

HWY 77 Seniors, LTD.
Giddings, Texas

July 3, 2024

Mr. Bobby Wilkinson, Executive Director
Texas Department of Housing and Community Affairs
221 E. 11th Street
Austin, Texas 78701

Via electronic mail

Re: Appeal to Termination Notice for TDHCA #24263 – Hwy 77 Seniors Apartments
in Giddings, Texas

Dear Mr. Wilkinson,

Please accept this letter as a formal appeal of the termination notice issued by the Texas Department of Housing and Community Affairs (the Department) on June 27, 2024, for the above-referenced Application. Staff issued the termination letter due to the Market Study not being submitted by the Delivery Date of April 4, 2024.

The language in the current Qualified Allocation Plan (QAP) pertaining to the submission of the third-party reports described in Section 11.205 states:

For Competitive HTC Applications, if the reports, in their entirety, are not received by the deadline, the Application may be terminated (emphasis added).

For the 2023 QAP, staff changed the language of this rule from "shall be terminated" to "may be terminated" at the behest of the Department's governing board. This request came about as a result of events during the Department's board meeting on July 7, 2022, when there was discussion of two separate appeals being heard at that meeting addressing the same exact issue, the missing Primary Market Area (PMA) map in an Application. A similar issue was discussed during an appeal heard at the Department's board's meeting on June 15, 2023, when an Applicant did not submit the required Market Study report by the delivery date.

While those appeals were denied, the circumstances of our Application differ in some significant ways. For the appeals in 2022, they had to be denied due to the stricter language in the rule. The rule was specifically changed to give the Department and the board more flexibility handling third-party reports.

Regarding the appeal in 2023, the board considered granting the appeal based on the more flexible language. In a three to two vote, the board ultimately upheld the termination as there were five other Applications in the region directly behind the terminated Application that did submit the Market Study report timely and could have potentially been harmed by the granting of the appeal. That is not the case this year; there are no other Applications behind ours in the sub-region that would be harmed by granting the appeal. A copy of the relevant transcript has been attached and labeled Exhibit A.

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The added flexibility in Section 11.205 gives Applications the chance to move forward even if the third-party reports are not submitted by the due dates. Based on this change to the rule, we believe that you, under your authority as Executive Director of the Department, may grant our appeal of the termination and allow staff to continue the review of our Application.

As there are no other Applications behind ours in Rural Region 7, if our Application is terminated, there is the distinct possibility that this sub-region will not receive an award and will not add needed new housing stock during this year's funding cycle.

However, if our appeal is granted, the Application will give the subregion a chance at an award of tax credits and allow Hwy 77 Seniors to provide the affordable housing this sub-region truly needs. According to the Department's 2024 Housing Plan and Annual Report, Region 7 has the highest housing cost burden for households at 30% and 50% of the area median income. The rural sub-region also has the largest percentage of individuals over 65 years of age in the state. The Hwy 77 Seniors Development is proposing 24 new construction, affordable units to assist this population in Giddings, Texas.

To reiterate our position, we believe it is within your authority to grant our appeal under the new language in the rule under §11.205, and we respectfully request that you grant our appeal so that our Application may move forward and we may provide much needed housing for seniors in the sub-region.

Please feel free to reach out to me directly at (979) 218-8836 or via email at emanuel@edgproperties.net any time if I can provide anything further. I look forward to a favorable outcome in this matter.

Sincerely,



Emanuel Glockzin
Co-Developer and Guarantor

cc: Lora Myrick, BETCO Consulting, LLC

Exhibit A

Leo Vasquez (03:32:23):

Moving right along. Clock still says 10:25. Okay item 28. We're losing our crowd. Okay. Presentation, discussion and possible action on a timely final appeal of the termination of Casita's Palmettos under department's multifamily program rules. Mr. Campbell.

Cody Campbell (03:32:45):

Thank you.

I'm happy to say that this one

Leo Vasquez (03:32:46):

Is an easier one?

