

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

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

June 5, 2014
9:00 a.m.

MEMBERS:

J. PAUL OXER, Chair
JUAN MUÑOZ, Vice-Chair
J. MARK McWATTERS, Member
LESLIE BINGHAM ESCAREÑO, Member
ROBERT D. THOMAS, Member
TOM GANN, Member

TIMOTHY K. IRVINE, Executive Director

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TEXAS HOMEOWNERSHIP

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- m) Presentation, Discussion, and Possible Action on Determination Notices for Housing Tax Credits with another Issuer

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P R O C E E D I N G S

1
2 MR. OXER: Good morning, everyone. I'd like to
3 welcome you to the June 5 meeting of the Texas Department
4 of Housing and Community Affairs Governing Board. I see
5 everyone got the memo on summer attire; June and July is
6 when we do that.

7 So we'll begin with roll call, as always. Ms.
8 Bingham?

9 MS. BINGHAM ESCAREÑO: Here.

10 MR. OXER: Mr. Gann?

11 MR. GANN: Here.

12 MR. OXER: Professor McWatters?

13 MR. McWATTERS: Here.

14 MR. OXER: Dr. Muñoz?

15 DR. MUÑOZ: Present.

16 MR. OXER: I am here. We expect Mr. Thomas,
17 but he's not here yet; we'll advise for the record when
18 he arrives. We have a quorum present so we can do
19 business.

20 Let's stand and salute the flag.

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

23 MR. OXER: Don't we have a resolution, Tim?
24 Let's start with that.

25 MR. IRVINE: We do. This is Resolution No. 14-

1 030.

2 "Whereas, June 2014 is Homeownership Month in
3 Texas

4 "Whereas, the goal of the Texas Department of
5 Housing and Community Affairs is to ensure that all
6 Texans have access to safe and decent affordable housing;

7 "Whereas, the Texas Department of Housing and
8 Community Affairs reaffirms the importance of
9 homeownership in the lives of the Texans we serve and in
10 the Texas economy;

11 "Whereas, it is the policy of the Texas
12 Department of Housing and Community Affairs to support
13 equal housing opportunity in the administration of its
14 homebuyer and homeownership programs and services;

15 "Whereas, the Texas Department of Housing and
16 Community Affairs applauds all those who work to achieve
17 and maintain affordable, responsible homeownership, and
18 recognizes those who provide services and resources to
19 all homebuyers, regardless of race, color, creed, place
20 of birth, familial status, or disability;

21 "Whereas, the Texas Department of Housing and
22 Community Affairs encourages Texas to explore the
23 numerous homeownership resources available during
24 Homeownership Month and throughout the year;

25 "Therefore be it resolved, that in pursuit of

1 the goal and responsibility of providing affordable
2 homeownership opportunities for all, the Governing Board
3 of the Texas Department of Housing and Community Affairs
4 does hereby celebrate and join Governor Rick Perry in
5 proclaiming June 2014 as Homeownership Month in Texas,
6 and encourages all Texas individuals and organizations,
7 public and private, to join and work together in this
8 observance of Homeownership Month."

9 And we would request that the Board adopt that.

10 MR. OXER: No discussion required, or does a
11 Board member have a comment?

12 MS. BINGHAM ESCAREÑO: Move to so resolve.

13 MR. OXER: Thank you, Ms. Bingham. Do I hear a
14 second?

15 MR. McWATTERS: Second.

16 MR. OXER: Second by Professor McWatters. All
17 in favor?

18 (A chorus of ayes.)

19 MR. OXER: Opposed?

20 (No response.)

21 MR. OXER: There are none. Thank you for that,
22 Tim.

23 MR. IRVINE: I have a proclamation.

24 MR. OXER: Yes, please.

25 MR. IRVINE: This is a proclamation from

1 Governor Perry.

2 "For Texans, a home is more than shelter from
3 steamy summers and cold, rainy winters. It's a hub for
4 family and community and serves as a symbol of success,
5 security and independence. When families move into homes
6 of their own, they gain independence, build relationships
7 in the community, and have a vital stake in the progress
8 of our great state. Homeownership is an important part
9 of our way of life for many in the Lone Star State.

10 "While owning a home can be a financial
11 challenge, thankfully, Texas is home to many outstanding
12 organizations, from real estate professionals, builders
13 and lenders, to nonprofit organizations and government
14 agencies like the Texas Department of Housing and
15 Community Affairs, working to help potential buyers make
16 informed decisions about their future. I applaud all of
17 those who work to achieve and maintain affordable,
18 responsible homeownership, and recognize those who
19 provide services and resources to all homebuyers and
20 homeowners.

21 "Each year the month of June is designated to
22 raise awareness of the benefits of homeownership and the
23 resources available to Texans. At this time I encourage
24 all Texans to explore the homeownership opportunities
25 ahead. The steps you take today can make a difference

1 for yourself, your family, and the Great State of Texas.

2 "Therefore, I, Rick Perry, Governor of Texas,
3 do hereby proclaim June 2014 to be Homeownership Month in
4 Texas, and urge the appropriate recognition whereof.

5 "In official recognition whereof, I hereby
6 affix my signature, this 1st day of May 2014." Signed by
7 Governor Perry.

8 MR. OXER: Great. Well, we appreciate his
9 recognition of the efforts that everybody in this room
10 makes.

11 I'd also like to recognize Riley Stinnett.
12 He's here from Senator Fraser's office. Appreciate you
13 coming by.

14 We have some other folks here. Eric, I want
15 you to make a couple of comments about the month of May
16 and the response we had to our reservations on mortgages
17 and identify some of the people we have and take some
18 pictures. If you'd come up and do that, please. And
19 we're going to ask each of the folks who had their
20 pictures taken this morning, the lenders of the year and
21 such, come up and be recognized here in a minute.

22 So tell us how May went, Eric.

23 MR. PIKE: Good morning, Board, Chairman. Eric
24 Pike, director of the Homeownership Division with TDHCA.

25 We typically see, on an average month, around

1 \$25 million in mortgage loan originations under our My
2 First Texas Home program. We obviously have had a very
3 successful year, but during the month of May, this past
4 May, that production level increased up to almost \$37
5 million, so an increase of around \$11 million over what
6 we typically see. So record production. We've also had
7 significant production under our Mortgage Credit
8 Certificate program.

9 We are here today recognizing some of our
10 lending partners, and I'd like to ask, if I could, that
11 they stand at this point in time.

12 MR. OXER: Ask them to come up here. We're
13 going to have Jorge come and take a picture.

14 Introduce and explain who each of them are,
15 Eric.

16 MR. PIKE: To my left here is Kim Lewis. Kim
17 has been one of our recognized loan officers for a number
18 of years. I think this is actually her fifth year in a
19 row as one of our top loan officers, so welcome back Kim
20 Lewis. Kim is with Premier Nationwide Lending out of the
21 town of Flower Mound which is up northwest of the Dallas-
22 Fort Worth area.

23 Also joining us today is Dan Reagan. Dan is
24 with Cornerstone Home Lending. Cornerstone's corporate
25 office is located in the Houston area, but Dan works here

1 locally in Austin and is representing the company and
2 accepting the award on their behalf.

3 Also, immediately to his left, is Andy
4 Woodside. Andy has also been one of our top loan
5 officers for a number of years. Andy is out of the
6 Houston area and he works for Cornerstone Home Lending.
7 To give you a reference point here, Cornerstone, the
8 company, did \$99.4 million worth of production with us
9 for the year of 2013 and for the first three months of
10 2014, so that's a huge accomplishment, and we do want to
11 thank you all for your efforts.

12 Also joining us today is Clifton Saunders.
13 Clifton is with Houstonian Mortgage. Obviously,
14 Houstonian, they're out of the Houston area; I think he
15 told me Stafford is where your offices are located. This
16 is Clifton's first year receiving and accepting the Loan
17 Officer of the Year Award. He also has done a
18 considerable amount of business with us. The Houstonian
19 Mortgage Group has done over \$43 million in production
20 with us this year. So he is accepting on behalf of the
21 company which is one of our Lenders of the Year, as well
22 as himself for being a Loan Officer of the Year.

23 Also joining us is Jeremy Radick, and Jeremy is
24 with Guild Mortgage. Guild is located is headquartered
25 in San Diego, they're a big nationwide lender, do lots of

1 business all across the country. They do a significant
2 amount of production with us as well. Their total
3 production level topped \$63 million this year. And so
4 Jeremy is here accepting on behalf of Guild. The Guild
5 office that he is with is out of the Houston area.

6 So, again, I want to thank all of you for your
7 efforts. I'd also like, if I might, ask for my staff to
8 stand just for a moment. I have a very small staff so
9 this won't take but a moment. Sheron Everett, who has
10 been with the Department for a number of years. All my
11 staff are long term serving state employees. Cathy
12 Gutierrez, and Dina Gonzales. And so, obviously, without
13 their efforts and without the lenders' efforts, we would
14 not be as successful as we are, so we certainly
15 appreciate it.

16 MR. OXER: I'd like everybody to stand and give
17 them a round of applause.

18 (Applause.)

19 MR. OXER: Eric, come up here, Eric's staff
20 come up here with this crew. And I also want you to
21 point out something, Friday was a pretty unusual day in
22 terms of what we did, so say a few words about that too,
23 Eric. And since Guild is here, I want you to recognize
24 that the record that they did Friday would have been a
25 record for the Department, not to mention the record we

1 set.

2 MR. PIKE: Last Friday, as I said, part of our
3 record production for the month of May, we did \$7.2
4 million worth of mortgage loans.

5 MR. OXER: And the previous record had been?

6 MR. PIKE: Well, the day before we did over \$4
7 million, but I think our previous record prior to that
8 was around \$2.2-. We used to get excited about \$2.2-, so
9 \$7 million just blew our mind. But Guild Mortgage
10 originated about 20 loans that day out of about 50-some-
11 odd loans that were done.

12 MR. OXER: For a total of \$3.1 million on that
13 one day.

14 MR. PIKE: Thank you.

15 MR. OXER: Congratulations, everyone.

16 (Applause; pause for photos.)

17 MR. OXER: Thanks again, and congratulations,
18 everybody.

19 Is Bobby Wilkinson here? Just want to say hi.
20 You're our link, our communication to that big pointy
21 building, so we always appreciate you showing up.

22 Let's get to the agenda now. On the consent
23 agenda, does any Board member have an item they wish to
24 pull? I've been given some information that we're going
25 to pull item 1(b) for a discussion. Is there anything

1 else?

2 Just another housekeeping item. The front row
3 up here to our left is for speakers that wish to speak on
4 the item being considered.

5 With respect to the consent agenda, do I hear a
6 motion to consider?

7 MS. BINGHAM ESCAREÑO: Move to approve the
8 consent agenda with the exception of item 1(b), pulled
9 out to be considered separately.

10 MR. OXER: Thank you, Ms. Bingham. Do I hear a
11 second?

12 MR. GANN: Second.

13 MR. OXER: Second by Mr. Gann. There's no
14 discussion. All in favor?

15 (A chorus of ayes.)

16 MR. OXER: Opposed?

17 (No response.)

18 MR. OXER: There are none.

19 Then we'll take 1(b) to begin.

20 MS. DEANE: Mr. Chair, I believe there have
21 been some handouts provided to you on 1(b). Under the
22 rule, the Board would need to decide if they want to
23 accept those handouts.

24 MR. OXER: Does the entire Board have that
25 handout?

1 MS. DEANE: No. It would not be given to the
2 Board until the Chair, in his discretion, determines.
3 The questions are: whether or not it's exceptional
4 circumstances, whether or not they are delivered to staff
5 prior to the start of the meeting so that staff may log
6 them in and the chair may review them for acceptance,
7 they're not so voluminous as to cause inordinate delay
8 with members while the Board and the public review them,
9 and they are provided in hard copy format to all members
10 of the public in attendance, and they're also provided to
11 staff in Adobe Acrobat format for inclusion in the
12 electronic records of the Board materials.

13 MR. OXER: Can we certify if those criteria
14 have been met? Peggy, do we know? They have. Do we
15 have copies of these for everybody in the front, or
16 they're available? They're not particularly voluminous.
17 All right, we'll accept the documentation.

18 MS. DEANE: You can hand them out now.

19 MR. IRVINE: While these are being handed out,
20 I'd just like to reinforce for everybody for future
21 meetings, it's really important that you get materials in
22 to staff in time for us to include them in the Board
23 materials, whenever possible. We want to make sure that
24 the whole public has a full chance to study the
25 materials, and obviously, that our Board members have a

1 chance to look at them so we have a more engaged and
2 informed discussion.

3 MR. OXER: Barbara, are you going to make the
4 presentation on this, or is somebody from staff?

5 MS. DEANE: No.

6 MR. OXER: Who is going to present on this from
7 staff? Patricia? And while the Board is reviewing this
8 and listening, I think we'll get started on your
9 comments, Patricia.

10 MS. MURPHY: Good morning. Patricia Murphy,
11 chief of Compliance.

12 The item before you is about some awards of
13 some discretionary CSBG funds that were previously
14 awarded at the May 8 meeting, subject to a previous
15 participation review. EARAC reviewed the previous
16 participation of the considered entities and EARAC voted
17 against providing discretionary funds to Tri-County
18 Community Action based on some findings in their most
19 recent single audit. Those findings related to internal
20 controls over their financial reporting, and the
21 monitoring staff of the Department is not able to confirm
22 that they have implemented those procedures.

23 Attached to this item that they have provided
24 to you is the procedures that they have proposed to
25 resolve the finding, but we're not able to confirm that

1 these procedures have been implemented. Which makes
2 sense because we just recently monitored them and what
3 we're monitoring is their 2013 contracts and that was the
4 fiscal year for the same single audit, so we found the
5 same things that the single auditor found. So in the
6 next set of reviews we would be able to look at these
7 procedures that they have developed to see if they're
8 implemented. So they have these procedures but I cannot
9 confirm for you that they're implemented.

10 MR. OXER: So the timing is essentially that
11 there was an audit, there was a response to the audit,
12 you've gone out and done the monitoring, you saw that
13 they did something in the meanwhile, but they haven't
14 done it long enough for it to be evident that the
15 implementation has occurred.

16 MS. MURPHY: That's correct. So their response
17 that they just provided to you shows that these were
18 procedures that were adopted in December of 2013, and so
19 our monitoring work, what we are looking at is prior to
20 December of 2013.

21 MR. OXER: Prior to December.

22 DR. MUÑOZ: Patricia, having reviewed these
23 procedures, would they address the deficiency?

24 MS. MURPHY: I believe they would, if they're
25 properly implemented

1 MR. OXER: If properly implemented.

2 MS. MURPHY: Right.

3 MR. OXER: And there were procedures in place,
4 apparently before, or is that the case that procedures
5 were in place but they weren't followed before?

6 MS. MURPHY: There was a lack of internal
7 controls before.

8 MR. OXER: Lack of internal controls. So we
9 don't actually know, we expect this to work but we don't
10 know if it has. So essentially, the process would be to
11 wait for another year for monitoring to see if their
12 implementation actually effects the change that we're
13 looking for.

14 MS. MURPHY: That was the recommendation of
15 EARAC.

16 MR. OXER: Any questions from the Board?

17 DR. MUÑOZ: Just for my memory, these are sort
18 of dollars that were in addition to that were not sort of
19 allocated, so it's not necessarily that this or any other
20 awarded agency would have necessarily expected this.

21 MS. MURPHY: That is correct. This is
22 additional discretionary funds, and so the money that
23 would have gone to them gets disbursed among the entities
24 that did not have compliance issues.

25 DR. MUÑOZ: The others in that group.

1 MS. MURPHY: Correct.

2 MR. OXER: Which included a total of how many:
3 two, fifty, twelve?

4 DR. MUÑOZ: A dozen?

5 MR. IRVINE: Dozen-ish.

6 MS. MURPHY: I'm sorry, I don't know offhand.

7 MR. OXER: About a dozen is a good answer.

8 MS. MURPHY: Correct.

9 MR. THOMAS: This program for Tri-County is
10 specifically related to Head Start, Early Head Start,
11 energy assistance and Community Service Block Grants. Is
12 that what I'm reading in there?

13 MS. MURPHY: That's my understanding of the
14 programs that this agency runs, yes.

15 MR. THOMAS: And these material weakness
16 findings affect the accountability, transparency and
17 recognizing that the dollars are accountable, going where
18 they're supposed to go?

19 MR. OXER: Properly accounted for in the
20 expenditure.

21 MR. THOMAS: Obviously, if an auditor tells us
22 that it's a material weakness, that's significant. What
23 did the staff find in their review of that, auditors
24 being very cautious.

25 MS. MURPHY: So both the single auditor and our

1 staff found that they made corrections to their general
2 ledger but there's no like backup to say why was that
3 charged to this, so something like a Head Start expense
4 is being charged to our programs, and then they just sort
5 of say oh, that was a mistake, and fix it. But they
6 don't have good controls over making sure that the right
7 amounts are charged to the right programs. These are
8 very, very small amounts, it's just that it's an internal
9 control, it's a process and procedure kind of an issue,
10 and that without those kinds of internal controls in
11 place, it could possibly lead to fraud, waste and abuse
12 or mismanagement of funds.

13 MR. THOMAS: We're not concerned about amount,
14 we're concerned about managing the public's funds no
15 matter what the amount is. Correct?

16 MS. MURPHY: EARAC's recommendation was to say:
17 let this agency get their internal controls in place, and
18 then through our normal course of monitoring we can
19 confirm that they're in place.

20 MR. THOMAS: Because we don't care about the
21 amount, we care about making sure the procedures are
22 followed for ensuring the public's monies are spent
23 properly.

24 MS. MURPHY: Correct. These are the
25 discretionary funds.

1 MR. OXER: We're exercising our responsibility
2 as a fiduciary for the State.

3 Any other questions from the Board?

4 (No response.)

5 MR. OXER: Just restate staff's recommendation
6 on the item, Patricia.

7 MS. MURPHY: Staff's recommendation is, as in
8 your Board book, to award the funds to the CSBG entities
9 that did not have those types of compliance issues.

10 MR. IRVINE: And actually, if I might clarify,
11 it's in your Board materials, the formal language in the
12 resolution is to accept the report from EARAC confirming
13 the previous participation review status of all of the
14 previously awarded activities, and then the conditions to
15 make those awards have two exceptions for Cameron-Willacy
16 and for Tri-County.

17 MS. MURPHY: What Tim said.

18 MR. THOMAS: So moved.

19 MR. OXER: Motion by Mr. Thomas to approve
20 staff recommendation on item 1(b). Do I hear a second?

21 DR. MUÑOZ: Second.

22 MR. OXER: Second by Dr. Muñoz.

23 There's public comment. Mr. Simon.

24 MR. SIMON: Good morning. I'm George Simon,
25 the executive director of Tri-County Community Action.

1 I've been in this position for the last two and a half
2 years.

3 MR. THOMAS: How long? I'm sorry, sir.

4 MR. SIMON: Two and a half years. And over
5 that time, Tri-County has really come a mighty long way.

6 This particular audit -- and if I could draw your
7 attention to the last page of the audit -- does not say
8 that we didn't have documentation. The recommendation
9 was that we have it in the proper location in a proper
10 manner that would be readily accessible. So the
11 documentation that we had there was available and was
12 provided, it's just that we had to dig for it instead of
13 it being in one place. And so the recommendation from
14 the auditor was to enhance procedures that would maintain
15 in such a manner the entities that can readily be
16 accessed.

