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TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING OF JUNE 24, 2002

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C. Kent Conine, Vice-Chair

Beth Anderson, Member  
Vidal Gonzalez, Member

Shadrick Bogany, Member  
Norberto Salinas, Member

**BOARD MEETING**  
**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**  
**Capitol Extension, Auditorium, 1400 North Congress, Austin, Texas 78701**  
**June 24, 2002                      9:00 a.m.**

**AGENDA ADDENDUM**

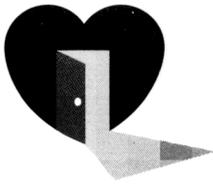
**The following reflects Action Item 1 from the Agenda:**

Item 1    Presentation, Discussion and Possible Action on Appeals to Board from                      Michael Jones  
            Low Income Housing Tax Credit Applicants on Application Matters as follows:

            #02025, The Village at Prairie Creek  
            #02026, Parkside Terrace Senior Apartments  
            #02069, Sanger Trail Apartments  
            #02086, Refugio Street Apartments  
            #02136, Cherry Mountain Villas  
            Any Other Appeals Timely Filed in accordance with the Qualified Allocation Plan  
            and Rules

**Three Other Appeals Timely Filed Include:**

            #02100, Grove Place Apartments  
            #02121, Northpoint Retirement Village  
            #02128, Cedar Point Retirement Apartments



# SafePlace

Envision a future without violence.

CALL US 267-SAFE



June 13, 2002

Mr. Michael Jones  
Chair, Governing Board  
Texas Department of Housing  
and Community Affairs  
P.O. 13941  
Austin, TX 78711-13941

Dear Chairman Jones:

We wish to appeal the score awarded to the application of Grove Place Apartments for Low Income Housing Tax Credits (#2100). We ask that the Board award an additional eight points to our application for meeting the mixed-income development criteria of the 2002 Qualified Allocation Plan (QAP).

As a preface to the details of our appeal, we would like to introduce our organization and explain the uniqueness of the Grove Place Apartments application and its sponsor, SafePlace of Austin. For more than twenty years, SafePlace has been the primary provider of direct, comprehensive services for those who have been hurt by domestic violence and sexual assault in Austin and Travis County. We operate 24-hour hotlines; provide shelter and transitional housing; offer long-term nonresidential counseling programs; and administer proactive community education programs to reduce violence and sexual assault. During 2000, we provided over 27,000 nights of emergency shelter and supportive housing for 38 families including 39 adults and 92 children. A three-minute video about SafePlace is enclosed.

**Too many families who must leave our domestic violence shelter or transitional housing are faced with the appalling choice of returning to a batterer or becoming homeless.** Because of our families' dire need for safe, affordable, permanent housing, SafePlace chose to develop rental housing which would benefit a wide range of income groups – a development structure ideally suited to the Low Income Housing Tax Credit Program. The proposed Grove Place Apartments would offer 147 income-restricted units, of which 44 would serve families earning below 30 percent. An array of support services will allow SafePlace families to continue to heal while other services, such as financial education, will improve the lives of all residents. We have strong support from the community and the neighborhood. All necessary City approvals have been obtained; construction could begin immediately.

In planning the Grove Place development, we sought to create the type of project that is specifically called for in the QAP. A community with housing for extremely low income families that is integrated with higher incomes and acceptable to the neighborhood. The proposal includes:

- 44 units serving 30 percent of median income or below (30 percent of income restricted units);

Call us 24 hours 267-SAFE/927-9616 TTY for Deaf callers  
P.O. Box 19454 Austin, TX 78760  
www.austin-safeplace.org  
512/385-0662 fax

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- 30 units serving 40 percent of median income or below (20.5 percent of income-restricted units);
- 44 units serving 50 percent of median income or below (30 percent of income-restricted units);
- 28 units serving 60 percent of median income or below (19 percent of income-restricted units); and
- 38 units at market rates (20.5 percent of total units)
- for a total of 184 units.

We believe this rent structure is healthy for tenants as well as the community and also meets the goals of Texas Department of Housing and Community Affairs (TDHCA) to encourage mixed-income housing.

On May 13, 2002, TDHCA staff issued a Scoring Notice disallowing the eight points requested for a mixed income development providing 20 percent of their units at market rents on the basis that the market rate unit rents at Grove Place fail both the 10 percent and 5 percent tests. On May 22, we submitted a letter of appeal to TDHCA Executive Director Edwina Carrington with a letter from our market analyst, Charles Heimsath of Capitol Market Research (enclosed). Mr. Heimsath highlighted the following points:

- If actual market conditions are considered, the rent schedules for Grove Place Apartments meet TDHCA's 10 percent and 5 percent tests.
- The area median incomes and maximum allowable rents for 2002 promulgated by the U.S. Department of Housing and Urban Development (HUD) significantly overestimates median family income for the Austin-San Marcos metropolitan area. Looking at median incomes in submarkets throughout Austin no income level approaches \$71,000, let alone surpasses it.

In her June 5<sup>th</sup> response, Ms. Carrington notes the Grove Place appeal does not contest the application of the mixed-income test, it contests the application of the test because of the submarket. Staff cannot accept that argument because it would be unfair to other applicants but feels it is a relevant issue for further discussion for the 2003 QAP. We used that test as it is the appropriate test to measure local conditions using accurate information, as required in the QAP.

She also states that while our appeal claims the HUD rents are too high and should not be used to score the mixed income item, the 2002 QAP requires that the HUD rent standard be used to evaluate applications. Thus, on both points – median income and HUD allowable rents -- it would be unfair to other applicants to reconsider the application of the QAP.

We respectfully ask you that you reconsider staff's recommendation. Our request applies to all tax credit applications for the Austin-San Marcos area. According to the 2002 QAP and Rules, the QAP is a plan that [*emphasis added*]:

- A. provides the threshold, scoring, and underwriting criteria based on housing priorities of the department *that are appropriate to local conditions*;
- B. gives preference in housing tax credit allocations to Developments that, as compared to other developments:
  - i) when practicable and feasible based on available funding sources, serve the lowest income tenants and
  - ii) are affordable to qualified tenants for longest economically feasible period.

We understand the importance of the QAP in its role to guide the Department to ensure fairness of application of rules; however, Austin-San Marcos area applicants should not be penalized for a statistical error that can be proven using Census 2000 data. TDHCA staff do not dispute that the HUD income and rents for the Austin metropolitan area are incorrect. In the weekly open forum meetings, both the Tax Credit and Underwriting staff have openly acknowledged that there is a problem with the HUD estimates for Austin. We feel it would be appropriate for projects within Region 7, and other Regions that can statistically prove erroneous HUD data to be evaluated based on current and accurate local conditions to ensure the intent of the QAP is achieved.

Given the inherent error in the HUD data for the Austin metropolitan area, this test cannot be applied appropriately to local conditions. We are faced with passing an unpassable test. The result being that a completely viable, high quality project that produces more units for very low-income families than all but two other applications will not be seriously considered.

Time is of the essence. The Grove Place apartments will be entitled to a property tax exemption under State law. If that law is amended in the next legislative session, this project with its wide array of very low income rents will not be possible. Therefore, it is crucial that it happen under the 2002 allocation round, or victims of domestic violence will continue to face the unacceptable choice of returning to a violent relationship to shelter their families or homelessness.

As the Grove Place Apartments, in its current structure, meets the Selection Criteria conditions for mixed-income developments based on current local conditions, we respectfully request that an additional eight points be restored to our application. Thank you for your consideration of our appeal.

Sincerely,



Kelly White  
Executive Director

Enclosures

- May 22, 2002 Grove Place Appeal letter with attachments
- June 5, 2002 Carrington response
- SafePlace video



2002 APPEALS REVIEW AND PROCESSING FORM

Development Number: 02100 Development Name: Grove Place Apts

PLEASE NOTE THAT ALL APPEALS MUST BE IN WRITING!! (Email is acceptable)

Essential Dates to Track:	Enter Date Here
Date Appeal Received:	May 23, 2002
14 Day Deadline for Response from Executive Director: (enter upon receipt of appeal)	June 6, 2002
Date the ED Response was Sent Out to Appellant	June 5, 2002
Date any Board Appeal Information was Requested from LIHTC	

I. Nature of Appeal

Please identify the Nature of the Appeal by checking the appropriate box. Note that appeals may NOT be filed for anything other than one of these reasons. An Applicant may not appeal a decision made regarding an Application filed by another Applicant!

