

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

9:59 a.m.
Friday,
June 9, 2006

Capitol Extension Room E2.036
1100 Congress Avenue
Austin, Texas

BOARD MEMBERS:

ELIZABETH ANDERSON, Chair
SONNY FLORES
VIDAL GONZALEZ
KENT CONINE
SHADRICK BOGANY

A G E N D A

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P R O C E E D I N G S

MS. ANDERSON: Call to order. The June 9 meeting of the Governing Board of the Texas Department of Housing and Community Affairs -- welcome you all. We are happy that you are here with us today. This is a momentous day, because it is the first Board meeting of our new Executive Director, Mike Gerber.

So we will give him an appropriate initiation into this process, particularly given our agenda today. We have a couple of things. I guess the first thing I should do is call the role.

Vice-Chairman Conine.

MR. CONINE: Here.

MS. ANDERSON: Mr. Bogany. Mr. Bogany, I understand, will be joining us in about an hour.

Mr. Gonzalez.

MR. GONZALEZ: Here.

MS. ANDERSON: Mr. Flores.

MR. FLORES: Here.

MS. ANDERSON: Mayor Salinas.

(No response.)

MS. ANDERSON: We do have four members present. We do have a quorum. Before we begin the public comment, we have just a couple of agenda items.

Mr. Gerber.

MR. GERBER: Sure, Madam Chair. Thank you very much. First let me thank you Chair Anderson, Vice-Chair Conine and members of the Board for having the confidence in me to offer me this challenging position. I'm grateful to Governor Perry for the opportunity to serve and for approving the Board's selection.

I'm very honored to lead this Agency as it carries out its critical mission of improving lives through improved communities. There's no higher calling in my view than to give assistance to those in need and to provide safety and affordable housing.

As you all know the cupboard was far from bare when I assumed the position of Executive Director, my predecessor Edwina Carrington left the Department in an excellent position to achieve its goals. She built a tremendous team of dedicated and experienced professionals.

And I'm most proud to lead them. My commitment to you and to the Governor and to the Legislature that I will continue to be a responsible steward of the valuable federal and state resources that we receive to create and preserve affordable housing across the state.

I will work closely to engage members of

Congress, the Legislature and our many stakeholders in a healthy dialogue as we explore new and creative ways to fulfill our mission and remain accountable and most productive.

With your help we will keep our sights on making TDHCA a state housing agency and community affairs Agency that understands the need better, functions more efficiently to meet that need more quickly, and does so in a way that's creative and transparent and meets your expectations.

Thank you again for this unique opportunity to serve the citizens of Texas.

MS. ANDERSON: Thank you, Mr. Gerber.

MR. GERBER: My first item that I have very mixed emotions about -- to just make some remarks about the departure of one of our most experienced and dedicated staffers. Ruth Cedillo is retiring. There are few areas of TDHCA that Ruth Cedillo has not touched in one way or another.

And there are even fewer that have not benefitted from her leadership and direction. I've had the pleasure of knowing Ruth for almost 15 years, beginning when I was a Senate staffer in Washington, D.C. She then had the reputation of being a tireless worker on

behalf of low-income Texans.

And nothing has changed about that. Ruth has dedicated nearly 30 years of her life to serving the people of Texas. Her work, especially in the field of community development, is known and recognized around the nation.

Ruth's name is synonymous with the Texas CDBG program, which she ran as director for 12 years to the benefit of our state's small and rural communities. Her leadership helped bring about real and positive change to many, many people.

And now Ruth chose in this time to retire to pursue other opportunities of interest, to enjoy her two daughters, her grandchildren. As I found out yesterday as the youngest of 15 children, she also has 125 nieces and nephews. Her first task is just learning their names.

But Ruth, we will miss you very much. You leave behind many friends at TDHCA, but most importantly, a legacy of improving lives and communities. You were always a part of the TDHCA family. Take good care, and God bless.

MR. CONINE: Ruth, I'd also like to chime in if I could and express my gratitude being the one that's been around here the longest, I guess. But you have certainly

shown that your heart's in the right place when it comes to affordable housing.

And for that we will miss you deeply, and thank you for your services, as you've performed greatly over the years. I personally appreciate it. Thank you.

MR. GONZALEZ: Ruth, thank you for your service. You were most helpful when Shad and I first came on board. Basically you and Delores told us how to act and what to do. And we appreciate all the help that you gave us. So thank you very much. We wish you the best.

MS. ANDERSON: Ruth, I want to add my thanks to you to the words that have been said here this morning. Everywhere I go in this state and somebody finds out I'm associated with TDHCA, they're always saying, Oh, do you know Ruth Cedillo?

She knows all 20-plus million people in the State of Texas. And she is respected and beloved not only inside the Department and in our housing and community affairs community, but throughout the state for your years and years of working to make Texas a better place.

I remember well. I was a brand-new Board member when Ruth accepted the challenge to be the interim ED for a period of time before Edwina Carrington was hired. Then most recently she has worked tirelessly on

the applications and the whole process for the Department to be involved in the Hurricane Rita GO Zone.

And so, no matter what it was, my entire experience with Ruth is that she steps up when asked. She is a servant-leader.

And I'm very grateful to you for your service to this Department. We'll miss you. Thank you very much.

Mr. Gerber, I think we have one more item before public comment.

MR. GERBER: Yes. I'll ask Mr. Dally to come up and take a victory lap on a very important bond issue that the Department just completed -- or is in the process of completing.

MR. DALLY: Well, at our last Board meeting you know that Byron Johnson turned in his resignation. But he had pretty much crafted the entire single family deal. But we still had to go and do a pricing in a couple weeks. And I came on and just kind of watched over.

I think I dotted on "I" and crossed on "t." But I want to report today that we had a very successful single-family bond closing. I also want to mention that -- I think it was announced at that meeting that there was discussion about that S&P was considering raising us to a AAA rating.

And they did indeed do that for our single-family indenture. And this was \$282,430,000 in bonds. And this is the largest deal, including back to inception of THA, that we've ever done. It includes both new money and some refunding.

And I'm going to go ahead and skip the details on bond yield and no-arbitrage certificates and skip to some of the highlights, in the sense that we have a statewide tranche of new money that will be at 5-5/8 unassisted.

Then the five points of assistance will be for the 6-1/8. And that will be in a statewide basis, which is going to put us very competitively in the market. And we expect this money to flow out very quickly. Then in addition to that we have the Hurricane Rita GO Zone -- \$112 million -- that's reserved for the 22-county region impacted by Hurricane Rita.

That mortgage rate will be 5-7/8, with five points of assistance. I should also mention that Byron Johnson had discussions with Freddie Mac over the course of the months leading up this deal. And they had a very strong interest in having some GO Zone bonds in single-family money.

And then they were also interested in our

entire statewide. And it was because they stepped up that we got such a competitive price. At this point I want to kind of let some of the folks that really did the hard work share in some of the limelight.

First of all Matt Pogar was named acting Bond Finance Director after Byron's deal. I'm going to go ahead and let him come up and introduce his staff and some of the team members.

MR. POGAR: Thank you, Bill. Members of the Board, I'd like to introduce to you our staff. Heather Hoolnett is our associate in bond finance. She's been with us for several years now and doing an excellent job. Maria Hopeman [phonetic] is not here with us today.

But sitting here is our underwriter Dean Shea and Andy Bonum. Vinson & Elkins is our bond counselor, which would be Elizabeth Rippy and Susan Johnson. Also we have our financial advisor, Gary Machak and J.C. Howell [phonetic] are here today.

Our bond disclosure counsel is Mark Malvo [phonetic]. So I thank you for giving the opportunity to finish this. We're going to close on the 28th of this month. Everything is looking great. Thank you a lot. Appreciate it.

MS. ANDERSON: Thank you, Matt.

Thank you, all.

It's a great team, and it's a great bond issue.

Our single-family programs don't generate the heat that some of our tax-credit related programs do. But our single-family programs are quiet heroes, as this money goes to work for first-time homebuyers putting people in their own homes for the first time.

So that's great news. I appreciate the opportunity to give recognition to Matt and the entire team for the outstanding work that they did bringing this home. We welcome public comment in our deliberations and as part of our Board meeting.

As is our custom we take this comment both at the beginning of the meeting, or if you prefer when the agenda item is presented. There are several people this morning that would like to make public comment here at the beginning of the meeting. So that is where we will begin.

We have a lot of people that want to comment on various agenda items today. So I've asked Nidia to keep time for us. And we will have a three-minute time limit.

The first witness is Councilwoman Angela Hunt.

MS. HUNT: Madam Chair, members of the Board, I want to thank you so much for giving me the opportunity to speak with you today. It's exciting to be on this end.

It's gratifying to have three minutes to talk. So I appreciate it very much that you gave me the opportunity to speak first. Thank you.

My name is Angela Hunt. I serve on the Dallas City Council. And I have the very distinct privilege and honor of representing downtown Dallas. I wanted to talk to you today and encourage you to support our City Walk at Ackard Project.

We have some gentlemen from Central Dallas Ministries who will be explaining the ins and outs of the project to you. But I wanted to come and explain to you why this project is so critical and why now is the time to get it done.

I think we at the City Council understand that you are faced with very challenging decisions in making your choices with regards to tax credits. You have many worthy projects to choose from. The City Walk at Ackard project is very critical for this reason.

In downtown Dallas -- if any of you have been to Dallas lately -- I know Madam Chair lives in Dallas -- we have an incredible renaissance going on in our city. You'll see about 20 cranes dotting the sky in downtown and uptown Dallas. It's amazing.

Most of these projects however -- in fact I

would venture to guess all of them -- are very high-income projects. They're about \$600 per square foot. It's remarkable how expensive these projects are. I believe -- and I know that you believe -- that our cities are stronger and healthier if we have a mix of incomes, and a mix of housing types that are available for everyone.

And right now we don't have that in downtown Dallas. And that is our challenge that we face as a city council. We also don't have enough opportunities for the homeless to be housed in our city. And we know that housing first works.

We just saw that recently in the New York Times. Housing first works. And so providing housing to the homeless and giving them a real start to a new life makes all the difference and will truly decrease the number of homeless on our streets.

There are two components to this project that are critical. One is the affordable housing component, which is a large aspect of this project. We don't have enough affordable housing. And this is a great opportunity for us to put that in downtown Dallas.

The folks who are the waiters and waitresses in our city in our downtown, the folks who are dishwashers, who are the janitors, they don't have the opportunity to

live downtown. And this project is in a terrific location.

It's right by a rapid-transit line. It has great access to public transit. And it is in really a very flourishing part of downtown. So I think this would fit in very nicely and again put an affordable housing component where we don't have one.

The other critical component is -- as I mentioned before -- the single-room occupancy room aspect with the homeless. We developed a couple of years ago on the City Council a ten-year plan to end chronic homelessness in our city. And we're ver proud of that.

That plan is to create about 700 single-room occupancy units for our city. We have fewer than 200. This plan would 50 to that. Now, I visited Houston a couple of months ago. One of the things we saw is that they have over 1,000 SROs.

Now, we haven't seen tax credits within four miles of this site location in three years. And we think it's critical to diversify the tax credits and to diversify affordable housing in Dallas. And lastly I would just like to leave you -- if I may -- with the reason that the timing of this is critical.

On May 28 the City Council approved funding for

part of this project. We approved \$750,000 in CDBG funds to be used for this project and also \$1 million out of a bond program for a homeless assistance center that passed last fall of \$23.8 million.

This is actually a very large chunk of what we set aside on our bond program for SROs. It's a significant chunk. We believe in this project. However the funding for this project from the city is contingent on the support of this Board for the tax credits.

The cost of land in Dallas is going to keep going up, especially in downtown. And this is the perfect time for us to undertake this project. We don't believe that if we put it off that we're going to be in a better position to be able to afford this property.

We also believe this is a catalyst project, and that this will be the model. We've never undertaken SROs in this type of model before. And if we can prove that this works, if we can show the community this works, we believe that we will have a much better time of investing in the other 650 SROs that we need.

So I want to thank you so much for the opportunity to speak with you. I ask you on behalf of the City Council, please support this project this year. We need it. It's important for our city and important for

downtown. And I thank you for the opportunity to speak.

Thank you, Madam Chair.

MS. ANDERSON: Thank you.

The next witness is Larry James.

MR. JAMES: Madam Chair and members of the Board of Governors, thank you for the opportunity for me to visit with you briefly. My name is Larry James, and I'm the president and CEO of Central Dallas Ministries. As you are aware, the Central Dallas Community Development Corporation has submitted an application for low-income housing tax credits.

We believe the proposed project is more than worthy of an award this year for the following reasons -- for many reasons, but I'm going to list three. First, this project is a first attempt in many years to bring housing diversity to our now growing, increasingly upscale downtown area.

As you are aware our plan provides for 150 units of affordable housing for the men and women who work in the downtown area, who otherwise would not be able to live in the downtown area. In addition the project will set aside 50 units of housing for formerly homeless persons in response to the recommendations of the city's task force on homelessness.

The project will also include nine units of market-rate housing. And the building includes a 300-seat auditorium that will provide a space for community artistic presentations and other positive experiences for our residents.

Approximately 40 members of our staff will be in the building daily, including 24/7 security, front desk attendant and a concierge staff that will attend to the needs of our tenants. The bulk of our staff will be in the office portions -- a couple of floors that we've devoted to office space.

And those services will be offered in the building. Finally there will be a light retail component on the ground floor. Second, even though we don't have the formal endorsement of a neighborhood residents association, we believe that we do have the substantive equivalent of such for the downtown area because of the widespread community support that we have received for this endeavor.

We received the backing of our city and county government. Two votes before our City Council were 13-1 and 14-1, which is quite an accomplishment in our view. Further we submitted written support in our application from Senator Royce West and State Representative Dan

Branch, in whose districts our property is located.

We are aware of the letter that you received from State Senator John Corona. And while we respect his point of view we would point out that the property in question is not in his district. We've met with various business groups, including the Royal State Council, downtown Dallas First Baptist Academy, First Baptist Church, YMCA, various civic clubs and business owners and leaders.

And we had a very well-attended public meeting at First United Methodist Church which is just up the street from the project. And we are aware that you've been contacted by a number of our supporters from Dallas, who really hope to see this project brought to completion.

Third and finally and briefly, Dallas needs this unique project. Dallas citizens who earn well below median income in our city working downtown need the option of living downtown, as do homeless people need permanent housing. Thank you very much.

MS. ANDERSON: Thank you, sir.

Do we have a letter from Senator West? Do you want to read that?

MR. LYTTLE: This is a letter that's addressed to Mr. Gerber, Executive Director. "Dear Mr. Gerber. On

March 28, 2006 I submitted a letter of support for an application file number 060086 to fund housing for homeless persons and those at risk of becoming homeless at City Walk at Ackard, 511 North Ackard Street, Dallas, Texas 75201.

"This development will prove much needed affordable housing for residents in my district. The Dallas City Council reviewed this development that falls within their jurisdictional boundaries and has chosen to support it.

"I want to restate my support for this development in downtown Dallas. The development's amenities include a fitness center, library, community room, access to case management, storage rooms and a roof deck located on the site.

"The mix of units will increase the diversity of residents in the downtown area by offering units affordable to an expanding market. I know it will prove to be an asset for District 23. If you have any questions regarding this issue or any other matter, please call me or my assigned staff person, Roger Jones.

"Thank you for continuing to support affordable housing in my district. Sincerely, Royce West, Senator of District 23."

MR. GERBER: Thank you. Mr. John Greenan.

MR. GREENAN: Thank you, Madam Chair, members of the Governing Board. My name's John Greenan. I'm Executive Director of Central Dallas Community Development Corporation. I'm pleased to speak about a proposed project at 511 North Ackard, City Walk at Ackard.

Although this project's application's filed on behalf of Central Dallas CDC, I want to emphasize the extent to which this has been a cooperative effort -- all levels of government: federal, state, local, county, as well as the private sector have been involved in developing and determining the turning forward of this.

It's really been an enormous community effort and very much, I think, deserves the support of the Board.

I want to briefly mention two reasons I think this project needs to go forward at this time. The first is the first step in Dallas's ten-year plan to end homelessness.

It's going to send a real signal to other organizations, other groups that may have plans to provide housing for the homeless and determine whether they want to go forward or not. A success will spur others; a failure will discourage them.

And second is -- as Councilwoman Hunt

mentioned -- extraordinary economic renaissance in downtown Dallas. I think this is a project that can be done now. It may not be able to be done in a year; certainly could not be done in five years.

And for that reason I think it's important to be supported at this time. Thank you very much.

MS. ANDERSON: Thank you.

Sarah Andre.

MS. ANDRE: Good morning, and thank you for this opportunity. My name is Sarah Andre. And I've had the pleasure of working on the City Walk at Ackard. I'd like to read a letter from Dallas County Judge Margaret Kelliher. The letter is addressed to the Board.

"Dear Board. Although I am unable to be at the hearing today, I want to convey my enthusiastic support for the proposal by Central Dallas Ministries and Central Dallas Community Development Corporation to redevelop 511 North Ackard into City Walk at Ackard.

"Throughout Dallas County there's a desperate need for high-quality affordable housing. And the project proposed by Central Dallas Ministries would not only provide it, but would also serve to revitalize a building in the center of the City of Dallas.

"The offices of Dallas County are located in

downtown Dallas, where I have worked as the county judge, a district court judge and a practicing attorney. I know very well that a healthy downtown area is important not just to the City of Dallas, but to the health to Dallas County as a whole.

"I believe that City Walk at Ackard will provide an excellent opportunity to increase the population of low and moderate-income workers living downtown and will be an important first step in reducing the homeless population in Dallas County.

"I am pleased to convey my endorsement of Central Dallas Ministries and Larry James, its president and CEO. I have known and worked with Larry and Central Dallas Ministries for many years. And they are trusted partners.

"I know the work of Central Dallas Ministries and am familiar with many of its staff. In fact I am currently on a potential project to provide housing to children who age out of foster care. I am confident that these organizations have the leadership and organizational strengths to make City Walk at Ackard a model of success for Dallas County.

"I urge the Board's support for City Walk at Ackard. Sincerely, Margaret Kelliher, County Judge."

Thank you.

MS. ANDERSON: Thank you.

Granger McDonald.

MR. MCDONALD: Good morning. I'd like to continue on with this same talk about what's happening in Dallas and for all of Region 3. I think if you saw the Wednesday article in the Dallas Morning News, it pointed out that 125,000 new residents now reside in Houston because of Hurricane Rita and Hurricane Katrina.

It went on to say what a wonderful job -- things were happening, the way GO Zone was to create more housing, create opportunities to house these 125,000 people in Houston. The article went on then to say there's 75,000 people in Region 3, Dallas/Fort Worth Metroplex and surrounding cities.

We're not doing anything for those 75,000. It's almost as bad in Dallas/Fort Worth and Region 3 as it is in Houston Region 6. And I'd like to encourage this Board to seriously consider forward commitments for this round for all of Region 3.

MS. ANDERSON: Thank you.

Steven Mack. I have four people ceding time to you. But I trust that you don't really need 15 minutes.

MR. MACK: I won't abuse it.

MS. ANDERSON: Okay. Welcome.

MR. MACK: Good morning, and I appreciate the time this morning. I am Steve Mack, and I am proud and honored to represent the citizens of a little town named Cross Plains located between Brownwood and Abilene. I am one of the owners and the CEO of Texas Heritage Bank, which was chartered 75 years ago in Cross Plains.

I'm here in support of the Cross Plains Senior Village, application number 060218 for the 2006 HOME preservation and rental development program. The Cross Plains HOME application is still under review by this body, as I understand it.

The City of Cross Plains is home to approximately 1,100 people located in rural Callahan County. And it is the center of economic activity for parts of Brown, Eastland and Coleman Counties.

According to the 2000 census median figures, the typical Cross Plains area resident is 42 years old, high-school educated, employed in a blue collar profession, and has a household income of approximately \$22,000 a year.

Many residents commute to Brownwood and Abilene for work, but choose to live and raise their families in a rural setting, so that they can also be involved in the

honorable endeavors of farming and ranching. Cross Plains is also home to a sizable senior citizen population, with 24 percent of the population age 65 and older.

And this compares to 12 percent for the U.S. general population. As many of you know and others of you will remember, a few short months ago in the afternoon hours of December 27, 2005, a wildfire that was fueled by a hot, dry West Texas wind swept through our community.

And you will remember that the national news media descended on our little town to report on the devastation that was left behind. Sadly two elderly ladies lost their lives in that fire, one of which was a lovely lady who was a second-grade teacher and taught all four of my children.

That fire also destroyed 116 residential dwellings and the First United Methodist Church. Many of the dwellings that were destroyed were rental units that the landlord owners do not intend to reconstruct. Other existing rental units were sold to displaced homeowners who needed immediate housing.

There was already a serious shortage of adequate housing for senior citizens in our town. But the December 27 fire just exacerbated the shortage. Several years ago I, along with some other local volunteers, was

involved in the founding of the Cross Plains Housing Initiative, a nonprofit neighborhood support organization.

I also served a five-year term as the first president of the Cross Plains Economic Development Corporation. And as the CEO of a bank and a citizen of this community, I have seen firsthand that these are independent-minded, hard-working, tax-paying folks.

Before the smoke cleared from the December 27 fires, Cross Plains citizens rallied around their neighbors, families and friends and began the monumental task of cleaning up and rebuilding our town. They are not the type of people to begin calling for government assistance without first taking responsibility into their own hands.

I'm proud to call these folks my friends and neighbors. The proposed project will provide 28 new housing units for low-income elderly citizens whose incomes are between 30 percent and 50 percent of the area median income.

The City of Cross Plains is fully supportive of this proposed project. The city council has authorized the extension of water and sewer to the project as an in-kind contribution. And my understanding that's valued at about \$100,000.

The Cross Plains EDC has also demonstrated its support for the project by designating ten acres of EDC land. And the project also enjoys the support of our State Representative Harvey Hilderbran, and our State Senator Troy Frasier.

The Cross Plains Senior Village project received the top score of the pending tax credit applications in Region 2. And it is my understanding that the remaining funds available under the HOME program are in great demand by other worthy and important projects.

However, I ask you to consider giving special attention to a community, that in a single afternoon of horror lost a vast amount of its rental housing stock. As I previously mentioned, the Cross Plains community has a large population of low-income, elderly folks.

In order for our elderly population to afford this housing and for the project to be feasible, it is necessary for the project to receive the available HOME funds and for you to redirect any available HOME funds to support this project.

On behalf of the good folks of Cross Plains I thank you for your time and for your thoughtful deliberation for the Cross Plains Senior Village application for HOME funding. Thank you.

MS. ANDERSON: Thank you.

Mr. Steven Carriker.

MR. CARRIKER: Thank you, Madam Chair and the Board. I'll be very brief and give you back change on your three minutes. I am Steve Carriker, and I am the Executive Director of the Texas Association of Community Development Corporations.

On behalf of myself, our board of directors and our nonprofit community-based membership, we simply want to say to the Board congratulations on your selection of a very capable new executive director. And to Mr. Gerber, thank you for your willingness to serve.

We appreciate the work you've done in the past in regard to housing and affordable housing in the State of Texas. And we certainly look forward to working with you in the future. Our board of directors met last week.

We were proud to report that interest in affordable housing is obviously very intense in the State of Texas.

Our membership is at an all-time high in the history of our organization. Nonprofit community development corporations stand ready to work with this Board and Agency in efficiently and effectively bringing affordable, sustainable and high-quality housing to the communities around in the state in such great need.

We appreciate all the work the Board does. And Madam Chair, thank you for the opportunity to once again work with this Board and this Agency.

MS. ANDERSON: Thank you, sir.

Mr. Gary Driggers.

MR. DRIGGERS: Madam Chair, members of the Board. I rise again to seek your support for application 060124, an incremental tax credit request of \$41,000 for costs associated with rising commodity prices caused by Hurricane Katrina.

This application is for a 32-unit development located in Goliad, Texas, a rural community that even in the best of times would be difficult because of the associated economies of scale that we faced for a development of that size.

Despite the challenges that we faced we are on schedule to complete our project in August of this year. We are 70 percent complete as of today. We have maintained or exceeded all of our amenity packages and our designs that we committed to in our '04 package.

We are looking forward to serving the community starting in September. Despite this request we are still a very efficient use of tax credits. Over the past three years we would rank now lower than 15th of all

applications in the state ranked by tax credits per unit.

All the units that ranked ahead of us are larger -- some significantly larger. All of the projects that are in the range of our size received tax credits in the area of \$7,500. Our tax credit award was for \$6,096.

So in closing, I know you're very busy.

We appreciate your consideration, and thank you for your support.

MS. ANDERSON: Thank you.

Ian Randolph.

MR. RANDOLPH: Good morning, Madam Chair, Board members.

Congratulations, Michael.

MR. RANDOLPH: Very briefly, I'm here to represent Senator Lucio. He asked that I deliver some letters on behalf of the appeals for Sunset Haven in Brownsville and Mesquite Terrace in Pharr. As you may or may not know, the senators have a longstanding concern about how we score community participation on the QAP, et cetera. I thank you.

MS. ANDERSON: Thank you.

Andrew Blifford.

MR. BLIFFORD: Madam Chair, members of the Board. I'm Andrew Blifford. I'm here on behalf of

Chairman Jim Pitts. He has asked me to emphasize his support of the appeal for the Country Lane Seniors Project.

I believe there is a letter to be read into the record.

MS. ANDERSON: Do we have a letter for Representative Pitts? Do you want to maybe ask this gentleman to read the letter into the record for us?

MR. BLIFFORD: "I would like to offer my full support to the appeal of the final scoring for the Country Lane Seniors Waxahachie Community project. This project provides senior citizens in this area the opportunity to live independently and ultimately provide facilities for more specialized care.

"This project has the full support of the Waxahachie City Council and will meet a clearly identified need in our community. I realize that TDHCA staff did not receive correspondence certifying the Bullard Heights Neighborhood Association as on record until after the Department's March 1 deadline.

"However, I believe the neighborhood association has demonstration that an attempt was made to transmit such a letter via regular mail dated February 4, 2006, which was ultimately received by the Department

staff.

"I am also aware that the neighborhood association stated its support for this project in a letter to the Department dated March 29, 2006. I would ask that the Board consider granting this appeal, giving the overwhelming support in the community for the project and the positive impact it will have in our area.

