

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

BOARD MEETING

Thursday,  
December 18, 2008  
9:55 a.m.

Capitol Auditorium, Capitol Extension  
1500 Congress Avenue  
Austin, Texas

BOARD MEMBERS:

KENT CONINE, Chairman  
TOM CARDENAS (not present)  
LESLIE BINGHAM-ESCARENOS  
SONNY FLORES  
GLORIA RAY  
JUAN MUNOZ

STAFF:

MICHAEL GERBER, Executive Director

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P R O C E E D I N G S

MR. CONINE: Good morning. Happy holidays and Merry Christmas to everybody. It's that time of year -- can't believe it's that time of year already, but it is. And I hope everyone here has a lot to be thankful for in these trying times, as I know they all are for everyone, not just a few. But it's always great to take a week or two and focus on what's really important in life -- friends, family, and faith. So, again, I hope all of you have a great holiday season.

We'll call the meeting to order. And I'll call the roll right quick.

Leslie Bingham?

MS. BINGHAM-ESCARENOS: Here.

MR. CONINE: Tom Cardenas.

(No response.)

MR. CONINE: Kent Conine is here.

Dr. Munoz?

DR. MUNOZ: Here.

MR. CONINE: Gloria Ray?

MS. RAY: Here.

MR. CONINE: Sonny Flores?

MR. FLORES: Here.

MR. CONINE: We've got five of us here, which

is a quorum.

Mr. Gerber, it looks like a distinguished group in front of us.

MR. GERBER: It is.

Mr. Chairman, one of the great blessings of TDHCA is having a wonderful choir that sings periodically for us. And I'd like to introduce them by name -- Sharon Everett, Shawn Carter, Marcella Perry, Willie Kay Hurd, Ann Mack, Charles Meyer, Belinda Cabrera, and Bob McCray [phonetic]. Did I miss any?

VOICE: Annette Corney [phonetic].

MR. GERBER: Oh, Annette Corney, of course, is here as well. And they're here to provide us with a little seasonal music and to get the meeting started right. So I introduce proudly the TDHCA Diversity Choir.

(Choir sings.)

MR. CONINE: I hate to tell you, Mr. Gerber, I'm afraid some of them have missed their calling. They're working for us. They're great.

MR. GERBER: If I could, Mr. Chairman, one more thing?

MR. CONINE: Sure.

MR. GERBER: One bit of exciting news for the Department -- as many of you know, we are pleased to

announce that Tim Irvine has accepted our invitation to come and serve as our deputy executive director.

Tim currently serves as E.D. for the Texas Real Estate Commission. Before that he served for many, many years as the executive director for the Manufacturing Housing Division. He's a lawyer. He has tremendous experience in real estate and real estate finance. Tim will start with us in early January. And he's here, and I just want to extend a very warm welcome to Tim.

MR. CONINE: Tim, glad to have you back in the Board. And the Real Estate Commission's loss is our gain.

Appreciate you agreeing to serve and look forward to you helping with our programs and policies as we move forward in the next year.

Okay. Let's move right into the public comment portion of our agenda. Most of you know that if you want to speak you need to speak now or at the agenda item. If you haven't filled out a witness affirmation form please do so so that we can know who you are and register the fact that you want to speak to the Board.

Public comment's limited to three minutes unless someone gives you some time -- then you get five minutes. So moving right on into it, Barry Kahn is our first one.

MR. KAHN: Good morning, Mr. Chairman, the rest of the Board. Happy holidays to all.

MR. CONINE: Thank you.

MR. KAHN: I'm Barry Kahn, a developer in Houston. A couple of quick comments on the compliance rules. First of all, the compliance rules have gotten to be a little more complex as far as the definition of substantial -- commencement of substantial construction. For many year it was just meaning a threshold of like 10 percent of hard costs incurred.

And now there's a variety of various steps which create certain problems because people could be well under their way but have issues. For instance, one of the requirements is some major utility transmission infrastructure in place. Well, some of that can't be completed till near the end of the job. It's not really a good test to make sure somebody's well underway.

A few years ago we had a standard where only 10 percent of hard costs needed to be spent to meet the test.

And I would like to suggest that, you know, the Department and the Board review this and try to come up with a simpler standard rather than this more complex standard that's evolved over the years.

It's important to have something that somebody

has commenced substantial construction, but, you know, it appears that these rules have gotten a little unwieldy and are far more than what may be required, particularly in this environment where a syndicator issuing with a deal closed and be proceeding unless it's a real deal.

Secondly, I've got some confusion -- and I'm sorry this is last minute but -- raised to the staff -- but in Section 60.116(c) (a) there seems to be some inconsistencies in the language. For instance, a major finding of violations will be cited on life threatening issues which are corrected within 72 hours. Then on level 3 deficiencies -- I'm sorry -- in the first case -- which were not corrected in 72 hours.

Then in level 3 deficiencies it says which are corrected in 72 hours. I mean, it would seem that, you know, there shouldn't be a violation if it is corrected -- and that needs to be cleared up.

And then on level 2 deficiencies it doesn't have anything on a cure period. So I think, you know, some technical cleanup on that language would be helpful for all. And if there's any questions I'd be happy to answer them.

MR. CONINE: Any questions of the witness?

(No response.)

MR. KAHN: Thanks.

MR. CONINE: Thank you. Mike Sugrue? Mike Lankford will be next.

MR. SUGRUE: Good morning, Mr. Chairman --

MR. CONINE: Good morning.

MR. SUGRUE: -- members of the Board and Mr. Gerber, who just got up. My name is Mike Sugrue. I'm here representing TAAP this morning. I too am here to talk about the compliance rules -- very similar to what you just heard Barry say.

The Board approved the compliance rules on November 13 and they were published in the Texas Register on the 28th. And TAAP had a lot of input and the staff listened to a lot of what we had to say.

The one issue that we still have outstanding we feel is the same thing that Barry just spoke to -- and it's essential construction. I think it's easier done as a percentage of completion. That's the way draws are done. That's the way the banks deal with it. I think it's easier to do that than to say X number of slabs, Y amount of framing, or Z roofs shingled. That leaves too many moving parts I feel.

So TAAP has written it down and we've given you a letter. And we'd like your consideration on that part.



And thank you and happy holidays -- Merry Christmas.

MR. CONINE: Same to you. Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

Mr. Lankford?

MR. LANKFORD: Chairman, TAAP will be discussed -- I believe it'll be discussed later in the agenda. So if you'll save time I'll pass.

MR. CONINE: You want to go to the agenda item or are you passing altogether?

MR. LANKFORD: No, I think it's going to be discussed by other folks, and I'll pass.

MR. CONINE: Okay. Thank you. Pat Ahumada I guess -- Ahumada -- I'm sure I messed that up.

MR. AHUMADA: That's quite all right. They do it often.

MR. CONINE: Sorry about that.

MR. AHUMADA: Good morning, Chairman Conine and Board members, and thank you for allowing me a few minutes to speak and happy holidays to everybody.

My name is Pat Ahumada, A-H-U-M-A-D-A -- is my last name. I have the honor to serve in the crown jewel of Texas -- Brownsville, Texas -- as mayor. And I'm here

on behalf of my city and my constituents.

I want to take this opportunity to speak in support of the Sunset Haven Limited request to received additional tax credits based on its eligibility for the 9 percent applicable percentage and to fund increased development costs.

Sunset Haven is a hundred-unit housing community for very low, low-income seniors in Brownsville. Construction started in December of 2007 and the project's experienced construction cost increases similar to 2007-2008 tax credit projects.

None of the buildings were placed in service prior to July 30, 2008. According to Sunset Haven it's eligible for the 9 percent applicable percentage allowable by Housing Assistance Tax Act of 2008. However, Sunset Haven cannot benefit from this federal legislation unless Texas Department of Housing and Community Affairs Board agrees -- which is you -- to provide additional tax credits that are being considered under Board agenda number 2.

The citizens of Brownsville, especially our very low, low-income senior citizens with much need, would appreciate your consideration and approval to award additional credits to Sunset Haven and other 2006 projects

eligible for the 9 percent applicable percentage and that experienced increased construction costs like 2007-2008 projects. That's my first request.

My second request is regarding Candlewick Townhomes -- and it's located at 1155 Paredes Line Road in Brownsville, Texas. This project is sponsored by Odyssey Residential and Bill Fisher. Right now the general partner is slated to be the instrumentality of the Cameron County Housing Authority.

Cameron County Housing Authority is one of only two housing authorities with jurisdiction to operate in Cameron County, along with our housing authority. The Brownsville Housing Authority -- it is the city's and, as I understand it, the tax credit investor's desire that the general partner be owned and controlled by our housing authority, Brownsville Housing Authority.

The change being requested to substitute Brownsville Housing Authority for Cameron County Housing Authority is not material. It is being done in response to the hardship imposed by the marketplace on these types of investments at this time. It is necessary Brownsville Housing Authority be involved to satisfy the requirements now imposed on the market.

These new standards include a level of size,

financial strength, and experience in Section 22 affordable housing programs. Brownsville Housing is the only housing authority with jurisdiction over Candlewick that meets these new standards.

This is a critical project to the city's effort to preserve affordable housing. To ensure this happens our City Commission, along with myself, are looking at \$800,000 of a total annual allocation citywide of only 1.4 million to make sure Candlewick was preserved for the benefit of our Rio Grande Valley community.

The developer has gotten HUD to extend the housing assistance payment for a period of 15 years, which is great. The housing assistance contract directly subsidizes each unit for a total value over 15 years of at least 20 million in rental subsidy -- is something that's surely needed for Brownsville.

This project was must go forward and we need your help. To ensure this happens I'm asking you on behalf of the City of Brownsville and the senior citizens for you to assist us in processing this approval.

The issue at hand are for an approval to substitute our housing authority -- Brownsville Housing Authority for the Cameron County Housing Authority. This immaterial change will make sure the financing closes and

this development is now rehabilitated to ensure affordability for the next 30 years.

I know you are aware of how difficult this marketplace is to close financing. This change closes the project financing. I am aware that the Brownsville Housing Authority had a non-compliance issue that is now cleared. The developer, Tom Scott, has submitted the material necessary to demonstrate the property's compliance. If necessary please allow them and approve to close the Candlewick financing with the Brownsville Housing Authority as the owner of the general partner to make a commitment to ensure that any open compliance issues are remedied.

This is 2007 9 percent project that is ready to close. Your help would be appreciated.

Mr. Chairman, usually I'm on the other side and now I know what the public comments have to go through with a short period of time. So I hope that was quick --

MR. CONINE: No, you did fine.

MR. AHUMADA: -- enough that there's some time left to wish you a happy holidays. And any questions I'll be here to answer if I can.

MR. CONINE: I just noticed your title of mayor here, Mayor. So I appreciate --

MR. AHUMADA: I had that honor bestowed on me by citizens. Thank you.

MR. CONINE: -- appreciate the sentiments. Any questions of the witness?

(No response.)

MR. CONINE: Okay. Thank you very much.

MR. AHUMADA: Thank you for what you do. And I appreciate any consideration you can give.

MR. CONINE: Thank you. Granger MacDonald? Hollis Fitch will be after Granger.

MR. MACDONALD: May I submit this for the record?

MR. CONINE: Sure.

MR. MACDONALD: Who do I give it to? Right here?

(Pause.)

MR. MACDONALD: Good morning.

MR. CONINE: Good morning.

MR. MACDONALD: Mr. Chairman, a couple of things. First of all I'd like to thank the Board for what you all did last month. It was a bold step and I find that many states in the Union are doing the same thing now. But you all took the lead on it and, you know, there are going to be a lot of people in a few years that sleep

in a safe, affordable housing. They'll never know your names, never know who this staff was, and they have you all to thank for it.

The major issue I wanted to speak about is at 3:15 this last Monday, about 45 minutes prior to a drop dead deadline, we managed to pull off a conversion of a bond deal that had been working for about 90 days. The problem with this deal was that other than the credit enhancement provider we were the only solvent people in the deal.

Our syndicator had -- has been sold four or five times -- are basically in receivership. Fannie Mae was the owner of the bonds. Our casualty insurance was actually provided by AIG. Our rate cap provider was Lehman Brothers, you know. And, to say the least, it became very hard to get everybody on the same sheet of music to get the conversion done.

I think you're going to see more bond deals that can't convert for one reason or another. And a lot of it's beyond the control of all of us. And I think maybe that it's time to think about how we can come up with a system where if a bond deal does collapse that we can -- we write the bond deal -- reissue the bonds, somehow constrict the fees a little bit, and try to recast

these bonds on some of these deals that are going to collapse.

