

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

QUALIFIED ALLOCATION PLAN
AND
MULTIFAMILY RULES
COMMITTEE

Capitol Extension
Room E1.014
1100 Congress Avenue
Austin, Texas

April 25, 2018
4:12 p.m.

COMMITTEE MEMBERS:

LEO VASQUEZ, III, Chair
LESLIE BINGHAM ESCAREÑO, Member
PAUL A. BRADEN, Member

ON THE RECORD REPORTING
(512) 450-0342

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
CALL TO ORDER, ROLL CALL CERTIFICATION OF QUORUM	3
PUBLIC COMMENT	
REPORT ITEMS	
1. Presentation an discussion of the Resident Survey	5
2. Presentation and discussion of the 2019 QAP Project Plan	16
3. Presentation, discussion, and possible action to make recommendations to the Governing Board regarding requesting further information or reports from staff and/or providing direction and priorities for future proposed rule changes as to distribution of accessible units under 10 TAC §1.207	31
4. Presentation, discussion, and possible action to make recommendations to the Governing Board regarding requesting further information or reports from staff and/or providing direction and priorities for future proposed rule changes as to the administration of the right of first refusal under 10 TAC §10.407 (TABLED)	41
Public comment on matters other than items for which there were posted agenda items.	41
EXECUTIVE SESSION	--
OPEN SESSION	--
ADJOURN	44

1 P R O C E E D I N G S

2 MR. VASQUEZ: Let's call the meeting to order
3 here. Sorry for the late start, and Ms. Bingham is on her
4 way, she'll be here any minute.

5 The Qualified Allocation Plan and Multifamily
6 Rules Committee of the Texas Department of Housing and
7 Community Affairs is hereby opened, it is 4:12.

8 Roll call. Paul Braden?

9 MR. BRADEN: Here.

10 MR. VASQUEZ: Leo Vasquez, here. And currently
11 absent is Ms. Bingham Escareño. So we do have a quorum,
12 we can get started.

13 We will have public comment, but as typical
14 with our meetings, we'll solicit public comment at the end
15 of the meeting and we'll also provide for public comment
16 at the end of each agenda item for presentations on that
17 particular topic that we've discussed.

18 And the first item on the agenda is
19 presentation and discussion of the Resident Survey. Marni
20 Holloway will present, but I believe we have an
21 introductory remark.

22 MR. ECCLES: Good afternoon.

23 Just a couple of prefatory remarks just about
24 what's going on here.

25 SPEAKER FROM AUDIENCE: Who are you, for the

1 record?

2 (General talking and laughter.)

3 MR. ECCLES: Beau Eccles, general counsel,
4 TDHCA.

5 For these proceedings, when we're discussing
6 this Board's rules with the committee, there are two
7 different areas that may be covered. The first is
8 interpreted guidance of what the current rule means and/or
9 guidance as to changes to the rule that the committee
10 would like to see presented when the new rules are
11 proposed to the Board. So those are two separate things;
12 it's important to keep these functions separate.

13 The Board engages in its statutory policymaking
14 function through rulemaking and only a plain reading of
15 the statute and current rules should be used as the basis
16 for interpretation of its rules. Tweaks to the rules or
17 exceptions or different standards of general applicability
18 may be suggested as things that the committee would like
19 to see in the proposed version of the rule for next year,
20 but we can only, as a department, enforce the rule in
21 statute we currently have.

22 Lastly, an interpretive guidance provided by
23 this committee does not alter any action taken by the full
24 Board or any matter that is final. It is prospective
25 interpretive guidance and it's not even binding on the

1 Board in that it is not itself a rule.

2 So just for the committee's sake, for the
3 public's sake, this committee is not going to be proposing
4 new standards to be interpreted or it can only provide
5 interpretation of the plain meaning and plain wording of
6 its current statute and rule and interpret or take in
7 comment as to maybe tweaks to be made for the next rule,
8 but when those tweaks maybe reach some favor with the
9 committee and maybe they're talked about as oh, that's a
10 good idea, but that doesn't make it a rule that's
11 enforceable now.

12 So that said, I'll turn it over to Marni.

13 Thank you.

14 MR. VASQUEZ: Thank you, Mr. Eccles.

15 MS. HOLLOWAY: Good afternoon, Chairman
16 Vasquez, Mr. Braden. I'm Marni Holloway, I'm the director
17 of Multifamily Finance. I remembered to say that.

18 (General laughter.)

19 MS. HOLLOWAY: Item number 1 is presentation
20 and discussion of the Resident Survey. You'll recall we
21 talked about this just a little bit at last month's Board
22 meeting just so that everyone could have an opportunity to
23 take a look at it over the past month, it was published in
24 the Board book. Today we're hoping to take a little bit
25 deeper dive into the survey results.

1 As we discussed last month, the survey
2 respondents were over-represented the elderly population
3 in the TDHCA portfolio, so across the portfolio about 28
4 percent of the heads of households for units are
5 classified as elderly, for the survey 63 percent of the
6 survey respondents are classified as elderly. There were
7 653 respondents, so that means roughly 411 were considered
8 elderly and the remaining 242 were considered not elderly.

9 The fact that survey respondents are disproportionately
10 elderly doesn't prevent us from drawing helpful
11 conclusions from the survey that should be taken into
12 consideration when looking at results that aren't split
13 out in the report that was published.

14 We are able to isolate non-elderly and family
15 responses to the survey which provides insight into how
16 differing resident groups feel about housing choices. An
17 early question in the survey asked residents from the zip
18 code of their previous address which was compared to the
19 zip code of the property they're currently living in, and
20 while this question should be tested again in future
21 surveys to assure its validity, since memory recalls are
22 prone to error -- I don't remember my last zip code --
23 initial findings suggest that 75 percent of respondents
24 moved from different zip codes. This information shows us
25 that income-eligible renters actively look for properties

1 in many parts of their cities or towns and not just in
2 their current neighborhoods. If this is supported by
3 future testing, it supports the Department's continued
4 focus on dispersion and offering eligible residents choice
5 of where to live.

