

**SUPPLEMENTAL BOARD BOOK
OF
May 13, 2021**



Leo Vasquez III, Chair
Leslie Bingham, Vice-Chair
Paul Braden, Member
Sharon Thomason, Member
Ajay Thomas, Member
Brandon Batch, Member

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
GOVERNING BOARD MEETING

A G E N D A
9:00 AM
May 13, 2021

Meeting Location: In light of the March 13, 2020, disaster declaration by the Office of the Governor, and the subsequent waivers of portions of Tex. Gov't Code, Ch. 551*, this meeting of the TDHCA Governing Board will be accessible to the public via the telephone and web link information, below. In order to engage in two-way communication during the meeting, persons must first register (at no cost) to attend the webinar via the link provided. Anyone who calls into the meeting without registering online will not be able to ask questions or provide comments, but the meeting will still be audible. A recording of the meeting will be made available to the public as soon as possible following the meeting.

Governing Board Webinar registration:

<https://attendee.gotowebinar.com/register/8299063603340971536>

Dial-in number: +1 (914) 614-3221, access code 636-031-475 (persons who use the dial-in number and access code without registering online will only be able to hear the Board meeting and will not be able to ask questions or provide comments). Note, this meeting will be proceeding as a videoconference under Tex. Gov't Code §551.127, as modified by waiver.

If the GoToWebinar terminates prior to adjournment of the meeting (i.e. if the webinar session "crashes") the meeting will be recessed. A new link to the meeting will be posted immediately on the TDHCA Board meetings web page (<https://www.tdhca.state.tx.us/board/meetings.htm>) along with the time the meeting will resume. The time indicated to resume the meeting will be within six hours of the interruption of the webinar. Please note that in this contingency, the original meeting link will no longer function, and only the new link (posted on the TDHCA Board meetings web page) will work to return to the meeting.

CALL TO ORDER

ROLL CALL

CERTIFICATION OF QUORUM

Leo Vasquez, Chair

Pledge of Allegiance - I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

Texas Allegiance - Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible.

Resolution Recognizing May as National Mobility Awareness Month

CONSENT AGENDA

* The list of Open Meeting laws subject to temporary suspension effective March 16, 2020, is available at: <https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/Open%20Meeting%20Laws%20Subject%20to%20Temporary%20Suspension.pdf>

Items on the Consent Agenda may be removed at the request of any Board member and considered at another appropriate time on this agenda. Placement on the Consent Agenda does not limit the possibility of any presentation, discussion or approval at this meeting. Under no circumstances does the Consent Agenda alter any requirements under Chapter 551 of the Tex. Gov't Code, Texas Open Meetings Act. Action may be taken on any item on this agenda, regardless of how designated.

ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS:

ASSET MANAGEMENT

- a) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Land Use Restriction Agreement

Rosalio Banuelos
Director of Asset Management

00072	Beacon Bay Apartments	Port Isabel
01073	The Greens on Turtle Creek	Port Arthur
02042	Saddle Creek Apartments at Kyle	Kyle
03009	Forest Park Apartments	Bryan
03178	Big Bass Resort Senior Apartments	Jacinto City

- b) Presentation, discussion, and possible action regarding a Material Amendment to the Housing Tax Credit Application

14425	Dwight D. Eisenhower Memorial Apartments	El Paso
20200	Lofts at Temple Medical District	Temple

- c) Presentation, discussion, and possible action regarding approval of a Multifamily Direct Loan re-subordination for Westridge Villas (HOME #1002295 and TCAP #13150015502)

COMMUNITY AFFAIRS

- d) Presentation, discussion, and possible action on the 2021 Department of Energy Weatherization Assistance Program State Plan and Awards

Michael De Young
Director of Community Affairs

RULES

- e) Presentation, discussion, and possible action on an order proposing the amendment of 10 TAC Chapter 1, Subchapter A, General Policies and Procedures, §1.3, Sick Leave Pool; and an order directing its publication for public comment in the Texas Register
- f) Presentation, discussion, and possible action on an order proposing new 10 TAC Chapter 5, Section 8 Housing Choice Voucher Program, §5.802, Waiting List, directing its publication for public comment in the Texas Register
- g) Presentation, discussion, and possible action on an order adopting amendments to 10 TAC Chapter 7 Subchapter C, Section 7.33, Apportionment of ESG Funds, concerning the Emergency Solutions Grants, and directing their publication for adoption in the Texas Register

Brooke Boston
Deputy Director of Programs

Michael De Young
Director of Community Affairs

Abigail Versyp
Director of Single Family & Homeless Programs

HOUSING RESOURCE CENTER

- h) Presentation, discussion, and possible action on the draft 2022 Regional Allocation Formula Methodology, and directing its publication in the Texas Register for public comment

Elizabeth Yevich
Director of Housing Resource Center

MULTIFAMILY FINANCE

- i) Presentation, discussion, and possible action on a waiver of specific non-statutory requirements of 10 TAC §11.9(d)(5)(A) regarding Letters from State Representatives for 21130 Sun Pointe Apartments and 21200 Edson Lofts

Marni Holloway
Director of Multifamily Finance

BOND FINANCE

- j) Presentation, discussion, and possible action regarding the adherence to a Protocol established by the International Swaps and Derivatives Association for the Department's LIBOR-based swaps

Monica Galuski
Director of
Bond Finance

CONSENT AGENDA REPORT ITEMS

ITEM 2: THE BOARD ACCEPTS THE FOLLOWING REPORTS:

- a) Media Analysis and Outreach Report (March 2021)
- b) Report on the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act
- c) Report on the Department's 2nd Quarter Investment Report relating to funds held under Bond Trust Indentures

Michael Lyttle
Director of
External Affairs
Joe Guevara
Director of Financial
Administration
Monica Galuski
Director of
Bond Finance

ACTION ITEMS

ITEM 3: EXECUTIVE

- a) Presentation, Discussion and Possible Approval of an Award of Emergency Rental Assistance Funds to the Texas Access to Justice Foundation for Housing Stabilization Services
- b) Report on Activities Related to the Department's Response to COVID-19 Pandemic
- c) Executive Director's Report

Brooke Boston
Deputy Director
of Programs

Bobby Wilkinson
Executive Director, TDHCA

ITEM 4: BOND FINANCE

- a) Presentation, discussion, and possible action regarding the Issuance of a Governmental Note (Caroline Lofts) Resolution No. 21-029 and a Determination Notice of Housing Tax Credits
- b) Presentation, discussion, and possible action regarding the Issuance of Governmental Notes (The Citadel Apartments) Series 2021 Resolution No. 21-030, and a Determination Notice of Housing Tax Credits
- c) Presentation, discussion, and possible action authorizing publication of a Notice of Public Hearing for the issuance of Single Family Mortgage Revenue Bonds

Teresa Morales
Director of
Multifamily Bonds

Monica Galuski
Director of
Bond Finance

ITEM 5: MULTIFAMILY FINANCE

- a) Presentation, discussion, and possible action on an Award of Direct Loan Funds from the 2020-1 Multifamily Direct Loan Notice of Funding Availability and a Determination Notice for 4% Housing Tax Credits for The Enchanted Gardens in Victoria
- b) Presentation, discussion and possible action regarding an Award of Direct Loan Funds from the 2020-1 Multifamily Direct Loan Notice of Funding Availability for Manor Town Apartments Phase 2 in Manor
- c) Report on potential assistance to 2020 competitive 9% Housing Tax Credits due to the impact of increased construction costs
- d) Presentation, discussion and possible action on timely filed appeals of scoring of HTC Applications, and request for Board waiver of rule, under the Qualified Allocation Plan

Marni Holloway
Director of
Multifamily Finance

21016	Houston Willow Chase Living	Houston
21139	Cypress Creek Apartments	Dallas
21144	Mariposa Apartment Homes at Plano Parkway	Plano

- e) Report on the 2022 and 2023 QAP Planning Process

ITEM 6: CDBG CARES

Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Texas Emergency Mortgage Assistance Program awards and any timely filed appeals

Rudy Bentancourt
Director of CDBG CARES

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

EXECUTIVE SESSION

The Board may go into Executive Session (close its meeting to the public):

Leo Vasquez
Chair

The Board may go into Executive Session Pursuant to Tex. Gov't Code §551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee;

Pursuant to Tex. Gov't Code §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer;

Pursuant to Tex. Gov't Code §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Tex. Gov't Code Chapter 551; including seeking legal advice in connection with a posted agenda item;

Pursuant to Tex. Gov't Code §551.072 to deliberate the possible purchase, sale, exchange, or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person; and/or

Pursuant to Tex. Gov't Code §2306.039(c) the Department's internal auditor, fraud prevention coordinator or ethics advisor may meet in an executive session of the Board to discuss issues related to fraud, waste or abuse.

OPEN SESSION

If there is an Executive Session, the Board will reconvene in Open Session. Except as specifically authorized by applicable law, the Board may not take any actions in Executive Session.

ADJOURN

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Michael Lyttle, 512-475-4542, TDHCA, 221 East 11th Street, Austin, Texas 78701, and request the information. If you would like to follow actions taken by the Governing Board during this meeting, please follow TDHCA account (@tdhca) on Twitter.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Nancy Dennis, at 512-475-3959 or Relay Texas at 1-800-735-2989, at least five days before the meeting so that appropriate arrangements can be made. Non-English speaking individuals who require interpreters for this meeting should contact Elena Peinado, 512-475-3814, at least five days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado, al siguiente número 512-475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

5a

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
MAY 13, 2021

Presentation, discussion, and possible action on an Award of Direct Loan Funds from the 2020-1 Multifamily Direct Loan Notice of Funding Availability and a Determination Notice for 4% Housing Tax Credits for The Enchanted Gardens in Victoria

RECOMMENDED ACTION

WHEREAS, an application for Enchanted Gardens (Application #21422), from VTX Enchanted Gardens, Ltd (Applicant), requesting Direct Loan funds and 4% Housing Tax Credits (HTC), was submitted to the Department on February 16, 2021;

WHEREAS, the Application requests \$3,000,000 of HOME Investment Partnership Program funds, and is a Priority 1 under the 2021-1 Multifamily Direct Loan Notice of Funding Availability (2021-1 NOFA) under the General set-aside;

WHEREAS, the Certification of Reservation from the Texas Bond Review Board was issued on January 25, 2021, and will expire on July 24, 2021;

WHEREAS, the proposed issuer of the bonds is the Victoria Housing Finance Corporation;

WHEREAS, the Application proposes the new construction of 168 units in Victoria targeting the general population and the Application has received complete reviews for compliance with program and underwriting requirements;

WHEREAS, in accordance with 10 TAC §1.301(d)(1), the compliance history is designated as a Category 2 and deemed acceptable by the Executive Award Review Advisory Committee (EARAC); and

WHEREAS, staff recommends approval of \$3,000,000 in HOME and the issuance of a Determination Notice for Application 21422, Enchanted Gardens;

NOW, therefore, it is hereby

RESOLVED, that the award of \$3,000,000 in HOME from the 2021-1 NOFA, and the issuance of a Determination Notice of \$1,155,427 in 4% HTC, subject to underwriting conditions that may be applicable as found in the Real Estate Analysis report posted to the Department's website for Enchanted Gardens is hereby approved in the form presented at this meeting; and

FURTHER RESOLVED, that the Board’s approval is conditioned upon satisfaction of all conditions of underwriting, and completion of any other reviews required to ensure compliance with the applicable rules and requirements.

BACKGROUND

Development Information: Enchanted Gardens is a proposed 168-unit New Construction Development targeted to the general population, located at 4600 North Ben Jordan Street, Victoria, Victoria County. The proposed Development will be built on a currently undeveloped 10-acre site and comprised of 48 one-bedrooms, 72 two-bedrooms, and 48 three-bedroom units restricted at several area median family income (AMI) levels, as noted, with unit types appropriately disbursed among each income level and Unit type:

<u>AMI Level</u>	<u>Units</u>	<u>TDHCA Source</u>
30%	3 units	Direct Loan (MFDL)
50%	5 units	MFDL
60%	15 units	MFDL
60%	142 units	4% HTC
80%	2 units	MFDL

In addition to the 26 floating HOME Units, two HOME Match Units will be required at rent and income restricted to 80% of AMI and may not be MFDL-funded Units. There will be no project-based rental assistance attached to any of the Units.

All Units will include green building features, have an Energy Star rating, faux wood floors, full size washer dryer connections, and energy efficient ceiling fans in the living and bedroom areas. The property will feature an array of common area amenities such as a pool, fitness center, a business center and/or library where the residents will have use of computers and Wi-Fi, community room with kitchen, and adequate parking. Exterior amenities also include a dog park, garden area, and BBQ grill areas.

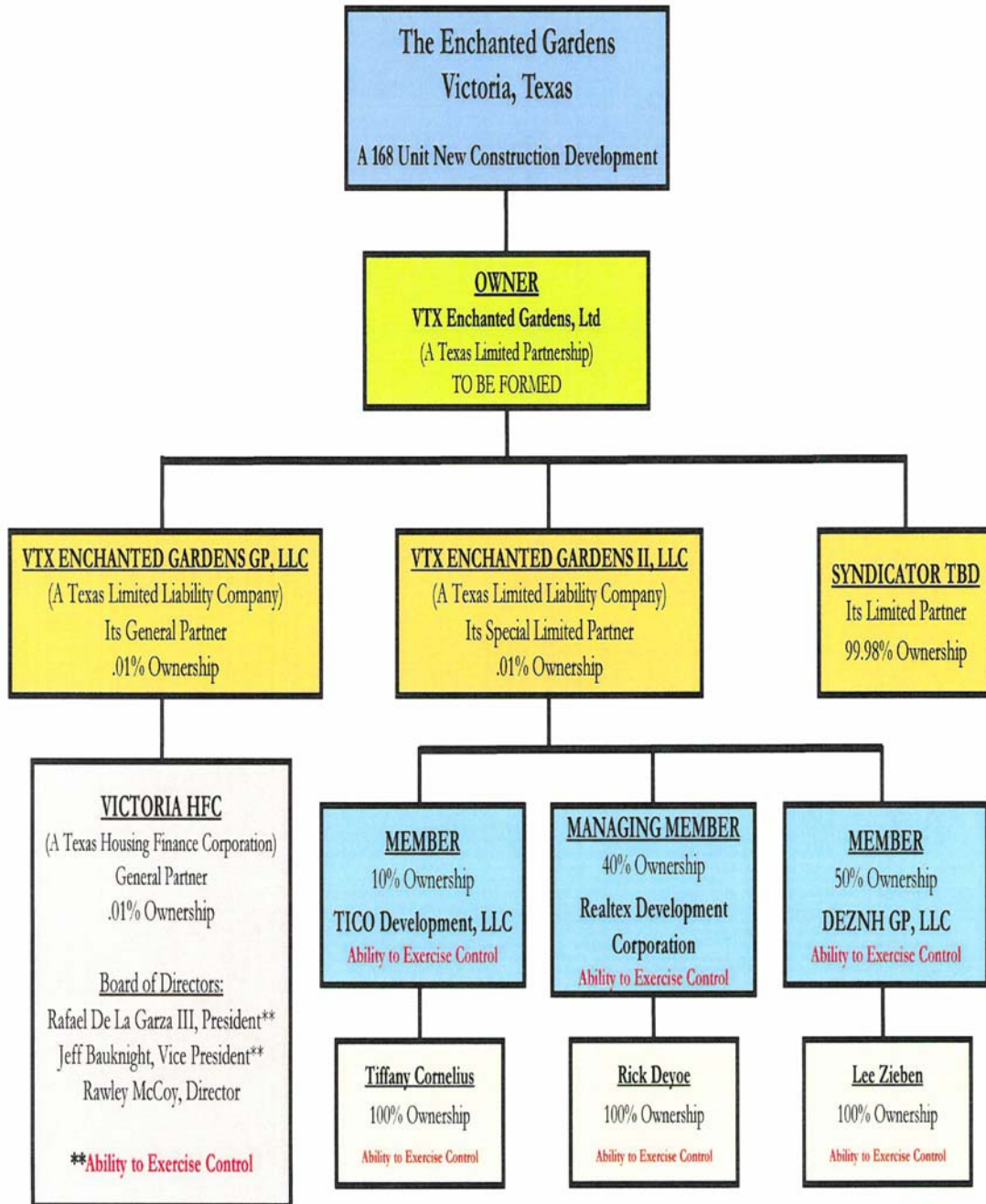
Financing: Staff recommends the Board’s approval of HOME totaling \$3,000,000, to be funded from the General set-aside at 0.4%, amortized over 35 years with an 18-year term. The interest rate has been adjusted by Real Estate Analysis from NOFA requirements in accordance with 10 TAC §11.302(d)(4)(D)(i), in order to meet Debt Coverage Ration requirements. The balance of the financing includes a proposed 4% HTC allocation of \$1,155,427 tax-exempt bonds to be issued by Victoria Housing Finance Corporation, and deferred developer fee, as further outlined in the Real Estate Analysis Underwriting Report.

The HOME loan will be in second position behind the tax-exempt bond financing throughout the term of the loan. This Application has been underwritten and determined to meet the Real Estate Analysis rules and requirements.

Organizational Structure and Previous Participation: The borrower is VTX Enchanted Gardens, Ltd, and includes the entities and principals as illustrated below. The applicant's portfolio is considered a Category 2 and the previous participation was deemed acceptable by EARAC.

Public Comment: There have been no letters of support or opposition received by the Department in connection with this application.

THE ENCHANTED GARDENS



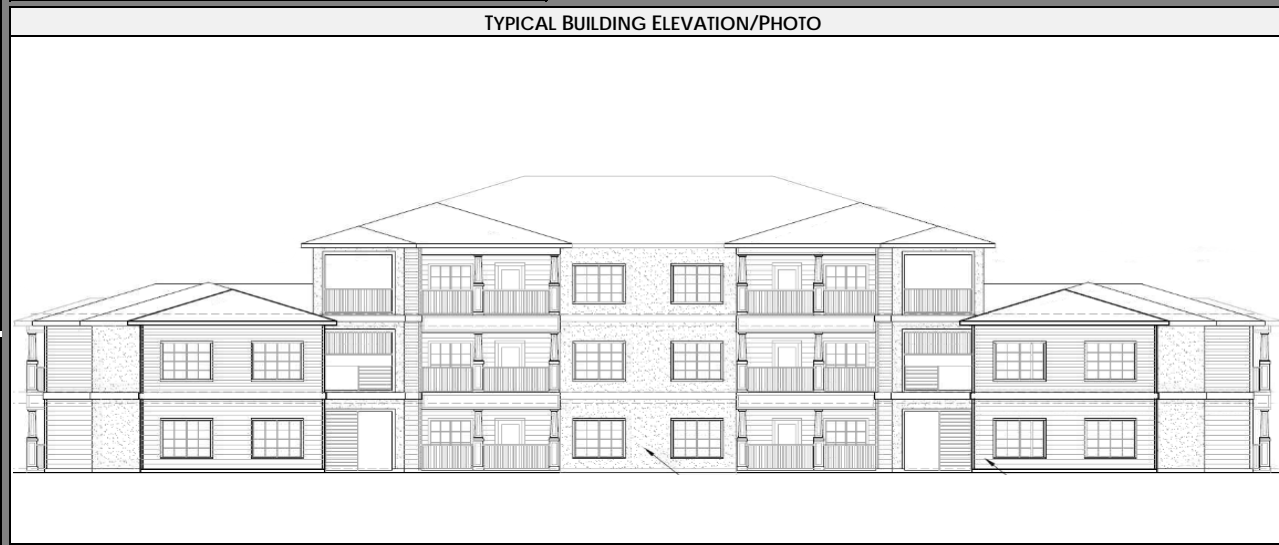
21422 Enchanted Gardens - Application Summary

REAL ESTATE ANALYSIS DIVISION
May 5, 2021

PROPERTY IDENTIFICATION	
Application #	21422
Development	Enchanted Gardens
City / County	Victoria / Victoria
Region/Area	10 / Urban
Population	General
Set-Aside	General
Activity	New Construction

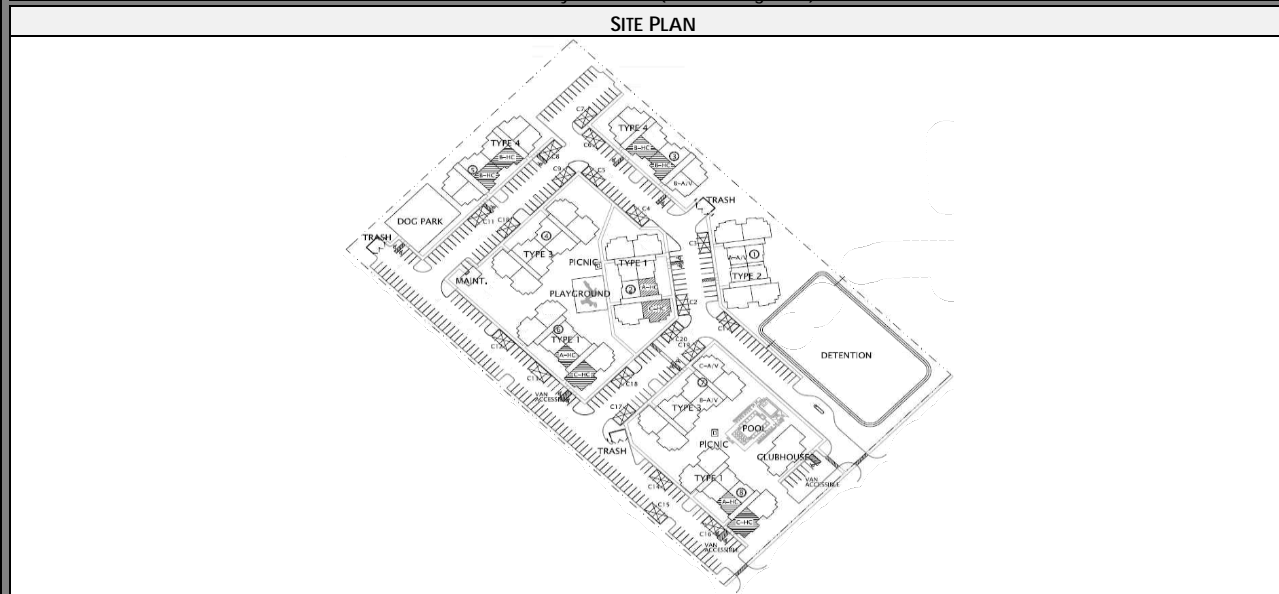
RECOMMENDATION						
TDHCA Program	Request	Recommended				
LIHTC (4% Credit)	\$1,155,427	\$1,152,758	\$6,862/Unit	\$0.89		
	Amount	Rate	Amort	Term	Lien	
Multifamily Direct Loan	\$3,000,000	0.40%	35	15	2	

KEY PRINCIPALS / SPONSOR	
Rick Deyoe / RealTex Development Corporation	
Rafael De La Garza III / Victoria Housing Finance Corp.	
Lee Zieben / DEZNH GP, LLC	
Tiffany Cornelius / TICO Development, LLC	
Contractor -	No
Seller -	No



UNIT DISTRIBUTION			INCOME DISTRIBUTION		
# Beds	# Units	% Total	Income	# Units	% Total
Eff	-	0%	20%	-	0%
1	48	29%	30%	-	0%
2	72	43%	40%	-	0%
3	48	29%	50%	-	0%
4	-	0%	60%	168	100%
			70%	-	0%
			80%	-	0%
			MR	-	0%
TOTAL	168	100%	TOTAL	168	100%

PRO FORMA FEASIBILITY INDICATORS			
Pro Forma Underwritten		Applicant's Pro Forma	
Debt Coverage	1.15	Expense Ratio	38.8%
Breakeven Occ.	85.1%	Breakeven Rent	\$826
Average Rent	\$900	B/E Rent Margin	\$74
Property Taxes	Exempt	Exemption/PILOT	100%
Total Expense	\$3,993/unit	Controllable	\$2,701/unit



MARKET FEASIBILITY INDICATORS			
Gross Capture Rate (10% Maximum)			4.8%
Highest Unit Capture Rate	16%	3 BR/60%	48
Dominant Unit Cap. Rate	13%	2 BR/60%	72
Premiums (↑60% Rents)	#DIV/0!		#DIV/0!
Rent Assisted Units	N/A		

DEVELOPMENT COST SUMMARY			
Costs Underwritten		Applicant's Costs	
Avg. Unit Size	1,014 SF	Density	16.8/acre
Acquisition		\$02K/unit	\$370K
Building Cost	\$87.91/SF	\$89K/unit	\$14,976K
Hard Cost		\$115K/unit	\$19,321K
Total Cost		\$186K/unit	\$31,252K
Developer Fee	\$3,837K	(60% Deferred)	Paid Year: 11
Contractor Fee	\$2,704K	30% Boost	No

DEBT (Must Pay)					CASH FLOW DEBT / GRANT FUNDS					EQUITY / DEFERRED FEES		
Source	Term	Rate	Amount	DCR	Source	Term	Rate	Amount	DCR	Source	Amount	
Walker & Dunlop	15/35	3.95%	\$15,675,000	1.28						Affordable Housing Partners, Inc.	\$10,259,543	
MultiFamily Direct Loan	15/35	0.40%	\$3,000,000	1.15	Donanted non-professional labor	0/0	0.00%	\$20,000	1.15	VTX Enchanted Gardens Development L	\$2,297,435	
TOTAL DEBT (Must Pay)			\$18,675,000		CASH FLOW DEBT / GRANTS			\$20,000		TOTAL EQUITY SOURCES	\$12,556,977	
											TOTAL DEBT SOURCES	\$18,695,000
											TOTAL CAPITALIZATION	\$31,251,977

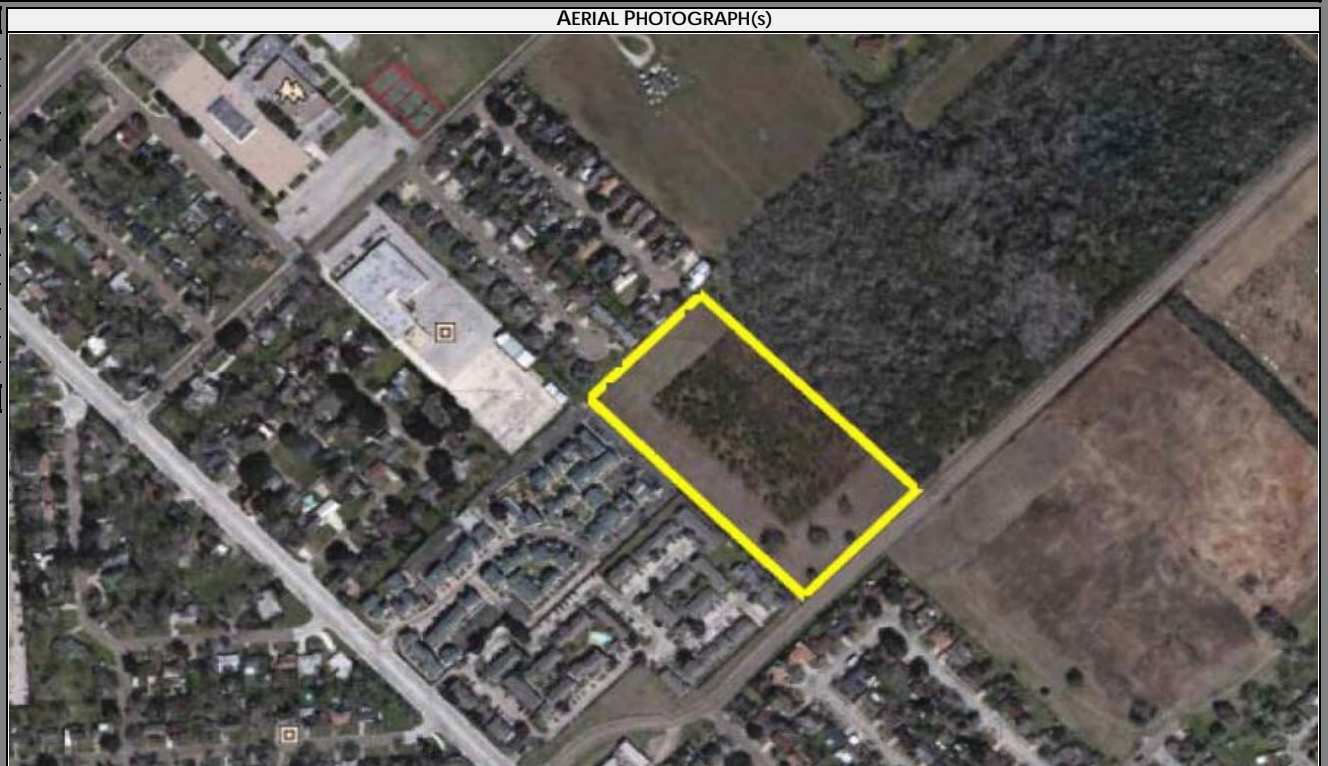
CONDITIONS

- 1 Receipt and acceptance before Direct Loan Closing
- a: Updated application exhibits: Rent Schedule, Utility Allowance, Operating Expenses, Long-Term Pro Forma, Development Cost Schedule, Schedule of Sources; and documentation necessary to support any changes from previous underwriting.
 - b: Substantially final construction contract with Schedule of Values.
 - c: Updated term sheets with substantially final terms from all lenders.
 - d: Substantially final draft of limited partnership agreement.
 - e: Senior loan documents (and/or partnership documents) must contain a provision(s) that any stabilization resizing on the senior debt includes the debt service on the TDHCA MDL at a minimum 1.15 DCR.
 - f: Documentation identifying any required matching funds, and confirming that the source is eligible to be counted as matching funds under HUD and TDHCA requirements.

Should any terms of the proposed capital structure change or if there are material changes to the overall development plan or costs, the analysis must be re-evaluated and adjustment to the credit allocation and/or terms of other TDHCA funds may be warranted.