Because some of them are going to collapse -- trust me. I mean, we were within 45 minutes of it Monday and managed to get victory out of the jaws of defeat. But it was a pretty tough chore. Anyway, that's -- I'd like to throw that out to be discussed.

Also, in this period -- the last 65 days on this project we have eleven inspections. And, you know, all my managers did for two months was have an inspection from, you know, the syndicators, the lenders, the bond holders -- it was crazy.

And you all had on your agenda to remove the TSAHC fees for inspections, and I know that that one has been pulled at the request from some other folks. But I would certainly like for you all to make sure that we follow up on that in February and talk about these inspections and fees because it's really getting onerous.

You know, a \$10,000 fee on a 250-unit project equates to about a 120- or \$140,000 worth of bonds -- worth of bond proceeds. And that's money that can be better used in putting people into safe housing instead of paying for inspections. Thank you.

MR. GERBER: Mr. Chairman, in that spirit,



we're going to not only deal with those fees, but I think we're going to also convene a roundtable to talk about all the fees within the Department to make sure we're not taking more than we need to absolutely do our due diligence work.

MR. CONINE: Okay. Hollis?

MR. FITCH: Good morning, Mr. Chairman and Board members. I'm Hollis Fitch, developer for Moore Grocery Lofts, Project Number 07096, in Tyler, Texas. First off, I would like to thank the Board for all the assistance that's been provided to the development community during this difficult and unprecedented times.

I'm here to speak today about a unique situation that sprung up from the Board's action at the November meeting. The Board elected to give all 2007 and 2008 deals assistance by increasing project costs by 10 percent and electing to give the entire 9 percent rate.

Our project, Moore Grocery Lofts, has fallen into a unique situation and hasn't received as much assistance as needed. Our project received additional allocation of \$26,195, which is a 3-1/2 percent increase from the original allocation of approximately 748,000.

While the project has the eligible basis to qualify for \$974,445 in total credits the gap method has

capped the additional credits. We didn't know the additional credit amount at the last meeting because this project is actually a 2006 forward commitment and it wasn't listed in the original list. We didn't actually find out about our additional credit amount until December 10.

From the beginning we knew we were going to have additional costs associated with this development. Most of the costs stem from the elevator-served corridors -- it's a five-story building with an elevator.

The square footage of the elevator-served corridors are approximately 6,700 square feet. Under the 2006 and 2007 QAPs these costs were not able to be used for application purposes. Under the 2008 QAPs these costs were then allowable.

Since we knew that we were going to be -- we were going to experience a problem from the beginning we worked proactively to close at a higher equity rate and got more favorable debt terms.

But this actually hurt us when we needed some additional help because the gap method determining the additional credits only looked at the application cost and the closing syndication rate. It did not give a very accurate picture to where the deal was in real terms.

We did have a problems during the construction process that led to some additional costs that we did not anticipate. This deal was the first time the state Historic Preservation officer had dealt with this type of project, and we saw some delays from that end.

But our biggest delay was our initial closing with Collin Financial, which two weeks before closing the equity backed out of the market as a whole. So in order to close at a higher equity price to complete the project we had to start from scratch again with another investor, which actually led to almost a six-month delay. Had we actually closed with the first investor we would have completed the project a few months ago.

At the end of the day what we're asking for is that some of these additional costs that were not able to be used for consideration of the additional credits be taken into account. We do not need by any means our full eligible allocation. What we're looking for is \$47,526 in additional credits.

Again, thank you for considering this request. And thank you for the generous assistance that's been provided already.

MR. CONINE: Any questions of the witness?

MR. FLORES: Yes. What's the name of the

project?

MR. FITCH: Moore Grocery Lofts.

MR. FLORES: I'm sorry?

MR. FITCH: Moore Grocery Lofts.

MR. FLORES: What town?

MR. FITCH: Tyler, Texas.

MR. FLORES: Let me just tell all of you that we have a lot of paper that's been sent to us. And there's a lot of projects in here. And if you present it when the project is presented it probably makes more sense to us up here than presenting them at the beginning of the meeting. I don't know what the problem is but --

MR. FITCH: We were not able to get --

MR. FLORES: -- other stuff beneath this stack of papers here.

MR. FITCH: Yes, sir.

MR. FLORES: Thank you.

MR. CONINE: Thank you. Any other questions of the witness?

(No response.)

MR. CONINE: Thank you. I love this name -- Margarita Vasquez.

MS. VASQUEZ: Buenos dias.

MR. CONINE: Buenos dias.

MS. VASQUEZ: [speaking Spanish.]

MS. VASQUEZ: God bless you all. Happy holidays.

MR. CONINE: Thank you.

VOICE: Dr. Munoz, would you like to --

VOICE: Sonny, would you like to?

MR. FLORES: Sure -- doesn't speak Spanish; pass it over to me. Thank you.

Dr. Munoz, she said thank you very much on behalf of Alton and the support you give them now and have given them in the past. This -- they appreciate very much the support for the workers -- Farm Workers Union -- that this supports a lot of education programs -- information that they need to get out there. And overall thank you very much and Merry Christmas to all of you.

Did I say it all right, Dr. Munoz?

DR. MUNOZ: I believe that's technically accurate.

MR. CONINE: Okay. Thank you very much. Joaquin Vasquez, same project?

MR. VASQUEZ: Good morning.

MR. CONINE: Good morning.

MR. VASQUEZ: I guess my wife said all that she was going to say, you know. But we appreciate that you

take us in consideration. Thank you.

MR. CONINE: Thank you.

VOICE: Thank you. Appreciate you all being here.

MR. CONINE: Diana McIver. She's got someone allocating some time, so she gets five minutes.

MS. McIVER: That's -- actually --

MR. CONINE: Is that on a different deal?

MS. McIVER: Oh, [indiscernible] taking time.

MR. CONINE: That is a different deal, isn't it?

MS. McIVER: It's a different deal. Right.

MR. CONINE: That means I've got to hear you more than once today.

MS. McIVER: You have to hear me twice today. But I'll be covering three projects, so it's a good deal. I just used my entire three minutes up I can tell.

MR. CONINE: Is that called leverage?

MS. McIVER: Leveraging. Yes, this is leveraging. And that's actually what I'm here about, is leveraging.

MR. CONINE: I'm sure it is.

MS. McIVER: I'm Diana McIver. I am president of DMA Development, and we're the developer and the

general partner of Project Number 08264. It's Cambridge Crossing in Corsicana, Texas. It was just received an allocation of tax credits this past July.

What we received at the same time was an allocation of HOME dollars in the amount of 420,000 to be paid back at the applicable federal rate. What I'm here today to request -- is because things have changed within -- we appreciate the additional credits and they take us a lot of the way there, but because things have changed in our construction -- our financing world we have approached TDHCA staff about reviewing the terms of the HOME loan and looking at a lower interest rate -- potentially zero percent interest rate.

And in doing that staff advised us that we need to go to the Board and have the Board direct them to meet with us to consider new documentation, new construction numbers, new financing letters, and be able to come back to you hopefully at the February meeting with a request for any adjustments to our HOME loan if staff agrees that they are needed. So it's a direction to staff request. Am I saying that correctly, Tom?

MR. CONINE: Okay. Any other questions of Diana? Now, I'm looking at this witness after -- Janine Sisek.

MS. McIVER: Oh, okay. I didn't need her time.

MR. CONINE: She's the one that gave you more time.

MS. McIVER: Oh, I didn't need it.

MR. CONINE: It says it's the same project on the HOME loans.

MS. McIVER: Oh, yes.

MR. CONINE: So you've got more time. Not that you need it, but you have it.

MS. McIVER: Yes. I mean, I can go into all the boring details, but I think the basic request is can we sit with staff with new documentation.

MR. GERBER: You're asking to direct the staff to go back and just look at a deviation from the HOME loans that the Board approved.

MS. McIVER: Right -- from a HOME award that was made in July and executed a couple of weeks ago.

MR. FLORES: That's not on the agenda, is it, Mike?

MR. GERBER: It is not on the agenda.

MR. FLORES: So it would have to be put on the February meeting.

MR. GERBER: The staff has applied the HOME rules as they currently exist. This would mean



[indiscernible] have to go and talk to the applicant about a deviation to those rules as applied to this project. Is that correct now?

VOICE: I think I've got it.

MR. HAMBY: Interest rates are the sole provision of the Board. The Board gets to set interest rates. And so staff has no ability to adjust interest rates once you've made an award. I believe Ms. McIver's request is that they would like to move from what you passed to a lower interest rate -- even to zero percent if possible.

And in order to do that you have to ask the staff to do so because you're the only people who can adjust the interest rates. So if you don't want to adjust the interest rate it doesn't go back on the agenda. If you do want to adjust the interest rate the only way to get it done is to put it back on the agenda.

MR. CONINE: There's no way we can determine whether or not we would or we won't because we've got nothing in front of us. So the question would be why don't you go ahead and put it on the agenda for the next meeting and give us the backup information we need to make the decision. Is that good enough?

MS. McIVER: That works for me. Thank you.

MR. CONINE: Okay. We'll see you later.

MS. McIVER: Okay.

MR. CONINE: Okay. That concludes the witness affirmation forms I have for the public comment period unless we've left somebody out -- just making sure we haven't. The rest of them will be speaking at the particular agenda item.

MR. GERBER: Mr. Chairman, the first item is the consent agenda. Item 1(a) and 1(b) are duplicates so we'll take Item 1(b). And we're asking for approval to -- of the other items that are on there.

MR. CONINE: Is there any other Board member that has any other issue with any other item in the consent agenda? If not, I'd love a motion to approve.

MS. RAY: So move, Mr. Chairman.

MR. CONINE: Motion from Ms. Ray and I heard -- I'll let Mr. --

MR. FLORES: Second.

MR. CONINE: -- Flores second it. Any further discussion on the consent agenda? Is this discussion on the consent agenda? No. Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Moving on to Item 2.

MR. GERBER: Mr. Chairman, Item 2 are the multifamily division items. I'm going to let Robbye Meyer walk us through each of those items.

MS. MEYER: The first item, 2(a), is the amendments. The first amendment is Fulton Village, 01004. The owner's requesting approval to substitute a nonprofit organization for -- to replace a historically utilized business as it was originally proposed in the -- to control the general partner. The HUB to be replaced is Pro Connection, Inc., a subsidiary of APV. Redevelopment Corporation would be the replacement. APV is a nonprofit organization controlled by the Housing Authority of the City of Houston via Board members in common.

The presence of the HUB scored five points in the application. The application was the highest scoring application in Houston. It was approved for an award as a forward commitment. However, staff could not verify that the score determined the award because it was forward commitment.

There is no provision in the QAP for staff to approve or recommend approval for this proposal. However,

staff does recognize that the Board has approved a nonprofit organization to substitute for HUB entity in the past. No penalty is recommended.

MR. CONINE: Okay. I have a public comment on this before we move on. And I'll sure we'll hear more from this guy -- Barry Palmer. I'm sure he's a more than one time participant today. We're in the Christmas spirit, Barry -- maybe.

MR. PALMER: Yes, we'll see how long that Christmas spirit lasts. Barry Palmer with Coats Rose speaking on behalf of the Houston Housing Authority just asking the Board's approval of this substitution of a nonprofit entity as the general partner in this transaction as opposed to the HUB.

This is a public housing development that was developed as replacement housing for Allen Parkway Village, a 100 percent public housing now. The developer was hired, who was a HUB, who completed the development. This is an '01 allocation -- has been placed in service for some time now.

The developer provided the guarantees. Those guarantees have all expired. There is really no further need for their involvement. So the Housing Authority, as a nonprofit affiliate, could step in and serve as the

general partner.

We think from a policy basis, while there's nothing specific in the QAP about this, that this is a good policy for the Board to have to allow the substitution of a nonprofit for a HUB in that it provides additional flexibility and comfort to the investment community that if some point down the line they need to replace a general partner that a nonprofit and a HUB stand on equal footing. Thank you for your consideration.

MR. CONINE: I'm just curious is there's any consideration going on here.

MR. PALMER: No.

MR. CONINE: Okay. Any other questions of the witness? Dr. Munoz?

DR. MUNOZ: My understanding of the HUB vendors is specifically to involve the companies that have a presence of owners of color or women. How is that -- how is a nonprofit the equivalent of that? How does a nonprofit capture that purpose?