- A. A determination regarding the Applications relating to:
  - A1. Pre-Application or Application Threshold Criteria
  - A2. Underwriting Criteria; or
- B. The scoring of the application under the Pre-Application or Application Selection Criteria; or
- C. The amount of housing tax credits recommended to be allocated to the Application.

C1. Has the applicant requested a copy of the underwriting report?  No  Yes

C2. If applicable, has the underwriting report been sent?  No  Yes (Date: \_\_\_\_\_)

II. Timing of Appeal

- Check here to confirm that the appeal has been filed within 7 days of release of the results for which the appeal is based.

did they provide answers

## HANDLING RULES AND INSTRUCTIONS

As the deadlines associated with the appeals policy are legislated deadlines, time is of the essence!!

1. Initial appeals will come in to either LIHTC or Executive. They should all be passed on to LIHTC for initial processing and **boldly** marked as an **APPEAL**. If an appeal comes in to the Board, please check with tax credits to be sure an initial appeal has been handled through the Executive Director first. If an appeal comes in by email please make sure it gets promptly forwarded to a LIHTC Manager.

2. LIHTC Staff will enter the Appeals in the LIHTC Database and notify one of the two managers that an appeal has been received and give it to a manager for prompt handling. LIHTC Staff will make one copy of the appeal for scanning and posting to the web, and one copy for the project file.

3. LIHTC will compile all related documents to the appeal and will generate a draft response on behalf of the Executive Director. All appeals will be maintained in an Appeals folder kept with either one of the Managers while awaiting resolution and after a final response has been sent, the Appeal and response will be filed in the project folder.

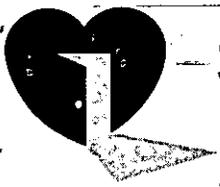
3. That draft response will be routed within 7-10 days of the receipt of the appeal to the Executive Director. I would suggest short meetings to go over these with LIHTC. These will be routed as an Executive Action Item marked specifically as an Appeal.

4. Once the Executive Director has approved or revised the response, the response document will be returned to LIHTC and sent out from our office (this allows us to better track all appeals action taking place). Attach a copy of the response to the Appeals Form.

5. If the Applicant is not satisfied with the ED response, they may appeal in writing to the Board. These will come in through Dolores Groneck. When she receives an appeal, she will ask the LIHTC Program for this form, all attachments, the file, and any other supporting documentation. That will be provided to her immediately and denoted in an Appeals Tracking Log.

Board Appeals must be received before the 7<sup>th</sup> day preceding the date of the board meeting at which allocation decisions will be made; or received before the third day preceding the board meeting at which allocation decisions will be made if the ED has not responded before the 7 day mark mentioned in the sentence above.

Board review of an appeal can only be based on the original application and documents submitted with the original application. No new information may be reviewed.



# SafePlace

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RECEIVED

May 22, 2002

MAY 23 2002

LIHTC

Edwina Carrington  
Executive Director  
Texas Department of Housing  
and Community Affairs  
507 Sabine Street  
Austin, Texas 78746

Re: Low Income Housing Tax Credit Application #2100  
For Grove Place Apartments

Dear Ms. Carrington:

We received the notice amending our scoring on the Low Income Housing Tax Credit application #2100 for Grove Place Apartments and respectfully disagree with the staff's positions on Exhibit 210 and Exhibit 4 I. This letter is an appeal and request that the eleven points deducted from the Grove Place Apartment score be restored.

Attached is a letter from our partnership attorney Cynthia Bast, explaining how our relationship with Tekoa Partners, Ltd. does qualify as a joint venture. Given the mission of Texas Department of Housing and Community Affairs to create the most and highest quality housing with the least amount of tax credits we believe it is essential that the Department accept this position. By requiring the joint venture to actually be a General Partnership, the Department is keeping the partnership from qualifying for a property tax exemption. We estimate that the staff's continuing to hold the general partnership requirement, which was formulated prior to the change in the Community Housing Development Organization law, would increase the capital requirements of Grove Place by some \$2,000,000, requiring us to request approximately \$250,000 per year in additional tax credits.

Also attached is an analysis by Charles Heimsath of Capital Market Research of our sub market incomes and the resulting rents. As you can see, incomes at 60% of median for the southeast Austin sub market are approximately half of HUD's 60% incomes for the greater Austin MSA. It is illogical and unfair to require that market rate units for our project exceed HUD rents for the entire Austin MSA. We strongly feel Mr.

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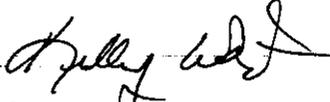
512/385-0662 fax



Heimsath's analysis is comparing our rents to appropriate rents for our sub market.

We appreciate your review and consideration.

For Grove Place Partners, Ltd.

A handwritten signature in black ink, appearing to read "Kelly White". The signature is fluid and cursive, with a large initial "K" and "W".

Kelly White  
Executive Director



CAPITOL  
MARKET  
RESEARCH

Real Estate Research, Land Development Economics & Market Analysis  
May 21, 2002

Mr. William Lee  
Tekoa Partners, Ltd.  
2901 Bee Caves Road, Box C  
Austin, Texas 78746

**RE: Grove Place Apartments**

Dear Mr. Lee,

I have reviewed the letter from TDHCA dated 5/13/02, which states that Grove Place Apartments does not pass the 10% rule, meaning that the average rent per sq. ft. in market rate projects in the southeast submarket are less than 10% higher than the maximum allowable (60%) rents under the tax credit program.

There are two reasons why this test cannot be met in the subject southeast Austin market area. First, the median income in the market area is substantially (46%) below the median household income in Austin, which in turn means that households in the area cannot afford high monthly housing costs. And, second, the HUD promulgated median household income of \$71,100 for a family of four in 2002 is so high, that it increases the maximum allowable rents (at 60% of median household income) to levels that exceed the market rents in many parts of Austin.

It does not seem appropriate to compare rental rates in a defined submarket with (HUD income derived) rental rates for the entire MSA. To do so denies the very real variations that occur among submarkets within a large and diverse region such as the Austin MSA.

Consequently, we propose that the subject rental rates be compared with 60% rates that can be calculated from the current (2001) median household income estimated for the market area by Claritas at \$33,053. Table (1) shows a current estimate of income limits, by household size for the Grove Place market area based on a median household size of 2.56, Table (1). Using this approach will yield a difference of 157% to 234% between the submarket derived maximum allowable rents and the current market rents achieved in the market area. Clearly, using the market area income to calculate maximum allowable rents will yield a significant variance between the subject rental rates and "market" rents.

It seems apparent from our investigation that HUD has significantly overestimated the 2002 median family income for the Austin MSA. Another demographics firm (DemographicsNow.com) estimates the median household income for the MSA at \$40,222 versus \$60,947 derived from the HUD estimate of \$71,100 for a family of four.

I recommend a serious reevaluation of the Austin MSA income estimates, but in the interim, suggest the use of submarket income estimates to set the 60% rents, as a practical short term solution.

I trust that this analysis will help you in your protest of the TDHCA scoring of the Grove Place Apartments market analysis.

Respectfully submitted,  
CAPITOL MARKET RESEARCH, INC.

