

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD OF DIRECTORS MEETING

Ric Williamson Hearing Room
DeWitt Greer Building
125 East 11th Street
Austin, Texas

Thursday,
May 9, 2013
9:00 a.m.

MEMBERS:

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

TIMOTHY K. IRVINE, Executive Director

ON THE RECORD REPORTING
(512) 450-0342

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b) Presentation, Discussion, and Possible Action on a proposed Agreed Final Order with respect to Wilshire Apartments (HTC #93062)	
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c) Presentation, Discussion, and Possible Action on an order adopting amendments to 10 TAC Chapter 5, Subchapter A, §§5.1, 5.2, 5.5, 5.8, 5.9, 5.14, 5.17, 5.21, and 5.23, concerning General Provisions, and directing its publication in the Texas Register	
d) Presentation, Discussion, and Possible Action on orders adopting amendments to 10 TAC Chapter 5, Subchapter E, §§5.502, 5.503, 5.505 - 5.508, 5.521 - 5.525, 5.531 and 5.532, and the repeal of §§5.504, 5.526, 5.527, 5.529, and 5.530, concerning the Weatherization Assistance Program General, and directing their publication in the <i>Texas Register</i>	
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- g) Presentation, Discussion, and Possible Action on an order adopting 10 TAC Chapter 10, Uniform Multifamily Rules, Subchapter H, Income and Rent Limits, and directing its publication in the *Texas Register*
 - h) Presentation, Discussion, and Possible Action on orders adopting amendments to 10 TAC Chapter 23, Single Family HOME Program, Subchapter B, Availability of Funds, Application Requirements, Review and Award Procedures, General Administrative Requirements, and Resale and Recapture of Funds, §23.26, concerning Reservation System Participant Agreements (RSP); amendments to Subchapter C, Homeowner Rehabilitation Assistance Program, §§23.31 and 23.32, concerning Homeowner Rehabilitation Assistance Program Requirements; and amendments to Subchapter D, Homebuyer Assistance Program, §23.41, concerning Homebuyer Assistance (HBA) Program Requirements, and directing their publication in the *Texas Register*

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- l) Presentation and Discussion of the Department's 2nd Quarter Investment Report in accordance with the Public Funds Investment Act (PFIA)

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- k) Presentation, Discussion, and Possible Action on a Request for Proposal (RFP) for investment banking firms interested in providing investment banking services as Senior Manager and Co-Manager for one or more proposed single family mortgage revenue bonds starting in fiscal year 2014
- l) Presentation and Discussion of the

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- m) Presentation, Discussion, and Possible Action on Approval of the FFY 2013 Low Income Home Energy Assistance Program (LIHEAP) State Plan Amendment
- n) Presentation, Discussion, and Possible Action on Approval of the Draft FFY 2014 Low Income Home Energy Assistance Program (LIHEAP) State Plan, to be published in the *Texas Register* for Public Comment
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- p) Presentation, Discussion, and Possible Action to ratify amendments made to Neighborhood Stabilization Contracts in order to meet extended deadlines established by HUD

OFFICE OF COLONIA INITIATIVES:

- q) Presentation, Discussion, and Possible Action on Colonia Self Help Center Program Award to El Paso County through Community Development Block Grant (CDBG) Funding

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- r) Presentation, Discussion, and Possible Action to approve a Housing Tax Credit Application Amendment
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- t) Presentation and Discussion on the Department Snapshot tool for the Housing Trust Fund and Colonia Self Help Center programs

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PROCEEDINGS

MR. OXER: Good morning, everyone. We'll start as we do I'd like to welcome everybody to the May 9, 2013, meeting of the Texas Department of Housing and Community Affairs governing board.

We'll start by certifying the quorum. Ms. Bingham is not here today.

MR. OXER: Mr. Gann.

MR. GANN: Here.

MR. OXER: Mr. Keig.

MR. KEIG: Here.

MR. OXER: Professor McWatters.

MR. McWATTERS: Here.

MR. OXER: Dr. Muñoz is absent. And I am here. We have four, we have got a quorum so we can do business. So I would recall that a majority of the quorum constitutes legal action or certifies action. So let's begin by saluting the flags.

Tim, lead us.

(Pledge of Allegiance.)

MR. OXER: Okay. All right. I think most of you noticed that Dr. Munoz and Ms. Bingham are not here. Ms. Bingham is suffering from an accident she had, managed to break a heel and ankle. So we're having to -- I asked her how the other guy was too, so. We expect her back next month, we hope being mobile. Dr. Munoz has some personal issues associated with his family and is in California today.

So with that any announcements, Mr. E.D.?

MR. IRVINE: No, sir.

MR. OXER: Okay. Let's get to the consent agenda. There are items on the consent agenda. Does any member wish to poll a meeting or poll an item from the consent agenda?

(No response.)

MR. OXER: Any other comments from staff?

(No response.)

MR. OXER: Okay. Want to try your motion?

MR. KEIG: Move to approve the consent agenda.

MR. OXER: Motion by Mr. Keig to approve the consent agenda.

MR. GANN: Second.

MR. OXER: Second by Mr. Gann. Any discussion? Any comments?

(No response.)

MR. OXER: Okay. All in favor of approval of the consent agenda?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous. Thank you. We should hope that the rest of this meeting goes that smoothly. Right?

Okay. Report items. Any details here, since we have those?

MR. IRVINE: Those are accepted.

MR. OXER: I know they were accepted but were there any questions or anything that we needed to? All right. Let's get right to it.

Cameron, looks like you're up first.

Jean, he's sending you to take the first set of bullets. Is that what it means?

MS. LATSHA: Yes. Jean Latsha, Housing Tax Credit Program Manager. So Item 2A, this is the same item that was on your agenda month, the community revitalization plans. This month there are eight plans on your list, all for which staff is recommending denial of preclearance. I don't want to repeat my entire presentation from last month. But as a refresher, this year's QAP allows the Board to accept a community revitalization plan as eligible for points on an application even though that plan may not have met every single aspect of the rules, which lays out in great detail what these plans should look like.

Because of the substantive review that was necessary in order to evaluate these plans, we allowed applicants to meet with a panel to discuss how they thought their plan should be considered eligible. That panel was made up of five or six staff members from different divisions, including Multifamily Finance, Legal, Executive, HOME, and the Housing Resource Center.

All but one of these recommendations as well as the ones in April were the result of unanimous votes by that panel after meeting with the applicants. It was more difficult to reach consensus on one of the plans, the

one from Aubrey, because there was a dissenting opinion.

So I bring up all of this again partly in response to some comments that were made at the end of April's Board meeting. There was a claim that subjectivity is slipping into our review process, and my response is that we had the same concern when it came to the scoring item, that that is exactly why we had a panel review these plans so that the opinions of just one or even two staff members would not cloud or dominate the evaluation of these plans.

The fact is that these reviews are subjective. There are not hard and fast standard measurements for things like adverse environmental conditions or accessibility to public facilities. Is a sand pit an adverse environmental condition? How about a wastewater treatment plant? Does living in an attendance zone of a good school count as access to that school or should we only consider it accessible if it is within walking distance along sidewalks?

These are the types of questions the panel asks when reviewing these plans. And the fact that the answers to these questions were discussed amongst a diverse group of folks and not simply answered by one person was our attempt to address or mitigate the potential subjectivity of these evaluations.

In addition, there was a claim that applicants were surprised by staff expectations during these reviews. But our expectations were written into the QAP. Staff expected to see that plans taken as a whole could be reasonably expected to revitalize a neighborhood. Staff also expected, and

this was written in the QAP as well, that the plans were not broader economic development efforts.

Community revitalization is distinguishable from economic development. What is difficult about making that distinction between a revitalization plan and economic development plan is the fact that it may require not just reviewing the plan but reviewing the target area of the plan. Perhaps this is where some of the applicants were frustrated in staff's review, since they submitted plans with target areas and assumed that would be enough.

But again the QAP specifically called for staff to review the neighborhoods along with the plans themselves. And when trying to make this distinction, the first question one might ask is what is being revitalized. It is asking this question which has prompted staff in this review to, yes, look for blighted structures or lack of employment opportunities or any other evidence that the target area was formerly vital and is now in need of some influx of public funds in order to return to that previously vital state.

On the other hand, economic development can and will typically occur with or without some commitment from the local government as often characterized by brand new construction by private developers on previously undeveloped or underdeveloped land.

While the preclearance process does allow for the community revitalization plans to be eligible without addressing all of the specific factors that staff might expect to see in these plans, it does not call for us to completely discount the overarching concept of a revitalization.

I would also suggest that the preclearance provision does not allow us to discount the process by which these plans are developed and adopted. The QAP very clearly states that in order to be eligible for points that the plan must have been duly adopted by the appropriate municipality in a process that allows for public comment.

Again while these plans may lack certain very specific aspects that were laid out in the QAP and still be found eligible, staff does not believe that the absence of this process of adopting the plans should be readily accepted or waived as a requirement.

Are there any questions before I go on to the actual recommendations?

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Maybe just a comment. This seems like there's at least some distinction that staff is trying to make between the difference between a revitalization plan and a vitalization plan. Some of these weren't developed in the first place, I gather.

MS. LATSHA: Yes, sir. You'll see when we get to a couple of the recommendations that there are plans in place but staff's evaluation of those plans was that they were not revitalization plans. And a large part of that assessment had to do with the target areas themselves.

MR. OXER: And a key component of this is not the magnitude of the effort that was put in by whatever entity that was creating the plan but whether or not the plan made substantive and considerable effort towards

revitalization.

MS. LATSHA: Yes, sir. Yes, sir. And, you know, I think I said this in April and I'll say it again, I think that staff was impressed by some of the planning efforts by these municipalities but we still did not feel that they qualified as revitalization plans with respect to scoring points on these applications.

MR. OXER: Okay. Any other questions?

Professor McWatters?

MR. McWATTERS: And there is a difference, I gather, between economic development and revitalization.

MS. LATSHA: Yes. And I think if you were to look at QAPs, you know, in years past I think those terms have always been distinguished separately.

MR. McWATTERS: Okay. So if someone takes property which has never been developed, it's empty land and develops on it, that seems to me to be more in the nature of a development plan, economic development as opposed to revitalization because it never was vitalized in the first place. Is that consistent --

MS. LATSHA: That was staff's opinion as well.

MR. McWATTERS: Okay. Thank you.

MR. OXER: Mr. Keig?

MR. KEIG: Yes, I just want to comment on that. It seems that this process has taken a whole lot of staff time. And perhaps next time we look at this area and the QAP that we try to put some more objective

standards in there so that it doesn't take as much of staff time. And I am concerned a little bit about the amount of discernment by the State over what is something that I consider to be more of a local control. If the city or the county or whatever, the local entity, got to be deferring to their judgment about what they think a community revitalization plan is.

That doesn't change anything I think about what you're proposing today, but I'm trying to look ahead and trying to make the process maybe streamline a little bit, a little bit more in the future.

MR. OXER: Tim?

MR. IRVINE: If I might comment on that? I absolutely agree. The extent to which the rules can lay out objective criteria is in everybody's best interest, staff's, the communities'. Level playing field. I think that much of what drove us to spend this exorbitant amount of time, however, was the fact that we had a transitional period in here.

We had never before developed such a detailed set of requirements for what would constitute a community revitalization plan. Because of the very compressed timing of the development of QAP and moving into application and awards, it was virtually impossible for a community to have gone through the extensive process of identifying issues, going through public comment, development a plan, you know, bringing it forth in the way that the rule actually contemplates. And we did not want to have a situation where for one full cycle it would simply be off the table that you could do this.

MR. KEIG: And I echo Mr. Irvine's comments. I want to say

thank you for all the time you've spent in doing this. We didn't anticipate this result when we, you know, promulgated the rule that this would be the case. So thanks for all your, you and your staff's hard work on it.

MS. LATSHA: You're welcome. I love my job.

MR. OXER: Right answer. And it makes a good argument for a two-year QAP. Don't you think?

MS. LATSHA: I would agree.

MR. OXER: Okay. I'll spot you that one.

All right. Any other -- are we going to take these all in a block or one at a time?

MS. LATSHA: Well, there are a number of them. There are eight on your agenda but five of them I understand got -- there's not going to be any discussion about staff recommendation unless the Board has specific questions about any of those plans.

MR. OXER: Let's identify which those are first.

MS. LATSHA: Sure. 13113, Reserve at Arcola Senior Living.

MR. OXER: Okay.

MS. LATSHA: 13192, Shaenfield Apartments.

MR. OXER: Okay.

MS. LATSHA: 13196, Emerald Village.

MR. OXER: Okay.

MS. LATSHA: 13263, Sunland Apartments.

MR. OXER: Okay.

MS. LATSHA: And 13281, Sunquest Apartments.

MR. OXER: Okay.

MS. LATSHA: And staff recommends denial of preclearance of all of those plans.

MR. OXER: And from what we know, there's been no request -- for those five there's been no requests for comment and no challenge to your decision. Is that what you're saying?

MS. LATSHA: That's correct.

MR. OXER: Okay. All right.

All right. Motion to consider.

MR. GANN: I'll move for staff recommendation.

MR. OXER: Okay, motion by Mr. Gann to approve staff recommendation for -- say again?

MR. GANN: On those five.

MR. OXER: On the five identified by Ms. Latsha.

MR. KEIG: Second.

MR. OXER: And second by Mr. Keig. Any public comment? There was no public comment. And just as a point of housekeeping here -- let's get this vote over with and then I'll talk about the housekeeping. Okay. No public comment.

Other comments, Jean?

MS. LATSHA: (No audible response.)

MR. OXER: Okay. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It's unanimous. Thank you.

Okay. We've got the three that seem to be attracting some attention here. Those of you who've been here in this room in particular know this is our front row, this is our area for those who wish to speak. If you want to speak on the item as it's coming up, and we'll do these one at a time, start from this side. I'll go from my left across this way so that whoever's up there in the first seat gets to speak first.

So okay. Jean, let's start with 13140.

MS. LATSHA: Yes, sir. All right. 13140, Villas at Justin. So the applicant in this case did submit a plan that was adopted by the municipality. This is one of those cases where staff reviewed the target area of the plan and started to have some concerns about it. Basically staff was unable to determine from the record that the target area actually had the physical characteristics of a neighborhood that would need revitalization.

I actually went and visited this site too, and while there's like a 1970s single-family neighborhood that, you know, some of the homes might need a little paint, there didn't seem to be a prevalence of blighted structures or existing aging structures in the area, which would be an indicator, as we discussed before, of an area that was in need of revitalization.

The applicant also pointed to a creek or a greenbelt area as an environmental factor, but staff felt that this actually was a positive in the area. It kind of lended itself to a park area, which I understand the city actually wants to develop. There are also some newly constructed commercial businesses

along the highway, which really gave the sense that this was just a smaller community that was growing up. Really gave the sense that this was economic development and not revitalization.

And then with this particular plan staff had some concerns because a large part of our scoring criteria is based on the budget of the plan, and a large portion of the budget of this plan was associated with a wastewater treatment plant that was right across the highway that was kind of included in the target area. And this just seemed a little bit opposite of what a revitalization plan would normally want to accomplish.

Normally I think we would see the wastewater treatment plant as the environmental factor that would need to be addressed and cause a need for revitalization. But instead it was the opposite, that the wastewater treatment plant, the installation of it was part of the revitalization effort, which just seemed a little opposite. But and then the applicant pointed out that the plant was across the highway from the rest of the target area but if the city chose to separate that plant, then the appropriateness of the inclusion of the plant in the budget becomes a little tenuous too.

So we had some concerns, first off, that this really was like an economic development and then, secondly, the inclusion of the wastewater treatment plant as part of the revitalization effort seemed a little -- to make the plan a little tenuous as well. But I'll let the applicants comment and we can go from there. Unless you have some questions for me.

MR. OXER: All right. Does any member have a question of Jean?

(No response.)

MR. OXER: Okay. Protocol says we have to have a motion to consider before public comment. The staff recommendation is to deny this.

Is that correct, Jean?

MS. LATSHA: Yes, sir.

THE COURT: Okay.

MR. KEIG: I move that we adopt staff's recommendation.

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

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters.

Okay. Good morning. We have several present that wish to speak, so we'll start from the left right there, so. And when you come up please identify yourself, who you're representing, and make sure that you sign in.

Michelle, we have a sheet up there to sign --

Okay. Sign in on the sign-in sheet so we can make sure that Miss Penny can identify you in the transcript.

MS. STATHATOS: My name is Ashley Stathatos, I'm the City Manager for the City of Justin. And thank you so much for giving us the opportunity to speak. We have engaged some of our representatives, Tan Parker, Senator Jane Nelson, Commissioner Andy Eads just to, you know, get their support. And we have letters from them, and I just wanted to read Senator Jane Nelson's letter for the record, if that's okay. It's short so it

shouldn't take too much time. You know, it's a busy legislative sessions, so that's why we have the letters.

"Dear Mr. Irvine. I am writing this letter in support of the Villas at Justin, a proposed apartment community in the southwest neighborhood of Justin, Texas. As the State Senator for this area I believe the city of Justin would greatly benefit from this mixed income project.

"The southwest neighborhood is being revitalized to better accommodate the need of the Justin community. By offering more housing options, especially to low income residents, the city will be in a better position to implement its 2005 Southwest Neighborhood Revitalization Plan.

"Please do not hesitate to contact me if you have any further questions regarding my support for this development. Very truly yours, Jane Nelson."

And then the Mayor is actually going to speak to our plan and why we feel like it's revitalization and why we chose the southwest neighborhood. Thank you.

MR. OXER: Good. Thanks, Ashley.

Mr. Mayor? Or Madam Mayor then.

MS. BOULWARE: Hi. I'm actually not the mayor. Good morning. Kecia Boulware with AMTEX Multi-Housing representing the applicant. Chairman Oxer and members of the Board, I want to thank you in advance for your careful consideration today of the Southwest Neighborhood Revitalization Plan submitted by the City of Justin.

We have here today with us several representatives from the

City of Justin, including Mayor Scott, who will speak later on the details of the plan. My remarks will offer why AMTEX is proposing the Villas at Justin and some of my concerns about the interpretation of revitalization with respect to approval of plans under the QAP.

First, AMTEX is a developer/builder that is also a long-term owner and operator of affordable housing. We have been developing tax-credit properties since the late 1990s and still have all of our properties in our portfolio today. We look to build in areas that not only have favorable demographic and economic trends but where we can grow to become part of the communities in which we build.

In identifying suitable sites this year, we tailored our search efforts with the guidance provided by the scoring system of the QAP, focusing on high opportunity areas. Further, knowing the Board is charged with satisfying the terms of the ICP judgment, we arrived in Denton County and the City of Justin.

Justin is a small town of just under 2.5 square miles and 3500 people with a general fund budget that affords few administrative staff. This small community is creative and assertive in charting its future. The area around Justin is experiencing an economic boom with the large new GE plant located a mere five minutes away, yet Justin has virtually no affordable rental housing to offer those workers.

The folks in Justin realized that in order to benefit from the regional growth it must revitalize the resources it does have. So without the benefit of urban planning professionals on staff or large sums of money to hire

an outside firm, Justin set forth to identify and meaningfully address the barriers to keep it from flourishing. The result of their work is summarized in the subject revitalization plan.

And while to some the factors identified in their plan may not include private structures and may not seem as dire or dramatic as those identified in other large urban cities whose revitalization plans you have approved, Justin's factors are no less crucial nor are they somehow less compliant with the intention of the QAP. With a city the size of Justin, every square foot counts and every factor is significant.

I applaud the City of Justin for putting the needs of their existing community at the forefront of their plan. Justin did not focus solely on economic development, which it could have done by creating financial incentives for new businesses. Instead its elected officials moved forward with a comprehensive revitalization plan that would benefit its existing community as well as future residents.

That tells me as a future long-term investor and neighbor in Justin that I will not be overlooked for the next new deal but that the community will also be committed to the long-term sustainability of the Villas at Justin. As the QAP regulations acknowledge, the definition of revitalization is subjective by nature, and I appreciate the Board refraining from relying on preconceived notions of what revitalization should look like and remaining open to considering the judgment of the citizens of Justin. Thank you.

MR. OXER: Thanks, Kecia.

MS. BOULWARE: Now I'll pass it off to Mayor Scott.

MR. OXER: Okay. Are there any questions from the Board?

(No response.)

MR. OXER: Good, thanks.

Mr. Scott?

MR. SCOTT: Good morning, ladies and gentlemen.

MR. OXER: Indeed.

MR. SCOTT: My name is Greg Scott, and I am the mayor of a great place to live, Justin, Texas. Our commitment to this revitalization is major for our small city. I do have one of my councilman with me today as well. We drove up at four o'clock this morning so that we could be here to maybe educate you a little better and maybe educate your staff a little better, not that they haven't done a good job, and I know they have a hard job to do, as you do.

But I really appreciate the time and efforts that they have put in and as we have put in. Our citizens through their various public meetings, council meetings, all kinds of different things, meetings with the financial people and those kinds of things in order to make this project come to fruition and why do we need to do this, not just the AMCAL thing but the whole revitalization of that whole area.

As Kecia pointed out, we are only 2.19 square miles. If you would permit me, as you look at this map this is the City of Justin. Here's our revitalization area. As you can see, one can't -- this is where we chose to focus to start because that is the place that's the easiest to start with to get this revitalization going.

As you see here, there's a creek right here that they talk about, the parklands and et cetera, and we are developing that. It's all floodplain. It can't be, if you will, revitalized other than put more grass, more trees, et cetera. We've also included our sewage treatment plant over here, and I wish my mayor pro tem was actually here this morning, he's an engineer. His work is never done either.

MR. OXER: Good on him.

MR. SCOTT: This sewer plant's been there for well over 30 years, and we revitalized it in the last two years. That's exactly what we did, we spent an inordinate amount of money to be able to revitalize this sewer plant so that these homes that are down here in this part right here can have sewer. Because our infrastructure is 50 years old.

We're a very old town, a very small town. We're in the process of growing and becoming a much bigger city. Not that we can get too far out of -- this is our ETJ that we -- that would be economic development. But if we don't revitalize this area right here, which we've already spent an exorbitant amount of money here as well already doing streets, infrastructure, sewer, water, those kinds of things in order to make this happen so that the rest of this -- we have the ability to bring this property back to life. Because otherwise it's just going to sit there vacant forever and ever.

I realize we're talking about, in some instances everybody was talking about economic development and those kind of things. It's kind of there but it's more if we don't revitalize this area it's -- we won't be able to revitalize the rest of the town this way. This is our first step. This is our

second step. This is actually older, what you see OT is Old Town. That's actually going to be even a bigger project for revitalization.

But we have to start somewhere. And as Kecia pointed out there's a GE plant right down here that's four miles. They build all the new locomotives for the BNSF. And we don't have any housing for those people to live in other than our 70s houses that we have and the -- we have one little set of multifamily up here that's 40 years old. And we're going to have to work on that area too, but that's not for us to do today.

I did want to talk a little bit about the letter that we sent to Mr. Irvine. I was hoping to maybe get some time with him and his staff to be able to maybe talk about some of the things that was addressed in the letter or that they talked about.

MR. OXER: Yeah, I would point out to the folks that are here in the room that all this information was posted in the book, it's been available, so we're making it available. This is round two, she's our ring gal.

MR. SCOTT: Yeah. But as I said earlier, we're not very big, it's 3400 acres, but we've done a lot of this with a lot of the citizens' input that was requested that we needed to have per the rules and stuff. And I want to make sure that because the schools are not far from where the creek runs through there on that floodplain, that just made us feel like that was the better area to try to revitalize before we go and try to do something else that we -- we have to try our waters first before we can go and just do the whole thing.

I did want to address a couple things that they had in the letter that I think were -- they weren't able to discern the specific problems in the

targeted area which gave rise to the need for the concerted plan for revitalization.

Our blight would not be as big as, say, a big city like Dallas because we're not that big. We're very old, and our stuff is very much in disrepair. I can tell you that, I went out and did a water main here about a month ago, had to work -- I mean that's part of what we do in a small city. And we really need to make sure that we spend our time and efforts trying to get the city back on course because the growth is coming our way.

MR. OXER: And just so that you know, there's a clock running.

MR. SCOTT: Okay.

MR. OXER: There's no laser coming down and going to hit you. Okay? Okay, we calmed the Koreans down so we're not expecting --

MR. SCOTT: Yeah, I haven't heard much from them either.

MR. OXER: -- we're not expecting the missiles this week, so. I'll leave you with the fact that we're going to have some continuing discussion on this by a number of people. We're running a clock on everybody. Right now it's set at five minutes. You'll get a little signal on the dais there or on the podium that will alert you when you get to a minute --

MR. SCOTT: Okay.