MR. PALMER: Well, it's different. But in a number of instances -- like in the 2001 QAP, for example -- and this was a 2001 forward commitment even though it applied in 2000 -- there -- the point category where you would get points was either a HUB or a

nonprofit. So they are different social goals to encourage participation by both HUBs and nonprofits, but in a number of instances in the past in the QAP they've been treated as essentially the equivalent.

And I would like to point out that we had a HUB developer who has participated in this project for seven years who's a developer who developed the project, built it, stabilized it, placed it in service -- but is not a manager. So there's a management company that is now managing it and so the developer is really no longer necessary.

MR. CONINE: Any other questions of --

MR. FLORES: Mr. Chairman? Yes.

MR. CONINE: Mr. Flores.

MR. FLORES: Mr. Chairman -- Mr. Palmer, you stay there a minute. I want Tom Gouris to explain a few things to me and then I'll probably ask you a few questions. Tom, the -- he said the developer was a HUB, and that's -- under state law he's got a requirement for a certain amount of HUB participation. Or was this voluntarily in there as part of the application?

MR. GOURIS: I believe it's a point item. Tom Gouris, by the way.

MR. FLORES: It's a voluntary thing for five

points. Right?

MR. GOURIS: It's a selection item that people put in to get a higher score. Yes, sir.

MR. FLORES: And the developer was whom on this project?

MS. MEYER: There was a point item at that time.

MR. FLORES: I got that far.

MR. GOURIS: Was it Pro Connection?

MR. FLORES: Who was the developer that's a HUB?

MS. MEYER: It was Lee Burchfield was the actual developer for the --

MR. FLORES: And Burchfield is a HUB?

MR. GOURIS: I believe because there's -- a woman owned the majority of that organization.

MR. FLORES: Do they have a certificate from the state of Texas asserting that --

MR. GOURIS: To have received the points they would have had to show that, yes, sir.

MR. FLORES: I'm having trouble hearing. Can you --

MR. GOURIS: To have received the points for that item they would have had to have provided that

documentation.

MR. FLORES: Okay. And, now, this change goes from a HUB to a City of Houston group that's nonprofit? And that nonprofit is essentially part of the City Housing Department? Is that the way -- did I get that right, Barry?

MR. PALMER: It's money -- cities have nonprofits that are affiliated that they control through the Board. And this is one of those kinds of entities that they control.

MR. FLORES: And then they --

MR. PALMER: It's a separate entity but --

MR. FLORES: And then -- and benefits and go back to the -- to enure the Housing Department -- or the City. Did I get that right?

MR. PALMER: The Housing Authority, yes.

MR. FLORES: Yes, okay. I am normally against anybody playing around with the HUB program. However, in this case it appears that you're actually essentially putting it back in the project and that project is hopefully, you know, occupied by minorities and people who would benefit that are non-majority people. For this reason I support this project, and, of course, I want to wait until the discussion is done. I'll be happy to make



the motion.

MR. CONINE: Any other discussion? Questions?

MR. GOURIS: Perhaps a point of clarification -- that HUBs and nonprofits aren't actually treated equally, but from time to time in the past they have been. But currently they're not.

DR. MUNOZ: They have been or they hadn't?

MR. GOURIS: They had been from time to time in the past. But they aren't today.

MR. FLORES: And it's not that we haven't set a precedent, too, because we don't set precedents.

MR. CONINE: We try not to.

MR. FLORES: Mr. Chairman, I make a motion to approve the --

MR. CONINE: Motion to approve by Mr. Flores. Do I hear a second?

MS. RAY: Second.

MR. CONINE: There's a second by Ms. Ray. Any further questions?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Next, Ms. Meyer?

MR. MEYER: The next two amendments are with the same developer, and they're relatively the same, but I'll give you the specifics.

05082 is Sphinx at Luxar Villas. The owner's requesting approval for changes in the site plan, unit plans, and parking facilities. They are stating that the changes were made to avoid crossing easement of a natural gas line at the rear of the site. Because of the changes the site plan was finalized with slightly more of the rear of the site left vacant than the original plan.

The principal changes in the unit plans were 15 of the half-baths were eliminated, and the architect certified that the total net rentable area of the development increased from 102,923 square feet to 105,707 square feet.

The parking was reduce, but it's still within City Code.

05095, Sphinx at Reese Court -- the owner again requested approval to change the site plan -- the number of buildings changed here, the unit plans, and the parking facilities.

The owner stated the site plan and the building

count were changed to accommodate a detention facility to comply with unexpected zoning changes that required the three-story units of the proposed buildings to be located in certain parts of the subject site and two-story units to be located toward the residential development of the surrounding area.

In the end the owner said that the proposed six residential buildings were converted into seven and distributed over the site as the City of Dallas required.

The principal changes in the unit plans were four of the half-baths were -- 14 of the half-baths were eliminated, and the architect certified that the total rentable area of the development increased from 82,042 square feet to 84,238 square feet.

Parking was reduced, but it's still within City Code.

Both of these developments received '08 binding agreements, so we have those 8609s issuance that have to be issued at the end of this year. So these amendments have to be resolved so that we can issue those 8609s by December 31.

Staff is recommending approval of the amendments because the net effect does not negatively impact the development. However, staff is recommending

the assessment penalties because all of this is done after the fact.

MR. CONINE: Okay. I have a witness affirmation form here. Joe Agumadu? Is that correct?

MR. AGUMADU: Almost.

MR. CONINE: Almost.

MR. AGUMADU: Close enough. I thought I'd be around to answer any questions you may have. The only point I have is that I'm not --

MR. CONINE: I'm sorry. Identify --

MR. AGUMADU: Joseph Agumadu, and I live in Dallas. I'm not aware that we were required in 2005 for [indiscernible] round to have a prior authorization to like change the number of buildings. But if it is I'm -- that's really what I have as comments.

MR. CONINE: Okay. Any questions of the witness?

(No response.)

MR. CONINE: Do I hear a motion?

MS. RAY: Mr. Chairman.

MR. CONINE: Yes, Ms. Ray.

MS. RAY: I move to approve the transaction with no penalties assessed.

MR. CONINE: Okay. There's a motion. Do I

hear a second?

(Pause.)

MR. CONINE: I'll second it to get it on the floor if nobody else will.

MS. BINGHAM-ESCARENOS: Are we voting on both projects?

MR. CONINE: Yes. We'll do it on both at one time. Excuse me for not making that clear.

MS. RAY: And, Mr. Chairman, I'd like to speak in favor of not assessing the penalties. Occasionally we change rules as we move down the stream. And the imposition of penalties is something that's fairly recent. And at the time the project was approved the penalties -- I mean, the prior approval was not part of the process. That is the only reason that I made the motion not to assess the penalties in this case.

MR. CONINE: Yes, I suspect the only reason he's here is because he got the '08 positional credits in '08 and it was picked up then -- be my guess.

MR. HAMBY: Actually it was originally put in the QAP in '05 -- the QAP that was approved in '05 that would be effective for the '06 year. So before the development ever started that penalty provision -- but the penalties were not going to be assessed until the '07

round, so at the end of '06 they gave a year's notice before. So starting in '05 people had notice.

DR. MUNOZ: The penalty provision were --

MR. HAMBY: Correct. They were placed in to be effective in the next year. They were not going to be effective for the '06 round, but the notice was put in an '05 that starting in '07 that the penalties would start taking effect on that round, so they could be assessed in '06. So there's a timing issue here as to when they began work -- it wasn't in effect for the '05 round when he received the awards, but in '05 those provisions went into the QAP.

MR. CONINE: Which means they weren't applicable till '06.

MS. RAY: And went into effect in '07.

MR. CONINE: There's a motion on the floor. Do I hear any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Ms. Meyer.

MS. MEYER: Next amendment is 060408. This is a bond transaction -- Amberwood Apartments. It was a rehabilitation. The owner's requesting approval to waive the threshold requirements of having ceiling fans in the living room and all bedrooms. Ceiling fans are present in the living rooms, but not the bedrooms.

The owner requested the Board accept the upgraded air conditioning systems to be substituted for the ceiling fans that were not installed. The owner said that the original development proposed included a proposal to spend 557,000 to replace the condensers -- the condensers and the air handling in the units.

Staff verified this proposal. However, the owner did certify that the ceiling fans would be in the units because it was a threshold requirement. According to the owner the difference of the \$120,000 between the original proposal and the final installation was in excess of the \$21,700 that the ceiling fans would have cost. The application included the property condition assessment that did not state the efficiency rating or other comparative fiscal specifications of HVAC equipment.

Staff recommends denying the request because it was a threshold requirement. Staff also recommends the assessment of appropriate penalties.

MR. CONINE: Okay. We have a witness affirmation here again. Jason Rennaker?

MR. RENNAKER: Good morning. My name is Jason Rennaker. I'm representing Amberwood Limited partnership. It's Amberwood Apartments in El Paso.

As stated, we -- there was an oversight in our communication between our development team and our construction team, and ceiling fans were omitted from the bedrooms.

And -- however, during the construction process we made a decision to upgrade the HVAC system -- higher efficiency furnaces and higher SEER rating on the cooling. We increased air circulation by increasing the circulation of return air. And, as stated, these were -- these improvements cost an additional \$120,000 in the project. And so we're requesting that these upgrades in the HVAC system be substituted for the requirement for the ceiling fans.

MR. CONINE: Okay. Any questions of the witness? I don't have any of you. I have some of staff at this point. Go ahead, Robbye. What's the ramifications of the denial, just to make sure I understand.

MS. MEYER: The ramifications of denial?



MR. CONINE: Yes.

MS. MEYER: We are waiving your rule -- I mean, this --

MR. GERBER: They'd have to spend \$21,000 for fans.

MS. MEYER: Oh, they would have to put the ceiling fans in.

MR. CONINE: Okay. But that's the ramification at this point.

VOICE: And the penalties.

MR. CONINE: And we decide on penalties. Okay. Any other questions of staff or -- the witness is gone, but any other questions of staff?

MR. FLORES: No. I make -- I'll go ahead and make a motion.

MR. CONINE: A motion. Yes?

MR. FLORES: I make a motion to deny the request and a penalty of five points.

MR. CONINE: Mr. Flores has a motion on the floor of a denial with five-point penalty. Any second?

DR. MUNOZ: Second.

MR. CONINE: Second from Dr. Munoz. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Any opposed?

(No response.)

MR. CONINE: Motion carries. Next?

MS. MEYER: Last amendment is 07309, Glenwood Trails. The owner's requesting approval to downsize the development so the construction would be feasible with the allocation from 2007 and as supplemented by the additional credits that the Board awarded at the November meeting.

The downsizing would change the site plan -- reduce the number of residential buildings from 19 to 16 and reduce the number of units from 114 to 96.

The number of units targeted for tenants at rent and income levels at 60 percent of AMGI would decrease under the new development proposal from 12 to 10.

And the underlying addendum supports the continued -- the underlying report development -- let's try this again.

The underlying addendum supports the continued feasibility of the original number of units and suggests a reduction in credits may be required if the reduced number of units is accepted.

Staff does not recommend approving the request

to allow the owner to reduce -- to re-engineer the development after the allocation of the additional funds at the November 13 meeting as doing so would render the original application and the allocation process entirely void.

MR. CONINE: Okay. I have a witness affirmation -- Les Kilday with some time donated from Dick Kilday and Barry Palmer once again.

MR. KILDAY: Chairman Conine, members, Mr. Gerber, I appreciate the opportunity to speak to you today. My name is Les Kilday. I am with Kilday Realty Corp.

We are the owners of Glenwood Trails, TDHCA Number 07309. Glenwood Trails is a family tax credit development in Deer Park, Texas, and it is a 2007 allocation that has not been closed yet.

At the November Board meeting this Board approved a plan to provide extra credits for 2007 unclosed deals by allowing a 10 percent increase in direct construction and site work costs. We appreciate the Board's action to this unprecedented time in the industry.

This increase in credits though does not provide Glenwood Trails enough equity to move forward.

Our construction costs have increased

approximately 15 percent. Our insurance expenses have increased due to Hurricane Ike. And the interest on the perm debt has increased significantly in the past year.

Some specific construction cost increases that have been required by the City of Deer Park -- I'd like to list a few of those. We're having to provide 1,600 linear feet of retaining wall on the sides that are adjacent to the single-family homes for drainage purposes. We are needing to provide two eight-inch water lines to cover the regular service and the fire line separate. In a lot of cases we've been able to include all those in one water line.

Roof trusses -- they're requiring 20-inch centers on the roof trusses. Industry standard and what we've seen has been 24 inches.

And building slabs are required to be two feet above the street crest. That's almost, you know, double what we have -- are normally used to.