Cody Campbell (03:32:46):

Is not particularly technical. So, this final appeal relates to the termination of Casita's Palmettos a 2023 competitive 9% housing tax credit development. The QAP requires that certain third party reports be submitted by deadlines established in the program calendar. One of these deadlines is for the market analysis report for the project, which is required to be submitted to TDHCA no later than April 3rd, 2023. The QAP also specifies that these reports are not received in their entirety by the deadline the application may be terminated. Market analysis for this application was not submitted until April

19th, 2023, 16 days after the deadline. Accordingly, staff terminated the application the applicant appealed to the executive director who denied the appeal. The appeal request that the application reinstated and explains that the late submission was an oversight due to a major staff change. The appeal also ask that the late submission be curable through the deficiency process, which allows staff at its discretion to request applicants to correct administrative deficiencies in the application. Those of you who are with us during the last year's cycle may recall that there were two applications terminated or failing to provide in the application the primary market area map. The primary market area map is typically a single page and it must be included in the full application. It is considered to be a third party report. And last year's QAP specified that failure to submit the entire reports by the respective deadlines shall result in termination. Because of the clear cut language of the QAP staff recommended that the board uphold the termination, which it did. While this sequence of evidence was directed by the QAP staff recognized the need to add some degree of fair and reasonable flexibility to this part of the rules and proposed two related changes to them, which were both ultimately adopted. First, the language about late third party reports that previously read shall be terminated was changed to may be terminated. Second, this situation was taken into consideration when revising the definition of

administrative deficiency, which was significantly overhauled for this year. This new definition has provided much clearer guidance to both staff and the development community as to what should or should not be curable in an application and has, in my opinion, resulted in a decrease in the number of significant issues in this year's round. I'm sure some of you have noticed it's actually been a pretty quiet tax credit round and staff thankfully only has to bring issues to the board when they're very technical and very difficult to, to sort out on our own. One of the items that is specifically included in this new definition as a curable matter is for applications that are substantially complete, a minor quantity of missing signatures documents or similar clerical matters, the curing of which will not create change within the application unless the missing documentation is required to have existed as the appropriate deadline and did not, or is otherwise not susceptible to resolution. In their appeal, the applicant asks to cure the matter under this provision of the rule. However, even with the added flexibility in this year's QAP staff was unable to agree with their conclusion. Additionally, in reviewing the rule that states that if the reports in their entirety are not received by the deadline, the application may be terminated, staff is unable to come up with many realistic scenarios to which that would apply. If not the two week late submission of an entire 300 page report. Staff recommends that the appeal be denied. And I'm happy to

answer any questions that you may have.

Leo Vasquez (03:36:19):

Okay, so to clarify this is not, an RFAD? This is just?

Cody Campbell (03:36:23):

Late submission. Yes, sir.

Leo Vasquez (03:36:24):

Does anyone have any questions for Cody on this? Does anyone wish to speak on, on this side? Yes, sir. Well, you come on up and sign introduce yourself.

Leo Barrera (03:36:44):

Yes, Sir. My name is Leo Barrera

Leo Vasquez (03:36:51):

Like you already. <laughs>

Leo Barrera (03:36:51):

I am with the applicant, So on behalf of the residence of Cameron County and 49 Brownsville families the future residence of Casita's Palmettos, we request an appeal to project's determination due to

staff turnover resulted from an unforeseeable medical emergency. Our market analysis document wasn't, you know, was submitted late, but did exist that time that was needed. Our opinion is that this qualifies as a correctable and minor administrative deficiencies established by the 10 TAC 11.1 (D) (2) (A), which does state just as it was mentioned, that you know, minor things are, are, you know, curable. We have evidence that the market analysis dutifully conducted by a third party was in our possession and existed at that time of the deadline. And the finding of the analysis does not change the essence or the assertion of our application. Our obligation claimed a great need of affordable housing for our community and the market analysis simply corroborates our claim. We respect the need for this backup analysis and completed the work on time. It was a minor clerical oversight that led to the failure to be uploaded. As there is no set definition in the QAP of what constitutes minor or major of the administrative deficiency and the QAP is wisely worded to grant the board the latitude and what may qualify as such. We humbly request that this body use its allowable discretion to make that determination. Like was also said, no RFAD was submitted and upon its late submittal of it, it was, you know, we didn't receive the termination from staff initially. I caught the oversight and contacted staff to let them know of the issue and obviously no army behind me, no consultants to, you know, talk to this matter. But you

know, as a nonprofit developer with limited staffing capacity, we acknowledge the need for controls to ensure similar clerical errors and not, you know, repeated and future applications. And we ask that you please use the flexibility built into QAP to for occasions such as these to allow us to learn from the oversight while maintaining our ability to serve a community and address the dire need of affordable housing. Thank you very much. Love to answer any questions if we have.