MR. OXER: -- a minute left. So that's for courtesy for those -- I'm willing to indulge a certain amount of excess during the time but there comes a point when I'd like you to sort of sum it up, if you would.

MR. SCOTT: I understand. Real quickly, I guess the amount of monies that we have spent in our revitalization already is 18 percent of our

current budget of 4.6 million. That does include our sewer plant. And I would like to address the sewer plant as that it has been there for 30 years and we did -- we revitalized it with the help of TCEQ.

And we realized that the plant that was there was not going to be able to sustain us, and we either had to do -- redo our plant and make it part of that whole area or we were going to have to build a \$16 million sewer line to Roanoke, and that wasn't going to happen either. And so there was no funding to do that, so that was our plan. And I don't think they realized, it looks new.

MR. OXER: Faced by a broad buffet of untasty opportunities, you had to take the least --

MR. SCOTT: The least --

MR. OXER: -- the least bitter one of the choices.

MR. SCOTT: Right, the lesser of two evils, and I'm very proud of our sewer plant. Our people have done a very, very good job and it looks new, and I'm proud of that. And it should serve -- it should allow us to be vital for at least another 25 years, that's our goal, with proper maintenance and those kinds of things. But I think the -- I guess the biggest part of that is the budgets for the parks and the other things, we're trying to do the quality of life for people, and this revitalization will help get that -- help motivate that even more. That's not your purview but that's where we are.

I think this housing would enhance and support our efforts in that southwest neighborhood, as you saw. That's a big area but it looks like there's a lot of open ground there but there's really not. With floodplains, you

know, you can't build on that and do all that. But we would like for you to really reconsider staff's recommendation. And I'd be happy to meet with anyone. I've not met with any of the staff or anything, so I couldn't tell you what they saw or what they didn't. None of my staff did. I have a staff of four, so.

If there's anything else that we can do to help you understand better and educate you a little more about Justin, Texas, we'd be more than happy to do that.

MR. OXER: Great. Thanks for your comments, Mr. Mayor.

MR. SCOTT: Thank you.

MR. OXER: Is there any questions from the Board?

(No response.)

MR. OXER: Good.

MS. RICKENBACKER: I'm last, I promise.

Donna Rickenbacker with Marquis. Good morning to you all.

MR. OXER: Good morning.

MS. RICKENBACKER: The Justin Southwest Neighborhood Revitalization Plan is the first plan being considered by the Board that was not recommended on a finding that the plan spoke more to economic development than to revitalization.

There's no debate that the plan was in place prior to the January 8 deadline, that it was adopted in a manner that allowed for public input, and that it identified several factors that Justin elected to address in the targeted area of their city, the factors that this Department expected to see

identified as existing in an area that would cause Justin to adopt the plan in the first place.

As described in staff's write-up, staff is distinguishing plans under their scoring category based on whether they viewed a need for the revitalization or the factors identified were more in line with economic development initiatives.

There's nothing in the scoring category that disqualifies a plan because it includes elements of both revitalization and economic growth. The rules even assume some overlap since lack of local businesses providing employment opportunities is one of the material factors the Department wants to see being addressed by a plan.

The scoring categories for community revitalization plans are new this year, as has already been spoken to. And I think we've struggled as an agency with what revitalization means and how to evaluate plans based on the constraints of an undefined term. This statement is not meant in any way, Tan, to be critical of you and your group. I have tremendous respect for your team, you know that.

I know that the panel tried to be fair in their assessment of each plan. We're not professional planners. We're local elected officials and stakeholders that know their city and have spent a great deal of time and focus on their unique problems and, with respect to the City of Justin, invested a significant portion of their budget to do so.

I think one of the difficulties with revitalization this year in how it is defined is due to the fact that the QAP has three revitalization plan scoring

categories with separate standards that must be met in order to qualify for the associated points, all of which recognize revitalization as the overall objective but identifies a range of thought as to what that is and what the applicant needs to provide to evidence the revitalization.

And two of the three revitalization scoring categories the Department relied solely on substantiating documentation from the local government as proof of the qualification of the plan. Only in the third revitalization scoring category that applies to developments located in the urban area of Region 3, which includes Justin, is the Department relying on elements of subjectivity and opinion in determining the merits of these plans.

I truly believe that staff has done their best, but the process for assessing plans and the scoring category has evolved and it's been transformative. Consequently, this Board has approved several plans by consent under the same revitalization scoring category as to Justin's plan that were not examined in the same manner as Justin and whose plans were not evaluated based on the same standards for determining revitalization.

Some of these plans I had the privilege of working on, so I know about them intimately. In one case a plan that covers multiple neighborhoods where there was no site visit by staff to determine what was happening in these neighborhoods, whether a city was actively improving streets, utilities, sidewalks, lighting, what I consider to be the bones of a neighborhood and what is more in line with a revitalization program.

In another case a plan was approved that covers a target area half the size of the entire city of Justin where nothing currently exists. The

plan targets an area that is largely vacant and undeveloped. In this instance, there is a well thought-out redevelopment plan in the vision by that community to create a mixed use district that includes housing. Under the standards that were applied to Justin, I believe that plan would have been considered a broader economic development initiative.

The one element of consistency in the plans recommended and approved by this Board to-date is we've let the local governments define their revitalization based on the unique needs and programs that they desire to address in a meaningful and targeted way. We believe that the Justin plan has met the requirements of the scoring category. First, it identified several factors the city is seeking to address in a material way. Second, Mayor Scott has shown that the plan taken as a whole, that is a requirement under the scoring category, can reasonably be expected to revitalize their southwest neighborhood and address in a substantive and meaningful way the material factors identified. I believe that spending in excess of \$6 million in funds is a meaningful investment for a city the size of Justin.

This scoring category does not require plans that evidence significant blight or that the neighborhood itself be in a state of severe disrepair, which is what staff has determined was lacking in Justin's focused area. As a matter of fact, there's no requirement in the rules to have the presence of blight at all. Blight is one of many factors that may be considered by a city.

Staff also determined that since there is undeveloped land and newly constructed commercial business in the target area, that the plan should

be considered a broader economic development initiative. Nothing in the rules implies that the revitalization identified is negated if economic development is simultaneously taking place in the same neighborhood.

I also want to point out that costly roadway, infrastructure, park and neighborhood improvements, if taken on by a city in the focused area, are not expenditures that one would argue stimulate the construction of new business. These types of improvements benefit stabilization and growth of residential neighborhoods.

The Board has a rare opportunity to make the final determinations in this scoring category. I hope that you will apply some consistency in your decision making by letting Justin define their revitalization, especially if their plan complies with the QAP rules. Finally, what's been stated before, the City of Justin wants and supports this project.

If we are going to apply some subjectivity to the scoring items and it will determine whether or not the project gets done in Justin, then I want you all to keep in mind in your decision making obviously another very important objective this year, to locate quality family housing and high opportunity areas pursuant to the court-ordered remedial plans.

The Villas is a family development being proposed in an HLA in Denton County, one of the five remedial counties. We respectfully request that the Board grant preclearance of this plan. Thank you.

MR. OXER: Any questions from the Board?

(No response.)

MR. OXER: Okay. There seem to be none. Any other

comments? Anything to address, Jean?

MS. LATSHA: I could address a few of those issues that they brought up if you'd like me to.

MR. OXER: Yes.

MS. LATSHA: Sure. And there were a few. I will just briefly talk about the scoring item and the three different ways that you could get points and why this is so different from the other ones. The other two ways to get points would either have to have CDBG DR funds in your deal. So that's pretty straightforward, you either have them or you don't. So a letter saying you have them is enough.

The other way to get points was if you were in a rural area and you did have things going on that were more akin to economic development. We recognize that a lot of rural areas aren't necessarily going to have a need for revitalization but we wanted to kind of give those applicants a chance at these points.

And so if you had some infrastructure improvements going on, then you could prove up that you had those infrastructure improvements going on via a letter from the city and you can get points that way. The plans that we required here in urban areas are, yes, expanded from what we would require from a rural applicant who simply needs to prove up a few infrastructure projects. This is more substantive.

I would like to talk a little bit more about some of the issues that were just raised. First off, if we did have, let's say, simultaneously economic development and community revitalization in this area, then, you know, one

thing that was mentioned by the mayor was a 40-year-old multifamily development. Now, I think that if part of a rehabilitation of that development might have been part of this plan, then perhaps staff could have recognized a revitalization effort.

But it was just that that actually is not part of this plan, which brings me back to thinking that this really is more about economic development. He said flat out that you cannot revitalize a greenbelt area. I agree. But you can turn it into a park which to me again sounds like economic development.

And I want to go back to the factors that were supposedly addressed in this plan. Blight was not one of them, so we can just take that entire factor off of the table. So this plan indicated that they were going to address four factors.

And the way that staff would see this working is that a city would identify factors that are important to them in developing these plans. They would then assess, basically assess those factors throughout their city and decide that this part of the city over here had a problem when we were talking about these four factors. And so we're going to focus our efforts over here.

So these are the four factors that were assessed in the Justin plan. Proximity and performance of area schools. Justin's -- I think the entire -- I don't know if the entire district is recognized or exemplary but all of the schools that these kids would attend in this target area are exemplary or recognized. So I don't see that as a problem in this area. It's actually an asset

to the area. So I don't see where that factor would cause a need for revitalization.

Another is the proximity and creation of local business. But we've heard two or three times now that there actually is a lot of job opportunity for the folks that live here. So again this doesn't feel to me like a factor that would cause a need for revitalization but instead it's an asset to the community. And I think that's what we just kept feeling and seeing when we continued to get into this plan and to get into the target area.

The sewer plant, I'll address that as well. Although it may have been revitalized because it was 30 years old, that sewer plant serves the entire city. So I don't know how we could take that revitalization of that sewer plant and apply it only to this target area if that upgrade served the entire city. So once again we don't feel that it really needed to be a part of this revitalization plan.

I really think that kind of addressed all of the comments that were there unless there's anything that --

MR. OXER: No.

MS. LATSHA: Anything more.

MR. OXER: Professor McWatters?

MR. McWATTERS: This may be too simplistic, but I'm hearing HOA. Okay? But I'm also hearing revitalization. And is it internally consistent to have an HOA that's in need of revitalization? I mean from my view, without having thought about this perhaps as much as necessary, it seems like the terms almost by definition would be mutually exclusive. There may be some

overlap but not a lot. Can you help me out with that?

MS. LATSHA: I would say it exactly as you just said it, that the -- and the QAP did not make those two items mutually exclusive so that you might have cases where there is some overlap. But it is true that it is -- it would be difficult to reconcile a site that is considered high opportunity and then still in need of revitalization.

MR. McWATTERS: Okay. Thank you.

MR. IRVINE: I would say that it is certainly theoretically possible to have both. You know, the HOA constituent components, high income and low poverty and high quality schools, and it is not inconceivable to me that within those allowable components you could have emerging issues that were troubling, like gang activity or very old infrastructure that had fallen into such disrepair that it could not serve a discrete area.

And I think that if you had those specific kind of factors, it is conceivably possible that you could have an HOA that had conditions that merited a concerted revitalization effort. I would point out, however, that all of this really has its genesis in Section 42(m) of the Internal Revenue Code, where, at least as staff perceived it, Congress was expressing a preference for deals in qualified census tracts, which would be inconsistent with HOAs, where those deals were contributing to, not constituting but contributing to a concerted plan of revitalization.

MR. McWATTERS: But, Tim, do you think that when it says concerted revitalization plans, does that mean the revitalization is systemic to the area or will one or two problems in one or two areas, is that enough to kick

it over into a revitalization?

MR. IRVINE: I believe personally, and it's just a personal opinion, that one or two significant factors could indicate a need for revitalization. For example, if in my neighborhood all of a sudden gang activity began to proliferate and that changed the way that I lived there, yeah, I would want my city to have a plan to address that.

MR. OXER: Mr. Keig?

MR. KEIG: Yeah. I'd like to look at their plan. They list four planning factors. The first one is the schools. What we put in the QAP under 6(a), the six or seven items, I don't think those were supposed to be if somebody's strong on those then it supports a community revitalization plan, it's if there's a weakness there. So I don't consider the first bullet point on schools to be an issue here.

The second one is lack of parks and recreation facilities. That is listed in the QAP. And they have mentioned that as being an issue to try to upgrade that, I don't know what you'd call that, preserve area, whatever. The next item is proximity and creation of local businesses and employment opportunities. That is one in the QAP. However, the balance of that bullet point in their plan is that there are employment opportunities, not the opposite. And then the last bullet point is transportation has been inadequate, and that does meet one of our factors.

So we have one or two out of these factors that might be in support of a community revitalization plan. So the question is are lack of parks and recreational facilities and lack of transportation, is that going to be enough

to rise to the level for this to be a community revitalization effort.

MR. OXER: Any other comments from the Board?

(No response.)

MS. RICKENBACKER: Can I just speak to a couple of items?

MR. OXER: If you're going to speak, Donna, you've got to come to the mike.

MS. RICKENBACKER: A couple of items that I want to address. With respect to the parks and recreational plan, that they did engage a consultant in 2005-2006 to create a parks plan. That parks plan was and the implementation of the first phase of that parks plan was \$1.2 million. So I want to make sure you understand it was more than just putting a little trail system through a low-lying area, if you will, in the southwest area of their city.

What they chose to do was target this area first to put a significant investment of park and recreational improvements, in part adjacent to their school that's over in this southwest area, the one and only school that the City of Justin has.

And what they did was -- which, you know, I'm just really proud of them, I wish bigger cities would take a look at what Justin has done. What they elected to do was integrate some of these older neighborhoods with some of the newer neighborhoods through this park plan. They installed pocket parks adjacent to some of these newer subdivisions and some of the older ones that are -- you know, they're clearly looking to revitalize and upgrade just -- that are in disrepair. They've been ignored.

I mean, you know, this may not be the same level of disrepair

that you'd see in bigger cities but it's a neighborhood of several subdivisions that's just flat been ignored for a while. So they elected to concentrate on bringing those up to a healthier standard and something that you wanted to see take place through, in part, this parks plan.

And \$1.2 million was of improvements that put in, once again, a recreational center adjacent to the school and tied these neighborhoods together through an extensive trail system and pocket parks, which right now that low-lying area kind of bifurcates the two sides of that southwest neighborhood. And what they did was integrate and pull it together through that parks plan.

So I want you all to know that was a fairly significant undertaking on the part of the city, and it was more involved than just putting in a couple trails through, you know, some wetlands area.

With respect to the factors identified, you know, I want to -- first of all, this is the city's plan and maybe it -- and it didn't have a professional planner working on it. But I do want you all to recognize that they did have a factor in there that covered housing and all the work that they've done with respect to housing in this neighborhood and the associated cost.

And this sewer treatment plant, it just kind of keeps coming back to the surface, really positively impacts this area. Because the catalyst for a good part of those improvements were the work, the ongoing work that they were putting into the southwest area of their city. So clearly it should be part of this revitalization plan. It shouldn't be excluded from it. Obviously when you're upgrading and you're spending a considerable amount of your

budget to upgrade a sewer treatment plant to primarily service the work that they're doing in the southwest area, you're going to prize it so it has capacity to handle growth in that city. You understand that, Chairman Oxer, more than anybody.

Anyway, those are my comments. If you have any questions?

MR. OXER: Thanks, Donna.

Professor McWatters, any questions, do you have a question?

MR. McWATTERS: I do have a question.

MS. RICKENBACKER: Yes, sir.

MR. McWATTERS: How does the two items you described, the sewer plant and the trail, how does that differ from economic development and why is that revitalization?

MS. RICKENBACKER: Well, trail systems and park improvements and recreational facility, that they, once again, located adjacent to the school, don't really stimulate economic or what I think staff is referring to economic development, which is businesses and retail to come into an area of the city. Those improved neighborhoods and tying neighborhoods together, they don't really stimulate in my mind -- I'm obviously not a planner, but in my mind that doesn't stimulate commercial and retail components to come into a city.

Those come in as a result of a parks plan that's been implemented that includes, you know, bringing back neighborhoods, integrating neighborhoods together. And so, you know, it's the outcome of the work that they've put into this area that really is, in my mind, stimulating the

economic activity that's taking place over there.

MR. OXER: Thanks, Donna.

Mr. Mayor, I have a question.

MR. SCOTT: Yes, sir.

MR. OXER: You have to come to the mike when I say that because -- not for me, for the record.

MR. SCOTT: For the record. Absolutely.

MR. OXER: So GE's down the street?

MR. SCOTT: Yes, sir.

MR. OXER: What's the average income of the people that work at GE, people from Justin that work at GE?

MR. SCOTT: I'm going to say the average income of those GE employees is somewhere around between 40 and \$50,000 a year.

MR. OXER: Okay.

MR. SCOTT: They're building locomotives, brand new plant.

MR. OXER: Heavy iron.

MR. SCOTT: Heavy iron, that's right. They've been brought some from Erie, Pennsylvania. They're moving a lot of that here. Word is -- and --

MR. OXER: Another one that the Governor brought home.
Right?

MR. SCOTT: Yep, another one, yeah, absolutely.

MR. OXER: I'm liking it.

MR. SCOTT: Actually the key to this is that's actually in the

City of Fort Worth. It's adjacent to Texas Motor Speedway, which I figure most people know about, NASCAR and those kind of things. But it's just outside of our reach, so we wish we could have had that in our -- we wouldn't be here today. We'd be doing something different. But that's, yeah, that GE plant is a big, big thing. And right now they're only running one shift, 350 workers. So they hope to get up to three shifts, and that's where we are today.

MR. OXER: Well, if Warren Buffet gets his way hauling oil down from the Barnett Shale, we're going to have plenty of railroads we're going to need.

MR. SCOTT: Absolutely. And I still believe this, and just a little levity, but in the Monopoly game he who owns all the railroads wins.

MR. OXER: I'm on your side on that one. As much as you can stay out of jail too.

MR. SCOTT: Oh, yeah.

MR. OXER: All right. Are there any other comments?

(No response.)

MR. OXER: No other comments from the public. Jean's made the point the staff recommends denial of the --

Come back up and restate it, Jean, just if you would, please.

MS. LATSHA: Sure. The staff recommends denial of preclearance for number 13140, Villas of Justin.

MR. OXER: Okay. All right. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Preclearance is denied. Thank you for your comments.

Okay. Next one, Jean.

MS. LATSHA: Sure. All right. Next on our list is 13152.

I've been trying to figure out how you guys want to say this for three months now. Is it Kirin or Kiron?

VOICE: Kiron.

VOICE: Kiron.

MS. LATSHA: I just heard two different ones.

MR. OXER: I did.

MS. LATSHA: Kiron.

MR. OXER: All right, who's driving this truck over here?

MS. LATSHA: KIRON at Aubrey. And if I got that right. This is a similar, if you will, situation to what you just heard in staff's opinion. I will say that --

MR. OXER: Hold on just a second, Jean. This is a little housekeeping item we're going to have to address here, because apparently there's other exposition that we're encouraging up here. We have most of this in our book. Okay? So I'm going to tell each one of the folks that comes up on each one of these items that anything you're showing us we already have. So what you've got to do is show this to everybody else so that they see.

MALE VOICE: Okay.

MS. LATSHA: And I'm not sure that you have those photos in

your books.

MALE VOICE: Well, we had provided for the entire room copies of these photographs.

MR. OXER: As long as they have it. And it's a, you know --

MALE VOICE: Well, there's a stack out there.

MR. OXER: I know. It's a public obligation, we have to give -- anything that the Board's looking at the public has to be able to see. So I just want to point that out. Let the record reflect that those -- that somebody from this item has said that these are available.

If they're available, if there are copies out -- are there copies out there?

MALE VOICE: Yes.

MR. OXER: Guys, we got copies out there? Okay.

If anybody is interested in seeing these, what's up here that's evidence for the Board, then go out and get yourself a copy. But, you know, rather than make this an art gallery up here, we just want to make sure that --

Cameron, you do so well at that.

He's our fashion hawk today too, you know, so.

Jean, you finally got him in his place. He's doing good work there.

MS. LATSHA: Good, good.

MR. OXER: Okay.

MS. LATSHA: All right. Let me find my place here.

MR. OXER: All right. Back to the wall here, hit the rock some

more.

MS. LATSHA: All right. So this is going to be, I imagine, pretty similar to what you just heard. Like I said in my introduction, we did struggle with this recommendation. We were impressed by Aubrey's planning efforts, but I think there are two things that in the end outweighed some of what we saw when -- by the presentation of the applicant.

Number one is a lot of what Cameron's showing you here and a lot of what we saw when we met with the applicant was not part of the plan. And as I said in my introduction also, you know, an important aspect of this is public comment. And we felt that we could only really evaluate the plan that was presented to the public that was then adopted by the City.

I think that there were some planning efforts going on that were not included in the adopted plan that may have convinced us, but at the end of the day we really felt like we could only assess what was actually approved. And this is a similar situation in that this plan identified the factors that they were going to assess, and they were just about copied and pasted by the QAP.

It said we list these factors that we're going to assess and then, you know, pick our target area based on whether or not that target area has a problem when talking about those factors. But then there was not really an assessment in the plan. So it was difficult for us to see how it was that this part of the city had these factors in place.

So again we visited the site, we met with the applicant, and discovered a lot of the same things. You know, this is a high opportunity area. These kids are all going to go to really schools. A lot of the land in the target

area is undeveloped or underdeveloped. There were a few blighted homes but nothing that would suggest a prevalence of aging existing structures or anything like that.

So we came to that same kind of conclusion where this feels like a smaller city growing up and there's some good planning efforts going on but this is really truly economic development. And again I'll let them speak to that.

MR. OXER: Okay. We have, protocol says we have to have a motion to consider.

MR. KEIG: Move to approve staff's recommendation.

MR. OXER: Okay. Motion to approve staff recommendation to deny preclearance of the --

MR. GANN: Second.

MR. OXER: -- by Mr. Keig. Second by Mr. Gann. Okay. Now we'll have some public comment, so.

Good morning.

MS. KIRKLAND: Good morning. My name is Chantal Kirkland, I'm the Director of Planning for the City of Aubrey. The City of Aubrey has actually been working on this area for over a decade now. In 2003 the first major investment was undertaken and progressively over that time period we continued to encourage our partners in the public setting, being the school district or our development partners that own property or are looking to build in the City of Aubrey, to focus on this area.

In addition, we've established a community development

corporation, which I'm sure you all are familiar with, to focus our funding that we could afford in this specific area. And over that time since 2003 we've had 27 opportunities or more -- it's actually been more than that but those are the official ones -- for the public to come and talk to us about this area. And those were both at community development corporation meetings and city council meetings where we were moving forward with infrastructure. Because that was the primary concern ten years ago was, gosh, those folks weren't even on water and sewer, how do we get them there.

And we kind of reached a point where we just finished the last little linkage that we could get in without doing any condemnation or anything that would upset the people who actually live there. And we're kind of to the point now where we're moving, we're branching outward and going deeper into this area. And at that time -- very handy -- they hired me in October.

And in October I also got this phone call saying, wow, here's this opportunity for this apartment complex, and they said where do you think we should go, we're looking at the Aubrey area. You know, it's kind of nice up there. And my response immediately was we got to get you in this area where we've already been investing for ten years. We've already been tearing buildings down, rehabilitating buildings, doing things to primarily just make this area a little bit better. Because for a very good long time this area was ignored. A lot of attention went to the older downtown area, and this part was just flat ignored.

So by encouraging them to go here, we were able to come open up some possibilities for us as well. Kind of created a little bit of

excitement in the community. So between the time that we became aware that it would be handy to have a plan in place instead of just going off on our own and doing our own thing and not worrying about writing it down, we had five public hearings to open it up and let the public come in and talk to us.

Specifically we laid out a plan that married what we thought the needs of the QAP were with what Aubrey had already been doing and had already planned to do. This was not something new and this was not something that had not been contemplated for a very long time.

Since 2003 we've actually removed 12 structures on this site. The site where the actual KIRON at Aubrey is proposed, the apartment complex, had four buildings that were removed and there will be another that will also be removed. In addition to that, there used to be very large businesses in this 360-acre zone area, revitalization area. Of that 361 acres, 121 acres were these two businesses, and they were sand pits. And from an aerial they look great.

I think that's on one of our drawings here, on this first one. Down here, this whole southeast quadrant, 30 percent of the planning area are these sand pits. And you can see in some of our other drawings that you have, I think the last two, you can see that these are holes in the ground. They're not developable at this time. They weren't developable 30 years ago when they were still operating as a business, and certainly 20 years ago when they stopped pulling sand out of the ground they were not developable.

The city's plan has always been and will continue to be to turn those into useable areas by turning the one that has filled itself with water,

unfortunately, into a park to bring that community together. In addition, the plan will be to fill in the one to the northern part, and we're already working on that today with the person who owns that property.

