

Robert H. Talton

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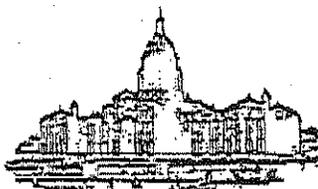
December 9, 2004

The Honorable Rick Perry
Governor of Texas
P.O. Box 12428
Austin, Texas 78711

Dear Governor Perry:

I write to express appreciation for your rejection of the Texas Department of Housing and Community Affairs (TDHCA) 2005 Low Income Housing Tax Credit Program Qualified Allocation Plan (QAP), with recommendations for change to ensure conformance with statute. TDHCA staff has proposed a draft 2005 QAP with many of the amendments I proposed in my previous letter to you. However, I note that some of the changes suggested were either ignored by the agency or modified to the extent that I believe causes the proposed QAP to again not conform to statute.

In particular, I bring your attention to QAP §49.9(g)(13)(G)-(H) - development locations. The proposed revisions to the QAP reduce the point advantage for high income area development locations from seven points to four points - the exact same point advantage given to economically distressed area development locations. Thus the point advantage for economically distressed areas is essentially nullified. Texas Government Code Section 2306.127(3) requires that "the department shall give priority through its housing program scoring criteria to communities that are located wholly or partly in ... an economically distressed area or colonia." By awarding the same number of points for non-economically distressed areas as economically distressed areas, no priority is given in the scoring criteria as is required by statute. I again recommend eliminating the point advantage for high income area developments (QAP §49.9(g)(13)(G)-(H), which has no basis in statute, and urge the agency to adopt a QAP to reflect the Legislature's intent of placing developments in areas of the greatest need.



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I also note TDHCA's failure to make recommended changes to §49.1 (b) Program Statement, which as proposed adds words not in statute: §49.6(d)(4) - Credit Amount, which allows developers to receive tax credits in excess of the legislatively mandated ceiling; and §49.9(f)(12)(C)(ii)(II) - Documentation for acquisitions, which while modified in the proposed amendments, still does not give rehabilitation projects a solid footing in the application process. As the 78th Legislature found, rehabilitation projects are more likely to gain community support, make better use of existing housing inventory, and overall make better use of taxpayer dollars. I urge the agency to take a second look at the proposed revisions.

The above listed changes are important to make sure the 2005 QAP conforms to statute and legislative intent. Thank you again for making a positive change in TDHCA's operations. I look forward to working with you on this and other issues in the upcoming 79th Legislative Session.

Sincerely,



Robert E. Talton
Chair, Committee on Urban Affairs

RET:ch

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FACSIMILE TRANSMITTAL PAGE

Date: December 9, 2004

To: Ms. Elizabeth "Beth" Anderson	Fax Number: 214-521-4305
Mr. C. Kent Conine	972-668-6700
Mr. Patrick R. Gordon	915-545-4433
Mr. Shadrick Bogany	512-472-8526
Mr. Vidal Gonzalez	512-472-8526
Mayor. Norberto Salinas	956-580-8669

From: Tamea A. Dula **Phone:** 713-653-7322

No. of Pages (including cover page): 3

Client/Matter #:

Message: Please see the enclosed e-mail regarding the TDHCA's 2005 QAP and the amendments proposed by Representative Robert E. Talton.



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IF YOU WISH TO RESPOND, USE FAX NO. (713) 651-0220

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Dula, Tamea

From: Dula, Tamea
Sent: Thursday, December 09, 2004 5:16 PM
To: 'Edwina Carrington (ecarring@tdhca.state.tx.us)'; 'Brooke Boston (brooke.boston@tdhca.state.tx.us)'; 'Robert.onion@tdhca.state.tx.us'; 'Chris.wittmayer@tdhca.state.tx.us'
Subject: 2005 QAP - Talton Amendments
Importance: High

Ladies and Gentlemen:

Representative Robert E. Talton has proposed certain amendments to the 2005 QAP based upon his assertion that the QAP does not comply with statutory requirements. With regard to his amendments removing public housing authorities from participation in the At-Risk Set-Aside (Sections 49.3(12)(C), 49.3(12)(D) and 49.7(b)(2) of the QAP), we believe this his assertion is incorrect and that there is no legal authority in Chapter 2306 of the Government Code requiring such amendments.

In paragraph 2 of Rep. Talton's November 23, 2004, letter to Governor Perry, he objects that the legislative mandate is not followed in the Section 49.3(12) definition of "At-Risk Development" because it has been expended to include properties that the legislature obviously did not intend would be included. He states, "Specifically, S. B. 264 explicitly removed public housing authorities as qualified applicants. See, S. B. 264 House Floor Amendment 1, by Representative Ken Mercer, adopted on May 224, 2004." Rep. Talton states that the proffered amendments are necessary to conform the 2005 QAP with §2306.6702(a)(5) of the Government Code.