Charles H. Heimsath, AICP

Capitol Market Research, Inc.  
605 Brazos, Suite 300  
Austin, Texas 78701, (512) 476-5000

**Table (1)  
Austin MSA and Market Area Income Levels by Household Size**

<b>Area</b>	<b>Average HH Size</b>	<b>1 Person</b>	<b>2 Person</b>	<b>3 Person</b>	<b>4 Person</b>	<b>5 Person</b>	<b>6 Person</b>
<b>Austin - San Marcos FY 2002 Median Family Income</b>		\$49,800	\$56,900	\$64,000	\$71,100	\$76,800	\$82,500
<b>Average HH Size:</b>	<b>2.57</b>	<b>\$60,947</b>					
<b>Grove Place Market Area FY 2002 Median Family Income</b>		\$27,008	\$30,858	\$34,709	\$38,559	\$41,650	\$44,742
<b>Average HH Size:</b>	<b>2.56</b>	<b>\$33,053</b>					

Table (2)

**Grove Place Submarket Area****Market Rate Rent Analysis**

	<u>1 person</u>	<u>2 person</u>	<u>3 person</u>	<u>4 person</u>	<u>5 person</u>	<u>6 person</u>
Grove Place Market Area Income at 60% of MFI	\$ 16,205	\$ 18,515	\$ 20,825	\$ 23,135	\$ 41,650	\$ 44,742
Rent per Bedroom w 1.5 persons/Bdrm Persons per Household	<u>Studio</u> 1	<u>1 Bedroom</u> 1.5	<u>2 Bedroom</u> 3	<u>3 Bedroom</u> 4.5		
Annual Income based on Household Size	\$ 16,205	\$ 17,360	\$ 20,825	\$ 32,393		
Gross Monthly Rent per Bedroom per Household Size	\$ 405	\$ 434	\$ 521	\$ 810		
-Less Utility Allowance	\$ (58)	\$ (88)	\$ (123)	\$ (165)		
<b>Net Monthly Rent</b>	<b>\$ 347</b>	<b>\$ 346</b>	<b>\$ 398</b>	<b>\$ 645</b>		
Grove Place Market Rent	\$ 620	\$ 783	\$ 921	\$ 1,038		
Avg. Unit Size - Submarket	440	646	909	1,139		
Avg. Rent/s.f. - Submarket	\$ 0.79	\$ 0.54	\$ 0.44	\$ 0.57		
Avg. Rent/s.f. - Grove Place	\$ 1.24	\$ 1.04	\$ 1.02	\$ 0.86		
Avg. Unit Size - Grove Place	502	750	901	1,080		
Positive Rental Differential per bedroom	179%	226%	232%	161%		
Positive Rental Differential per s.f.	157%	195%	234%	170%		
Number of Units	8	10	8	12		
Number of Market Rate Units meeting submarket rent test	8	10	8	12		
Revised Applicable Fraction based on Unit Count	80.0%					

# LOCKE LIDDELL & SAPP LLP

ATTORNEYS & COUNSELORS

100 CONGRESS AVENUE  
Suite 300  
Austin, Texas 78701-4042

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Direct Number: (512) 305-4707  
email: cbast@lockeliddell.com

May 22, 2002

Ms. Brooke Boston  
Texas Department of Housing and Community Affairs  
507 Sabine  
Austin, Texas 78701

Re: Grove Place Partners, Ltd. (the "Partnership")  
--- TDHCA No.: 02171

Dear Brooke:

We represent the Partnership, which is an applicant for low-income housing tax credits in the 2002 allocation round. The general partner of the Partnership is currently Travis County Domestic Violence and Sexual Assault Center dba SafePlace, a Texas non-profit corporation ("SafePlace"). The developer of the project will be Tekoa Partners, Ltd., a Texas limited partnership (the "Developer"). In its application, the Partnership requested 3 points for compliance with Exhibit 210, requiring that "the Development involves a joint venture between a for profit organization and a Qualified Nonprofit Organization." The reason for taking these points is that the Partnership believes that SafePlace and the Developer have committed to a joint venture for the development of the project.

TDHCA has disagreed with the Partnership's contention that a joint venture is present in this case and has not awarded the 3 points applicable to Exhibit 210. This letter is intended to describe the ways in which we believe the arrangement between the Developer and SafePlace satisfies the definition of "joint venture" under Texas law.

Under Texas law, a joint venture is formed when persons or entities combine to jointly pursue a particular project for mutual benefit or profit. Four elements must be present for a combination of persons or entities to qualify as a joint venture:

- (1) community of interest in the venture;
- (2) an agreement to share profits;
- (3) an agreement to share losses; and
- (4) a mutual right to control the enterprise.

We will describe the Partnership's compliance with each of these elements below.

Community of Interest. Both SafePlace and the Developer will have an interest in the development of the project. While the Developer will not be a co-general partner with SafePlace, the QAP does not appear to require that. It merely states that the Qualified Nonprofit Organization must be participating as one of the general partners. It does not go on to say that the for profit organization must be participating as a general partner. Further, while TDHCA's QAP formerly required the applicant requesting joint venture points to present an "executed partnership agreement between the organizations participating in the joint venture", that requirement has been removed from the 2002 QAP.

Sharing Profits. The Developer will receive a fee from the Partnership for the development of the project. The Developer has agreed to share this fee with SafePlace. Thus, both parties will share in the profits of developing the project.

Sharing Losses. The Developer and SafePlace will share in certain guaranties related to the development of the project. Texas courts have held that an argument to guaranty can, in certain circumstances, be construed as an agreement to share losses from the enterprise.

Mutual Control of Enterprise. The Developer will be responsible for certain activities related to the development of the project, including working with the contractor, architect, and other construction professionals, supervising construction activities, and assuring timely completion of the project. SafePlace, as the general partner of the Partnership, will have certain rights to supervise and direct the Developer's activities.

We hope that TDHCA will see that a joint venture to pursue a particular enterprise can be achieved without the for profit organization and the Qualified Nonprofit Organization serving as co-general partners of the applicant and, further, that a co-general partner arrangement is not specifically required by the QAP.

As you know, Brooke, the enactment of an ad valorem tax exemption for a CHDO that is the sole general partner of a tax credit limited partnership is an important financing tool. This new exemption allows projects that are controlled by CHDOs to be stronger financially without the need for additional credits or subsidy. By requiring, in Exhibit 210, a CHDO non-profit to actually have a for profit entity as a co-general partner, TDHCA prohibits the non-profit from using the CHDO tax exemption. This results in a project needing more credits or subsidy from TDHCA, which gives TDHCA less "bang" for its credit "buck".

We appreciate your attention to this matter and hope you will restore the 3 points taken by the Partnership under Exhibit 210.

Brooke Boston  
May 22, 2002  
Page 3

Feel free to call me if you would like to discuss any of the information presented in this letter.

Sincerely,



Cynthia L. Bast

cc: Bill Lee (*via hand-delivery*)



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

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GOVERNOR

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EXECUTIVE DIRECTOR

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Norberto Salinas

June 5, 2002

Ms. Kelly White  
SafePlace  
P.O. Box 19454  
Austin, Texas 78760  
Facsimile: 512.385.0662

**Re: Response to Appeal Filed May 23, 2002  
Grove Place Apartments, TDHCA Project No. 02100**

Dear Ms. White:

Consistent with §49.4(k) of the 2002 Qualified Allocation Plan and Rules (QAP), I am writing in response to the appeal you filed on May 23, 2002 on the above-referenced development.

### Appeal Review

I have carefully reviewed the application you submitted, as well as your appeal, relating to Sections 49.7(f)(5)(B) and 49.7(f)(4)(I) of the 2002 QAP. In your appeal you contend that the partnership between SafePlace and Tekoa Partners qualifies for the joint venture points under Exhibit 210. In the letter from Locke Liddell & Sapp provided along with your appeal, Cynthia Bast points out that while the QAP does explicitly require that the nonprofit organization must be a general partner, it does not require that the for profit organization be participating as a general partner. Your application also provides an agreement between SafePlace and Tekoa Partners that indicates an agreement. Although the intent of that exhibit was that the joint venture must involve co-general partners, I agree that the language of the QAP is not definitive in reference to that requirement.