BOND RESERVATION / ISSUER	
Issuer	Victoria HFC
Expiration Date	7/24/2021
Bond Amount	\$20,830,247
BRB Priority	Priority 3
Bond Structure	Private Activity Bond
% Financed with Tax-Exempt Bonds	87.5%

RISK PROFILE	
STRENGTHS/MITIGATING FACTORS	
▫	38% expense-to-income ratio
▫	85% break-even occupancy
▫	Developer experience
WEAKNESSES/RISKS	
▫	Minimal debt coverage





DEVELOPMENT IDENTIFICATION

TDHCA Application #: 21422 Program(s): 4% HTC/MDL

Enchanted Gardens

Address/Location: 4600 N. Ben Jordan Street

City: Victoria County: Victoria Zip: 77901

Population: General Program Set-Aside: General Area: Urban

Activity: New Construction Building Type: Garden (Up to 4-story) Region: 10

Analysis Purpose: New Application - Initial Underwriting

ALLOCATION

TDHCA Program	REQUEST				RECOMMENDATION				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	Lien
MultiFamily Direct Loan	\$3,000,000	0.50%	35	15	\$3,000,000	0.40%	35	15	2
LIHTC (4% Credit)	\$1,155,427				\$1,152,758				

- * Multifamily Direct Loan Terms:
- * The term of a Multifamily Direct Loan should match the term of any superior loan (within 6 months).
- * Lien position after conversion to permanent. The Department's lien position during construction may vary.

CONDITIONS

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SET-ASIDES

TDHCA SET-ASIDES for HTC LURA		
Income Limit	Rent Limit	Number of Units
60% of AMI	60% of AMI	168

TDHCA SET-ASIDES for DIRECT LOAN LURA		
Income Limit	Rent Limit	Number of Units
30% of AMFI	30% of AMFI	3
50% of AMFI	Low HOME	5
60% of AMFI	High HOME	15
80% of AMFI	High HOME	3

Comments:

Three (3) units restricted to 80% High HOME rents will be designated MFDL Match-eligible units.

DEVELOPMENT SUMMARY

The Enchanted Gardens is a proposed 168 unit new construction multifamily community. The development will be comprised of 48 one bedrooms, 72 two bedrooms, and 48 three bedroom units that will be energy efficient and meet the criteria to achieve an Energy Star rating for multifamily. The property will feature an array of common area amenities such as a resort style pool, fitness center, business center / library, community room with kitchen, dog park, garden area, and BBQ grill areas.

RISK PROFILE

STRENGTHS/MITIGATING FACTORS	
▫	38% expense-to-income ratio
▫	85% break-even occupancy
▫	Developer experience

WEAKNESSES/RISKS	
▫	Minimal debt coverage
▫	
▫	

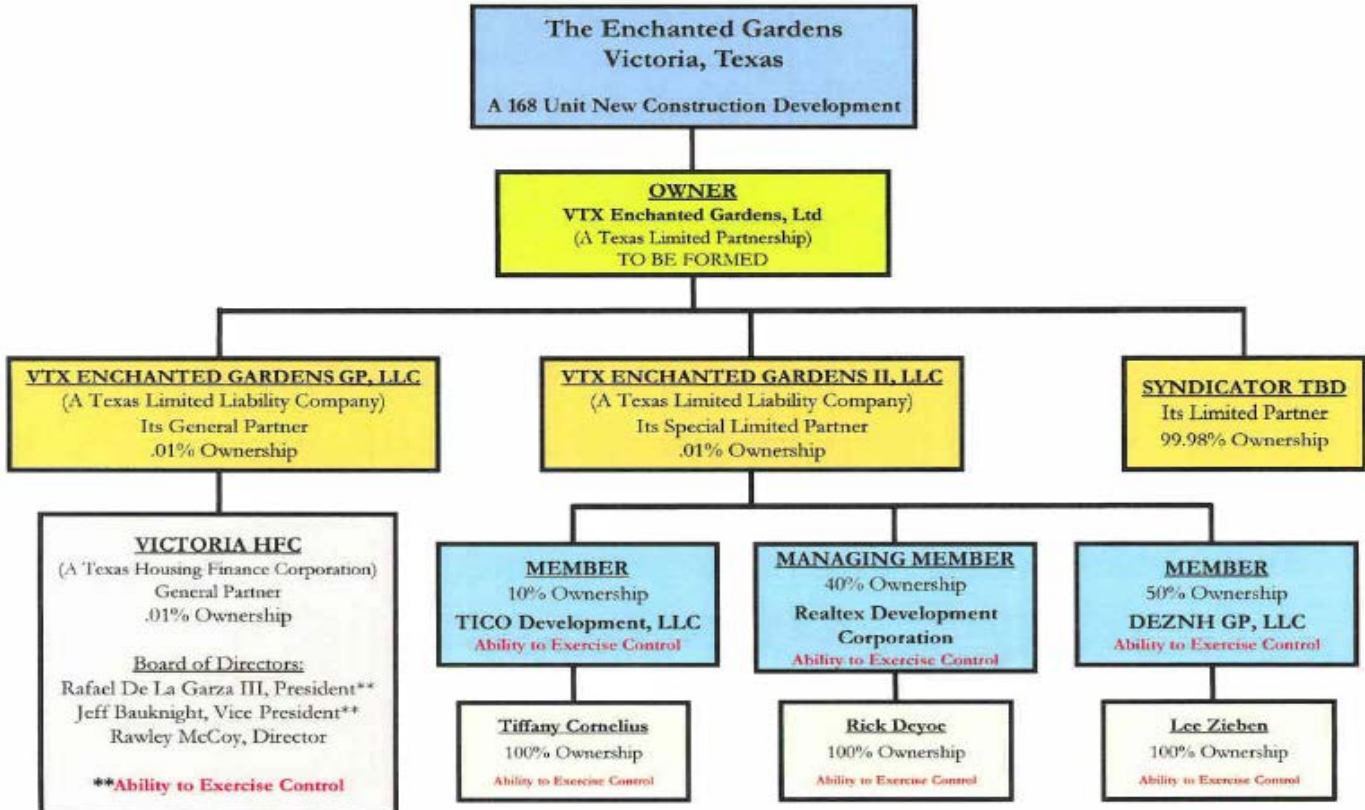
DEVELOPMENT TEAM

PRIMARY CONTACTS

Name: Rick J. Deyoe
 Phone: 512-306-9206

Name: Alma Cobb
 Phone: (512) 306-9206

OWNERSHIP STRUCTURE



- RealTex Development Corp has developed 19 properties through the 9% HTC program since 2001.
- Lee Zieben has developed three 9% HTC properties since 2002.
- Tiffany Cornelius has participated in two 9% HTC developments over the past two years.
- The Victoria Housing Finance Corp does not report any previous participation in the tax credit program.

DEVELOPMENT SUMMARY

SITE PLAN



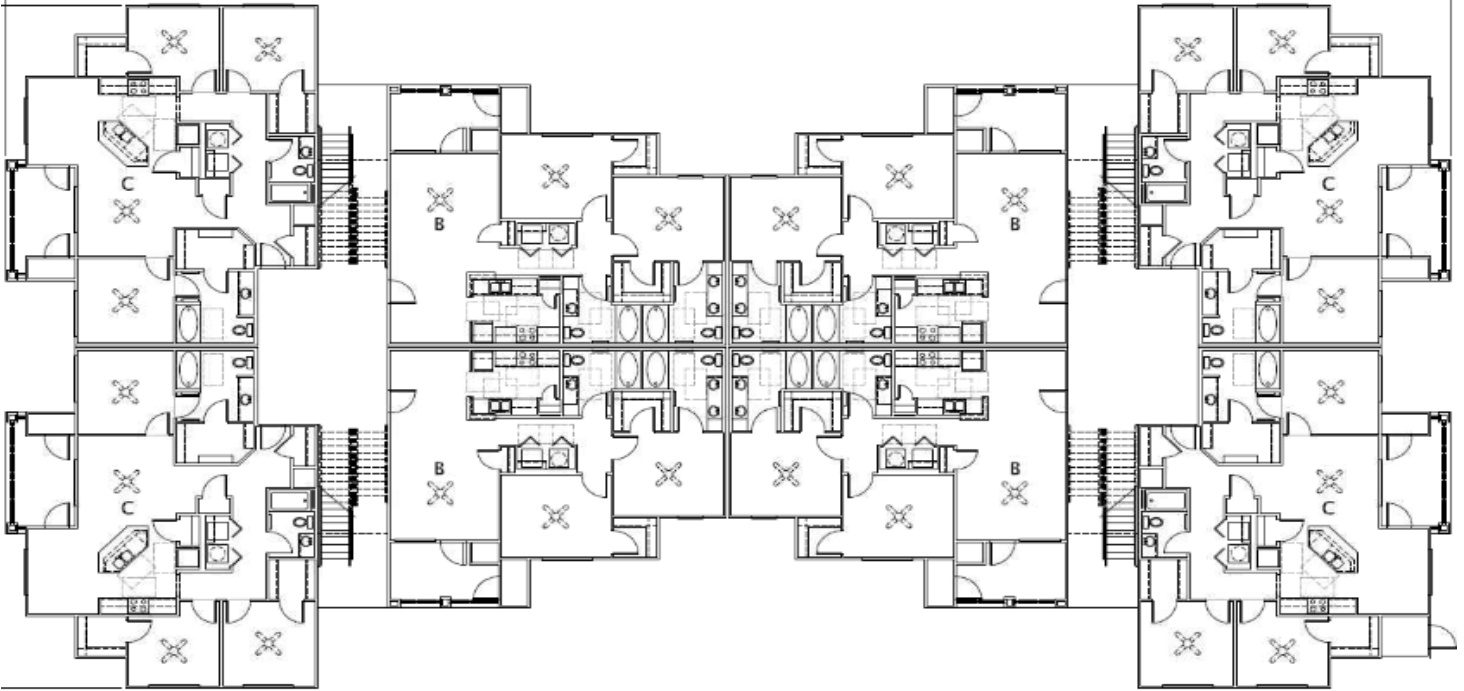
Very limited topography on this vacant site, which is efficiently parked with two southeast points of egress out to Ben Jordan St. Significant paving with limited greenspace allocated for the picnic area, dog park, and playground, as well as considerable greenspace northeast of the parcel.

Parking	No Fee		Tenant-Paid		Total	
	Count	Cost/unit	Count	Cost/unit	Count	Cost/unit
Open Surface	256	1.5/unit	0	--	256	1.5/unit
Carpport	0	--	80	0.5/unit	80	0.5/unit
Total Parking	256	1.5/unit	80	0.5/unit	336	2.0/unit

Comments:

The City of Victoria has approved the proposed parking plan consisting of 256 open spaces and 80 carport spaces. The Applicant intends to charge fees for the covered parking. The cost to construct the carports has been excluded from eligible basis.

BUILDING PLAN (Typical)



Comments:

Most units include wet-island kitchens and walk-in closets in all master bedrooms. All buildings include significant articulation with short breezeways separating unit entries.

BUILDING ELEVATION



Comments:

Four of the buildings are split level (pictured), while the remaining four are each 3-story. Each building consists of 40-70% siding with the remainder being Stucco. All buildings includes a relatively low 4:12 roof pitch.

BUILDING CONFIGURATION

Building Type	1	2	3	4									Total Buildings
Floors/Stories	2.538	2.538	3	3									8
Number of Bldgs	3	1	2	2									
Units per Bldg	20	20	20	24									
Total Units	60	20	40	48									168
Avg. Unit Size (SF)		1,014 sf		Total NRA (SF)		170,354		Common Area (SF)*		3,485			

*Common Area Square Footage as specified on Architect Certification

SITE CONTROL INFO

Site Acreage: Development Site: 10.00 acres Density: 16.8 units/acre
Site Control: 10 **Site Plan:** 10 **Appraisal:** 0 **ESA:** 10
Feasibility Report Survey: 10 **Feasibility Report Engineer's Plan:** 0

Control Type: Commercial Contract - Unimproved Property Contract Expiration: 7/31/2021
 Development Site: 10.00 acres Cost: \$350,000 \$2,083 per unit
 Seller: City of Victoria
 Buyer: Realtex Development Corporation
 Related-Party Seller/Identity of Interest: No

SITE INFORMATION

Flood Zone:	<u>Zone X</u>	Scattered Site?	<u>No</u>
Zoning:	<u>N/A</u>	Within 100-yr floodplain?	<u>No</u>
Re-Zoning Required?	<u>No</u>	Utilities at Site?	<u>Yes</u>
Year Constructed:	<u>0</u>	Title Issues?	<u>No</u>

Current Uses of Subject Site:
 Undeveloped Land

Surrounding Uses:
 North: Single Family Homes / Vacant Lot / Leary Lane
 West: Fox Run & Moss Wood Apartments / Sam Houston Dr.
 South: Ben Jordan St. / Single Family Homes
 East: Undeveloped Land

HIGHLIGHTS of ENVIRONMENTAL REPORTS

Provider: Phase Engineering, Inc. Date: 1/3/2021

Recognized Environmental Conditions (RECs) and Other Concerns:
 ▪ None

MARKET ANALYSIS

Provider: Apartment MarketData, LLC

Date: 1/31/2021

Primary Market Area (PMA): 889 sq. miles 17 mile equivalent radius

ELIGIBLE HOUSEHOLDS BY INCOME								
Victoria County Income Limits								
HH Size		1	2	3	4	5	6	7+
60% AMGI	Min	\$11,640	\$11,640	\$13,950	\$13,950	\$16,110	\$16,110	---
	Max	\$30,360	\$34,680	\$39,000	\$43,320	\$46,800	\$50,280	---

AFFORDABLE HOUSING INVENTORY								
Competitive Supply (Proposed, Under Construction, and Unstabilized)								
File #	Development			In PMA?	Type	Target Population	Comp Units	Total Units
	None							
Other Affordable Developments in PMA since 2016								
	None							
Stabilized Affordable Developments in PMA							Total Units	816
							Total Developments	7
							Average Occupancy	95%

Proposed, Under Construction, and Unstabilized Competitive Supply:

None

OVERALL DEMAND ANALYSIS				
		Market Analyst		
		HTC	Assisted	
Total Households in the Primary Market Area		34,896		
Potential Demand from the Primary Market Area		3,152		
10% External Demand		315		
Potential Demand from Other Sources		0		
GROSS DEMAND		3,467		
Subject Affordable Units		168		
Unstabilized Competitive Units		0		
RELEVANT SUPPLY		168		
Relevant Supply ÷ Gross Demand = GROSS CAPTURE RATE		4.8%		

Population:	General	Market Area:	Urban	Maximum Gross Capture Rate:	10%
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UNDERWRITING ANALYSIS of PMA DEMAND by AMGI BAND					
AMGI Band	Market Analyst				
	Demand	10% Ext	Subject Units	Comp Units	AMGI Band Capture Rate
60% AMGI	3,152	315	168	0	5%

Demand Analysis:

The capture rate calculation determines the percentage of the qualified demand that is needed to absorb the proposed units. All capture rates are under the maximum thresholds.

UNDERWRITING ANALYSIS of PMA DEMAND by UNIT TYPE					
Unit Type	Market Analyst				
	Demand	10% Ext	Subject Units	Comp Units	Unit Capture Rate
1 BR/60%	490	49	48	0	9%
2 BR/60%	514	51	72	0	13%
3 BR/60%	281	28	48	0	16%

Market Analyst Comments:

"Access to the property is very good. The subject site has excellent access to both Highway 463 and Texas Highway 87 via Ben Jordan Street. The subject location provides easy access to shopping, recreation, and employment areas." (p. 3)

"According to market participants, the market in this area is strong and the level of demand for quality "affordable" housing is growing." (p. 4)

"Based on straight-line delineation of the household growth alone between the years of 2021 to 2025, it can be assessed that the primary market area will need an additional 617 rental dwelling units." (p. 7)

Revisions to Market Study:	0
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OPERATING PRO FORMA

SUMMARY- AS UNDERWRITTEN (Applicant's Pro Forma)					
NOI:	\$1,057,375	Avg. Rent:	\$900	Expense Ratio:	38.8%
Debt Service:	\$919,096	B/E Rent:	\$826	Controllable Expenses:	\$2,701
Net Cash Flow:	\$138,279	UW Occupancy:	92.5%	Property Taxes/Unit:	\$0
Aggregate DCR:	1.15	B/E Occupancy:	85.1%	Program Rent Year:	2021

All units will be restricted at 60% AMI under the HTC LURA.

Twenty-six units will be subject to layered restrictions from the Direct Loan financing: 3 units at 30% AMI, 5 units at Low HOME/50% AMI, 15 units at High HOME/60% AMI, and 3 units designated as MFDL Match-eligible units will be restricted at High HOME/80% AMI.

All units are underwritten at maximum Program Rents.

TDHCA expenses derived from both local comparables as well as the applicant's currently managed properties.

Property Management Fee of 4% as determined by the self-managed Applicant.

Property Tax exemption due to Victoria HFC's involvement in the General Partnership.

Related-Party Property Management Company: Yes

Revisions to Rent Schedule:	2
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Revisions to Annual Operating Expenses:	2
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DEVELOPMENT COST EVALUATION

SUMMARY- AS UNDERWRITTEN (Applicant's Costs)

Acquisition	\$35,000/ac	\$2,202/unit	\$370,000	Contractor Fee	\$2,704,000
Off-site + Site Work		\$18,339/unit	\$3,080,876	Soft Cost + Financing	\$4,169,949
Building Cost	\$87.91/sf	\$89,143/unit	\$14,976,000	Developer Fee	\$3,837,085
Contingency	7.11%	\$7,524/unit	\$1,263,981	Reserves	\$850,086
Total Development Cost	\$186,024/unit		\$31,251,977	Rehabilitation Cost	N/A
Qualified for 30% Basis Boost?		Not Qualified			

Acquisition:

Site Acquisition of \$35,000 /acre from the City of Victoria.

Site Work:

\$392K allocated for grading, with \$767K for concrete & paving of the site.

Building Cost:

\$3.63M (26%) for Woods and Plastics is reflective of current cost of wood.

\$2.2M (22%) allocated for Doors, Windows, & Finishes.

Contingency:

Soft Cost contingency combined with total contingency and subject to 7% limit.

Contractor Fee:

Contractor Fee is overstated as the result of the adjustment to contingency.

Soft Costs:

\$3,185 / unit for Architecture & Engineering

\$150K for Furniture, Fixtures, & Equipment.

Developer Fee:

Developer Fee is overstated as the result of the adjustment to Contingency.

Credit Allocation Supported by Costs:

Total Development Cost	Adjusted Eligible Cost	Credit Allocation Supported by Eligible Basis
\$31,251,977	\$28,818,940	\$1,152,758

Related-Party Contractor:

_____ No _____

Related-Party Cost Estimator:

_____ Yes _____

Revisions to Development Cost Schedule:

2

UNDERWRITTEN CAPITALIZATION

BOND RESERVATION

Issuer	Amount	Reservation Date	Priority
Victoria HFC	\$20,830,247	1/25/2021	Priority 3
Closing Deadline		Bond Structure	
7/24/2021		Private Activity Bond	

Percent of Cost Financed by Tax-Exempt Bonds

87.5%

INTERIM SOURCES

Funding Source	Description	Amount	Rate	LTC
TDHCA	MultiFamily Direct Loan	\$3,000,000	0.00%	10%
Walker & Dunlop	Construction Loan	\$22,812,269	3.25%	78%
Affordable Housing Partners, Inc.	HTC	\$3,466,500	\$0.89	12%
		\$29,298,769	Total Sources	

Comments:

Walker & Dunlop will provide a \$22,812,269 Construction Loan at 3.25%.

PERMANENT SOURCES

Debt Source	PROPOSED				UNDERWRITTEN				
	Amount	Interest Rate	Amort	Term	Amount	Interest Rate	Amort	Term	LTC
Walker & Dunlop	\$15,675,000	3.95%	35	15	\$15,675,000	3.95%	35	15	50%
MultiFamily Direct Loan	\$3,000,000	0.50%	35	15	\$3,000,000	0.40%	35	15	10%
Donanted non-professional labor	\$20,000	0.00%	0	0	\$20,000	0.00%	0	0	0%
Total	\$18,695,000				\$18,695,000				

Comments:

Walker & Dunlop will provide \$15,675,000 permanent financing at 3.95% amortized over 35 years with a 15-year term following a 36-month forward period.

The Multifamily Direct Loan NOFA specifies an interest rate of 2.50%, subject to underwriting adjustment to achieve the minimum 1.15 times debt coverage. As presented, based on the currently stated terms for the senior debt, debt coverage is 1.146 times. Per the 2021-1 Annual NOFA and the Underwriting Guidelines in 10 TAC §11.302(d)(4)(D)(i), the Underwriter recommends an interest rate of 0.40% to achieve the minimum 1.15 debt coverage. Final terms for all financing will be confirmed prior to Direct Loan Closing, and the recommended interest rate may be revised based on the rule.

Equity & Deferred Fees	PROPOSED			UNDERWRITTEN			
	Amount	Rate	% Def	Amount	Rate	% TC	% Def
Affordable Housing Partners, Inc.	\$10,268,608	\$0.89		\$10,259,543	\$0.89	33%	
VTX Enchanted Gardens Development LLC	\$2,328,863		61%	\$2,297,435		7%	60%
Total	\$12,597,471			\$12,556,977			
				\$31,251,977	Total Sources		

Credit Price Sensitivity based on current capital structure

\$1.087	Maximum Credit Price before the Development is oversourced and allocation is limited
\$0.765	Minimum Credit Price below which the Development would be characterized as infeasible

Comments:

Deferred Developer Fee of \$2.4M will be fully repaid by yr 12.

Revisions to Sources Schedule:	4
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CONCLUSIONS

Gap Analysis:	
Total Development Cost	\$31,251,977
Permanent Sources (debt + non-HTC equity)	\$18,695,000
Gap in Permanent Financing	\$12,556,977

Possible Tax Credit Allocations:	Equity Proceeds	Annual Credits
Determined by Eligible Basis	\$10,259,543	\$1,152,758
Needed to Balance Sources & Uses	\$12,556,977	\$1,410,896
Requested by Applicant	\$10,283,300	\$1,155,427

	RECOMMENDATION	
	Equity Proceeds	Annual Credits
Tax Credit Allocation	\$10,259,543	\$1,152,758

	Amount	Interest Rate	Amort	Term	Lien
MultiFamily Direct Loan	\$3,000,000	0.40%	35	15	2

Deferred Developer Fee	\$2,297,435	(60% deferred)
Repayable in	11 years	

Comments:

Credit allocation is limited to \$1,152,758 as Determined by Eligible Basis.

The Underwriter recommends the award of a Multifamily Direct Loan in the amount of \$3,000,000 at 0.40% with 35-year amortization and 15-year term to match the senior debt.

If the Direct Loan funds are not awarded, debt coverage would increase to 1.28, but the available Developer Fee would be insufficient to replace the MDL funding. The project would be feasible with a \$1,700,000 increase in senior debt, providing 1.15 debt coverage, and with the Developer Fee 94% deferred.

Underwriter:	<u>Greg Stoll</u>
Manager of Real Estate Analysis:	<u>Jeanna Adams</u>
Director of Real Estate Analysis:	<u>Thomas Cavanagh</u>

UNIT MIX/RENT SCHEDULE
Enchanted Gardens, Victoria, 4% HTC/MDL #21422

LOCATION DATA	
CITY:	Victoria
COUNTY:	Victoria
Area Median Income	\$74,400
PROGRAM REGION:	10
PROGRAM RENT YEAR:	2021

UNIT DISTRIBUTION				
# Beds	# Units	% Total	Assisted	MDL
Eff	-	0.0%	0	0
1	48	28.6%	0	8
2	72	42.9%	0	11
3	48	28.6%	0	7
4	-	0.0%	0	0
5	-	0.0%	0	0
TOTAL				
	168	100.0%	-	26

60%	Average Income	
Income	# Units	% Total
20%	-	0.0%
30%	-	0.0%
40%	-	0.0%
50%	-	0.0%
60%	168	100.0%
70%	-	0.0%
80%	-	0.0%
MR	-	0.0%
TOTAL		
	168	100.0%

Pro Forma ASSUMPTIONS	
Revenue Growth	2.00%
Expense Growth	3.00%
Basis Adjust	100%
Applicable Fraction	100%
APP % Acquisition	4.00%
APP % Construction	4.00%
Average Unit Size	1,014 sf

UNIT MIX / MONTHLY RENT SCHEDULE																						
HTC		TDHCA Direct Loan Program		UNIT MIX				APPLICABLE PROGRAM RENT			APPLICANT'S PRO FORMA RENTS				TDHCA PRO FORMA RENTS				MARKET RENTS			
Type	Gross Rent	Type	Gross Rent	# Units	# Beds	# Baths	NRA	Gross Rent	Utility Allow	Max Net Program Rent	Delta to Max	Rent psf	Net Rent per Unit	Total Monthly Rent	Total Monthly Rent	Rent per Unit	Rent psf	Delta to Max	Underwritten	Mrkt Analyst		
TC 60%	\$813			1	1	1	729	\$813	\$48	\$765	\$0	\$1.05	\$765	\$765	\$765	\$765	\$1.05	\$0	\$925	\$1.27	\$925	
TC 60%	\$813			39	1	1	727	\$813	\$48	\$765	\$0	\$1.05	\$765	\$29,835	\$29,835	\$765	\$1.05	\$0	\$923	\$1.27	\$923	
TC 60%	\$813	30%/30%	\$388	1	1	1	727	\$388	\$48	\$340	\$0	\$0.47	\$340	\$340	\$340	\$340	\$0.47	\$0	\$923	\$1.27	\$923	
TC 60%	\$813	LH/50%	\$650	1	1	1	727	\$650	\$48	\$602	\$0	\$0.83	\$602	\$602	\$602	\$602	\$0.83	\$0	\$923	\$1.27	\$923	
TC 60%	\$813	HH/60%	\$815	5	1	1	727	\$813	\$48	\$765	\$0	\$1.05	\$765	\$3,825	\$3,825	\$765	\$1.05	\$0	\$923	\$1.27	\$923	
TC 60%	\$813	HH/80%	\$815	1	1	1	727	\$813	\$48	\$765	\$0	\$1.05	\$765	\$765	\$765	\$765	\$1.05	\$0	\$923	\$1.27	\$923	
TC 60%	\$975			61	2	2	1,044	\$975	\$58	\$917	\$0	\$0.88	\$917	\$55,937	\$55,937	\$917	\$0.88	\$0	\$1,282	\$1.23	\$1,282	
TC 60%	\$975	30%/30%	\$465	1	2	2	1,044	\$465	\$58	\$407	\$0	\$0.39	\$407	\$407	\$407	\$407	\$0.39	\$0	\$1,282	\$1.23	\$1,282	
TC 60%	\$975	LH/50%	\$780	3	2	2	1,044	\$780	\$58	\$722	\$0	\$0.69	\$722	\$2,166	\$2,166	\$722	\$0.69	\$0	\$1,282	\$1.23	\$1,282	
TC 60%	\$975	HH/60%	\$992	6	2	2	1,044	\$975	\$58	\$917	\$0	\$0.88	\$917	\$5,502	\$5,502	\$917	\$0.88	\$0	\$1,282	\$1.23	\$1,282	
TC 60%	\$975	HH/80%	\$992	1	2	2	1,044	\$975	\$58	\$917	\$0	\$0.88	\$917	\$917	\$917	\$917	\$0.88	\$0	\$1,282	\$1.23	\$1,282	
TC 60%	\$1,126			41	3	2	1,256	\$1,126	\$65	\$1,061	\$0	\$0.84	\$1,061	\$43,501	\$43,501	\$1,061	\$0.84	\$0	\$1,522	\$1.21	\$1,522	
TC 60%	\$1,126	30%/30%	\$537	1	3	2	1,256	\$537	\$65	\$472	\$0	\$0.38	\$472	\$472	\$472	\$472	\$0.38	\$0	\$1,522	\$1.21	\$1,522	
TC 60%	\$1,126	LH/50%	\$901	1	3	2	1,256	\$901	\$65	\$836	\$0	\$0.67	\$836	\$836	\$836	\$836	\$0.67	\$0	\$1,522	\$1.21	\$1,522	
TC 60%	\$1,126	HH/60%	\$1,138	4	3	2	1,256	\$1,126	\$65	\$1,061	\$0	\$0.84	\$1,061	\$4,244	\$4,244	\$1,061	\$0.84	\$0	\$1,522	\$1.21	\$1,522	
TC 60%	\$1,126	HH/80%	\$1,138	1	3	2	1,256	\$1,126	\$65	\$1,061	\$0	\$0.84	\$1,061	\$1,061	\$1,061	\$1,061	\$0.84	\$0	\$1,522	\$1.21	\$1,522	
TOTALS/AVERAGES:				168				170,354				\$0	\$0.89	\$900	\$151,175	\$151,175	\$900	\$0.89	\$0	\$1,248	\$1.23	\$1,248

ANNUAL POTENTIAL GROSS RENT:	\$1,814,100	\$1,814,100
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STABILIZED PRO FORMA

Enchanted Gardens, Victoria, 4% HTC/MDL #21422

STABILIZED FIRST YEAR PRO FORMA

	COMPARABLES		APPLICANT				TDHCA				VARIANCE	
	Database	Developer / Local Comps	% EGI	Per SF	Per Unit	Amount	Amount	Per Unit	Per SF	% EGI	%	\$
POTENTIAL GROSS RENT				\$0.89	\$900	\$1,814,100	\$1,814,100	\$900	\$0.89		0.0%	\$0
Deposit Forfeitures, Misc					\$15.00	\$30,240						
80 Carports					\$11.90	\$24,000						
Total Secondary Income					\$26.90		\$40,320	\$20.00			34.5%	\$13,920
POTENTIAL GROSS INCOME						\$1,868,340	\$1,854,420				0.8%	\$13,920
Vacancy & Collection Loss				7.5% PGI		(140,126)	(139,082)	7.5% PGI			0.8%	(1,044)
EFFECTIVE GROSS INCOME						\$1,728,215	\$1,715,339				0.8%	\$12,876