In addition, there's a neighborhood here. It's not readily visible, it's hidden by a bunch of trees. Even if you drive along the highway it's hidden. There's really not much you can see. But those homes are dilapidated. The average value of a home in Aubrey is about 100,000. The average value in the community reinvestment area is 51,000. There's one home in there that's valued for 7,000. I'm not really sure how that's even possible.

But at the end of the day these homes are in serious disrepair, they're dilapidated. Some of them still, despite the City's best efforts, are not on city water and sewer. They still have their own facilities. And at the end of the day there's a lot of just straight up blight. It's hard to see on this drawing here. There's a structure there that has no walls. It's just steel beams up in the air. Not really sure what's going on there and not really sure how to, you know, fix that without some community investment. Because obviously the property owner has lost interest.

So at the end of the day we truly believe that this is a community reinvestment plan, revitalization plan. Revitalization means to bring new vigor to an area. And that's what we're doing, it's what we've been doing. And with 30 percent of the property looking from the air like it's developable, I'm sure this is a -- you know, I'm sure if I was standing on the other side I'd say no. But once you find out that it's a 20-foot-deep hole, once

you find out that most of these homes are over 30 years old and the way that they were built, they were built in the wake of a tornado that came through and wiped out a lot of homes and they were built hastily and probably not following a lot of the same building codes that were in even in place at the time, we really struggle with that.

Our community's been focusing on this, and you can see in our plan that we're going to continue to focus on this. So --

MR. OXER: Chantal, I'm going to have to ask you to sum it up.

MS. KIRKLAND: Okay. Sorry.

MR. OXER: It's okay.

MS. KIRKLAND: I guess that's really it. Thank you.

MR. OXER: Fair enough.

Any questions from the Board?

MR. GANN: I'd like to ask a question. I'd like to know the size of --

MR. OXER: Mr. Gann.

MR. GANN: -- Aubrey. What's the size of Aubrey?

MS. KIRKLAND: Twenty-five hundred population. However, we -- we're kind of unique. The city of Aubrey sits right on top of the city of Krugerville, which has 1500 in population, who sits right on top of the city of Crossroads, just 700. So we --

MR. OXER: But you're talking about a major metroplex here. Right?

MS. KIRKLAND: Yeah, I know. Right?

MR. GANN: You're a separate entity from those.

MS. KIRKLAND: Yes, we are.

MR. GANN: So what you're trying to tell us though to me it sounded like that you all have had a revitalization plan because you've redone about 10 or 12 hours or whatever. Is this neighborhood also included in that area? Targeted area?

MS. KIRKLAND: Oh, absolutely. This is the targeted area.

MR. GANN: Okay. That's what I'm --

MS. KIRKLAND: Yeah, what we've been doing --

MR. GANN: -- the point that I'm --

MS. KIRKLAND: -- for the past ten years is this plan and executing this plan. We just didn't have it on paper.

MR. GANN: Okay. And I think that's because you're 2500 in size. Right?

MS. KIRKLAND: Yeah. And we didn't, again we didn't have a professional planner until October or whenever I was hired. And this is what I do, so I whipped up a plan.

MR. GANN: Thank you.

No more questions.

MR. OXER: There you go. Okay.

Professor McWatters, you have a question?

MR. McWATTERS: Yes. When I looked at the aerial and I looked at the southeast quadrant and the southwest quadrant, in fact a substantial portion of this, it struck me as being raw land and that there were a

couple of blighted areas, and that the photographs were probably picked to enhance that. But what you're telling me is that areas in the southeast quadrant and southwest quadrant were at one time used as businesses.

MS. KIRKLAND: They are.

MR. McWATTERS: Okay, removing sand. Okay? And then the people closed those businesses, went away, and that these two quadrants could not be developed as they are now.

MS. KIRKLAND: Correct.

MR. McWATTERS: Because there's holes in the ground, holes that fill with water. Okay?

MS. KIRKLAND: Yes.

MR. McWATTERS: Of those two quadrants, how much of those constitute sand pits?

MS. KIRKLAND: Thirty percent of the overall area. And of --

MR. McWATTERS: What do you mean by overall area? Do you mean the entire area in yellow?

MS. KIRKLAND: Yes. So the entire planning area, 30 percent is this sand pit up here and this sand pit down here.

MR. McWATTERS: Okay.

MS. KIRKLAND: And so generally there is -- it's very small, it's very hard to see, there are businesses in here in this area. There's a manufacturer for cabinets, there's a grocery store, some other things. The homes are primarily --

MR. OXER: There's some folks out in west Texas in Carrizo

Springs that are looking to buy sand right now.

MS. KIRKLAND: Well, you know, a lot of people were looking to buy sand up in Aubrey apparently a long time ago.

MR. OXER: Sorry, I'm trying to add a little levity to this. I know it's difficult but, yeah, frack sand's gotten pretty popular recently.

MS. KIRKLAND: Yeah. Yeah. And this was a common business practice in kind of north of Lake Lewisville in that vicinity for a long time.

MR. OXER: Yeah, no, back in times that sand was used for building roadbeds, and it's called a borrow pit. As they said up there, a bear pit. Okay.

MR. McWATTERS: Okay, so it doesn't sound like there's demand for the sand today at least from this area.

MR. OXER: No.

MR. McWATTERS: Okay. And so in the area it's not like it's some farmer's land who decides to develop it and go off and put a plat down and a street and sewer and electric.

MS. KIRKLAND: No.

MR. McWATTERS: There would be additional work required.

MS. KIRKLAND: Yes. And as a matter of fact, we specifically -- you'll notice our plan is kind of wonky shaped, and we are missing like almost a whole -- if you were to do a perfect square almost, we're missing -- we specifically excluded farmland. So we were under the impression that this was revitalization, and that meant there had to be

something there to revitalize. And so there had been businesses here. There are businesses in this corridor. The only really empty property I would think is this heavily treed area, but it too has its own challenges.

MR. McWATTERS: Okay. Of the non-sand businesses, are any of those closed now? In these pictures they look like there's some derelict buildings. And I can't tell if those are sand buildings or those are other buildings.

MS. KIRKLAND: We did not take any pictures of the closed business buildings. As a matter of fact, we had one building that at one time was closed and someone moved into it and is selling concrete out of it now.

MR. McWATTERS: Okay. But are there any businesses now that are simply closed and the buildings are there?

MS. KIRKLAND: No. We have torn down the ones that closed and --

MR. McWATTERS: Okay.

MS. KIRKLAND: -- did not -- were not reopenable.

MR. OXER: So what you're effectively saying is the blight you have been in the process of addressing.

MS. KIRKLAND: Yes.

MR. McWATTERS: Okay. Thank you.

MR. OXER: Mr. Gann, was there another question?

MR. GANN: No. She's satisfied me.

MR. OXER: Mr. Keig?

MR. KEIG: Yeah. What environmental conditions do you think

need to be addressed, or is that not really an issue?

MS. KIRKLAND: I'm going to be very honest. From my perspective, the sand pits are an environmental issue. There's a certain amount of --

MR. OXER: Promiscuous disposal that occurs in them.

MS. KIRKLAND: Yes. And you can see, the last picture he held up was of the sand pit and you could see there was an old 18-wheeler cab that had just been left whenever they closed the business. And there's some other debris that's very similar to that, some construction-type debris that was just left and it's got to be cleaned up now.

MR. KEIG: And as far as transportation, you put in the plan that it was inadequate. Did you say there's --

MS. KIRKLAND: There are no roads that actually go into the property, and that's actually one of the challenges that I personally have. I don't like driving my car off of the road. There are --

MR. KEIG: Depends on what kind of car you're driving probably.

MS. KIRKLAND: I have a Jeep.

MR. KEIG: So I'd be too, so.

MS. KIRKLAND: My husband gets upset with me, but --

MR. KEIG: We should talk later.

MS. KIRKLAND: Exactly. There are private access easements, but they're private and they're not public. So even if somebody did want to, say, develop that -- throw this piece out, they could not because

there's no transportation to it. And it's not just the development aspect either. The homes that you see, this is a road to that home. That's not their driveway, that's the road that leads to it. That's -- I believe that's --

MR. KEIG: And is there a plan to address these transportation issues?

MS. KIRKLAND: Yes. Yeah, the last page of our plan actually is the major thoroughfare --

MR. OXER: Plan.

MS. KIRKLAND: -- plan. And the funding for that is the third-to-last page.

MR. KEIG: Okay. Okay. And then how about the public facilities?

MS. KIRKLAND: I'm sorry?

MR. KEIG: That's listed as a factor that needs improvement --

MS. KIRKLAND: Yes.

MR. KEIG: -- plan.

MS. KIRKLAND: This side of the -- well, this side of all town but this community doesn't have any public facilities that are readily available. The library and the community center are on the other side of 377, which has no crossing. As a matter of fact, it didn't even have a light within a relatively reasonable walking distance until I think we installed that in November.

MR. KEIG: But all I see in the plan is that "the City will make a coordinated effort as stated in the CRP to bring these facilities to the CRP and thereby further enhance the community."

MS. KIRKLAND: Oh, I'm sorry.

MR. KEIG: Your best efforts to do that?

MS. KIRKLAND: The more specific that I think of --

MR. KEIG: Okay.

MS. KIRKLAND: -- that we're planning on is in the project -- this chart, this third from the last, and there's a pedestrian connection across Highway 377. There is a trail system, lake, park, playground recreation facility, and those kind of things that we would provide those city services, those public facilities in this community in locations specified on the plan.

MR. KEIG: Okay. That's all the questions I have right now.

MR. OXER: Okay. Thank you.

MR. KEIG: If I can be recognized. At this time --

MR. OXER: Yes, sir.

MR. KEIG: -- I'm going to withdraw my second at this time to the motion.

MR. OXER: Okay. Mr. Keig withdraws his second to the motion by Mr. Gann.

MR. GANN: I'd like to withdraw my motion.

MR. OXER: Well, now we're talking. All right. Now we have to have a, change has to -- continue to have to have a motion to consider. So given the current state of affairs, do I hear a motion to consider?

MR. KEIG: I need a question on a point of order is if I move to not follow staff's recommendation, is there a certain standard I have to follow to make that motion?

MR. IRVINE: I believe it would be appropriate for you to state on the record what your supporting rationale would be for whatever recommendation you propose.

MR. OXER: Mr. Keig.

MR. KEIG: No --

MS. LATSHA: I only want to and I probably made this point earlier, but I think this is why, like I said, we struggled with this. I think that what they presented here was compelling to staff as well.

MR. OXER: So what you're saying was this is on the border --

MS. LATSHA: But our --

MR. OXER: -- and you knocked it over on this one.

MS. LATSHA: Well, and our issue really was what was presented in the plan itself. And it was difficult for us to see all of this detail in the plan.

MR. OXER: Okay. And I got --

MS. LATSHA: But --

MR. OXER: Hold on. I've got a question. All right.

Chan?

MS. KIRKLAND: It's okay, you can call me Chan.

MR. OXER: Madam Planner, did you have an opportunity to sit down with staff?

MS. KIRKLAND: Sort of.

MR. OXER: Now, wait a minute, that's not the same story I'm getting from the other side of the fence.

MS. KIRKLAND: Yes, they provided the opportunity for us, and I was unable to attend but I was on the phone.

MR. OXER: Okay. But there was an opportunity to have this discussion. So just was it you and several people on our side, on your side, Jean, that were talking to her on the phone?

MS. LATSHA: Both. We had a panel of -- I don't remember, I think somebody had to leave that panel early, so it's five or six of us. And then they had three or four folks come in.

MR. OXER: Okay. So we had people here. Okay. Did these folks bring this information also?

MS. LATSHA: Yes. Which, like I said, I --

MR. OXER: Without the art gallery we have here today, is that what --

MS. LATSHA: Yes.

MR. OXER: Okay. All right. Given that -- hold your place, just sit tight for a second -- Mr. Keig, would you now like to state your point and then make your motion?

MR. KEIG: Yeah. My point is that in looking over the factors in the community revitalization plan that they have submitted, I think there's sufficient factors as set out in the QAP and evidence that supports those factors to say this is a community revitalization plan.

MR. OXER: Particularly given the fact that the staff states they find the information presented today compelling in support of that.

Is that correct?

MS. LATSHA: Yes, sir.

MR. OXER: Okay.

MS. LATSHA: And like I said too, this was not a unanimous vote on this recommendation either.

MR. OXER: Okay. So this one was on the bubble. We were struggling on this. Okay. Given that.

MR. KEIG: And I recognize that it did look like it was on the bubble type of project. So based upon those considerations, I move to approve the preapplication.

MR. OXER: Okay. Motion by Mr. Keig to approve the preapplication -- and actually it's to approve the --

MS. LATSHA: The preclearance.

MR. OXER: -- the preclearance --

MR. KEIG: Approve the preclearance.

MR. OXER: -- of the community revitalization plan in opposition to staff's recommendation in the Board book but with a current comment by Jean to support that motion. Did I get it all in there?

MR. GANN: Yeah. And I'll second that.

MR. OXER: And a second by Mr. Gann. Okay. Now we had an opportunity for public comment but I'm going to make a recommendation, Cynthia. Okay? Based on the direction this is going, you can pick whether you want to run the risk or not. Okay? So is there any other public comment we'd like to have?

(No response.)

MR. OXER: Good. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. Good job. Okay.

MS. LATSHA: All right. Next on the list is --

MR. OXER: Jean, we're getting a request in from the pit crew over here, we need to make a pit stop as it turns out. So we're going to make a -- owing to the fact that we are at bare quorum today, we're going to have to adjourn or recess for briefly. Let's be back in -- let's see, what time is it over there? Let's be back in our seats at a quarter of the hour.

(Short recess taken.)

MR. OXER: All right, welcome back. We had a little issue we had to decide up here.

So, Jean, let's go for the next one.

MS. LATSHA: All right. The next one is number 13234, Wynnewood Family Housing. Am I now?

MR. OXER: Now it's on. Say it again.

MS. LATSHA: All right. Next on the list, 13234, Wynnewood Family Housing. All right. So this applicant actually did not submit a plan. Instead what was submitted was a resolution from the City of Dallas authorizing a number of actions that related to support for a particular development.

This I spoke to earlier too. I think what's really at issue here is

the process. There's not really a plan here. And then on top of that you might see that the applicant might present a redevelopment plan for this specific housing development along with a shopping center and kind of tried to convey that that is the plan that was submitted for points. Although not only was that not submitted but even if we were to consider it, it wasn't -- this is not a plan that was approved in this process that those other cities went through.

This was more of a developer going to city council and saying, hey, we held a bunch of meetings with the neighborhoods and they told us what they wanted us to do with this project. Do you think that's a good idea? Yes. Great. We pass a resolution supporting that project with some funding.

So I think this Board can appreciate the difference between that process and actually having a plan that is out there for people to comment on -- you guys take this kind of comment all the time -- and then having to approve it. I kind of liken what happened here as this Board giving \$100,000 to a consultant to write the QAP because they had some meetings with a development community. And clearly that's different than us presenting a QAP to you, taking a bunch of public comment on it, and then having to decide to adopt that QAP.

And so I think that's our issue here. There's really not a plan. There is some -- several resolutions with some clear support for redevelopment of this area in south Dallas but there's really not a community revitalization plan in place.

MR. OXER: So the question, at least from what I can tell, my perspective here, and that is or is not that is there a plan or not, but does the

plan constitute something that's of sufficient substance in terms of its impact going forward and the effort that it suggests would be made in the future.

MS. LATSHA: That as well, yes.

MR. OXER: Right. Okay. Well, keep working, we'll work on it.

MS. LATSHA: All right. I think I'll let them speak to their plan.

MR. OXER: Okay. And --

MS. LATSHA: Or --

MR. OXER: No?

MS. LATSHA: -- you need some more clarification there?

MR. OXER: Yeah, we need -- I'm going to see if there's any questions from the Board, and then we're going to -- then we got a little further colloquy, we've got a motion to consider. Just one of those little housekeeping items. Okay. And for the record state staff recommendation.

MS. LATSHA: Staff recommends denial of preclearance.

MR. OXER: Okay. All right. Are there any questions from the Board?

(No response.)

MR. OXER: Then we'll need a motion to consider. As the Chair I can't make that, I can only second one if it comes up. So you guys are going to have to say something here eventually.

MR. KEIG: Well, I withdrew my last motion.

MR. OXER: I know. Geez, we won't let you make another one. Right?

MR. GANN: I'll make the motion.

MR. OXER: Okay. Motion by Mr. Gann to approve staff recommendation to deny the preclearance of a community revitalization plan assessment.

MR. McWATTERS: Second.

MR. OXER: And second by Professor McWatters. Is there any other comment or questions for Jean?

(No response.)

MR. OXER: Okay. Thanks, Jean. Sit tight. I'm sure you'll be back.

Okay. As a quick reminder, don't forget to sign in.

MR. JOHN GREENAN: I did already, Mr. Chairman.

MR. OXER: Okay. Just making sure we check that box.

MR. JOHN GREENAN: Thank you. Mr. Chairman, members of the Board, good morning. My name is John Greenan, I'm part of the applicant's partnership and I'm Executive Director of Central Dallas Community Development Corporation. I'd like to try to put in context the planning process here.

This redevelopment effort really began back in 2009 when the Bank of America invited me to join them in working on the redevelopment of the Parks at Wynnewood. That's a 60-year-old apartment complex, functionally obsolete, being maintained as best it could but losing money, clearly not a sustainable situation, which is why this application is in the at-risk pool.

In 2010 the TDHCA Board awarded us a forward commitment

of credits to do the first part of the redevelopment. We are now in construction and closing on completing a 140-unit redevelopment and having torn down 108 of the existing 408 units that are the Parks of Wynnewood. The application that we have here is a continuation of this project.

In May of 2011 a new council person was elected to represent the district in which this is located. And Councilman Griggs came to meet with us and look what we were doing and essentially said you're not doing enough. It's good that you're putting up new buildings to replace something that is old and is having a negative impact on the community. I want a redevelopment plan that looks at this site, what it can be, and also at the adjacent shopping center.

Now, I understand if you say -- it is about 130 acres in this and you say the vast bulk of it is just two properties. But in fact those two properties constitute well over 100 acres of land, which is a very sizeable entry in the area in Oak Cliff in which this is located.

The shopping center is the historic Wynnewood Shopping Center, which was the pride and joy of Oak Cliff in 1950, and since that time it's rapidly declined. The quality of the retail has gone down. I mean you get replacement of -- payday lenders replaced department stores, and it's just become a situation where it no longer is a regional shopping center. It attracts customers from some of the poorer areas south of here because of its proximity. But it has clearly fallen on hard times.

So after a lot of discussion with Councilman Griggs and the City, we put together a agreement which called for funding \$125,000 to the

City for the City to select someone to develop a revitalization plan for this area and then to carry out our redevelopment in synch with what was suggested there and we hope also the shopping center will follow in the same path. Of course it's private ownership, but that ownership's been involved in these discussions.

These properties are key not just to their own revitalization, which is important, but also to the revitalization of surrounding areas. Immediately north of this area in north Oak Cliff the area has become much more vibrant and is improving rapidly. These two large properties are sort of the plug in the drain. You get there and then the revitalization stops and the neighborhoods rapidly decline as you go south of these properties.

The planning process, I know it's an issue here, but I think if you look at it correctly what is set forth in the QAP is a minimum planning process. A plan promulgated, opportunity to public comment, and then review and approval of the plan. I think a better process, and I think any urban planner will tell you this, is you start first not with a top-down plan but with community discussion. You find out from the community what they need, what they want, what needs to go in the plan, what's important to them.

And that's really the process that's set forth here. And that's a long process. I mean it takes a lot of work to set these meetings, to promote them, to get attendance. Then afterwards to understand the meaning of that and come back again to the community with the proper plan. We of course began this in 2011, well before there was any guidance from the QAP, and that's the course that's been followed here.

It's being done by professional planners from the Dallas CityDesign Studio who are expert in this area. And I think it's important that they believe it will revitalize the area. They're the professionals doing the work, and we've been guided very closely in the way we've designed this current application by their work.

The public comment included long charrettes, because I attended both of the current ones in July 2012, well before the QAP was out, and then on November 3rd, 2012 was the second one where the plan came back to the community so that they could assess what it was that the community wanted. Again that was before the QAP was promulgated.

Specific factors considered what the community thought was important. And I think it's reasonable to assume if the community thought it was important, it would have been brought up in all of the extensive public meetings. If you look at the list, there's been 35 of them. But the charrettes especially were extensive and handled by outside professionals.

And so I think that you can know that what was important to the community has been considered, and in putting this plan together it's not a one cohesive unified document but sometimes a plan can be tentative, it can have part of what you need to do in it, it doesn't, I don't think, need to be a complete and comprehensive document, and the flexibility is just as important as the comprehensiveness. Thank you.

MR. OXER: Okay. Any questions from the Board?

MR. KEIG: Yep.

MR. OXER: Mr. Keig.

MR. KEIG: By way of background, I grew up in Oak Cliff and I'm very familiar with this area. And it definitely is in need of community revitalization. But I have some questions about whether it's going to meet the requirements to substantially be an equivalent under the QAP. How do you address the criticism that there's not a budget for the plan?

MR. GREENAN: Mr. Keig, there -- what I would say is there's not a unified budget document. There is a budget, there's money that's been specifically committed to the plan. And I think those are two different things, as I'm sure you know. The President submits a budget or supposed to every year. It doesn't mean he can spend any of that money until it's authorized. In this case the authorization has been given, and I think that's more important than the fact that there isn't one comprehensive document.

MR. KEIG: And how much are the funds that are being looked at to be invested?

MR. GREENAN: 5.2 million directly. There's been 800,000 in round terms, and 400,000 from the City and 4 million committed from a bond issue for this project.

MR. KEIG: And there was, let's see, there was an \$850,000, what was that, that was like for --

MR. GREENAN: That was --

MR. KEIG: -- forgiveness of a loan or something like that?

MR. GREENAN: Yes, sir, that was a loan forgiveness.

MR. KEIG: Okay. How were the charrettes publicized, advertised?

MR. GREENAN: Well, they were published in city documents, but more than that, all of the neighborhood organizations were contacted and, to the extent available, their membership lists. The attendances were in the 50 to 80 range probably in each case, and they were pretty broad. We had people from the apartments themselves, people from three or four neighborhood associations. It was a large group.

MR. KEIG: Staff has been concerned that it doesn't encompass a large enough area. I mean you mentioned the hundred acres, but they're concerned that it doesn't include some of the neighborhoods. One of my first houses that I grew up in would have been in one of those neighborhood just south of there. How would you address that concern of staff?

MR. GREENAN: What I would say is unfortunately the large apartment complex, the Parks at Wynnewood, which is in very declining shape, and the shopping center -- you know, the shopping center has -- the stores have gone downhill but more than that, by current standards it's over-parked, it's a wasteland walking along the road. They really are the large impairment to revitalization of the surrounding areas. I think the idea is if we fix them, then the areas around them will improve naturally.

MR. KEIG: Okay. That's all the questions I have right now.

MR. OXER: Okay. So you said that the -- you had charrettes and you've engaged public comment in the creating or at least engaging their interest, commented on what should be into a plan. But that -- and that, at least in my mind, that isn't the way you build up a plan. But then you assess

one, build a plan, and then they have an opportunity to comment on the one, the plan that's actually produced as opposed to comments on how to produce a plan.

MR. GREENAN: I understand. I understand the distinction. What I'd say is, first, given the time period in which we could act, it wouldn't have been possible in Dallas to fully comply with what was in the QAP. We think we've substantively complied. And we have at this point a partial plan. We have community comment, we have recommendations on how the Parks at Wynnewood should be redeveloped in order to revitalize the neighborhood. And they are working with the landowner of the shopping complex to develop a similar plan.

And these things, if they're going to get done, really they have to be flexible, they have to be a work in progress. And we think we have most of the elements at least of a plan. It's not a final plan in the sense that it's going to be enacted, but that's really not possible when you're working in a partnership that's a public/ private situation.

MR. OXER: And I understand the fluid nature of the -- and particularly in this year since this is a transition point where we're at a -- the ship was turning. Okay? So we're getting this thing lined up and there are -- it was going to be hard. Even for the ones that got there it was going to be hard. Okay? So I guess the point I want to make is that whatever the outcome on this or any of the others of these, that this is not going to -- we're trying to the sort of structure of the QAP and the build on that so it's easier in the future. So I would remind everybody whose consideration is for the ones that were

declined, that even those, that doesn't say the project can't be considered next year when there's been more time to execute on the plan, so. As far as I'm concerned, it argues to a two-year QAP.

