

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

GOVERNING BOARD
MEETING

Ric Williamson Hearing Room
Dewitt C. Greer Building
125 East 11th Street
Austin, Texas

June 13, 2013
9:03 a.m.

BOARD PRESENT:

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

ON THE RECORD REPORTING
(512) 450-0342

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Adoption of Resolution No. 13-035 recognizing June as Home Ownership Month and announcement of Lenders and Loan Officers of the Year	7
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ITEM 1: APPROVAL OF THE FOLLOWING ITEMS PRESENTED IN THE BOARD MATERIALS: EXECUTIVE:	
a) Presentation, Discussion, and Possible Action on the Board Minutes Summary for May 9, 2013	
b) Presentation, Discussion, and Possible Action to approve the dissolution of certain Governing Board committees and designation of Governing Board liaisons for certain management activities	
RULES:	
c) Presentation, Discussion, and Possible Action on the re-adoption of 10 TAC Chapter 1, Administration, Subchapter A, General Policies and Procedures, §1.4, concerning Protest Procedures for Contractors, pursuant to Texas Government Code §2001.039, and directing its publication in the Texas Register	
BOND FINANCE:	
d) Presentation, Discussion, and Possible Action on Resolution No. 13-037 authorizing a Mortgage Credit Certificate Program (MCC) for first-time homebuyers (Program 81) along with related program documents to be administered by the Texas Department of Housing and Community Affairs	
e) Presentation, Discussion, and Possible Action on Resolution No. 13-038	

authorizing amendments to Program 79 program documents to address HUD requirements regarding the Department's provision of down payment assistance

TEXAS HOMEOWNERSHIP PROGRAM:

- f) Presentation, Discussion, and Possible Action on the Single Family Mortgage Loan and Mortgage Credit Certificate (MCC) Programs Participating Lender List

MULTIFAMILY:

- g) Presentation, Discussion, and Possible Action on Inducement Resolution No. 13-036 for Multifamily Housing Revenue Bonds and an Authorization for Filing Applications for Private Activity Bond Authority - 2013 Waiting List
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COMMUNITY AFFAIRS:

- I) Presentation, Discussion, and Possible Action on Approval of the draft Community Services Block Grant Application and Plan for Fiscal Years 2014 - 2015 directing it for publication in the

State
and
Texas

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- j) Presentation, Discussion, and Possible Action on HOME Investment Partnerships Program (HOME) Amendments
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HOUSING TRUST FUND:

- k) Presentation, Discussion, and Possible Action on the approval of the proposed 2014 - 2015 Housing Trust Fund (HTF) Biennial Plan

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- l) Presentation and Discussion on the

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Neighborhood Stabilization Program
(NSP)

REPORT ITEMS:

The Board accepts the following reports:

1. Executive Report of Multifamily Program Amendments, Extensions, and Ownership Transfers
2. Status Report on the HOME Program Contracts and Reservation System Participants
3. Report on the status of the Community Services Agency of South Texas contracts for CEAP and CSBG
4. Status Report and Clarification on the CSBG Discretionary NOFA funding amount for Transitional Funding for Migrant and Seasonal Farm Workers entities
5. Report on Request for Qualifications (RFQs) for outside counsel for Single-family and Multifamily Bond Counsel, Low Income Housing Tax Credit Counsel, and Loan Document Preparation Counsel
6. Report on a Request For Proposal (RFP) for a Master Servicer for the Single Family Mortgage Loan
7. Report on a Request For Proposal (RFP) for a Program Administrator for the Single Family Mortgage Loan and Mortgage Credit Certificate (MCC) Programs
8. TDHCA Outreach Activities, May 2013

ACTION ITEMS:

ITEM 2: APPEALS:

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- a) Presentation, Discussion, and Possible Action regarding Pre-clearance requests for Community Revitalization Plans filed with Pre-Applications in the 2013 Competitive Housing Tax Credit Cycle 13044 Villas of Vanston Park Mesquite 88
- b) Presentation, Discussion, and Possible Action to Issue a list of Approved Applications for Housing Tax Credits ("HTC") in accordance with §2306.6724(e) of the Texas Government Code 118
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- 13021 The Manor at Commerce Park Belton
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- 13026 The Huntington at Sienna
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- 13042 The Cottages at South Acres Houston
- 13043 Progress Senior Living Odessa
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- 13045 Evergreen at Murphy Senior
Community Murphy
- 13046 La Esperanza Del Rio Rio Grande
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- 13047 GardenWalk of La Grange,
Schulenburg, and Weimar La Grange,
Schulenburg, and Weimar
- 13048 Shepherd Seniors Apartments Shepherd
- 13051 Royal Gardens Rio Grande City
- 13052 Southfork Plantation Manvel
- 13053 Heritage Plaza Montgomery

13058 Evergreen at Hebron Senior Community
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 (Houston ETJ)
 13064 HomeTowne on Magnolia Savannah
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 13082 Woodland Creek Apartments Corpus
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 13087 Villas del Rio Rio Grande City
 13088 Riverwood Apartments Three Rivers
 13089 Pinewood Park Lufkin
 13090 Residences at Caruth Lake Rockwall
 13091 Heritage Park Vista - Phase Two
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 13096 Laureles del Este Fabens
 13097 Eastpointe Estates El Paso
 13098 Meadow Heights El Paso
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 13100 Villages of Penitas Penitas
 13102 Reserve at McAlister Fort Worth
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 13114 Abbington Estates Canton
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 13130 North Desert Palms El Paso
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PUBLIC COMMENT ON MATTERS OTHER THAN ITEMS 130
FOR WHICH THERE WERE POSTED AGENDA ITEMS. PUBLIC
COMMENT MAY INCLUDE REQUESTS THAT THE BOARD PLACE
SPECIFIC MATTERS ON FUTURE AGENDAS FOR CONSIDERATION.

EXECUTIVE SESSION (none required)

ADJOURN 133

P R O C E E D I N G S

MR. OXER: Good morning, everyone. I'd like to welcome you to the June 13 meeting of the Texas Department of Housing and Community Affairs Governing Board.

We will start, as we do, with roll call. Ms. Bingham is not here today. She is still recovering from a broken ankle.

Mr. Gann?

MR. GANN: Here.

MR. OXER: Mr. McWatters?

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz?

DR. MUÑOZ: Present.

MR. OXER: And I am here. That gives us a quorum of four, we can conduct business.

All right. Let's stand and salute the flags to begin. Tim.

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

MR. OXER: Before we start our formal agenda today, we're going to take a few minutes to recognize that June is Home Ownership Month in Texas, and so to mark this occasion, everybody on the Governing Board here, all of our members, have signed a resolution that I'm going to ask Tim to read into the record and then we'll have a

brief recognition of some of the folks that we want to identify that helped make it an important month in Texas.

So, Tim.

MR. IRVINE: Thank you so much.

This is resolution No. 13-035.

"Whereas, June 2013 is Home Ownership Month in Texas;

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

"Whereas, the Texas Department of Housing and Community Affairs recognizes that owning a home provides a source of security and stability for many Texans, and offers a place to retreat to after a hectic day, raise a family and make lasting memories;

"Whereas, it is the policy of the Texas Department of Housing and Community Affairs to support Equal Housing Opportunity in the administration of its home buyer and home ownership assistance programs and services;

"Whereas, the Texas Department of Housing and Community Affairs works in partnership with private and non-profit sectors to effectively administer state and federal funds that support home ownership, from home

purchase to rehabilitation, reconstruction or replace, to weatherization and accessibility modifications for enhanced affordability and safety;

"Whereas, the Texas Department of Housing and Community Affairs applauds all those who work to achieve and maintain affordable, responsible home ownership, and recognize those provide services to all home buyers and home owners, regardless of race, creed, color or place of birth;

"Whereas, the Texas Department of Housing and Community Affairs encourages Texans to explore the numerous home ownership resources available during Home Ownership Month and throughout the year;

"Therefore, be it resolved that in pursuit of the goal and responsibility of providing affordable home ownership opportunities for all, the Governing Board of the Texas Department of Housing and Community Affairs does hereby celebrate and join Governor Rick Perry in proclaiming June 2013 as Home Ownership Month in Texas, and encourages all Texas individuals an organizations, public and private, to join and work together in this observance of Home Ownership Month."

We would ask that the Board adopt that by acclaim.

MR. OXER: So by acclaim we request the voice vote.

(A chorus of ayes.)

MR. OXER: Opposed, of course, there are none, so done.

The Board and the Department are not alone in acknowledging this benefits of ownership which is supported by Governor Perry. It's an important thing that we do, so I think we have some folks here that we're supposed to identify.

MR. IRVINE: I believe we also have a proclamation from the Governor.

MR. OXER: How about reading that into the record also.

MR. IRVINE: This is a proclamation from the Governor.

"Home ownership is an important part of our way of life in Texas, embodying our core values of individuality, responsibility and self-reliance. When families move into a home of their own, they gain independence and confidence and their faith in the future grows, giving Texans a vital stake in the progress of our great state.

"Since 1980, the Texas Department of Housing

and Community Affairs has worked in partnership with the private and non-profit sectors to support home owners, from home purchase to rehabilitation, reconstruction, replacement, to weatherization and accessibility modifications for enhanced affordability and safety.

"I applaud all those who work to achieve and maintain affordable, responsible home ownership and recognize those who provide services and resources to all home buyers and home owners. At this time, I encourage all Texans to explore numerous home resources available, as the steps you take today can make a difference for yourself, your family and the Great State of Texas.

"Therefore, I, Rick Perry, Governor of Texas, do hereby proclaim June 2013 to Home Ownership Month in Texas and urge the appropriate recognition whereof.

"In official recognition whereof, I hereby affix my signature this, the 1st day of May 2013."

That's from our Governor.

MR. OXER: We're getting our script right up here, folks, to make sure this comes down right.

We'd like to recognize the program staff, lenders and loan officers who in the past year, 2012-2013, helped over 3,800 households experience the benefit of home ownership throughout the Department's Single Family

Mortgage Loan Program. The program's network of participating lenders originated over \$342 million in first lien mortgages under what's called the My First Texas Home Program, and in addition, mortgage credit certificates were issued on mortgage loans totaling \$153 million. All of our leading lenders and loan officers here today have demonstrated their ongoing dedication and commitment to affordable housing and the expansion of home ownership in Texas, and we're proud to have them with us.

So we're going to have each one of them here stand and recognize these guys. Hold your applause until we've identified and recognized each one of them.

First, Bob Heckler, senior vice president, is here on behalf of Cornerstone Home Lending which has earned the Lender of the Year Award for originating 759 mortgage loans and mortgage credit certificates totaling over \$98.7 million.

Please remain standing until I get finished because we're going to count all this up, I'm telling you.

Also, is branch manager, Patricia Wagner, here on behalf of DHI Mortgage Company, which has earned the Department's Lender of the Year for originating 377 mortgage loans and mortgage credit certificates totaling over \$53.7 million.

We also welcome and acknowledge Chad Overhauser. Chad, nice to have another representative from the tall lobby here. Chad is the president here on behalf of Ameripro Funding, Inc. which has also earned the Department's Lender of the Year Award for originating 302 mortgage loans and mortgage credit certificates totaling over \$41.2 million.

We'd like to say hello and welcome a loan officer, Adrian Quiniela -- Adrian, good morning -- here on behalf of the Rocky Mountain Mortgage Company which has also earned the Department's Lender of the Year Award for originating 142 mortgage loans totaling over \$17.1 million.

We're also pleased to recognize Mr. Dan Regan, accepting on behalf of Andy Woodside of Cornerstone Home Lending in Houston, who is accepting the Department's Loan Officer of the Year for closing himself 214 mortgage loans under the My First Texas Home Program.

Kim Lewis is also here to accept TDHCA's Loan Officer of the Year Award. Ms. Lewis, of NTFN which is basically Premier Nationwide Lending in Flower Mound, closed 144 mortgage loans under the My First Texas Home Program and was responsible for issuing 124 certificates under the Texas Mortgage Credit Program.

As I understand it, Kim, as they say, this ain't your first rodeo, you've been here before. Right? I think we've recognized you before.

So thanks to all of you. I have to say it's the folks like you that go out there and do the milling and grinding that we try to make sure that the opportunity is there for everyone. And thank you everyone for joining us today in recognizing Home Ownership Month in Texas. Thank you very much.

(Applause.)

MR. OXER: Now, we've reserved the second row of the chairs here. These folks may not necessarily want to stay, but we wanted to give them a second row seat, not a front row seat. The front row is still going to be reserved for people that want to speak. But this is how it works when we're here making this work for you, giving you some opportunity to spend that money.

Okay. Let's get to the consent agenda. Do we have any intervening items, Tim? Just go straight to the consent?

MR. IRVINE: Yes.

MR. OXER: Is there any item that any member of the Board wishes to pull from the consent agenda? Recalling that we're going to be under a short shot clock

today because of our minimal quorum, but we can pull some of these out later.

(No response.)

MR. OXER: All right. There are none to be pulled. I'll entertain a motion to consider.

MR. GANN: I so move.

MR. OXER: Motion by Mr. Gann to accept the consent agenda.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Is there any discussion?

(No response.)

MR. OXER: There is none. All in favor?

(A chorus of ayes.)

MR. OXER: And opposed, there are none. It's unanimous. Thank you.

Okay. Cameron, you get to jump right in the deep end of the pool, Sport.

MR. DORSEY: Good morning. Let me get set up here.

MR. OXER: And let me add just a housekeeping item. Occasionally everybody here is going to see members of the Board meandering back over to this room to get coffee and such. We have purposely left the door open so

there's no issue about being out of communication, so we'll maintain our quorum while folks are getting coffee.

That has been an issue in the past, so we are trying to meticulously, scrupulously maintain the rule that we have to abide by.

Cameron.

MR. DORSEY: All right. So item 2 are appeals, and these appeals are all related to 2013 9 percent tax credit applications that, as you all know, we're currently kind of in the middle of the tax credit cycle right now.

A little bit of cleanup. We've got two that have decided to withdraw. Those include Delta Estates, the first one on your list in the agenda, and the second is Mariposa at Woodbridge, they also withdrew. And then we have one which we would recommend tabling to the next Board meeting, and that one is Stonebridge of Plainview. I'd have to defer to Barbara whether or not a motion and everything is necessary to accomplish that tabling.

MS. DEANE: We're going to take these one at a time anyway, so let's go through this and by the time we get to that one.

MS. DEANE: I don't think it necessarily would require a motion, it'll just lapse to the next meeting, but certainly if you wanted to make that official on the

record, you could do that.

MR. OXER: Well, and to recognize the reason it would be delayed.

MS. DEANE: Right.

MR. DORSEY: All right. Hudson Providence. This is application number 13018. This is an application in Rural Region 5 down east of the Houston area.

We, in the course of the review, determined that the applicant did not qualify for seven points that were requested under the point item of commitment of development funding from a unit of general local government. The points that were requested were seven points, it's the lowest threshold under that particular point item, and that particular threshold that seven-point threshold was kind of a new concept this year for instances in which a municipality or a unit of general local government may not have the funding available to commit to a transaction, but nonetheless, they support that transaction moving forward. This point threshold enabled them to pass a resolution to allow the applicant to access these seven points.