6 Because TDHCA serves so many households, we are
7 called on to meet differing needs. For some households,
8 such as those on fixed incomes or the elderly, affordable
9 housing in a TDHCA property is a long term stable housing
10 solution. For other households, affordable rental housing
11 might be a stepping stone to homeownership. In the
12 survey, the 77 households with children were asked if
13 owning a home is a medium to long term goal; 53 of them
14 said yes. Of those 17 said that they plan to pursue
15 homeownership within the next two years. So through
16 tenant surveys or simply a brochure that's available at
17 tenant properties, TDHCA could inform family households
18 that hope to one day own a home about the programs
19 administered by the Department and its partners across the
20 state that could assist them with that.

21 Residents were asked if they find certain
22 neighborhood amenities to be important. All of the
23 amenities listed were taken from our opportunity index
24 menu items, and while all neighborhood characteristics
25 received some level of support across the survey, some

1 features had an overwhelming number of residents select
2 them as important. So just as a group but not ranked,
3 most residents identified the same top five as being near
4 a grocery store or pharmacy, being near a health care
5 provider, the attractiveness of the neighborhood, so no
6 trash or abandoned buildings, safety of the neighborhood,
7 and being near family and friends.

8 When households with children are isolated for
9 their responses, they largely agreed except school quality
10 became more important than being near family. Schools
11 with a Met Standard rating, as you know, are part of our
12 undesirable neighborhood characteristic rule, so this is
13 something that we are addressing to some extent with our
14 current rules.

15 Residents were then asked to rank all the
16 amenities that they identified as important, so within
17 everything they chose. The 653 respondents ranked safety
18 of the neighborhood as being the most important
19 neighborhood characteristic. This ties directly back to
20 the crime rate in the undesirable neighborhood rule and to
21 the property crime rate item in the opportunity index
22 menu. Being near a grocery store or pharmacy was ranked
23 as the second most important, and being near one's health
24 care provider was ranked as the third most important
25 neighborhood characteristic.

1 In light of these responses, we could consider
2 how to reflect these preferences in future rules, whether
3 through competitive scoring items in the QAP or threshold
4 requirements in the Uniform Multifamily Rules in Chapter
5 10.

6 Respondents were also asked to identify the
7 importance of various characteristics such as the size of
8 units, storage inside units, and amenities at the
9 apartment complex. Most residents identified the same top
10 five that were most important -- again, these are not
11 ranked -- those are utility bills, noise level, the
12 attractiveness of the apartment homes, physical condition
13 of the apartment and property, and then lighting
14 throughout the building and grounds of the community.

15 When households with children were isolated for
16 their responses, they largely agreed except that they
17 overwhelmingly identified size of my home as being an
18 important development characteristic.

19 When those amenities were ranked, size of unit
20 was the most important, utility bills was next, physical
21 condition of the apartment and property was third.

22 In light of those responses, we could consider
23 how to reflect the preferences in the Uniform Multifamily
24 Rules, or development characteristics are included through
25 minimum point requirements tied to items selected from a

1 long list.

2 Earlier today we met with stakeholders at our
3 planning meeting to discuss, among other things,
4 development amenities. I think we had a productive
5 conversation and we will be providing the Board a report
6 on that meeting next month once we have the time to write
7 it down, we don't have time to get it out before tomorrow
8 morning.

9 The Uniform Multifamily Rules require that
10 every development offer some tenant supportive services to
11 its residents and the survey invited respondents to
12 identify those services that they find to be most
13 important. This was another topic of our meeting earlier
14 today. Most residents identified the same two top two
15 services that are most important, that is health services
16 and transportation. Given that the survey respondents
17 weighted more heavily towards elderly residents, this
18 preference is not surprising.

19 When households with children were isolated for
20 their responses, they largely agreed except for one
21 difference. The third service tied with another as being
22 identified as most important is education services for
23 children.

24 Respondents were asked: If you could have your
25 dream home, would you keep your home in your current

1 neighborhood or would you move your home to another part
2 of town? They were then asked a series of questions that
3 asked them to reflect on the qualities of good and bad
4 neighborhoods. Respondents were then asked the first
5 question again but in a different way: Imagine you can
6 move to the best neighborhood in your town or city, which
7 would you prefer: number one, stay where I am but pay
8 cheaper rent, or number two, pay a little more rent but
9 live in the best neighborhood. This series of questions
10 tried to uncover respondents' motivation for selecting a
11 new apartment unit, is it location, is it cost.

12 Because we know where the respondents live, we
13 can interpret their responses in light of the conditions
14 in their neighborhoods, like poverty. We can ask
15 questions like: Are residents who live in a high poverty
16 census tract more likely to want to move away than
17 residents who live in a low poverty census tract? So
18 compared to residents in census tracts that qualify for
19 opportunity index threshold points -- so that basic
20 threshold you have to pass to get to opportunity -- with
21 those in census tracts that would not qualify, a higher
22 percentage of residents in census tracts that do not
23 qualify for opportunity index preferred to move to a
24 different neighborhood when first asked where they would
25 locate their dream home. Similarly, a higher percentage

1 of residents in census tracts with relatively high
2 concentrations of tax credit housing preferred to move to
3 a different neighborhood.

4 Without any regard to who is responding or the
5 neighborhood characteristics of where they live, 57
6 percent of all residents preferred to locate their dream
7 home in their current neighborhood and 43 percent
8 preferred a different neighborhood. For those who
9 initially preferred a different neighborhood, nearly half
10 of them change their minds when presented with the option
11 of cheaper rent by staying in their current neighborhood.

12 The other half maintained their preference to move to the
13 best neighborhood even if it meant a little more rent each
14 month. A possible conclusion from these findings is that
15 providing neighborhood choice to residents supports the
16 preferences of the many households we serve across the
17 state.

18 When respondents stated that they would prefer
19 to locate their home to another part of town because of
20 the benefits they see there, the survey asked them to
21 identify the features of that neighborhood. For those
22 respondents who initially stated they wished to move, they
23 were looking for more community resources, things like
24 grocery stores, parks, other -- we don't know what it
25 is -- crime and safety is an issue, and then

1 attractiveness of the neighborhood.