With regard to §48.7(f)(4)(I) of the 2002 QAP, relating to mixed income, the Department has also reviewed your appeal. Your appeal does not contest the findings of the mixed income tests as applied by the Department for scoring the application. Your appeal is an explanation of why the tests should not be applied to the proposed application because of the special features of the proposed submarket. In fairness to all other applicants, the explanation involving rents in the subject submarket versus the Austin MSA cannot be accepted at this time. Discussion of the foregoing issue, while no longer able to impact the 2002 QAP, will be appreciated as it may apply to the revisions for the 2003 QAP.

The second issue discussed by the market analyst, Charles Heimsath, involves the apparent overestimation of 2002 LIHTC rents by the U.S. Department of Housing and Urban Development. You indicate that the 2002 HUD rents are excessively high and should not be used to score the mixed income item. However, the Department indicated early on in the application cycle that applications would be evaluated using 2002 HUD rents and that those are the rents that all applicants would be expected to use.

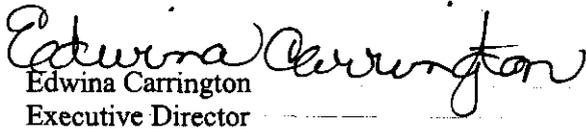
Appeal Determination

Based on the above reasons, your appeal has been partially approved. The three points deducted for the Joint Venture will be reinstated. The eight points deducted for Exhibit (4)(I) will not be reinstated.

Section 49.4(k) of the 2002 QAP indicates that if you are not satisfied with this response to your appeal, you may appeal directly in writing to the Board of the Texas Department of Housing and Community Affairs (the Board). Please note that an appeal filed with the Board must be received by the Board before at least seven days preceding the date of the board meeting at which the relevant allocation decision is expected to be made. To have an appeal considered by the Board at the June 24 Board meeting, the appeal must be received by Delores Groneck, Board Secretary, no later than June 17, although it is strongly suggested that you submit it by June 13.

If you have questions or comments, please call (512) 475-3340.

Sincerely,

  
Edwina Carrington  
Executive Director

# Northpoint Retirement Village

June 10, 2002

Board of Directors  
Texas Department of Housing  
and Community Affairs  
501 Sabine, Suite 300  
Austin, TX 78701



Project Number: 02121      Project Name: Northpoint Retirement Village

Dear Sir or Madam:

In accordance with Section 49.4 (k) of the Qualified Allocation Plan I would like to appeal for reinstatement of 15 points that were denied on our application for an allocation of tax credits in the 2002 application cycle. On May 23, 2002 we received notice that points were being deducted from our application. We filed an appeal with the Department in accordance with Section 49.4(k) but in the response letter from Edwinna Carrington, the Executive Director of the Department dated June 6, 2002, our appeal was denied. A copy of all the correspondence between the Department and ourselves is attached to this letter. We feel that there are extenuating circumstances that should be considered and it is our opinion that the points should be reinstated.

In the original notice from the Department, the points we received for filing a pre-application were being denied because of a change in the unit mix. Three areas were identified. First, the market rate units in the pre-application were 1-bedroom units and for some reason on the final application they were listed as two bedroom units. Secondly, the square footage of the market rate units was listed as 870 square feet and finally, in the pre-application, there were 3, 1-bedroom units set aside for tenants with income at 30% or less of the AMFI and 5, 2-bedroom units at the 30% level. In the final application, it indicated 4, 1-bedrooms and 4, 2-bedrooms at the 30% level. The unit composition is different but the number of units at the 30% level remained the same so the total points were unchanged. It was never our intent to change the application and since the point total remained the same, we feel that these would not be material changes. It is our contention that these are typographical errors. Our defense would be that the method for calculating the rents for the market rate units is exactly the same as the pre-application and based on the 1-bedroom rental rates. As for the square footage difference, the plans only show one size two-bedroom unit and it was not the size of the unit indicated in the application. Since the unit mix was wrong, it is conceivable that the square footage could also be incorrect. Finally as for the difference in the 1 and 2 bedrooms at the 30% level, we have no excuse. If changing one unit within a set-aside category is enough to disqualify us for the points, then so be it.

*1544 Sawdust Rd., Suite 210 • The Woodlands, Texas 77380*

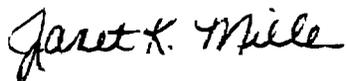
It is our interpretation that the reason for the pre-application process was to save developers the time and money of submitting an application that had no chance of winning because of points. We believe the goal of the pre-app was not to have an applicant apply for points at the pre-app stage that could not firm up at application. This didn't happen to us. Whether it was one or three typos, the bottom line is that our points did not change. We feel that these 15 points are keeping our application from being underwritten and thereby being considered for an allocation of credits.

It is difficult for us to understand how a minor change in the unit mix can eliminate an application, even though our points and the total number of units were not changed. This is especially confusing since you could change items such as the rents, loan rates, minor variations in square footages, etc. as long as you did not add or remove any of the documentation submitted as evidence of the Selection Criteria.

Our other concern is the notice we were given. The Department notified us when there were items that needed clarification during the application process. All of these items were required to clear up misunderstandings with the application. We contend that the unit mix could have and should have been included in a deficiency letter. It was not. If given the chance, we could have evaluated the error and made the necessary corrections to ensure our 15 points would not be deducted due to a human error.

We hope that after review of this letter, you will see that we did not try to change our application and will be prepared to reinstate our 15 points at the board meeting at which the relevant allocation decision is expected to be made pursuant section 49.4 (k). Thank you for your assistance and if we can be of further assistance, please contact us at the numbers below.

Cordially,



Janet K. Miller  
President,  
Miland Services, Inc.,  
Co-General Partner  
(281) 367-0113

cc: Mr. George Barbosa  
Co-General Partner



02121AZ

Development Number: 02121<sup>w</sup> Development Name: Northpoint Retirement Village

PLEASE NOTE THAT ALL APPEALS MUST BE IN WRITING!! (Email is acceptable)

Essential Dates to Track:	Enter Date Here
Date Appeal Received:	5/24/02
14 Day Deadline for Response from Executive Director: (enter upon receipt of appeal)	6/7/02
Date the ED Response was Sent Out to Appellant	6/6/02
Date any Board Appeal Information was Requested from LIHTC	

**I. Nature of Appeal**

Please identify the Nature of the Appeal by checking the appropriate box. Note that appeals may NOT be filed for anything other than one of these reasons. An Applicant may not appeal a decision made regarding an Application filed by another Applicant!

- A. A determination regarding the Applications relating to:
  - A1. Pre-Application or Application Threshold Criteria
  - A2. Underwriting Criteria; or
- B. The scoring of the application under the Pre-Application or Application Selection Criteria; or
- C. The amount of housing tax credits recommended to be allocated to the Application.

C1. Has the applicant requested a copy of the underwriting report?  No  Yes

C2. If applicable, has the underwriting report been sent?  No  Yes (Date: \_\_\_\_\_)

**II. Timing of Appeal**

Check here to confirm that the appeal has been filed within 7 days of release of the results for which the appeal is based.

*Statutory amounts*  
*Unreduced from P-A to APP*  
*N/A from 60,000 @ PA to 61,000 Full APP*  
*60,000*  
*60,000*  
*Unreduced*

## HANDLING RULES AND INSTRUCTIONS

As the deadlines associated with the appeals policy are legislated deadlines, time is of the essence!!

1. Initial appeals will come in to either LIHTC or Executive. They should all be passed on to LIHTC for initial processing and **boldly** marked as an **APPEAL**. If an appeal comes in to the Board, please check with tax credits to be sure an initial appeal has been handled through the Executive Director first. If an appeal comes in by email please make sure it gets promptly forwarded to a LIHTC Manager.

2. LIHTC Staff will enter the Appeals in the LIHTC Database and notify one of the two managers that an appeal has been received and give it to a manager for prompt handling. LIHTC Staff will make one copy of the appeal for scanning and posting to the web, and one copy for the project file.

3. LIHTC will compile all related documents to the appeal and will generate a draft response on behalf of the Executive Director. All appeals will be maintained in an Appeals folder kept with either one of the Managers while awaiting resolution and after a final response has been sent, the Appeal and response will be filed in the project folder.