Specifically, this is cited in the write-up but the rule is at 11.9(d)(3)(A)(vi) of the QAP which is Chapter 11 and reads as follows: "Seven for a resolution

of support from the governing body of the city, if located in a city, or county, if not located within a city, in which the development is located, stating that the city or county would provide development funding but has no development funding available due to budgetary or fiscal constraints, and despite reasonable efforts, has been unable to identify and secure any such funding. The resolution must be submitted with the application and dated prior to March 1, 2013. A general letter of support does not qualify."

In this particular instance, there was a resolution submitted, however, that resolution very specifically related to the statutory requirement for developments located in certain cities where they have twice the tax credits per capita over the statewide average. The resolution specifically cited that section of statute and that demonstrated that it was specifically approved for that particular purpose.

Also, on the agenda at that particular meeting, I believe, was an item related to development funding, however, there was no resolution passed that lays out these specific requirements of the QAP. In other words, we cannot draw a line between this rule and a resolution that meets these requirements.

The applicant also submitted a letter from the city which indicated that basically -- it says: By reference of the city not passing a resolution to make a loan of this type, it should be quite obvious that the city does not have funds available for this type of undertaking at this time." That was a letter from the city but it was not a resolution of the city council itself, and so we were unable to award those points.

I'll stop there. Staff recommendation is to deny the appeal and allow these folks to speak.

MR. OXER: Any member of the Board have a question for Cameron? I've got a quick question, Cameron.

MR. DORSEY: Sure.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: Cameron, in those instances where you have two times the concentration, for an applicant would they have had two separate letters, one addressing the promise of funding and one addressing the excessive sort of concentration? Would those have been separate or would it have been a common resolution sometimes?

MR. DORSEY: I would see it in multiple ways. It could be done as two completely separate resolutions, it could be done as part of one combined resolution, but we definitely look for the specific language required by

the QAP within whatever resolution is submitted.

DR. MUÑOZ: Explicitly stating?

MR. DORSEY: Bingo. There was not even a reference to development funding at all in the resolution that was submitted. And you know, statute requires various types of resolutions, and then the rules require various types of resolutions. It's really important, and I understand the city's statement that it should be kind of obvious, but when you have these resolutions that are weighted differently for various purposes, some are for eligibility purposes, some are for points, you know, we need specificity and that's what we expect to see.

MR. OXER: Okay. We have public comment. We need a motion to consider first, you're right.

DR. MUÑOZ: Move staff recommendation.

MR. OXER: Okay. Motion by Dr. Muñoz to approve staff recommendation. Is there a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

We have two gentlemen that would like to speak. And just as a housekeeping item, again to remind everybody, front row starting from this side, if you want to speak on the specific item that we're addressing, that's where I'll expect to see you.

Good morning, sir.

MR. AKBARI: Good morning. I'm Chris Akbari and I represent Hudson Providence. And I want to first thank you guys, both the Board and the staff. The staff has done a great job.

I'd like to point out that the City of Hudson has a population of 4,731 people. In the State of Texas and in most rural communities, especially Region 5, there's a vast difference between the populations of rural communities: some have 30,000, some have as few as 100 people. In this particular county there's only 90,000 people. Basically, the problem boils down to this is in the city limits and because it's in the city limits, it only has a very specific number of people it can go to to get funding. Those people area a housing authority, a housing finance corporation, an EDC or the city, or it could go directly to the county but it couldn't go to an instrumentality of the county.

We approached the city and we explained to them the situation that the QAP had very specific requirements and that we needed their help. They supported it unanimously, they support this development 100 percent, but they said, We just don't have a fund available or an instrumentality that we can be able to fund this

development out of. We approached them, we talked with the city attorney, we talked with the city administrator.

And I would point out that this is a small community that received CDBG Disaster Recovery funding from Hurricane Ike, Round 2, for \$293,000, but they didn't receive any funding for rental housing or for housing whatsoever. Because of that need for them to receive the infrastructure funds, they actually had to pass what's called a Fair Housing Activity Statement. This Fair Housing Activity Statement requires that they ensure that they do not further impediments to Fair Housing, such as NIMBY-ism.

In fact, when we approached them, they were very concerned about making a statement -- this is right from the QAP -- that says: "No development funding is available due to budgetary or fiscal constraints." We said, We understand, but in order for us to compete we need to be able to have seven points and we have nobody else we can go to. They said, Well, we have money, we have money, how can we say that we don't have money or that there's a budgetary constraint. We said, Well, this is a restriction of the QAP. And they said, Well, we completely understand but this is the best that we can do, we write you a letter; our attorney is telling us that if

we pass this resolution we might violate Fair Housing, we might have problems with somebody coming back and saying we're trying to oppose the development, and we don't need that negative publicity; we've already passed your resolution that says that we support it completely. And so we had to move forward with a letter.

MR. OXER: And a quick reminder to everybody, when you come back up in here, make sure you sign in so that we can properly identify you for the record.

MR. BALL: Good morning. My name is Don Ball, and I'm here speaking on behalf of the Hudson Providence.

And before I start, Mr. Oxer and the Board, I would like to thank you for all you've done for public housing and affordable housing in the State of Texas, wonderful work that you guys are involved in the state, and we appreciate that very much.

As Chris just pointed out to you, the City of Hudson was very supportive of our resolution for the project. In fact, they really wanted it. They were asking us would we make enough room in the great room for the residents that live there to meet and play dominoes and bingo and things like this once a month that they were now hosting that at the city all and the seniors needed a place like that to meet. Of course, we offered to oblige

that.

The city manager looked for funding, he actually was positive about finding some funding until he talked with the city attorney and the city attorney told him that they did not have a fund, and he came back and told me that the funding would not go forward. He determined that there was no source that they could use that was permitted for a project of this type that they had, that they owned.

The city manager was advised by the attorney that a resolution denying financing would be problematic and should be tabled, and I was at that council meeting and I thought they were going to do the resolution. We had asked it be on the agenda and it was on the agenda, but when it came time to do that, they just said that they were going to have to table it.

I had a conversation with the city attorney, asked for just a time out for a moment or two with him, and I said, This is imperative, even if you don't have funding, that you give us a turn-down for us to have those seven points. And he said, I will give you a letter from the city stating that we support the development but we do not have a fund to make this loan from, but we're going to table this at this city council meeting.

And I don't know whether the issue was whether the city thought they would be subjected to litigation for the Fair Housing issues, the NIMBY-ism that all of the cities were required to make a resolution for in recent months, or if they just didn't want anything negative to come out of the meeting. But he made the statement to me that they did not want anything negative to come out about his development, he wanted the residents of Hudson, the people that live there to know that this was a very important development and something that the city needed and something that the city wanted.

Hudson is not very experienced regarding low income housing tax credits, they only have two 9 percents there, and they were approved in 2010 under a different QAP and they did not run into these problems at that time and they were not familiar with them. And the city manager did not understand that the substitution of the letter advising the lack of funding might not be considered the equivalent to a resolution to that effect, and he was adamant that the letter would fulfill the obligation of the seven points in our application, and of course, this apparently is not how TDHCA has accepted that, they have not accepted it that way.

So in light of that, I would like to request

that the TDHCA Board exercise its discretion in approving the seven points for resolution of support without the appropriation of funds and the requirement of a resolution stating there is no funding availability is not a statutory requirement. Also, I would ask you to please grant this waiver so that statutory purpose 2306.6701 which intends that the TDHCA and its Board maximize the number of suitable, affordable residential units because our project will add 80 LIHTC units versus our competitors units of 36 for essentially the same amount of tax credits.

So gentlemen, please consider this and I ask you to please give us a waiver on this.

MR. OXER: Thank you, Mr. Ball. Any questions from the Board?

(No response.)

MR. OXER: Cameron, I've got a question.

MR. DORSEY: Yes, sir.

MR. OXER: So I'm just trying to make sure we've got the weave right on this. Has this come up in any other community or on any other application?

MR. DORSEY: Yes, at least one other one, and I think it's slightly different, the one I have in my mind. It is a little bit closer to getting there because there

is a resolution that has to do with development funding but it doesn't hit on all cylinders. So yes, there is at least one other one.

MR. OXER: That's one out of a total of?

MR. DORSEY: Well, we had 133 applications. I can tell you haven't reviewed every one of those applications, and this particular point threshold, the seven-point threshold, under this point item is a lower point threshold, so the applications that submitted with seven points under this item might be lower down in queue and we might not have gotten to them, so I can't say definitively that there aren't other ones out there. But yes, there are a couple of the -- I think we've reviewed around 80-85 applications and I think we've found two that have an issue with this specific provision.

MR. OXER: Okay. So to qualify, the city has go to say: We form a resolution, we approve this, and here's the funding, it's going to come out of this fund -- more or less.

MR. DORSEY: That's right

MR. OXER: Or to get the seven points but they don't have the funding, they say: We approve the project but we don't have the funds but we'd like you to see it. Is that more or less? Is there a way for them to get the

points without having the funding?

MR. DORSEY: Yes. This resolution is that only way. And unfortunately, in a lot of these cases, I understand some cities can --

DR. MUÑOZ: Hey, Cameron. What does a resolution have to say for them to get the funding where there is no fund?

MR. DORSEY: Well, where there is funding, there's two different ways to accomplish points.

DR. MUÑOZ: Where there is no funding.

MR. DORSEY: Where there is no funding there's this seven-point threshold, that's it, seven or zero.

MR. IRVINE: The resolution essentially needs to convey that we have no funds with which we could provide assistance.

MR. DORSEY: And the reason is because this whole point item is about development funding and has its genesis in the statute, and the statute is about development funding.

MS. DEANE: Right. Let me add one thing. Because this is a statutory requirement, it's a commitment of local government funding, they not only have to say that we have no funding but they also need to say that if we did have money available, we would have provided.

DR. MUÑOZ: And they didn't say that.

MS. DEANE: They didn't say that. That's what pulls it into that statutory requirement, it's the commitment of local government funding, so they also have to make that commitment that, you know, we would have given them money, we would provide development funding if we had it but we do not have that available. So I think that's one item that's kind of missing here.

MR. DORSEY: Yes. This particular threshold was added between the draft and the final version of the rules. We received some public comment and we really worked hard to try and craft an item that complied with statute and provided some level of points for instances where they just simply didn't have the resources available, and so the crafting of the language is very, very explicit.

DR. MUÑOZ: The question at least I'm trying to answer for myself is there was an opportunity for the city to provide something that sort of captured the spirit of what Barbara just described, and that wasn't provided. For whatever reasons the city had, they were reluctant because they might be called under suit for something else. And I did note the gentleman who spoke after Chris, the city manager did not understand that the letter that

they provided would not be sufficient. It's their responsibility to understand.

I don't know that it's our responsibility to change the statute or change the QAP when a city official, you know, misunderstands the nature of the request. And if we do so in this case, why not in other cases when repeatedly we're reminded about, you know, a small community that didn't have the sort of acumen or the technical sort of sophistication to address the QAP. We've heard that before and it's reasonable, but then it creates a precedent to change it for others.

MR. DORSEY: Sure. I will just note that in some instances we have encountered issues where cities just weren't comfortable and city attorneys have contacted Barbara and they've worked out some language, you know, some conditions within the resolution or some limitations of the resolution that helps mitigate some of the concerns that the city attorney has in those types of things. And I would just encourage folks that are struggling with this type of thing to contact us early on and we'll try to work with them.

MR. OXER: So essentially what you're saying is that the attorneys on both sides, as it turns out -- and I hate to see this as a competing thing -- but they got

together and figured out where there was some overlap and satisfied both needs.

MR. DORSEY: That's right. That has happened in other instances, not on this one, but in cases of other resolutions that were required.

MR. OXER: Chris, do you have a followup comment?

MR. AKBARI: Yes. I would like to ask two questions. Could you please read the statute for the Board so that they're familiar with that statute? And then also I'd like to point out that the part that they really have a difficulty with is very specific, it is: "no development funding available due to budgetary or fiscal constraints." That is the problem. This city did not want to say they did not want to say they didn't have money, they didn't want to get into a situation where they said, We don't have money to lend to this project for affordable housing. Yet they do have money in the bank, people see their fiscal assets every time they go to council and provide it. So that's the problem.

And I'd like to allow the Board to hear what the statute about government support is, and also reread the section of how to qualify for that, because the letter we have provides every single thing but he was afraid to

bring it to the council because he didn't want it in the form of a resolution that they did not have the money available due to budget or fiscal constraints.

MR. OXER: And we recognize that, and I hope you'll recognize that what we're evaluating is not an individual's hope that they would make it, we're evaluating a commitment by the management of the community, the governance of the community to the effect that it is available, or in this particular case that it's the consequence of fiscal restraints that it's not available, but they would if they had it. So we're back to a situation where somebody can't speak on behalf of a city council, the city council has to speak on behalf of the city council, and that's done through a resolution that specifically identifies and addresses the issue we're talking about.

DR. MUÑOZ: And Chris, I have a followup question. So just so I'm understanding correctly -- sorry for calling you Chris, we're not that familiar with each other -- so on the one hand you're saying that the city was apprehensive about issuing something that said we do not have the money because they did have the money, and yet they wouldn't provide a resolution saying since we have the money, we'll support it?

MR. AKBARI: The problem is that the city attorney told them that none of their public funds could actually be used to fund affordable housing. That's the problem.

DR. MUÑOZ: Okay. So if they have no funds that would be eligible or permissible for affordable housing, why couldn't you have a resolution that says we have no available funds that would be permissible, according to the city attorney, for public housing?

MR. AKBARI: It's because we were trying to get them to put the exact language of the QAP, which they refused to do. That's the problem. They took it as if we're saying we don't have the budget or we don't have fiscally this capability, then that's what the issue was. They didn't want to just come out and say we don't have a fund. That's what they said in their letter; they said we do not have a fund we can fund this from, we don't have the ability to fund this.

MR. OXER: And I hope you'll recognize that the effort that we put into the QAP -- and if you've been through a couple of these from our side and with the staff's side, these are difficult -- would be sort of an understatement -- in trying to get those, and the wording and detail in the QAP is there's excruciating detail and a

lot of energy and effort put into that to provide, in this particular case, Barbara, it's because we're trying to offer guidance to the applicants about what would satisfy the QAP. And so that's one of the reasons if they didn't want to say what's in the QAP, we understand that, but the reason it's in the QAP is because if you say that, that's what gets you the points.

MS. DEANE: It's an effort to meet the statutory requirements. And also, the specificity is in there to provide certainty to the community.

MR. OXER: And a guarantee to the community.

All right. We understand your position.

Cameron, anything else?

MR. DORSEY: To Chris's point, I don't know, Tim, do you have the statute up there.

MR. IRVINE: Sure.

MR. DORSEY: Go ahead.

MR. IRVINE: The statute states: If an application satisfies the threshold criteria, the Department shall score and rank the application using a point system that prioritizes, in descending order, criteria regarding -- and then it jumps down to item (e) the commitment of development funding by local political subdivisions.