2 For those respondents who initially stated they
3 wished to stay in their current neighborhood but that
4 their neighborhood could improve in some ways, the top
5 four items identified for improvement were: crime and
6 safety; attractiveness, so no trash or abandoned
7 buildings; more community resources, those same grocery
8 stores and parks; and then better public transit.

9 Staff has not begun drafting rule changes in
10 response to the survey results. Many of the rules we
11 already have in place like the opportunity index or
12 undesirable neighborhood characteristics support some of
13 these resident preferences. At the same time, we welcome
14 direction from committee members regarding rule changes
15 that may better align our programs with resident
16 preferences in the future, along with input from
17 stakeholders such as we received today at our meeting.

18 I'll be happy to take any questions.

19 MR. VASQUEZ: Does anyone?

20 MR. BRADEN: So was there anything that you
21 found surprising when you went through these results?

22 MS. HOLLOWAY: Not so much. I think that given
23 the limited period of time that we had to conduct the
24 survey and then sort of the limited scope of that because
25 of the time, there wasn't anything that was a big shock.

1 I think that having the survey so heavily weighted towards
2 elderly respondents really skews a lot of these results,
3 and I would hope if we are able to do more surveys in the
4 future and are able to reach out to our entire group of
5 residents or a larger group of residents that we would get
6 a more reliable result of what everybody is looking for.

7 And I think, anecdotally, we've heard all of
8 these things in the past. I think that the survey just
9 helps support some of those conversations.

10 MR. VASQUEZ: And it would definitely be good
11 to be able to not have it so skewed with the elderly.

12 MS. HOLLOWAY: Right.

13 MR. VASQUEZ: And I didn't hear you mention
14 anything about was there any comparison between urban
15 versus small town?

16 MS. HOLLOWAY: There are clusters in the survey
17 and I believe one of those splits out to urban and rural
18 but we have not divided out these results in that manner.

19 We absolutely, since we have that data, I believe could
20 do that. I'm looking at Patrick, he's nodding his head.

21 Actually, the thing I forgot to say when I
22 first started is that huge kudos go to Patrick and to
23 Julie Long for their tremendous work on the survey. It
24 just would not have happened without the two of them.

25 MR. VASQUEZ: Well, again, this I think is

1 great work and gives a great slice of perspective on
2 everything that we're working on. As you mentioned, if we
3 keep doing it every year and start building actual trends,
4 and again, diversify that group that we're talking to, I
5 think it would be very valuable for us going forward.

6 MS. HOLLOWAY: Absolutely. And I don't know if
7 we can get it done for next month's Board book, but we
8 certainly can start to break out the urban and rural
9 preferences.

10 MR. VASQUEZ: It jut would be interesting to
11 see if there's some differences.

12 MS. HOLLOWAY: It would. And I think that it
13 would be useful, particularly as we continue to work with
14 groups like the Rural Rental Housing Association and they
15 have a different set of priorities than developers who are
16 working in the urban areas, it would be useful to have
17 that information.

18 MR. VASQUEZ: Sure.

19 MS. HOLLOWAY: I don't know if anyone has
20 anything.

21 MR. VASQUEZ: Does anyone want to comment on
22 the survey?

23 (No response.)

24 MR. VASQUEZ: There will definitely be more in
25 the future.

1 And can we note for the record that Ms. Bingham
2 joined us midway through the presentation?

3 MS. BINGHAM ESCAREÑO: Sorry I was late.

4 MS. HOLLOWAY: All right. Number 2 is
5 presentation and discussion of the 2019 QAP project plan.

6 So the 2019 QAP rules project kicked off on
7 December 14 of 2017 when staff met with stakeholders to
8 discuss issues that arose in previous cycles and to
9 brainstorm possible topics of discussion for the upcoming
10 roundtables. Stakeholders requested fewer but more
11 in-depth roundtables, so in response to that feedback we
12 have scheduled four meetings between January and June, not
13 including any possible committee meetings. We've also
14 reiterated our commitment to meet with smaller groups
15 regarding very targeted issues that concern them.

16 We have continued our efforts to coordinate
17 programs with other governmental entities, like the USDA
18 and the Texas Historic Commission, in order to create
19 alignments which may lead to future rule changes

20 The first meeting topic was opportunity index
21 and employment area proximity which fulfills one of the
22 goals in the plan which is weighting scoring items to
23 encourage more competition among applicants and more fine-
24 tuned public policy that responds to quantifiable real
25 estate metrics. Unfortunately, this meeting was canceled

1 because of weather in January, so we've posted a condensed
2 version of this topic to the Department's online forum.

3 This includes possible revisions to the opportunity index.

4 We have received two comments on the forum regarding
5 opportunity index, and we actually discussed that a little
6 bit with the group at our roundtable meeting earlier today
7 that this would be their opportunity to provide us that
8 input regarding the opportunity index, do they want us to
9 stick with it what we have, do we need changes, and so
10 we're looking for that feedback from our stakeholders.

11 Regarding proximity to jobs which was posted as
12 a topic, we have not posted anything to the forum but we
13 hope to do so in the future. We've had some conversations
14 with staff at the U.S. Census and the Texas Workforce
15 Commission -- or actually Patrick and Julie have -- to
16 ensure that the jobs data we would rely on is valid. This
17 is a scoring item that has come up in conversations in the
18 past but we just haven't been able to get to a conclusion.

19 These conversations have assured us that within certain
20 parameters the data is valid, and the next step for this
21 new policy will be identifying how scoring proximity to
22 jobs might be incorporated into the QAP.

23 The next roundtable focused on real estate
24 analysis, housing tax credit efficiency and the direct
25 loan program. The purpose of this conversation was to

1 fulfill a second goal of the plan which was recognizing
2 but also containing rising costs and encouraging housing
3 tax credit allocation efficiency. Staff wanted to discuss
4 tax credit efficiency because the number of units produced
5 annually by the 9 percent program has been dropping year
6 after year. Admittedly, there are a number of reasons
7 this may be happening, but the value proposition behind
8 exploring these questions is that through greater
9 efficiency we hope we can fund more developments and more
10 units.

