if it does come back in that you have to have some sort of experience I would at least request that it's not based on 8609s, which is something that staff issues not

something that the developer necessarily has a lot of control over the timing.

So if it's going to come back in in any way I think the final inspection would be a better criteria than 8609s, which are often delayed out for years over some minor issue or just because they get lost on desks. And final inspection is a clear delineation and always happens when the project is completed.

But at this point I think that the language we have with HUD participation and nonprofit participation is very inclusive, and it allows for projects with multiple parties in the deal. And I think that was what staff wanted and I think that's what the board wanted, and I think you've accomplished that very well with the current language.

MR. OXER: Good.

MS. ANDERSON: Terri Anderson speaking again. I do like the current language. And just a little bit of history as it relates to a lot of developers who are very interested in having the three 8609s or six 8609s.

When I was at the Department some of these same developers had zero experience. And I would just suggest that there needs to be consideration for the fact that this should be a more inclusive program. This should be effective competition. It is complicated. To the extent that someone

needs help there are plenty of consultants who are more than willing and able to help them get through the process.

MR. OXER: Like behind you over there.

MS. ANDERSON: One's sitting behind me, yes. That would be the one. So, I mean, I just want to encourage the board to consider the fact that this is a program where it may be difficult to navigate, but there are ways to get through that. And a lot of the developers finance their own deals personally and/or was here at the Department when they first applied. Thank you.

MR. OXER: This is a comment from -- and, Sarah, you're next. But there was a comment from my perspective -- we want an open competition. I know everybody -- there were some in here that wanted to have Texas experience to be able to compete in the Texas program. But we wanted to have open competition. I got some guidance from some other folks in this building here -- open competition.

What we were trying to get to is a mechanism to deal with the issue we don't have to deal with this morning where if you're in and you keep -- you get a deal -- if you've got the horsepower to come in -- I'm satisfied with the requirement now, Tom -- if you've got the, you know, the drawbar on your tractor and you can pull one of these deals -- got it? Okay. If you can do one of these then get

over here and do it.

But if you get in here and keep going into a serial insufficiency then that's what we're trying to penalize. Okay? So it's not Texas experience so much as it's Texas history.

MS. ANDERSON: I gotcha.

MR. OXER: Okay. Now what was your comment, Sarah?

MS. ANDERSON: I don't remember.

MR. OXER: What do you want to say?

MS. ANDERSON: I'm still trying to work through them. Okay.

MR. OXER: Your running buddy came up here and smashed me.

MS. ANDERSON: I know. I agree wholeheartedly. Sarah Anderson. And I wasn't planning on speaking on this either, but Donna did bring up an issue.

And I'm a HUB also and we participate in these deals. And I would like to think, Cameron, that that number that they used was 100 percent -- that it had to total up.

It's now down to 80. Being on the HUB side and seeing who's putting the guarantees and who's doing what, I would think that 50 percent is probably still more fair. 80 percent's better than 100 percent, but 50 percent -- I mean, technically

you're asking someone who doesn't have all the experience to come in and get more than their fair share in a deal.

I mean, I understand the concept of getting paid to learn. But 80 percent is really high. At some point you're asking someone to give at least 50 -- almost 50 percent of either the ownership, the cash flow, the developer fee -- and, you know, that -- so -- even though that's against my interest because honestly I could be getting that 80 percent, but it just even from my side seems a little high.

MR. OXER: Uh-huh. Well, part of that was intent to capacity building on those entities that have the capacity to build up and compete in this business. You know, ultimately if you're a HUB two or three deals you're no longer a Historically Underutilized -- you are utilized. Okay?

MS. ANDERSON: Right. Right. That's just a lot to ask a developer to give up.

MR. OXER: Right. I can see --

MS. ANDERSON: And as far as experience here my line has always been I think that if you can do it, whether you're in state or out of state, it's irrelevant. You know, Bobby asked me how I felt about experience, and I agree that -- you know, we have a threshold to get into the program.

And as a community we did discuss at the beginning

that perhaps having a higher threshold for scoring for more experience was not a bad thing. And somehow in a discussion of whether it should be in state or out of state we -- that did get a little bit lost. And so, you know, I would support if there was something that counterbalanced the HUB and the nonprofit with an experience.