MR. DORSEY: And I just want to add that in crafting this item, this is a resolution that doesn't actually commit funding, and when we crafted it, that seven points is actually below the lowest of the top ten scoring items, and so we definitely crafted it with statute in mind. I just wanted to make that clear.

MR. OXER: Well, I think it should be clear to everybody that pretty much everything we do has to be done with statute in mind because the guys in that pointy top building over on the hill have a sort of review of what we do a lot of times. In fact, they just did it this year. We're happy to stay it turned out the way we hoped too.

All right. We've heard the issues. Is there any other comments from the Board? Professor McWatters.

MR. McWATTERS: I'm not sure if honestly the city council wasn't reading this a little too narrowly. The rule doesn't say the city is broke, the city can have money, but when you look at the budget, you have to look at what a budget is. A budget is the sources and uses of funds, and if you look at the uses of funds, those are presumably committed, so when you honor those commitments, the money may not be spent yet but it may be committed to be spent in the future, so when you spend it in the future, then, hey, we have no money left over for

affordable housing, even though we have money in the bank right now.

So I think they were looking and reading out of this rule the language due to budgetary or fiscal constraints, because those are the uses of funds which would take up that money in the bank that you're talking about, there would be no other money left for affordable housing. And if that was the case, I don't see why the appropriate governing body could not have passed the resolution.

MR. OXER: Any other questions of Cameron?

(No response.)

MR. OXER: All right. There's a motion by Dr. Muñoz to approve staff recommendation, second by Professor McWatters, public comment has been heard. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, it's unanimous.

Thank you.

MR. DORSEY: All right. The next one is an appeal for River Bank Village. This is an application that is located in Urban Region 11, that's down along the border there.

This one relates to economically distressed area. There's also one other one that relates to economically distressed area and that's Barron's Branch. I think it probably make the most sense to take these kind of back to back, but I'll talk specifically about River Bank Village first.

At the last Board meeting we brought an item before you all, it was a very general item seeking guidance on how to treat applications that elected points for location in an economically distressed area which is defined as an area that meets the requirements of Section 17.921 of the Texas Water Code. Embedded within that definition there is discretion that's reserved for the water board itself, and this does have its genesis in our statute and we felt that that reference to the Texas Water Code when we crafted the QAP was a really necessary element.

We provided in the reasoned response at the time of the rulemaking process that we would be looking for a letter from the Texas Water Development Board. That is not a specific requirement cited in the rule. Elsewhere in that transcript we also indicated that we would be willing to look at some alternative forms of documentation to see if it met the requirements, but it

clearly states that at that time we were completely unaware of any other type of documentation that would document compliance with this particular section of the rule.

Moving forward, several applicants contacted us kind of before the pre-application was submitted and throughout all the way up until just the day before the March 1 due date for full applications. The reason for that contact and communication was folks were having a lot of difficulty getting the Texas Water Development Board to provide them a confirming letter, and folks contacted me to ask what else might we be able to submit, and these types of things, to which my response was almost uniformly: Look, I'm willing to look at something else but I am not aware of other documentation that would work.

That's common for a lot of these types of scoring issues, we craft scoring items but the universe of possible documentation that could meet the requirements is uncertain. You now, this is a very large state with a lot of different circumstances, with city governments that do things differently, all kinds of different stuff going on, so I think we remain fairly open-minded when it comes to what might work, but particularly when we provide some guidance that there's a specific type of documentation

that would work, you know, the hope is that an applicant can access that and deliver that item.

In this particular instance, folks couldn't. the Texas Water Development Board wasn't able to provide that type of documentation, and so applicants were trying to look for alternative documentation. Again, we never blessed an alternative method and we were unable to really reach an agreement about how to access these points under this scoring item before the March 1 deadline.

There were a couple -- well, there were more than a couple, I think there were around six, a handful of folks that actually elected the economically distressed area point item, and we haven't reviewed every one of those applications. We've got two before you today, and in both instances we just didn't feel as if the point the requirement of the QAP was met. And in addition to that, and a big piece of these two appeals, is whether or not a point deduction should be applied along with the two points that were taken away for having not met the item to begin with.

So River Bank Village submitted basically three pieces of key documentation, in my mind. They can correct me if they feel like that's incorrect. They submitted a letter from the city and they submitted a letter from the

state representative, and what appears to be the basis for the assertions made in the letter was a document that's a status report for the Economically Distressed Areas Program administered by the Texas Water Development Board.

That status report on kind of the front page has a map, it highlights several counties around the state that have adopted the Model Subdivision rules. That's part and parcel to the determination of whether an area is economically distressed but not definitive. If a county has that in place, that doesn't necessarily mean automatically that it meets that definition.

Then there are several water projects, different infrastructure projects that were funded under the EDAP program -- as it's called -- and there are at least a couple of water projects within this county -- this transaction is in Hidalgo County and this is also in Laredo -- so there was one also funded in Laredo back in 2000.

Why did we have difficulty accepting this documentation? Well, there are a couple of reasons. We've used this documentation in the past under previous sets of rules, but those sets of rules allowed entire counties to be designated as an economically distressed area if one project within that county was done, and we

had some real heartburn about doing that this year with the emphasis, you know, trying to incentivize development in high opportunity areas, and we really felt like we needed to refine this scoring item to really accomplish what it's trying to do which is the economically distressed area, where is that project necessary, what are the project boundaries.

The difficulty is there are no project boundaries within this status report provided, so if you filter in and try to go anywhere beyond the city or the county level and try to go down to a census tract level or a project level or something like this, you end up stuck.

So using this report, we could only really say the City of Laredo or the entire county of Hidalgo is economically distressed.

Now, if we applied that same methodology to all the other applications in the cycle, we would end up with 33 applications that could potentially -- that's a quick count, but 33 other applications that are within counties highlighted and where projects were done under the EDAP program and that are reflected in the status report. Now, of those 33, there were only two or three that claimed points under this item because I think they heeded staff's guidance and recognized the difficult position

here.

The applicant, you know, it would be hard for me to say that they acted in any other fashion other than good faith, given that negotiations on what could meet this requirement went up until literally hours before the deadline for submission. I mean, the day before the deadline we were on the phone with the Texas Water Development Board trying to come up with a solution. So it would be really hard for me to say that.

So we are recommending that we not award the two points for being located in an economically distressed area and we're remaining pretty neutral -- well, we're remaining neutral on the subject of whether or not the penalty or the point deduction should be applied.

MR. OXER: Any questions of Cameron?

(No response.)

MR. OXER: Okay. Two to speak.

MS. DEANE: You need a motion.

MR. OXER: Thank you for my counsel here. We do need a motion to consider here.

DR. MUÑOZ: I move staff recommendation to deny the two points and to restore the one point.

MR. OXER: Okay. Motion by Dr. Muñoz.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. And to reiterate, that's to restore the one point, not assess, ostensibly the penalty, so called, but deny the two points and not assess the penalty. Is that correct, Cameron? That's good enough. Okay.

Now we have a motion and we've considered it, so please.

MR. BROWN: Good morning. My name is Doak Brown. I'm with Brownstone Affordable Housing. We're the developer for this specific project.

With that motion being made, I'll just make this brief. I was up here to fight the loss of the one point, I didn't feel that that was justified in this particular situation, given all the confusion over the back and forth of what was going to be required. We still believe that we're in an EDA and we hope that next year some sort of resolution can be made between TDHCA and Texas Water Development Board over how one determines they're in an EDA.

Specifically, our job site drains into one of the facilities that was paid for with Texas Water Development Board funds, so if there's an area that probably qualifies as an EDA, this job definitely would.

MR. OXER: We understand your point. And I

like to think that the point, the penalty point would be assessed for an egregious error that we understand that this is a point of negotiation, you were discussing it and you were negotiating in good faith, so your point has been heard.

Interestingly, next year you're going to have something else to do because it's no longer going to be the Texas Water Development Board, it's going to be the Texas Water Development Commission with three new commissioners and a whole set of new rules to play with over there. That's according to what the guys in the pointy top building said this year.

MR. BROWN: Thank you.

MR. OXER: Thanks for your comments.

MR. SHACKELFORD: Good morning. John Shackelford, Shackelford Melton & McKinley. Mr. Chairman, members of the Board, Mr. Irvine and Ms. Deane, appreciate the position taken on the motion to not assess a penalty point and would hopefully see that applied with all applicants, the one following me and any others that may come before the Board at a later time.

The thing for me is just thinking about where the program is and also, as Mr. Oxer, you just mentioned about next year doing something, I'm curious, you know,

there's an emphasis on complying with statutory requirement and in an effort to try to more narrowly interpret this particular statute of 2306.127 that gives priority in the scoring criteria for projects in an economically distressed area, the rule that staff came up with, ironically doesn't narrow it, the implementation of it ends up obviating the statute or possibly even violating the statute.

So I'm just curious what the considerations are there of having a rule that, unbeknownst to staff at the time that they came up with it, came up with in good faith, tried to apply a new interpretation to this particular rule for other considerations, that we don't have a situation where the implementation of it then causes there to be, for all practical purposes, an impossibility of a developer to comply with it, nobody is going to get the two points if the Board continues down this path, and therefore, there is no priority given to this particular scoring criteria.

So it's sort of a comment but it's also a little bit of a question, I guess, as to just thinking in terms of where we are this year and then also in future years that we don't have a situation where developers look for sites and then because of some rule it ends up being

where it unwittingly works against them in the scoring criteria.

Thank you.

MR. OXER: Thank you, Mr. Shackelford.

Cameron, do you have a comment on that?

MR. DORSEY: I just wanted to say I don't think staff concedes the idea that it's impossible to access the point under this language, I think it's more difficult. I think we haven't seen a specific instance that we felt qualified, but I think we've certainly discussed certain instances that would be very, very compelling, we just haven't seen one of those situations.

The other thing is in applying the statute, we had a lot of different considerations including some of the issues with the remedial plan and making sure we complied with it. So there were a lot of considerations in crafting this plan. We do plan on trying to address this next year and make this a more viable and clean path for folks.

MR. OXER: It's another rough edge we've got to buff off on the QAP, I take it.

MR. DORSEY: Yes. There are certainly several; I think we've got a list going. One thing we want to try and accomplish is kind of as a report item next Board

meeting, kind of start the discussion on some of the major kind of what we envision for the rulemaking process this cycle and what areas of the QAP might deserve the most attention and those types of things. Put folks on notice early, but that will come up at the next meeting, hopefully.

MR. OXER: Good. Any other questions?

DR. MUÑOZ: Hey, Cameron, I've just got an observation. I hear you sort of describe the, you know, not quite impossibility of sort of providing something. You know, and you made a point right now toward the end of your comments about sort of giving people early notice. It's imperative as you sort of sit there and interpret whether or not what's been provided by the developers meets this borderline impossible threshold. I guess the point I want to make or the observation is it should be more important that the developer understand that before you do, because they're trying to put this together and it shouldn't get to you and then be interpreted in a way that they were sort of unaware of what the kind of definitional parameters of what they're providing is. Does that make sense?

MR. DORSEY: Yes.

DR. MUÑOZ: I mean, it's incumbent upon us to,

as you said, give them very early notification of what they're trying to provide so that when it comes to you it's not quite so impossible. Does that make sense?

MR. DORSEY: Absolutely.

MR. OXER: Well, and the point to add to that, I think it's fair to say that you negotiated, you were saying that you had time on the phone, there was at least conversation going on, and I have to believe that there's sufficient staff that you have that people can call and figure this out early on.

MR. DORSEY: Yes. And I think folks were on notice pretty early that accessing these points was a risk, claiming these points, there was a risk associated with it because unless you're able to obtain XYZ, I think that was definitely communicated. I think in the instances where folks did claim these points, they felt like they needed to.

DR. MUÑOZ: Well, maybe just as you're composing your list, you know, that there's some on that list that are highlighted a bit more than others.

MR. DORSEY: Definitely.

MR. OXER: All right. There's a motion by Dr. Muñoz to approve staff recommendation and a second by Mr. Gann, as I recall, to deny the two points but to restore

the one point that had been penalized. Is there any other public comment?

(No response.)

MR. OXER: All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, it's unanimous.

Thank you, gentlemen.

Cameron.

MR. DORSEY: All right. This one, if you guys don't mind skipping down to Barron's Branch because this is the same issue at play here, the EDA points, it seems to make the most sense to me. Barron's Branch is a transaction located in Waco. We heard some about this transaction last year and we also heard from representatives of the applicant at the last Board meeting related to this particular issue.

In this instance the applicant claimed two points for a location in an economically distressed area.

This transaction is located in McLennan County in the City of Waco, and these folks probably started talking to me, you know, before the rules were finalized about this stuff. We started having email traffic, there were a good

amount of exchanges of emails and they checked in routinely with me to see if we had a clear path that we could advise them of. And they also worked, I believe they contacted the Texas Water Development Board on several occasions in attempts to get a letter, I think even the City of Waco had contacted them.

The documentation they ultimately provided in their application was a summary from Mr. Cohen, who is sitting here, that kind of summarizes the basis for having claimed points. There was also a legal opinion from McGinnis, Lochridge & Kilgore, and the concern with that legal opinion was really that its limitations were a big concern. It kind of prefaced each affirmative statement of how it met the rule with if the Texas Water Development Board interprets their rule this way, then it meets the rule, and so that was obviously a big concern.

The other interesting thing is actually the documentation submitted by the prior applicant that highlights those counties that have adopted the Model Subdivision rules and meet that kind of prong of the test an highlight the water projects actually doesn't highlight McLennan County on it which it goes, again, to some of the concerns about what clearly, you know, can be documented to meet this requirement.

In the end, we felt like the documentation simply wasn't sufficient and so we did not award the two points. We also did a one-point deduction and I think their concern is primarily about the one-point deduction, just as Mr. Brown's, but I'll let them go ahead and speak now.

MR. OXER: Okay. Do I have a motion to consider?

MR. GANN: I'll make a motion to deny the two points and to not charge on the one point.

MR. OXER: To restore the one point.

MR. GANN: Restore the one point.

MR. OXER: Motion by Mr. Gann to approve staff recommendation to deny the two points but approve not deducting the one point. Do I hear a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Okay. We have public comment. Good morning.

MS. STEPHENS: Good morning. I'm Lisa Stephens and I represent the developer for Barron's Branch. Like Doak, in light of the motion, I'll keep it brief.

We did work, as Cameron said -- he was probably tired of hearing from us on this issue -- we worked it pretty tirelessly and had a lot of extensive conversation

with staff, with TDHCA, as well as with the city and the Water Development Board. Ultimately, like the prior application, we believe we qualify under a site-specific determination. We believe that we had evidence to show that. I understand that it's evidence that has to be interpreted by someone, and so we appreciate that fact.

But we don't believe, given everything that occurred in the months leading up to the application, particularly in the last month leading up to the application, that this warrants a penalty point, given the confusion surrounding it. So I appreciate the motion.

MR. OXER: Good. Is there any other comment?

(No response.)