11 Stakeholders gave staff some really helpful
12 feedback at that roundtable, including requested
13 efficiency be consolidated into one rule instead of
14 several, which is something that we're going to continue
15 to discuss. On the multifamily direct loan rule, what we
16 realized as staff, out of the conversation with
17 stakeholders, is that we have not done a good job of
18 letting everyone know what's available through our direct
19 loan program. There were a couple of questions of people
20 said, Look, you should change it so it does this. And we
21 said, But we already did. So clearly we need to do a
22 little more work there. The Board report posted for
23 tomorrow's meeting includes a more detailed report on that
24 roundtable and efficiency.

25 And then just before his meeting we held

1 another roundtable. The topic was common and unit
2 amenities, building standards, resident services and the
3 integrated housing rule, which also speaks to goals in the
4 plan of better categorizing resident services and actually
5 reflecting the value of items with weighted scores and
6 better categorizing common unit amenities and accurately
7 reflecting the value of items with weighted scores. The
8 report for that meeting will be in next month's Board book
9 and will also post to the Department's online forum.

10 We have one more roundtable scheduled with
11 stakeholders in May which will focus on tiebreakers in the
12 QAP, also on Chapter 12, our bond rule, and as a result of
13 the conversations at today's roundtable, we're going to be
14 talking about the Section 811 program -- the group wanted
15 to have a broader discussion about that program.

16 So the tiebreakers, of course, play a huge role
17 in determining awards, in many regions the scoring is
18 relatively flat so we wind up going all the way out to
19 tiebreakers, so that should be an interesting
20 conversation.

21 Our timeline for the rest of the year, we are
22 hoping to have a staff draft of the QAP and parts of
23 Chapter 10 posted sometime in August, so that would be
24 just the staff draft just for everyone to take a look at.

25 We would plan another QAP and Rules Committee to be held

1 in September to discuss that draft rule -- you remember we
2 did that last year -- before it is presented to the Board,
3 and then the public comment period would fall between late
4 September and early October. The final QAP and parts of
5 Chapter 10 will be presented to the Board for adoption at
6 the November 8 Board meeting. Also at this meeting the
7 draft remaining parts of Chapter 10, which would be the
8 asset management and real estate analysis sections, along
9 with Chapter 12, the bond rule, and Chapter 13, the direct
10 loan rule, would be presented as draft with a public
11 comment period following. And then, of course, once the
12 final is approved by the Board, the QAP and rules will be
13 sent to Governor Abbott for his review and approval.

14 I'll be happy to answer any questions.

15 MR. VASQUEZ: So in the roundtables how many
16 people are participating or how many representatives,
17 roughly, ballpark?

18 MS. HOLLOWAY: The registration was 55 today.
19 I haven't looked at the sign-in but it was a good size
20 group.

21 MR. VASQUEZ: Probably this group here.

22 (General laughter.)

23 MR. VASQUEZ: And from what you're saying,
24 there weren't any really new major topics or major areas,
25 pretty much tweaking everything that we already have?

1 MS. HOLLOWAY: Right. And we've heard a number
2 of times from the development community that their
3 preference is for incremental changes to the rules.
4 They're all out there right now looking at sites for 2019,
5 so if we make a big change, then that throws a wrench in
6 what they're doing so that's understandable. The other
7 part of it is if we make big changes, then we don't know
8 which parts are successful in bring whatever result. If
9 we change this smaller thing and it brings this result,
10 then we can identify it, but if we change a bunch of
11 stuff, then we don't know what brought about those
12 changes. So that's part of the conversations that we've
13 been having about tweaking what we already have. But I
14 think that we got some really good perspective yesterday
15 about some of the changes that we need to be looking at in
16 order to make those sections of our rule more effective.

17 MR. VASQUEZ: Could you comment about any
18 discussion relating to simplification rather than
19 complication?

20 MS. HOLLOWAY: Complication? We haven't talked
21 about that. I mean, there has been conversation about
22 condensing some parts of our rules, for instance, this
23 efficiency measure, there's a request to condense it down
24 into one item rather than three. I don't recall right now
25 anyone saying the rules need to be simpler. I'm sure

1 everyone would like them to be simpler but that hasn't
2 been part of those conversations.

3 MR. VASQUEZ: I think from my perspective, I
4 don't know about the entire Board, but anything we can do
5 to help simplify this process and streamline it and remove
6 a many of the nits as we can, I think would be helpful for
7 everyone involved. Just keep that in mind.

8 Does anyone else have any comments?

9 MR. BRADEN: I have a couple. Have we ever had
10 a QAP that lasted more than one cycle?

11 MS. HOLLOWAY: Not that I know of, but then I
12 haven't been at this, this is my third round. Part of
13 that, though, is that every year it has to go to the
14 governor, so we could call it a two-year QAP but it still
15 would have to go to the governor in the interim. I
16 believe that there was work toward a two-year QAP at one
17 point, and I wasn't involved in that, but they got into
18 that two-year QAP and realized, oh, we really need to
19 change some things, and then it wasn't a two-year QAP.

20 MR. BRADEN: I mean, recognize that this is a
21 very helpful process and I think it's great that you're
22 getting so much -- you know, we need to get the public
23 comments you're getting, but it just seems like it's a
24 huge drain on not only staff but the community's time and
25 effort to do this every year. It seems like as soon as

1 you're done you're doing it again, and if we could get to
2 a point where you could just tinker with it or just change
3 the dates and have the governor sign basically the same
4 thing for two periods and then change it when the
5 legislature starts changing things, it just seems like it
6 might be more efficient. Maybe that's not possible
7 because of the way the program works.

