

# Texas Competitive Low Income Housing Tax Credits

Texas City Attorneys Association  
Summer Conference 2018

Presented By:  
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# History

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- **1986**
  - Tax Reform Act, IRC Sec. 42
- **1993**
  - LIHTC became permanent under federal law
  - Texas Gov't Code Ch. 2306 enacted
- **2005**
  - TDHCA calls it the Housing Tax Credit (HTC) Program
  - Texas Gov't Code Ch. 2306 still calls it "Low Income" (LIHTC)

# What is competitive LIHTC?

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## Regulated by IRS

- IRC Sec. 42

## Administered by the State (TDHCA)

- Texas Gov't Code Ch. 2306
- 10 TAC Chapters 10 and 11
- Qualified Allocation Plan Adopted Annually

# What is competitive LIHTC?

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TWO TYPES:

4% = noncompetitive

9% = competitive ✓

# 9% LIHTC

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- Dollar for dollar income tax credit for affordable housing development
- Private developers incentivized to use private equity
- 2018 cycle estimated available tax credits:
  - 2017 population figure of 27,862,596 [IRS Notice 2017-19] multiplied by \$2.40 [Rev. Proc. 2017-58]
  - Estimated Total = \$66,870,230

# 9% LIHTC

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- How competitive is it?
  - 13 regions in Texas
    - Subdivided between urban and rural
- 2018 Estimated Total Allocation = \$66,870,230 to \$76,645,699
- Pre-application
  - More than 400 applicants
  - Total Amount Requested = \$394,151,033
- Final applications
  - 138 applicants
  - Total Amount Requested = \$145,505,213

# 9% LIHTC

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- Tax credit period = 10 years
- Can control rent and property for 30 years or more
- Multifamily mix of market and affordable units
  - New construction or
  - Substantial rehabilitation
- Usually combined with other social services
- Can be combined with HOME funds

# 9% LIHTC

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- Awarded competitively on an annual basis
- Based on a point system
- Rules adopted: Qualified Allocation Plan (QAP)
- November – QAP signed by Governor
- December – QAP published
- January – Pre-application due
- March – Final application due
- June – Public comment and eligible applications announced
- July – Final awards



Why is the City being approached?

EVERY POINT  
COUNTS!

# Pre-Application Scramble

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- Applicants need to maximize points:
  - Pre-application submittal
    - Site control
    - Zoning
  - Property location
  - Proximity to public transit
  - Distance from grocery store, pharmacy, public library, park or recreation facility
  - Within 3 miles of health-related facility
  - Within 2 miles of city hall
  - Within TIRZ, TIF or other redevelopment area
  - Within a county with a disaster declaration
  - Local government support
  - Loan or monetary support from city
  - State rep. support
  - Neighborhood org. support

# Pre-Application Scramble

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- Pre-application notice must be given to all of the following:
  - Neighborhood organizations
  - Superintendent of the school district
  - Presiding officer of the board of trustees of the school district
  - Mayor
  - All elected members of the governing body of the city
  - Presiding officer of the governing body of the county
  - All elected members of the governing body of the county in which the development site is located
  - State senator and state representative

# Local Gov't Support 2018

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Resolution of Support = 17 points

Resolution of No Objection = 14 points

Resolution of No Support or no action taken = 0 points

# Local Gov't Support 2018

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- Commitment of Development funding by city = 1 point
- Must show financial benefit to the development
  - Loan
  - Grant
  - Reduced fees
  - Or contribution of other value of \$500.

# Local Gov't Support 2018

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- Can you say no, or refuse to consider a resolution?
  - Be careful!
  - QAP warns:

“In providing a resolution a municipality or county should consult its own staff and legal counsel as to whether such resolution will be consistent with Fair Housing laws as they may apply, including, as applicable, consistency with any Fair Housing Activity Statement-Texas (“FHAAT”) form on file, any current Analysis of Impediments to Fair Housing Choice, or any current plans such as one year action plans or five year consolidated plans for HUD block grant funds, such as HOME or CDBG funds.”