"With the addition of the Bullard Heights Neighborhood Association's support, this project should be one of the highest scoring projects in this reason. I would hope that a lost piece of mail would not disrupt such a worthwhile project from going forward.

"Thank you for your time and attention to this matter. Sincerely, Chairman Jim Pitts."

MS. ANDERSON: Thank you.

Mr. Ruben Longoria, would you like to speak now or when the agenda item comes up? Is Mr. Longoria with Representative Flores's office here?

VOICE: He's outside.

MS. ANDERSON: I'm told that the Legislature staff people want to speak at this point and not later. So we just want to make sure about that. And then we have James Cade.

Would you find out if he'd like to speak now or

at the agenda item?

It's your choice to speak now or when the item is presented.

MR. LONGORIA: I'm going to wait for the item to be presented.

MS. ANDERSON: Okay. Fair enough. Thank you, Mr. Longoria.

Yes, sir. You have the option of speaking either now or when the agenda item is presented.

MR. CADE: I can speak now. My names is James Cade, and I work for Representative Deshotel. I'm speaking on behalf of him today. We're in support of all the projects in Orange County.

MS. ANDERSON: Questions? Anything else?

(No response.)

MS. ANDERSON: Thank you very much. Okay. That concludes the public comment for the opening public comment period. We will proceed with our agenda. The first item on the posted agenda is a presentation by the U.S. Department of Agriculture rural development.

MR. GERBER: Madam Chair, that's been postponed until a later date.

MS. ANDERSON: The next item of business is the consent agenda.

Mr. Gerber.

MR. GERBER: Madam Chair, there are several items on the consent agenda for the Board's consideration. If any Board member wants to review them. They are minutes -- one item from the Bond Finance Division which approves a resolution authorizing positions that are authorized really to bond transactions.

There are two Housing Program items: one making changes to the loan terms for FDI University Place, and a second item, which is a recommendation to the Board for the selection of an independent auditor.

MR. FLORES: Madam Chair, I just have a question on this one. It has to do with the auditor. Do we select the auditor, or does the State Auditor's Office select them?

MR. GERBER: We select the auditor.

MR. FLORES: We select them. They approve. Or how does that work? I'm confused on the relationship between the two.

MR. GERBER: Mr. Dally, would you like to comment on the auditor selection?

MR. DALLY: I just want to acknowledge the fine service I think we've received from Deloitte & Touche over the last five years. Also want to acknowledge the review

team. We had members of the Financial Administrative Group as well as our internal auditor and the Bond Finance Group, who were part of the team, too, make the evaluations.

MR. FLORES: That's very nice, but that wasn't my question. I'm trying to find out the relationship between the State Auditor's Office and our Agency. Who selects the auditor? One selects, and the other approves it appears. I didn't quite understand from the paperwork.

MR. DALLY: The Department makes a selection of the auditor. What the State Auditor's role is is they allow us to seek an outside third party. It is at their option whether they allow an Agency to seek a third-party auditor.

MR. FLORES: Okay. So we just got permission from them.

MR. DALLY: Yes. We got permission from them, and then we made a selection.

MR. FLORES: You make it easy for me. Thank you very much.

I have no problem with the consent agenda. So if you want a motion, I'll make a motion.

MS. ANDERSON: Was that a motion?

MR. FLORES: I'll make a motion to approve.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Agenda item number two is presentation, discussion and possible approval of Portfolio Management & Compliance items.

Mr. Gerber.

MR. GERBER: Madam Chair, there are two HOME program amendments. Lucy Trevino will present for the staff.

MS. ANDERSON: And I do have public comment on this item after staff's presentation.

MS. TREVINO: Good morning. Lucy Trevino, Manager in PMC. The HOME rules state that amendments that significantly decrease the benefits to the Department will be presented to the Board for approval. Two HOME amendment requests are presented today for your consideration.

The first request is from Brewster County. The county is requesting an eleven-month extension to their current HOME contract. An extension is necessary due to delays encountered from the Historical Commission in completing the environmental process.

Currently after a lot of meetings and research, a memorandum of agreement has been negotiation between the county, the Historical Commission and TDHCA. Once the agreement is approved by all parties, the county expects a quick turnaround in the completion of the homes.

The eleven-month extension would allow the county sufficient time to reach resolution with the Historical Commission, order the materials required to meet historical guidelines and complete the homes.

MS. ANDERSON: Do you want to present both of them, and then we'll take the public comment on them.

MS. TREVINO: Okay. The next request is from the City of Nash. The City of Nash is requesting a modification to their income-targeting requirements and a reduction of their match requirement. The modification to their income requirement would allow the city to assist a disabled household that would otherwise not qualify for assistance.

Since the city has no other eligible applicants

on the waiting list, the approval of this amendment would not deny assistance to other eligible families. The reduction in the value of their match is also requested. The match that was initially pledged was to be provided from a third-party contractor in the form of donated demolition services.

The contractor's no longer providing those services. So the city proposes to use city crews and equipment to demolish the houses. Because the city's actual cost is lower, they're not able to meet the original amount of match that was pledged.

The city is not able to identify alternative sources of match.

MS. ANDERSON: County Judge Beard.

JUDGE BEARD: Madam Chair, Board members, thank you for this opportunity. While the magnitude of our project is small compared to a project from Dallas, it's of extreme importance to our rural residence. What has happened in our project is that our county has been essentially caught between two agencies.

The Historical Commission is very concerned about some of the homes of the applications in our projects. Our county has worked long and diligently to resolve those issues. And I can report to you today that

we are at resolution.

If you will give us the green light today, if you will give us an extension, we are ready to move forward and complete this project in short order. This is all about improving the lives of some rural elderly poor.

Working together I'm confident that we can do this, if you will grant us an extension.

Thank you. At this time I would defer to the representative from Grant Works, who can address our issues in more detail.

MS. ANDERSON: Thank you, ma'am.

Any questions for the Judge?

(No response.)

MS. ANDERSON: You all can go in any order you want. I have witness affirmation forms from Tres Davis, Greg Hudson and Jake Brisbin.

MR. DAVIS: Good morning. I'm Tres Davis with Grant Works. And I'm just here to ask that you all consider approval of the extension for Brewster County. Just to give you a real quick -- and I promise I'll be brief -- rundown on how we got to where we are today.

The county was awarded back in 2004 their HOME grant. We took applications in June 2004, went through the environmental process.

(Pause.)

MS. ANDERSON: Mr. Brisban.

MR. BRISBAN: Madam Chair, members of the Governing Board. I'm Jake Brisban, the executive director of the Rio Grande Council of Governments. And I, too, know the meaning of being brief. I would like to add one thing.

Over the course of the last two years I've counseled with and visited with Judge Beard over the difficulties of maneuvering her and her commissioner's court way through this process between the two state agencies.

I know this woman. I've known her for 25 years. I know what her commitment is to the people in her community. It's greatly distressed me to see her go through this. I can tell you that she's handled it in a way that I have great admiration for.

She's never once lost her temper. She's never blamed anyone else for the problem. She's simply addressed the issues that were at hand. She brought members of her commissioner's court here. Commissioner Payana's [phonetic] with her.

I came to help with any way I could. And I hope that in your wisdom if you can find a way to grant

her this extension I think it will truly help the people that this whole program is about. Thank you.

MS. ANDERSON: Elizabeth Lea.

MS. LEA: Thank you. I'm Elizabeth Lea from the city of Nash. I'm city administrator there. We're asking for help for one of our residents. This issue's over income. This lady actually is the only one of our group that is making a payment on her home.

From the pictures you can see I don't know how anyone would expect that. But she is making a payment on that house. So she is over income. She has had no gas. So she had no hot water in this house for over two years because of the bad pipes in there.

And the gas company of course turned it off. She can't afford to have it fixed. The city just feels like that we almost have to do something to help her. Of course after wonderful person that we thought was going to help do all this demolition we were using that as a match.

When they decided they couldn't do that, our city employees are not paid near what those people were. So our match would have to drop on this. So we have done nine other houses. This is our second go-around. We really have had a lot of success. And we want to be able to finish these nine.

MR. CONINE: How did the first nine houses work out?

MS. LEA: Wonderful. We have lots of people that come by every day talking about how great they look. I think we submitted some pictures -- I'm not sure if the staff has those -- of the first nine that we've completed.

MR. CONINE: Were they all less than 50 percent of median income?

MS. LEA: Yes. They were all less than 50.

MR. CONINE: Thank you.

MS. ANDERSON: Any other questions?

(No response.)

MS. ANDERSON: Thank you, Ms. Lea. That's the end of public comment on this agenda item.

MR. CONINE: Move for approval of item 2, both items.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. CONINE: Counsel's going crazy over this for some reason.

MR. HAMBY: Sorry. Because the staff's recommendation is that we cannot recommend approval, I'm assuming that what you mean is that you are affirmatively granting the amendments.

MR. CONINE: Yes. We did what you couldn't do.

MS. ANDERSON: Okay. We're ready for agenda item number 3. I will go ahead and tell you all, we are going to take a lunch break. We're probably going to break around noon at a logical time, which may be like we're right in the middle of appeals or something.

But we are going to take a lunch break and have an executive session. Agenda item number 3, which is the presentation, discussion and possible approval of Community Affairs Division items.

Good morning, Eddie.

MR. FARISS: Good morning.

MS. ANDERSON: Mr. Gerber.

MR. GERBER: Madam Chair, Mr. Fariss, our director of Community Affairs, will lead this presentation.

MR. FARISS: Good morning, Madam Chair, Board members, Mr. Gerber. Last month we brought to you a request to obligate \$45 million in LIHEAP from this past round of funding. In doing so we provided you with extensive information about how the LIHEAP Program operates.

Today your packet contains the draft 2007 LIHEAP state application. The Department must submit on an annual basis to U.S. Department of Health and Human Services this application for Low Income Home Energy Assistance Program funding.

We've this year used the model plan provided by HHS. If this draft plan is approved today, we will take the plan to public hearing July 18 and bring back a final plan to you for approval July 28. As we discussed last month the LIHEAP Program contains four components as described here in the Board write-up.

We also brought to you last month some program design changes which you approved and which this application contains. Your Board write-up also includes the funding formula -- how we determine how we distribute these funds.

It also contains a list of the subrecipients receiving these funds. In the essence of brevity I will

stop and ask if you have any questions.

MS. ANDERSON: Questions for Mr. Fariss?

(No response.)

MS. ANDERSON: Thank you.

MR. FARISS: Yes, ma'am.

MS. ANDERSON: What is the Board's pleasure?

MR. CONINE: Move for approval.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Agenda item number 4 is presentation, discussion and possible approval of Housing Programmatic items.

Mr. Gerber.

MR. GERBER: Madam Chair, the Texas Department of Housing and Community Affairs Strategic Plan for fiscal years 2007 to 2011 outlines its approach to addressing the affordable housing and community service needs of lower

income Texans.

The Plan was developed within the context of the State's overall goals and budget to generate specific outcomes that tie directly to the Department's budget structure. TDHCA will use the Plan to help meet the needs of the citizens of Texas through logical, transparent, accountable and effective actions.

This document is due to the Governor, Lt. Governor, Speaker and others by July 7. Our intent was to put this Plan before the Board. Staff is prepared to provide a brief presentation if that would be helpful -- whatever would be the Board's pleasure.

MS. ANDERSON: So it's going to come back to us as an agenda item in the next meeting.

MR. GERBER: Yes, ma'am. At the next Board meeting for a more full discussion. Our intent was to get it before you. But Mr. Shotman's here if you'd like a quick overview.

MS. ANDERSON: Would that be good for the Board -- a quick overview of the Plan?

Mr. Shotman.

MR. SHOTMAN: Good morning, Madam Chair and Board members. I'm Steve Shotman, the team leader of Research and Planning for the Division of Policy and

Public Affairs. Mr. Gerber pretty much outlined the highlights of my speaking points.

I'll just hit them again real briefly. The Plan is prepared biennially in advance of the legislative session. And it's based on a structure provided by the LBB.

In essence I think it provides sort of a real good overview and summary for legislators and the Governor's Office to look at while they're starting to develop rules and the budget structure for our Agency, in addition to the legislative appropriations request.

As Mr. Gerber mentioned, it will be submitted on the 7th to the Governor's Office, Lt. Governor, Speaker of the House, the Comptroller of Public Accounts, the State Auditor, Sunset Advisory Committee, House Appropriations Committee and Senate Finance Committee.

So everybody gets to see it. Basically the Plan itself incorporates a lot of the parts of our State Low Income Housing Plan and our Consolidated Plan. It also focuses more on sort of administrative aspects of the Department, such as our budget structure and our workforce requirements and that kind of thing.

The main thing I want to note is that while it's called a planning document, it does not establish our

future performance measure targets. That's all done separately through the legislative appropriation request.

And it does also not set any sort of rules or set-asides for program activities.

That's all done separately through the State Low Income Housing Plan and then all the separate program rulemaking activities. With that, unless you want me to get into more specific items, I can just sort of leave it there until next time around.

MS. ANDERSON: We'll just leave it. We'll see you next meeting.

MR. FARISS: Sounds good.

MS. ANDERSON: With the Board's indulgence, I have a letter from State Senator Troy Frasier about Cross Plains, which we heard comment about. It's not on our agenda today. Mr. Frasier's letter reads, "Dear Mr. Gerber. Recently learning that TDHCA is oversubscribed for HOME funds, I must again voice my support for the Cross Plains Senior Village development project.

"As I mentioned in my first letter the City of Cross Plains was devastated by wildfire that burned 7,665 acres, swept through a portion of the city on December 27, 2005, destroyed life and property. This tragic fire event, which destroyed 116 homes and damaged 36, made

matters even worse for a community already in need of affordable senior housing.

"The determined community of Cross Plains will continue to rebuild from the devastation of last year, but will need our help in this ongoing healing process. I believe these are extenuating circumstances, and strongly encourage the TDHCA Governing Board to give this important senior housing complex every possible consideration. Sincerely, Troy Frasier, State Senator."

And from State Representative Harvey Hilderbran. "Mr. Gerber. The City of Cross Plains consists of 67 percent elderly and low-income residents and has been in need of housing development for some time.

The Cross Plains Senior Village project is a good start at providing adequate housing for the residents of Cross Plains.

"After the December 27, 2005, wildfires that destroyed 116 homes, the City of Cross Plains is in serious need of housing development. The Village project would benefit Cross Plains's elderly residents who lost their homes in the wildfire or that can no longer afford to live on their own.

"I must impress upon you not just the seriousness of the situation, but also that you play an

important part in its solution. With enough funding for this project the City of Cross Plains will be in a better position to provide suitable housing for its residents.

"I would like to respectfully request that the Texas Department of Housing and Community Affairs sufficiently fund the Cross Plains Senior Village project.

Sincerely, Harvey Hilderbran, State Representative."

Okay. So now we're ready for agenda item number 5, which is presentation, discussion and possible approval of Multifamily Division items. These are housing tax credit appeals in agenda item 5(a). As you would expect, Board members, I have lots of public comment on these. So we will just take them in order.

MR. CONINE: Can we take a five-minute break?

MS. ANDERSON: Okay. Five-minute break.

(Whereupon, a short recess was taken.)

MS. ANDERSON: Okay. We are on agenda item 5(a), which is tax credit appeals. We're going to take these appeals in the order that they are presented on the Board agenda. We're going to take them one by one, have a staff presentation on the appeal, then the public comment for that appeal.

Then we will go to the next appeal and get the public comment on that appeal. Then we will vote on them

at the end.

Is that right?

MS. JOYCE: Vote per appeal.

MS. ANDERSON: So, we'll have the staff presentation; we'll have the public comment; we'll have discussion among the Board members and vote on that appeal, and then we'll go to the next one. With the Board's indulgence though, we have one witness who is not in robust health.

And he has asked to go ahead and make his comments. We're going to take one out of order, and that is 060144, which is Centerpoint Home Ownership -- if we can take that one out of order?

MS. JOYCE: That one isn't particularly difficult. We could try to, but it's going to be very hard for everybody to understand probably the most complicated ones.

MS. ANDERSON: Okay. Then Mr. Rutledge, with your indulgence I'm going to let our staff guide us. Thank you. Won't be too long.

So then the first one is 060042, Country Lane Seniors.

Mr. Gerber.

MR. GERBER: Well, Madam Chair, just to start

on item 5, which is the presentation, discussion and possible approval of Multifamily Division items, specifically housing tax credit items and other appeals and other items that have been timely filed, for the audience's information what the Board is going to be looking at are the 9 percent housing tax credit or HTC appeals that were posted with the Board book seven days prior to this meeting.

All appeals were submitted pursuant to the 2005 QAP. Thus far in the 9 percent cycle as Executive Director I received 18 appeals of determinations made by staff regarding 9 percent housing tax credit applications. Of the 18 appeals received I granted three.

The remaining 15 appeals were denied. And the applicants have subsequently timely filed their appeals for the Board's consideration. Staff has provided you with a separate binder of appeals.

I've asked Jen Joyce in the Multifamily Finance Production Division to lead the presentation of these appeals for the 2006 tax credit round, along with Kevin Hamby who's providing support on legal questions related to our Tax Credit Program.

Ms. Joyce and Mr. Hamby.

MS. JOYCE: Jen Joyce, Interim Manager of the

Multifamily Finance Production Division. It's that time of year again. I'm just going to present on the appeals that you have before you as the first place in the appeals binder.

As Mr. Gerber said, you have two binders. You can put the first one away, and now turn to the appeals binder. The order of the appeals book that we've done for you is this first title page, which shows the grouping by order of each of the appeals that you're going to be hearing today.

Two of those appeals have been withdrawn and do wish to go to the next meeting in late June. Therefore I'm changing the order of the Centerpoint Home Ownership appeal to go as the last one in the section called resident council appeals.

And that will make more sense as to why later. If you look at your binder, basically you have in front of you the title page. Then you have a tab. Behind that you'll have an action item which gives you reading material to kind of catch you up on what has happened that transpired in the appeal.

But note that I'll be going over the major points of all of these. So you don't need to necessarily read along. I'll just provide that information in

summary. Behind that I've included the QCP section, or actually the QAP section that's applicable to each appeal.

And you'll see the highlighted portion of that section. And that's the portion that they actually violated in the appeal -- just to kind of help speed things along. Then it goes in order of Board appeal, executive director appeal, executive director response, and then all of the backup documentation.

In general I won't be asking you to flip around. You probably won't need to. But this information is here for you to review if we need to. I'm going to go ahead and get started. And if you could just indulge me for a couple of minutes to explain some things that I think will save some time in the long run as we go along.

The first group of appeals are regarding quantifiable community participation or QCP. Based on the 2006 Qualifying Allocation Plan or the QAP, QCP scores range from a maximum of 24 points for strongest position of support to zero for the most opposition.

If the letter is ineligible, neutral, or no letter was submitted, then an application is awarded 12 points. This is no different from how it was last year. We received 68 QCP letters this year. Of those 24 were determined to be ineligible.

Forty-three were awarded points for the strongest support. So that's 24 points. And one was awarded zero points for the strongest opposition. This is out of 127 active 9 percent applications -- just to give you an idea of the perspective of all of this.

Here's the part that I think is hopefully going to save some time. The QCP points are legislated. It is a legislative requirement pursuant Section 2306.6710(b) of Texas Government Code. And it requires QCP to be the second highest-scoring criterion for 9 percent tax credit applications.

Specifically this section says -- it's not very long -- "quantifiable community participation with respect to the development will be evaluated on the basis of written statements from any neighborhood organizations on record with the state or county, in which the development is to be located and whose boundaries contain the proposed development site."

Now, unfortunately statute does not provide a definition of neighborhood organization. And as noted even in the 2004 AG opinion relating to the QAP, neither the state nor counties maintain a record which identified neighborhood organizations whose boundaries include the proposed development site.

Therefore staff -- since this legislation has been a requirement -- we have provided information and guidelines in the QAP that meet the minimum requirements to meet the intent of statute. Today you're going to actually hear a lot of appellants who weren't awarded points because the QCP letter did not meet the QAP requirements.

But they assert that because those requirements are not required in 2306 the letter should be eligible. It's a consistent theme in almost all of the appeals. I just want to be clear that, without this language in the QAP, any letter from any group of people could possibly qualify for these points.

Even if they were formed by the applicant, paid money for their support from the applicant, or if their boundaries did not include the development site until they were expanded, solely to submit a letter eligible for the application.

Without the QAP language, it would seem that all of the 127 9 percent tax credit applications submitted this year could possibly receive these points. The QAP represents a reasonable interpretation of statute. And it underwent the process created by the Administrative Procedures Act to create the rules.

So that said, you're about to hear the appeals of applicants, where the letters did not meet the rules of the QAP or statute and were therefore disqualified. In all of the following QCP appeals, the applicants are appealing to have their score increased from 12 to 24.

So let's go ahead and turn to 060042, Waxahachie Community. Do you want me to give you a brief breakdown of what the development of application proposes, ten seconds or less for each one of these ? Okay. This application is in the City of Waxahachie, Region 3. It's urban/exurban.

New construction, 103 units and proposes to serve the elderly. If you'll turn to your QAP section, the part of the cutout of the QAP that's titled Boundaries and Deadlines. It's page 4. Just two pages behind. This is double-sided. It looks like this. It's behind Every Action Item.

You can see the two sections of the QAP where the neighborhood organization's letter did not meet these sections, which then ultimately disqualified them. For this particular application, it was a bit of an anomaly in that we allow in the QAP the ability of the neighborhood organizations to become on record with the state by submitting evidence to us by March 1, 2006.

That evidence is outlined in the QAP, what all needs to be submitted. We did not receive this request from this particular neighborhood organization by that deadline. Instead we received the QCP package from them, which is due April 1, 2006.

In that QCP package was the evidence that was required by March 1. When we contacted the neighborhood organization, they were very adamant that they definitely submitted that package. They sent it by regular mail. It was sent on February 24 and should have been received by the Department by March 1.

We never received it. And we have worked very, very hard to try and track any correspondence down, and asked them to try and alternately meet their requirements of the QAP in other ways. But unfortunately we haven't been able to do that.

The appellant asserts that, because the deadline, the date is not required in statute for this particular item, it should basically be granted by the Board for that reason, even though it violates the QAP as we kind of talked about a little bit ago.

I'll let them go ahead and come up and discuss the merits of their appeal.

Do you have a question on this?

MR. CONINE: If you could articulate one more time what was due on March 1 from the neighborhood association, what was due April 1.

MS. JOYCE: Sure. If you turn to that section of the QAP there are two requirements that this neighborhood organization's letter did not meet. The first is they have to be on record with the state or county.

That's a requirement. That's within statute. The QAP says that the Texas Department of Housing will allow them to become on record with us, therefore with the state, along as they submit required evidence to us by March 1, 2006.

Some of that evidence is actually what's also asked for in the QCP letter. They did not get that back to us by March 1. When they submitted their actual QCP letter, included in that letter was the evidence that we required, should they have become on record by March 1, 2006.

Ultimately because we did not receive that letter by March 1, we are unable to determine when those boundaries were formed. There was no evidence or proof of the bylaws and when they were created. We had absolutely no way -- and tried very hard to try and find a date

sensitive to March 1, 2006.

They aren't on record anywhere with the state or county.

MR. CONINE: Okay. Thank you.

MS. ANDERSON: Mr. Kenneth Mitchell.

MR. MITCHELL: Good morning, Board. Thank you.

This is somewhat of a hard appeal for me to present, because we agreed with every word you said. And that's kind of hard when you agree with the staff. I'll do the best I can.

Ms. Joyce is right. She spent a lot of time working with the neighborhood group, trying to get this situation worked out. I'm very appreciative of that. You have your books. We have the pages numbered. I'd like to go to page 11 if we could.

While you're turning, this project is a senior citizens project in Waxahachie, Texas. It's supported by the Bullard Heights Neighborhood Association. They have been in existence over five years. The president is Ms. Sandra Wilkinson.

If you're on page 11, this is the letter that was sent by Ms. Wilkinson. And this is the letter that was supposedly lost in the mail. Unfortunately it's a very, very important letter not to get here -- I mean of

all the letters, that's the letter.

This year is the first year where I basically hand them the package, say, Good luck. You're on your own; I can't help you. I can't write your letter. I can't transmit your letter. I can't really hardly talk to you about your letter.

For rules to be given to a neighborhood association, they must be crystal clear. These neighborhood association people are below the beginner stage. They're not like most of the people in here, not like you.

They don't have a clue really what the program is. So anyway, that's the letter that got lost in the mail. If you'll flip back over, on page 8 we found out about this -- I was sick about it obviously -- around the end of April, first of May.

I called Ms. Wilkinson. I said, Do you know what happened to the letter. I mean it's very important.

And she said, I followed the instructions to the best of my ability. What threw her off is on page 8. If you'll notice at the top, on the address it says for regular mail delivery.

She takes that literally. Now if it had been me, I would just ignore that. Never send a letter this

important by regular mail. She did. She sent it by regular mail. So, I guess if you could take time back and make another decision, we'd love to do this.

But we can't take time back. That was a bad mistake. But what can you do? She tried to follow this template letter. The other thing is, staff trying to work with her and work this out -- on page 9, you'll see in the letter they said, "We need possible proof of delivery."

She said, I can't give them that. She said, There's nowhere in these instructions that says I need proof of delivery. It's not here. We just seem to be on the wrong track here with regular mail and no delivery. If this letter had gotten there we would be the second highest-scoring application in Region 3.

Now we're pretty much down at the bottom. So anyway, that's the story that I have. I would like to say one more thing.

MS. ANDERSON: I'll ask you to finish up, Mr. Mitchell. Your buzzer went off.

MR. MITCHELL: The city voted to build a new senior citizens center on land right by our project, which would be great. And the seniors are all excited about living by our project and going to the new seniors center. In our budget we have about \$500,000 for offsite water

and sewer.

And the city is anxious to maybe take that and pool it with their money and extend water and sewer to this property. And then the neighborhood group, they want a great, quality project in their neighborhood. So you've got all the seniors in Waxahachie and the city wants it, and the neighborhood group.

And what we're asking for is that you would accept the on record letter 29 days late -- that you would accept it due to reasonable cause, good cause and fairness. In the event that we're not successful we're going on with our score and compete the best we can. I appreciate your consideration.

MS. ANDERSON: Thank you, Mr. Mitchell.

MR. CONINE: Madam Chair, I have one question.

Who typed this letter?

MR. MITCHELL: They did.

MR. CONINE: Who's they?