17 And so, again, when you look at this audit, it
18 was zero cost, there was no disallowed costs involved.
19 All of the findings in this particular one were cleared,
20 and to be honest, since I've been there, and even reading
21 back to former audits, this has been the cleanest audit
22 that this organization has had in a long time.

23 So I stopped today to, first of all, say thank
24 you for even being considered for this award, but
25 secondly, TDHCA has done a fantastic job with us in

1 partnering, working together to get the recommendations
2 that would help us to do what we need to do in terms of
3 managing the monies that are available. My
4 disappointment is in the decision because, again, we have
5 worked hard to get where we are now, and when we really
6 look at what the recommendations were to enhance
7 procedures, we did do that. There's a letter on the
8 second page that shows we answered that, it's on the
9 actual audit if you read our recommendations, and then
10 the procedures that took place have moved forward.

11 We just were audited this past April with
12 TDHCA. There was one question, to my awareness, that was
13 in regards to a journal entry and we were able to provide
14 that documentation. Of course, the monitoring report
15 isn't back yet and so they can only go off of what has
16 happened in the past.

17 So I'd like for you to reconsider here. If
18 not, again, we appreciate the opportunity to stand and
19 tell you that this organization is spending the
20 government's money in the right way and with all
21 transparency and doing the things that are required from
22 you guys to us.

23 MR. OXER: Thank you, Mr. Simon.

24 Any questions from the Board for Mr. Simon?

25 MS. BINGHAM ESCAREÑO: I have one.

1 MR. OXER: Ms. Bingham.

2 MS. BINGHAM ESCAREÑO: Mr. Simon, can you just
3 explain in layman terms your understanding of what the
4 actual operational finding was from the previous audit?

5 MR. SIMON: Yes. When they asked for journal
6 entries, they needed support documentation, and so they
7 had to go into the computers and to the files and so
8 forth in order to dig it up, so it wasn't something that
9 was readily accessible. The auditors, when they sat
10 down, it wasn't a matter that we didn't have the
11 documentation, but they felt like, procedurally, we
12 should have that information handily and readily
13 available, especially for me as the executive director.
14 Finance knew where to go and get it and so forth, but I
15 didn't know myself where I could get the information.

16 So this process now puts us in place that when
17 we look at journal entries or changes in journal entries,
18 that that supporting documentation is in a general
19 journal that could be provided and at the location where
20 this information is kept. And so that was the
21 recommendation and so that's what we moved forward to do
22 and put it in place right away and it's in place right
23 now.

24 MR. OXER: Anything else, Ms. Bingham?

25 MS. BINGHAM ESCAREÑO: I have a question of

1 Patricia.

2 MR. THOMAS: Don't go away, sir, because I have
3 some questions.

4 MS. BINGHAM ESCAREÑO: Patricia, Mr. Simon
5 referenced an April audit, and so the official findings
6 are not back to the organization yet?

7 MS. MURPHY: That is correct.

8 MS. BINGHAM ESCAREÑO: Does the agency know
9 what the findings are from the April audit?

10 MS. MURPHY: I have a draft of the report and I
11 can tell you that we cannot confirm that these procedures
12 have been implemented, but again, it's because we are
13 reviewing the same transactions and are saying there's
14 not readily accessible documentation to support these
15 journal entries. It's the same body of work that's being
16 audited. And again, they'll have their response period
17 if there's anything that's incorrect in our report to set
18 it straight on that.

19 MR. THOMAS: I don't understand that
20 clarification. So the April audit went back over the
21 existing audit -- did I understand that correctly? -- and
22 as part of that the audit should have identified whether
23 corrections have been made and now documentation was
24 kept? Or was it just a review to determine whether the
25 initial audit was done properly?

1 MS. MURPHY: So their single audit was for
2 their fiscal year which is a calendar year?

3 MR. SIMON: It's our fiscal year.

4 MS. MURPHY: It's a calendar year, your fiscal
5 year is a calendar year?

6 MR. SIMON: No. The fiscal year runs from May
7 1 to April 30.

8 MS. MURPHY: So their single audit covered
9 their fiscal year 2013, and we're monitoring their 2013
10 grants, so both their single auditor and our auditors,
11 our monitors are reviewing the same financial
12 transactions, so it makes sense that we're seeing the
13 same things that the single auditor saw. So while they
14 have developed these procedures in December of 2013 to be
15 implemented to address this issue, I can't confirm that
16 they're implemented because I'm looking at the same
17 transactions that the single auditor did.

18 MR. THOMAS: So there's nobody's feet on the
19 street to go see if they actually put the paperwork next
20 to a file, like you close your books, you create your
21 financial records for the bank and the universe and
22 accountability and transparency, and when you close
23 you've got a nice big thick book that has all of your
24 transactions, all of your ledgers, and all of the backup,
25 and you're saying that we haven't had a chance to see if

1 that's been developed yet.

2 MS. MURPHY: Right. And I appreciate your
3 clarification that it's not that there's no
4 documentation, it's like where is this documentation to
5 support this journal entry. So we, again, are finding
6 journal entries where we're going to have to say where's
7 the documentation to support these journal entries, and
8 they'll have that corrective action period to do so.

9 So he's saying that as of December 2013 we've
10 implemented these procedures, where going forward any
11 journal entries we have we're going to have nice clean
12 documentation and all the documentation in one place
13 that's easily auditable.

14 MR. THOMAS: And we haven't seen in April that
15 that's been in effect because there's no one that's
16 actually been able to go over their files to determine
17 that.

18 MS. MURPHY: Correct. So when we went in
19 April, we monitored their 2013 contract; in April 2014 we
20 monitored the past work.

21 MR. THOMAS: I guess I'm so dense. Wouldn't
22 they have had to take up to December 31 of 2013, if they
23 had documentation that supported those journal entries,
24 in order to comply, would they not have had to take that
25 paperwork, with the auditor's instructions, and just as

1 Mr. Simon has just indicated, and put those where they
2 belong so that our staff would have been able to see that
3 at this point? And I may be asking the wrong person
4 here.

5 MS. MURPHY: So when we go out we pick a month
6 that we're going to review their journal, their general
7 ledger and all of the transactions, and so we did not
8 pick January 2014, we didn't pick a month after they have
9 prepared these procedures. So our review included
10 transactions prior to the implementation of these
11 internal procedures. Next year we'll go out and we'll
12 look at their 2014, we'll pick months in 2014 and select
13 transactions to say let me see the backup for these
14 things, is this supportable, is it documented, all that
15 kind of stuff.

16 MR. THOMAS: So we've had horrible examples of
17 a lack of good process and procedures and protocols
18 resulting in hundreds of thousands of dollars, millions
19 of dollars having been lost from public trust, and being
20 a former executive for the Austin Child Guidance Board
21 and chair of the Safe Place Board, this kind of stuff
22 keeps me up at night, so this is not insignificant for
23 me. So I guess what I'm trying to make sure if this is
24 just truly -- in my mind, if this was just an issue of
25 getting the documents in the place where they needed to

1 be but we were able to confirm that they've done that, I
2 see this one way. If this is a situation where they
3 didn't go back and correct for the prior year and put the
4 things together so that you all would have been able to
5 see that, I'm concerned about their commitment to making
6 sure that their records met the obligation, and if you
7 can't answer that, then I need Mr. Simon to.

8 MS. MURPHY: So we're not able to confirm that
9 these policies and procedures have been implemented. In
10 our future monitoring we'll test for that.

11 MR. OXER: Mr. Simon, you have to restate your
12 name when you come back to the microphone.

13 MR. SIMON: George Simon.

14 In regards to the audit, if you look at the
15 total audit, it was zero cost. So in other words, there
16 was no dollars that were misappropriated, there was no
17 unrestricted funds that needed to be paid back or
18 anything like that. Overall, the agency operated very,
19 very well this year; I mean, there was no disallowed
20 costs. And so if you look at the zero cost part of it,
21 all the monies were spent appropriately, there was no
22 questions in regards to costs, and out of this whole
23 audit, this was the recommendation that came from our
24 auditors -- and well taken because I think it should be.

25 MR. THOMAS: I'm thrilled about the level. I'm

1 concerned about you saying that it's the best audit
2 you've had, and I'd like to know historically, but that
3 just gives me even more concern, so I'm afraid I haven't
4 asked my question very well. It's a very, very narrow
5 question. If the historical records found that
6 documentation necessary to confirm those journal entries
7 was not located in such a manner or situation, whether it
8 was closing the month out and making sure that you had
9 copies of everything behind your journal entries so it
10 could easily be found -- which is a very simple thing to
11 fix, which is a very standard process in the finance
12 department -- if that wasn't done such that our staff
13 could see that, how do we know these procedures have been
14 implemented. It should have been in place at this point.

15 MR. SIMON: Yes, sir. The audit took place
16 last November.

17 MR. SIMON: I'm sorry. I'm talking about when
18 our folks went back in April.

19 MR. SIMON: It was a desk audit, and then we
20 had people to come out afterwards to look at some
21 documents. I wasn't sure what they looked at. From the
22 staff's perspective there was only one document that they
23 asked in relationship to the GL, and so with that being
24 the case, that's what they showed them from the
25 information that was provided, and that's in my cover

1 letter. I said to the best of my knowledge, the recent
2 monitoring when they came out, only one request was made
3 for supporting documentation from the journal entry which
4 was provided from our general ledger.

5 MR. THOMAS: Okay. Thank you, sir.

6 MR. OXER: Any other questions from the Board?

7 (No response.)

8 MR. OXER: Mr. Simon, while I appreciate that
9 the effort has been made and we appreciate that your
10 audit was clean and your funds were good, and it's
11 obvious that you're making improvements and getting
12 there. Depending on what this does, the way this vote
13 would currently be structured, it's not a condemnation of
14 your efforts so much as a recognition that there were
15 changes that were made, it's a snapshot in time that
16 we're looking at this. This is excess money that would
17 have been redeployed, so I think it needs to be
18 recognized on the record that this is not something that
19 you would have expected so it's not a diminution of your
20 operating funds.

21 In several of the other programs, and Cameron
22 is going to be here and Jean is going to be here, we have
23 to slice some exceedingly thin lines, and so I appreciate
24 your effort, but recognize that this is something that
25 happened and you're going forward and we recognize you're

1 making efforts going forward.

2 MR. SIMON: I appreciate the opportunity to
3 speak to you today, and again, the key here was for me to
4 stand for Tri-County to let you know that this
5 organization is putting forth the effort to do what we
6 need to do that this will be a model agency to come, so
7 that's my purpose for being here.

8 MR. OXER: Great. Okay. Is there anything
9 else that you'd like to say?

10 MR. SIMON: No, sir. Just thank you.

11 MR. OXER: Any other questions from the Board?

12 (No response.)

13 MR. OXER: All right. We had a motion by Mr.
14 Thomas, second by Dr. Muñoz to approve staff
15 recommendation on item 1(b). All in favor?

16 (A chorus of ayes.)

17 MR. OXER: Opposed?

18 (No response.)

19 MR. OXER: There are none.

20 Mr. Simon, thank you for your efforts, and we
21 expect to see you here again with some more good news.

22 MR. IRVINE: Mr. Chairman, before we move into
23 the regular action items, I believe Cameron has some
24 remarks on one of the report items that was on consent.

25 MR. OXER: Sure. Good morning, Cameron.

1 MR. DORSEY: Good morning. Cameron Dorsey,
2 deputy executive director of Multifamily Finance and Fair
3 Housing.

4 I just wanted to call attention to one
5 particular report item, it's the report item on the
6 formation of the new Fair Housing team and talk a little
7 bit about what our activities are and just let you guys
8 know that we're going to be bringing more regular reports
9 to you all on what the activities of that team are.

10 MR. OXER: And the hide is on the wall where we
11 used it for the right purpose.

12 MR. DORSEY: Right, exactly.

13 So we recently formed a Fair Housing team
14 internally, and I took on the responsibility for
15 overseeing the activities of that team. I hired Laura
16 Debellas. Laura Debellas is our new Fair Housing team
17 lead, right here. Laura is a great addition to help lead
18 this team. She has previously worked as a housing
19 advocate for persons with disabilities in the Seattle
20 area, she worked for HUD Multifamily in their Seattle
21 office. She's also worked in all kinds of areas of the
22 department, she started in the Compliance Division at
23 TDHCA, she was one of the two-person core team that
24 implemented the tax credit assistance program. Then she
25 left and went back to Seattle for a while and realized

1 she made a grave error, and that she wanted to come back
2 and work for me, so she came back and worked in our
3 Multifamily HOME program, and now she's leading up this
4 Fair Housing team with me. So she's really a great
5 addition and great resource.

6 We also are putting together folks in other
7 areas of the department. Just to call a couple of those
8 folks out, we've got Megan Sylvester in the Legal
9 Division who is just a really, really important resource
10 and has lots to add to what we do. And then also very
11 critical are the data people that are helping us build
12 some databases: Chad Landry and David Johnson, who are
13 part of the 3PM team that reports to Brooke, and Brooke
14 has been kind enough to let us borrow those folks. And
15 in addition to that we have a couple of other positions
16 we might fill in the future, we just want to make sure we
17 identified what kind of individuals we would need to fill
18 those positions before we go about hiring folks.

19 So some of the first activities that we're
20 engaging in, that this Fair Housing team is engaging in,
21 we are consolidated and collecting all of the demographic
22 data we have throughout our various programs. We have
23 various systems throughout the Department to collect
24 demographic information concerning who we serve, where
25 our funds are allocated, and those types of things. So

1 we're trying to pull that together into one kind of
2 centralized location so that we can run comparisons
3 against census data.

4 We're also looking at purchasing crime data and
5 looking to pull in other types of data such as
6 environmental related data and what-have-you, so that we
7 can do some really good reviews on kind of where our
8 funds go, who they go and how we can improve reaching all
9 segments of the populations, including all of those
10 protected classes that are protected under the Fair
11 Housing Act.

12 We're also building a database that's separate
13 from that one that will help basically document what we
14 are doing in a central place. As you all know, we have
15 various divisions that are operating all different types
16 of programs and so we're creating a database that will
17 help us track everything that's fair housing related in
18 each division and pull that together in a centralized
19 location so you can actually look at a report, identify
20 where holes might be, where additional action steps might
21 be implemented to affirmatively further fair housing.

22 And I also think we'll be able to, once we kind
23 of get all this data together and we're able to look at
24 everything we're currently doing, we might also be able
25 to identify some additional impediments or refine the

1 impediments that are reflected in our current Phase II
2 Analysis of Impediments to Fair Housing Choice.

3 So these are all some kind of core really kind
4 of big activities that we're engaging in.

5 We don't want to sit idle while we're getting
6 these databases together, so we're also doing a few
7 things just right off the bat. We're holding a
8 roundtable, actually tomorrow afternoon, to discuss our
9 affirmative marketing rule and our tenant selection
10 criteria rule. These are two rules that have a very
11 direct bearing on the State's efforts to affirmatively
12 further fair housing, and so we're going to open those up
13 for consideration and look at possible changes we might
14 make to, I think, benefit everyone involved, the
15 development community, including just some additional
16 objective standards for how you identify the populations
17 that are least likely to apply and what groups you should
18 be affirmatively marketing to, and these types of things.

19 Also on kind of the agenda, as the previous
20 director of the Multifamily Division -- and Jean knows
21 this as well -- it's very difficult to pay equal
22 attention to every element of the QAP and the multifamily
23 rules. A disproportionate amount of time gets spent kind
24 of debating those certain scoring elements or what-have-
25 you, and so there are some other elements that kind of

1 fly under the radar and maybe don't get as much
2 consideration as other elements.

3 And so I think my experience with the
4 multifamily area, as well as just the fact that we've got
5 this Fair Housing team together, we're going to be
6 looking at focusing on some of the undesirable area
7 features and undesirable site features rule, giving a
8 little bit more substantive consideration to things like
9 the distance requirements for undesirable area features
10 or site features. Perhaps a railroad shouldn't be on
11 equal par with a hazardous manufacturing kind of facility
12 or what-have-you, or an oil refinery, these types of
13 things. So we're doing a lot of stuff in those areas.

14 We're also kind of keeping tabs on a couple of
15 other cool outreach activities that we've got underway.
16 One is a collaboration with the University of Houston to
17 develop materials to provide additional education to
18 local elected officials concerning their role in
19 providing support resolutions and engaging in the tax
20 credit allocation process, just allowing them to
21 understand all those various resolutions that they may or
22 may not have to consider in order to assist in
23 facilitation of a tax credit deal in their area.

24 And then last, but not least, we are also
25 working with the Health and Housing Services Coordination

1 Committee to develop a small set of videos. There's
2 going to be a series of them that address various topics.
3 They're kind of high level videos for service providers
4 and folks that are working with persons with disabilities
5 and other populations that we serve, to just kind of, in
6 a five-minute video, give them an overview of different
7 aspects of the programs we offer.

8 Rental assistance, for example, would be a
9 topic that's important. There's so many different types
10 of rental assistance out there, and understanding all of
11 those various forms of rental assistance and how folks
12 holding those vouchers have access to tax credit
13 properties. Fair housing, there will be, hopefully, a
14 five-minute fair housing video, somewhere in the realm of
15 five minutes, to just kind of give an overview of what
16 the Fair Housing Act is, reasonable accommodations type
17 issues.

18 So we've kind of ramped up pretty quickly,
19 we've got a lot going on in the fair housing arena, and I
20 fully expect that once we have these databases developed,
21 we'll bring reports that actually include some lists of
22 all of the different types of activities and the status
23 of those activities. So there you go. I just wanted to
24 give you guys kind of an overview of what we're working
25 on now and what to expect from us in terms of reports in

1 the future.

2 MR. OXER: Great. Thanks, Cameron.

3 Any questions from the Board?

4 MR. IRVINE: I just have a comment on it. When
5 we entered into our conciliation agreement and we
6 developed the Phase II Analysis of Impediments through
7 the use of a third-party consultant, the affirmatively
8 furthering fair housing process moved along in a very
9 specific orderly manner, and as we concluded that
10 requirement and submitted the Phase II AI to HUD, I think
11 you're going to see a significant transformation in just
12 the way that we're approaching this.

13 Staff has taken this back from the consultants,
14 this is something we own. We want to use these regular
15 reports at the Board meeting to make sure that the Board
16 is engaged and that the public has an opportunity for
17 engagement, and we do not view affirmatively furthering
18 fair housing as some static checkbox activity, we view it
19 as a pretty intensive process.

20 Once upon a time I might have said not a week
21 went by without a discussion of fair housing activities
22 in the Department, now I would safely not an hour goes by
23 without it. And I really mean that. Cameron and Laura
24 and Megan are really reaching out and engaging the
25 programmatic areas and others, and this is very

1 proactive, and I think, frankly, it's kind of exciting.
2 So thank you.

3 MR. OXER: So essentially what we're doing,
4 too, from what I gather what you're doing on one of the
5 early questions that some of us had was what's in all
6 that data in those repositories down in the agency and
7 what can we learn from it, so you're able to deep-dive
8 that data and figure out some things that give us some
9 assistance in terms of directions we can take in the
10 future to make this more appropriate, more responsive,
11 and essentially more productive. Is that right, Cameron?