# Local Gov't Support 2018

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- Can you say no, or refuse to consider a resolution?
  - Be careful!
  - Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507, 192 L. Ed. 2d 514 (2015)
  - Discriminatory effect prohibited - 24 C.F.R. § 100.500

# Irving 2018

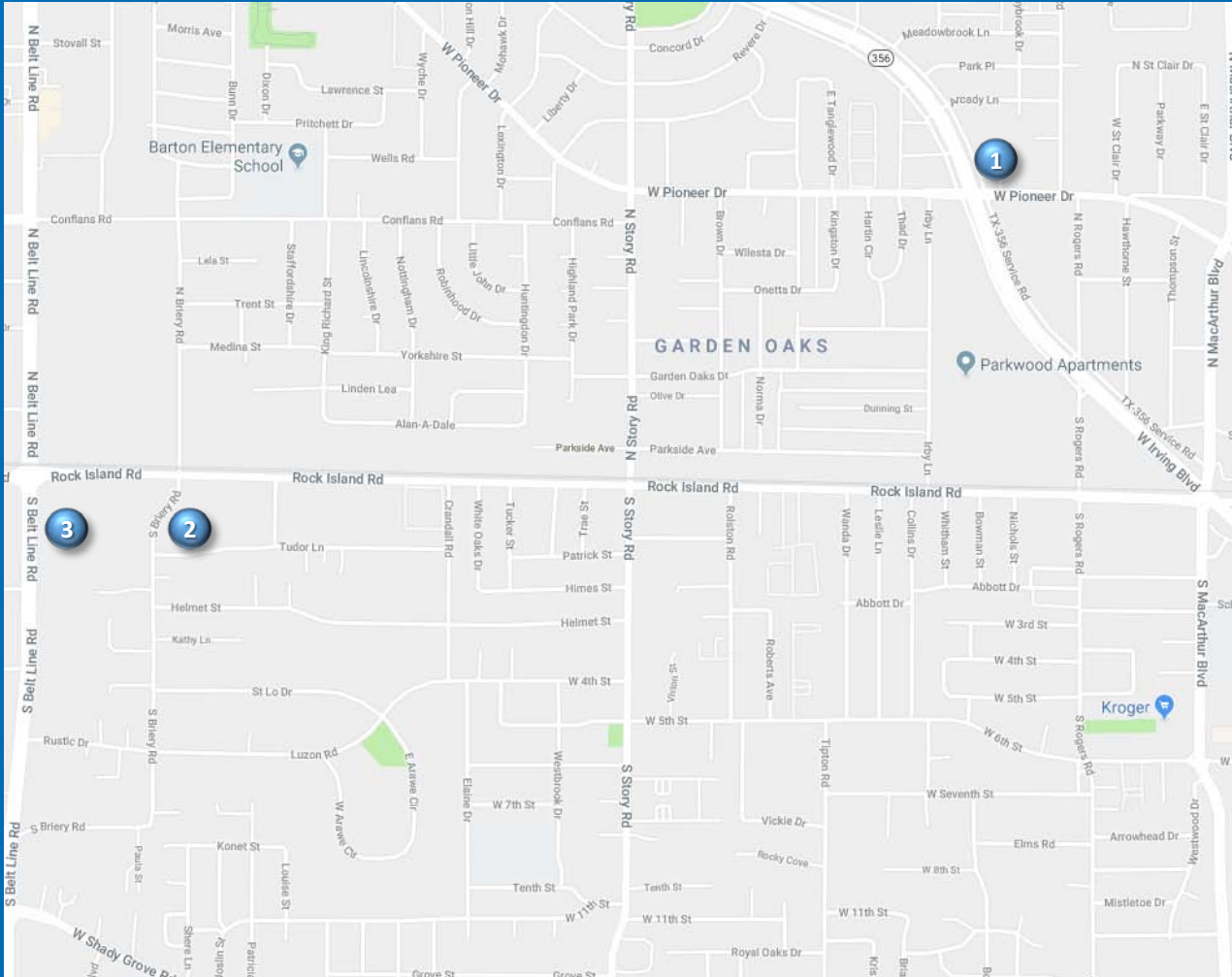
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- 2017 change in the population threshold from 300,000 to 200,000 for key application points
- Because Irving is the best place to live in DFW?
- Because of maximum points?