MR. OXER: So essentially the motion by Mr. Gann is to approve staff recommendation to deny the two points but further resolve to not deduct the one point, similar to our prior resolution, and a second by Professor McWatters. No other public comment. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none, it's unanimous.

Thanks, Ms. Stephens.

MR. DORSEY: All right. This is a tough one,

this is a really tough one. This is Serenity Place Apartments, it's located in downtown Dallas or central Dallas.

And this relates to whether or not the applicant was able to satisfy the site control requirements in 10.204(9)(b) of the QAP. We terminated the application as a result of staff's belief that the requirements were not met, and they appealed first to the executive director and now to the Board.

This is a tough one because it's a pretty complicated series of documents relate to the acquisition of the property. I'm going to try to walk you guys through this in a couple of stages and try to make sure they don't have to speak on some of the basics of this issue.

The application is for the development of a transaction on multiple lots, on multiple inner city lots, they're relatively small lots, they're kind of defined by nine different addresses, although I think there's actually more lots than that. It looks like there's nine full lots and then halvesies of two lots or something like that. And so those lots had different ownership, each of the lots had different owners in the beginning, and that makes the transaction difficult just in and of itself to

gain site control from each of the owners of those lots.

To compound that, there was one lot, for example, that was purchased at a sheriff's sale because of a property tax foreclosure. I mean, they've really tried to piece all of these lots together to come up with one larger piece of property to construct this transaction on.

Now, the QAP requires documentation of site control for all of that property.

Now, because they had different owners and everything, they're also all at a bit of a different stage in the process of transferring ultimately to the applicant. Some of them had been already closed before the application was submitted, some of them were simply under contract, some of them appear to have already been transferred, effectively, to the city. The kind of course of site control that the applicant is trying to demonstrate is: original owner, site control from the original owner to a related party to the applicant, and then from the related party they're going to transfer, basically assign all of the ownership or rights to purchase those to the City of Dallas, and then the City of Dallas loop back through a lease with a term of at least 45 years to the applicant.

And the reason they do that is really it

reduces the holding cost of the land when the city maintains the ownership and they ground lease it in this fashion. And so kind of in the interim they're trying to save themselves some money and make the transaction more overall viable. I think that's a fair statement.

So there were a lot of deficiencies related to the site control, there were upwards of 22, and I'm not necessarily going to fault the applicant in this case. Again, this is largely as a result of the complexity and all the different things here.

Now, I just described it in kind of a fairly linear fashion, but throughout the course of these transfers, the applicant, for example, adjust course a little bit that created confusion on staff's part. We had a lot of communication back and forth. You know, they would change the structure a little bit here or there to reduce the liability to one entity or one person and those types of things.

So again, all to say it's pretty complicated, but the basic process, the basic kind of linear trajectory is: from original owner get it to a related party to the applicant, get it in the city's name, and then loop it back around through at least a 45-year lease back to the applicant, who would then develop the property and operate

the property, presumably with some property tax benefits.

The problem revolves around two kind of particular issues. One is whether or not there was a clear agreement in place. It appeared at some stage to be an agreement to agree in the future to terms that were not necessarily specified. I've provided a basic kind of chart of some of the key documents in the Board writeup, and so what I'm talking about there is the assignment of purchase and sale and option to develop the property. That was provided in the application and it was executed but it had that kind of agreement to agree kind of component to it that concerned us.

Also not clear was the lease term associated with it. Elsewhere in the application we definitely were able to identify a intent to enter into a 35-year lease and a city resolution that provided the city the city staff with the ability to work with the owner to execute a 35-year lease.

Not provided at that time, Exhibit C to the assignment of purchase and sale agreement and option to develop which is kind of that agreement to agree, Exhibit C said 55 years, but we also had all this other conflicting documentation that said 35 years, so we started asking a whole lot of questions related to that.

I think there were numerous phone calls and there was a good amount of confusion, our differing understandings of what the result of those phone calls and emails were in this process. But again, I think everyone was acting in good faith, I just think it's largely due to the complexity of the transaction.

At the end of the day, however, we issued an administrative deficiency that was due by April 30. It's a five-day time frame, administrative deficiency due April 30, and we needed documentation that they had in place the ability to compel a leasehold interest for 45 years as required under the QAP. And we didn't feel as if we got resolution to that within that five-day period. As a result, we terminated the application, they appealed and provided various pieces of documentation.

Part of their appeal was really based on they felt caught off-guard by the termination and that was due to what I perceive as a kind of miscommunication during the deficiency period where they felt like they got confirmation of a resolution to the issue where no further action was necessary on their part, and where we felt like we were trying to let them know we understand we've received all you guys can submit, there will be nothing further submitted, so now we're going to review that and

come to a final determination.

And you know, probably not the best language on our part, I'm willing to concede that, but it's in part because the genesis of that email was a series of phone conversations, and I hate to go into what we think was said on those phone conversations versus them, so I'm going to stay away from that stuff.

They felt like if they had known that the deficiency wasn't satisfied, then they could have requested a 30-day extension which would get them the ability to have gone out and gotten a resolution to the issue. At the time I think they felt like they would have been able to get a 30-day extension, but the rules clarify that we can only provide a five business day extension -- it's something that Tim, as the executive director can grant -- for good cause where there are issues related to obtaining documentation from a third party.

So they felt like kind of: Hey, folks, we kind of had our ability to address this issue cut short by the representation that it was resolved. So we tried to look at the facts of the situation and we came to the conclusion that really what they were saying was the 30 days would have gotten them past April 22 -- is it April 22? -- May 22, past May 22. May 22 was a city council

meeting for the City of Dallas where they could have gotten a new resolution to support the city's ability to enter into a 45-year lease with the applicant.

And so we didn't really feel like it was valid to say hey, we could have requested an extension and gotten this resolved when everything in the documentation provided to us indicated that they couldn't have gotten it resolved in five business days because really they had to wait for that May 22 board meeting -- council meeting. Only in the Board appeal did they provide a letter from the city council members saying: Hey, TDHCA, you guys should have contacted us and we would have held a special meeting.

But there was no discussion of that until the Board appeal, that never was part of the conversation. Our understanding was that they were really constrained and they felt like the documentation they had met the requirements, they didn't really need the resolution, et cetera, et cetera.

At the end of the day, I'm just going to read this quick paragraph to clarify kind of our position on this whole faulty email thing and represented the issue was resolved.

The applicant's appeal stated that had the

applicant been afforded additional time to cure an administrative deficiency that the issue regarding the site control documents submitted with the application that it is possible that the additional documentation requested by staff -- namely, a resolution from the city of Dallas -- could have been obtained in time for staff to accept the documentation as satisfactory during the review process.

First, this was first based on the applicant's assumption that it could have requested a 30-day extension of the administrative deficiency response deadline. However, no extension was requested by the applicant, and, had it been requested pursuant to Section 11.2 of the QAP, a maximum of five business days could have been granted. The deficiency response in question was originally due on April 30, 2013. Therefore, had the extension been requested and subsequently granted, the applicant would have had until May 7 -- May 27 is when that city council meeting occurred -- to provide the necessary documentation to evidence site control. However, the initial appeal, dated and received by the Department on May 10 -- three days after when that five business days would have expired, that initial appeal, it didn't even have the documentation necessary. So they didn't get five business

days to provide it but they could have provided it in response to the appeal and made probably a pretty strong argument, but they weren't able to provide it even in response to that appeal, and that was due after that five business days would have expired, if they had been granted that five business days, which there's no guarantee of that since that's discretion Tim has under the QAP. So that's kind of the deal there.

At the end of the day, we got a resolution from the council in the Board appeal but it didn't appear until the Board appeal, it wasn't in the initial appeal to the executive director. And I'm still not certain it would be completely resolved but it's very clear in our minds that we didn't have it within the deficiency time frame and some key pieces of that didn't come in until the Board appeal which was well, well after those time frames expired.

MR. OXER: Hold on a second, Cameron. Any questions of the Board?

(No response.)

MR. OXER: Yeah, you're right, this is one. So April 30 was when it was due; you had conversation, you went through the whole response they think; you saw that they think there's more due, and they would have asked for

an appeal; they would have gotten five days, they couldn't get the 30; the city council potentially would have been able to get in there and fix it within the five.

MR. DORSEY: In the Board appeal I think the city council member said: If you guys would have reached out to us, we would have done this. But that didn't appear until the Board appeal.

MR. OXER: Since they were given a termination and they appealed to Tim, he didn't allow it, so now they're appealing to the Board.

MR. DORSEY: That's right.

MR. OXER: So there's some time stretching in there for all these.

MR. DORSEY: Sure.

MR. OXER: And do I recall that you said that we -- because by extension, you are us, you are our eyes and ears on this -- we, staff, admit that there was some confusion in the interpretation of what was said?

MR. DORSEY: Absolutely, and I can kind of understand the confusion, I really can, but you know, I've got to look at how that affects other folks, and whether or not, based on the full record, if that misunderstanding hadn't occurred, is there really a good case that the requirement could have been met, and it's just not there

in my mind.

MR. IRVINE: And just for the sake of a little clarity on my position on this, it's actually a lot simpler than Cameron has just laid out. Site control is a requirement that when you apply, you've got to have it, and it is the legal ability to compel title to a developable interest in the property, and that is defined in our application rule, if you're using a lease, as ability to compel a 45-year lease. So to me, it's a very black and white fact question, you know, when you applied did you have something such that you could have gone to court and compelled whoever owned the property to enter into a 45-year lease.

DR. MUÑOZ: And at the time of the application the answer to that question would have been?

MR. IRVINE: I've not seen anything that showed that they had it when they applied.

MR. OXER: Okay. We'll have a motion to consider.

MR. GANN: I'll move staff recommendation.

MR. OXER: Motion by Mr. Gann to approve staff recommendation. Is there a second?

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. Okay. We have

comment. Good morning.

MR. VOELKER: Good morning. Bob Voelker, Munsch Hardt Kopf & Harr out of Dallas, on behalf of the applicant. Good morning, Chairman and members of the Board.

Before it get started I want to state the five very, very important words that are in the record here, and those are words that were in an email from staff to the applicant and to the City of Dallas on April 29 which is the day before the appeal period was up, and if you remember, nothing else, these five words are very important: "the deficiency has been satisfied." And once that happened, we just assumed the deficiency had been satisfied and we didn't need to do anything more. And so that's a very important fact. There wasn't a miscommunication where we kind of quibbled about words, those specific words are in an email, so I think that's very important to remember.

I might go on and kind of put that all in context. There's basically two questions to answer here. First of all: Is the city council resolution authorizing city officers to enter into a contract to lease the property to Citywide required by the QAP or the rules? Second question is: Did Citywide have a binding agreement

with the city to lease the property back from the city?

So then these first and second questions kind actually kind of tie to each other. The corporate resolution from the governing body of the seller or ground lessor is not required by the QAP or the rules for any applicant, and that's whether it's a city, a partnership, a corporation or whoever is selling the property. It's just not in the rules. The staff's and executive director's focus on that particular document is really not appropriate. The question is really whether we had a contract with the city, and the city council doesn't really enter into contracts, they ultimately have to do an authorizing resolution, but they're not the ones who enter into the contract, and that's really a legal point.

And so I'm going to do a little Legal 101 here, but one of the first things we learned in law school is that there's multiple ways in which an entity can bind itself, and one of those ways is if there's an officer of the entity that has the normal authority to act in that capacity signs a contract, that contract is binding. And it doesn't matter whether the board of that particular entity ever authorizes that particular transaction, that's binding on that entity because that person has the authority to enter into a contract on behalf of that

particular entity.

We do secure resolutions at closings for a reason, that's because title companies often want them. I mean, it's just kind of good COIA on our part, but that's not really what determines whether or not you have a binding contract.

We really did have a binding contract with the city and the city has reaffirmed that on multiple occasions. They understood they were taking control of the property simply just to give it back to us, we were doing this to try and save on taxes in the interim period, and the city has agreed to put \$44,000 per unit into this particular project. To be honest with you, I would have no issue suing the city to compel a conforming lease for tax credit purposes in this particular instance, notwithstanding the error in the city council resolution, which the city council person has admitted that that was an error.

Notwithstanding that we're not required to provide a resolution, we made every effort to address staff's concerns prior to the deficiency deadline. We were very diligent and staff was very diligent in working with us, and we had multiple dialogues between staff and the city about this particular issue, and the city

reaffirmed that they intended to fix the city council resolution and ultimately to enter into a 45-year lease. Jerry Killingsworth sent a letter to the agency stating that the city council would take that action at its next board meeting.

If we had been told that the deficiency hadn't been satisfied, we would have worked with the city to call an emergency city council meeting, or another action they indicated they could have taken was that the city council could have authorized the housing committee to take this action. But unfortunately, when we got the email saying the deficiency had been satisfied, we just stopped, thinking that we were good and we didn't need to go back and address this issue.

So given that we've got an authorizing resolution, that an authorizing resolution is not required by the QAP or the rules for any applicant, an officer of a city can actually bind the city, the applicant has met the requirements of the QAP. We took the staff emails on their face, that they'd accept a letter from the city stating -- they actually told us this in an email -- they would accept an email from the city stating that they intended to extend the period and the error in the city council resolution, and we saw that it said that the

deficiency had been satisfied.

So based on good faith reliance on staff's actions and words, we think this constitutes grounds for reinstating the application without any point deduction.

MR. OXER: Thank you. Any comments?

MR. VOELKER: Thank you.

MR. OXER: And don't forget to sign in.

MR. ROBERTS: Good morning. My name is Sherman Roberts. I'm the applicant, I'm a nonprofit group working in the City of Dallas.

Serenity Place is a 45-unit supportive housing project. It's one of the projects, as our current mayor, the chair or the homeless czar before he became mayor, wanted to push this issue forward. This is the number one issue of affordable housing in the City of Dallas, housing for women with children and families. That's just a few points about this.

And Cameron made a good statement saying this is very complex. I've been working on community development for over 30 years and this is one of the difficult, complex projects I've ever done trying to assemble all the land. All the land was bought by me, I had contracts on every piece of land. Since today we have closed every piece but one which we still have a long-term

contract working with a person, so to say we didn't have a contract, we did from day one.

Citywide is not the City of Dallas entering into the purchase contracts with all the landowners, all the contracts were in Citywide's name and would never have assigned it to the City of Dallas without getting it back.

Citywide believed that the assignment of the purchase and the sale agreement provides Citywide site control and gives Citywide significant autonomy and not the City of Dallas Council before 12/15/2015.

We worked with the City of Dallas attorneys to draft this agreement. Everyone understood that though this was a draft document, it provided Citywide control of the site. As the city reaffirmed to TDHCA, neither the city or Citywide would ever enter into a lease agreement term that did not conform to TDHCA's requirement. The City of Dallas, as a practical matter, would not want to own this land since this is not for the revitalization.

This was an experimental project that the city wanted to kind of save the nonprofit some taxes because we're doing multiple projects along the stretch of land called the Lancaster Corridor. This is a mixed use development that we're encompassing homeless as well as retail, office, and middle income people. We just had a

groundbreaking yesterday with the city council adjourning and coming out to this project which they are so closely supporting.