General & Administrative	\$71,784	\$427/Unit	\$47,970	\$286	2.47%	\$0.25	\$254	\$42,700	\$47,970	\$286	\$0.28	2.80%	-11.0%	(5,270)
Management	\$77,827	4.2% EGI	\$64,173	\$382	4.00%	\$0.41	\$412	\$69,185	\$68,614	\$408	\$0.40	4.00%	0.8%	571
Payroll & Payroll Tax	\$206,801	\$1,231/Unit	\$178,745	\$1,064	9.76%	\$0.99	\$1,004	\$168,740	\$168,740	\$1,004	\$0.99	9.84%	0.0%	-
Repairs & Maintenance	\$133,791	\$796/Unit	\$89,092	\$530	5.53%	\$0.56	\$569	\$95,600	\$109,200	\$650	\$0.64	6.37%	-12.5%	(13,600)
Electric/Gas	\$56,241	\$335/Unit	\$43,335	\$258	1.27%	\$0.13	\$131	\$22,000	\$28,800	\$171	\$0.17	1.68%	-23.6%	(6,800)
Water, Sewer, & Trash	\$126,614	\$754/Unit	\$117,659	\$700	7.22%	\$0.73	\$743	\$124,755	\$126,614	\$754	\$0.74	7.38%	-1.5%	(1,859)
Property Insurance	\$96,825	\$0.57 /sf	\$56,738	\$338	4.81%	\$0.49	\$495	\$83,140	\$83,140	\$495	\$0.49	4.85%	0.0%	-
Property Tax (@ 0%) 1.3119	\$84,993	\$506/Unit	\$88,129	\$525	0.00%	\$0.00	\$0	\$0	\$0	\$0	\$0.00	0.00%	0.0%	-
Reserve for Replacements				\$0	2.43%	\$0.25	\$250	\$42,000	\$42,000	\$250	\$0.25	2.45%	0.0%	-
Supportive Services				\$0	0.58%	\$0.06	\$60	\$10,000	\$10,000	\$60	\$0.06	0.58%	0.0%	-
TDHCA Compliance fees (\$40/HTC unit)				\$0	0.39%	\$0.04	\$40	\$6,720	\$6,720	\$40	\$0.04	0.39%	0.0%	-
Security				\$0	0.35%	\$0.04	\$36	\$6,000	\$6,000	\$36	\$0.04	0.35%	0.0%	-
TOTAL EXPENSES					38.82%	\$3.94	\$3,993	\$ 670,840	\$698,681	\$4,159	\$4.10	40.73%	-4.0%	\$ (27,841)
NET OPERATING INCOME ("NOI")					61.18%	\$6.21	\$6,294	\$1,057,375	\$1,016,657	\$6,052	\$5.97	59.27%	4.0%	\$ 40,717

CONTROLLABLE EXPENSES							\$2,701/Unit				\$2,865/Unit			
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1.15 1.11

CAPITALIZATION / TOTAL DEVELOPMENT BUDGET / ITEMIZED BASIS
Enchanted Gardens, Victoria, 4% HTC/MDL #21422

DEBT / GRANT SOURCES															
APPLICANT'S PROPOSED DEBT/GRANT STRUCTURE										AS UNDERWRITTEN DEBT/GRANT STRUCTURE					
DEBT (Must Pay)	Fee	Cumulative DCR		Pmt	Rate	Amort	Term	Principal	Principal	Term	Amort	Rate	Pmt	Cumulative	
		UW	App											DCR	LTC
Walker & Dunlop		1.23	1.28	\$27,227	3.95%	35	15	\$15,675,000	\$15,675,000	15	35	3.95%	\$827,227	1.28	50.2%
MultiFamily Direct Loan		1.10	1.15	\$93,451	0.50%	35	15	\$3,000,000	\$3,000,000	15	35	0.40%	\$91,869	1.15	9.6%
CASH FLOW DEBT / GRANTS															
Donated non-professional labor		1.10	1.15		0.00%	0	0	\$20,000	\$20,000	0	0	0.00%		1.15	0.1%
				\$920,678	TOTAL DEBT / GRANT SOURCES			\$18,695,000	\$18,695,000	TOTAL DEBT SERVICE			\$919,096	1.15	59.8%
NET CASH FLOW		\$95,979	\$136,697					APPLICANT NET OPERATING INCOME		\$1,057,375	\$138,279	NET CASH FLOW			

EQUITY SOURCES												
APPLICANT'S PROPOSED EQUITY STRUCTURE						AS UNDERWRITTEN EQUITY STRUCTURE						
EQUITY / DEFERRED FEES	DESCRIPTION	% Cost	Annual Credit	Credit Price	Amount	Amount	Credit Price	Annual Credit	% Cost	Annual Credits per Unit	Allocation Method	
Affordable Housing Partners, Inc.	LIHTC Equity	32.9%	\$1,155,427	0.89	\$10,268,608	\$10,259,543	\$0.89	\$1,152,758	32.8%	\$6,862	Eligible Basis	
VTX Enchanted Gardens Development LLC	Deferred Developer Fees	7.5%	(61% Deferred)		\$2,328,863	\$2,297,435	(60% Deferred)		7.4%	Total Developer Fee: \$3,837,085		
Additional (Excess) Funds Req'd		0.0%			\$0				0.0%			
TOTAL EQUITY SOURCES		40.3%			\$12,597,471	\$12,556,977			40.2%			
TOTAL CAPITALIZATION						\$31,292,471	\$31,251,977				15-Yr Cash Flow after Deferred Fee:	\$1,416,286

DEVELOPMENT COST / ITEMIZED BASIS											
APPLICANT COST / BASIS ITEMS					TDHCA COST / BASIS ITEMS					COST VARIANCE	
Acquisition	New Const. Rehab	Total Costs			Acquisition	New Const. Rehab	Total Costs		%	\$	
		Eligible Basis					Eligible Basis				
Land Acquisition			\$2,083 / Unit	\$350,000	\$350,000	\$2,083 / Unit			0.0%	\$0	
Closing costs & acq. legal fees				\$20,000	\$20,000					\$0	
Site Work		\$2,180,100	\$14,880 / Unit	\$2,499,876	\$2,499,876	\$14,880 / Unit	\$2,180,100		0.0%	\$0	
Site Amenities		\$513,800	\$3,458 / Unit	\$581,000	\$581,000	\$3,458 / Unit	\$513,800		0.0%	\$0	
Building Cost		\$14,880,000	\$87.91 /sf	\$89,143/Unit	\$14,976,000	\$15,828,235	\$94,216/Unit	\$92.91 /sf	-5.4%	(\$852,235)	
Contingency		\$1,283,560	7.30%	7.11%	\$1,283,560	\$1,283,560	6.79%	7.00%	0.0%	\$0	
Contractor Fees		\$2,636,405	13.98%	13.98%	\$2,704,000	\$2,704,000	13.39%	14.00%	0.0%	\$0	
Soft Costs	0	\$1,091,500	\$6,735 / Unit	\$1,131,500	\$1,131,500	\$6,735 / Unit	\$1,091,500		0.0%	\$0	
Financing	0	\$2,531,805	\$18,086 / Unit	\$3,038,449	\$3,038,449	\$18,086 / Unit	\$2,531,805		0.0%	\$0	
Developer Fee	\$0	\$3,768,500	15.00%	14.99%	\$3,838,000	\$3,837,085	14.51%	15.00%	0.0%	\$915	
Reserves			6 Months	\$850,086	\$808,889	6 Months			5.1%	\$41,197	
TOTAL HOUSING DEVELOPMENT COST (UNADJUSTED BASIS)		\$0	\$28,885,670	\$186,146 / Unit	\$31,272,471	\$32,082,593	\$190,968 / Unit	\$28,818,940	\$0	-2.5%	(\$810,122)
Contingency											
Contractor's Fee											
Developer Fee	\$0										
Reserves											
ADJUSTED BASIS / COST		\$0	\$28,818,940	\$186,024/unit	\$31,251,977	\$32,082,593	\$190,968/unit	\$28,818,940	\$0	-2.6%	(\$830,616)
TOTAL HOUSING DEVELOPMENT COSTS (Applicant's Uses are within 5% of TDHCA Estimate):					\$31,251,977						

CAPITALIZATION / DEVELOPMENT COST BUDGET / ITEMIZED BASIS ITEMS
Enchanted Gardens, Victoria, 4% HTC/MDL #21422

CREDIT CALCULATION ON QUALIFIED BASIS				
	Applicant		TDHCA	
	Acquisition	Construction Rehabilitation	Acquisition	Construction Rehabilitation
	ADJUSTED BASIS	\$0	\$28,818,940	\$0
Deduction of Federal Grants	\$0	\$0	\$0	\$0
TOTAL ELIGIBLE BASIS	\$0	\$28,818,940	\$0	\$28,818,940
High Cost Area Adjustment		100%		100%
TOTAL ADJUSTED BASIS	\$0	\$28,818,940	\$0	\$28,818,940
Applicable Fraction	100.00%	100.00%	100.00%	100.00%
TOTAL QUALIFIED BASIS	\$0	\$28,818,940	\$0	\$28,818,940
Applicable Percentage	4.00%	4.00%	4.00%	4.00%
ANNUAL CREDIT ON BASIS	\$0	\$1,152,758	\$0	\$1,152,758
CREDITS ON QUALIFIED BASIS		\$1,152,758		\$1,152,758

Method	ANNUAL CREDIT CALCULATION BASED ON APPLICANT BASIS		FINAL ANNUAL LIHTC ALLOCATION		
	Annual Credits	Proceeds	Credit Price \$0.8900	Variance to Request	
			Credit Allocation	Credits	Proceeds
Eligible Basis	\$1,152,758	\$10,259,543	\$1,152,758	(\$2,669)	(\$23,757)
Needed to Fill Gap	\$1,410,896	\$12,556,977	----	----	----
Applicant Request	\$1,155,427	\$10,283,300	----	----	----

50% Test for Bond Financing for 4% Tax Credits					
Tax-Exempt Bond Amount	\$22,812,269		Percent Financed by Tax-Exempt Bonds	Applicant	TDHCA
	Applicant	TDHCA		87.5%	84.8%
Land Cost	\$350,000	\$350,000	amount aggregate basis can increase before 50% test fails	\$19,566,797	\$18,714,562
Depreciable Bldg Cost	\$25,707,741	\$26,559,976			
Aggregate Basis for 50% Test	\$26,057,741	\$26,909,976		75.1%	69.5%

BUILDING COST ESTIMATE				
CATEGORY	FACTOR	UNITS/SF	PER SF	
Base Cost:	Garden (Up to 4-story)	170,354 SF	\$91.76	15,631,346
Adjustments				
Exterior Wall Finish	0.00%		0.00	\$0
Elderly	0.00%		0.00	0
9-Ft. Ceilings	3.00%		2.75	468,940
Roof Adjustment(s)			(0.25)	(42,590)
Subfloor			(0.29)	(48,555)
Floor Cover			2.56	436,106
Breezeways	\$30.14	30,688	5.43	925,054
Balconies	\$29.98	18,644	3.28	558,944
Plumbing Fixtures	\$1.610	160	1.51	257,600
Rough-ins	\$600	336	1.18	201,600
Built-In Appliances	\$2,950	168	2.91	495,600
Exterior Stairs	\$2,460	32	0.46	78,720
Heating/Cooling			2.34	398,628
Storage Space	\$30.14	1,863	0.33	56,158
Carports	\$12.25	19,200	1.38	235,200
Garages		0	0.00	0
Common/Support Area	\$130.45	3,485	2.67	454,631
Elevators		0	0.00	0
Other:			0.00	0
Fire Sprinklers	\$2.59	206,390	3.14	534,550
SUBTOTAL			121.17	20,641,934
Current Cost Multiplier	1.00		0.00	0
Local Multiplier	0.90		(12.12)	(2,064,193)
Reserved				0
TOTAL BUILDING COSTS			109.05	\$18,577,740
Plans, specs, survey, bldg permits	3.30%		(3.60)	(\$613,065)
Contractor's OH & Profit	11.50%		(12.54)	(2,136,440)
NET BUILDING COSTS		\$94,216/unit	\$92.91/sf	\$15,828,235

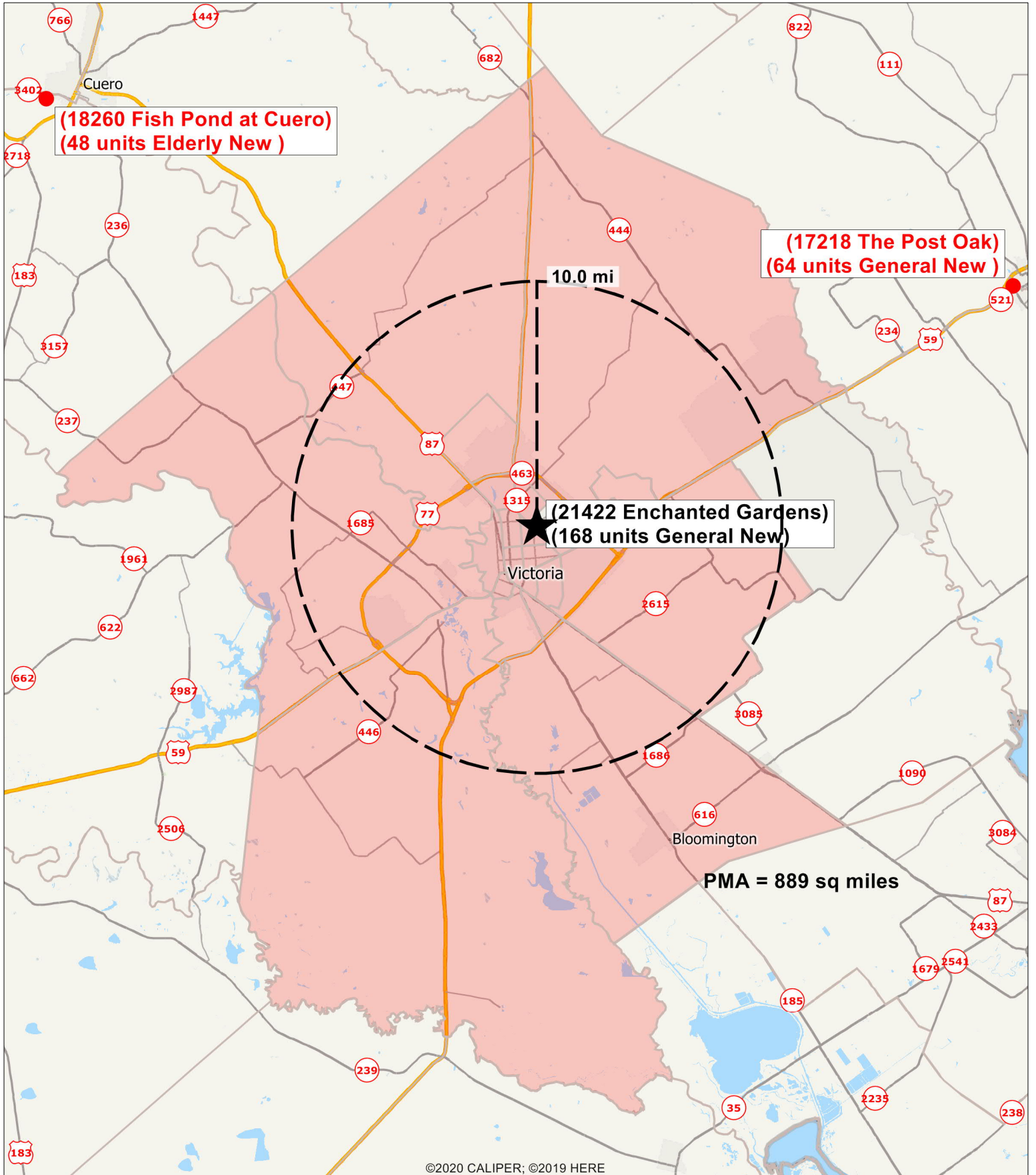
Long-Term Pro Forma

Enchanted Gardens, Victoria, 4% HTC/MDL #21422

	Growth Rate	Year 1	Year 2	Year 3	Year 4	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30	Year 35
EFFECTIVE GROSS INCOME	2.00%	\$1,728,215	\$1,762,779	\$1,798,034	\$1,833,995	\$1,870,675	\$2,065,376	\$2,280,342	\$2,517,682	\$2,779,725	\$3,069,041	\$3,388,469
TOTAL EXPENSES	3.00%	\$670,840	\$690,273	\$710,276	\$730,864	\$752,056	\$867,706	\$1,001,345	\$1,155,795	\$1,334,320	\$1,540,701	\$1,779,314
NET OPERATING INCOME ("NOI")		\$1,057,375	\$1,072,505	\$1,087,759	\$1,103,131	\$1,118,619	\$1,197,671	\$1,278,997	\$1,361,887	\$1,445,404	\$1,528,339	\$1,609,155
EXPENSE/INCOME RATIO		38.8%	39.2%	39.5%	39.9%	40.2%	42.0%	43.9%	45.9%	48.0%	50.2%	52.5%
MUST -PAY DEBT SERVICE												
Walker & Dunlop		\$827,227	\$827,227	\$827,227	\$827,227	\$827,227	\$827,227	\$827,227	\$827,227	\$827,227	\$827,227	\$827,227
MultiFamily Direct Loan		\$91,869	\$91,869	\$91,869	\$91,869	\$91,869	\$91,869	\$91,869	\$91,869	\$91,869	\$91,869	\$91,869
TOTAL DEBT SERVICE		\$919,096	\$919,096	\$919,096	\$919,096	\$919,096	\$919,096	\$919,096	\$919,096	\$919,096	\$919,096	\$919,096
DEBT COVERAGE RATIO		1.15	1.17	1.18	1.20	1.22	1.30	1.39	1.48	1.57	1.66	1.75
ANNUAL CASH FLOW		\$138,279	\$153,410	\$168,663	\$184,035	\$199,523	\$278,575	\$359,901	\$442,791	\$526,308	\$609,243	\$690,059
Deferred Developer Fee Balance		\$2,159,156	\$2,005,747	\$1,837,084	\$1,653,049	\$1,453,526	\$219,784	\$0	\$0	\$0	\$0	\$0
CUMULATIVE NET CASH FLOW		\$0	\$0	\$0	\$0	\$0	\$0	\$1,416,286	\$3,464,005	\$5,928,481	\$8,809,342	\$12,099,208

\$0

21422 Enchanted Gardens - PMA Map



Disclaimer: This map is not a survey. Boundaries, distance and scale are approximate only.

5d

BOARD ACTION REQUEST
MULTIFAMILY FINANCE DIVISION
MAY 13, 2021

Presentation, discussion and possible action on timely filed appeals of scoring of HTC Applications, and request for Board waiver of rule, under the Qualified Allocation Plan

21016	Houston Willow Chase Living	Houston
21139	Cypress Creek Apartments	Dallas
21144	Mariposa Apartment Homes at Plano Parkway	Plano

RECOMMENDED ACTION

WHEREAS, 10 TAC §11.9(d)(5) of the 2021 Qualified Allocation Plan (QAP) related to Community Support from State Representative identifies specific requirements and restrictions related to Applications seeking points for Community Support from State Representatives;

WHEREAS, the Applicants for 21016 Houston Willow Chase Living, 21139 Cypress Creek Apartments and 21144 Mariposa Apartment Homes at Plano Parkway timely submitted Applications without letters from State Representatives included, which were received by the Department directly from the respective Representatives;

WHEREAS, the Applicants have timely submitted appeals of notices of scoring adjustment issued by the Department due to receipt of opposition letters from the State Representatives for each Application, requesting that the Board apply discretionary factors allowed under 10 TAC §11.206 and score the Applications under 10 TAC §11.9(d)(5)(B)(“No Letter from a State Representative”);

WHEREAS, 10 TAC §11.207(3) related to Waiver of Rules prohibits Board waiver of any requirement contained in statute;

WHEREAS, Tex. Gov’t Code §2306.6710(b)(1)(J) and (f) state that the Department shall score, rank and awards points to an Application based on the level of support from the State Representative and provide no allowance for discretionary action by the Department regarding the score;

WHEREAS, the Executive Director has denied the Applicants’ appeals; and

WHEREAS, staff recommends that the waivers not be granted, as any action other than denial would violate statutory requirements;

NOW, therefore, it is hereby

RESOLVED, that the waiver of 10 TAC §11.9(d)(5) related to Community Support from State Representative requested by 21016 Houston Willow Chase Living, 21139 Cypress Creek Apartments and 21144 Mariposa Apartment Homes at Plano Parkway is hereby denied.

BACKGROUND

The QAP provides for scoring of letters received from State Representative under 10 TAC §11.9(d)(5)(A):

(A) Letter from a State Representative. To qualify under this subparagraph, letters must be on the State Representative's letterhead, be signed by the State Representative, identify the specific Development and express whether the letter conveys support, neutrality, or opposition...In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

The relevant statute, Tex. Gov't Code §2306.6710(b)(1)(J), provides:

(b) If an application satisfies the threshold criteria, the department shall score and rank the application using a point system that:

(1) prioritizes in descending order criteria regarding:

(J) the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site[.]

Further, Tex. Gov't Code §2306.6710(f) requires:

(f) In evaluating the level of community support for an application under Subsection (b)(1)(J), the department shall award:

- (1) positive points for positive written statements received;
- (2) negative points for negative written statements received; and
- (3) zero points for neutral statements received

If no letter is received from the State Representative, the Application is scored under 10 TAC §11.9(d)(5)(B):

(B) No Letter from a State Representative. To qualify under this subparagraph, no written statement can be received for an Application from the State Representative who represents the geographic area in which the proposed Development is located, unless the sole content of the written statement is to convey to the Department that no written statement of support, neutrality, or opposition will be provided by the State Representative for a particular Development. Points available under this subparagraph will be based on how an Application scores under §11.9(d)(1), of this section, relating to Local Government Support. For an Application with a proposed Development Site that, at the time of the initial filing of the Application, is:

(i) Within a municipality, the Application will receive:

- (I) Eight (8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or
- (III) Negative eight (-8) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application or Development.

(ii) Within the extraterritorial jurisdiction of a municipality, the Application will receive points under subclause (I) or (II) or (III) of this subparagraph and under subclause (IV) or (V) or (VI) of this subparagraph:

- (I) Four (4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality supports the Application or Development; or
- (II) Zero (0) points for no resolution or a resolution from the Governing Body of that municipality expressly setting forth that the municipality has no objection to the Application or Development; or
- (III) Negative four (-4) points for a resolution from the Governing Body of that municipality expressly setting forth that the municipality opposes the Application

or Development; and

(IV) Four (4) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(V) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development; or

(VI) Negative four (-4) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

(iii) Within a county and not within a municipality or the extraterritorial jurisdiction of a municipality:

(I) Eight (8) points for a resolution from the Governing Body of that county expressly setting forth that the county supports the Application or Development; or

(II) Zero (0) points for no resolution or a resolution from the Governing Body of that county expressly setting forth that the county has no objection to the Application or Development.

(III) Negative eight (-8) points for a resolution from the Governing Body of that county expressly setting forth that the county opposes the Application or Development.

The relevant statute, Tex. Gov't Code §2306.6710 (g), provides:

(g) If no written statement is received for an application under Subsection (b)(1)(J), the department shall use the maximum number of points that could have been awarded under that paragraph to increase the maximum number of points that may be awarded for that application under Subsection (b)(1)(B). If awarding points under Subsection (b)(1)(B)(iii), the department shall reallocate the points from the scoring category provided by Subsection (b)(1)(J) equally between the political subdivisions described by Subsection (b)(1)(B)(iii). In awarding points transferred under this subsection from the scoring category provided by Subsection (b)(1)(J) to the scoring category provided by Subsection (b)(1)(B), the department shall award:

(1) positive points for positive resolutions adopted;

(2) negative points for negative resolutions adopted; and

(3) zero points for neutral resolutions adopted.

Lastly, for the applications seeking a waiver of the scoring rule regarding state representative letters, the waiver rule (10 TAC §11.207) contains this important exception:

3) The Board may not grant a waiver to provide directly or implicitly any forward commitments **or to waive any requirement contained in statute.** (emphasis added)

For the three subject Applications, letters from the respective State Representatives were submitted directly to the Department, rather than being included in the Application. This is a common practice, as some Representatives prefer to send their letters directly to staff. Before the introduction of Tex. Gov't Code §2306.6710 (g), which allows the points associated with State Representative letters to be awarded based on local actions if the Representative does not submit a letter, only the Representative's support, neutrality or opposition to the Development was considered in scoring.

State Representative letters of opposition were received for the three Applications, leading to a deduction of eight points. This loss of points causes the Applications to be non-competitive in their subregions, and it is highly unlikely that they will receive allocations of 9% tax credits. The Applicants have appealed this loss of points, and the Executive Director has denied the appeals.

21016 Houston Willow Chase Living

The request asks that the Board utilize discretion under 10 TAC §11.206, and waiver authority under 10 TAC §11.207 of the 2021 Qualified Allocation Plan (QAP), to disregard the letter of opposition submitted to the Department by State Representative Sam Harless.

The Department received a letter under 10 TAC §11.9(d)(5)(A) from State Representative Sam Harless. The letter was timely submitted and determined by staff to express opposition toward the Application pursuant to Tex. Gov't Code §2306.6710(b)(1)(J). This determination requires that the Application score be revised to deduct eight (8) points under 10 TAC §11.9(d)(5).

In previous years, TDHCA staff has contacted Applicants as a courtesy when State Representative letters received by the Department were neutral or expressed opposition. This year there were factors of workload, weather, and pandemic stresses that precluded staff's ability to perform this courtesy. It is noted in the appeal that the Applicant actually met with the State Representative several weeks after he sent the negative letter to TDHCA, and the issue of the negative letter was not discussed between the parties.

The appeal and request for waiver also alleges "negligence" by Department staff in not sending a copy of the State Representative's negative letter to the Applicant, causing them "to incur unnecessary and avoidable development costs." The Department is not responsible for the content of a State Representative's letter, or the timing or content of any communications between an Applicant and the applicable State Representative. There is no rule or statutory basis in Applicant's "equitable" argument to disregard the State Representative's negative letter simply because TDHCA staff did not send the Applicant a courtesy copy.

The Applicant acknowledges the Department received a letter of opposition from State Representative Sam Harless but the appeal claims that the letter was unforeseeable and should therefore not negatively impact scoring of the Application. As detailed in the request, the letter of opposition was issued from a third party and thus was beyond the Applicant's control.

The appeal and waiver request claim "TDHCA has a compelling mandate to disregard Rep. Harless' opposition letter when the facts and circumstances indicate his opposition or that of his constituents is rooted in NIMBYism. To otherwise allow Rep. Harless' opposition letter to kill the Project would constitute a violation of fair housing and constitute discrimination." The appeal and waiver request cite 10 TAC §11.206 and Internal Revenue Code §42(m)(1)(A)(iv), and calls on the Board to utilize "its discretionary authority" to determine the Application to be eligible for the eight points under §11.9(d)(5)(B), relating to Letter from State Representative.

The request also cites IRS Revenue Ruling 2016-29, and submits that the TDHCA Board should be led by its conclusion that "[Internal Revenue Code] §42(m)(1)(A)(ii) does not require or encourage [state housing credit agencies] to bestow veto power of LIHTC projects either on local communities or on local public officials."

As to the waiver request, 10 TAC §11.207 related to Waiver of Rules, the request ignores the third subsection of the rule that unequivocally states that the Board "may not grant a waiver . . . to waive any requirement contained in statute."

Ultimately, this appeal and waiver request are asking the Board to waive the requirements of Tex. Gov't Code §2306.6710(b)(1)(J) and (f). The statute does not give the Board discretionary authority to determine whether to prioritize points on the basis of the state representative letter. Indeed, the statute specifically requires the deduction of points for negative letters. The use of the word "shall" in the statute governing this part of the evaluation of applications imposes a duty on the Board to directly adhere to this legislative requirement. See Tex. Gov't Code 311.016(2) (use of the word "shall" in statute imposes a duty).

Because the Board lacks the authority to operate in direct contradiction of a statutory duty, the appeal and request for waiver should be denied, and the Application score will continue to indicate a deduction of eight points under 10 TAC §11.9(d)(5)(A), relating to Community Input from State Representative.

21139 Cypress Creek Apartments

21144 Mariposa Apartment Homes at Plano Parkway

These appeals similarly asks that the Board utilize "discretion" under 10 TAC §11.206 of the 2021 Qualified Allocation Plan (QAP) to disregard the letters of opposition submitted to the Department by State Representative Matt Shaheen for Application 21144, and Representative John Turner for Application 21139. Similar to Application 21016 (above), Application 21139 requests waiver of the state representative letter under 10 TAC §11.207.

21026

Houston Willow Chase Living



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
Leo Vasquez, *Chair*
Leslie Bingham, *Vice Chair*
Brandon Batch, *Member*
Paul A. Braden, *Member*
Ajay Thomas, *Member*
Sharon Thomason, *Member*

April 13, 2020

Writer's direct dial: (512) 936-7834
Email: alena.morgan@tdhca.state.tx.us

Thomas E. Huth
Houston Willow Chase Living, Ltd.
13455 Noel Road, Suite 400
Dallas, TX 75240

RE: NOTICE OF SCORING ADJUSTMENT: 21016, HOUSTON WILLOW CHASE LIVING

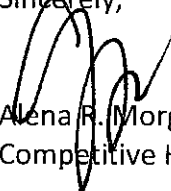
Dear Mr. Huth:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of the Application named above. Upon review, staff determined that the letter received from State Representative Sam Harless expresses opposition toward the Application. Accordingly, the Application score will be revised to indicate zero points under both 10 TAC §11.9(d)(5)(A) and (5)(B), subject to your ability to appeal.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §11.902 of the QAP. If you wish to appeal this decision to the Executive Director, the appeal must be filed, in writing, with the Department not later than seven (7) calendar days after the date of this notification. Please review §11.902 of the QAP for full instruction on the appeals process. Please note that §11.902(f) of the QAP and Tex. Gov't Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application.

If you have questions or require further information, please contact me.

Sincerely,


Alena R. Morgan, JD
Competitive HTC Administrator





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April 20, 2021

Via E-mail

Mr. Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
221 East 11th Street
Austin, TX 78711

In re: Appeal TDHCA #21016, Houston Willow Chase Living, Houston, Texas (the
“Project”) and Request for Waiver; Our File No. 52110.1

Dear Mr. Wilkinson:

This law firm represents Houston Willow Chase Living, Ltd. (the “Applicant”). We have been requested by Tom Huth, President of Applicant, to appeal the decision of the Texas Department of Housing and Community Affairs (“TDHCA”) Notice of Scoring Adjustment sent by staff to Applicant on April 13, 2021 reducing the scoring of the Project and to request a waiver pursuant to §11.207 of the 2021 Qualified Action Plan (“QAP”).

This request is predicated on two bases. The first being the concern that in this instance the opposition letter from State Representative Sam Harless (“Rep. Harless”) Texas House District 126, which effectively kills the Project, constitutes a violation of fair housing and constitutes housing discrimination. The second being equity to correct negligence by TDHCA by not advising Applicant of the opposition letter TDHCA received on February 2, 2021 with the effect of causing Applicant to incur unnecessary and avoidable development costs from February 2, 2021 through April 12, 2021, the day preceding the date Applicant was informed of the opposition letter from Rep. Harless by TDHCA (a copy of the letter was received from TDHCA on April 13, 2021) – well after Applicants submission of its “Full Application.” These unnecessary and avoidable development costs total, at a minimum, \$97,109.20.

