

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE INCLUSIVE COMMUNITIES	§	
PROJECT, INC.,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	Civil Action No. 3:08-CV-0546-D
	§	
THE TEXAS DEPARTMENT OF	§	
HOUSING AND COMMUNITY	§	
AFFAIRS, et al.,	§	
	§	
Defendants.	§	

ORDER ON DEFENDANTS’ MOTION TO AMEND
THE REMEDIAL PLAN


Having reviewed Defendants’ Motion to Amend the Remedial Plan, the Court finds that the Motion should be GRANTED. The Remedial Plan is amended as follows:

- A. The Opportunity Index is amended as generally described below. The specific, and controlling, language is attached as Exhibit A.
 - 1. The “Exemplary” and “Recognized” ratings requirement is replaced by a requirement that the school have “a Met Standard rating and [] achieve[] a 77 or greater on index 1 of the performance index, related to student achievement”;
 - 2. The 5-point tier for elderly projects is eliminated; and
 - 3. A separate Opportunity Index for projects in Rural Areas is created.
- B. With respect to points for Educational Excellence, the “Exemplary” and “Recognized” ratings requirement is replaced by a requirement that the school have “a Met Standard rating and [] achieve[] a 77 or greater on index 1 of the performance index, related to student achievement.” The specific, and controlling, language for the educational-excellence factor

is attached as Exhibit B.

- C. The one point available for elderly projects in Underserved Areas is eliminated. The specific, and controlling, language for the underserved-areas factor is attached as Exhibit C.

SO ORDERED on December 27, 2013.



SIDNEY A. FITZWATER
CHIEF JUDGE

Exhibit A

Opportunity Index

Opportunity Index. The Department may refer to locations qualifying for points under this scoring item as high opportunity areas in some materials.

(A) For Developments located in an Urban Area, if the proposed Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (or 35 percent for Developments in Regions 11 and 13), an Application may qualify to receive up to seven (7) points upon meeting the additional requirements in clauses (i) - (iv) of this subparagraph. The Department will base poverty rate on data from the five (5) year American Community Survey.

(i) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (7 points);

(ii) the Development targets the general population or Supportive Housing, the Development Site is located in a census tract with income in the second quartile of median household income for the county or MSA as applicable, and the Development Site is in the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement (5 points);

(iii) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top quartile of median household income for the county or MSA as applicable (3 points); or

(iv) any Development, regardless of population served, if the Development Site is located in a census tract with income in the top two quartiles of median household income for the county or MSA as applicable (1 point).

(B) For Developments located in a Rural Area, an Application may qualify to receive up to seven (7) cumulative points based on median income of the area and/or proximity to the essential community assets as reflected in clauses (i) - (v) of this subparagraph if the Development Site is located within a census tract that has a poverty rate below 15 percent for Individuals (35 percent for regions 11 and 13) or within a census tract with income in the top or second quartile of median household income for the county or MSA as applicable or within the attendance zone of an elementary school that has a Met Standard rating and has achieved a 77 or greater on index 1 of the performance index, related to student achievement.

(i) The Development Site is located within the attendance zone and within one linear mile of an elementary, middle, or high school with a Met Standard rating. (For purposes of this clause only, any school, regardless of the number of grades served, can count towards points. However, schools without ratings, unless paired with another appropriately rated school, or schools with a Met Alternative Standard rating, will not be considered.) (3 points);

(ii) The Development Site is within one linear mile of a center that is licensed by the Department of Family and Protective Services specifically to provide a school-age program (2 points);

(iii) The Development Site is located within one linear mile of a full service grocery store (2 points);

(iv) The Development Site is located within one linear mile of a center that is licensed by the Department of Family and Protective Services to provide a child care program for infants, toddlers, and pre-kindergarten, at a minimum (2 points);

(v) The Development is a Qualified Elderly Development and the Development Site is located within one linear mile of a senior center (2 points); and/or

(vi) The Development Site is located within one linear mile of a health related facility (1 point).

(C) An elementary school attendance zone for the Development Site does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary schools that may possibly be attended by the tenants. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions.

Exhibit B

Educational Excellence

Educational Excellence. An Application may qualify to receive up to three (3) points for a Development Site located within the attendance zones of public schools that have achieved a 77 or greater on index 1 of the performance index, related to student achievement, by the Texas Education Agency, provided that the schools also have a Met Standard rating. Points will be awarded as described in subparagraphs (A) and (B) of this paragraph. An attendance zone does not include schools with district-wide possibility of enrollment or no defined attendance zones, sometimes known as magnet schools. However, in districts with district-wide enrollment an Applicant may use the lowest rating of all elementary, middle, or high schools, respectively, which may possibly be attended by the tenants. The applicable school rating will be the 2013 accountability rating assigned by the Texas Education Agency. School ratings will be determined by the school number, so that in the case where a new school is formed or named or consolidated with another school but is considered to have the same number that rating will be used. A school that has never been rated by the Texas Education Agency will use the district rating. If a school is configured to serve grades that do not align with the Texas Education Agency's conventions for defining elementary schools (typically grades K-5 or K-6), middle schools (typically grades 6-8 or 7-8) and high schools (typically grades 9-12), the school will be considered to have the lower of the ratings of the schools that would be combined to meet those conventions. In determining the ratings for all three levels of schools, ratings for all grades K-12 must be included, meaning that two or more schools' ratings may be combined. For example, in the case of an elementary school which serves grades K-4 and an intermediate school that serves grades 5-6, the elementary school rating will be the lower of those two schools' ratings. Also, in the case of a 9th grade center and a high school that serves grades 10-12, the high school rating will be considered the lower of those two schools' ratings. Sixth grade centers will be considered as part of the middle school rating.

(A) The Development Site is within the attendance zone of an elementary school, a middle school and a high school with the appropriate rating (3 points); or

(B) The Development Site is within the attendance zone of an elementary school and either a middle school or high school with the appropriate rating (1 point).

Exhibit C

Underserved Areas

Underserved Area. (§§2306.6725(b)(2); 2306.127, 42(m)(1)(C)(ii)) An Application may qualify to receive two (2) points for general population or Supportive Housing Developments if the Development Site is located in one of the areas described in subparagraphs (A) - (D) of this paragraph . . .

(C) A Place, or if outside of the boundaries of any Place, a county that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development; or

(D) For Rural Areas only, a census tract that has never received a competitive tax credit allocation or a 4 percent non-competitive tax credit allocation for a Development that remains an active tax credit development serving the same Target Population.