MR. MITCHELL: Sandy Wilkinson's husband is Ron Wilkinson. And Ron Wilkinson typed the letter.

MR. CONINE: Do you know the date that he typed the letter?

MR. MITCHELL: He says the 24th. That's

another thing that's difficult about this appeal. I'm appealing for my application, but I can't hardly appeal for the neighborhood group, because I was just totally out of it.

What the letter says is the 24th. I know her husband word-processed it.

MS. ANDERSON: Thank you.

Any other questions for Mr. Mitchell?

Questions for staff?

MR. GONZALEZ: Madam Chair, question for the Chair. Could we make sure we keep time and stay within the time? Because if not, this thing is going to go on and on.

MS. ANDERSON: It's pretty important to these people.

Ms. Joyce, I have a question for you. If I understand correctly, we didn't get the letter by March 1. We didn't get it on March 2. We didn't get it on March 22. We didn't get it on April 22. The letter has never appeared?

MS. JOYCE: Actually it did appear on March 30 -- so 29 days, as he just said, after the deadline.

MS. ANDERSON: But in the packet.

MS. JOYCE: In the QCP packet. Had that same

information that we're referring to been in the packet on March 1 then we would at least have been able to determine that the boundaries of the organization included the development site as of the date of submission.

MS. ANDERSON: It sounds to me like they didn't understand that they needed to make two submissions. So that's different than, the letter's lost in the mail. If the letter was lost in the mail, you would -- generally, unless you're in Santa Fe, New Mexico, the post office eventually gets mailed to you.

In Santa Fe they have a little different problem with their postmaster.

MR. FLORES: Madam Chair, may I ask a question?

MS. ANDERSON: Yes.

MR. FLORES: Joyce, this rule about submitting that letter 30 days prior to, did we set that rule within the Agency?

MS. JOYCE: There's the statute which says that the comment from the neighborhood organization needs to be a neighborhood organization whose boundaries encompass the development site. So that portion is required by statute.

And to become on record with the state or county is required by statute.

The date sensitivity of becoming on record with

the state and the boundaries is a QAP-imposed date. One could argue that statute -- by saying that you're commenting on an application that was submitted on March 1, 2006 -- that your boundaries then need to include the development site by March 1, 2006. They can't annex later.

That was the big argument last year. There's no evidence or proof that these bylaws and boundaries were created prior to March 1, 2006, unfortunately.

MR. FLORES: It sounds like we make the 30-day rule. It's not in the statute.

MS. JOYCE: The March 1, 2006, deadline for the 9 percent cycle -- no, it is not. It's in the QAP.

MS. ANDERSON: How many years has it been in the QAP -- March 1?

MS. JOYCE: Brooke, do you remember from memory? I don't think it's ever changed.

MR. HAMBY: Kevin Hamby, General Counsel. Mr. Flores, the reason we have to set dates -- and there are dates that have to be set -- is because there are firm dates in the statute that we have to meet, like July 31 the credits have to be awarded.

So as we start backing those up, there are logical extensions. So it is not a hard date that's

listed in the statute. But because other dates are listed in the statute, we have to reasonably interpret the statute and make hard dates.

As you can see from these binders, it's very difficult to complete the application process and the reward process by the hard dates that we do have in the statute.

MR. FLORES: So we make the rules, and we can change the rules.

MR. HAMBY: We make the rules with extensive public comment according to Administrative Procedures Act.

And it goes out for public comment so the public has an opportunity to comment on it a year -- not quite a year. We officially adopt the rule -- I believe this year it was December 15 or 16 when the Governor signed it. I don't remember exactly which one.

MS. ANDERSON: So we do go through an annual rulemaking process. But we don't just change a rule outside of that rule-making cycle.

MR. HAMBY: Right. The public has a two-month period of time to comment on it. In addition the staff works in round tables with the general public before we even adopt the draft rules that come before the Board that were approved last August.

Then they're put out for public comment in September. Then they're finally approved by this Board in the October or November time frame. Then the Governor signs off on them at that point. And then the application cycle begins.

But it all stems from that original hard date that the Legislature gives us on when to award tax credits, and also a federal date of when we have to have those tax credits awarded for the year. So it's not a hard date per se.

But it is in order to meet the requirements of the hard dates in the statute.

MR. FLORES: Do you defend this in a court of law?

MR. HAMBY: Could we?

MR. FLORES: Yes. I have no trouble defending this in a court of law.

MR. FLORES: You don't think we're in jeopardy of making this an arbitrary rule.

MR. HAMBY: No. It's a reasonable interpretation of the statute because of the hard dates. There's a lot of paperwork that has to be processed. I would be perfectly comfortable defending this date, as a matter of fact any of the dates in the QAP.

MR. FLORES: I hope we don't get there. But that was my concern. Thank you.

MS. ANDERSON: Other questions?

MR. CONINE: Jen, forgetting the March 1 date for a minute or any date for a minute, did the neighborhood association meet all the other requirements of QAP in their submission?

MS. JOYCE: After all of the deficiencies were resolved, there were other portions of the QAP they would have violated, had they not resolved them in a deficiency process with us. The only two remaining items are the Roman numerals V and IX that are highlighted there in the QAP.

One is that it's showing that the organization is on record of the March 1 deadline that we're talking about with the state or the county, and that the boundaries in effect of the organization were as of the date the application was submitted, which is March 1.

MR. CONINE: So both of those items were sensitive to the March 1 date is what you're saying.

MS. JOYCE: They are. In my mind I see this kind of as two things. One is that they missed the deadline for becoming on record with TDHCA. And that's more of a March 1 issue. The other is that statute

requires that we can only consider their comment if their boundaries include the proposed development site.

That proposed development site became effective March 1, 2006, when they submitted their application. Because we cannot guarantee -- and we remember the allegations from last year when we couldn't guarantee -- those boundaries including the development site as of March 1, 2006, we also considered ineligible.

MR. CONINE: Okay. And the new rules relative to the developers helping out these neighborhood associations, at what point would the developer have crossed the line by saying, Make sure you overnight it down there to them?

MS. JOYCE: I have a lot of examples of when developers crossed the line this year. But that's a whole other talk show. Any kind of assistance in terms of giving them the neighborhood packet would be completely acceptable.

I have an example that I'm sure all of you have seen that is available on our website. It's a very, very extensive packet for neighborhood organizations to consider. It gives them all of the rule requirements put as much in layman's terms as possible.

It outlines all of the deadlines very, very

clearly. It also provides template language for them to be able -- and there was a PDF version of that language on the website so that they could basically copy and paste that language verbatim in order to meet the requirements this year.

The only things they had to submit separately from this were also very detailed and outlined in this packet. Unfortunately the deadlines weren't met.

MR. BOGANY: Jen, I have a question. If a developer had told them to send it registered mail knowing how important this was, or overnight it knowing how important it was, would that have been a violation of him over helping -- violating our rules?

MS. JOYCE: The QAP is clear that had he paid for it then that would have been a violation. I would venture to say that in general because they were allowed to go through public hearings and invite neighborhood organizations, show them the packet, go over the packet with them, that that was acceptable.

It's providing direct assistance to them in drafting that letter, that that's what would not be okay this year.

MR. BOGANY: Okay. So it was prudent that if I'm a developer and I'm doing a project and I know how

important it is, is to tell the people to send it overnight mail or send it registered mail, so have some proof.

Because you've got so much mail coming into the Department it could have easily been lost.

MS. JOYCE: Correct.

Kevin, do you disagree with me that that would be grounds for disqualification?

MR. HAMBY: No. I don't disagree with that. But I would probably want to correct the assertion that it could easily have been lost. We're actually very good about what we do in the mailroom.

MR. BOGANY: I guess what I'm saying, Kevin, is that if I got a project and I need neighborhood support, I'm going to make sure that the neighborhood has some way of knowing that it was sent in. It seems to me you need to keep records based on possibility of this happening.

MR. HAMBY: Well, of course we would probably expect someone who was mailing something that they'd spent -- you had a board meeting on it in the neighborhood association. You'd taken a vote. You had done many things to support this project that it would probably rise to the level where you realize you might want to tracking device as well, so you can answer your board.

MR. BOGANY: Thank you very much.

MS. JOYCE: May I just add to that? I completely agree with Kevin's statement. In general we do not lose mail. We have a tracking system. And we did check all of that to make sure that we hadn't received it. We had other letters that we were supposed to have received, where we didn't get it within the deadline.

And they were able to either prove up that they did indeed send it to us and it was received within the deadline. We just sometimes had two different date stamps -- one from the mailroom and one from the second copy we received.

But in another instance, interestingly the neighborhood organization initially made this exact same assertion, nothing different from my recollection. But unfortunately later it was proven up that the way and method that it was delivered to us was paid for by the applicant by FedEx.

It was because he realized that they did indeed miss the deadline. And he felt that it was reasonable to send that for them. Again they asserted that they actually had sent it, when later on it meant that they did not.

MR. GONZALEZ: I have a question. Would it be

prudent for them to email it or fax it also at the same time that they're mailing it?

MS. JOYCE: We received it by email, fax, regular mail delivery without it having any kind of a tracking system. We also received overnights express packaging.

MR. GONZALEZ: They had other options also.

MS. JOYCE: They did. And those options were outlined in the QCP packet.

MR. BOGANY: Madam Chair, I'd like to make a motion that we deny this appeal.

MR. CONINE: I'll second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Appeal is denied.

MS. JOYCE: If you could please turn next to 060244, Waco River Park -- the tab there. I do think

that as I said, these are in an order to help build in terms an understanding of the rules and everything. So I do think things will pick up a little more quickly, hopefully.

This is Waco River Parks, 060244. It's an application that is in the City of Waco. It's urban/exurban. It's an elderly development in Region 8, new construction. And it is proposing 124 units. Rather unfortunately for the neighborhood organization -- I did speak with them, and they were really, really wanting to give input for this application.

But unfortunately they thought that they were on record with the Secretary of State in a way that would have been acceptable to us. Unfortunately their status is forfeited.

If you could turn to the QAP section that is titled Boundaries and Deadlines -- again just behind the action item, the QAP specifically says that the neighborhood organization in order to qualify must be on record with the state or county as of March 1, as we've been discussing.

If an organization's status with the Secretary of State is shown as forfeited, dissolved or otherwise, the organization will not be considered on record with the

state. And then it goes on to say that they could become on record with us.

Unfortunately this was the only method that the neighborhood organization used to document that they were on record with the state or county. So we determined that the letter was ineligible for that reason.

MS. ANDERSON: Does that conclude your --

MS. JOYCE: It does. I could go over some of the reasons for the appeal from the applicant. And in general I usually will. But I'd rather he actually present those, because they're more of a subjective nature of opinions of the QAP.

MS. ANDERSON: Okay. And the applicant is Mike Langford.

MR. LANGFORD: Actually there are several witnesses from the neighborhood association. I'd rather cede my time. Mr. Seals is present. I'd like for him to go first.

MS. ANDERSON: That's fine.

MR. SEALS: Good morning, Madam Chair, members of the Board. My name is Lee Seals. I am the Carver Neighborhood Association president. In this neighborhood we have about 5,700 residents. This neighborhood is an elderly neighborhood.

Our neighborhood association is active. We meet once a month. I've lived in this neighborhood for 46 years. I live at 700 Carter Street. I've lived there for 46 years. The years that I've lived there, the people in this neighborhood are, like I said, old.

And the neighborhood is in Waco. But we have the oldest neighborhood in the City of Waco. We are trying to get these apartments built because of the neighborhood being so old. The developer came to us about seven months ago.

What happened was our neighborhood association was asked to come to Killeen, Texas, and look at the apartments. We went, and we looked, and we saw. And what we saw we thought would be a great development for the Carver neighborhood.

A few months ago we had someone come in and want to put in a two-story apartment. The neighborhood didn't want something like that. We wanted something that all the people in the neighborhood could enjoy and see. As I stand before you I would say that the Carver neighborhood would like to see this Board move forward on this riverfront project for the Carver Neighborhood Association. Thank you, ma'am. Thank you, sirs.

MS. ANDERSON: Mr. Wilbert Austin.

MR. AUSTIN: Good morning. My name is Wilbert Austin. I am the newly elected City Councilman for District 1 in the City of Waco. I have lived in the Carver neighborhood addition for about 50-odd years. To look and see what is trying to happen is a great deal for the elderly people.

I just got off of Waco Transit Board. We have, as we speak, been trying to get transportation for our senior citizens, so that when they live in those apartments, they can go grocery shopping and things like this. They have to pay \$10 to \$20 for people to pick them up and take them.

So when we looked at this program, where they're going to have transportation for the seniors, they're going to have blood pressure check for the seniors, they're going to have food for the seniors, this is something that we have longed for.

We ask that this Board take under consideration and give us approval to allow the elderly people -- I'm getting old myself, so I might have to stay in one of those. I would love to stay in that apartment from what I've seen.

I own my home, but I would like to stay in one of those. So we ask you all to take under consideration

of this application for reinstatement. Thank you.

MS. ANDERSON: Thank you, sir.

Melett Harrison.

MS. HARRISON: I'm going to defer my comments, too.

MS. ANDERSON: Margaret Mills.

MS. MILLS: Madam Chair, members of the Board. I'm Margaret Mills. I'm the Director of Downtown Waco, Incorporated, which is an economic development corporation responsible for the revitalization of downtown Waco and the Brazos River corridor, which is the location and the site for this proposed project.

In 1998 we developed a plan in cooperation with the City of Waco which called for quality housing throughout the downtown and the Brazos River corridor to meet the needs of the young professionals moving into the area, to the Baylor University students and for quality housing for residents of the Carver Neighborhood Association as well.

Since that time three proposals have come to our office, as an economic development contractor, for housing which was not consistent with the goals for the Carver plan that the Waco City Council had approved, nor were they consistent with what the neighborhood wanted.

The neighborhood wanted housing for the elderly. They wanted single story. They wanted it to be consistent with some of the design of the river. And so we were looking for a quality development. The Carver Neighborhood Association has been one of the more active neighborhood associations since its inception.

A copy of their charter was sent with a part of the application. We saw that copy of the charter. And we are very familiar with their bylaws, because we worked with them through the City of Waco and know that they have met on a regular basis and that they are one of the more active neighborhood associations within the city.

We did not know -- as they did not know -- that they had to renew that charter on an annual basis. For that we are regretful for them. But we think this project is consistent with what they have desired, with what we have desired.

We think it was a good application. And we hate to see the project rejected because of an inconsistency in the information that they were provided.

I appreciate your hearing our appeal. I'll be happy to answer any questions.

MS. ANDERSON: Thank you.

MR. BOGANY: I have a question.

MS. ANDERSON: Will it hold until we hear the rest?

MR. BOGANY: Yes.

MS. ANDERSON: Mr. George Johnson.

MR. JOHNSON: Madam Chair and Board, thank you for this opportunity to make this special appeal. My name is George Johnson, Jr. I'm Assistant City Manager of the City of Waco. And I'm here in support and to solicit your support in this multifamily, special housing tax credit program, item number 060244, Waco River Parks Apartment.

Strategic housing initiative projects are extremely important to our community and to probably to all communities, I'm sure. It is an extremely important objective for the City of Waco and its citizens. Each opportunity to assist low, moderate housing offerings for the constituents of Waco housing is an extremely active activity that is occurring right now in the City of Waco.

Our elected officials, as well as our community leaders, have worked diligently to make this project a viable project that would bring credit to, not only your Board, but also to the State of Texas and to the City of Waco.

In specific this project has been given plenty of well thought-out attention. And has been expressed by

our clientele, the persons who would benefit from this project wholeheartedly support to make this project a viable project for the City of Waco.

This project has earned support from the neighborhood residents associations, the City of Waco City Council and the McLennan County Commissioners Court elected officials. Each participant support of this project has worked hard and has endorsed this special project.

For two reasons this project is a gateway into a long-term blighted area in a low resident neighborhood.

And we have looked for a special project that would make a major difference for our community. This project does that for the City of Waco.

This project has successfully galvanized the neighborhood support. And it is a special project that for reasons that -- I can go on, and I'm sure you won't let me go on too much longer -- share with you that this project really does have enormous appeal for the City of Waco.

And we would not like to see this project disqualified because of a technicality or an administrative error. I will say, Madam Chair, thank you for giving us this opportunity to make this appeal. Our

neighborhood association has been and continues to be a viable part of participating and make this project an excellent project for the City of Waco. Thank you.

MS. ANDERSON: Mr. Langford, do you want to speak or have your counselor speak for you?

MR. LANGFORD: I think Cynthia Bast has some comments.

MS. BAST: Good morning. I'm Cynthia Bast of Locke, Lidell & Sapp representing the tax credit applicant in this appeal. You know one of the anomalies of quantifiable community participation is that the applicant is not allowed to assist the neighborhood organization in writing the letter or assembling its packet.

But then when the letter's disqualified, the applicant is responsible for the appeal. Mr. Mitchell alluded to that just a moment ago. In some instances had the applicant been able to assist the neighborhood organization in wading through the various technical requirements, the situation might not even get to an appeal in the first place.

And I think we may have one of those situations here. Once the applicant was advised that the neighborhood organization's letter would not be scored because its charter had been forfeited with the Secretary

of State, it did some research.

And it discovered that this longstanding organization has been active with the City of Waco and with McLennan County for many years. And in fact the County Commissioner of McLennan County has indicated that the Carver Neighborhood Association has been recognized by the county and thus should satisfy the QAP requirements.

Commissioner Gibson has written a letter and asked me to read this into the record as follows. "Dear Mr. Gerber. I'm the Commissioner for Precinct 2 in McLennan County and have been for the past 15 years. I recently wrote your Agency a letter expressing my full support for the above-referenced proposed development to be located within the boundaries of the Carver Neighborhood Association that is in my commissioner's precinct.

"The proposed development still has my full support. In 1997 I was appointed to participate in Waco Enterprise Community East Waco Lighted Neighborhood Commons, a program with the purpose of revitalizing, stabilizing and improving neighborhoods.

"Carver Neighborhood Association was a member of the Waco Enterprise Community East Waco Lighted Neighborhood Commons. I worked very closely with the

Carver Neighborhood Association as a legal and official organization.

"In conclusion I would request the full points be given to the above-referenced development or that the proposed development be awarded a forward commitment in order that this project begin development. Sincerely, Commissioner Lester Gibson."

So we do have a letter from a county official indicating the recognition of the Carver Neighborhood Association that was obtained by the applicant after this problem in appeal came to light. We hope you will take into consideration and grant the applicant's appeal and award the quantifiable community participation points. Thank you.

MS. ANDERSON: That concludes the public comment on this item.

Mr. Bogany, you had a question for Mr. Hamby.

MR. LANGFORD: Madam Chair, did she use all my minutes?

MS. ANDERSON: No, she did not.

MR. LANGFORD: May I come up there?

MS. ANDERSON: Yes, at your peril.

MR. LANGFORD: Madam Chair, members of the Board. My name's Mike Langford. I am the applicant, as

has been said this morning. One other thing I'd like to point out is that the neighborhood association, as soon as they were made aware that they had forfeited their status, went and filed and are on record now and have filed with the comptroller.

Again it's one of those things -- as I've said, if they'd had lost it two years ago, that'd be one thing.

But they were out of compliance or lost their good standing the very next year, which I think shows that they were ignorant to the fact that they didn't know they were supposed to do this and did not.

So again I think it is a technicality. It would have been very easy to submit the single-page letter that Jen has been talking about that's in the packet. Again if the applicant would be able to be involved on that end as she said we wouldn't be there.

MR. GONZALEZ: Madam Chair, did they just fail to submit their annual report.

MR. LANGFORD: Yes, sir. The documents that are in probably your packets and that I saw -- there's articles of organization file-stamped in 1996 by the Secretary of State, which I'm thinking this is perfect. Not only they're stamped by the Secretary of State, it's ten years ago.

It shows that they're not a newly formed neighborhood association, which we all know get done on a regular basis right now. The fact is that they were unaware that they had to file their annual franchise report.

So the very next year they were determined to be out of good standing.

MR. GONZALEZ: And they're in good standing right now.

MR. LANGFORD: All the documents have been filed with the comptroller there in Waco.

MR. BOGANY: Madam Chair, I have a question for Jen.

MS. ANDERSON: Thank you, Mr. Langford.

MR. BOGANY: After hearing I had a comment. In your notes you said the statutory requirement for the county or state registration were not satisfied. Is the letter from the county judge showing that they are a registered neighborhood in McLennan County.

Is that significant enough to be registered by the county? Typically how in that particular county -- and maybe the city manager can answer that -- but how does an organization register themselves in that particular county?

MS. JOYCE: Again the problem that we have run into with the statutory language is that it requires state or county registration. But there were no processes in place. It does vary county to county in terms of how somebody might be registered as a neighborhood organization.

And a lot of counties don't even allow it. There's not a process involved. We, to my knowledge, never received that letter. It's certainly in your packet that you can use for consideration in determining an appeal.

Also the letter itself didn't specifically say -- but I didn't get to see it -- didn't specifically say, this neighborhood organization was on record with the county as of March 1, 2006, and actually was registered on that date.

That possibly could have been something that we would have accepted. So, to hear it for the first time today, not actually see the letter myself, and not recalling any other information we've received before, it's hard to accept.

MR. BOGANY: I have one more quick question for Mr. Hamby. Can we go against a statutory requirement?

MR. HAMBY: The short answer of course is no.

A statute is statute. The longer answer is of course that on record is subject to interpretation. I would probably echo Ms. Joyce's comments -- and I'm not disparaging attorneys, because I'm very fond of them, unlike some of our Board members.

Ms. Bast is a very skilled attorney. And I think that if you listen to the letter that was written by the county commissioner, they clearly said the organization was recognized and not on record.

I haven't seen the letter either, Cynthia. So I don't know that it's --

MS. ANDERSON: Didn't the letter acknowledge that the Carver Neighborhood Association is a real neighborhood organization? I don't think that's at issue here. Right? What's at issue with regard to the statute and our rules is whether they were properly registered with the county or state by the deadline that's in the QAP.

MR. HAMBY: Right. I think this recognizes the group and that they've worked with them over a period of time. But it specifically in our QAP says if Secretary of State registration is forfeited, that it is not eligible. That's verbatim out of the QAP.

MR. BOGANY: Even though she said that it could

be county or state.

MR. HAMBY: Well, that's the difference. And that's why if they had gone on and said that there was record -- as Jen had said, if they come up with anything that said there is a record recorded with the county, the county has some record for recording groups.

But this group, they knew they were on record with someone. It was the Secretary of State. But they had forfeited their registration. I don't believe this letter in my quick reading of it has said that they are recorded in the county.

MR. BOGANY: Can ask one question of the city manager?

MS. ANDERSON: Sure.

MR. JOHNSON: Yes, sir.

MR. BOGANY: Quick question. How do you guys go about registering organizations in your county or city?

MR. JOHNSON: There is no registration to my knowledge at the county level. At the city level they are registered through the city manager's office and/or through our community government department.

MR. BOGANY: So on the county side of things -- which you're representing the city -- but in the county side of things, to your knowledge there is no such

registration at all.

MR. JOHNSON: Unless it would perhaps have occurred at a commissioners court into formal record.

MR. BOGANY: I guess my thought is that if Jen says that every county is different. Then the county commissioner writes a letter saying I've recognized them over a period of time and worked with them, couldn't that be their recognition of this organization?

MR. JOHNSON: That's how we interpret it.

MS. ANDERSON: Thank you, sir.

Mr. Gerber.

MR. GERBER: Ms. Joyce.

MS. JOYCE: I was just trying to pull up my notes to read statute verbatim for you. "Quantifiable community participation with respect to the development will be evaluation on the basis of written statements from any neighborhood organizations on record with the state or county in which the development is to be located and whose boundaries contain the proposed development site."

"On record" is different from "recognized."
"On record" is not qualified in statute in terms of how it's done. Through the trials and tribulations that we've all experienced since this has been given to us as something that we have to quantify as the second highest-

scoring item, we have included language and opportunities that provide alternate methods than just Secretary of State registration.

MS. ANDERSON: And that's in the QCP packet that was posted on the web.

MS. JOYCE: Every bit of it is in the QCP packet. It's all outlined in the QAP. It's unfortunate, and the city registration does not count clearly. I also have not received any of the information verifying that they have become on record with county that was mentioned earlier.

So there's no way of determining -- we haven't evaluated anything that would indicate that they are now on record with county.

MS. ANDERSON: It wouldn't matter anyway, because the statute says March 1. Do I understand that right?

MS. JOYCE: The QAP was March 1, 2006.

MR. CONINE: So the QAP says the date. The statute says we have to do it as of some date.

MS. JOYCE: The statute says that they need to be on record. I would argue that it is implied because you must have a neighborhood organization on record with the state or county whose boundaries include the proposed

development site to comment on an application.

That application has to be submitted by March 1, 2006. That's a lot of where, in order for us to actually run out time lines and everything within being able evaluate this required item, that we consider the cutoff date.

That's the application in order to become on record. They're allowed to be given a month later after that -- to actually submit the letter.

MR. CONINE: I appreciate staff's difficulty with time. On the other hand obviously this homeowners association was registered with the state. But that's history. So they had been. Why wouldn't this be treated as a deficiency item to get the "corporation in good standing" as opposed to a kick-out item?

MS. JOYCE: It was treated as a deficiency item. I'm actually glad that you asked that. Every single item of and eligibility is treated as a deficiency item. We call; we follow up; we handhold. We tell them, If you can come up with anything to prove up that you're on record with the county or state -- here's a lot of different ways that you can do that -- then do so.

If you're forfeited in this way, then could have submitted something else indicating that they were on

record with the county or state as of March 1, 2006. We never received anything.

MR. CONINE: Hang on here. You're missing my point. My point is they're trying to hit a March 1 deadline. They found out that their charter's been revoked -- even though they're registered with the state. The state knows who they are, because there's records there.

There's a deficiency now because annual reports haven't been filed. They file the annual reports within some given time under deficiency status. And now you're back in good standing, say as of April 1 -- whatever it takes. And you can get those things done in fairly quick time, I think.

I guess I'm having a problem with why -- because if you get back up and look at the forest and the trees, this is the kind of stuff the Legislature wanted; this is the kind of stuff the Board wanted. They're a neighborhood group that wants the project. There's no doubt about it.

And we're hanging our hat on some dumb date and some process that is some combination between statutory deficiency and kick-out. I don't like -- when you've got umpteen million dollars of good real estate going on I

have a hard time not finding a way to create a deficiency and a get-back-in-good-standing process here.