Shackelford, Bowen, McKinley & Norton, LLP

Dallas Nashville Austin Fort Worth Frisco Houston Baton Rouge

With regard to the first basis for this appeal and waiver request, please be advised of the following:

1. Rep. Harless has never submitted a letter in support of an affordable housing project.
2. Rep. Harless' opposition letter, which is attached hereto as Exhibit A and incorporated herein by reference for all purposes, is dated January 27, 2021, and was received by TDHCA on February 2, 2021, which clearly indicates Rep. Harless did not evaluate the merits of the Project nor wait for Applicant to discuss with him the merits of the Project or to address his concerns. Instead, he summarily opposed the Project because of it being an affordable housing project.
3. Rep. Harless and his Chief of Staff met with representatives of Applicant on February 10, 2021, 14 days *after* the opposition letter was sent and at this meeting neither Rep. Harless nor his Chief of Staff ever said a word about having already sent an opposition letter or even implied they would oppose the Project. On the contrary, they gave names of who in Rep. Harless' district they should speak with to gain support and indicated Rep. Harless would take no position and not send a letter at all to TDHCA. Furthermore, the Chief of Staff followed up with Applicant's representatives and said, "thanks for dropping by and explaining the breadth of your project."
4. Rep. Harless' letter expresses blatant NIMBYism and is devoid of any in depth rationale for his position. Instead, the letter makes the trite, worn out NIMBY arguments that the Project would cause overcrowded schools, increased traffic and that the area lacks public transportation. His blanket statement infers all residents of affordable housing lack sufficient financial resources to afford an automobile. Additionally, the letter is incorrect about public transportation because a bus stop is within 350 feet of the Project.
5. The underlying basis for Rep. Harless' opposition to the Project is "My constituents have expressed concern that the project would not be in the best interest of the community." You and the Board know racism and discrimination exists in housing and NIMBYism is not merely a concept, but that it is a cancer that affects many neighborhoods and when it metastasizes it kills affordable housing projects for the simple reason – racism.
6. On December 6, 2019, Rep. Harless posted a letter from Harris County Commissioner Jack Cagle. As a preamble to Mr. Cagle's letter, Rep. Harless wrote, "During the last session, I polled our district and talked with many of you and expansion of affordable housing in our area is not wanted." How more obvious can Rep. Harless be to his egregious opposition to any affordable housing in his district? If all elected officials took this view affordable housing would be exclusively confined to certain areas on the "wrong side of the tracks." His attitude is an abuse of authority and smacks of violation of

fair housing laws. A copy of the Facebook post is attached hereto as Exhibit B and incorporated herein for all purposes.

7. Prestonwood Forest Maintenance Association is a homeowners association located in Rep. Harless' district. Attached hereto as Exhibit C and incorporated herein for all purposes is a Facebook post on the Prestonwood Forest Maintenance Association Facebook page evidencing the coordinated opposition to the Project on the basis of NIMBYism. Please note, this Facebook post is dated April 17, 2021, almost three months after Rep. Harless' opposition letter dated January 27, 2021 stating: "My constituents have expressed concern that the project would not be in the best interest of the community." The bigoted excuses given in the sample letter for the residents to use are "...a real risk of making our area less desirable, disrupting the aesthetics of the many surrounding communities, and significantly lowering property values as a result." It is incumbent upon TDHCA and its goal to provide safe and sanitary affordable housing across the state to not be held hostage to one person, Rep. Harless, because some of his constituents are opposed to this type of housing in their community.

For these reasons, Applicant urges you to take note of the Internal Revenue Service's Revenue Ruling 2016-29 (the "Rev Ruling"), which specifically addresses a point scoring item similar to what is provided in §4.9(a)(d) of the QAP regarding community support as evidenced by a written statement from a state legislator elected from the district in which the project is proposed to be located.

The Rev Ruling permits you and the Board to disregard Rep. Harless' opposition letter, which states, in part, "the jurisdiction has a chance to weigh in, or even object, but not that every objection will be honored." The Rev Ruling further references §42(m)(1)(A)(ii) of the Internal Revenue Code (the "IRC") in stating, "Thus, §42(m)(1)(A)(ii) ensures only the opportunity of local input to the allocation decision. It does not require or encourage allocating agencies to bestow veto power of LIHTC projects either on local communities or on local public officials."

Federal law is clear. TDHCA has a compelling mandate to disregard Rep. Harless' opposition letter when the facts and circumstances indicate his opposition or that of his constituents is rooted in NIMBYism. To otherwise allow Rep. Harless' opposition letter to kill the Project would constitute a violation of fair housing and constitute housing discrimination. In addition, there is a very strong need of affordable housing in this part of Harris County due to Hurricane Harvey and the COVID-19 pandemic.

As you know, 10 TAC §11.207 requires the Applicant to show that the need for the waiver is not within the control of the Applicant. The Applicant has absolutely no control over any third party, including, in particular Rep. Harless and his thoughts, motivations and actions. As noted above, when Applicant's representatives met with Rep. Harless about the Project he had already sent this objection letter to TDHCA and yet, neither he nor his staff disclosed such fact in the

Mr. Bobby Wilkinson
TDHCA
April 20, 2021
Page 4

meeting or in subsequent communications with Applicant's representatives. The submission of Rep. Harless' opposition letter is beyond the control of the Applicant.

10 TAC §11.207 further requires the Applicant to show, by TDHCA granting the waiver, it better serves TDHCA's policies and purposes set forth in Texas Government Code §§2306.001, 2306.002, 2306.359 and 2306.6701 (which are general in nature and apply to the role of TDHCA and its programs, including the housing tax credit program) than not granting the waiver.

The Project would be the first general population affordable housing project in this area of Houston since 2009. This Project is located in a high opportunity area. Economically disadvantaged persons in this area of Houston are woefully compromised in their affordable housing choices and opportunities.

For these foregoing reasons, the Applicant requests you, or ultimately the Board, to exercise your and its discretionary authority under §11.206 of the QAP and IRC §42(m)(1)(A)(iv) by restoring the points deducted from the Project despite the opposition letter from Rep. Harless. By not exercising your or the Board's discretionary authority would not only kill affordable housing in this area of Houston, but it, maybe more significantly, sends a message to Rep. Harless and his constituents that activist NIMBYism (racism) is a successful strategy to deny fair housing to a certain demographic of our population.

Equity is the second basis for the appeal, although it ties in with the above argument. As a long time, experienced developer, Applicant's parent affiliate has, since 2012, made numerous applications for low income housing tax credits and has been awarded credits on nineteen (19) developments. Historically, TDHCA has timely notified the Applicant of TDHCA's receipt of a letter from a State Representative, whether the letter be in support, in opposition or neutral. Without notice to the development community, this year TDHCA abruptly stopped its historical, well preceded practice of notifying applicants of State Representative letters. Applicant did not learn of Rep. Harless' opposition letter until April 13th, over two months from when TDHCA received such letter.

As noted above, Applicant's representatives concluded from their meeting with Rep. Harless that he would not submit a letter to TDHCA. Applicant obtained a resolution of support for the Project from the Houston City Council. Applicant, having no knowledge of Rep. Harless' letter since TDHCA failed to notify Applicant, reasonably assumed it was entitled to 8 points for community support by receiving from the Houston City Council a resolution of support as provided in the QAP. Since the Representative Angie Button H.B. No. 1973 legislation passed, State Representatives are allowed to stay silent on this matter. Given Applicant did not receive the Rep. Harless letter until April 13, 2021, Applicant presumed no such State Representative letter was written.

Mr. Bobby Wilkinson
TDHCA
April 20, 2021
Page 5

Applicant has been significantly damaged by TDHCA's failure to advise Applicant of Rep. Harless' opposition letter. Applicant moved forward with incurring architect and engineering costs on the Project's site in reasonable and foreseeable anticipation of the Project receiving an allocation of housing tax credits. Applicant, but not for being advised by TDHCA of Rep. Harless' letter, would not have submitted a full application for the Project, much less incurred significant development costs in excess of \$97,109.20, not including attorney fees. Accordingly, in the interests of both fair housing laws and equity, Applicant requests its scoring not be reduced due to Rep. Harless' letter.

If you rule against this appeal and waiver request, Applicant requests this item be put on the Board's agenda for discussion and final determination.

Sincerely,


John C. Shackelford

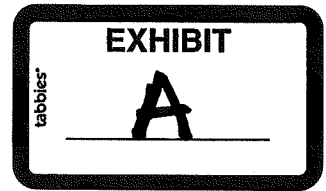
JCS:tlw

cc: Marni Holloway (*via email*)
Beau Eccles, Esq. (*via email*)
Tom Huth (*via email*)
Kim Parker (*via email*)
Avis Chaisson (*via email*)
Sara Reidy (*via email*)
Linda Brown (*via email*)
Michelle Snedden, Esq. (*via email*)

TEXAS HOUSE of REPRESENTATIVES



SAM HARLESS
DISTRICT 126



January 27, 2021

Marni Holloway
Director, Multifamily Finance Division
P.O. Box 13941, Capitol Station
Austin, Texas 78711

Dear Ms. Holloway:

My office received notice of an application for a housing tax credit for Houston Willow Chase Living (Project # 21016), located at SEQ Breton Ridge St. and Willow Chase Blvd., Houston, TX 77070, has been submitted. As the State Representative from this area, it is my responsibility to oppose this tax credit based on the input I have received from my constituents.

My constituents have expressed concern that the project would not be in the best interest of the community, citing overcrowded schools, lack of public transportation, and increased traffic congestion as just some of the problems that could be experienced with the additional influx of people multi-family construction would bring. For these reasons, **I respectfully request that the housing tax credit application for Houston Willow Chase Living be denied.**

Thank you for allowing me to submit this letter in order for my district to be heard in this matter. Should you have any questions or concerns please do not hesitate to contact my office.

Sincerely,

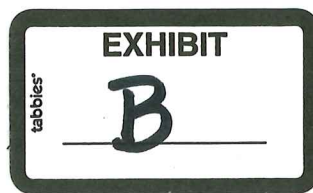
A handwritten signature in black ink, appearing to read "Sam Harless".

Sam Harless
State Representative
District 126
512.463.0496 (Capitol office)



Sam Harless ✓

December 5, 2019 · 🌐



I just received disturbing news regarding potential commissioner's court action next week on an affordable housing issue I know is important to our community, so I wanted to make sure you are aware. During the last session, I polled out district and talked with many of you and expansion of affordable housing in our area is not wanted. If input on this issue from your local State Representative is an important outlet for your voice in such matters, please review his letter. Below is a letter from Commissioner Jack Cagle's Office.

Dear Friends:

I recently learned an interesting "word of the day."

"Hugger-mugger" is a 16th-century word meaning "chaotic and disorganized" or "conducted with a secret or clandestine nature."

That old word accurately describes what happened at this week's meeting of Commissioners Court regarding Harris County's low-income housing policy. Without any notice to the public, the commissioner for Precinct 1 proposed abandoning the county's long-standing requirement to obtain a letter of support from the pertinent state representative on applications for low-income tax credit housing projects. As you know, this requirement provides another significant layer of protection for residents of neighborhoods being considered to host such projects.

Although state law requires a state representative's letter of support for 9% credit applications, current Harris County policy requires such a letter for 4% credit applications as well. It is this requirement that the Precinct 1 commissioner proposed eliminating this week. I objected to making such an important change to county policy without adequate notice to Commissioners Court and, more importantly, to the public. As a result, the proposal failed because of a lack of notice.

Now the Precinct 1 commissioner says he will try again, pledging to bring the issue back Monday during the county's budget hearings.

If you feel it is important to have a say on which tax credit projects should be built in the county – and where they should be built – please contact our office and the office of the County Judge.

My office's telephone number is 832-927-4444, and you may email me at commissionercagle@hcp4.net. Judge Hidalgo's office number is 713-274-7000, and her email address is Judge.hidalgo@cjo.hctx.net.

If you wish to see the exchange at Commissioners Court, you may view it at the following link.

<https://youtu.be/qT0HulvzR6I>.

Sincerely,

R. Jack Cagle



Prestonwood Forest Neighbors & Friends



Chris 'Robertson' Collins shared a link.

April 17 at 9:27 AM · 🌐

For PWF Neighbors who did not receive the email concerning the proposal for a Government Subsidized Apartment Complex in our area. Please read below:

ATTENTION PRESTONWOOD FOREST OWNERS! CALL TO ACTION TO OPPOSE SUBSIDIZED HOUSING PROJECT IN OUR AREA!

We have recently learned of the proposed construction of a government subsidized apartment complex in our area and we need your help to voice our collective opposition to this type of project. Our State Representative, Sam Harless, is ready to fight for us but he needs as many of his constituents as possible to make their voices heard so we have drafted the below opposition letter that you can simply copy and paste, add your name and property address at the bottom and then email it to Rep. Harless's Chief of Staff, Ron Hickman at Ron.Hickman@house.texas.gov.

But don't wait too long...we have a deadline of Tuesday, April 20, 2021 to file any opposition before they are allowed to proceed with this construction project! Attached is the detailed information we received about the proposed project for your review and we thank you in advance for your assistance in helping to protect our community!

Copy and past the below, add your information at the bottom and send an email!!

Rep. Sam Harless
Texas House of Representatives
District 126
6630 Cypresswood Dr., Suite 150
Spring, TX 77379

Attn: Ron Hickman, Chief of Staff
Via Email Ron.Hickman@house.texas.gov

Re: Proposed Palladium Willow Chase Living – Apartment Complex Construction

I am a resident of the Prestonwood Forest Maintenance Association and a constituent in the District you represent. I am writing to voice my OPPOSITION to the above referenced proposed construction of government subsidized apartments in my area. Allowing this type of project runs a real risk of making our area less desirable, disrupting the aesthetics of the many surrounding communities, and significantly lowering property values as a result. In addition, this type of subsidized apartment complex would seriously impact the already existing issue of overcrowding in our schools and worsening traffic throughout the area. Allowing construction of this type of project to move forward in our area would demonstrate disregard for the concern of the property owners in the communities that have been here for decades.

Sincerely,

(Property Owner)
(Property Address)
Houston, Texas 77070
(Contact Phone)



Prestonwood Forest Neighbors & Friends

Sincerely,

(Property Owner)

(Property Address)

Houston, Texas 77070

(Contact Phone)

Thanks,

Sherri Carey, CMCA®AMS®PCAM®

FinalLogo

An Accredited Association Management Company (AAMC)

Po Box 940267

Houston, Texas 77094

Office 281-391-7914

Fax 281-391-7913

scarey@highsierramanagement.com

HIGHSIERRAMANAGEMENT.COM

High Sierra Management - About Us



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

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Sharon Thomason, Member

May 4, 2021

John C. Shackelford
c/o Houston Willow Chase Living, Ltd.
9201 N. Central Expressway
Fourth Floor
Dallas, TX 75231

RE: APPEAL RESPONSE FOR 2021 HOUSING TAX CREDIT APPLICATION 21016
HOUSTON WILLOW CHASE LIVING

Dear Mr. Shackelford:

The Texas Department of Housing and Community Affairs (the Department) received the appeal and waiver request submitted with the aforementioned application. The request asks that the Board utilize its discretion under 10 TAC §11.206 and waiver authority under 10 TAC §11.207 of the 2021 Qualified Allocation Plan (QAP) to disregard the letter of opposition submitted to the Department by State Representative Sam Harless. The appeal and request for waiver also alleges “negligence” by Department staff in not sending a copy of the State Representative’s negative letter to the Applicant, causing them “to incur unnecessary and avoidable development costs.” The appeal requests that the application be deemed eligible for the eight (8) points selected by the Applicant under 10 TAC §11.9(d)(5)(A), relating to Community Support from State Representative.

The Department received a letter under 10 TAC §11.9(d)(5)(A) from State Representative Sam Harless. The letter was timely submitted and has been determined by staff to express opposition toward the Application pursuant to Tex. Gov’t Code §2306.6710(b)(1)(J). This determination requires that the Application score be revised to deduct eight (8) points under 10 TAC §11.9(d)(5). In previous years, TDHCA staff has provided the courtesy of copying Applicants on letters sent to the Department by State Representatives. This courtesy is not required by statute or expressed in any rule; and this year there were factors of workload, weather, and pandemic stresses that precluded staff’s ability to perform this courtesy. It is noted in the appeal that the Applicant actually met with the State Representative at issue several weeks after he sent the negative letter to TDHCA, and the issue of the negative letter was not



discussed between the parties. The Department is not responsible for the content of a State Representative's letter, or the timing or content of any communications between an Applicant and the applicable State Representative. There is no rule or statutory basis in Applicant's "equitable" argument to disregard the State Representative's negative letter simply because TDHCA staff did not send the Applicant a courtesy copy.

The Applicant acknowledges the Department received a letter of opposition from State Representative Sam Harless but the appeal claims that the letter was unforeseeable and should therefore not negatively impact scoring of the Application. As detailed in the request, the letter of opposition was issued from a third party and thus was beyond the Applicant's control. The waiver request also emphasizes that approving the request would better serve TDHCA's policies and purposes set out in Tex. Gov't Code §§2306.001, 2306.002, 2306.359 and 2306.6701. Explaining further, it states:

The Project would be the first general population affordable housing project in this area of Houston since 2009. This Project is located in a high opportunity area. Economically disadvantaged persons in this area of Houston are woefully compromised in their affordable housing choices and opportunities.

The appeal and waiver request claims "TDHCA has a compelling mandate to disregard Rep. Harless' opposition letter when the facts and circumstances indicate his opposition or that of his constituents is rooted in NIMBYism. To otherwise allow Rep. Harless' opposition letter to kill the Project would constitute a violation of fair housing and constitute discrimination." The appeal and waiver request cites to 10 TAC §11.206 and Internal Revenue Code §42(m)(1)(A)(iv), and calls on the Board to utilize "its discretionary authority" to determine the Application to be eligible for the eight points under §11.9(d)(5)(B), relating to Letter from State Representative. The request also cites to IRS Revenue Ruling 2016-29, and submits that the TDHCA Board should be led by its conclusion that "[Internal Revenue Code] §42(m)(1)(A)(ii) does not require or encourage [state housing credit agencies] to bestow veto power of LIHTC projects either on local communities or on local public officials."

The analysis of this appeal and waiver request begins with the cited authority for the Board's discretion and waiver rule. 10 TAC §11.206 contains the following clause regarding the Board's decision making on applications:

The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes **the Board's decision to apply discretionary factors where authorized.** (emphasis added)

As to the waiver rule, 10 TAC §11.207, the rule specifically states that "[w]aiver requests on Competitive HTC Applications will not be accepted between submission of the Application and any award for the Application." This request for waiver was received after the submission of the Application as part of the Applicant's scoring appeal on April 20, 2021. Moreover, the request details its satisfaction of the "control" and "policies" elements of the rule, but neglects to consider the third subsection of the rule:

3) The Board may not grant a waiver to provide directly or implicitly any forward commitments **or to waive any requirement contained in statute.** (emphasis added)

Ultimately, this appeal and waiver request is asking the Board to waive the requirements of Tex. Gov't Code §2306.6710(b)(1)(J) and (f):

- (b) If an application satisfies the threshold criteria, the department **shall** score and rank the application using a point system that:
- 1) prioritizes in descending order criteria regarding:
 - (J) the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site;

and

- (f) In evaluating the level of community support for an application under Subsection (b)(1)(J), the department **shall** award:
- (1) positive points for positive written statements received;
 - (2) negative points for negative written statements received;
- and
- (3) zero points for neutral statements received.

The statute does not give the Board any discretionary authority to determine whether to prioritize points on the basis of the state representative letter. Indeed, the statute specifically requires the deduction of points for negative letters. The use of the word "shall" in the statute governing this part of the evaluation of applications imposes a duty on the Board to directly adhere to this legislative requirement. See Tex. Gov't Code 311.016(2) (use of the word "shall" in statute imposes a duty). Lacking the discretionary authority to operate in direct contradiction of a statutory duty, the appeal and request for waiver is denied, and the Application score will continue to indicate a deduction of eight points under 10 TAC §11.9(d)(5)(A), relating to Community Input from State Representative.

If you are not satisfied with this decision, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the QAP for full instruction on the appeals process. Please note that §11.902(f) of the QAP and Tex. Gov't Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application.

May 4, 2021

Page 4

If you have any questions or require further information, please contact Alena R. Morgan, Competitive Tax Credit Program Administrator, at alena.morgan@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,

A handwritten signature in blue ink that reads "R D Wil II". The signature is written in a cursive style with a double underline at the end.

Bobby Wilkinson
Executive Director

21139

Cypress Creek Apartment Homes at Forest
Lane

Waiver Request TDHCA #21139

Cypress Creek at Forest Lane

The Applicant is submitting this waiver request pursuant to §11.207 and requesting the Board utilize its §11.206 discretion to disregard the letter received by TDHCA from State Representative John Turner under §11.9(d)(5) in opposition to Cypress Creek at Forest Lane, Application #21139 (the “Proposed Development”). As this was a letter from a third party it was beyond the Applicant’s control and unforeseeable. Granting this waiver meets the requirements of §2306.001 as it allows TDHCA to “assist local governments in: (A) providing essential public services for their residents; and (B) overcoming financial, social, and environmental problems.” Specifically the problem of segregated housing in Dallas. By TDHCA accepting this State Representative letter and deducting points from the application, the Applicant believes it is perpetuating a violation of fair housing and discrimination towards LIHTC allocations in High Opportunity areas serving families.

The Proposed Development has faced opposition from the nearest neighborhoods, the councilman and now has received a letter of opposition from State Representative Turner, however the tenor of that opposition is such that for TDHCA to take it into account would be a violation of fair housing and constitute housing discrimination. The Applicant believes that the location for the Proposed Development in District 10 of the City of Dallas, a Council District that has not had new construction workforce housing since 1990 is an ideal location. The location has no undesirable site features or neighborhood characteristics based on data used to evaluate such factors by TDHCA (schools and crime rates), further, it is in a high opportunity census tract on a zoned piece of property and in close proximity to jobs and the DART Light Rail. This site is also the only site in North Dallas proposed to serve the general population, and is the lowest poverty rate census tract of all of the City of Dallas Pre-Applications serving the General Population.

Familial Status Discrimination

The Councilman who represents the district where the Proposed Development would be located has gone on record to state that he would support the proposal if it were senior housing.

“[Housing] is certainly something we need across the city,” continued McGough, “it’s just a question of where and how. I would be on board if it were senior housing – especially with the proximity to Hamilton Park.”

Low income Housing Plan Draws Opposition From Neighbors, Lake Highlands Advocate, By Carol Toler
February 22nd, 2021 (attached Exhibit A)

This statement is familial status discrimination and is consistent with the HUD charge recently brought against the City of Arlington. (See Exhibit B- Hud Complaint) For a Councilman in a District with no new construction affordable housing in 31 years to state that this location would be approved if it were a senior development is problematic, and his role in furthering the opposition to this proposed development including organizing constituents to lobby the State Representative to write a letter of opposition is rooted in this discrimination. (See Exhibit C-Facebook Post from Councilman McGough) State Representative Turner cited the Councilman’s opposition as well as constituent opposition in his letter, however, no valid

reason has been presented to the Applicant for this opposition nor have any changes been proposed. (See Exhibit D-Letter from Representative John Turner)

State Representative Turner’s letter of opposition cites no specific reason for opposition from the community and notes that Councilman McGough opposed this project. Representative Turner also cited his support of another Low Income Housing Tax Credit application, presumably to show that he supported affordable housing in general, however there are many differences between these two proposed developments. The Residences at Alpha Road, the application to receive Representative Turner’s support, is a development serving seniors, and it is in a census tract with a much higher concentration of minorities. His choice of which project to support and which to oppose aligns with the familial status housing discrimination of Councilman McGough as well as the disparate impact of the State Representative letters as a whole in the State of Texas. See the below demographics showing the development Representative Turner supported compared to our proposed Development.

Application Number	Application Information					Census Tract Demographics				
	Development Name	State Representative Letter	Point Effect	Census Tract	City	Elderly/General	Minority Percentage	African American Percentage	White Only Percentage	White Only Difference v. Dallas County
21149	Residences at Alpha	Support	8	48113013626	Dallas	Elderly	83%	21%	17%	-10%
21139	Cypress Creek at Forest Lane	Oppose	-8	48113007805	Dallas	General	52%	24%	48%	21%

*White only difference v. Dallas County shows that Residences at Alpha is in a more diverse census tract than the county as a whole, while Cypress Creek at Forest Lane has less minorities than the county. State Representative Letters are shown to have a negative impact on more proposed developments in Census Tracts with higher concentrations of White Only residents as compared to the surrounding county.

State Representative Letters Disparate Impact

The Applicant has reviewed all of the State Representative letters received by TDHCA for the 2017-2020 9% Competitive Tax Credit Rounds and found that developments proposed to serve families in high opportunity areas are affected negatively more often than other proposed developments. This impact is even further exacerbated when the racial make up of the census tract is taken into account. For the following analysis we utilized 2019 5-Year ACS data for demographics of the census tracts and compared the demographics of the census tract to the surrounding county to determine if a census tract had a higher percentage of White Only residents (More White) or had a higher percentage of Minority Residents (More Diverse). We also analyzed the negative impact of State Representative actions based on if they negatively impacted the application score, i.e. no letter 2017-2019 negatively impacted the score of the application because the application received 0 out of 8 possible points. No letter in the 2020 application round did not impact the score because those points were transferred to the City Council or County Commissioner. Using these measures as well as data submitted by the applicants in the pre-application logs we were able to determine that the impact of State Representative Letters or lack thereof was far more prevalent in proposed developments that were similar to the Proposed Development. Since 2017 there have been 322 (53%) applications in More White census tracts and 283 (47%) applications in More Diverse census tracts. However, State Representatives negatively affected the score of applications in More White census tracts 64.3% of the time, a more than 10% overrepresentation. The Proposed Development is in a census tract that is 21% More White than Dallas County as a whole thus increasing its chances for negative State Representative action. (See Exhibit E-Statistical Analysis) Analysis isolating Regions 3, 6, 7, and 9 which

include the major metropolitan areas of Texas show that applications in More White CTs are almost 2.5x more likely to be negatively affected by a State Representative's actions.

The Proposed Development is also a High Opportunity Area application, which indicates a lower poverty rate and an income in the first three quartiles of the region. When we add this factor into our analysis of State Representative's negative impact on application scores, we see that the overrepresentation is more exacerbated. Of the 461 High Opportunity applications 273 (59.2%) were in More White census tracts, 7 were equivalent to the surrounding county and 181 (39.2%) were more diverse. The More White applications were once again overrepresented with 74% of the impacted applications and affected almost twice as often. This 15% overrepresentation and twice the instance of negative State Representative action is troubling and shows a statistically significant bias.

Finally, the State Representative's negative impact is more likely for High Opportunity General Population Applications than High Opportunity Elderly developments in More White census tracts. The Elderly Developments were negatively affected 12.3% of the time, while General Population developments were negatively affected 15.6% of the time. However, in the instance of the two transactions Representative Turner has considered this application cycle, Residences at Alpha Road (Elderly development in a More Diverse census tract) and the Proposed Development (General Population Development in a More White census tract) the differences are much more drastic. Only 11% of High Opportunity Elderly developments in a More Diverse census tract were affected by State Representatives while 22%, or double the rate, of General Population transactions in More White census tracts are affected. The State Representative's actions continue the trend of disparate impact and align with the housing biases anecdotally observed by developers and prevalent in the pre-applications for the 2021 round in the urban 3 subregion. The 2021 pre-applications in the urban 3 subregion showed Elderly developments in census tracts that were 5% More White than the General Population/Supportive Housing pre-applications.

The combination of all of the attributes that make the Proposed Development a high scoring application also inevitably leave it to be more likely to receive negative treatment from a State Representative. The odds are stacked against high opportunity general population developments in More White census tracts, especially in the regions with large metropolitan areas. The ideal location for affordable housing.

ICP Analysis

The Inclusive Communities Project has analyzed the merits of the Proposed Development and has written a letter of support to both the City of Dallas and the TDHCA Board. ICP notes that under the "November 15, 2014 Voluntary Compliance Agreement between the City of Dallas and HUD, following HUD findings of fair housing violations, the City agreed to "provide affordable and assisted housing in new areas of opportunity." Blocking the Proposed Development will hinder the ability for the City of Dallas, which supported this proposal at City Council, from fulfilling their obligations to affirmatively further fair housing.

Our understanding from the application and public information is the area that would be served by Cypress Creek has: only twelve percent (12%) poverty, a white non-Hispanic population of fifty-two (52%), and the low CDFI distress score of 1 out of 4. When compared to other LIHTC projects in the City of Dallas, these kinds of findings are far better than other Dallas neighborhoods where LIHTC complexes are replete. ICP believes this proposed complex will serve lower income families and wage earners who desire to live in this well-resourced community and is aware of no reason

this project should not be supported by the City of Dallas, particularly because support would assist the City in meeting its obligation to affirmatively further fair housing.

See Exhibit F- ICP Letter Dated February 23, 2021

*Please note some demographics differ due to use of differing sources

The Proposed Development has also been through the Dallas Housing Authority RFP process and been awarded a number of Walker Vouchers. “The proposed Cypress Creek Apartments falls within a Walker Targeted Area as defined in the Court in the fair housing case Walker v. HUD to which the City was a defendant.” (ICP Letter-Attached Exhibit F) There are many hundreds of Walker Vouchers currently going unused because of landlord discrimination. To deny the only development proposing to accept Walker Vouchers robs the people Walker was fighting for and hinders desegregation in Dallas.

Rev. Rul. 2016–29

The Proposed Development’s chances of funding are being negatively impacted by the letter from State Representative Turner. With the negative 8 points being allocated it is in essence a local veto. Revenue Ruling 2016-29 (Attached as Exhibit G) uses an example of State X.

This QAP contains provisions that strongly favor applications from affordable housing projects that demonstrate affirmative local support. For example, under the point system that Agency uses in judging among applicant projects, points are granted to projects that—

- Manifest quantifiable community participation with respect to the project, especially as evidenced by written statements from neighborhood organizations in the area of the proposed project.
- Receive a commitment of development funding by the local political subdivision.
- Receive community support for the application, as evidenced by a written statement from the state legislator elected from the district in which the project is proposed to be developed.

Revenue Ruling 2016-29

The third bullet point mirrors §11.9(d)(5) of the Texas QAP relating to support from a state representative. The Revenue Ruling clearly allows for TDHCA to disregard the State Representative Letter as it states that, “the jurisdiction has a chance to weigh in, or even object, but not that every objection will be honored.” Further, “Thus, § 42(m)(1)(A)(ii) ensures only the opportunity for local input to the allocation decision. It does not authorize an allocating agency to abandon the responsibility to exercise its own judgment. In particular, it does not require or encourage allocating agencies to bestow veto power over LIHTC projects either on local communities or on local public officials.”