MR. GREENAN: Certainly if we had known, you know, on a two-year QAP, we could have structured the charrettes to specifically address it. But, you know, the -- I think all the substance is here. If we had known in July of last year what the QAP was going to say in November, we would have put those lists of things on the list and it could have been checked off. In fact, I don't think that really impacts the substance of what was done. People in the community --

MR. OXER: You're in a bigger ship, it takes longer time to turn.

MR. GREENAN: Yes, sir. It takes a long time to turn.

MR. OXER: It's like turning an aircraft carrier, it never happens in a hurry. There's always a lot of thrashing around at the rear end of it too, you know.

MR. GREENAN: That's right.

MR. OXER: So a lot of foam and turbulence, in keeping with our Navy metaphor with the -- okay.

Any other questions from the Board?

(No response.)

MR. OXER: Do you have anything else to add there, John?

MR. GREENAN: Let me check my list briefly, if you don't mind.

MR. OXER: Fair enough.

MR. GREENAN: I was just going to say that one thing that has

been talked about is there is a need for revitalization here. The apartments themselves are 60 years old, and something's got to be done with them because they can't stay good. I think that's not at question.

MR. OXER: Good. All right. Thank you for your comments.

MR. GREENAN: Thank you.

MR. OXER: Barry? Good morning, sir.

MR. PALMER: Good morning. Barry Palmer with Coats Rose speaking on behalf of the Wynnewood revitalization plan. I think John gave you a good flavor of what we're talking about here. This is not a high opportunity area. This is not an area with a lot of vacant land. This is not an economic development project. What this is is an inner-city revitalization effort supported by the City.

And let me just read one sentence from the mayor's letter that the mayor sent to the Department about this just for the record. He wrote: "This is to confirm that by Resolution 123460 the City of Dallas supports a currently evolving plan for the revitalization of the Parks at Wynnewood, the Wynnewood Shopping Center, and a portion of the Beckley Wood neighborhood, all together about 130 acres, for the purpose of providing affordable residential opportunities and drawing local businesses into the area." One of the criticisms from staff was that the area is too small, that it's just the apartment community and the adjoining shopping center.

MR. OXER: Well, essentially there's a site redevelopment plan as opposed to a community redevelopment plan. Is that --

MR. PALMER: Right.

MR. OXER: More or less.

MR. PALMER: But this -- yeah. But again this is, you know, 130 acres in the center of one of our major cities. There's nothing in the QAP that says how big your revitalization area has to be or how small. But this is a substantial amount of land. If you've looked at the photos that were in the package that shows the shopping center and the apartment complex, it goes on forever.

The Wynnewood Apartments are 60-year-old barracks-style construction. If you drive by them you would think that it was public housing. They're in desperate need of something to be done. The shopping center is in desperate need of revitalization. The mayor and the council has supported a revitalization plan.

And although staff says we don't have a budget, what we do have is a commitment for funds. And there's nothing in the QAP that says you have to have a specific budget. It talks in terms of having either a budget or evidencing economic value. And here we've got a commitment, the City has already put in 850,000. They've committed another 425,000 to the redevelopment on the housing side, and they've committed \$4 million of bond funds for infrastructure in this area.

So we've got a commitment of funds, we've got a plan that is still a work in process. But we have to remember that the QAP that we're working under with its current language on revitalization plans was signed by the Governor on December 1st, 2012, and preapplications together with your revitalization plans were due on January 8th of 2013. So you had 39 days in

which to comply with all the technical requirements of the QAP.

And the Board and staff recognized that was going to be impossible for this 2013 session, and so you put in language in the QAP that addresses this, that says that the Board can exercise its independent judgment to determine whether a revitalization plan substantively and meaningfully satisfies a revitalization effort.

You know, staff in their write-up acknowledged that a revitalization effort was under way and that the City had committed sufficient or substantial resources to it. But their objections were again on, you know, a budget, complying with all the technical requirements of how you adopt a plan, and the size of the area. So again the QAP doesn't say 130 acres is too small. If you were to go out and walk this area you would think it's a pretty large area to be revitalized.

Certainly, Mr. Keig, you're familiar with the area. Like I said, it goes on forever, the shopping center and the apartments.

And there's a need for revitalization. There's a commitment from the City for the dollars for revitalization. All that's lacking is complying with some of the technical requirements in the QAP, which we acknowledged going in. When you adopted the 2013 QAP you essentially told the development community that, you know, there's going to be a little bit of leniency this year because of the short timeframe, that the Board is going to look at whether you've substantively shown there's a revitalization effort here underway and, if so, that it's in your purview to grant the revitalization points. And we would ask that you do that.

MR. OXER: Thanks, Barry.

Any questions from the Board?

(No response.)

MR. OXER: Okay. Thanks, Barry. Stay close until we get this.

Jean, you want to come up? Do you want to address any of those?

MS. LATSHA: Yes. First, I just want to go back a little bit too and just point out that not all of these applications necessarily need these points in order to remain competitive. Just because that was brought up in an earlier comment.

But I'd like to go back to again the fact that this really isn't a plan here. And one point of fact there is that I have several letters from different cities, including one from the City of Dallas, certifying that they have duly adopted a community revitalization plan. I do not have one of those letters for the Wynnewood revitalization plan, and that is because, as I said, there is not a plan in place.

Now, the letter that Barry quoted from does say that "we support a revitalization plan" that basically is in place but it's the developer's plan. It's not the City's plan, it never was adopted by the City. Not one of the many resolutions that they have presented to us with respect to this development says that a community revitalization plan has been adopted.

All of those resolutions speak to funding for the development. But you can certainly have funding for development that a city supports without having a community revitalization plan in place. And that is what's

happening here.

MR. OXER: Tim?

MR. IRVINE: I just wanted also to inject that, you know, we pick words and sometimes we don't pick the precise word. And I agree with Barry that nowhere in the QAP does it say your plan must cover so many acres or whatever. And it's my sense that when we talk about the plan being, you know, too small, whatever, the area being too small, what we're really talking about is it's a bit homogenous. I mean it's a shopping center and an apartment complex. And I believe Barry said that the shopping center is working to develop a similar plan. So what that leaves you with is there's nothing but a plan ostensibly for the apartments.

MR. OXER: John, come on.

MR. GREENAN: I'd just like to address the one point about whose plan this is. We wrote a check for \$125,000 to the City. They were entitled to select the planner, which they did, and they selected the Dallas CityDesign Studio, which is a city agency, and they're the ones developing the plan. They're certainly independent, they're professional, and not someone under our control. So it's not the developer's plan, it's the City's plan. And in fact if it was the developer's plan --

MR. OXER: I have a question.

MR. GREENAN: Yes, sir.

MR. OXER: You said it's the CityDesign Studio. They're independent but they're part of the city? Straighten that back out.

MR. GREENAN: They are funded by --

MR. OXER: Are they on contract to the City or are they part of the City?

MR. GREENAN: Both.

MR. OXER: Hmm.

MR. GREENAN: I'm sorry, it's complicated. They have a contract --

MR. OXER: We get that up here occasionally.

MR. GREENAN: -- with the Building Community Workshop to hire Grant Brown to run it, so that part is by contract. And the leader of it is not a city employee. Larry Beasley was the former city planner for the City of Vancouver and now consults with Dubai as their principal planner, is their principal consultant. And then below those two leaders there are a number of people who are city employees they brought in. I guess the point I would say is they're certainly out of our control.

MR. OXER: And that's fair. I'm trying to make the connect between this and the City to counter or to see if there is a counter to the point that this is not a city plan.

MR. GREENAN: It's being written by the City, by an agency of the city.

MR. OXER: Just like, if you're familiar with like the BDG here at the University of Texas, it's part of the state but it's independent?

MR. GREENAN: Yeah, I think you could make that comparison.

MR. OXER: Okay.

MS. DEANE: Mr. Chair, if I can just make one comment.

MR. OXER: Please.

MS. DEANE: Just from a legal standpoint, I think there's going to be or I think there is a baseline requirement that there be a plan adopted by the city. So there needs to be an identification in the record of exactly -- assuming the Board would consider this, there needs to be an identification in the record as to exactly what that is, what is the revitalization plan adopted by the municipality.

MR. OXER: Yeah. And where I was going with earlier on this in terms of developing the plan, granted City of Dallas is a big outfit, you know, it's going to take them a while to turn. Thirty-nine days is way too short to try to make all this work that -- unless it was ongoing to start with. And so as this comes along you've got a lot of input to engage in that, which would take a while of course, and then you have to do that.

And what we're looking for, as Barbara points out, is that once it's been done, once it's involved, once it's there, city council or a unit of the government has to say here's what we agree is the plan, and then everybody can comment on that. And so what we're trying to do is get over that hump.

MR. GREENAN: I understand. But this is a particular case where one part of the City has employed another part of the City to draw the plan for them. I think you've got to think that at that point it is the City's plan.

MR. OXER: Agreed. And it's the City's plan in terms of -- when -- a comparison that I would make is TDHCA staff will make recommendations and come up here, but that's not what TDHCA says until we

say that's what TDHCA says.

MR. GREENAN: Yes, sir.

MR. OXER: That's where I'm headed with this. Because yes it's a city plan, yes the city counted for it, yes the contractor before he had it done, but until the city council says this is our plan it's still -- it's a draft.

MR. GREENAN: I understand.

MR. OXER: Is that clear?

MR. GREENAN: Yes.

MR. OXER: Is that clear, counselor?

MR. GREENAN: And I think if it were next year when the provision allowing the Board to use more discretion I guess will have expired, it would be a different question. But this year when you have a plan that was set in motion well before the QAP, when the City is doing it the way they believe it ought to be done with their own professionals, I think that it's a case where you can say it may not be the whole plan as it comes out final, but there's clearly some sort of plan.

When we went and met with the CityDesign Studio before submitting this application they had developed a recommendation and told us, look, you need to build this housing here. Of course we can't control what you do, but that's what we recommend. And so that the input of the City and the fact that they were determining the planning -- and if you would look at where we have situated this.

It's in the far southeast quadrant of this property, it was not the obvious or immediate choice. We thought it would go in the northeast

quadrant, which is much cheaper to develop, but they said we don't want two low income properties facing one another, we'd like to have them dispersed, we think that lead to better overall development of the area. So in fact as far as where we're locating this and how we're building it, it was very much determined by the City's plan.

MR. OXER: Okay. So did you have a comment, counselor?

MS. DEANE: I just wanted to mention one more thing in terms of the, you know, what is the plan of the municipality or the city. And I would just point out one of the letters in fact that's included in your Board book where they talk about that the individuals writing the letter, just like the design space, whatever that entity might be, as it says in the letter, "We do not have the authority to bind this City in any way. Authority to bind the City is reserved with the city council, and that body is entitled in its discretion." So here again I think we have to have a record that reflects what is the plan of the City.

MR. OXER: Yeah, and that's what we're -- that's the point we're talking about.

So welcome back, Barry.

MR. PALMER: Yes.

MR. OXER: You understand that's the point we're trying to get to.

MR. PALMER: Right. And in your Board package there should be the city council resolution that approved the initial \$850,000 of commitment of funding. And attached to that was a letter agreement which constituted the plan between -- you know, with the City for the initial 48 acres. And then as

things evolved the City wanted the shopping center included in the planning process. And I think that's why, you know, and the mayor in his letter when he acknowledges the plan acknowledges it's an evolving plan and the plan is being revised to include the shopping center in there as well.

MR. OXER: Okay. Are there any questions for Barry?

MR. McWATTERS: I have one.

MR. OXER: Okay. Professor McWatters.

MR. McWATTERS: It seems like we have a plan to have a plan, but our council is telling us in order to comply with the QAP we need a plan itself. So do we have a plan itself?

MR. PALMER: Yes. We have a plan itself that is still -- while we have a plan it's acknowledged by all of the parties that we're expanding the plan and still fine tuning the plan, still taking additional input from the public, adding the shopping center into the plan, and perhaps the mayor mentions one of the adjoining neighborhoods being added into the plan.

So we have a plan, it's still evolving, but we have commitment for funding of the plan, we have, you know, the mayor acknowledging we have a plan that's still evolving. We have shown in your materials the record that there have been 35 meetings with the community over the last three years over this -- the plan for the Wynnewood area.

This is not something that the developer saw the last draft of the QAP and went out and drafted a plan and went to the City and asked them to adopt it. This is something that we've been working with the city now for four years. But the exact wording of the revitalization points wasn't known

until December.

So maybe the steps, all the steps that we followed haven't been exactly the ones that are in the QAP now, but certainly there is, you know, a substantive revitalization effort going on here as acknowledged by the mayor, as committed to by the resolutions adopted by city council and the funding provided by the City, and a plan that's in place but still will eventually be expanded to include more area.

MR. McWATTERS: Let me ask this. I assume that before the City of Dallas says they have a plan there are certain municipal governance, corporate governance equivalents that need to be adhered to. In a corporation it would be maybe board action or senior management action actually signed off, approved, we have a plan, not a plan, part of a plan.

Have all of those municipal governance requirements been met where the City of Dallas would stand up if they were here and say yeah, there's a plan, it's been fully adopted? We need to do nothing else.

MR. PALMER: Right. Well, I think, you know, they have adopted the city council resolution that provided the initial \$850,000 for the revitalization effort and attached to that -- they didn't do that without conditions. They had a number of conditions and formulated the initial plan for the 48 acres as part of their approval for the funding for the first phase.

And so that's what enables the mayor. The mayor wouldn't write a letter saying we've got a revitalization plan if they didn't have one. Now, he qualifies it to say the plan's still evolving, it's going to change. But we've got a plan, we've got funding. And in his letter he goes on to confirm the

funding, the 850,000, the 425,000, the 4 million. I mean he wouldn't do that if there wasn't a plan that had received council approval.

MR. McWATTERS: Well, it's a plan for a plan. Let me ask Jean. I mean, Jean, is there a plan?

MR. OXER: Here we are, Barry.

MS. LATSHA: Yes, the short answer is I'm not even sure if there's a plan for a plan. I have to admit --

MR. McWATTERS: Okay.

MS. LATSHA: -- I don't know where the applicant could point to me, could say pages X through Y are the community revitalization plan in their submission. It's simply not there. There is a resolution approving some funding for a very large project that does look like revitalization. But there's simply no adoption of a community revitalization plan. But as I said before, the City of Dallas actually did in time for January 8th adopt some community revitalization plans and they did not include this development.

MR. GANN: Mr. Chairman, I call for the question.

MR. KEIG: Can I ask one last question?

MR. GANN: Yes, that's fine with me.

MR. KEIG: Okay.

MR. OXER: Mr. Keig.

MR. KEIG: I'm looking at the letter dated January 7, 2013, from Jerry Killingsworth with the City. And he references Resolution number 121589, which is not the resolution that we have at the beginning of the packet. And he says "adopted by the Dallas City Council on June 13, which

established a revitalization plan." Where is that resolution?

MS. LATSHA: I actually pulled it up, and it's really just very similar to the other resolution that was -- that were included. It is all really about funding for the development.

MR. KEIG: So what you're saying is even though Mr. Killingsworth says that resolution established the revitalization plan, it doesn't say it in so many terms.

MS. LATSHA: No, sir. It's lengthy but I could read parts of it if you'd like. But it --

MR. KEIG: Well --

MS. LATSHA: -- it does not adopt the plan. That --

MR. KEIG: You're bringing in --

MS. LATSHA: -- resolution doesn't adopt the plan.

MR. KEIG: Yeah, if they want to comment to say that's not the case, then they can. But it doesn't look like that's going to be the case.

MR. OXER: Let me ask a contextual question here. Because last year -- I mean we're making some choice, making some changes this year and admittedly this is the pivot point in all of this. So next year we're going to have a little sharper delineation of this where there is, at least in the QAP this year, some measure of discretion left to the Board. I have to -- as the Chair I would like to point out that discretion in all matters before this Board is something we like to use really lightly.

Because that's -- unfettered, that's something that tends to get us in trouble. So this is one of the reasons we're making a point to spend

enough time to hammer this out and split this little hair down as fine as we can get it. But it appears to me that the issue here is that there's a certain amount of discretion that is accommodated for her to be accommodated this year but that's the only year we'll be doing this. Because there would be a more strict definition of a community revitalization plan for next year. Is that correct?

MS. LATSHA: The two thousand -- our current QAP does state that this process will only be in place for the 2013 cycle, yes.

MR. OXER: Okay.

MR. GANN: Question.

MS. LATSHA: If that answers your question.

MR. OXER: Mr. Gann calls for the question. Is there anymore questions from the members of the Board?

(No response.)

MR. OXER: Okay. Hang on a second, let me recite this to make sure we get it right. Who did this?

MR. GANN: I did.

MR. OXER: Okay. The question or motion --

MR. GANN: I made it.

FEMALE VOICE: By Mr. Gann.

MR. OXER: Motion by Mr. Gann, seconded by Mark to approve staff recommendations. Is that correct?

MR. GANN: Yes.

MR. OXER: Okay. All in favor?

MR. GANN: Aye.

MR. McWATTERS: Aye.

MR. KEIG: Nay.

MR. OXER: And one -- there's three/one with one opposition from Mr. Keig.

This was a tough one, folks, and I got to tell you I mean it's got to be what we're ultimately looking for in this is a specific certifiable resolution that there is a motion from the local unit of government saying that there is the plan. And unfortunately, because we have to have -- the purpose for going against -- a purpose for satisfying the requirement for the benefit of the State to go against staff recommendation, so.

All right. Thanks, Jean.

All right. Annette, we have two comments to read into the record. I understand these -- well, you'll speak to the number for each of one of them.

MS. CORNIER: Annette Cornier, TDHCA staff. Although these projects have already been voted on, Manish Verma would like to provide their opinion for the record on Item 2(a), Project 13192 and 13196 in favor of staff recommendation.

MR. OXER: Okay. And as it turned out, the vote by the Board was to support staff recommendation on each one of those items for to decline preclearance of the community revitalization plan. Is that correct? That is correct.

Right, Jean?

MS. LATSHA: (No audible response.)

MR. OXER: I know, we all got to pay attention. I'm sorry.

MS. LATSHA: I'm sorry; I was listening to Cameron.

MR. OXER: That's all right. I mean he does have some influence over your paycheck, so that's -- it's a rare time. I was just saying that we wanted to recite for the record that for the two items that Annette just read in, those were parts of the first five that we voted on where we unanimously voted to decline the precertification or deny the preclearance --

MS. LATSHA: Deny preclearance, yes.

MR. OXER: -- of the community revitalization plan. Good.
Okay.

All right. Do you have a part B?

MS. LATSHA: No.

THE COURT: Cameron gets part B.

MR. DORSEY: Yes, I do. She was the revitalization plan expert, so. All right. This item is a little bit different in the sense that it's not going to have a staff recommendation. Although I'm happy, if you all would like, I can give you kind of which way I'm personally leaning, but I don't think that that has a place in the item itself.

It deals with the competitive cycle and one particular point item and how we need to deal with that point item in light of what's happened since the QAP was approved. That point item is Section 11.9(c)(6)(B), which provides for up to two points for an application proposing development in an economically distressed area. And economically distressed area, as defined by the QAP, must meet the definition in the Texas Water Code Section

17.921, and that definition is reflected in your Board write-up.

For you all's reference as well, this is also the basis for this being a point item is in Statute 2306.127, and it requires us to incentivize applications that are located in a series of areas, colonias, economically distressed areas, two other types of areas that no longer exist under federal law.

Now, in 2306.127 it doesn't define specifically an EDA, but elsewhere in statute the same terminology is associated with references to this definition in the Texas Water Code. And in light of that, we felt that the most consistent way to apply this statutory requirement was to engage that 23 -- I'm sorry, engage that definition in the Texas Water Code, since it's referenced elsewhere where EDA is used.

Now, the definition is a tough definition. Because it includes in it this ability for the Water Development Board to have some discretion in determining what is an economically distressed area. As a result, we fairly early in the process started trying to engage with the Texas Water Development Board about how we can accomplish assigning points under this particular point item. That conversation really started subsequent to the development of the QAP and the reference to that section.

But our initial guidance was that in order for the points to be claimed under this item, an applicant needed to get some confirmation in the form of a letter, what have you, from the Texas Water Development Board. However, through conversations with them, we -- it became clear that that wasn't something that the Texas Water Development Board and TDHCA could

really strategically find a way to accomplish that. So the Texas Water Development Board said basically we can't do letters.

We kept having conversations all the way effectively up until the eleventh hour but it left applicants in a situation where they were uncertain exactly how to prove up whether or not they met this requirement or not.

That's all to say this item is not really about what qualifies an application for those two points. The question is whether or not we should apply a one-point deduction in instances where an applicant claims those two points but staff believes the documentation is insufficient on which to award those points. Should they get a point deduction for having tried to claim those points.

And we went back to the preamble to the approval of the rules, and it included kind of two concepts in there that I think really necessitated us bringing this to you all to help get some guidance. The first is that we would not a point deduction in instances where the applicant pretty clearly had claimed the point in good faith. Provided pretty good documentation but it just didn't get them quite there.

But right below that is a paragraph that talks specifically to this point item, and it says you need a letter from the Water Development Board and if you don't you'll get a one point deduction. So I think we're here to help kind of reconcile those two assertions that were part of the preamble.

MR. OXER: So what we're essentially saying is don't overplay your hand.

MR. DORSEY: Well, if you claim points and are unable to

prove them up, basically if you frivolously claim points we want to be able to do a point deduction. And the reason really this was part of the rules this year is because staff spends a significant amount of time reviewing applications for which points were claimed but there's no support for those points. And so we spend a lot of time reviewing those applications. Those lose points, they become noncompetitive, and we have to review more applications in whole and keep replacing. And so that's why this exists.

In this instance it would be hard for me to say in hindsight, based on the actual occurrence of events after or subsequent to that preamble and the approval of the rules, that an applicant submitting some level of documentation and claiming these points was not acting in good faith. I mean they were acting in an environment where they really didn't have great guidance one way or another.

Now, so that kind of lends itself to no, the point deduction should not be applied. At the same time I would put forth that probably the assertion of some other possible applicants that specifically did not claim the points, they'd say, well, I didn't want to risk it. You know, I had clear guidance out there, it said I needed X, I couldn't get X, so why would I risk having claimed those points. But, hey, I would have tried to claim those points if I had known up front that you guys weren't going to do the penalty or the point deduction.

So I think, you know, those are the two sides of this scenario. I will tell you that there are six applications preliminarily, that's what we've come up with, six applications that have claimed these EDA points. I will say that,

you know, in light of this really being more of a policy issue rather than a, well, let me see what the ends are and then make a decision, we didn't include the details of exactly how those issues might play out. It's really, look, folks claimed these points, they submitted some level of documentation. If they did that, given the course of events, should we assign a point deduction.

MR. OXER: Good. Thanks.

Okay. Any questions from the Board?

(No response.)

MR. OXER: Okay. Motion to consider.

MR. IRVINE: Mr. Chairman --

MR. OXER: Or did we determine that there's not a motion to consider here? What's your recommendation, Cameron?

MR. DORSEY: Tim, do you want me to recommend something?

MR. IRVINE: Well, I mean on one side when we worked with the Board to develop that preamble language we all in good faith believed that this point item would be addressed by letters from the Water Development Board. Ultimately it was something that operationally they just could not achieve.

So a fundamental supposition was gone. At the same time, as Cameron pointed out, everybody in this program acts in an extremely strategic manner and people make decisions about what to claim and what not to claim based on their assessment of the overall operating environment. And in the strict language part of that operating environment was if somebody claims that

and can't back it up, they're going to get dinged an extra point. So that's the tension that --

MR. OXER: Yeah, I understand the tension on that and the strategic nature of that. But there again we started out making or suggesting in the QAP that there had to be some support given by the TWDA or WDB that they were unable to offer. Or would be unable to offer. Is that correct?

MR. IRVINE: Right.

MR. OXER: That's what your finding was.

MR. IRVINE: Right.

MR. OXER: Okay. All right. Okay. So your recommendation is to maintain the policy for detracting one point, and what we're trying to determine is, is that good policy.

MR. DORSEY: Well, I think we're just -- we haven't made a -- I'm not sure what the baseline decision would be. If we didn't bring the issue to you guys, I think we would have been at a loss for exactly how to treat the issue, which is why we're bringing it to you. In other words, we don't have a specific recommendation.

Although, you know, personally I kind of lean just toward the you know what, given that things didn't play out like they were, you know, like we had initially anticipated, I kind of lean toward, you know, I feel like these folks were not acting in bad faith in trying to claim this point, they were just -- they felt like they needed the points, they felt like they qualified for the points, they were just at a loss for how to prove up the points.

And, you know, that's kind of what it looks like to me, at least in

a couple instances, and so, you know. The, oh, we're still going to apply the penalty point feels, you know, like a bad position to me.