The City of Dallas, while we continue to believe that the resolution was not necessary to evidence site control, the city stated on 4/29/13 that it will amend the resolution and that followed through on 5/22. Had we known we needed it sooner, we could have called a special meeting. The city council member that's in this area is on the housing committee and the person that's helping us do this is the housing chair, and they could have called a special meeting had we known we needed the five days.

Citywide and the city have continued to work together and close land since we made application. TDHCA is aware that we have closed lots since application under this agreement and since various administrative deficiencies are provided to TDHCA, with closing statements, title policies, deeds and updated land status associated with these closings, evidence the City of Dallas commitment to this project. TDHCA stated that they would accept a letter from the city stating that they intend to term the lease for 45 years contingent on tax credit application.

I just want to kind of tie up here and just say we strongly recommend that you reconsider this because it was a lot of confusion on both sides, and we kept going back and forth and we did get that last statement and the email saying you have met all the deficiencies is the reason why we did stop. And the city did put in \$1.97 million to this project, \$44,000, over \$15,000 of what you normally put in a tax credit deal.

Thank you.

MR. OXER: Thank you. Any members of the Board have a question for Mr. Roberts?

(No response.)

MR. OXER: Thank you, Mr. Roberts.

Cameron. All right, we have another one. You weren't on the front row, I didn't know you wanted to be there.

MS. PALMER: It has a sign that says you can sit there.

MR. OXER: Okay.

MS. PALMER: Chairman Oxer and members of the Board. My name is Claire Palmer, and I am the attorney representing project number 13023, Patriot's Crossing. In a very sad circumstance this year, Patriot's Crossing and Serenity Place are located within two miles of each other,

so both projects cannot get an award because of the two-mile-same-year rule.

Patriot's Crossing has applied for tax credits in 2011 and did not receive an award. They came back in 2012 and filed a pre-application and realized they didn't have sufficient points and didn't file an application, and we're back again for the third year trying to get a tax credit award. Had we known that an application was being filed within two miles of us, we would have certainly tried to work with them, but they are a new project that we had no knowledge of until after pre-applications were filed.

I'm sure it's a very worthwhile project, but I'm here to support staff recommendation to terminate the project because we were in a similar place three years ago with multiple sites of land that we had to purchase from many, many, many different individuals. Because we've had so much time, that is now done, our land has been replatted as a single site, our land has been graded and cleared, and our project is ready to go.

In fact, the money came from the City of Dallas for the project and if we are not under construction by the summer of 2014, the land will revert to the city and no affordable housing will get built on that site. Unlike

Serenity Place, who has multiple years to get their land done before it would revert to the city, this is our truly last shot.

Patriot's Crossing is a project that is located directly across the street from the Veterans Hospital in Dallas, it's 150 units of multifamily housing that is intended to serve veterans and their families who are getting services at the Veterans Hospital.

After many, many, many meetings with the City of Dallas, the City of Dallas actually selected our project as their most significant project of the year for the very first time, and we were extremely proud to get that. However, even with the two points that you get for being selected as the most significant project, we cannot beat a supportive housing project with less than 50 units in points. It's simply impossible. They get four extra points that no one else can get, one point for being less than 50 units and three additional points that a multifamily development cannot get because of the supportive services piece of their application. So even with our two extra city points, we cannot outscore them.

And because of the two-mile-same-year rule, even though we would be, quote, in the money with our application, because they are scored ahead of us, we would

be prohibited by statute from getting an award.

We feel like we have played by all the rules, we've come back and back and back to TDHCA to try to get this award, we've got our land under control, we've spent untold amounts of money and time to do that so that we are ready to go as soon as we get an award, and we urge that you support staff recommendation.

Oh, I'm sorry. Staff had asked me to read -- our development consultant is very ill today and could not be at the meeting, but he had sent a letter to staff and they asked that I would read it into the record, so I'm just going to read it exactly as written.

"My name is Mike Shugrue and I am serving as consultant on project number 12023, Patriot's Crossing. I am here today to encourage the Board to adopt staff recommendation and terminate the application of Serenity Place. As you have heard, our project is located within two miles of Serenity Place and both projects cannot receive an award this year.

"As all of you know, I have been in this business for many years and I usually develop my own projects. However, I have become involved in the Patriot's Crossing project because it is such a worthwhile project. As a veteran myself, I am really proud to be

working on a project which is located directly across the street from the Dallas VA Hospital and which will provide much needed housing for veterans and their families.

"I have seen the project attempt to get credit awards in prior rounds and have seen the Board actually in 2011 really try to find a way to award this project. It simply did not score high enough and it did not get a forward commitment in the last year that forwards were available. I know that staff has even urged the project to reapply for credits.

"I am sure that Serenity Place is also a much needed project, however, it is a much smaller development and it is designed to serve only the homeless population, while our project is multifamily and has 150 units. If we had known before applications were filed that someone else was filing within two miles, I think we would have tried to work with them. However, that information was not available to you.

"We are at our last year to even try to get an award, and we urge the Board to uphold the termination."

MR. OXER: Okay. Thank you. Any questions of Claire from the Board?

(No response.)

MR. OXER: Good. Thank you. Next. Give us

just a second here. Mr. Roberts, and please identify yourself when you come back to the mike.

MR. ROBERTS: Sherman Roberts with Citywide CDC.

In 2008 Citywide bought the land to do a tax credit project. We told the housing department, since we knew another one was being filed, we would remove ours. Claire is right, we didn't know they were filing and they didn't know we were filing. After three years, we had to re-sell our land to HUD and buy it back. So we didn't know either, and it's unfortunate that we're down here but we've been holding our land too from 2008.

MR. OXER: Sounds like the city needs to do a better job of coordinating.

MR. ROBERTS: Yes. So it's just one of those things that happened.

MR. OXER: Okay. Point taken.

Is there other comments?

MR. LELAH: Good morning. My name is Yigal Lelah and I'm the principal of the developer of Patriot's Crossing.

And as Claire said, I don't want to repeat everything that she's said, but we've been working on this project for three years, we have a unique piece of

property right across the street from the Veterans Hospital, and this is our last year to apply, we will not be able to apply again. We stand the chance of losing the property if we are not under construction by 2014 of August, and to the contrary, Serenity Place does have until 2016 under the same or similar contract that we have with the city.

I'm here to urge the Board to uphold staff recommendation and give Patriot's Crossing and us a chance to create some housing for veterans in the Dallas area. Thank you.

MR. OXER: Great. Don't forget to sign in. Thanks.

Any questions from the Board? Are there other comments? Anybody else want to speak on this item? Mr. E.D.

MR. IRVINE: Yes. I actually had two quick comments. First of all, I absolutely am not expressing current legal opinions or advice on this, and I certainly respect Mr. Voelker and his knowledge in these matters, but it is my general recollection that the whole concept of apparent authority is applied differently in the context of public entities. I spent several years litigating that issue over 35 years ago, and what it

really ultimately came down to is if you're trying to bind a public entity, you really need to have express authority, either in a charter or through resolutions or other appropriately adopted authority.

The other issue is I absolutely concede the point that the five words certainly do convey an impression that is unfortunate, but I also want to say as difficult as it is, we can't bind the agency to matters that preclude the Board exercising its review and discretion. And we'll certainly work on our wording on those kinds of things and we certainly understand the equitable argument.

MR. OXER: Okay. Any other questions from the Board? Professor McWatters.

MR. McWATTERS: I have a question of Mr. Voelker. When the resolution came from the city for 35 years, did anyone review that?

MR. VOELKER: I had not seen it. It was done kind of at the last minute in order to get the city council resolution done right at the point in time in which we were applying for the credits. And so the city council drafted it, signed it, sent it to us and it ended up in our application. To be honest with you, it should never have gone in the application because you can resolve

and do things later to actually reaffirm a contract, and so there was really no reason for that ever to have been in the application.

MR. McWATTERS: But it was and I think you said earlier it was a mistake, the 35 years, the intent was to do 45 but it said 35?

MR. VOELKER: Correct.

MR. McWATTERS: And you know, it seems to me it would have been a simple matter to receive the resolution, someone read it and say: It says 35, it should say 45, let's get this fixed right now.

MR. VOELKER: Yes. The problem was that we couldn't correct it at that time because the application was already due. And then when staff brought it up, we went through the process back and forth with staff and the city to try and resolve it, and then staff finally said, in the course of a whole bunch of emails and conversations: Okay, we see that you can't do this until later on because of when the next city council meeting is, your deficiency is satisfied. But then that sentence goes on to say but you'll still need to go and get this site control taken care of -- which we had told staff was going to occur on May 22.

So we put all that together in that long chain

of emails and said: Deficiency has been satisfied, you're still going to need to go get a resolution from the city council actually authorizing what it is, the contract that they've entered into. So we just kind of assumed at that point in time we didn't need to do anything further.

MR. McWATTERS: Yes, but from my experience, when you're before a governmental body and you're asking for something, you generally prepare a draft and say this is what we would like, just so there's no ambiguity. And it would say 45 years and not 35 years, and then if it comes back the other way, you turn it around as soon as possible, a special meeting or whatever.

MR. VOELKER: If we'd had the time, we would have.

MR. McWATTERS: Well, that, I guess, is the problem is that when you get to the last minute for these material items and they come back wrong and you're out of time, you sort of put yourself in a box.

Let me ask you another question, this detrimental reliance argument. When you received the email from staff saying everything was okay, how long was it from that time until you realized things were not okay?

MR. VOELKER: When we got the termination notice.

MR. McWATTERS: What was the difference in time?

MR. VOELKER: I don't remember. It was probably a couple of weeks in there when that happened, I just don't remember the exact timing.

MR. McWATTERS: Okay. Was there anything in the letter or the email that said everything is okay, that there was a condition tied to that?

MR. VOELKER: Yes. The email said, Your deficiency has been satisfied but you still need to go satisfy our site control requirements. And that is in a string of emails where we had talked about the fact we were going to go back to city council, and we had provided at that point in time a letter from Jerry Killingsworth, who was the housing director of the city, saying he was going to bring it back before the city council and solve this problem on May 22. So that was kind of the string of things that was happening at that point in time.

So we said, Okay, the deficiency has been satisfied, we still need to go do this. We thought fine, we'll go do that in the time frame which we described before that we were going to go do that.

MR. McWATTERS: Okay. Cameron, would you like to comment on that?

MR. DORSEY: Just to clarify. The deficiency was due on April 30 and the termination letter was sent on May 3, so there wasn't a large lapse in time there.

The other thing is the administrative deficiency that was due on April 30, I'm going to read a provision from our administrative deficiency template that has its basis in the rule. It says: "Issues initially identified as an administrative deficiency may ultimately be determined to be beyond the scope of an administrative deficiency, and the distinction between material and non-material missing information is reserved for the director of Multifamily Finance, executive director and the Board."

That's a condition placed on every administrative deficiency we send out. It also, let's see -- okay, I think that's it. But that was in the deficiency to which the -- that was in the same deficiency associated with the email.

MR. McWATTERS: Let me ask you this, I just want to make sure I understand this. The email that went out that said everything is okay but you have to go ahead and do some other stuff, that email went out on April 30?

MR. DORSEY: It went out the day before the deficiency was due, I believe. The deficiency, I think, was due on a Friday, I think it went out on a Thursday, I

think that's correct. But it didn't go out on the last day of the deficiency period.

MR. McWATTERS: Okay. I'm trying to separate or understand better the April 30 to May 3. What happened on April 30?

MR. DORSEY: On April 30 we were reviewing the response that we thought was the complete record of what the applicant had within their capacity to submit to the department to satisfy the deficiency. During that period we were trying to review to determine if, in fact, it was sufficient.

MR. McWATTERS: And what happened on May 3?

MR. DORSEY: On May 3 we reviewed the materials list with Barbara and we came to the conclusion that we needed to terminate the application.

MR. McWATTERS: So I'm just confused. I'm hearing from Mr. Voelker that there was a detrimental reliance period of two weeks. Is this saying on, it was really three days?

MR. DORSEY: Right -- well, it was four days. It was April 30 to May 3.

MR. McWATTERS: Was part of that a weekend?

MR. DORSEY: Yes. And that's in the Board book. I don't think he was trying to mislead you, I think

he was trying to estimate. A lot of times it does take us two weeks to do things; in this case it didn't.

MR. McWATTERS: Okay. So it was a relatively short period of time then. Okay. Thank you.

MR. OXER: Any other questions of the Board?

(No response.)

MR. OXER: No other public comment. There's been a motion by Mr. Gann --

DR. MUÑOZ: Mr. Chair, I've got a question for the executive director.

MR. OXER: Well, let's hear it.

DR. MUÑOZ: So you said that -- obviously, you've already answered this, I just want to ask it again -- you see nothing that would persuade you that they had control, and yet we hear Mr. Voelker say we had a binding agreement, the gentleman who owns, we have contracts on every piece of land, I bought every piece of land.

MR. IRVINE: What I saw indicated to me that the City of Dallas had adopted a resolution saying we agree to agree, and we agree to agree with respect to execution of 35-year leases. And to me that raises two problems: one is the agree to agree issue because obviously there are other material terms in a lease

besides the period, and the other probably more germane issue is that under the specific requirements of our rules, if you're using a lease as the way to establish site control, it's got to be a 45-year lease.

And I understand the argument that there was a mistake or oversight or whatever with respect to the original resolution, and my concern is that there was nothing that really tied it back and said, Yes, everything that we've done was to correct and acknowledge the mistake and go back and affirm that as of the date of the first resolution it was really supposed to be a 45-year lease.

MR. OXER: Anything else, Dr. Muñoz?

DR. MUÑOZ: No.

MR. OXER: Okay. Cameron, you can affirm this, but when just went through this with staff, you did discuss with general counsel, you and Barbara.

MR. DORSEY: I heavily rely on Barbara.

MR. OXER: As I would hope everybody recognizing we're all sort of leaning over that way.

MR. DORSEY: Technically, I don't report to her, but for all intents and purposes, I report to Barbara.

(General laughter.)

MR. OXER: Trust me, I know how that works.

All right. Any other comment? Any other questions from the Board? There's no other public comment. All right. There's a motion to approve staff recommendation by Mr. Gann, second by Dr. Muñoz. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Thank you.

Does this one appear to be contentious or complex?

MR. DORSEY: This one is the last one of the appeals. It's Plainview and that's the one where we're recommending it be tabled. I think Barbara indicated that no action is required for that but you can take action to formally table it if you like.

MR. OXER: Hold on a second. Let's go through this again. Stonebridge at Plainview, you're going to table this one, and so this is the last one.

MR. DORSEY: That's right, because we already dealt with Barron's Branch with the EDA issues.

MS. DEANE: Stonebridge does have some compelling reasons to move this to July. I won't go into the specifics of it but they have some very compelling

reasons.

DR. MUÑOZ: Do we need a motion to table?

MS. DEANE: I think certainly it would be appropriate if you want to do that. If you don't act on it, it will just lapse to the next meeting anyway, but a motion to table would clarify the record.