The Revenue Ruling also analyzed the use of these factors as it relates to Fair Housing.

“Agency’s practice of requiring local approval has created a pattern of allocating housing credit dollar amounts that has perpetuated residential racial segregation in State X. Agency’s practice,

therefore, has a discriminatory effect based on race, which is a protected characteristic under 42 USC 3604. Thus, the practice is inconsistent with at least the policy of the Fair Housing Act of 1968 (the Act), 42 USC 3601–3619.”

This finding is consistent with the data shown above based on the State Representative Letters received by TDHCA between 2017 and 2020. The impact in the State of Texas is not only racial, but also based on familial status, with less opposition being brought against elderly developments. The final holding of the Revenue Ruling empowers TDHCA:

“When state housing credit agencies allocate housing credit dollar amounts, § 42(m)(1)(A)(ii) does not require or encourage these agencies to reject all proposals that do not obtain the approval of the locality where the project developer proposes to place the project. That is, it neither requires nor encourages housing credit agencies to honor local vetoes.”

This final holding gives the option to TDHCA to decide not to honor the Letter of Opposition from the State Representative because it is in fact a local veto and the usage of this scoring criteria in this instance is a violation of fair housing based on the disparate impact shown above.

Board Action

The Applicant is requesting that the Board use its discretionary authority to award Cypress Creek at Forest Lane 8 points in spite of the opposition letter submitted by Representative Turner. This is not a call to eliminate all State Representative Letters, however, where there is a disparate impact against the type of Proposed Development, the existence of multiple court orders, federal regulations and local ordinances that support the award of the Proposed Development. The Board has the ability to act on this request under state statute (§§2306.6725(c);2306.6731) and the Internal Revenue Code (§42(m)(1)(A)(iv)). They empower the Board to:

...document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized.

QAP §11.206

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(§42(m)(1)(A)(iv))

In this instance the Applicant believes there would be good cause, as well as authority under the IRC to award points contrary to the scoring of the State Representative Letter of Opposition. The most pressing reason is also an obligation of QAP §11.206 which states:

The Board's decisions regarding awards shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order.

This section of the QAP contemplates that Board decisions should be based on a multitude of factors and not simply the competitive score of the application. In this instance the applicability of the above Revenue Ruling, relevant IRC Code Sections (Federal Statute), various Federal Fair Housing laws and the multiple court orders in effect in Dallas that the Proposed Development would help satisfy are all factors that the Board is able to consider. The Board is not simply bound by a competitive score, but may take a holistic approach, and see that in this instance the letter submitted has no merit and contradicts the established goals of the Dallas Comprehensive Housing Policy, the goals of the QAP and Affirmatively Furthering Fair Housing.

Exhibit A



ADVOCATE

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By Carol Toler | February 22nd, 2021 | City Hall, Hamilton Park, Multifamily Housing Development, News, Notes from City Hall, Our City, Politics | 4

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5 / 6



Site of planned Cypress Creek at Forest Lane

The [City of Dallas Housing and Homelessness Solutions Committee](#) voted today to recommend

approval of a new housing project near the Home Depot at Forest Lane and 75. Cypress Creek at Forest Lane, 11520 N. Central Expressway, would be funded in part using housing tax credits and would host a 50/50 mix of 200 low income and market rate units.

Opposition to the project has built slowly over the past couple of weeks, as residents of nearby [Hamilton Park](#) and the area surrounding [Stults Road Elementary](#) heard about the city's plans over social media. City planners hosted a public meeting last Wednesday via Zoom to answer questions about the development, but attendance was low due to widespread power outages during the snowstorm.

“My neighborhood’s concern is that this would be the fourth project related to low income housing or homelessness,” said Woot Lervisit, who lives near the proposed development. “Projects in the planning stages include Parkland’s charity clinic [in the [Greater](#)



LET’S GET SOCIAL:



Recent



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March 5th, 2021



They’re fast, we’re furious How street racing and interse takeov becam a

[Cornerstone Baptist Church](#)], the new [St. Jude homeless center](#) at LBJ and 75 and [City of Refuge at 12000 Greenville](#). We would ask the city and county, ‘What are you trying to turn our neighborhood into? Why are you trying to concentrate poverty here?’”

The project, along with other similar mixed income developments in other areas of Dallas, will move to the full city council for approval Wednesday. Deputy Mayor Pro Tem Adam McGough, who represents Lake Highlands and Hamilton Park, said he’s not ready to vote yes.

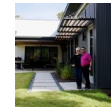


“They have not done the community engagement they need to do,” said McGough of city staff and [Austin developer Bonner Carrington](#). “I asked the development team that very first time we met to reach out to the neighborhood groups and stakeholders, and I was told that it was happening. The first meeting I was invited to was Wednesday the 17th at the peak of the weather issues. As I sit here right now, I can’t support it.”

McGough contrasts involvement of the neighborhood on the development with projects like City of Refuge at Lake Highlands, modeled after Bonton Farms in South Dallas. After many months of consulting with

neighborhood problem

March 5th, 2021



Pandemonium on the porch: How Tami and Tom weathered COVID while their home was being built

March 5th, 2021

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neighbors, he says, the community backs the plan because it serves the vulnerable while providing community assets.

“[Housing] is certainly something we need across the city,” continued McGough, “it’s just a question of where and how. I would be on board if it were senior housing – especially with the proximity to Hamilton Park.”

Also a factor, McGough explained, is the [makeshift tent city nearby](#).



“The neighbors in that area are justifiably upset with the way the city has allowed 75 and Forest to decline with tents and panhandling. While that’s not connected to this project, there’s an issue of trust. I went to speak to [the panhandlers] and try to get them some help during the storm, and they’re not going anywhere. They consider that their home. The city has just failed us. We’ve got people getting naked in the street. There is no enforcement – we’re basically just their trash service.”

McGough said he welcomes input from neighbors on the issue before he and other council members vote on the project Wednesday. Councilmembers can be emailed here or via

firstname.lastname@dallascityhall.com.

“I’m still in the listening phase,” said McGough. “I want to hear the community’s thoughts on this project. Will it add value to the neighborhood or is it something people are opposed to? There has not been enough engagement, and what neighborhood engagement we have had has been opposition. At this point, I have to vote with the community.”



Developer Bonner Carrington has Cypress Creek apartment homes in Houston, Amarillo, D-FW and central Texas.

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

_____)	
The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of Complainant)	
Commonwealth Development, Inc.)	
)	HUD OHA No.
Charging Party,)	FHEO No. 06-17-8202-8
)	
v.)	
)	
City of Arlington, Texas)	
)	
Respondents)	
_____)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 2, 2017, Complainant Commonwealth Development, Inc. filed a timely complaint with the Department of Housing and Urban Development (“HUD” or the “Department”) alleging that Respondent the City of Arlington, Texas violated subsection 804(a) of the Fair Housing Act, 42 U.S.C. §§ 3601-19 (“Act”), by discriminating because of familial status. On January 5, 2018, the Complaint was amended to clarify the violation alleged.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(g)(1), (2). The Secretary has delegated that authority to the General Counsel, 24 C.F.R. §§ 103.400, 103.405, who has re-delegated that authority to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

By a Determination of Reasonable Cause issued contemporaneously with this Charge of Discrimination, the Acting Director of the Office of Systemic Investigations, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2); 76 Fed. Reg. 73,990 (Nov. 29, 2011).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to make a dwelling unavailable because of familial status. 42 U.S.C. § 3604(a). Such prohibited conduct includes “[e]ngag[ing] in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of . . . familial status.” 24 C.F.R. § 100.50(b)(3). Familial status is defined as having a child in the household under the age of eighteen or being pregnant or in the process of securing legal custody of a minor child. 42 U.S.C. § 3602(k).

B. Parties

2. Complainant Commonwealth Development, Inc. is a housing development company located in Bryan, Texas.

3. Respondent, the City of Arlington, Texas, was incorporated in 1884 and is governed by a City Council that includes the Mayor and eight district representatives.

C. Factual Allegations

a. LIHTC and Respondent's Policy

4. The Low Income Housing Tax Credit (“LIHTC”) is a federal tax credit under the United States Tax Code designed to incentivize the construction and rehabilitation of affordable housing for low-income residents. The program is the largest federal program for low-income housing development in the United States. LIHTC credits are allocated to developers in two ways: 9% and 4% credits. 9% credits are generally reserved for new construction and are highly competitive, while 4% credits are non-competitive and typically used for rehabilitation projects and new construction that is financed with tax-exempt bonds.

5. In Texas, the State's Department of Housing and Community Affairs allocates LIHTC credits pursuant to Texas's Qualified Allocation Plan (“QAP”). Under the Texas QAP, proposed projects can earn seventeen points for a resolution from the local government that it supports the project and fourteen points for a resolution from the local government that it does not object to the project. There is no limit to the number of projects a local government can support. Because the selection process for 9% credits is so competitive, it is practically impossible for a project to score high enough to be selected without these points. In Respondent's region, the state allocated about seven and a half million dollars (39% of total funds) exclusively for projects that would not be restricted to elderly residents (referred to by Respondent as “workforce” housing).

6. On November 29, 2016, the City of Arlington, Texas, adopted a Housing Tax Credit Review Policy (the “Policy”) setting forth criteria for the City Council to use to decide which proposed LIHTC projects would receive resolutions of support or no objection and which would not. One of the five criteria was “The City has a preference for new development of senior housing or redevelopment of senior and/or workforce housing.”

7. Although written as a preference, City officials made statements demonstrating they intended this criterion to be a requirement. For example, one councilmember stated, “we specifically [tried] to get away from . . . allow[ing] workforce housing We were trying to differentiate between senior living and workforce living.” In practice, only projects that conformed to the preference were approved under the Policy.

8. In crafting and applying the Policy, City officials made statements indicating that they preferred senior projects to workforce projects because residents with children would be problematic. For example, a councilmember expressed her view that local residents do not like having families with children as neighbors: “the community said ‘I don’t want to live next to a three-year old; the only thing worse than living next to a three-year old is living next to an eight-year old,’ so they wanted senior housing.” The Deputy City Manager also raised objections to attracting new residents with children when he stated that LIHTC projects would “be problematic if they are developed [not for seniors] whether it’s from a school standpoint or they’re just in the wrong location.”

9. The Council was aware that a need for non-age-restricted affordable housing existed in the City. Based on the City’s own Analysis of Impediments to Fair Housing Choice, “There are relatively fewer elderly persons and persons living alone, thus a smaller demand for small housing units from these segments of the population.” Additionally, the City’s Consolidated Plan reported that 15,895 non-elderly households, in addition to 2,920 elderly households, have untenably high housing cost burdens. Complainant reminded the City Council of this dual need on numerous occasions, as well as of the fact that the Council could simultaneously support both senior and workforce projects, but the Council persisted in ignoring the affordable housing needs of non-senior households. Census data shows that among LIHTC-eligible households in the Arlington area, a non-senior-headed household is much more likely to have children than a senior-headed household.

b. The 2017 Application Cycle and Complainant’s Proposal

10. For the 2017 application cycle, the City received ten applications for projects using 9% credits, but two of the applications were withdrawn. Complainant’s proposal was the only one for the new construction of workforce housing. Among the others considered, six were for the new construction of senior housing and one was for the rehabilitation of workforce housing.

11. Complainant sought a resolution of support for a development called Cooper Street Apartments. The development would have had 104 units, eighty-eight of which would have been affordable. The development would have had twenty-four three-bedroom units, fifty-six two-bedroom units, and twenty-four one-bedroom units. Census data shows that most of the two- and three-bedroom units would likely have been occupied by families with children.

12. Complainant repeatedly explained to the City Council that with a resolution of support its project was highly likely to be selected by the state for LIHTC funding because it would receive a high score on the state's metrics. Complainant also explained that workforce and senior housing were not in competition with one another because the state set aside a large amount of money exclusively for workforce housing.

13. The City Council provided resolutions of support to two of the six proposals for new construction of senior housing. All other 9% projects were denied, including Cooper Street Apartments and the proposed workforce redevelopment project. In considering Complainant's proposal, councilmembers made clear that the Policy was a reason they would not provide a letter of support or no objection. For example, one councilmember stated that as a new construction workforce housing project "that's kind of in violation of our City requirements . . . that kind of doesn't work for us right away, so I think I could make a determination on that one without taking a look at it. It just doesn't fit the criteria."

14. A proposal for a senior project using 4% credits was initially awarded a resolution of no objection (even though the Policy did not technically apply to projects using 4% credits). However, the Council subsequently considered withdrawing the resolution when the project was changed from being purely senior housing, whereupon the developer withdrew the proposal. A councilmember also spoke of another workforce project that he discouraged from even applying while the Policy was in development.

15. By enacting and implementing its Policy, Respondent blocked the construction of affordable housing that would have been occupied by families with children, including the development proposed by Complainant. Respondent did so even though supporting such proposals would have in no way impeded its ability to support senior developments as well.

16. As a result of Respondents discriminatory conduct, Complainant suffered actual damages.

D. Legal Allegations

17. As described above, Respondent discriminated by making dwellings unavailable because of familial status, in violation of subsection 804(a) of the Act. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(3).

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a), and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19;

2. Enjoins Respondent and its agents, employees, successors, and all other persons in active concert or participation with it, from discriminating because of familial status in any way related to the provision of housing pursuant to 42 U.S.C. § 3612(g)(3);
3. Requires Respondent's agents and employees to attend, at Respondent's cost, training that addresses the Fair Housing Act's prohibitions against discrimination;
4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate any aggrieved persons for any harm caused by Respondent's discriminatory conduct;
5. Awards the maximum civil penalty against Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 23rd day of September 2020.

s/ Jeanine M. Worden

Jeanine M. Worden
Associate General Counsel for Fair Housing

s/ Kathleen M. Pennington

Kathleen M. Pennington
Assistant General Counsel for Fair Housing Enforcement



Ayelet R. Weiss
Deputy Assistant General Counsel for Fair Housing Compliance
U.S. Department of Housing and Urban Development
Office of General Counsel
451 7th St. SW, Room 10270
Washington, DC 20410
(202) 402-2882
ayelet.r.weiss@hud.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Important Notice,” “Charge of Discrimination,” and “Determination of Reasonable Cause” were served on the following via email on this 23rd day of September 2020:

COMPLAINANT:

Commonwealth Development, Inc.
emanuel@edgproperties.net

COMPLAINANT’S REPRESENTATIVE:

J. Davis Watson
Watson Law Firm, LLP
dwatson@watsonlawyers.com

RESPONDENT:

City of Arlington, Texas
Galen Gatten
City Attorney’s Office
galen.gatten@arlingtontx.gov



Ayelet R. Weiss
Deputy Assistant General Counsel for Fair Housing Compliance
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ayelet.r.weiss@hud.gov



Adam McGough, Dallas City Council, District 10

March 1 at 2:35 PM · 🌐



Despite opposition from the vast majority of community members and stakeholders, the City Council on Feb. 24 voted against my motion to DENY and instead approved a resolution of support from the City of Dallas for Cypress Creek at Forest Lane Apartments to be considered for 9% low-income housing tax credits (LIHTC). An overwhelming majority of the feedback I received, particularly from adjacent neighborhoods like Northwood Estates and Hamilton Park, expressed opposition to the project planned for 11520 N. Central Expy. Thank you to those residents who sent emails, made phone calls, participated in community meetings and testified to City Council.

The next step in the process is for the Texas Department of Housing and Community Affairs (TDHCA) to review Cypress Creek's application (#21139) to determine whether it will compete with other applications submitted throughout the state for these coveted federal tax credits. The deadline for submissions is March 8.

A letter from Rep. John Turner submitted prior to the deadline would have a significant impact on the project application's ability to move forward in the process. You can contact him with your input at district114.turner@house.texas.gov or 214-234-7625.

The TDHCA will host a virtual public hearing on May 18 at 6 p.m. to accept comments on the projects in four regions, including ours (Region 3). Those interested in attending this virtual public hearing may register at <https://attendee.gotowebinar.com/regi.../1254678419723046416>.

In addition to providing comments during the public hearing, written comments concerning any application may be submitted in hard copy or electronic formats to: Texas Department of Housing and Community Affairs Attn: HTC Public Comment P.O. Box 13941 Austin, Texas 78711-3941 Email: HTCPC@tdhca.state.tx.us. Please be that aware all comments submitted to the TDHCA will be considered public information. Comments received after 5 p.m. on June 18 will not be accepted.

<https://lakehighlands.advocatemaq.com/.../low-income.../>



TEXAS HOUSE of REPRESENTATIVES

John Turner

State Representative, District 114

March 5, 2021

Marni Holloway
Director of Multifamily Finance
Texas Department of Housing & Community Affairs
211 E. 11th St.
Austin, TX 78701-2410

[Delivered via email to Michael.Lytle@tdhca.state.tx.us]

Dear Director Holloway:

I write to express my opposition to the Low-Income Housing Tax Credit application submitted for the proposed development known as Cypress Creek Apartment Homes, project #21139, planned for 11520 North Central Expressway, Dallas, TX 75243.

One of the factors to be considered by the department in evaluating an application is "the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site." Texas Govt. Code Sec. 2306.6710(b). As the State Representative for District 114, which includes the proposed location, it is evident to me that there is strong community opposition to the project, particularly among residents and community leaders in the closest and most affected neighborhoods.

The two neighborhoods east of Central Expressway nearest to the proposed development are Hamilton Park and Northwood Heights/Northwood Estates (also known as the Stults Road neighborhood). Hamilton Park is a historically black north Dallas community that holds an important place in the past and present of our city. Stults Road is an ethnically and economically diverse neighborhood just to the east of the proposed site. I have received many communications from residents and leaders in both neighborhoods, as well as others nearby, with the vast majority opposed to the development.¹

To be clear, I support efforts to increase affordable housing options in Dallas and throughout our region. In fact, I am this same day submitting a letter of support for a separate Low-Income Housing Tax Credit application development elsewhere in my district. This is consistent with the views of many of the constituents who reached out to me, who made clear that their objections were rooted in

¹ I note in addition that the Dallas City Council Member representing the proposed location, Deputy Mayor Pro Tem Adam McGough, opposed the project when the application came before the Council. He was joined in his motion to deny the City's authorization of support by five other Council Members: Casey Thomas, Carolyn King Arnold, Tennell Atkins, Lee Kleinman, and David Blewett.

Re: Cypress Creek Apartments - TDHCA Project #21139

March 5, 2021

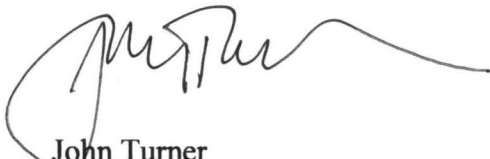
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concerns about the specifics of the Cypress Creek proposal, and not in a general opposition to affordable housing.

A reasonable level of local community support is likely to be an important factor in the success of any housing development. Texas law provides for this to be part of the department's evaluation, as expressed through the submissions of state representatives. Because I have not found that level of support to be present here, and in representation of my constituents, I respectfully submit this letter of opposition to the application.

Thank you for your attention and for the work you do on behalf of our state.

Sincerely,

A handwritten signature in black ink, appearing to read "John Turner", with a long, sweeping horizontal line extending to the right.

John Turner
State Representative
House District 114

Analysis of State Representative Letters 2017-2020			
Total Applications Analyzed	618	Share	Effected Rate
In More White CTs	322	52.1%	
In More Diverse CTs	283	45.8%	
In Equivalent CTs	13	2.1%	
Total State Rep Negative Effects	71		
In More White CTs	45	63.4%	14.0%
in More Diverse CTs	26	36.6%	9.2%

11% overrepresentation observed

Analysis of High Opportunity Applications			
Total High Opportunity	461	Share	Effected Rate
In More White CTs	273	59.2%	
In More Diverse CTs	181	39.3%	
In Equivalent CTs	7	1.5%	
Total State Rep Negative Effects	54		
In More White CTs	40	74.1%	14.7%
in More Diverse CTs	14	25.9%	7.7%

14% overrepresentation observed

Comparison of High Opportunity More White Elderly vs General Population			
Total High Opportunity	273	Share	Effected Rate
General Population	165	60.4%	
Elderly	108	39.6%	
Total State Rep Negative Effects	45		
General Population	31	68.9%	18.8%
Elderly	14	31.1%	13.0%

8.5% overrepresentation observed

Analysis of Regions 3/6/7/9 (Major Metros)			
Total Applications Analyzed	252	Share	Effected Rate
In More White CTs	154	61.1%	
In More Diverse CTs	98	38.9%	
In Equivalent CTs	3	1.2%	
Total State Rep Negative Effects	39		
In More White CTs	31	79.5%	20.1%
in More Diverse CTs	8	20.5%	8.2%

18% overrepresentation observed

The method of categorizing More White vs More Diverse census tracts was to compare the demographics of the CT to the demographics of the county where it is located.



February 23, 2021

Mayor Eric Johnson &
Dallas City Council Members
City of Dallas
1500 Marilla Street
Dallas, TX 75201
Via electronic submission

RE: ICP's Support for the Cypress Creek LIHTC Proposal

Dear Mayor and Dallas City Council:

ICP continues its interest in seeing new low-income housing tax credit (LIHTC) apartment complexes in low poverty areas that offer opportunities to lower wage residents outside of neighborhoods where they have traditionally been steered. The proposed Cypress Creek Apartments falls within a Walker Targeted Area as defined in the Court in the fair housing case Walker v. HUD to which the City was a defendant.

The ability for the City to address its fair housing issues calls for support of the Cypress Creek proposal. In the November 15, 2014 Voluntary Compliance Agreement between the City of Dallas and HUD, following HUD findings of fair housing violations, the City agreed to "provide affordable and assisted housing in new areas of opportunity". The November 2018 North Texas Regional Assessment of Fair Housing, commissioned by the City, stated Goal A was to seek to "increase access to affordable housing in high opportunity areas."

Our understanding from the application and public information is the area that would be served by Cypress Creek has: only twelve percent (12%) poverty, a white non-Hispanic population of fifty-two (52%), and the low CDFI distress score of 1 out of 4. When compared to other LIHTC projects in the City of Dallas, these kinds of findings are far better than other Dallas neighborhoods where LIHTC complexes are replete. ICP believes this proposed complex will serve lower income families and wage earners who desire to live in this well-resourced community and is aware of no reason this project should not be supported by the City of Dallas, particularly because support would assist the City in meeting its obligation to affirmatively further fair housing.

Sincerely,

Demetria L. McCain
President

Ann Lott
Vice President of Housing Initiatives

CC: David Noguera, Director, Housing & Neighborhood Revitalization, City of Dallas
Daniel & Beshara, PC

Part I

Section 42.—Low-income housing credit

26 CFR 1.42–14: Allocation rules for post-2000 State housing credit ceiling amount.

Rev. Rul. 2016–29

ISSUE

When state housing credit agencies allocate housing credit dollar amounts, does § 42(m)(1)(A)(ii) of the Internal Revenue Code (Code) require or encourage these agencies to reject any proposal that does not obtain the approval of the locality where the project developer proposes to place the project?¹

¹ Section 147(f) requires public approval for all issuances of proposed qualified private activity bonds, including bonds used to finance qualified residential rental projects. These bond issuances must be approved both (a) by the governmental unit which is to issue the bonds or on behalf of which they are to be issued (issuer approval) and (b) by a governmental unit the geographic jurisdiction of which includes the site of the facility to be financed (host approval). Although the host-approval component of public approval means approval by a governmental unit whose jurisdiction includes the site of the financed facility, “public approval” (including “host approval”) does not include “local approval.” To illustrate, bonds issued by (or on behalf of) a State may be approved by the State alone in its capacities as issuer and as a host governmental unit whose jurisdiction includes the site of the financed facility. So there is no requirement for local approval by the county or municipality in which the financed facility is to be located. See § 5f.103–2(c) of the Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982. Thus, § 42(m)(1)(A)(ii) neither requires nor encourages *local* approval for these bond-financed projects, although § 147 does require *public* approval for issuing the bonds.

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FACTS

Agency, a housing credit agency in State X, is responsible for allocating housing credit dollar amounts to applicants that seek to develop affordable housing projects that will be eligible to earn low-income housing tax credits (LIHTCs). To guide *Agency* in making these allocations, *Agency* adopted, and the relevant governmental unit approved, a qualified allocation plan (QAP).

This QAP contains provisions that strongly favor applications from affordable housing projects that demonstrate affirmative local support. For example, under the point system that *Agency* uses in judging among applicant projects, points are granted to projects that—

- Manifest quantifiable community participation with respect to the project, especially as evidenced by written statements from neighborhood organizations in the area of the proposed project.
- Receive a commitment of development funding by the local political subdivision.
- Receive community support for the application, as evidenced by a written statement from the state legislator elected from the district in which the project is proposed to be developed.

Agency believes that § 42(m)(1)(A)(ii) requires that allocations be made only to proposals that receive the approval of the locality where the proposed project is to be located. Accordingly, *Agency* will reject an application if evidence of affirmative local support is lacking, and *Agency* uses factors such as the ones in its QAP to determine

– 3 –

whether or not that support exists. Requiring local approval empowers jurisdictions to exercise what some call a “local veto.”

In State X, local approval is much more likely to be secured for proposed LIHTC developments in areas with greater proportions of minority residents and fewer economic opportunities than in higher-opportunity, non-minority communities. *Agency’s* practice of requiring local approval has created a pattern of allocating housing credit dollar amounts to projects in the predominantly lower-income or minority areas, with the result of perpetuating residential racial and economic segregation in State X.

LAW

If a building is constructed and operated consistent with the requirements of § 42, the building’s owners generally receive a 10-year stream of LIHTCs.

Under § 42(h), however, the LIHTCs determined in any year with respect to a building may not exceed the housing credit dollar amount that a State housing credit agency has allocated to the building.

Section 42(m) requires these allocations to be made pursuant to a QAP. Each QAP must contain certain preferences, and selection criteria, specified in the Code, but other factors may be added.

Section 42(m)(1)(A)(ii) prevents a housing credit dollar amount from being allocated to a building unless the allocating “agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.”

ANALYSIS

Although *Agency* believes that the local veto provisions in its QAP respond to the requirement in § 42(m)(1)(A)(ii), *Agency* misinterprets this provision. *Agency's* interpretation is inconsistent with (1) the language of § 42(m)(1)(A)(ii) and (2) general Federal fair-housing policy.

1. The Language of Section 42(m)(1)(A)(ii)

The Code requires that each local jurisdiction have a “reasonable opportunity” to comment on any proposal to allocate a housing credit dollar amount to a project within that jurisdiction. This requirement is not the same as requiring the jurisdiction’s approval. The clear meaning of “reasonable opportunity to comment” is that the jurisdiction has a chance to weigh in, or even object, but not that every objection will be honored.

Thus, § 42(m)(1)(A)(ii) ensures only the opportunity for local input to the allocation decision. It does not authorize an allocating agency to abandon the responsibility to exercise its own judgment. In particular, it does not require or encourage allocating agencies to bestow veto power over LIHTC projects either on local communities or on local public officials.

2. General Federal Fair-Housing Policy

Agency's practice of requiring local approval has created a pattern of allocating housing credit dollar amounts that has perpetuated residential racial segregation in State X. *Agency's* practice, therefore, has a discriminatory effect based on race, which

– 5 –

is a protected characteristic under 42 USC 3604. Thus, the practice is inconsistent with at least the policy² of the Fair Housing Act of 1968 (the Act), 42 USC 3601–3619.

Nevertheless, *Agency* interprets § 42(m)(1)(A)(ii) as forcing *Agency* to require local approval, despite the discriminatory effect of that practice in State X. This interpretation assumes that, in creating LIHTCs, Congress silently reversed well-established, fundamental Federal fair-housing policy. Eighteen years before the 1986 enactment of § 42, the Act had firmly established this policy. See 42 USC 3601 (“**Declaration of policy.** It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”). Without legislative commentary or other persuasive evidence, one cannot conclude that Congress intended to reverse this well-established policy.

In the summer of 2015, the United States Department of Housing and Urban Development (HUD) issued new final regulations regarding obligations under the Act to Affirmatively Further Fair Housing (AFFH). See 80 Fed. Reg. 42272 (2015) (issuing HUD’s AFFH final rule, which is codified at various locations in 24 CFR Parts 5, 91, 92, 570, 574, 576, and 903). Discussing the many decades during which AFFH had been firmly established Federal policy, HUD states in the preamble, “*From its inception [in 1968], the [Act] ... has not only prohibited discrimination in housing related activities and transactions but has also provided, through the duty to affirmatively further fair housing ... , for meaningful actions to be taken to overcome the legacy of segregation,*

² The practice may also violate specific nondiscrimination provisions of the Act. See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015).



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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Greg Abbott
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May 3, 2021

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Zach Krochtengel
Cypress Creek Forest Lane, LP
6807 Ledyard Drive
Dallas, TX 75248

RE: WAIVER RESPONSE FOR 2021 HOUSING TAX CREDIT APPLICATION 21139
CYPRESS CREEK AT FOREST LANE

Dear Mr. Krochtengel:

The Texas Department of Housing and Community Affairs (the Department) received the waiver request submitted with the aforementioned application. The request asks that the Board utilize its discretion under 10 TAC §11.206 and waiver authority under 10 TAC §11.207 of the 2021 Qualified Allocation Plan (QAP) to disregard the letter of opposition submitted to the Department by State Representative John Turner. Further, the waiver requests that the application be deemed eligible for the eight (8) points selected by the Applicant under 10 TAC §11.9(d)(5)(A), relating to Community Support from State Representative.

The Department received a letter under 10 TAC §11.9(d)(5)(A) from State Representative John Turner. The letter was timely submitted and has been determined by staff to express opposition toward the Application pursuant to Tex. Gov't Code §2306.6710(b)(1)(J). This determination requires that the Application score be revised to deduct eight (8) points under 10 TAC §11.9(d)(5).

The Applicant acknowledges the Department received a letter of opposition from State Representative John Turner but the waiver claims that the letter was unforeseeable and should therefore not negatively impact scoring of the Application. As detailed in the request, the letter of opposition was issued from a third party and thus was beyond the Applicant's control. The waiver also emphasizes that approving the request would satisfy the requirements of Tex. Gov't Code §2306.001. Explaining further, it states:

Granting this waiver meets the requirements of §2306.001 as it allows TDHCA to "assist local governments in: (A) providing essential public services for their residents; and (B)



overcoming financial, social, and environmental problems.” Specifically the problem of segregated housing in Dallas. By TDHCA accepting this State Representative letter and deducting points from the application, the Applicant believes it is perpetuating a violation of fair housing and discrimination towards LIHTC allocations in High Opportunity areas serving families.