MR. OXER: It's hard to apply, at least my sense is it's hard to apply a penalty when the opportunity from the Water Development Board wasn't there for you to score in the first place. That said, this is a particularly competitive process where one point, as we've seen in the last couple years, can take you in or out of the money. And that's, you know, that's why you're here.

MR. DORSEY: Uh-huh.

MR. OXER: All the easy decisions you get to make. Right?

MR. DORSEY: Right. And I would say if we hadn't included that second paragraph in the assertion that you get the penalty point or you get a point deduction if you don't provide a letter. And if we had not included that in the preamble I think the decision would be fairly clear in this instance. It's the fact that you had this we apply good faith but then if you don't have this letter you're out. And then the sequence of events that were unanticipated at the time the preamble was written.

MR. IRVINE: Well, don't forget though that there is still the possibility that you could have applied to the Water Development Board for assistance because you were in an EDA, in which case the Water Development Board would have provided documentation to support that. And, you know, that might be a very small universe.

MR. DORSEY: Right. I think that there is a possibility that there is documentation out there that would be sufficient in instances where,

for example, a project might be connecting to the infrastructure that was constructed under the EDAP Program. But I don't know the universe of those possibilities, and so it's hard for me to speculate exactly around those things.

MR. McWATTERS: Cameron, when an applicant ticked the box for the extra point was there at that time a reasonable expectation that the letters would be forthcoming?

MR. DORSEY: No. Well, there was one applicant that I believe got a verbal -- I have heard that they got a verbal confirmation that they were in an EDA but the Water Development Board was not able to provide written confirmation. So I think maybe they had a reasonable assumption that they would get a letter to back up their claiming of the points at some point. But I think clearly when they filed these applications on March 1 they knew at that point that, you know, they weren't going to be able to get the point, and they certainly could have just noted that in the application, we're not claiming these points because we didn't ultimately get the letter.

MR. McWATTERS: Right. I mean this seems to me sort of critical. At the time the application is filed you tick a box asking for an extra point but you're telling me they knew they would not get the letter?

MR. DORSEY: I think they had to know, yes. Because the support for the election of the points is required to be included in the application.

MR. McWATTERS: Okay, then I'm having a hard time understanding the good faith here if I'm asking for a point that I know I'm not going to be able to get it.

MR. DORSEY: Well, I think that they were hoping that the Department would come up with an alternative through the review process to -- because they felt like what the guidance we had previously provided was simply unachievable. An impossibility, basically, I think that that's --

MR. McWATTERS: Okay. So I tick a box asking for the point, I don't think I'm going to get what is asked for but I'm going to receive the functional equivalent of it under some other rubric that should satisfy the staff. Was that a reasonable expectation at the time, do you think, that that functional equivalent letter or approval or whatever would be forthcoming?

MR. DORSEY: It would be hard for me to say that it was reasonable. Because the way the rule is written, you have to meet the definition in 17.921 of the Texas Water Code. And in order to meet that definition, I mean some -- it reserves some level of discretion for the Texas Water Development Board in making that decision. So I don't know how we would have come up with another really form to assess the eligibility without it being directly an affirmation from the Texas Water Development Board, but.

MR. McWATTERS: Okay. Well, I mean it takes me back to the good faith argument, so I'm still having trouble understanding good faith if I don't think I'm going to be able to get what I --

MR. DORSEY: Maybe it's this, maybe the distinction is this. They weren't sure if they'd be able to get the support but they felt confident that they -- in reality, whether they were able to get the support documentation we were asking for or not, that they qualified for this point. Based on where the development site is located, they truly feel it is in an EDA whether or not

we can get the documentation you're asking for or not.

MR. IRVINE: They in good faith believed that they were in an EDA but they did not have the required documentation and knew that at the time they checked the box and at the time that applications were due they did not have the required documentation.

MR. McWATTERS: Well, I mean we just voted something down three to one on my words of a plan for a plan and Jean's maybe not even that. And so that was clearly a case where things are moving in a certain direction but the documentation wasn't there. So I'm just trying to reconcile and be consistent.

MR. DORSEY: Okay.

MR. IRVINE: Sure.

MR. KEIG: Let me ask --

MR. OXER: Mr. Keig.

MR. KEIG: -- if you don't mind. If we were to vote to assess the penalty point, but that created unjust situation for the one applicant who at least may have gotten a verbal commitment that, yeah, you're in an EDA but had not gotten the letter yet.

MR. DORSEY: I think that just comes down to kind of an opinion. I think it's -- yeah, I think it comes down to, you know, your own personal opinion on the subject. I mean I would say that that's the one I heard about, but, you know, for example, Doak sitting here, I didn't hear from him on the phone on this subject. So he could have gotten something verbally from his Water Development Board. That was just a specific instance that the

applicant specifically told me, hey, they told us verbally, you know, we're at kind of a loss because we can't get the letter, what do we -- so.

MR. KEIG: We've got commenters. Right?

MR. OXER: We do.

MR. KEIG: All right. Can I go ahead and move? Or did you want to take a break?

MR. OXER: I'm debating about taking a break here. All right. Here's what we're going to do just for purposes of maintenance of our schedule here. We're going to table discussion for right now. We're going to take a break, break for lunch. We have an executive session we've got to do. And we'll come back and finish this up. There's been no motion, there'll be no discussion at lunch amongst the Board members. So I want everybody to sit still just for a second because it's got to read clearly on the record. Okay? What we'll do is -- and we'll be back here at 1:15, back in our chairs at 1:15.

But the Governing Board of the Texas Department of Housing and Community Affairs will go into closed session at this time pursuant to the Texas Open Meetings Act to discuss pending litigation with its attorney under Section 551.071 of the Act, to receive legal advice from its attorney under Section 551.071 of the Act, to discuss certain personnel matters under Section 551.074 of the Act, and to discuss certain real estate matters under Section 551.072 of the Act, and to discuss issues related to fraud, waste or abuse under Section 2306.029(c) of the Texas Government Code.

The closed session will be occur in the Directors Room immediately behind us. And the time is now 12:04. Let's be back in our chairs

at 1:15, folks.

(Whereupon, at 12:04 p.m., the Board met in Executive Session.)

MR. OXER: Okay. The Board has now reconvened in open session at 1:15. We met in Executive Session, no decisions were made, and we received advice from counsel.

Okay, Cameron, we will follow up with what you were working on. Resummarize, please.

MR. DORSEY: Sure. We were dealing with the item on economically distressed area points, and whether or not the penalty point or point deduction rather should be applied in instances where the applicant claims the points, provides some level of documentation, but is unsuccessful in proving up their eligibility for those points.

What we would typically do is make sure that they didn't get the two points they asked for but in addition to that we have an item that would potentially warrant an additional one-point deduction. And it's really dealing with what that one-point deduction -- whether we should apply that one-point deduction in this instance or not.

And just after I finished talking before these guys came up to me and asked me if I wouldn't mind clarifying something, and I said sure, that's no problem because it's just a couple pieces of factual information that I think probably are relevant. One is that the rule itself, the QAP itself does not specifically state that the required piece of documentation is a letter from the Texas Water Development Board. That's one thing.

The area where that guidance was provided was both in the preamble to the approved rule, so when we brought the rule for approval at the November I think 13, 2012 Board meeting the preamble included a reasoned response where we had to explain the rationale behind not accepting certain public comments. And at that -- in that document we specifically stated effectively that we would be looking for a letter from the Texas Water Development Board.

It's also -- and I verified this over lunch because I wasn't quite certain. I verified that it also provides that same guidance in the manual itself as well as I think staff was consistent in providing that guidance in the form of emails in email exchanges with several folks about this issue. I think -- I don't think -- because the rule is controlling, I don't think it precludes us from looking at other documentation to see if it substantively meets the requirement of the rule.

But, you know, I think Jean and I were just at a loss for -- we don't have any knowledge of other documentation that would meet the requirement. And in the absence of having some specific knowledge about a piece of documentation that could meet the requirements, the guidance was letter, letter from Texas Water Development Board. We know that that would meet the requirements. So I just wanted to lay that out for you all. Other than that I think I covered the main points in the --

MR. OXER: So if they had applied for support from the Water Development Board, had they -- and we know now the Water Development Board doesn't issue those letters, as you suggest, if they had applied would

they have received some documentation from the Water Development Board to the effect that they were in an EDA and were being considered?

MR. DORSEY: My understanding is that as a project developer these folks wouldn't necessarily have been able to apply directly for funding from Texas Water Development Board. It would have to have been the city or county, and they probably wouldn't have applied as a result of there being a tax credit application in the area. Probably would have been an instance where just happenstance the city had recently applied for funding and was able to show that there was a recent determination that it was an EDA by documenting the receipt of funding under the EDAP Program that Texas Water Development Board administers. Does that kind of make sense?

MR. OXER: Uh-huh. This is one more example of why the QAP is a continuing work in progress.

MR. DORSEY: Yeah, I think it is. You know, it's a tough spot to be in. Statute requires this point item. I think, you know, when Barbara and I, Barbara, our general counsel, and I look at this provision and we look at statute, it's hard for us to come to a conclusion that we have the discretion to use anything but the definition in 17.921 of the Texas Water Code because of how frequently that section of the Water Code is referenced when EDA is mentioned in our statute, Chapter 2306.

And, you know, the problem with that is just that definition really reserves the determination of what is an EDA to the Water Development Board itself. And it puts us in a tough spot of needing to kind of craft a path for applicants and, you know, work through creation of a path with Texas Water

Development Board. And I think in this instance we were just unable to successfully craft that path in a timely fashion.

MR. OXER: So the legislature passes a law that says you have to have the involvement of Texas Water Development Board. We pass a rule that says you have to engage that. Texas Water Development Board says no, we're not going to provide that.

MR. DORSEY: I mean yes, effectively. And I will say real quick the Texas Water Development Board has looked at this issue and they have some disagreements with us on the subject. But, you know, I think we all worked in good faith as state agencies to try and work out a solution. It's just we probably could have. Down quite at the wire, the last second we had a concept that could have resulted in a process. But at that point it was March 1 and apps were due. And so we weren't able to get that in place in a sufficient, you know -- with sufficient time for applicants to really utilize that type of path toward documenting points in this point item.

I think in the future we will look at what we can do in this area. It's going to be hard to detach from the Texas Water Code definition, I think, because of how statute is crafted. And there are a number of places in statute that reference other federal agencies and other state agencies, and it's always a really tough thing because, you know, they don't necessarily administer programs with us in mind.

MR. McWATTERS: Cameron, at the time the box is ticked and the application is submitted why is anything required at that time to be included with the application regarding this issue?

MR. DORSEY: Sufficient documentation to prove that the development is located within an EDA as defined by the QAP.

MR. McWATTERS: Okay, sufficient documentation. Okay. Okay. What's the issue here then?

MR. DORSEY: The issue here is if insufficient documentation is provided, because there was kind of an absence of any guidance from staff of a viable path to access these points, should applicants that tried to come up with a path themselves be docked a point for having tried to claim these points.

MR. McWATTERS: Okay. So at the time the applications submitted someone includes some documentation they consider to be sufficient, and then the staff subsequent to that has an interpretation that says that it's a letter?

MR. DORSEY: No.

MR. McWATTERS: Okay.

MR. DORSEY: Previous to applications being submitted, prior to March 1, I think consistent in guidance we said look, this is the definition that really is administered by the Texas Water Development Board. We are unaware of how an applicant would be able to provide sufficient documentation to support their location in an EDA without getting affirmation of that fact from the Texas Water Development Board.

That was something we clearly communicated over and over and over with folks who asked the question. It's communicated in the manual. I don't think that it means that we wouldn't accept some alternative

documentation. We are unaware of the existence of some other method of substantively proving up that the rule is met.

So today we're dealing with not whether or not these folks provided sufficient documentation. We haven't reviewed all of these applications. The question is if we were to view those and determine that the documentation is in fact not sufficient based on the rule, do we take the points they claimed away and dock them an additional point for failing to prove up that they qualify.

MR. McWATTERS: Remind me, what was the time period between the staff's interpretation that a letter is required and the due date for the application?

MR. DORSEY: It was at least, you know, in the realm of three months, I believe. We were fairly early on, perhaps even in late November and early December, answering questions related to how this would be applied. I can tell you I don't recall having much email exchange with Doak on the subject. I may have but I can't recall it. With Mr. Cohen's client I had probably upwards of 15 emails exchanged where they were trying to elicit how they might alternatively submit and prove up these points. You know, routinely or consistently I think our guidance was we aren't aware of an alternative path that would sufficiently document that you meet the rule.

MR. McWATTERS: And just to kind of go back to where we were before lunch, at the time the applications were due was it reasonably clear that the water department was not going to provide these letters? Or was that still an open issue?

MR. DORSEY: I think that it was clear at that point that these applicants would be unable to have such a letter.

MR. McWATTERS: Okay. Thank you.

MR. OXER: So they would not be able to get the specific letter but they were looking for alternative documentation. And although you were not aware of an alternative, that doesn't preclude the existence of one.

MR. DORSEY: Right.

And, you know, the only reason I hedge a little bit, Professor McWatters, on your question is because I think I had more information than these guys probably had. They were probably operating in a vacuum where they felt like someone might be getting the letter so, you know, I'm going to keep trying and claim these points. Because it's not fair if someone gets a letter and they're able to get the points and I technically qualify but I am not able to get a letter. I think, you know, I think those concerns came out in some of the email exchanges and phone conversations I had with them.

MR. OXER: How many of the applicants, Cameron, claimed the points for an EDA? There were approximately six --

MR. DORSEY: Approximately six.

MR. OXER: And those were the ones that claimed the points.

MR. DORSEY: That's right.

MR. OXER: So that was like a two point -- they claimed the two points for being in an EDA.

MR. DORSEY: Either one or two, yes.

MR. OXER: Okay. So then the question is if they are in an

EDA and we're here because now they're not there, okay, if they are in an EDA but we wouldn't be able to -- I'm trying to work through if we take those six and just not dock the points. But if they don't -- if they can't demonstrate that they qualify for being in an EDA, then that makes them all equal anyway. I mean the only difference would be in their competition with all the rest of the projects.

MR. DORSEY: Right. I'm definitely not suggesting we not dock them the two points if they're not in fact --

MR. OXER: No, I get that.

MR. DORSEY: -- in an EDA.

MR. OXER: I get that point. Okay. If they're not in an EDA we're not just going to --

MR. DORSEY: Right.

MR. OXER: -- gratuitously --

MR. DORSEY: Right.

MR. OXER: -- award the points. Okay. But if they made a good faith effort, the question is do they get the penalty.

MR. DORSEY: That's right.

MR. OXER: So this comes down to the it's not a plus, it's only a minus.

MR. DORSEY: That's right.

MR. McWATTERS: So at the time these applications were submitted there could -- you may have known in your opinion that the Water Development Board was not going to issue the letters. But I think a key

question of fact is was that reasonably disseminated. Because if everybody knew it and you're still ticking the boxes and submitting it and you're just not going to get there, that's one thing. But if there's a reasonable expectation in the eyes, the minds of the development community, you know, being smart people, you know, focusing on this, where they really say, you know, I don't know, I think so, then that's a different issue.

MR. DORSEY: Okay. Right. And I think the information we provided was very simply, from our perspective, we aren't aware. We've been told that Water Development Board is not going to provide letters but we certainly can't guarantee that because we don't work at the Texas Water Development Board, so.

MR. OXER: Tim, did you have a question or comment?

MR. IRVINE: No, I just going to try and put a bow around it. I mean basically without Board direction to the contrary is we go through these, if you check the box and you didn't provide what we viewed as reasonable supporting documentation to support your points, then we're going to take away the points and assess a penalty point. And you're going to get a scoring notice that's going to reflect that, and if you want to appeal your scoring notice you can.

MR. DORSEY: Let me say one other thing that might be important for you all in making this decision. And I know that this is in hindsight and so you might discount, you know, some for that reason. But when we developed this point deduction item we specifically took public comment and responded to public comment and removed several point items

from being subject to the point deduction on the basis that, you know, there was -- these rules are new, there's some uncertainty surrounding what may qualify. And it would be difficult for the Department to really assess a point penalty in those instances because, you know, an applicant just isn't necessarily completely certain if they're qualifying or not.

So, for example, community revitalization plan, no point deduction is applied to that point item because of how new it was and because everyone kind of recognized some substantive discussion and things would need to occur before we determined if points were awarded. Same thing with State Rep and Senator letter, it's difficult for an applicant to predict before those letters are actually due if they're going to get those points.

And so one could maybe look at it through that prism and say, you know, well, if we had known this at the time we probably wouldn't have subjected this particular item to the point deduction in the first place, you know, if we had known that what -- if we had known that it was uncertain what documentation would be available to prove up this point item, so.

MR. OXER: And how long has this item on the Water Development Board or related to this EDA with the Water Development Board been a part of the QAP?

MR. DORSEY: It's been a part of the QAP for a long time. I tell you what, it's been incredibly difficult to administer. In previous years we had looked at entire counties as qualifying if one EDAP project had occurred within that entire county. We went back, as you all know, in crafting the rules -- well, recrafting the rules by kind of stripping out what we had done

before and going back directly to statute. We tried to peel back that because allowing entire counties to qualify based on one EDAP project within the county is a little bit more expansive than what statute contemplates.

We also rolled it back in light of the remedial plan. I'll be careful. Basically we agreed as part of the court order and as part of the remedial plan that development location scoring criteria outside of those statutorily required would be limited to those included in the remedial plan. And so we felt like if we had taken a more expansive view of what this item was, more expansive than statute than we might be allowing for development location points in areas that weren't -- in areas that may conflict with the remedial plan.

And so we were trying to make sure that the strict, narrow interpretation of statute is that you must be within an area that is defined as an EDA in accordance with the Water Code. Here's what that means. We're going to look for documentation to support that specifically and not kind of a more expansive alternative.

MR. OXER: How many other components of the QAP have a penalty point item associated with it for lack of documentation?

MR. DORSEY: Probably -- this is an estimate -- eight. It's an estimate.

MR. OXER: That's all right. More than one and less than 200. Okay, so. Is it bigger than a bread box and smaller than a Mack truck, you know, so. Okay.

So the resolution we have to consider is whether or not -- what

we're essentially saying is, is this penalty point application at this point good policy. Okay. Well, we'll need a motion to consider.

MR. IRVINE: Well, we don't -- correct me if I'm wrong, but I don't believe you have to take action. I'm telling you that it's staff's advice to you that if you don't take action, the way we will administer it is we'll look at the documentation, if it's not there we take away the points and assess a penalty point.

MR. OXER: Okay. And certainly if it can't be demonstrated that they are within an EDA, then they would not get the points.

MR. IRVINE: Correct.

MR. OXER: The question now whether you penalize one point, which, as we pointed out, in a hypercompetitive round this is -- that can be damning. So --

MR. DORSEY: Let me expand on Tim's point there. One option would be to not take action, we can assess the penalty point. That would provide -- we provide scoring notices to each applicant and it gets scored. They can appeal that, and on an individual case-by-case basis you guys could take a look at the merits surrounding the penalty point versus not -- applying a penalty point versus not.

MR. OXER: Because I think that there's some variation in the sufficiency of documentation associated with each one of these.

MR. DORSEY: I think that that's absolutely true. We have one that kind of I think printed off a list of counties that had gotten EDAP funds or that were colonia model -- had adopted colonia model subdivision rules, and

because they're in that county they feel they qualify. In other instances I think there's one where they have a State Representative or Senator that has weighed in and say they believe so, and in one we have the letter from the mayor where they weighed in and said we believe so. So there's definitely variations on the documentation provided.

MR. OXER: You know, just from the -- I believe this is an issue that deserves more granularity in our consideration to make sure that we -- rather than broad brushing an entire issue, I'd like to go back. But I do take it that you're making good notes and you're going to bring this up in the next QAP?

MR. DORSEY: Yeah, I think we're going to -- I mean we'll try to address it. You know, it's just how we address it within the confines of the statute and what -- you know, it references -- I mean we really feel like it needs a reference, this Water Code definition, so now how do we deal with that. And make it implementable. It's not very implementable right now.

MR. OXER: Yeah. Well, I would offer up that as a member of the Board, not the sitting Chair but as a member of the Board it would make sense to me to follow Tim's course to consider these individually, would delay action, defer action until later and just look for -- but then that's my considered opinion.

Tim, do we have any specific we need to take or we can just say we'll defer? Recommended we'll defer until later and let those that have a challenge or wish to challenge that on waiver come up and talk next time.

MR. IRVINE: We can certainly do it that way.

MR. OXER: Is there a Board action that's required to do that?

(No response.)

MR. OXER: Okay. In that case, as the Chair I'll recommend that we defer action on this item until somebody brings a specific issue up on the penalty point that's assessed. Because we'll have to assume that the penalty points will be assessed for those who have insufficient documentation. Okay? And for those who find that a penalty's been assessed, we'll look forward to hearing from them in that kind of follow-on meeting.

MR. DORSEY: Right. And that would be -- if we assess the penalty point and they chose to appeal, it would come before you. But if they did not choose to appeal, then I don't think you would necessarily take action on that specific instance.

MR. OXER: Counsel, would that satisfy the legal requirements?

MS. DEANE: Right, I -- this particular item you're not absolutely required to take action today. It would just be if you had a particular guidance that you wanted to give staff. But if staff is telling you this is how they're going to handle it and you don't feel the need to take action to give guidance on that and allow it to come back on some kind of appeals process on a case-by-case basis.

MR. OXER: I believe that your course of action is the proper one, Cameron. And anybody who wants to -- anybody have any other thoughts on that?

(Pause.)

MR. OXER: Okay, we have an affirmation but not a resolution to that effect. So let's hear from you next time.

Now, owing to the fact that we have some folks up here that want to speak on this, would you like to speak on this item or would you like to come up and defend your item next time?

SPEAKER: I'd like to --

MR. OXER: Okay.

MR. KEIG: Well, if we're not taking action --

MR. OXER: We can't -- I don't think we can --

MR. KEIG: -- I don't know whether we can hear public comment on it.

MR. OXER: Can we even hear it, counsel?

MS. DEANE: Well, you can.

MR. OXER: We can hear --

MS. DEANE: I mean it's a posted item. But are you required to? Not necessarily, but you can. You're not precluded from it.

MR. IRVINE: They can come back and address you at the end of the meeting.

MR. OXER: That's what we'll do, Doak. And here's how we'll handle that. Because I like to maintain some consistency in the process. We have a time at the end of the meeting, and since this is -- since we essentially dealt with and dispatched this item, what I want to do is have you come back at the end of the meeting and bring out what you'd like to say. Because we'll have a time for you to add -- because it will be something we'll consider in the

future. That okay? Okay.

That all you got, Cameron?

MR. DORSEY: Yes, sir. On this item.

MR. OXER: On this item, so.

SPEAKER: [inaudible].

All right. We'll expect you back when we call for public comment.

Okay. Appeal. Cameron.

MR. DORSEY: All right. This is an appeal related to a determination on a current 9 percent application. The application is number 13256, 4320 Lofts located in Houston. This is a transaction -- well, this issue is really surrounding the point item for support or opposition from a State Representative or State Senator, the State Representative or State Senator that represents the area in which the development is located.

And it's a little bit of a convoluted series of events, so I'm just going to try to walk you through step-by-step so we can save the applicant from having to do that as well. Before the deadline or really on the day of the deadline for State Representative or State Senator support or opposition letters to be received by the Department the applicant submitted a letter from the Representative.

It was a letter of support. It included in bold at the top of the letter a statement that it was conditioned upon that particular State Representative's further due diligence. It was a very kind of general condition. Also within that letter is an unqualified statement of support but really at the

top a big bold statement that says this is conditional.

Contemporaneously, they submitted a request for an extension of the deadline of April 1 for State Representative and State Senator support letters. In the QAP, I think it's in Section 11.3, there -- it's in the program calendar section, 11.2, there's a provision that allows the Executive Director to provide up to a five-business-day extension to nonstatutory deadlines for good cause. In this particular instance the letter that was conditional came in kind of at the same time as their request for an extension of that deadline.

When I talked to them yesterday they felt like my write-up was a bit -- was not exactly what happened on their end, so I'm going to tell you what they feel like happened on their end. They felt like they didn't really have time to read the letter of support, so they submitted both and kind of to protect themselves if they ultimately needed an extension or if something were to happen. But their extension, they indicated, was really kind of independent of what the content of the letter was, the conditional nature of the letter.

So they asked for an extension in case they weren't able to get a letter in by the deadline. What ended up happening, they got a conditional letter by the deadline. But staff deemed that insufficient to meet the requirement in the rule. So an extension was provided for three days. The basis provided for the extension was that the State Representative had a health issue. And so we provided an extension on that basis.