8 MS. HOLLOWAY: I don't know that it's not
9 possible. I think that there would need to be -- an
10 effort like that I think is one that the majority of folks
11 would have to agree that this is what we're going to do,
12 that this is as good as it's going to get for two years
13 and then we'll work on it for the next one. There are so
14 many sort of disparate focuses, foci -- I'm not
15 remembering my geometry -- on the QAP, people come at it
16 from so many different directions that sort of gaining
17 that consensus is a good job, we certainly could work
18 towards it. I know all of us would really like to have a
19 fall, that would be nice. It's like we just finish 9
20 percent and we're off into rules. So I don't disagree.

21 MR. BRADEN: Maybe as part of your outreach
22 when you're doing these roundtables you can get the views
23 of the group to see what they think about the possibility.

24 MS. HOLLOWAY: Absolutely.

25 MR. BRADEN: It's probably a longer term goal

1 but it still may be something we want to try to work
2 toward.

3 MS. HOLLOWAY: I think that it's a worthwhile
4 goal. And I agree with you, it takes a great deal of time
5 and effort to do this every year.

6 MS. BINGHAM ESCAREÑO: I think it is one of our
7 charges to think about what we could do to have a QAP last
8 more than one year, and you know, there would be ways to
9 weigh the pros and cons of doing that. I know that if we
10 had no choice and our resources were limited, heaven
11 forbid, through budgetary decisions or whatever, we would
12 choose to put our resources in processing applications and
13 going through the funding of developments as opposed to
14 constantly rewriting administrative code. So I think it
15 should be kind of one of our overarching charges,
16 something that we should be looking at collectively.

17 MR. VASQUEZ: I'm trying to detect nodding in
18 the audience. It's a little bit. My unscientific study.

19 (General laughter.)

20 MS. HOLLOWAY: Well, and a question like that
21 is absolutely something we could put up on forum or we
22 could include in future conversations and see what
23 thoughts are.

24 MR. VASQUEZ: From my business perspective, if
25 I just know what the regulations are, even if I don't like

1 them, if I know what they are I can just start dealing
2 with them for the future, and that knowledge of what
3 playing field we're playing on goes a long way, even if I
4 don't like all the rules.

5 MS. HOLLOWAY: Right.

6 MS. BINGHAM ESCAREÑO: Marni, when you went
7 over the timeline and we were talking about everything
8 that kind of hits for public comment around the same time,
9 is that the way it usually runs?

10 MS. HOLLOWAY: Yes.

11 MS. BINGHAM ESCAREÑO: So we always have all
12 that stuff kind of hit at the same time.

13 MS. HOLLOWAY: Yes. The QAP and then parts of
14 Chapter 10. The asset management and REA rules the last
15 couple of years have followed by a month, and then the
16 bond rule and the direct loan rule follow by a month also,
17 just kind of gives everybody a little more breathing room.

18 MS. BINGHAM ESCAREÑO: Yes. And I don't have
19 any other questions.

20 MR. VASQUEZ: Okay. Let's see if we can have
21 some comment. Again, this is more on the process of the
22 QAP, not the details of this one or that one. Would
23 anyone like to speak?

24 MS. BAST: Cynthia Bast from Locke Lord.

25 I actually was not planning on speaking today,

1 but Mr. Vasquez, your question about simplicity struck a
2 chord with me because of a recent experience I had, and so
3 I wanted to relay that to you all for you to see something
4 that's actually going on out here in the community.

5 I was working with a client that was doing an
6 application for bonds and tax credits with TDHCA as the
7 issuer, so we're marrying two programs here, and the
8 client asked me a question and it was a tax credit related
9 question, so I went to the QAP and I found an answer. And
10 then in corresponding with the client, what I realized was
11 that there were multiple sources where this topic was
12 addressed in different ways and that the language in the
13 various places was not the same. So I compiled a two-page
14 summary of the differences between the bond
15 pre-application, the bond pre-application manual, the
16 multifamily procedures manual, the QAP, and this also had
17 to do with a demographic issue so the demographic report,
18 five sources, different language in all of them.

19 Now, I don't want to say that we need to get
20 rid of manuals because the community needs that
21 interpretive guidance, it's very important, but when you
22 have that many sources to go to, you've got to have some
23 level of ability to have quality control to ensure that
24 they're consistent.

25 I don't know if it would ever even be possible

1 for the Department to hire an outside set of eyes, an
2 independent vendor consultant that would actually look at
3 these things and find these things. Because I think many
4 times our eyes get weary and foggy and we think we know
5 what it means and so we don't really consider it until
6 someone comes in and asks a question and you go, oh, my
7 gosh. So I'm just throwing that out there in the
8 simplification realm of I'd like to see us work on
9 consistency in not just our rules but the guidance for the
10 rules.

11 MR. VASQUEZ: Thanks.

12 MS. RICKENBACKER: Donna Rickenbaker with
13 Marque.

14 I echo what Cynthia is saying very much so.
15 Something that was said at the workshop is that hopefully
16 will resonate with you all is, first of all, I don't think
17 that we made a lot of huge substantive changes between the
18 2017 and '18 rules, if there were substantive changes. I
19 think it was more from the governor's changes than
20 anything else. That being said, these workshops start in
21 January, the rules are just signed by the governor in
22 December, everybody is kind of working frantically to put
23 their applications together and do what they need to do to
24 get in good quality applications based on those rules that
25 were signed by the governor in December.

1 Starting a rulemaking process in January for
2 the following year, you know, I just think that
3 timing-wise if we could kind of reschedule the topics, if
4 you will, QAP, point-based rule changes, I think if we
5 could kind of take a look at those when we're a little
6 further along in the year, like in March-April, maybe even
7 May, when not only have the development owner community
8 kind of had an opportunity to look at applications and see
9 how everything looks like it's going to be falling out,
10 but then staff can look at it and see what we really need
11 to do to kind of adjust the rules based on what they're
12 seeing happening. If it's all great, then we don't
13 adjust.

14 I am of the opinion, and I think most of the
15 development community is of the opinion we don't want to
16 make really big broad holistic changes to the rules, I'm
17 very much in line with that, but I think honest sincere
18 tweaking of those rules that need to be adjusted for
19 probably need to be looked at, and we could kind of take a
20 look at those topic areas, QAP rule point-based categories
21 at a later time period than January-February when a lot of
22 people aren't showing up at workshops, they're putting
23 together their applications, might be beneficial to
24 everybody.