12 MR. DORSEY: Right. I mean, I think that
13 there's a lot of questions you can ask. When we allocate
14 tax credits to a deal in a high opportunity area, for
15 example, are we reaching a broad segment of the
16 population, what does the demographic profile of these
17 properties, are they reaching everyone, and I think we
18 need to be looking at that. Part of whether or not
19 you're reaching folks is looking at affirmative
20 marketing, so that's one of the reasons we've opened that
21 rule up for discussion at this roundtable tomorrow.

22 And there are quite a bit of little holes in
23 how we might collect data that are really important to
24 identify and resolve. Just simple things. You know,
25 when we collect race and ethnicity information on tax

1 credit tenants, the race and ethnicity information is
2 virtually completely separate which doesn't really align
3 well with how the Census Bureau collects data, so it
4 makes it more difficult to compare. For example, a
5 Hispanic individual may or may not identify themselves as
6 white, and so then identifying white non-Hispanic
7 individuals becomes a big problem if you don't have that
8 linkage there in how you collect the information. And
9 the Census Bureau has that linkage and we want to have
10 that linkage as well so that we can do similar
11 comparisons and comparable comparisons, apples to apples.

12 MR. OXER: So you're setting this up to be able
13 to correlate it with externally available data sets so
14 that you can see what happens, because most of what we've
15 got is a snapshot on these tax credit deals, for example,
16 that happened then but they're not a static environment
17 because they continue to change over time, so we can go
18 back and look at what happened at that snapshot when it
19 occurred. Right?

20 MR. DORSEY: Sure. I think you can do a number
21 of things. Right now, with respect to high opportunity
22 areas and providing incentives to go into high
23 opportunity areas and develop tax credit deals, it's
24 fairly simple. We've got this big website and I can go on
25 the website and pull off a data set and do some Excel

1 formulas and spit out a list of probable high opportunity
2 areas, but then I think that there are some subsequent
3 questions you need to ask that relate to who those
4 developments are reaching and how we better reach a broad
5 segment of the population and create really inclusive tax
6 credit developments and multifamily properties.

7 MR. OXER: With the background in engineering
8 that I have, nothing speaks as loud as data, so I hope
9 this is going to be something that gives us a stronger
10 foundation to make policy on everything that we do.
11 Okay, I'm a nerd, I admit that, I like the idea that
12 we're going to have some things like this, some numbers
13 to guide some of the decisions that we're going to be
14 making.

15 MR. THOMAS: The rest of us like it too, we're
16 just not as nerdy

17 (General laughter.)

18 MR. OXER: If you were as nerdy as me, you'd be
19 in real trouble to start with.

20 Thanks, Cameron.

21 Let's go to item 2 and get started here.

22 MR. IRVINE: And, Mr. Chairman, now that we're
23 on the action agenda, I was wondering if we might ask
24 that the community affairs item, item number 4, occur
25 after item 2.

1 MR. OXER: And then number 3?

2 MR. IRVINE: Right.

3 MR. OXER: Good enough. Elizabeth, good
4 morning.

5 MS. YEVICH: Good morning, Mr. Chair, Board
6 members. I'm Elizabeth Yevich, director of the Housing
7 Resource Center, and I'm here for item number 2 which is
8 the agency's strategic plan for fiscal years 2015 through
9 2019, and this plan communicates the agency's goals,
10 directions and outcomes to various audiences, including
11 the governor, the legislature and the general public.

12 This plan is due every two years, and the plan
13 was developed within the context of the State's overall
14 goals and budget to generate specific outcomes that tie
15 directly to the Department's budget structure. And the
16 plan provides a very high level overview of issues that
17 may affect the ongoing accomplishments of the agency's
18 mission over the next five years.

19 Examples of internal issue the report considers
20 include the Department's budget, workforce
21 characteristics, technological assets and projects,
22 organizational structure, and our existing performance
23 measures. External factors, examples of those that may
24 change over time are also studied, and such factors
25 include the agency's available funding resources, service

1 population characteristics, service area boundaries,
2 economic, legal and environmental conditions in which it
3 operates. So finally, this plan provides TDHCA with an
4 opportunity to describe some of its strengths,
5 weaknesses, challenges and opportunities for change.

6 While this is a planning document, it does not
7 establish future performance measure targets or the
8 methods of finance, and this is done through what you're
9 going to be hearing about in the next 60 days, the LAR,
10 the Legislative Appropriations Request process, so this
11 is sort of the first step before that. This plan also
12 doesn't talk about program set-asides or program
13 activities. All of those specific details and decisions
14 are made through program rulemaking, funding plans and
15 our infamous SLIHP which is the State Low Income Housing
16 Plan and annual report.

17 Again, the agency strategic plan is just a very
18 high level overview plan, and it's due in a few weeks,
19 June 23, to the Governor's Office, the LBB and several
20 legislative committees. So staff would like to request
21 permission to make very minor changes in the next couple
22 of weeks, including small clarifications or editing that
23 might be needed. Therefore, with that, staff recommends
24 approval of the plan.

25 MR. OXER: Good. Thanks, Elizabeth. Any

1 questions from the Board?

2 MR. THOMAS: How is the Board's involvement
3 from the policy perspective incorporated into the
4 strategic plans going to the governor and the LBB?

5 MR. OXER: Do you want to handle that, Tim?

6 MR. IRVINE: Well, we have the Chair acting as
7 the liaison for planning and financial matters. We went
8 through the plan in depth with Chairman Oxer and
9 discussed it with him. Quite candidly, because of the
10 way that our programs are assigned to us legislatively,
11 there's really not a tremendous amount of strategic
12 development in that process. Our real strategic efforts
13 are more on efficiency and delivery.

14 MR. OXER: One of the first questions that was
15 asked of me when I came over here, Robert, was: What do
16 you plan to do over there? I said, I don't plan to
17 figure out what to do, my job is to figure out how to do
18 what the legislature and the governor have decided needed
19 to be done, so our strategy is to execute on what they've
20 told us. That said, there's some structuring and
21 organizational changes we made that are moving along.

22 For one, there was a strategic planning
23 committee that was in place. We had a series of
24 committees. By virtue of the fact that we're a very
25 small board and we would have at least three members on a

1 committee, it was very difficult to get everybody
2 together just because it was either all of us or not, and
3 so with the exception of the Audit Committee, which is
4 formal and mandated, we now have a liaison from the Board
5 on each of the planning or the committee efforts that
6 we're undertaking, as opposed to a full committee
7 assigned to each one of them. I'll make that as a point
8 of record on there, so the strategic planning and
9 finance, I serve as a liaison.

10 MR. THOMAS: Other than the rubber stamp,
11 without having any background or view of these things
12 before now -- and maybe it was and maybe I didn't
13 remember it, and of course I have great deference to our
14 executive team and great deference to our Chair -- but
15 how am I supposed to help establish, recognizing that our
16 members come from far and wide and we're lucky to have
17 them show up and that I can be five minutes late every
18 time and I live in town.

19 But given all of that, I have some concern
20 about the process we're currently following and would
21 like to state for the record that I'd like to see some
22 process implemented that would allow the Board members,
23 because this is the core essence of policy direction
24 setting and then the execution, so how do we get insight
25 into this in a way that allows our staff to know that our

1 Board and our Chair has the full Board's support -- which
2 they know they do -- and we can vote and make sure we're
3 doing this the right way.

4 MR. OXER: Point noted, point taken and
5 accepted. I think the strategic plan has been available
6 to every member of the Board, hasn't it?

7 MR. IRVINE: Yes.

8 MR. OXER: And it's on the website, it's
9 posted.

10 MR. THOMAS: There's a tremendous amount of
11 information on the website.

12 MR. OXER: You've got to be a nerd to find it.
13 We'll send you the URL.

14 MR. THOMAS: This is absolutely not an attack
15 of the process, it is, instead, a request for enhancement
16 of the process.

17 MR. OXER: And I recognize that, Robert, and I
18 appreciate that.

19 DR. MUÑOZ: You need a motion?

20 MR. OXER: We need a motion with respect to
21 this item.

22 DR. MUÑOZ: Move approval.

23 MR. OXER: Motion by Dr. Muñoz to approve staff
24 recommendation on this item.

25 MR. McWATTERS: Second.

1 MR. OXER: Second by Professor McWatters.
2 There's no evident request for public comment. All in
3 favor?

4 (A chorus of ayes.)

5 MR. OXER: Opposed?

6 (No response.)

7 MR. OXER: There are none, and the Chair notes
8 that Mr. Thomas would like to have considerable input and
9 more information about this, so it's on the record,
10 Robert.

11 MR. THOMAS: Thank you.

12 MR. OXER: Yes, sir. Happy to do it.

13 MR. IRVINE: I would certainly offer any time
14 any member wishes to discuss any of these plans, I'd be
15 delighted to meet with you and go through them in detail.

16 MR. THOMAS: You're awesome, and you have every
17 single time offered to meet with me, walk me through
18 anything I needed to appreciate and understand.

19 Sometimes I don't know what I need to know about. I saw
20 the agenda item but I honestly did not go into the detail
21 that I should have, but I would think a strategic plan,
22 particularly that covers that many years, would have some
23 level of Board involvement, beyond just our chair, so
24 that we can, quite frankly, answer questions

25 MR. OXER: And you need to be able to answer

1 questions. And let it be stated on the record that the
2 strategic plan, as it shows, 2015 to 2019, is a strategic
3 direction that we're constantly making course corrections
4 as we go. All of this is generally amenable to
5 modification and input any time there's a Board member
6 who thinks there's an item that needs to be considered
7 for improving our process or result.

8 MR. THOMAS: Okay. Thank you.

9 MR. OXER: Sure. Okay. We'll take item number
10 4 next before item number 3. I'll take that out of line,
11 out of order here. Brooke, are you handling this one?
12 Oh, Michael. I'm sorry.

13 MR. DE YOUNG: Michael De Young, Community
14 Affairs Division director.

15 Item 4, Mr. Chairman and Board members, is the
16 presentation and discussion of the approval for the draft
17 LIHEAP plan. Just some quick information to share with
18 you. The LIHEAP program is a program that awards about
19 \$131 million annually to the State of Texas for energy
20 assistance, weatherization activities, and then the
21 associated administrative costs.

22 The draft plan before you is a fairly large
23 document upwards of 100 pages. This is the draft plan,
24 we'll take it out for public comment, we'll also have a
25 public hearing, a formal process where comment can be

1 accepted, and if there's significant comment, we would
2 modify the plan. What we're asking you all to do today
3 is to approve us to take the draft plan out, publish it,
4 receive comment, conduct a public hearing, and if there
5 are no substantive changes to the plan from the public
6 comment received, that we could go right away, with Tim's
7 approval, to submit the plan to the LIHEAP office.

8 There's a couple of technical things that are
9 going on right now. LIHEAP, at the federal level, has
10 instituted a new application process. They are out for
11 public comment on that application form. So the form in
12 front of you is what we think will be the final format,
13 so when we get final approval through the federal process
14 to update our application, we would make all this
15 information fit into the new form. We don't expect that
16 there will be much change, and we expect that to come
17 within the next 20 to 30 days. The comment period, I
18 believe, has already concluded, they're just going
19 through the final steps now.

20 The other thing that's unique in this plan
21 right now, if you read through it -- and if you did,
22 bless you for reading through this plan -- there is a
23 requirement now for states to come up with a technical
24 definition for crisis and life threatening situations.
25 Each state is being asked to come up with a formal

1 definition. Rather than the state just setting out a
2 formal definition, we're going to put out some proposed
3 language and also have some public process with our
4 subrecipient agencies and the general public to try and
5 formulate what that should look like. It does have some
6 specific requirements from the federal government that
7 we'll have to meet, but the language we're allowed to
8 tinker with a little bit.

9 So we're going to be doing that process over
10 the next 60 days, and that would be included either in
11 the final application to LIHEAP when we submit it before
12 August 31, or as an amendment to the LIHEAP plan. And
13 the LIHEAP plan, if you're not familiar with it, it is a
14 block grant, it is a fairly wide ranging grant that has
15 tremendous latitude for states, so the amendment process
16 for the LIHEAP plan is simply filing a letter. So if we
17 don't get the public process completed for those two
18 definitions for crisis and life threatening, we would
19 submit just shortly after the submission of the plan
20 formally on August 31.

21 MR. OXER: Okay. Let me ask this, Michael,
22 we're looking at what were the two, life threatening and
23 crisis were the two definitions?

24 MR. DE YOUNG: Life threatening and crisis.

25 MR. OXER: And that's reserved for the states

1 because life threatening and crisis could be different
2 here versus in Maine or Washington?

3 MR. DE YOUNG: Yes.

4 MR. OXER: And Washington State, not D.C.
5 Living in Washington, D.C. on Saturday night can be life
6 threatening.

7 MR. DE YOUNG: I grew up in Washington, D.C.
8 Yes, sir.

9 Yes, it is reserved for the states to define,
10 and we've had some conferences nationally to try and talk
11 about this, and each state has very different structure
12 to what they consider life threatening because of their
13 public utility commission, their public utility
14 requirements on disconnections. So all this has to go
15 into kind of how you address these definitions because
16 the federal government gives you no guidance on what is
17 life threatening. They say you have to have a policy for
18 life threatening situations, and then they give you no
19 guidance on it; they say you must have a policy on crisis
20 but they do not give you guidance on it. Actually, there
21 are 57 grantees for LIHEAP that include some of the
22 islands and territories, we're all being pushed for this
23 same definitions. And it's probably a definition that
24 even if we do adopt it now, we'll have to come back for
25 revision a year into it after we figure out if we've

1 worded it correctly or not included some specific
2 language.

3 MR. OXER: Is this a new component for the
4 LIHEAP plan that we have, or is it something that we're
5 just modifying, or is this a new piece?

6 MR. DE YOUNG: This is a new piece.

7 MR. OXER: Okay. Any questions from the Board?
8 Motion to consider?

9 MR. THOMAS: So moved.

10 MR. OXER: Motion by Mr. Thomas to approve
11 staff recommendation.

12 MR. McWATTERS: Second.

13 MR. OXER: And second by Professor McWatters.
14 There's no request for public comment. All in favor?

15 (A chorus of ayes.)

16 MR. OXER: And opposed?

17 (No response.)

18 MR. OXER: There are none. Thanks, Michael.

19 MR. DE YOUNG: Thank you.

20 MR. OXER: Okay. Jean, I think you're up.

21 MS. LATSHA: Good morning. Jean Latsha,
22 director of Multifamily Finance.

23 I'm just going to really quickly piggyback on
24 some of Cameron's introductions. As a result of his new
25 position, obviously, I'm standing here.

1 MR. OXER: I'll say congratulations or
2 condolences, one of those two. Right?

3 MS. LATSHA: Probably the latter, but that's
4 all right.

5 DR. MUÑOZ: Did Cameron get promoted again?
6 (General talking and laughter.)

7 MS. LATSHA: I'm happy to say that I do have a
8 replacement for myself in my previous role.

9 MR. OXER: Is that possible that you can be
10 replaced?

11 MS. LATSHA: Yes, right. All I know is that
12 I've actually been able to cook dinner for kids a couple
13 of times since Katherine came on, so thank you.

14 MR. OXER: Sorry we were interrupting you. Say
15 who your replacement is.

16 MS. LATSHA: That's okay. Just wanted to
17 introduce Katherine Saar as our new 9 percent housing tax
18 credit administrator.

19 MR. OXER: Katherine, good morning. Buckle up,
20 it's going to be a hell of a ride for the next couple of
21 months.

22 MS. LATSHA: So item 3 is a number of appeals.
23 We'll get to the first one, this is Oak Grove Village in
24 Marble Falls.

25 Staff denied points on this application under

1 two separate provisions of the rule, one of which is a
2 scoring item related to commitment of funding from a
3 local political subdivision. The other was a five point
4 deduction due to a late response to a deficiency. My
5 understanding is that the applicant is not contesting
6 those five points related to the late deficiency.
7 However, we should talk about commitment of funding under
8 a local political subdivision.

9 This rule 11.92 of the QAP states that funds
10 cannot have been provided to the local political
11 subdivision by the applicant or a related party -- I'm
12 sorry -- by the local political subdivision. Basically,
13 what we're saying is the local political subdivision that
14 is providing the funding cannot be a related party to the
15 applicant. In this case, Mr. Mark Mayfield is the
16 president and CEO of an organization that is in the
17 ownership structure of the development owner, and also
18 serves on the board, I believe as chair, for the Marble
19 Falls Economic Development Corporation.

20 Because of our definition of control, coupled
21 with statute's definition of related party, has always
22 taken the position that board members actually do exert
23 control over the organization of the board that they
24 serve on. The applicant clearly recognized this.

25 Let me quickly read our definition of control.

1 It's defined as the power, ability or authority, acting
2 alone or in concert with others, directly or indirectly,
3 to manage, direct, et cetera. Which is why staff does
4 take this position that a board member exerts control
5 over that organization, therefore, that board member, as
6 also a part of the ownership structure, makes the
7 applicant and that EDC related parties. Related party is
8 defined in a number of different circumstances, one of
9 which is a person or organization -- which is Mr.
10 Mayfield in this instance, that person -- and an
11 organization that is tax-exempt under Section 501(a)
12 which is the EDC, and that is controlled by that person,
13 i.e., he is a board member of the EDC. So that's how
14 staff got to this conclusion.

15 The applicant recognized this relationship, and
16 so Mr. Mayfield recused himself from the decision
17 relating to the funding for this particular development.

18 Staff, however, does not believe that recusal from this
19 one particular decision equates to his relinquishing
20 control over that board, that EDC. So we feel that that
21 related party relationship still exists between the
22 applicant and the local political subdivision providing
23 the funding.

24 I believe that the applicant is going to argue
25 that Local Government Code does allow for the EDC to

1 commit funds to the development, despite Mr. Mayfield's
2 involvement on both sides of this transaction. I'm not
3 familiar enough with Local Government Code to know the
4 answer to that. I can say that staff is not contending
5 that the EDC could not provide funding to this
6 development; we are simply contending that we should not
7 award points for the EDC providing funding to this
8 development because of that relationship between the
9 board member and him as an owner of the development.

10 So unless you have any questions for me, I
11 think that there's a few people that would like to speak
12 to that.

13 MR. OXER: We'll get to that. Is there any
14 questions from the Board? I have a question. There is
15 apparently two issues that have been conflated here: one
16 is the local financing decision about whether or not this
17 recusal offers an opportunity for the EDC to make funding
18 available to the application, and the other one is
19 whether or not whether or not, from the perspective of
20 the QAP and the tax credit program, despite that recusal
21 they still constitute related parties.

22 MS. LATSHA: That's correct.

23 MR. OXER: Okay. And so the issue is then,
24 absent the consideration for the financing, it's an
25 assessment of the points available on this with respect

1 to the related party transaction.

2 MS. LATSHA: That's right. This is basically
3 why the rule was written this way. You could have a PHA
4 has a board, you could create another entity that has all
5 of the same board members, plug that into the ownership
6 structure, that board provides a commitment of funding to
7 that development, and we said we don't think we should
8 award points for that. We're not saying you can't do it,
9 we just don't think that we should be awarding points for
10 development funding when there is that relationship
11 between the funder and the fundee, if you will.

12 DR. MUÑOZ: I have a question. Do you know of
13 any instance where we have awarded points under this kind
14 of situation?