# Irving 2018

5 project proposals on 3 properties



- 1 Canova Palms
- 2 Oliver Commons
- 3 Churchill at Irving Community
- 3 Evergreen at Irving Beltline Community
- 3 Evergreen at Belt Line Irving Senior Living Community

# Irving 2018

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- All new construction
- All multi-family
  - 3 Senior Housing projects
  - 2 standard multi-family housing projects
- Range in size from 60 to 120 units
  - Range from 50 to 116 income restricted units
  - Range from 0 to 12 market rate units
- All require some form of zoning change
- No projects have been through city's pre-development review process
- No projects have documented community input
- 2 of 5 projects satisfy TDHCA pre-application notice
- All projects requested waiver of fees ranging from \$500 to \$1,000
- 2 of 5 projects requested HOME funds (\$1,000,000)

# Irving 2018

Name of Project	Developer	Proposed Property	Rehabilitation	New Construction	Senior Housing	# of Units	# of Restricted Units	# of Units at 30% AMI	# of Units at 50% AMI	# of Units at 60% AMI	# of Units at Market Rate	Zoning Change Required?	Current Zoning	Completed City's Predevelopment Process?	Documented Community Input?	Satisfy TDHCA Pre-application Notice?	Waiver Request	HOME Funds Requested
Canova Palms	Saigebrook Development	1717 Irving Blvd	N	Y	Y	60	50	5	20	25	10	Y*	S-P-1	N	N	Y	\$ 500	\$1,000,000
Oliver Commons	Saigebrook Development	3090 Rock Island	N	Y	N	88	84	9	34	41	4	Y	S-P-2 for ML20	N	N	Y	\$ 500	\$1,000,000
Churchill at Irving Community	Churchill Irving Community	100 S. Robinson**	N	Y	N	110	105	NP	NP	NP	5	Y	M-FW	N	N	N	\$ 1,000	N
Evergreen at Irving Beltline Community	Irving Beltline Community	100 S. Robinson**	N	Y	Y	120	108	NP	NP	NP	12	Y	M-FW	N	N	N	\$ 1,000	N
Evergreen at Belt Line Irving Senior Living Community	Churchill Residential	100 S. Robinson**	N	Y	Y	116	116	NP	NP	NP	0	Y	M-FW	N	N	N	\$ 1,000	N

\* Proposed property currently has Site Plan for assisted living - will require re-zoning for proposed use

\*\* Address submitted by developer. DCAD shows parcel address as 160 S. Belt Line Road.

NP = Not Provided

# Dalworthington Gardens 2016

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- Population 2,383
- Houston Developer – Vietnamese multifamily proposal
- No development plans
- No environmental assessment
- No traffic study
- No market study
- Wrong zoning
- No public utility access
- School impact?
- Located next to million-dollar home
- Request for Resolution in Support = hundreds of citizens in opposition
- Rumor that DOJ was present at Council Meeting