MR. OXER: I think we'll need to do that. Go ahead, Cameron, and give us a recommendation.

MR. DORSEY: Staff recommends tabling the item. I will say this gentleman flew in from out of state to make comment on this item. Would be it be appropriate to accept comment since it is on the agenda but then to table the issue so that the developer -- the developer is not here to also speak is the problem.

MR. OXER: Absolutely, and we appreciate that you've come from a distance, obviously, to be here.

Staff recommendation is to table the issue so we'll have to have a motion to consider.

MR. GANN: I so move.

MR. OXER: Motion by Mr. Gann.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz to table this item until next meeting which will be on July 11.

We will take comment if you'd like. It's just

a technicality we've got to go through, you understand.

MR. JOHNSON: Sure. Thank you, Mr. Chairman, members of the Board. My name is Brett Johnson. I'm with Overland Property Group out of Kansas City. I did fly in specifically for this issue today.

MR. OXER: Is it humid in Kansas City?

MR. JOHNSON: It's not this bad.

MR. OXER: Welcome to Houston -- oh, wait, we're in Austin.

(General laughter.)

MR. JOHNSON: I do appreciate the opportunity, and I will try to be back again on the 11th if it's required.

I sympathize with the developer, and I know he's not here to speak today on this, but ironically, we were in reverse roles two years ago. State Street and Overland Property Group were competing in Lubbock where we made an error on our application and we lost a point, and we accepted that. We lost a sizable allocation because of that error.

We believe that the QAP is very black and white, and the issue at hand is regarding a revitalization document that was not submitted on the tab that was supposed to be submitted on by the date it was supposed to

be submitted on. The QAP is very clear that if exhibits are not included, you cannot get the points for that. We're losing a point on an application this round because of an error that we made, and we accept that.

We don't believe that there is an argument to be made on their side, if they have one, to allow that document to be submitted. It would be going against the competitive nature of the process and it would adversely affect our application in Pampa, Texas which we feel was thoroughly reviewed before we submitted it, we spent a lot of time, effort and money, as most developers do, to review it, and we don't believe that there should be an exception made because of a mistake.

Again, we don't doubt that there is a document that exists somewhere, but according to the rules, it was not done in the appropriate manner or submitted in the correct manner. So when you do hear from them -- and again, I will be back to speak because we believe this is very important -- it would set precedent that we don't think would be good for TDHCA or the other developers.

Thank you.

MR. OXER: Good. Thank you very much.

Are there any questions of the Board for the speaker?

(No response.)

MR. OXER: We understand your point, and I should think that it would be evident probably to everybody else who's been here and spent any time, we grade hard. As Professor McWatters would tell his class in law school in SMU, you earn his points, and you probably have to earn ours too.

MR. JOHNSON: We appreciate that.

MR. OXER: Any other comments? There's a motion to table this item until the July 11 meeting. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none.

Okay. That brings us, I think, to the end of the appeals. Is that correct, Cameron?

MR. DORSEY: That is correct. And I'll let Jean speak on Community Revitalization Plan.

MR. OXER: Okay. Before we start doing that, we're going to take a short break, owing to the fact that we've been sitting here heavily banging on these appeals.

So let's be back in our chairs, it's five minutes to the hour now, let's be back at ten after, please.

(Whereupon, at 10:55 a.m., a brief recess was taken.)

MR. OXER: Okay, folks, back in our seats and let's get going.

Where are we at here, on 3(b), Cameron. Welcome aboard here, Jean.

MS. LATSHA: Not Cameron. Jean Latsha, Housing Tax Credit Program Manager. I'll give Cameron a break.

I am here today on one last Community Revitalization Plan that is seeking pre-clearance. I won't go through all of the reasons why we need pre-clearance, I think we've heard that enough in February and April and May.

But the applicant for Villas of Vanston Park submitted the packet that we required when requesting pre-clearance, and in that packet submitted the Gus Thomasson Corridor Revitalization Code which is essentially a zoning ordinance is basically how staff reviewed that document. That zoning ordinance had a target area that did include the development site but was, like I said, just a zoning ordinance that didn't appear to have, didn't really appear to be a community revitalization plan and didn't really appear to have a budget associated with it.

In addition to that, in the packet the

applicant submitted the Casa View Heights Neighborhood Plan which did appear to be a community revitalization plan that was adopted, I think, back in 2007 and included a target area, however, that target area did not encompass the development site, and again, it was unclear if there was any budget associated with that plan.

So because we did have questions about the budget and about the target areas, we met with the applicant, they submitted a number of documents as supplemental information and explained those documents, and basically the argument is that the revitalization code, which is the zoning ordinance, is basically a tool to implement the Casa View Heights Neighborhood Plan which was adopted way back here.

And then in between the neighborhood plan being adopted and the zoning ordinance being adopted, this target area was expanded through a number of resolutions included in the comprehensive plan for the city, and also in the meantime, the city expended a good amount of funding in that target area. However, all of the pieces of documentation in between that first neighborhood plan that had a target area that did not encompass the development site and the revitalization code, the zoning ordinance that did encompass the development site but

wasn't really a plan, all of that documentation tying those two things together was not submitted in the original packet. That is the basis for staff's recommendation of denial of pre-clearance.

There are a number of folks here to explain how those documents are related. Staff, I think, too would concede that it does appear that there was some significant effort on the city's part in this part of the city, it was just really difficult for us to see that there was an actual plan that was adopted with a budget, but I'll let them explain that. And again, staff's recommendation is denial.

Tim, did you have something to add?

MR. IRVINE: I would just like to point out to give you a little bit of a different context for understanding this. We try very hard to make all of our rules as crisp, hard-edged and precise as possible, but the Community Revitalization Plan under this particular qualified allocation plan is unique in that it is a one-time purposefully squishy rule.

The rule itself lays out a number of bright line criteria that we believe should be involved in the development and execution of a revitalization plan, but we fully understood that there were so many technical

complexities and they involved public input processes, they involved city government actions, they involved development of budgets, they involved a lot of things, and there was no reasonable way that in all areas of the state, cities and their citizenry would have the ability to move quickly enough to develop a fully compliant plan meeting all of the technical requirements in the QAP within the time frames involved.

So there is, for this transitional one-year period where this is a brand new item, a provision that is your ability to say notwithstanding the fact that they did or didn't meet one or two particular items in the list in the rule, that they substantively and meaningfully evidenced a community revitalization effort. And we really think the heart of it is that there's citizen involvement, that the plan specifically addresses material factors that are present in the neighborhood in which the development is proposed to be located, and that there be some meaningful funding associated with it.

MR. OXER: Okay, good. We'll have a motion to consider.

DR. MUÑOZ: So moved.

MR. OXER: There's a motion by Dr. Muñoz to approve staff recommendation to deny. Is there a second?

MR. McWATTERS: Second.

MR. OXER: And second by Professor McWatters.

We have considerable public comment here, and we'll start right here and work through Mr. Shackelford and on down. And don't forget to sign in.

MR. GERTSON: Chairman and members of the Board, I appreciate the chance to be here this morning. My name is Richard Gertson. I'm the community development director for the City of Mesquite, and worked throughout the application process with the applicant, the Villas of Vanston Park.

I appreciate Mr. Irvine's comments, because we actually believe we hit them all right on the head, and he's so correct in talking about just part of the process that a community really must go through to have a good community revitalization plan. And I want to speak to that and I want to address three things that as far as I can see in the staff memo to you in your Board packets that have been addressed and I believe Ms. Latsha also addressed.

The first having to do with the form of the community revitalization plan itself, and more particularly, the connection between all of the pieces that the City of Mesquite has completed over the last

seven years. On page 3 of the staff report in your packets, the staff members do state that it seems to be rather obvious that the City of Mesquite has undertaken significant revitalization efforts in the area that we are talking about, so I want to talk again about the form. It doesn't appear to be a question about whether or not we are really in a serious and significant revitalization effort. The second thing is the location of the project site that appears within our community revitalization plan, and finally, the connection to the budget.

As Mr. Irvine stated, and also mentioned at the last meeting last month, there's a compressed time period between the development of this year's QAP on the issue of the CRPs and the development of these plans, and indeed, he said it would be virtually impossible, really, for a community to really put all of these pieces together in the way they normally would be.

Now, I have to admit something, and I probably look like it, but I've been in the business of urban planning and revitalization for 40 years now, and basically the process has not changed in that time. You start with, in our case, the neighborhood plan. You then begin to adopt the neighborhood plan into policy by having the city council enact the changes to your comprehensive

land use plan. And then you finish it off with an implementing code that gives the entitlements to the developers to be able to come in, and keeping with all the policies that have been enacted before and be able to begin the process of revitalization.

Over our seven years that we have been involved in this process -- because we didn't just start in January by cutting, pasting, coming up with a plan that mimicked the QAP or just whipping one up into a singular document -- we have a complete continuum of how we have gone about revitalization in this neighborhood. And while this box over against the wall over here is not in the record, that is everything that went in between, the parts of the plan we have. We provided in the record the bookends, I'll call it, for our revitalization plan: the Casa View Heights Neighborhood Plan that Ms. Latsha mentioned and the implementing code. Everything else happened in between for a period of seven years.

Now, I have to point out, because it's being challenged whether or not there's a connection, a nexus between these two, that in the record the plan itself refers a number of times, in fact, it's replete, the number of references between the implementing code and the genesis for our revitalization plan which is the Casa View

Heights Plan, and that's pointed out in section 1.1.1. The very first statement in our code references back to the genesis for this, so we believe there's a direct connection, notwithstanding the fact that we didn't give the full box and wrap it up and put a label on it and say that's our CRP, we gave the bookends for the thing, and we believe that adequately demonstrates our plan in the kind of form that the Board is looking for.

The second thing that was mentioned was that the applicant's site is not contained within our community revitalization plan. I have to mention, again, it's already in the record because it's part of the plan, this map. The applicant's application included a physical location address, as well as the site plan, and it's right there. This map is a part of the record already. We believe that shows it's smack-dab in the middle of the revitalization area.

The third thing has to do with the budget. We provided an extensive budget that showed that there have been over the years, over the seven years that we have been revitalizing this area, well in excess of \$6 million expended -- in fact, it's actually far more than that. And again, it's part of the record that you have in front of you, and it lists each and every thing that was done,

including the initial plan, the hiring of personnel to implement it, housing stabilization and housing affordability studies, the comprehensive plan, various projects, and so forth.

And in the staff memo it said that it wasn't clear whether or not those were revitalization dollars being spent, but rather that perhaps they were O&M, just operation and maintenance, kind of like an overlay. We state the uses of the funds right on the sheet that's a part of the record. We believe that's clear. It doesn't refer to O&M, it's talking about brand new projects or it's talking about studies or it's talking about the hiring of personnel. We believe that's a clear indication of what we're using the funds for.

Again, I appreciate the chance to talk to the Board. Thank you.

MR. OXER: Good. Make sure you sign in, please.

Any questions by the Board of Mr. Gertson?

(No response.)

MR. OXER: Okay. Thank you.

MR. OJI: Good morning, Board members. My name is Jay Oji. I'm the manager of the applicant in question. I'm also the president of Sphinx Development Corporation,

the developer of the project proposed.

First of all, I want to just give a general background. Sphinx Development Corporation has a lot of experience. Actually, we received our first tax credit reservation in 1994, so we've been doing this a very, very long time, and we've done more than ten tax credit projects, some of which have received national awards.

The reason why I'm bringing this up is just to give you a good background of why I think the QAP for 2013 is a very sophisticated QAP which we like very well, and it takes a lot of experience to be able to put forth the right application.

From the inception in 2012 when we started, we identified -- rather, we sought out communities that have existing revitalization areas in place and we settled on the City of Mesquite, with Mr. Gertson as the planning director. Like he mentioned to you, he has over 40 years of experience in this area. Not only that, he's an attorney, so he's been able to put together documentation that established the revitalization plan, the ordinances, the whole CRP plan.

So the reason I'm mentioning this is as experienced developers, the biggest challenge usually is to work with a city, and in this case we got it. The plan

has been in existence for eight years, and it went through the process. The neighborhood hearing, everything else was done.

The next thing is as experienced developers we decided we knew what the staff called for. We wanted to make sure that we provided the genesis of the revitalization plan which is the Casa View Heights. That's the front-end of the application, like he mentioned. We also ended up giving you a revitalization code which is the code that combines both. At the end of the day, what we submitted to staff showed our site within the boundaries of both the neighborhood plan which is the Casa View Heights and the Gus Thomasson Revitalization Code.

So my question is it appears that it's not whether the site is in a revitalization zone but rather whether the applicant provided sufficient information at the application stage to meet our points. And the answer is in the affirmative, we gave you both the neighborhood plan and the revitalization code, and in both cases it is clearly evident, as staff probably mentioned in the Board book, that it's not a question, so we are in the revitalization area.

Lastly, I have to mention this because it's

very, very important, the CRP is like the QAP that we have here. And I know, like I mentioned, we've been doing this since 1994. The QAP is an evolving document, just like a CRP. The QAP that we have today -- which we like, 2013, because it's straightforward, black and white, you know exactly what you're dealing with -- by the way, staff, I'll commend you guys for this year's QAP -- that's how the CRP is. It starts out with a neighborhood plan, a residential neighborhood, and it incorporated some commercial developments that facilitates commerce in the area.

So just because we gave you a neighborhood plan and if you don't see that in there, if you don't see the site in there, it does not mean that you're not in a revitalization code. The current plan that encapsulates the whole revitalization code, that's where the property that we are proposing to develop is within.

So my point is -- and again, I'll quote Mr. Irvine, I think in one of the transcripts he mentioned, Mr. Irvine said to make a revitalization plan meaningful, you have to put a budget on it. Since 2005 when this thing started as a residential plan, Mesquite has not just budgeted, but they have performed by committing and funding in excess of \$14 million in this whole plan. So I

don't see how you can say the applicant did not submit enough information. That's one.

Finally, what we provided in the record includes the site and the plan boundaries, along with funds spent in the plan. This is a much higher threshold than even the staff requires, much higher. This is not an economic development plan, this is a revitalization plan, and we gave you specifically what the application calls for, so both of them were there.

So this is not one of these go to city hall, get a resolution passed regarding some new development in some kind of area, this is an existing revitalization area, has been in existence for eight years, funds have been expended and projects are coming.

And finally, I'm just going to say this, TDHCA issued to us a request for additional information -- remember, additional information. We were never on any board clearance, anything. The fact is they requested for additional information. We gave them the information. The information we gave clarified to their own satisfaction that, indeed, the project is within a revitalization plan. So my question is what are we talking about. It seems to me like they've been unduly unfair to the applicant just because there are two codes,

front-end and back-end.

So I'm pleading with the Board to reconsider your motion because this project is a catalyst for an area in Mesquite that is, you know, blighted, they need housing. The North Central Council of Governments and the City of Mesquite and most people have put in funds to make things happen in this area.

So I encourage you to revisit this again, and I thank you guys for your consideration. Thank you very much.

MR. OXER: Thank you, Mr. Oji. Any questions from the Board?

(No response.)

MR. OXER: Good. Thanks. Mr. Shackelford.