The request identifies these concerns in detail, particularly with regard to the specific third party who submitted the letter at issue. The request clarifies that it does not propose a blanket disregard for input from State Representatives altogether. Rather, the waiver claims, “where this is a disparate impact against the type of Proposed Development...[t]he Board has the ability to act on this request under state statute (§§2306.6725(c)¹; 2306.6731²) and the Internal Revenue Code (§42(m)(1)(A)(iv)).” The request also cites to IRS Revenue Ruling 2016-29, and submits that the TDHCA Board should be led by its conclusion that “[Internal Revenue Code] §42(m)(1)(A)(ii) does not require or encourage [state housing credit agencies] to reject all proposals that do not obtain the approval of the locality where the project developer proposes to place the project.” In this case, the waiver suggests the Application should be determined to be eligible for the eight (8) points under §11.9(d)(5)(B), relating to Letter from State Representative.

The analysis of this waiver request begins with the cited authority for the Board’s discretion and waiver rule. 10 TAC §11.206 contains the following clause regarding the Board’s decision making on applications:

The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes **the Board's decision to apply discretionary factors where authorized**. (emphasis added)

As to the waiver rule, 10 TAC §11.207, the request for waiver details its satisfaction of subsections (1) and (2) of the rule, but neglects to consider the third subsection:

3) The Board may not grant a waiver to provide directly or implicitly any forward commitments **or to waive any requirement contained in statute**. (emphasis added)

¹ (c) On awarding tax credit allocations, the board shall document the reasons for each project's selection, including an explanation of:

(1) **all discretionary factors** used in making its determination; and

(2) the reasons for any decision that conflicts with the recommendations of department staff under Section [2306.6731](#). (emphasis added)

² (a) Department staff shall provide written, documented recommendations to the board concerning the financial or programmatic viability of each application for a low income housing tax credit before the board makes a decision relating to the allocation of tax credits. The board may not make without good cause an allocation decision that conflicts with the recommendations of department staff.

Ultimately, the request is asking the Board to waive the requirements of Tex. Gov't Code §2306.6710(b)(1)(J) and (f)

(b) If an application satisfies the threshold criteria, the department **shall** score and rank the application using a point system that:

- 1) prioritizes in descending order criteria regarding:
 - (J) the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site;

and

(f) In evaluating the level of community support for an application under Subsection (b)(1)(J), the department **shall** award:

- (1) positive points for positive written statements received;
 - (2) negative points for negative written statements received;
- and
- (3) zero points for neutral statements received.

The statute does not give the Board any discretionary authority to determine whether to prioritize points on the basis of the state representative letter. Indeed, the statute specifically requires the deduction of points for negative letters. The use of the word “shall” in the statute governing this part of the evaluation of applications imposes a duty on the Board to directly adhere to this legislative requirement. See Tex. Gov't Code 311.016(2) (use of the word “shall” in statute imposes a duty). Lacking the discretionary authority to operate in direct contradiction of a statutory duty, the waiver is denied and the Application score will be revised to indicate a deduction of eight (8) points under 10 TAC §11.9(d)(5)(A), relating to Community Input from State Representative.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §11.902 of the QAP. If you wish to appeal this decision to the Executive Director, the appeal must be filed, in writing, with the Department not later than seven (7) calendar days after the date of this notification. Please review §11.902 of the QAP for full instruction on the appeals process. Please note that §11.902(f) of the QAP and Tex. Gov't Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application.

If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

Marni Holloway
Multifamily Finance Division Director

CYPRESS CREEK at FOREST LANE

TDHCA Board
221 East 11th Street
Austin, Texas 78701-2410

May 7, 2021

Members of The Board:

Please accept this appeal to the denial for our waiver request dated May 3, 2021. TDHCA application #21139 Cypress Creek at Forest Lane has faced numerous obstacles that have kept this high quality application from being prioritized for funding. Without action from this Board the segregation of affordable housing in Dallas will continue and the first new construction affordable housing in this City Council District since the early 1990s will be denied.

Familial Status Discrimination

The Councilman who represents the district where the Proposed Development would be located has gone on record to state that he would support the proposal if it were senior housing.

“[Housing] is certainly something we need across the city,” continued McGough, “it’s just a question of where and how. I would be on board if it were senior housing – especially with the proximity to Hamilton Park.”

Low income Housing Plan Draws Opposition From Neighbors, Lake Highlands Advocate, By Carol Toler
February 22nd, 2021 (attached Exhibit A)

This statement is familial status discrimination and is consistent with the HUD charge recently brought against the City of Arlington. (See Exhibit B- Hud Complaint) For a Councilman in a District with no new construction affordable housing in 31 years to state that this location would be approved if it were a senior development is problematic, and his role in furthering the opposition to this proposed development including organizing constituents to lobby the State Representative to write a letter of opposition is rooted in this discrimination. (See Exhibit C-Facebook Post from Councilman McGough) State Representative Turner cited the Councilman’s opposition as well as constituent opposition in his letter, however, no valid reason has been presented to the Applicant for this opposition nor have any changes been proposed. (See Exhibit D-Letter from Representative John Turner)

State Representative Turner’s letter of opposition cites no specific reason for opposition from the community and notes that Councilman McGough opposed this project. Representative Turner also cited his support of another Low Income Housing Tax Credit application, presumably to show that he supported affordable housing in general, however there are many differences between these two proposed developments. The Residences at Alpha Road, the application to receive Representative Turner’s support, is a development serving seniors, and it is in a census tract with a much higher concentration of minorities. His choice of which project to support and which to oppose aligns with the familial status housing

discrimination of Councilman McGough as well as the disparate impact of the State Representative letters as a whole in the State of Texas. See the below demographics showing the development Representative Turner supported compared to our proposed Development.

Application Information							Census Tract Demographics				
Application Number	Development Name	State Representative Letter	Point Effect	Census Tract	City	Elderly/General	Minority Percentage	African American Percentage	White Only Percentage	White Only Difference v. Dallas County	
21149	Residences at Alpha	Support	8	48113013626	Dallas	Elderly	83%	21%	17%	-10%	
21139	Cypress Creek at Forest Lane	Oppose	-8	48113007805	Dallas	General	52%	24%	48%	21%	

*White only difference v. Dallas County shows that Residences at Alpha is in a more diverse census tract than the county as a whole, while Cypress Creek at Forest Lane has less minorities than the county. State Representative Letters are shown to have a negative impact on more proposed developments in Census Tracts with higher concentrations of White Only residents as compared to the surrounding county.

State Representative Letters Disparate Impact

The Applicant has reviewed all of the State Representative letters received by TDHCA for the 2017-2020 9% Competitive Tax Credit Rounds and found that developments proposed to serve families in high opportunity areas are affected negatively more often than other proposed developments. This impact is even further exacerbated when the racial make up of the census tract is taken into account. For the following analysis we utilized 2019 5-Year ACS data for demographics of the census tracts and compared the demographics of the census tract to the surrounding county to determine if a census tract had a higher percentage of White Only residents (More White) or had a higher percentage of Minority Residents (More Diverse). We also analyzed the negative impact of State Representative actions based on if they negatively impacted the application score, i.e. no letter 2017-2019 negatively impacted the score of the application because the application received 0 out of 8 possible points. No letter in the 2020 application round did not impact the score because those points were transferred to the City Council or County Commissioner. Using these measures as well as data submitted by the applicants in the pre-application logs we were able to determine that the impact of State Representative Letters or lack thereof was far more prevalent in proposed developments that were similar to the Proposed Development. Since 2017 there have been 322 (53%) applications in More White census tracts and 283 (47%) applications in More Diverse census tracts. However, State Representatives negatively affected the score of applications in More White census tracts 64.3% of the time, a more than 10% overrepresentation. The Proposed Development is in a census tract that is 21% More White than Dallas County as a whole thus increasing its chances for negative State Representative action. (See Exhibit E-Statistical Analysis) Analysis isolating Regions 3, 6, 7, and 9 which include the major metropolitan areas of Texas show that applications in More White CTs are almost 2.5x more likely to be negatively affected by a State Representatives actions.

The Proposed Development is also a High Opportunity Area application, which indicates a lower poverty rate and an income in the first three quartiles of the region. When we add this factor into our analysis of State Representative's negative impact on application scores, we see that the overrepresentation is more exacerbated. Of the 461 High Opportunity applications 273 (59.2%) were in More White census tracts, 7 were equivalent to the surrounding county and 181 (39.2%) were more diverse. The More White applications were once again overrepresented with 74% of the impacted applications and affected almost

twice as often. This 15% overrepresentation and twice the instance of negative State Representative action is troubling and shows a statistically significant bias.

Finally, the State Representative's negative impact is more likely for High Opportunity General Population Applications than High Opportunity Elderly developments in More White census tracts. The Elderly Developments were negatively affected 12.3% of the time, while General Population developments were negatively affected 15.6% of the time. However, in the instance of the two transactions Representative Turner has considered this application cycle, Residences at Alpha Road (Elderly development in a More Diverse census tract) and the Proposed Development (General Population Development in a More White census tract) the differences are much more drastic. Only 11% of High Opportunity Elderly developments in a More Diverse census tract were affected by State Representatives while 22%, or double the rate, of General Population transactions in More White census tracts are affected. The State Representative's actions continue the trend of disparate impact and align with the housing biases anecdotally observed by developers and prevalent in the pre-applications for the 2021 round in the urban 3 subregion. The 2021 pre-applications in the urban 3 subregion showed Elderly developments in census tracts that were 5% More White than the General Population/Supportive Housing pre-applications.

The combination of all of the attributes that make the Proposed Development a high scoring application also inevitably leave it to be more likely to received negative treatment from a State Representative. The odds are stacked against high opportunity general population developments in More White census tracts, especially in the regions with large metropolitan areas. The ideal location for affordable housing. No application subject to State Representative opposition letter has received an allocation since at least 2016.

State Representative Letters Give Cover to NIMBY

The purpose of State Representative letters is to reflect the support of the community; however, the community has ample opportunity to engage and show opposition at the local level through City Council meetings where support resolutions are passed. Further, the QAP allows for a State Representative to host a meeting of constituents which the State Representative did hold and the Applicant was not welcome to be present. (See Representative Turner Meeting Flyer- Attached Exhibit F) The opposition to this proposed development is unknown and the factors leading to the State Representative opposition have yet to be articulated to the Applicant except in the vaguest of generalities.

Allowing State Representatives to hold community meetings or take constituent complaints that are not in the public forum gives a cover for Nimbyism and other discriminatory actions and reasoning to impact affordable housing.

ICP Analysis

The Inclusive Communities Project has analyzed the merits of the Proposed Development and has written a letter of support to both the City of Dallas and the TDHCA Board. ICP notes that under the "November 15, 2014 Voluntary Compliance Agreement between the City of Dallas and HUD, following HUD findings of fair housing violations, the City agreed to "provide affordable and assisted housing in new areas of opportunity." Blocking the Proposed Development will hinder the ability for the City of Dallas, which supported this proposal at City Council, from fulfilling their obligations to affirmatively further fair housing.

Our understanding from the application and public information is the area that would be served by Cypress Creek has: only twelve percent (12%) poverty, a white non-Hispanic population of fifty-two (52%), and the low CDFI distress score of 1 out of 4. When compared to other LIHTC projects in the City of Dallas, these kinds of findings are far better than other Dallas neighborhoods where LIHTC complexes are replete. ICP believes this proposed complex will serve lower income families and wage earners who desire to live in this well-resourced community and is aware of no reason this project should not be supported by the City of Dallas, particularly because support would assist the City in meeting its obligation to affirmatively further fair housing.

See Exhibit G- ICP Letter Dated February 23, 2021

*Please note some demographics differ due to use of differing sources

The Proposed Development has also been through the Dallas Housing Authority RFP process and been awarded a number of Walker Vouchers. "The proposed Cypress Creek Apartments falls within a Walker Targeted Area as defined in the Court in the fair housing case Walker v. HUD to which the City was a defendant." (ICP Letter-Attached Exhibit H) There are many hundreds of Walker Vouchers currently going unused because of landlord discrimination. To deny the only development proposing to accept Walker Vouchers robs the people Walker was fighting for and hinders desegregation in Dallas.

The State Rep. policy perpetuates the existing racial segregation in the Dallas area LIHTC projects

The Dallas Metropolitan area LIHTC projects are already racially segregated by location and by occupancy. 92% of Black LIHTC households are located in predominantly Minority census tracts in the Dallas Metropolitan area. 88% of Hispanic LIHTC households are located in predominantly Minority Census Tracts in the Dallas Metropolitan area. By comparison, 69% of White non-Hispanic LIHTC households are located in predominantly Minority Census Tracts. White non-Hispanic LIHTC households occupy 51% of the LIHTC units in predominantly White non-Hispanic census tracts (2991/5843). White non-Hispanic LIHTC households occupy no more than 24% of the 39,633 LIHTC units in this area. TDHCA Housing Sponsor Report 2015; TDHCA HTC Inventory Jan. 2018; U.S. Census, ACS 5 YR data, 2017.

The State Rep. policy prevented at least 14 applications for locations in More White Census Tracts averaging 37% Minority from providing units in locations that would not have perpetuated the existing racial segregation in the LIHTC program.

The State Rep. policy is preventing Complainants' application for general housing from being located in a More White census tract in the City of Dallas. The policy is preventing the application from being located in a More White location than any of the other applications for general housing in the City. It is preventing the location of a LIHTC project in a More White location than the City, the County and the MSA.

Rev. Rul. 2016-29

The Proposed Development's chances of funding are being negatively impacted by the letter from State Representative Turner. With the negative 8 points being allocated it is in essence a local veto. Revenue Ruling 2016-29 (Attached as Exhibit I) uses an example of State X.

This QAP contains provisions that strongly favor applications from affordable housing projects that demonstrate affirmative local support. For example, under the point system that Agency uses in judging among applicant projects, points are granted to projects that—

- Manifest quantifiable community participation with respect to the project, especially as evidenced by written statements from neighborhood organizations in the area of the proposed project.
- Receive a commitment of development funding by the local political subdivision.
- Receive community support for the application, as evidenced by a written statement from the state legislator elected from the district in which the project is proposed to be developed.

Revenue Ruling 2016-29

The third bullet point mirrors §11.9(d)(5) of the Texas QAP relating to support from a state representative. The Revenue Ruling clearly allows for TDHCA to disregard the State Representative Letter as it states that, “the jurisdiction has a chance to weigh in, or even object, but not that every objection will be honored.” Further, “Thus, § 42(m)(1)(A)(ii) ensures only the opportunity for local input to the allocation decision. It does not authorize an allocating agency to abandon the responsibility to exercise its own judgment. In particular, it does not require or encourage allocating agencies to bestow veto power over LIHTC projects either on local communities or on local public officials.”

The Revenue Ruling also analyzed the use of these factors as it relates to Fair Housing.

“Agency’s practice of requiring local approval has created a pattern of allocating housing credit dollar amounts that has perpetuated residential racial segregation in State X. Agency’s practice, therefore, has a discriminatory effect based on race, which is a protected characteristic under 42 USC 3604. Thus, the practice is inconsistent with at least the policy of the Fair Housing Act of 1968 (the Act), 42 USC 3601–3619.”

This finding is consistent with the data shown above based on the State Representative Letters received by TDHCA between 2017 and 2020. The impact in the State of Texas is not only racial, but also based on familial status, with less opposition being brought against elderly developments. The final holding of the Revenue Ruling empowers TDHCA:

“When state housing credit agencies allocate housing credit dollar amounts, § 42(m)(1)(A)(ii) does not require or encourage these agencies to reject all proposals that do not obtain the approval of the locality where the project developer proposes to place the project. That is, it neither requires nor encourages housing credit agencies to honor local vetoes.”

This final holding gives the option to TDHCA to decide not to honor the Letter of Opposition from the State Representative because it is in fact a local veto and the usage of this scoring criteria in this instance is a violation of fair housing based on the disparate impact shown above.

Impediment to Affordable Housing Not Present In Market Rate

The proposed Site for the Cypress Creek at Forest Lane development is zoned and the proposed development could be built on this site by right. The State of Texas has unfairly imposed an impediment to developing affordable housing that would not be present had the Applicant been developing market rate apartments. This is a violation of Fair Housing that should not be tolerated, further, the QAP requirements for the State Representative input as shown below (emphasis added) create a public forum for community input that should not be available and has no purpose other than to discriminate against affordable housing and the demographics affordable housing residents tend to fall into.

...Therefore, it is encouraged that letters not be submitted well in advance of the specified deadline in order to facilitate **consideration of all constituent comment and other relevant input on the proposed Development.** State Representatives to be considered are those in office at the time the letter is submitted and whose district boundaries include the Development Site. If the office is vacant, the Application will be considered to have received a neutral letter. Neutral letters or letters that do not specifically refer to the Development will receive zero (0) points. A letter from a state representative **expressing the level of community support may be expressly based on the representative's understanding or assessments of indications of support by others, such as local government officials, constituents, or other applicable representatives of the community.** In providing this letter, pursuant to Tex. Gov't Code §2306.6710(b)(1)(J), a representative may either express their position of support, opposition, or neutrality regarding the Application, which shall be presumed to reflect their assessment of the views of their constituents, or they may provide a statement of the support, opposition, or neutrality of their constituents regarding the Application without expressing their personal views on the matter.

This forum for public input and the solicitation of such input from the State Representative is a catalyst of opposition against the proposed development and other affordable housing proposals. This opposition is not present for market rate developments on sites that are already zoned.

Board Action

The denial of our appeal from the executive director states that the department does not believe the board has the authority to recommend this project for an award because of the statutory requirements to take state representative letters into account in scoring and ranking the applications. The scoring and ranking of the applications is just one step in a two step process with the second being the Board approving awards. The scoring dictates the department staff's recommendation. The Applicant believes that there is explicit authority granted to the Board by the Internal Revenue Code and the QAP to depart from the scoring of applications when warranted and award a lower scoring application. The Applicant is requesting that the Board use its discretionary authority to award Cypress Creek at Forest Lane an allocation of tax credits in spite of the opposition letter submitted by Representative Turner. This is not a call to eliminate all State Representative Letters, however, where there is a disparate impact against the type of Proposed Development, the existence of multiple court orders, federal regulations and local ordinances that support the award of the Proposed Development. The Board has the ability to act on this request under Texas administrative code (§§2306.6725(c);2306.6731) and the Internal Revenue Code (§42(m)(1)(A)(iv)). They empower the Board to:

...document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized.

QAP §11.206

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(§42(m)(1)(A)(iv))

In this instance the Applicant believes there would be good cause, as well as authority under the IRC to award tax credits contrary to the scoring of the State Representative Letter of Opposition. The most pressing reason is also an obligation of QAP §11.206 which states:

The Board's decisions regarding awards shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order.

This section of the QAP contemplates that Board decisions should be based on a multitude of factors and not simply the competitive score of the application. In this instance the applicability of the above Revenue Ruling, relevant IRC Code Sections (Federal Statute), various Federal Fair Housing laws and the multiple court orders in effect in Dallas that the Proposed Development would help satisfy are all factors that the Board is able to consider. The Board is not simply bound by a competitive score, but may take a holistic approach, and see that in this instance the letter submitted has no merit and contradicts the established goals of the Dallas Comprehensive Housing Policy, the goals of the QAP and Affirmatively Furthering Fair Housing.

Exhibit A



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Site of planned Cypress Creek at Forest Lane

The [City of Dallas Housing and Homelessness Solutions Committee](#) voted today to recommend approval of a new housing project near the Home Depot at Forest Lane and 75. Cypress Creek at Forest Lane, 11520 N. Central Expressway, would be funded in part using housing tax credits and would host a 50/50 mix of 200 low income and market rate units.

Opposition to the project has built slowly over the past couple of weeks, as residents of nearby [Hamilton Park](#) and the area surrounding [Stults Road Elementary](#) heard about the city's plans over social media. City planners hosted a public meeting last Wednesday via Zoom to answer questions about the development, but attendance was low due to widespread power outages during the snowstorm.

“My neighborhood’s concern is that this would be the fourth project related to low income housing or homelessness,” said Woot Lervisit, who lives near the proposed development. “Projects in the planning stages include Parkland’s charity clinic [in the [Greater](#)



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[Cornerstone Baptist Church](#)], the new [St. Jude homeless center](#) at LBJ and 75 and [City of Refuge at 12000 Greenville](#). We would ask the city and county, ‘What are you trying to turn our neighborhood into? Why are you trying to concentrate poverty here?’”

The project, along with other similar mixed income developments in other areas of Dallas, will move to the full city council for approval Wednesday. Deputy Mayor Pro Tem Adam McGough, who represents Lake Highlands and Hamilton Park, said he’s not ready to vote yes.



“They have not done the community engagement they need to do,” said McGough of city staff and [Austin developer Bonner Carrington](#). “I asked the development team that very first time we met to reach out to the neighborhood groups and stakeholders, and I was told that it was happening. The first meeting I was invited to was Wednesday the 17th at the peak of the weather issues. As I sit here right now, I can’t support it.”

McGough contrasts involvement of the neighborhood on the development with projects like City of Refuge at Lake Highlands, modeled after Bonton Farms in South Dallas. After many months of consulting with

neighborhood problem

March 5th, 2021



Pande on the porch: How Tami and Tom weather COVID while their home was being built

March 5th, 2021

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neighbors, he says, the community backs the plan because it serves the vulnerable while providing community assets.

“[Housing] is certainly something we need across the city,” continued McGough, “it’s just a question of where and how. I would be on board if it were senior housing – especially with the proximity to Hamilton Park.”

Also a factor, McGough explained, is the [makeshift tent city nearby](#).



“The neighbors in that area are justifiably upset with the way the city has allowed 75 and Forest to decline with tents and panhandling. While that’s not connected to this project, there’s an issue of trust. I went to speak to [the panhandlers] and try to get them some help during the storm, and they’re not going anywhere. They consider that their home. The city has just failed us. We’ve got people getting naked in the street. There is no enforcement – we’re basically just their trash service.”

McGough said he welcomes input from neighbors on the issue before he and other council members vote on the project Wednesday. Councilmembers can be emailed here or via

firstname.lastname@dallascityhall.com.

“I’m still in the listening phase,” said McGough. “I want to hear the community’s thoughts on this project. Will it add value to the neighborhood or is it something people are opposed to? There has not been enough engagement, and what neighborhood engagement we have had has been opposition. At this point, I have to vote with the community.”



Developer Bonner Carrington has Cypress Creek apartment homes in Houston, Amarillo, D-FW and central Texas.

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

_____)	
The Secretary, United States)	
Department of Housing and Urban)	
Development, on behalf of Complainant)	
Commonwealth Development, Inc.)	
)	HUD OHA No.
Charging Party,)	FHEO No. 06-17-8202-8
)	
v.)	
)	
City of Arlington, Texas)	
)	
Respondents)	
_____)	

CHARGE OF DISCRIMINATION

I. JURISDICTION

On May 2, 2017, Complainant Commonwealth Development, Inc. filed a timely complaint with the Department of Housing and Urban Development (“HUD” or the “Department”) alleging that Respondent the City of Arlington, Texas violated subsection 804(a) of the Fair Housing Act, 42 U.S.C. §§ 3601-19 (“Act”), by discriminating because of familial status. On January 5, 2018, the Complaint was amended to clarify the violation alleged.

The Act authorizes the Secretary of HUD to issue a Charge of Discrimination (“Charge”) on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. *See* 42 U.S.C. § 3610(g)(1), (2). The Secretary has delegated that authority to the General Counsel, 24 C.F.R. §§ 103.400, 103.405, who has re-delegated that authority to the Associate General Counsel for Fair Housing and the Assistant General Counsel for Fair Housing Enforcement. 76 Fed. Reg. 42,463, 42,465 (July 18, 2011).

By a Determination of Reasonable Cause issued contemporaneously with this Charge of Discrimination, the Acting Director of the Office of Systemic Investigations, on behalf of the Assistant Secretary for Fair Housing and Equal Opportunity, has determined that reasonable cause exists to believe that a discriminatory housing practice has occurred and has authorized and directed the issuance of this Charge. 42 U.S.C. § 3610(g)(2); 76 Fed. Reg. 73,990 (Nov. 29, 2011).

II. SUMMARY OF FINDINGS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the allegations contained in the aforementioned complaint and the Determination of Reasonable Cause, Respondents are hereby charged with violating the Act as follows:

A. Legal Authority

1. It is unlawful to make a dwelling unavailable because of familial status. 42 U.S.C. § 3604(a). Such prohibited conduct includes “[e]ngag[ing] in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings to persons because of . . . familial status.” 24 C.F.R. § 100.50(b)(3). Familial status is defined as having a child in the household under the age of eighteen or being pregnant or in the process of securing legal custody of a minor child. 42 U.S.C. § 3602(k).

B. Parties

2. Complainant Commonwealth Development, Inc. is a housing development company located in Bryan, Texas.
3. Respondent, the City of Arlington, Texas, was incorporated in 1884 and is governed by a City Council that includes the Mayor and eight district representatives.

C. Factual Allegations

a. LIHTC and Respondent's Policy

4. The Low Income Housing Tax Credit (“LIHTC”) is a federal tax credit under the United States Tax Code designed to incentivize the construction and rehabilitation of affordable housing for low-income residents. The program is the largest federal program for low-income housing development in the United States. LIHTC credits are allocated to developers in two ways: 9% and 4% credits. 9% credits are generally reserved for new construction and are highly competitive, while 4% credits are non-competitive and typically used for rehabilitation projects and new construction that is financed with tax-exempt bonds.

5. In Texas, the State's Department of Housing and Community Affairs allocates LIHTC credits pursuant to Texas's Qualified Allocation Plan (“QAP”). Under the Texas QAP, proposed projects can earn seventeen points for a resolution from the local government that it supports the project and fourteen points for a resolution from the local government that it does not object to the project. There is no limit to the number of projects a local government can support. Because the selection process for 9% credits is so competitive, it is practically impossible for a project to score high enough to be selected without these points. In Respondent's region, the state allocated about seven and a half million dollars (39% of total funds) exclusively for projects that would not be restricted to elderly residents (referred to by Respondent as “workforce” housing).

6. On November 29, 2016, the City of Arlington, Texas, adopted a Housing Tax Credit Review Policy (the “Policy”) setting forth criteria for the City Council to use to decide which proposed LIHTC projects would receive resolutions of support or no objection and which would not. One of the five criteria was “The City has a preference for new development of senior housing or redevelopment of senior and/or workforce housing.”

7. Although written as a preference, City officials made statements demonstrating they intended this criterion to be a requirement. For example, one councilmember stated, “we specifically [tried] to get away from . . . allow[ing] workforce housing We were trying to differentiate between senior living and workforce living.” In practice, only projects that conformed to the preference were approved under the Policy.

8. In crafting and applying the Policy, City officials made statements indicating that they preferred senior projects to workforce projects because residents with children would be problematic. For example, a councilmember expressed her view that local residents do not like having families with children as neighbors: “the community said ‘I don’t want to live next to a three-year old; the only thing worse than living next to a three-year old is living next to an eight-year old,’ so they wanted senior housing.” The Deputy City Manager also raised objections to attracting new residents with children when he stated that LIHTC projects would “be problematic if they are developed [not for seniors] whether it’s from a school standpoint or they’re just in the wrong location.”

9. The Council was aware that a need for non-age-restricted affordable housing existed in the City. Based on the City’s own Analysis of Impediments to Fair Housing Choice, “There are relatively fewer elderly persons and persons living alone, thus a smaller demand for small housing units from these segments of the population.” Additionally, the City’s Consolidated Plan reported that 15,895 non-elderly households, in addition to 2,920 elderly households, have untenably high housing cost burdens. Complainant reminded the City Council of this dual need on numerous occasions, as well as of the fact that the Council could simultaneously support both senior and workforce projects, but the Council persisted in ignoring the affordable housing needs of non-senior households. Census data shows that among LIHTC-eligible households in the Arlington area, a non-senior-headed household is much more likely to have children than a senior-headed household.

b. The 2017 Application Cycle and Complainant’s Proposal

10. For the 2017 application cycle, the City received ten applications for projects using 9% credits, but two of the applications were withdrawn. Complainant’s proposal was the only one for the new construction of workforce housing. Among the others considered, six were for the new construction of senior housing and one was for the rehabilitation of workforce housing.

11. Complainant sought a resolution of support for a development called Cooper Street Apartments. The development would have had 104 units, eighty-eight of which would have been affordable. The development would have had twenty-four three-bedroom units, fifty-six two-bedroom units, and twenty-four one-bedroom units. Census data shows that most of the two- and three-bedroom units would likely have been occupied by families with children.

12. Complainant repeatedly explained to the City Council that with a resolution of support its project was highly likely to be selected by the state for LIHTC funding because it would receive a high score on the state's metrics. Complainant also explained that workforce and senior housing were not in competition with one another because the state set aside a large amount of money exclusively for workforce housing.

13. The City Council provided resolutions of support to two of the six proposals for new construction of senior housing. All other 9% projects were denied, including Cooper Street Apartments and the proposed workforce redevelopment project. In considering Complainant's proposal, councilmembers made clear that the Policy was a reason they would not provide a letter of support or no objection. For example, one councilmember stated that as a new construction workforce housing project "that's kind of in violation of our City requirements . . . that kind of doesn't work for us right away, so I think I could make a determination on that one without taking a look at it. It just doesn't fit the criteria."

14. A proposal for a senior project using 4% credits was initially awarded a resolution of no objection (even though the Policy did not technically apply to projects using 4% credits). However, the Council subsequently considered withdrawing the resolution when the project was changed from being purely senior housing, whereupon the developer withdrew the proposal. A councilmember also spoke of another workforce project that he discouraged from even applying while the Policy was in development.

15. By enacting and implementing its Policy, Respondent blocked the construction of affordable housing that would have been occupied by families with children, including the development proposed by Complainant. Respondent did so even though supporting such proposals would have in no way impeded its ability to support senior developments as well.

16. As a result of Respondents discriminatory conduct, Complainant suffered actual damages.

D. Legal Allegations

17. As described above, Respondent discriminated by making dwellings unavailable because of familial status, in violation of subsection 804(a) of the Act. 42 U.S.C. § 3604(a); 24 C.F.R. § 100.50(b)(3).