Granted it may not be written in the QAP that way. And we'll address that issue the next QAP for sure.

MS. ANDERSON: In my view that's where it should be addressed and not in this appeals process, because this is --

MR. CONINE: The Board has certain discretion.

MS. ANDERSON: That's right. And there is language in the QAP that says if an organization status with the Secretary of State is shown as forfeited, dissolved, the organization will not be considered on records with the state.

Did this language go in last year to address another loophole?

MS. JOYCE: I brought my black-line just to be able to address when things are new. But it was as a result of public comments and certain allegations that we had received regarding that issue and when they become forfeited, when that will be considered ineligible.

We had some that became forfeited after the QCP letter was submitted. We had some that were proven up as forfeited by allegations. They submitted the evidence to us, and that's why it was added. But let me look to see

if it was new from last year.

Brooke is saying yes. And to my recollection it was, too. Yes. It was added last year. And if I could just point to one more thing -- and I know it's a technicality -- but just free to consider -- I'm sure Kevin is probably wanting to say the same thing -- the Board cannot consider any new evidence that's presented that was not presented in seven days posted.

And we ourselves have not seen any documentation that would meet our tests to date that would show they are on the record with the county or state. So while your point is something to definitely consider in the long run or now, I would submit that we still don't have evidence that they're on record, unless what you're saying is that county letter counts.

MR. BOGANY: Well, I guess, Jen, my question is, if there's no mechanism in place, and the county judge writes a letter saying that in his opinion they recognize them, then to me if there's no place or no mechanism, then it's whatever what county judge or county wants to decide as recognition.

But if you're telling me now that you should have got that letter seven days ago before today, then I probably can understand.

MS. JOYCE: Yes. Had we received that letter in particular as the evidence that they're on record with the county, we would have issued a deficiency or called the county itself to ask -- and this is in the original package -- to ask, do you consider this on record, and could you please state that in a revised statement, and as of March 1, 2006.

MR. HAMBY: I actually need to clarify that point. If we had it in our possession within seven days it would have to be posted on the website. Certainly the applicant is able to bring things in that are not in our possession to bring issues before the Board.

MR. BOGANY: But they should have gotten the letter before this meeting.

MR. HAMBY: They did not have to for the purposes of your considering it. Obviously we have deadlines. We had issued deficiencies, and we've had a long process here. But that doesn't mean that they are not able to bring things for the Board to consider the day of.

We cannot give you anything that's in the control of the Department seven days in advance.

MS. ANDERSON: Now, come on, boys.

MR. BOGANY: Kevin, I just have one more

question. I was just about over the edge. Are you saying -- what I heard Jen say is that if she had had the letter earlier then we could have presented it to do some investigation on the letter, making sure this is how they do it. Is that what I heard her say?

MS. ANDERSON: It if was in the original packet.

MR. HAMBY: There would be some questions. The way this Board works, the way the county commissions work -- and I'm not speaking for McLennan County Commissioners, because I obviously don't represent them -- a single individual commissioner and single individual Board member cannot bestow recognition on behalf of a county.

It would require a Board vote. There'd have to be some sort of process involved.

MR. BOGANY: Thank you.

MR. CONINE: Could I ask one of the homeowner association's representatives who would be familiar with when you found out that this deficiency was -- I guess the state charter or franchise was revoked on March 1 or somewhere close to there -- what's you've done since then and why as a Department haven't heard back from the state to put you in good standing.

Here it is June. Not that'll do you any good. But I'd just like to know.

MS. HARRISON: My name is Mellett Harrison. I work for the City of Waco, but I'm neighborhood services, and I work as staff to a lot of the neighborhood associations. Given the fact that no one in the Carver Neighborhood Association membership is on the net, has a computer and does receive email actively, they asked me to assist them with pulling forms down from the comptroller site.

We tried to help them pull up all their old records, fill out all the forms for every year that they didn't submit the form, because that's flat out what is was, a misunderstanding. They didn't know they had to do annual reporting.

We submitted those to the comptroller's office at our local Waco comptroller's site. They told Mr. Seals, who is the president of the organization, that that would give them what they needed to get them back into good standing. Does that answer your question, or do you need more information?

MR. CONINE: That was done when?

MS. HARRISON: We did not get the information that we needed to file that stuff until about three weeks

ago. It was not done in your time frame, because they did not understand that they were deficient and didn't get that information.

So we found out what they needed to do, got their records together and refiled it as quickly as they knew they needed to.

MR. CONINE: Thank you very much. Move we deny the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Notting Hill Gate. Let's do that, and then we'll do lunch.

MS. JOYCE: At least my part's quick, and I hope I didn't misrepresent that, based on any comment. We've already talked about boundaries and why and how. If you'll turn to that QAP section that we have highlighted there, this particular portion is specifically regarding

the item 9, where the boundaries need to be in effect by March 1, 2006.

And annexations occurring after that time to include a development site will not be considered eligible. This neighborhood organization very, very clearly annexed their boundaries after the March 1, 2006, deadline.

At first they actually did not respond to our deficiency notice, other than to say, sorry, we aren't able to provide any of that information. So therefore just consider our comment as support. After receiving the appeal from the applicant, I called the neighborhood organization, because they asserted that they had annexed their boundaries properly since that time period.

So I called the neighborhood organization and was able to receive evidence that yes, indeed they have. As of -- I believe the date is April 25 -- they annexed their boundaries according to the documentation they submitted.

However this is well after the March 1, 2006, deadline. So their boundaries were not in effect -- the boundaries did not include the development site as required by statute by the time the application was submitted, which was March 1, 2006, as required by the

QAP.

MS. ANDERSON: Sarah Andre.

MS. ANDRE: If I may I'd like for Barry Palmer to speak first. Is that all right?

MR. PALMER: Good afternoon, my name is Barry Palmer. And I'm the attorney for the applicant, Notting Hill Gate, which is a senior property proposed for Missouri City. The neighborhood association in question, the Gessner Patio Homes Association [phonetic], submitted their letter in a timely fashion on April 1.

And it satisfied all of the requirements. The issue is when they changed their boundaries to include this site. This neighborhood association has been in existence for over 25 years. It is adjacent to the site on which the tax credits are applied for.

They did expand their boundaries to include this site. It's not required in the statute that any annexation or boundaries be set by March 1. That was something that was added in the QAP this past year. There were extenuating circumstances in this situation, in that the developer had been working with another neighborhood association.

At the request of a Missouri City council member, they asked him to work with a specific

neighborhood organization. That organization asked that they not work with any other organization until they came to a decision.

When they had a vote they were deadlocked on the vote. So that first organization referred to them to Gessport Patio Homeowners Association and asked that they work with them. At that point Gessport Patio wanted to include the project, expanded their boundaries to include it and submitted a letter than complies in all other respects.

We have a couple of other speakers, including someone from the Homeowners Association that we would like to have speak.

MR. FLORES: Before you go. What did you say about the March 1 deadline? That it had never been there before this year?

MR. PALMER: Right. That was added to the QAP this year. It's not a statutory requirement as to the time that the boundaries are in place. This was something that was added in the QAP.

MR. FLORES: Okay. Don't go away.

Now, staff -- Jennifer, Kevin -- is something brand new that you put into the QAP?

MS. ANDERSON: Could we have Mr. Palmer sit

down? What we try to avoid is a debate between a witness and the staff.

MR. FLORES: That's fine. Somebody's got something going. I'm trying to straighten it out.

MS. ANDERSON: Mr. Palmer, if you'd just sit on the front row in case we need you again. Thank you.

MS. JOYCE: I'm only looking at the black-line, which is reflective of any proposed changes we had from 2005 to 2006. My recollection of 2004 is that it's the same. The only change we made in that particular section is that it went from 2005 to 2006 in terms of being on record with the state.

That's the only change. There are other deadlines that were added from 2005 to 2006. But it's not this particular one.

MS. ANDERSON: Wait. One's about the letter. What Mr. Palmer was referring to is the language about the boundaries in effect for the organization for March 1. That is new language?

MS. JOYCE: There two bullets here that you can refer to in your packet as well: VIII and IX. One is that the articles of incorporation and/or bylaws were created by March 1, 2006. And the other is that the boundaries in effect for their organization on March 1, 2006, will be

the boundaries utilized for the purposes of evaluating these letters.

I guess I should clarify. The reason why I immediately went to there is it's so ingrained in me, that is how we were interpreting it in years past, because they had to be on record with the state or county. The boundary issue became a very big issue last year. So, yes, we did add clarifying language here that Mr. Palmer was referring to.

MR. FLORES: Thank you.

MS. ANDERSON: Do you have any other questions for Mr. Palmer?

MR. FLORES: No. Thank you, Mr. Palmer.

MR. CONINE: I do. You say the proposed project was in between two homeowner associations and we were trying to pick which one that was going to incorporate this particular one into? Is that what the delay was?

MR. PALMER: Well, I think there's overlapping jurisdictions of neighborhood groups. The neighborhood group that they talked to at first included the project. This neighborhood group was originally a block away from the proposed project before the annexation.

MR. CONINE: So, one gave it up for the other

basically.

MR. PALMER: Right.

MS. ANDERSON: Betty Keller, are you here to speak on this?

MS. KELLER: Yes, but Sarah wanted to go before me.

MS. ANDERSON: Whatever you all want to do. Let's just keep moving.

MS. ANDRE: Hi, there. Once again my name is Sarah Andre, and I'm a consultant on the Notting Hill project. I'm here to speak on behalf of the developer, Joe Lopez. I'd like to apologize for his absence. He was unable to be here today and asked me to step in.

I'd like to just provide you some information on the process that was followed. And I've passed out a time line, which I will spare you from reading. But I would like to point out some of the salient points.

In early January when we had a contract for this site, Mr. Lopez contacted Missouri City Council member Eunice Reiter, who submitted written support for the project and asked us to work with a specific neighborhood association.

Mr. Lopez then contacted the West Airport Homeowners Association and its president, Don Barr. Mr.

Barr is supportive of the project and mentioned to Mr. Lopez that Dr. Betty Keller, who is on the board of another nearby association, Gessport Patio Homes, might be interested in the project.

However he did ask that we not contact that association in order to avoid any conflict or competition between the two organizations. So Mr. Lopez honored that request. And in late February was still waiting for a meeting with the West Airport Homeowners Association.

Mr. Barr then informed Mr. Lopez in early March that the West Airport Association would not be able to both hold a vote and write a letter by the April 1 deadline, and then gave his permission to Mr. Lopez to go ahead and contact Dr. Keller.

Mr. Lopez then contacted Gessport Patio Homes Association, which subsequently voted to support the project and immediately incorporated the Notting Hill development into its boundaries and sent a letter of support to TDHCA by the April 1 deadline.

I bring these things to your attention only to demonstrate that the developer took the necessary steps to meet the spirit of the Department's rules on community participation. And we understand that problems in the past have necessitated the creation of current rules.

But I would like to emphasize that an unintended consequence of the rule regarding March 1 -- not that the organization be on record, but incorporating the boundaries -- an unintended consequence of that is that if you find out about an organization late in the process, that association is basically denied the opportunity to participate fully, even if it meets all of the other criteria.

In this case Gessport Patio Homes Association does meet those criteria. And their letter was discounted because of a circumstance basically beyond their control.

This situation really begs the question that if an association meets the important criteria, should there even be a process deadline that's prior to the due date for the letter of submission.

It's our understanding that the April 1 deadline is there to give neighborhood associations additional time to deliberate projects. But in this case that conflicts with the March 1 deadline. And in fact it has worked against community participation in this case.

This group was formed 25 years ago. And they can in no way anticipate what projects and where growth will affect them that far in advance. I'll conclude with that and ask for your support on this project.

MS. ANDERSON: I have a couple questions. Some of the letters -- the one dated April 24, for example, from Mr. Cliff Davis talks about "the Association also accepts members on an associate basis, persons, entities located within the expanded boundaries indicated on the attached map."

Where in the bylaws are provisions made for associate members?

MS. ANDRE: I don't have a copy of bylaws in front of me.

MS. ANDERSON: I think the answer is there's nothing in the bylaws making provision for associate members.

MS. ANDRE: I'd have to look at that.

MS. ANDERSON: It's on page 21 of the appeals packet. And it's the minutes of Gessport Homeowners Association, April 25, 2006. The way I read these minutes, the association itself is saying they didn't expand their boundaries until after March 1, because the sentence reads, "In March 1, 2006, the Board decided to expand the boundaries of the Association and accept associate members."

It seems to me that in the minutes themselves they're saying they didn't meet the March 1 deadline.

MS. ANDRE: Yes, ma'am. And I agree with you. I do not deny that they did that. I'm just saying that I think that rule is arbitrary and eliminates their participation.

MS. ANDERSON: Do you want Ms. Keller to go next?

MS. ANDRE: Please. Thank you.

MS. KELLER: Madam Chair and the Board. I apologize for my voice. I've been teaching all week, so I blew it out. I thought today I was going to rest my voice. But on behalf of my association I thought I'd give it a shot to come up here.

I teach compliance at the college, so I know the rules and regulations when you don't meet the deadlines. When it told us that we didn't make the deadline, the Board said, okay, we didn't make the deadline. Okay. It's a done deal. We'll try next time.

But on behalf of the subdivision -- the average age in that subdivision is 60 years if age -- they would benefit from that Notting Hills retirement home, because they are aging. Being an only child, my parents would benefit from it, too.

My father is very independent. So he's not going to move in with me nor my family. He's 80, and my

mother's 70, and they live out of state. In a couple of more years I'm going to have to bring them here with me anyway.

So I decided just to come up here and try. I know we didn't make the deadline date due to no fault of our own. I know about your protocol. But I'm still just pitching in anyway to say, Hey, when we submitted our paperwork, it was too late. I understand that.

So I'm only coming on behalf of my community and because I am a board member and an active participating community leader. Serve on several boards there in the community, as well as a precinct judge. I know all those people.

I walk the community. I participate. I get involved. It's a lot of work. But I enjoy doing it. So that is the only reason I'm here. If you have any questions, I'll answer.

MS. ANDERSON: Thank you, Ms. Keller.

Ms. Dula.

MS. DULA: I will pass. Thank you.

MS. ANDERSON: That's all the public comment on this item.

MR. BOGANY: I move that we deny this appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. We're going to take our lunch break and go into Executive Session.

(Whereupon, at 12:41 p.m. the board went into executive session.)

MS. ANDERSON: The Board has completed its Executive Session of the Texas Department of Housing and Community Affairs on June 9, 2006, at 1:35 p.m. I hereby certify that this agenda of an executive session of the Governing Board of the Texas Department of Housing and Community Affairs was properly authorized pursuant to Section 551.103 of the Texas Government Code.

The agenda was posted at the Secretary of State's Office seven days prior to the meeting, pursuant to Section 551.044 of the Texas Government Code, that all members of the Board were present with the exception of Norberto Salinas, and that this is a true and correct

record of the procedures pursuant to Texas Open Meetings Act, Chapter 551 of the Texas Government Code.

We're still on agenda item 5(a). And the next development is 060143, Sun Valley Homes.

Mr. Gerber.

MR. GERBER: Ms. Joyce.

MS. JOYCE: Actually just as a reminder that 143 ending and 147 both withdrew and want to go to late June. So we have moved 144 which is Centerpoint Resident Council Development after Mesquite Terrace, which is 060117 and Sunset Haven, 060118. Right now we are on Mesquite Terrace, 060117.

MS. ANDERSON: I have a witness affirmation form from Sun Valley and Orchard Valley from a Mike Lopez. Since that has been taken off the agenda, is Mr. Lopez allowed to speak anyway?

MR. HAMBY: He would have been allowed to speak at public comment period. So since he was not aware --

MS. ANDERSON: And I don't think I had this form during the time of public comment.

MR. HAMBY: It's not an agenda item, so it's not being addressed today by the Board.

MS. ANDERSON: Sorry, Ms. Joyce.

MS. JOYCE: Okay. We are on Mesquite Terrace,

060117. The next three appeals that you're going to hear, they are resident councils whose letters of quantifiable community participation, QCP, were denied because they are a resident council commenting on a development that is new construction.

This year the 2006 QAP added new language which explicitly states that a resident council is not a neighborhood organization, unless the letter is relating to an application that is proposed for -- and these are the important parts -- rehabilitation or demolition with new construction applications, in which the council is commenting on that rehabilitation or demolition/new construction of the property occupied by the residents.

So that's the important part here. I've researched actually this and all of the points for each of the next three appeals. In the interest of time, so that they have a chance to discuss everything, I'll just say that the reason why they were denied is because the QAP says so. It's very, very clear.

If you'd like me to comment on any of their points, you're more than welcome to ask.

MR. BOGANY: Which three are those, Jen?

MS. JOYCE: 060117. If you go to the front of your book --

MR. BOGANY: I see it.

MS. JOYCE: The first is Mesquite Terrace, 060117. The next is 060118, Sunset Haven. After that we're going to go back to Centerpoint Home Ownership, which is a neighborhood organization that submitted actually all three of the first three appeals. But two of those have now been withdrawn.

MR. BOGANY: So these two here are the same type appeal, resident council.

MS. JOYCE: All five of them -- now three; two were withdrawn -- are all similar in that they were denied because they're a resident council.

MS. ANDERSON: Okay. So we have public comment on 060117, Mesquite Terrace, first. I remind you that we have a three-minute limit. A lot of people want to address this topic.

Yes, sir.

MR. HAMBY: I apologize for taking your time again. I have to correct a statement I made earlier. I was thinking globally that things that are not in the Department's control cannot be put up. The QAP actually says that new information cannot be submitted to the Board within seven days.

I should never disagree -- on those things.

But the new information can't be submitted unless it's [indiscernible] the appeal package.

MS. ANDERSON: Okay. Mr. Ruben Longoria with State Representative Kino Flores's office.

MR. LONGORIA: Madam Chair, members of the Board. My name's Ruben Longoria. I'm the chief of state of Representative Kino Flores. We submitted a letter in support Mesquite Terrace application. We'd like to officially enter that into the record.

If you have any questions I'd be glad to answer them.

MS. ANDERSON: Do you have the letter?

Did everyone get a copy of this letter from Kino Flores? Are there questions for this gentleman?

(No response.)

MS. ANDERSON: Thank you.

Mr. Bill Skeen.

MR. SKEEN: Concede my time to Mr. Barry Palmer.

MS. ANDERSON: Mr. Palmer.

MR. PALMER: Good afternoon, Board. My name is Barry Palmer. I'm with the law firm of Coats Rose. And we represent the Brownsville Housing Authority of the Pharr Housing Authority and the Weslaco Housing

Authority -- all of which are arguing appeals.

I think that we're on the Pharr Housing Authority right now. But the issues are very similar. And that is whether a resident council is a neighborhood organization only for purposes of commenting on its own development.

That was new language added to the QAP this year that limits the ability of resident councils to comment on projects, such that they can only comment on their own property if it's being rehabilitated or torn down and rebuilt.

So if a new complex is being built across the street, if it were a homeowners association or a resident council for an apartment complex that was not public housing then they could comment, according to the QAP, on a project across the street.

But in this case because we're talking about public housing residents, they are limited by the QAP to not being able to comment on the project. And I would submit that that provision of the QAP violates fair housing. It violates Section 2306 of the Government Code.

And it probably violates the Fourteenth Amendment to the Constitution. But in the Government Code, the provisions that were added by the Legislature a

couple of years ago, which set up the scoring criteria, they clearly said that the second highest item would be to score points of quantifiable community participation with respect to any neighborhood organization on record.

It doesn't say anything about limiting it so that public housing resident councils could not be counted or that they could only count for their own project. Under Fair Housing similarly there is a provision that says that you can't discriminate against a group because of their source of income.

Here we have public housing residents that are not given the same rights as a homeowners association or even a group of tenants that are not public housing residents.

There really is no explanation that's been given that I've heard from the Department is why lesser rights should be given to public housing residents than to other residents, other than the fact that some developers apparently commented last session that they wanted to limit the rights of resident council people to only talk about their own development.

But that's not really a reason to limit the rights of public housing residents. So I would ask your consideration that this provision of the QAP be waived and

that these letters be counted.

MS. ANDERSON: Thank you.

Mr. Roy Navarro.

MR. NAVARRO: Madam Chair, Board members and Mr. Gerber. I'm Roy Navarro. I'm the executive director of the Pharr Housing Authority here on behalf of the appeal for Mesquite Terrace, 106-unit elderly development, located in the Las Milpas area of Pharr, Texas.

Las Milpas has been recognized by HUD within its 30th anniversary, CDB recognition of eklands [phonetic] for a model of Colonia rehab. The Pharr Housing Authority demolished 75 public housing units known as Villa Esperanza housing project in 1999.

HUD determined that it was obsolete and could not be rebuilt at the same site due to environmental problems. Mesquite Terrace will include 20 public housing units which will replaced demolished public housing units of Villa Esperanza.

Regarding the resident councils of Las Milpas Resident council clearly meets the definition of a neighborhood organization. It has provided proof that it was on record with Hidalgo County and has provided maps and other legal documents showing the proposed development site is within its organizational boundaries.

HUD requires that the Pharr Housing Authority consult with the resident council with jurisdiction over the proposed development -- in this case Mesquite Terrace -- and obtain their approval for this proposed development.

By restricting resident councils' participation in the application process, the Department treats public housing residents differently from other neighborhood residents. Mesquite Terrace site, purchased in 1997, has been a part of the Las Milpas resident council since that time.

Back in 2004 the TDHCA Board recognized that the parcel of land containing Las Canteras tax credit community and the Mesquite Terrace community was within the boundaries of the Las Milpas resident council. If Las Milpas Association was a homeowners association their support letter would have qualified them in the 2006 QAP for the full 24 points.

Because it is a public housing resident council, despite the fact that the proposed units are in a part of the reconstruction of demolished public housing, it is denied scoring and a voice in the application process.

We cannot understand this discrepancy between

organizations simply because of their organizational structure and/or the income of the members. What is not the intent of staff when amending the statutory definition of a neighborhood organization may have implications under the Fair Housing Act, as mentioned earlier.

Mr. Gerber's letter denying the Mesquite Terrace appeal states that the letter does not count, because the residents do not live in the proposed units. It is not possible for residents to live in proposed new construction. You have also been provided with letters from Senator Lucio and Senator Flores supporting our appeal factors.

Based on these facts we respectfully request that the Board award the 24 points for a QCP for the support letters from Las Milpas resident council.

MS. ANDERSON: Thank you.

Mr. William Lee.

MR. LEE: I cede my time to Ms. Bast.

MS. ANDERSON: Mr. Flores.

MR. FLORES: Good afternoon, Madam Chair, Board members and executive director. I'm Apologia Flores. I'm not an employee, but I work with the Pharr Housing Authority. You heard the comment from the two prior speakers, and you heard the staff tell you about the QAP

provisions that are immune to the 2006 QAP.

When a housing authority demolishes like in the case of Pharr -- there are 75 units -- because they're obsolete and there's a very serious problem for safety and environmental issues because it ended up under an elevated freeway, HUD would not let you use that site for public housing.

So it's demolished, and the people that lived there are going to other public housing developments or use vouchers to rent privately-owned housing. So now two or three years later they're going to do a replacement project.

How can the residents of the project that was already demolished be able to vote on that project like the QAP says. It's impossible. Now, if that property that's going to be demolished -- let's say -- still has a resident council on there, like in the case of Pharr, but the replacement housing is five or ten miles on the other side of the city, it's not within their boundaries.

They can't comment on it. So really the QAP, in this particular case of Pharr and the other housing authority, is unworkable. It's impossible for them to be able to express their support or opposition. Thank you.

MS. ANDERSON: Ms. Bast.

MS. BAST: Cynthia Bast of Locke, Lidell & Sapp, representing the applicant for this appeal. You've heard some, I think, compelling testimony about resident councils established by public housing authorizes. You have seen a map showing the Las Milpas resident council and its boundaries -- boundaries that were accepted by this Board last year for a quantifiable community participation in the QAP.

What we have here, I think, is a case of unintended consequences. I don't think that this Board wants to treat public housing residents differently than any other homeowners or renters. In 2005 this Board heard an appeal involving a QCP letter from a resident council.

At that time you, Ms. Anderson, asked the staff to talk with the development community and the advocacy community about resident councils. And they followed your direction. And they inserted this language in question into the 2006 QAP.

So that action, based on one appeal last year, has now impacted five different resident councils on five different applicants, three of which you're hearing today and two of which you will hear later this month.

So, what we have here are residents of public housing who belong to legitimate resident councils,

resident councils that do have boundaries that were established about ten years ago -- not just recently -- to participate in the QCP process; resident councils that want to have a voice in their immediate communities.

And they've been eliminated from the process. I don't think that this Board meant to silence public housing residents from having a voice in their neighborhoods. So true to the words of our former chair, Mr. Jones, I know that you won't check your brains at the door.

You have the power to fix this problem, this unintended consequence, and I trust that you will consider it carefully. And I hope that you will do so. Thank you.

MS. ANDERSON: I have a question. Did you participate in the public comment process on the QAP last year? I assume that this language was put in the draft QAP that went out for public comment. Did you participate in the public comment?

MS. BAST: Did I personally or did the Housing Authority?

MS. ANDERSON: No. I'm really asking you -- as been said already here today -- are a very capable, competent, skilled, experienced attorney in this body of law and regulations. So I just wonder if you -- in

reading the draft QAP last year did you then make public comment about this language?

MS. BAST: I did make public comment. I did not make public comment about this language.

MS. ANDERSON: Thank you.

Anybody else have questions?

MR. BOGANY: I have a question for Jen.

MS. ANDERSON: I've got more public comment.
Mr. Bill Walter.

MR. WALTER: Thank you very much. My name's Bill Walter. But actually I'm here to read a statement from Mr. Hollis Rutledge, who was here earlier to give commentary, but unfortunately couldn't stay this late. So he asked me to read this statement on his behalf.

"Chairwoman Beth Anderson and Board members. Good morning, and thank you for the opportunity to address you. I'm Hollis Rutledge from Mission, Texas and represent several cities in the Rio Grande Valley. In 2004 I appeared before this Board on an appeal for Las Conteras Apartments in Pharr, Texas concerning the award of points for quantifiable community participation.

"You appropriately approved the appeal and granted QCP points to Las Conteras. Today I appear before you on similar appeals for QCP points for the following:

project 060117, Mesquite Terrace; 060118, Sunset Haven; and 060144, Centerpoint Home Ownership.

