TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

9:15 a.m.
Monday,
June 24, 2002

Capitol Extension, Auditorium
1400 N. Congress
Austin, Texas

COMMITTEE MEMBERS:

C. KENT CONINE, Vice Chairman
ELIZABETH ANDERSON
SHADRICK BOGANY
VIDAL GONZALEZ
NORBERTO SALINAS

STAFF PRESENT:

EDWINA CARRINGTON, Executive Director
TOM GOURIS
BROOKE BOSTON
BEN SHEPPARD
SARA NEWSOM

I N D E X

I N D E X (cont'd

P R O C E E D I N G S

MR. CONINE: I would like to call the Texas Department for Housing and Community Affairs board meeting of June 24 to order. It's good to see all of you here today, as always. The first thing we'll do is call roll to see who's -- hello, Vidal. Vidal Gonzalez is now here. Welcome.

Michael Jones, the chairman, looks like he's absent, that sorry rascal. Beth Anderson.

MS. ANDERSON: Here.

MR. CONINE: Shad Bogany.

MR. BOGANY: Here.

MR. CONINE: Kent Conine is here, and Norberto Salinas.

MR. SALINAS: Here.

MR. CONINE: Okay. We do have a quorum. Five members present and one absent. I want to, again, thank everyone for coming this morning. I also want to thank Senator Barrientos for allowing us to use this particular auditorium so everybody can be in a little more comfort that any of the other crowded meetings rooms that we might have around the state capitol.

This is -- you know, there are always times of the year when the swallows come back to Capistrano and the bats come out from under the Congress Street bridge. This is the time when everybody shows up for tax credit hearings. It's good to see everybody again this time of year, although it is 30 days ahead of when we normally do it to try to give us some time to not only let the public see what staff is recommending, but also time to let the appeals process take its full effect.

We have a lot of public comment here this morning. Before we go to the public comment, what I'd like to do is let each one of you know who have turned in a witness affirmation form that you will get your choice of whether to go during the public comment period, or later on when we go through the individual appeals, or during the dialogue relative to the projects.

So you can be thinking about that. Anybody who hasn't turned in a public comment form, who would like to speak before the board today, you need to see Dolores down here. Here she is bringing one or two more. We'll try to get through them, but I want to make sure everyone has a chance to speak.

Due to the volume of witness affirmation forms today, we will probably set a three-minute time limit on the dialogue. If you need some more, you can obviously -- if you've got someone else here who can turn in a witness application form and pick you up another three minutes, we can do it that way. But please be respectful, if you will, of not only the board's time, but the staff's time and everyone's time in the dialogue that we have. To start off the meeting, I'd like to turn it over to our executive director, Edwina Carrington, who'd like to open the meeting up, if you would.

MS. CARRINGTON: Thank you, Mr. Chairman. Good morning and welcome to all of you all. On behalf of the board of directors and the staff of the Texas Department of Housing and Community Affairs, we want to thank you for your input and for your participation in our 2002 tax credit program.

Several characteristics of the 2002 program, I think we will find evident today, include transparency of our process this year, consistency in review of our applications, equitable application program rules, and an emphasis on scoring. We believe there were several multiple positive changes in our tax credit program for this year.

Most notably, we had a very successful pre-application process. We have an appeals process that is in the process now. We have deep rent skewing in the application scoring. We also have a viewing room that's in our offices, where if someone wanted to come in and look at applications, look at backup information, they could come in and do that.

Also, the pre-aps and the applications were on our web site. Then I think also most notably on Fridays for six weeks, we had an open forum in our conference room, where many of you all came to discuss letters that you had received from us and to ask for clarification on a variety of issues.

The appeals process is a little -- I'd like to discuss the appeals process in a little bit more detail this morning. The appeals process was mandated in Senate Bill 322, and then was also incorporated in our QAP. The appellant can appeal decisions of the department related to satisfaction of pre-ap or application threshold criteria.

They can apply to the department to appeal on underwriting decisions. They could also apply for scoring under the pre-ap or the application and on the recommendation of the amount of credits that the staff is recommending. If an applicant is not satisfied with the department's response, the applicant may appeal to the board for a decision at the board level.

For applications that are deemed ineligible by the department, the appeals procedure for those applicants is to appeal directly to the board of directors. Again, those are right out of the QAP. To date, the department has received in time to process, 40 appeals, and we have completed the appeal process on 40 appeals.

Seventy percent of those have actually been satisfied. They were either completely reinstated, partially reinstated or 100 percent denied. So 70 percent of the appeals the department received seven days prior to this board meeting have been resolved. You will be hearing this morning from the other 30 percent, who are not satisfied with staff's response and are coming to the board for a final decision.

It's important for those of you to remember, and I know that many of you have signed this affirmation form -- it's important to remember that you must file a formal appeal to the department and that the last day to file those appeals is the close of business this afternoon.

We will be processing those appeals over the next 30 days, and those appeals will be heard and resolved at our board meeting in July. What the board will be doing today is taking action in two areas. They will be hearing the appeals, making decisions on the appeals, and they will be reviewing a list of recommendations from staff for -- it's what we call our recommended list of applications.

This list has come through the executive award and review committee of TDHCA, which is in Senate Bill 322. So these have been reviewed by staff, and I am a member of that committee, so indeed the recommendations you are going to be seeing today are staff's recommendations and have been reviewed by many folks at the department.

I would like to thank my tax credit staff, our underwriting staff who has done yeoman's work over the last several months in administering this program, and with that, Mr. Chairman, I will turn the mike back over to you.

MR. CONINE: Thank you, Ms. Carrington. Okay. I'll officially open it up to public comment. Board members, I'd like to suggest that we have probably three different classes of public comment that I can see and maybe more coming. But we've got those that are listed specifically as appeals that we are going to listen to today.

We have probably just some general public comments, and then we have probably some appeals that have been recently turned in or the department has yet to rule on. So kind of keep that in mind as we go through here, and I hope the people who are speaking would try to identify succinctly which project and which appeal or which issue you may be visiting with today.

Again, we'd like to recommend that we keep our comments to about three minutes. Do we have someone that can be the official timekeeper, Ms. Carrington, who can kind of help me do that along somewhere? Can you do that?

MS. CARRINGTON: Dolores is shaking her head yes.

MR. CONINE: Okay. Great. What I'll do now is open this board meeting up for public comment. As I go through here and call your name, and I'll do it one by one, if you could let me know whether you want to speak now or whether you want to speak when your item -- either item 1 or item 2 on the agenda, which item 2 lists every project that we've got here. So that will help me as we go through.

The first one is named Don Forse from Nacogdoches, or from Austin. Is Don here?

MR. FORSE: Yes, sir. We'll wait.

MR. CONINE: Okay. Can you tell me which item you'd like to speak on?

MR. FORSE: It's item number 2112.

MR. CONINE: 2112. Thank you very much. Eloise Smith.

MS. SMITH: Now.

MR. CONINE: Yes. When?

MS. SMITH: Now.

MR. CONINE: Now. Come on. You are welcome to come up. Come on over to the microphone here, and if you will, state your name and where you're from and dive right into it.

MS. SMITH: My name is Eloise Smith. That's E-L-O-I-S-E S-M-I-T-H. I am the mayor of the city of South Houston, Texas. We're a small town in the more southern part of Texas with a population of about 16,000. The city of South Houston and its citizens there -- many of them were basically, even our governing body, were against this project in the very beginning from probably around February all the way through, at the time that these people should have been making applications

We had a misperception of this, that this was like a HUD project for low income housing, and we have in our city -- we are probably very close to the bottom in the per capita income for Harris County. We have a very poor community. It's more like a bedroom community.

Due to that, we were afraid that another project would increase the need for additional police. We also thought that being nonprofit would mean that we would not be able to collect taxes on such a project and would really put a burden on our budget. We did not understand the mixed income approach, where it wasn't just totally a low income housing.

So we were basically against this project. Our budget for our general fund is $6.4 million, with a $4 million budget on our systems fund, so you can see we don't have a lot of money to work with, and when we have a piece of land there that was going to be developed, we wanted it to be something that -- like a Wal-Mart, that we could get sales tax because we have very little industry and, like I say, a very low ratio income per capita.

After reviewing this project, we have had many meetings about it. We met with our chamber of commerce, Some of the members here that you will hear from today. We would like very much to reconsider this. There were a lot of meetings with these people, Mr. Richardson and his staff, and our state reps, Mr. Noriega and Congressman Gene Green.

They have explained it very fully. Our governmental body is now for this project. We feel, actually, that it is something vitally needed in our city. With mixed income, you have a better opportunity of not having segregation. The income also -- this project also has the educational benefits that -- we just weren't totally aware of the benefits that this could offer to our community.

A lot of single mothers with children who would have the advantage of having the childcare out there in the apartment project, along with the educational and computer benefits that it offers here -- this is something that we don't have. We do have a library, but our facilities are very limited, so this would be a real advantage to the people who would live in this project.

I want to thank you for the opportunity to speak to you. If you have any extra tax credits that are available, we missed the 15 points pre-ap -- I understand that the developer did -- because of our slowness in understanding the project. So if other tax credits become available, we would certainly appreciate your consideration to this developer.

If we can answer any further questions, we will be happy to do so. You have our name and address, and we feel that we really need this project, that it would be beneficial to a small community that has very little else to offer right now. We're growing and we're trying. Thank you so much for the opportunity to speak.

MR. CONINE: Let me clarify, if I might. You are speaking to the Windsor Garden apartment project?

MS. SMITH: Yes, sir. Windsor Garden apartment project.

MR. CONINE: Does the whole board understand that?

MS. ANDERSON: Yes.

MR. CONINE: Okay.

MR. SALINAS: Is that number 20-what?

MS. SMITH: 02151.

MR. CONINE: 2151 is what I've got on my sheet.

MR. SALINAS: 02151?

MS. SMITH: 02151. I think your list shows 2151.

MR. CONINE: Any questions?

(No response.)

MS. SMITH: Thank you.

MR. CONINE: Al Thiel.

MR. THIEL: Good morning, Mr. Chairman and all the board members. I'm speaking on Windsor Gardens Apartments, 02151. I'll try not to say some of the same things that our mayor, Ms. Smith, has spoken about. I concur with everything that she has said. Of course, I've been on the -- elected four times now on city council. I'm on my seventh year, and I'm quite familiar with the city of South Houston and our needs.

After the meeting with the developers and getting educated on what affordable housing is, I am wholeheartedly behind this project. Four reasons that I am backing this project are that the developer, Mr. Richardson, and his company's financial strength, the quality of the projects that we visited, and he did not take three or four years to build his projects and lease them out.

We would not be raising taxes because of this project; however, the project would be paying us local taxes. Even though we are aware of the need for affordable housing in our community, we wanted to be sure that the property built would be appropriate for the various needs of our residents.

Over time, we became convinced that the Windsor Gardens property would meet the housing needs of our families, of our police, teachers and a number of city workers, along with many commercial establishments in our city. A fairly wide range of income brackets can be served on the property.

Windsor Gardens' education-based housing program and early childhood program would greatly assist our local schools and educational levels of our residents. My wife and I are very impressed with the quality and professionalism of the staff during our visit to an educated base housing center.

One of the centers that we visited was Plum Creek in Houston. We were so impressed that if we made the decision to move into an apartment, our first choice would be Windsor Gardens. Lastly, we estimate the economic impact that Windsor Gardens would have on our city would be approximately $77,000 in ad valorem taxes per year, plus additional sales taxes and revenues for having more families live in South Houston.

Due to the fact that our project did not receive the pre-application points of 15, if it had received these points, our project would have scored highest of nonprofit set-aside within the region. If you have any sources of tax credits available, or some come available, please consider the city of South Houston.

We really need this project. This would probably be the best thing to happen in South Houston in many, many years, so please consider Windsor Gardens in South Houston. Thank you.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Thank you so much. I appreciate it. Next, Jane Thiel.

MS. THIEL: Good morning. My name is Jane Thiel, and I chairman of the Chamber of Commerce of South Houston. I am also chairman of the South Houston Crime Control and Prevention Board, and I'd like to give you a little bit about the demographics of our city, if you are not familiar with it.

The city of South Houston is located in a very ideal location. We are close to Hobby Airport, the Port of Houston, NASA, downtown Houston. We are surrounded on three sides by the city of Houston and on one side by the city of Pasadena. We have three total square miles in our city. It doesn't sound like it's very big, but it's big when you walk it for a campaign, believe me.

As the mayor said, our population is 16,000. Seventy-three percent of that is Hispanic. Twenty-three percent of it is Caucasian, and the rest is made up of African-Americans, Asian-Americans and American Indians, of which I am one, with my red hair. Don't let it fool you. I am also Scotch-Irish.

We have U.S. citizens and residents. We have a lot of residents that live in our city. The average median income for a family of four is $30,000 annually. Ten percent of our population is under the age of five. We have almost 60 percent of married couples in the city. Our schools have over 4,000 enrolled. We have four elementary schools, one intermediate school and one high school.

The average education level of ages 25 and over is 23 percent with ninth through twelfth grade education, and 40 percent high school graduates and some college. The breakdown of our workforce in the city is 25.7 by technical, sales and administrative support, 24.8 by precision or production craft and repair, 22.4 is machine operators, assemblers, inspectors, transportation and laborers.

Unemployment in our city is about 5 percent. We are a working community with over 59 percent employment. The remaining percentage is either not in the labor force or serving in the armed forces. We have over 700 businesses in our city and we're growing more every day.

HEB is expected to open its doors and replace the Albertson's that has pulled out. In September, they will be putting one of their Superstores there. Our chamber was able to award four scholarships just last week to students at South Houston High School. Next year, we hope to double that.

We are a family-oriented community, and those that grow up here return wanting to give something back to our community. We have a great community center that has lessons for ESL, learning how to speak Spanish, the arts such as Ballet Folklorio, music and, of course, sports.

We have basketball, girls' softball and boys' baseball. We have four city parks, and we do have a small library. Our civil service police department is also slowly growing, along with our volunteer fire department. As you can see, the market demand for this project is tremendous.

South Houston needs this project. It fits us like a glove. Our city is personable, friendly, and we're all there to help each other. We are small to know if there's a stranger in our neighborhood, yet large enough that you can have your own breathing space and privacy.

I also apologize for taking so long to understand the program. Out of the many meetings that occurred, I believe the one that Mr. Chris Richardson met with us, with the city and chamber of commerce board members, and our guests on February 27 of this year, was probably the turning point in our understanding what this project was all about.

At our meeting, I invited the mayor, the council, several area businesses and private citizens. There was a lot of active discussion on what the project was all about and what we could do for the city.

MR. CONINE: If you don't mind, if you could wrap it up, please.

MS. THIEL: Sure. I understand that we didn't receive the 15 points for the pre-application, and I would ask that you reconsider that. I would also ask if you would change the name of the program. Make it more understandable so small cities know what's going on. We didn't want another HUD project in. Thank you for your time, and I appreciate it.

MR. CONINE: Thank you. Any questions, board members?

(No response.)

MR. CONINE: Okay. The next name I have is Bob Young. Would you like to go now or --

MR. YOUNG: Now.

MR. CONINE: Now. Okay.

MR. YOUNG: Good morning. I'm Bob Young, mayor of the city of Cedar Park, Texas. Today, I come before you representing 35,000 citizens of our fair city on your project known as 2128, the Cedar Point Retirement Apartments. Everybody in our town has been excited about this project for some time, as one of our greatest needs has been identified as affordable housing for the seniors.

We don't currently have anything like that, and we find that one of the most admirable projects that we've seen in a long time. I would have to classify this project as the most important project ever discussed since I have served as mayor of my community, and I am in my second term.

I have continued to encourage this project for quite some time, and I was almost certain that TDHCA would completely agree with us that this critical need is an immediate need in our city. However, based on the fact that we've been told we did not meet the favorable recommendations, I come before you today to issue an appeal.

Since the deadline for this original application, our project has continued to grow in scope and support in our community. In fact, we have received additional letters of support from other state elected officials beyond those who agreed to support us early on.

Those who have joined us in recognizing the need for a senior citizen affordable housing project are the District 20 State Representative-elect Dan Gattis and Senator Steve Ogden. And I'd like to keep this brief, so I'll close by asking you to reconsider this very worthy and much-needed project in our city.

The city of Austin, our neighbor to the north -- or south, I'm sorry -- is not considered a viable option for our senior and elderly citizens. Cedar Park is a unique and dynamic city, and continues to grow in quality of life for all of its citizens, including our senior members of the community.

Please help us meet the long-term needs of our city, and we ask you to reconsider favorably for this project. Thank you.

MR. CONINE: Thank you, Mayor. Are there any further questions from the board?

(No response.)

MR. CONINE: Thank you very much. Jeff Fulencher. Is Jeff here?

(No response.)

MR. CONINE: He was here, I know. David Kelly.

(No response.)

MR. CONINE: They are both outside, I think. David.

MR. KELLY: We want to speak on a Refugio issue that is also being reviewed as up for renewal, and we're here at your convenience. The question is whether you would rather have us speak now or speak at that time.

MR. CONINE: Probably on the agenda item, if it's okay with you.

MR. KELLY: Yes, sir.

MR. CONINE: All right. Is that for both of you now?

MR. KELLY: That's correct.

MR. CONINE: Okay. Rose Garcia.

MS. GARCIA: Yes. I would like to speak later with the projects.

MR. CONINE: Okay. And it's project 2063. Is that correct?

MS. GARCIA: Yes.

MR. CONINE: Okay. Tim Johnson.

MR. JOHNSON: I'll wait to speak on the projects. That's 2063 and 2064, 2059 and 2068.

MR. CONINE: Got it. James Millender.

MR. MILLENDER: Sir, I would also reserve to speak later.

MR. CONINE: Okay. And that's on 59 and 68?

MR. MILLENDER: Yes.

MR. CONINE: Okay. Sam Brewster.

MR. BREWSTER: I would like to speak later on 2063 and 2064.

MR. CONINE: All right. Corinne Vanberg.

MS. VANBERG: Yes. I'd like to speak later on 2059.

MR. CONINE: All right. Phil Duprey.

MR. DUPREY: I'll speak now, please.

MR. CONINE: Okay.

MR. DUPREY: Good morning. I am the mayor pro tem of the city of Cedar Park, here to speak on behalf of 2128, the Cedar Point Retirement Apartments. My name is Phil Duprey. If I were giving points to the project, which didn't make the cut, I'd give it bonus points for two reasons.

We've had 400 percent growth in Cedar Park from 1990 to 2000. The city has grown fastest in the fastest-growing county, and the senior growth has been right along with that. We've never had so many folks and never had so many senior folks. We have the Treasure of the Hills Senior Center, which is an activity center, which is just booming, adding on, and there are more and more seniors all the time.

There is no apartment place like this proposed project anywhere near Cedar Park, so I'd give bonus points for the fact that we've grown so fast, so quickly, and for the fact that this project is unique in this area of the district. We've seen the similar project in Pflugerville, which is stunning.

We want something like that in our part of the district, and the seniors are certainly there to take advantage of it. So if I were giving points, I would it bonus points, and thank you for your consideration.

MR. CONINE: Thank you very much, Mayor Pro Tem. I apologize for not getting you in order a minute ago. Kent Taylor.

MR. TAYLOR: My name is Kent Taylor, and my apologies for not getting the memo about wearing a suit and tie today. I came dressed in my normal attire. I'm a commercial real estate broker here in Austin. I own my own company called Taylor Commercial.

I am here to speak in support of project number 2128, Cedar Point Seniors Apartments, the one that was just spoken about by both the Cedar Park city council member and Cedar Park mayor. First, I would like to commend you as a board on the process of allowing some time between the time that staff makes its recommendations and that you make the board approval.

I think that it's very much needed this year, as is evidenced by the number of appeals which have shown up this year. I'm here to talk about the issue that I think relates to this, which is the issue of point chasing and awarding the people who get the credits.

That's the job the staff was designed to do, I guess, with this particular round, but I think it is your job to decide what's best for the affordable housing communities and top point-getters may not be the right ones for the communities. For example, site and market conditions are not always fully factored in.

Properties and qualified census tracts sometimes get awarded when they shouldn't be. We have, over the past several years, had an enormous number of projects awarded credits for qualified census tracts, and we've got that problem going on again this year.

I ask you to think about the fact that maybe there are people in other areas of town that need those affordable houses more than the ones in the qualified census tracts, due to the amount of supply that's come on. Second, I think there has not been enough analysis brought to the worthiness of sites.

I think I can speak to that one because my business is as a commercial real estate broker. That's all I do, is sell sites; and over the last five years, 90 percent of my business is selling multi-family sites. So I think I have a little bit of knowledge about what makes a good multi-family site and what doesn't.

As it relates to senior sites, I think it's very important there be good proximity to things like grocery stores, medical, senior centers, et cetera, where they don't have to go far to get what they need, as opposed to being in an area of town where they can get qualified census tract credits.