III. CONCLUSION

WHEREFORE, the Secretary of the United States Department of Housing and Urban Development, through the Office of the General Counsel, and pursuant to 42 U.S.C. § 3610(g)(2)(A), hereby charges Respondent with engaging in discriminatory housing practices in violation of 42 U.S.C. §§ 3604(a), and prays that an order be issued that:

1. Declares that the discriminatory housing practices of Respondent, as set forth above, violate the Fair Housing Act, 42 U.S.C. §§ 3601-19;

2. Enjoins Respondent and its agents, employees, successors, and all other persons in active concert or participation with it, from discriminating because of familial status in any way related to the provision of housing pursuant to 42 U.S.C. § 3612(g)(3);
3. Requires Respondent's agents and employees to attend, at Respondent's cost, training that addresses the Fair Housing Act's prohibitions against discrimination;
4. Awards such damages pursuant to 42 U.S.C. § 3612(g)(3) as will fully compensate any aggrieved persons for any harm caused by Respondent's discriminatory conduct;
5. Awards the maximum civil penalty against Respondent for each violation of the Act, pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 180.671; and
6. Awards such additional relief as may be appropriate under 42 U.S.C. § 3612(g)(3).

Respectfully submitted on this 23rd day of September 2020.

s/ Jeanine M. Worden

Jeanine M. Worden
Associate General Counsel for Fair Housing

s/ Kathleen M. Pennington

Kathleen M. Pennington
Assistant General Counsel for Fair Housing Enforcement



Ayelet R. Weiss
Deputy Assistant General Counsel for Fair Housing Compliance
U.S. Department of Housing and Urban Development
Office of General Counsel
451 7th St. SW, Room 10270
Washington, DC 20410
(202) 402-2882
ayelet.r.weiss@hud.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing “Important Notice,” “Charge of Discrimination,” and “Determination of Reasonable Cause” were served on the following via email on this 23rd day of September 2020:

COMPLAINANT:

Commonwealth Development, Inc.
emanuel@edgproperties.net

COMPLAINANT’S REPRESENTATIVE:

J. Davis Watson
Watson Law Firm, LLP
dwatson@watsonlawyers.com

RESPONDENT:

City of Arlington, Texas
Galen Gatten
City Attorney’s Office
galen.gatten@arlingtontx.gov



Ayelet R. Weiss
Deputy Assistant General Counsel for Fair Housing Compliance
U.S. Department of Housing and Urban Development
Office of General Counsel
451 7th St. SW, Room 10270
Washington, DC 20410
(202) 402-2882
ayelet.r.weiss@hud.gov



Adam McGough, Dallas City Council, District 10

March 1 at 2:35 PM · 🌐



Despite opposition from the vast majority of community members and stakeholders, the City Council on Feb. 24 voted against my motion to DENY and instead approved a resolution of support from the City of Dallas for Cypress Creek at Forest Lane Apartments to be considered for 9% low-income housing tax credits (LIHTC). An overwhelming majority of the feedback I received, particularly from adjacent neighborhoods like Northwood Estates and Hamilton Park, expressed opposition to the project planned for 11520 N. Central Expy. Thank you to those residents who sent emails, made phone calls, participated in community meetings and testified to City Council.

The next step in the process is for the Texas Department of Housing and Community Affairs (TDHCA) to review Cypress Creek's application (#21139) to determine whether it will compete with other applications submitted throughout the state for these coveted federal tax credits. The deadline for submissions is March 8.

A letter from Rep. John Turner submitted prior to the deadline would have a significant impact on the project application's ability to move forward in the process. You can contact him with your input at district114.turner@house.texas.gov or 214-234-7625.

The TDHCA will host a virtual public hearing on May 18 at 6 p.m. to accept comments on the projects in four regions, including ours (Region 3). Those interested in attending this virtual public hearing may register at <https://attendee.gotowebinar.com/regi.../1254678419723046416>.

In addition to providing comments during the public hearing, written comments concerning any application may be submitted in hard copy or electronic formats to: Texas Department of Housing and Community Affairs Attn: HTC Public Comment P.O. Box 13941 Austin, Texas 78711-3941 Email: HTCPC@tdhca.state.tx.us. Please be that aware all comments submitted to the TDHCA will be considered public information. Comments received after 5 p.m. on June 18 will not be accepted.

<https://lakehighlands.advocatemaq.com/.../low-income.../>



TEXAS HOUSE OF REPRESENTATIVES

John Turner

State Representative, District 114

March 5, 2021

Marni Holloway
Director of Multifamily Finance
Texas Department of Housing & Community Affairs
211 E. 11th St.
Austin, TX 78701-2410

[Delivered via email to Michael.Lytle@tdhca.state.tx.us]

Dear Director Holloway:

I write to express my opposition to the Low-Income Housing Tax Credit application submitted for the proposed development known as Cypress Creek Apartment Homes, project #21139, planned for 11520 North Central Expressway, Dallas, TX 75243.

One of the factors to be considered by the department in evaluating an application is “the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site.” Texas Govt. Code Sec. 2306.6710(b). As the State Representative for District 114, which includes the proposed location, it is evident to me that there is strong community opposition to the project, particularly among residents and community leaders in the closest and most affected neighborhoods.

The two neighborhoods east of Central Expressway nearest to the proposed development are Hamilton Park and Northwood Heights/Northwood Estates (also known as the Stults Road neighborhood). Hamilton Park is a historically black north Dallas community that holds an important place in the past and present of our city. Stults Road is an ethnically and economically diverse neighborhood just to the east of the proposed site. I have received many communications from residents and leaders in both neighborhoods, as well as others nearby, with the vast majority opposed to the development.¹

To be clear, I support efforts to increase affordable housing options in Dallas and throughout our region. In fact, I am this same day submitting a letter of support for a separate Low-Income Housing Tax Credit application development elsewhere in my district. This is consistent with the views of many of the constituents who reached out to me, who made clear that their objections were rooted in

¹ I note in addition that the Dallas City Council Member representing the proposed location, Deputy Mayor Pro Tem Adam McGough, opposed the project when the application came before the Council. He was joined in his motion to deny the City’s authorization of support by five other Council Members: Casey Thomas, Carolyn King Arnold, Tennell Atkins, Lee Kleinman, and David Blewett.

Re: Cypress Creek Apartments - TDHCA Project #21139

March 5, 2021

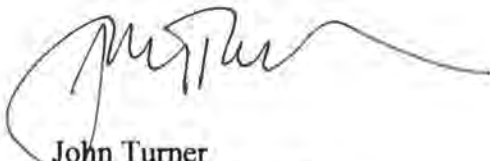
Page 2 of 2

concerns about the specifics of the Cypress Creek proposal, and not in a general opposition to affordable housing.

A reasonable level of local community support is likely to be an important factor in the success of any housing development. Texas law provides for this to be part of the department's evaluation, as expressed through the submissions of state representatives. Because I have not found that level of support to be present here, and in representation of my constituents, I respectfully submit this letter of opposition to the application.

Thank you for your attention and for the work you do on behalf of our state.

Sincerely,

A handwritten signature in black ink, appearing to read "John Turner", with a long, sweeping horizontal line extending to the right.

John Turner
State Representative
House District 114

Analysis of State Representative Letters 2017-2020			
Total Applications Analyzed	618	Share	Effected Rate
In More White CTs	322	52.1%	
In More Diverse CTs	283	45.8%	
In Equivalent CTs	13	2.1%	
Total State Rep Negative Effects	71		
In More White CTs	45	63.4%	14.0%
in More Diverse CTs	26	36.6%	9.2%

11% overrepresentation observed

Analysis of High Opportunity Applications			
Total High Opportunity	461	Share	Effected Rate
In More White CTs	273	59.2%	
In More Diverse CTs	181	39.3%	
In Equivalent CTs	7	1.5%	
Total State Rep Negative Effects	54		
In More White CTs	40	74.1%	14.7%
in More Diverse CTs	14	25.9%	7.7%

14% overrepresentation observed



Comparison of High Opportunity More White Elderly vs General Population			
Total High Opportunity	273	Share	Effected Rate
General Population	165	60.4%	
Elderly	108	39.6%	
Total State Rep Negative Effects	45		
General Population	31	68.9%	18.8%
Elderly	14	31.1%	13.0%

8.5% overrepresentation observed

Analysis of Regions 3/6/7/9 (Major Metros)			
Total Applications Analyzed	252	Share	Effected Rate
In More White CTs	154	61.1%	
In More Diverse CTs	98	38.9%	
In Equivalent CTs	3	1.2%	
Total State Rep Negative Effects	39		
In More White CTs	31	79.5%	20.1%
in More Diverse CTs	8	20.5%	8.2%

18% overrepresentation observed

The method of categorizing More White vs More Diverse census tracts was to compare the demographics of the CT to the demographics of the county where it is located.

 **WRITE** 
by
Thursday - March 4, 2021

JOHN TURNER, D-114 TX State Representative

john.turner@house.texas.gov or District114.Turner@house.texas.gov

SUBJECT: Opposition to Cypress Creek @ Forest Lane

Ask State Rep. Turner to **write** State Officials that he is either **AGAINST** or **NEUTRAL** to *Cypress Creek*.
State why you **OPPOSE** *Cypress Creek* which may **include** ongoing public safety, homeless, and need for quality retail development issues; existing sufficient supply of housing- apartments already in proximity to amenities at Forest Lane and Greenville Avenue; and scarce community- stakeholder engagement. **Don't forget** your Name, Address including neighborhood *and* Phone Number in your message-letter.

 **SPEAK** 

SPEAK with TX State Rep. Turner on Wednesday – March 3, 2021 at 7:00 PM via ZOOM or by telephone. Spanish translation will be provided telephonically upon request.

Register for the community meeting by emailing Woot Lervisit : wlvvisit@gmail.com .

STULTS ROAD and HAMILTON PARK COMMUNITIES



February 23, 2021

Mayor Eric Johnson &
Dallas City Council Members
City of Dallas
1500 Marilla Street
Dallas, TX 75201
Via electronic submission

RE: ICP's Support for the Cypress Creek LIHTC Proposal

Dear Mayor and Dallas City Council:

ICP continues its interest in seeing new low-income housing tax credit (LIHTC) apartment complexes in low poverty areas that offer opportunities to lower wage residents outside of neighborhoods where they have traditionally been steered. The proposed Cypress Creek Apartments falls within a Walker Targeted Area as defined in the Court in the fair housing case Walker v. HUD to which the City was a defendant.

The ability for the City to address its fair housing issues calls for support of the Cypress Creek proposal. In the November 15, 2014 Voluntary Compliance Agreement between the City of Dallas and HUD, following HUD findings of fair housing violations, the City agreed to "provide affordable and assisted housing in new areas of opportunity". The November 2018 North Texas Regional Assessment of Fair Housing, commissioned by the City, stated Goal A was to seek to "increase access to affordable housing in high opportunity areas."

Our understanding from the application and public information is the area that would be served by Cypress Creek has: only twelve percent (12%) poverty, a white non-Hispanic population of fifty-two (52%), and the low CDFI distress score of 1 out of 4. When compared to other LIHTC projects in the City of Dallas, these kinds of findings are far better than other Dallas neighborhoods where LIHTC complexes are replete. ICP believes this proposed complex will serve lower income families and wage earners who desire to live in this well-resourced community and is aware of no reason this project should not be supported by the City of Dallas, particularly because support would assist the City in meeting its obligation to affirmatively further fair housing.

Sincerely,

Demetria L. McCain
President

Ann Lott
Vice President of Housing Initiatives

CC: David Noguera, Director, Housing & Neighborhood Revitalization, City of Dallas
Daniel & Beshara, PC

Part I

Section 42.—Low-income housing credit

26 CFR 1.42–14: Allocation rules for post-2000 State housing credit ceiling amount.

Rev. Rul. 2016–29

ISSUE

When state housing credit agencies allocate housing credit dollar amounts, does § 42(m)(1)(A)(ii) of the Internal Revenue Code (Code) require or encourage these agencies to reject any proposal that does not obtain the approval of the locality where the project developer proposes to place the project?¹

¹ Section 147(f) requires public approval for all issuances of proposed qualified private activity bonds, including bonds used to finance qualified residential rental projects. These bond issuances must be approved both (a) by the governmental unit which is to issue the bonds or on behalf of which they are to be issued (issuer approval) and (b) by a governmental unit the geographic jurisdiction of which includes the site of the facility to be financed (host approval). Although the host-approval component of public approval means approval by a governmental unit whose jurisdiction includes the site of the financed facility, “public approval” (including “host approval”) does not include “local approval.” To illustrate, bonds issued by (or on behalf of) a State may be approved by the State alone in its capacities as issuer and as a host governmental unit whose jurisdiction includes the site of the financed facility. So there is no requirement for local approval by the county or municipality in which the financed facility is to be located. See § 5f.103–2(c) of the Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982. Thus, § 42(m)(1)(A)(ii) neither requires nor encourages *local* approval for these bond-financed projects, although § 147 does require *public* approval for issuing the bonds.

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FACTS

Agency, a housing credit agency in State X, is responsible for allocating housing credit dollar amounts to applicants that seek to develop affordable housing projects that will be eligible to earn low-income housing tax credits (LIHTCs). To guide *Agency* in making these allocations, *Agency* adopted, and the relevant governmental unit approved, a qualified allocation plan (QAP).

This QAP contains provisions that strongly favor applications from affordable housing projects that demonstrate affirmative local support. For example, under the point system that *Agency* uses in judging among applicant projects, points are granted to projects that—

- Manifest quantifiable community participation with respect to the project, especially as evidenced by written statements from neighborhood organizations in the area of the proposed project.
- Receive a commitment of development funding by the local political subdivision.
- Receive community support for the application, as evidenced by a written statement from the state legislator elected from the district in which the project is proposed to be developed.

Agency believes that § 42(m)(1)(A)(ii) requires that allocations be made only to proposals that receive the approval of the locality where the proposed project is to be located. Accordingly, *Agency* will reject an application if evidence of affirmative local support is lacking, and *Agency* uses factors such as the ones in its QAP to determine

– 3 –

whether or not that support exists. Requiring local approval empowers jurisdictions to exercise what some call a “local veto.”

In State X, local approval is much more likely to be secured for proposed LIHTC developments in areas with greater proportions of minority residents and fewer economic opportunities than in higher-opportunity, non-minority communities. *Agency’s* practice of requiring local approval has created a pattern of allocating housing credit dollar amounts to projects in the predominantly lower-income or minority areas, with the result of perpetuating residential racial and economic segregation in State X.

LAW

If a building is constructed and operated consistent with the requirements of § 42, the building’s owners generally receive a 10-year stream of LIHTCs.

Under § 42(h), however, the LIHTCs determined in any year with respect to a building may not exceed the housing credit dollar amount that a State housing credit agency has allocated to the building.

Section 42(m) requires these allocations to be made pursuant to a QAP. Each QAP must contain certain preferences, and selection criteria, specified in the Code, but other factors may be added.

Section 42(m)(1)(A)(ii) prevents a housing credit dollar amount from being allocated to a building unless the allocating “agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.”

ANALYSIS

Although *Agency* believes that the local veto provisions in its QAP respond to the requirement in § 42(m)(1)(A)(ii), *Agency* misinterprets this provision. *Agency's* interpretation is inconsistent with (1) the language of § 42(m)(1)(A)(ii) and (2) general Federal fair-housing policy.

1. The Language of Section 42(m)(1)(A)(ii)

The Code requires that each local jurisdiction have a “reasonable opportunity” to comment on any proposal to allocate a housing credit dollar amount to a project within that jurisdiction. This requirement is not the same as requiring the jurisdiction’s approval. The clear meaning of “reasonable opportunity to comment” is that the jurisdiction has a chance to weigh in, or even object, but not that every objection will be honored.

Thus, § 42(m)(1)(A)(ii) ensures only the opportunity for local input to the allocation decision. It does not authorize an allocating agency to abandon the responsibility to exercise its own judgment. In particular, it does not require or encourage allocating agencies to bestow veto power over LIHTC projects either on local communities or on local public officials.

2. General Federal Fair-Housing Policy

Agency's practice of requiring local approval has created a pattern of allocating housing credit dollar amounts that has perpetuated residential racial segregation in State X. *Agency's* practice, therefore, has a discriminatory effect based on race, which

21144

Mariposa Apartment Homes at Plano
Parkway



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott
GOVERNOR

BOARD MEMBERS
Leo Vasquez, *Chair*
Leslie Bingham, *Vice Chair*
Brandon Batch, *Member*
Paul A. Braden, *Member*
Ajay Thomas, *Member*
Sharon Thomason, *Member*

April 13, 2020

Writer's direct dial: (512) 936-7834
Email: alena.morgan@tdhca.state.tx.us

Zach Krochtengel
Mariposa Plano Parkway, LP
6807 Ledyard Drive
Dallas, TX 75248

RE: NOTICE OF SCORING ADJUSTMENT: 21144, MARIPOSA APARTMENT HOMES AT PLANO PARKWAY

Dear Mr. Zachary Krochtengel:

The Texas Department of Housing and Community Affairs (the Department) is in receipt of the Application named above. Upon review, staff determined that the letter received from State Representative Matt Shaheen expresses opposition toward the Application. Accordingly, the Application score will be revised to indicate zero points under both 10 TAC §11.9(d)(5)(A) and (5)(B), subject to your ability to appeal.

An appeals process exists for the Housing Tax Credit Program. The restrictions and requirements related to the filing of an appeal can be found in §11.902 of the QAP. If you wish to appeal this decision to the Executive Director, the appeal must be filed, in writing, with the Department not later than seven (7) calendar days after the date of this notification. Please review §11.902 of the QAP for full instruction on the appeals process. Please note that §11.902(f) of the QAP and Tex. Gov't Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application.

If you have questions or require further information, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Alena R. Morgan".

Alena R. Morgan, JD
Competitive HTC Administrator



Scoring Adjustment Appeal TDHCA #21144

Mariposa at Plano Parkway

The Applicant is submitting this appeal of the scoring adjustment notice dated April 13, 2021 and requesting the Board utilize its §11.206 discretion to disregard the letter received by TDHCA from State Representative Matt Shaheen under §11.9(d)(5) in opposition to Mariposa Apartment Homes at Plano Parkway, Application #21144 (the "Proposed Development"). By TDHCA accepting this State Representative letter and deducting points from the application, the Applicant believes it is perpetuating a violation of fair housing and discrimination towards LIHTC allocations in High Opportunity areas in north Dallas and the suburbs of Collin County.

The Proposed Development faced no opposition from the councilman or neighboring property owners at public meetings, received a resolution of support from the Plano City Council and now has received a letter of opposition from State Representative Shaheen, however the tenor of that opposition is such that for TDHCA to take it into account would be a violation of fair housing and constitute housing discrimination. The Applicant believes that the location for the Proposed Development in a high opportunity part of Plano that has never had an allocation of tax credits is an ideal location. The location has no undesirable site features or neighborhood characteristics based on data used to evaluate such factors by TDHCA (schools and crime rates), further, it is in a high opportunity census tract in close proximity to jobs and other amenities.

State Representative Letter Factually False

The State Representative submitted a letter that was factually untrue. The letter dated March, 4th 2021 states:

I would like to formally express my opposition for Application #21144 because of the unanimous decision to deny this project by Plano City County[SIC], and the opposition of the many property owners. (See State Representative Letter Attached- Exhibit A)

This letter is factually incorrect as the City of Plano voted 7-1 to support the proposed development and passed a resolution of support on February 8th 2021. See Resolution of Support Attached- Exhibit B) There was no opposition in the two public meetings held by the City of Plano which makes this letter and its reasoning invalid. This misinformation furthers the findings of the 2013 Sunset Advisory Commission for TDHCA that was critical of utilizing State Representative letters saying:

...officials were often not in a position to meaningfully evaluate a proposed development or obtain community input sufficient to draft the required letters. (See Extract of TDHCA Sunset Advisory Committee Report Attached- Exhibit C)

The purpose of State Representative letters is to reflect the support of the community, however the community has ample opportunity to engage and show opposition at the local level through City Council meetings where support resolutions are passed. Further, the QAP allows for a State Representative to host a meeting of constituents which the State Representative did not hold. The opposition to this proposed development is unknown and the factors leading to the State Representative opposition have yet to be articulated to the developer.

State Representative Letters Disparate Impact

The Applicant has reviewed all of the State Representative letters received by TDHCA for the 2017-2020 9% Competitive Tax Credit Rounds and found that developments proposed to serve in high opportunity areas are affected negatively more often than other proposed developments. This impact is even further exacerbated when the racial make up of the census tract is taken into account. For the following analysis we utilized 2019 5-Year ACS data for demographics of the census tracts and compared the demographics of the census tract to the surrounding county to determine if a census tract had a higher percentage of White Only residents (More White) or had a higher percentage of Minority Residents (More Diverse). We also analyzed the negative impact of State Representative actions based on if they negatively impacted the application score, i.e. no letter 2017-2019 negatively impacted the score of the application because the application received 0 out of 8 possible points. No letter in the 2020 application round did not impact the score because those points were transferred to the City Council or County Commissioner. Using these measures as well as data submitted by the applicants in the pre-application logs we were able to determine that the impact of State Representative Letters or lack thereof was far more prevalent in proposed developments that were similar to the Proposed Development. Since 2017 there have been 322 (53%) applications in More White census tracts and 283 (47%) applications in More Diverse census tracts. However, State Representatives negatively affected the score of applications in More White census tracts 64.3% of the time, a more than 10% overrepresentation. The Proposed Development is in a census tract that is 18% More White than Collin County as a whole thus increasing its chances for negative State Representative action. (See Statistical Analysis Attached-Exhibit D) Analysis isolating Regions 3, 6, 7, and 9 which include the major metropolitan areas of Texas show that applications in More White CTs are almost 2.5x more likely to be negatively affected by a State Representatives actions.

The Proposed Development is also a High Opportunity Area application, which indicates a lower poverty rate and an income in the first three quartiles of the region. When we add this factor into our analysis of State Representative's negative impact on application scores, we see that the overrepresentation is more exacerbated. Of the 461 High Opportunity applications 273 (59.2%) were in More White census tracts, 7 were equivalent to the surrounding county and 181 (39.2%) were more diverse. The More White applications were once again overrepresented with 74% of the impacted applications and affected almost twice as often. This 15% overrepresentation and twice the instance of negative State Representative action is troubling and shows a statistically significant bias.

The combination of all of the attributes that make the Proposed Development a high scoring application also inevitably make it to be more likely to receive negative treatment from a State Representative. The odds are stacked against high opportunity developments in More White census tracts, especially in the regions with large metropolitan areas. The ideal location for affordable housing.

In 2021 there were three final applications submitted to TDHCA that received a letter of opposition from a State Representative all three were in census tracts that were More White and all three would have been in a position to be funded if not for the letter of opposition and the negative points. The below table shows the significant over representation of White residents in the census tracts. The 2021 application cycle census tracts were 1% More Diverse than their surrounding counties, showing that these three affected applications are all at least 18% More White than the average application census tract and in the top quartile in terms of the difference of Only White residents in their census tract compared to their surrounding counties.

Application Number	Application Information						Census Tract Demographics				
	Development Name	State Representative Letter	Point Effect	Census Tract	City	Elderly/General	Minority Percentage	African American Percentage	White Only Percentage	White Only Difference v. County	
21139	Cypress Creek at Forest Lane	Oppose	-8	48113007805	Dallas	General	52%	24%	48%	+21%	
21144	Mariposa at Plano Parkway	Oppose	-8	48085031649	Plano	Elderly	28%	9%	72%	+18%	
21016	Houston Willow Chase Living	Oppose	-8	48201552700	Houston	Elderly	56%	18%	44%	+17%	

*White only difference v. County shows the applications have less minorities in their census tracts than the counties that surround them. State Representative Letters are shown to have a negative impact on more proposed developments in Census Tracts with higher concentrations of White Only residents as compared to the surrounding county.

Rev. Rul. 2016–29

The Proposed Development’s chances of funding are being negatively impacted by the letter from State Representative Turner. With the negative 8 points being allocated it is in essence a local veto. Revenue Ruling 2016-29 (Attached as Exhibit E) uses an example of State X.

This QAP contains provisions that strongly favor applications from affordable housing projects that demonstrate affirmative local support. For example, under the point system that Agency uses in judging among applicant projects, points are granted to projects that—

- Manifest quantifiable community participation with respect to the project, especially as evidenced by written statements from neighborhood organizations in the area of the proposed project.
- Receive a commitment of development funding by the local political subdivision.
- Receive community support for the application, as evidenced by a written statement from the state legislator elected from the district in which the project is proposed to be developed.

Revenue Ruling 2016-29

The third bullet point mirrors §11.9(d)(5) of the Texas QAP relating to support from a state representative. The Revenue Ruling clearly allows for TDHCA to disregard the State Representative Letter as it states that, “the jurisdiction has a chance to weigh in, or even object, but not that every objection will be honored.” Further, “Thus, § 42(n)(1)(A)(ii) ensures only the opportunity for local input to the allocation decision. It does not authorize an allocating agency to abandon the responsibility to exercise its own judgment. In particular, it does not require or encourage allocating agencies to bestow veto power over LIHTC projects either on local communities or on local public officials.”

The Revenue Ruling also analyzed the use of these factors as it relates to Fair Housing.

“Agency’s practice of requiring local approval has created a pattern of allocating housing credit dollar amounts that has perpetuated residential racial segregation in State X. Agency’s practice,

therefore, has a discriminatory effect based on race, which is a protected characteristic under 42 USC 3604. Thus, the practice is inconsistent with at least the policy of the Fair Housing Act of 1968 (the Act), 42 USC 3601–3619.”

This finding is consistent with the data shown above based on the State Representative Letters received by TDHCA between 2017 and 2020. The final holding of the Revenue Ruling empowers TDHCA:

“When state housing credit agencies allocate housing credit dollar amounts, § 42(m)(1)(A)(ii) does not require or encourage these agencies to reject all proposals that do not obtain the approval of the locality where the project developer proposes to place the project. That is, it neither requires nor encourages housing credit agencies to honor local vetoes.”

This final holding gives the option to TDHCA to decide not to honor the Letter of Opposition from the State Representative because it is in fact a local veto and the usage of this scoring criteria in this instance is a violation of fair housing based on the disparate impact shown above.

Board Action

The Applicant is requesting that the Board use its discretionary authority to award Mariposa at Plano Parkway 8 points in spite of the opposition letter submitted by Representative Shaheen. This is not a call to eliminate all State Representative Letters, however, where there is a disparate impact that promotes longstanding systemic segregation. The Board has the ability to act. Under state statute (§§2306.6725(c);2306.6731) and the Internal Revenue Code (§42(m)(1)(A)(iv)) the Board is empowered to:

...document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes the Board's decision to apply discretionary factors where authorized.

§ 2306.6725(c)(1-2) QAP §11.206

(m) Responsibilities of housing credit agencies

(1) Plans for allocation of credit among projects

(A) In general Notwithstanding any other provision of this section, the housing credit dollar amount with respect to any building shall be zero unless—

(iv) a written explanation is available to the general public for any allocation of a housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the housing credit agency.

(§42(m)(1)(A)(iv))

In this instance the Applicant believes there would be good cause, as well as authority under both Texas Statute and the Internal Revenue Code to award points contrary to the scoring of the State

Representative Letter of Opposition. The most pressing reason is also an obligation of QAP §11.206 which states:

The Board's decisions regarding awards shall be based upon the Department's staff and the Board's evaluation of the proposed Developments' consistency with, and fulfillment of, the criteria and requirements set forth in this chapter, Chapter 13 of this title (relating to the Multifamily Direct Loan Rule) and other applicable Department rules and other applicable state, federal and local legal requirements, whether established in statute, rule, ordinance, NOFA, official finding, or court order.

This section of the QAP contemplates that Board decisions should be based on a multitude of factors and not simply the competitive score of the application. In this instance the applicability of the above Revenue Ruling, relevant IRC Code Sections (Federal Statute) and various Federal Fair Housing laws that the Proposed Development would help satisfy are all factors that the Board is able to consider. The Board is not simply bound by a competitive score, but may take a holistic approach, and see that in this instance the letter submitted has no merit and contradicts the established goals of the Plano Low Income Housing Policy, the goals of the QAP and Affirmatively Furthering Fair Housing.

The competitive score of the Applications that are transmitted to the Board make up the Department recommendation, however the Board is not bound to follow that recommendation by statute and statute specifically contemplates the Board's ability to make a decision that "conflicts with the recommendations of department staff under Section 2306.6731." Further, the QAP and state statute give specific examples of allocations the Board is prohibited from making, including but not limited to forward commitments or more than \$2 million to one project, however, the Board has no limitation to awarding a lower scoring project over a higher scoring project.



Matt Shaheen
District 66 • Collin County

March 4, 2021

To Whom it May Concern,

My office received information regarding a project within my district known as Mariposa Apartment Homes at Plano Parkway.

I would like to formally express my opposition for Application #21144 because of the unanimous decision to deny this project by **Plano City County**, and the opposition of the many property owners.

If you have any questions, please feel free to reach out to me at Matt.Shaheen@house.texas.gov, or call my office at (512) 463-1021.

Thank you,

A handwritten signature in black ink that reads "Matt Shaheen".

Representative Matt Shaheen

Human Services
Committee



State Affairs
Committee

RESOLUTION NO. 2021-2-6(R)

A Resolution of the City of Plano, Texas, supporting an application for nine percent (9%) housing tax credit (HTC) financing to the Texas Department of Housing and Community Affairs (TDHCA) for the proposed affordable residential development project located on 5± acres, at approximately the northwest corner of Plano Parkway and Dallas Parkway, Plano, TX; designating the City Manager to certify this resolution to TDHCA; and declaring an effective date.

WHEREAS, Mariposa Plano Parkway LP has proposed a development for affordable rental housing which will be named “Mariposa Apartment Homes at Plano Parkway” and will include approximately 180 units on 5± acres located at approximately northwest corner of Plano Parkway and Dallas Parkway, in the City of Plano, Collin County; and

WHEREAS, Mariposa Plano Parkway LP intends to submit an application to the Texas Department of Housing and Community Affairs (TDHCA) for 2021 Competitive 9% Housing Tax Credits for the Mariposa Apartment Homes at Plano Parkway development; and

WHEREAS, The Mariposa Apartment Homes at Plano Parkway development will include 68 market rate units and 112 units affordable to seniors with an income at or below 60% of the area median income; and

WHEREAS, Mariposa Plano Parkway LP has submitted a housing tax credit resolution application to the City which satisfies the process established in Resolution No. 2016-11-4(R) and criteria amendments approved during the Preliminary Open City Council Meeting on November 23, 2020; and

WHEREAS, the City of Plano Housing Infill Program encourages the development of real property for low and moderate income housing; and

WHEREAS, this Resolution of Support is specifically related to potential financing only and makes no finding regarding either the suitability of the proposed development site or compliance with the city’s development regulations, and approval of this resolution will not be construed as a development permit or approval; and

WHEREAS, the City of Plano will waive a minimum of \$500 in fees for each development of which a Resolution of Support was adopted by the City Council; and

WHEREAS, it is in the public interest of the citizens of the City of Plano that the application be made for such funding.