And then, finally, the zoning -- we are adjacent to -- on two sides to single-family zoned properties. And so because of that the City of Deer Park has a zoning requirement that we have to be one story only. So this development is a full one story.

The great thing about that is it's very

residential, it's close to single family, and it has a very residential look to it. The problem is that it exacerbates the construction costs that are -- have increased being only one story.

So that -- the result of that deal is a deferred developer fee of close to 85 percent. We cannot find a syndicator or a lender right now in this environment that will do a deal, even with a deferred developer fee, even close to that amount.

As a result, we're asking the Board to allow us to reduce the number of units from 114 to 96. With the current allocated amount of credits and this reduction in units Glenwood Trails would be able to secure the proper financing enabling it to move forward.

In our discussion with the underwriting staff they were unable to complete the analysis -- the underwriting analysis of the development with the reduced units due to the fact they didn't have an updated syndication letter and they didn't have an updated lender letter.

Well, it's sort of a Catch-22 because the syndicator and the lender that we've talked to -- with they way things are now, they don't want to go into a hypothetical situation and go through their credit

underwriting and all that on a hypothetical. They want approval -- they want to see approval before they can do that.

Because of that Catch-22 -- I will say this. We did last -- at the end of the day yesterday we did get a lender letter for this development for the construction and the lending. We're still working on the syndication.

But because of this -- you know, this sort of Catch-22 -- we're asking the Board to approve our amendment request to reduce the units subject to the complete underwriting analysis and approval.

In summary, Glenwood Trails would be the first affordable apartment development in the City of Deer Park.

Deer Park was hit very hard by Hurricane Ike and there's very strong demand for affordable housing.

We're eager to start construction and have units on the ground and available to families of Deer Park by the fourth quarter of 2009. The TDHCA Board has been instrumental in providing help for 2007 and 2008 tax credit deals caught in the vise of so many challenges that have hit the tax credit industry.

At the September Board meeting this Board also mentioned they would be very open to amendments to help these developments. We ask that you provide us with

opportunity to move forward with Glenwood Trails and approve our amendment. Thank you.

MR. CONINE: Barry Palmer?

MR. PALMER: I'm Barry Palmer with Coats Rose speaking on behalf of Glenwood Trails. And I would like to focus on -- you know, at the September Board meeting the Board heard, you know, testimony from the development community about the dire circumstances in the industry and the impact it was having on 2007 transactions. And unprecedented amount of transactions from 2007 had not closed to that point.

And the Board adopted a policy at that meeting that they would consider additional credits for 2007 allocations and also encouraged developers to look at cost engineering their projects to find a way to reduce the gap through construction cost decreases and to bring amendments to the Board for consideration that will do that.

We spoke at that time at the September meeting about how an across-the-board increase of tax credits for all projects would not solve all the situations. And, yet, it was the strong desire of staff to look at things across-the-board on tax credit increases rather than to look at individual case-by-case how much construction

costs had increased.

Here we have some circumstances where construction costs have increased, credit prices have gone down, interest rates have gone up, insurance costs have gone up -- all that brought together we were unable to make the project financially viable with just the increase of tax credits.

But with the reduction of the project by 18 units that will save construction costs and it will allow the project to go forward. It's essentially the same project that was applied for and approved -- it's just got fewer unit. All the rest of the project's the same -- as Mr. Kilday mentioned, the first tax credit project to be developed in the Deer Park community.

So I would ask the Board in consideration of the Board's policy of the September meeting -- that amendments would be considered that helped to fill the gaps on projects like this -- that this is a perfect example of a project that fits within that policy. Thank you.

MR. CONINE: Any questions of the witness or witnesses? Ms. Bingham?

MS. BINGHAM-ESCARENOS: I just had a question for Mr. Kilday regarding -- you mentioned the city -- Deer



Park having kind of higher requirements in terms of the slab and the eight-inch drainage and all that. Just out of curiosity, when did that happen in the process?

MR. KILDAY: That happened as our plans were being approved. This was, you know, well after the allocation and when we actually had the building plans at the city for approval.

MR. CONINE: Including the one story?

MR. HAMBY: When did Deer Park require this?

MR. CONINE: Yes.

MR. HAMBY: What happened to you when Deer Park made these requirements --

MR. KILDAY: To answer your question I'm not sure of the specific requirements. I don't know where in the process Deer Park made that -- made those changes.

MS. BINGHAM-ESCARENOS: So Deer Park supported the project?

MR. KILDAY: Absolutely.

MS. BINGHAM-ESCARENOS: I was part of -- I wasn't around when that project was done. The city was very supportive of the project?

MR. KILDAY: Absolutely. Yes, ma'am.

MS. BINGHAM-ESCARENOS: I don't have any other questions.

MR. FLORES: Mr. Chairman?

MR. CONINE: Mr. Flores?

MR. FLORES: Mr. Kilday, where is this project now? I mean, where are you in the scheduling of this project? Are you drawing plans? Are you --

MR. KILDAY: The plans were completed based on 114 units. And we are -- and then submitted to the city. What we would need to do if this is approved -- we would just need to resubmit the plans based on the 96 units. But --

MR. FLORES: You haven't turned any dirt yet. You haven't -

MR. KILDAY: No, sir.

MR. FLORES: Okay. You're in the permitting process.

MR. KILDAY: Yes, sir, that is correct.

MR. FLORES: And you're well aware, as I am, from being from the Houston area, that Deer Park has pretty tough standards for building by now.

MR. KILDAY: Absolutely.

MR. FLORES: I've known that for a long, long time. But it's not as if that's a mystery down there. So there are lot tougher than they are in the City of Houston. The City of Houston is obviously also not that

easy either.

MR. KILDAY: Yes, sir.

MR. FLORES: But, you know, I can't believe you didn't know any of that from the beginning. Could I ask a question of staff -- Tom or Robbye -- whoever their program is? If this project had been presented as it's being presented now at the time what would have happened to its rating. If it's at -- if it essentially got 20 percent less units -- that's what bothers me -- would it affect the score?

MR. GOURIS: I don't believe it would have affected score. It would have affect -- it potentially would affect the amount of credit it was initially eligible for. We've reevaluated based on the information we do have, and under either scenario it would be -- we still believe it would be viable whether it's 114 or the reduced number of units.

I would say that there is an opportunity for this developer and any developer who needs to make a significant change to their transaction -- they haven't started -- they haven't turned dirt. I mean, the application round is open and they can apply for credits in the '09 round and start afresh with now plans in hand that they know what they're going to build.

I mean, technically speaking, they don't have a plan prepared for the smaller number of units, and so they still have to go through that process. This is 2007 transaction. They're going to be running short on time to get this thing done by the end of next year.

MR. CONINE: There's a lot of things that bother me about that -- about this, especially -- you know, the normal thing is, I'm going to build so many units. We went through this whole application process, staff reviewed all that stuff -- I need more credits. So we give them more credits and that didn't work out. So now instead of asking for more credits they want just to do fewer units, which kind of destroys everything staff's done previously.

And if you take that concept to -- all across the Board every one of these guys would just come in and reduce their units and keep the same number of credits. There's no pro rata drop in the amount of credits here. So that, coupled with the time constraints on this particular deal, make me support the staff position.

MR. FLORES: My concern -- to me, it's a worthwhile project that's needed in the area. It's a tough place to build things. However, 20 percent less units really bothers me a lot. That's a huge difference.

So I guess I'll go along with your recommendation.

MR. CONINE: You want to make a motion unless there's some more questions? I don't see any other questions.

MR. FLORES: Move staff recommendations.

MR. CONINE: Move staff recommendations. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further questions?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 2(b) -- or not to be.

MS. MEYER: Mr. Chairman and Board, the next item has to do with applications -- awardees that have returned their credits and are asking to rescind those returns. At the previous Board meeting you had a couple of applicants that asked you -- for staff to place an agenda item on this agenda to address that, and we have

done that.

They're asking to reinstate their awards so that you can reconsider their transactions to have the same benefits that the other awardees have received. At the November Board meeting you heard those.

One of those applicants was a 2007 applicant that returned their credits prior to the July Board meeting and one of those was a 2008 awardee that returned their credits during the amnesty period after the September Board meeting.

And, just to be clear, those credits from those applicants who returned the applications -- they have been reallocated. You reallocated those in November and back in July. They're no longer available. So if you choose to put those -- reinstate those awards those additional credits will need to come from either 2009, 2010, or possibly 2011 rounds, depending on the regions -- those applications are reinstated.

Once an application is returned it's considered inactive and is no longer available to be considered by the Board. Total applications that have been returned to date is \$10 million -- 10.4 in returned credits has occurred. You had 1.3 prior to the July meeting, 9.1 million after the September meeting. And all of that has

been reallocated.

Staff recommends that you not allow returned applications to reinstate their awards.

MR. CONINE: Okay. I've got some public comment from a few of them that are on the list here. Jean Latsha? And there was some time allocated to Jean from another person. You've got five minutes.

MS. LATSHA: Good morning.

MR. CONINE: Good morning.

MS. LATSHA: I'm Jean Latsha with the National Farm Workers Service Center in Casa Alton. I opened this can of worms at the November Board meeting when I asked to be put on today's agenda in order to have a chance to have my application reinstated and my credits returned.

If you recall, I returned my credits after an amendment request was denied and before H.R. 3221 was passed and this Board allocated additional credits to unclosed 2007 deals.

You may also recall the tremendous community support for this project that was demonstrated at the last Board meeting and today. Thank you, Margarita.

First of all, thank you for adding us to the agenda and giving us a chance to speak on behalf of this project again. Today I would like to address the staff

recommendations for both agenda Items 2(b) and 2(e).

Staff recommends in 2(e) that the Board not allow 2007 awarded applicants to return credits and reallocate 2008 or 2009 credits to the applicants because it could possibly violate statute. However, staff also recommends in 2(b) that the Board not allow previously returned awards to rescind the return and reinstate the award because the Board already did reallocate credits.

Without being a lawyer, this just seems contradictory. On one hand they're claiming that the Board cannot reallocate credits and on the other hand claiming that that very action -- reallocating credits -- is the reason the Board should not reinstate tax credit awards.

After everything that's happened in the last few months it's difficult to follow with credits went to which applicants. I think we can all agree that since the Housing and Economic Recovery Act there seems to be plenty of credits out there. But I don't think that we consider that every credit out of the 2007 ceiling went to a 2007 applicant or that every credit out of the 2008 ceiling went to a 2008 applicant and so on.

There are several examples of applications that were submitted in one year and received credits out of a



different year's ceiling. The most obvious to me is applications that receive forward commitments. These clearly receive credits under a different ceiling than the one under which the application was submitted.

Second, all of the 2004 and 2005 applications were given additional credits out of the 2007 ceiling due to increases in construction costs.

And, finally, we have a situation today in which staff states that all of the credits returned this year have been reallocated I believe to all of the 2007 applications. But those reallocated credits came from 2005, 2006, 2007, and 2008 ceilings.

Again, I'm not a lawyer. But it seems clear to me that there is precedent for this Board to issue credits from whichever ceiling has them to spare -- and I think for good reason. I doubt that the intention of Texas state statute is to get in the way of putting affordable housing on the ground.

Also, in regards to the notification process, in none of the cases mentioned above were applicants required to notify the public that they were receiving additional credits out of a different credit ceiling.

The fact is the public notification speak to the relevant development information, which does not

include information about from which year credit ceiling the applicant will be awarded.

The closest the public notifications come to addressing credit year is including an estimated date of completion. However, applicants are not required to renotify the public if that completion date, which is based on placed in service deadline, changes. What if, for instance, a hurricane or two comes through and floods an application's construction site allowing him or her to extend their placed service deadline after the area has been declared a national disaster. That applicant is not required to renotify the public.

As long as that relevant development information remains the same there is no need to renotify.

The public already had several opportunities to comment on these 2007 applications. And as long as credits are being awarded to those applications without changes to that relevant development information I would think that this Board would have the power to award that application credits from any year's credit ceiling.

Thank you for your time. Merry Christmas. Any questions?

MR. CONINE: Any questions of the witness?

(Pause.)

MR. CONINE: Okay. Doak Brown? Pat Barbolla will be next.

MR. BROWN: Good morning. My name is Doak Brown. I'm here today to speak on behalf of the [indiscernible] Corral which is located in Kingsville, Texas. I'm with Brown [indiscernible] Affordable Housing and we're part of the development team, along with the Kingsville Housing Authority, which applied for credits on this particular project.

We received an '08 allocation and we returned those credits prior to the last Board meeting because amnesty was set to expire on December 3. And we ended up -- you know, at the time there was not a market for credits for rural projects.