So in summary, I ask that you use the judgment that you are given in your authority on this board, and that you, at least in Region 7, look beyond the location of being in qualified census tracts, and look at what is best for the seniors in this particular area and be in support of project 2128.

MR. CONINE: Thank you, Mr. Taylor. Any questions?

(No response.)

MR. CONINE: Okay. Bryan Lee.

MR. LEE: Yes. We'll hold our time until the appeal process and there are five others behind me, all from Century Pacific. We're all going to wait until projects 2019 through 2022.

MR. CONINE: That will be Robert Nathan, Charles Shwenneson, Irwin Butch, Vangie Burse. Any others?

MR. LEE: Bill Walter was also turned in.

MR. CONINE: Let me see if I can find him. Hang on just a second. It's going to be the last one. There it is, the next to the last one. Okay. Got them all. Thank you very much, and we'll bring it up at that time. Bill Lee.

MR. LEE: Mr. Chair, I'm going to wait until the appeals process with three speakers for the projects --

MR. CONINE: Okay. Got two of them. Let me see if I can find the third. I think I saw it toward the bottom. Start from the bottom up. That's what I probably ought to do. Got it. Janet Miller.

MS. MILLER: I would prefer to wait for the appeals process.

MR. CONINE: Okay. Barron Rush.

MR. RUSH: Ditto on 2122.

MR. CONINE: Okay. Gene Thomas.

MR. THOMAS: Yes. I'd like to speak now.

MR. CONINE: Okay.

MR. THOMAS: Thank you, Mr. Chair. My name is

J. Eugene Thomas. I am chairman of the Southeast Dallas Land Use Study out of Dallas, Texas. If you don't mind, Mr. Chair, I also have Mr. Parker, who was late getting here. He is going to be speaking on the project 02025, which is the Village of Prairie Creek.

MR. CONINE: Has he done a witness affirmation?

MR. THOMAS: Yes. He has.

MR. CONINE: We'll find him. Got him.

MR. THOMAS: All right. Thank you. This southeast Dallas land use study was authorized by the city of Dallas in June of 1993 to be a guide for future development of the southeast Dallas area. Pleasantwood-Pleasant Grove -- Development Corporation was designated as the conduit for the recommendation identifying the plan which would be implemented.

One of those recommendations that was identified in the plan was to encourage affordable housing. The Village of Prairie Creek was the first housing development that came to Pleasantwood and Pleasant Grove in July 2001, with proposed development that was ready to proceed.

We have worked diligently with this developer for over a year for the proposed development. Together we held numerous meetings as early as August 25, 2001, and discussed the impact on our community. Our organization was responsible for facilitating the rezoning of the proposed site and it was accepted by the Dallas City Council on October 24, 2001.

During the rezoning process, there was ample opportunity for the community to watch and support our position of the proposed development. As expected, we had no opposition for the hearings. According to the application submitted to the department in 2002, two applications were located within the area of our land use study.

Both of the applicants of these applications made presentations to the representatives of our organization. For the record, we want to let it to be known that we supported one of these developments, and that was the development of the Village of Prairie Creek.

The reason we did that was because the developer was the first developer that came to us, and we did not have any development out there for the past 40 years. So this project was embraced, along with the other project, and with the total projects that we have embraced out in that area, it brings about a total of 460 new affordable housing apartments.

We already have an existing total of over 3,000 apartments in the area. Any more, we made a commitment to the community that we would not support any other development that would bring more affordable -- more multi-family housing to the area, because we feel it would something of a detriment to the area. However, we did support those other two projects.

But we are asking, and hope that you will respect our decision as members of this organization. We have dedicated the valuable resources to making the right decisions for our neighborhood. Please show your support for the only development that is approved in our community, and that's the Village of Prairie Creek. If you have any questions, I would be more than happy to answer them.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Albert Parker.

MR. PARKER: Good morning to you. My name is Albert Parker, 9647 Oakgate, Dallas, Texas. I'm a representative of the Pleasantwood-Pleasant Grove CDC 501(3)(C) nonprofit organization. I'm standing in the absence of Dr. H.J. Johnson, chairman of the board of directors, whom I have personally known for 12 years.

Pleasantwood-Pleasant Grove CDC supports the proposed multi-family housing project being presented to you today, as the city council of Dallas approved it unanimously, and also the Dallas City Planning Commission approved it unanimously several months ago.

This multi-family housing project is very much needed. Affordable housing in this section of Dallas is very much needed. This developer, Washburn Group, is very much concerned about building a quality housing that will aid low income families. We have seen that work on a similar project.

This project will enhance the neighborhood, and will also bring about possibilities of future economic development for the Pleasantwood-Pleasant Grove area, which will be in keeping with the Dallas Comprehensive Southeast Land Study, which was adopted by the Dallas City Council in 1996. Pleasantwood-Pleasant Grove was very much a part of that.

I will now read a portion of the land survey study regarding the implementation. "Number one, the EDD, that is, the Economic Development Department of Dallas, shall work with the Pleasantwood-Pleasant Grove CDC, and that is by encouraging the development of housing programs."

In closing, the Pleasantwood-Pleasant Grove CDC has a long history of working with the city of Dallas to better the quality of life for citizens in this area, which we and the Washburn Group are presenting to you today. Therefore, on behalf of the Pleasantwood-Pleasant Grove CDC, I will humbly submit to you to vote yes for this application.

A yes vote is a vote for progress. A yes vote is a vote for humanity. And just to give you an up-to-date status, the Dallas Rapid Transit has put a station out there, and by the year 2005, there will be a rail station out there.

I would like to leave this picture with you showing the area that this project will be built. This is a fast-growing area, and I'm sure that all of us are for progress. Thank you very much.

MR. CONINE: Thank you, Mr. Parker. Any questions?

MR. SALINAS: What project is that?

MR. CONINE: 2025. We have one more speaker on that project, Jim Washburn.

MR. WASHBURN: I'll be speaking when the appeals take place.

MR. CONINE: When the appeals take place. Okay. Fred Odanga.

MR. ODANGA: I'll speak now. Good morning, board members. My name is Fred Odanga. I'm one of the general partners of Ryan Crossing Villas, project number 2133, which was not recommended for tax credits by the staff due to its low scores. I have filed an appeal with the department on June 19, disputing the deduction of 34 points.

I have not yet received a response, and if unsuccessful in my appeal to the department, I will appeal to the board. I need some guidance on whether I should wait for a response from the department before appealing to the board, or if I will have an opportunity to appeal to the board before the final decision is made. These are my comments.

MR. CONINE: Okay. Thank you. Any other comments?

(No response.)

MR. CONINE: His appeal hasn't been responded to by staff here. Rick Deyoe. Sorry about butchering that up.

MR. DEYOE: I'll reserve until item 2, whenever the reservations come up.

MR. CONINE: And that's on 2070?

MR. DEYOE: 2070.

MR. CONINE: Diana Kinlaw.

MS. KINLAW: I'd like to reserve my comments until the item 2. Additionally, Jim Plummer is here with me, and he would like to reserve his comments until later.

MR. CONINE: Okay. Jim Plummer. We'll have him right behind you. Dan O'Dea. Sorry about that, Dan.

MR. O'DEA: I knew as soon as you couldn't read it, it was me.

MR. CONINE: If that were the case, there would probably be 20 people standing there.

MR. O'DEA: My name is Dan O'Dea. I'm president of Preservation Partners, and I'm speaking on behalf of 2155, Blue Water Garden Apartments: 2156, Town North Apartments; and 2036, Gateway East Apartments. We will be filing appeals --

MR. CONINE: What city are you in?

MR. O'DEA: Oh, sorry. Blue Water Gardens is in Hereford, Region 1. Town North is in Texarkana, Region 4, and Town North -- sorry -- Gateway East is in El Paso, Region 10. We will be filing appeals today. What we are appealing is, these are all recommended, and we are appealing the conditions.

What I'd like to do is first speak globally and then go to a specific concern. These projects are all in the at-risk set-aside, which is undersubscribed and are difficult projects. You start combining tax credits with 236 of HUD, IRP, Section 8, and you're making them a lot more complicated transactions, but we are required to close them in the same time.

I feel that the conditions listed will prohibit us from being able to get these closed in a reasonable amount of time, and also think that they are conditions that, to some degree, need to be determined by HUD and the private sector. I believe that the underwriting department's job is to determine the financial feasibility of a project, and that's what they do.

I don't believe they should dictate terms to the private sector. In all three of our projects, one, we have a maximum -- or two, we have maximum NOIs that we are allowed to get dead-on, and one, we have a minimum NOI. I think anyone who has ever underwritten a multi-family project would tell you it's like a tax return. If you give it to ten people, you will get ten different answers.

None of them are wrong. They are just all different methodology. The other thing is, they are being underwritten today, and they will close next year. If nothing else, we will probably see rent increases in the maximum limits. One of our conditions is that if our HAP contracts change, we need to come back for further underwriting.

We told the department that our HAP contracts would change, and they underwrote them at the current rents. I think that's an unfair burden since the time when we're trying to close, in May of next year, which is when it'll be required, is when the department is also in the middle of their application process and is very busy and I'm sure would not be able to get to the re-underwriting in a timely method.

I think the reason that the tax credit program is the most successful housing program that has existed is because of the input of the private sector, both from the equity and lending standpoint of making sure that the projects are feasible. If the lender determines there needs to be less or more debt, I think that's a determination they should be able to make.

One of the projects we are being told to put more debt on. I don't think you'll find too many developers who try and put less debt than they can on a project. Now, I would like to speak specifically to 2155, and my concern with that project -- that is the project where the condition is for a minimum amount of debt or debt based on a minimum NOI.

My difference with underwriting is that underwriting used the current contract rents, which are in excess of the tax credit maximums. I spoke on Friday at the tax credit open forum, and Tom and I had a discussion, and Tom Gouris told me that they were required to not allow more than a one twenty-five debt coverage, and if you were getting those rents, you need to underwrite them.

I have gone back and reviewed that, and in section 49(b) -- I'm sorry. Let me get it here. Section 49.8(h)(1), where it explains how income will be determined for underwriting purposes, it states that the maximum rent that can be used is the maximum of market or tax credit rents. You can't use a HAP rent that is greater.

The reason that is, and the reason that the lender will not accept that is, if the HAP contract at some point is terminated, and even if you have a rent, it can always be lowered, at that point in time, you would not be able to service your debt because you would not be allowed under the tax credit program to go out and charge a higher rent.

So you are immediately upside down with your mortgage. I stated to the best of my knowledge at the time, although I found out since I was slightly incorrect, that no lender would make those kinds of loans. I have since found out there are lenders who will make loans based on tax credit rents, or Section 8 rents, in excess of tax credits; however, in speaking to my counsel, who I won't mention since he's your counsel, on the transaction, he said what equity is providing -- or requiring -- on those transaction is a nonforeclosure letter from the lender.

MR. CONINE: Finish it up, please.

MR. O'DEA: If you get a loan based on tax credits that are in excess of tax credit maximums, equity providers will require that that lender agree not to foreclose if you cannot get those rents. Thank you.

MR. CONINE: Thank you. Any questions?

MR. SALINAS: Is this part of the recommendation to -- for tax credits?

MR. CONINE: Well, he had four of them in there.

MR. O'DEA: There were three, and they've all been recommended. What I'm speaking to is not the recommendations, but it's the conditions.

MR. CONINE: He's got an appeal that -- he said he was going to file an appeal, so the staff, the department, will have two weeks to answer that, and I'm sure we'll see him again next time.

MR. SALINAS: You are not satisfied with the staff that you will not take the tax credits?

MR. O'DEA: What I'm concerned with is the problems that will cause. If I have to go back to underwriting next May because my Section 8 rents are different than they currently are, which I am willing to bet they will be, and which we told the department they will be, I now have to wait for underwriting.

At the same time I have to come back to the department, request an extension which you could turn me down on, pay $2,500 and get deducted two points per project on the next time I apply, so I automatically lose six points. If at that time, Underwriting says, We're requiring you to lower the loan amount that you submitted, I now have to go back to HUD and change my HAP contract, what I give to them, because I have to tell them if my debt changes.

I now have to wait for them to reissue a new HAP contract, which they will then lower my rents, which I will then be required to come back to TDHCA again, and you can conceivably forget. These are very complicated transactions. There have only been 132 of these transactions done using 236, IRPs and keeping the IPRs and combining them with tax credits.

The rules that the lenders and the equity providers are using for underwriting these transactions change every month. I've closed seven of these transactions, and I can tell you that something that I've done with that was related, how they told me they would underwrite in April, when we came back for a transaction we are now closing, they told us, Oh, no. Fannie Mae has told us they are not doing that now.

So the rules are constantly changing, and I think what's important on these transactions and certainly going forward is to try and get that in the broad parameters, this is a feasible transaction or not a feasible transaction, but understand the same thing with the HUD offices.

Every time we go to a HUD office, they interpret the rules differently. National's position on HUD is, We will not overrule a field office.

MR. SALINAS: We have our QAPs. We have our rules, and we have so many people waiting for the tax credits that are not going to get tax credits today. If you aren't happy about the rules, then you need to let them go to somebody else.

MR. O'DEA: Well, one, I'm asking you -- I'm asking that, one, Section 49(h)(1) be interpreted -- or not interpreted, but be followed, and I believe it was not followed. And those are the rules. The other is I do not believe there is a rule that states that you must dictate the maximum or minimum NOI that must be used by a lender.

That's all I'm asking. I don't disagree with how underwriting is applying. What I'm saying is different underwriters will apply things differently. I'm willing to bet that if everyone in TDHCA's underwriting staff underwrote the same project, you would get different answers. Not significantly different answers, but different.

I think part of the process is to make sure that the project is feasible, to make sure that the project can get done and then to let the private sector, both from the equity and lending standpoints, determine what amount they're comfortable with. And things change. Rents go up. Expenses go up and down.

MR. CONINE: Did you get a chance to participate in one of the Friday open sessions?

MR. O'DEA: Yes.

MS. CARRINGTON: He and Tom had this discussion on Friday last week, and staff is certainly -- let's just wait for the --

MR. SALINAS: I think that today is the wrong time to discuss what's going to happen after you get the credits.

MR. O'DEA: My understanding is if I don't file an appeal as to a condition by today, I can never appeal the condition.

MR. SALINAS: Well --

MR. O'DEA: And I'm making this comment during now because I do feel that this is more of a policy as to certain things. I'm not disputing that Tom and the underwriting staff has done what they feel is correct and that they have applied objective methods.

I can point out something. Again, these are new transactions. I know they are new to the staff here. The IRP, which is being treated as other income -- well, that is a set subsidy --

MR. CONINE: You are going down a road here that staff needs adequate time -- I can probably tell you right now, we're not going to make a decision on your appeal because you technically haven't filed one.

MR. O'DEA: Oh, no. I understand that.

MR. CONINE: We understand kind of where you are going and we want to let the process have time to work.

MR. O'DEA: I agree completely. I am not asking for a ruling.

MR. CONINE: Mr. Bogany, I think, had one more question.

MR. BOGANY: Well, I have a question for staff. Have we underwritten a project like this before?

MS. CARRINGTON: Yes.

MR. BOGANY: Was it successful? Was it a successful project where they turned everything in on time?

MR. GOURIS: At least one did.

MR. BOGANY: Okay. So this is not the first time we've done this, and the same rules applied last time.

MR. GOURIS: Yes, sir.

MR. CONINE: Any other questions from any other board members?

(No response.)

MR. CONINE: Thank you, Mr. O'Dea. Richard Shaw.

MR. SHAW: I'd like to wait until the appeal process.

MR. CONINE: Okay. Rowan Smith.

MR. SMITH: Good morning.

MR. CONINE: Good morning.

MR. SMITH: How are you all today?

MR. CONINE: Good.

MR. SMITH: Good. My name is Rowan Smith, and I'm from Houston, Texas. I wanted to discuss a couple of issues with project 2032, Padre De Vida Apartments in McAllen, Texas. Also, I have a question for the board and the legal department. I'll start with the question first.

I was part owner of this project, as well as a project that was funded out of the 2001 Qualified Allocation Plan as a forward commitment. The question is: If a developer receives a forward commitment subject to the rules of the QAP, does that disqualify that person from submitting another project that may be over -- the combined two would be over the limit for the next year. That is the question.

You don't have to answer that right now, but we also, just to let you know -- one of the conditions from the lender on this project that we got last year was to get a letter from the department that stated that this project, El Pueblo Dorado, was funded under the allocation plan for the 2001 cycle, so that it could be guaranteed that the debt -- that was part of that LURA. In other words, the points and the things that we would have to adhere to for the LURA would be from the 2001 allocation cycle.

So we will be requesting a determination on that, as well as -- we also are aware of several other developers that have been funded forward commitments and the next year, get another project that was well over the access. So there's been a history of the department doing that anyway. So that's the first question.

The second is that we have filed an appeal last week in regard to the underwriting comments to this project and several others that I'm a consultant on. But one of the issues that has come up is that the underwriting department, even though they have recommended this project to be funded, has used some operating expenses, especially in the payroll and the utilities and the maintenance categories that we're contesting their numbers.

In order to make projects work in the Rio Grande Valley, we've been able to support and give evidence to the department since 1973 that the operating expenses in these areas are considerably lower than other areas of the state, especially in payroll. For instance, one of the lowest median income areas of the state, our payroll costs, which we have supplied to the state, actual payroll records from paychecks for five projects, three projects and then two others in the Rio Grande Valley, show that the operating expenses are well below what the underwriting department wants to use.

Now, what this has created is this problem: We've based our proposal on providing a lot of 40 percent units to the people that live in the Rio Grande Valley, so that there will be plenty of units for persons at 40 percent median income in the lowest median income area of the state, to provide some housing for them.

We've been able to come up with all kinds of ways, from design to management to financing, to make these projects work in the lowest area of the state. One of the main assumptions has to be that the operating expenses are considerably lower. We supplied plenty of historical data. We supplied plenty of market studies.

We supplied appraisals on all these areas for the last seven years. So we think that this should be reevaluated, and we request that it be reevaluated, based on the actual data that we've got, historical data on these projects. If they do that, then that would, again, increase our points in this particular project's application, which then would make it the highest-scoring project in the region.

That was before they made the recommendations subject to these payroll and other expenses that are -- I don't know what database they're using for that, but it's -- according to the database that we have and what the lenders have, it's not in line with reality.

We've had another kind of training process that we've had to go through, and that is to train syndicators and lenders about the operating costs in this region.

MR. CONINE: If you could wrap it up, Mr. Smith.

MR. SMITH: Yes, sir. And I'm just telling you that we've done that, and we have plenty of letters coming from the lenders and syndicators that operating expenses which we showed in this application are higher than what they normally underwrite for, so that's our presentation. Thank you, sir.

MR. CONINE: Thank you. Any questions from the board members?

(No response.)

MR. CONINE: We appreciate you coming.

MR. SALINAS: You're appealing that 2032.

MR. SMITH: 2032.

MR. SALINAS: Is that the one in McAllen or what?

MR. SMITH: Yes.

MR. SALINAS: But you also have two other ones. Right?

MR. SMITH: Well, I'm a consultant on two others. Okay?

MR. CONINE: Thank you.

MR. SMITH: Thank you.

MR. CONINE: Ignacio Grillo.

MR. GRILLO: Good morning, Mr. Chairman, Ms. Carrington, members of the board and the staff of TDHCA. I fall into the category of having filed an appeal on Thursday. I haven't received anything back yet. I haven't had time to get it, I'm sure. I'd like to read a paragraph out of --

MS. CARRINGTON: Can I ask you which project you're speaking on?

MR. GRILLO: Oh, yes. I'm sorry. Region 6, project number 02123, Villas at Park Grove.

MR. CONINE: Thank you. That makes it easy on us.

MR. GRILLO: Sure. Thank you. The specific grounds for this appeal is that among the recommendations to the board in Region 6, we feel that the department has inadvertently violated exhibit 21411(g), which goes to the

$1.6 million per applicant per year limitations, per the developments.

These limitations apply to an applicant or related party, unless otherwise provided by the board. I go on to talk about the definition of an applicant. It is any person or affiliate -- this is for the QAP -- the person who files a pre-application or an application with the department requesting a tax credit allocation.

It is the next highest-scoring deal an applicant in Region 6, and the only applicant in Katy, Texas. It's our position that the goal of the program is best achieved by following the regulations as set forth by the QAP and by providing a wider distribution of credits.

We respectfully request to you, the board, and to the department to stay within the guidelines of the QAP and award us an allocation. I know that it's a difficult position that the department is in. At times, the QAP, as we all know, has some issues, and we're all diligently working to try to get those issues resolved.

But this is a very important situation that deals with the $1.6 million per applicant and per the people involved. We all know and we feel that the intent of the QAP is such as to limit developers from getting more deals by going through different avenues to try to get into more deals that what is really allowed.