3. That draft response will be routed within 7-10 days of the receipt of the appeal to the Executive Director. I would suggest short meetings to go over these with LIHTC. These will be routed as an Executive Action Item marked specifically as an Appeal.

~~4. Once the Executive Director has approved or revised the response, the response document will be returned to LIHTC and sent out from our office (this allows us to better track all appeals action taking place). Attach a copy of the response to the Appeals Form.~~

5. If the Applicant is not satisfied with the ED response, they may appeal in writing to the Board. These will come in through Dolores Groneck. When she receives an appeal, she will ask the LIHTC Program for this form, all attachments, the file, and any other supporting documentation. That will be provided to her immediately and denoted in an Appeals Tracking Log.

Board Appeals must be received before the 7<sup>th</sup> day preceding the date of the board meeting at which allocation decisions will be made; or received before the third day preceding the board meeting at which allocation decisions will be made if the ED has not responded before the 7 day mark mentioned in the sentence above.

Board review of an appeal can only be based on the original application and documents submitted with the original application. No new information may be reviewed.



# Miland Services, Inc.



1544 Sawdust, Suite 210  
The Woodlands, Texas 77380  
281-367-0113 (phone) • 281-367-2348 (fax)

RECEIVED  
MAY 24 2002  
LIHTC

## Fax Cover Sheet

To: Brooke Boston

From: Janet Keller

TID HCA

Pages: 2

Fax: 512-475-0764

Date: 5-23-02

Re:

- Urgent
- For Review
- Please Comment
- Please Reply
- Please Recycle

● Comments:

Point Deduction appeal

# Northpoint Retirement Village

May 23, 2002

Ms. Brooke Boston  
Texas Department of Housing  
and Community Affairs  
501 Sabine, Suite 300  
Austin, TX 78701

Project Number: 02121 Project Name: Northpoint Retirement Village

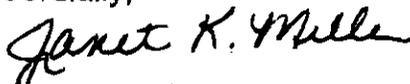
Dear Ms. Boston:

Pursuant your letter dated May 13, 2002, I would like to appeal the final score issued:

We were deducted 15 points due to a typographical error on our final application submitted on April 5, 2002 that contradicted the unit mix we submitted in our pre-application submitted in January. The only evidence we have to support this statement is the rental rate charged for the market rate units on the rent schedule. If you take the 2002 maximum rent for a 1 Bedroom unit in Houston Texas of \$670 and subtract the \$56 utility allowance you get \$614. Dividing \$614 by the square footage of the one bedroom unit on the rent schedule of 775 sq.ft., you get \$0.7923/sf. Multiplying that figure by 105% you get \$0.8319. Multiplying that number by 775 sq.ft., you get \$645, which is the rental amount on the rent schedule in the application.

I hope that after review of this letter, you will see that we did not try to change our application and will reinstate our 15 points deducted. Thank you for your assistance and if I can be of further assistance, please contact me at 281-367-0113.

Cordially,



Janet K. Miller  
President,  
Miland Services, Inc.,  
Co-General Partner



## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Rick Perry  
GOVERNOR

Edwina P. Carrington  
EXECUTIVE DIRECTOR

BOARD MEMBERS  
Michael E. Jones, *Chair*  
Elizabeth Anderson  
Shadrick Bogany  
C. Kent Conine  
Vidal Gonzalez  
Norberto Salinas

June 6, 2002

Ms. Janet Miller  
Northpoint Retirement Village  
1544 Sawdust Road, Suite 210  
The Woodlands, Texas 77380  
Facsimile: 281.367.2348

**Re: Response to Request for Appeal Received May 24, 2002**  
**Northpoint Retirement Village, TDHCA Project No. 02121**

Dear Ms. Miller:

Consistent with §49.4(k) of the 2002 Qualified Allocation Plan and Rules (QAP), I am writing in response to the appeal you filed on May 24, 2002 on the above-referenced development.

### Appeal Review

I have carefully reviewed the application you submitted, as well as your appeal relating to §49.7(f)(10) of the 2002 QAP. While I understand the calculation you used to defend the error made in your application, the result of those calculations does not necessarily confirm that the change in the application was a typographical error, particularly because the calculation relates only to the change of the Market Rate units from one-bedroom/one-bath units to two-bedroom/one-bath units. However, the rent schedule at full Application also showed changes in the tax credit unit mix. There were originally 3 one-bedroom/one-bath units at 30% of AMGI at Pre-Application, but that number was changed to 4 units at application on March 1. There were originally 5 two-bedroom/one-bath units at 30% of AMGI at Pre-Application, but that number was changed to 4 units. Also upon further review, the square footage calculations from the Pre-Application to the Application also were increased, indicating that this change was not merely a typographical error on one page, but a change that was carried throughout the application.

### Appeal Determination

Based on the above reasons, your appeal has been denied. The 15 points deducted from your score for the change from the Pre-Application to the Application will not be reinstated.

If you have questions or comments, please call (512) 475-3340.

Sincerely,

A handwritten signature in cursive script that reads "Edwina Carrington".

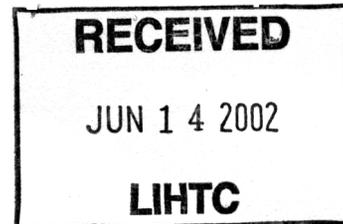
Edwina Carrington  
Executive Director



**C A M P B E L L**  
**H O G U E**  
AND ASSOCIATES LLC

June 13, 2002

Ms. Edwina Carrington  
Executive Director  
Texas Department of Housing and  
Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941



Re: Appeal to Board  
Cedar Point Retirement Apartments, TDHCA Project # 02128

Dear Ms. Carrington:

I am in receipt of the Texas Department of Housing and Community Affairs ("Department") response to our appeal for the above referenced application. I am not satisfied with the Department's response and reasoning and thereby am requesting that this item be brought before the Board for its review and consideration. The basis for this appeal is as follows:

First, the market study conducted by Capitol Market Research clearly states that the proposed developments' market rate units **will have at least a 10% rent difference**. I am attaching the entire market study for the Boards review. The original basis for this appeal was a result of the Department deducting six points from our final score for failing to meet the 10% test, although the market study indicates otherwise. During the course of formulating the original appeal to the Department, I had several written communications from Ms. Brooke Boston, Co-Manager of the low income housing tax program in which she indicates that the reason for the point deduction is that other comparable market rate unit rents included meals and therefore were not comparable. Based upon that information, Capitol Market Research provided additional information, again supporting the fact that proposed developments market rate unit rents were at least 10% greater than the tax credit rents. By providing this additional information, for which I reasonably assumed to have been requested by the Department (based on e-mails from Ms. Boston), I supplied this additional information only to have the appeal denied (again) based on the fact that the appeal was based on information not originally contained in the market study.

Second, the Department's response to our appeal further states that there must be some other reason that the market rate rents at comparable properties are higher, meals not being the only reason. The Department's response further states that The Department relied only on the comparables given in the original market study. In the market study, Capitol Market Research fully documents their findings, assumptions and conclusions as

Ms. Edwina Carrington  
Cedar Point Retirement Apartments  
June 13, 2002  
Page 2 of 2

to why the subject's market rate rents are justifiable and meet/exceed the Department's test of providing rents at least 10% greater than the highest allowed rents under the Program. It appears that the Department has chosen to ignore the market analyst's findings, assumptions and conclusions and has drawn its own conclusions as to what the market and market rate rents should be.

I respectfully request that the Department re-evaluate this decision and to re-instate the six points deducted from our application. Should you have any questions, please feel free to call me at 512-794-7938.

Sincerely,



David Saling  
Project Manager

Enclosures: Original Appeal Documentation  
Market Study

## **#02128 Appeal**

A copy of the Applicant's Market Study submitted with their Application, was also filed with the Appeal. If needed, a copy of that Market Study is available for viewing at TDHCA.