And I guess I'm here today to request a forward commitment similar to the projects that were on the waiting list. The ironic thing is is had I been in second place and not in first place I would have been in a better position with the Board's actions than actually receiving the award at the July Board meeting. And I just request that we be treated the same as the projects which were on the waiting list.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much. Pat Barbolla?

MR. BARBOLLA: Mr. Chairman, members of the Board, my name is Patrick Barbolla. I am president of Fountainhead Affiliates, which is the general partner of Goldthwaite Fountainhead L.P.

Goldthwaite Fountainhead is the owner of application -- it's 08226, Whispering Oaks Apartments. As the name implies it's in Goldthwaite, Texas. That's in Mills County.

Again, this is -- the property was allocated \$135,000 in tax credits in '08. At that time -- obviously it's a rural property. We returned the credits because, one, obviously amnesty was involved. But as a rural property there were no buyers of rural properties in Texas. Since that time I have located a commitment for a purchaser for this property.

What we're asking for is to have the application reinstated and then be -- once it's reinstated be placed on a -- given a forward commitment for 2009 -- because we know the credits are all gone for this year -- and also applying the 10 percent increase in construction costs and the 9 percent it would raise it to approximately \$154,000.

We think that's fair because -- I'm not here -- I have another property in the list but we're not actually asking for that one to go forward because I don't have a buyer for it. That's the one immediately under on page 2, Prairieville Ridge Apartments. We'll just have to try to rework that one and file an application for 2009.

I am here because I have a purchaser -- a syndicator that -- frankly, the syndicator is viable -- it's actually solvent -- that has made the commitment to purchase the credits of this property.

The property -- we did receive a HOME loan in July. We would have to come back and do a little tweaking -- an amendment of the HOME loan. But that would be minor and, again, that would probably come back at the next Board meeting. Because at this time we're just asking for -- to be reinstated and placed on the -- given a forward commitment. I'll be happy to answer any questions.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

MR. BARBOLLA: Thank you.

MR. CONINE: Robbye, why don't you -- there's a question on this particular agenda item. Why don't you

refresh our memories of where we are on total allocations for --

MS. MEYER: To date:

MR. CONINE: Yes -- '08, this year, and what we've done at the November meeting -- '09 at this point.

MS. MEYER: What we've done to date is 55 million. Now, in that 55 million -- do you have --

MR. CONINE: For '08.

MS. MEYER: For '08. What you've done --

MR. GERBER: But how much is the round? How much was the round -- and then deduct from that.

MS. MEYER: Okay -- in July you allocated \$49 million.

MR. GERBER: Right.

MS. MEYER: Okay. You've had returns. Okay.

MR. GERBER: Right.

MS. MEYER: But what you've actually done as of November -- and I'll back up and tell you -- you have out -- what you've done right now is 55 million. Actually, this is in the next agenda item. What you have out right now is 55 million. Okay? In that you have 43 million that are active applications still from July.

MR. CONINE: Okay.

MS. MEYER: Okay. 10 million of that is your

10 percent and your 9 percent applicable percentage. Okay? That's your additional allocation that you made to '07 deals and also the 10 percent increase that you gave to '08 transactions. It's also a little bit under \$2 million additional for Ike areas. And then we had the swap out of Ike is in there. But you have 55 million that's allocated for this year.

MR. CONINE: Maybe the better question I need to ask is how many of the '08 credits do you know of right now that aren't allocated somewhere? The answer's probably zero. Right?

MS. MEYER: It's about \$1.7 million that we still have.

MR. CONINE: Because, in theory, what we do whenever we get '08 credits around we pull any '09s back into '08s that we can --

MR. GOURIS: The next thing we're going to talk about is exactly that issue, because we have some issues about the forward -- doing the forward commitments and how we're doing that. We're going to want to try to maximize the forward commitment areas that are going to have an impact next year to the '09 round where we do those in '08. So we're trying to preserve any '08 dollars for that activity so that we can limit the impact to those regions

next year.

MR. CONINE: But all that's happening to those who stuck it out and hung in there and stayed through --

MR. GOURIS: Right.

MR. CONINE: -- and got to --

MR. GOURIS: That's correct.

MR. CONINE: -- where we are today versus this particular group, which, for whatever reason it was, decided to terminate their application.

MR. GOURIS: Right. And the issue for the forwards is that a number of areas are going to be oversubscribed next year and the following year based on the concentration of applications that we have in those regions.

If we return these rescinded deals -- or return deals back to the pool that's just going to exacerbate that problem for next year even greater -- to be even greater.

MR. CONINE: All right.

MR. GOURIS: And let me go through the numbers one more with you. It's \$55 million that we've spent. Originally we had allocated 49 for -- in July -- that's down to about 43. On top of the 43 there's \$10 million in the 10 percent stuff that --



MR. CONINE: Right.

MR. GOURIS: -- is going to come out of '08, and then another \$2 million that is coming out of the Ike area that's above the 14.9 in additional Ike money that we got.

MR. CONINE: Okay.

MR. GOURIS: So that's where the 55 million comes from.

MR. CONINE: I think I get the gist. Any other questions of staff from the Board? Let me ask you one other question. Of all of these on this list here -- and you may not know this from memory -- all these have paid an application fee and a commitment fee originally when they were on the list. And in -- since they have turned the projects back in some of the commitment fees have been refunded?

MR. GOURIS: They would have only paid a commitment fee had they met carryover -- or had they gotten to the point of an allocation and carryover. Some of them --

MR. CONINE: Okay.

MR. GOURIS: -- have returned --

MS. MEYER: Some have not.

MR. GOURIS: -- prior to that.

MR. CONINE: So if we wanted to say to this particular group -- we've already allocated everything we had but encourage you to come back in 2009 and we'll waive the application fee for the 2009 process, would that be something that this Board could do?

MR. GOURIS: Yes, sir.

MR. CONINE: And the commitment fee, if it had been paid but not -- hasn't been returned yet --

MR. GOURIS: And they receive an award in 2009 --

MR. CONINE: -- and they get one in 2009 then we could carry that commitment fee forward. So, in essence, they wouldn't be financially penalized is what I'm trying to get to --

MR. GOURIS: Yes.

MR. CONINE: -- for moving forward into the '09 round.

MR. GOURIS: Right.

MR. CONINE: Do you know off the top of your heads how many that would be?

MR. GOURIS: Do you know how many --

MR. CONINE: And a guess on those that have paid commitment fees that you just haven't sent it back yet? I'm sure the gentleman who was up here that just had

one in November -- Pat says he's in that category -- so there's a few.

MR. GOURIS: There's a few.

MR. CONINE: Okay. Any other questions of the staff or witnesses on this point?

(No response.)

MR. CONINE: Any other -- do I hear a motion?

MR. FLORES: Will you frame the motion in the way you just discussed it? You frame the motion.

MR. CONINE: Yes. I think -- you know, from where we are now I think on these that have terminated to try to do -- you know, to jump into this thing -- back into this thing at the end of the year would create a lot of havoc and so forth.

But I don't want to financially -- you know, in the spirit of Christmas and reshuffling the deck and everything we've been doing in the last 60 days, I don't want to financially penalize these folks if they want to reapply for '09. So -- and I would like to encourage them to reapply for '09 so -- because we're going to have plenty of credits floating around.

So I think what I'd like to see is, you know, denial of the -- let's see. We would move staff recommendation and waive the application fee and the

commitment fee if it's applicable for the '09 round for this group of projects.

MR. GERBER: So just hear it first. There would still be a commitment fee paid, but if it's already been paid and hasn't been returned --

MR. CONINE: That's correct.

MR. GERBER: -- and has not been returned.

MR. CONINE: That's correct. If they haven't paid one then they still owe one for '09 if they get in the money.

MR. GERBER: Right.

MR. CONINE: That would be my motion.

MR. FLORES: Second.

MR. CONINE: I made the motion and Mr. Flores has seconded. Any further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. FLORES: Mr. Chairman, let me just question one comment you just made. You said there's going to be

plenty of monies available for next --

MR. CONINE: Plenty of tax credits available for '09. There will be plenty of tax credits -- I promise you.

MR. FLORES: I was waiting to see if anybody's nodding their head so that I'm --

MR. CONINE: There will be.

MR. FLORES: -- because it didn't look that way.

MR. CONINE: The capital markets are such that there will be.

MR. FLORES: Coming from someone from the industry I'll assume you speak for the --

MR. CONINE: Oh, I just -- I hang around there every now and then -- I don't know. Item 2(d) -- no, this is (c). I'm sorry.

MS. MEYER: Okay. Let's see if we can keep from being confused by the time we get to the end of this one.

The forward commitment from what you did at the November Board meeting -- as we stated, you've already awarded 55 million year to date through the November Board meeting. 43 million of that is still active from the July meeting. You have had some returns. 10 million of that

is from the increases and the 9 percent applicable percentage, 10 percent cost increase. A little under 2 million of that is an overage in excess of the Ike credits that we swapped out. And you'll recall that there is 4.9 million in Ike credits that we swapped. And we'll also be carrying over 4.9 into -- 14.9 into 2009. And that will go back into those 29 counties for Ike areas.

If the funding plan that staff provides here at the end of this agenda item -- we will carry that forward into 2009 into those areas. To be clear of what those funds would first be made available for the Ike area, if we don't have enough applications in those areas then it will collapse into the State funds. We will not carry it forward again.

The Board also approved all the applications on the waiting list for funding subject to three restrictions -- what you did. If all the -- if all waiting lists deals are able to move forward these amounts would be 18.7 million -- 18,700,000 in additional credits request is what you have.

The final allocation amount would be greater since the requests do not include consideration of the 9 percent. So we still have to do that. We haven't underwritten all of those transactions yet or the 10

percent increase.

For those deals you have -- they are subject to real estate underwriting. They're also subject to the regional allocation formula, and they're also subject to 180 closing from the date of the November Board meeting when the Board approved those transactions. So we'll be asking for closing information probably about mid-May for those transactions that the Board approved for the waiting list.

And the Department only utilizes forward commitments to the award of the waiting list based on the RAF. Several regions will be affected for those funds and it will overallocate those regions. The funds in subregions rural 1, urban 2, urban 4, and rural 7 -- they will be eliminated -- they will be limited to the funds to under 500,000, and then others will be overallocated completely, and we will either go into 2010 or 2011.

MR. CONINE: Can I stop you there and ask a question?

MS. MEYER: Sure.

MR. CONINE: But the 180-day deadline will occur prior to the award date for 2009. So we'll know whether or not -- staff will know whether or not those particular regions have been filled up prior to the

decision date in July.

MS. MEYER: That's correct.

MR. CONINE: Okay. Thank you.

MS. MEYER: That's correct.

MR. CONINE: Okay.

MR. GOURIS: The reason we need to do this is to make clear how we're going to -- how the waterfall of the funding is going to happen so that developers can make good decision now when they're making the applications in those regions that may not have funds. And so we want to make sure everyone knows how this is going to be laid out so they can make those decisions.

MR. CONINE: I appreciate the transparency, Mr. Gouris. Very good. Go ahead.

MR. CONINE: But this isn't just for the waiting list. This is also for the 9 percent applicants -- I mean, for the '09 applicants -- so they know which regions aren't going to be available or limited.

MR. CONINE: I got it.

MS. MEYER: Okay.

MR. CONINE: Go ahead.

MS. MEYER: To meet the Board's objective to get the most housing on the ground as possible in the near



future -- these are -- we have suggested the following plan.

Going to use all the returned credits from '08, whether returned this year or under amnesty in 2009, and do not place them in the regional allocation. At the present we have approximately \$1.7 million in '08 credits to allocate to the waiting list for this year with priority on these potentially oversubscribed 2009 regions.

Use of Board's approval -- approved regional allocation formula, which includes the allocation ceiling, the forward -- the carryforward funds, and H.R. 3221 funds for each region.

The third area would be to determine the fund's waiting list -- will be the priority need for collapse at this time. And this would change from our normal collapse where we would take the most underserved subregion first and take those funding -- so the waiting list would take priority over those. We would take rural subregions before we would take statewide subregions.

And then, last, we would place forward commitments in the subsequent years for 2010 and '11 as needed in the regions overallocated by the 2008 waiting list. You want to add?

MR. GOURIS: Just that the end result is in

these areas where we're oversubscribed. Some of these applications would actually get a forward commitment that's conditioned on the availability of funds in 2009. And if there are no funds in 2009 then they'd have a commitment for 2010. So they'd receive a commitment, but it would be conditioned on the year. They'd still have to close based on that conditional commitment in 180 days. That's kind of the difficulty for some of these transaction.