So we respectfully request that you look at this issue and follow the intent of the QAP, which really is clear to everybody involved, to everybody that's in the process that we've spoken with about this instance and this deal in particular. It's very much our feeling that we deserve an allocation to the degree that there is a deal in Region 6 that received an allocation with the same points that we received.

We know that you will use common sense to add common sense to the process that sometimes seems a bit difficult for all of us to get through, because there is the letter of the QAP and now this and that. But we all know what we're here to do, and that's get the people in Texas the opportunity to have a decent, clean place to live.

As the only applicant in Katy, we respectfully request that you look at our application, and thank you very much.

MR. BOGANY: I have a question.

MR. CONINE: Yes, sir. Mr. Bogany.

MR. BOGANY: I went through all that you just said. Are you saying that you were turned down because you were related to another -- you were affiliated with another --

MR. GRILLO: No, sir. I'm very glad you asked that question. There is an applicant -- there are applicants, and I don't want to go too deeply into it. I'm not sure what the department's response is going to be to us yet, so I'd like to be careful. But our research and our development team, the folks who we had look at our application and the other applications in Region 6, have found and there is clearly, and people will openly admit it or maybe not so openly, but it's known that there are -- there is an applicant who has received an allocation, two allocations in Region 6.

They exceed the $1.6 million rule. The exhibit is --

MR. BOGANY: Which applicant is this?

MR. GRILLO: Zero --

MR. CONINE: You probably ought to let staff do that.

MR. GRILLO: I'll be happy to answer, Mr. Chairman.

MR. CONINE: Let's let staff respond to your appeal. You said you had filed an appeal.

MR. GRILLO: Yes, sir. And staff is well aware of the applicant numbers and names. It's our feeling, and like I said, everybody who looked at the applications, i.e., attorneys, consultants, et cetera, who agree with our position, and we just request that you stick with the intent.

We are the next project to receive an allocation. Like I said, somebody in Region 6 at 142 points did receive a recommendation, which is the same score that we have in Region 6. We just request that you please use common sense in this process, which at times is difficult enough.

MR. CONINE: Thank you very much. Any other questions?

(No response.)

MR. CONINE: Okay. Jay Oji.

MR. OJI: Mr. Chairman, I would like to wait.

MR. CONINE: Okay. Number 2078.

MR. OJI: 2078.

MR. CONINE: Larry Paul Manley.

MR. MANLEY: Mr. Chairman, we have an appeal filed, and I'd also like to make comments on the application itself. We didn't sign up and we can postpone if you want to.

MR. CONINE: Okay.

MR. MANLEY: The names are Benjamin Moore and

John Stover.

MR. CONINE: I have them right here. We'll group them all together and take it up during the period of the board meeting when we discuss that problem. Juan Patlan.

MR. PATLAN: Mr. Chairman, we were going to make general comments of support, but in the interest of time, we'll pass.

MR. CONINE: You'll pass. Thank you very much. Aron Kulheny?

MR. KULHEVY: Kulhevy. I would like to speak later on project number 2112.

MR. CONINE: 2112. Okay. Mike Monty.

MR. MONTY: We'll go with the --

MR. CONINE: You want to go later.

MR. MONTY: Yes, sir.

MR. CONINE: Okay. I can read your mind. 2164 and 2166 are the two numbers I have written down here. That concludes all the witness affirmation forms I have, unless someone's got someone hidden somewhere. Is there anybody that wants to speak to the board that I have not called?

Are you going to say something?

MS. CARRINGTON: No.

MR. CONINE: Okay.

MS. CARRINGTON: The back of my head's cold. I feel like I'm going to sneeze.

MR. CONINE: Good luck. Okay. Next, we'll close the public comment related to the open public comments that we have, and we'll save the rest of them for later on in the agenda. Item 1 will be the possible discussion and action on the appeals on the low income tax credit applicants.

Shall I turn it over to you first, Ms. Carrington? Or shall we just start right down the list?

MS. CARRINGTON: I think we probably should start right down the list.

MR. CONINE: Okay. I think that's probably what we ought to do. I think that would be the best thing. Why don't we -- let me just for the record state that probably the best way to handle this is -- I'm a rookie at doing this to begin with, and this is the first time for us all, is let's listen to the public comment, if this is okay with the board, listen to the public comment on each one of these, the particular projects, and then we'll have the staff make the presentation relative to that.

So in regard to that, on project 2025, Village at Prairie Creek, I have Jim Washburn scheduled to speak.

MR. WASHBURN: Good morning.

MR. CONINE: Good morning.

MR. WASHBURN: Let the fun begin. My name is Jim Washburn, and I'm representing the applicant for TDHCA number 02025, which is the Village at Prairie Creek, and I'm also representing the applicant for TDHCA number 02026, the one following that, Parkside Terrace Senior Apartments. Let me begin by just saying that --

MR. CONINE: Hang on just a second.

MS. CARRINGTON: Can we just talk about one?

MR. CONINE: We're dealing with --

MR. WASHBURN: I'll just talk about the first one, then.

MR. CONINE: Okay.

MR. WASHBURN: And then, basically, I'll tell you what I'm going to do on the second one.

MR. CONINE: All right. It's probably the same issue dealing with both?

MR. WASHBURN: It's exactly the same issues, and really, you'll make the decision based on the first one. But I want to start by saying that this year's application process was kind of like none other before that I've been involved in. The 2002 QAP this year underwent numerous changes, and I think that there were probably two issues that really came out of this year's QAP that were the driving force of some things that happened this year.

Ms. Carrington brought it up as well. First and foremost, I think that the developers were forced this year to design an application that was really geared toward scoring, because scoring really dictated what happened in this process. Secondly, I think that there was an added emphasis given to making sure that the department's staff had little room for subjectivity in this.

I don't know if that made your job easier or harder. It might have tied your hands in some cases when there were decisions that needed to be made, but I think there was a conscious effort to remove some of the subjectivity within the QAP. I bring these two issues up to demonstrate the importance of scoring in this year's allocation process.

The simple fact is if you don't score enough, your application doesn't go to Underwriting, and if it doesn't go to Underwriting, you just don't get looked at. That's a tough pill to swallow when you've been working on something for a year, a year and a half, with people, and you've got a lot of time and effort put into it, especially when you're the next in the pecking order when it comes to score, as we are on 02025.

So it's essential to make sure there's no room for misinterpretation of the QAP and its intent. Without getting real technical, simply stated, our appeal is based on the following circumstances. Both of our applications -- we're just speaking on one, though -- lost mixed income points because our market analyst defined a submarket differently than our competitors defined their submarkets.

We defined a submarket that reflected the area from which our prospective tenants would be most likely drawn from. Other applicants broadened their submarket in an effort to find market rents that would meet the QAP's requirements. One applicant actually used the entire city to support some of their submarket delineation.

My point in saying these things is that there were differences going on in how submarkets were determined, and we chose to do something one way and somebody else chose to do something a different way. So the result is that our market rents did not support the 10 percent and the 5 percent test, and other applicants who expanded their submarkets actually were able to make their numbers work.

I have a couple of questions. I mean, is this practice forbidden by the rules of the QAP? No. It is not forbidden. Market analysts are the ones that determine their submarkets and the department has to stand behind what those market analysts say.

Did the staff interpret the QAP accurately with regard to the 5 percent and 10 percent test? Absolutely. They did the letter of the law by the QAP and the way the QAP is written. But my question is, is everybody playing by the same rules. The answer to that question is absolutely not.

Essentially, the department is not comparing apples to apples when market analysts are not reporting the same information in the same areas. The result is that some applicants are being rewarded points for creating a submarket that meets the 10 percent and the 5 percent tests and there is nothing in the QAP that allows the department to question the integrity of this information.

Since scoring is of the utmost importance, this creates an unfair advantage when all applicants are not following the same guidelines. Unfortunately, the QAP does not define what constitutes a submarket. This lack of definition has allowed some applicants leeway in supporting the data necessary to receive these mixed income points.

What we're asking you today is to just consider the fairness of this practice. And we would like for you to seek additional information from the staff regarding our concerns. If we are going to create a program that is fair and equitable for all of us, it is vital that developers, the department staff and the members of this board have an open line of communication.

We're certain that our concerns that I have brought up here today will be addressed in the upcoming 2003 QAP discussions, and we're hopeful that this program will flourish from the good faith efforts of all the people that are involved in this program.

I didn't get real technical because there are a lot of technical things that I brought up in my appeal, but that is the basis for this appeal, and I would be open for any comments if you had -- or any questions if you want me to get more specific.

MR. SALINAS: Are you saying that they're not applying the same rules for everybody?

MR. WASHBURN: I'm saying that their lax definition within the QAP, and because of their lax definition in the QAP, certain people can interpret it in a way that benefits them, where other people were determining --

MR. SALINAS: That's not what you said. You said they were not following the rules for everybody.

MR. WASHBURN: I'm not saying that they are not following the rules for everybody. No. I did not say that. I don't believe I said that.

MR. SALINAS: I understand. In answer to that, you heard what he said.

MR. GOURIS: I think he was talking about the market analysts.

MR. WASHBURN: I was talking about the market analysts. I'm saying that staff followed the QAP by the letter of the law. They did what they're required to do. They did. But what's happening is the market analysts and developers are out there, are required to interpret the QAP, and it can be interpreted in different ways in this particular area.

It can be interpreted in ways to benefit you, and the department really has no way to go about verifying whether the information that's being presented to them is accurate or not. They basically have to go by what the market analyst says, This is where we're presenting this information. Is that correct?

MR. CONINE: Any other questions from any other board members to Mr. Washburn?

(No response.)

MR. CONINE: Before we're going to let staff have a chance to respond here.

MR. SALINAS: Yes. I would for somebody to respond.

MR. CONINE: Okay. Staff? Who's going to make the staff presentation?

MS. CARRINGTON: Ben Sheppard from the underwriting department will be making this presentation.

MR. SHEPPARD: My name is Ben Sheppard. I'm a planner with the Tax Credit Program. Market analysts define the market areas. They define the submarkets, and each one is allowed under the QAP to define his own submarket. It was said earlier that if you take two underwriters and ask them to underwrite the same project, you will get a slightly different answer from each one.

You might even get a substantially different answer from each one. The same thing is true of market analysts. You might have one market analyst define a very large submarket where another one would define a small one.

MR. BOGANY: So in our QAP, we don't tell the market analysts what the submarket is?

MR. SHEPPARD: As a matter of fact, Mr. Gouris has proposed that we do that very thing in the future. That is something that we're working on.

MR. BOGANY: So at this point, we followed the rules based on what we have right now?

MR. SHEPPARD: Yes, we did.

MR. BOGANY: Thank you.

MR. CONINE: Any other questions from any other board members? Do I hear a motion in regard to this appeal?

MS. ANDERSON: I'll jump out here since I'm wearing red. It's a target color anyway. Mr. Chairman, due to the fact that we really are bound to be faithful to the QAP and we, I think both the witness and staff have testified, ought to prospectively look at changes in a number of areas of the QAP, but dealing with today's QAP as today's QAP, I think, is what we are bound to do.

Therefore, I move that we deny the appeal for the Village of Prairie Creek.

MR. SALINAS: Second.

MR. CONINE: There's a motion by Ms. Anderson and a second by Mayor Salinas that we deny the appeal on the Village of Prairie Creek. Is there any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor, say aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: That, I guess -- do we need to talk about 2026?

MR. WASHBURN: Sir, I'll go ahead and withdraw my appeal for 02026.

MR. CONINE: Okay. Mr. Washburn is withdrawing his appeal on 02026. Thank you, sir. Appreciate those comments, and they truly didn't fall on deaf ears.

The next appeal we have is 2069, Sanger Trails, Mr. Richard Shaw.

MR. SHAW: Good morning. I'm Richard Shaw. I'm a developer from Dallas, Texas. I'm here to spend a couple of minutes of your time on the appeal. Again, it's involving the same point question that the previous applicant made, but our appeal is based upon something totally different.

We have two parts to this question. Number one, we're to show that our market rents -- or our tax credit rents, excuse me -- on our properties, or the proposed properties, are at least 10 percent lower than the market rate rents in the area. Our market study used nine comps and the staff in reading the market study, for some reason, pulled off the market rents that were proposed for the site in Sanger, as opposed to the comps that were used in the area which happened to be Denton, which was the only area close to Sanger that has comparable developments today.

So on that first part of the question, where we ask that the rents for the 60 percent units be lower by 10 percent of the market rents, they used the rents that we proposed in Sanger as opposed to the rents that are currently used in the market rate properties in Denton. The Denton properties -- and there is a clarification letter attached to the appeal from the person that did the market analysis for us, clarifying this.

It clearly shows that the rents are at least 10 percent lower on a per-square-foot basis for each unit type. The one bedroom is 13 percent lower. The two bedrooms are 13 percent lower, and the three bedrooms are 10 percent lower. On the second part of the question, it becomes a little more complicated.

The second part of the question is we needed to show that our market rate rents that we are proposing on our property are 5 percent higher than the maximum 60 percent rents that we could get on that property. Now, here we have an apples to apples -- or apples to oranges -- situation.

In showing this, we took our tax credit rent, which in this case, our proposed tax credit tenants would be paying their own electric bills, so for the maximum allowable, we deducted the electric allowance to come to the rents on that apartment.

On the other hand, on the market rate tenants, our market rate tenants would be paying their own electric bills as will the low income tax credits, but in addition to that, the market rate tenants will also be paying for water, sewer and hot water, which the low income tax credit tenants will not.

So to determine the housing costs, which is what we all talk -- the term we all use in this program -- we have added to the proposed market rate rent on our proposed property, the utility allowance for the market rate tenants for the water, the sewer and the hot water.

In doing this, the rents differ by a lot more than 5 percent. Our one-bedroom units will have over 7 percent higher rent than the tax credit rents, two-bedroom units over 17 percent higher for the market rate versus 60 percent rents, and the three-bedroom units will have about 11-1/2 percent higher. We're only looking for that 5 percent difference to qualify for these points.

Now, if we were in Highland Park in Dallas where the rents were much higher, this would skew a lot differently. In a small community, I think to be fair, we have to use housing allowance. To get our tax credit rents, we're always deducting the utility allowances. To compare apples to apples, when we look at our market rate rents, any utilities that the market rate tenant will pay, that a tax credit tenant doesn't pay, should fairly be added to their housing costs, because that's what we're trying to arrive at.

One other comment I might make, and this is something, probably, you want to talk about when it comes to the QAP, in regard to this question: Our project only has about 7 percent of the units that will have about 60 percent of the median income. The remainder of the low income units, or some 93 percent of them, will be in the 30 percent, 40 percent and 50 percent of median income range.

To be fair on a question like this, we should be using probably an average rent of all of the low income units as opposed to just the highest possible rent that the 60 percent units can make. And this is something that I think doesn't really affect us, because I think we make the qualification anyway.

But it's something that I think we need to look at in the future because you are looking for the lowest-skewed units; that's why your point structure is set up. So we need to keep it in perspective.

MR. CONINE: Could you wrap it up, Mr. Shaw?

MR. SHAW: Yes, sir. That's about it. I just respectfully ask you to consider what I've said. I think the market -- letter that you have from the market analyst bears out what we said, that the staff used the wrong numbers on the 10 percent rule and on the 5 percent rule.

I ask you to consider the fact that we're including utilities. Thank you very much. Any questions?

MR. CONINE: Do we have a staff response or any questions of Mr. Shaw first?

(No response.)

MR. CONINE: Staff response.

MS. CARRINGTON: I'll put Ben in the right division this time. Instead of Underwriting, he's in Tax

Credits. Sorry, Ben.

MR. SHEPPARD: Ben Sheppard, planner. Mr. Shaw's appeal really hinges on the 5 percent rule. In his rent schedule in the application, the market rate units are shown to have $715 net rent. They were compared to tax credit units straight out of the rent schedule, also using the net rent that's shown in the rent schedule, and they failed the 5 percent test.

The rent schedule indicates by the use of that $715 as market rent that it is, in fact, net of utilities. We would have to have information to the contrary somewhere else in the application to be able to know that we should have taken utilities out. I believe that we correctly scored it.

MR. CONINE: Let me ask a question, if I might, relative to the expense side of the equation. Did you prorate the expense on water -- and I guess water's the only thing you're passing through to the market rate rents. Did you prorate that, or was it -- how did Underwriting take that into consideration?

MR. SHEPPARD: We take the net rent as given by the applicant and the market study to score the 5 percent part of this question.

MR. CONINE: I guess my question is to the expense side.

MR. SHEPPARD: It is netted out. Not prorated, but it is netted out of the rent. This project never made it to Underwriting.

MR. CONINE: Do you see what I'm asking?

MR. GOURIS: We would have adjusted it.

MR. CONINE: In Underwriting, you would have adjusted it.

MR. GOURIS: Yes, sir.

MR. CONINE: And that's standard procedure in the others that were underwritten.

MR. GOURIS: Yes, sir.

MR. CONINE: Okay. Any other questions from the board?

(No response.)

MR. CONINE: Do I hear a motion on this particular case, 2069?

MR. SALINAS: I motion to deny the appeal.

MR. BOGANY: Second.

MR. CONINE: There is a motion to deny the appeal from Mayor Salinas, seconded by Mr. Bogany. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion, signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Okay. Thank you for your interest. Moving to project 2136, Cherry Mountain Villas. I believe we've got three speakers. Do we want to go out and get the three speakers?

MS. CARRINGTON: This is Mr. Manley.

MR. CONINE: You always were late. Just joking.

MR. MANLEY: Mr. Chairman, members of the board, my name is Larry Paul Manley. I'm here to talk about number 2136. It's an appeal. I also have general comments on the selection side that I would like to share with you when it comes time to talk about that.

I don't know if it's appropriate to do that after I make my appeal presentation or not, because in some respects, as goes the appeal, I may or may not have much to say about the other part. But I think the comments are worthwhile anyway.

Mr. Stover and Mr. Moore have both agreed to give me whatever additional time we need to get it said, and I don't think it is going to take nine minutes under any set of circumstances.

MR. CONINE: Okay.

MR. MANLEY: So however you want me to handle that, I'll do it.

MR. CONINE: Let's do the appeal first, and then if you want the second dibs, I'll be glad to give you the second dibs.

MR. MANLEY: Thanks. I have given you a typed version of what I came to talk about, and I think Ms. Groneck has passed them out to you. This is additional comments, based on other appeal items that I have previously filed. What it all comes down to, really, is the calculation of market rent.

In particular in this case, it is what does market rent mean in Lakeway, Texas, because that's the area where the project is located and the submarket we are dealing with. The staff has taken the position that we have failed the 10 percent test, which is the difference between the maximum allowable tax credit rent and the rent that is currently existing in the market, the market rate in similar quality product.

The quoted language is, "The average rents within the submarket based on the number of bedrooms for comparable market rate units are at least 10 percent higher on a per-net rentable square-foot basis than the maximum allowable rents under the tax credit program."

That's what the test is. Our first comment is that we believe that there is a glitch in this year's analysis of how market rent is being applied. To our knowledge, it's the first time it's done this way, that the words, Maximum allowable tax credit rents, are being applied to your rent schedule, not to what it really says, which is program rents.

So therefore, if you had a property that had basically tiered income levels of 30 percent, 40 percent and 50 percent, but no 60 percents, then the measure of whether or not you had a 10 percent gap in your rents was from the 50 percent rent cap to the market rent. If you had a 60 percent, they'd measure from a 60 percent to the market rent.

We submit to you that in this year's round where it's so critical that you have points, that everybody should be graded on the same score, off the same score sheet, and that it should be scored the way the QAP states it, that is, program rents, not rent schedule rents. So therefore, everybody should be measured off the 60 percent maximum income rent to determine that 10 percent test.

That's important because it determines your competitive position relative to the other applicants. We also think that the staff is taking the wrong tack in using "rental concessions," and I'll put that term in quotes, as a determinate of what the market rent really is.

The current QAP makes no reference whatsoever to deducting rental concessions from market rates to determine what the rent is. If you talk to anybody in the industry and ask them what their rent is, they will tell you what their quote in street rent is, or what they are quoting to their new tenants.

Nobody will admit to you that their rent is anything less than what their stated rent is. A rental concession, on the other hand, is a cost of getting a contract signed. That is just like a leased brokerage cost, where you pay a broker who brings you somebody, and oftentimes you pay them the first month's rent or a half-month rent. Sometimes you give them TVs and VCRs.

We think that to deduct rental concessions from market rate rents is contra to the concept as used in the industry and it is not recognized in the QAP, and to our knowledge, and I could be wrong on this, but to my knowledge, this is the only applicant that has had rental concessions applied to deduct the market rate rents to the point where it squeezes it down to the tax credit level.

To our knowledge, TDHCA has never applied the rental concession adjustment. Again, that's my point. The department did try an attribute adjustment matrix, which was an attempt to value properties based upon physical characteristics. They did it early in the analysis of these applications and, based on what I've heard from staff, essentially decided not to pursue it because it was too difficult to apply.