While the applicant had asked for a general extension of the deadline, when staff reviewed it, it felt like the rationale provided and the good cause provided really was limited to the issue surrounding the

State Representative. And so we extended the deadline in order to receive a unconditional letter from the State Representative. In other words, you couldn't go out and get the State Senator to weigh in after the deadline, you already had that opportunity. We're extending this specifically for this good cause, specifically to get this issue cleared up.

The initial extension I think was three days. They came back and asked for another two days to get it out to the full five days, and we granted that. Within the five days, the five business days they were unable to provide an unconditional letter from the State Representative. They were, however, able to ultimately provide an unconditional letter from the State Senator. But because the extension had been granted specifically to allow them to get an unconditional letter from the State Representative, we didn't feel that we had the discretion to accept the letter, that was deemed late, from the State Senator.

That's kind of the -- you know, in a nutshell that's kind of what's going on here. So we determined basically that they would not be eligible for 12 points based on the conditional letter received before April 1 and they would not be eligible for 12 points under this point item for the unconditional letter from the State Senator received after the deadline.

MR. OXER: Mr. Keig.

MR. KEIG: Did Representative Coleman ever clarify his letter after reviewing the material?

MR. DORSEY: I have not receive a letter that clarified the support in an unconditional manner.

MR. KEIG: We can ask Ms. McIver, but --

MR. DORSEY: Yeah. I think they've had more conversations with the Representative's office, and they might be able to provide some more detail surrounding those conversations. I think Michael Lyttle -- I'm not sure if he had conversations with the Representative's office or Elena.

Elena, did you?

(Pause.)

MR. DORSEY: Prior to the first conditional letter I think we had some conversations with them, but not after to ultimately resolve the issue.

MR. OXER: Okay. Any questions from the Board?

(No response.)

MR. OXER: Motion to consider.

MR. McWATTERS: Let me ask this.

MR. OXER: Yeah, please. Professor McWatters.

MR. McWATTERS: At the time of the extension do we have any way of knowing whether or not there is a reasonable expectation that the Representative would be able to provide the letter in a timely manner? I mean I guess what I'm saying is that if -- okay, there's an illness, give the Representative two or three days, he or she will come around, it will be fine and we'll get the letter. And then, you know, doesn't recover within five days, and then there's an impossibility of performance on behalf of the Representative. And so would it then be unreasonable to look to someone else who can give the letter because the person designated simply can't do it. And those are fact questions which to me seem to be material, but I have no

idea what the answer is.

MR. DORSEY: Yeah, I don't think that that's necessarily unreasonable. But the way the extension works, it has to be requested prior to the deadline and everything, and we had already granted the extension on X basis for X amount of time. And I don't think we felt like we really had the ability under the rules to go back and say, well, now we have new information that warrants allowing them to get a letter from the State Senator.

I'll also say, I wanted to make sure I clarified, because normally my response would be, well, you could have approached the State Senator and gotten a letter from the State Senator. There are two options there.

Since the State Senator ultimately weighed in, why didn't you just approach them earlier. I asked them that basic question yesterday. And they said, Well, we did approach the State Senator. But a condition of the State Senator providing support was that the Representative support the transaction.

So now if that detail had been provided in the extension request, you know, perhaps we would have had a better basis to make a general extension of deadline. But we didn't really have that basis provided for us in the extension request.

MR. IRVINE: Yes. The extension request was directed to me. It specifically referenced the Representative as needing the additional time. And that was the stated good cause. And it was on that basis that I specifically granted the extension.

And then, when requested to grant an additional extension

within my five-business-day-total authority, I just -- again, based on that underlying assumption.

MR. DORSEY: I will say one more thing that I think might come up when the Applicant makes comments. Why is a conditional letter not okay? Well, a couple of years ago, we changed the rule in this area.

And we have maintained this change, where after an elected official weighs in, that letter cannot be rescinded. And so, if we accept conditional letters that are conditioned upon very general kind of things, like further due diligence, it is really difficult to say all right. That is definitive enough for us to count it for points.

And then, if they called us later and said we want to remove this, how do you explain to them that no, I am sorry. You can't rescind your conditional letter, after you have done the due diligence that you stated that you needed to do in the first place.

And that is where the tension is, along with the fact that the rule says, the letter must clearly state support. Not provide conditions and these types of things.

So in order to deal with situations on a you know, consistent, transparent and fair basis, you know, if we were to tell one State Representative that well, all right. It is fine to reaffirm your support later, unconditionally. Then how would we deal with one that wanted to change their opinion, based on the fact that they had initially made it a conditional letter in the first place.

MR. OXER: So if you really think about it, conditional support

based on due diligence means, we haven't made a decision. So we are just pushing the risk off on you. That is all right. You don't have to say anything. I get to say it.

All right. Just a little quick housekeeping item here. Cameron, you get to be still. This is just a little note for anybody here who happens to be driving a Chevy SUV with a license plate BUI5456. If you don't get there in a hurry, you are going to have an opportunity to go talk to TxDOT and get it out of impound.

I don't see anybody rushing for the door, so you don't have to worry about that one. Bill. Okay. Anything else? Did you have another item?

MR. McWATTERS: No. I am just -- Cameron, let me ask this. I am just curious to the extreme. A Representative provides a letter. It is conditional, saying that it doesn't work. It is five day -- the Applicant gets a five-day extension. The Representative dies. Okay. During that five day period.

And that to me is the same as being incapacitated by illness. Okay? It is the same thing. Death, illness, whatever. But in the death scenario, the Senator then walks up and says, Hey, you know, I'm sorry the guy died. I will be happy to give a letter. That would not be acceptable.

MR. DORSEY: If the five-day extension had been so explicit that it was only to allow for that representative to respond, I think we might end up here. I think in that instance, we may have not brought it as an appeal, but kind of as a what should we do. Or a waiver, or something like that. But, I think it would still end up at the Board's level. Because we have limited

discretion to account for those types of situations.

MR. McWATTERS: Okay. Thank you.

MR. OXER: At what point in this process, if they are going to get the letters, or the support letters from their State Representative or State Senator all of this. They are working on a proposal.

They have got their applications that are due March 1st. The QAP comes out December 9th. This is not a new requirement for the support letters.

MR. DORSEY: No. It is not.

MR. OXER: So a fundamental question in my mind is, why did they wait that late anyway?

MR. DORSEY: Well, I think that is a -- I will tell you that we have encouraged in the past, staff has encouraged State Representatives and Senators to take as long as they would like to make a decision. And then in fact, maybe they want to wait closer to the deadline, on the basis that they can't rescind, once they send it in. And they may have more information a little bit later in the process.

So I don't think it would be fair for me to weigh in on your question without stating that up front. Certainly, if I was an applicant --

MR. OXER: That is fair.

MR. DORSEY: I would approach them early. But I think the Department itself is encouraging them to hold off on these letters until they are absolutely certain.

MR. OXER: So we have encouraged them to hold off until they

are absolutely certain. But yet, we get one that says, conditioned on making certain uncertain.

MR. DORSEY: Right. But I think that that again was all that, to be fair, I think that that was all part of the health issue stuff.

MR. OXER: Okay. All right. Any questions from the Board for Cameron?

(No response.)

MR. OXER: Okay. Well, we have to have a motion to consider, here.

MR. GANN: I will move staff recommendation.

MR. OXER: Okay. Motion by Mr. Gann, for staff recommendation.

MR. KEIG: Second, for purposes of discussion.

MR. OXER: Second for purposes of discussion by Mr. Keig. Okay. We have some obvious public comment. So I think you are first, Diana.

MS. McIVER: Chair, Board, staff. My name is Diana McIver. And I am with DMA Development. And I want to give a little more of the history. And I appreciate Cameron walking you through it, so that I could keep my time as short as possible.

This is one of the more difficult things we have ever been through. We started reaching out to Representative Coleman and Senator Ellis in early February.

And Senator Ellis made it clear to us, very clear to us that he would not support until he saw a letter of support from Representative

Coleman. Because he felt that the Representative was closer to the district than he as a Senator was. And so we continued to keep him apprised.

We were actually being considered by the City of Houston for support at their March 20th meeting. We didn't want to bring a lot of push for a letter before we were pretty certain that we were going to get support from the City of Houston.

They have a two times resolution; if you don't get that, you are out. They ended up approving I think, about 50 percent of the applications before them.

It became known to us around the middle of March when we started having more and more conversations with Representative Coleman's office. You know, basically letting him know that we had the City Councilwoman's support. That we believed we were going to get support from the City of Houston.

Around that time, it was made known to us by his staff that he was seriously ill, and he was not around. And we talked to people who knew him well, who were close friends. And he was not responding, even to text messages.

It put it in perspective for me. Because one of the most important things we need as a developer is that letter of support, is twelve points. You know, it is win or lose in this business.

But increasingly, I became very uncomfortable with us pressing and pressing a person who is ill for this letter. It is flat out disrespectful. And it pulls you back.

And you go, this man has a lot more issues on his plate. Not only is he in session, he is seriously ill. He cannot be found by his friends. What right do I have to push and push for this letter? He has much more serious issues than affordable housing in his district.

I mean, our little letter is just like one little dot on a radar screen. And so it became pretty clear to us on April 1st. And by the way, last year's deadline in prior years, it has been May 1st. But this year, it was moved up to April 1st.

It became pretty clear to us later on the day, on April 1st, that based on conversations with his staff, that we were not going to -- that the staff was not going to be able to get a letter signed from him by close of business that day. We had conversations about the QAP. About whether this matter was eligible for an extension. Whether the time was 5:00 or whether the time was midnight.

A lot of the deadlines actually have a 5:00 deadline. This one was silent. Finding out that you know, that literally would be midnight on an issue that doesn't have a 5:00 time table.

So we are racing through to try to get something to staff before close of business, on the whole concept of requesting an extension to the deadline for that item. To that deadline for letter of support from state or you know, state elected official.

And so at the time that this all happened, we had actually -- a person on my staff had actually drafted a letter for my signature. And that letter came off the printer. I signed it, took it in to scan it to her computer, so

she could send it forward.

Literally, at that very moment, the letter came through from Senator Coleman's staff. We didn't read it. It came through at 4:57. It reached your offices, not your offices. But TDHCA offices at 4:58. We just sent it forward.

But that didn't make us feel like we would abandon our effort to go through with the request for an extension. We forwarded a letter to get it in under the wire. We still wanted to request an extension. And we did that. And if you check the records, they are only a few minutes apart.

So from my standpoint as the developer of this project, and having I think, gone through a real life-awakening experience, that probably a letter of support for my development is not the most important thing in everybody's world. It is probably only important in my world.

I believe that on April 1, we filed a timely extension. We requested an extension to that particular scoring item. It is in every letter. That it is there on that scoring item.

And that at the end of the day, at the end of that extension, we had one, a letter of support from Senator Ellis. He saw -- we sent the Garnet Coleman letter to him. And he turned around and provided a letter of support. It was good enough for him, for him to provide a letter of support.

We also believe that we had a letter of support from Representative Coleman that met the definition. Because it did express support for the development. And it was on letterhead. And it was signed, and all of those things.

So from my perspective, I believe that we acted in good faith. And that we did meet the requirements of that particular scoring item. And that we earned those points, the twelve points for letters from either Senator or Representative.

MR. OXER: Thanks, Diana. Any questions from the Board? Mr. Keig, anything you wanted to inquire of?

MR. KEIG: Well, I would ask. Have you ever heard anything else about the conditional letter? Did the staff say anything since then?

MS. McIVER: Personally, I did not. But two members of my organization, General Counsel Janine Sisik, Director of Real Estate Audrey Martin, when I was out of town actually did have a meeting with Representative Coleman, and discussed that with him. And he did not indicate that that was conditional support. That the idea of the conditional phrase was that he wanted more outreach.

I know either of them are happy to address that conversation. If you would like to hear from them on that?

MR. OXER: Sure. Janine? Audrey? Come up, so she doesn't have to take the bullet by herself.

MS. MARTIN: Audrey Martin with DMA Development. Right. As Diana said, I think she summed it up pretty well. We did meet with Representative Coleman.

And kind of what we heard from him was, we submitted that letter with the intent that that would serve your purpose for points. And the due diligence piece is between me the representative and you the developer.

And I would like you to go and talk to some of the neighborhood groups and continue conversations. And that was the takeaway from that meeting. Do you want to add anything?

MS. SISIK: Yes. Janine Sisik, General Counsel of DMA Development. The other thing that he said, one of the first things that he said in our meeting, and it took us several weeks to get that meeting with him, was that he was surprised that the Agency didn't accept the letter. And you know, to reiterate what Audrey said, he said, I was trying to get you guys the letter to get you through this point category.

But I also wanted to keep you engaged in conversations with my office about who you talked to, which of my constituency -- which of my constituents have you talked to, and who you still need to talk to. And that was pretty much the sum of the meeting. Thanks.

MR. OXER: Yes. Make sure you sign in there, so we can keep a record. Okay. Any other comments?

(No response.)

MR. OXER: Let's see. We had a -- is Mr. Keig here?

MR. IRVINE: Mr. Gann. Seconded by Mr. Keig.

MR. OXER: Gann and Keig. You guys are a regular tag team here. Okay.

MR. McWATTERS: Let me ask this question.

MR. OXER: Okay.

MR. McWATTERS: Thank you.

MR. OXER: Professor McWatters.

MR. McWATTERS: I heard testimony where you said that the Representative was seriously ill. Sort of holed up at home. Incommunicado. Not answering texts. I mean, that is different than a stomach bug. That is different than the flu, which is something that would be reasonable to think that a person would overcome in a relatively short period of time, and be able to produce a letter. Okay.

But given that you are on notice about the severity of this, why didn't you immediately go to the Senator, and say Senator. I understand your response is that the Representative is closer to this issue. And therefore, I want his or her support on this. But hey, the Representative is not going to be there.

Okay. Let me tell you why. You probably already know this. But let me tell you the story. And the Senator says okay. And the Senator could have written a letter, or within the time period. Did that thought not occur? Why is my logic flawed there?

MS. MARTIN: We did have that conversation.

MR. OXER: Audrey, you have to identify yourself again.

MS. MARTIN: Sure. Audrey Martin with DMA Development. You know, it was a situation where in the few days leading up to the April 1st deadline, as Diana said, it was becoming a situation where you know, we were hearing from his staff, from Representative Coleman's staff; he is unavailable.

You know, I am making daily phone calls to his office and hearing, Maybe today; maybe he will be in. I don't know. We haven't heard. We are not sure.

We didn't get a definitive -- we never at any point from Coleman's office got a definitive, we are not going to see him this week. We know there is no possibility. It was, we will keep trying. We will keep trying.

I was, at the same time, having conversations with Senator Ellis' staff. Without kind of, me being able to say definitively, we will not get this letter. Senator Ellis' staff told me we are not going to deviate from this requirement that you get the Representative letter.

And so it just -- we didn't have an ability. We were having the conversations. We were trying. It just didn't happen until it was very clear that we were absolutely unable -- well, which we didn't even think we were unable to do.

We thought we provided a letter that was sufficient on April 1st. But when staff came back to us and said it is not sufficient, at that point, you know, we really kind of pushed with the Senator. The Senator did think the letter was sufficient, and provided his letter of support.

MR. OXER: So you are saying the Senator felt like the letter that you supplied was sufficient for him to say he is not giving his support unless the Representative does. So he thought that was sufficient for the Senator's --

MS. MARTIN: The Representative Coleman letter got Senator Ellis comfortable given his policy, to now provide letters.

MR. OXER: Yes. You understand the context that we are struggling here. Because there have been way too many examples here in the past, where you have had letters of complete, absolute, unflinching,

unending unconditional support, that were right after it was done, it was yanked.

So those are a little hard to figure out what exactly they mean. If it was unending and unconditional, but then they don't give it. They take it away as soon as the -- what we are trying to do is to balance out application this as a policy to make sure.

While I appreciate that the Representative didn't understand why he thought why his letter wouldn't be acceptable to us, you have got to recall that it is not a matter of what he thinks. We are going to judge this in terms of the measure of what we see as their support for this.

So that is -- like we have said before, Cameron never brings us the easy ones. He always takes care of those in the office. So I can see the benefit of having the Senator say that the Representative support. But I would like to make sure, have it on the record that -- and I don't know, I am sure that nobody is listening to this today over in that other building across the street.

But the point I wanted to make is, we want to get this down, if nothing else, for next time, for the next QAP. We want to ask for some statement in there, Cameron, to the effect that the conditionality of the support means it is not.

MR. DORSEY: Right.

MS. SISIK: I only mentioned our meeting with Representative Coleman because I think it speaks --

MR. OXER: You have to identify yourself again.

MS. SISIK: Janine Sisik, DMA Development Company.

Because I think it speaks to his intent that his intent in writing that letter was to offer a support letter, which is why it says in the letter, I hereby fully give my full support to this project. It is very clear in the letter.

MR. OXER: But it says conditional at the top.

MS. SISIK: Of a different place. But in meeting with him --

MR. OXER: But in the same letter.

MS. SISIK: On the same letter. Yes. But in meeting with him, I believe his intent was to provide a letter that qualified for points.

Your other point, going back to the point about revoking the letter. I know that that happened before. Representative Coleman submitted this letter of support on April 1st. It is now May 7th.

He has had plenty of opportunity to revoke his letter. And he hasn't. So you know, all of that discussion about what has happened in the past. I appreciate it.

I feel like the QAP adequately addresses that situation, regardless of whether Representative Coleman revoked it or not. It wouldn't have been accepted by the Department. So I don't really understand what that is one of the staff's justifications. He hasn't revoked it. So --

MR. OXER: Well, no. And we haven't suggested that he has.

MS. SISIK: Right. But the intent behind the letter, as he communicated it to us, he meant it as support. It was a support letter. In my opinion. Thank you.

MR. OXER: Okay. Thanks. Do you have a question for her?

MR. KEIG: No. Have, in your recent memory in the past few

years, have you seen letters of support from Representative Coleman?

MR. DORSEY: Yes.

MR. KEIG: And have any of them been conditional letters?

MR. DORSEY: Not the ones that I have seen. And I will tell you, actually these guys Open Records requested a bunch of the letters.

So I of course, went through those that they Open Records requested to see if any of them were conditional. No, they weren't. They weren't conditional. None that I saw were conditional. Nor -- they also requested some from Senator Ellis, were also not conditional.

And I will say, with regard to just the idea of changing. You know, staff is in a tough position of having to anticipate things that may never happen.

The fact that they Open Records requested letters that were done under previous rules in order to try and support the idea that the conditional letter should count is precisely why I can't let a conditional letter count when, even if it is not revoked. Because I have got to account for a playing field that is not yet known necessarily.

And I have got to account for all of these types of contingencies and situations that may occur, to make sure that we are being fair and consistent and transparent about how we administer these rules.

MR. OXER: It occurs to me, based on what you have said, Janine, and what you said too, Diana, that if he was trying to elicit continued comment and involvement between your team and his constituents within the area, he was saying yes. I agree with this. I support the letter. But

the conditional part was a message to you. Is that right? Somebody come up and say yes or no. please.

MS. MARTIN: I think that's a fair statement. That that was a message to us, to keep engaged. I mean, that was my takeaway from our meeting with him as well.

MR. OXER: And that is what I am trying to -- because far be it from me to suggest to Representative Coleman how to communicate with his constituents, or with you, or with anybody else. But for the record, what I would have done was sent two letters.

Just, that way it is not misinterpreted. And it doesn't open itself up to misinterpretation in such a -- I should hope that he would recognize that there are far broader implications on this, in terms of application of process of rules on this, than just this one letter.

So we have got to be -- you know, we are slicing things really thin here. Okay. And there is a reason for that. That you know, that will become evident. I mean, everybody has to recognize that it is a very competitive process. And there is a lot of money at risk here. And there is a lot of -- it is a policy issue. You simply have got to address it clearly.

So your fundamental position is that the letter satisfied, he felt the letter satisfied the letter of support that was requested on the QAP. Your discussion with the Senator, he felt the same way.

And you are suggesting that the condition on additional due diligence was a message to you, to continue your engagement with the community? Is that a fair assessment of all of that? In terms of his due

diligence, why would he have called it due diligence instead of communication?

MS. MARTIN: You know, I can only guess about that. Audrey Martin with DMA. I can only guess about that.

Again, there was -- it was very difficult to get in touch with the Representative. It was our understanding, during that time. So whatever happened between him and his staff to ultimately draft that letter, I am not sure.

MR. OXER: Diana, do you have another comment?

MS. McIVER: Yes. And I just want to go back to that part of -- our appeal also relates to the Senator Ellis letter. Which we have a timely extension request.

And we did get a letter as well from Senator Ellis in support, that had no extra print on it at all. So I just want to sort of bring that into the picture as well.

MR. OXER: Professor McWatters?

MR. McWATTERS: Yes. It seems to me there are a couple of issues here. One of which, I am sympathetic to, and one of which I am not.

This idea that someone can submit a letter of support, but within the body of the same letter in bold face type, saying that oh by the way, there is a condition subsequent to this letter. And the condition subsequent is, I may change my mind. I may do additional due diligence and therefore, change my mind.

The issue is not whether or not the Representative did or did

not change his or her mind subsequently. The issue is, on the date the letter was due, was there a letter of support? And to me, in this case, the answer is clearly no.

There is not a clear letter of support. I have never seen anything like this. In a legal context, it would be more along the lines of a letter of intent, or an agreement to agree or something fuzzy along those lines. So, I am speaking for myself.

But the second issue, is this whole issue of impossibility. Okay. Well, the one which I am sympathetic to. You have a person who submitted a letter that in my view, is non-compliant. We at TDHC granted an extension of five days. Okay.

During that five days, it was simply impossible I think, as the developer has stated, simply impossible to have the Representative agree to do anything. To be found. To answer a text. Okay. So what do you do? You go to Plan B. Okay.

And Plan B is to come up with the Senator's letter. And Plan B was not mentioned in the extension request. And that is the only issue to me. Is whether or not it was reasonable at the time the extension request was requested that the Representative would ever be able to respond.

And if the developer knew, had reason to know there was no reason to -- they should have mentioned Senator Ellis as Plan B. If at that time, they thought a reasonable expectation, the Representative would recover within the five day period, I can see why they did not.

MR. OXER: Based on the fact that you had been in

communication, or had been making an effort to be in communication with the Representative for some several weeks before then, and had not yet, there was at least some question of whether or not he would have been able to respond within the extension. Is that correct, Diana?

MS. McIVER: Yes.

MR. OXER: Fair enough. Let the record reflect that she responded positive, affirmative. Okay. Any other public comment?

(No response.)

MR. OXER: All right. We have a motion by Mr. Gann. Second by Mr. Keig. Is that correct?

MR. KEIG: Yes.

MR. OXER: Okay. To approve staff recommendation to deny -- come up and state it again, Cameron. Make sure we get it right.

MR. DORSEY: Well, our recommendation is to deny the appeal on the basis that since we couldn't accept the documentation, it would be a tough thing for us to recommend that you all do. But you do have the discretion to. So our recommendation is to not grant the appeal.

MR. OXER: Okay. There is a motion by Mr. Gann and second by Mr. Keig to support, approve staff recommendation to deny the appeal. All in favor?

(A chorus of ayes.)

MR. OXER: Opposed?

MR. McWATTERS: Aye.

MR. OXER: One opposed. Professor McWatters. So it is a

three to one. The appeal is denied. Okay. Let's move to the fourth item.

Michael.

MR. DeYOUNG: Michael DeYoung, Community Affairs Division. Mr. Chairman and members of the Board, Item 4 is the recommendation of the staff to restore advanced funding status to CSA of South Texas for the CEAP, which is the Utility Assistance Program, and the CSBG program which provides for case management services.

We are also coupling with that request, a request that they voluntarily relinquish the Weatherization Assistance Program. I will go into it briefly.

They have different service areas for each of these programs. For CEAP, it is three counties. CSBG, it is two counties. For WAP, it is nine counties. So the recommendation is to go fund the CEAP, the CSBG, and bring services to the clients to have not received services in the last two years.

About two and a half years ago, we placed CSA on cost reimbursement, due to some monitoring findings and an assessment of their organizational capacity. In late 2010, they were placed on cost reimbursement. And since that time, a lot of time has passed. There has been a large effort to try and resolve the issues.

At this point in time, clients have not received services in two years. Staff is vitally concerned that we begin to provide services to these counties. They are counties just south of San Antonio, and have not received services in some time.

So in the interest of providing utility assistance and case

management services, staff seeks your approval to reinstate the advance status, and take them off cost reimbursement. And then we would embark upon an extensive training and technical assistance effort for the staff of CSA.