"The three applications involve the housing authorities of Pharr, Brownsville and Weslaco and resident councils therefrom. The three applications are for proposed new construction developments that will include public housing units to replace units lost through HUD-approved demolition and disposition.

"The land for the proposed new developments has been part of the housing developments where the members of the resident councils live and within their boundaries for a number of years: Pharr since about 1997, Brownsville since about 1995, and Weslaco also since 1985.

"The 2006 QAP recognizes resident councils as a qualified neighborhood organization for purposes of QCP, but restricts their participation to only for rehabilitation or demolition with new construction applications in which the council is commenting on the rehabilitation or demolition of the property occupied by the residents.

Chapter 2306 of the Texas Government Code and Senate Bill 264 require the Department to score and rank applications using specific criteria, including QCP from any neighborhood organization on record with the state or

county in which the development is to be located and whose boundaries contain the proposed development site.

"The QAP restriction for resident councils cannot be found in the State statute. In June 2004 the Honorable Greg Abbott issued opinion GA0208 on whether TDHCA's 2004 QAP was consistent with the State statute.

"In his opinion the Attorney General stated that Section 2306.6710(b)(1) does not authorize the Department to adopt additional criteria or to modify the criteria set forth therein. His opinion also shows that this section is a mandatory provision, and the Department lacks discretionary authority to intersperse other or additional factors.

"If we follow the 2004 Attorney General opinion, the 2006 QAP provisions restricting QCP participation for resident councils contradict the State statute and exceed the Department's authority to the extent that they are inconsistent therewith."

MS. ANDERSON: Thank you very much, Mr. Walter.

MR. FLORES: Excuse me. Who does this man represent this?

MR. WALTER: Hollis Rutledge?

MR. FLORES: Yes.

MR. WALTER: He is working on behalf of the

housing authorities of Pharr, Brownsville and Weslaco.

MR. BOGANY: He's a consultant?

MR. WALTER: Yes, sir.

MR. BOGANY: Okay. Thank you.

MS. ANDERSON: That concludes the public comment on this, unless I've misplaced a piece of paper. On any of these if I'm missing somebody, get your hand up in the air for me.

Mr. Bogany.

MR. BOGANY: Jen, I have a question. After hearing public comment, based on how you read the QAP, has your opinion changed at all based on that these were residents that were dispersed. They were together at one time.

Now they've been dispersed, because they had to be for environmental issues. And now they've come back to vote for this particular project. Has your opinions changed at all because of that?

MS. JOYCE: No. And it's because actually I believe that he said something a little different from that. Will you let me clarify?

MR. BOGANY: Yes.

MS. JOYCE: He spoke of the Villa Esperanza which is a development that was demolished several years

ago. Those residents were relocated to a different development site. That resident council is still active.

And HUD rules preclude that resident council from addressing another competing resident council.

So the current existing development, existing right now where there's proposed new construction, the Villa Esperanza Resident council cannot comment on that. That's where it's members lie. So, no. I do not feel like it violates it at all. And HUD in fact has a similar rule to what we have.

MR. BOGANY: Thank you. I move that we deny the appeal.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. So now we are on 060118, Sunset Haven.

MS. JOYCE: These are pretty much the same

arguments for similar reasons, similar demolition several years ago. I'll go ahead if it's okay with you, unless you have any questions of me?

(No response.)

MS. ANDERSON: Mr. Palmer, do you want to start again?

Remberto Arteaga.

MR. ARTEAGA: Madam Chair, members of this Commission and Mr. Gerber. I am Remberto Arteaga, the Executive Director of the Brownsville Housing Authority. And I'm here to speak on behalf of Sunset Haven, a proposed 106-unit elderly development in Brownsville.

Based on your previous decision I want to clearly show that this is significantly different. This is an outline plot of the property that we have that we're considering. The area in orange is the property we bought back in 1994.

We built 44 single-family homes in 1997. At the time because of not enough funding from HUD the whole area was not completed, but it was reserved for future development. As clarified in our deficiency response dated April 7, the Brownsville Housing Authority lost 310 units that were lost through the HUD-approved demolition disposition.

Part of that also requires that we work to replace those units. Sunset Haven will include 30 public housing units of the lost public housing units. Thus under the QAP, Sunset Haven application is a reconstruction project.

The notion that the resident councils from where the units that were lost comment on this project is not appropriate because the units that were lost are at another site. But here we have a site that's within the confines -- it's a contiguous piece of property.

It's never been changed. So believe that these residents organizations have a right to comment about something that's going to happen within the confines of their property.

And furthermore the fact that these regulations are limiting their comments is disenfranchising them and making them second-class citizens, because not only can they not only comment about their own development within the confines of this property, but if something else was happening in a property adjacent to this property, that would be lost.

In essence we've created a second-class citizen by this action here. By restricting which resident councils may participate in the application process the

Department is actually treating public housing residents differently from other neighborhood organizations.

If Sunset Terrace Association was a private homeowners association their support letter would have received the full 24 points. In this case there were only 12 points. And I would appeal to your sense of justice that we be granted to the entire 24 points.

I also wanted to note there was a letter submitted on our behalf by Senator Lucio and Representative Oliveira. I'd like to have that read into the record. Thank you very much.

MR. BOGANY: Can I ask you a quick question?

MR. ARTEAGA: Yes, sir.

MR. BOGANY: Where is your project going in this orange block?

MR. ARTEAGA: Right in this area.

MR. BOGANY: Okay. And so the resident council of those --

MR. ARTEAGA: The resident council covers the entire area. But these are the residents that are currently living there.

MR. CONINE: How long has that resident council been in existence?

MR. ARTEAGA: About a year and a half, two

years.

MR. BOGANY: So, I guess I have a question for Jen.

In this scenario here, Jen, that's not considered part of that group?

MS. JOYCE: The QAP is very clear. And the bylaws of the association are also clear -- that the residents are the members of the resident council. That's the bylaws aspect. The QAP is clear that a resident council, which is named in the bylaws, cannot comment on new construction unless the residents actually occupy the development site and they're proposing to demolish.

If there were existing units here in this area that were going completely down on the ground and being built up and would be considered new construction and those people would be displaced, then they would indeed have the ability to comment on the 2006 QAP.

MR. CONINE: The clarity of the QAP -- I don't necessarily agree with you.

MS. ANDERSON: Who are you talking to?

MR. CONINE: I'm talking to Jen.

MS. ANDERSON: Okay. Then let's have the witnesses --

MR. CONINE: I need that map.

MR. ARTEAGA: Am I done, ma'am?

MS. ANDERSON: Yes.

MR. CONINE: This may be a Kevin Hamby issue here, too. Quite frankly I'm reading this language this week for the first time.

MS. ANDERSON: Are we going to ask the questions of staff or the witness?

MR. CONINE: Related to this project, because it says here -- the highlighted part out of the QAP says, "neighborhood organizations included owner associations, property owner associations and resident councils only for rehabilitation or demolition with new construction application, in which the council is commenting on the rehabilitation or demolition/new construction."

Now that slash can be "or" -- can be taken to mean "or" new construction within the property here, of those residents. That's the way I read that. Obviously you're not reading it that way.

That's why I think this particular case is so different where I think this language was headed, which was we didn't want a multifamily property next door to somebody else commenting on somebody else's property. But this single-family thing to me, the way that reads with the "slash" and "new construction" reads totally

different. Now, I put that out for discussion I guess.

MS. JOYCE: I will say it's been definitely determined by counsel in all discussions. But the key here is the property occupied by the residents. And it says "only for rehabilitation or demolition with new construction applications in which the council is commenting on the rehabilitation or demolition/new construction" -- "slash" meaning going to the previous aspect of that sentence -- "demolish with new construction."

MR. CONINE: All right. Let's just say the property. The property though is defined by the red boundary, not those single-family lots. And let me just make the assumption that one of those dudes sells the house and moves into the apartments.

They have met at least the intent of that language, I think.

MS. JOYCE: The property identified the property, as detailed in the bylaws, is the existing property and its members.

MR. CONINE: It's not the red boundary.

MS. JOYCE: No. In the other documentation that they provided to us they expanded their boundaries, which is similar to last year. The boundaries that were

identified in the bylaws -- because there weren't any bylaws -- the other documentation that you provided to us indicated those boundaries.

Either way, without getting into a large discussion about that aspect, the QAP is clear in terms of -- even not looking at the boundaries -- that the resident council can't comment unfortunately if it's new construction without demolition, because they can only comment on the development where they live, if it has demolition and new construction.

MR. CONINE: This says property. It doesn't development where they live. It says property. And we're going to get into a definition discussion or argument.

MS. JOYCE: Kevin, would you like to make any additions to that?

MR. HAMBY: Kevin Hamby, General Counsel.

MS. ANDERSON: Can I ask the witnesses just to sit right there on the front row. That's a very handy map. Thank you very much.

MR. CONINE: That's helpful. Thank you.

MR. HAMBY: The key term, I think -- and this was certainly a debated issue inside the Department as we've discussed this issue -- the key issue and the key phrase that triggers the denial or recommendation of the

appeal from the Executive Director and to the Board is "occupied."

The plain language of this particular section, the "occupied" language is a key phrase. Because it is distinguished from the other QCP boundaries -- because we don't say anywhere else that you have to occupy those boundaries -- it has to be within your organization structure.

We've heard several comments about resident councils, if it was a neighborhood organization it would be treated differently. And that's true, because they're different creatures. Resident councils, whenever you read their bylaws, have a very different set of agenda and a very different set of goals than your average neighborhood association.

They have economic buildups in them. They have other issues that are set apart from the typical neighborhood association. I inherited a lot of this language. Even though I was technically on staff when it was approved, it was done prior.

But because the Board and the public comment went to include the word "occupied," it obviously has some meaning and some intention. At this point no one occupies that property. It's within the boundaries. But there's a

distinct definitional difference from "within the boundaries" and "occupied."

MR. CONINE: But the new construction would be occupied by the residents.

MR. HAMBY: But at this point they're not part of the resident council. And that's the issue. It is a catch-22, but it is the definition that you put in there. You can't occupy structures that aren't built. I agree with that.

But that's the reason it makes clear that the rehabilitation and demolition is a key component of this particular section of the QAP.

MR. CONINE: The only thing that kills you the way I read it is the "/new construction," because anytime you have a "/new construction" it could mean "or."

MR. HAMBY: I don't disagree with that interpretation. But you have to have to occupation; you have to be occupied. Again that word is put in for a reason.

MR. CONINE: So you're making the leap that none of those existing homeowners are going to occupy those apartments?

MR. HAMBY: I'm making the leap that "occupied" is a past-tense phrase and at least indicates that it's

done now. It's not "will occupy." You'll see in other questions that come up -- looking at a LURA discussion -- we talk about prospective future and other tenants -- current and other tenants.

They make allowances for "prospective" whenever we start talking about "prospective." "Occupied currently" means it's occupied. That's largely the basis for why we looked at this language in the QAP. And if read it to where every word in it has meaning, if you have "occupied" then you have to occupy it.

That's the distinction. I'm reading what is placed before you.

MR. BOGANY: Kevin, I have a quick question just for my clarification, make sure I understand. The property was demolished, moved down. They were occupying it before. Then you can rebuild, and it meets the criteria.

Your thought process is, and Jen's thought process is there was never anything occupying that. So you're building from scratch.

MR. HAMBY: Actually one of the ones that we did approve, if I recall correctly -- there is a Phase I and a Phase II. And the resident council occupies both of those. The groups voted. They took it down to the

ground. And they will rebuild Phase II.

Even though the people in Phase II are going to be displaced, for purposes of commenting this particular project, the people are occupying what will be the property there. In this case it's a third lot, if you will.

MR. BOGANY: Okay.

MR. FLORES: Excuse me. Are you through?

MR. BOGANY: Yes, I am.

MR. FLORES: Kevin, so if you had a phase construction, which is pretty common in the business -- Phase I, II and III -- the council would have to the full thought of saying that when we go to Phase II and III, all of that is all-inclusive then. Is that correct?

MR. HAMBY: Yes. That's my understanding.

MR. FLORES: Okay. But if they don't have it, then therefore when you go into Phase II, then do you have to start all over again?

MR. HAMBY: Again, if you're taking people down -- if people are living there now --

MR. FLORES: My assumption is you have a blank piece of property, and you have Phase I, II and III.

MR. HAMBY: Well, I understand it. If you have Phase I, II and III the way the QAP is written, I believe

you have to have occupation. And so if you have no property there to take down, then it would be new construction and not rehabilitation or reconstruction.

MR. FLORES: I'd like to approve this, if somebody would second my motion.

MS. ANDERSON: We have some additional public comment.

Bill Skeen.

MR. SKEEN: I'll cede my time to Barry Palmer.

MS. ANDERSON: Mr. Palmer.

MR. PALMER: Barry Palmer on behalf of the Brownsville Housing Authority. I have to respectfully disagree with Jen Joyce and with Kevin that the language of the QAP is all that clear cut as to what it says. Keep in mind this is not a statute, where you've got to parse every word and give meaning to it.

This is language added in the QAP by the Board. When it's unclear and could be read a number of different ways, I think you've got to give the benefit of the doubt to including participation by the neighborhood groups, rather than excluding them.

I think that you can certainly read this language to include this situation, where you've got units next door to vacant land, and there are units occupied

there right now. What does "occupied" mean? Does "occupied" include the playground?

Does "occupied" include open green space of an apartment complex that is owned by the same owner? I would say that it does. If you live at an apartment complex and there's a bunch of green space next door that you used to play in -- it's owned by the same owner -- are the residents of that apartment complex occupying that open space?

I would submit that they are. And that is the situation here. So we would ask that, in this case where the language is very unclear as to what it says, that it be read in a manner to include more participation rather than to exclude it. Thank you.

MS. ANDERSON: Mr. Bill Walter.

MR. WALTER: I'll cede my time to the other witnesses.

MS. ANDERSON: William Lee.

MR. LEE: I'll cede my time to Ms. Bast. We'll pass.

MS. ANDERSON: Mr. Flores.

MR. FLORES: I think I just wanted to make a point of clarification. I think Mr. Palmer made the very same comment that I was going to make. If I understood

the staff correctly, they said that the resident council expanded their boundaries.

That is simply not correct. The boundaries of the resident council since 1994 have been on site right there. There has never been any extension of their boundaries. It's been that way since day one.

MS. ANDERSON: Would you point to Rainbow Drive for me?

MR. FLORES: This is Rainbow Drive right here.

MS. ANDERSON: Okay. So inside the orange line. And then Horizon Lane.

MR. FLORES: Right here.

MS. ANDERSON: And Blue Sky Drive.

MR. FLORES: Right here.

MS. ANDERSON: When were the boundaries of the resident council --

MR. FLORES: 1994 when the site was acquired. That is the public housing development.

MS. ANDERSON: Well, the letter dated March 1 from Olivia Rivera says the boundaries are Rainbow Drive, Horizon Lane and Blue Sky Drive.

MR. FLORES: I think this map is included as an attachment to their bylaws.

MS. ANDERSON: I'm just reading the plain

language of the letter.

MR. FLORES: The only other thing is this also seems to be an interpretation by the staff that HUD dictates the bylaws and the actions and boundaries for resident councils. That simply is not correct. The resident councils approve their own bylaws.

They elect their own officers. They do their own governing. And HUD encourages them to expand beyond the public housing development, that they integrate and mainstream themselves into the neighborhood. But basically my comment was that the boundaries had never changed since day one.

MS. ANDERSON: Ms. Bast.

(No response.)

MS. ANDERSON: Mr. Roy Navarro.

(No response.)

MS. ANDERSON: Mr. Voelker, do you want to speak now?

MR. VOELKER: Madam Chair, other members of the Board. My name is Bob Voelker.

Ms. Anderson, I believe you were there at the urban affairs hearing.

MS. ANDERSON: This needs to about this agenda item.

MR. VOELKER: It will be.

MS. ANDERSON: Okay. Thank you.

MR. VOELKER: You were there at the urban affairs meeting a couple of weeks ago when I talked about Fair Housing issues. There implicit in the Qualified Allocation Plan. I've taken this as kind of my personal agenda item, even though I don't have a horse in this race right now with this application or any of the others.

But I am horribly troubled. As a fair housing lawyer who's been involved in about six of these cases since 1994, I'm with what we're trying to do here. I want you to image the flip side of what we're talking about here today.

Let's say you had 1,000 public housing residents who came down to object and said, Our area covers this particular site. But we don't want this deal here. Would you really want to deny those public housing residents the ability to comment on this application.

If this were a neighborhood association you would give them that authority. We all know that public housing residents in areas where public housing authority deals exist tend to be very low-income areas. They tend to have a greater minority concentration.

Clearly this rule and the way it's being

applied today is going to have an impact on these public housing authority projects that are being proposed and are going to have an impact on public housing residents that it would not have if these people lived in Collin County north of Dallas, and they were the same people commenting on the same application.

And that is horribly, horribly problematic from a fair housing standpoint. You're going to deny public housing residents the opportunity to have new public housing units. Whereas if this same project were proposed in Collin County with a neighborhood association you would allow them to have that right.

I think that's a very difficult thing to support when it comes down to supporting what the fair housing laws encourage. So, I would ask you to think about what happens next year when you have 1,000 public housing residents who come down here and say they don't want a deal here.

You're going to deny them a total voice. I think that's very difficult for the Board to take that position. Thank you.

MS. ANDERSON: May I ask you a question, Mr. Voelker.

MR. VOELKER: Yes, ma'am.

MS. ANDERSON: This language that we're debating about the resident council was put in the draft QAP last year. Did you comment on this language during the public comment period last year?

MR. VOELKER: I did not. But whether you comment or not doesn't really matter. It still violates the law.

MS. ANDERSON: I understand. I just asked you a question about whether you participated in the public comment.

MR. BOGANY: Ms. Anderson.

MS. ANDERSON: Yes, sir.

MR. BOGANY: I have one quick question.

MS. ANDERSON: For this gentleman?

MR. BOGANY: No, for you. You were reading some information from the resident council, and they told you what their borders were.

MS. ANDERSON: Right. It's the page marked 69, 70 and 71 in the Board book.

Mr. Robert Joy.

MR. JOY: Up until about ten minutes ago I did not plan on speaking today. But I feel like it's appropriate for me to speak at this point. During this appeals process every appeal I've heard so far has been

questioning the QAP.

It says it was wrong when it was done. And we're not talking about beginner developers here. We're talking about people like Nono Flores, Cynthia Bast, Bill Lee, Bill Skeen, Bill Fisher -- all of which have been in this process for years and review the QAP to a great extent just like I do.

And now they're coming and saying when they don't get their deals, Oh, the QAP was wrong, we need to fix it. Well, the QAP wasn't wrong. It just didn't work out for them. And I feel like it's appropriate that we still with the QAP to whatever extent it is.

The language -- and I don't have a copy of QAP -- they talk about the occupied. I don't think that's the key here. I think the rehabilitation and the destruction with new construction are the key words. Occupied may be a key word, but those are the real key words. Thank you.

MS. ANDERSON: Thank you, sir.

Ms. Bast.

MS. BAST: Very quickly. There was some question about the boundaries, which as Mr. Flores indicated, were established by the orange lines. However what the community organization said is that basically

that they live on these streets.

They all front these streets. So they're trying to say, these are the streets of our neighborhood.

Perhaps a more appropriate legal description from a title company would have been better. But in closing I would like to say first of all, ditto to Mr. Palmer and Mr. Voekler.

Both presented themselves I think very eloquently. As I tried to say in the Mesquite Terrace appeal we have a situation of unintended consequences here. I don't think this Board wants to disenfranchise or eliminate anyone from the process.

This Board has always tried to be inclusive. We have something that was put in a rule to try to address one problem last year. And as happens every year, we discover things that we realize either it slipped by us, or we didn't fully appreciate the consequences, or the language wasn't clear.

And maybe we thought it even said something else. There's lots of reasons why perhaps it got to where it did. But the fact of the matter is we're here today with a significant problem with residents of public housing who are not being able to offer their voice.

And I hope that is what you will think about.

And I hope that you know that that's what Board discretion is all about. Thank you.

MS. JOYCE: As it relates to the boundaries -- because I know I brought that up earlier, and I chose to go in the direction of the QAP. I just want to clarify. The neighborhood organization in response to a deficiency that we issued to them, we told them that your boundaries as you've stated them do not include the proposed development site.

This was after lots of dialogues with them. They wrote back saying the Brownsville Housing Authority owns the land in the Sunset Terrace development. Sunset Haven would automatically be included in the Sunset Terrace resident development and association due to its proximity and location within the development.

We considered those boundaries to be such their bylaws state, which is the members currently are the boundaries, and by the way that this particular HUD resident council works is it will expand into once the development is built.

That does not also mean that the QAP restricts this only to public housing resident councils. The language is actually resident councils.

MR. CONINE: Mr. Hamby. You're focused on the

word "occupied." And I'm focusing the word "property." The word "property" -- singular -- would be all areas within the boundary of that resident council, because all of those residents have responsibility for the property.

Therefore all those who occupy within those boundaries can comment on whatever goes on the vacant land on the property. And that's I think a reasonable developer would read that. I've read this thing now over a dozen times, and would think that that resident council could comment -- again this is the single-family deal, which is a little different than two apartment complexes -- but that's where I'm headed.

I think that the singular on "property" is what gets you in the jeopardy box here.

MR. HAMBY: Well, I guess I would go into that same discussion that Mr. Palmer had. Do you occupy a playground? Do you occupy the dirt sitting next to you?

MR. CONINE: Absolutely. Like a homeowners association, you have responsibility for the common area. It's the same thing.

MR. HAMBY: And they're not in this particular case occupying that property. It's designed to be built upon. We're going to have this issue many times. I think it's very clear. So I think that's where we

probably have a disagreement on that particular phrase.

MR. CONINE: Very imperfect language here.

MR. HAMBY: I know Ms. Bast has said a couple of times, unintended consequences. I don't believe that's unintended consequences. I believe that's exactly why this language was written this way. It may not be a desired consequence.

But unintended consequences means, Gosh, we never thought of this when we were writing this. And I believe based on Ms. Bast said, it was in direct response to an appeal last year, where we had people commenting across borders across --

So it was very clearly written -- at least the intent. And one of the things we do whenever we determine this intent is go back and say why did this rule come up, where is it from; we read the transcript.

MR. CONINE: Just the overall concept, Kevin, is if you have a resident council that has a defined boundary. It's on the books for a while. And they live in houses in the vacant land within that boundary, and something's going to be built in there, you'd want them to comment on it. That's just plain old common sense. Right?

MR. HAMBY: I want to get to the reasonable

developer question. The question is the rule of it says and the reason it was written and drafted this way. And the reason it was written and drafted this way when you go back and look at the language that went around the meeting, there was some give and take on what you were going to say.

This is what was put out there. I would hesitate to count the number of pages of fair housing questions that Mr. Voelker has sent me in this period of time. And this has never come up.

MS. ANDERSON: Wasn't part of why it was put in there because we had resident councils trying to kill other people's deals, playing dirty?

MR. CONINE: Yes, next door.

MR. HAMBY: It was to limit where you could comment to, to the land that you actually occupied. If you believe that the occupation includes anything adjacent, then in your mind that would be sufficient to occupy.

MR. CONINE: Within the boundary, not adjacent, within the boundary. Ms. Joyce was making a point a minute ago about resident councils are not just public housing folks. What was happening is you'd have a market-rate apartment project who would form a resident council

and then complain about the low-income deal moving in next door.

So this was where the genesis of this language came from.

MR. HAMBY: Correct. But there is a --

There is some dispute as to the boundaries from what they submitted originally and what they're going to expand into. This is the reason you get paid the books, is because you get to make these decisions.

MS. ANDERSON: What we were trying to do was rein in resident councils commenting negatively on some adjacent development that was being built by a private developer, not a housing association.

MR. HAMBY: Now that is where I would agree with -- I don't remember who said it -- that we would have a Fourteenth Amendment -- we'd probably have a First Amendment problem if we were only doing it for people who comment negatively on property next door.

We could not limit that speech to make it to where, if you're making a negative comment you cannot comment, if you're making a positive comment, you can. I mean, I think that's where we'd end up in more trouble than we probably want to buy into at this point.

I understand your dilemma. We have had as much

dilemma internally.

MR. FLORES: Madam Chair, have we had full discussion from the public?

MS. ANDERSON: We are complete. And I believe you all have copies of Senator Lucio's letter about this development.

Did they get a copy of Representative Oliveira letter? Yes, they do.

MR. FLORES: Madam Chair, I move to approve the -- I'm trying to figure out how to say it.

MS. ANDERSON: Grant the appeals or deny the appeals.

MR. FLORES: Grant the appeal.

MR. CONINE: I'll second.

MS. ANDERSON: Discussion.

MR. FLORES: My basis is that I think it's imperfect language, and we should give them the benefit of doubt.

MS. ANDERSON: Any other discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. JOYCE: The next item up for discussion is Centerpoint Home Ownership, which is 060144. Considering what you just voted on, we would actually recommend that you grant this particular appeal for Centerpoint Home Ownership, because the way that the Board is interpreting the language is such that a property occupied includes the vacant land, and that new construction would include that property.

MR. CONINE: For single-family deals.

MS. JOYCE: For single-family. In this case this is a single-family development with plots that are within the boundary of the development site as indicated in the neighborhood organization. And they're commenting on the remaining open land that will be new construction, single-family.

Please be very aware of the fact that this resident council also has commented one letter of opposition and two letters of support for developments outside. It actually happens to be the same neighborhood organization from last year that was talked about in the appeal earlier.

So, if you do approve this, make sure that you realize the one in late June won't necessarily be approved. You're not approving both by approving this one.

MS. ANDERSON: Now, I have a question for you on page 96 of the appeal book. It is an email from a Dallas law firm to you, saying that the QCP packet is attached. Is this law firm representing the neighborhood or the applicant?

MS. JOYCE: I was very clear to make sure of that. I had extensive conversations -- and you can see later emails -- with Ms. Pritchard. And they indicated that she in no way was affiliated. She purely was the resident council's legal assistant.

MS. ANDERSON: Now, how would a resident council in the Rio Grande Valley end up with a Dallas-based law firm, whose principal in the law firm is a fraternity brother and classmate of the applicant?

MS. JOYCE: To be completely candid it wasn't a test that we were making. So, if you would like to call anybody up to ask about that -- I don't know the answer to that.