MR. CONINE: Mr. Gouris, you know, I certainly understand how we have run staff through the wringer this particular cycle. And I wanted to ask a question as to the underwriting on these -- how is that progressing?

MR. GOURIS: Well, it's been a busy fall. We're hoping to get them all accomplished by February. You know, right now we're trying to prioritize those that have to be done out of the '08 cycle.

MR. CONINE: Right.

MR. GOURIS: And those are going to be done in the next number of days. We have to get those accomplished, you know. The underwriting -- well, it's not going as quickly as I would like, mostly because things -- a lot of things are up in the air -- not from our end necessarily or even from the developer's end, but

because it's -- sometimes there's inconsistencies and we have to go back and get additional information. Then we find there are more inconsistencies, particularly when financing structures are changing and evolving and new financing commitments are unavailable.

So it becomes a little Catch-22, if you will. Sometimes -- like on the amendment we'd heard about earlier we didn't -- they weren't able to get us new financing information because they didn't know what their deal was going to look like.

We need to work with what we have, and if there's clarifications we need the help from the development community to get as good information as possible as quickly as possible so we can get that underwriting done.

MR. CONINE: So did I hear you say that your target date for completing all this particularly group is the first of February or the end of February?

MR. GOURIS: I'm afraid --

MR. CONINE: Because we have a Board meeting in February, you know.

MR. GOURIS: I'm afraid it's more likely going to toward the end of February. We are pushing hard to try to get it done earlier than that.

MR. CONINE: All right.

MR. GOURIS: But, realistically --

MR. CONINE: Well --

MR. GOURIS: -- there's a lot to be done yet.

MR. CONINE: This Board -- because this Board member for sure appreciates what staff's doing in these turbulent times. And I just wanted to clarify where that process was and what time frame, not only for the developers in the room who might be -- have an interest here, but also the Board. We just want to make sure we can give everybody enough time to meet the 180-day window.

MR. GOURIS: It would be likely that appeals on these underwriting reports wouldn't hit you all until March if there were any appeals to be had then. And hopefully we'll get those things resolved so that there won't be any appeals.

MR. CONINE: Okay.

MR. GERBER: Mr. Chairman, in that spirit, I just mention that Rachel Morales is here. She is the manager for the underwriting division, and a lot of this work falls on her and her folks. We really appreciate what you're doing.

MR. CONINE: Thank you very much. Any other discussion -- Robbye, were you finished? I didn't mean --

MS. MEYER: Well, we would like to say one other thing. If we had some whole deals that we can fund out of 2008 and carry them over in 2008. If we can swap out some of the additional credits that we gave for 2007 transactions -- give them 2009 allocations instead of 2008 allocations with the Board's permission we would like to do that so that we can get those deals carried over in 2008 to alleviate some of the RAF stress -- if we have deals that can carry over.

And we do have a few transactions that have said they can carry over in 2008 by the end of the year if we can get them underwritten to do that by December 31. And that's part of our plan that we had put on the Board's --

MR. FLORES: But that's not in the document that we have in front of us for staff recommendation. It's not -- none of this document --

MS. MEYER: It is in your write up. That is part of --

MR. FLORES: Is it part of this recommendation on this particular item?

MR. GOURIS: Prioritizing the '08 to try to do '08 -- to try to fund as many of these out of '08 as possible. We have 1.7 million in '08 funds that we're

going to be able to use for -- to prioritize these. We may get some more, and to the extent that we have folks that are able to carry over in these subregions we are asking for the authority if we can substitute some out of the '07 -- I think I got the extra points.

MR. FLORES: I get it. Thank you very much. But, again, I like what you. I just want to make sure we included it when we make that motion.

MR. CONINE: Any other further discussions for staff?

MR. FLORES: I'm ready to make a motion, Mr. Chairman, if you're ready.

MR. CONINE: Oh, wait a minute.

MR. FLORES: You're not ready.

MR. CONINE: I've got some witness affirmation forms here. It might surprise you. Ken Mitchell?

MR. MITCHELL: Good morning. I have a pass out. (Handing documents.)

MR. MITCHELL: I am Ken Mitchell with the Grand Reserve Seniors Community in Waxahachie. And I just want to say I'm in favor of this. I think I fit in with the category of stuck it out. So I applied about this time last year and I've been waiting all year.

And I'm very, very excited about getting my

project funded and moving forward. It's a very good thing for the seniors in Waxahachie and Waxahachie. And I can make the carry over this year. Thank you very much.

Oh, I want to show you this picture. This is Country Lane Seniors presently built, and the project we're approving is right by it -- it's this site. And it is going to be a very, very beautiful project.

MR. CONINE: Mr. Mitchell, is this -- this is a seniors project. Right?

MR. MITCHELL: Yes, it is. And the first phase is 100 percent complete -- I mean, 100 percent leased.

MR. CONINE: This is the old adage of the height of optimism because those little bitty twigs you call trees around there -- those seniors aren't going to be around when they grow up.

MR. MITCHELL: Right. Thank you very much.

MR. CONINE: Thank you for your testimony. Don Youngs.

(Pause.)

MR. CONINE: That's what he gets for giving me a picture.

MR. YOUNGS: Good morning. My name is Don Youngs. I'm with the Youngs Company. I'm a consultant to developers. One thing that Ms. Meyer said just a moment

ago may make my question moot if I can ask her a question first.

MR. CONINE: Go right ahead.

(Pause.)

MR. YOUNGS: Okay. Then I'm back on, but I will still be very brief.

MR. CONINE: Okay.

MR. YOUNGS: Going through the transcript of last month's Board meeting it appears to me that the resolution that was passed did not include any conditions for RAF. Though on page 228 Mr. Hamby did make a comment about RAF, but it wasn't discussed further by the Board I don't believe.

So what I'm really looking for is clarification on the RAF, and also under consideration would be that if one reviewed the forward commitments from the 2005, '6, and '7 rounds I believe that RAF considerations were not an issue. That's all I have to say unless you have any questions.

MR. CONINE: As it pertains to your particular project it would appear that the way this would fall out as it currently stands you'd get some '09 and some '10s. Is that correct?

MR. YOUNGS: Well, I am not aware of that.



MR. CONINE: I mean, if for '03 has a million-one-oh-five and there's five hundred in front of you and that -- I don't know -- these are probably done in any particular order? We don't even know what order they're in yet.

MR. YOUNGS: Well, Ms. Meyer told me I believe at one time on the telephone that we were the number two position, and I'm assuming that that is still the case.

MR. CONINE: We must adhere, as much as possible, to the QAP. And I think the RAF is one of those sacred things that we had to adhere to. So at least from my perspective and any discussions I've had with staff we are applying the RAF as it pertains to these 2009 forwards.

MR. YOUNGS: Okay. Well, would the application still be available for partial 2009, 2010, or would we need to resubmit in 2009?

MR. CONINE: No, you're good to go.

MR. YOUNGS: Okay. Super. Thank you very much.

MR. CONINE: You're welcome. Deborah Sherrill.

MS. SHERRILL: Good morning. My name is Deborah Sherrill, and I'm here to represent the Corpus Christi Housing Authority, its affiliates, and

instrumentalities. And this couldn't have been better timing for me to request what I'd like to request.

In regards to the forward commitment project DN Leathers 08 -- excuse me -- DN Leathers Townhomes 08194, if at all possible we would like to request that the funding come from the '08 allocation versus the '09. And this would give us an opportunity to compete in the '09 round. So I'd like to take that 1.7 million that's left in the '08 is what I'm saying.

MR. CONINE: I think -- I mean, I hear what you're saying. Any other staff -- any other questions of the witness? We're voting on the waterfall how everything's going to fall out.

MS. SHERRILL: Right. I understand.

MR. CONINE: That's the subject of this particular motion. I hear your request. Thank you for that request.

MS. SHERRILL: Just know that we're interested.

MR. CONINE: Any other questions?

MS. SHERRILL: Thank you for this time.

MR. CONINE: Okay. Bobby Bowling? And Mr. Palmer will be next after Mr. Bowling.

MR. BOWLING: Good morning, Mr. Chairman, members of the Board. I'll try to be brief. I just

wanted to come and speak in support of this staff recommendation. I think it's a very excellent and clever way to try and fund as many of the deals as the Board gave them direction to do.

I'm confident -- our region is one of the ones that's overfunded for 13, but I think that the -- if you go through the six recommendations -- the waterfall, so to speak, as you referred to it, Mr. Chair -- I'm confident that the housing projects that are needed in our community will be funded out of the '09, or even there's allowances for them to come out of '10 and '11.

I kind of share your sentiment, Mr. Chair that a lot of this money will come in the six month with the deadline that's put up. So I'm confident that this is a good plan. I just want to commend staff and tell them we as developers appreciate their efforts to carry forward the Board's wishes on awarding these deals that are put forward by developers who are cautiously optimistic that we'll get these projects on the ground. Thank you.

MR. CONINE: Thank you, Bobby. Any further questions of the witness? M. Palmer?

MR. PALMER: Barry Palmer with Coats Rose. I'd like to support the staff's recommendation, but with one requested revision or amendment, which would be that the

allocations to the projects -- that the 180 days that they have to close run from the time that they get their commitment letter.

I know at the Board meeting last month when this was approved it all happened so fast that I'm not sure that we're all clear exactly what had been approved.

And when I've talked to staff since that time the indication was it was going to have to come back to the Board again this month for approval again.

And so I think that developers have not been clear if they have a commitment and, if so, for how much.

No commitment letters have gone out yet to any of the people since the November meeting.

And, of course, to close -- once you get a commitment to move towards closing developers have to start writing some big checks for architects and engineers to move through -- to get building permits to be in position to close. And I just want to try and give a fair opportunity to these developers to close in 180 days by having the 180 days run from the time that they actually get a tax credit commitment letter.

And we've been talking about 2007 deals in this environment that haven't been able to close yet that have had a year-and-a-half. So I think that these developers

are willing to spend the money to go forward to try and make a closing in 180 days. But let's give them a fair opportunity by having the 180 days run from the time they actually have a commitment.

MR. CONINE: Mr. Palmer, I hate for you to be reflecting upon the intelligence of the developer community out there, but I think these guys know they've got a deal. And I think 180 days is plenty of time. Because staff needs enough time if they don't take the bait between now and May 15 or whatever day it is then there will be ample time to readjust our allocation process under the RAF for the July meeting. And that was the purpose of establishing that date. So thank you for your comments.

MR. FLORES: Mr. Chairman, explain that -- how many days do we have now?

MR. CONINE: They have -- under the current Board --

MR. FLORES: On the current conditions.

MR. CONINE: They have until the middle of May to close their transaction. And what Mr. Gouris just testified to is they'll have underwriting done by the middle of February and they'll have the commitment notices out as they do them, but the last one's going to be the

middle of February, let's say. So they'll have enough days to --

MR. FLORES: 180 days that he's talking about generally?

MR. CONINE: They'll have somewhere between 180 and 90 days to officially close the deal, although they already know they've got one in the hopper.

MR. FLORES: Yes. But, still, 90 days is what they've got.

MR. CONINE: It may change a little bit. Right. It may -- the underwriting may change it, depending on what underwriting does.

MR. FLORES: And what harm would it be to go to 180?

MR. CONINE: Because then our allocation round when we do it in July would be --

MR. FLORES: Pressed for time.

MR. CONINE: Yes, that's the best way to describe it. And, you know, we fairly gratuitous to do what we did I think. And I suspect that if these deals are capable of getting closed they will get closed. That's the way I see it. Any other questions of the witness?

(Pause.)

MR. CONINE: Thank you.

All right. We -- that's all the witness affirmation forms on that one. Any further discussion?

(Pause.)

MR. CONINE: If not, I could entertain a motion.

MS. BINGHAM-ESCARENOS: Move staff's recommendation.

MR. CONINE: Move staff recommendation from Ms. Bingham. Do I hear a second?

MR. FLORES: Second.

MR. CONINE: From Mr. Flores -- seconded. Any further discussion?

(No response.)

MR. CONINE: All those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 2(d). Tom?

MR. GOURIS: I've got this one.

MR. CONINE: Okay.

MR. GOURIS: Chairman Conine, Board, Item 2(d) is a special request to increase the allocation of

individual competitive 9 percent tax credit development.

For the record, as you know, there was a mistake in the write up. It reflected that Mr. Cardenas had asked that this item be placed on the agenda. It was actually Ms. Ray that asked for it after public comment had been made from a developer at last month's meeting.