MR. OXER: Okay. Good. All right. Is there anybody in here who hasn't spoken yet today? Okay. Is there anybody -- all right. We're getting to the point that you're going to have a summary on this.

MR. DORSEY: Uh-huh.

MR. OXER: Okay. Let's go through your next block of answers and then I've got a -- one more thing to do.

MR. DORSEY: Well, on this particular item I think you all recall the last meeting. You all expressed some interest in the Texas experience portions being removed. We -- there was also some feelings that there wanted to be some assurance that there was proper compensation and participation of the HUB in these transactions if we were awarding points for it. And so we tried to craft the item in light of those thoughts from you all last time.

We didn't get -- we certainly did still read through all the public comment we got after that date, and there wasn't anything that was incredibly compelling to kind

of -- that compelled us to change course from what we proposed.

So I guess, you know, I'm open to other thoughts you all might have on this particular item. Just so you know, the way it's crafted the HUB has to have a combination of developer fee, of cash flow -- participation fee and developer fee cash flow and ownership that adds up to basically 80 percent, so that it's like 20 percent of cash flow, 20 percent of developer fee, and, you know, whatever is left for -- the 40 percent for the ownership. That's kind of how it's structured.

And we didn't want to be too, you know, prescriptive, but that provides some flexibility for structuring. It also requires that it -- at least each of those categories 5 percent be given to the HUB. But that was the thought process.

MR. OXER: Okay. That addresses -- that's your address or response to that -- of the last block, I think.

Is there anybody in here that has another -- any other comment regarding QAP who has not had an opportunity to speak?

VOICE FROM AUDIENCE: I have one other --

MR. OXER: Okay. Let's get you on. Is there anybody else? Are there any more comments? Okay. On this?

I mean, what we're basically trying to do is get to a wrap up on part 7. Okay?

MR. BOWLING: This is your last selection criterion item, and it's the last item on the top letter -- it's number 17. It deals with point deduction.

And I spoke about this when you first entered this into the Texas Register. I think the QAP is too different -- and I'm speaking for TAP now, not just myself.

The QAP has gone through too much of a makeover to insert this point deduction item, in our opinion, this year.

Now, in fairness, Cameron did ask me to look at how it's been limited since TAP sent in its comments. And in reading about sponsor characteristics and UGLG and all the other, I have to admit I haven't really looked at the different staff change since our letter was sent in.

But the TAP position is we would oppose any point deductions in the QAP this year for --

MR. OXER: Okay. Thanks, Bobby. Barry, you've got something you want to add?

MR. KAHN: On a separate matter another TAP comment -- Barry Kahn for TAP. Our recommendation is on the 130 percent boost, since there's many areas of the state that don't qualify as high opportunity areas or revitalization areas, that if somebody gets local community support for at least \$2,000 a unit that they would still get the 130 percent boost.

Where that kicks in is there's -- with the dollars that somebody can get -- you know, the 12- or 13,000 a unit, they can perhaps get enough points to overcome not being in a revitalization area or an opportunity area.

And if the city or county or municipality is that much behind the deal then I think it's wrong for the Department to ignore it particularly since we have people who qualify that's less than 60 percent of the area median income in census tracts that aren't high opportunity areas or in revitalization areas.

MR. OXER: Okay.

MS. SISAK: One last quick comment on leveraging.

MR. OXER: And you are:

MS. SISAK: Jeanine Sisak.

MR. OXER: We know who you are but she -- we have to tell her every time.

MS. SISAK: Okay. Thank you. So I'm just trying to save time. Leveraging -- quick comment on that. You know, the way the draft of the QAP is I think it's 7 percent, 8 percent, and 9 percent you get 3, 2, and 1 points respectively.

I've run a couple of scenarios. To get the maximum points it's really it's really tight -- you know, the deal's really tight if you keep your tax credit request to less than

7 percent of total development costs. And I know, you know, we can opt not to chase those three points, but the reality is this is one of the point under -- items under total development control, and most people are going to go for it.