15 MS. LATSHA: Not in the last few years when we
16 changed the rule.

17 MR. OXER: Since the implementation of the rule
18 as it stands now, we haven't done that.

19 MS. LATSHA: We have not.

20 MR. OXER: Does that answer your question,
21 Juan?

22 DR. MUÑOZ: Yes.

23 MR. OXER: Any questions from the Board?
24 Motion to consider?

25 DR. MUÑOZ: Move staff recommendation.

1 MR. OXER: Dr. Muñoz moves staff recommendation
2 on item 3(a).

3 MR. THOMAS: Second.

4 MR. OXER: Second by Mr. Thomas. Okay. We'll
5 have public comment. Good morning, Claire.

6 MS. PALMER: Good morning. I always forget to
7 sign in so I'm going to do that first. My name is Claire
8 Palmer, and I am representing the ownership group of Oak
9 Grove Village, TDHCA 14006, which the ownership group in
10 this particular instance consists of Texas Housing
11 Foundation and the Hamilton Valley Management and the
12 Hoover Companies, and I represent all of the entities.

13 We actually think this is a pretty simple
14 issue. We don't disagree that Mark Mayfield is both the
15 executive director of Texas Housing Foundation which is
16 part of the applicant group and that he's also a board
17 member of the Marble Falls Economic Development
18 Corporation. While we technically agree that that fits
19 under the definition in the statute of a related party,
20 although he draws a salary from the Texas Housing
21 Foundation and will not directly benefit in any financial
22 way from a tax credit award, unlike the hypothetical
23 situation that Jean just discussed.

24 DR. MUÑOZ: Claire, did you just say you
25 technically recognize?

1 MS. PALMER: Absolutely. We recognize that we fit
2 within 2306, that is not an issue to us. We recognize that the
3 related party definition includes our particular situation
4 here. Where we disagree is the handling of the related party
5 issue. There's no statutory prohibition against a local
6 subdivision loan being made, and in fact, as recently as 2011
7 and 2012, the TDHCA QAP allowed for related party loans, a
8 local government loan could be from a related party.

9 DR. MUÑOZ: Just a minute, let me just ask. When
10 did we change the rule?

11 MS. PALMER: 2013.

12 DR. MUÑOZ: So you're referring to something which
13 has since been changed.

14 MS. PALMER: Right, but it's a new rule, in the
15 QAP, it's not by statute, it was just changed by rule, and
16 that's a very important distinction.

17 MR. OXER: Well, it's an important distinction for
18 you to recognize that the statute tells us to make the rules.

19 MS. PALMER: I agree. I don't disagree that the
20 statute tells you to make rules. What I disagree with is the
21 rule being in conflict with the Local Government Code which
22 provides a remedy when there is a conflict of interest or a
23 potential for undue influence by an elected public official.
24 And Local Government Code Section 171 provides a specific
25 recusal procedure for any board member or local government

1 official if the official has a substantial interest in a matter
2 coming before that board. Failure to follow that procedure is
3 actually a Class A misdemeanor by that board member.

4 And in this particular case, Mr. Mayfield followed
5 the procedure exactly and filed all of the required affidavits
6 and all of those affidavits were submitted with the
7 application.

8 MR. OXER: And that financing would have been
9 certified and allowed by this, and we're happy to recognize it.

10 MS. PALMER: Absolutely. And I understand that now
11 TDHCA -- this was the original position that they took, but I
12 understand that TDHCA staff is now trying to separate points
13 from financial involvement from the applicant. The fact of the
14 matter is a 9 percent application is completely points driven.

15 To say that the local government could follow their local
16 government procedure and give money to this development is
17 irrelevant if you can't get the 14 points.

18 MR. THOMAS: Do those assurances include that there
19 is no financial incentive? I mean, I get your point. Your
20 point is the tail is wagging the dog. The rule is good and
21 it's meant to accomplish or prevent certain situations. You're
22 saying, however, it's in conflict with Local Government Code
23 and procedures which exist to actually provide for allowing
24 these public policy objectives to be achieved without there
25 being fraud or double dealing.

1 MS. PALMER: Absolutely. And the Attorney
2 General's Office has reviewed this actual situation on numerous
3 occasions, and as far as I can tell, I can't find an attorney
4 general opinion that says that when a rule of a state agency or
5 local government is in conflict with a state statute, the state
6 statute does not trump the rule.

7 MR. THOMAS: I think the legislature trumps our
8 rulemaking authority, I'm just going to tell you.

9 MS. PALMER: Exactly. And that's our very simple
10 and narrow issue here is we believe that the Local Government
11 Code provides an exact process for handling the exact situation
12 that came up in this particular issue of the related party
13 loan. We handled it in accordance exactly with the Local
14 Government Code, and we believe that staff should have
15 recognized that and awarded the 14 points. In my mind it's a
16 very, very simple issue.

17 MR. OXER: We actually put this rule in place to
18 make sure that the staff didn't have to recognize any
19 subtleties because we wanted a clear separation, period.

20 MS. PALMER: And I believe there is a very clear
21 separation here, and a very, very clear Local Government Code
22 rule that says that if a government official has any
23 substantial interest in the matter coming before the board,
24 they have a process laid out that they have to follow, and in
25 fact, the final portion of that statute says this statute is

1 specifically intended to preempt the common law theory of
2 conflicts. And I don't know how you make it any clearer than
3 that.

4 MR. THOMAS: Do we have that statute? I mean,
5 you're talking my bailiwick and most of us up here that have
6 this background. And what you've just said now triggers the
7 next question for me, and do I actually have a rule that is
8 technically and legally in conflict with statute, versus is the
9 rule that we've put in place is it actually not inconsistent.
10 In other words, does the allow for exactly what the staff did
11 and what the Board voted to approve?

12 MS. PALMER: I believe that the rule is in direct
13 conflict with the statute, and I believe that strongly enough
14 that I would ask for an attorney general's opinion on that.

15 DR. MUÑOZ: Barbara?

16 MS. DEANE: Right. I would say that if our rule
17 said that they cannot give funding to this entity, we would
18 have a conflict, and that would be correct. But that's not
19 what our rule does. Our rule relates to points. This specific
20 sentence in this specific rule has been upheld by an opinion of
21 the Office of the Attorney General last year, and I don't
22 believe that there's a direct conflict here.

23 Now, that said, could the Board decide to recognize
24 the Local Government Code and decide to, in its implementation
25 of the rule, recognize that. I think there are some issues

1 there in doing that. For one thing, the issue of related party
2 and the definition of related party occur many, many, many,
3 many places in our rules, and so to do some kind of blanket
4 recognition of Chapter 171 would basically wreak havoc on the
5 QAP, so any recognition of that would have to be extremely
6 narrowly tailored.

7 The other question I had, and I kind of wanted to
8 ask Claire this question. Do you mind?

9 MR. OXER: Please.

10 MS. DEANE: The rule was enacted, as Jean was
11 saying, to address the issue of a local governmental entity
12 setting up its own entity and then basically lending themselves
13 money, and the provision that you specifically cited, which is
14 171.004, in addition to allowing an individual member to file
15 and affidavit and recuse themselves, in subsection (c) it says
16 if every member of that local governmental body has the same
17 conflict of interest, they could all file affidavits and they
18 don't have to abstain. So do you think that, in your opinion,
19 would that then allow the governmental entity to do one of the
20 main reasons the rule was targeted at and that is then they
21 could all file affidavits and say we're all setting up this
22 entity and we're all going to loan it money, so here's our
23 affidavit, we're going to abstain, and therefore, we get to do
24 one of the main things that the rule was targeted to?

25 MS. PALMER: I understand that point, but if you

1 look at the QAP on this particular section of local government
2 funding, the local government body that has to give the funds
3 has to have been appointed by the mayor of the city or the city
4 council of the city, so I find it difficult to imagine a
5 situation where a city mayor or city council is going to go and
6 make up a body specifically to fund an application for tax
7 credits. I think it's a disingenuous idea to think that we're
8 going to suddenly have cities creating bodies. For one thing,
9 they have to have money, and where that money is going to come
10 from is unique, at best. And number two, you're going to have
11 to have a city willing to set up -- I think that hypothetical
12 is so farfetched.

13 MR. OXER: Just to offer a historical note, it's
14 not a hypothetical. In fact, that rule was put into place to
15 prevent something that happened before.

16 MS. PALMER: I personally would never certainly
17 recommend that to my client.

18 MR. OXER: Nor would anybody here personally ever
19 do that. Okay? But the rule is in place to stop something
20 that already occurred.

21 MR. THOMAS: I don't want to be antagonistic, and
22 this is obviously a heated issue and I'm concerned a little bit
23 with the discussion, but we all know, some way more than
24 others, that we have come through a troubled period and we want
25 to make sure that we don't go back to that troubled period.

1 MS. PALMER: I certainly don't disagree with that,
2 and I absolutely understand why the rule is in place, but I
3 also think that in the situation that I have before you today,
4 we have an applicant who followed every rule they believed was
5 proper, and they lost 14 points over that, and 14 points, as
6 you know -- I mean, losing one point in an application can make
7 the difference. Losing 14 points when you've acted in good
8 faith and followed a statute of the State of Texas, to me seems
9 patently unfair and an overly narrow reading of the conflict
10 between your rule and the statute.

11 MR. THOMAS: Well, help with the slippery slope
12 argument now. You understand exactly what my concern is.

13 MS. PALMER: I absolutely understand.

14 MR. THOMAS: And how does our staff, addressing
15 using rules that are intended to create a fair playing field
16 for everybody, not end up having a document which is five times
17 this size in order to be able to address the concern you're
18 raising?

19 MS. PALMER: I think you could put exceptions into
20 the QAP language on the local government funding; I think
21 there's many ways that language could be handled. I don't
22 think that this particular issue would affect any other section
23 of the QAP that uses the related party terminology because
24 we're not trying to change the related party issue with regard
25 to the organizational chart or the organizational structure,

1 we're not trying to exempt someone out of the organization for
2 any purpose other than local government funding. So first, I
3 think we're only talking about that one section of the QAP and
4 how it fits within the Local Government Code requirement of
5 allowing a board member to recuse themselves.

6 And I think, number two, I think you need to look
7 at the fact that the QAP is a living, breathing document that
8 tries to address issues every year that come up. There's
9 always a quirk in it that is an unintended consequence. In
10 this particular case I think that Mr. Mayfield acted so in good
11 faith and did exactly what he knew to do under the Local
12 Government Code, I can't imagine that -- to me it just seems
13 simple that they should have been awarded these points, that he
14 did what he was supposed to do. I think that you could put in
15 place language in that if there's some economic benefit that is
16 going to derive to both the parties on either side, then they
17 cannot give funding for the development. You've added language
18 every year.

19 DR. MUÑOZ: Let me ask a question. This rule was
20 enacted in '13, it was changed very deliberately from the
21 previous QAP. Didn't he know that this rule existed and that
22 points would not be allocated?

23 MS. PALMER: No. He didn't apply in 2013, and he
24 believed when he read the rule that he had a procedure.

25 DR. MUÑOZ: Did he ask staff?

1 MS. PALMER: I don't think he thought he needed to.
2 The Hoovers and Mr. Mayfield have been applying for tax
3 credits since the '80s, they probably know more about the tax
4 credit process than I will ever begin to know.

5 DR. MUÑOZ: They didn't know that after 2013 that
6 points wouldn't be allocated given this kind of financial
7 relationship.

8 MR. OXER: For the record, it's not the financial
9 relationship.

10 MS. PALMER: It's not the financial relationship.
11 If he had applied in 2013, he would have done exactly what he
12 did this year, he would have filed the proper paperwork and
13 recused himself from the vote of the economic development
14 corporation.

15 MR. THOMAS: That's the nuanced argument, and the
16 question is on that nuanced argument is our rule -- I don't see
17 it necessarily -- I'm sorry, I'd like to see the document -- I
18 don't necessarily see it's in contradiction just on the
19 explanation we've been provided, but I do think it's a
20 significant enough issue that it should have come up. And
21 unfortunately, our law library is right across the street and I
22 don't have internet access or I would have pulled it up.

23 MR. OXER: Let me ask a question, Robert. Do you
24 want to see the law on 171, or do you want to see the QAP?

25 MR. THOMAS: I don't want to do the legal analysis

1 myself -- I do want to read it -- I don't think that's my job,
2 we have a phenomenal general counsel, but I do have some
3 concern that I didn't get an answer that comforted me in the
4 context of this narrow situation.

5 MR. IRVINE: It may be appropriate to discuss that
6 with counsel in executive session.

7 MR. THOMAS: I think that that's definitely a good
8 idea.

9 MR. OXER: That's where I was headed with this.
10 Is there anything else you'd like to add, Claire?

11 MS. PALMER: No. Mr. Mayfield would like to make a
12 few comments.

13 MR. OXER: Okay. Mr. Mayfield.

14 MR. MAYFIELD: Thank you, Board members. I guess
15 unfortunately, I'm Mark Mayfield. I'm the executive director
16 of the Marble Falls Housing Authority, as well as the Texas
17 Housing Foundation. I've been doing this for 27 years.

18 There's two points I really want to make toward
19 this. I'm the director of the housing authority, the Texas
20 Housing Foundation is a public housing authority. It was
21 birthed through just an effort that I have put my whole career
22 into of how to provide housing that is much needed in
23 communities all across the state.

24 The Texas Housing Foundation was started in 2009.
25 It's the only public housing authority of its kind in the State

1 of Texas. It was created by resolution of the county
2 commissioners of Blanco, Burnet and Llano counties, and the
3 reason it was, was to become a tool because I was starting to
4 develop housing in Marble Falls -- it's a growing community
5 just west of here -- it's a growing community and a lot of
6 needs were out there. I was the executive director of the
7 housing authority and I was trying to meet those needs, and we
8 began to do a lot of that through the Marble Falls Housing
9 Authority and I started running into a lot of conflicts with
10 HUD.

11 So I thought how can we address this HUD issue
12 because a lot of the regulations that were coming from the
13 federal government through the Department of Housing and Urban
14 Development were starting to hinder a lot of our efforts to
15 provide the housing. And so I go the services of a gentleman
16 named Joe Shipp, who is a former assistant secretary of HUD.
17 He came down and we began to explore how this could be done.

18 And so really, there's a couple of things I want
19 this Board to understand and know about this. This is a HUD
20 initiative that I'm trying to incorporate. Here's the HUD
21 approval letter dated October 8 of 2009 and this was what
22 birthed the Texas Housing Foundation when we elected, as a
23 board of commissioners, to walk away from the federal public
24 housing program, and the Marble Falls Housing Authority created
25 a new housing authority with the Texas Housing Foundation, the

1 City to Marble Falls, my board of commissioners, the county
2 commissioners of Llano, Burnet and Blanco counties to create
3 this.

4 And through the special application center with
5 HUD, they agreed to allow us to demolish the 100 public housing
6 units and to go back and to put affordable housing units on
7 this site. The City of Marble Falls passed a resolution, a
8 revitalization plan, swapped a lot of land, parks, all kinds of
9 things that we're doing in the City of Marble Falls, all under
10 this guise of this HUD approved plan. Because of the
11 regulations that we work under, we were only able to apply for
12 80 units, we demolished 100 units, to put back, according to
13 the plan, 134.

14 We've already done the 80 units, got them on the
15 ground, took the public housing units down, great property,
16 tremendous, tremendous asset, an award-winning property that we
17 put in Marble Falls. Now we're trying to finish this effort.
18 This is the third time that we've applied for these credits,
19 this is the third year in a row, and here we are now because of
20 some related party issue.

21 I am not an owner, I am an employee. The Marble
22 Falls Economic Development Corporation was not created to try
23 to underskirt some regulation to allow this thing to happen.
24 One of the things about rural communities, if you have any idea
25 about rural communities, people like me have to serve a lot.

1 This is my second go round on the economic development
2 corporation board. I've served as mayor, council, school
3 board, everything, you name it, been there, done that. It's
4 just a part of what happens in rural communities. And to sit
5 here and say that some related party issue and they're going to
6 take 14 points away just because you are who you are is just
7 the quagmire that we're working through here.

8 And here we are again, ready to complete this
9 issue, complete this development, to complete this HUD-related
10 plan, and because I'm the executive director of the housing
11 authority that's applied through the local government, went
12 through the full recusal process, the whole thing that's state
13 law, following state law to the letter, and yet there's some
14 issue here and they're going to pull the 14 points. I don't
15 know how we'll ever finish this HUD-approved plan under these
16 type of circumstances.

17 MR. THOMAS: Unless you retire and move to Hawaii.

18 MR. MAYFIELD: Well, Marble Falls is close to
19 Hawaii.

20 MR. OXER: Pretty close to paradise.

21 MR. MAYFIELD: This is not some shifty maneuver to
22 try to do something.

23 MR. OXER: Mr. Mayfield, I don't want to interrupt
24 you, but to the point, I recognize your position, I grew up in
25 a rural community, an extraordinarily rural community, my

1 nearest neighbor was like four miles away. And I recognize as
2 a sort of senior member of the community, there are a lot of
3 hats that you have to wear.

4 For the record, I'd like it stated on the record
5 that when we write the QAP, we go through this as a meticulous
6 process, it's painfully detailed, with the idea that these
7 rules have to apply for this program statewide.

8 MR. MAYFIELD: I understand that.

9 MR. OXER: So while we appreciate that there are
10 circumstances where this is not the case and it's a matter of
11 community service -- which we much appreciate and I'm sure your
12 community appreciates -- we're still trying to create a rule
13 that's fair to the entire state. That's just an issue that we
14 have to deal with, it's a plain policy issue. I'm not going to
15 say it doesn't result in blunt instrument abuse or impact on
16 some projects, it simply does, but that's just one of the
17 things.

18 I remind everybody, and anybody who's been here
19 before knows that I've said this, when I took this job they
20 said it's going to be really hard work, nobody is going to
21 appreciate what you're doing, and every decision you make is
22 going to piss off somebody.

23 So with that, I'd ask if there's anything else
24 you'd like to say. We get your point and I appreciate that
25 you're here on this.

1 MR. MAYFIELD: Well, I guess the legal side of it,
2 we spent all day yesterday with Senator Fraser talking about
3 this. There's a disagreement. We have followed state law.

4 MR. OXER: And we respect that you have followed
5 the state law with respect to the financing of the project, we
6 understand that, and our issue has little to do with the
7 financing, for financing the project. It's just that the
8 application of the QAP and the points available under that
9 rule, that's a different rule, that's not in conflict.

10 MR. THOMAS: Well, I'm not convinced that it's not,
11 so I don't think it's fair for us to make that blatant
12 statement.

13 MR. OXER: It's not in conflict in my mind.

14 I will say we've heard what you've had to say. Is
15 there anybody else that wants to speak on this, Claire?

16 MS. PALMER: No.

17 MR. OXER: Okay. Here's what we're going to do.
18 We've been in our saddles here for an hour and a half, so we're
19 going to take a 15-minute break and we're going to come back
20 and take this issue up on this item after we have some
21 discussion with general counsel in our executive session. Stay
22 tuned, there will be more. For right now, let's take a 15-
23 minute break and be back in here in 15 minutes.

24 (Whereupon, a brief recess was taken at 10:37 a.m.)