MR. SHACKELFORD: Thank you. John Shackelford, Shackelford Melton & McKinley, and representing the applicant in here. I think Mr. Gertson and Mr. Oji did a pretty good job.

Again, I just sort of want to frame the issue for the Board, and that is last month before you several issues of a similar type nature and the thrust of those were more directed towards was there a plan, and if there was a plan, was it an economic development plan or was it a revitalization plan. In our instance here before you I

think staff would stipulate that, okay, with what we now know there is a genuine revitalization plan, the project area is located within there, so we're not dealing with the same kind of issues that were before you the last time. So that's one thing I want to point out.

You know, one of the reasons for the changes to the rule to do what it was because applicants would pitch you up at the last minute with things and it was creating quite a bit of controversy and unduly providing stress on staff and the Board on trying to make sense out of what was a plan and not a plan, and I heard it mentioned last year that trying to get away from people gaming the system. And we're not gaming the system in this instance.

You know, we had the situation where I think part of what's going on here in the context is this application wasn't looked at until more recent in the process, it wasn't thought to be probably within the money, so to speak, we never went through an administrative deficiency process for this issue to come up until late. When staff did start looking at it, they had some issues.

Ms. Latsha reached out to the applicant, had some questions, sought clarification. My client then asked me to help provide the clarifying materials to do

that, which, I think, this is analogous to the QAP which provides for an administrative deficiency process where the applicant can provide, upon request, clarifying, non-material information, and that's what I think I've provided to the staff in response to Ms. Latsha's email.

Because what I did was, although I think we satisfied the requirements of the QAP initially with, as it's been called, the bookends, we gave the comprehensive plan at the beginning, we gave this Gus Thomasson Corridor Code at the end that encompassed all of it, what I did was, to help staff understand it and try to tie it up with a pretty bow is the letter that you have in your Board packet, was go through on a linear fashion and connect each one of the dots of when the originating ordinance came into effect in '05, each ordinance that was passed along the way that Mr. Gertson referred to, and then showed how the code then is sort of the culmination of all of that.

But I tried to help staff understand here's how we go from what was given in the first place by the applicant of the comprehensive plan to the code on the back-end that they provided, and tried to do that so that it was abundantly clear. Now, to me, that's just providing clarifying material of a non-material nature

because everything I provided is part of the public record. We didn't go obtain anything new that wasn't available any time before this year. The only thing I provided in my letter, I think, that was new was a letter from Danielle Wonkovich from the City of Mesquite. So other than that, everything that I provided in my letter was already made available in public record all this year.

Any questions?

MR. OXER: Good. Thank you, Mr. Shackelford.

Any questions from the Board?

(No response.)

MR. OXER: Good. Thank you.

MR. SHACKELFORD: Thank you.

MR. SHEETS: Thank you, Mr. Chairman, members of the Board. My name is Kenneth Sheets. I am the representative for District 107, and this property lies right in the heart of District 107. I am part of that pointy top building over there on the hill.

MR. OXER: Then you understood my reference then, right, sir.

MR. SHEETS: I did.

MR. OXER: You guys have been busy this year.

MR. SHEETS: Somewhat. I think they called this the Kumbaya session because we were all getting

along.

MR. OXER: Nothing like lubricating a situation like that with a lot of extra money, it makes everybody get along a lot better.

MR. SHEETS: Or they get upset because you're spending too much.

MR. OXER: That's the way it works.

Welcome. We're proud to have you here.

MR. SHEETS: I appreciate it, sir. And I'll be very brief because I think the points have already been covered.

You will see in the record that I did provide a letter of support for this project because it is important to our community. This is a vital step in the revitalization of this area. It's an area that I have to travel through frequently in the travels throughout my district, and so I'm quite familiar with this area and I deal with my constituency in this area quite a bit.

My understanding of this issue -- and I'm no expert on these matters -- right now the question is that this is potentially a matter of form over substance. And understanding that, I would ask the members of the Board to exercise their discretion in approving this project.

And if there's no questions, I'm finished with

my remarks.

MR. OXER: Great. Thank you.

Is there any questions from the Board?

(No response.)

MR. OXER: Thanks very much.

MR. SHEETS: Thank you.

MR. OXER: We appreciate you being here.

Jean, we have a question, please. Go over and outline, let's hear the outline again on this.

MS. LATSHA: Sure. There were two documents submitted: the plan and the ordinance. The development site is located within the target area that was that map that he showed you. That pretty color map, that was part of the zoning ordinance. The development site is located within that area.

And that ordinance does reference the plan, the Casa View Heights Neighborhood Plan. However, because I read that reference, and so I looked to the plan and I look at that planned target area and the development site is not located within that target area. This target area and this target area did overlap, but the development site fell out of the one that was over here which is what raised all of these questions.

DR. MUÑOZ: Jean, hold on. Did the development

fall within the overlapping area?

MS. LATSHA: No, sir.

DR. MUÑOZ: You're saying no, he's saying yes.

MS. LATSHA: And that's because -- and I'm talking about the original submission. Now, with all of the documents that they provided to us after my questions about those target areas --

DR. MUÑOZ: Here's my question.

MR. OXER: Hold on a second, let her finish.

MS. LATSHA: -- they did provide a map that was adopted into their comprehensive plan that expanded that original target area to include this one, so that the development site was included in it, yes.

MR. OXER: Go ahead. You had a question.

DR. MUÑOZ: That answered my question.

MR. OXER: All right. So there was an original plan, had a map, you had six-seven years of activity, city resolutions, budgets being spent, that sort of thing, part of which expanded that area. And then you have the defining code -- for want of a better term -- that says this is our plan and it goes all the way back to this end. What you're saying is the original bookend, the front-end of the bookends here, didn't include that map.

MS. LATSHA: That's correct.

MR. OXER: Okay. So if you looked at it from the back-end looking forward, or from the back-end looking back into it, it would have been there because they had added to the area.

MS. LATSHA: Right. And I think that's their statement, basically, is they say when we reference -- over here when we reference the Casa View Heights Neighborhood Plan, in our mind the Casa View Heights Neighborhood Plan is the one that has this target area that happened here in the middle. I didn't have that documentation when it was originally submitted. All I had was the original target area which made me question whether or not the development site was in the target area

So I think it is a question of the original submission, are we looking at just that Casa View Heights Neighborhood Plan, the original target area that was adopted. And then on top of that, at which point did the budget become associated with this plan. I think that we talked about that too, that there's evidence that there were definitely expenditures in this area. Whether or not there was ever funding that was tied to a particular plan, I'm still not sure exactly when that happened.

DR. MUÑOZ: Jean, but there's no doubt that it falls within now.

MS. LATSHA: The one in the middle?

Absolutely.

DR. MUÑOZ: And you also said that there's no doubt that there were expenditures made.

MS. LATSHA: I think that's been confirmed as well.

MR. OXER: And they really burned a few trees preparing this thing too. Right?

MS. LATSHA: I'm sorry?

MR. OXER: They've evidently killed a few trees making this thing, right, based on the documentation we've got?

MS. LATSHA: Evidently.

MR. OXER: Okay. Mr. E.D., I have a question. With respect to this one, this being one of those rules and interim rules being in transition, and recognizing, as those of us who have been in city planning and doing a lot of things like this, they tend to be works in progress -- is that a fair statement, gentlemen -- work in progress and they tend to evolve, what's the prospect for this sharpening up next year's significant?

MR. IRVINE: Oh, I think it's virtually inevitable that it will be much more sharp next year because we've gone through the one-year transition, and

cities that want to have revitalization plans that qualify for these points will have had over a year to put them together.

MR. OXER: Had enough time to put them together. Because what we're looking for, frankly, is something that's not done for the purpose of an application but that has been being done for which a project is now located within it so that we give those points. It's not something you can put together overnight for an application.

MS. LATSHA: I wouldn't say that this was. I would say that the original submission might have good, had that been given a little bit more time and attention, the submission itself. The effort was clearly given quite a bit of time and attention.

MR. OXER: Okay. So the actual impact of this decision is for them to have the points restored.

MS. LATSHA: That's right. This is worth, I think, six or four -- six points. If we get to reviewing their application, it could be potentially six points. The plan itself is worth four, and then they would have additional information in their actual application that would be worth another two, yes.

MR. OXER: And this clearly is on the high end

of what we were looking for at the last meeting because some of those, let's just say there were a lot of ambiguities in the ones we considered last time.

MS. LATSHA: I would say that's fair.

MR. OXER: Okay.

DR. MUÑOZ: And they've more than exceeded sort of the threshold of evidence.

MS. LATSHA: After the supplemental information, I think we still, like I said, had some questions, particularly about the budget being tied to a plan and not just expenditures that also happened, but I think that the additional, the supplemental information did, for me, clear up the target area issue.

MR. OXER: Cleared up the target area, but obviously over eight years and adding projects and doing the sort of things, that doesn't happen free, so there's obviously been budget expended on this and budgets planned, obviously plans.

Mr. Shackelford, can you step back up for a minute?

Thanks, Jean.

Do you have a list of the expenditures, the nature of those?

MR. SHACKELFORD: It's attached to my letter

that's in your Board packet there. I believe it is exhibit 6 to my letter.

MR. OXER: We only have 600 pages on this Board book.

MR. SHACKELFORD: I don't have available to you that page number. I apologize, Mr. Oxer.

MR. OXER: I make reference to the 2800 we had on the second meeting I showed up at.

MR. SHACKELFORD: But if you'll take my word for it, you'll see that they've expended in excess of \$14 million.

MR. OXER: And I understand that's the excess that they've spent that much, and some of those are for projects, some of that was cap ex and some of it was op ex.

MR. SHACKELFORD: Mr. Gertson could probably better address exactly.

MR. OXER: Mr. Gertson, come on up.

MR. GERTSON: I'm sorry, Mr. Chairman, I didn't understand the last question.

MR. OXER: Rather than saying it's an operating budget, what we're looking for is capital commitments for the redevelopment as opposed to just maintenance, O&M, staffing, that sort of thing.

MR. GERTSON: Precisely. Again, it includes a lot of brick and mortar, so to speak, that is, capital improvements that are even ongoing today, as well as everything required to make that happen, the studies that went into affordable housing studies and so forth that set the stage for even applications as the one we're talking about here today, made them all realities. But the vast majority of the dollars that you see there is exactly that, it's brick and mortar.

MR. OXER: Okay. Thank you.

MR. GANN: Mr. Chairman.

MR. OXER: Mr. Gann.

MR. GANN: I think I made that motion and this is the reason we're here is to make good decisions and I think this is one of those situations -- did you make the motion? I'm sorry.

DR. MUÑOZ: I made the motion.

MR. GANN: Okay. I'd like to withdraw my second then.

MR. OXER: Okay.

DR. MUÑOZ: Well, I was prepared to withdraw my motion.

MR. OXER: Hold on a second. There's a procedural thing we've got here folks. Mr. Gann withdraws

his second, Dr. Muñoz --

MR. GANN: I got some false information here.

MR. OXER: Well, that's the first time we got bad counsel.

(General laughter.)

MR. McWATTERS: I would like to ask Mr. Shackelford a question.

MR. OXER: Please.

MR. SHACKELFORD: I would point out I never had you at SMU Law School.

(General talking and laughter.)

MR. McWATTERS: I'm reading from staff's recommendation, and this is going to be replotting some ground, but I just want you to hit this with your best shot. The staff says, in a nutshell, their last paragraph that they're recommending that pre-clearance not be granted based upon their assessment that the application materials, as submitted, which constitute the record, did not establish at least two components the staff viewed as critical -- that did not establish two components. Number one, that the plan area included the developments.

What's your response to that? I know we've talked about that, but what's your response to that?

MR. SHACKELFORD: Again, that is going back,

the comprehensive plan that was initially submitted did not include the target area. Ms. Latsha is absolutely correct. The code that was also provided, which is the back side and the last piece of legislation -- or ordinance adopted by the city in 2008 encompassed from the beginning in '05 through what was done in '08, and in that interim period this particular area was included in the expanded revitalization plan boundaries.

So yes, the last paragraph speaks to what was originally submitted and I would take you back to the prior page where in the writeup on the second paragraph, fourth line from the bottom where it says about the expanded target area was not made clear. To me, that's a subjective standard. I don't doubt that staff looked at it and it may not have been clear to them and that possibly there was a little bit more effort that would have needed to be made to find it, but we think from the beginning what was provided with the comprehensive plan to the code on the backside, the material was there.

And what I did in my supplement letter was just make it abundantly clear, having the benefit of working with staff and understanding what they go through and just trying to make it as easy for them to understand that this is not a situation like Mr. Oxer mentioned of a developer

trying to get the city to run something through real quickly so that they can get these points.

MR. McWATTERS: Okay. Fair enough.

Second point, did not establish that the plan had a specific correlated and adopted budget supporting the claimed points. I know we've talked about this, but what's your summary of that?

MR. SHACKELFORD: That again in the supplemental information that there was the exhibit 6 I just pointed you to you shows quite clearly all the money that's been allocated and funded since the inception of this program back in '05. I cannot tell you exactly what was in the original materials that were provided -- Mr. Gertson or Mr. Oji could possibly do that -- that made reference to the budget. So I think there were some issues with that that Ms. Latsha asked us about, which is, again, why we provided the supplemental information. But again, I don't think that's of a material nature, that's just supplementing for clarification purposes.

MR. McWATTERS: Okay. Thank you.

Then I will withdraw my second.

MR. OXER: Okay. Professor McWatters withdraws his second to the motion to approve staff recommendation. So Dr. Muñoz withdraws --

MS. DEANE: Can I just make a suggestion real quick? Based upon what Mr. Shackelford just stated, it might be important to have an acknowledgment, perhaps, by the Board as part of their vote that they are accepting the information that was provided subsequent, at least the information about the boundaries of the plan, merely as clarification to satisfy what might be akin to administrative deficiency so that we can have that in the record.

DR. MUÑOZ: Well, Barbara, as I understand it, the position they have is that the ordinance even initially incorporated the target area.

MR. OXER: No. The original area on the original plan did not include the area, but the ordinance supporting it with the revitalization plan and the ordinance does.

MR. SHACKELFORD: Right. Technically, as Ms. Latsha said, the comprehensive plan adopted in 2005 did not include this particular location. The Gus Thomasson Corridor, which is the commercial area, got included in the target area in 2008 on December 15 of 2008. On that same day at the same city council meeting, another ordinance was passed which was the Gus Thomasson Corridor Code which, as I've said, was sort the final bookend of

everything that happened from '05 to '08.

MR. OXER: That's good.

DR. MUÑOZ: And those bookends were both provided initially?

MR. SHACKELFORD: Yes, the comprehensive plan and the Gus Thomasson Corridor Code.

MR. OXER: Okay. Thanks, Juan. And your point is well made, Counselor, that we'll put this in the record in the form of the motion to say that -- or I hope someone will, to that extent -- the information they've offered up seems compelling, and in my mind, at least, is more than satisfactory in terms of addressing a site in a location that has an ongoing revitalization plan, it's evident that this wasn't put together for the purpose of gaming the system to get bag points on this.