25 Thank you very much.

1 MR. VASQUEZ: Great. Thanks.

2 Would anyone else care to comment on this
3 topic?

4 MS. MARTIN: Hi. Audrey Martin with Purple
5 Martin Real Estate.

6 I just wanted to help you in your visual survey
7 efforts looking for nods earlier related to a potential
8 two-year QAP. I do think people would be supportive of
9 that idea. It's something that's come up in the past as
10 an attempt, like Marni was talking about; we didn't quite
11 get there to actually let the second year run its course.

12 But your point is well taken about for us in the
13 development community to know what the rules are early.
14 It helps us put together better development proposals for
15 staff to consider. I think it's better for everyone
16 longer term.

17 And related to the process, I really think that
18 staff has done a super job getting feedback and doing
19 these roundtables so frequently with us, but I do agree
20 that it's got to be such a staff drain. I mean, you can
21 look at the project plan and see how much work goes into
22 that. So I like that we had fewer this year than we had
23 the year before. I do agree with Donna's point that it
24 might be beneficial to put those scoring questions a
25 little later just so we know what the impact is as we're

1 working through our applications, as we're trying to see
2 how the sites actually fit with those.

3 So just a few thoughts. Thank you.

4 MR. VASQUEZ: Great. Thanks, Audrey.

5 MS. SISAK: Hi. Janine Sisak, DMA Development
6 Company.

7 I just want to say a few brief things. I'm in
8 full support of simplifying the QAP. I think there are
9 some point categories in there, Marni mentioned them, I
10 was encouraged that she mentioned some of the cost
11 containment or efficiency point scoring items. There are
12 three of them, I think there should be one of them. The
13 one that should stay should be cost per square foot
14 because that's in the statute, that's the one that need to
15 stay. It's a really good example of how I'd like to see
16 the QAP go and let's kind of strip it down, simplify it,
17 reflect certain statutory requirements, all the statutory
18 requirements, of course, and then a couple of important
19 aspects that we've boiled into the QAP, high opportunity,
20 CRP and perhaps concentration measures obviously need to
21 stay.

22 But I would love process-wise for us to focus
23 on the tiebreakers more. If we get to a place for the
24 QAP, the scoring items are kind of achievable for
25 everyone, and that's what we're seeing is that everybody

1 kind of gets the basic points and then everything is
2 determined by the tiebreakers, and so what happens is we
3 kind of spend all this energy rehashing the same things
4 every year and by the time we get to the tiebreakers,
5 everyone is kind of sick of talking about it. But I think
6 that's a really good opportunity for the Board and for
7 staff every year to kind of re-look at those and say,
8 okay, this year what are we going to prioritize, is it ex-
9 urban deals, is it urban core deals, is it senior deals,
10 and I'd like for us all to focus on that instead of
11 rehashing these other categories over and over again.

12 I think there's a really great opportunity for
13 us to, again, kind of re-prioritize public policy year
14 after year, and if we just focus on that we can do it
15 early enough in the season that we as developers can go
16 out and find sites early enough.

17 But thank you for your service and for staff's
18 efforts this year. I look forward to seeing the draft
19 QAP.

20 MR. VASQUEZ: Good. Thanks, Janine.

21 And actually, not to cut off comments but I'd
22 like to continue on with the overall agenda to the next
23 topic.

24 MR. IRVINE: Good afternoon. Tim Irvine,
25 executive director, TDHCA.

1 The next topic has to do with the distribution
2 of accessible units, and this is going to be couched as an
3 interpretive matter where I'm seeking input as to whether
4 you agree with my interpretation.

5 We have two provisions in our statute, they're
6 found at 2306.6722 and .6730 and they use pretty much the
7 same language. They say that tax credit developments will
8 have the accessibility standards under 504 that are set
9 out in 24 CFR, Part 8, Subpart C. If you ever go to that
10 subpart of the HUD regs, it's very conveniently laid out
11 in the left-hand side that there is a section that is
12 called accessibility standards, and our deals meet those
13 accessibility standards.

14 In addition, there's a Section 8.26 that deals
15 with distribution of accessible units. If you receive HUD
16 funds and you are subject to that particular HUD rule, you
17 must distribute your accessible units in accordance with
18 8.26, the HUD rule. If you're in a tax credit deal, tax
19 credit only, no HUD funds involved, then it's simply the
20 application of our statute through our rule that deals
21 with distribution. I think it's a basic precept of the
22 Fair Housing Act that there should be distribution. You
23 don't want to concentrate accessible units in one or two
24 particular parts of a development, you want to make sure
25 that persons with disabilities have the same equivalent

1 choice, the functional choice and options that anybody
2 else would have.

3 Interestingly enough, 8.26 is couched pretty
4 much in that kind of language. It says that persons with
5 mobility impairments or hearing or vision impairments
6 should have the same comparable choice to other persons
7 accessing the same program.

8 What we have tried to do in our rule is, I
9 think, perhaps over-complicate this issue. I think that
10 the standards set out in 8.26 is just a really straight up
11 common sense approach. We've tried to develop other ways
12 of looking at this and making it more precise. For
13 example, staff has developed a wonderful tool that you
14 could use to calculate and determine how your five and two
15 should be distributed throughout your development, and
16 there's no doubt that if you follow that methodology it's
17 compliant.

18 But in discussions with HUD, HUD has made it
19 very clear through their Fair Housing and Equal
20 Opportunity Office that under different facts and
21 circumstances there are lots of ways of looking at unit
22 distribution. You can look at it on a development basis,
23 you can look at it on a portfolio basis, you can look at
24 it on a regional basis.

25 So I think that when I go back and read our

1 rule and look at what it specifically does and does not
2 require, what it requires is that you've got the 5 percent
3 for persons with mobility impairments, the 2 percent for
4 persons with hearing and visual impairments, and that you
5 will distribute those throughout your development in a
6 reasonable way to provide comparable choice to persons
7 with disabilities such that they are not being
8 concentrated but they're having, in fact, an opportunity
9 to choose throughout the development.