A careful review of S. B. 264 Floor Amendment 1 shows that its effect was to eliminate a proposed statutory change that would have included "a public housing authority" in the definition of "housing sponsor." "Housing sponsor" is a term used in Chapter 2306 for entities that are qualified to receive grants and loans from the TDHCA. Failing to revise the statute to specifically include a public housing authority as a housing sponsor is not the legal equivalent of prohibiting a public housing authority from being a housing sponsor. However, even if the Floor Amendment did prohibit a public housing authority from qualifying as a "housing sponsor", the Floor Amendment did not affect the Low Income Housing Tax Credit Program. The term "housing sponsor" does not appear in Subchapter DD, which is the portion of Chapter 2306 that deals with the Low Income Housing Tax Credit Program.

Since the Floor Amendment did not affect the statutory underpinnings of the Low Income Housing Tax Credit Program, the terms of the 2005 QAP are not in violation of state law. We ask the TDHCA General Counsel to review Chapter 2306 and confirm our conclusions. A global search for the term "housing sponsor" by computer will evidence that the term never appears in Sections 2306.6701 - 2306.6734, which set out the requirements for the Low Income Housing Tax Credit Program.

Based upon the inapplicability of the Floor Amendment to the Low income Housing Tax Credit Program, and therefore the 2005 QAP, we urge you to reject Rep. Talton's amendments removing references to public housing authorities from Sections 49.3(12)(C), 49.3(12)(D) and 49.7(b)(2) of the QAP. We are simultaneously communicating with Governor Perry's office concerning this misinterpretation of the Floor Amendment.

Thank you for your consideration of these issues.

Tamea A. Dula, Esq.
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Tamea A. Dula
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HOUSING AUTHORITY

of the City of Beaumont, Texas

December 9, 2004

Mr. Shadrick Bogany
TDHCA
P. O. Box 13941
Austin, TX 78711

Dear Mr. Bogany:

This letter is to request your assistance and support in opposing the recommendations being proposed by State Representative Robert Talton, Chair of the Urban Affairs Committee, regarding the 2005 Qualified Allocation Plan (QAP) by the TDHCA for allocating Low Income Housing Tax Credits. The QAP revisions being requested by Rep. Talton unjustly penalize Housing Authorities by removing Public Housing developments from eligibility designation for the "at risk" set-aside category for tax credits. A review of the TDHCA log for 2004 tax credit applications shows only 3 applications were submitted for Public Housing developments and that the 3 were awarded an allocation. The total allocation for the 3 Public Housing developments was only \$2,596,324 or 6.4% of the \$40,366,28 state allocation.

Public Housing clearly qualifies as "at risk" and needs to be modernized and preserved in order to continue providing safe, decent and sanitary housing to the very low income families, seniors, and disabled persons at rents they can afford, which does not exceed 30% of their adjusted family income. The Federal government has continually reduced funding of the Public Housing Program at the national level. Recently, USA Today reported that the Federal budget approved by Congress last week for FFY 2005 will cut funding for Public Housing by \$1 BILLION and future reductions are expected.

The elimination of the "at risk" designation for Public Housing will exacerbate the problem of developing and maintaining the existing portfolio of such housing for low-income citizens all over the State of Texas. Housing Authorities need low-income housing tax credits to preserve, modernize, upgrade or replace the dwindling Public Housing stock. The use of low-income housing tax credits by Housing Authorities promotes and nurtures local public/private partnerships of Housing Authorities, private developers, and private investors as well as privatizes the ownership of Public Housing during the 15-year tax credit period that the private investors remain as owners.

The changes requested by Representative Talton will be considered at your Board Meeting on Monday, December 13, 2004. Your assistance in assuring that Public Housing remains eligible for the "at risk" category would be greatly appreciated.

Sincerely,

Robert L. Reyna
Executive Director

NuRock Companies

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Phone 972-745-0756 ♦ Fax 972-745-2190

DEC 8 AM 10:40

FACSIMILE TRANSMISSION

TO: Brooke Boston
FAX #: 512-475-0764
FROM: Bob Voelker
DATE: Wednesday, December 08, 2004

NUMBER OF PAGES 4 (including this cover sheet)

Special Instructions:

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Comments:

NuRock Companies

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December 8, 2004

VIA FACSIMILE 281-487-8988

Congressman Robert Talton
Chairman – House Committee on Urban Affairs
3622 Fairmont Parkway
Suite B
Pasadena, TX 77504

RE: Qualified Allocation Plan – Texas Department of Housing and Community Affairs

Dear Congressman Talton:

My name is Bob Voelker, and I was, to a large degree, responsible for requesting and promoting the changes made to the market rate units provision at the last TDHCA Board Meeting. I have now received a copy of your letter to the Governor, and understand better your position on this issue. The purpose of this letter is to outline what I think are significant unintended results of your proposal – but, understanding your desire to "provide affordable housing with rents within the reach of working families," I want to offer another option that does not have the unintended results and still accomplishes your desires. My goal in this letter is to resolve this issue in advance of the Board meeting on Monday, so that we mutually agree that all of the issues are addressed and the TDHCA Board has a cogent workable proposal in front of them that they can vote on without significant discussion.

At the outset, I want to make myself available to you to either talk over the phone or to fly down to Houston tomorrow to discuss this matter.