2002 APPEALS REVIEW AND PROCESSING FORM

Development Number: 02128 Development Name: Cedar Point Ret

PLEASE NOTE THAT ALL APPEALS MUST BE IN WRITING!! (Email is acceptable)

Essential Dates to Track:	Enter Date Here
Date Appeal Received:	5/24/02
14 Day Deadline for Response from Executive Director: (enter upon receipt of appeal!)	6/7/02
Date the ED Response was Sent Out to Appellant	6/6/02
Date any Board Appeal Information was Requested from LIHTC	

**I. Nature of Appeal**

Please identify the Nature of the Appeal by checking the appropriate box. Note that appeals may NOT be filed for anything other than one of these reasons. An Applicant may not appeal a decision made regarding an Application filed by another Applicant!

- A. A determination regarding the Applications relating to:
  - A1. Pre-Application or Application Threshold Criteria
  - A2. Underwriting Criteria; or
- B. The scoring of the application under the Pre-Application or Application Selection Criteria; or
- C. The amount of housing tax credits recommended to be allocated to the Application.
  - C1. Has the applicant requested a copy of the underwriting report?  No  Yes
  - C2. If applicable, has the underwriting report been sent?  No  Yes (Date: \_\_\_\_\_)

**II. Timing of Appeal**

- Check here to confirm that the appeal has been filed within 7 days of release of the results for which the appeal is based.

## HANDLING RULES AND INSTRUCTIONS

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3. That draft response will be routed within 7-10 days of the receipt of the appeal to the Executive Director. I would suggest short meetings to go over these with LIHTC. These will be routed as an Executive Action Item marked specifically as an Appeal.

~~4. Once the Executive Director has approved or revised the response, the response document will be returned to LIHTC and sent out from our office (this allows us to better track all appeals action taking place). Attach a copy of the response to the Appeals Form.~~

~~5. If the Applicant is not satisfied with the ED response, they may appeal in writing to the Board. These will come in through Dolores Groneck. When she receives an appeal, she will ask the LIHTC Program for this form, all attachments, the file, and any other supporting documentation. That will be provided to her immediately and denoted in an Appeals Tracking Log.~~

Board Appeals must be received before the 7<sup>th</sup> day preceding the date of the board meeting at which allocation decisions will be made; or received before the third day preceding the board meeting at which allocation decisions will be made if the ED has not responded before the 7 day mark mentioned in the sentence above.

Board review of an appeal can only be based on the original application and documents submitted with the original application. No new information may be reviewed.

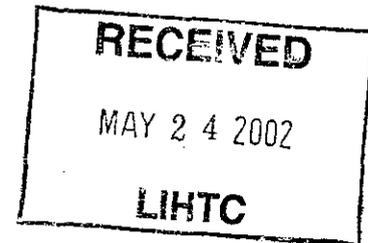


**C A M P B E L L  
H O G U E**  
AND ASSOCIATES, LLC

May 23, 2002

Ms. Brooke Boston  
Co-Manager, LIHTC Program  
Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711

Re: Scoring Appeal  
Cedar Point Retirement Apartments  
TDCHA File # 02128



Dear Ms. Boston:

Please consider this letter to be our formal appeal on the scoring for Cedar Point Retirement Apartments TDHCA file # 02128

Based on the attached scoring determination by the TDHCA, points were deducted from the final score for failing to meet the criteria on market rate rents. As a result a total of 06 points were deducted from our final score.

We believe that this application does indeed meet/exceed the stated requirements in the QAP for market rate units. Based upon the market study and additional information provided by Capital Market Research, the market rate rents proposed at Cedar Point Retirement Apartments are greater than the 10% maximum rent allowed as stated in the QAP.

A quick review of the market comps indicates this point and is reflected in the attached tables prepared by Capital Market Research. It has also been discussed that some of the market rate comparable offer a meal service and therefore are not a true comp. Capital Market Research has deducted the cost of the meals (based upon conversations with the leasing staff at these properties) and has come to the conclusion that the market rate rents at Cedar Point Apartments are at least 10% higher on a net rentable square foot basis. Please reinstate the 06 points deducted from our application.

Sincerely,

  
David Saling  
Project Manager

Enclosures: TDHCA Scoring Determination Date May 13, 2002  
E-Mail Correspondence between David Saling and Brooke Boston  
Letter and exhibits from Capital Market Research dated May 16, 2002



**LOW INCOME HOUSING TAX CREDIT PROGRAM**  
**2002 APPLICATION SCORING NOTICE**  
 Texas Department of Housing and Community Affairs

Date Issued: 05/13/02

Cedar Point Housing Associates, L.P.

David Saling

3508 Far West Blvd., Ste. 130

Austin, TX 78731

Phone #: (512) 794-9378

Fax #: (512) 794-8168

**RE: 2002 LIHTC Application for Cedar Point Retirement Apartments**  
**TDCHA Number 02128**

Attention: David Saling

The Texas Department of Housing and Community Affairs (the Department) has completed its review of the above-referenced application for threshold documents and selection criteria points. Below, is a summary of points requested, as calculated by the Applicant, followed by the points requested as calculated by the Department. The two numbers differ if the Applicant's calculation was incorrect. The points awarded by the LIHTC Program are shown, followed by the difference between the points requested (as calculated by the Department) and the points awarded. If you participated in the Pre-Application process, the Pre-Application score requested (as calculated by the Department) and score awarded are also provided. The results of the review are followed by an explanation of any adjustments, including points denied.

Final Points Requested in Application:

115
-----

Final Points Requested Calculated by LIHTC Program:

115
-----

Final Points Awarded by LIHTC Program:

109
-----

Difference between Requested and Awarded:

6
---

Pre-Application Scoring:
--------------------------

Pre-App Points Requested:	125
---------------------------	-----

Pre-App Points Awarded:	113
-------------------------	-----

**Explanation for Deductions**

Exhibit (4)(I, (6,0) - Based on information presented in the rent schedule and the market study, the development fails the 10% test.

Please note that scores may still be reduced for points associated with low income targeting if the Underwriting Department determines that the application, as recommended, has a deferred developer fee that is greater than 50% of the entire developer fee, or if the Department learns that a subsidy is no longer available to the applicant. If this occurs, you will be provided with a revised Application Scoring Notice.

**LOW INCOME HOUSING TAX CREDIT PROGRAM****2002 APPLICATION SCORING NOTICE**

Texas Department of Housing and Community Affairs

A posting of all application scores, as well as a list of those projects recommended for underwriting, will be available at [www.tdhca.state.tx.us/lihtc](http://www.tdhca.state.tx.us/lihtc) on approximately May 16. The posting of the scores on the web will trigger the appeals policy, which is explained in detail in Section 49.4(k) of the 2002 Qualified Allocation Plan and Rules. If you have any concerns regarding potential miscalculations or errors made by the Department please contact me by facsimile (512.475.0764 or 512.476.0438) or email to

Sincerely,

*Brooke Boston*

Brooke Boston  
Acting Co-Manager, LIHTC Program

**D Saling**

**From:** Brooke Boston [bboston@tdhca.state.tx.us]  
**Sent:** Friday, May 17, 2002 8:47 AM  
**To:** 'D Saling'  
**Subject:** RE: Cedar Point Retirement Homes-TDHCA File # 020128

As you surmised, there is no form or required format - just write a letter that indicates it is an appeal, the project #, etc. and then your arguments for why you think the points should be reinstated.

-----Original Message-----

**From:** D Saling [mailto:davids@campbell-hogue.com]  
**Sent:** Friday, May 17, 2002 8:51 AM  
**To:** 'Brooke Boston'  
**Subject:** RE: Cedar Point Retirement Homes-TDHCA File # 020128

Thanks - is there a format to be used or just state that we are appealing the department's scoring and submit our argument with documentation? Please advise - See you this morning at the public hearing

-----Original Message-----

**From:** Brooke Boston [mailto:bboston@tdhca.state.tx.us]  
**Sent:** Thursday, May 16, 2002 3:38 PM  
**To:** 'D Saling'  
**Subject:** RE: Cedar Point Retirement Homes-TDHCA File # 020128

I received you fax. I have already submitted the posting documents to our web master. So once the scores are posted on the web, please send your documentation with a cover letter as a formal appeal.