You have too many submarket issues involved and too many different parameters. Well, I submit to you that rental concessions are similar because they are all different. They are in different places. They are different amounts. A rental concession can be for money. It could be for a month's rent, two months' rent. It could be for a VCR. It could be for anything.

I've heard of people giving people vacation trips or free flying miles as a rental concession. If utilized at all, however, rental concessions adjustments should have been addressed in the QAP and in the applications submissions manual, and they weren't.

They should have been used uniformly, if at all, on all applications, not just those where it was addressed in the market study. Admittedly, in our market study, we addressed rental concessions, but it was the market analyst who provided that data to us as an information to the recipient, not in response to what was called for in the QAP.

As a matter of fact, he concluded on page 13 of his analysis that we met the 10 percent test, and then he said, By the way, here are the rents on a net rent concession basis. Notwithstanding all of that, we're arguing that we still need it anyway. Even if you apply rental concessions as presented in the market study, we have the amount of rent that exceeds the minimum required on a per-unit basis.

Where the test has failed, if it fails at all, is when you calculate it on a per-net rentable square-foot basis. We submit to you that the language -- and again, that portion of the language says, "Market rate units are at least 10 percent higher on a per-net rentable square-foot basis than the maximum allowable rents," is ambiguous in the sense that we think it should be applied to the per-square-foot calculation in the property, not on a region wide basis and that when you apply it that way, we still beat the test.

The only time that we possibly fail is when you take a rent concession, take it out of the market rents, squeeze it down and divide it by the regionwide area apartment units, which tend to be large because we have big units in that region that are in the comparable market, and even then we fail it by a penny and a half on eight units amounting to $11.25 each, and when you add all that up, it's $90 a month -- is what you're missing.

So for all those reasons we've included, in materiality, we would say that we would respectfully request that we have the points restored, in which case our score would go to 136, which takes her into a much higher ranking in Region 7. As a matter of fact, a 136 score in the general category would be sufficient to get an award in eight other regions.

Assuming that you get to that level, we did have comments about why we think that other considerations in scoring should be taken into thought in making allocations in Lakeway. That's my appeal. Questions?

MR. CONINE: Any questions of Mr. Manley from the board?

MR. SALINAS: Eventually, you'll agree with the staff on the points you got, so can we hear from the staff?

MR. CONINE: Yes. Sure. That's kind of the next step.

MR. SHEPPARD: Because we had a definition and used the same one for everyone, we did not use the definition that Mr. Manley just spoke of. His application score hinges on the fact that we used rents that were net of rental concessions. We believe that's a common practice in the industry.

The HUD rent schedule that is used, that we may make a part of our own procedure to make our procedures uniform, includes an adjustment space for rental concessions, and taking the rents adjusted for those concessions, this application didn't pass the 5 percent test -- I'm sorry -- didn't pass the 10 percent test.

MR. SALINAS: Are you saying that your numbers are right?

MR. SHEPPARD: Yes. We believe that they're right.

MR. CONINE: Let me ask a couple -- he asked some very, or made some specific comments and I want to follow up just for a minute. If the top program rent was 50 percent in his particular project, did you underwrite from 50 percent on the 10 percent test, or was everybody done at 60 percent?

MR. SHEPPARD: As a holdover from the way these were scored in past years, if a project has 50 percent rents as its highest rents, we would look at the 50 percent rents, the highest LHTC rent allowable for 50 percent units, rather than 60 percent units. I might add that those would be in the LURA. Anyone who had 50 percent rents as its highest rent would have to put all those units in the LURA as 50 percent units.

MR. CONINE: So if marker rents are low because of concessions, it seems like you'd be better off measuring from the 50 percent number than the 60 percent number to try to gain the percent. Is that correct? Am I thinking correctly on that?

MR. SHEPPARD: You are correct if you could remain financially feasible doing so.

MR. CONINE: All right. I think you did answer the question about concessions. I know the Austin market in general is -- I have some serious concerns about it just from what I hear on the street, and you took those into consideration. If the market study you received indicated there were concessions in the market, did you obviously factor those in?

MR. SHEPPARD: Yes. We did.

MR. CONINE: And that was true of not just his project, but the other projects where that was indicated?

MR. SHEPPARD: Yes, sir.

MR. CONINE: And then he mentioned something about growth rents versus the square-footage rents, and that can vary by unit size tremendously. Which one do you use as a standard practice in measuring the 10 percent test?

MR. SHEPPARD: Mr. Manley made a dichotomy between using rents per square foot on the one hand and using gross rents on the other. We used rents per square foot. The QAP states rents per square foot, and we applied rents per square foot to both measures, both from the market as a whole and to the units compared to other units within the project.

MR. CONINE: Any other questions from any board members?

(No response.)

MR. CONINE: Is there a motion that we'd like to make.

MS. ANDERSON: Mr. Chairman, I move that we deny the appeal for Cherry Mountain Villas.

MR. BOGANY: Second.

MR. CONINE: Motion made by Ms. Anderson and second by Mr. Bogany, I believe.

MR. BOGANY: Yes.

MR. CONINE: To deny the appeal. Any other discussion?

(No response.)

MR. CONINE: All those in favor say aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Thank you, Mr. Manley.

MR. MANLEY: Thank you.

MR. CONINE: Next -- and you are welcome to the second chance if you want to come back later on.

Let's see here. I have project 2086, the Refugio Street Apartments in San Antonio, and I have a witness affirmation from Jim Plummer, Diane Kinlaw, David Kelly, Jeff Fulencher. I have four on this one, and we have all four coming.

MR. FULENCHER: Mr. Chairman, Jeff Fulencher. I'd like to yield my time to Mr. Kelly.

MR. CONINE: Okay.

MS. KINLAW: Good morning. I'm Diana Kinlaw from the San Antonio Housing Authority. I"m vice president of development and asset management. We have submitted an application for the Refugio Street Apartments, TDHCA number 2086.

We're here to appeal specifically Exhibit 210, and 210 pertains to the qualified nonprofit. We were deducted three points because of the way our application was perceived, because it is a public facility corporation. Now, one of our other speakers here will address how we feel that it does meet the requirements of the QAP.

MR. CONINE: Okay.

MR. PLUMMER: My name is Jim Plummer, and I'm an attorney with Fulbright and Jaworski, representing the Housing Authority and the Refugio Public Facility Corporation. The Public Facility Corporation is an organization created under Section 303 of the local government code.

It is a quasi-governmental entity created on behalf of the local housing authority. The general partner in this case is a single purpose entity that represents the housing authority. As a quasi-governmental entity, that organization is automatically exempt from federal income tax pursuant to Section 115.

It can also apply for an exemption under Section 501(c)(3). I believe this appeal is fairly simple. The issue is, what does it mean to be described in Section 501(c)(3)? This organization is described in

Section 501(c)(3), but it has not actually submitted its letter to the IRS yet to receive that determination back from them.

Now, the QAP doesn't require that you have that letter, and I don't believe the exhibit requires that you have that letter. It simply requires that you be described in that format, and this organization will meet that definition. We had hoped to be allowed to go ahead and make that application with the IRS once we knew whether or not we were going to get tax credits.

That's an expensive application to file, it takes some time to get it, and we were automatically exempt, so there was no reason to go file unless we were going to prospectively get the tax credits. So from our perspective, this is simply a question of, what does it mean to be described in Section 501(c)(3) and what do you have to have as proof?

This organization is clearly described. The staff has received a legal opinion from us that it is described as such, and we are not aware of any requirement that you have any formal determination. I'll turn it over to David Kelly.

MR. CONINE: Okay.

MR. KELLY: Mr. Chairman, members of the board, thank you for the opportunity to address you. Actually, I would like to make a quantitative comment, a qualitative comment, and because I realize that you have a number speakers yet to hear, I will try to give you some time back at the end of this.

Quantitatively, one consideration that I know you cannot take action on today, but I think may bear on your thinking, is there is another appeal that we are filing because we lost points for the receipt of HOPE 6 funding. HOPE 6 funding was received by the San Antonio Housing Authority because the U.S. government had determined that this project needed to be removed and replaced with something more appropriate.

$4.1 million of HOPE 6 funding was awarded to the San Antonio Housing Authority, and indeed a portion of those dollars have been spent already. In fact, dollars are being spent currently to actually design the redevelopment and some of the utilities that would be used therein.

So although those points were removed, we've received the money. The housing authority has spent the money. The housing authority is in the process of continuing to spend the money on this specific location, and so it would appear to me that that de facto satisfies the requirements of HOPE 6 funding being used in the capitalization for the award of points.

The request that Jim has asked for with regard to the definition of the nonprofit would give us sufficient points to move us into an award posture. In addition to the five points that were removed for HOPE 6 funding, the sum of those two would move us to the second highest-scoring project in the region.

That's the qualitative argument, or quantitative argument, which is the three points we've asked for would put us in the money, so to speak. The five points that can't be moved on today would also, even in the absence of these three, place us within a funded position.

But that is quantitative issues. The qualitative comment that I'd really like to speak to is something that I think underpins everything we're doing here today. One of the things that we believe, and I think what really makes our country great, is the fact that the power of government comes from the governed, and at the local level, that is where people know what's best and in their best interest.

The San Antonio Housing Authority and its auxiliaries de facto are exempt from taxes. That is a source of capitalization. This project actually resides adjacent to the Texas Museum of Life and Culture. It's across the street from the Alamodome. It's a few blocks from the Riverwalk.

One of the things that I was told is that San Antonio is every Texan's second hometown. My wife is a hardened New Jersey girl, and when walking on the Riverwalk, she actually said the Riverwalk is indeed one of the more romantic things she's ever seen.

MR. CONINE: Now, easy. Don't get too much into that.

MR. KELLY: I think the citizens of the city of San Antonio have determined that it is very important that what is done here, even though it might be slightly more expensive than other projects, is important to the city and important to the state. Furthermore, the citizens of the United States government and the United States of America have determined that this project is important to be reconfigured through the form of an award of HOPE 6 funding.

The city of San Antonio, in support of the fact that this is important to the city, in addition to the tax exemption, has awarded $2.1 million of general budget dollars and also CDBG funds to this project to make it a reality.

So I guess, qualitatively, the comment I would make is, let's throw all the points aside and whether we are in the money or not in the money for a moment, and make the argument that the people of the city of San Antonio have spoken and said that this is important enough that we are willing to allocate $2.1 million to this project over other needs of the city.

The people of the United States have spoken and said that we think it is important for HOPE 6 dollars to be allocated to this asset. I guess the question is, what will the people of Texas say through you about the importance of this project to the state of Texas? Thank you very much.

MR. CONINE: Any questions, board members?

(No response.)

MR. CONINE: All right. Why don't we get the staff response in right quick.

MS. CARRINGTON: That would be me, Mr. Chairman.

MR. CONINE: You. Okay. Go right ahead.

MS. CARRINGTON: Staff based our disqualification on these three points, based on the read in the QAP on the definition for a qualified nonprofit organization, which says an organization that is described in the Code 501(c)(3) or (c)(4).

So that's in our QAP and comes directly out of the Internal Revenue Code in referencing a 501(c)(3) or (c)(4) organization as a qualified nonprofit organization. It was a very literal interpretation of the read of the QAP.

MR. CONINE: Mr. Plummer, would you like to respond to that, because I'd like a little better definition.

MS. CARRINGTON: Oh, boy. We're up against an attorney.

MR. PLUMMER: Actually, I would like to respond to that. The language in the definition is clear and is exactly as she said. The issue is, what does it mean to be described? The question becomes, are you going to make the word, Described, need to have obtained a ruling from the IRS? That is the question.

To be described in Section (c)(3), you must perform a charitable function. You have multiple nonprofits who perform that charitable function merely by participating in the low income tax credit project. The housing authority has two. We were trying to set up a single asset entity with that purpose.

We already have two exactly similar organizations who have received such determination letters, but that is something that you should be able to do after the fact. That's the real question.

MR. CONINE: Let me -- did Mr. Kelly state that there was a second appeal that was getting ready to be filed today? Is that correct?

MR. PLUMMER: It's already been filed. It simply hasn't had time to react to it yet.

MR. CONINE: It's already been filed. And that's probably on the HOPE 6 stuff.

MR. PLUMMER: Yes, sir.

MS. KINLAW: If you want we can send --

MR. CONINE: No. Too much brain damage when I start thinking about federal policy and HOPE 6. Maybe this is one we can wait on and do them both at the same time and get a little better --

MS. ANDERSON: I move to table the discussion of this appeal.

MR. GONZALEZ: Second.

MR. SALINAS: Why would you want to table it when staff has recommended that we not act?

MS. ANDERSON: Because I think we have a legal issue that I would like to get some counsel from --

MR. CONINE: Right now, we don't have general counsel sitting with us.

MR. GONZALEZ: Where is the general counsel?

MR. CONINE: He's here, but he's not employed yet, is he?

MR. GONZALEZ: I think it's important we visit this and get some feedback.

MR. CONINE: There is a motion made by Ms. Anderson to table, seconded by Mr. Gonzalez. No further discussion on that particular issue. All those in favor say aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

MR. SALINAS: Aye.

MR. CONINE: Motion passes to table on this, and we'll revisit the issue when we come together next month. Thank you.

MR. KELLY: Thank you for your consideration.

MR. CONINE: Okay. Project number 2100, Grove Place Apartments. I have William Skeen, Kimberly Frost. Those are the two I have here on that particular project.

MR. LEE: Mr. Chairman, you should have a third up there for Bill Lee.

MR. CONINE: Hang on just a second. I've made mistakes before. Yes. There it is, right there. I apologize. Three individuals. Who is speaking first here, I guess? Or will you be the only speaker?

MR. LEE: No. Mr. Chairman, my name is Bill Lee. Mr. Skeen is going to cede his time to me, and I will be followed by Ms. Frost. Mr. Chairman, board members, Ms. Carrington, my name is Bill Lee. We are here appearing this morning to appeal a scoring decision made by staff on Grove Place Apartments in Austin, application 2100, whose general partner is Safeplace, our nationally recognized sexual assault and domestic violence shelter.

We've got an aerial of the site, which is directly adjacent to Safeplace's campus, along with some charts that we'll describe in a moment. We are not here to ask for consideration that falls outside the QAP. We are here because of a statistical error made by HUD in the calculation of the area median incomes in the Austin MSA, an error acknowledged by staff and one proven by recently released 2000 census data and local conditions.

This error put staff in the impossible position of using scoring criteria that are appropriate for local conditions as required by the QAP. The definition of this year's qualified allocation plan is as follows: "The QAP is a plan that provides threshold, scoring and underwriting criteria based on housing priorities of the department that are appropriate for local conditions."

Given the significant nature of the error, the mixed income scoring criteria, which we've heard about so far, cannot be applied appropriately to local conditions because they are so far out of line with the reality of the marketplace. Our first chart shows year-to-year percentage change for all Texas metropolitan areas based on HUD's 2002 income figures.

The results are astounding. If HUD is correct, we are asked to believe that the Austin MSA median income grew at more than ten times the average rate for all other Texas metro areas, except Austin, and 6 percent more than the next fastest-growing market, Dallas. This is impossible to reconcile with existing conditions in Austin.

Only this past Friday, an Austin American-Statesman report cited unemployment in Austin at 5.4 percent, a full 2 percent higher than just a year ago, and its highest level in years. I'll leave these with staff. Our second chart shows that even HUD seems uncertain as to what's happening in Austin, for while they increase LIHTC rents over 9.9 percent, their fair market rents for Austin increased only 3.41 percent between 2001 and 2002.

Finally, we have expressed to staff that comparing rents for one of Austin's lowest median area submarkets to the entire Austin MSA is an inappropriate test of local conditions and, therefore, inconsistent with the intent of the QAP. Our southeast submarket has a median income, in some cases, over 40 percent less than other Austin submarkets.

This test is unfair to residents of our area's lowest income submarkets. It discourages the development of mixed income communities, which are exactly the type our neighbors seek. They understand that mixed income communities appeal to a broad range of prospective residents and enjoy stronger economic performance.

The conclusion of all this information is that, in the case of mixed income developments in the Austin MSA, the QAP's requirement for criteria that are appropriate for local conditions cannot be accurately applied. Therefore, we request you consider Grove Place in light of its overwhelming compliance with other crucial criteria from the QAP.

Again, quoting from the definition of the Qualified Allocation Plan, "The QAP gives preference in housing tax credit allocation to developments that, compared to other developments, when practical and feasible, based on available funding sources, serve the lowest income tenants and are affordable to qualified tenants for the longest feasible period."

Grove Place will provide 147 units for residents at 60 percent or below of median income. More importantly, it will create 44 units for residents at 30 percent of median income, more than all but two of the state's total tax credit applications, and the only such significant commitment of new units anywhere in Austin.

From 2001 through 2005, the city of Austin projects an unmet demand for units with rents under $600 at over 7,000 units. Grove Place will be the first project to attempt to address this issue. Grove Place has elected, for the maximum affordability period, the 40-year compliance period and a 55-year extended use period.

Grove Place clearly achieves the outcomes intended by the state and the department as delineated in the QAP program statement. These outcomes include, one: Providing appropriate rental housing for households that have difficulty finding suitable rental housing. Grove Place will accommodate families exiting Safeplace's emergency shelter and supportive housing facilities on its adjacent campus, while continuing to provide them with critically needed counseling and services.

This special needs population has extremely limited means and is at very high risk. Today, 85 percent of those families exiting do not have an affordable place to which to move. Two: Grove Place provides and achieves the creation of affordable housing by a nonprofit. Safeplace, an experienced nonprofit housing provider, is committing to dramatically expand its operation to provide affordable housing and social services to its clients, along with other income-qualified tenants from the Austin community, thus meeting important state and local goals of expanding nonprofit housing capacity.

Grove Place, while providing a significant number of very low-income units, simultaneously achieves the department's goal of maximizing utilization of tax credits. Grove Place has the fourth lowest request per unit for credits in the nonprofit set-aside, and the fourth lowest request per unit of the 15 projects in Region 7.

Finally, we know that Austin can be a difficult place for multi-family development, especially tax credit communities. Because of its Safeplace sponsorship, Grove Place has strong neighborhood support. All platting, site plan and land use approvals are complete and in hand.

Building plans are complete and ready for submittal to the building department for permits. Construction could truly start within 90 days of allocation. The problem caused by HUD and Grove Place's ability to meet so many of the department's objectives are clear and sufficient reasons to grant Grove Place a forward commitment for the 2003 allocation round. However, it is crucial that you understand the real life reasons why this is the right thing to do.

I would now like to introduce Ms. Kimberly Frost, a board member of Safeplace. She will present you the most important reasons to grant our request.

MS. FROST: Good morning, Mr. Chairman, members of the board, Ms. Carrington and staff. Thank you for giving me the opportunity to speak to you this morning. Mr. Lee has explained to you how to apply the data to the QAP to award Safeplace and Grove Place the points it needs in this tax credit allocation, and I am here, hopefully, to explain to you why it is so important to move this project forward.

Grove Place will allow Safeplace to take the next step in providing care to some of the most vulnerable members of our community. Safeplace exists to end domestic and sexual violence in our community. It does that through a continuum of servicing beginning with emergency shelter.

Last year, Safeplace provided more than 35,000 nights of shelter to victims in our community. From there, less than 25 percent of the applicants who petition for housing in our supportive housing units are able to move from shelter into supportive housing. They can only stay in supportive housing for 18 months, and when people's time in supportive housing or in shelter ends, 85 percent of Safeplace clients are faced with the terrible decision of whether to go back to their batterer or whether to become homeless. That's where Grove Place comes in.

An affordable housing project adjacent to the Safeplace complex would enable Safeplace to transition its clients into independent lifestyles close to the Safeplace campus where they can continue to provide counseling and life skills training to give these people the tools they need to genuinely and really become independent.

What happens now when clients leave shelter or leave supportive housing is that often they have such transportation problems, they can't get back to Safeplace to get the counseling and life skills training that we can provide. If we could give some of these people an affordable place to live right next door to Safeplace, they would be able to take advantage of the long-term skills and training that Safeplace can provide to really, really end the violence in their lives, so that they don't have to go back to the abuser or they don't have to become homeless and as vulnerable to violence as they were when they were living with an abuser.

It is important that this Grove Place project be moved forward now, so that we can take advantage of the property adjacent to Safeplace to build this project and create a home for our clients who need someplace to go so that they can get the lifelong skills that Safeplace could provide if we had a place for them to live and be safe while they were getting that counseling and training from Safeplace.

So I urge you to give the tax credit allotment to Grove Place so that Safeplace can continue to do its job and move on to the next level of providing care to these vulnerable, vulnerable people. Thank you.

MR. CONINE: Thank you. Okay. Ms. Carrington, staff, who is going to respond?

MS. CARRINGTON: Mr. Sheppard.

MR. CONINE: Mr. Sheppard.