25 MR. OXER: Let's get started again, please.

1 What we're going to do is table this item for now,
2 at the Chair's discretion, because I want to hear some comment
3 from general counsel during our exec session. So given that's
4 the case, Claire, just to remind you, it ain't over yet, we're
5 still talking about this, so we're going to get some advice
6 from our general counsel and get back to you after we get
7 through exec session. If we get through quickly the next
8 couple of items and get them taken care of it, we will do it as
9 quickly as we can and get it done before lunch.

10 MS. PALMER: (Speaking from audience.) Chairman
11 Oxer, will I get a chance for rebuttal or anything?

12 MR. OXER: You'll have a chance to continue the
13 conversation after we come back. Don't be concerned.

14 MR. THOMAS: For rebuttal.

15 MR. OXER: If you ride a shuttle, what does that do
16 to you?

17 MR. THOMAS: It re-shuttles you.

18 MR. OXER: You get a chance to shut when you come
19 back.

20 MR. THOMAS: Yes.

21 (General laughter.)

22 MR. OXER: We make light of it because we know this
23 is very difficult at times, these are hard decisions, but it's
24 all better if we take a breath and think about it for a while.

25 Next item, Jean.

1 MS. LATSHA: The next item on your list, another
2 appeal, this is Royal Gardens in Wichita Falls. Staff denied
3 points for a few items here related to educational excellence,
4 again, commitment of development funding by a local political
5 subdivision, and pre-application participation. I understand
6 that the applicant decided not to move forward with the appeal,
7 so staff's recommendation is denial of the appeal.

8 MR. OXER: So they're actually conceding the
9 points.

10 MS. LATSHA: Conceding the points. But that said,
11 do we still need to formally follow this?

12 MR. THOMAS: Motion to approve staff
13 recommendation.

14 DR. MUÑOZ: Second.

15 MR. OXER: There's a motion by Mr. Thomas to
16 approve staff recommendation on item 3(b), and a second by Dr.
17 Muñoz. Is that correct? Okay, close enough. Is there a
18 request for public comment? There's none because they're
19 conceding the points. All in favor?

20 (A chorus of ayes.)

21 MR. OXER: And opposed?

22 (No response.)

23 MR. OXER: There are none. Thanks, Jean. Next.

24 MS. LATSHA: You're welcome. Next on the list is
25 Cleme Manor. This is a development proposed in the City of

1 Houston. This is actually two separate requests combined into
2 one, but it will make sense in just a moment. It's an appeal
3 of a termination under 10.101(a)(4) which undesirable area
4 features and a request for an exemption under 10.101(a)(3)
5 undesirable site features. It might seem a little unusual that
6 staff is recommending granting of this appeal but the
7 application can't move forward without Board action due to the
8 necessity of the exemption, so we felt it appropriate to bring
9 both recommendations under the same board item since they
10 involve the same property and similar issues.

11 We have covered both of these rules at previous
12 Board meetings, but just to summarize, the undesirable site
13 features addresses those site features that are within 300 feet
14 of the proposed development, including a railway, junkyard,
15 heavy industrial use, and without the exemption that can be
16 granted for developments proposing rehabilitation with ongoing
17 assistance from HUD, those applications would be found
18 ineligible. The undesirable area features rule addresses
19 features within a thousand feet of the site, things like
20 blighted structures, criminal activity, hazardous waste sites,
21 et cetera. It is under this rule that staff actually did
22 terminate the application.

23 This development is undoubtedly within 300 feet of
24 a railway, and staff, upon two separate site visits, did see
25 some evidence of blight, industrial use and junkyard. The area

1 also has a history of relatively high criminal activity.
2 However, there's also a significant revitalization effort from
3 the City of Houston for this area, but because the rule related
4 to undesirable are features doesn't specifically contemplate
5 mitigating factors such as revitalization, staff did move
6 forward with the termination.

7 However, in the applicant's appeal they did point
8 to 10.207 of the rule which relates to the pre-clearance
9 process. This part of the rule does suggest that staff and/or
10 the executive director consider mitigating factors when making
11 determinations with respect to eligibility of the site.

12 The applicant also pointed to some specific detail
13 about some of the features that were previously mentioned. In
14 particular, the railroad, there was a noise study conducted in
15 accordance with HUD standards, indicating that it did not have
16 a significant impact on the development. Also, the applicant
17 pointed to the fact that the City of Houston has no zoning so
18 the proximity of the warehouses and supposed industrial use to
19 residential areas isn't that uncommon in the City of Houston.
20 Also, some of those uses wouldn't necessarily be considered
21 heavy industrial.

22 In addition, the applicant researched the site.
23 There does appear to be that scrap metal yard that staff
24 determined was a junkyard at one point, and it is, in fact,
25 part of the Houston Valve and Testing Company and used valves

1 are kept in inventory there for sale. So staff might be
2 conceding also that some of these features that appeared to
3 exist on those site visits, either there are mitigating factors
4 or other circumstances that maybe these features don't actually
5 meet what the rule was trying to get at when we didn't want to
6 see these things around. I didn't say that very well.

7 MR. THOMAS: You didn't want the tail to wag the
8 dog.

9 MS. LATSHA: That's right.

10 Further, staff did meet with the City of Houston
11 and the applicant. I think it's fair to say that we were
12 pretty impressed with the efforts being put the Greater Fifth
13 Ward and also with the applicant's very specific plans to
14 address issues of crime at the property. Staff does recommend
15 approval of the appeal and also that the Board grant the
16 exemption. This determination to recommend the granting of the
17 appeal does take into consideration matters of interpretation
18 of the QAP. First, it is our view that these undesirable site
19 and area features may be considered in the context of
20 appropriate mitigation and revitalization, as pointed out by
21 the applicant.

22 So without any further questions of me, I believe
23 we have some folks here from the City of Houston who would like
24 to comment on the development.

25 MR. OXER: Before we comment, as we always do, we

1 have to have a motion to consider.

2 MR. GANN: I'll move staff's recommendation.

3 MR. OXER: Motion by Mr. Gann to approve staff
4 recommendation to approve -- say it again, Jean -- approve the
5 waiver?

6 MS. LATSHA: Grant the exemption for undesirable
7 site features and grant the appeal of the termination under
8 undesirable area features.

9 MR. OXER: Motion by Mr. Gann. Do I hear a second?

10 MR. THOMAS: Second.

11 MR. OXER: Second by Mr. Thomas. Okay. We'll have
12 public comment, and we'll start right here. Now, you folks
13 sitting on the front right there, you have an interest in
14 making a comment on this. Cynthia, were you first?

15 MS. BAST: Yes, sir. Good morning, Board. I am
16 Cynthia Bast of Locke Lord, and I am representing the applicant
17 for this appeal and clearance.

18 Cleme Manor is a very important redeveloping in
19 Houston's historic Fifth Ward.

20 MR. OXER: I have a quick question before you go
21 too far here, Cynthia. You seem to be getting what you're
22 looking for.

23 MS. BAST: Yes, sir. I am just doing an
24 introduction. Because this is such an important thing to the
25 City of Houston, we really need to emphasize that to you all.

1 We appreciate staff's recommendation for approval, we
2 appreciate your time, however there are a number of people here
3 from the City of Houston that I just want to introduce, and
4 then I'm going to sit down and they would like to give you
5 context of why this is so important to their city.

6 MR. OXER: And while I appreciate that it is
7 important to the city, if you're getting what you want, can
8 there be anything that's much more important than that?

9 MS. BAST: No, sir, other than we do believe that
10 letting you all know what's happening in the City of Houston is
11 important because this is part of their distribution of
12 Disaster Recovery Round II funds. There are only five
13 developments that have been selected for those funds in the
14 City of Houston. One of them was actually on your agenda
15 today, two others are going to be coming before you in the
16 future, and so the City of Houston really just wants you all to
17 understand what they're doing with their revitalization and
18 what they're doing with their disaster recovery funds.

19 DR. MUÑOZ: Cynthia, at least on these other two
20 that you're referring to that will be coming before us in the
21 future, I think it's more appropriate for us to learn as
22 they're before us rather than take this opportunity for some
23 sort of preemptive narrative on these prospective projects.

24 MR. OXER: Because a preemptive narrative, we can't
25 listen to anyway on anything that's not a consideration for

1 this agenda.

2 MS. BAST: Absolutely.

3 MR. OXER: And while I appreciate the members, I'm
4 from Houston, Metro Houston, so I drove over here too,
5 appreciate you being here, appreciate your interest in the
6 process. And of all the folks out there, there's a whole bunch
7 of those same colored shirts, does everybody want to talk or is
8 it just you? What I'm going to ask is whoever is going to
9 speak for the City of Houston and for the resident group, or
10 whatever you represent, if you could put yourselves together
11 and somebody represent whatever you want to say instead of
12 continuing to say it three or four or five times. We've been
13 through this rodeo before, and we would like you to consider
14 the time and effort that everybody has got into it.

15 MS. BAST: We have had that discussion, to be
16 respectful of your time. We have one person from the City of
17 Houston and the developer, and that's all we brought that
18 wanted to just very briefly give you an overview, that's all.

19 MR. OXER: Great. Happy to have them. Introduce
20 them and let's see what you've got to say.

21 MS. BAST: So we will have Stedman Grigsby from the
22 City of Houston, and Neal Drobenare from the NHP Foundation.

23 MR. OXER: Great. Thanks. And everybody remember
24 to sign in when you come up, just for our recorder's benefit.

25 MR. GRIGSBY: Good morning. As Cynthia said, my

1 name is Stedman Grigsby. I'm the division manager for the City
2 of Houston's Housing and Community Development Department. I
3 oversee the City of Houston's Hurricane Ike Disaster Recovery
4 Round II multifamily and non-housing programs which are funds
5 which have been made available to the city by the General Land
6 Office of the State of Texas.

7 The city's plans for our DR-II funds are to
8 implement a targeted comprehensive revitalization plan which
9 will concentrate investment in specific neighborhoods to create
10 areas of opportunity which would be stable, racially
11 integrated, diverse and economically robust, and to preserve
12 affordable housing within those communities. The Fifth Ward is
13 one such community which we have identified, and the renovation
14 of Cleme Manor is critical to our plan for the Fifth Ward.

15 This comprehensive revitalization plan was
16 developed over two years in conjunction with community
17 residents and organizations, fair housing advocates, affordable
18 housing development experts, a nationally recognized urban
19 planner, the General Land Office, and HUD. As a result of our
20 collaborative effort, we have found common ground with fair
21 housing advocates through our plan to transform historically
22 underserved neighborhoods of minority and poverty concentration
23 into high opportunity neighborhoods.

24 We will leverage DR-II dollars within areas where
25 previous current and planned public and private investment will

1 spark this comprehensive revitalization. Such public and
2 private investment in the Fifth Ward includes 14 separate
3 activities of various types which total approximately \$352
4 million. As a part of the General Land Office's Disaster
5 Recovery Round II program, an extensive fair housing review of
6 our plan was conducted and it has been determined that our plan
7 does affirmatively further fair housing.

8 HUD has also become aware of our plan, has reviewed
9 it at the highest levels, and they are very pleased with what
10 we have developed.

11 Thank you to the staff for allowing us to explain
12 our plan and for your time this morning, and I ask that the
13 Board support staff's recommendation regarding this matter.

14 MR. OXER: Good. Is there any comment or question
15 from the Board?

16 (No response.)

17 MR. OXER: Thanks.

18 MR. DROBENARE: Good morning. My name is Neal
19 Drobenaire. I'm the vice president of the NHP Foundation, and I
20 will be very brief.

21 The NHP Foundation is a national housing nonprofit
22 devoted to the preservation of affordable housing with a
23 portfolio here in Texas. We're very excited about this
24 project, in particular because we believe that this is a
25 neighborhood that has the opportunity to become a high

1 opportunity neighborhood, and one of the reasons it isn't, is
2 we've got this property which, in fact, dominates a section of
3 the Fifth Ward and its rehabilitation is necessary to set the
4 pace for private investment in the neighborhood of single
5 family and very small multifamily that surround it.

6 We recognize that this is a property that has had a
7 history of crime, and in fact, even had a nuisance plan put in
8 place by the City of Houston. We find that to be one of the
9 most compelling reasons to do this, to bring true professional
10 management, to put in the physical repairs, the cameras. We do
11 have 50 manned cameras, along with a consolidate plan with the
12 Harris County Sheriff and the Houston Police Department, to
13 make this a safe property. And we believe that if this
14 property is safe and crime is addressed, we'll have done a
15 major part of the crime issue for the community.

16 We're very excited about this. We believe Section
17 8 should be not just a warehouse for the poor but a launching
18 place where people can get ready for improving their lives
19 through not only this housing but services attached for it.

20 We appreciate the work that the staff has done to
21 really dig in and understand this neighborhood and understand
22 this plan and understand this property. Thank you for your
23 time, and I'll end here unless you have any questions for me.

24 MR. OXER: Great. Any questions from the Board?

25 (No response.)

1 MR. OXER: Okay. Thanks very much.

2 Stedman, I hope you'll pass along our best regards,
3 certainly mine, to Mayor Parker. She and I had an opportunity
4 to share a table at an event here not too long ago, and I
5 appreciate her interest in what we're doing and her
6 consideration for the effort that we go through because there
7 are deliberations that we have to do to make that fit in to
8 what the city is trying to do. So I hope you pass along our
9 best regards.

10 Is there any other comment? Yes, ma'am. Good
11 morning.

12 MS. WALKER: Good morning, and thank you for
13 allowing us to come and speak.

14 Dear Chairman Oxer, Board Members and Mr. Irvine.
15 Since we didn't get the letter to you, I'm going to read the
16 letter so we won't have to speak and everything. My name is
17 Debra Walker and I'm a TOP board member. Also, I chair the TOP
18 housing campaign with our organization.

19 MR. OXER: And TOP is?

20 MS. WALKER: Texas Organizing Project. We're a
21 grassroots membership driven organization, and we took the
22 fight on with the city Housing and Community Development to get
23 the monies to come into our neighborhood to revitalize for our
24 high opportunity areas.

25 MR. OXER: Good audience from what it looks like.

1 MS. WALKER: Thank you.

2 We are here today to speak on behalf of the members
3 of TOP.

4 Cleme Manor Apartments are a product of bad housing
5 policy from a bygone era. It is a 288-unit project based
6 Section 8 apartment development built 40 years ago in a place
7 and a manner that would not be permitted today. All of the
8 residents have extremely low income, many are single mothers or
9 elderly, and almost all are African American. It is one of the
10 largest government subsidized housing developments in Houston
11 today. It was poorly designed where it was built, has been
12 allowed to run down, and the current owner and management have
13 made a mess of property management. Cleme Manor Apartments
14 have been neglected for so long. The development has to be
15 fixed for the sake of the tenants and for the future of the
16 neighborhood.

17 TOP has worked closely with Mayor Annise Parker and
18 City Housing Director Neal Rackleff, HUD and fair housing
19 advocates to develop and secure funding for a plan to transform
20 the neighborhood around Cleme Manor Apartments, and two other
21 Houston neighborhoods into high opportunity areas. This type
22 of neighborhood transformation is completely unprecedented.
23 Hundreds of new and reconstructed affordable homes are being
24 rebuilt in the blocks surrounding Cleme Manor. Gentrification
25 is going full force just a few blocks of Cleme Manor in the

1 form of hundreds of new high end town homes at the edge of
2 downtown Houston.

3 The goal of the city, HUD, the neighborhood and
4 fair housing advocates and TOP is to get quality affordable
5 housing in the neighborhood so that the current residents can
6 enjoy the new opportunities and jobs that come with a
7 revitalized, diverse and integrated neighborhood. TOP will
8 continue to work with the developer of Cleme Manor Apartments
9 and the city over the coming weeks to ensure that things are
10 put in place to ensure that Cleme Manor is rebuilt right and
11 contributes to the revitalized community.

12 We know that TDHCA has compliance rules and
13 standards for apartments that receive housing tax credits and
14 that your staff enforces those standards. We will count on you
15 to do that over the years to come to ensure this rebuilt
16 project remains high quality.

17 For the sake of the tenants at Cleme Manor
18 Apartments, the neighbors, and our dreams for a new and better
19 community that overcomes past discrimination, TOP asks for your
20 support for the request before you to grant eligibility for
21 Cleme Manor Apartments for low income housing tax credits.

22 Sincerely yours, TOP, members of the Texas
23 Organizing Project. Thank you.

24 MR. OXER: Thank you.

25 Are there any questions from the Board?

1 (No response.)

2 MR. OXER: Other members of TOP, we appreciate you
3 being here. Obviously, we can pick you out of the crowd.

4 Are there any other questions, any other comments
5 on this item? Jean, I have one other question. This looks
6 like TDHCA will be putting money into a project that is not the
7 first money in, there is obviously a lot of money going in to
8 revitalize this area.

9 MS. LATSHA: That's correct. I think that was a
10 big part of our discussion. When we met with the City of
11 Houston and the applicant, it became pretty apparent to all of
12 us that there's some really significant revitalization effort
13 going on here, and it's already begun and there's plans to do
14 even more.

15 MR. OXER: So this is not a revitalization plan,
16 this is an execution and delivery on revitalization.

17 MR. IRVINE: It's attracting private sector capital
18 already.

19 MR. OXER: Great. Any other comment or question
20 from the Board?

21 MR. McWATTERS: Let me say this, Mr. Chairman.

22 MR. OXER: Yes, sir, Professor McWatters.

23 MR. McWATTERS: That was my question about it being
24 the first money in. But I would also like to commend Ms. Bast
25 for her letter she wrote on May 7. It was a very lawyer-like

1 letter, but given that I'm a lawyer, it presented a most
2 compelling rational objective case for this, and I appreciate
3 it, and hopefully it will serve as a template so people can ask
4 you for maybe a Word copy and they can just change the dates
5 and proceed from there. It was an excellent job and presented
6 exactly the concern of the Chair.

7 MR. OXER: Given attribution, do you get royalties
8 each time that letter is used, Cynthia?

9 (General laughter.)

10 MR. OXER: Anything else?

11 MS. LATSHA: No, except that I had the same
12 reaction, sir.

13 MR. OXER: Okay. There's a motion by Mr. Gann,
14 second by Mr. Thomas on item 3(c). All in favor?

15 (A chorus of ayes.)

16 MR. OXER: Opposed?

17 (No response.)

18 MR. OXER: There are none. Congratulations, folks,
19 and good on you for what you're doing over there.

20 What's the next one, Jean?

21 MS. LATSHA: One more appeal.

22 MR. OXER: Okay. Let's do Liberty right quick and
23 get that done.

24 MS. LATSHA: This is, again, an appeal of denial of
25 points on an application, Liberty Square and Liberty Village.

1 The points were denied under 11.9(e)(e) pre-application
2 participation. Applications are eligible for six points if
3 certain consistencies remain between the submission of a pre-
4 application and an application. This includes that the
5 application is participating in the same set-asides. This pre-
6 application was submitted indicating participation in the USDA
7 set-aside, and the full application indicated the same;
8 however, upon review, there was no evidence of any USDA funding
9 in this transaction.

10 Staff issued a deficiency and the applicant's
11 response was essentially that the development was eligible to
12 receive USDA financing, however, still no indication of any
13 actual USDA financing in the transaction. So basically the
14 ramifications of that are simply a loss of pre-application
15 points. The application is still eligible to move forward but
16 because it's not eligible to participate in the USDA set-aside,
17 basically there's an inconsistency between that pre-application
18 and the application submission because the set-aside changed,
19 and so staff denied six points under pre-application
20 participation.