RESOLUTION NO. 2021-2-6(R)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

SECTION I. In accordance with Texas Government Code §2306.6710 and Texas Administrative Code Title 10, § 11.9(d)(1), the City of Plano, acting through its governing body, hereby confirms that it supports the proposed application for Mariposa Apartment Homes at Plano Parkway, on 5± acres located at northwest corner of Plano Parkway and Dallas Parkway, Plano, TX 75093, and that this formal action has been taken to put on record the opinion expressed by the City of Plano on February 8, 2021.

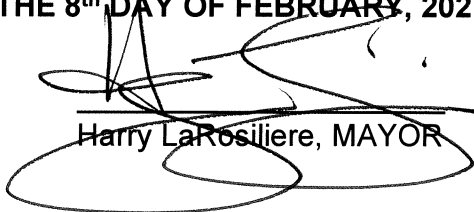
SECTION II. The Resolution of Support is based on the following information presented in the application for Mariposa Apartment Homes at Plano Parkway:

1. The application met four out of the five City of Plano Housing Tax Credit Resolution Application threshold questions; and
2. The development will include 68 market rate units and 112 units affordable to seniors with an income at or below 60% of the area median income.


SECTION III. The City Manager is hereby authorized, empowered, and directed to certify this resolution to the Texas Department of Housing and Community Affairs.

SECTION IV. This resolution shall take effect immediately upon its passage.

DULY PASSED AND APPROVED THIS THE 8th DAY OF FEBRUARY, 2021.


Harry LaRosiliere, MAYOR

ATTEST:



Lisa C. Henderson, CITY SECRETARY

Approved as to form:



Paige Mims, CITY ATTORNEY

SUNSET ADVISORY COMMISSION

FINAL REPORT
WITH LEGISLATIVE ACTION

*Texas Department
of Housing and
Community Affairs*

JULY 2013



Tax Credit Scoring

Priority	Topic	Maximum Points
1	Financial feasibility of the development	28
2	Quantifiable community participation based on letters from neighborhood organizations	24
3	Income levels of tenants	22
4	Size and quality of units	20
5	Commitment of local funding	18
6	Level of community support based on letters from state legislators	16
7	Rent levels of units	14
8	Cost of development by square foot	12
9	Services to be provided to tenants	10
10	Whether the development is located in a declared disaster area	8
11-24	Criteria added by TDHCA, with scores ranging from 1 to 7 points each	56
Total		228

Findings

The Sunset Commission's recommendations to improve administration of the Housing Tax Credit Program continue to be appropriate.

The 2010 Sunset review found that several statutory requirements impede the effective administration of this key housing program. The Commission's proposed changes in law are still needed to improve the allocation of federal housing tax credits in Texas.

Neighborhood letters can significantly outweigh other important criteria.

- **Neighborhood organization letters.** State law requires the awarding of significant points during the tax credit application process for letters from neighborhood organizations; however, the Sunset Commission found that these letters are not always representative of the community as a whole, and are regularly contested. As a result of the number of points awarded, neighborhood letters outweigh other important criteria for a tax credit project. The scoring and verification of letters is very time consuming for the Department, and the Commission found that other states do not generally grant this level of importance to neighborhood letters, but instead rely on locally elected officials and governing bodies to provide community input. A change in law is still needed to adjust the scoring of community input through neighborhood organization letters.
- **State elected official letters.** This recommendation was based on the Sunset Commission's finding that the law governing the tax credit awards process was the only state law that required state representatives and senators to provide letters in support of, or opposition to, development projects of this nature. The Commission concluded that given the size of many electoral districts and the short application timeframe, elected

officials were often not in a position to meaningfully evaluate a proposed development or obtain community input sufficient to draft the required letters. Given the point value associated with these letters, if officials opt not to provide letters, projects, especially in the most competitive areas, will almost certainly not be funded. As there were no changes in the statutory scoring criteria for the tax credit program during the most recent legislative session, this recommendation remains appropriate.

- **Emergency tax credit cycles.** This recommendation was based on findings that fixed statutory deadlines could restrict the State's ability to distribute federal tax credit assistance in emergency circumstances in the future. In 2009, TDHCA received temporary authority, which expired in 2011, to create additional tax credit cycles in conjunction with receipt of American Recovery and Reinvestment Act funds. If the Department were to receive additional non-standard funds in the future, it may be unable to use them. This recommendation remains appropriate to ensure that the Department could allocate emergency tax credits should it receive them in the future.

Without a change in law, Texas could be unable to use future emergency federal funding.

Recommendations

Change in Statute

1.1 Replace neighborhood organization letters with voted resolutions from local city council or county commissioners courts as a principal tax credit scoring item, but continue to consider neighborhood organization letters as a lesser scoring item.

Under this recommendation, voted resolutions from local elected officials would replace neighborhood organization letters as the second-highest scoring criterion required by statute for tax credit applications. The Department would award points to applications for supportive resolutions voted on by a city council, or if none exists, the county commissioners court in the area of the proposed development. The Department would continue to score letters from neighborhood organizations as the last statutorily required item in the tax credit scoring process. This recommendation would adjust the tax credit scoring process to give greater weight to local voted resolutions and reduce the number of points available for neighborhood organization letters.

Letters from elected bodies would ensure that the basis for evaluating community participation is more representative of the community as a whole. Elected officials have been entrusted with making decisions for the community and have the responsibility and accountability inherent in representation, which neighborhood organizations do not have. Local officials are typically more accessible through open, public means than groups based on voluntary membership, which would afford more equal opportunity for community residents to provide input.

1.2 Eliminate the requirement for letters of support from state senators and representatives.

This recommendation would change the application scoring process by removing the statutory requirement for support letters from state-level elected officials. State senators and representatives could still provide input in the tax credit awards process, but their participation would not be a required scoring item.

Analysis of State Representative Letters 2017-2020			
Total Applications Analyzed	618	Share	Effectuated Rate
In More White CTs	322	52.1%	
In More Diverse CTs	283	45.8%	
In Equivalent CTs	13	2.1%	
Total State Rep Negative Effects	71		
In More White CTs	45	63.4%	14.0%
in More Diverse CTs	26	36.6%	9.2%

11% overrepresentation observed

Analysis of High Opportunity Applications			
Total High Opportunity	461	Share	Effectuated Rate
In More White CTs	273	59.2%	
In More Diverse CTs	181	39.3%	
In Equivalent CTs	7	1.5%	
Total State Rep Negative Effects	54		
In More White CTs	40	74.1%	14.7%
in More Diverse CTs	14	25.9%	7.7%

14% overrepresentation observed

Analysis of Regions 3/6/7/9 (Major Metros)			
Total Applications Analyzed	252	Share	Effectuated Rate
In More White CTs	154	61.1%	
In More Diverse CTs	98	38.9%	
In Equivalent CTs	3	1.2%	
Total State Rep Negative Effects	39		
In More White CTs	31	79.5%	20.1%
in More Diverse CTs	8	20.5%	8.2%

18% overrepresentation observed

The method of categorizing More White vs More Diverse census tracts was to compare the demographics of the CT to the demographics of the county where it is located.

Part I

Section 42.—Low-income housing credit

26 CFR 1.42–14: Allocation rules for post-2000 State housing credit ceiling amount.

Rev. Rul. 2016–29

ISSUE

When state housing credit agencies allocate housing credit dollar amounts, does § 42(m)(1)(A)(ii) of the Internal Revenue Code (Code) require or encourage these agencies to reject any proposal that does not obtain the approval of the locality where the project developer proposes to place the project?¹

¹ Section 147(f) requires public approval for all issuances of proposed qualified private activity bonds, including bonds used to finance qualified residential rental projects. These bond issuances must be approved both (a) by the governmental unit which is to issue the bonds or on behalf of which they are to be issued (issuer approval) and (b) by a governmental unit the geographic jurisdiction of which includes the site of the facility to be financed (host approval). Although the host-approval component of public approval means approval by a governmental unit whose jurisdiction includes the site of the financed facility, “public approval” (including “host approval”) does not include “local approval.” To illustrate, bonds issued by (or on behalf of) a State may be approved by the State alone in its capacities as issuer and as a host governmental unit whose jurisdiction includes the site of the financed facility. So there is no requirement for local approval by the county or municipality in which the financed facility is to be located. See § 5f.103–2(c) of the Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982. Thus, § 42(m)(1)(A)(ii) neither requires nor encourages *local* approval for these bond-financed projects, although § 147 does require *public* approval for issuing the bonds.

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FACTS

Agency, a housing credit agency in State X, is responsible for allocating housing credit dollar amounts to applicants that seek to develop affordable housing projects that will be eligible to earn low-income housing tax credits (LIHTCs). To guide *Agency* in making these allocations, *Agency* adopted, and the relevant governmental unit approved, a qualified allocation plan (QAP).

This QAP contains provisions that strongly favor applications from affordable housing projects that demonstrate affirmative local support. For example, under the point system that *Agency* uses in judging among applicant projects, points are granted to projects that—

- Manifest quantifiable community participation with respect to the project, especially as evidenced by written statements from neighborhood organizations in the area of the proposed project.
- Receive a commitment of development funding by the local political subdivision.
- Receive community support for the application, as evidenced by a written statement from the state legislator elected from the district in which the project is proposed to be developed.

Agency believes that § 42(m)(1)(A)(ii) requires that allocations be made only to proposals that receive the approval of the locality where the proposed project is to be located. Accordingly, *Agency* will reject an application if evidence of affirmative local support is lacking, and *Agency* uses factors such as the ones in its QAP to determine

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whether or not that support exists. Requiring local approval empowers jurisdictions to exercise what some call a “local veto.”

In State X, local approval is much more likely to be secured for proposed LIHTC developments in areas with greater proportions of minority residents and fewer economic opportunities than in higher-opportunity, non-minority communities. *Agency’s* practice of requiring local approval has created a pattern of allocating housing credit dollar amounts to projects in the predominantly lower-income or minority areas, with the result of perpetuating residential racial and economic segregation in State X.

LAW

If a building is constructed and operated consistent with the requirements of § 42, the building’s owners generally receive a 10-year stream of LIHTCs.

Under § 42(h), however, the LIHTCs determined in any year with respect to a building may not exceed the housing credit dollar amount that a State housing credit agency has allocated to the building.

Section 42(m) requires these allocations to be made pursuant to a QAP. Each QAP must contain certain preferences, and selection criteria, specified in the Code, but other factors may be added.

Section 42(m)(1)(A)(ii) prevents a housing credit dollar amount from being allocated to a building unless the allocating “agency notifies the chief executive officer (or the equivalent) of the local jurisdiction within which the building is located of such project and provides such individual a reasonable opportunity to comment on the project.”

ANALYSIS

Although *Agency* believes that the local veto provisions in its QAP respond to the requirement in § 42(m)(1)(A)(ii), *Agency* misinterprets this provision. *Agency's* interpretation is inconsistent with (1) the language of § 42(m)(1)(A)(ii) and (2) general Federal fair-housing policy.

1. The Language of Section 42(m)(1)(A)(ii)

The Code requires that each local jurisdiction have a “reasonable opportunity” to comment on any proposal to allocate a housing credit dollar amount to a project within that jurisdiction. This requirement is not the same as requiring the jurisdiction’s approval. The clear meaning of “reasonable opportunity to comment” is that the jurisdiction has a chance to weigh in, or even object, but not that every objection will be honored.

Thus, § 42(m)(1)(A)(ii) ensures only the opportunity for local input to the allocation decision. It does not authorize an allocating agency to abandon the responsibility to exercise its own judgment. In particular, it does not require or encourage allocating agencies to bestow veto power over LIHTC projects either on local communities or on local public officials.

2. General Federal Fair-Housing Policy

Agency's practice of requiring local approval has created a pattern of allocating housing credit dollar amounts that has perpetuated residential racial segregation in State X. *Agency's* practice, therefore, has a discriminatory effect based on race, which

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is a protected characteristic under 42 USC 3604. Thus, the practice is inconsistent with at least the policy² of the Fair Housing Act of 1968 (the Act), 42 USC 3601–3619.

Nevertheless, *Agency* interprets § 42(m)(1)(A)(ii) as forcing *Agency* to require local approval, despite the discriminatory effect of that practice in State X. This interpretation assumes that, in creating LIHTCs, Congress silently reversed well-established, fundamental Federal fair-housing policy. Eighteen years before the 1986 enactment of § 42, the Act had firmly established this policy. See 42 USC 3601 (“**Declaration of policy.** It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.”). Without legislative commentary or other persuasive evidence, one cannot conclude that Congress intended to reverse this well-established policy.

In the summer of 2015, the United States Department of Housing and Urban Development (HUD) issued new final regulations regarding obligations under the Act to Affirmatively Further Fair Housing (AFFH). See 80 Fed. Reg. 42272 (2015) (issuing HUD’s AFFH final rule, which is codified at various locations in 24 CFR Parts 5, 91, 92, 570, 574, 576, and 903). Discussing the many decades during which AFFH had been firmly established Federal policy, HUD states in the preamble, “*From its inception [in 1968], the [Act] ... has not only prohibited discrimination in housing related activities and transactions but has also provided, through the duty to affirmatively further fair housing ... , for meaningful actions to be taken to overcome the legacy of segregation,*

² The practice may also violate specific nondiscrimination provisions of the Act. See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015).

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unequal treatment, and historic lack of access to opportunity in housing.” *Id.* at 42272 (emphasis added).

AFFH was firmly established Federal housing policy when § 42 was enacted, and there is no suggestion that Congress intended § 42 to diverge from that policy. Section 42(m)(1)(A)(ii), therefore, does not require or even encourage conduct inconsistent with that policy.

HOLDING

When state housing credit agencies allocate housing credit dollar amounts, § 42(m)(1)(A)(ii) does not require or encourage these agencies to reject all proposals that do not obtain the approval of the locality where the project developer proposes to place the project. That is, it neither requires nor encourages housing credit agencies to honor local vetoes.

DRAFTING INFORMATION

The principal author of this revenue ruling is James W. Rider of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, please contact Mr. Rider at (202) 317-4137 (not a toll-free call).



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

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GOVERNOR

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May 3, 2021

Writer's direct dial: 512/475-1676
Email: marni.holloway@tdhca.state.tx.us

Zach Krochtengel
Mariposa Plano Parkway, LP
6807 Ledyard Drive
Dallas, TX 75248

RE: APPEAL RESPONSE FOR 2021 HOUSING TAX CREDIT APPLICATION 21144
MARIPOSA AT PLANO PARKWAY

Dear Mr. Krochtengel:

The Texas Department of Housing and Community Affairs (the Department) received a scoring appeal regarding the aforementioned application. The appeal asks that the Board utilize "discretion" under 10 TAC §11.206 of the 2021 Qualified Allocation Plan (QAP) to disregard the letter of opposition submitted to the Department by State Representative Matt Shaheen. Further, the appeal requests that the application be deemed eligible for the eight (8) points selected by the Applicant under 10 TAC §11.9(d)(5)(A), relating to Community Support from State Representative.

The Department received a letter under 10 TAC §11.9(d)(5)(A) from State Representative Matt Shaheen. The letter was timely submitted and has been determined by staff to express opposition toward the Application pursuant to Tex. Gov't Code §2306.6710(b)(1)(J). This determination requires that the Application score be revised to deduct eight (8) points under 10 TAC §11.9(d)(5).

The Applicant acknowledges the Department received a letter of opposition from State Representative Matt Shaheen but the appeal asks the Board to use its "discretion" under 10 TAC §11.206, and argues:

This Section of the QAP contemplates that Board decisions should be based on a multitude of factors and not simply the competitive score of the application. In this instance the applicability of the above Revenue Ruling, relevant IRC Code Sections (Federal Statute) and various Federal Fair Housing laws that the Proposed Development



would help satisfy are all factors that the Board is able to consider. The Board is not simply bound by a competitive score, but may take a holistic approach, and see that in this instance the letter submitted has no merit and contradicts the established goals of the Plan Low Income Housing Policy, the goals of the QAP and Affirmatively Furthering Fair Housing.

By TDHCA accepting this State Representative letter and deducting points from the application, the Applicant “believes it is perpetuating a violation of fair housing and discrimination towards LIHTC allocations in High Opportunity areas . . .”

The appeal identifies these concerns in detail, particularly with regard to the specific state representative who submitted the letter at issue. The scoring appeal clarifies that it does not propose a blanket disregard for input from State Representatives altogether. Rather, the appeal claims, “where this is a disparate impact that promotes longstanding systemic segregation... [t]he Board has the ability to act. Under state statute (§§2306.6725(c)¹; 2306.6731²) and the Internal Revenue Code (§42(m)(1)(A)(iv)) the Board is empowered[.]” The appeal also cites to IRS Revenue Ruling 2016-29, and submits that the TDHCA Board should be led by its conclusion that “[Internal Revenue Code] §42(m)(1)(A)(ii) does not require or encourage [state housing credit agencies] to reject all proposals that do not obtain the approval of the locality where the project developer proposes to place the project.” In this case, the appeal suggests that the Application should be determined to be eligible for the eight (8) points under §11.9(d)(5)(B), relating to Letter from State Representative.

The analysis of this appeal begins with the Applicant’s cited authority for the Board’s discretion. 10 TAC §11.206 contains the following clause regarding the Board’s decision making on applications:

The Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, including good cause, and the reasons for any decision that conflicts with the recommendations made by Department staff. Good cause includes **the Board's decision to apply discretionary factors where authorized.** (emphasis added)

Ultimately, the appeal is asking the Board to disregard the requirements of Tex. Gov’t Code §2306.6710(b)(1)(J) and (f):

¹ (c) On awarding tax credit allocations, the board shall document the reasons for each project's selection, including an explanation of:

(1) **all discretionary factors** used in making its determination; and

(2) the reasons for any decision that conflicts with the recommendations of department staff under Section [2306.6731](#). (emphasis added)

² (a) Department staff shall provide written, documented recommendations to the board concerning the financial or programmatic viability of each application for a low income housing tax credit before the board makes a decision relating to the allocation of tax credits. The board may not make without good cause an allocation decision that conflicts with the recommendations of department staff.

(b) If an application satisfies the threshold criteria, the department **shall** score and rank the application using a point system that:

- 1) prioritizes in descending order criteria regarding:
 - (J) the level of community support for the application, evaluated on the basis of a written statement from the state representative who represents the district containing the proposed development site;

and

(f) In evaluating the level of community support for an application under Subsection (b)(1)(J), the department **shall** award:

- (1) positive points for positive written statements received;
 - (2) negative points for negative written statements received;
- and
- (3) zero points for neutral statements received.

The statute does not give the Board any discretionary authority to determine whether to prioritize points on the basis of the state representative letter. Indeed, the statute specifically requires the deduction of points for negative letters. The use of the word “shall” in the statute governing this part of the evaluation of applications imposes a duty on the Board to directly adhere to this legislative requirement. See Tex. Gov’t Code 311.016(2) (use of the word “shall” in statute imposes a duty). Lacking the discretionary authority to operate in direct contradiction of a statutory duty, the appeal is denied, and the Application score should indicate a deduction of eight (8) points under 10 TAC §11.9(d)(5)(A), relating to Community Input from State Representative.

If you are not satisfied with this decision, you may file a further appeal with the Board of Directors of the Texas Department of Housing and Community Affairs. Please review §11.902 of the QAP for full instruction on the appeals process. Please note that §11.902(f) of the QAP and Tex. Gov’t Code §2306.6715(c) limit Board review of an Application on appeal to the original Application and those documents contained within the Application.

If you have any questions or require further information, please contact Alena R. Morgan, Competitive Tax Credit Program Administrator, at alena.morgan@tdhca.state.tx.us or by phone at 512-936-7834.

Sincerely,



Bobby Wilkinson
Executive Director

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BOARD ACTION REQUEST

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DIVISION

MAY 13, 2021

Presentation, discussion, and possible action on the Community Development Block Grant Coronavirus Aid, Relief, and Economic Security Act Texas Emergency Mortgage Assistance Program awards and any timely filed appeals

RECOMMENDED ACTION

WHEREAS, on March 27, 2020, the President of the United States signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law which provides relief for individuals and businesses negatively impacted by COVID-19;

WHEREAS, Title XII of the CARES Act provides supplemental formula funding of at least \$5 billion to states to carry out activities under the Community Development Block Grant program (CDBG CARES) among other programs to prevent, prepare for, and respond to COVID-19;

WHEREAS, the Department received \$141,846,258 in three allocations of CDBG CARES funding from the U.S. Department of Housing and Urban Development, to prevent, prepare for, and respond to COVID-19;

WHEREAS, the Board approved a plan on October 8, 2020, which outlined the planned uses of CDBG CARES funding which included Urgent Need Mortgage Assistance;

WHEREAS, for activities in the plan that recommend competitive awards of funds to subrecipients, awards require Board approval and staff is seeking such approval;

WHEREAS, the TEMAP applications scores were released to the applicants and the applicants were made aware of their right to appeal such scores (10 TAC §1.7). The Department received no appeals to the TEMAP scores; and

WHEREAS, staff is recommending the attached list of 40 awards conditioned on final recommendations of approval or approval with conditions from the Compliance Division for purposes of a recommendation or recommendation with conditions from the Executive Review and Advisory Committee, totaling \$22,524,125 in CDBG CARES awards;

NOW, therefore, it is hereby

RESOLVED, that the Executive Director, his designees, and each of them be and they hereby are authorized, empowered, and directed, for and on behalf of the Department, to take any and all such actions as they or any of them may deem necessary or advisable to effectuate 40 awards totaling \$22,524,125 for CDBG CARES mortgage assistance funding, pending the Executive Award Approval and Advisory Committee (EARAC) review and approval or approval with conditions;

FURTHER RESOLVED, should funds under any CDBG CARES allocation contracts be returned or made available, those funds may be reallocated at the discretion and authority of the Executive Director or designee to other contracts awarded under CDBG CARES that have shown sufficient obligations and/or expenditures; and

FURTHER RESOLVED, staff is authorized to reopen the NOFA to seek additional interested applicants for areas not already covered by the awards.

BACKGROUND

On March 27, 2020, the CARES Act was signed into law. The CARES Act provides for \$5 billion to be distributed through the CDBG Program nationally and includes waivers of certain provisions of the CDBG regulations. The CDBG Program is a HUD-funded program designed to provide decent housing and a suitable living environment, and by expanding economic opportunities, principally for low- and moderate-income persons. The response by HUD to address the Coronavirus Pandemic under CDBG CARES allows the funding to be used for a range of eligible activities which prevent, prepare for, or respond to the spread of infectious diseases such as the coronavirus disease 2019 (COVID-19).

The Department's Second Amendment to the 2019 State of Texas Consolidated Plan One Year Action Plan identifies \$68,517,020 in CDBG CARES funding for Urgent Need Mortgage Payment Assistance. The Department has created the Texas Emergency Mortgage Assistance Program (TEMAP) which will provide relief to homeowners in the form of mortgage assistance payments to income eligible homeowners throughout Texas.

As required by CDBG-CV rules, the emergency mortgage assistance payments will be made directly to mortgage lenders / loan servicers, on behalf of the individual or families in need of assistance, and not directly to an individual or family in the form of a direct income payment. Funds dedicated to this activity will assist households for no more than six months of mortgage assistance, including arrears. The assistance will allow payments for up to 5 months of arrears and at least one month of forward payment of the full amount of the monthly mortgage payment up to the Department established limit.

A Texas Emergency Mortgage Assistance (TEMAP) Notice of Funding Availability (NOFA) was released statewide on January 29, 2021. TDHCA staff conducted a TEMAP application workshop on February 18, 2021 and continued providing assistance to potential applicants throughout the NOFA process. The application period closed on April 12, 2021. Funds were made available

regionally to ensure broad geographic distribution in the state and further programmed in the following ways:

Rural and Small Metro Areas (Part A): As required by HUD, TDHCA is required to allocate at least \$40,000,886 of the CDBG CARES funding to non-entitlement units of general local government. Non-entitlement units are cities with populations of less than 50,000 (except cities that are designated principal cities of Metropolitan Statistical Areas), and counties with populations of less than 200,000. The Department will provide specific program design guidelines, facilitating the program administration for non-entitlement awardees. Balance of State Coverage. The funds within each region not allocated for non-entitlement awardees were made available in two additional pools:

- 1) Entitlement cities and counties and nonprofits covering one county (Part B); and
- 2) Regional organizations which include private nonprofits serving more than one county, community action agencies and regional councils of governments (Part C).

Each program part was allocated funds and funds were then further allocated into the each of the 13 TDHCA State Service regions. To minimize the risk of duplication of benefits, properties in an area covered by a contracted non-entitlement or entitlement awardee will be assisted through that respective program, and will therefore not be eligible to be assisted through that regional or statewide activity. The table below reflects the three pools of funds, the number of applications received, the amount of funds available and awarded.

Component	Recipients	Apps Received	\$ Available	\$ Awarded	Apps Awarded
Part A	Non-Entitlements	8	\$40,000,086	\$2,879,690	7
Part B	Entitlements; Single County Nonprofits	15	\$14,828,989	\$5,729,690	14
Part C	Regional providers	36	\$14,828,989	\$ 13,914,745	19
TOTAL		59	\$69,658,864	\$22,524,125	40

All applications were reviewed for required threshold requirements. The applications were also reviewed for completeness and eligibility. When needed, staff requested that an applicant provide clarification, correction, or non-material missing information to resolve inconsistencies in their application to assist staff in evaluating the Application. One application was disqualified in Part A for not meeting the citizen participation requirement for non-entitlement applications. Four applications in Part C were withdrawn, all submitted by the same entity. Applications were also scored and ranked by Program Part and within each region. As required by the NOFA, in order to ensure that no two organizations covered the same geographic area to minimize

duplication of benefits, staff revised applicants' service regions where applicable to eliminate duplication of service regions; in some cases where two entities were proposing to serve the same county(ies), the highest scoring applicant was selected and the lower scoring applicant was not recommended for an award.

With this action item, TDHCA will award \$22,524,125 of \$69,538,864 to 40 applicants and will be able to provide mortgage assistance coverage in many areas of the state. It should be noted that \$37,120,396 of Program Part A funds remain. This reflects an amount of CDBG CARES funds that is required to be provided to non-entitlement communities. However, some of the applicants in Part C applied to serve non-entitlement communities. The Department is working with these entities and HUD to have assistance in this area serve as part of the Department's non-entitlement community requirement. As a result, some Part C awardees may be asked for a limited time period to set-aside and track a proportional amount of funds in the service area for households in non-entitlement areas.

Moreover, due to the lack of applications:

- TDCHA will revise and re-release the NOFA for any entities wanting to offer the TEMAP program in geographic areas that are not covered by this first round of funding (see attached map), allowing applications under any and all of the Program Parts originally offered.
- As per the Second Amendment to the CDBG CARES Action Plan, properties in an area covered by a contracted non-entitlement or entitlement awardee will be assisted through that respective program.

If CDBG CARES contracts with these TEMAP subrecipients are returned or otherwise deobligated, the funds may be reallocated at the discretion and authority of the Executive Director to other contracts awarded under CDBG CARES that have shown a high percentage of expenditure.

Staff recommends the awards conditioned on EARAC recommendation or recommendation with conditions, as reflected herein and in the Attachment.

Attachment A – Award Recommendations through TEMAP Parts A, B, and C

Program Part A – Non-Entitlement Communities	Program Part B – Entitlement Communities and Nonprofits	Program Part C- Regional Providers	Total Requested Funds
\$ 2,879,690	\$ 5,729,690	\$ 13,914,745	\$ 22,524,125.00

TEMAP Program Part A Funding Recommendation		
Region	Entity Name	Recommended Funds
2	City of Coleman	\$ 500,000
6	City of Palacios	\$ 300,000
10	Nueces County	\$ 500,000
11	City of San Perlita	\$ 289,845
11	Town of Laguna Vista	\$ 289,845
11	City of Eagle Pass	\$ 500,000
11	Webb County	\$ 500,000
PROGRAM PART A TOTAL		\$ 2,879,690

TEMAP Program Part B Funding Recommendation		
Region	Entity Name	Recommended Funds
1	City of Amarillo	\$ 400,000
3	City of Fort Worth	\$ 500,000
3	Housing Channel	\$ 500,000
6	Baker Ripley (City of Pasadena)	\$ 500,000
7	Austin Housing Finance Corporation (AHFC)	\$ 500,000
7	Bastrop County Long Term Recovery Team	\$ 500,000
9	City of San Antonio	\$ 500,000
9	The Salvation Army	\$ 500,000
10	City of Corpus Christi	\$ 200,000
11	City of Laredo	\$ 200,000
11	Hidalgo County	\$ 500,000
11	City of McAllen	\$ 350,000
11	City of La Villa	\$ 289,845
11	City of Alamo	\$ 289,845
PROGRAM PART B TOTAL		\$ 5,729,690

TEMAP Program Part C Funding Recommendation		
Region	Entity Name	Recommended Funds
1	Panhandle Community Services	\$ 250,000
1	South Plains Community Action	\$ 500,000
2	Central Texas Opportunities	\$ 297,693
3	Life Rebuilders, Inc	\$ 500,000
3	Transcend STEM Education	\$ 300,000
3	Texas Neighborhood Services	\$ 500,000
3	Need A Break Inc.	\$ 500,000
3	Harmony Community Development Corporation	\$ 500,000
4	Family Endeavors, Inc., dba Endeavors	\$ 670,690
5	Family Endeavors, Inc., dba Endeavors	\$ 520,789
6	Family Endeavors, Inc., dba Endeavors	\$ 3,576,100
7	Community Action, Inc. of Central Texas	\$ 500,000
8	Families In Crisis, Inc.	\$ 500,000
8	Opportunities for Williamson and Burnet Counties (OWBC)	\$ 500,000
9	Alamo Area Council of Governments (AACOG)	\$ 1,346,991
10	Family Endeavors, Inc., dba Endeavors	\$ 537,427
11	Family Endeavors, Inc., dba Endeavors	\$ 1,593,322
12	Concho Valley Community Action Agency	\$ 500,000
12	Permian Basin Regional Planning Commission	\$ 321,733
PROGRAM PART C TOTAL		\$ 13,914,745