So I recommend that the 7 percent number be increased to 8, and then 8 to 9, 9 to 10.

There's a couple of things in this year's QAP that really puts a downward pressure on, you know, your tax credit requests and barrel markets -- the 50 units, 500,000 request.

Everything's kind of feeling really, really tight and I don't think we want a policy where we kind of end up -- we all end up with fewer credits than we need to deliver the good products that we've promised high opportunity areas.

MR. OXER: Okay. Thank you, Janine. Okay. Is there anybody else that has a comment on the QAP and the rules -- on any component of it?

(No response.)

MR. OXER: Okay. Cameron, here's what we're going to do. We've been at this for just under four hours.

So are you prepared reasonably certain with your summary or do you need to --

MR. DORSEY: We need to chat real quick.

MR. IRVINE: We'd probably like --

MR. OXER: All right. Here's --

MR. IRVINE: -- probably ten or 15 minutes --

MR. OXER: Okay.

MR. IRVINE: -- for staff to talk.

MR. OXER: Here's what I want to do. To go through -- we're at a minimum quorum here. If any of us leave the room we have to hold deliberations and wait till we reconvene.

So it's -- let's see. It's 5:21 right now. Okay? At 5:35 let's get everybody in the room. We'll take a 15-minute break, more or less, get back in here, get caucused, get summaries -- have your summary ready and then we'll take action on that. But we'll stand in recess here for 15 minutes.

(Whereupon, a short recess was taken.)

MR. OXER: Stand your ground where you are. I want you to listen. We are -- we have returned to session. We are reconvened. We're going to take a short -- we need to make a short break with staff for an executive -- a short executive session. And I have to read this into the record, so please listen.

The governing board of the Texas Department of Housing and Community Affairs will go into closed session at this time pursuant to the Texas Open Meetings Act to receive legal advice from its attorney under Section 551.071 of the Act. Closed session will be held in the ante room of this

chamber here. The date is November 13, 2012, and the time is 5:36. We expect this will be approximately ten minutes.

Don't go away. We'll be right back.

(Whereupon, a short recess was taken.)

E V E N I N G S E S S I O N

MR. OXER: All right. The board's now reconvened in open session at 6:15. We received advice from our legal counsel. No decisions were made.

Cameron, you want to summarize at this point and I'll suggest some of these issues that have arisen.

MR. DORSEY: Sure. Do, you know, we've had just a phenomenal amount of public comment, not just today, but I think the length of the public comment and reason response in the board book exceeds the length of the rules themselves. This is clearly -- you know, this is a program that a lot of folks care about.

I think, you know, in looking through all of the comment that was made and -- today and kind of where -- how we've gotten to this point, I think staff would be good with recommending a few modifications to what is posted in your board book. At the beginning I mentioned a couple, but I'll run through the list in full.

Define nearing expiration as it appears in the language for the at-risk set-aside as it was defined in the 2012 QAP.

Under the point item for sponsor characteristics change the requirement regarding not -- the HUB not being related to other entities to read, Principals of the HUB may

not related to any other principals of the applicant or developer.

We talked about under the unit of general local government funding point item changing the date August 1 to September 1, and that's related to just an acknowledgment of when the city, county, or instrumentality would need to make a funding decision.

A change in the cost per square foot -- development cost per square foot funding point item such that we eliminate the existing tiers that are in place and in their place just put one deviation from the mean tier for within 10 percent of the mean. 10 points would be available.

And also under that one I think, you know, we're -- we acknowledge that, you know, going into some of these high opportunity areas can be exceedingly difficult and arduous, and oftentimes the development requirements that are encountered in these locations require a quality -- a construction quality that is higher than what would be expected outside of high opportunity area, such as, you know, percent masonry, you know, not the -- not HardiePlank or the kind of wick-and-stick stone -- but talking about five and a half brick ledge type stone or articulation in the exterior, et cetera.

And given some of those issues we would recommend

that deals scoring 5 or 7 under the opportunity index be eligible for 10 points for building costs less than \$80 per square foot. That would be an addition to that provision in there regarding kind of the \$80 per square foot hold harmless for 8 points for everyone.