MR. SHEPPARD: I think the only thing that I can respond to is the statements made about HUD rents. For good or bad, we pegged our scoring criterion to HUD rents. HUD rents, in fact, probably do not reflect what's going on in the market. The definition that HUD uses is a definition meant to keep its rents high.

As a matter of fact, it does not use statistical data beyond 2000 to calculate the 2002 rents, and they're high.

MR. CONINE: So what you're saying is because they're high and incomes have risen, you've got this squeeze going on between market and the program rents?

MR. SHEPPARD: Every appeal that you've heard this morning is directly connected to that fact.

MR. CONINE: Were we consistent with, again, the application of this versus any other project that was scored?

MR. SHEPPARD: Yes. This is the first year that we've had this problem, and we failed to see it coming.

MR. CONINE: Is it safe to say that it's an Austin problem? Or does it happen in other areas of the state?

MR. SHEPPARD: It's probably a statewide problem, given the fact that employment has gone down slightly. That affects the median gross income. Of course, the median gross income in Austin was affected pretty dramatically. No one that I know of can put a number on it right now.

MR. CONINE: Any other questions from any other board members?

(No response.)

MR. CONINE: Do I hear a motion?

MR. SALINAS: So move to deny.

MR. CONINE: A motion to deny from Mayor Salinas. Is there a second?

MS. ANDERSON: Second.

MR. CONINE: Second from Ms. Anderson. Any further discussion?

(No response.)

MR. CONINE: If not, all those in favor of the motion, please signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Okay. Mr. Bogany, yes?

MR. BOGANY: I just -- looking at these HUD rents and the grouping, what we said earlier -- a few minutes ago -- a few seconds ago -- in the next QAP, we are probably going to take this HUD deal out, I'm assuming.

MR. CONINE: It's up to the board.

MR. BOGANY: I'm assuming that staff is going to recommend that we take that out of the QAP.

MS. CARRINGTON: I think what you will see is some adjustment to the troublesome part of the mixed income points. We're going to have to have some standard to base the rents on, and the tax credit rents, of course, are based on a percentage of the HUD median incomes.

So you will still see that in there, but I think certainly where you'll see some adjustments is in the mixed income points and perhaps some adjustments for submarkets, some of the really troublesome things that you've heard this morning on the appeals.

MR. CONINE: The next project is project 2121, Northpoint Retirement Village. I have Janet Miller as the only speaker, I believe.

MS. MILLER: My name is Janet Miller. I'm here to talk about project 2121, Northpoint Retirement Village. My partner, Mr. George Barbosa, would have been here but unfortunately he is in Alaska. I'm here by myself. I'd 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.

In the original notice from the department, the points we received for filing a pre-ap were being denied because of a change in the unit mix. Three areas were identified. First, the market rate units in the pre-ap were one-bedroom units, and for some reason, in 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-ap, there were three one-bedroom units set aside for tenants with income at 30 percent or less of the AMFI and five two-bedroom units at the 30 percent level. In the final application, it indicated four one-bedrooms and four two-bedrooms at the 30 percent level.

The unit composition is different, but the number of units at the 30 percent level remained the same, so the points were unchanged. It was never our intention to change the application, and since the total points remained the same, we feel that there would not have been any material changes.

It is our contention that these were typographical errors. Our defense would be that the method of calculating the rents for the market rate units is exactly the same as the pre-ap and based on the one-bedroom rental rate.

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 on the application. Since the unit mix was wrong, it is conceivable that the square footage could also have been incorrect.

Finally, as for the difference in the one and two bedrooms at the 30 percent level, we don't have any excuse on that. If changing one unit within the set-aside category is enough to disqualify us for the points, then so be it because it really did change.

It is our interpretation that the reason for the pre-ap 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-ap was not to have an applicant apply for points at the pre-ap stage that would not firm up at the application.

This didn't happen to us. Whether it was one or two 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. I would request that the board relook at that.

MR. CONINE: Any questions from the board before we hear the staff respond?

(No response.)

MR. CONINE: Okay, staff.

MS. BOSTON: My name is Brooke Boston. I would just -- probably the most straightforward thing to do is -- the QAP is very clear. It says to be eligible for the 15 pre-application points, the pre-application must be for the identical site and unit mix as the proposed development in the application.

We had three appeals based on these 15 points. When we looked at them, we didn't want to penalize someone for making a single typographical error, so we looked to see how these carried through the applications. In this particular case, the errors carried through. As she mentioned, there were several.

There were problems with the square footage and the unit amount. And in that case, we don't see that as one typographical error. We see that as a consistent problem throughout the application that signified a change.

MR. CONINE: So we have substantial difference. How many two-bedrooms do we have in the original one, and how many two-bedrooms did we end up with?

MS. BOSTON: It's not substantial. As she pointed out, it's a very minor difference. The QAP says it must be identical, and so we applied that very literally.

MR. CONINE: Okay.

MR. SALINAS: Almost?

MS. BOSTON: Excuse me?

MR. SALINAS: Almost the same?

MS. BOSTON: It's very close, but it's not identical.

MS. ANDERSON: Can you explain -- Brooke, can you help me understand why that criteria -- why to get the pre-ap points you have to -- what was the thinking behind having an identical unit mix?

MS. BOSTON: Right. From the beginning, we wanted the pre-application to have enough weight so that the applications that people were submitting at pre-ap, when we released the information to the public that other people could make a solid decision and say, These people did this and they scored this way and they're doing this deal, and now I know how I would also like to respond to that.

And we found one of the best ways was that you couldn't change a whole lot of stuff, and that was one of the items.

MR. SALINAS: So the staff is recommending a denial?

MS. BOSTON: Yes.

MR. SALINAS: So moved.

MR. CONINE: There is a motion from Mayor Salinas to deny. Is there a second?

MS. ANDERSON: Second.

MR. CONINE: There is a second. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion, signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Project 2128, Cedar Point Retirement. We've already heard the public testimony regarding that, but we haven't heard staff response, so if staff would like to speak to that particular project.

MS. CARRINGTON: This is Cedar Point Retirement.

MR. CONINE: Yes. I think it's a mixed income issue again and they already spoke in the previous public comment section, and it would be helpful for us to have Mr. Sheppard respond. Then we can make the decision.

MR. SHEPPARD: This fundamental problem with this application's mixed income scoring was that the market analyst properly drew comps from retirement -- well, from seniors housing developments, but he left the meals in the rents. This caused the rents to be extremely high relative to the market rents for LIHTC developments, which do not allow mandatory meal plans.

The market analyst -- there were actually two developments like this, with the same market analyst. I don't remember if this was the one that had the two comps that didn't include meals or not, but both of them had the same problem and we could not take the analyst's word for a rent that was over 150 percent higher than the market rent that he was proposing in the rent schedule of the application.

So we had to go back to his analysis, use a couple of rental developments that did not have meals in them, and when we did that, it didn't make the grade. Let me try again.

MR. CONINE: Try again. Thank you.

MR. SHEPPARD: First, let me get straight which one we're dealing with here.

MR. CONINE: Project 2128.

MS. CARRINGTON: Cedar Point Retirement.

MR. SHEPPARD: Yes. In this particular development, the analyst was saying that the market rental rates of comparable developments had rents per square foot of $1.81, where the subject market rents were only $1.17. It just didn't make sense. You would not charge $1.17 in your development if the market rent for a comparable unit was $1.81.

This was a case where we had to make our own analysis of what was going on, and the market analyst didn't give us the facts to go with. We did our own analysis, and he failed the test.

MR. CONINE: Mr. Bogany?

MR. BOGANY: I just have a point of information type question. Does the market analyst have the opportunity to call you guys and ask you questions --

MR. SHEPPARD: I talked to this market analyst, actually.

MR. BOGANY: -- before they submit their complete proposal?

MR. SHEPPARD: He can do that, but what he can't do is give us more information. He can call us, but he can't add information.

MS. CARRINGTON: Afterwards. That's the problem.

MR. SHEPPARD: That's right.

MR. BOGANY: You know, it just seems like to me the real key to the program is who is the market analyst you choose.

MR. SHEPPARD: It's true to an extent. I think in some cases, it was perhaps that fact, and in others, it was that the market analysts weren't familiar with the criteria we'd be using, even though they were available for them to know.

MR. BOGANY: To review. Okay. So it gets back to whoever you chose to dance with.

MR. CONINE: Are we saying this failed the 5 percent test, the 10 percent test? Which test did it fall out on?

MR. SHEPPARD: This one failed the 10 percent test. The market rents within the tax credit development -- or I'm sorry. The submarket rents were not at least 10 percent higher than the market rents within the development.

MR. CONINE: In the market study, you guys said

$1.80 a foot, and you think that included meals and a couple of other elderly projects.

MR. SHEPPARD: Yes. It did.

MR. CONINE: Did you convert it to apples to apples?

MR. SHEPPARD: To the extent that we could. Yes. And as a matter of fact, he supplied two comparables that did not have the meals in their rents, and they were considerably too low to allow the development to get points for this item.

MR. CONINE: This is a Cedar Park project, right?

MR. SHEPPARD: Yes.

MR. CONINE: So they probably went down and picked up that big project on the island down there in Lake Travis to use as the $1.80 rents? Is that the one that skewed this thing out of the --

MR. SHEPPARD: Well, I think the fact that they included a mandatory meal plan within the rents was the main thing that drove them up so high. The meal plan itself would be worth 50 percent, 60 percent of what the rent for a unit would be. Do you see what I mean?

MR. CONINE: Yes. I'm trying to convert that to numbers. On a 1000-square-foot unit, you said that

$.50 a foot is applicable to meals. That's $500 a month. Is that right?

MR. SHEPPARD: The number I remember from this market study was between $200 and $300.

MS. ANDERSON: In the original market study?

MR. SHEPPARD: Yes. The original market study. Well, forgive me. Either the market study or his response stated an amount for meals that was between $200 and $300.

MS. ANDERSON: Right. I have that, but as of May 16, long after the application was submitted.

MR. SHEPPARD: Yes.

MS. ANDERSON: It's my understanding that one of the issues that we have is that the application -- the information was -- and maybe it was provided before May 16, but I'm seeing the analyst's letter on May 16, so I understand that one of our issues here is that this information wasn't provided at the time of the application, and so that's why you had to make some conclusions and sort of work through this on your own, using your own --

MR. SHEPPARD: That's correct. It's very technical doing a rent grid, an adjustment grid, and I -- this one, it was obvious from the beginning it was not going to make the scoring, the necessary amount for giving it points. You see, the point is, the market analyst would have to give us enough information for us to do anything other than what we did, and he didn't.

He gave us enough information to make it obvious that he was not making an apples to apples comparison himself. Then we had to make it for him to the best of our ability.

MR. CONINE: Is there a motion?

MS. ANDERSON: I move to deny the appeal.

MR. SALINAS: Second.

MR. CONINE: Ms. Anderson moves and Mayor Salinas seconds. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion, signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Thank you. Okay. We're going to do these next four together. Projects 2019, 2020, 2021 and 2022. We have several speakers.

MR. LEE: Mr. Chairman, three of the speakers have agreed to cede their time to me. Mr. Walter, Mr. Schwenneson and Mr. Nathan. And then if I might, I would also request -- no. You're fine.

MS. ANDERSON: Where is this on the agenda?

MR. CONINE: It's in the, And other.

MS. ANDERSON: Okay. So we didn't get anything on this.

MR. CONINE: Did we get anything on this?

MS. ANDERSON: This is -- I don't remember seeing anything on this.

MR. LEE: The appeal letter you have in your hand was faxed on Friday. I have just given you a copy of what was faxed on Friday.

MR. CONINE: Okay. Hold on. Let me find out what we got in our deal. Who did you tell me was going to speak?

MR. LEE: Byron Lee. I"m going to start, and then I would request that Ms. Vangie Burse, who is a property supervisor for the property, and Mr. Irwin Deutsch, who is the chairman of the company, be allowed to respond to any staff concerns that they raised, because they know these properties intimately and they have specifics that I wouldn't have.

MR. CONINE: Okay. And the other two people are yielding their time to you. Is that correct?

MR. LEE: The other three people. Yes.

MR. CONINE: Okay. I've got it straight now. Hold on just a second. Have we satisfied the board now on what they're supposed to be looking at?

MR. SALINAS: 2120?

MS. ANDERSON: 2019 to 2022. There are four of them.

MR. CONINE: Did you guys get this packet right here?

MS. ANDERSON: Yes. Well, no. I got this one. I didn't get that one.

MR. CONINE: My goodness. Look here.

MS. ANDERSON: And all it is, is the letter.

MR. CONINE: So let me understand, Ms. Carrington. They filed an appeal. We haven't responded or we have responded?

MS. CARRINGTON: This is the one that, as I mentioned at the very beginning, these four applications have been disqualified under a section of the QAP, and the process for these four applications is to come directly to the board of directors.

MR. CONINE: The staff has already -- the staff doesn't get a shot at it.

MS. CARRINGTON: The staff does not get a shot at it. We have determined that they are ineligible and their appeal process is directly to you all, so what you --

MR. SALINAS: Why has the staff said that they are not eligible?

MR. LEE: I can answer that.

MR. CONINE: Let's let them make their case, Mr. Mayor, and then we'll hear the staff's response to that. Okay.

MR. LEE: May I proceed, Mr. Chairman?

MR. CONINE: You may proceed, Mr. Lee.

MR. LEE: Thank you. In answer to your question, Mayor Salinas, this is a single issue for all four properties and the good news is, it's a different issue from anything you've heard before. The single issue is the interpretation and application of some information from Kansas relating to Kansas properties and then how that information should be used under the QAP.

MR. CONINE: If you wouldn't mind speaking into the microphone, I'd appreciate it.

MR. LEE: Is it all right if I approach the exhibits? I'll keep my voice up so you'll be able to hear me.

MR. CONINE: All right. Fine.

MR. LEE: If I talk too loud, tell me and I'll tone it down.

MR. CONINE: You want me to do this?

MR. LEE: Thank you very much. I'll be moving back to this stand in a moment. All right. So that's the issue. What happened in Kansas and how does that affect the QAPs here? Some of the information that I'm going to talk to you about was not available when the staff made its initial determination because the Kansas projects are not materially noncompliant by the rules of the Kansas Department of Commerce and Housing.

That's what we believe the staff may have determined. We're guessing a little bit there. How do we know that the Kansas projects are in compliance in Kansas? It's very simple. We have a letter which was put in your packet, Exhibit E, from Mr. Fred Bentley, who is the rental housing administrator, who is also head of the tax credit department in Kansas, to you all.

He says, and it's so important that I'm going to read it, "This letter will confirm that Century Pacific remains in good standing with the Kansas Department of Commerce and Housing and is eligible to participate in the department's various programs, including application for allocation of tax credits under the department's low-income housing tax credit program."

This is the most recent information. This letter is dated June 18, 2002. The information the staff unfortunately had was outdated information based on an inspection back in October 2001. Since that inspection, most of not all of the violations have been resolved, and there are no more existing material health and safety violations in Kansas.

I have summarized that for you. By the way, I have these in your packets if you'd like to follow along. Not only does Kansas say that Century Pacific is in good standing, but the staff based their decision, we believe, because 8823s have been filed and should be considered noncompliant.

An 8823 is a federal IRS tax form that has to be filed, and we know in Kansas based on Exhibit, I believe it's D of your packet, that augmented forms are being prepared as I speak. Why? Because in Kansas, the agency acknowledges that the owner has required many of the 8823 deficiencies and is in the process of correcting all the remainder pursuant to an agreed targeted completion date.

In other words, Kansas says that we're in compliance up there, and indeed we have an agreement as to how to fix any of the remaining concerns in the projects in Kansas. Why is this important in Texas? In Texas, under the QAP, you have to find a material noncompliance in order to kick out an application because it is ineligible.

The first point is a very technical point. A noncompliance will be run by the department's compliance division on the date the pre-application round is open. That date was December 4. After the December 4 application date, there were no 8823s that were relied on. Those all came later.

So if you are going to take a very technical application of the QAP, there was no evidence of any problem in Kansas that would qualify as a QAP concern or even a violation. Secondly, under the QAP 4910, the test is major violations of health and safety standards. That's what you are looking for.

The QAPs in Texas added a very significant and important language. It says, "Documented by the city." And there's a reason for that. We don't want some subjective interpretation of violations. We want a city to actually say, Hey, there's a code violation.

There is no evidence of code violations, either on December 4 or at any time. Therefore, the QAP has not been violated by anything that's going on in Kansas because there's no documented major violations of health and safety documented by the city.

Finally, the only other application of the QAP that could apply is a pattern of minor property conditions. We don't know if that's what the staff is looking at, but if they were, it's only for uncorrected violations, which they are not.

Most of the violations are corrected, and if you take the QAP test and you have four properties, which are going to be 12 points. Twelve points is not enough to disqualify in Texas. It's got to be 30 points. Finally, this is a little bit different kind of tax credit application. This is for preservation property.

Preservation properties are older properties, usually in this case, over 30 years old, whereas most of the properties you look at are seven to eight years old. Older properties, of course, of that age have lots of minor things going wrong all the time, but that's the whole reason that we have the preservation tax credits in your system, because we want to keep these old -- we -- the legislature and federal government want to keep these older properties in the mix of properties available for low income housing.

If Century Pacific doesn't qualify for that, over 25 percent of all of your applications for this type of tax credit will disappear, and there's nobody else to take their place. In other words, if you disqualify Century Pacific, you will not use at least 25 percent of your preservation property tax credits, and the legislation and the federal government says we should be doing that.

We should keep these places in the mix, because as you know, once they're gone, they're usually gone forever. That's what the preservation tax credit is intended to do. We think that Century Pacific qualifies for the credit. If Century Pacific is allowed to do these credits, the ultimate result will be that older properties in Texas will be enhanced and they will be improved.

We think this board has the opportunity to apply, as we said at the very beginning, an equitable and I think a logical application of the rules here. To me, it makes absolutely no sense that Texas would disqualify Century Pacific based on something that happened in Kansas, when Kansas says, No, we think Century Pacific complies with our rules, and they qualify for tax credits up here.

As I said, it's illogical to me that if Kansas says we're fine and we qualify, why would Texas ever take a different position? Again, I think it's probably because of outdated information that the staff just simply didn't have available to it. I would request that the board grant this appeal.

I would also ask -- if the staff is not going to respond, then I would ask that Vangie Burse be allowed her three minutes to talk about what's being done up in Kansas, and then I would let Irwin Deutsch talk about the preservation tax credit in a little bit more detail. Thank you.

MR. CONINE: Thank you. Any questions of Mr. Lee at this point?

(No response.)

MR. CONINE: Angie.

MS. BURSE: Good morning.

MR. CONINE: Vangie. I'm sorry.

MS. BURSE: That's okay. My name is Vangie Burse. I'm a regional property supervisor for Century Pacific. I actually deal with the Kansas and Texas portfolio that Century Pacific has. One of the things that I wanted to bring up is the fact that the working relationship that I've developed with the Department of Commerce in Kansas is a very positive and unique one.

I think the agency has great understanding of the age of these properties that we are dealing with, and the requirements that it takes to maintain these properties as they get older. I am very familiar with all of the properties that are in question today.

I do want to -- I'm sorry. Excuse me. I do want to make sure that the staff understands that from my conversation with Sheila Rogless, that there are no major existing health, life, safety issues on any of these properties, that they have been corrected.

Now, sometimes what happens in the process is the time frame of information getting from one source to another source. In fact, when I spoke with her about a week ago, the one thing that she said was that, Vangie, I've got a stack of paper here and haven't gotten to go through them yet.

So they're busy and they have things that are pressing and pending that doesn't always allow them to get information back to us as far as the 8823s in a timely manner, or maybe to agencies such as yourself. In closing, and I'll keep this very brief and just restate the fact that as of to date, there are no major life, health, safety issues on these properties, and any life, health, safety issue that has ever existed on these properties are deemed a priority.

It's not just that we go, Oh, it's a life, safety issue. Oh, well. No. It's a priority, and they demand the utmost attention from all the on-site managers period. So I will close with saying that, and if you have any questions for me, I will be glad to answer them.

MR. CONINE: How many properties do you have in Kansas, just out of curiosity?

MS. BURSE: There is a total of four.

MR. CONINE: Four properties.

MS. BURSE: That is correct.

MR. CONINE: Okay. Any other questions from any other board members?

(No response.)

MR. CONINE: Thank you. Does Mr. Deutsch want to respond now, or wait until --

MR. DEUTSCH: Probably now would make sense, I would think. I would just like to thank the board for taking the time to consider this matter. It came up rather quickly and unexpectedly last week that this was even an issue, so we gathered our forces and came here to try and get you as much information as possible, as soon as possible.

What I wanted to say is, the preservation program and the preservation set-aside that has been set up in Texas and other places is an important program. We have already been awarded tax credits on two properties in Kansas, and there are some other communications indicating that they will award bonds on the other two.

We've worked closely with Kansas because they understand there are certain things you have to take care of immediately, but they are looking to the long-term enhancement and preservation of these properties which they consider to be very important.