10 I really think that the language in our rule
11 that references 8.26 is not clear exactly how it
12 references it. I think you could look at it as perhaps a
13 source of a sentiment on distribution but I don't think it
14 specifically incorporates 8.26 by reference. I do not
15 believe that our rule specifically says you should use our
16 particular tool, although staff would certainly view that
17 as an acceptable way to determine the distribution. I
18 think our rule just basically says you should distribute
19 you units throughout your development on a reasonable
20 basis. That is the way that I look at what our rule says
21 and that is the way that, unless you disagree with me, I
22 would like for staff to administer that rule.

23 I also want to make clear that we do have a
24 number of developments, including developments we've
25 funded and developments that have been funded through

1 other sources, where HUD funds are brought into those, and
2 where those HUD funds are brought in there is no question
3 that all of Subpart C applies, including 8.26, but there
4 is a federal application of a federal regulation to those
5 particular recipients of federal funds and I believe that
6 the cognizant agency in that case is HUD, it is not us,
7 and if HUD is of the view that a particular distribution
8 is acceptable to them, I think it's appropriate to defer
9 to the appropriate federal cognizant agency.

10 So that's really all I have to say on unit
11 distribution unless folks would like to come in and
12 amplify on that.

13 MR. VASQUEZ: I have a question, Tim. So does
14 the example fit into this discussion where the way that we
15 have been administering or applying the rules exceeds the
16 requirements of the federal requirements.

17 MR. IRVINE: I think as I read the rule it does
18 not exceed the federal requirements, because I think it's
19 clear that under Fair Housing you need to have
20 distribution. I don't think we have to, in fact, pull in
21 8.26 which arguably would go beyond a narrow reading of
22 our statutory directive to use the accessibility standards
23 in Subpart C. No, I really don't think we do go beyond
24 the rule.

25 I think if we were to, for example, try to

1 impose the application of our tool as the exclusive way
2 that you determine unit distribution, I think that might
3 go beyond what the statute requires and would be such an
4 instance.

5 MR. VASQUEZ: Again, I think what we're looking
6 at from the Board perspective is that Texas, again, should
7 not be overcomplicating anything, we should be simplifying
8 and should not be stretching beyond what the federal
9 regulation is.

10 MR. IRVINE: Right. And I think what I've
11 tried to lay out for you is a well thought out, reasoned
12 assessment of our rule that aligns with the requirements
13 of state statute, aligns with the federal requirements
14 under Fair Housing laws and 504, and also pulls in a level
15 of deference to HUD as a cognizant agency on HUD-funded
16 deals.

17 MR. VASQUEZ: So there's no reason for us to
18 change rules?

19 MR. IRVINE: I think if you want to change
20 rules, then I'm certainly all ears if you've got ideas but
21 those would not take effect till they went through the
22 entire rulemaking process. I believe that probably when
23 we bring the rule back next year we will clarify some of
24 the I won't exactly call it ambiguity but the confusing
25 superfluous information. For example, when you bring

1 non-exclusive examples into a rule, I think it often makes
2 it murkier rather than clearer.

3 MR. VASQUEZ: Again, I just want to make sure
4 that staff understands our goal is not to add more than is
5 necessary.

6 MR. IRVINE: We understand that.

7 MS. BINGHAM ESCAREÑO: So like in the committee
8 material that you provided for all of us today, you
9 highlighted where in our rules we try to go into examples
10 and all that kind of stuff, and so what I hear you saying
11 is if we could simplify by saying, you know, HUD is pretty
12 clear on -- we don't stray but where we start trying to
13 put more layer and detail is in the distribution part.
14 Right?

15 MR. IRVINE: Exactly.

16 MS. BINGHAM ESCAREÑO: In the accessibility,
17 everybody is pretty clear.

18 MR. IRVINE: I think that part is pretty clear.

19 MS. BINGHAM ESCAREÑO: And when there are deals
20 that don't include HUD funds, then we've done our own part
21 to try to say what distribution should look like. Right?

22 And what you're saying is even if there aren't HUD funds
23 involved at the time of the deal, there could be HUD funds
24 brought in at some other time, but if HUD already has rule
25 and language around distribution, then would it not make

1 sense for our agency to follow kind of the language as HUD
2 has placed it.

3 MR. IRVINE: Fairly stated.

4 MR. BRADEN: I agree, and I agree with your
5 interpretation, and I have specific comments about what
6 maybe we should change in the rule but they're in line
7 with yours about even those examples really aren't helpful
8 and that one part of the example that's not an example
9 should really just be separate section of that rule.

10 But one of the scenarios you put in the backup
11 for this material, this scenario one, which if you read
12 the breakup, it seems to me that it complies and
13 apparently made an award on the basis it complied, but
14 then there's a comment in here that said, "A compliance
15 issue had been raised with the development." So that
16 would be somebody is asking questions of whether or not
17 they agree with your interpretation?

18 MR. IRVINE: When a deal is about to be placed
19 in service it's got to go through a final inspection, and
20 one of the things that our compliance staff will check for
21 is that you, in fact, have a compliant unit distribution.

22 And I think that the compliance staff, as I said, has
23 developed a fantastic tool and I want them to know that
24 the way that I look at this is that tool would certainly
25 be an acceptable way to distribute units but it is not the

1 exclusive or controlling way and the real ultimate
2 standard is, frankly, more one of a reasonableness
3 standard.

4 MR. BRADEN: And I agree with that, and it
5 sounds like the tool is based on the example in our rule.

6 MR. IRVINE: Correct.

7 MR. BRADEN: And it's treating that more as a
8 bright line as opposed to just an example of one way you
9 can comply with our rule.

10 MR. IRVINE: Exactly. I do not believe the
11 examples constitute a bright line.

12 MR. BRADEN: And I agree with that.

13 MR. IRVINE: So the chairman was looking for
14 nods, I'm looking for more than nods. I think you've
15 made it clear that you agree with the way that I'm
16 reading our current rule and propose to go forward
17 administering it. I think I've got good direction on how
18 to tighten up and clarify the verbiage in our rule. And
19 the third point that I'd like to know is whether you
20 agree that where HUD is saying for somewhere over whom it
21 has jurisdiction, this is an acceptable way to us to deal
22 with your unit distribution, that we defer to them.