In addition to that, we would recommend that the board empower staff to make any necessary changes to ensure compliance with the remedial plan and the court order. The way we would go about doing that is if we encountered an instance that we had some concern about I think we would seek to, you know, work with our legal counsel, with the AG's office, and ensure that we were compliant before it went into the Texas Register.

So that's staff's amended recommendation.

MR. OXER: And that includes all of the components that we feel like we needed to amend for this one. Are there any other components of this we need to elucidate on? Is that it?

MR. DORSEY: Jean just mentioned the 2 points for green, but that was covered under the action for Chapter 10, so we're good on that.

MR. OXER: Okay. Good.

MR. DORSEY: So that's it.

MR. OXER: All right. We spent a long time here,

and this is -- I would comment that the -- as everybody knows, this is a brand new QAP, literally from the ground up -- completely restructured. So we anticipated an enormous amount of comments like this -- which we got -- and I caution everyone to recall that regardless of what happens the QAP's worth one year because we're going to be doing this again next year. So none of this gets cut into stone and parked forever.

So, that said -- there he is -- making sure we had a quorum here. If you'll notice, Mr. Vice Chairman, it's the attorneys that are outside.

MR. GANN: Yes, I noticed that. They can't get it straight. I did notice that.

MR. OXER: That chain on your ankle is only going to go so far.

I appreciate everybody's consideration on this. If it wasn't so important we'd interrupt this conversation. We need to let them talk this through, I think.

Tom, don't make tractor jokes while you're sitting there.

MR. McWATTERS: Mr. Chairman?

MR. OXER: Sir.

MR. McWATTERS: Would you tell her that no cheese on my burger?

MR. OXER: I was going tell her to make mine a double burger.

Okay. Cameron, I know you've had such a lovely time here today, but we have more questions for you.

MR. DORSEY: Sure.

MR. OXER: Okay. Would you be kind enough to restate the circumstances regarding the PHA and where we stand right now?

MR. DORSEY: Sure. I think we're pretty comfortable with the language we've got. I think we have some general concerns. If we were to accommodate the comments made before the board today were in public comment related to elimination of the related party language for government instrumentalities that we may run into some conflict with our efforts to carry out our remedial plan and to comply with the court's order.

MR. OXER: So fundamentally we have -- and I'm sure there's a variety of opinions on this. But what you have as currently stated is our best attempt to satisfy the requirements of the remedial plan and the Fair Housing Act and make sure that there's a clear and transparent process that doesn't advantage one group over another --

MR. DORSEY: And statute, yes.

MR. OXER: -- and satisfies statute. Counselor?

MS. DEAN: Correct. And we feel that it is in compliance with 2306 that we have the discretion to develop criteria. And local political subdivision is not defined in -- I feel it's supported in the record.

MR. OXER: So given the current set of circumstances counsel, you, housing counsel feels like this is about as good as we can do.

MR. DORSEY: Yeah. This is a really difficult balance and this involves trying to anticipate outcomes. And I think what we've crafted is a set of scoring criteria that we believe will best accomplish the outcome that we need to to comply with the court's order --

MR. OXER: Okay.

MR. DORSEY: -- as well as to carry out statute and all of the other, you know, points you made earlier.

MR. OXER: Okay. Are there any other -- at the risk of seeming like we're indecisive, is there any other clarification you feel like we need to make, counsel?

MS. DEAN: Uh --

MR. OXER: I know this one's tough.

MS. DEAN: Obviously this whole thing has just been so complicated. It's a very complex process and it's been going on for a long time. And there's a lot of issues related to it.

I guess just so there's no -- if people wonder why a particular term might be missing we are -- one of the things that we will be looking for guidance from the court with is in the community -- the high opportunity areas, the -- we might be looking at removing the term supportive housing. And that's one of the things that we have got to run by the court because now it's general population and -- in response to public comment we added supportive housing and we are going to be clarifying that.

So just in -- so there's no surprises in case that's one of the things that we --

MR. OXER: Just to get that on the record

MS. DEAN: Just to get that --

MR. OXER: -- to make sure we --

MS. DEAN: -- on the record.