As far as the situation, I think the nature of what is spelled out in the QAP here, which is to provide an allocation for the preservation properties, speaks for itself. Obviously, by definition, and there's a long list of things that we did qualify for because we were in the set-aside, we did the pre-ap and everything, and basically by definition, a preservation property, number one, is an older property and number two, it needs a lot of work.

So the fact of the matter is, that is exactly what we're talking about here. So we are an existing owner of these properties. This isn't -- we are not applying for -- we are applying only for the rehab credits to give us the dollars to fix the properties.

In order to get these things done, it needs a lot of support. It's only very recently that a combination of forces have come together. States such as Texas have made the allocation available. The city governments have recognized the importance of preservation.

The lenders have finally decided, Yes, this is a good way to go. And then, last of all, HUD is wholeheartedly supporting these transactions. So it is a combination of efforts that is emerging across the country. We all recognize that we are dealing with properties that need work, but in terms of any issues regarding any of these major health safety issues, I don't know if it was clear, but actually how our policy of taking care of them -- for example, a smoke detector.

One of the issues that came up is smoke detectors, because they have batteries in them. If, for example, there is no battery and someone takes the battery out of a smoke detector, that's a violation. But when the inspector comes to do these inspections in Kansas, one of our representatives goes with him, and anything that is determined to be of a health nature is taken care of immediately.

So even though the report may be sent in and one of these reports a month or two later, that's long after the problem has been solved. So I respectfully request that we be given an opportunity to continue with the program here in Texas. Thank you very much for your time.

MR. CONINE: Thank you. Ms. Carrington, which staff is going to respond?

MS. CARRINGTON: Sara Newsom.

MR. CONINE: Sara. Hello, Sara. How are you this morning?

MS. NEWSOM: I'm Sara Newsom. I am the housing compliance manager. There are a couple of issues. As of late last week, Kansas was still reporting that there were outstanding 8823s with major violations of health, safety and building codes on two of the four properties located in Kansas.

They did report to us via a reporting mechanism that we have. They were one of seven states that reported some violations with this company, but they did report to us that three out of the four properties in Kansas had 8823s with major violations of health, safety and building codes.

The fourth property has not been issued the 8823, but will be issued at the end of the close of the correction period, which I understand is the seventh of July. So they will be reported. Their one property has been corrected and cured, they have told us, and all the 8823s reported corrected. The others are outstanding, as I said.

There are a couple of things that we can say. There were some smoke alarm issues that we had -- we have inspection reports from all of the four properties, and I'll answer any other questions that you may have.

MS. CARRINGTON: Sara, what I think would be important for you to talk about is the fact that Kansas -- and help me out here -- but Kansas does not have a scoring system as we have for incidence of noncompliance, and it is also my understanding in talking with you that Kansas does not have a definition for material noncompliance.

So what we have done is taken the reports that we have received from Kansas and put that in Texas definitions of these events of noncompliance, and indeed, it was staff's determination that these properties were in -- well, the properties in Kansas were in material noncompliance.

MS. NEWSOM: That is correct. They have no policy related to denial of the tax credit applications due to noncompliance issues.

MR. CONINE: Let me see if I can understand the time line here for just a second. When was the application -- were all four of these projects applications received at virtually the same time?

MS. NEWSOM: Yes.

MR. CONINE: And roughly what date was that?

MS. BOSTON: They submitted the pre-ap in January and then submitted their final ap on March 1.

MR. CONINE: Okay. And based on what the QAP states, under the compliance issues, we were made aware through their application process that there were some compliance issues in Kansas? Or did that come about subsequent to the staff investigation?

MS. NEWSOM: Correct. Part of the compliance status -- to give you a history of their compliance status, we do an evaluation of all the properties that are located in Texas, and part of the application requires the applicant to contact other states where they have tax credit applications and have the appropriate state report to us whether or not the properties are in compliance.

MR. CONINE: So they reported they had projects in Kansas when they applied on March 1.

MS. NEWSOM: Correct.

MR. CONINE: And then Kansas contacted us, or we contacted Kansas?

MS. NEWSOM: The applicant sends Kansas a form. Kansas fills it out and submits it to us.

MR. CONINE: Which they did.

MS. NEWSOM: Which they did.

MR. CONINE: And we received that when?

MS. NEWSOM: Actually, I think we got that in the first part of March.

MR. CONINE: Okay. So I'm sure this is where the gray area comes in the QAP as to -- is there a time frame allowed in the QAP -- once we are notified of compliance issues in other states, there's no time frame in the QAP to take care of that because we automatically throw them out at that point. Is that a correct interpretation?

MS. NEWSOM: The compliance division does a compliance history. We get the list at the same time Underwriting gets the list, so then we start working on the compliance status at that point.

MR. CONINE: So the fact that they've cleaned it up and all that since then is still -- you know, if we do it, this happened at this period in time and based on what we knew at that period in time is the reason we didn't -- the applications didn't move forward at that point.

That's what we had to do under the QAP. Is that correct? I probably need to be asking our Underwriting staff. Help me, Brooke.

MS. BOSTON: The section of the QAP that relates to the ineligibility of this particular application is not the same section that addresses the date issue for material noncompliance in the state of Texas. The section of the QAP that relates to out-of-state noncompliance does not discuss a time frame.

I don't think that because we expect those forms to come back from the other states -- at least, right now, there is nothing in the QAP that says that that form comes back on March 15 versus April 1, that there's --

MR. CONINE: But just whenever we get it and there's a problem, what does the QAP say to do?

MS. BOSTON: This is under the section relating to ineligibility and disqualification and it gives a list of several items. This item in particular says, "The applicant or any person, general partner, general contractor and their respective principals or affiliates active in the ownership or control of other rental income-type housing tax credit property outside of the state of Texas has incidence of noncompliance with the LURA or the program rules in effect for such tax credit properties, as reported on Exhibits 105(c) and (d)," which is the form Sara mentioned to you all, "and/or as determined by the state regulatory authority for such state, and such noncompliance is determined to be material noncompliance by the department." The department being us.

MR. CONINE: Right. And so Kansas doesn't have a definition of material. Did you happen to take the issues in Kansas and kind of rate them on a Texas scale and see how they would have fallen out? And that became material to us, even though Kansas doesn't do it that way? Any other questions from the board? Mr. Bogany?

MR. BOGANY: I just have one quick question. So based on this matter from the department in Kansas, the Department of Housing, is that this letter is saying there are no violations in Kansas at this point, and this was thrown out based on us having this other deal where it said they were in violation.

MS. NEWSOM: The letter that I have from Kansas, which is dated June 19 or 18, says that they are in good standing with the Kansas Department of Commerce, which if they -- and I questioned Kansas about this. They said, We have no policy that would disqualify someone due to outstanding noncompliance issues.

MR. CONINE: But can't you have compliance issues with the IRS as opposed to the Kansas housing authority?

MS. NEWSOM: Absolutely.

MS. ANDERSON: Sara, I'd like to ask you a question. I have this letter dated the 18th that Mr. Bogany is referring to, about they are in good standing and they are eligible to participate in their department's various programs. But then I also have a copy in that applicant's packet that they provided us, that is a memo to you dated June 10 from Craig Salmonin [phonetic] that is indicating that the properties still have outstanding 8823s on June 10.

MS. NEWSOM: Yes.

MS. ANDERSON: So there are still major deficiencies? Do you read that that there are still major deficiencies from Kansas' perspective on June 10?

MS. NEWSOM: Yes. They have reported to me as late as Friday that there were outstanding issues.

MR. CONINE: That's the bottom paragraph, I think, of the June 10 letter.

MS. ANDERSON: That's talking about our letter, our June 10 letter. I'm talking about the one they provided here.

MR. CONINE: Any other questions? Is there a motion? Hold on there a second. Mr. Bogany had one more question.

MR. BOGANY: I would like to see them respond to the June 10 8823s due to major deficiencies. I would like to hear them respond.

MR. CONINE: Mr. Lee, would you like to respond to that?

MR. LEE: Yes. I would. First of all, understand 8823s, if there is any problem or violation, you have to do an 8823. When it gets corrected, you do a corrected 8823. So the fact that there's an 8823 out there doesn't mean anything.

If you look at, in our tabs, Exhibit Number D, you will see at the very last item that Kansas is in the process of providing corrected 8823s because, as Vangie says, the problems in Kansas, we believe, have been corrected for major health and safety violations.

Unfortunately, I think the staff is applying alley cats and alligators to this problem. The alley cats up in Kansas is their program. You don't do that in Texas. In Texas, you've got to apply your own QAPs. What is the test in Texas? The test in Texas is, is there a major health and safety violation. There is not. Not in the Kansas projects that they are relying on.

So you are applying the wrong standard, and that's the problem here.

MR. CONINE: Didn't the QAP, though, state that we ask you to supply any compliance standard? It doesn't matter whether it's our standard or somebody else's standard, but if there are any compliance issues in any other state, we want to know about it, which then affects your application in the state of Texas.

We're not -- I don't think we've said that there are health, safety and welfare issues in the state of Kansas. What we've said was, Let us know if there are compliance issues.

MR. LEE: That's exactly right, and we did that, of course. But then, it's the next two steps that are important. So you go to Kansas and you say, Okay, Kansas, what is the status of these projects up there. And as I understand this June 18 letter, the status as we stand here today is, Century Pacific can get tax credits up there.

In other words, Century Pacific meets the plan in Kansas. So then the second step of the analysis is, okay, is there something in Kansas that we could apply to Texas that would be a violation of the Texas QAPs? The answer is there is not.

There simply is nothing in the Kansas information that would violate the QAPs, or if you think that there is a violation up there, then you have to -- it has to rise to the level in Texas of a major health and safety violation. You haven't heard anything about such violations; therefore, even if you apply Texas' QAP, we'd still qualify.

MR. CONINE: Well, I think the issue is a matter of timing from our perspective. I think the staff, you know, has a certain amount of time to underwrite and score and all the other things that need to be done, and at the time, there were, in our opinion it sounds like to me, material noncompliance issues related to Kansas, and so again having cleared those up through now is wonderful and we're glad you've done that, but I'm not sure it's at least germane to the conversation.

MR. LEE: Two responses: One, we didn't even know about this problem. Staff never told us about this problem until a week or ten days ago, so we had no chance to clear the record. It seems to me, if you are going to apply equity, we should be given a chance to respond to outdated information.

You don't want to base your decisions on outdated, improper information, I'm sure. Neither does staff. And secondly, under the QAP, it provides in 4910, for example, if you are applying the point system, you have corrected and uncorrected violations. Your QAP specifically allows for the kind of correction that my client is going -- has done up in Kansas.

It would be, it seems to me, strange to say, We're going to punish you for correcting the problems by not even taking notice of them when our own QAP says we have to take notice of corrected problems, and on minor violations, for example, reduce them from three points to one point.

So I think if you are going to apply equity and the QAPs themselves, the only conclusion should be we're compliant in Kansas. If Kansas is satisfied that we're compliant and there is no evidence that we violate any of the Texas regulations, and under the technical application of the rules, this appeal should be granted. I'd urge one of the members make such a motion.

MR. SALINAS: But at one time, you were not complying.

MR. LEE: At one time, we were not complying. Correct. In Kansas, there were problems. There were 8823s, but those have been corrected.

MR. CONINE: Let me ask staff about the notice issues. Is it true that they were just notified a week or ten days ago that there was an issue in Kansas that needed to be resolved?

MS. BOSTON: Yes.

MR. CONINE: Okay. But we've had that information from Kansas since March.

MS. NEWSOM: Kansas issued -- did the inspections in October and December of 2001. I do not know the exact date the letter to the owner was submitted from Kansas, but yes, they've known --

MR. CONINE: No. We sent them a letter. We sent Kansas --

MS. ANDERSON: Yes. You missed the question.

MS. NEWSOM: I'm sorry. Yes, we sent Kansas a letter and it was dated -- do you remember the date?

MS. CARRINGTON: [indiscernible].

MS. NEWSOM: It's been ten or 14 days ago. It was pretty -- fairly recent.

MR. CONINE: You're still missing my point. When we sent the form to Kansas saying, Was there a problem, Kansas responded to us, you were saying back in March.

MS. NEWSOM: Back in March. That is correct.

MR. CONINE: Why do we have the gap between March and a week ago or ten days ago or whatever we want.

MS. NEWSOM: When we do a compliance history, it's not just the compliance division that responds. It's all other program areas. We check across the board in all of the divisions within the department for a compliance status, and that just takes some time.

MR. CONINE: So it seems to me like if we ignore the timing issue for a minute, and grant this particular appeal, that would just trigger an underwriting process for these four projects. Is that correct? Would you mind quoting to me the section of the QAP that you read one more time?

MS. BOSTON: It's Section 49.5(b)(7). And again, at the beginning of it, it says, "The department will disqualify or may debar an application if," and then there's a list. It says, "The applicant or any person, general partner, general contractor and their respective principals or affiliates, active in the ownership or control of other low income rental housing tax credit property outside of the state of Texas has incidence of noncompliance with the LURA or the program rules in effect for such tax credit property as reported on Exhibits 105(c) and 105(d), and/or as determined by the state regulatory authority for such state, and such noncompliance is determined to be material noncompliance by the department.

MR. SALINAS: So you're saying that they are not complying with the department?

MS. BOSTON: We're saying that based on the information that they provided us from Kansas, when we apply our tests to it, that we believe they are in material noncompliance, which then makes them ineligible.

MR. SALINAS: I think, Mr. Chairman, that with the information we have, I would like to move that we go ahead and deny the appeal.

MS. ANDERSON: Second.

MR. CONINE: There is a motion to deny the appeal and a second. Any further discussion?

MR. LEE: May I make a motion for the board --

MR. CONINE: No. You are out of order. You cannot.

Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion, signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. LEE: May I request to the board, since we have until July 7 to get noncompliance in order according to the staff's own interpretation of rules, that we be allowed to come back month and represent this issue to the board?

MR. CONINE: Now, he's saying July 7. Where does that date come from?

MS. NEWSOM: That comment was from me, and that is one property in Kansas, that fourth property that has not been issued 8823s. Their corrective action period is up on July 7 on that one property.

MS. ANDERSON: We just denied the appeal.

MR. SALINAS: The motion has been made. They can probably come back and apply for some other tax credit later.

MS. ANDERSON: Take better care of your stuff.

MR. CONINE: Okay. Could we move the displays here? We are going to now recess for at least 45 minutes, till about 1:00. We're going to go get a bite of lunch. This should conclude all of the appeals.

MS. ANDERSON: Are we through with the appeals? Is that all of them?

MR. CONINE: That should conclude all the appeals. We will be in recess until 1:00.

(Whereupon, at 12:15 p.m., the meeting was recessed, to reconvene at 1:00 p.m. this same day, Monday, June 24, 2002.)

A F T E R N O O N S E S S I O N

(1:15 p.m.)

MR. CONINE: Let's see if we can call the board meeting back to order, if we may. We are going to move on to item number 2, which is the presentation and discussion and review of recommendations of the department staff, and approval of the list of approved applications from all submitted application for the low income housing tax credit program.

If I might, I am going to call Brooke Boston to give the presentation, and if the board members would slide off the dais and down so we could see her slide show.

MS. BOSTON: My name is Brooke Boston. I'm the acting co-manager of the low income housing tax credit program, and today we wanted to present our staff recommendations of the 2002 allocation. As a program, we have made an effort to make sure that we are transparent. We've gone out of our way to make sure that more information than ever has been on the web.

As always, we are open to open records requests. Anytime anyone needs anything, as long as it is not protected as confidential information, we've been always able to share that. We, I think as most of you all have been able to tell, have been very consistent in our adherence to our rules and guidelines, the QAP, our processes, Senate Bill 322.

We have made it our effort to treat everyone equitably. All applicants are handled exactly the same. This year, we had 139 pre-applications submitted in January. Twenty-five people decided not to proceed, so we feel like that was a successful pre-application cycle because people got enough information that they didn't spend the money on going forward.

Twenty-nine applicants who did not participate in pre-application did also add an application at full ap, which made a total of 143 initial competing applications. Two of those withdrew, and there have been 13 terminations. Likewise, out of the remaining deals, we've sent 85 applications to Underwriting.

The recommendation process this year went through several steps. The first step is set-asides. We made sure that statewide, the set-asides, which include the nonprofit, the rural, and the at-risk developments, statewide we went with the highest-scoring developments.

After we had taken care of those -- and I should note that two of those, the at-risk and then a subset-aside of rural, which is the TXRD development, were undersubscribed, which means we didn't even have enough applicants to fill the whole set-aside.

After we had taken all those out, we then went to each region, because obviously those high-scoring deals are wherever they are in the state. We add them into their proper region, and then we go through and make sure that we're getting down to our regional allocation amount.

Just based on the nature of the credit requests that we get, the totals, the way those numbers add up, will never add up just perfectly with the amount of money that we're required to meet the regional allocation. So there's always going to be some underage or -- I guess that's more of a shortfall -- or overage in each region.

And like I said already, we make sure that we are going by the highest score in the set-aside, and then once we are in regions, which pretty much leaves you with general set-asides, we make sure we selected the highest set-aside deals in the region, if there was spending left.

We did not recommend to the board any developments that had a nonrecommended status from our Underwriting department. One component of a not-recommended status from Underwriting also includes anyone who is violation of the concentration policy.

We evaluated for material noncompliance by our compliance division. Then we also confirmed the $1.6 million per applicant. No applicant can exceed the $1.6 million, and for this year out of the 2002 allocation, if someone had a 2002 forward commitment that was made last year, that counts as part of their $1.6 million for this round, because you are talking about the same allocation year, which actually I think that question came up earlier during public comment.

Evaluation factors: Up until last year, we always had a large array of evaluation factors, and this year we made them much more concise, and there are fewer of them. Basically, evaluation factors are the only way for staff, outside of scoring, to make recommendations to the board.

It includes serving more low income families for fewer credits, more low income families for a longer period of time, allocating among different entities, which we felt like $1.6 million also assures that, and then consistency with local need. I'd like to point out that only in one instance in the entire list where there was actually a tie between scores was any evaluation factor used at all.

So pretty much, everything else was score, region and set-aside. This is a map that shows the breakout of the regions statewide. This depicts the actual regional allocation that we're targeting to hit in each region, and it just shows that as a pie chart, the region and the dollar amount.

The total credit ceiling is $37.3 million. I'd like to point out again, though, that $5.5 million of that has been committed last year as forward commitments for this year. This is my favorite chart, and it's because last year, we only had 29 units recommended at 30 percent of area median income, and this year if the list as it is today remains final in July, we would have 300 30 percent units and almost 1100 units at 40 percent, and that makes me giddy.

"Then I just wanted to mention the forward commitments. We have the ability to allocate up to 15 percent of the 2003 allocation, which is $5.7 million. We are recommending that a little less than that be -- when we do make the forward commitment recommendations, we're recommending that it be less than the full 15 percent to accommodate for any appeals.

Again, with forward commitments, it's our suggestion that in terms of how to allocate those forward commitments, that once we have established which regions are experiencing the most significant shortfalls in terms of the percentage of their allocation that they would not be getting because of the shortfall -- and when I say shortfall, it means if you went to the next highest deal in that region, they'd go over, so we're trying to make sure that the people -- excuse me, the regions that would be most affected by that would be where we would send the forward commitments.

The $1.6 million rule for 2003 would also apply. We couldn't give more than $1.6 million to any one applicant just out of these forward commitments, as well as that will impact their 2003 applications next year. And that's it.

MR. CONINE: Okay. I think historically we've read into the record once -- I guess that really won't do any good at this point, though. We'll probably do that at the next one. Okay. You've all had a chance to receive the list of staff recommendations. I guess -- I know what we've got.

We have some public comment on some projects that are on the list, so why don't we go through that now. The first one I have is James Millender.

MR. MILLENDER: Mr. Chairman, board and staff of TDCHA, good afternoon. My name is James Millender. I represent the Marvelous Light Corporation out of El Paso, Texas. There was no nonprofit -- there were no nonprofit allocations made in Region 10 while large portions of the forward commitments were recommended for allocations to large projects outside of Region 10 that scored equal to or lower than the Region 10 projects.

The Region 10 nonprofit projects are all small projects located in Border communities with a great need for clean, affordable housing. Granted, forward allocations to small projects will allow TDCHA to spread allocations among more areas and more developments, rather than as a concentration among a few developers and a few regions.

What I'm doing today is requesting a better spread of forward commitments equally between all regions throughout Texas and especially in the area of El Paso, where there is a great need. One of the projects that we're asking your support for is within the Enterprise Zone, and certainly that is an area that needs our attention. We appreciate any support that you could give to us in that respect. Any questions?

MR. CONINE: Okay. Any questions from the board?

(No response.)

MR. MILLENDER: Thank you.

MR. CONINE: Thank you for your time. Appreciate it. Corinne Vanberg.