21 During their appeal -- this was not during the
22 deficiency process but at the point of appeal, the applicant
23 produced a letter from Amegy Bank indicating that part of the
24 mortgage financing was going to be provided under this business
25 and industry loan from the USDA. We researched that loan a

1 little bit and discovered that this type of activity is not
2 actually eligible to be funded under that B&I loan program. I
3 think the applicant actually found the same. And my
4 understanding is that today they may be proposing yet another
5 way to have USDA financing in this transaction.

6 I believe they're going to try to receive funding
7 under an intermediary relending program where the USDA lends
8 money to a nonprofit, the nonprofit then lends that money to
9 the development. Staff has some reservations as to whether
10 participation in that program would qualify them to participate
11 in the USDA set-aside, but more importantly than that, this
12 almost feels like an extension of the administrative deficiency
13 process. It just keeps changing and changing, trying to get
14 their application to meet the requirements to participate in
15 the set-aside when it just simply never met them.

16 One thing I would like to point out, 10.902(d) of
17 the rules regarding appeals states that: While additional
18 information can be provided in accordance with any rules
19 related to public comment before the Board, the Department
20 expects that a full and complete explanation of the grounds for
21 appeal and circumstances warranting the granting of an appeal
22 be disclosed in the appeal documentation filed with the
23 executive director. Full disclosure allows the executive
24 director to make a fully informed decision based on a complete
25 analysis of the circumstances and verification of any

1 information that may warrant a granting of the appeal in the
2 applicant's or development owner's favor.

3 So staff recommends denial of the appeal.

4 MR. OXER: Any questions from the Board of Jean?
5 Motion to consider?

6 DR. MUÑOZ: Move staff recommendation.

7 MR. OXER: Motion by Dr. Muñoz to approve staff
8 recommendation. Do I hear a second?

9 MR. McWATTERS: Second.

10 MR. OXER: Second by Professor McWatters.

11 Good morning, Barry.

12 MR. PALMER: Good morning. My name is Barry Palmer
13 with Coats Rose, and we're representing the applicant.

14 In this case we don't disagree with some of Jean's
15 comments on where we are. This application applied in at the
16 at-risk set-aside as a USDA deal. The QAP and the rules at
17 this point do not require that you prove up that you have a
18 USDA commitment at the time that you apply, and so we're asking
19 for time to prove up that commitment at a later date.

20 In the letter from Mr. Irvine, when he denied the
21 appeal, he stated that if we had information or confirmation
22 from the USDA showing that the development is indeed eligible
23 to receive the USDA financing, that he would be willing to
24 consider that information and revisit this appeal. And we've
25 had some further discussions with the USDA and have talked to

1 them about this program that Jean mentioned that the project
2 would be eligible for. So what we're asking for today is not
3 for the Board to overrule staff here but to table this appeal
4 to give us time until the next Board meeting to present further
5 information to the executive director, as he suggested he would
6 consider in his letter, from the USDA that this project is, in
7 fact, eligible for USDA financing.

8 MR. OXER: Any questions?

9 MR. THOMAS: Yes.

10 MR. OXER: Mr. Thomas.

11 MR. THOMAS: I'm confused. Do our rules require
12 unequivocally showing that the USDA approval existed as part of
13 the application process.

14 MR. OXER: Jean.

15 MS. LATSHA: I can't say that it's explicitly
16 stated in the rule that an applicant should submit X, Y or Z to
17 prove up that they are eligible to participate in the USDA set-
18 aside, but it's logical to assume that if someone wants to
19 participate in the set-aside that their application should
20 indicate that they are eligible to participate in that set-
21 aside. Otherwise, every applicant could simply check these
22 boxes, participate in that set-aside inevitably and drag out
23 this administrative deficiency process until we simply couldn't
24 manage the cycle.

25 MR. THOMAS: So does that Amegy letter attached as

1 Exhibit 3 satisfy that requirement?

2 MS. LATSHA: No, because that is the B&I loan that
3 they're actually not eligible to receive. I believe that when
4 Mr. Irvine wrote his letter, basically what that letter
5 indicated was should we find that they're actually eligible for
6 that B&I loan, since that was documentation that was submitted
7 in their appeal, that we'd be willing to consider that as
8 evidence that they are eligible to participate in the set-
9 aside. But I don't think that they're still making that
10 argument. Like I said, our own research indicates that they're,
11 in fact, not eligible for that funding.

12 MR. THOMAS: Period.

13 MS. LATSHA: That's right.

14 MR. THOMAS: These are fundamentally opposite
15 universes. I'm trying to reconcile with what you said first
16 with what you were told by the applicant's representative and
17 now what you're confirming here.

18 MR. OXER: Something isn't gelling. Come on,
19 Barry. Say your name.

20 MR. PALMER: Barry Palmer. You asked Jean is there
21 something in the rules that says you have to have your USDA
22 commitment at the time of application, and I took her answer to
23 say, well, it's logical that you would, not that the rules say
24 that. And so if that's what the rule should be going forward,
25 then let's change it in next year's QAP and say that you have

1 to have your commitment at the time you apply. But this year
2 it doesn't say that. And so we're proving up after the fact
3 that we're eligible for the USDA financing because we weren't
4 required to have the commitment at time of application.

5 MR. THOMAS: But our staff has just told us through
6 Jean that you will not qualify for that.

7 MR. PALMER: For the particular program that the
8 Amegy Bank letter evidenced that they would provide funding
9 for. But there is another USDA program that the project would
10 be eligible for that we could prove up that this project is
11 eligible to be financed, and then if it were to be awarded
12 credits, it would be subject to the project being financed by
13 USDA financing and we would have to prove that up over the
14 course of moving forward towards the closing.

15 MR. THOMAS: So, Barry, thank you. That helps
16 clarify it in my mind which is, I think, exactly was Jean was
17 saying, that there's a concern that for a \$5.6 million project,
18 I think, wouldn't you have wanted to have that so that staff
19 could verify? Barry, wouldn't you, just in your due diligence,
20 wanted to provide that to the staff since, even though it may
21 not technically say that it had to be, where you could show
22 that as part of the awarding that you had everything lined up
23 so it didn't look like we were just rolling this out for months
24 at a time?

25 MR. PALMER: Well, I would say it's analogous to

1 the commitments of local government funding. All of these
2 applications that you have before you have put in points that
3 they're going to get local government funding, but they're not
4 required to provide those commitments until after they get an
5 allocation. Sometime in September they've got to prove up that
6 they actually have the commitment. And the reason it's
7 structured that way is that local governments don't want to
8 actually commit money to projects unless they know they have a
9 tax credit allocation. And that would be the same problem here
10 getting a USDA or even a FHA commitment for a project before
11 you have a tax credit application.

12 MR. THOMAS: I'm having a hard time seeing that
13 analogy stick, honestly.

14 MR. OXER: And for the ones that are local
15 government financing, the recognition of the commitment in the
16 application before it's proved up and the funds are available
17 is evidenced in what way, Jean?

18 MS. LATSHA: That the applicant has, at minimum,
19 applied for the funding and that the funding entity recognized
20 that.

21 MR. OXER: There's some sort of documentation that
22 says they're qualified, capable, and the entity would consider
23 this as they go forward.

24 MS. LATSHA: And not only that they are considering
25 that application but that they will make a decision on that

1 application by September 1. So that if staff were to award
2 applications that indicated points for commitment from a local
3 political subdivision and then that commitment fell off, we
4 would have ample time to reallocate those tax credits.

5 The idea that you wouldn't have to prove
6 eligibility for a set-aside, an at-risk set-aside, a USDA set-
7 aside, nonprofit set-aside, kind of guts the idea of the set-
8 aside in the first place. This determines which applications
9 you're competing against, it drives our allocation process when
10 we make determinations for awards at the end of July.

11 MR. OXER: This is speculative at this point, but
12 is there anything we can think of to do to clarify that as we
13 go forward? Because what I can see is every rural application
14 just checks that box.

15 MS. LATSHA: Exactly, which is why this situation
16 is problematic. That's precisely what happened here: they
17 checked a box, said sure we'll get USDA financing when we need
18 it, but there's no assurance that that's going to happen at all
19 at this point.

20 We could certainly throw some additional
21 documentation in the manual that makes it clear what needs to
22 be submitted. I can tell you, though, every other USDA
23 application that we received, because they do have that USDA
24 515 or 514, 516 financing in place, it's all there. They
25 submit it because it makes sense to submit it, it's part of

1 their financing structure.

2 MR. OXER: That they have obviously been working on
3 before they get there, because if you work with the USDA and
4 you're trying to get a project under the 2014 allocation and
5 you haven't gotten the commitment yet, it's going to be 2018
6 before you hear anything.

7 MS. LATSHA: And maybe so, but I think what it
8 speaks to also is that all of these applications, whether
9 they're in the USDA set-aside, at-risk set-aside, any
10 application, a threshold requirement is submitting
11 documentation that indicates the financing structure of the
12 development. And so those that have USDA financing in that
13 structure, it's submitted as part of the application under
14 those threshold requirements, and so it's simply already there.

15 For those that are competing in the USDA set-aside, staff
16 looks at this, they say we have the box checked over here.
17 Over here under the financing requirement, sure enough, there
18 is some USDA financing in this deal.

19 MR. OXER: Any other questions? Is there any other
20 comment? Barry, anything else you want to add? Make it short,
21 60 seconds.

22 MR. PALMER: Okay. In view of the fact that the
23 QAP and the rules don't say when you have to prove up your USDA
24 financing, all that we're asking is that we have the ability to
25 the next Board meeting to show the executive director that the

1 project is eligible for USDA and we would agree to prove it up
2 with a commitment no later than the time that commitments are
3 due for local government financing, so that it would not drag
4 out for a long period of time.

5 MR. OXER: What you're looking for is a stay of
6 execution.

7 MR. PALMER: We're looking for a chance to prove up
8 that we're eligible for the money. In view of the fact that
9 there's not a requirement as to when you prove it up in the
10 QAP, we're asking for it to be considered the same as local
11 government financing.

12 MR. OXER: And I assume, Jean, you're taking notes
13 about any modifications we're making next QAP so that we can
14 take this out of the quirk list.

15 MR. THOMAS: How long have we been asking for these
16 extensions in various communications with the staff to get to
17 this forum already?

18 MS. LATSHA: I believe the first deficiency was
19 issued sometime in April -- March 31.

20 MR. THOMAS: Thank you.

21 MR. OXER: Is there any other public comment?

22 Donna.

23 MS. RICKENBACKER: Donna Rickenbacker with Marquee
24 Consultants.

25 First, with respect to the deficiencies, I'm not

1 questioning what Jean is telling you with respect to the
2 deficiencies. This is kind of a unique situation with USDA.
3 First, there is nothing in the rules that require us to prove
4 up USDA financing at the time of the application submittal
5 deadline. However, what's happened here is that you've got
6 conflicting statutory rules and USDA trying very much, have
7 been proactive in working with us to identify a USDA loan
8 program that would fit for this project.

9 As it is right now, under the Texas Government Code
10 we're not allowed to have a 538 loan in the deal. So the only
11 other rural housing loan programs that would be available would
12 be 515 and 521. Those loan programs are effectively inactive.

13 They have been for a while, to the best of my knowledge, and
14 based on discussions with USDA, it doesn't appear that those
15 programs are going to be funded any time in the near future.
16 So the USDA set-aside transactions that moved forward this year
17 that were able to prove up USDA financing in their deal at the
18 time of applications were those that already had a 515 or a 521
19 loan already in place that they were then going to refinance
20 and move forward in that set-aside.

21 We're in a situation where this would be new
22 dollars, so identifying those new dollars, we can't use
23 anything that's under any of the rental housing programs
24 because there's nothing available except 538, which we're not
25 eligible, if you will, to apply for because the Texas

1 Government Code forbids us from using that housing loan
2 program. So USDA has been trying to find a program that we
3 could qualify for, and it has taken a while. Jean is correct,
4 it has taken us a while to identify what that is.

5 USDA has identified over the last few days a
6 program, this intermediary relending loan program that they
7 believe this project would qualify for. There are two
8 intermediaries that do serve Limestone County which is where
9 Groesbeck is located. All we're asking for is some additional
10 time to get to the executive director evidence that this
11 particular project does qualify for that USDA financing.

12 DR. MUÑOZ: I'd like to withdraw my motion and move
13 to table.

14 MR. OXER: Professor McWatters, you seconded.

15 MR. McWATTERS: I concur.

16 MR. OXER: Okay. With respect to item 3(d), the
17 motion recalled, the second recalled. There's a motion now by
18 Dr. Muñoz to table the item until our next meeting on the 26th,
19 three weeks away. Do I hear a second?

20 MR. McWATTERS: Second.

21 MR. OXER: Second by Professor McWatters. Nice the
22 way that worked out.

23 Any other comment, Barry? Okay. All in favor aye.

24 (A chorus of ayes.)

25 MR. OXER: Opposed?

1 MR. THOMAS: No.

2 MR. OXER: One no registered by Mr. Thomas.

3 Now we're down to the last issue, so everybody sit
4 still while I read this. The Governing Board of Texas
5 Department of Housing and Community Affairs will go into closed
6 session at this time, pursuant to the Texas Open Meetings Act,
7 to discuss pending litigation with its attorney under Section
8 551.071 of the Act, to receive legal advice from its attorney
9 under Section 551.071 of the Act, to discuss certain personnel
10 matters under Section 551.074 of the Act, to discuss certain
11 real estate matters under Section 551.072 of the Act, and to
12 discuss issues related to fraud, waste or abuse under Section
13 2306.0739(c) of the Texas Government Code.

14 The closed session will be held in the anteroom
15 immediately behind us. The date is June 5, 2014, the time is
16 11:37. We expect this to be a relatively short executive
17 session, so it's 11:37 now, we expect to be back by quarter
18 after 12:00. See you then.

19 (Whereupon, at 11:37 a.m., the meeting was
20 recessed, to reconvene this same day, June 5, 2014, following
21 conclusion of the executive session.)

22 MR. OXER: Let's get back in the game here, in the
23 interest of time. I know Mark is on his way. The Board is now
24 reconvened in open session at 12:22. We heard advice from our
25 general counsel. In closed session we made no decisions, we

1 received advice from our counsel.

2 MS. LATSHA: I believe we're back to Oak Grove
3 Village, Marble Falls. Staff's recommendation, in general, was
4 to deny the appeal of the scoring notice where staff denied
5 points under commitment of development funding by a local
6 political subdivision.

7 I didn't know if you were wanting to hear some
8 additional comments from me or if you'd rather hear from
9 Claire.

10 MR. OXER: I think what we're going to do, we know
11 the staff position and there's a current motion that has been
12 tabled. There's some conversation we need to have about the
13 questions and the interpretation by members of the Board here
14 on this particular item. So I'll ask if there's any member of
15 the Board who has a question of Jean or something you want to
16 say, and Robert, I know you do.

17 MR. THOMAS: And it may not be material. One of
18 the things you provided us before, Barbara, that gives us the
19 boundaries here that says the submission of these forms
20 occurred after the deficiency response deadline on Monday,
21 April 12, 2014 and it was this late submission that caused
22 staff to deduct the forms pursuant to the rule, and that's on
23 page 2 of 3 in the lower third, the second to last paragraph.

24 MS. LATSHA: That was a different scoring item.
25 Staff denied points under local political subdivision funding,

1 but then we also imposed, basically, a penalty of five points
2 for a late submission for a deficiency response. That five-
3 point reduction is not being contested by the applicant.

4 MR. OXER: Any other member of the Board have a
5 comment or question? Tom, you had, I think, a pertinent
6 comment, and while we respect the position that the rural
7 communities have a limited source of human capital to apply to
8 these situations, there's still options that they have.

9 MR. GANN: I was wondering, and I realize that you
10 are on both boards or at least two boards, and that's the
11 conflict. And I know you get paid by one of them so you do get
12 some money from one of these entities as you work as executive
13 director or whatever. Why didn't you resign one of those two,
14 because that's all you would've had to have done in order for
15 this not to be a conflict at all.

16 MR. MAYFIELD: Mark Mayfield, Texas Housing
17 Foundation.

18 I was under the impression that the recusal process
19 is how it was handled. I was told by legal that that is how it
20 was handled. I recused myself.

21 MR. OXER: And let me ask a clarifying question on
22 that, Mark, because this is really important. When you say
23 legal, that is your attorney, not our attorney.

24 MR. MAYFIELD: Correct. That is correct. So that
25 is the process that was taken. My understanding is that is the

1 law. I mean, I'm not a lawyer but that was my understanding,
2 and again, in small communities you wear a lot of hats.

3 MR. GANN: I'm from one of those small communities
4 myself, so I understand that, but I've also had to resign a few
5 things just to be on this Board, and I just wondered why that
6 was not considered, I guess.

7 MR. MAYFIELD: Well, frankly, I've had to join a
8 lot of things to where public housing authorities would not be
9 looked at in the way that they're looked, and this industry
10 battles an image, and even with the creation of the Texas
11 Housing Foundation we created with the purpose of not using
12 that name. The Texas Housing Foundation was used because
13 affordable housing is critical, but we have a tremendous image
14 problem, primarily because of public housing, and that was what
15 we have tried to get away from. The Texas Housing Foundation
16 receives no funding from any tax levying body. We are
17 completely self-sustaining, self-supportive. But I've had to
18 sit in many roles, elected roles and everything else, to bring
19 credibility to our industry to the elected forces because
20 public affordable housing has, as you very well know and hear,
21 the connotations of being negative and not really what it
22 stands for. I've spent my entire career trying to change that.

23 MR. GANN: I'm in that same boat because I've also
24 had projects. All right? I am a developer and real estate
25 agent at the same time, so I understand that comment. I still

1 said you could have resigned one of those two and solved this
2 whole problem from the beginning. I take your comments to
3 heart.

4 MR. MAYFIELD: One thing, I'm not a developer. I
5 know I get that hat put on me a lot. This is a perfect example
6 of public-private partnerships which I think is how it's going
7 to have to happen. Thank you.

8 MS. PALMER: Mr. Gann, can I just add?

9 MR. OXER: Hold on a second, Claire.

10 Barbara, what I would like, if you would, could you
11 restate the decision we have to look at here, or what we're
12 looking at from a legal standpoint, just a legal clarification,
13 the two issues that seem to be in conflict, from their
14 perspective, and then what we're trying to decide on? Because
15 there's the financing issue and there's a recusal process to
16 allow for financing for this, for a dozen other opportunities
17 out there, and while I understand how that operates and there's
18 a clear provision that the recusal allows that to occur, what
19 we're trying to look at here is the QAP, for a lot of reasons,
20 is the point allocation process, it doesn't have an impact on
21 the financing. So can you have some comments on that, Barbara?

22 MS. DEANE: Well, let me just say, as I said to
23 Claire earlier, I don't agree there's a conflict itself between
24 Chapter 171 and the rule because one deals with whether or not
25 they could contract with and provide financing, and it's not

1 for me to say, but there appears to be absolutely nothing wrong
2 with the contract they entered into or the agreement to give
3 funding or Mr. Mayfield's vote, nothing absolutely wrong with
4 that. But our issue deals with whether or not they get points
5 under the QAP, and so to me, there is not a conflict there as
6 such because getting points is different than whether or not
7 you can actually give funding. I understand the concern that
8 you might consider it futile to give the funding if you can't
9 get the points. It's kind of a different issue, though, than
10 whether or not there's a straight up conflict between the
11 statute and the rule.