The original allocation of funds for Spanish Creek Townhomes was increased at the time of the award to the \$1.2 maximum allowed under the 2006 QAP. It was provided -- and it provided that syndication proceeds at that time effectively eliminated the need for any deferred developer fee. There was no gap remaining.

The developer is now seeking additional credits for the transaction because of delays and cost overruns that have required the deferral of the majority of the developer's fees. A request for an additional 9 percent -- for additional funds for 9 percent credits at this late stage in the development process is a radical departure from what we've done in several ways.

It departs from the practices of this Board and Department. Supplemental credits have rarely been awarded to individual 9 percent transactions nationally and never before in my experience in Texas without going through that competitive process except where the whole industry



has been impacted, as in the case of the 10 percent increase that was done last month.

The allocation of the 9 percent tax credits is controlled by the QAP which describes the manner of the completion and the recorded submission of an application, the evaluation of the need for funds and the relative merits of a development based upon statutory selection criteria.

While the QAP has included some language for some time that provides potential flexibility in the amount of the final allocation should federal statute allow, Section 42(m)(2)(b) of the Internal Revenue Code requires that the Department evaluate and limit the amount of tax credits to provide no more funds than are necessary as determined at three evaluation points in time -- the application, the allocation or carryover, and when the development is placed in service with the reconciliation of final cost certification and the issuance of 8609s.

This development has passed that milestone and placed the project in service, but has not yet submitted a complete cost certification document. So it's final evaluation has not been completed.

But, more importantly, the call for the credit to be limited at each of these benchmarks would not have

been necessary if Congress has intended that a higher amount that was not applied for in a competitive manner and was not allocated in a predictable process could be achieved at a single benchmark by mere request of the developer without the oversight of the complete evaluation.

The applicant has had the ability to apply and compete for additional funds in both the 2007 and 2008 rounds and, in addition, could have competed for -- and requested Housing Trust Funds earlier this year -- but did not do so. Indicated they did not know until recently that the delays in construction would cause cost increases over a million dollars.

The development has been completed and -- at the end -- by the end of 2008 as required in order to remain qualified for the original allocation of credits. A tax credit development cannot receive additional allocation of tax credits after the end of the year in which it is completed, which means this is the last Board meeting which -- in which an allocation of additional tax credits could even be contemplated for the construction of this development.

It is not known if other applications for other sources of financing from local entities have been

pursued, but none have been made to this Department.

The original application included some fee waivers that have since been abandoned because some of the cost increases had to do with local -- some local issues that they were no longer able to achieve those fee waivers -- at least that's what we were told recently.

The developer fee is intended to compensate and cushion the developer, who has accepted the risk associated with the development. This owner has also benefitted by having a related-party contractor help control the costs and timing of construction, as much as any developer could control such things.

The cost increases in this case, though still estimates, are not projections anymore as they have already been incurred. The development was nearly complete before any consideration of -- by the 2008 Congress or by the TDHCA Board that additional fund for developments be considered. And that consideration was because of the economic downturn this year, not in 2006 and 2007.

This request would treat this 2006 deal differently than all other 2006 deals that are not on the agenda today to ask for additional funding. And though you've already heard from some, and you may hear from

others, they will not have an opportunity to be placed on the agenda for equal treatment and consideration because this is the end of their placed in service year. So they're not being treated equitably.

Staff does not recommend reconsideration of additional credits for this development because -- for a number of bullet point reasons here. The development has already maximized the credit amount allowed on the original QAP. They had opportunity to apply for additional credits, and they didn't. They had the opportunity to structure their deal and lock it in long before the cost increases that we've -- and the credit losses that we've been talking about in the last couple of months.

It presents a new and potentially dangerous precedent to have such a volatile allocation amount and to never really finalize the amount in a region in the award year. And it's inequitable to the other 2006 round applicants who are not able to make this application -- or make this request for additional funds.

MR. CONINE: Okay. I've got some witness affirmation forms here on this particular agenda item. Ike Monty? You guys may want to shuffle the deck on what order you go in. Frank Ainsa -- Frank's got some time

from Keith, so he's a five minuter.

MR. AINSA: Chairman Conine, member of the Board, and Mr. Gerber. I'm Frank Ainsa. Together with Cynthia Bast I represent Spanish Creek Townhomes. And we're also here speaking on behalf of Investment Builders, which is owned by Ike Monty. I have three handouts that I'd like to present to the Board.

(Pause.)

MR. AINSA: May I begin?

MR. CONINE: Yes, go ahead.

MR. AINSA: Members of the Board, you may remember that I spoke to you at the last meeting about Spanish Creek Townhomes. And I'd like to divide my presentation here into a brief review of the facts and then a discussion of the applicable rules and the policy decision that you're being asked to make here.

I remind everybody, as Tom Gouris told you, this is a 2006 project and it is -- it's composed of 136 units. The essential facts that I think you need to know were set out in a letter that I sent to Tom Gouris on December 5 -- and I believe it's in your Board book -- and you have reviewed it.

But to refresh your memory, the credits were awarded in 2006. The construction loan closed on December

1 of 2006. Construction was due to begin on December 30, 2006. The developer encountered an unforeseen problem with the City of El Paso on a platting issue and was not able to start until April of 2007.

The developer then hit another problem due to a lawsuit between the City of El Paso and the El Paso Water Improvement District Number 1 which further delayed the project. And so it was not actually completed until August of 2008. At this time all of the units have been placed in service, although seven of the units were placed in service after July 20 of 2008.

Now, in my letter of December 5 I documented for you what the reasons were for the delays at the city level and at that lawsuit level. I included a letter from the attorney who represented the developer showing that the platting issue, and especially that lawsuit, issue were totally unforeseen and unanticipated and involved great delays.

I also pointed out to you that the situation at Fort Bliss with the BRAC expansion has caused a tremendous increase in construction costs. And there is someone else independent of me who will verify that to you today.

As you know BRAC stands for the Base Realignment Commission, and they increased the size of

Fort Bliss dramatically and there's an immense amount of construction. From my standpoint what happened is general contractors from out of El Paso came into town, basically stripped the subcontractors out of our market, causing individual developers like Investment Builders to have to incur higher costs.

The point that I want to drive home here is that at the beginning of this project when it was estimated Investment Builders used costs from another project that had just been completed and believed with an increase in those costs that they were sufficient to handle escalations in the market. Well, it turned out to be not the case because of Fort Bliss. Fort Bliss rapidly increased the cost of subcontractors between late 2006 through 2007 and 2008. So the net effect of this is that there was a \$1,277,000 cost overrun.

Now, I received the staff report -- the Board action report, and I responded to it. And I don't -- I faxed my letter of December 16 to all of you. I don't know if you've had a chance to review it. But I responded point by point to the staff comments. And I think it's important for me to very briefly review what I consider the be the pertinent responses here because they very much affect the staff position on this case.

Yes, for sure, this is an unusual request. It's going back to 2006. You have not helped any other 2006 projects at this point. You have not had any policies that specifically dealt with 2006.

But let me start off by pointing out to you that in my December 16 I point out that there is Rule 50.16 in the QAP. 50.16 explicitly provides that the Board has the discretion to award additional tax credits where there's a bona fide substantiation of cost overrides and the Department has made a determination that the allocation is needed to maintain the development's financial viability.

Let me start at that point here. I believe the staff does agree with the contention that the developer made that this project is not financially feasible. We demonstrated that the developer's fee cannot be recovered over the applicable period. And you have a financial feasibility issue.

Now, not only do we have substantiated cost overruns we have substantiated cost overruns that were unforeseen and unanticipated going beyond what was required here in your policy.

Now, the Department -- Mr. Gouris has made a statement to you that this is unprecedented, it's



undesirable, it shouldn't be done because it violates the competitive nature of the tax credit program. And I point to you, once again, Rule 50.16 is an exception to that. And there is a reason for that kind of exception -- because there are projects like Spanish Creek that fall into problems through no fault of the developer.

Now that can happen with a natural event like a hurricane that occurs in an entire region, but it can also happen in an area like El Paso, which is subject to very unusual conditions. And that exception was put in there to give the Board discretion.

And I do not think it is proper for the competitive nature of the tax credit program to be thrown in the face of this application when you have 50.16 and you've had it in there in prior versions of the QAP.

MR. CONINE: I need to ask you to wind up, Frank. Five minutes is up.

MR. AINSA: Well, in summation, what I would like to say is simply this. Investment Builders has developed 2,200 units over more than ten years in the tax credit program. This project cannot support this cost overrun and this developer cannot pay this cost overrun. And this project will fail if the additional credits are not awarded.

And if you do not have additional credits -- or it's not clear to me that you do -- Investment Builders will return the Desert View's credits that were awarded on its waiting list project that you awarded last month in order to make this project work.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Cynthia Bast, do you want to go next, or, Ike, do you want to go next?

MR. MONTY: Chairman Conine and Board, thank you for the opportunity to hear our request. I'm just being extremely realistic with the issues that have come up. Obviously I've hired counsel to help me sort through the issues.

We have a cost certification -- the cost certification's been done. The additional credits that are required are documented. And this is not an issue of undue enrichment, if you will. This is just a reality of liquidity that's needed to fund this project.

The credits are actually -- the syndicator that we have on this development has to buy the credits. And, you know, during these tough times -- I mean, clearly, we've been a leader in the industry and I think people are looking for courage, leadership, and also unselfish

behavior.

So, to the extent that the 2008 allocation that you graciously awarded at the last meeting, we're willing to return those credits because this is that important to the viability of my company and to the project. So brevity is always good and I'll let Cynthia wrap up.

MR. CONINE: Any questions for the witness?  
Cynthia Bast?

MS. BAST: Thank you. Cynthia Bast of Locke, Lord. Good morning.

MR. CONINE: Good morning.

MS. BAST: Just to point to the costs supported by the cost certification and to clarify what this request will be, the developer is requesting \$130,238 of additional credits to assist with covering this overrun.

As he mentioned, the amount of the Desert View's credits which were awarded at the last Board meeting exceeds that. So if those are returned they would fall back into the '08 round and we would request that they be available today.

Again, these kinds of discretionary items are difficult. We understand that. These are very difficult decisions that you're making at each and every Board meeting. We hope that -- we know that you take them very

seriously and think them through very carefully, not just for what it does for this particular developer or this particular project or this particular city, but what it does for our state as a whole.

As Mr. Ainsa pointed out, this discretion has been in the QAP for many years. And so the argument that it's unfair to other competitors, that it treats someone differently, well, it's there specifically to allow you to treat someone differently.

And I have many people who call me on a regular basis and say, I need some relief -- how can I seek relief. People know what's in the QAP. They know what their rights are under the QAP. And so I don't think that it does mar the competitive aspect of it because we're using a particular provision in the QAP that you are allowed to us.

I've worked with Ike Monty and Investment Builders since 1995. He is one of my oldest clients in this area. And, as he mentioned and Mr. Ainsa mentioned, they've performed admirably on 2,200 units in the city of El Paso. We believe that this unforeseen circumstances and this extraordinary circumstance deserves our special consideration for a very talented and capable developer that has been serving this state for a long time. Thank

you.

MR. CONINE: Bill Skeen? Bobby Bowling will be next -- Terri Anderson after that.

MR. SKEEN: Bill Skeen, Tekoa Partners. I'm here to speak on this item. I have a question, if I might ask, first. The way I see the action item, it's a discussion to allow all 2006 awards resubmit if they have additional cost increases. And I just wanted to make sure I was clear on that.

MR. CONINE: I don't see the word all there.

MR. SKEEN: It says presentation, discussion for 2006 awarded applications, so I assumed that was all, if I'm mistaken.

MR. CONINE: It's just this one particular project.

MR. SKEEN: Well, I'll go ahead with my presentation anyway. Thank you.

MR. CONINE: Okay. Good.

MR. SKEEN: Chairman Conine, members, on a global basis we would support all 2006 awards that qualify to be able to submit updated costs for evaluation of additional credits. Per the Housing Assistance Act of 2008 this would apply to applications that were not placed in service as of July 30, 2008. These applications cannot

benefit from the federal legislation unless you take action to award additional credits on a case-by-case basis.

2006 awards experienced construction cost increases similar to '08 and '09. Therefore, the applicable 9 percent percentage would be recommended, along with consideration for additional costs.

A case in point is a project that we have worked on -- Sunset Haven, TDHCA File Number 06118. Construction started in December of 2007. None of the buildings were placed in service as of July 30, 2008. The construction costs increases that we experienced due to material cost mainly increased the cost of the project by over \$400,000. If additional credits were awarded to this project it would be well below the 1.2 million ceiling on credits.