MS. VANBERG: Good afternoon. I'm here -- John Cook, northeast city representative of El Paso, was not able to be here, and I have a letter from him that he'd like to get into the record. This has to do with Mountainside Townhomes, number 02059, in Region 10.

"This project was not recommended for an allocation. It's a 16-unit community that will have eight three-bedroom and eight four-bedroom units and is located across the street from the elementary school. The sponsor of the project is the Marvelous Light Corporation, a nonprofit organization.

"The project is in a distressed area and in need of revitalization. The city has invested millions of dollars in a new recreation center, street and drainage improvements and community-policing strategies to turn this community around. Affordable housing alternatives are also needed to revitalize this neighborhood.

"El Paso Mayor Caballero and I are committed to bringing more affordable housing to the Border region area, and I would urge and appreciate the board considering this small project for a forward commitment. Sincerely, John F. Cook, Northeast City Representative."

Thank you.

MR. CONINE: Thank you. Sam Brewster.

MR. BREWSTER: Good afternoon. My name is Sam Brewster, and I want to thank you for the opportunity to address you. I am a resident and a city councilman for the city of Socorro, Texas. I am here on behalf of the citizens of Socorro to express our support for Mission Del Valle Townhouses, Ltd., which is project 2064, and Rancho Del Valle Townhouses, Ltd., which is project 2063.

These are projects that are sponsored by Tierra Del Sol Housing Corporation and Western Builders, Inc. During the meeting held in El Paso earlier this year, the board stated they would allocate tax credits to bring housing closer to colonia areas. Although housing needs within the city of El Paso are great, in most cases, they do not bring affordable housing to communities outside the El Paso city limits that are closer to colonia development areas.

I am from Socorro, Texas, not El Paso. We have our own needs, and we have worked hard to bring water and sewer to our community, but we need your help to bring decent and affordable housing to our community. The people of Socorro are asking for your help. Look favorably on the request for decent, affordable housing, which they need. I want to thank you for the time you have given me, and I hope that you hear our call for help. Thank you.

MR. CONINE: Thank you, Councilman. Rose Garcia.

MS. GARCIA: Good afternoon. I'm Rose Garcia with Tierra Del Sol Housing Corporation, and I work in West Texas and New Mexico. I've been doing affordable housing for a number of years, and I really appreciate how your agency has improved the process and even the chemistry, and it feels good.

Also, I think we that do the tax credit development -- I also appreciate this form, to be able to tell you the issues of the colonias, which I'm not going to go into more detail than what you've already heard, but Socorro, Texas, is one of the up and coming colonias that has worked hard for water and sewer, and now has gotten some new industries that have considerable jobs that we're trying to stabilize the workforce with housing and incubate the tenants in the housing into becoming homeowners also, and doing home buyer counseling.

I ask you to consider forward commitment for the projects 2063 and 2064, which are small developments, 32 units and 16 units, in Socorro. I'd be happy to answer any questions, but I think the colonia -- from the list that I noticed, there were very, very few projects this year that were awarded credits. So I ask your reconsideration on that, and thank you very much for this hearing.

MR. CONINE: Thank you. Appreciate you coming. Questions?

MR. BOGANY: I have a question for staff.

MR. CONINE: Question, Mr. Bogany.

MR. BOGANY: And you guys may have told me this already, but are nonprofit and for-profit scored on the same level?

MS. BOSTON: You want to know what we do?

MR. BOGANY: Yes.

MS. BOSTON: In evaluating the set-asides, like I said, we take it from a statewide perspective first, so we go down the list and if a deal is high-enough scoring in the nonprofit set-aside, that may mean it's actually lower than a score of a general set-aside.

So in this case, you have -- it sounds like you're asking if you have two deals that are the same score, that nonprofit score may have been competitive enough in the nonprofit set-aside to allow it to be on the list, whereas the general is not competitive enough within the general set-aside to allow it to be on the list.

MR. BOGANY: I guess my question is, like on the general set-asides, are they -- when you go in and score, is it looked at without being general or nonprofit, just looked at as a project as a whole?

MS. BOSTON: Exactly. We -- the staff, in evaluating them based on threshold and score, do not consider at all what set-aside they are in.

MR. BOGANY: Okay. And the other question I have: The other projects in El Paso, like city development CLINT, is that near the colonia also, or is that --

MS. BOSTON: I believe CLINT is not far outside the city of El Paso, but someone else -- okay. Tom is emphasizing that it is in the real set-aside. Honestly, I don't know my geography out there well enough to tell you exactly where it is.

MR. BOGANY: One last question: The most, I guess, we could get is $1.6 million that a developer could get. Am I correct?

MS. BOSTON: Correct.

MR. BOGANY: Thank you.

MR. CONINE: Next witness is Tim Johnson or Jim Johnson?

MR. JOHNSON: Tim.

MR. CONINE: Tim.

MR. JOHNSON: Depends on how well I do. I can change names. I'm here just to wrap this last group of presentations up. My name is Tim Johnson, and I represent both Tierra Del Sol and Marvelous Light Corporation in relation to projects 02064 and 02063 for Tierra Del Sol -- those are two projects located in Socorro, Texas, and then Marvelous Light Corporation, 02059 and 02068, which are two projects to be located in central El Paso.

Basically, my understanding from just following the process and the recommendations and listening today is this year's allocations were based -- by staff, and I understand the reasoning behind it, but based pretty much solely on points. It's a points-driven objective standard application.

What I would like you to consider in relation to that is that in the nonprofit, these four projects that I'm discussing today are projects that would be in the nonprofit set-aside. In the El Paso and really the Border region, unfortunately, when you are comparing those nonprofit projects are scored up against and competing against on a statewide basis against other nonprofit projects within the set-aside.

So in other words -- and I think this goes to one of the questions that you were asking earlier -- if even though one way to get an award is to be higher scoring in your set-aside regardless of the region that you're in, well, in this case because of the -- it's our feeling that it becomes because of the income levels. Within Region 10, it becomes increasingly difficult to put together projects that both score high enough and maintain economic feasibility.

For instance, by way of example, there was some -- Ms. Boston pointed out the encouragement -- and I think the point system may award to allow for more 30 percent units in the mix. It becomes increasingly difficult to move more 30 percent units into these applications in a nonprofit set-aside that competes on a statewide basis.

Anyway, the second thing -- this being said, we do understand where staff is coming from and appreciate and applaud their use of an objective standard; however, we do want to make sure that everyone understands that we're not comparing apples to apples in this situation and had really hoped that there would be a geographic allocation within the districts themselves.

In other words, all the projects except one, I believe the CLINT project that he's referring to, were located inside the municipal boundaries of the city of El Paso, none to serve these outer-lying areas that are closer to the colonias that do need the clean and affordable housing.

Secondly, if possible, try to have some sort of geographical disbursion of the forward commitments, rather than continually allocate those to the, frankly, same regions over and over again. I know the point system that was discussed and to make up underages in the subscriptions, but in some cases, these underages that were made up resulted in huge over-allocation to various regions.

If you look at the amount that each of those regions subsequently got -- and I'm sure Ms. Boston can give you the exact numbers, but I think where there was an underage of maybe 50 to 100,000 in one region, it subsequently ended up with nearly a million-dollar overage.

That's a result of allocating based solely upon points, rather than at some point deciding that maybe within the board's discretion under the QAP, that they take the opportunity to try to fund some of these smaller projects and spread the forward commitments among all the regions, versus concentrating them in one or two regions, in this case four regions.

Anyway, we've got four projects that we feel like are good projects and really have a need, or have surveyed a need, and are small projects that could be allocated. One or two of these projects could be allocated from the forward and still allow for a forward commitment across the state to all other regions, rather than just suck it up in just one or two regions.

Thank you for your time. I hope you'll consider this within your discretion. Thank you.

MR. CONINE: Thank you. Any questions?

MR. BOGANY: I have one question.

MR. CONINE: Mr. Bogany.

MR. BOGANY: I'm just trying to get a clarification. Brooke, this is more for you. In Texas, the TXRD: Why wouldn't a place like Socorro qualify? Is that because they are in the county of El Paso?

MS. BOSTON: I think it's because they're in the metropolitan area.

MR. BOGANY: They're in the --

MS. BOSTON: The MSA.

MR. BOGANY: MSA. Okay. So that's why they wouldn't qualify for that, because of that, regardless of what the community is like.

MS. BOSTON: I can't say categorically that they don't qualify. I know they didn't apply in the rural set-asides.

MR. BOGANY: So they did not apply for the rural set-aside?

MS. BOSTON: They did not apply.

MR. JOHNSON: I don't believe they qualify for the rural set-aside. I mean, Mr. Brewster can speak a little bit more about Socorro, but basically it's a -- my understanding was that it's a municipality lying outside the city limits of the city of El Paso that was formerly a colonia itself and which has turned itself into -- and brought some significant jobs and infrastructure to this area now.

It is now a municipality and the allocation credits sort of fall in the gap, the no man's land situation. It is truly not a metropolitan area, but it does not fall far from the rural set-aside.

MR. BOGANY: So you are telling me that it would have been better for them to stay a colonia.

MR. JOHNSON: I think so. Yes, sir. Under today's rules, it would have been, sir.

MR. SALINAS: The city of Socorro has their own city council and their own mayor? This would fall into the city limits, inside the city limits of Socorro? Because you know we made a trip to El Paso and we did a trip to the colonia. It is sad to see that the city officials and county officials do not enforce the model rules.

So I don't have any problems helping or doing what it takes to bring affordable housing to some of these areas and making special provisions to help them, so especially these two projects here which are small projects. I know we all have been -- I think all of us went over there to a project. I think -- who was missing? I think everybody was out there.

One of the things that we'd really like to focus on is that everybody in that area focus on bringing in the model rules and be sure that every developer is provided water and sewer and whatever the law says they have to bring in, but it's amazing that some of those areas are not being enforced.

I was kind of very disappointed in the way that they've been doing business in that area. It's kind of sad, so I would like to do anything possible, especially those two projects for Socorro, which are inside the city of Socorro, to get some set-asides and try to get help in the next cycle or whenever we can, but with an obligation that we all have a city limits and you also have a ETJ that we would probably ask that you all enforce the model rules even outside your city limits, including your ETJs and not allowing anybody else to provide any lots without any water or any lots without any septic tanks or sewer.

So I guess -- does anybody follow me, what I'm trying to --

MR. CONINE: I think we'll have an opportunity, once we get through the public comment, we can focus on the forward commitment list.

MR. SALINAS: Well, it's unfortunate that you all have these projects which are good projects, that I don't have any problem giving you some set-asides and probably getting these things done, especially inside the city of Socorro.

MR. CONINE: Thank you, Mayor. Alex Vidales, I believe.

MR. VIDALES: Good afternoon, board, Chair. My name is Alex Vidales and I am a former city councilman for the city of Socorro. I am now an intern for Senator Eliot Shapleigh, who regrets that he can't be here today, but his schedule is pretty tight, so he did recommend that I offer you his testimony on his behalf.

Again, this is with regard to projects 2063 and 2064. "Dear ladies and gentlemen of the board, I would like to express my support for the Mission Del Valle and the Rancho Del Valle applications of Tierra Del Sol to proceed with the development of affordable housing projects in the city of Socorro.

"In your earlier board meeting held in El Paso, you indicated a willingness to bring projects closer to colonia developments that have become common in our Border area and our city. However, it does not appear from your staff recommendations for tax credit projects that your goal is being met.

"I request that the board please set aside for funding for one or both of the referenced low income housing projects to be developed in the city of Socorro. Very truly yours, Eliot Shapleigh." And again, if the board has any more questions of me, you can go ahead and ask Rose Garcia or Mr. Monty or Council member Sanderson. Thank you.

MR. CONINE: Thank you. Rick Deyoe. Did I mess it up again this time? Gosh. I'm going to get it right eventually, Rick.

MR. DEYOE: Thank you. Chairman Conine, members of the board, my name is Rick Deyoe. I'm president of Realtex Development Corporation, and I'm here on behalf of project 2070, the Woodview Apartments in Wichita Falls. I've had several conversations with staff, and they do a great job, but I'm at a bit of a dilemma because I've got an issue that I can't appeal, and that is because staff had recommended the project to Underwriting, and then Underwriting had recommended an allocation to the project an amount of credits. It passed Underwriting.

However, it was not recommended because it wasn't in the rural set-aside. Once again, we have the same issue on a statewide basis here that Ike Monty and his group just spoke about in the nonprofit set-aside, and that is when the staff went first and applied the rural set-aside by score, they fulfilled 100 percent of the rural set-aside with Region 2 projects in the rural set-aside, and so therefore, the city of Wichita Falls, which accounts for approximately 20 percent of the region's total population, has one of the lowest needs scores in the region, was not able to get an allocation of credits even though it scored high enough, simply because 100 percent of that region's allocation went to the rural set-asides.

I don't think -- and I've heard from the mayor and from the citizens of the city of Wichita Falls. Their thoughts are that they shouldn't be penalized because they are a city of 110,000 with needs that are, in some instances, much greater than some of these smaller cities.

Every region, there's been pretty much of an equal distribution between general set-aside projects, rural set-aside projects, not-for-profit and the like, with the exception of Region 2. So I'm here today to discuss what I think are some inequities in the process, and to suggest that the Wichita Falls project be funded with either this year's credit allocation or maybe perhaps a fuller commitment for 2003.

One thing that I've got here in the packet that I sent to you is a follow-up letter from the city of Wichita Falls that was sent to Director Carrington, as well as the staff, last week, just to make sure that the staff was well aware that the city of Wichita Falls was 100 percent behind this project.

That letter is included here because I don't know that it was able to reach you. The only other thing I might add is that when we look up the evaluation contents as to why our project didn't receive a recommendation for an allocation, it says here and I'll quote, "As a general set-aside development, this development did not score high enough in its region to warrant a recommendation."

Now, members of the board, this was the highest general set-aside scoring project in the region. So all I would suggest is that the folks within the city of Wichita Falls feel that they shouldn't be denied an allocation of credits or their city shouldn't be denied an affordable housing development because they are not in the rural set-aside because they can't qualify for that. Questions?

MR. CONINE: Any questions? Can the applicant tell me why he didn't apply in the rural set-aside instead of the general?

MR. DEYOE: Wichita Falls has a population of 110,000 people. It's an MSA. It doesn't qualify as a rural set-aside, or we certainly would have.

MR. CONINE: Would have. All right. Any other questions?

(No response.)

MR. CONINE: Thank you. Jay Oji.

MR. OJI: I'll pass.

MR. CONINE: Thank you. Aron Kulheny. Did I mess it up again?

MR. KULHEVY: It's Aron Kulhevy. Thank you. Board, my name is Aron Kulhevy. I'm a city planner for the city of Nacogdoches, and I"m here to speak in favor of project number 2112, Cardinal Village Apartments. The city of Nacogdoches -- one of our major concerns is affordable housing, and the mayor of the city of Nacogdoches recently appointed a task force to research the need for affordable housing within the city of Nacogdoches.

It was determined that the city is currently experiencing a high level of growth and anticipates continuing expansion; thus the need for affordable housing is of immense importance. Almost half the housing units in the city of Nacogdoches were built before the year 1970, and they are becoming in a more deteriorated state.

Historical data shows that 30 percent to 35 percent of housing units within Nacogdoches are in a substandard or a dilapidated state. The city of Nacogdoches is currently beginning the process of doing a new comprehensive plan, and one of the purposes of this plan is for affordable housing and concentration on the population of neighborhoods.

This project will aid the city of Nacogdoches and its efforts to meet demand for affordable housing. The city of Nacogdoches would greatly appreciate any support from the Texas Department of Housing and Community Affairs in helping it achieve its goal of providing safe and affordable housing for its citizens. Thank you for your time and attention.

MR. CONINE: Now, you're the city planner for Nacogdoches. Is that correct?

MR. KULHEVY: Yes. That's correct.

MR. CONINE: And you're in favor of an affordable multi-family project in Nacogdoches. Is that correct?

MR. KULHEVY: Correct.

MR. CONINE: Are you available for rent? Because there are some of your fellow brethren in the APA that would love to hear from you, I think.

MR. KULHEVY: I imagine so.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: Thank you for coming. Appreciate it.

MR. KULHEVY: Thank you.

MR. CONINE: Don Forse.

MR. FORSE: Good afternoon. My name is Don Forse. I'm the capitol office director for State Representative Wayne Christian, who represents Nacogdoches, Texas, here to speak on his behalf in favor of project number 2112, Cardinal Village. You should have a letter in front of you from Representative Christian. I gave it to staff earlier.

In the interest of time, I will not go through it. Suffice it to say that Representative Christian does believe there is a need for affordable housing in the Nacogdoches area and is fully supportive of this particular project. I also passed out to you a letter from the city, just one, I believe, from the director of urban development.

Once again, I'd just like to pass along Representative Christian's full support of the project, and either I or Mr. Kulhevy would be happy to answer any questions you have. Thank you.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Appreciate it. Barron Rush.

(No response.)

MR. CONINE: Barron? Going once, twice, sold. Mr. Manley, would you like to come up again?

MR. MANLEY: Mr. Chairman and board, this is just a commentary on a general perception of how we allocate during the QAP. I am not going to argue the specific deal, other than as an example. This is -- if I may, I think I can talk loud enough for you to see this better.

What I've done here is draw an outline of the Austin-San Marcos MSA, and in this MSA, I've drawn in -- I've put in pins wherever we've had either tax credit at 9 percent or a 4 percent bond. And you'll see the concentrations that -- tell you what. This is just the inception of programs.

This area is the market area, similar to the Lakeway area that we were talking about. You can apply it to other areas, as you can see, but this is an example. The problem with the QAP is that when you rely upon points scored in a QAP written to target poverty and concentrations of lower incomes and median incomes, you end up with concentrations like this in areas where you get more and more concentrated in poorer and poorer areas, which is not necessarily a bad thing, particularly as the mayor of one these colonias says, we've been trying for years to help solve that problem.

What it does to us, however, in the metro areas that have this kind of concentration issue, is that every PCT is over here. And that's my point issue. Not only do they get bonus points for concentration in the credits, but you get it in scoring allocation as well.

Having said that, I'd like to just raise an issue, and this is a costly issue for the board. That is that one thing many of us in the development community and others who work in affordable housing believe is that we should be locating affordable housing where people can't afford housing.

We also should put it where there is no housing, as well. But where you have a surfeit of housing in one area, it's time to look in another area to try to improve the lifestyle of people in that area as well. In particular, in metro areas, where you have a shifting of the economic base, you have jobs moving out to an area. You have -- oh, my goodness gracious.

MR. CONINE: That's $100 for the housing trust fund.

MR. MANLEY: That's fine. You have a situation in the Lakeway example, for instance. The median income in that area is between $75,000 and $100,000. Everybody agrees it's a high income area. There are 86,000 people who live in that yellow-green submarket. 62,000 jobs in that submarket there.

When I met with the planning commissioner for the city of Lakeway, I was prepared to kind of being pushed out because I was bringing in low income affordable housing. Her first question to me was, What are your rents? And I showed her my rents. And she said, Who is going to be eligible to live there?

I told her the income numbers. Her grin really just lit up the whole room, and she said, Everybody who works for me would live there. We don't have any place for these people to live. They are driving 30 to 50 miles one-way round-trip every day just to have jobs.

So I submit to you that on a policy level, somehow or other, we need to address that issue. People who have lower incomes need to be able to live close to where they work. They need to have a place where their children can go to doctors and have schools in a neighborhood so that if their parents have to leave work to help out, they can do that.

We need to help re-create that small-town environment where there was no distinction based on income. Everybody went to the same school. Everybody shopped at the same grocery store. Everybody went to the same churches. And by concentrating the way we're doing, we're resegregating our cities.

I'm just suggesting to you that we really -- and we're doing it economically, not by race -- but we all know how that falls. What I'm suggesting is that it might be better in the long run for mixed income developments where you give people a chance to step up into a different neighborhood and perhaps a better job situation, for people who don't have cars to travel that distance who can live close to where their children go to school, close to where they work, close to where they worship.

That's about what I have to say, and I think there are a lot of other people who agree with me on this. It's the other side of the coin of targeting for deep incomes, and we really need to look at both sides.

MR. CONINE: Any questions for Mr. Manley? Mr. Bogany?

MR. BOGANY: I'd like for you to do that same proposal with the bond review board.

MR. MANLEY: I'd be happy to.

MR. BOGANY: You take that same proposal down to the Bond Review Board.

MR. MANLEY: I think that we should -- that follows for a lot of things, Mr. Bogany. For instance, we should get away from the priority of the 50 percent and 60 percent on the bond allocations. An 80-20, the old time bond allocations where you did 20 at 50 or 40 at 60, and the rest market creates a mixed income bond deal that you can locate in other areas, and you don't have to just pile people on top of each other.

Believe me, from what I've discovered, the people that live in the QCT tracts in the inner cities don't want more of these deals piled on top of their neighborhoods. They want mixed income. They want higher income. They don't want lower income. So we've got a mismatch in our needs and desires.