And also we would add the component of more frequent monitoring of this agency, in an effort to assure that the clients receive the services and that corrective actions that need to occur at CSA of South Texas do in fact, take place.

And we would work to resolve all of those issues, hopefully by the end of this program, or this current calendar year, December 31, 2013. And that is a staff recommendation.

MR. OXER: Okay. Questions from the Board?

(No response.)

MR. OXER: Okay. We have to have a motion to consider here.

MR. KEIG: I move staff's recommendations.

MR. OXER: Okay. Motion by Mr. Keig to approve staff recommendation as described in the Board book. Is there a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. We have public comment. So grab a seat, Michael. We will be back to you.

Yes, sir. Mr. Ojeda, I think we will remind you that we are on a five-minute clock here. So we would like to offer you the time to make your comments.

MR. OJEDA: Chairman Oxer, if you would remember, at the

last Board meeting, the item -- that there was an agenda item presented to advertise these services, put them up for bid. I was here to support that particular item, because we wanted the services to be provided.

But I also ask for an opportunity to be placed on the agenda so that I could let the Board know the reason why we were not operating those programs anymore. And I had prepared a presentation for you. I was not contacted by staff to submit the information.

I was not aware of your protocol. And I was -- therefore, I did not present the presentation. But very quickly, there are some issues here that --

MR. OXER: Let me, and this won't count on your time, Mr. Ojeda. But I have to point out to you that we have to address the item as it is described in the Board agenda, largely because of the summary rule that says, we can't take up anything that wasn't given an opportunity for public comment.

So to that end, we will be happy to hear anything that you have to address the comments, or address the items on the agenda. But if you have things that you would like to offer up that are new items to be considered, we will have a period at the end of the meeting, where we will encourage, or an opportunity to start building the agenda for the next meeting.

MR. OJEDA: Okay. Again, I have requested to placed on the agenda the contact I had with Michael DeYoung. He informed me that this was being placed on the agenda.

I told him that that is not why I asked to be placed on the

agenda. That I had my own thing that I needed to send to you. So I asked for your guidance as to what I should do.

MR. OXER: Okay. Well, here is -- if you have an item that you would like to speak to that is not specifically the item that is on the agenda, at the end of this meeting, when we come to the end of the formal agenda, there is an opportunity for you to make a request, bring an item up specific. As opposed to going through him, you can tell us directly. So we can put that on the agenda for next time.

MR. OJEDA: With respect to the item that is on the agenda, after I went back from the last Board meeting, I had a letter from Brooke Boston informing us that we should voluntarily relinquish all our contracts with TDHCA. And if we did not do so, they would initiate proceedings to take the contracts back.

And I told her that there were some issues pending, that still needed to be resolved. And that my Board had instructed me that we needed to resolve those issues, especially some reimbursements that are owed to us, before we could discuss you know, anything related to relinquishing or doing anything on those contracts.

There are some outstanding issues that again, that the Board should know about. And those are the comments that I have.

MR. OXER: Okay. Thank you for your comments. Those are items that we will make a point -- Michael, do you want to address any of this? Do you want to restate?

MR. DeYOUNG: Yes. Just for clarification, we contacted Mr.

Ojeda prior to the Board book posting to try and inform him of the item, the way we had crafted it. At that time, he didn't indicate a desire to us to provide other documentation or -- what he did say is, that is fine. That is not the issue. That is not my issue. We weren't informed that we were going to have additional documentation presented.

MS. BOSTON: I would like, if we could take a second for Mr. Ojeda to just in a couple of sentences, lay out his concern. I think that he may be able to talk to you about it. It is referenced in the write-up.

MR. OXER: You need to tell us who you are.

MS. BOSTON: I am sorry. Brooke Boston.

MR. OXER: Okay. So, it is not currently part of the motion in the write-up, but it is definitely in the write-up. It is discussed. So I think it is part --

FEMALE VOICE: The agenda posting is really broad. It is presentation and discussion on the status of Community Services Agency of South Texas.

So the problem is, I don't know what he is intending to comment on. But it sounds like, if it is the amount of money, if that is what he is talking about, the posting with the Secretary of State is sufficient to allow him to do that.

MR. OXER: Okay. All right. Mr. Ojeda, I will give you another five minutes here. Tell us what you need to add.

MR. OJEDA: Very briefly, I think our whole problem started when during the time of the ARRA Weatherization program, when the money

for the weatherization ARRA was going to come on in, everybody started ramping up. This was, I think, like in May of 2009. And everybody was getting ready for this influx of money that was coming in.

We were told that we were not eligible, because we had an issue with one of our rental housing projects in Encinal, Texas. And we accepted our fate. And we were told that we were not eligible. And we continued with our regular weatherization program.

In September of 2009, the contracts were laid out. And everybody that was going to receive a contract. They had been preparing since May to get ready for the contract. And the ARRA adventure began. We accepted our fate. We were not going to get any money.

In December of 2009, we had a contract for the ARRA program. Very simply put, we had not ramped up. We were not ready. We started in January. And we started the process from scratch.

The contract that was given to us was backdated to September, just like the other contractors. And we were expected to perform back to September of 2009. There were some production requirements that had been imposed through the contractors.

And here we were, in 2010, just getting started. By the time we procured, we did everything that was required to get started, we were, in February. We were getting close to March. And you know, we were playing a catch up game. Because we had not been given the opportunity to ramp up.

In April, we received a letter letting us know that Meliora was going to come in to do an assessment of our organization. And in the CAA

world, the Meliora is like the kiss of death, you know. When you have Meliora coming in, the TDHCA is trying to find, well, according to the CAA world, they are trying to find a way to shut you down, or take away your money.

That is basically, in our opinion, what happened. But anyway, they came in. And they made a lot of recommendations. One of the basic recommendations is that we change our agency to a model that they were proposing that we should fit. They were proposing that we develop several departments.

We were going to have to go through a reorganization of the whole agency. The only problem was, that no money was involved. We didn't have any money to do all of those things. There is a lot of outstanding issues right now, with my Meliora that have not been resolved.

And you know, this -- we were in the middle of the ARRA. And now we have the Meliora to deal with. And this was, in 2010, in the summer of 2010. And then in November of 2010, we were put on a reimbursement basis, because we were considered an agency at risk.

And we had no problem with that, because we had been dealing with reimbursement programs with other state agencies. The only difference was, that those other state agencies have a formal reimbursement process that you follow. They provide forms. They tell you exactly what you need to do to get reimbursed.

So we had no issue with being on a reimbursement basis. In fact, Michael DeYoung came to our Board meeting and told our Board that we were on a reimbursement. And basically, what that meant, was that we

delivered the service with our own money, and we would get reimbursed once we submitted a reimbursement.

That there would be a ten-day period, a ten-day working period before we get reimbursed. We saw no problem with that. The only problem was, that we asked for a process to follow.

And we were sent to go to Laredo to a community action agency in Laredo so that they could tell us what they were doing to submit the reimbursements. And the people in Laredo told us that we were going to be in for a surprise, because there really was no process. And they were having a long time before they were getting their reimbursements.

We followed the process that was given to us by the Webb County community action agency. And nothing happened. We didn't get reimbursed. And when we kept asking, we kept asking for a process for our reimbursements.

And all this time, we were providing services with our local money. We kept providing the services. We had been told we were going to get reimbursed. And not only were we put on a reimbursement basis, but we were locked out of the TDHCA reporting system. And we could no longer submit reports.

And so we kept asking for a process. The process never came. And finally Michael DeYoung told us that Seladonia Mendoza was going to come up with a process. We received the process. It was a very detailed process.

It told us exactly what we needed to do. All of the

documentation that was required. And we submitted our reimbursement exactly like he told us to. Well, after that, we got another letter. And I have all of this documented for you, by the way.

And we got another letter from Michael DeYoung telling us that we needed to submit additional information that was not included in that process that we had gotten from Seladonia Mendoza. At that time, this was like in April of 2011.

By this time, we were not getting reimbursements. We had basically exhausted our local funds. We were using our local funds from the agency. And we were basically -- we didn't have any more.

So we decided that we had to close down the program. We laid off our staff. We closed down the TDHCA programs because there was no guarantee that we were going to get reimbursed.

In the meantime, we had received a monitoring on our ARRA program. And I will be honest with you, the monitoring was not that good. But one of the reasons that the monitoring was not that good is because we never had an opportunity for an exit interview from those that did the monitoring.

And it has always been a common practice that before they leave, the monitors will let you know what the results of the monitoring were. But in this particular case, we didn't get an exit interview. And sure enough, when the report came in, it was a very bad monitoring report, but it was nothing that we could not resolve.

One of the main things on that monitoring report related to procurement. And in our conversations that we had with Michael regarding

that, he said, because the procurement had been done wrong. Everything was disallowed. You know, all of our reimbursements, everything that we had been doing was disallowed because the procurement had been done wrong.

Well, the procurement had not been done wrong. You know, and we were able to resolve all of those issues in that monitoring report. There was, the main thing was the issue of procurement. But we followed everything that DOE had recommended for procurement to the letter.

Everything that they recommended, we did. So we resolved that issue. And we submitted a letter saying okay. Now that we have resolved this issue, can we get a reimbursement. And can we be reinstated as a community action agency so we can do the program.

Well, the response that we got was another letter saying that there was another monitoring report that was outstanding from a year and seven months ago. We had submitted a response to a monitoring report in August of 2010. And we never heard anything about it.

But now that we have resolved all of the issues on this ARRA that was keeping our reimbursements, that was being put in front of us, keeping our reimbursements, now we got a letter saying that oh, by the way, there is a monitoring report from August of 2010, which was a year and seven months ago, that you haven't responded to.

Well, you know, our Board Chairman submitted a letter to Mr. Irving telling him that that was not fair. That that report had been closed on the TDHCA contract system. It no longer existed. And yet, we were being held accountable for that.

Well after that, we continued trying to get our reimbursements. On April 1st of 2012, we received a letter from Michael DeYoung telling us, okay. We are going to come to your office. We have received all of your reimbursements.

But now we are coming to your office to review all of your documentation at the local level. And he referenced the ARRA program. He referenced the 2010 DOE, and the 2010 LIHEAP program. And sure enough, he gave us a list of everything that we needed to prepare. And we prepared everything.

When the team came, everything was there. They spent five days. This was in May of 2012. They spent five days in our office, reviewing all of the documentation.

And before they left I asked for an exit, so that I could know what they had approved or disapproved. And they told me that they could not tell me anything because management was going to let us know at a later date. We kept asking. We kept asking.

And no one would tell us what the results of that review was. You know, and we finally got a letter from one of the persons that had been doing the review. There was an email saying that management was still reviewing everything.

But there was an outstanding monitoring report. There was an outstanding response to the Meliora situation. Well, we had not gotten any -- we didn't have any funding from TDHCA. We didn't have any existing contracts in place.

We didn't have any staff. And no one had told us about this situation. So how, our reimbursement would be held back because the monitoring reports and the Meliora findings that we needed to respond to, even though we didn't have a TDHCA program in our agency.

Not only that, but we were in the process of getting audited for our annual audit. And the auditors requested information from TDHCA regarding the outstanding receivables that we had from TDHCA. And they never got a response.

This is the first time in over 30 years that I have been dealing with TDHCA, that we did not get a response for the audit that was in place. On August the 28th, I finally got a call from Michael telling me that he offered me --

MR. OXER: Mr. Ojeda. Rather than a recitation of the infinite details of all of this, I am going to have to ask you to sum it up here, if you wouldn't mind.

MR. OJEDA: Okay.

MR. OXER: Those sorts of details are important in the discussion with the staff. But we have to look at it from a decision and policy issue.

MR. OJEDA: Okay. Well, again, if I had been afforded the opportunity, all of this documentation would have been provided to you. But the bottom line is this; we complied contractually with everything that was requested of us.

And on August 28th, the day that I was making reference to,

Michael told me, you are not going to get reimbursed because the contracts have expired. And I asked, when did they expire. And he said, they expired September of 2011. And I complained.

I said, well, you have been asking us to do all of this work, all of this time, with the expectations that we are going to get reimbursed. And you knew that they had expired in 2011. Why were we subjected to all of this effort?

We didn't even have a staff in place. And we were providing them with everything that we needed. And not only that, but to this day, we don't really know what happened with that review that they did in our office on May 12th.

You know, we have requested that we be provided with all of the information. We need to know what was approved, what was not approved. And our understanding, is that all of this information falls under the public information act. And we can't seem to get it.

We did meet with Mr. Irving on October the 26th. Ms. Deane was there and my Board Chairman, and I met with him. And our understanding, when we left that meeting was, he instructed Michael and Brooke to look into the matter and try to resolve it with us.

And two weeks later, we got a letter saying, no, the contract is expired. So you are not going to get anything. And that is the issue that we have. Now we are being offered new contracts. And this money that is owed to us is just going to be washed away.

And we are saying no. We can't accept that. We just cannot

accept the fact that sorry, the contract expired. The homes have been weatherized.

The materials have been installed. Contractors have been paid. We used a lot of our local money to do this program, and we expect to get reimbursed. We complied with our contractual obligations.

MR. OXER: Okay. No, I think I understand your point. And we would like it to be reflected that you were offered a substantial opportunity to make your point. So I am going to offer Michael a chance. Thank you for your comments, for coming to make those, Mr. Ojeda.

MR. DeYOUNG: Again, Michael DeYoung Community Affairs Division. A couple of -- I am jotting down all over on my page, so I am going to jump around a little bit.

Mr. Ojeda said that the assignment of Meliora is the kiss of death. I would disagree with that assessment. Meliora is a third party who comes in and actually does organizational assessments of community action agencies all across the country.

Originally, they started as an organization called Mid Iowa Community Action. They were the top awarded community action agency in the country when they started this consulting business. Their assessments have been done in various entities all across the state.

We have enlisted them a few times. Most recently, at Panhandle Community Services, and have brought an agency that was struggling back to being one of the well managed well governed organizations. So I think the implication that that is the kiss of death is not accurate from

staff's perspective.

Part of the cost reimbursement process is that you have to prove up your expenditures. And I won't pull punches. It is difficult. It is a sanction. You have to show us that you have done everything correctly.

And that starts from procurement to contracting to invoicing to -- for example, if you are weatherizing homes, in this instance, Mr. Ojeda was weatherizing homes with ARRA -- that you have done the assessments correctly. That you have procured the materials correctly. The contractor was properly procured.

The burden of proof is on the agency, not TDHCA at that point. So we go down and we try and work through this process. It is not something that is done in a one week visit.

So as Mr. Ojeda talks about that they came for a five-day visit, and I didn't get an answer. Yes. That is normal procedure. We come back with a lot of documentation.

On a recent visit we scanned records for five days to come back to embark upon a three-week process to figure out what all was in that documentation for another agency. It is not simple. So it is not conducive for staff to render an opinion on documents that we have not had a chance to digest and look at in the broad scope of the program to see if they have complied.

Mr. Ojeda mentioned that they were locked out of reporting. Our community affairs contract system does not allow an agency to go in and keep putting in reports until we have approved the previous report.

So the fact that he couldn't get the next month's report evidences that we did not have the documentation we need to completely approve the prior report. And so a consequence is, you can't go in and put your next month's report in.

We have got to get that first one cleared, so that we can true up and then start again. That is one of the issues with cost reimbursement. And it is labor intensive.

With regards to the statement that there was a monitoring report from August -- you are going to have to help me David. Is this August 2010, a monitoring report?

MR. OJEDA: August 2010.

MR. DeYOUNG: August 2010.

MR. OJEDA: We did a monitoring report.

MR. DeYOUNG: Okay. He stated that that report was closed out in the contract system. The report doesn't get closed out in the contract system. The contract was closed out. The contract dates had run out. If there are monitoring findings that exist with compliance, those stay open. They don't go away because your contract closed. We need to resolve those issues. And we worked to resolve all of those issues. And this is no different than another subrecipient who has a monitoring. They resolved twelve of the 13 findings. We are still watching that one finding, even though it may be a finding from a year or two ago. They need to resolve that finding. And we track that with a database that tells us what findings have or have not been resolved. The Meliora assessment actually contain 27 findings or

improvements, recommended improvements. Each finding has an associated recommended improvement. As we transmitted that unaltered document to Mr. Ojeda, that occurred in -- I will have to scramble real quick. We transmitted --

MR. OJEDA: 16 March 2012.

MR. DeYOUNG: Okay. June 2010, we transmit the document, the Meliora assessment. The first response comes in from CSA. And it works on some small ancillary issues. But we have got 27 findings still unresolved. That is when we put them on cost reimbursement. We get the next response. Three issues become resolved. We still have 24 unresolved issues. We have other issues associated with the monitoring reports prior to the Meliora assessment. There is a lot of back and forth. Mr. Ojeda is correct. I mean, he didn't touch on a third of all of the conversations that that are going on. You have monitoring staff and training staff. TDHCA staff spent 35 days during this two-year process on site at CSA trying to work through this issue, trying try to show them this process. Mr. Ojeda complained that he was never shown a process for cost reimbursement.

Cost reimbursement is very different at each agency, depending on what programs they administer and what the issues are. We have to craft a cost reimbursement procedure for each agency. So when we put someone on cost reimbursement, we realize we were going to have a huge training effort and a huge compliance effort to get them through this process. We have done this with nine agencies in the last five years. I will tell you, this is the only agency we have had this issue with. We have agencies

where the issues are in their work quality in the weatherization program. So we have to do a very different process for that, because we are spending a lot of time in the homes, versus issues maybe in CEAP or utility assistance, where it is more a financial kind of technical assistance that we are providing. So there is never the ability to just say here is one document, and it applies to cost reimbursement for every agency and every situation. Part of the issue is, you are trying to craft what works for this agency, and what works to get client services delivered as quickly as possible.

I think staff's desire or recommendation here is, there has been so much back and forth. And you can hear frustration I think, on both sides with this process the way it is. It has become stale. Mr. Ojeda has had to let go of staff. TDHCA staff has still I think seven issues unresolved from that Meliora assessment. And we feel like so much time has passed that perhaps the best approach at this point is to go back and re-engage and start the process and help the clients who have not had assistance for two years.

Two other notes that I jotted down: Mr. Ojeda mentioned that we received a letter from his auditors asking for what amounts we owed. The reason there was no response to that is, we didn't have the documentation to verify that we owed those amounts.

Again, we still have not resolved these issues. Most of these issues, in fact, and because there is so many issues, it is difficult for me to make any 100 percent certain statement. But the vast majority of these issues involve often times thousands of pages of documentation. It has never been clear, clearly presented or hasn't been clear to staff that there is a proper

ability to document each and every expenditure.

And that is why there are so many gaps in communication, because we have staff working through thousands of pages of documentation to try and figure out what was the process. Was it followed? Was it properly done. And we still have no ability to render a verdict on those questions and those questioned costs.

So Mr. Ojeda would bring up that there is -- and I am going to throw out a rough figure. I think it is about \$400,000 of funds that he would seek to recoup from these grants. The reality is, the time has expired.

The federal period that we can draw those funds has expired. We have no avenue to pay on those grants. We have no documentation that fully adds up for those reimbursements still to this day. Mr. Ojeda has submitted a lot of documentation. But we don't have what we need, even if we had the ability to draw those funds, because it is not in a form that readily can be looked at and said this adds up.

MR. OXER: So there is no particular sequence that gives you a number that supports the number that he says TDHCA owes him?

MR. DeYOUNG: Not right now.

MR. OXER: Okay.

MR. DeYOUNG: And that is -- the design of the cost reimbursement process is trying to make this as clear as possible.

MR. OXER: I know. Cost reimbursement is one of those things that has got to be -- it is a linkage; it's a direct linkage, and that kind of defers --

MR. DeYOUNG: These invoices all roll up into this one monthly report.

MR. OXER: Right.

MR. DeYOUNG: And it falls perfectly into your general ledger.

MR. OXER: And I would defer to the resident CPA on the dais up here. Now, on that side of the aisle. That the accounting isn't an issue that has to be very detailed.

Let me ask this, just for -- to have this purposely on the record. The time for which the agency had or would potentially had the opportunity to draw down those funds is closed. It no longer exists, except to pursue appeal for federal funding for these programs. Is that correct?

MR. DeYOUNG: Correct.

MR. OXER: Okay. In the event that --

MR. DeYOUNG: There is no avenue.

MALE VOICE: State that again?

MALE VOICE: There is really no way to appeal for federal funds.

(Simultaneous discussion.)

MALE VOICE: The federal grants are made available to the State of Texas and subgranted to our subrecipients. And those federal grants have finite periods.

After the end of those periods, there is no federal source of money for us to go to. State agencies cannot make payments unless they have the money, and it has been appropriated to us.

And in this case, it would require appropriations at the federal level, the state level, and the availability of the funds. And none of those three components are present here.

MALE VOICE: Yes. And as soon as that period expires, U.S. Treasury sweeps the accounts.

MR. OXER: Essentially slams it shut.

MALE VOICE: They slam it shut the next morning at eight o'clock.

MR. OXER: Okay. Brooke, do you have a comment you would like to make?

MS. BOSTON: Yes. I just -- Brooke Boston. It may be helpful. When we spoke with Mr. Ojeda on the phone to let him know what the write-up said, we had filled him in about this, before the materials were posted, just so he wasn't surprised about what the write-up would reflect. Since that is not what he is choosing to talk about, it may be that the Board wants to discuss with him whether the action is still something that is even something that they desire before you take an action either way.

MALE VOICE: Yes. And I would just like to comment. You know, I appreciate what Mr. Ojeda and his organization have done historically for their community, serving their fellow Texans. It is what you are there for. And I understand and acknowledge that it is a complex morass that has gotten us to this point in time.

But I believe that -- I speak for Michael and Brooke and this whole team, that we would really like to offer a possibility that the things that

we believe you are capable of doing, that we could have a fresh start, and put you in the status of administering CSBG funds and the utility assistance funds on an advanced basis going forward.

MR. OXER: Okay.

MR. OJEDA: May I respond?

MR. OXER: Yes. I will give you three minutes on that one, just because you deserve a response.

MR. OJEDA: When Michael called me --

MR. OXER: I am sorry, Mr. Ojeda. You have to identify yourself.

MR. OJEDA: David Ojeda, Community Services Agency.

MR. OXER: Right.

MR. OJEDA: On August 28th, when Michael DeYoung called me, he called me to let me know that the ARRA program, it was on a Tuesday. The ARRA program was going to end on a Friday. He offered partial reimbursement.

And I asked him what happened to the rest. He said that those costs were disallowed. I asked for an opportunity to review those costs. And he sent me the information on Thursday. I had until Friday.

When I looked at the information there were a lot of mistakes that the staff had made. We could have resolved a lot of those issues had we been given the opportunity. He said, you know that it takes forever. Why weren't we given the same opportunity for the other contracts?

Why didn't they allow us the opportunity to look. We still don't

know what or who disapproved. You know, we prepared all of this documentation. We spent a lot of time getting things ready for them.

And do we have to use the public information act to get information? We are a contractor with TDHCA. We should know what. We provided a service. We delivered, again.

The homes are weatherized. The materials are installed. The contractors are paid. Why all of the secrecy? Why can't we know how we did? And again, all we got was, sorry. It expired. You are not going to get funded.

I mean, I think that we are afforded an opportunity -- we should be afforded an opportunity to know what was approved or disapproved. You know, and you know, this thing about the thousands of papers and everything, we kept providing everything that we were asked. They want information. We sent it.

You know, he sent a team of five there. You know, we got everything ready for them. And we kept asking. We kept asking. You know, what are the results? And they kept telling us, management is under review.

Again, I have all of that documented. All of the correspondence that we had changed and everything. I just think that -- I don't have a problem entering into discussions about the new contracts.

But again, you know, we want to replace those local funds that were very important to our community. But we are not talking about \$400,000. It is more than that. Those local funds were used in our community to provide assistance to help people with things that federal funds cannot provide.

And we exhausted everything. Everything is gone. Because we were told we were going to get reimbursed. We should provide the service. You are going to get reimbursed. And we didn't.

MR. OXER: Okay. I understand your point, Mr. Ojeda. Michael, come up.

MR. DeYOUNG: The cost reimbursement process doesn't say you will automatically get reimbursed. It is incumbent upon the subrecipient to provide a clear record of what the expenditure was, that it was an eligible client, that the activities were properly conducted, and the services were rendered.

Mr. Ojeda was -- CSA was reimbursed for all costs that we could. It is a moot point at this point whether an individual cost was allowed or disallowed. We have no avenue to pay CSA for any of those dollars.

The records that were put together, as Mr. Ojeda said, we gave them everything. It is not just giving everything. It is showing that everything adds up and everything was done the right and proper method, and all of the federal and state requirements were met.

If that is not the case, giving a bunch of paper does not equate to you get a reimbursement. And so we, on many issues, you can look at some of the activity.