Leo Vasquez (03:39:16):

Okay, thank you Mr. Barrera. I guess I'll ask this to either of you, but you can probably answer just as well as Cody. So you're saying that the CDC Brownsville did obtain the market study prior to the submission date,

Leo Barrera (03:39:32):

Correct? Yes. We did.

Leo Vasquez (03:39:34):

It just was not included in the,

Leo Barrera (03:39:36):

It wasn't upload in time of that was requested by, by the QAP

Leo Vasquez (03:39:41):

But so it so it was not ordered by you from the provider after.

Leo Barrera (03:39:49):

No, no, it was ordered prior to submittal. We had it on date prior to submittal. It just because of the staff turnover. We just didn't physically update it on the correct, on the correct date, like what was mentioned.

Leo Vasquez (03:40:05):

Okay. Go ahead.

Holland Harper (03:40:07):

Am I correct here that the market analysis is 267 pages thick? Is that correct?

Leo Barrera (03:40:13):

Yes, sir.

Holland Harper (03:40:14):

So it wasn't like a missed a signature? It's like you missed like an entire book.

Leo Barrera (03:40:20):

Well, that's, that's true.

Leo Vasquez (03:40:23):

It's one PDF, right?

Cynthia Bast (03:40:25):

It's one PDF that, you know, everyone has to submit. The QAP does define it as determining supplied demand and rental rates. The new income and rental tool for the department was, you know, updated May 25th. So it's fair to say that every market analysis in this current round is somewhat out of date because the new rental tool has, has refreshed incomes and rents.

Holland Harper (03:40:53):

Right. When you ordered it on the third of you had it on the April 3rd,

Leo Barrera (03:40:56):

It did exist prior to

Holland Harper (03:40:59):

You put your packet together. Yes, sir. You missed this big, chunky

piece of information. Okay. All right. Thank you sir.

Leo Barrera (03:41:10):

Thank you.

Leo Vasquez (03:41:11):

So I got two questions for Cody.

Cody Campbell (03:41:12):

Sure.

Leo Vasquez (03:41:13):

Okay, thanks Leo. Are you satisfied that Mr. Barrera's assertion that they had the report was, was the report was produced, they had it in hand prior to the, the deadline. I, they didn't order it afterwards.

Cody Campbell (03:41:33):

I unquestionably believe that that is true. As I spoke about that, I, I find the organization has all the organizations to be honest and I don't believe that they would misrepresent that the board.

Leo Vasquez (03:41:43):

Okay, great. I guess the other general question is, so all that

capital project that we approved today will automate the application process for people. Don't submit everything on everyone. It'll pop up and say, hey, you're missing this report.

Cody Campbell (03:42:05):

We're still pretty early on in the development.

Leo Vasquez (03:42:07):

Well, I know it's early, but once it gets built, I mean

Cody Campbell (03:42:10):

That's, that would

Leo Vasquez (03:42:10):

Be this kind of mistake would be almost impossible to have.

Cody Campbell (03:42:13):

Right.

Leo Vasquez (03:42:15):

Unless they attach the wrong attachment or something. Okay.

Holland Harper (03:42:26):

Mr. Campbell, do you think this is a minor issue or a major issue?

Cody Campbell (03:42:29):

Staff?

Holland Harper (03:42:29):

How does staff feel? Just take it off of yourself. How does staff feel? Staff says this is a major issue. Do you concur with that statement?

Cody Campbell (03:42:36):

Sure. So I think pretty much for the entire modern history of TDHCA running this program, this would've been an unquestioned, an unquestionable black and white. This is a termination. Where I think it does get a little bit hairy is with the language that we changed to allow a little bit more flexibility. I don't believe that when we added that flexibility into the QAP, that fully not submitting a report until two weeks after the deadline was, I don't know that we wanted to extend the net that far. That being said behind the intention of rule does not change what the rule actually says. I struggle to agree that a 267 page report is a minor quantity of documents. It does seem to need to be a pretty significant quantity of documents. But as Mr. Barrera pointed out, minor is not defined in

the QAP. So

Leo Vasquez (03:43:28):

It's arguably one document.

Cody Campbell (03:43:29):

It is arguably one document. That is correct.