I'm going to try to make this as uncomplicated as possible, but unfortunately the way in which market rate units (i.e., units developed without rent restrictions or income restrictions) work under the tax code is very complicated. In a nutshell, in a low income housing tax credit development we only get "eligible basis" (the base number on which tax credits are computed) on the low income component (rent and income restricted units) in the development. No tax credit support is provided for units that are not rent restricted and income restricted. Thus, the total number of tax credit units that can be developed is capped by the amount of credits that the federal government awards to the state each year, and market rate units, since they do not use tax credits, are in addition to and do not subtract from or reduce the number of tax credit units that are developed. To the extent that TDHCA can encourage developers to produce market rate units with scoring rules, those are units that are produced on top of the maximum number of tax credit units that can be generated with the capped amount of tax credits available to the State. This explains one of the reasons why there has been positive scoring for market rate units as far back as I can remember under the previous QAP's. Most states, in fact, encourage the production of market rate units.

Let's see if we can quantify this – under the 2004 QAP there was positive scoring for up to 20% market rate units. Texas had available approximately \$40,243,000 in tax credits for the year. This allocation of credits generated a total of 7,470 units – 6,690 tax credit units and 780 market rate units. Due to the positive scoring for market rate units, the State of Texas and the affordable housing community across the State gained 780 units that would otherwise not have been developed. This is an almost 12% increase.

Under your proposal, developments with more tax credit units would receive less points, providing a disincentive for market rate units. All that would occur under your proposal, if we applied it to the 2004 year, would be that the 780 market rate units would not be developed. More tax credit (rent and income restricted units) would not have resulted – the market rate units did not receive any tax credit dollars ... all of those dollars went to the 6,690 tax credit units. This would result in 780 less units being developed for the State of Texas – resulting in job losses, smaller developments in some areas that need the economic boost, etc.

A further explanation on how market rate units work in tax credit developments is necessary. As a practical matter, although these market rate units are not income or rent restricted by law, the fact that they exist in low income developments and in low income areas provide significant practical restrictions on the income levels of the residents and the rents that we can charge on these units. As a general rule, we are fortunate if we can charge \$35 a month more for a market rate unit than a comparable rent and income restricted 60% of area median income unit in the same development. Thus, although the market rate units in tax credit developments may not have rents as low as the rent restricted units, they are "affordable" when compared to true market rate units in a typical market rate development. Granted, there are exceptions and this does not address your concern "to provide affordable housing with rents within the reach of working families" as to these market rate units. Later on, I'm going to propose a solution that provides scoring for limiting the rents on market rate units, which should get at the heart of your intention, without eliminating these units from being developed.

There are also some significant other reasons why market rate (non-income restricted) units are beneficial. Most communities do not want 100% income restricted properties. HUD is actively pursuing mixed income developments as they replace older Section 8 housing. The social engineering concept is that there is beneficial interaction when various income classes are placed in one development, and potentially negative social consequences when housing developments are 100% income restricted. The benefits of mixed income properties is not just an issue for the suburbs – we also should be encouraging mixed income developments in the low and very low income areas – this provides incentives for upwardly mobile minorities to stay in the newer, nicer communities that we develop in these areas, whereas if developments are 100% low income, these individuals and families will not have the quality housing to allow them to stay in the area (the same thought process applies in seniors' developments – upper income seniors who have stayed in lower income areas as they have deteriorated should have a nice development in their area that they can be a part of as well).

All of that said, here is my proposal – that we continue to encourage market rate units, so that these additional units are generated without tax credit support. That is important for everyone – the low income people, the low income communities, workers in the State of Texas, etc. However, we need to provide an incentive for developers to cap the rents that they can receive on these market rate units, thus making them affordable. The provision would read as follows:

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. [(2306.6710(b)(1)(G))] If greater than 90% but less than 95% of the Units in the Development (excluding any Units reserved for management staff) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, and if

the units not restricted to the maximum tax credit rent agree to a voluntary rent restriction equal to no more than 5% greater than the maximum tax credit rent, then the Development will be awarded 7 points. If greater than 85% but 90% or less of the Units in the Development (excluding any Units reserved for management staff) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, and if the units not restricted to the maximum tax credit rent agree to a voluntary rent restriction equal to no more than 5% greater than the maximum tax credit rent, then the Development will be awarded 9 points. If greater than 80% but 85% or less of the Units in the Development (excluding any Units reserved for management staff) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, and if the units not restricted to the maximum tax credit rent agree to a voluntary rent restriction equal to no more than 5% greater than the maximum tax credit rent, then the Development will be awarded 12 points.

This proposed rule accomplishes both results – the production of market rate units without the use of tax credits, AND affordable rents on those units. We can tweak the language by providing more ranges and point options if you desire, but the theory is to encourage market rate units with the rents on these units being restricted.

I very much appreciate the work you are doing to try to keep the affordable housing program in Texas on the proper course, and I hope that what I have presented is helpful information and provides some additional insight into the inner workings of the program.

Again, let me know if you would like to talk and/or meet to discuss the foregoing.

Very truly yours,

Robert H. Voelker