-----Original Message-----

**From:** D Saling [mailto:davids@campbell-hogue.com]  
**Sent:** Thursday, May 16, 2002 3:25 PM  
**To:** 'Brooke Boston'  
**Subject:** RE: Cedar Point Retirement Homes-TDHCA File # 020128

Brooke

Meals are provided for an additional charge at two locations, Buckner Villas and Stonebrook. At Buckner, the meals are available for \$225 per month and at Stonebrook, the charge is \$5 for lunch and \$1 for dessert (only one (lunch) meal is offered). If the higher charge of \$225 per month is assumed as the value of the meal service, then the market rents in other properties could be adjusted downward by \$225 to yield a more "comparable" rental structure. We have prepared a new table with meal service deducted, and have provided these tables as attachments for your review. The average rent per sq. ft. for market rate properties with meals deducted is \$2.70.

I am texting the revised Tables 7(a) and 7(b) for your review.

-----Original Message-----

**From:** Brooke Boston [mailto:bboston@tdhca.state.tx.us]  
**Sent:** Thursday, May 16, 2002 7:29 AM

**To:** 'D Saling'  
**Subject:** RE: Cedar Point Retirement Homes-TDHCA File # 020128

David,

The market study does quote an average market rental rate of \$1.81 per square foot; however, several of the properties used in this calculation include a meal service in the rental rate. Page 26 of the market study states, "...most of the private market rate properties offer an extensive service package, that includes 3 meals a day, with the unit rate." Therefore the only true comparable properties (ones without this meal service) are Heritage Plaza, Merriltown Phase II and The Wellington. Based on these three properties, the average rent per square foot for 1/1 is \$1.02 and for 2/1 is \$.845. Therefore, the application fails the 10% test for both unit types.

If you still wish to dispute this, I would suggest that you file an appeal. The scores are being released today on the web, which will trigger the appeal process. They will be due no later than May 23.

Brooke Boston  
LIHTC Acting Co-Manager

-----Original Message-----

**From:** D Saling [mailto:davids@campbell-hogue.com]  
**Sent:** Monday, May 13, 2002 3:35 PM  
**To:** Brooke Boston (bboston@tdhca.state.tx.us)  
**Subject:** Cedar Point Retirement Homes-TDHCA File # 020128

Brooke, I am in receipt you the Department's scoring notice for Cedar Point Retirement Apartments which indicates that the application has had 6 points deducted for failing to meet the 10% test. I am somewhat confused as page 55 of the market study by Capital Market Research clearly states in the Summary/Conclusions that..."the subject 188 unit low income rent restricted independent senior apartment development is considered to be viable and feasible for development....the income restricted rental rates proposed for the subject (at \$0.94) are more than 10% below the average market rental rates of \$1.81 per square foot and the subject market rents at \$1.17 per square foot are at least 5% higher than the maximum allowable rents under the program.

Please let me know what else is needed to demonstrate that this application meets both the 10% and 5% tests. Do you need further info from CMR or from us? Please advise.

**David H. Saling**  
**Project Manager**  
**Campbell-Hogue & Associates, Inc.**  
**512.794.9378-office**  
**512.794.8168-fax**

5/23/2002



CAPITOL  
MARKET  
RESEARCH

Real Estate Research, Land Development Economics & Market Analysis

May 16, 2002

Mr. David Saling  
Campbell-Hogue & Associates  
3508 Far West Blvd., Suite 130  
Austin, Texas 78731

Dear David,

I have reviewed the comments from TDHCA and I would like to suggest another approach for comparison of the subject to the market rate senior's projects.

Meals are provided for an additional charge at two locations, Buckner Villas and Stonebrook. At Buckner, the meals are available for \$225 per month, and at Stonebrook, the charge is \$5 for lunch and \$1 for dessert (only one (lunch) meal per day is offered). If the higher charge of \$225 per month is assumed as the value of meal service, then the market rents in other properties could be adjusted downward by \$225 to yield a more "comparable" rental structure. We have prepared a new table with meal service deducted, and have provided these tables as attachments for your review. The average rent per square foot for market rate properties, with meals deducted is \$2.70.

Please let me know if there are other issues that need to be addressed.

Sincerely yours,

Capitol Market Research, Inc.

Charles H. Heimsath, AICP  
President

Capitol Market Research, Inc.  
605 Brazos, Suite 300  
Austin, Texas 78701, (512) 476-5000

**Table (7a)**  
**Average Total Rent by Type**  
**With Meals Deducted**

Project	Total Units	Eff./Studio	1/1	2/1	2/1.5	2/2	3/2
<b>Income Restricted Projects</b>							
Cobblestone Court	68	-	\$235	-	-	-	-
Eberhart Place	37	\$566	\$566	-	-	-	-
Gaston Place	100	-	\$485	\$554	-	-	-
La Vista	200	-	\$346	\$435	-	\$564	-
Lakeside	164	\$566	\$566	\$648	-	-	-
League Street Manor	36	-	\$417	\$565	-	-	-
Merrilltown	204	-	\$558	\$648	-	\$663	-
North Loop	130	-	\$435	\$569	-	-	-
RBJ Tower	249	\$375	\$400	-	-	-	-
Salina Center	32	\$285	\$285	-	-	-	-
St. George Court	60	-	\$615	\$686	-	-	-
Stonebrook	206	-	\$570	\$690	-	\$720	-
Sunrise Village	100	-	\$373	-	-	-	-
Trinity Place Apartments	68	\$490	\$532	-	-	-	-
Village at Collinwood	174	-	\$658	\$733	-	-	-
Village Christian Apartments	104	\$414	\$436	\$561	-	-	-
Western Trails	99	\$435	\$450	\$542	-	-	-
<b>Income Restricted Weighted Avg</b>	<b>2,031</b>	<b>\$431</b>	<b>\$464</b>	<b>\$647</b>	<b>-</b>	<b>\$636</b>	<b>-</b>
<b>Market Rate Projects</b>							
Ameripark	175	\$1,006	\$1,309	-	\$1,670	-	-
Buckner Villas	24	-	-	-	\$1,225	-	-
Englewood Estates	128	\$1,218	\$1,678	-	-	\$2,027	-
Heritage at Gaines Ranch	172	\$1,801	\$2,441	-	-	\$3,446	-
Heritage Plaza	90	-	\$520	\$738	-	-	-
Merrill Gardens at Round Rock	69	\$1,570	\$1,995	\$2,275	-	-	-
Merrill Gardens at San Marcos	46	\$1,370	\$1,670	-	-	\$1,870	-
Merrilltown II	91	-	\$743	\$843	-	\$873	-
Summit at Westlake Hills	149	-	\$2,710	-	-	\$4,036	-
The Clairmont	147	\$1,150	\$1,368	\$1,670	-	\$2,050	-
The Continental	130	-	\$1,747	-	-	\$2,063	-
The Grand Court Round Rock	88	\$1,220	\$1,415	-	-	\$1,830	-
The Island on Lake Travis	207	\$545	\$2,081	-	-	\$2,680	\$4,070
The Renaissance	124	\$1,570	\$1,939	-	-	\$2,377	-
The Wellington	80	-	\$900	-	-	\$1,282	-
Wesleyan Retirement Center	92	\$1,055	\$1,650	-	-	-	-
<b>Weighted Average:</b>	<b>5,874</b>	<b>\$1,158</b>	<b>\$1,667</b>	<b>\$1,046</b>	<b>\$1,302</b>	<b>\$2,486</b>	<b>\$4,070</b>

Source: Capital Market Research, January 2002.