I think everybody has the right motivation in their heart, but the unintended results are pretty bad.

MR. CONINE: We'll look forward to seeing you in the halls next spring to make sure that happens. Thank you.

MR. MANLEY: All right.

MR. CONINE: I think there's a bunch of us that think the same way. Okay. Ike Monty.

MR. MONTY: Thank you, Chairman. I just wanted to thank the staff and Edwina -- Ms. Carrington, and obviously the board. And I'm talking in support of the nonprofit partners that we have. The fact that we are able to have this forum before the final gavel falls is nice to point out that there is an issue, especially with Socorro. Again, thank you very much for hearing us out, and hopefully we can get a fuller commitment. Thank you.

MR. CONINE: Thank you. Any other public

comments that I happen to have missed?

(No response.)

MR. CONINE: Okay. Seeing none, I guess we will -- why don't we get a motion on the floor so we can have discussion first? Does that sound like a good idea, or do you all want to have discussion first?

MR. SALINAS: You mean a motion on the recommendations?

MR. CONINE: Yes.

MR. SALINAS: I move.

MR. GONZALEZ: Second.

MR. CONINE: A motion by Mayor Norberto Salinas and second by Vidal Gonzalez that we, I guess, approve the recommendations of staff. Now we can ask them to open the discussion. Anybody have any questions they'd like to ask? I'll start off with one just for fun.

It was alluded to earlier in one of the earlier presentations that there may have been a particular developer that would have exceeded the $1.6 million rule in -- which region was it? Let me see if I can find it. I think it was Region 2. Well, no. I guess it wouldn't make any difference which region.

There were a couple of them. I guess I was looking at 2148 in Region 2 and 2149 in Region 3. Can you enlighten me on how that doesn't exceed our $1.6 million rule? Well, we'll give Ms. Carrington a shot at it.

MS. CARRINGTON: Okay. As I said, either Brooke or I could respond to this. As we review, as our staff reviews the applications, we look at the structure of the ownership on all of the applications along with the definition of affiliated party, related parties.

We're looking specifically to assure ourselves that the entities that are involved in each of the transactions, that if they are tied to other transactions, that we can either prove that or not prove that based on the information that they have submitted to us.

We are very comfortable with all of the applications that we are recommending today, that there are none that violate the $1.6 million rule.

MR. CONINE: Really?

MS. ANDERSON: Is that because somewhat in the actual details of the deals themselves, somebody may have nine or 14 percent of the deal, and so when you look at this person's name, the person doesn't have $1.6 million because somebody else owns a piece of the deal?

MS. CARRINGTON: I will let --

MS. ANDERSON: You just do the math and it's over $1.6 million.

MS. CARRINGTON: There are definitions that we go by in the QAP for related party and affiliates, and so we look at those and tie those together and determine indeed whether it does come within the $1.6 million or it exceeds the $1.6 million. Now, it looks like Tom may have a better explanation. More clarity.

MR. GOURIS: Tom Gouris with the credit application division. More clarity on the subject that you all bring up. The two developments you are talking about were recommended for more credit than they requested. What we did in our Underwriting report is indicate that should both of them be recommended, then the requested amount should be the amount allocated because if they were given the recommended amount from Underwriting, they would go over the $1.6 million.

The requested amount is just under $1.6 million. I think that's where you're --

MS. ANDERSON: So it really isn't about their percentage ownership of the deal.

MR. GOURIS: Correct in this case.

MS. CARRINGTON: Although, yes. Tom says in this case because the question -- the comment that did come up in the public comment period indeed was a concern about violating the $1.6 million rule.

MS. ANDERSON: We just need to clarify that next year.

MR. SALINAS: They might be consulting for someone else.

MS. CARRINGTON: Well, that's not ownership, though.

MS. BOSTON: In the particular case for which public comment was made, it's in Region 6 and it's number 2080 and number 2081. From our review, there is not a violation. There is one entity involved in both developments, but that entity does not violate the rule because of their level of involvement and the definition we have for control.

MR. BOGANY: So you are saying that 2080 and 2081 have a couple of the same players?

MS. BOSTON: A particular entity, a particular company was involved in both developments, but in one, it's got a general partnership role, and in the other one, it has more of a removed limited partnership role.

MR. CONINE: On that specific one, I'd like some further clarification from staff on that before we do final commitments in July, as well as the one I mentioned just previously. There also were 12 projects on the list that were awarded more credits than were asked for, which is something that intuitively I have a problem with. Can you clarify what happened there?

MR. GOURIS: Yes. Those were all transactions where they had used a lower applicable percentage than what the stated underwriting rate would be. That's the one thing that we adjust for and reevaluate their credit amount based on the actual applicable rate when we underwrite or when the applications are taken.

This year, that rate was 8.44 for the 9 percent credit. I believe it was 3.67 for 4 percent credit. So we underwrote all the applications at that same rate, regardless of if they asked us or if they suggested a lower rate. In some cases, they did suggest a lower rate which then when we recalculated their eligible basis would give them more credit.

MR. CONINE: But isn't that a constantly moving target, depending on when the -- you know, every month, that deal changes.

MR. GOURIS: Generally, yes. It is a moving target and that's why we set it fixed to be the month that they made application. So everyone would have that information before they could finalize their application. We assumed and hoped that this wouldn't be as big an issue. Maybe there would be one or two this year. But there are quite a few more than that.

MR. CONINE: Yes. There are 12.

MR. GOURIS: There are 12.

MR. CONINE: We could pick up another $100,000 or so in credits if we were to hold to the applicants' applications.

MR. GOURIS: However, the rules of the QAP suggest that we would adjust for that, upward or downward. In this case, it was an upward adjustment.

MR. CONINE: Okay.

MR. BOGANY: I have a question.

MR. CONINE: Mr. Bogany.

MR. BOGANY: I am just curious, Underwriting. Like when you take these credits and you look at where you have one development that's building 100 units and another 100 units, and then you've got half a million credits on both sides, why when you said that you are trying to spread these credits out that you might not give as many credits on the large unit and try to have the smaller units that might be able some good also included in the credits?

How do you determine that I'm going to give all of what they want, but over here a good project in an area with need, then, you don't. You don't give them enough credits, because for once the bigger project got all the money. Am I making sense?

MR. GOURIS: Yes. I think so. I think to clarify what it is that we do is once the score is determined and whether or not they come to Underwriting is determined, then Underwriting independently evaluates that development one at a time, and says, This is the amount of funds that this development needs to be feasible or not to be too feasible.

So we look at each development individually. We don't then compare or contrast, Well, this development has bigger units and therefore should get more credits or less credits. It's using all of our evaluation techniques on that one development, independently and then going to the next development.

MR. BOGANY: The reason I ask is I"m looking at the Region 6 and I know Galveston has a big need for affordable housing, but you lump them in with Harris County and it looks as though, even though there's a big need for it, they're not going to be getting tax credits because everything continues to be concentrated in Harris County and Houston.

Here you've got Galveston County. Just by geography, they're close, but it looks like we're overlooking, I guess, the need for some of these rural communities, like Richmond and Fort Bend counties. Some of these other areas there, I guess -- and it seems like we're constantly concentrating on Harris County.

MR. GOURIS: This year, it's due to score, and the transaction in Galveston didn't score as high as the transactions that were being recommended in the Houston/Harris County area. That's the difference. If they could have chosen other scoring issues to attempt to use that would have given them a better score, that would have given them a better chance at getting an allocation.

MR. BOGANY: And then I've got places like Hempstead, which is on the TXRD development, which Hempstead is about as close to Houston as Galveston, in my opinion, but they are in the rural areas. So I'm just -- this seems -- you know, it's not even.

MR. GOURIS: And those are Texas transactions and they -- there's a separate set-aside for those.

MR. BOGANY: -- and Nacogdoches and any of those places couldn't apply to that.

MR. GOURIS: Right.

MS. ANDERSON: I have a question. We had a lot of discussion earlier about the Austin market and the unemployment rate and that perhaps the softness that might have created in the housing market. So my question is with regard to the recommended list in whatever the region is Austin -- seven, when were -- generally speaking, when were the market studies done? Not just for the Austin projects, but really for all projects.

When generally are those market studies done? How old is that data as we're looking at it, sitting here today?

MR. GOURIS: They were due March 29, so they were done in February and March, mostly.

MS. ANDERSON: Were most of them done in February and March, and not earlier?

MR. GOURIS: There may have been a handful that were done in December and, you know, that time frame. But most of them were going to have been done in February and March.

MS. ANDERSON: And in your view, do they reflect the market conditions prevailing in Austin at that time and any change -- has there been a significant change in your experience subsequent to that time in the Austin market?

MR. GOURIS: That's a really difficult thing to answer. I think generally they do reflect the market. There's a lot of room in the market for different opinions.

MR. CONINE: Spoken like a true underwriter.

MR. GOURIS: I'm confident that the information that we received in the market study is good information. It's valuable information and it's information that is consistent with where the market is today.

MR. CONINE: Let me follow up on this line of thought. Would it be appropriate to ask staff to get an update on those projects on the recommended list and/or the forward list in the Austin MSA to verify the fact that the statistical information that you're looking at today is the same as it was six months ago? Would it be appropriate since we now have 30 days? We've got till the end of July to make our ultimate decision.

MR. GOURIS: It's definitely possible.

MR. CONINE: My concern is there are stories about three months' free rent out there, and if you go through the methodology of street rate rents and factoring in the discount, there quite conceivably could be units out there that could be available cheaper than the low income tax credit rents would be.

If we have a condition or market that has that condition, it might behoove us to shift some of those tax credits into other markets until this market improves, and

I'm just, again, trying to get as much statistical data as I can in order to make that decision.

MR. GOURIS: Yes. Number one, I think the thing to remember is that these transactions aren't going to actually be ready to be leased for two years, so forward about the last 90 days and what's happened, we should have a lot more concern about what's going to happen in the next two years and the things that could change in that time frame.

So back to the question, I'm not sure what additional information it would really help us with to provide any more clarity for where the market is going to be in two years.

MR. CONINE: Mr. Bogany.

MR. BOGANY: I think what Mr. Conine is saying is that we're planning for the future, but there's immediate need today, and if it helps to know that the market in Austin is soft right now and we have other needs, why fork credits over to that two years away?

Why we can't deal with it two years from now versus -- why that project can't deal with it two years versus the immediate need of projects where we need housing today. I mean, if you've got three months of free rent or you have 60 days', 30 days' free rent, that tells me you have a softening of the market, and it just seems as though we ought to be able to adjust to that marketplace and not continue to pour apartments where the market is soft.

Who's to say two years from now, it may be even worse. So I think what he is saying, What about the immediate need today or the next six months?

MR. GOURIS: And that is an excellent point if you look at the list of the rest of the transactions in that region. However, it would be hard for us to find one that's not in the Austin MSA that wouldn't have the exact same effects on it, that could be recommended.

MS. CARRINGTON: Tom, if I might, when you look at the recommendations on Region 7, there are one, two, three, four, five, six of them listed. One of them is in Kyle, which is Hays County. Now, that is part of the Austin MSA. It is not in Austin. One is in Austin.

Then another one is in Burnet, which is in Burnet County, not part of the Austin MSA. Cameron, and I must admit I don't know what county Cameron's in.

MR. CONINE: Those are forward.

MS. ANDERSON: Those were started last year, those three.

MR. GOURIS: Those three, Brenham, Cameron and

Elgin were forward commitments, but if you look at the -- it's a good point to make that most of our funds from this year's allocation are going to be spread throughout the region, and really only one in the city and one in the MSA.

MS. ANDERSON: They're representing over 65 percent of the total dollars, though, because it's a biggie.

MR. CONINE: We would like you to, I guess -- at least, I would and the rest of you can speak up, but I'd like to get some updated information. The other thing I'd like that I didn't mention before was, my recollection is there may have been a bond deal passed by this board sometime in between when those market studies were done and today.

We need to see if that might affect the concentration policy or anything else that has been done since then.

MR. GOURIS: We would be looking at that as we underwrite everything that has been approved by the board in the meantime, but we can definitely look at it.

MR. CONINE: Okay. Let's just check it out.

MR. GOURIS: Okay.

MR. CONINE: Other questions of any other board members?

MS. ANDERSON: I have a question about the forward -- I guess there are like four deals on the forward commitment list, and they're all, again, great big slugs of money. Is that -- you know, they're all big complexes, and so it does -- that was done strictly based on the score, right, which is the way the QAP asks you to do it, strictly based on the score.

MS. BOSTON: Correct. In each region, it was -- as I mentioned earlier, we took the regions who are going to have the most severe impact and made sure that any region who had more than 5 percent shortfall, so to speak, was going to get a forward commitment, and in each of those four regions, the next highest-scoring deal happened to be huge.

MR. CONINE: Have all of these been underwritten forward?

MS. BOSTON: All of the recommended and all of the forwards except -- well, that one's been finished, but at the time that we sent out the list, one had not. But it has been now, since then, which is number 02041 in Region 8A, Villas at Costa Verde.

MR. CONINE: We're going to get an updated number from Underwriting, I guess, on that one?

MR. GOURIS: I can give it to you right now if you like.

MR. CONINE: Go ahead.

MR. GOURIS: That was another incident where the -- now there are 13 -- where the applicable percentage was lower that they had indicated than what we had said would be the applicable percentage at the beginning of the cycle, so the recommended amount is $1,096,514.

MR. CONINE: Man, you are just so generous nowadays.

MR. GOURIS: I'm trying to be a good guy.

MS. ANDERSON: Now, there's an example where the forward commitment is a deal that scores 129, and then there are two deals below the line. Now, they're both in San Antonio. One's big and one's a little smaller with the same scores. Is this the one where we had the tie and used the evaluation factors?

MS. BOSTON: Yes. It is. In this, we used the factor of serving the most low income families for the fewer amount of credits, and in this case -- find my -- in this case, this development was able to serve -- basically, they were using 5,614 in credits per low income unit to serve 190 low income families, while the other two averaged about 7,600 credits per low income unit and were serving fewer units that were low income. So to me, that was pretty substantial.

MR. CONINE: Tom, I notice five or six of these on here have a little NR beside them, not recommended. Was there a common denominator on any of these, or were they are specific to each particular project? I'm talking about the ones right below the line.

MR. GOURIS: The closest thing to the common denominator is that once we finished the underwriting, we weren't able to see that they could repay the developer fee in 15 years. I think that this is the case in all, but one of them, the last one, it's combined with issues regarding the cost of remediation of an environmental factor.

And there's also the concentration issue with a project, or two projects in Aransas Pass -- Port Aransas. So those were the two or three issues that --

MR. CONINE: And we had a policy on the deferred developer fee to get it back in a 15-year period? Is that in the QAP or just an underwriting policy?

MR. GOURIS: It is a feasibility issue, but it is not clearly defined in QAP. It was discussed at all the workshops, and it's a feasibility issue.

MR. SALINAS: How close are you to making a forward commitment on these two smaller projects?

MR. GOURIS: They have not been underwritten as of yet, but we will proceed to do so.

MR. SALINAS: Which is 2063 and 2064?

MS. BOSTON: Yes. Those are the right two. Yes.

MR. SALINAS: Those are the right two?

MS. BOSTON: So you'd like us to underwrite those?

MR. SALINAS: I would like to help the people from Socorro in trying to do it. What do you think, Mr. Chairman? What do you think?

MR. CONINE: I'm with you. Go ahead. Make him do a little work. I'm with you. Don't want him to be resting.

MR. GOURIS: Be glad to.

MR. SALINAS: So that's done.

MS. ANDERSON: I was going to say, Just those two?

MR. CONINE: Let me ask the question. Are there any projects that the board heard public comment on today that have not been underwritten so that when we meet next, we will be able to make an educated decision?

MR. BOGANY: I'd like for you to look at

Mountainside Townhomes, 2059. And also Geronimo Trails Townhomes, 2068. Because we actually didn't really approve any nonprofits. It wasn't high on your list.

MR. CONINE: 2025, Village at Prairie Creek, the one we heard some public testimony in Region 3. I guess that'll teach everybody to show up and talk, won't it?

MS. ANDERSON: Mr. Chairman, I actually, without wanting to get this list too long, but I think we probably ought to underwrite the Villas at Park Grove in Katy while we're -- you've asked for more information about that related party issue in Houston and Region 6, so --

MR. CONINE: That's true. And the Grove Place, the one that's again in Austin, but I'd like a little more info on that project, as well. Have we overloaded your boat yet?

MR. GOURIS: Not yet.

MS. ANDERSON: I have one more to suggest, and I know it's pending the outcome. We tabled an appeal for Refugio Street Apartments. They have some other element of appeal pending in front of staff, and so as a protective measure, I think you have to underwrite --

MR. CONINE: It's been underwritten.

MR. GOURIS: It's been done.

MS. ANDERSON: It has? Oh, I see. It's -- okay. Sorry.

MR. CONINE: Any other comments from the board at this point?

MS. ANDERSON: I have a comment that I actually think is an amendment to the -- are we just amending -- is the motion on the floor just for the recommended list, or does that include the forward commitment proposals?

MR. CONINE: I'll ask the maker of the motion down at the end of the table.

MR. SALINAS: I would include the forward commitments also.

MS. ANDERSON: Then I would like to propose an amendment to the motion that's on the floor, that because of the good policy ideas and issues that have been raised around the size of the projects for forward commitments, the suggestions for underwriting some additional -- we're asking Underwriting to underwrite some additional projects that we might want to put in that forward commitment pool, you know, that because we sort of have these moving parts still moving around, that we not, in this recommendation in the motion that's on the floor, that we take the forward commitments out of it, so we're just talking about the recommended list for this year's commitments.

MR. CONINE: Is there a second to that amendment?

MR. BOGANY: Second.

MR. CONINE: There is a second to the amendment. Any discussion?

(No response.)

MR. CONINE: All in favor say aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Okay. The amendment to the motion passes, so now we have a motion on the floor to accept staff's recommended list for the allocations for the 2002 low income tax credit. Any further amendments that --

MS. ANDERSON: May I ask a question?

MR. CONINE: Sure.

MS. ANDERSON: Also around that recommended list, we've raised these issues around the limited partner and general partner and related party thing and the percentage of ownership and on that $1.6 million cap and the Region 6 Austin MSA. So does that motion include, subject to -- it's not just approving the -- it's approving the recommended list subject to these sort of open items that we have moving around.

MR. SALINAS: It's subject to them following the rules. Whatever rules we have right now.

MR. CONINE: Subject to the board determining the final list based on research and information that will be coming in the next 30 days. Is that acceptable to the maker?

MR. SALINAS: Yes.

MR. CONINE: Okay.

MR. SALINAS: That would include the appeals on there.

MR. CONINE: That would include the appeals. I mean, we have some more appeals coming. We know we have some more appeals coming, so that would include appeals. So I guess to make sure that everyone understands, we'd be voting on the list as it stands today, but nobody on that list would have a guaranteed tax credit allocation until we meet again next month and determine the final determination, so that everyone's perfectly clear on that.

You've got a leg up, but you don't have the deal yet.

MR. SALINAS: When is the next meeting?

MR. CONINE: July 29.

MR. GONZALEZ: You need a second on that

motion?

MR. CONINE: We need a second on that motion. Vidal Gonzalez seconds that motion. Any further discussion?

MR. SALINAS: The recommended list is the one that we are approving today, but it has to be reapproved on the 29th.

MR. CONINE: We will finalize it on the 29th.

MR. SALINAS: But the people that are getting the recommendations today are there.

MR. CONINE: No. They're subject to the final adjustment, because certain appeals may create an overage, for instance, in a particular set-aside or region that we'll need to adjust for. That's what we want to make sure we have the flexibility to do.

MR. SALINAS: Okay. Yes. As long as the region --

MR. CONINE: Any other discussion?

MR. SALINAS: The only thing is the regions that we have, the allocated monies for the regions does not --

MR. CONINE: That does not change.

MR. SALINAS: That does not change.

MS. ANDERSON: The allocation appointment doesn't change.

MR. CONINE: And the set-asides don't change. All that stays the same. Seeing no other questions, all in favor of the motion, signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion passes. I want to commend staff and everyone and the board for their efforts and due diligence to this point. We have still got some more work to do, and I would again thank the development community for participating in the process as much as you have this year.

It's been -- from all indications to this board member and others that I've talked to, the process has been a lot better and hopefully has met your satisfaction. We probably have an executive director's report.

We don't have an executive director's report. Any other business to come before the board?

(No response.)

MR. CONINE: Do I have a motion to adjourn?

MS. ANDERSON: So moved.

MR. BOGANY: Second.

MR. CONINE: Seconded. All in favor say aye.

(A chorus of ayes.)

MR. CONINE: We're adjourned.

(Whereupon, the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: June 24, 2002

I do hereby certify that the foregoing pages, numbers 1 through 197, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

07/01/02
(Transcriber) (Date)

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