MS. ANDERSON: I don't believe the resident council, because I know about the relationship between the

applicant and the John Carney law firm. I think this is blatant assistance to this neighborhood association. And the QAP is very clear about that.

So I'm not willing to grant this appeal, because I don't think I'm going to get another shot at making the comments I just made. It violates that section of the QAP. And the letter ought to be ineligible in my opinion on that basis. It's just clear as day what's being done here.

MR. CONINE: There's not another deficiency letter the department could send out?

MS. JOYCE: I'm sorry. What was your question?

MR. CONINE: Another deficiency letter on that issue.

MS. JOYCE: Is there another one, or could there be?

MR. CONINE: Could there be?

MS. JOYCE: I don't see why not. But if it's the Board's wishes and discretion to ask us to table this appeal, possibly issue the deficiency to the neighborhood organization asking for clarification of this item prior to making judgment.

MR. CONINE: Move to table.

MS. ANDERSON: Second.

(No response.)

MS. ANDERSON: Discussion? All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. CONINE: Was there public comment on this particular issue?

MS. ANDERSON: Have public comment that we didn't hear?

MR. HAMBY: Actually it was my understanding that you made a motion to postpone, which is a privileged motion which takes precedent over the public discussion.

MS. ANDERSON: The next one.

MS. JOYCE: Sorry. I wasn't sure if you wanted me to keep going. The Evergreen at Farmers Branch is 060110. And QAP says that neighborhood organizations are persons living near one another. It also says that property owners associations can qualify, in terms of being considered a neighborhood organization.

There were several property owner associations that submitted letters. When that was the case we issued deficiencies basically saying, Could you please prove that

you at least some residents living near one another as a property association within these boundaries.

In this particular application it is not occupied by the residents. But as the applicant asserts it will in three months. Right now the neighborhood organization does not qualify because it is only comprised of property owners and not residents.

MS. ANDERSON: Mr. Brad Forslund.

MR. FORSLUND: Good afternoon, Madam Chair and Board. My name is Brad Forslund, representing Churchill Residential on behalf of the applicant. As Ms. Joyce indicated we feel that this particular appeal is a matter of timing and would ask that the Board take this into consideration, not only in the case of this application, but also going forward.

The facts of this situation are: the site is located in what is called the Mercer Crossing mixed-use development. This mixed-use development is a combination of residential, office, retail and hotel. There are 5,000 units planned for this particular development.

Currently there is the first phase of residential under construction right now. And they are scheduled to open within the next two months now -- three months when we first discussed this deficiency. There is

a second phase that is scheduled to start construction this year.

There's also a town-home-for-sale development scheduled in this same neighborhood. I'd like to point out that Mercer Crossing does have a neighborhood association. It was formed prior to March 1, 2006. We're well within the boundaries.

It's got organizational documents. It has an active board.

MR. CONINE: Just nobody living there.

MR. FORSLUND: Just nobody living there. But I would like to say -- and you'll see in the correspondence -- that the intent is that when people start to reside in this neighborhood that there will be a resident council.

That's why I ask. I know what the QAP intends to say. But do we really want to exclude developments -- are we saying that we can't be first into a new mixed-use development? Are we saying that we have to let somebody else go in a developed community, get residence, and then now we can go in?

That to me does not seem to be the intent of what we want to do here. Looking forward just as a final comment -- if we're going to use this program to go in and

be a catalyst into urban locations into new neighborhoods, and if we continue to have this rule, we cannot be a catalyst.

We cannot go into these new urban neighborhoods until somebody is there and living. I just would ask the Board to consider these things and take into consideration that it is timing, and also that the QAP does not specifically state when residency has to occur. Thank you.

MS. ANDERSON: Ms. Dula.

MS. DULA: Thank you. I think he stated it aptly.

MS. ANDERSON: Thank you.

MS. JOYCE: Yes, sir.

MR. BOGANY: Jen, have we ever had a situation like this one here, where they're trying to actually create something versus most of the time we're going into communities that are already established? But what happens when you're trying to establish a community where there is not community at all, and you're trying to get it going?

MS. JOYCE: Yes, we have. I can point to it in some of the transcripts that I brought with me in my research. We also had that public comment provided for

the QAP. And it was determined that because the people are not living near one another yet -- both in the appeal and in the QAP language -- that no. It does not qualify as a neighborhood organization.

MS. ANDERSON: It doesn't mean you can't put the development in there, right? We're not standing in the way of putting the development in there. It's just that you couldn't get QCP points in scoring.

MS. JOYCE: You can have a property owners association clearly, as long as some of the members are also residents within that boundary. It's not a problem.

MR. BOGANY: So in other words it's not a precedent that we've set before, where we approved something without that -- going back and doing your research.

MS. JOYCE: The only one that I can think of is the one that I mentioned to you. But I would never assert that there's a precedent that we should be following. I feel like the QAP language is clear. But it's up for your discretion.

MR. CONINE: Move to deny the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. JOYCE: The next item is Orchard Park at Willowbrook, 060170. In summary we issued that same deficiency because it seemed that they were property owners association. In their deficiency response back to us they indicated that they were comprised of three people, all of them were property owners and non-residents, but one is a church.

They didn't qualify that at all to indicate if anybody lived there or not. But in their response we were also able to determine that the three people are also the only officers of the organization. And so it is an organization comprised only of officers, which isn't allowed in the QAP as well.

So they were considered ineligible under the property owners with non-residents section of the QAP.

MS. ANDERSON: Mr. Fairfield.

MR. FAIRFIELD: Thank you Madam Chair, members of the Board, Mr. Gerber and Ms. Joyce. My name is Stephan Fairfield with Covenant Community Capital in Orchard communities.

We are a mission-drive nonprofit group focused on helping low-income working families and seniors build economic resilience by providing access to social capital, financial literacy, education and affordable housing.

We've worked hard to be good stewards of the resources intrusted to us by this Department, voluntarily making 50 percent units of many of the 60 percent units in our last tax credit award. And in the area of home ownership we've successfully served families earning as low as 10 percent of median family income.

Our appeal is based first on ambiguity in the QAP, since it states that neighborhood organizations include property owner associations, and secondly because the Harris County appraisal district, which does define and classify neighborhoods in Harris County does not define them on the basis of the presence of a homeowner or renter, but rather on a traditional real estate understanding of neighborhoods as "groups of comparable properties whose boundaries are based on location and similarity of property data characteristics."

Thus our neighborhood as coded and classified by the county includes commercial land, a school, a church, a retail center, a daycare, a warehouse, offices, parking and a college campus. None of the 28 tracts in the county's classified neighborhood include a home or apartment.

We believe the Agency would accept written statements from any neighborhood organization on record with the state or county in which the development is to be located and whose boundaries contain the site.

We believe that our support letter from the owners association, whose restrictions are reported against its members' properties, meets the statute's meaning, and the Department's interpretation goes beyond the statute and has the effect of disenfranchising the voices of a large host of property owners.

Because of the scoring structure, this limited interpretation also renders a large portion of the county ineligible for affordable housing development, exacerbates concentration problems and needlessly makes it harder for the Department and groups like us to achieve our mission.

A story on the cover of the Houston Business Journal recently recounted the revolt of homeowners in Fort Bend County over a proposed tie-in market-rate

development.

An unnecessarily restrictive policy which pushes affordable housing into proximity with homeowners isn't required by statute. We would be grateful for your kind consideration of our appeal and recognize a letter from a property owners' association created and reported in the real property records in 1979, which restricts its owners' sites.

And ours has been in that boundary since inception and meets the County's understanding of a neighborhood. We'd be grateful for your consideration. Thank you.

MR. CONINE: On this one I think the QAP's just clear that you've got to have folks living there. So I move to deny the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no. Motion carries.

Mr. Bogany, did you vote no?

MR. BOGANY: No.

MS. ANDERSON: Mr. Bogany voted no.

MS. JOYCE: The next application is for Providence Estates. It is application 060219. I wanted to first point out that there's a mistake in your write-up, in that it says that the applicant was applying for under 50.9(i)(23).

And actually what we're talking about right now is (i)(19), which is the qualified census tracts with revitalization. Basically in order to qualify for these points, the development needs to be located inside of a community of qualified census tract.

We issued a deficiency to the applicant with a laundry list of items. And unfortunately that one was missed by the applicant, that we had asked for evidence indicating that they actually were inside the QCT. Part of the reason why it was missed probably had to do with the fact that it was being submitted at 4:55, five minutes from the 5 o'clock deadline.

So unfortunately staff, who normally takes the time to call the applicant to say, Hey, did you get this portion, we didn't receive it -- we didn't have to time to do it because of the five minutes. So we issued a scoring notice to the applicant, letting them know that they

didn't qualify for these points.

And the appeal is basically asking for the Board's discretion in allowing the points be given, because the development is indeed inside of the QCT.

MS. ANDERSON: There's no one here to comment.

I have a question for you. I made a note to myself that the deficiency notice was dated April 11, and the response I guess was due to us on -- no, final scoring notice on the 15th.

What I'm trying to establish is how long did the developer have from the time the deficiency notice was issued until the time they needed to respond to all items in the deficiency notice?

MS. JOYCE: That portion of the QAP is also behind the action item. The deficiency deadline, they have five days. At the end of the fifth day then they lose five points. Because this point is only valued at one, there was no need for him to submit it the next day, he would have lost five instead of one.

Five days. And after seven, they're terminated.

MR. CONINE: But it's in the QCP.

MS. JOYCE: Yes.

MR. CONINE: I move we grant the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no. No. I vote no.

MR. GONZALEZ: Motion carries.

MS. ANDERSON: Yes, I'm sorry. The motion carries.

Thank you, Mr. Gonzalez.

MS. JOYCE: I will try and do what I can to get through this one as quickly as possible. You guys might a dialogue. It might need to be with Kevin Hamby. This is the Residences at Eastland, 060138. The development applied for points under (I)(11) which awards points for developments that are including the use of existing housing as part of the community revitalization plan.

So to qualify for points they have to be demolishing and proposing new construction or rehabilitation of existing housing on the site. The points were not awarded because the applicant is proposing to demolish one unoccupied house, and then rebuild 165

units.

It has been determined that this is not existing housing. So, I will go ahead and let -- unless you have any questions of me at this time.

MS. ANDERSON: Who'd like to go first? Bob? Dan?

MS. BAST: Thank you for your patience and endurance. We're getting there. Again Cynthia Bast of Locke, Lidell & Sapp, representing the applicant for Residences at Eastland in this appeal. As noted by Ms. Joyce, the site for the development does contain existing housing, and the site is undeniably part of a community revitalization plan.

Thus we believe that the applicant should qualify for the seven points under this scoring item of the QAP. I know -- just for your information -- that this is one of those items of the QAP in the selection criteria that actually comes from a mandate in the Internal Revenue Code.

The housing on this site is a dilapidated house, that although currently unoccupied was recently occupied, and that is a public eyesore. And it will be demolished as part of the development. Ridding the city of this kind of public eyesore is exactly what the

community revitalization plan is trying to achieve.

However, as Ms. Joyce notes, because there is only one house on the site, TDHCA staff has determined that the applicant should not qualify for those seven points. This interpretation extends beyond the bounds of the QAP, beyond the bounds of the Internal Revenue Code.

The QAP and the Internal Revenue Code do not have a definition for existing housing. They do not require the presence of any specific number of units for this selection item. Moreover, in the 2005 application round this Department faced a virtually identical situation.

And they gave the applicant a different result.

The language in the QAP in 2005 and 2006 are exactly the same. The 2005 applicant received its requested points for a site that contained two houses that would be demolished.

This applicant has not received points for a site that contains one house. So what's the differences between two houses in 2005 and one house in 2006, when the language of the QAP remains the same? We asked the staff this very question.

And they feel that there's a need to change this interpretation and that it was appropriate to do so,

particularly in like of personnel changes that have occurred since the 2005 round.

And they believe that a materiality standard needs to be applied to this concept of existing housing on the side, which again the materiality standard is not specifically in the QAP or the Code.

Ms. Anderson, members of the Board, I understand that from time to time we need to change interpretations. And we do that. And we need to change sometimes the way we look at things. But I would argue that now is not the time to change an interpretation.

To change an interpretation of language in the QAP that has existed during multiple years during the middle of an appeal works against the goals that this Board has tried to achieve -- that of a transparent process and a level playing field.

If you'll just give just a moment more. I have some time from Mr. Sherman.

MS. ANDERSON: Yes. He's yielded his time.

MS. BASS: You know that these applicants select their sites based on how they think they're going to score during the competitive process. They do that based on the plain language of the QAP and the known interpretations of the QAP.

And that's exactly what happened here. We have an applicant that spent thousands of dollars pursuing a potential site, thinking that it would be competitive based on a known interpretation of the QAP. I'm not trying to tell you that you shouldn't change your interpretations over time.

But what I'm saying here is that if you wanted to change this interpretation of this part of the QAP, you could have done it during the QAP drafting process, which would have been vetted in public comment. You could have done it at the application workshops.

You could have done it in the Q&A that's posted on the web. But it's being done in the middle of the scoring process, which I believe is not transparent and does not create a level playing field. So if you want to change this interpretation of what constitutes existing housing, then by all means do so.

But this Board has said many times, including to me, that you need to follow the language of the QAP. And if there's a problem, then we'll address it in the 2007 round.

So to close I am asking you to please award the seven points to this applicant for a development that uses existing housing as part of a community revitalization

plan, because to grant the points is consistent with the QAP, maintains the level playing field that you all have worked so hard to try to achieve here. Thank you.

MS. ANDERSON: Mr. Sherman.

MR. SHERMAN: Cynthia expressed what we need to.

MS. ANDERSON: Mr. Hopkins.

MR. HOPKINS: She's done very well.

MS. ANDERSON: Bradford Bell.

MR. BELL: Ditto.

MS. ANDERSON: Do you have a question for Mr. Hamby?

MR. HAMBY: Kevin Hamby, General Counsel.

MR. GONZALEZ: Kevin, tell us what you know.

MR. HAMBY: Well, I think Ms. Bast is going to get mad at me today, because I keep talking about her. I'm going to quote her language to you. Don't check your brains at the door. This language is very explicit. And I obviously was not here to make a recommendation to the Board last year.

If you read 50.9(I)(11) one of the key elements of it -- first it says, "Use of existing housing is part of the community revitalization plan." I don't think anybody disagrees this is a community revitalization plan.

But if you read the definition that goes beyond the headline of existing housing it says, "The development is an existing residential development."

One house does not a development make. I think that's where our language came in. To me it makes it pretty clear in the language. So from that standpoint that's the interpretation that we use. There is, as she said, in a legal determination -- and one of the things that we've changed this year is we've done written legal determinations whenever somebody asked us a question.

And I believe the applicant received that. Jen

MS. JOYCE: Yes.

MR. HAMBY: Yes, the applicant received that.

And I believe that Ms. Bast's letter -- it's in your Board book -- discusses that issue. I appreciate the logic that she's talking about that from year to year having a consistency, but in my mind whenever you ask me to interpret things, I was given direction by both the executive director and by this Board to interpret things as they are in the rules and let you know what I think the plain language says.

And I believe that existing residential development implies a materiality test, that there's got to be more than one unit, and that there's got to be

something there that you're actually replacing. I would completely understand why Fort Worth would want this particular unit torn down.

That doesn't mean it's worth seven points, because that's a lot of points. Anything else?

MR. BOGANY: She used an example of year ago that we passed a project that had similar characteristics.

Jen, are you familiar with that project or know what she was talking about?

MS. JOYCE: Somewhat, yes.

MR. BOGANY: Is it similar?

MS. JOYCE: In my discussions with Kevin we talked about kind of in terms of percentages. My notes say it was two units, but it was proposing 36. In this case it's one unit, proposing 165.

How much? It was 168. Two units and 168. Then my notes were wrong.

But, Kevin, again if you could go ahead and clarify on that.

MR. HAMBY: My issue in the materiality question became a materiality question because there has to be something that's a reasonable man test, if you will. Does anybody see this as a residential development?

That's in the QAP, and it's defined there.

Again I wasn't basing it on last year's opinion. I think we've had many different opinions than we had last year over the course of it, including in the Q&A and other areas.

MR. BOGANY: Well, I guess, Kevin, what I'm thinking is the consistency. Today we voted on appeals that could open doors for other appeals. And people throwing things constantly back that you appealed last year, this year and so on.

That's the biggest issue when you come into appeals is that you constantly open the door and lawsuits for people to come back and say, you denied this and that. Consistency is what I'm trying to achieve. Just be very consistent.

So to me if I've got two units that was a development a year ago, then it's hard for me to believe that this one unit couldn't be considered the same thing.

MR. HAMBY: Well, I think in administrative law -- especially for your Board -- you are not a court. It's not stare decisis. There is not a binding precedence. Obviously it's good to give as much information as you can to the development community. But you write a new rule every year.

MR. GONZALEZ: Move we deny.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. JOYCE: The next application appeal is for Pear Orchard Apartments. It's a Hurricane Rita application that was submitted -- am I going out of order?

MS. ANDERSON: What happened to Alamito Place?

MS. JOYCE: You're correct. Alamito Place, which is 060234. It's an application in El Paso. The QAP has the explicit requirement that you must submit a Phase I environmental site assessment for the Department to be evaluated by April 1, 2006.

We did not receive this Phase I environmental site assessment. We notified the applicant and gave him the opportunity to provide proof that it was submitted timely. They then let us know that there was an issue

with HUD, that there was a delay in getting it. They would not be able to get it to us.

To date they still have not gotten us the Phase I environmental site assessment. They were terminated based on the fact that they didn't meet the required deadline.

MS. ANDERSON: Mr. Beto O'Rourke.

MR. O'ROURKE: If I could I'd like to allow Ms. Jackson to go before me.

MS. JACKSON: Good afternoon, Commissioners. I'm sorry I'm Antoinette Jackson with Coats Rose. Alamito Place Apartments is a Hope VI development in El Paso, Texas, which is going to be a part of a full redevelopment plan, which is a part of what the city has set forth for the City of El Paso, which you will hear more about.

The ESA is something that also must be done in conjunction with HUD approvals. And it also requires SHPO approvals, which are these historic approvals. The ESA in this case never received a HUD approval, and we're waiting for that.

However, as you may know, housing authorities have certain guidelines that they must follow and meet in order for them to proceed with procurement and other guidelines in order to secure third-party reports.

Because they have not received a HUD approval, they had to go through the HUD process in order to get that HUD approval for them to proceed.

They notified the Department that they had not received that HUD approval. However, we never received a formal notice of a deficiency for the ESA. When we did indicate to the Department that we wanted to know what would be the problem here and what would happen, we did not receive a response from the Department.

Because this is a not a statutory requirement we are asking that the Board use its discretion for this particular threshold requirement, and ask that you grant the appeal today.

MS. ANDERSON: Questions?

MR. GONZALEZ: I have a question for Jen.

MS. ANDERSON: I've got some more public comment.

Mr. O'Rourke.

MR. O'ROURKE: Madam Chair and members of the Board. I thank you for the opportunity to speak today. My name is Beto O'Rourke. I'm the City Council Representative for District 8, which includes South El Paso and the Segundo Barrio, which includes the proposed Alamito Place.

There's tremendous need in El Paso as there are in many of the communities that you all serve. Our per capita income in certain census tracts in South El Paso are under \$7,000 a year. We have a very high unemployment and poverty rates.

Residential flight in the last census period, we had 1,200 residents leave the downtown area and the loss of 490 housing units. So we need to correct that. However, on the other side of this we have a once-in-a-lifetime opportunity right now at this point in time.

You heard earlier today that Dallas is in the middle of a renaissance of their downtown. We're just kickstarting ours. The city, the entire community has focused its efforts and its housing efforts specifically on South El Paso.

There's a comprehensive plan to revitalize, renew and redevelop downtown El Paso. And really central to this is the Hope VI grant that was awarded by the Housing and Urban Development Department last year, a \$65 million effort.

The city's contributing \$1.2 million to infrastructure. This low-income tax credit development application is fundamental to the success of this Hope VI project. I'm trying to establish a chain of related

issues that will bring back South El Paso.

So, we are committed at the city's level to bringing this back. On behalf of the residents of Segundo Barrio, the mayor, the Council and the people of El Paso, we ask you to please look favorably on our request today.

I also have a letter that was just given to us by Senator Shapleigh.

It's a very short one. If I may I'd like to read it into the record. "I am writing in support of the Alamito Place housing project which is a part of the Hope VI revitalization program of public housing in El Paso. The particular project deals with the revitalization of the oldest public housing property in the City of El Paso.

"Hope VI awards, which is granted by the U.S. Department HUD requires partnership with the community and other resources to fulfill the development. In doing so the El Paso Housing Authority has created partnerships with the city, county and neighboring communities in an effort to realize this project.

"This project is also a part of the city's plans to revitalize downtown El Paso. Therefore I urge you to give strong consideration to the appeal being made by the City of El Paso's Housing Authority." Thank you. And I will give you this letter.

MS. ANDERSON: Thank you, sir.

MR. BOGANY: I have a quick question for you.

MR. O'ROURKE: Yes, sir.

MR. BOGANY: I understand how important it is to get this project on board for El Paso. But what I don't understand is why the environmental site assessment was not turned in on time. If you know you need it, you know you've got to get it done, you know how important this project is, why didn't the developer get the ESA in to staff?

MR. O'ROURKE: Sir, this was the first time the housing authority had applied for these tax credits. And they were doing so assuming that they had to follow the SHPO for environmental site assessments. So we were going under the federal regulation, not realizing that we could use a third party.

However, there are two representatives from the housing authority who are signed up to speak, that might be able to give some detail to your question.

MR. BOGANY: I just feel like that's your problem. You've come close to telling me why you didn't do it. But if you've experienced developers and you know this project is good, then everybody should be doing their job. That's why you've got them on the team.

MR. O'ROURKE: And I don't want to for a minute imply that I think that a mistake was not made. There was a mistake in this process. We're owning up to it. Nothing was lost in the mail. The dog didn't eat the environmental assessment.

But what we're telling you is there was a reason. It was unwitting. We thought we were following the correct procedures. I ask your indulgence in that. But there's a better explanation coming from the members of the housing authority.

MR. BOGANY: All right. Thank you.

MS. ANDERSON: Mr. Salcido.

MR. SALCIDO: I will yield to Gary Sanchez.

MS. ANDERSON: Okay. Thank you, sir.

MR. SANCHEZ: Good afternoon, Madam Chair, members of the Board. My name's Gary Sanchez. I'm with the Housing Authority of the City of El Paso. As Mr. O'Rourke mentioned this was -- and I'm not using this as an excuse -- but this was our first attempt for low-income tax credit application.

As was mentioned, this application is part of a much, much larger picture. It's part of the Hope VI Alamito project, which is a \$20 million HUD grant, which we have leveraged into a \$65 million, 308-unit

development.

Included in that 308 units is 235 public housing units, 58 tax credit properties and then 15 HOME ownership units on site, and then an additional 23 offsite. Now, I followed the process because I'm working on the Hope VI application and the Hope VI project as well as the tax credit.

And I did follow the process required by HUD for the Hope VI. I also followed the process for TDHCA's tax credit. However, there was a technical error. In working so closely with HUD and TDHCA I confused one requirement. That was the requirement for the ESA.

HUD also requires an ESA. And they require that it be done through our responsible entity, which is the City of El Paso. Because of a SHPO issue, we've been waiting for that ESA to be completed. My mistake was thinking that we're looking for the same ESA for both entities, TDHCA and HUD.

By the time it came to the point that we were notified by HUD that it was going to be too late to get SHPO approval we had passed the deadline. We requested this ESA back in late 2005. And then again, like I said, due to historical HUD issues, we have not received it.

These issues and delays were communicated

however to everyone, at HUD as well as to TDHCA. I believe it was April 2 or April 3 I received notification from Ms. Joyce that we had not provided the ESA. On April 4 I set an email thanking her for her help and for the update and asking the question very specifically, how does this affect our application?

I never received a response. On April 12 we received deficiency notices. We responded to all the deficiency notices on time. But the ESA issue was not part of the deficiency notice. So on the 19th when we completed the deficiency process, we thought we were complete.

On May 15 we received our point notification, which we were number one in our region, and then on the 22nd we -- termination notice. So I made a technical error. But I believe that there might have been other errors made as well.

So, my error was waiting too long for HUD and SHPO to resolve the problems that we had with this Hope VI project. We now have Phase I. And as we suspect, it is completely clean and without any contamination.

I'm asking that, based on a strong application, the relationship to Hope VI and the significant impact to the downtown revitalization in El Paso that you look

favorably and reinstate our points. Thank you very much.

Any questions?

I was reminded I need to also mention that we are self-developing and that there's developer fees. That's one area that I wanted to bring up.

MR. BOGANY: I have a question for Jen.

Jen, I think in your notes you said you did notify them that they didn't have the ESA in ahead of time.

MS. JOYCE: I wish that I had included the email in your package. Yes, I did by email the day after the deadline. The 3rd was actually a Monday. We had emailed everybody in this case on the 4th, providing them the opportunity to show evidence that they did indeed submit it.

My recollection -- I wish had included the email, and I didn't -- is that I responded and basically let them know that -- well, what I can say for sure that's in writing, that we let them know ahead of time, prior to the determination notice being issued, that we do find it unfortunate.

It is unfortunate. The mistake was made. The violation is of the April 3 deadline. And that portion of the QAP was not met.

MR. BOGANY: I know we have Hope VI and all that. Being that this is a PHA, is there any deal where we have to agree with PHAs, and when they make mistakes?

MS. ANDERSON: It's my understanding they're subject to the same QAP that everybody is subject to. My opinion would be that developers are primarily responsible for making sure they comply with all the deadlines and terms and conditions of the QAP.

And the Department uses the deficiency process to help make sure that there was not -- we haven't misplaced paperwork or something. But it doesn't remove the obligation to the developer to follow the QAP which all their peers have to follow.

MR. SALCIDO: Madam Chair, may I speak?

MS. ANDERSON: Yes. Your name, sir.

MR. SALCIDO: Pablo Salcido. I'm on the list.

Good afternoon, everybody. My name is Pablo Salcido, President and CEO of the Housing Authority of the City of El Paso. I'm new too. If I go home empty-handed my honeymoon's over real quick.

The issues here are fundamental. And that is it's comprehensive; it's complex; it's HUD; it's state agencies; it's local entities. We're all working towards -- as we know how much you are working with us and

trying to respond to all our emails.