MR. DORSEY: Sure. And that would be encompassed --

MS. DEAN: If that word --

MR. DORSEY: -- by the --

MS. DEAN: -- disappears that's where it went. It went because the court -- because of guidance from the court.

MR. DORSEY: Right. And what would allow us to accomplish that is the staff recommendation to allow any other

changes necessary to ensure compliance with the remedial plan.

MR. OXER: Right. So this is -- I mean, that component of it is essentially allowing the wordsmithing as imposed on us by the court to satisfy the remedial plan.

MR. McWATTERS: Or if the court doesn't respond. I mean --

MS. DEAN: Correct.

MR. McWATTERS: -- judges don't have to respond and we'll -- have to be some good faith judgment exercised.

MR. OXER: Okay. My question to the -- yeah, because we have two lawyers that are members of the board I feel like you've given us an answer, counsel. Professor McWatters and Mr. Keig, do you feel like we've done the best we can do in crafting this at this point? That's not fair to call an opinion without asking for an opinion.

MR. KEIG: Exactly. I was going to say, Well, I'm not providing a legal opinion because I'm not acting as a lawyer. As a board member -- but as a board member --

MR. OXER: Hey, I'm the engineer that told you that tank wouldn't blow up.

MR. KEIG: But I have no further questions at this time.

MR. OXER: You know, if this does blow up in court you know who they'll send the letter to. All right. There

being no further questions -- because we don't want any more comment on this -- we've had enough -- all in favor -- let's see. There was a motion by Mr. Keig and a second by Vice Chairman Gann -- okay -- to accept staff recommendations, as modified by comments and discussion that Cameron has made right preceding -- okay.

MR. DORSEY: I think it will be helpful to make sure you accepts that friendly staff recommended amendment.

MR. KEIG: Yeah, I accept the modifications as recommended by staff.

MR. OXER: Okay.

MR. GANN: And so does the second.

MR. OXER: So does the second. Okay. All right. Without further interest, all in favor?

(A chorus of ayes.)

MR. OXER: Those opposed, nay?

(No response.)

MR. DORSEY: There are none. Thank you. All right. Now, with all the fireworks over and all the tension gone, we're down to --

MR. KEIG: Oh, we have more?

MR. DORSEY: No, we have only a little bit more here.

MS. DEAN: Can I make one clarification for the

record?

MR. OXER: We worked through --

MS. DEAN: And this is going back to 7(a). There was some confusion in the audience about the -- whether the vote was on -- to approve the entire item 7(a) or whether or not it was to approve the amendment to the motion. And so, just to clarify for the record, that vote was to approve 7(a) as a whole and not to approve the modification -- the amendment to the motion. It was the final vote on 7(a).

So I just wanted to make sure -- because there was some confusion from some members in the audience. It was a final vote on 7(a) and I assume that's correct.

MR. OXER: That's correct. That's my understanding of it. Okay. This -- there's a point -- this is the point in the meeting where we open for comments for anybody who wants to say anything on an item that hasn't been addressed. This is for us to add items to build our future agenda. Does anybody have anything they want to say?

(No response.)

MR. OXER: All right. Is there any comment from staff to contribute to our efforts?

(No response.)

MR. OXER: Okay. Does any member of the board have anything additional to say?

(No response.)

MR. OXER: The Chairman would like to say thanks very much, particularly to the staff, for an exceptionally good job of building a brand-new QAP. You know, it's evident that the work that we do is only the capstone for doing all this.

With that I will remind you -- just a point of interest -- our next meeting will be the last one for the year. It will be December 13 on Thursday. Let's wear some festive colors since it will be the holidays. Red and green will be in fashion. Okay? With that I'll entertain a motion to adjourn.

MR. GANN: So move.

MR. OXER: Motion by Mr. Vice Chairman Gann.

MR. KEIG: Second.

MR. OXER: Second by Mr. Keig. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. See you in four weeks.

(Whereupon, at 6:30 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: November 13, 2012

I do hereby certify that the foregoing pages, numbers 1 through 300, 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.

11/20/2012
(Transcriber) (Date)

On the Record Reporting
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