12 I will say that -- and this was kind of the
13 question I posed to Claire earlier -- I do understand that
14 there was a purpose for which the rule -- the main purpose, not
15 perhaps the only purpose, but the main purpose for which the
16 rule was enacted was to deal with the issue of governmental
17 entities creating their own entity and then lending itself
18 funds which is, granted, a little bit different situation than
19 we have here. I think the rule itself, as it's stated, is
20 pretty clear and I don't think it's in conflict with the
21 statute. I do think that if the Board wanted to recognize and
22 apply that statute in an extremely limited context, they could
23 consider that from a policy standpoint, but I don't think that
24 there is a legal conflict in which the statute completely
25 overrides and nullifies the rule.

1 Is that helpful?

2 MR. OXER: Claire, do you have a comment?

3 MS. PALMER: I do. Claire Palmer, representing the
4 developer.

5 First, I wanted to address what Mr. Gann had
6 brought up, and that is I wasn't the attorney that gave that
7 advice, it wasn't the developer attorney reading the QAP and
8 giving advice on how to handle the situation, that as the EDC
9 and the City of Marble Falls attorney giving Mr. Mayfield
10 advice on how to handle this situation which is who he took it
11 to, rightfully so.

12 They could have played this system, they could have
13 had the EDC give the money to the city and the city then grant
14 the money. This is a developer who is so incredibly honest and
15 transparent that they didn't want to play a game. If they had
16 thought through the whole process and said, oh, well, maybe
17 we're going to have a problem here, they could have played the
18 system and figured out a way to get the money to some other
19 entity and get the 14 points. The fact is they believe they
20 played within the rules and they believe that they solved the
21 related party issue.

22 And frankly, the QAP on local government support is
23 where the points category is; you can't separate local
24 government support from the points categories. When the local
25 government agrees to provide certain levels of support, that is

1 a points category, so for me, the division between yes, they
2 could provide a resolution to give local support but we have
3 the authority to decide how they get points, to me, is really
4 such a narrow split in what the rule said as to be a little bit
5 disingenuous. I mean, this is a points game. To get a
6 resolution that's going to give support and have Mr. Mayfield
7 properly recuse himself and call that acceptable under the rule
8 but we're not going to give points for it makes the resolution
9 of local support useless because 9 percent tax credits is a
10 points game.

11 MR. OXER: And I understand where you're taking
12 that, but to say that it's a violation of the rule, it's not a
13 violation of the law. The QAP is the rule.

14 MS. PALMER: Right.

15 MR. OXER: Now, the whole discussion we had, and I
16 think most everybody in here who was a party to this, will
17 recall that last year we had this extended discussion, heated,
18 voluminous and extended, that if the local government entity
19 provides an opportunity to loan money to somebody else, the
20 whole purpose of the tax credit program is to provide
21 incentives for private sector participation in these financing
22 mechanisms.

23 MS. PALMER: Right.

24 MR. OXER: And having a public entity creating an
25 entity, loaning itself money, would immediately give an unfair

1 advantage to the public housing authorities -- which, if you'll
2 recall, we went through an extremely heated conversation about
3 that -- and the purpose of that rule was to simply separate
4 that issue, simply separate the issue.

5 MS. PALMER: I completely agree.

6 MR. OXER: And now we're back to the issue of does
7 it violate the law of Texas. No. Does it qualify for points
8 under the QAP? There's nothing in the law that says we're
9 obliged to give points for doing something that the law doesn't
10 call illegal.

11 MS. PALMER: But you are obligated to give points
12 for funding sources from local government because in the
13 statute that's one of the categories that's listed in the
14 statute. It doesn't say it can't be from a related party. The
15 language in the QAP has restricted what's even in your own
16 statute about funding from local governments. We're definitely
17 talking about splitting hairs, and if we want to come up with a
18 compromise solution, I can give you half a dozen of them.

19 The fact is we came with an argument that I think,
20 in my opinion, should win the day here and would probably win
21 the day in an attorney general's opinion. But if you want to
22 say we recognize you did this in good faith and we'll give you
23 an opportunity to go to the City of Marble Falls where Mark is
24 not a related party and get the funding, we'll be happy to do
25 that. We've already talked to them and we know that we could

1 get the funding from some other source. It's not that we can't
2 get the funding from some other source, it's just that we
3 believe we did it correctly. But if you want an option here,
4 that's certainly an option.

5 MR. OXER: That's an interesting crease in this
6 because we just got finished offering somebody an opportunity
7 to have three weeks to go restate their financing. I've got to
8 tell you, this whole related party issue, it's a third rail,
9 somebody is going to get fried on this pretty soon if we're not
10 careful about this.

11 Jean, do you have a comment right quick, a thought?
12 We're looking for creative solutions to this, and frankly,
13 that's the best one I've heard. If you've got another option
14 to go get money for this, Claire, we don't have to make this
15 decision, or we keep the rule in place and you can get the
16 project going. Because we certainly want, Mr. Mayfield, to
17 support those projects, but we've also got to maintain some
18 continuity in our rule and some structure.

19 I sat here two years ago and told some veterans,
20 who sat there with tears in their eyes and tears in mine, we're
21 not going to fund your project because you didn't follow the
22 rules. Now, our interpretation of the rules, that's basic
23 policy, and we always wind up in these situations where we're
24 looking at a crease and we're trying to do the best thing for
25 the State of Texas.

1 So what I'm trying to do here is find a path
2 through this that will support your project that will maintain
3 the integrity of our QAP, while in the interim between now and
4 the time we'll modify it for the QAP in 2015, we can kill this
5 little quirk because the damn things keep showing up all the
6 time, take another one out and iron this wrinkle out of this
7 cloth.

8 Hi, Jean. Welcome back.

9 MS. PALMER: Jean Latsha, director of Multifamily
10 Finance.

11 I do see some problems with allowing this applicant
12 to substitute this financing. Basically, we've said this a lot
13 too, we review these applications as they are submitted on
14 March 1. To simplify this a little bit, let's say someone did
15 not submit a resolution from a local government indicating
16 support for another scoring item, and basically what's
17 happening here is that applicant would simply say: Well, I can
18 get the support, I just can't get it until June 5. And we have
19 consistently said that's not acceptable.

20 And that's essentially what would be happening
21 here, we would say you submitted something that was not
22 eligible for points, well, that's great, I can go out and get
23 something that is eligible for points now. It's something that
24 would, again, make the cycle a bit unmanageable. I don't
25 really have another comment except for that, that that would be

1 presenting some very new and different information quite a bit
2 after the application deadline.

3 MR. OXER: Your point is made.

4 MS. PALMER: Wait, wait.

5 MR. OXER: Relax, Claire. Nobody has called for a
6 question, nobody is going anywhere on this.

7 MS. DEANE: Mr. Chair, I was just going to offer,
8 without specifically saying it might be substitute financing,
9 if you want to put it on the June 26 agenda, legal would be
10 glad to work with Claire and with them to look at possible
11 legal options and other possible legal avenues, may or may not
12 include substitute financing, if that would be a problem. But
13 I'd be glad to work with them and see if we can find some way
14 around -- not way around but some way to work through this
15 legal issue, if that's the Board's desire.

16 MR. OXER: Right. And, Mark, we recognize that
17 you've been at this for several years, and we're not here to
18 say no, and we've had this conversation before, we're not
19 looking for projects, we're looking for money because there's a
20 whole lot of projects competing for that money and we've had to
21 create some way to have discriminating decision-making so we
22 can select those. So what we're trying to figure out is if
23 there is a way to make that happen.

24 Now, I sort of like the idea that we table this
25 one, as I telegraphed everybody up here on the Board, table

1 this one until Barbara can get in the game to see if we can
2 figure out a path through this, but if you can't by the time
3 you get here in three weeks. Where are you at, Jean?

4 DR. MUÑOZ: Jean, before you indicate where you're
5 at, let me indicate and telegraph where I'm at. What's to
6 prevent this, were this to be -- and I'm the one who made the
7 motion earlier to table -- what's to prevent this from, as Jean
8 sort of explained, become a precedent for others who fail to
9 submit documentation that is appropriate and compliant with the
10 QAP from simply making the same argument?

11 MR. OXER: And I have an answer to that.

12 MR. THOMAS: I would like to have just a
13 discussion. I'd like us to get this out, I'd like to hear
14 this, I'd like to hear where Mark is going to go, and I'd like
15 to piggyback on their expertise without necessarily answering
16 but getting those issues out there, if that's okay with the
17 Chair.

18 MR. OXER: It's absolutely all right with me, but
19 the answer to how this would not set a precedent would be to
20 say we make an exception to deal with this and then correct the
21 QAP with explicit connotation in the record that we were trying
22 to get through this maintaining the integrity of the rule.

23 Did you have a comment, Jean?

24 MS. LATSHA: The only other comment I would make is
25 this financing that is in this deal, in this format, I would

1 say actually is not only acceptable but incentivized by another
2 point item. This affects their ability to get points under
3 leveraging from private, state and federal sources, it
4 absolutely counts towards those points. It simply doesn't meet
5 the requirements of the rule under this specific provision.
6 That would be my only other comment.

7 MR. OXER: Mark, did you have a comment? Because
8 Robert just said you did.

9 MR. THOMAS: Well, he was trying to touch.

10 MR. McWATTERS: I'm not sure if I did, but I'm
11 trying to think through this, and if I was the attorney in
12 Marble Falls and Mark walks in and says I have this problem,
13 and you look at the Local Government Code and you determine,
14 oh, there's a recusal process here, and then it's oh, great,
15 let's do that. And then if someone even bothers to look at the
16 QAP but they review it and they see the provision, and I think
17 it's not irrational or non-reasonable for someone to conclude
18 that the recusal is somehow incorporated by reference into
19 that, that that surely must be part of the QAP if it's part of
20 the Local Government Code. I'm not saying it necessarily has
21 to follow, I'm just saying that it seems to me to be reasonable
22 that that could be an approach a lawyer would take.

23 So I would say this is probably a little bit
24 different than the firm date because here there's some
25 ambiguity which I could see, as a lawyer, making that mistake

1 also. And although I completely agree we ought to have a
2 rules-based approach to this, it would not seem unreasonable to
3 bump this for three weeks and see if a solution can be
4 determined, simply because, again, I can see how we got to this
5 point. No one was acting in bad faith, no one was skirting the
6 rules, this was no wink and a nod to get around the policy of
7 recusal and the like.

8 MS. BINGHAM ESCAREÑO: I have just a comment about
9 that, and it's just a question and it may be rhetorical or it
10 may be cleared up. I've been on the Board for a while, what we
11 hear a lot is how helpful staff is, that whenever there are
12 problems or whenever somebody hits a bump, that staff is always
13 there and willing to help out. And so I'm following your
14 hypothetical, Mark, about Mark goes to Marble Falls and says,
15 Here's this issue. And the lawyer looks at the law and says, I
16 think if we do the recusal everything will be fine. But at no
17 point it ever occurs to anybody to pick up the phone and call
18 staff and say: We just want to check on this; our legal
19 counsel in Marble Falls is saying I'll be covered by the
20 recusal, or maybe his representation here. But anybody to call
21 staff and just say: We're going to be counting on these
22 points, it looks like we're going to meet the criteria for
23 them, is there anything in this whole related entity or in the
24 QAP that might get in the way of that. And I think that's
25 where I'm kind of stuck.

1 I'm also a little stuck on making an exception or
2 extending a timeline, but I'm open to it. I think I'm like the
3 Chair, I'd like to hear a good idea around it, because I agree,
4 I don't think the intention was necessarily bad. But these are
5 points, and even though it's hard to swallow when people talk
6 about it being a points game because I don't like to think
7 about it as a game.

8 MR. OXER: That tells us that you're trying to
9 "game" the system.

10 MS. BINGHAM ESCAREÑO: Bad taste in my mouth.

11 MR. OXER: That was what really irritated us last
12 year about the gamers.

13 MS. BINGHAM ESCAREÑO: That's it.

14 MR. THOMAS: You made the motion to table, and my
15 concern, piggybacking exactly what you just said, Leslie, is
16 I'm really --

17 DR. MUÑOZ: The motion on this one.

18 MR. OXER: To table until we came to this point.

19 DR. MUÑOZ: This was your motion to table, seconded
20 by Mark, and that's what I voted no to.

21 MR. OXER: What you voted was to table until after
22 we take it back up, which is now.

23 MR. THOMAS: Okay. Thank you.

24 My concern is just that you all, this Board and
25 this staff and this interested community, has been grappling

1 with these issues for so very long. Maybe it's the lawyer
2 lines, along with Mark, I see that this is something that was
3 just not anticipated, this was not the related party issue that
4 we voted for in this QAP, it just was not.

5 But moreover, I'm very, very concerned that
6 sometimes we allow the QAP to jam up the process, to be used as
7 an absolute brick wall when, in essence, we want this community
8 to be poking holes. We want them to find, not to game any
9 system, but to find ways to provide the services, as a matter
10 of public policy to our state. We want developers, we want
11 cities and housing authorities to figure out ways, in these
12 complicated, bureaucratic messes that we all have to play
13 within, to make it work.

14 My concern of reading the rules so narrowly, we're
15 either going to go back to where we were before where our QAP
16 is so thick, that we're so rule-based that we now have
17 conflicts within our own rules, which is inherent, or the flip
18 side -- which I think we're going to have to end up -- and
19 that's having consistency in our Board, consistency from our
20 staff, establishing precedent, being reminded of that
21 precedent, but making judgment calls from here, and that means
22 sometimes not kicking it down the road and asking folks to come
23 back and figure out how to find another funding source, which
24 you're going to jeopardize potentially other points and then
25 make our staff feel like there's never an end point, they can

1 never move on because they're going back.

2 So my concern is simply that we recognize that we
3 have a unique circumstance here that did not, at least as I
4 understood it in my limited context of approving these QAPs, I
5 think of related party a someone that is getting a direct
6 benefit, or as we talked about it globally, an entity that was
7 basically double dealing, giving themselves an advantage over a
8 private entity. That was the big point. But moreover, I think
9 we need to be prepared to make tough decisions up here and
10 sometimes not kick it down the road and tabling.

11 MR. OXER: And I completely concur. There is a
12 certain amount of ambiguity on this, as Mark has pointed out,
13 and the responsibility of this Board is to make policy
14 decisions, and there comes a time, it's knowing when to
15 override the rules, and while we have those and we still try to
16 protect the integrity of those rules but it's also knowing when
17 to override them.

18 I'd love to see this thing funded. You'll have a
19 chance here in a second, Mark, don't worry. We're way away
20 from being finished on this, don't worry. I'd like to see a
21 way to fund this, to make this work, but with the specific
22 record pointed out that this is a unique circumstance and if
23 that were to be the case, it's not a precedent or something to
24 be looked on as a precedent for using this in the future, this
25 is a wrinkle that we ironed out of this larger cloth so that we

1 can get past this and support a project that we recognize has
2 merit and value in that community.

3 That said, at this point we've got to come up for a
4 reason -- and I think Robert has just identified that reason --
5 kind of come up with a reason why we oppose staff
6 recommendation. The motion that's currently on right now, on
7 the table --

8 DR. MUÑOZ: The motion, I thought, was to table it
9 until further in the meeting.

10 MR. OXER: Correct.

11 DR. MUÑOZ: There's not been a motion.

12 MR. OXER: We have now taken it back up. The
13 motion was to table the item until after executive session so
14 we could hear counsel and take it up again which is what we're
15 now doing.

16 MR. THOMAS: So that means that there's no motion.

17 MR. OXER: Currently there is no motion applying to
18 this item, so we're starting clean on where we're going to go
19 with this for comment. Is that a correct statement, Counsel?

20 MS. DEANE: Michael, you're taking the minutes. My
21 recollection is I'm not sure if we actually took a vote to
22 table.

23 DR. MUÑOZ: We did not.

24 MS. DEANE: So it would probably be better to go
25 ahead and pull back, if that's your desire, to pull back the

1 original motion and second and propose an alternative motion,
2 if that's what you desire to do.

3 MR. OXER: My notes were that we tabled. There was
4 a motion by Dr. Muñoz, second by Mr. Thomas.

5 DR. MUÑOZ: It would have been voted on.

6 MR. THOMAS: The motion initially by Dr. Muñoz was
7 to accept staff recommendation, I then seconded. Dr. Muñoz
8 then withdrew his motion and inserted his motion to table.

9 MR. OXER: We voted to table until after executive
10 session, so that's where we're at now. So now we don't have to
11 vote to take it back up. Bear with us, people, this is one of
12 those things we're going to have to deal with. So now we've
13 taken it back up, so now, since the original motion was
14 rescinded, we are starting with a clean slate on the
15 consideration by the Board for this item. Everybody understand
16 where we're at? You agree with that, counsels?

17 Now, anything else, Jean?

18 MS. LATSHA: No. Staff's recommendation is the
19 same, and I think that we've stated position pretty clearly.
20 The only thing, if there is going to be direction for staff to
21 consider documentation at this point in the game, I would only
22 ask that that direction be pretty clear because this scoring
23 item is complicated, it takes several different dates into
24 consideration. There is the initial scoring item that is based
25 on the amount funding in the transaction, then there are

1 additional points that are awarded for an actual commitment
2 from the funding entity that is supposed to be in the form of a
3 resolution dated before February 28, and there is an additional
4 point awarded dependent upon the form of that financing.

5 MR. THOMAS: My motion is to deny staff's
6 recommendation which, if I understand correctly, would allow
7 those 14 points to stand.

8 MR. OXER: And to not table it but to deny staff
9 recommendation.

10 MR. THOMAS: Not table it for all of the reasons
11 that staff just said and that Dr. Muñoz, Ms. Bingham, Mr.
12 McWatters indicated were potential concerns. So if I
13 understand it correctly, if we do not accept our staff's
14 recommendation -- which is a very rare and very serious
15 occurrence -- if we move not to accept, those 14 points would
16 still be awarded, the project would be moving forward. Do I
17 understand that correctly?

18 MS. LATSHA: As far as an ultimate recommendation
19 for an award, I couldn't speak to that because there are some
20 other point reductions on this application.

21 DR. MUÑOZ: It's just the 14 points, Jean.

22 MR. THOMAS: The 14 points.

23 MS. LATSHA: Yes.

24 DR. MUÑOZ: The answer was yes.

25 MR. THOMAS: So then my motion is to deny or not to

1 accept staff's recommendation, and therefore, the 14 points
2 would be awarded and the staff would decide how the rest of the
3 points fall or do not fall, but this issue would be behind us.

4 MS. DEANE: That would be to grant the appeal,
5 basically.

6 MR. THOMAS: Well, I'm just reading the resolve:
7 The applicant's appeal of the scoring notice of Oak Grove
8 Village is hereby denied. I would like to not have it denied.

9 MS. DEANE: You're granting it.

10 MR. OXER: You move to grant the appeal.

11 MS. DEANE: As to the 14 points only.

12 MR. THOMAS: Then for clarity, I move to grant the
13 applicant's appeal as to the 14 points only.

14 MR. OXER: Is there a second?

15 (No response.)