23 MR. BRADEN: I agree with that.

24 MR. VASQUEZ: WE concur with that.

25 MR. IRVINE: Excellent.

1 MR. ECCLES: That it's in line with a plain
2 reading of it.

3 MR. IRVINE: Yes, that's in line with a plain
4 reading.

5 MR. BRADEN: I think everything you discussed
6 is interpretive, we're not changing it in the rules right
7 now, and I think it is in line with a plain reading of
8 the rule.

9 MR. IRVINE: And I would also like to say that
10 even though it's something I can't describe with
11 specificity or detail because it is not a posted item for
12 today's agenda, I'm working on some, I think, pretty
13 significant improvements to the way that we approach our
14 rules that I will bring back to you for similar
15 discussions at a future meeting that I think will help us
16 make them simpler and more straightforward, easier for us
17 to administer, easier for the development community to
18 understand and follow, and to me that will largely set
19 the table for the possibility of a two-year QAP.

20 When we make tweaks and improvements to our
21 QAP, they are invariably not to make large changes to the
22 way we approach things like scoring or threshold or
23 anything like that, they're usually to address issues
24 that have come out from scenarios that have developed
25 over the prior round, and I think that if we take an

1 approach that embraces simplification and that type of
2 Board level policy value that we really can get to the
3 place where we can have a two-year QAP.

4 Any questions?

5 (No response.)

6 MR. IRVINE: We do not plan to go through the
7 right of first refusal issue at this time. We're
8 continuing to work through that at the staff level, and
9 so that said, I don't believe we have anything else.

10 MS. BINGHAM ESCAREÑO: Is that item 4?

11 MR. VASQUEZ: We're not going to discuss item
12 4 in this meeting.

13 MS. BINGHAM ESCAREÑO: Understood.

14 MR. VASQUEZ: So we can open up for public
15 comment on matters other than the items for which there
16 were posted agenda items.

17 MS. LANGENDORF: Good evening. My name is
18 Jean Langendorf, I'm with Disability Rights Texas.

19 And just as a follow-up -- and I look forward
20 to seeing what all Tim put together regarding the
21 accessibility and distribution -- I do want to say that
22 we did -- I think it was like two years ago or so we did
23 a public information request to see how the Department
24 was overseeing the accessibility requirements and other
25 things to do with the tax credit properties, and in doing

1 so kind of did a random sample, they were great with
2 providing us everything to look at as far as how they
3 were implementing the accessibility requirements, and I
4 just want to take this opportunity to say they were doing
5 a great job. And I can tell you from those of us in the
6 disability community and the attorneys that were also
7 doing the review, we didn't necessarily expect that.

8 But I do want to compliment the compliance
9 staff. They had great attention to it and some of the
10 issues that we saw in reviewing the files was the back
11 and forth about the placement of the various units and
12 the distribution of the units. And the thing that's
13 really important, and I think Fair Housing addresses a
14 lot of this, is that you do have options for individuals
15 with disabilities, that the development, say they have
16 one, two and three bedrooms, that the accessible units
17 are not all just a one bedroom, or they're not all off in
18 one building all by themselves.

19 So in the disability community this is a very
20 important issue, there is a lot of guidance on it. I
21 don't know what's being proposed but I trust Tim and a
22 lot of the staff as far as compliance goes, that we are
23 going to be looking at there are options and there are
24 the same Fair Housing requirements and opportunities for
25 individuals with disabilities that have mobility or need

1 the flashing lights and some of the other things.

2 But I just wanted to compliment, because these
3 guys know I rarely am one to be complimentary about
4 what's being done in the disability community, so I did
5 want to take the opportunity to say the compliance staff
6 was great. I'm not sure the developers, in looking at
7 the conversations back and forth, would agree with us on
8 that, but this is one area that they've been really good
9 to make sure that the disability community is being
10 served.

11 MR. VASQUEZ: Good. Thanks, Jean.

12 Anybody else?

13 (No response.)

14 MR. VASQUEZ: It's after 5:00 and let's go.

15 Right?

16 (General talking and laughter.)

17 MR. VASQUEZ: I'd actually just like to again
18 thank everyone for staying involved and your input really
19 is valuable. I know the staff is looking for it all the
20 time, and we as Board members are as well. Maybe
21 overstepping some bounds, so I'm only speaking for
22 myself, not the entire Board, but again, we truly are
23 looking for simplification, how can we make these --
24 codify everything into its most basic elements. We need
25 to change the policies to not be gotcha policies on

1 whether it's an administrative deficiency versus a
2 material deficiency, we really have to distinguish
3 between those, and we're trying to help move the process
4 into that where everyone makes a mistake but if it's
5 easily fixable, that shouldn't be a reason to throw out
6 that entire application or these projects we know you are
7 investing lots of money in and taking a lot of time.

8 So as you see us going forward, I think
9 there's consensus on the Board we're trying to move away,
10 it's not we caught you, you're out, it's going to be
11 please fix this and let's all move forward together. So
12 hopefully that will work out better.

13 And seeing that there's no other items on the
14 agenda, it's 5:13 and the meeting of the QAP Committee is
15 hereby closed.

16 (Whereupon, at 5:13 p.m., the meeting was
17 adjourned.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

C E R T I F I C A T E

MEETING OF: TDHCA QAP & MFR Committee
LOCATION: Austin, Texas
DATE: April 25, 2018

I do hereby certify that the foregoing pages,
numbers 1 through 45, inclusive, are the true, accurate,
and complete transcript prepared from the verbal
recording made by electronic recording by Nancy H. King
before the Texas Department of Housing and Community
Affairs.

DATE: May 1, 2018

/s/ Nancy H. King
(Transcriber)

On the Record Reporting &
Transcription, Inc.
7703 N. Lamar Blvd., Ste 515
Austin, Texas 78752