But the April 4 email clearly was not responded to. We asked specifically, how does this affect our application. We got no response. The April 12 issue -- and I'm standing by this, because I'm supporting staff whom I'm chasing on signatures and paperwork and saying, what's happening with the ESA; what's happening with the application?

So I just want to reassure you that we were responding to everything as fast and as quickly and as effectively as we could. So that's our point right now. We know we didn't have the ESA. We're not going to hide that fact.

We were just trying to make sure that through both the deficiency letter and the April 4 email, where we asked, how does this affect our application? If somebody had said, you're going to be disqualified, get it in yesterday we would have gone to a third party.

But we were going with the HUD process to get the ESA. So that's where coming from in the angle. So, yes, there was some confusion. But there's also clarity that we were trying to get leadership and input in terms of that email on April 4. Thank you.

MS. ANDERSON: I have a question for either Jen

or Kevin. What I'd like for you to do is read me 50.9(h)(14)(G)(ii), which talks about what is due on or before April 1 in the QAP, and what happens if it's not all submitted.

MS. JOYCE: May I paraphrase, or would you like it exactly?

MS. ANDERSON: You can paraphrase.

MS. JOYCE: "Upon application submission the applicant may provide evidence in the form of an executed engagement letter with performing each of the individual reports that the required exhibit has been commissioned to be performed, and that the delivery date will be no later than April 1, 2006."

I'll go ahead and read the rest of it. "In addition to the submission of the engagement letter with the application, a map must be provided that reflects the qualified market analyst into the market area. Subsequently the entire exhibit must be submitted on or before 5:00 p.m., Central Standard Time, April 1, 2006.

"If the entire exhibit is not received by that time, the application will be terminated and will be removed from consideration."

MS. ANDERSON: I move to deny the appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

MR. CONINE: I have one question, another question. This application is terminated. Is that what we're saying here?

MS. JOYCE: Yes.

MR. CONINE: The complicating factor that I see is that this is a Hope VI project. There's a lot of different moving parts. But to get a Hope VI grant anywhere in this country is not an easy thing to do. By the termination of the application it would foreclose the opportunity for us to potentially grant a forward, if circumstances would warrant.

So I'm trying to find some middle ground here. We understand that they were late. Because of competitiveness in this particular round we can't mess up the competitive cycle in the '06 round. But I'm concerned about the Hope VI grant and its longevity and so forth. Can you comment on when it might terminate?

MS. JOYCE: Unfortunately staff couldn't make a determination outside of termination. You do have discretion to terminate or not. Beyond that I can't think of one thing that would allow the application as it's currently constructed to remain anywhere.

Kevin, can you think of anything?

They would basically have to resubmit under a different program or for the 9 percent next year.

MR. CONINE: Can I call one of the other witnesses back up to get an answer to my question?

MS. ANDERSON: All right.

MR. CONINE: Does anybody know when the Hope VI -- give me some time lines.

MR. PALMER: Barry Palmer with Coats, Rose. Mr. Conine, as you're aware, the Hope VI program has been cut back drastically. When this was awarded it was one of the few in the country awarded last year. You're given four years from the time you get your grant in order to rebuild the public housing, or else the grant is subject to recapture.

Now there have been cases of extensions. But under the grant agreement you're given four years from the time that you're awarded your grant.

MR. CONINE: Thank you. That's all of my questions.

MR. FLORES: Mr. Palmer, does that mean 2009 is the drop-dead date?

MR. PALMER: That would be for all phases though. This was an '05 grant. So not one phase but all of the phases have to be completed by then. And when

you're doing a project like this, a public housing development that you're doing in several phases, if you don't get the first phase started for two, three years, then there's no way you're going to be able to do the whole thing in four years.

MR. FLORES: Mr. Palmer, if we deny this today, how does that affect the Hope grant overall? Kind of explain that to me. Put it all together.

MR. PALMER: Well, it puts it in jeopardy of their being able to complete on time. In addition to the four-year outside date you have a deadline to start the first phase. This would be the first phase of construction. When is our deadline?

MR. SALCIDO: The first phase will start January 2007.

MR. PALMER: January 2007 is our deadline to start construction on the first phase. If we miss that deadline, then the grant would be subject to recapture. If we don't get these tax credits and we have to come back and apply next year, then there's no way to start construction by January '07.

MR. BOGANY: The problem I've got with this -- and I realize how important the Hope VI is, and I think it's a worthwhile project. But the problem is if we don't

follow the rules it opens the doors for every other developer.

Whether you're Hope VI or private or whatever, it still opens the door. And it puts us in a position of picking and choosing which development goes. And I just don't like being put in that position. I really don't like being put in that position.

And I truly have to go back to your development team and that if you know you're supposed to do something.

Somebody on that team should have the experience to know that you need to follow -- if she says she needed the ESA, it needs to be done.

And Jen, I think you said earlier that you did contact them, telling them that you needed one.

MS. JOYCE: Yes. I believe that's what they said as well. They did not get an email back after the posed another question unfortunately. And I apologize for that.

MR. BOGANY: But I think it puts this Board in a very bad position in this situation, knowing that El Paso really needs this project. But I think it just opens the door for Pandora's box for us on future developments.

Is there any way we could do a forward commitment or anything like that?

MS. ANDERSON: We're a long way from talking about forward commitments.

MS. JOYCE: I don't believe there is, because the application would be terminated.

MR. BOGANY: That you terminate it.

MR. CONINE: What we need is a suspension category, and we don't have one.

MS. ANDERSON: Any other discussion? There's a motion on the floor, and it's been seconded. Everybody clear on that?

MR. FLORES: What's the motion?

MS. ANDERSON: The motion is to deny the appeal. Hearing no other discussion, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. JOYCE: The next application is Pear Orchard Apartments. The is the Hurricane Rita application that has been terminated. It has been terminated because of three separate reasons, each of them different from one another.

The first reason why it was terminated was

because it did not meet the minimum score criteria for the Hurricane Rita applications, which was 105. For 9 percent applications you might remember it's 125. For Hurricane Rita that amount was lowered to 105.

Their final score as it stands now is 96. However, we have been unable to complete a full review. So it might have even dropped lower had we gotten a full response. If I could point you to the QAP section, this will probably go faster.

For this particular one again they're behind the forward action item. The next reason why they were terminated is because they were considered ineligible under the section of the QAP that says that, "If the applicant has submitted an application that has an entire volume of the application missing, has excessive omissions of documentation from threshold criteria or uniform application documentation, or is so unclear, disjointed or incomplete that a thorough review cannot be reasonable performed by the Department, as determined by the Department, that we would disqualify the application."

Even after receiving 350 pages in deficiency responses and issuing, I believe, it's four -- it's in the write-up -- deficiency notices we still don't actually have the documentation that we need to perform a full

review. Just so you know, if this were a 9 percent application, we probably would have cut the threshold a little bit earlier.

But we really tried hard to work with this particular application. As they will tell you they were working without a consultant, trying to get this on the ground as a rehabilitation development in Hurricane Rita.

The last reason why we terminated them is because we had gotten indication in both the application and in outside communication that they had not done the notification requirements as required by threshold. We issued a deficiency to them asking them to provide evidence, including a certification, as well as proof of delivery, that those notifications were done.

And they were unable to provide the documentation that we'd asked for in the deficiency notice. The incomplete documentation that we were able to get from them in the deficiency notice had some red flags for us as well.

It kind of let us know that we did not believe that they had made the notifications as required. So, because of that -- I'll also note here that they actually also exceeded the 14-day deficiency deadline for Hurricane

Rita applications.

There is a seven-day deadline until you're terminated for 9 percent side for Hurricane Rita. We extend that to 14. I didn't include that in the termination notice, just because it was already -- three were enough. I just wanted to make sure and point that out, too.

MS. ANDERSON: Vicky Schexnayder.

VOICE: Several of us signed up. I think we're going to cede time.

MS. ANDERSON: So who's going to testify?

And your name, sir.

MR. MCCABE: My name is Brian McCabe. I'm an attorney with Cantey & Hanger. I want to commend the Department. This is different than the others that we have been looking at. This is the first time we've talked about Hurricane Rita.

And this Department has done tremendous job to bring assistance to the affected counties. Jen, Robbye, the whole staff over there -- as Jen indicated -- worked extremely hard. And we tried very hard to comply with them. I came late into the process.

And we have submitted a lot of documentation. This is a hurricane project. And I would like to defer to

the applicant. But I do want to comment your staff and certainly you for responding to such a national and Texas disaster in the way that you have.

MR. NEWBERRY: Good afternoon. My name is Joryl Newberry. I'm the managing member of Maple Glen Partners, which is the owner of Pear Orchard Plaza in Beaumont, Texas. 4,452 apartments in eastern Texas were either destroyed or substantially damaged as a result of Hurricane Rita.

Of all those thousands of apartments only one of those complexes has applied for Hurricane Rita credits, and that's Pear Orchard. Pear Orchard is the epitome of what these credits were intended for, the hurricane credits.

We did not apply for the regular, competitive 9 percent credits. We only applied for the Hurricane Rita round. Pear Orchard was devastated by the hurricane. And we look at TDHCA as one of the few providers of funds to rebuild this property.

Up until the hurricane we had no intention of applying for competitive credits. This is our first experience completing a Texas tax credit application. And we did not use an application consultant. Our application was not perfect.

However, by working with Department staff we believe that we addressed all the errors and concerns, and they have been satisfied. We appreciate staff's concerns, and we do not take the deficiencies lightly. However, there's to be no question regarding the financial feasibility or the demand for this housing.

We believe that a thorough review of our application has been performed by the Department, and that Pear Orchard is deserving of an award of credits. Additionally at 150 units Pear Orchard is the largest project which applied for hurricane credits. Thus the award of credits would positively impact the most families.

These families want to stay in the neighborhood, be near their schools and churches and friends and family. This is a preservation project for families, who unlike in larger Metro areas, have limited options for alternate, affordable housing, particularly as our rents are among the lowest in Beaumont.

There have been a number of concerns. Due to our inexperience dealing with a Texas application errors were made. However we did correct those as specific to the notifications. As we haven't sent certified mail or FedEx, we actually contacted the recipients and asked them

to confirm if they received those letters.

The mayor of Beaumont, county judge, two commissioners confirmed that they received those. Our application as to being unclear or disjointed, it wasn't perfect. But I believe we with the staff have done a great deal to correct this.

We urge you to help these families by supporting our appeal for Hurricane Rita credits. Thank you.

MS. ANDERSON: Thank you, sir.

Verria Kelly.

MS. KELLY: Good afternoon. My name is Verria Kelly. I am with the management company that manages Pear Orchard Plaza. And I also volunteered last year with a nonprofit called Shelter First in helping hurricane victims find housing after Hurricane Katrina.

Having spent a lot of time in Beaumont -- I think I was there about a month -- I went to the Ford Center and was amazed at the number of families that were devastated by the tragedy. We in Shelter First put together a list of apartment complexes in the area and then sought out to try and meet the housing needs of those individuals.

And what we find out is that everyone qualified

to live at Pear Orchard. They wanted to live there. Within two hours of sitting there at the Ford Center with our list, we had filled up all the units at Pear Orchard Plaza.

We had problems with the remaining apartment communities, because no one qualified to live in those communities. So we actually were able to fill up only Pear Orchard Plaza. We believe that awarding these credits will give these individuals a place to live, a place to call home.

And then also it will help other people in the community that are still displaced because of the hurricanes, because the other communities that they would have been able to live in were devastated and have not been rebuilt and did not even apply for the credits.

So we're asking for those reasons that you support our appeal today. Thank you.

MS. ANDERSON: Mr. John Lewis.

MR. LEWIS: Thank you. My name is John Lewis. I'm from Beaumont, Texas. Giving our glory to God and the distinguished members up here, I come along with the representatives here to give my side of what's going on. I'll try to eradicate the nervousness and be as brief as I possibly can.

I don't have a plethora of literature to bring up here to read from. So what I'm going to do -- which I think everybody should -- is read it from the heart. And I've got four words here on this sheet of paper that I would like you all to copy down as I read them.

First word I have down here is need. Second I have down here is bias. The third is simplicity. And the fourth is money. I'll try to touch them all as briefly as I possible can. When you need help -- which all of us do, everybody in this room -- I'm a simple person.

I can't even compare to some of the people in here with the suits and the ties and the fancy language. But when you need help you have to rely on going through people with power and authority.

I know God works through people, there's no doubt about it. And when you're asking for somebody to consider what you're about, that need comes out emotionally to get and to captivate somebody that's listening to you that can make discussions.

Sure, everybody needs help, just like you all do on the Board. When you need something, if you can find somebody that you can help you, you'll certainly ask them.

We're kind of behind the eight ball with some of the things that have been going on at Pear Orchard Plaza.

I don't know the logistics of anything like that. But I do know this. Right before the hurricane came I tried to apply to three apartment complexes in Beaumont. I was down and out and hard up on everything that I possibly was trying to acquire at the time.

Pear Orchard Plaza is the only facility that came through for me. It not only came through at the time when I needed them to come through -- which I was on my legs -- but even after the hurricane. Didn't miss a beat after coming back home for 19 days after I stayed out of town.

They were right there. Everything was there. The people that worked at there were always there to lend a hand. Doesn't it make sense to put money and confidence in people that not only are working conscientiously, but where you know that what you're sending your money to and your hopes and trusts into -- of course this is all about the money thing.

You're sending it to these people knowing that the job is going to get done. Period. Not in some fancy high-rise, but at a low-income level apartment complex like we live in. I represent myself and the tenants out at the Pear Orchard Plaza.

They asked me to come here. I'm not speaking

individually. I'm speaking for everybody that's out there. We all need that type of help. When you have bias towards something --

MS. ANDERSON: I need to ask you to wind up unless someone wants to yield time.

MR. LEWIS: Yes, ma'am. When you have bias towards something, you're going to speak up for something that really needs something to you, and everybody does. And we really feel as though what the representatives are trying to help us get here from the Board is the fact that they feel very strongly about the Pear Orchard Plaza.

We're setting a standard. We have improvements going on out there. I don't think you would want to disrupt the improvements that we have initiated out there and they have initiated out there, including the residents.

The money aspect, again --

MS. ANDERSON: Sir, I need to ask you to wind up.

MR. LEWIS: Well, we appreciate you listening to us, and we thank you very much. We hope you take into consideration what we said.

MS. ANDERSON: Shawn Jones.

MS. JONES: Good evening Madam Chair and the

Board members. My name is Shawn Jones. And I have been the site manager at Pear Orchard Plaza. This December will make 13 years. I'm here speaking before you today due to the applicant that I'm supporting, Mr. Joryl Newberry.

And I'm here to speak to you saying that Pear Orchard Plaza was severely damaged by Hurricane Rita. And the repairs that was damaged to the roofs and the plumbing is unrepairable due to my staff. We need this credit. It's very important that we rebuild Pear Orchard Plaza, because the traffic there is great.

There's many people that want to live there, because we were right next to the high school. The middle school is beyond us, and the elementary school is on the side of us. And people come there and apply because everything is walking distance, including the church and the YMCA, and we have a library.

So it's very important the you all consider our application. Thank you.

MS. ANDERSON: Ms. Schexnayder.

MS. SCHEXNAYDER: Good afternoon. My name is Vicky Schexnayder, and I'm a resident of the Pear Orchard Plaza in Beaumont, Texas. I'm a second-time resident. I was a resident approximately six years ago, and I moved

away. When I moved back I became a resident again.

I have children. I have two children who attend the elementary school, which was just mentioned by Ms. Jones, which is on the side of the complex. And I have a high school student who attends the high school which is one block down the street.

I would ask the Board to consider the application for the Pear Orchard Plaza apartment complex because it's a viable part of the community. All of the tenants who do have children, we walk our children to and from school.

That was my first point I wanted to make. The second point I wanted to make is that even after the damage that was done from the nature of the hurricane, the staff and the management at the complex has gotten together, along with the tenants to clean the place up.

They fixed the plumbing. They put in new windows. We've moved debris. If you go through the streets of Beaumont to other complexes you'll see that some of the debris is still there. So, with our complex we're trying our best to maintain it back to the standards that it was.

And the last thing I just wanted to say is that approximately 14 or so years ago the complex itself was

really not a good place to stay. It wasn't safe. For the last 14 years it has been a safe place to stay. Children are allowed to play outside now.

Elderly people walk around outside now. Most low-income apartment complexes still don't have those standards. But we do have those at Pear Orchard Plaza. That's all I've got to say. Thank you.

MS. ANDERSON: That concludes the public comment for this item, unless I missed somebody.

MR. BOGANY: I just want to ask you a quick question. I've heard all the public comment. I've heard your other comments. Where are we at with this file at this point in time?

MS. JOYCE: Unfortunately we don't have enough information to fully evaluate it. It has not gone into underwriting. There's not been a financial feasibility determination made on it. It's been determined ineligible.

MR. BOGANY: Okay. With the things that we were doing with the Rita and Katrina-type funds and everything, were they living under the same rules that we had under the QAP and all that good stuff?

MS. JOYCE: The policy basically refers to the QAP. It's called the Rita Policy. It refers to the QAP

but does give some exceptions to the QAP. Some examples I'm just thinking of: the extended deficiency time period, the lowered minimums for --

MR. BOGANY: Did they meet any of those deficiencies? Or we had them, and they still didn't get to that point.

MS. JOYCE: Did they meet any of the deficiencies?

MR. BOGANY: Right.

MS. JOYCE: They certainly met some of the deficiencies, not all of them.

MR. BOGANY: But with the lower scores and giving them more time, were they able to meet those thresholds?

MS. JOYCE: Unfortunately, no. For three separate reasons they were terminated.

MS. ANDERSON: We have another agenda item on this agenda, a couple of items down, with other applications to fund in that area.

MR. NEWBERRY: Could I have a word? I just want to respond to Mr. Bogany's question to Jen. There were clearly some deficiencies, and we did respond. At one point I think we met about 38 deficiencies. We did respond to everything, although some of the responses were

not perfect.

There was, for instance, a rent schedule which has created our low score with 22 points for loss because in our final schedule we mad an error. The rent amount has never changed. It's always been \$400 which is very cheap. And it's well below the standard for 50 percent.

But we have presented a corrected one, which should boost our score an additional 22 points, which would certainly make us qualified in terms of meeting the minimum threshold points.

MR. BOGANY: All right. Thank you.

MR. CONINE: Move to deny the appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. JOYCE: Last one, and I do want to get through it quickly. But because it is the last one, if I

could just add here. I wanted to say how very, very proud I am of Multifamily staff this year. Today's the day we get to kind of put ourselves on the chopping block, because it's our job to interpret the QAP, and we work very hard to do that.

What wasn't reflected today was the amount of dedication and unprecedented time and consideration and availability that staff has made to make this the best cycle ever under the interim direction of Robbye Meyer.

I also want to thank Kevin Hamby, because he was incredibly accessible to everybody in the applicant community and neighborhood organizations as they were submitting letters, and took the time to even provide written guidance, which hasn't been done before.

So, I just wanted to make sure and state for the record, because we do appreciate everything he's done.

And Andre Martin, our new Multifamily staff member who's been helping me today with all the organization and handing me things. Thank you. She's done a great job.

This last. This is an appeal for the termination of 9 percent housing tax credit application, Red Oak II, 060088. It is being terminated because the applicant has an ownership interest in a development that has a material noncompliance score.

As you may be familiar, in order to become in material noncompliance a development has to exceed the score of 30. If they exceed the score of 30, then the applicant and anybody who has an ownership interest in that development is considered ineligible for a certain amount of time.

The appeal itself is not actually appealing whether or not the development is in material noncompliance. The appeal is actually addressing external factors from that. We have definitely determined that the applicant has an ownership interest.

They were a HUB who was supposed to be materially participating and signed cost certifications to that effect. Therefore it is very, very clear that she, Ronnie Hodges, violates the section of the QAP, and is therefore ineligible to participate in the tax credit rounds.

MR. CONINE: Ronette Hodges, come on up.

MS. HODGES: I'd like to yield my time to Cynthia Bast and also Gayle Rolland, who's a member of the board.

MS. BAST: Cynthia Bast of Locke, Lidell & Sapp. With all due respect to Ms. Joyce, we believe that the applicant does not have ownership of the project that

has material noncompliance. And that's what we want to help you understand today.

As you have heard, Ms. Ronnie Hodges is the president and sole owner of a company called Valentine Realtors. Valentine was the HUB general partner for Riverwalk. Riverwalk is the project that has the material noncompliance score.

So Valentine's its HUB general partner. It's managing general partner is an entity called Tejas Housing Partners II, LLC, which is totally unrelated to Valentine.

Riverwalk received its material noncompliance score because its property manager used incorrect utility allowances in calculating tenant rents.

When this occurred Valentine as the HUB general partner didn't have specific responsibility for overseeing the property manager. That authority was vested in the managing general partner. Now as the HUB general partner Valentine did materially participate in other ways.

Nonetheless TDHCA is treating both general partners of Riverwalk the same, attributing the material noncompliance score to both. The problem here is that the material noncompliance score that has been attributed to Valentine, the HUB, is now impacting New Life Housing Foundation, which is an independent nonprofit organization

proposed to be the general partner for Red Oak II.

Staff has taken the position that the noncompliance score for Valentine needs to be attributed to New Life Housing Foundation, because they're under common control. And we argue that these two entities are not under common control.

As noted Valentine is wholly owned and controlled by Ms. Hodges. On the other hand Ms. Hodges has no ownership of New Life, the nonprofit. She is merely one of five board members of that organization. So as one of five, clearly she can be outvoted by her fellow board members, including in any decision that was made to file this particular tax credit application.

She also serves as the president of New Life in a volunteer capacity. She has never received compensation from New Life. But again even as president she does not directly control the day-to-day operation of New Life. She serves at the will and the discretion of the board of directors.

And the day-do-day operations of New Life are conducted by New Life's five employees. So we think there's a real question as to whether Valentine and New Life are under common control. And if this Board agrees that they are not under common control, then the

application should be reinstated.

But the best person to explain who controls the operations of New Life is not me, but an independent board member of New Life. So to give you more facts about New Life and its board and operations, Ms. Gayle Rolland will provide you with additional information.

MS. ROLLAND: Good afternoon. My name is Gayle Rolland, and I serve as vice president and as one of the five current board members of New Life Housing, the control of which is at the heart of the appeal before you.

As volunteer board members each of us, including Ms. Hodges, operates in cooperation with the others often through standing committees, for the sake of efficiency to present, discuss, develop and decide all matters great and small pertaining to the management and operation of New Life.

In our business lives outside of volunteer duties at New Life, including Ms. Hodges, we're lawyers, pastors, realtors, business owners and CPAs, all with our particular strengths that we bring to our work at New Life.

As declared in the New Life bylaws we are an organization that is to operate with as many as nine volunteer board members, none of who have any more or less

control or power than any other. And this is how we operate in both theory and practice.

Each board member brings certain areas of expertise and even leadership, by virtue of our formal education and business and life experiences in real estate, law, risk management, small business ownership, elearning technology, spiritual guidance, finance and administration.

No single skill set or any one person has any more control or influence than any other. We rely on each other for good counsel in areas in which we may have special expertise. But one board member does not control the others nor control the entity.

To do so would violate the intent and the letter of our bylaws. I believe that your determination that Ms. Hodges controls New Life Housing, because she is currently serving as president, bears reconsideration and hopefully reversal. Thank you.

MR. CONINE: Excuse me. Did you say she's president or a board member?

MS. ROLLAND: She is a board member, and our board has positions such as president, vice president -- a position I serve -- secretary and treasurer.

MR. CONINE: Officers of the 501(c)(3).

MS. ROLLAND: Yes.

MR. CONINE: Counselor. Can you kind of explain your position on this? We just heard theirs obviously.

MR. HAMBY: I think the staff's position and my position obviously is that at the time that the material noncompliance took place, there was --

MR. CONINE: We didn't hear a date.

MS. JOYCE: The test is run on May 1, 2006. Is that what you mean?

MR. CONINE: When was the other project that's in noncompliance, noncompliant.

MS. JOYCE: Patricia, did you say you issued the 8823s, or they were due December 22, 2005?

MR. CONINE: So it's in the last year.

MS. JOYCE: The date of noncompliance on the 8823 is January 1.

MR. HAMBY: And that obviously whenever she transfers her position to another position, that the material noncompliance goes with her. The fact that she does not run the board may have some impression. But we believe that that noncompliance follows because she was the principal in the other organization.

So you take the people that you put on your

board in their whole and their entirety. She's probably on the board -- I don't know why she's on the board -- but she certainly brings an affordable housing background to the board as a HUB and expertise that they rely on.

Our goal in the noncompliance area is to make sure that people who have noncompliance in prior organizations do not continue to move and to continue to receive funds. They could potentially then be in noncompliance.

MR. CONINE: Well, her position was that she's not the managing general partner of the other one that's noncompliant. There's a second co-general partner.

MR. HAMBY: You beg the question then if you say that I had nothing to do with that, but I'm signing all the documents. Without being comparatively speaking, that argument has been defeated in many a court case, that I had nothing to do with it; I was just there.

That kind of goes to the same point as this. I'm only one of many directors. How could I possibly have any influence over the organization.

MR. FLORES: Kevin, before you go.

Are you through?

MR. CONINE: I have one more thought. And that is, again trying to put my developer hat on here for a

minute, this actually terminates this application, this particular procedure. And I was wondering if a deficiency position and her resignation off the board of the nonprofit would satisfy the issue for us as a department so that the nonprofit could then move forward.

MS. JOYCE: I think that would be a determination of the general counsel upon review of what the QAP says. But it's the date effective of the application as submitted. The date of May 1, 2006, is the drop-dead date for when we run the score.

Even if these issues were to be corrected, it should also be noted that there would still be a material noncompliance score.

Patricia, that's still correct?

Yes. So even with corrections of the 8823s that are still outstanding corrections, it would still be a material noncompliance problem.

MR. CONINE: Because of the date.

MR. HAMBY: I don't know the answer to your question off the top of my head. That would be something you would ask us to go back and research, if you want us to postpone this until the next meeting to see if that could correct the deficiency for her to remove herself, because I don't believe the New Life group --

MS. ANDERSON: After the deadline.

MR. HAMBY: After the deadline, right. My guess is no, but I'm hesitant to say that definitely.

MR. FLORES: You asked the same question I was going ask. Thank you.