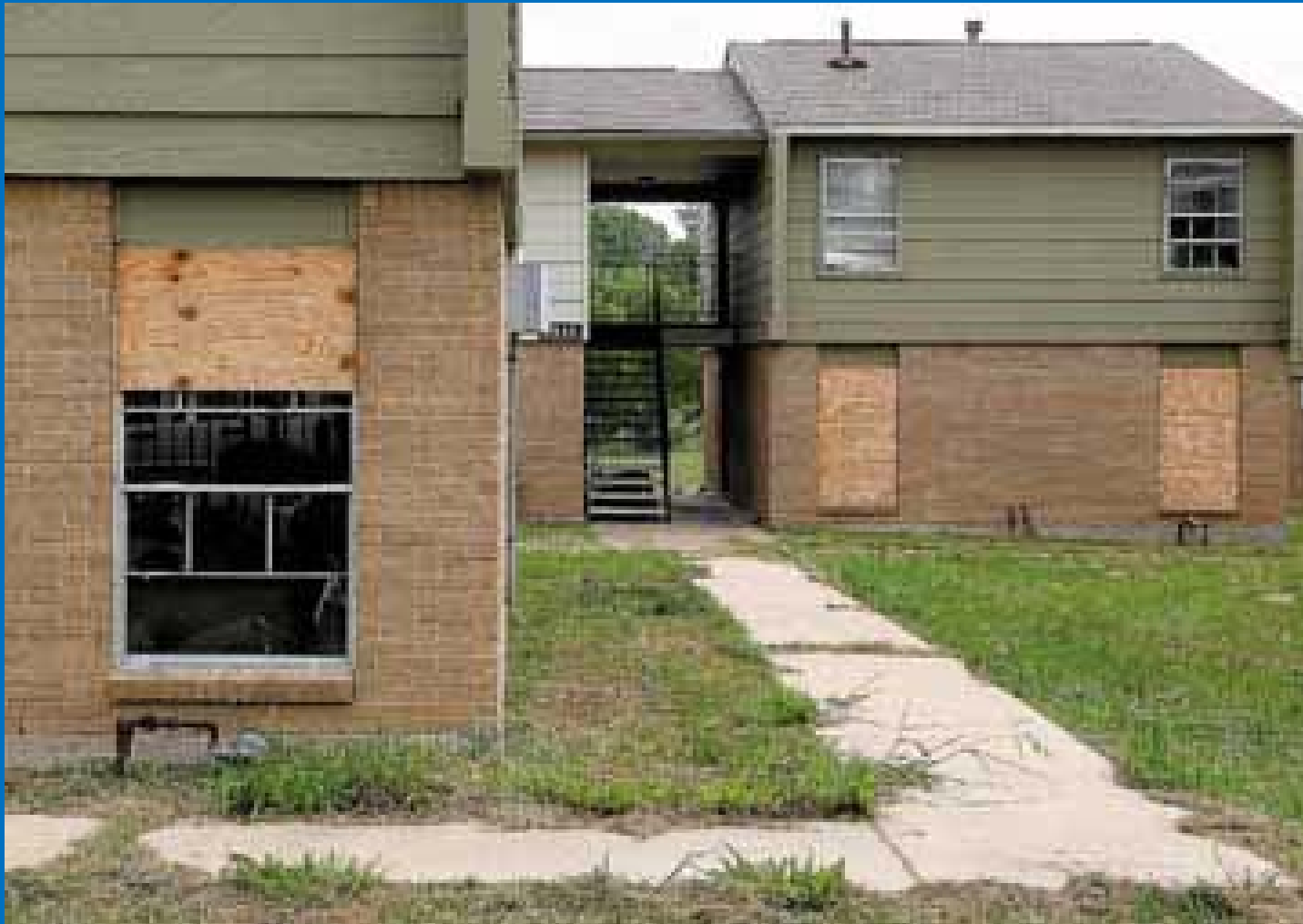
# Waco 2011 - 2015

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- HUD foreclosed Parkside Village Apts.
- More than 100 families displaced
- Crime reduced by appx. 30%
- City purchased property from HUD for \$1
- City demolished property
- City advertised RFP with ground lease
- 9% LIHTC were necessary for feasible development
- Multiple attempts to win LIHTC

# Waco 2011 - 2015

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# Waco 2011 - 2015

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# QUESTIONS?

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