16 MR. OXER: There apparently being no second, let's
17 look at another way we can take this on.

18 MS. PALMER: Chairman Oxer, I think I might be able
19 to resolve that.

20 DR. MUÑOZ: I'd like to move staff's
21 recommendation.

22 MR. GANN: I'll second.

23 MR. OXER: Motion by Dr. Muñoz and second by Mr.
24 Gann to approve staff recommendation to deny the appeal.

25 Claire.

1 MS. PALMER: Claire Palmer again. Back to the
2 tabling issue, Jean is correct, there are difficulties with
3 tabling and letting the funding, but we actually in this
4 application already had a resolution with city funding in it,
5 and so honestly, according to the QAP you have until September
6 1 to prove up your firm commitment of government funding, and
7 so I think that there's a pretty easy way that we could come
8 back in and amp up the city funding that we already have,
9 that's already in there by resolution. The city had agreed to
10 put in the detention pond which is puts in about \$60- to
11 \$80,000 in the deal. So it would not be a new source of
12 funding, it would actually just be taking out the EDC funding
13 and adding to the city funding, which we've already talked to
14 the city about doing and we can do.

15 So I think it would not be a completely new source
16 of funding, I think that Barbara and I could work out a way
17 where that funding came in under the rule, just for
18 clarification purposes.

19 MS. LATSHA: I would suggest that staff could
20 address that issue even with the denial of the appeal. We
21 could simply look at that application again, see what city
22 funding is already indicated in that application, and award
23 points accordingly.

24 DR. MUÑOZ: I'd like to move --

25 MR. OXER: Hold on. We've got an active motion on

1 the floor. So the current motion to deny the appeal, to
2 approve staff recommendation, which is by Dr. Muñoz, second by
3 Mr. Gann. In the event that that were to be the way this came
4 down, you're not dead yet, this application would not be dead,
5 you'd have an opportunity to pursue this through another
6 mechanism to work this out. Is that correct, Jean?

7 MS. LATSHA: Yes, sir.

8 MR. THOMAS: And still have their 14 points?

9 MS. LATSHA: Not necessarily. I would pick up this
10 application again, I would not award points based on funding
11 from the economic development corporation, however, if there is
12 another source of funds that is eligible for these points
13 that's already indicated in that application, we can certainly
14 award those points.

15 MR. THOMAS: But this is a 9 percent tax credit
16 deal. Right?

17 MS. LATSHA: That's correct.

18 MR. THOMAS: I mean, practically, are we killing
19 the deal if they don't get those 14 points?

20 MS. LATSHA: I don't have a log in front of me so I
21 don't know.

22 MR. OXER: The answer is because of the incredible
23 competitive nature of this program, if they don't get the 14
24 points it would effectively kill the deal. However, given the
25 fact that you have preexisting financing from another municipal

1 entity -- is that correct, Claire? She's indicating yes. If
2 that's the case, you could basically bump that, knock out the
3 EDC financing, they would still qualify for the points under
4 that?

5 MS. LATSHA: I can't say but if there is a
6 qualifying source out there, we would certainly be willing to
7 award the points for that qualifying source.

8 MR. THOMAS: Would it replace the 14 points in this
9 appeal? Are there enough points potentially to replace it?

10 MS. LATSHA: Potentially. Yes, sir.

11 MR. OXER: Effectively, they would get the 14
12 points from having financing from somebody else, as opposed to
13 the EDC

14 MS. LATSHA: Potentially. If there is
15 documentation in that application that indicates that there is
16 funding directly from the city that's in an amount that is
17 enough to award them 11 points, is in the form of a permanent
18 financing or an in-kind contribution in order to give them
19 another point, and then also that includes a resolution from
20 the city dated before February 28 for an additional two points,
21 they could conceivably have 14 points on that application.

22 MS. PALMER: We would not get the 14 points under
23 that scenario. Based on Barbara's discussion of the tabling
24 and coming in with a substitution of additional funds from the
25 city, we could get to the 14 points, but as it stands today,

1 what's in the application, because we believed the EDC funding
2 would count sufficiently for the 14 points, the city in-kind
3 contribution that we have would not make the 14 points.

4 MR. IRVINE: So you would effectively be retooling
5 the city funding.

6 MS. PALMER: Retooling the city funding.

7 MR. IRVINE: Which, because hard dates have already
8 expired, they're in the rearview mirror, you would effectively
9 need one or more waivers to provide for that.

10 MS. PALMER: That's correct.

11 MS. DEANE: Claire, did you at any point request a
12 waiver related to the related party issue?

13 MS. PALMER: No. Mainly because, honestly, I
14 didn't even know about it until we lost the 14 points, got the
15 notice and lost the 14 points, I didn't even know that that was
16 an issue that was out there. That was my first involvement
17 with it. These people have been filing these applications
18 since the '80s, they didn't even see it as rising to needing to
19 be a question to the Board, they saw it as so clear that it
20 didn't rise to the level of asking for a staff determination on
21 it.

22 After the fact, hindsight is great, you can look
23 back and go: Yeah, we probably should have asked staff how
24 they would treat this. But when you're in the middle of the
25 application process and things seem very clear to you, you

1 don't see that as needing to be questioned. I've been through
2 that a lot of times with a lot of clients when they read the
3 QAP, they read the law, they feel like they're absolutely on
4 100 percent solid ground and then staff sees it differently.
5 People can see these things in different ways, and that's just
6 what happened here.

7 MR. OXER: Tim.

8 MR. IRVINE: I would suggest, Mr. Chairman, that
9 even though you have an active motion under consideration, it
10 might be very helpful to take about a five-minute break and
11 have us line out for you several very specific options so that
12 you have a clear articulation of them. There's a lot of detail
13 that's necessary to manage this process, and I'm leery of
14 somebody going down one particular path and then finding, oh,
15 my gosh, there's some detail we overlooked that sort of
16 forecloses our getting to the desired result. I would suggest
17 that might be something that a small group of us, including
18 Claire, might just go off somewhere and sit down and write out
19 three or four clear ways that you might approach this and give
20 you, effectively, a menu from which to select.

21 MR. OXER: Mr. Mayfield, did you have another
22 comment?

23 MR. MAYFIELD: Mark Mayfield, Texas Housing
24 Foundation.

25 Just again, we have to hire attorneys because this

1 is way over my pay grade.

2 MR. OXER: For the record, for all of us up here,
3 it doesn't take much to get over our pay grade.

4 MR. MAYFIELD: As a practical matter, everybody in
5 this deal, with the exception of one, is a public body. You've
6 got the Texas Department of Housing and Community Affairs,
7 you've got the United States Department of Housing and Urban
8 Development -- everything that's being done here is on a HUD
9 approved plan that was approved back in 2009, we're just trying
10 to implement it -- you've got the City of Marble Falls, you've
11 got the Marble Falls Economic Development Corporation, you have
12 the Marble Falls Housing Authority, you have the Texas Housing
13 Foundation, and upon the HUD approved plan, because of the
14 complexity of 9 percent deals and such as that, we had to go
15 out with RFPs in order to secure a developer to help us through
16 this process. That is what has brought the years of experience
17 to this. This is a public effort for the public good, every
18 bit of it. There's nothing in here that doesn't speak to
19 anything but that. Sometimes we get kind of caught up in the
20 minutiae and we can't see the forest because of the trees.

21 MR. OXER: And we appreciate your comment to that
22 point, Mark, and while it seems like we're being caught up in
23 some minutiae, there are reasons that we're trying to maintain
24 the integrity of the process and the rule that we have, while
25 giving you an option to get through this so that by the next

1 time we come to this point we don't have this little quirk in
2 it and we can seal this little crack in the wall. So please
3 understand that we're not up here opposing you, I'm trying to
4 figure out a way to get both of us through this process.

5 MR. MAYFIELD: This is our third year, again, that
6 we've applied, we've been patient, we're trying to wait our
7 turn, if you will.

8 MR. OXER: Thanks for your comments.

9 Tim, let me ask again, do we have five minutes,
10 give us some counsel, let us take a quick exec session?

11 MR. IRVINE: It wouldn't be an executive session.

12 MR. OXER: Like a break. Just to recess for a
13 discussion. And I might add, Barbara, do we run potentially
14 afoul of anything on ex parte?

15 MS. DEANE: That's what I was just talking to Tim
16 about. I'm not sure that we can meet with the party to work it
17 throughout outside of the -- it's very strict, we have to be in
18 our office and we have to record, so I'm not sure visiting on a
19 break is allowed, but we can certainly try to work through some
20 of these issues based upon what we've heard them say.

21 MR. OXER: Tim.

22 MR. IRVINE: I've actually listed what I think the
23 three options are. I think option number one is the rule says
24 what the rule says and staff's recommendation is upheld.
25 Option number two would be to waive the appropriate deadlines

1 to allow the applicant an opportunity to go and retool its
2 qualifying city funding in a manner that would enable it to
3 access 14 points. Option number three would be to waive the
4 application of this specific rule in question for the rationale
5 that, as we've now fully developed, this was not necessarily
6 the type of situation that was contemplated when the QAP
7 prohibition was drafted. And I would say that those are
8 basically the three options.

9 MR. OXER: So we need to have much discussion,
10 we've just heard what we're looking for. I'm going to poll the
11 Board individually.

12 MR. THOMAS: You can't do that.

13 MR. OXER: I want to ask a question and everybody
14 on the Board can answer in their own chosen fashion. Does the
15 address the issue of the ambiguity that we've encountered here?

16 MR. McWATTERS: My turn? Well, my concern was I'm
17 trying to go back to a real life situation. You're in the
18 trenches, someone brings you a document, you look at the
19 document, and you say: Yeah, let's follow the Local Government
20 Code. And you follow it, and then you look at the QAP and you
21 see the word "related party" in there, and you just naturally
22 think that if I follow the Local Government Code, then I really
23 no longer have a related party transaction because somehow I
24 cured any problem with respect to it under the other law, and
25 therefore, I'm okay under the QAP.

1 Although Leslie makes an excellent point, it's a
2 point I've made myself more than one time, is pick up the phone
3 and call. But there's a possibility here that the law and the
4 QAP could be perceived as so clear that you wouldn't take the
5 time to pick up the phone and call. And maybe that's not the
6 best lawyering in town, but I can see it happening in good
7 faith. So along those lines, I don't think we would do
8 grievous harm by thinking about the ED's second option.

9 MR. IRVINE: And that's, in my opinion, clearly the
10 option that takes most into account the fact that they were
11 relying on advice of counsel.

12 MR. OXER: As Chair, I'll recognize that this is
13 clearly not a circumstance we were trying to prevent, or was it
14 an exemplar of the issues that brought us to the point of
15 creating this rule in the first place last year, mark. What
16 we're trying to do is get through this with a mechanism that
17 satisfies the rule but provides an opportunity to move this
18 forward. That's what I'm trying to do.

19 DR. MUÑOZ: I'd like to withdraw my motion and
20 provide an opportunity for some other motion that would then
21 permit us to further advance.

22 MR. GANN: I would concur.

23 MR. OXER: Mr. Gann withdraws his second, Dr. Muñoz
24 withdraws his motion. So we'll consider a second option -- not
25 second, it's like twelfth now -- we'll consider another option.

1 MS. LATSHA: If that option is waiver, there wasn't
2 a waiver requested.

3 MR. OXER: The period for waiver request and the
4 date has passed?

5 MS. LATSHA: That's correct.

6 MR. OXER: So we'd have to waive the date for the
7 waivers?

8 MS. LATSHA: That's correct.

9 MR. THOMAS: So option three because option two is
10 a waiver, so now we're going to be coming back and asking to
11 waive more of our rules, and now we figure out what of our
12 rules we actually stand on and jam down people's throats in
13 this forum of trying to either having us avoid making tough
14 decisions, or two, convince people that they better pick up the
15 phone and call our staff every time they want to breathe. And
16 I don't mean that rudely, I'm just saying I think that our
17 staff has been more, Jean has been more than gracious with
18 about three other incredibly smart people behind her, shaking
19 their head in support every time she tried to figure out how to
20 get us out of our jam without taking a hard vote.

21 As a lawyer, I wish we didn't have to go to the
22 nuclear option, but my boss, when I was a baby lawyer, said,
23 Robert, always give the judge three or four different pegs to
24 hang his hat on. I don't know that I would have started with
25 the nuclear option because I think that that created a lot of

1 anxiety at the dais, but I'm not going to tell a good lawyer
2 how to do his or her job. I respect that she was doing the
3 best that she can to try to get this point out about how silly
4 the application of this rule is, and extreme, when we didn't
5 talk about it.

6 That was the sole reason why I made the motion that
7 we deny, with all due respect to our staff, so that they're not
8 jumping through hoops, since I know that this does not kill
9 this deal, but causes them to still have to comply with all of
10 the other requirements, to deny the staff's motion. Either
11 that, or have the staff make it easy for us. If we really want
12 it easy for us, the staff can change their recommendation, and
13 that would make it real easy and we could go home. But if the
14 staff is not going to change their recommendation from the
15 podium, if they're not allowed to do that, then my motion that
16 we deny the staff's recommendation, or in the alternative, that
17 we grant the appeal to allow the rest of the process to go
18 forward so that we are not subject to now figuring out what
19 additional rules we're going to have to waive next month or the
20 month after that.

21 MS. LATSHA: And I do appreciate that. I have to
22 agree that either a simple granting or denying of the appeal is
23 probably the most appropriate. I don't know if I can really
24 make that suggestion. As far as our recommendation, one of
25 many of the reasons that we wouldn't be compelled to change

1 that recommendation is that it basically provides a provision
2 in the rule for if you have one board member who is in common
3 between the funding entity and the applicant and that one board
4 member recuses himself, then we are willing to make an
5 exception and consider that not a related party transaction.
6 But I'm not sure where we stop that, if it's two board members
7 or three board members, and it's for that type of slippery
8 slope reason, and I believe that that's part of the reason a
9 recusal provision wasn't written into the rule, wasn't
10 suggested by staff in our drafts of that rule in the first
11 place because it's difficult to say if one board member's
12 recusal is acceptable, then why not two.

13 MR. THOMAS: But that really wasn't what we were
14 trying to address. We have so many different legally distinct
15 concepts of conflict here we're actually talking about. We're
16 talking about at least three that I can think distinctly, that
17 I think are getting us confused. There's the direct legal
18 conflict of interest, the recusal for I'm going to get a
19 vested -- kind of like as Mr. Gann was trying to tell us, that
20 even collecting a salary is in some instances legally
21 considered a potential conflict.

22 We're also worried about the perception of conflict
23 where it looked like we would have entities create subsequent
24 entities that shared 100 percent board membership that gave
25 those local governmental entities a benefit over the private

1 development community, and that was a huge concern, as our
2 Chair pointed out.

3 My concern is where do we stop, and what you just
4 told me is: I need you to make a tough decision, Board, either
5 way, I don't care, we have no personal stake in it, don't put
6 us in a tough situation, make a decision up or down. That's
7 what I heard you say.

8 MS. LATSHA: That's probably accurate.

9 MR. THOMAS: And your concern of if we asked you to
10 come back and talk to us about rule modifications that talked
11 about how many recusals was appropriate, that that would then
12 put ambiguity on the staff's side of where that rule gets drawn
13 and we're still putting it back to the Board. The Board still
14 has to decide if those exceptions apply that are going to come
15 when someone says we've got two, you guys have said that it has
16 to be a minimum three or whatever the example is.

17 MS. LATSHA: I think staff would later ask for
18 similar guidance in a more general sense when coming to the
19 rulemaking process. Yes.

20 MR. THOMAS: So if this is a unique circumstance
21 that we did not anticipate, this is just one of those judgment
22 calls that we need to as a Board make, that the staff would
23 like to see us vote to make a judgment call, and if it is to
24 grant the appeal, then it's to make sure that we properly
25 document why we're granting that appeal to make sure it's

1 clearly and narrowly understood by the staff and the
2 constituents in the community so if they came back to us again
3 we could clearly say this is why we did it, this was absolutely
4 a unique circumstance, and only in this circumstance -- until
5 there's another unique circumstance -- will we grant it again.

6 MR. OXER: And there will be plenty of unique
7 circumstances but we want to keep wiping those off the map,
8 make it harder to be unique in the future.

9 This was clearly not the issue we were trying to
10 protect against in terms of the allocation process. There
11 again, we're trying to figure out a way through this. We can
12 deny the appeal or we can deny staff recommendation and then
13 have it in the record, just as Robert said. Anybody that comes
14 back and steps on that, you stepped on it once and armed the
15 trigger, the next one is going to take your leg off.

16 Are there any other questions? Anything else you'd
17 like to say, Claire? Mark, anything there?

18 (No response.)

19 MR. OXER: Okay. There's currently a motion on the
20 floor to be considered by Dr. Muñoz, who, as we must reflect in
21 the record, has had to depart, but we retain a quorum currently
22 with the other five members of the Board. It's a motion by Dr.
23 Muñoz, second by Mr. Gann. Is that correct?

24 MR. THOMAS: No. He withdrew his motion.

25 MR. OXER: That was the original one. So there's

1 no motion current?

2 MR. THOMAS: I spoke all over it. I move to grant
3 the applicant's appeal.

4 MR. OXER: There's a motion by Mr. Thomas to deny
5 staff recommendation and to grant the appeal on this one item.
6 Do I hear a second?

7 MS. BINGHAM ESCAREÑO: I'll second. On the 14
8 points. Right?

9 MR. THOMAS: The 14 points only.

10 MR. IRVINE: Only on the 14 points.

11 MR. OXER: Only on the 14 points in this issue.

12 MS. DEANE: And strictly in this limited
13 circumstance and not to be applied with regard to any other
14 rule using the term "related party" or anything else. This is
15 very narrowly applied.

16 MR. IRVINE: Nor precedential.

17 MR. THOMAS: Not precedential, very, very narrowly
18 limited.

19 MR. OXER: Which was the whole point of trying to
20 prevent this is in the future was to limit the precedent being
21 set by scrambling our rule on this one.

22 Is there any other comment?

23 (No response.)

24 MR. OXER: Motion by Mr. Thomas, second by Ms.
25 Bingham to deny staff recommendation and to approve the appeal.

1 All in favor?

2 (A chorus of ayes.)

3 MR. OXER: Opposed?

4 MR. GANN: No.

5 MR. OXER: Opposed, there's one by Mr. Gann.

6 (General talking and laughter.)

7 MS. LATSHA: I think we're done.

8 MR. OXER: We've reached the point in the meeting
9 where we offer an opportunity for anybody to speak for items to
10 be added to the future agenda, particularly for the meeting
11 coming up in three weeks from today on June 26. Is there any
12 public comment?

13 (No response.)

14 MR. OXER: Is there any comment from the staff?

15 Any comment from the Board members or staff on the dais?

16 (No response.)

17 MR. OXER: So I'll entertain a motion to adjourn.

18 MS. BINGHAM ESCAREÑO: So moved.

19 MR. OXER: Motion by Ms. Bingham to adjourn.

20 Second by?

21 MR. THOMAS: Me.

22 MR. OXER: Mr. Thomas. Motion to adjourn. All in

23 favor?

24 (A chorus of ayes.)

25 MR. OXER: Opposed?

1 (No response.)

2 MR. OXER: There are none. See you in three weeks.

3 (Whereupon, at 1:18 p.m., the meeting was

4 concluded.)