MS. ANDERSON: Yes, Ms. Hodges.

MS. HODGES: First I want to say to kind of give you further background is that as a HUB starting this out. A long time ago in 2000 it was my first attempt to even understand this process. Of course it's an ongoing, changing attempt.

So as a HUB and becoming a 10 percent owner of the general partner, I did not realize the implications of what has been pointed out to me as material ownership. I did assist as best I could and tried to learn the system.

However I will say that back in 2004 when the problem came up, I resigned as the HUB and also October 1, 2005, as the HUB of the Office to Hills [phonetic] limited partnership.

And at that time I received the withdrawal papers from both the junior partner and the limited partner. However it's my understanding that I never received anything from TDHCA. So, in my defense, I also never have ever received a letter from TDHCA regarding

noncompliance of any kind.

So, I wasn't part of the ownership at that time in the limited partner's view and the general partner's view. I didn't receive any notification of any noncompliance ever. So, and most of the time I've been spending time on other private matters and development matters and also working volunteer for this nonprofit, which I would like to point out that the QAP this year says that you have to have current material ownership.

Well, nonprofits do not and never had had ownership. You cannot own a nonprofit. So how could I have any material interest in this nonprofit and its destiny, other than as a member of the board? Yes, I'll be happy to resign as president.

But I think it's terrible that it was designed to provide social services, which TDHCA mandates every developer provide in these apartments. And we have five wonderful community directors that are very committed to helping break the cycle of poverty, to erase the generational poverty that a lot of these single moms and children find themselves in.

And we have spent and long and many hours developing programs to help them develop life skills. And I think it's a shame that, even though I don't have the

ownership, that nonprofit is being penalized. And I think you go against your own QAP when you say that it's penalized. That's all I have to say.

MR. CONINE: I move to deny the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Agenda item 5(b) is discussion and possible action regarding report of housing tax credit challenges.

MR. GERBER: Madam Chair, on the discussion and possible action items regarding report of housing tax credit challenges pursuant to the 2006 QAP, the write-up you are looking at details the status of all challenges received by May 30, 2006, pursuant to the QAP.

As you may recall last year we received many challenges, or as they were called last year, allegations. In 2006 language that was added which provided a process

for handling and evaluating challenges received by the Department.

The Department is following that process. On the second page of the write-up staff has provided a table that reflects a summary of all such challenges received as of May 30, 2006. At this time all challenges received are either ineligible or pending.

It's all Jen all the time today. And she'll be happy to respond to any additional questions that you might have about the chart or any of the challenges.

MS. ANDERSON: We're not asking for Board action on this item. Is that accurate?

MR. GERBER: That's correct, ma'am.

MS. ANDERSON: Okay. And I have public comment on this item.

David Kelley.

MR. KELLEY: I'll yield, but I'll be here.

MS. ANDERSON: George Shackelford.

MR. SHACKELFORD: Same thing.

MS. ANDERSON: Richard Harrington.

MR. HARRINGTON: Same thing.

MS. ANDERSON: Okay. Thank you, all.

Any questions of the Board on this item?

(No response.)

MS. ANDERSON: Hearing none we'll proceed to item 5(c), which is presentation, discussion and possible approval of remaining applications for Hurricane Rita Housing Tax Credit awards. Mr. Gerber.

MR. GERBER: Chair Anderson and members of the Board. As a bit of background in December 2005 Congress passed House Bill 4440, which gave Texas an additional \$3.5 million of Housing Tax Credit Ceiling to assist with the rebuilding of the hurricane disaster areas Along the gulf coast.

The Board approved the Hurricane Rita Housing Tax Credit Application Policy on January 18, 2006, to allocate the additional \$3.5 million of credit ceiling that the state received for the GO Zone. On May 4, 2006, this Board ratified three award recommendations in Jefferson County for a total of \$1,755,535 in tax credits in accordance with the Rita Policy and 2006 QAP.

EARAC is recommending four awards for approval by the Board in accordance with the Rita Policy, 2006 Hurricane Rita Tax Credit Ceiling in an amount not to exceed \$1,744,465 and no greater than \$135,078 from either the 2006 National Pool, 2006 recapture credits and/or a 2007 Forward Commitment as necessary to award all four applications fully.

Again Jen has responsibility on staff for this issue. But it should be noted that there was an error in the Board action item before you. It stated that "At this time all applications recommended for an award have been reviewed by the Portfolio Management and Compliance Division for compliance."

However a review has not been completed for Timber Creek at Sienna Trails, which is TDHCA number 060239. Should the applicant be determined ineligible as a result of this review, the next highest scoring application for an allocation in the county would be Legacy Senior Housing, which is TDHCA number 060199.

MS. ANDERSON: I have public comment on this item. Mr. Claybar.

MR. CLAYBAR: Thank you very much. I'll be very brief. I'm Brown Claybar, mayor of the City of Orange representing the City of Orange in Orange County. To be very brief I talked with you last month. And I'm here asking for help.

I showed you in the illustrations we had last month that we were ground zero for Hurricane Rita. I'd like for you to point on the Multifamily Finance Production Division of the Board report, under the prioritization of orders of counties it has Jefferson

County and Orange County has a number of destroyed units or apartment units in Jefferson County of 282, and in Orange County, 200.

I'd like to point out that Jefferson County has a population of 261,000. Orange County has a population of 81,000. We're only 20 percent the size of Jefferson County, and there were only 82 more units actually destroyed in Jefferson County than there were in Orange County.

I think this indicates the severity of the damage in the amount of how this storm has impacted our area. I'm asking for consideration for all three of the Orange County projects. Pineywoods is a continuation of a project that was started last year.

I consider that just critical for the economic development of the east side of Orange. There is a project in Vidor. Their needs are great. And then the third project in the City of Orange would be a great impact to our community.

I think as far as bang for the bucks and bang for the community these projects would mean a great deal to our community. Thank you.

MR. SHACKELFORD: Good afternoon. Hearings like this remind me that are blessing of no longer having

to serve in public office. I appreciate the fact that you're willing to do it. I'm here representing Itech Developers [phonetic], but also as a resident of that area for 71 years.

I'm here to tell you the area, particularly Orange County, is caught in a squeeze from two different phenomena. With the price of oil being where it is there's a resurgence of the oil industry, the offshore industry.

The industry is revitalizing in that area. The refineries are doubling capacity. The offshore people are cranking back up. People are moving in there for all these jobs. And there's less housing than there's ever been.

So the two are coming together to create a real mess. Junk houses down there are renting for \$7-\$800 a month. And when the loss that we had from the hurricane it's causing a severe hardship for this area to pick up and realize the potential that's being brought about by this phenomena.

It's essential that we have this kind of housing. So whatever you can do for Orange County we'd appreciate. Thank you.

MR. CONINE: Mike, refresh my memory on the

allocation again, \$3.5 million allocation. So far you've gone through four of them or got four projects that eat up about half of it. Is that right?

MR. GERBER: We've done three in Jefferson County for \$1.755 million.

MR. CONINE: When we went through the distribution were we going to do some in Jefferson and some in Orange, or we going to get all of Jefferson taken care and then go to Orange on a priority basis. Do you remember? Somebody help me with this.

MS. JOYCE: In the May meeting we had given you a recommendation of partial awards. They weren't a complete representation of using the Policy to give all of the awards. With the Policy today, total, we are recommending four in Jefferson, two in Orange and one in Angelina.

Actually that's considering that three of those seven total have already been awarded. So you have a total of four, two and one.

MR. CONINE: Okay.

MS. ANDERSON: I think the issue is we voted an original policy that did some alternating between rehab and new construction. So then at the last meeting we said, well, just look at it under an alternate scenario.

And it does make the things come out a little different.

And staff is recommending awarding it based on the current policy.

MS. JOYCE: If you need me to elaborate it any more, I'm more than happy to do that.

MR. CONINE: No. I'm good.

MR. AKBURI: Good afternoon. My name is Ike Akbari with Itech Properties in Port Arthur, Texas. Staff has done a great job. In fact, Jen has done a wonderful job during this whole scenario of going over all these applications and how fast they were able to put together the answers and everything.

And we appreciate all the work they've done. If fact as recent as under this meeting she has come up with the two different scenarios, one in column one and column two -- one assuming Jefferson County gets actually four, and Orange County gets only two.

And then one is Orange County gets three, and Jefferson County also has the option of getting three. As a developer obviously I support other developers. I don't have absolutely no comments about other developers in Jefferson County being able to get additional trade.

Of course all these things happened because of the Beaumont Loft determined as a rehab, even though in

our opinion Beaumont Loft was a rehab, but it was not a true rehab. It did not meet the rehab under the hurricane scenario.

And obviously we support the decision by you and also the staff. My request is at this time I definitely believe, because Orange County -- as you heard from the mayor and also earlier from Representative Joe Deshotel's office, Orange County has a great loss, and they deserve to have at least all their three projects.

I think it'll be great if could be able to approve at a minimum three projects for Orange County. Now, if you choose also to approve all four projects in Jefferson County, we'd appreciate if you could use your discretion in the recapture of the National Pool 2005 and also possibly funds available this year, be able to fund all the projects requested and meet the criteria of the staff recommendation.

That is really what I'm here for. I appreciate your time. If there's any question, I'd be more than glad to answer.

MS. ANDERSON: I'm sorry. That's the end of the public comment.

MR. CONINE: I move staff recommendations.
How's that?

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. With the Board's indulgence we will defer item 5(d) to the next meeting.

Item 5(e), Mr. Gerber.

MR. GERBER: Item 5(e) is an issuance of determination notice for the Amberwood Apartments. This is an acquisition/rehabilitation development located in El Paso. El Paso Housing Finance Corporation is the bond issuer.

The applicant is requesting a 4 percent housing tax credit allocation from the Department. It is a Priority 3 bond application. It has 310 total units, which will serve families at 60 percent of the area mean income.

This application was before the Board in May

for an appeal of termination due to some of the buildings being located in the flood plain. The Board granted their appeal to waive the flood plain issue, with the condition that the development would purchase flood insurance and provide the tenants with tenant insurance, until such time as the development would receive a Letter of Map Revision from FEMA.

Staff is recommending approval of the determination notice in the amount of \$489,934. Robbye Meyer is available is available to answer any questions on this.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Mr. Renneker, do you want to speak, or are you just here to answer questions?

MR. RENNEKER: Just to answer questions.

MS. ANDERSON: Thank you. Right answer.

Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor of the motion please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Item 6(a).

MR. GERBER: Madam Chair, on 6(a) is the issuance of private activity bonds and 4 percent Housing Tax Credit for the residents at Sunset Pointe. TDHCA is the issuer of the bonds. This is a new construction project proposed to be located in south Fort Worth and in the Crowley Independent School District.

It is a Priority 3 transaction consisting of 224 units that will serve families at 60 percent of the area mean income. The bonds will be publicly offered through Merchant Capital. They'll be variable rate with credit enhancement with Fannie Mae and carrying a AAA rating and will be amortized over 30 years.

The application was before the Board in May. The Board tabled the discussion to allow the meeting between the developer and City Councilman Jordan. That meeting took place on May 18, 2006. The Department has received letters of opposition from State Representative Anna Mowrey, County Commissioner Brooks, City Councilman Jordan, School Superintendent Gibson, Summer Creek Meadows Homeowners Association, the Wedgewood Homeowners Association and Meadows of Candleridge.

The development has received a letter of

consistency with the city's Consolidated Plan, and the proposed site is zoned appropriately for the intended use of multifamily housing. Staff is recommending approval of the bond issuance in the amount not to exceed \$15 million and the determination notice in the amount of \$670,194.

MS. ANDERSON: Councilman Jordan.

MR. JORDAN: Madam Chair, esteemed members of the Commission. I wish to express our appreciation for the 30-day continuance to allow us to meet with the developer. Early in October I submitted my first letter of opposition.

And throughout the process our opposition has been based upon the long-term sustainability potential for this project and the viability of the logistics to support it. We are three to five years away from having retail in this vicinity.

The adjacent properties are zoned commercial. We would be very pleased five years from now to have a facility such as this to warrant the future growth of our city. Fort Worth embraces an inclusionary housing policy. And we're very much concerned with the timing of this project, in that it will be isolated and secluded in our opinion.

And we wanted the opportunity to sit with the

developer. And as mentioned by Mr. Gerber, we met with the developer on May 18, with Commissioner Brooks, our County Commissioner. We were hopeful after the results of that meeting that there was some resolution of our concerns regarding the life cycle sustainability, the management and those things that were going to help us with the viability of the logistics.

However, apparently there was a misunderstanding of our request. We considered the reply we got back from the developer to be non-responsive. I would ask to submit for the record our reply to the developer, both mine and the assistant city manager.

There are two letters here dated June 7. I'd like to submit those for the record. I will say that yesterday we did receive replies from the developer regarding our concerns. The replies that we received we felt were more in line with the responsiveness of what we had asked for regarding long-term viability of the project.

However we were not able to reach a resolution or an agreement. So therefore we will continue and place our opposition. Depending on the actions of the Board we do hope to continue a dialogue with the developer to work towards a meaningful resolution of this.

But at the current we are in opposition to the program. Also for the record my staff had a discussion with Mr. Hamby regarding some confusions that existed with our local neighborhoods. There were citizens who wanted to provide input.

We have 110 letters of citizens in the area that were submitted to us and addressed to the Board. I'd like to submit those also for the record. In summary I'll say, sitting through your meeting today, I got quite an education process on how you conduct business and some of the issues.

I will say that there is a confusion that exists on the part of this municipality, the City of Fort Worth, as regards some of the criteria to be submitted by neighborhoods. We would like to work with Mr. Gerber and his staff to submit what we consider inconsistencies in that communication between municipalities and our neighborhoods.

With that I'll conclude my comments. But I did want to reinstate and make sure that our opposition is intact.

MR. CONINE: Any questions?

(No response.)

MS. ANDERSON: Thank you, Councilman.

Bob Sherman.

MR. SHERMAN: I cede my time to Cynthia Bast.

MR. CONINE: Defer to Cynthia.

MS. BAST: Last time you get to see me today.

MR. CONINE: This is it?

MS. BAST: This is it. This is your last chance for a shot. I am actually here to report favorably to the Board as to the progress that this developer has made in complying with this Board's wishes. As you well know, this project was presented at the May Board meeting.

And at that time Ms. Anderson made a motion and requested that this developer go and have additional conversations with the elected officials, indicating that we definitely want to do our housing in partnership with local citizens and local elected officials.

And that is exactly what New Rock set out to do. Very briefly, after the Board meeting on May 4 when you asked us to go back and have additional discussions, first of all New Rock was invited to attend a Saturday coffee with the neighborhoods around.

These neighborhoods are not within the boundaries of this site, but the neighborhoods surrounding. They accepted that invitation. As the councilman indicated, they did meet with the city

councilman and his staff, the county commissioner and his staff.

At that meeting their understanding of the concerns had to do with the support services that would be provided for the residents over the long term to make sure that the property would remain viable, which is a little bit different than the issue initially presented at the Board in May, which was the concern about the mixed-income component.

That mixed-income component was addressed by a market analyst and found unfeasible. So after the May 18 meeting with the councilman and his staff, the county commissioner and their staff, New Rock was actually asked to not attend the neighborhood coffee.

So they respectfully did that. Thank you, put together a written package, which you can see, of all the information that they thought that the city requested and tried to be very timely and responsive in putting all of the information together, sent it to the councilman and the commissioner.

And they also sent information to this Board. You have a letter dated May 22, where they reported on their progress in having communications with the city officials. So the information was submitted, as the

councilman indicated.

He came back on June 7 and said, I don't think we were on the same page. Let's talk about this some more. So again New Rock immediately submitted additional information about social services. There was a request for an agreement to provide social services.

And something of that nature was drafted and submitted in response to the request. So, we feel like this project has met the QAP. It's met the additional request of this Board. It's been recommended by staff. It is in a growing part of this Fort Worth community.

In a census tract, that according market analyst actually has an area median income higher than the overall area median for Fort Worth. So it's a very desirable location in this growing part of this community.

And we believe that we have done everything necessary for the award of the bonds and tax credits.

If there are any questions, we'll be happy to answer them. Thank you.

MR. CONINE: Any questions?

MR. BOGANY: I have a question for Ms. Bast.

MR. CONINE: Go ahead.

MR. BOGANY: The city councilman said he's not been able to meet with your group. I thought that's what

he said.

MS. BAST: I don't think that's what he said. I believe he acknowledged -- the city councilman first met with New Rock on March 6. That was specifically acknowledged in the transcript of the TEFRA hearing, which was held on March 23.

The councilman did appear at the TEFRA hearing on March 23. And then our group did meet with them again on May 18. I believe his testimony just acknowledged that meeting.

MR. BOGANY: What was the outcome of the meeting?

MS. BAST: I did not attend the meeting, Mr. Bogany. So if you will allow Mr. Hoskins, that will be great.

MR. CONINE: Introduce yourself and fill out a form.

MR. HOSKINS: The form was filled out, sir. It's up there somewhere. My name is Rob Hoskins. I'm from Atlanta, Georgia, and I'm the principal of the New Rock companies. As Ms. Bast indicated, this particular item was tabled for us to be able to meet with the city.

And we did meet with the city on May 18. The initial intent for meeting with the city, based upon the

concerns the councilperson had raised last meeting was a mixed-income component. And that was the reason that they had wanted it, and that was the package they presented to you all.

When we got into the meeting, the meeting quickly evolved into: what are the management practices; what are our supportive services practices, and what we do.

To which that is something that is very near and dear to New Rock's heart, because we provide a very strong, nationally award-winning supportive services program called the Breakout Program, that we institute in all of our properties here in Texas and in other properties throughout the other parts of the country that we do business with.

We're well-known for that. At the end of the meeting -- a couple of items were addressed in our opinion. Number one was that we agreed that we would discuss entering into a potential agreement with the city in return for them potentially providing incentives for us, such as tax abatement or something like that, because they wanted to be able to create some sort of a partnership.

The other thing we wanted to do is we wanted to

provide them with a full scale of information that you currently have up here, to show everything that we do, so that they can get an idea of what we're going to do.

We further told them what the requirements are as it relates to the LURA -- the fact that the TDHCA guidelines require supportive services for this particular development; the development is going to accommodate that; and the LURA is going to be part of that, which is a deed restriction which runs through the land.

Today we're having a conversation about life cycle sustainability. The only thing I understand about life cycle sustainability would be long-term physical plant management, which as you all very well know, that is a compliance standard that is administered on at least an annual inspection by TDHCA.

And all our properties here in TDHCA's compliance have no findings at this particular point in time. We're very proud of that. Any project community that we would put in would have the same type of base. So we left assuming that was the case.

The following Friday we sent them the package. Forty-eight hours before this Board meeting we got a letter stating that they weren't happy with it. Twenty-four hours later we got another letter from the assistant

city manager before this Board meeting, stating that the incentives that we thought we were going to be able to get aren't applicable, because they apply only to a mixed-income type community.

And that's not the type of project here. So there is legitimately some confusion here. But we responded to them and we asked them, This is the project. Here are supportive services. We've outlined everything in tab 2. The property is properly zoned.

The councilman was the head of the P&Z at the time of the rezoning for this particular property. We've done everything we could possibly do we think at this particular point in time to satisfy TDHCA's requirements and to hopefully resolve the city's requirements to be able to make this happen.

I also want to let you know that June 30 is our real estate contract expiration period. And we are -- as you probably are well aware given the time line -- expending significant funds to be able to get this thing to the proper closing on the basis of the fact that we have conformed to all the TDHCA QAP requirements and bond requirements for this particular project.

MR. CONINE: Any other questions?

(No response.)

MR. BOGANY: I move that we approve the project, resolution number 060019.

MR. FLORES: Second.

MR. CONINE: And I'm going to clarify that motion. I think the bond amount's \$15 million based on the reservation, and the credit allocation is \$670,194. Any other discussion?

(No response.)

MR. CONINE: Seeing none. All those in favor vote by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. We got to item 6(b). Is that right?

MR. GERBER: Yes, sir. Chairman Conine. Item 6(b), approval of an inducement for Rolling Creek Apartments. This inducement request is for \$15 million. The development is located in the northwest corner of Beltway 8 in Houston.

It will be a Priority 1C application to the Bond Review Board, which will serve families at 60 percent of the area median income and will consist of 248 units. This application has been before the Board for inducement

twice before.

However the application's been withdrawn before reaching the Board for a final decision. The first withdrawal was due to the notification sign not being installed on the property by the correct deadline. The second application was withdrawn due to the required letter of consistency with the Consolidated of Harris County, which was rescinded by the county.

It is the Department's understanding that the letter has now been reinstated. The Department has received a letter of opposition from State Senator Whitmire and State Representative Gary Elkins. Staff recommends approval of the inducement to allow staff to submit the application to the Bond Review Board for reservation of the allocation.

Ms. Meyer is available to answer any additional questions from the Board?

MR. CONINE: Got a couple witness affirmation forms. Mark Bower.

MR. BOWER: I'm just here to answer any question the Board may have.

MR. CONINE: Okay. Thank you.

Anybody got any questions?

MR. FLORES: Yes.

MR. CONINE: One question.

MR. FLORES: Mike, I have a letter of opposition from Alief School District. But this is Park West Apartments. I believe this is different. Different one?

MR. GERBER: Yes, sir.

MR. CONINE: Bob Coe.

MR. COE: I'm also just here to answer any questions on market study.

MR. CONINE: Okay. Thank you for being here.

MR. BOGANY: I'd like to move forward that we approve resolution 060020, Rolling Creek Apartments inducement for \$15 million.

MR. CONINE: Motion to approve. Is there a second?

MR. GONZALES: Second.

MR. CONINE: Any other discussion?

(No response.)

MR. CONINE: Seeing none -- one more discussion. Robbye.

MS. MEYER: I just want to say one thing. Right now the census tract numbers for that particular census tract -- 2006 numbers have not come out. So currently it does not fit under the 1C. So if we submit

to the Bond Review Board on Monday, which is the plan, it would have to switch to either Priority 2 or Priority 3.

I just want to put the Board on notice, because we have stated that it would be a 1C. But as of this morning they still haven't changed those census tracts.

MR. CONINE: Okay. Thank you. No further discussion. All those in favor say, aye.

(A chorus of ayes.)

MR. CONINE: All opposed. Motion carries.

Item 7(a), Mr. Gerber.

MR. GERBER: Mr. Chairman and members of the Board. Item 7(a) is a presentation, discussion and possible approval of the HUD-approved Action Plan, in which \$74.5 million has been allocated in CDBG funds for disaster recovery efforts in southeast Texas.

In the interest of time, we can provide a presentation to the Board. This Action Plan, which you have in your book, has been submitted to the Department of Housing and Urban Development. The Department has approved it.

Because of the timing required by HUD this application was developed in close coordination with staff and the Board chair and certainly with our technical assistance team at HUD. We also have a tremendous

partnership, as part of the Action Plan, with the Office e of Rural Community Affairs.

Charlie Stone is the executive director of that organization and is here to answer any questions you have.

In short, our Department will administer at least 55 percent of these dollars for housing, 45 percent or less -- because of the way CDBG has been allocated to the State of Texas -- would go for critical infrastructure.

And the critical infrastructure piece will be administered by ORCA. But all funding decisions on both critical infrastructure and housing will be made by this Board. The information's here, and will be glad to respond to any questions you have.

We wanted to bring it before to give you all an opportunity to simply review it, ask any questions and to ratify. If you prefer to hold off until the next meeting.

MR. CONINE: No. That's fine. Let's just move right along. We have one public comment from Kristin Carlisle.

MS. CARLISLE: Hi, I'm Kristin Carlisle, and I represent the Texas Low-Income Housing and Information Service, which is a housing advocacy nonprofit organization that serves a statewide mission of increasing the housing opportunities for low-income Texans.

First I just want to say that TDHCA has done a terrific job responding to this hurricane crisis, considering the limited resources that we have received from the federal government. My organization has been evaluating the housing needs in the 29-county area affected by Hurricane Rita.

And we found that families have received very little assistance from FEMA and continue to live in damaged and severely substandard housing conditions. I'll just overview quickly some of those conditions. Hurricane Rita destroyed nearly 21,000 homes.

About half of those were mobile homes. Three-quarters of the homes that sustained severe damage had no insurance. And based on the limited data available, we estimate that Hurricane Rita disproportionately impacted low-income families.

The cost of repairing the hardest hit homes will range anywhere from \$550 million to \$2.75 billion. So, in light of these facts we believe the state must make very wise use of the very limited resources it has at its disposal. So this allocation process is extremely important.

I have copies of a letter my organization submitted in April to TDHCA regarding the Action Plan, as

well as a report on damage estimates. We believe a single administrative program run through the state would be more efficient than siphoning very limited CDBG funds through the local councils of government.

But that said, most importantly as TDHCA determines how to award CDBG funds, families who suffered catastrophic losses as a result of Hurricane Rita should take priority over reimbursing local government agencies and companies.

As I pointed out earlier most of the impacted families are uninsured and will not be recovering from the storm without some assistance. This is a very real and immediate crisis. Housing should be TDHCA's number one priority in determining the expenditure of CDBG funds.

In summary I would just like to say I have some points that we hope TDHCA could follow which are that all available CDBG funds should be spent on replacement housing and major home repairs; initial assistance should be targeted to families who have no insurance or whose homes have been severely damaged or destroyed; and focus on rapid assistance through an expedited rebilling process.

MR. CONINE: Go ahead and wrap up.

MS. CARLISLE: Because families whose homes

have been destroyed are suffering, and they need to get back on their feet as quickly as possible. So just to close, I'd just like emphasize that all the available funds should be spent on housing. Thank you for the opportunity to speak.

MR. CONINE: Any questions of Ms. Carlisle?

(No response.)

MR. CONINE: Thank you for coming. Tell Mr. Henneberger hello for us.

This is not an action items. This is just for the Board's information. This is an informational item. So there's no action required on this particular agenda item.

Anything else to come before the Board, Mr. Gerber?

MR. GERBER: Not that I'm aware of, sir.

MR. FLORES: Motion to adjourn.

MR. BOGANY: Second.

MR. CONINE: This meeting is adjourned. Thank you.

(Whereupon, at 4:39 p.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: June 9, 2006

I do hereby certify that the foregoing pages, numbers 1 through 253, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Carol Oppenheimer before the Texas Department of Housing & Community Affairs.

(Transcriber) 6/21/2006
(Date)

On the Record Reporting
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