So since we're back to passing go here, I'll entertain a motion to consider.

DR. MUÑOZ: I move to consider.

MR. OXER: That's very considerate of you.

(General laughter.)

MR. OXER: Okay. Motion by Dr. Muñoz to deny staff recommendation to provide -- do you want to help me state this Jean? Come do this.

MS. LATSHA: Sure. I think Dr. Muñoz is trying

to say you would like to grant pre-clearance for the community revitalization plan.

MR. OXER: That's pretty much the way I read it.

DR. MUÑOZ: Juan Muñoz thinks that that was very eloquently put. Thank you.

(General laughter.)

MR. OXER: You have a gift for succinctness. Hold on. We have a motion. Do I hear a second?

MR. McWATTERS: Second.

MR. OXER: And a second by Professor McWatters. Is there any comment from the executive director?

MR. IRVINE: I was just going to clarify the motion and suggest that it be expanded to include a Board finding that the record establishes that the plan encompassed the site and that the budget was tied to the plan activity.

MR. OXER: As the chairman so modified on the motion, I think we'll do that by acclaim. Is that fair?

Okay. Is there any other public comment? I recommend you be quiet right now. Okay?

All in favor of the motion as stated?

(A chorus of ayes.)

MR. OXER: All opposed?

(No response.)

MR. OXER: Congratulations, folks. I have to say that's one of those delicate applications of discretion that we like to exercise very gently because it has repercussions down the line.

Cameron, you're back.

MR. DORSEY: Can't get rid of me.

MR. OXER: Not like we would try.

MR. DORSEY: All right. This last item is staff recommendation to approve a list of, quote-unquote, approved competitive 9 percent Housing Tax Credit applications in accordance with section 2306.6724(e) of the Texas Government Code, from which final commitments may be made prior to July 31, 2013 in accordance with Section 2306.6724(f) of the Texas Government Code. And I make that clarification because this is the approval of that list from which those final commitments will be made. Because you're on this list does not mean you get a tax credit award, and we just need that to be completely clear.

I need to modify the staff recommendation in the Board book just slightly to account for the actions previously taken today. Application 13000, Delta Estates

withdrew their appeal of the termination of that application, and therefore, staff recommends approval the list without that particular application included on it, as well as the application for Serenity Place Apartments, number 13124.

I wanted to say just briefly a couple of things. This is the time of year when I start feeling like I'm melting because I feel so much sympathy for all of the stuff going on with these applicants, I can identify with some of what they're feeling. And the administrative deficiency process, in particular, review process, comes under a good amount of fire, so I thought I'd say a couple of things.

We have a staff of about six, maybe six, tops, that review these applications, and then there's Jean and I, and obviously Barbara and Tim, but these applications, we've reviewed about 85 at this point, or close to done with about 85. If I low-balled the size of these applications, we're talking about 200 pages. That's 17,000 pages of documentation we've reviewed since March 1. It's tough, it's a tough job. We're not perfect all the time, sometimes we send emails, they have poor wording in them, and you know, I wish I could prevent all of those circumstances, and unfortunately, I can't.

Administrative deficiencies. Administrative deficiencies are a tough thing as well. We issue administrative deficiencies any time we see an issue where the rule is not clearly met, and we issue them with a really open mind. We do not know what the response is going to be, we cannot presume that the applicant's response will be X, Y or Z, and so when we issue one, we don't know what the response will be.

If they submit so much documentation back to us that it becomes a materiality issue, I apologize for the situation where they feel as though we should have to accept that documentation, but when we approach these things with an open mind, we just can't control those types of things. So there are situations where the response simply isn't -- we can't accept it, and it's because we approach those things with a completely open mind from the beginning.

Administrative deficiencies, on average we're talking about 12 to 15 per application. If I shoot for 13, 85 applications, we're talking about 1,105 administrative deficiencies. You all have heard appeals and issues related to, I don't know, maybe 20 of those deficiencies. That's less than 2 percent of the administrative deficiencies issued on these applications.

We are quite forgiving in some circumstances, within the constraints of the rules, but this is a very black and white document in a lot of areas, and so you guys and me and Jean, we're often dealing with all the really tough ones, but I want you guys to know that we've got a staff out there that's reviewing a lot of these issues, we do allow clarification. There are a lot of folks that put together really high quality applications. You will not hear from the vast majority of applicants this year related to appeals or issues in the applications. And I just wanted to kind of put that out there at this time of year when I start feeling like I'm melting, anyway.

Staff recommends approval of that list with the removal of those two applications previously mentioned.

MR. OXER: Let me add to your comment too, Cameron. I think I can speak for everybody up here, certainly the members of the Board, that we recognize the efforts that you and Jean put in, and I've pointed out on a couple of grand openings that we know this is hard, I have a part in making it hard, and that the easy parts, if it was easy, you wouldn't have to be talking to us. Fortunately, it's not an individual, it's not one person up here that you have to speak to, you have to speak to a

group of us so we get a broad variety of perspectives on those assessments.

So while we have an extraordinarily open process and transparent program, as best I can tell from the reports that come from other states, there's still some things where we have to do interpretation and look very closely at these rules. So lest it go unsaid, the Board appreciates the effort that the staff makes and the quality of the work that we do, and not just on this program but on all the programs that we have to be a part of, that you're a part of. So thanks to you and Jean for this one because this is the hard part.

MR. DORSEY: Yes, it is.

MR. OXER: Dr. Muñoz.

DR. MUÑOZ: Just a brief embellishment of your comments. I appreciate the remarks, Cameron, because I think it's important, at least for me, to understand the relatively small percentage of situations that we actually have to sort of consider on the dais and that the vast majority are resolved administratively through the acumen and expertise of your staff, so I appreciate that. You shouldn't feel as if you're melting, you're young, you're resilient, we have every confidence in your recuperative abilities.

MR. OXER: Regenerative too, if he gets an arm cut off.

(General laughter.)

DR. MUÑOZ: But sometimes, at least for those of us that don't sort of work with this every day, I mean, there's some nuance to interpretation that hearing from the appellants and hearing from you, it brings it into greater clarity to make these decisions, sometimes often in support of staff's recommendation, often, as in the case a moment ago, in a different direction. So I mean, at least in my case some of the questions are just ultimately with a sort of a reliance on staff's expertise and judgment, and also for the need for my own clarification, and also for the public to hear that there's a serious vetting, and that's separate and apart from the tremendous work that you and the agency do in general. And so everybody is appreciative of the exhaustive time and effort, but sometimes the probative questions are necessary.

MR. DORSEY: Absolutely.

MR. OXER: And as we pointed out before, every one of these projects that come before us to be considered that make these applications, every one of them is a worthy project. This has no evaluation of the worthiness

of the project, it's just we're looking for money, we're not looking for projects, so to the extent that we've only got so much, we have to spread it according to the set of rules and have to interpret those pretty sharply. So thanks from the crew up here.

I'm sure the guys behind you there, you've got a list here of the ones that survived getting yanked through a knothole so they get to see if they're in the final game on the chase for the race.

All right. With that, we'll have to have another motion to consider here, and our divine Ms. Bingham is not here this time.

MR. GANN: I'll move staff recommendation.

MR. OXER: Okay. There's a motion by Mr. Gann to approve staff recommendation, with the list as modified by Cameron as he just spoke.

DR. MUÑOZ: Second.

MR. OXER: Second by Dr. Muñoz. And we have some public comment here.

MR. PICOU: Mr. Chairman and Board, and certainly the staff and administrators. My name is Dwayne Picou. I'm president of New Point Estates Homeowners Association, and we are the bordering property to applicant 13113 which is the Reserve at Arcola. And I

appreciate this opportunity to make comment on this. Thirty days ago I didn't know these programs existed and I feel like I've had a crash course in public funding and housing and everything else.

In January of 2012, our development which comprises about 65 acreage home sites, was annexed into Missouri City. Prior to that point in time we were serviced by the City of Arcola. To day the least, services are just about nonexistent from the city. We had a fire in a home on Christmas Eve of 2010, multiple calls to 911, and to the city were not answered. The house burned completely to the ground before police or fire ever showed up. Finally, someone in an area of the neighborhood that was actually previously annexed as part of Missouri City made a phone to Missouri City and they came out to respond, however, it was too late.

Nothing has changed in the City of Arcola where this project is being proposed. There is no fire department, they rely on the volunteer fire department of Fresno which is understaffed, undermanned and does not have the proper equipment to put out a fire in a two-story home, much less an apartment complex that would have 120-something plus units in it. That is our main concern is the safety of the folks that would potentially be living

in that complex.

The City of Arcola has been in and out of receivership, has been rescued by Fort Bend County on multiple occasions to help provide water and sewer services. This property that is being proposed for this project has no existing sewer, it has no existing water to it. One of the city councilmen on Tuesday night of this week said it would take millions to get the upgrade to the sewer system to provide for this complex.

The city cannot provide sewer to its current residents based on funding that they have because they cannot come up with the matching funding to provide water and sewer to their current residents. So it's pretty inconceivable to think that they would be able to provide these services to this complex.

Police, there are four full-time police in this city, and that's probably questionable at this point in time. The police chief, I think on record there have been four in the last five years. The city is plagued with issues and funding.

I plead with the Board to really consider the spending of these funds. As you said, they have to be spent very wisely. This is a situation where I really do not think that the City of Arcola could come close to

providing the services necessary for these seniors. And lastly, I'll close by there are a huge number of inaccuracies in the application, both in information that was submitted by the city to the developer and then also information that was provided in the application.

I've submitted letters to you guys, both on the 5th of June and the 23rd of May, that should be part of your record that spell out these issues, as well as maps of the area and some of the further concerns that we have over safety with traffic and so forth. So I appreciate the time, and thank you very much.

MR. OXER: Okay. Thank you for your comments.

MR. APPLEQUIST: My name is Chris Applequist. I'm with Miller Valentine, we're the developer.

We actually just found out about the opposition yesterday through TDHCA. This neighborhood that opposed the development, they're actually in another city. Now, we're very close to them but they're in Missouri City, we're in Arcola.

A few of the items that he mentioned, really all these items are addressed either in our application or our feasibility study. I mean, these are all items that you look at during the development process. We have been in touch with the city, we've been in touch with the city

engineer. We do have a feasibility study from the city engineer to provide water and sewer. We also received a resolution of support and a funding commitment from the city that would actually pay for a portion of those extensions of utilities. So these are all items that we have looked at and addressed.

I just met this gentleman today, so we will be speaking with the neighborhood group, we will give them all the information. It seems like it's an issue that can be resolved by just providing to them what we've done so far. So we will be in touch with them and we will be working through this.

MR. OXER: Great. Thank you for your comments. Communication with the municipalities and the cities is probably the best thing to air out some of this.

Ms. Rickenbaker.

MS. RICKENBAKER: Hello. Donna Rickenbaker with Marquis. I'm just up here for one quick comment.

This is an agenda item for approval of a list and no more, and it's in connection with what may or may not be a transaction that's allocated the tax credits. So there's still a lot of work that staff is reviewing and going through with respect to most if not all of the applications that are on that list. That's all.

Thank you.

MR. OXER: Thank you. And yes, this is the list of those that survived and got into the arena for the last bout. So we're going down to the wire and I think we'll make the decisions, it comes out on the second meeting in July.

Is there any other public comment? Anything else you want to add to it, Cameron?

MR. DORSEY: No, sir.

MR. OXER: All right. There's a motion by whom? Motion by Mr. Gann and a second by Dr. Muñoz to accept the list of those that have met the criteria and now are in contention for a tax credit allocation, but who have not yet received but they're to be considered. All in favor?

(A chorus of ayes.)

MR. OXER: And opposed?

(No response.)

MR. OXER: There are none, it's unanimous. Good job, Cameron and Jean. I know where the real power is behind that team.

Anything else, Tim, anything to add?

MR. IRVINE: Not on that item. I had a general comment.

MR. OXER: All right. We've come to the point in the meeting where we take public comment or comments from anybody with regard to agenda items for future meetings. Any member of the public that would like to make any comment to address anything that has not been addressed?

(No response.)

MR. OXER: I don't see any of the staff out there who has anything to say. Anybody on the staff up here, Barbara or Tim?

MR. IRVINE: Actually, I just had one comment about a matter that you approved in the consent agenda, and it relates to the Housing Trust Fund plan, I just want the whole world to know it.

We have in the past gone through the process to develop the Housing Trust Fund plan and it has been, frankly, sort of a proliferation of boutique programs. This year we're proposing a plan that is very focused, working on Bootstrap and the Amy Young Barrier Removal Program. Those are our two prioritizations of Housing Trust Fund dollars.

Also, with respect to the Amy Young Barrier Removal Program, I want to say that there has been a concern expressed in our work groups and so forth that so

much of that funding seems to inevitably go to the more urban areas where the larger providers are able to utilize that, and this time we're going to make sure that at least for a front-end 60-day period every single region and subregion, including very small rural subregions, will be able to access at least a portion of the funds so that they can hopefully make accessible at least one household within their subregion. I know it's small but I think it's an important statement that our programs are here to serve all of Texas.

That's all I've got.

MR. OXER: Good. With respect to the consent agenda, and we were anticipating a far more contentious meeting today so I didn't ask Tim Nelson to be here, but I think you could probably summarize this. We had some real glowing success from Tim Nelson in pricing some bonds recently that saved us about \$7 million. Is Tim here? He's not here.

MR. IRVINE: Tim is probably off putting together the next deal, but I've got to say that Tim Nelson, who runs our bond investment activity, has been incredibly proactive going back and identifying within our open indenture structure particular pieces that could come back and be restructured to extract more value that we can

put, frankly, to a lot of down payment assistance activity. Any time you're doing timing with regard to interest rates, you're either really lucky or you're not really lucky, and he was really lucky.

MR. OXER: He got it really right this time, let me tell you.

MR. IRVINE: He nailed it, and I believe we pulled about \$9 million of extracted value out of that transaction.

MR. OXER: And we repriced some bonds. So kudos to Tim and the bond staff. We appreciate all of his efforts.

Any comments, anything to toss out or add in or just to say from members of the Board?

(No response.)

MR. OXER: As chairman, I get the last word. So thanks to the staff for all the hard work because this tax credit round is not something that's easy on any of you, and by making it hard on them, we make it hard on you, we know that. So the 20- to 25,000 pages of documents that you get to flip through, we know that's an effort, but on behalf of a group that deserves that effort.

So with no other items to consider, I'll

request a motion to adjourn.

DR. MUÑOZ: So moved.

MR. OXER: Motion by Dr. Muñoz to adjourn.

Second by?

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. Requires no public comment. All in favor say aye.

(A chorus of ayes.)

MR. OXER: And it's unopposed. I will see you in four weeks, folks.

(Whereupon, at 12:15 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: Texas Department of Housing & Community
Affairs Governing Board

LOCATION: Austin, Texas

DATE: 6/13/13

I do hereby certify that the foregoing pages, numbers 1 through 141, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy King before the Texas Department of Housing & Community Affairs.

(Transcriber) 6/19/13
(Date)

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