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**Table (7b)**  
**Average Rent per Square Foot by Type**  
**With Meals Deducted**

Project	Total Units	Eff.	1/1	2/1	2/1.5	2/2	3/2
<b>Income Restricted Projects</b>							
Cobblestone Court	68	-	\$0.44	-	-	-	-
Eberhart Place	37	\$1.32	\$1.05	-	-	-	-
Gaston Place	100	-	\$0.84	\$0.87	-	-	-
La Vista	200	-	\$0.48	\$0.54	-	\$0.57	-
Lakeside	164	\$1.81	\$1.17	\$0.90	-	-	-
League Street Manor	36	-	\$0.49	\$0.56	-	-	-
Merriltown	204	-	\$0.69	\$0.70	-	\$0.69	-
North Loop	232	-	\$0.79	\$0.68	-	-	-
RBJ Tower	249	\$0.94	\$0.62	-	-	-	-
Salina Center	32	\$0.75	\$0.48	-	-	-	-
St. George Court	60	-	\$1.15	\$1.06	-	-	-
Stonebrook	206	-	\$0.75	\$0.68	-	\$0.65	-
Sunrise Village	100	-	\$0.55	-	-	-	-
Trinity Place Apartments	68	\$0.99	\$0.96	-	-	-	-
Village at Collinwood	174	-	\$1.01	\$0.86	-	-	-
Village Christian Apartments	104	\$0.97	\$0.73	\$0.77	-	-	-
Western Trail	99	\$0.88	\$0.78	\$0.65	-	-	-
<b>Income Restricted Weighted Avgs</b>		<b>\$1.14</b>	<b>\$0.76</b>	<b>\$0.72</b>	-	<b>\$0.64</b>	-
<b>Market Rate Projects</b>							
Ameripark	175	\$2.62	\$2.37	-	\$2.08	-	-
Buckner Villas	24	-	-	-	\$1.12	-	-
Englewood Estates	128	\$2.80	\$2.88	-	-	\$2.30	-
Heritage at Gaines Ranch	172	\$3.78	\$3.47	-	-	\$3.43	-
Heritage Plaza	90	-	\$0.91	\$0.82	-	-	-
Merrill Gardens at Round Rock	69	\$4.76	\$4.18	\$3.67	-	-	-
Merrill Gardens at San Marcos	46	\$4.15	\$3.48	-	-	\$3.04	-
Merriltown Phase II	91	-	\$0.92	\$0.87	-	\$0.86	-
Summit at Westlake Hills	149	-	\$3.81	-	-	\$3.84	-
The Clairmont	147	\$2.88	\$2.85	\$2.65	-	\$2.28	-
The Continental	130	-	\$2.94	-	-	\$2.48	-
The Grand Court Round Rock	88	\$2.77	\$2.32	-	-	\$1.72	-
The Island on Lake Travis	207	\$1.23	\$2.52	-	-	\$2.19	\$2.22
The Renaissance	124	\$3.14	\$2.83	-	-	\$2.56	-
The Wellington	80	-	\$1.24	-	-	\$1.23	-
Wesleyan Retirement Center	92	\$4.89	\$3.57	-	-	-	-
<b>Total Weighted Average:</b>		<b>\$3.29</b>	<b>\$2.71</b>	<b>\$1.93</b>	<b>\$1.29</b>	<b>\$2.44</b>	<b>\$2.22</b>

Source: Capital Market Research, January 2002.

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## TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Rick Perry  
GOVERNOR

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EXECUTIVE DIRECTOR

BOARD MEMBERS  
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Elizabeth Anderson  
Shadrick Bogany  
C. Kent Conine  
Vidal Gonzalez  
Norberto Salinas

June 6, 2002

Mr. David Saling

Campbell Hogue and Associates, LLC  
3508 Far West Blvd., Suite 130  
Austin, Texas 78731  
Facsimile: 512.794.8168

**Re: Response to Appeal Filed May 24, 2002  
Cedar Point Retirement Apartments, TDHCA Project No. 02128**

Dear Mr. Saling:

Consistent with §49.4(k) of the 2002 Qualified Allocation Plan and Rules (QAP), I am writing in response to the appeal you filed on February 24, 2002 on the above-referenced development.

### Appeal Review

I have carefully reviewed the application you submitted, as well as your appeal as it relates to §49.7(f)(4)(I) of the 2002 QAP. Neither one nor two bedroom units passed the 10% test. In your appeal you provided a letter from Charles Heimsath with Capitol Market Research indicating he has taken a different approach in generating mixed income figures. In the last sentence of that letter, Mr. Heimsath states that the average rent per square foot for market rate properties, with meals deducted, is \$2.70. The statement appears to be based on data that was not originally submitted, and is, therefore, not documentation that is eligible to be taken into consideration during an appeal review.

Furthermore, from the rent schedule in the application, the maximum LIHTC rents for the subject's one and two bedroom units average \$1.167 per square foot. Prima facie, units that rent for \$2.70 or 231% of the rent of the subject units are not comparable to the subject units. Therefore, meals are not the only proper adjustment for the market rate units cited. The Department relied on the only comparables given, without meals included, to perform the original scoring calculations. The Department must continue to rely on the original findings.

### Appeal Determination

Based on the above reasons, your appeal has been denied. The six points deducted for Exhibit (4)(I) will not be reinstated.

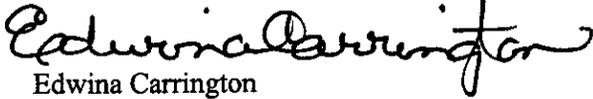
Section 49.4(k) of the 2002 QAP indicates that if you are not satisfied with this response to your appeal, you may appeal directly in writing to the Board of the Texas Department of Housing and Community Affairs (the Board). Please note that an appeal filed with the Board must be received by the Board before at least seven days preceding the date of the board meeting at which the relevant allocation decision is expected to be made. To have an appeal considered by the Board at the June 24 Board meeting, the appeal

Mr. David Saling  
June 6, 2002  
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must be received by Delores Groneck, Board Secretary, no later than June 17, although it is strongly suggested that you submit it by June 13.

If you have questions or comments, please call (512) 475-3340.

Sincerely,



Edwina Carrington  
Executive Director

## COATS | ROSE

BARR J. PALMER

bpalmer@coatsrose.com  
DIRECT DIAL  
(713) 653-7395

June 17, 2002

Ms. Brooke Boston  
Co-Manager Tax Credit Department  
Texas Department of Housing and Community Affairs  
507 Sabine  
Austin, TX 78701

Re: Yale Village Apartments TDHCA No. 02019; Kings Row Apartments  
TDHCA No. 02020; Continental Terrace Apartments TDHCA No. 02021,  
Castle Garden Apartments TDHCA No. 02022

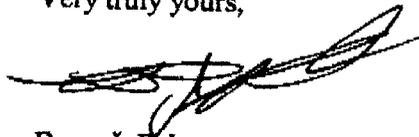
Dear Ms. Boston:

On June 10, 2002 the Texas Department of Housing and Community Affairs (TDHCA) sent a letter to Century Pacific, the sponsor of the above referenced developments, notifying the sponsor that the applications had been terminated due to non-compliance relating to developments located in the state of Kansas. Your letter was received on June 11, 2002. The documentation on which the department's decision to terminate these applications was provided to the applicant on June 14, 2002.

Section 49.5 of the 2002 Qualified Allocation Plan (QAP) states that a decision by the department to disqualify an applicant from participation in the program may be appealed directly to the Board of the TDHCA. This letter is to inform you of the intent of the applicant to appeal this decision to the Board. Unlike other appeal provisions set forth in the QAP, the appeal provisions of Section 49.5 do not set forth the time frame for filing the appeal. Please be advised that we intend to file this appeal no later than close of business on Thursday, June 20. We request that this matter be placed on the agenda for the Board's consideration at their June 24 meeting.

By copy of this letter, I am notifying the Secretary to the Board of this appeal and requesting that this matter be placed on the agenda for the June 24 Board Meeting.

Very truly yours,



Barry J. Palmer

BJP:pga

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Ms. Brooke Boston

June 17, 2002

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cc: Delores Groneck, Secretary of the Board - TDHCA  
Irwin Deutch  
Charlie Schwennesen  
Eric Maman