And Mr. Ojeda would say, we followed DOE's procurement to the letter. But did you follow the state procurement to the letter? There are multiple levels of compliance that have to be done before we can approve that expenditure. There were thousands of pages.

MR. OXER: But they were insufficient?

MR. DeYOUNG: They weren't sufficient to add up to a reimbursable cost.

MR. OXER: Okay. Tim? Okay. All right. What was your request that we would have -- I would like to see this resolved. And I don't know if there is any more that can be done. But I would like -- my own approach to this would be to defer discussion.

Table this until the next meeting. And make sure there is a one-on-one discussion with Mr. Ojeda. And get this -- I mean, go back to this, and come up with a summary report. Even if it takes just one more time to whip this thing into place.

And let's pull this thorn out, and let this heal up. And I think it would require suspending the motion or retracting the motion. Who was the second? Mr. Gann? Okay. It was a motion by Mr. Keig, second by Mr. Gann. Brooke, do you have a thought?

MS. BOSTON: I have a question at least.

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

MS. BOSTON: Brooke Boston. Just to clarify, you suggest that we go back and work through this, remove the thorn.

MR. OXER: Okay.

MS. BOSTON: I just want to -- are you asking that staff go back through all of those pages, and come up with an amount that would or wouldn't be disallowed? Or --

MR. OXER: I want to see some -- you know, there were --

matters that are this complex, we have an opportunity to look at this. We are looking at policy.

I personally, and I think that Mr. McWatters as a sitting CPA would suggest that this is correct. I will take your corroboration is, as I hope that. You know, there needs to be a specific definable sequence to be able to submit, to summarize the expenditures were there.

And they have got -- it has got to be done in a certain fashion. And staff is saying that hasn't occurred. He is saying that has occurred. Okay.

Unfortunately Mr. Ojeda, we have the -- the staff here has to check the box, because when we pull this out, our auditors say that there are certain things that have to be done. So from an accounting standpoint, I understand the point. You say it has been satisfied, and staff says it has not. Is that correct?

MS. BOSTON: Correct. I think he feels like he has turned everything in. He gave us boxes and boxes.

MR. OXER: Right.

MS. BOSTON: Sheet A doesn't correlate to Sheet B.

MR. OXER: Right.

MR. IRVINE: We do not have the resources to organize and compile vast quantities of material into a methodical record that supports reimbursement. Mr. Ojeda is contending that because of the financial posture of his agency, he lacked those resources. So what we have is a great big bunch of stuff.

MR. OXER: That nobody right now is willing to sort through and show us the line that connects the dots.

MS. BOSTON: And I think for the staff perspective, even if we connect the dots, unfortunately, because of how long this has gone on, there is no money.

MR. OXER: Even if we connected the dots and it works --

MS. BOSTON: Right.

MR. OXER: We can't pull down any money.

MS. BOSTON: Right. And because of -- you know, I sympathize with the request, in terms of an open record.

But because the analysis that he is asking for, what was allowed and disallowed doesn't exist, because we were not able to connect the dots. I mean, he is asking for open records on something that we don't have.

MR. OXER: So it is an open records for something that didn't exist. Because the data wasn't supportable.

MR. IRVINE: Well, it never got to the position of being allowed or disallowed.

MS. BOSTON: Right.

MR. IRVINE: It is not yet allowed. So it is --

MR. OJEDA: May I make a comment, please?

MR. OXER: Sure.

MR. OJEDA: I am having --

MR. OXER: And you have to come up to the mic again, Mr.

Ojeda.

MR. OJEDA: David Ojeda, Community Services Agency. I am hearing, but I am having a problem understanding. Because when I asked Michael DeYoung, when he called me on August 28th for the disallowed costs on the ARRA program, it was on a Tuesday.

On Thursday, he sent them to me. And we were reviewing them, and we found a lot of discrepancies, a lot of mistakes that the State had made. But we were not allowed to submit our documentation because we were told on a Monday -- again, Mike said, Friday was a definite deadline. On Monday, he told me, You have to take what we are offering, because there is no time for you to deal with what is a disallowed cost. So I am having a problem understanding this, because if he could provide that information for me, for the ARRA program, what about the other programs?

All I am asking is -- you know, and the other thing again, I am having -- his request to us to put all of this information together. Whatever he requested, he outlined everything in his letter. That is what we put together. He is saying there is a lot of other stuff that you didn't turn in. Well, you never asked me. If you had asked me, I would have done that. We always kept saying the same thing. And the letter that he sent to us is dated April 1st of 2012. The contract expired September of 2011. Why are we asked to do all of this stuff?

MR. OXER: Well, I think -- do you want to address that Michael? Because part of it was to address the items that were left unresolved from the Meliora evaluation. Is that right?

MR. DeYOUNG: Yes. I think that is part of it. You know, the ARRA weatherization was a huge effort within TDHCA. We doubled, almost doubled the staff of community affairs. We had significant monitoring staff.

Perhaps that process was more structured and we are more able to readily identify disallowed costs and allowed costs. The urgency on that grant was that it was about to expire. It was a one-time grant.

And we worked with not just with Mr. Ojeda and CSA, but with various entities that still had unresolved issues. And we put in a massive effort, manhour-wise to try and resolve all of those costs, because we knew we weren't going to have the opportunity in a matter of days to ever draw those funds again.

So there was probably a more concerted effort on those ARRA funds. Now, as far as the other CEAP, the CSBG dollars, you know, that is the record that there is you know, not well organized. It is not easily tie-able to a general ledger. The general ledger and the invoicing do not agree.

It is to this day and as we worked on doing this write-up, last weekend was an effort to go back through all of the documentation. This is a -- probably the biggest file we have.

I mean, there is -- literally hundreds of emails. Letters. Documentation. Phone call conversations. Staff notes from conversations. The record is spotty.

And it is costs that are shown somewhere, that don't tie to the backup document documentation. It is not clear why they don't tie together. There is no -- on its surface, explanation as to why it would be that way.

And given those circumstances, when you are looking at a cost reimbursement process that says I have an invoice for A. And it matches a work order. And it matches a check cut from the organization, that makes it simple.

But when you have an A, a B, and a C, and no one explains B or C, you don't pay on A. You have got to have some resolution. And that has not ever been presented to us clearly.

And again, we do get -- we have been given everything. But everything doesn't answer the question. And we have got to answer the question before we can give anything. And that is what we are working on.

MR. OXER: It sounds to me, that if there was ever an argument for a bigger tractor, this might be it.

MS. BOSTON: If I could just say one last thing. This is Brooke Boston. I feel like on most of the items, you guys receive, you are given, you are presented with something that an applicant or a contractor wants. And the decision is, do we or don't we do that?

And in this case, you know, I feel like the staff, somewhat proactively, as this wasn't requested by Mr. Ojeda, is trying to recommend something to the Board that would let us go back to the process of serving clients. And I guess, one suggestion would be within the realm of what could be done with any resources we have, which would not include funds that we can't access, what would CSA like to happen?

Because that is kind of the heart of the issue. If there is frustration there, I understand that. But what can we do? What is kind of the

request of TDHCA?

Because the Open Records request doesn't exist. You know, it isn't really something that we can produce. So it may be helpful, if you are going to ask us to do something between now and the next meeting, us having -- staff having a clear understanding of exactly what you all would be looking to vote on would probably be very helpful.

MR. OXER: Any thoughts? Professor McWatters?

MR. McWATTERS: Well, this is sort of along those lines because I intended to address that question. You just are addressing a broader question. CSA seems to have material discrepancies in its accountability, transparency, compliance programs.

And I gather there has been back and forth over some period of time to try to resolve that, and it hasn't been resolved. In fact, the resolution is so dilatory that the door has closed on federal funds for this, so there is no money to pay it, even if there was full compliance. Okay. So I look at the proposed resolution and one of the parts of it is to grant CSA new contracts. And so I have to ask myself the question, do you want to grant new contracts to CSA, if they are in material noncompliance with everything they have done so far, or with certain material matters that they have done so far. And is that not action that would appear dubious to a third party, simply looking at this. So I mean --

MR. OXER: Building on a weak foundation, so to speak. So what constitutes your ability to go back and reform the state of affairs at CSA?

MR. McWATTERS: Can this thing be fixed? Because the

wording of the resolution says, with increased monitoring by the Department. Is that possible? Do we have the people to do it? Does CSA have the people to do it? I just heard the answer was no.

MR. OXER: On both sides.

MR. McWATTERS: On both sides.

MS. BOSTON: Yes. And we have talked a ton about that, kind of the circular argument of, how do we get out of this loop? One of the factors to think about in this case is, these are not contracts that are annually bid. These are networks that exist to cover certain counties.

So we can't tomorrow come up with an alternate provider and say, in this case, because we do feel like, let's say it, we are dubious that, here is someone else who can help those clients today. And after several years, we just feel like something has got to happen.

The day TDHCA -- it would take a long process of -- we think about a year at least for us to remove the status of them as a Community Services Block Grant eligible entity. And that is a federal protection for those agencies.

And which was part of our thinking in, well, let's try. It has been enough years. We don't know for sure that if we gave them money back, they would have the same problems in the past. Because that staff and those processes aren't really in place any more.

So with them, CSA knowing what the issues in the Meliora report have been, which is our expectations of how we would expect them to operate these programs, if the contracts were given back. And we had put the

conditions on here that it would only be a conditional contract until they had done everything in the Meliora report.

And that they would only be coming off of cost reimbursement as long as we saw that they were doing things in the Meliora report. So if we were to begin the contract back, and in the first month, it looked as though there were no effort being made whatsoever, I think we would have kind of hit a halt again.

We in an effort of wanting to believe that they can do it, and that they have a desire to help the clients in the area. I mean, I would like to give them the benefit of the doubt that we can go down that path.

And if not, then we would obviously be in a position of potentially needing to pursue through the hearing process and the federal process of removing their programs. But we were trying to find an alternate solution.

MR. OJEDA: May I respond?

MR. OXER: We are back on the circle again, Mr. Ojeda. While I --

MR. OJEDA: Just one more.

MR. OXER: One more.

MR. OJEDA: Thank you. David Ojeda, Community Services Agency. I just want to let you know, one item that I am supposed to do with Meliora. I am supposed to develop a nine-county strategic plan for the nine counties of the weatherization program.

I don't have any administrative -- I only have CSBG for two

counties: Dimmit and LaSalle. The other seven counties, all I have is weatherization money. And my response to TDHCA is that weatherization funds cannot be used administratively to collect data, do the research, everything that needs to be done to put together a strategic plan for those nine-county areas.

I have two border counties, Eagle Pass and Del Rio. And those two counties have to be treated differently. We cannot do that nine county strategic plan. We don't have the capacity. We don't have the administrative funds.

I am supposed to do it under Meliora, because they said that I had to do one. And that item is still pending. There are other items, I don't have the time right now to talk to you about this.

But they are saying you have to do the Melioras. And I am thinking, like, they haven't been done, because we don't have the ability to do those things. We don't have the funding. There are some things that we just cannot do.

But you know, Meliora, God came down from heaven. And now we have to do what they say. And my response is, these things are not practical. We are a small agency. We have CSBG money for two counties. We have \$150,000. That is all we have. You know, and I wish I had the time.

And I had provided all of this information for you. But I was not given the opportunity to include it in the package. But you know, some of these things -- you have to look at it realistically.

MR. OXER: All right. Your point is well made, Mr. Ojeda, and

we appreciate your comments on that.

Brooke and Michael, come up. Come on. Let's do it.

MR. OXER: All right. I am pretty sure you guys made several laps around this circle, around this track. I personally concur with our position that our purpose is to provide services. We are not trying to hurt anybody's agency.

I want to do whatever we can to get CSA back up and going. If Meliora is in there, we need to get it to -- what I would like to do is, have some or in some fashion have our resolution to address this item, reflect the process that you articulated earlier. So that is what we follow going through, to see if we can resurrect this process. Okay.

If there are issues on the Meliora report that can be done, let's talk about that too. Okay. There is a solution to this somewhere. And it is not crushing anything on either side.

You know, the sad fact is, the money ran out. There weren't enough chairs. The music stopped. And you know, we didn't get a seat here.

So the point is that we have got -- I want to get back to where the agency is available to assist CSA in terms of providing services for those communities down there. So to that effect, does our resolution as currently stated reflect that interest, Tim?

MR. IRVINE: I believe so.

MR. OXER: Okay. So with the additional instructions to staff that we pursue this as you defined it, we will vote on this resolution with the idea that our intent is to see through to this, that they get -- that we in keeping

with our continuing metaphor here, get a bigger tractor they can drive here on this one. You know. You didn't think I would get away with a whole day and not say that, did you?

We need a bigger tractor on this one, so more capability, and a specific process. You know, direct accounting requirements that will satisfy Professor McWatters from an accounting standpoint. And get those processes in place. And then give them some time to execute on that.

So with that admonition, I would offer up that we have a -- I recall. This was what, an hour or two ago? A motion by Mr. Keig and a second by Professor McWatters to approve staff recommendation as described in the Board book. And there are -- there has been adequate time for public comment. So all in favor.

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. It is unanimous. So what I would really like to see is in next meeting, well, let's see where we are at. Mr. Ojeda, I hope that will be satisfactory for you. At least, see that you are getting some process of attention to the issue.

MR. OJEDA: Thank you, sir.

MR. OXER: Yes, sir. Okay. Well, it seems finally we have reached the end of the formal agenda. So we are now in that important part of the agenda where we invite public comment for anything. This is for the purpose of constructing an agenda for meetings in the future. Or as we come

through.

So is there any public comment that we would like to be made. Barry, it looks like you are the only one. And you are the first one, so have at it.

MR. KAHN: Okay. My name is Barry Kahn. I am only bringing this up, because we have been going through a lot of weatherization today. So it is an issue that is now on everybody's mind.

MR. OXER: And I will make a point that we will keep it at three minutes just for keeping the clock running here.

MR. KAHN: Anyhow, the whole issue is, the older tax credit properties are going to be facing an issue over the next few years. The Montreal agreement on the environment has precluded the use of the type of air conditioning units that have been in existence for many years, until very recently.

And a lot of our older properties are going to be facing a major financial expenditure to replace these ACs. And many of them, particularly the older ones have gone through all their operating reserves, and really don't have a source when the time comes.

And it is probably a three-, five-, to seven-year process. And since I have got such a short period of time, I can't go into a lot of details on the Montreal Process. But my real suggestion is that there be some staff, and thought put forth.

Since the Department now has a source of funding perhaps, I am just speculating from the repayment of the TCAP loans, to put some of this

money aside for weatherization down the road. When the time comes, that people can't buy Freon for R-22 ACs, and have to replace them. And if you want me to go into more detail, I will.

We examined this with the Department of Energy. It is like the EPA and the Department of Energy don't speak. At this meeting, a couple of years ago, when the weatherization funds did become available under the Obama stimulus plan, a couple of us went over to the DOE from the National Association of Homebuilders.

Afterwards, we kind of felt like Eddie Murphy in Beverly Hills Cop. It is when we brought up the suggestion that weatherization funds be used for the purpose of replacing R-22 ACs. It was like we were going over every federal budget, everything else under the kitchen sink.

So they haven't been receptive at the federal level. I am not sure where the funds, if there will be some more federal receptiveness. But I trust that the Department is kind of reviewing its alternatives with the repayment of the TCAP funds.

And all I am doing is making a suggestion that that thought process may include helping out older properties that will have to replace their ACs. Don't have adequate funding. You know, preserve our stock of affordable housing.

MR. OXER: Good. Thanks. You are certainly aware we can't ask questions, because this is an agenda item for the future. We wouldn't be able to act on it anyway. So we will get some more detail.

MR. KAHN: Okay.

MR. OXER: Thanks for your comment.

MR. KAHN: But it is just a thought.

MR. OXER: Good point. There is a continuously escalating environmental requirement for all of the things we do. So capital replacement, I haven't seen anything get cheaper. So all right. Good afternoon.

MR. COHEN: Good afternoon. Gary Cohen, Schutz and Bowen.

MR. OXER: Hi, Gary.

MR. COHEN: Thank you for the opportunity to speak. Speaking about the penalty point reduction issue that was discussed previously, just a couple of brief points, because there will be no action taken today.

We just would like to be clear on the record that hopefully Board and or staff will determine that something short of the letter from the Texas Water Development Board will suffice in staff's review, in order to avoid imposition of penalty points. There is nothing in the QAP that talked about provision of a letter.

It just said in order to avoid imposition of penalty points, sufficient documentation need to be provided in good faith. We felt we did that. As was discussed by various Board members. Right up until the end, we were told that letters would be issued by the Water Board.

We did know, no doubt about it, when it came time to submit the application that we were not going to have a letter. That is self-evident, because we did not submit a letter. We did believe, and reasonably believe

that there were others who may be obtaining letters.

We were told that our letter was signed and sitting on a desk and waiting delivery. So in a competitive environment, we did not go to Las Vegas and take a gamble here, like some people have characterized it.

We carefully read the QAP and saw the imposition of penalty points may occur when there is lack of good faith and no substantial documentation to support our position. We submitted a letter from the City that said all criteria for economic development, for the EDA area had been satisfied.

And they broke down each of the three specific requirements and explained why each of the three had been met. And we feel that that is more than sufficient grounds. Particularly in light of the fact that the statute directed the housing agency to prioritize transactions that were EDA.

We felt that the agency was going to award points to somebody. Notwithstanding that nobody was getting a letter, because statutorily, they had to. Ergo, we put in documentation that we felt would be sufficient to earn the points and to avoid penalties. Thank you for the opportunity to speak.

MR. OXER: Certainly. Thanks.

Doak.

MR. BROWN: Doak Brown, Brownstone Affordable Housing. I am not going to repeat the arguments that we were going to make. Because it is pretty much the same thing.

But to somewhat echo what he just said, is that the problems

that you have here is that the procedures manual created an impossible evidentiary requirement. And it essentially nullified the priority points that you are supposed to get for being in an EDA.

I am sure staff, it sounds as if they are going to look at what we provided, and determine whether or not it is sufficient supporting documentation. I hope that that doesn't mean that the only documentation that could be provided was the letter from the Texas Water Development Board.

We provided a letter from a State Representative and from the City of Laredo, which received the funds from the Texas Water Development Board. Which indicated that we are in an EDA. They were the ones that got in the funding.

All I can say is, I never dreamed that that type of documentation would be to such an extent that we might be penalized a point. That is all I wanted to say.

MR. OXER: Okay. Thanks for your comments. We will take it up at the next one. All right. Are there any other public comment for future meetings?

(No response.)

MR. OXER: Okay. Does staff and the audience have any more comments. Or any other public comments? Any other staff comments?

(No response.)

MR. OXER: Okay. I would like to -- I want to make a point here. Because as many of you know, this is Mr. Keig's last Board meeting.

He has managed to abandon ship here, and take on a new assignment. We expect him to hoist the pirate flag when he gets over there. Just like we have here.

MR. KEIG: Yes. You notice how I managed to get a bunch of things pushed off to the next meeting.

MR. OXER: Just like an attorney. Delay the argument. Don't make a decision. Okay. So with that, I would like to offer any Board member, including staff member, a member at the dais here, to say, to have a few words.

MR. IRVINE: I absolutely have a few words.

MR. OXER: Yes. But in public. So we can say them in mixed company. Okay.

MR. IRVINE: And they are all good. I think Lowell has been just the consummate public servant in the way he has approached his duties here. He has been meticulous beyond measure.

I mean, this is a guy who calls me to go through the board book and say, you know, on page 13, in line 6, you really should have said "or" instead of "and." Incredible detail. I mean, it is the kind of meticulousness that you expect of a first class lawyer.

But to have it brought into the arena of public service like this is just amazing. He has been a very steady influence. He has been unflinching on his commitment to compliance.

But he has also been very mindful of the human interaction need. You know, to get along with each other. And with the development

community. The community action agency community. All of the parties out there, that we work with.

He has just been an amazing guy. A good friend. And he is going to be a great leader where you are going.

MR. OXER: Okay. Anything else? Anybody?

(No response.)

MR. OXER: Okay. Professor McWatters. Don't worry. I will give you a shot at the end.

MR. McWATTERS: I would certainly like to second what Tim has said. You know, as a couple of lawyers sitting next to one another, that is usually going to lead to at least a couple of fistfights. And we didn't go there.

And it is because even though we have a common goal, we look at issues slightly differently. And in a harmonious way, and I think, in a constructive way. And I really appreciate that, Lowell. And I will miss your presence very much.

MR. KEIG: Thanks.

MR. GANN: Mr. Chairman, I guess I had better put my two cents in.

MR. OXER: Mr. Gann.

MR. GANN: I sat beside Lowell on this side, many nights and days and nights, it seems like. And your detail is just unbelievable.

Some of you may not know that, that Board book is 1,100, 1,200, 1,300 pages sometimes. And he would find all of the errors in spelling even on the back, and grammar too.

So it was fantastic just to watch you delve into all of those situations. And you have done a great job for us. Especially, even today. We appreciate you coming down and working out today.

MR. KEIG: It works.

MR. OXER: All right. I will give you a shot at it. Being the Chairman, I get the last word.

MR. KEIG: Well, for those of you who don't know, I am starting on Monday as the Director of the Civil Rights Division of the Texas Workforce Commission. It used to be a separate agency. And it was folded into TWC in 2005. I report to a separate board. I got to go down to Houston yesterday, and visit with the new Chairman of the Board. Not the new Chairman of the Board, new to me. Tom Anderson. So I am really looking forward to -- I will still be doing housing. We have all been housing, and --

MR. OXER: The problem is, if you show up here, we are in trouble. Is that what you are saying?

MR. KEIG: Right. In employment. And we have, I believe, an MOU with TDHCA in terms of referrals and that sort of thing. So I won't be totally gone. I will still be in the space.

MR. OXER: Let the record reflect that you officially start work Monday.

MR. KEIG: Monday. So I can't come back for another meeting. All of the Board members have to show up, at least one more. I have really enjoyed being on this Board since what, 2009.

You know, I heard that developers were evil. And I hadn't --

and developers and big firm attorneys well. And I hadn't found that to be the case at all. I really enjoyed hearing from the perspective of the developers, I think for the vast majority, the developers, they have their minds and hearts in the right place to provide affordable housing for low income Texans.

The staff has been incredible. We really couldn't do our job up here without all of the hard work that they do. And so I want to give them a big thanks as well. Thanks.

MR. OXER: All right. One last thing. Lowell has for some time, been on the audit committee. Sandy, if you wanted to say, you are welcome to say something. But you know, hopefully it will be -- I will give you a shot at it. But Lowell has been on the Audit Committee for some time, has been the Chair here for quite a while, too.

MS. DONAHOE: Okay. I will try to make this brief. I am Sandy Donaho, Director of Internal Audit. Lowell has been on the Audit Committee almost since the beginning of his tenure with the Board, I think.

And when he first joined the Audit Committee, I gave him a couple of books on audit standards and things like that. And imagine my surprise when he actually read them. And then he called me, and said, I want to talk to you about this Audit Committee tool book you gave me.

Okay. And he says, starting on page 12, and we worked our way through the whole book. And he had flagged all of the pages, I assume, and had comments and questions. And I really appreciate that about Lowell.

I really appreciate that if I send him an audit book, and he finds an error, there is probably not any other errors in there. So that has been

really good.

And he has been very supportive of audit. He has been very supportive of me and my staff. And we will miss him a lot. So thank you, Lowell.

MR. OXER: All right. I get to say the last words. So the -- I don't know if any of you know, but it was exactly two years ago this meeting, two years ago in May, this is my first meeting for the TDHCA.

And so the -- I have reflected on at times on whether or not I made a good choice in accepting that. But it has been a lot of fun since then. So the -- I do have to say that it has been a -- just say, a really rewarding experience to have the people who surrounded me up here, including Lowell.

And this was the fact that he has got a birthday in the first week of September, which, if you will notice, we are all stacked up on this side. All the September birthdays are on this side.

So we will miss Lowell. And of everybody up here, perhaps I will miss him the most. So Lowell, thanks, buddy.

(Applause.)

MR. OXER: All right. With that, we have reached the end. I have the last word. We will entertain a motion to adjourn. Do I so hear?

MR. KEIG: So moved.

MR. OXER: Motion by Mr. Keig in his last official act to adjourn. Do I hear a second?

MR. McWATTERS: Second.

MR. OXER: Second by Professor McWatters. No need for

public discussion. All in favor.

(A chorus of ayes.)

MR. OXER: Opposed?

(No response.)

MR. OXER: There are none. See you in a month, folks.

(Whereupon, at 3:35 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: May 9, 2013

I do hereby certify that the foregoing pages, numbers 1 through 183, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

05/14/2013
(Transcriber) (Date)

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