Anna Farias (03:43:41):

Cody when <crosstalk> You say allow more flexibility, you open the door.

Cody Campbell (03:43:45):

Of course,

Anna Farias (03:43:45):

because what happens is it becomes ambiguous.

Cody Campbell (03:43:50):

Sure.

Anna Farias (03:43:50):

And I there's that old saying I remember in law school, the first day

of law school is something is ambiguous, goes against the ambiguo.

Cody Campbell (03:43:57):

Okay. Sure.

Anna Farias (03:44:01):

But the important thing was this study was done within the deadline.

Cody Campbell (03:44:06):

Sure.

Anna Farias (03:44:06):

Okay.

Leo Vasquez (03:44:12):

Do you have something helpful?

Henry Flores (03:44:14):

Mr. Chairman, Yes sir.

Leo Vasquez (03:44:16):

Come on up.

Henry Flores (03:44:17):

Thank you for your indulgence. Mr. Chairman members, my name is Henry Flores. I represent a transaction that's competing with this applicant in the city of Edcouch. I wanted to, it's already been noted by staff that there has been kind of a universal adherence to this rule over time. I had the honor of being the first executive director for this agency. When this was first created, I worked for Governor Richards and Governor Bush. I ran it for two governors and been a developer now for almost 25 years. We're about to close out 54th transaction. One of the things I want to suggest to you is the consistency of the application. So the rule is critical. This is not a minor issue. It's 267 Pages. Put staffs at a of not being able to do their job cause they haven't received information on a timely basis. You know Mr. Campbell mentioned there was two examples last year. Numerous examples over time at the honor of serving on the board of the Austin Housing authority. 14 years appointed by four different mayors. Chairman for the last 13 of those 14 years. In 21, after I had left the agency, we submitted an application to this agency for tax credit. We forgot to submit the market study. We were terminated. We did not get the opportunity to proceed. We applied the next year. That's what happens when you make that kind mistake, the flexibility that's been referenced. It's critical to staff, but everybody relates to where you need a page out or where you submit

your mark, your sales contract and don't give the signature page. That's what it's addressed. We shouldn't be begin. We shouldn't be doing get Gotcha. There's no doubt about that. Leaving out a page, leaving out a two page. That's a gotcha. We should be allowed to decide, submit that. Not meeting the rules is not a gotcha. Not submitting your market study on a deadline is not a gotcha. Every other application that's being considered by this board at the next board meeting for award will have submitted their market study on time. That's what the rules are for, to apply consistency. You for your time. Oh, one other observation I mentioned where the deal in Edcouch, Texas. Edcouch is located in Hidalgo County, right now, based on the analysis of your, of your allocation, it appears likely that every single allocation in Regional 11 is gonna go to Brownsville, Cameron County if you uphold this appeal. If you don't uphold this appeal, then there'll be one deal in Hidalgo County, and three in, in Cameron County, a fair distribution of the funds, Hidalgo you probably know is significantly higher than, than significantly more populous than Cameron County. For Cameron to get all the allocations seems like an oversight. It should be addressed in this meeting. Thank you very much for your time.

Leo Vasquez (03:46:49):

Thank you Mr. Flores.

Henry Flores (03:46:52):

You can call me Leo... <laugh>. Thank you, folks.

Leo Vasquez (03:47:04):

Any final?

Cody Campbell (03:47:05):

I think you've heard it all. All right. This, this is kind of a yes or no.

Holland Harper (03:47:14):

Mr. Chairman. I make a motion, I move. The board deny the appeal of Casita's Palmettos on the basis of the board actually request associated documented documents presented to the board.

Leo Vasquez (03:47:26):

A motion made by Mr. Harper to deny the motion. Deny the appeal.

Kenny Marchant (03:47:32):

I Second that.

Leo Vasquez (03:47:34):

With a second by Mr. Marchant. Okay. All those in favor of denying the appeal, say aye.

Board members excluding Anna Farias and Leo Vasquez(03:47:52):
Aye.

Leo Vasquez (03:47:54):
You too. Although opposed to the motion, say no,

Anna Farias (03:48:00):
No.

Leo Vasquez (03:48:01):

No. So motion carries. Note that Ms. Farias and I vote no against the motion.

Cody Campbell (03:48:12):
Sure.

Leo Vasquez (03:48:25):
Forging ahead. Item 29, correct?

Colin Nickells (03:48:31):