We appreciate Mayor Ahumada's comments relative to this development and we would respectfully request that you would consider reviewing and potentially awarding credits for 2006 projects that experienced significance cost increases. Thank you.

MR. CONINE: Now that you've talked about something that really wasn't on the agenda how would you feel if I just -- if we just gave it to this particular

project?

MR. SKEEN: I would not have a problem with that at all.

MR. CONINE: No opinion? Okay. Thank you.

MR. SKEEN: Thank you.

MR. CONINE: Bobby Bowling? Bobby's going to tell me how he feels.

MR. BOWLING: Yes, I hope you're not going to ask me that same question, Mr. Chair.

MR. CONINE: I am, so you might as well go ahead and answer it.

MR. BOWLING: Well, yes, the reason I'm here is to speak for the special circumstance in El Paso -- to echo the sentiment that Fort Bliss has had a booming housing. With all due respect, Mr. Chair, I believe the agenda item would as posted allow you to take further action than just the one -- but that's my opinion.

MR. CONINE: Depends on what the definition of is is.

MR. BOWLING: Something like that. But I would just echo the sentiments. There has been a lot of basic expansion in Fort Bliss. Just real briefly to bring it home, our base was 8,500 troops in 2006 and by 2012 it's supposed to be 32,000 troops. So they're doing from what

I understand \$5 billion worth of construction work in 2008, and I think they have roughly that amount -- or did roughly that amount in 2007 while these projects were under construction as well.

The only other thing I have to add to the discussion is in House Resolution 3221 the City of El Paso and the base at Fort Bliss was provided special treatment in that legislation -- one of like three or four bases in the country that was allowed to not have to have military housing -- base allowance for housing included in income qualifying for low-income housing tax credit qualification.

So Congress did acknowledge that something extraordinary was going on in El Paso. I understand the arguments that staff made and I understand your concern, Mr. Chair, of the opening of Pandora's box, as you said in the last meeting.

But to the extent that you're considering this I would like to add those other facts to El Paso, and I would like to assert that my company has a 2006 application that would also request additional credits. It's called --

MR. CONINE: I'm shocked.

MR. BOWLING: -- Patriot Palms.



MR. CONINE: Absolutely shocked.

MR. BOWLING: So I've got a little letter with that request. If you don't mind I could hand it to the clerk and you all could review it. Thank you very much for your consideration.

MR. CONINE: Any questions of the witness?

(Pause.)

MR. CONINE: Terri Anderson?

MS. ANDERSON: Good morning, Chairman Conine --

MR. CONINE: Good morning.

MS. ANDERSON: -- and Board. I'm Terri Anderson with the Anderson Capital, LLC. To the extent that you all are considering additional credits to 2006 transactions I have a client who actually has a property that was affected by Hurricane Ike and we have gotten an extension on the placed in service deadline.

But to the extent we are not able to place our units in service and basically meet our delivery of tax credits we're going to have some adjustors. So to the extent you consider '06 please consider all of them. Thank you.

MR. CONINE: Thank you. Any --

MR. FLORES: Before you go, where is this project located?

MS. ANDERSON: The property is located in Port Arthur, Texas. The property is 060199.

MR. FLORES: Thank you.

MS. ANDERSON: Thank you.

MR. CONINE: Okay. We're going to go into Executive Session now and finalize this agenda item when we come back out of Executive Session. For the Board, we're going to E1020. Mr. Gerber, what do you need?

MR. GERBER: Mr. Chair, I'd just like to note that Brian Owens from the Governor's Office and Budget Policy and Planning is here.

MR. CONINE: Oh, where is he?

MR. GERBER: We appreciate him here.

MR. CONINE: There he is. How are you doing, Brian? Good to see you with us. And we'll probably be back for the crowds -- let's just say 1:15.

MR. GERBER: At the direction of the Chair on this day, December 18, 2008, at the regular meeting of the governing board of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board adjourned into a closed Executive Session as evidenced by the following an opening announcement by the presiding officer as designee, that the Board will begin its Executive Session today, December 18, 2008, at 12:00

o'clock p.m.

The matter for this Executive Session deliberation is as follows: A) The Board may go into Executive Session -- close its meeting to the public -- on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

B) The Board may go into Executive Session pursuant to Texas Government Code 551.074 for purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee.

C) Consultation with attorney pursuant to Section 551.071, Subsection A, of the Government Code, 1, with respect to pending litigation styled Rick Sims v. TDHCA, filed in federal district court; 2, with respect to pending litigation styled The Inclusive Communities Project v. TDHCA, et al., filed in federal district court; 3, with respect to any other pending litigation filed since the last Board meeting.

(Whereupon, at 12:00 p.m., the meeting adjourned into closed Executive Session to reconvene this same day, December 18, 2008, at 1:15 p.m.)

A F T E R N O O N   S E S S I O N

1:25 p.m.

MR. GERBER: Mr. Chairman, at your direction the Board has completed its Executive Session of the Texas Department of Housing and Community Affairs on December 18, 2008, at 1:15 p.m.

MR. CONINE: I do see one more witness affirmation form sitting here that wasn't here when we left on this particular -- Dennis Hoover? Dennis around? There he is. He obviously wanted to chime in on this fun.

MR. HOOVER: It's Diana's fault. She twisted my arm. My name is Dennis Hoover. I'm here to talk about agenda item 2(d). I also have two 2006 RD deals that could benefit from additional credits. These were deals that I originally put application in in 2004. As you can imagine costs have increased quite a bit since 2004, and this takes a long time to push through RD these days.

On top of that I've not been able to sell these deals. They're too small and too rural. So if I have any hope of selling them in the future it would be -- help a lot if I could get credits on all of my costs. Add my weight to that.

MR. CONINE: Really. Okay. Thank you. Any

other questions of the witness?

(Pause.)

MR. CONINE: Okay. Any other questions for staff or anybody else from the Board? If not I'll entertain a motion.

MR. FLORES: A motion for what?

MR. CONINE: Item 2(d).

MR. FLORES: That's the one we left --

MR. CONINE: Yes.

MR. FLORES: I move we approve the developer's request.

MR. CONINE: There's a motion to approve the developer's request. Do I hear a second?

DR. MUNOZ: Second.

MR. CONINE: There's a second. Any further discussion?

(Pause.)

MR. CONINE: I'd have to speak against the motion. Again, I understand the developer's situation, but just feel that this would set this terrible precedent.

And, as you can tell by other public testimony, the tidal wave would come in if we did. So I speak against the motion. Any other further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. CONINE: All opposed signify by saying aye. That's me.

MS. RAY: I abstain.

MR. CONINE: You're going to abstain? That's two to two. Motion fails. Okay. Moving on -- Item 2(e). Mr. Gerber?

MR. GERBER: Ms. Meyer?

MS. MEYER: If we could back up just a minute to the item on the application waiver of the fees for '09.

MR. CONINE: Sure.

MS. MEYER: We need to get a clarification on the waiver of the fees. If they --

MR. CONINE: Application fee and commitment fee were the two that were talked about.

MS. MEYER: Correct. Is that for the same site, same application, same -- we're assuming it's the same development -- same site -- everything that they applied for previously.

MR. CONINE: Unless the Board otherwise approves an amendment, yes. And only for the properties

listed. Only those deals. Okay?

MS. MEYER: Okay.

MR. CONINE: Because we want -- the whole idea -- I think the Board's intent -- and I don't want to speak for the entire Board, but what we thought would happen is, Look, can't do them now, can do them, you know, three weeks from now, throw your application in just like it was, we'll waive all the fees, and let it ride through like that. If there's major changes then it's a different deal.

MS. MEYER: Okay.

MR. CONINE: And let me just say, I think -- obviously the numbers will change, but the number of units won't change. The size of the project won't change, but the construction costs will be different, the syndication costs are going to be different -- all that's going to be different, and that's okay because they need to restructure it to make it work because it didn't work before -- we understand that. But the intent to the local communities would be, We're going to put, you know, 80 units of whatever in your community.

MS. MEYER: Understood.

MR. GERBER: 2(e).

MS. MEYER: Item 2(e). At the November meeting

several developers requested the Board's consideration to allow 2007 applications to return the credit and receive a reallocation of housing tax credits from the 2008 or 2009 credit ceiling to allow them an additional year for placement in service.

The Department's general counsel expressed concern with this consideration and requests a delay in the Board's consideration for this issue until he could confer with an informal conference with the Office of the Attorney General.

Our general counsel did meet informally with the director of Natural Resources and Administrative Law Division and another attorney within the division. The informal opinion of the Attorney General's Office was that because the Texas Government Code, Chapter 2306, Subchapter DD, provides that direction that each -- in each year is contemplated as an individual round applications must be resubmitted to award the 2007 round applications with 2009 credits.

It was their opinion that providing credits without an active application would not meet the statutory requirements as laid out in the Code. If a formal statutory interpretation is desired the Chairman or the executive director will need to request the opinion in



writing from the Attorney General. Anticipated date for an answer would be approximately 180 days from that request.

Staff does not recommend allowing the 2007 applications to return and receive an allocation without reapplying.

MR. CONINE: Okay. We've got a nice little chunk of public comment on this item. Diana McIver. She's got an extra yield time, so she gets five minutes.

MS. McIVER: But you get double for your money because I'm here to talk about two projects.

MR. CONINE: Leverage once again.

MS. McIVER: Okay. Diana McIver, DMA Development Company. And I'm here today on behalf of two of the unclosed 2007 tax credit projects.

One is a 110-unit rehab in Amarillo. You heard from Charlie Shelton of Sears Methodist on this project at your last meeting. The other is a 76-unit family community that we are co-developing with Texas Housing Foundation in Liberty Hill. And you heard from Mark Mayfield on this development at your last November meeting.

At that time what we were requesting was that you recapture our '07 credits and reallocate them as '08

credits so that we could extend the placed in service dates by one year. And this vehicle is allowed by federal law and it very clearly is being used by other states to correct this dilemma for the '07 projects.

As said at your September meeting, these were projects that were ready to close. They were both invested by PNC, but because of what happened with AIG and Merrill Lynch and Lehman Brothers and all of that they repriced them on September 16 and we were not able to close under those terms.

You have been advised now by your counsel that the Texas statute may not permit the recapture of 2007 credits and the reallocation of these credits as 2009 credits. However, for the two projects that I'm here discussing we do not need 2009 credits. We were asking for 2008 credits.

I have a letter from me in front of all of you that I think was passed out at the break. And attached to that is an excerpt from the 2007 QAP. And it makes it very clear that the 2007 QAP -- that definition of application round includes 2008. And it also says that '08s awarded as a part of the '07 round are deemed to meet the '08 requirements.

So we think that what we're asking for is

something different from what the A.G.'s Office was looking at because our definition -- it gets around the definition of application round -- but our definition in the '07 QAP did allow '08s to be funded. And we are asking for '08 credits. And, again, we would give back our '07s and you would recast them out as '08 credits.

What I want to emphasize is I'm here on two projects. And there are only seven projects in this particular category. And the reason for that is at your November meeting we heard there were 28 projects. But of those 15 are going to have -- or can, at their request -- it's not automatic -- but have the right to have extensions to their placed in service because they're in counties that were damaged by Hurricane Ike or Hurricane Dolly. And another three were forward commitments, and so they already have the extended place in service.

So we got back from that 28, with all the hurricane extensions, to a universe of 10. And of those I understand that two have closed and I think a third one actually closed yesterday. So we really are -- we're now down to the seven dwarfs. And there are several that you're going to hear from, and we're all in the very same situation.

The -- so that's my request. That's my first

request. Okay.

If you determine that you cannot do that then the second part of the request -- and understand that these deals are very pregnant deals. In the case of Amarillo that nonprofit has financial obligations of \$2 million. In the case of Liberty Hill our financial obligations -- either paid or bills that have to be paid -- is \$850,000. So these are deals that were ready to go. There is a lot of financial risk involved.

So if you determine that you can't today take back our '07s and give us '08s then my second suggestion would be to do some kind of expedited round for that group of applications. They're going to be harmed. They're going to be harmed because there's a different QAP this year.

Already Liberty Hill you've given out -- you've forward commitments all of the rural credits for Region 7, so, you know, there's really nothing to apply for.

So the request is to have a mini-round, similar to what we did with Rita, for those seven projects. And basically that would include expedited processing with awards to be made in April rather than July. It would include that if funds have been expended from their respective set asides that they get forward commitments so they not be at risk by all the forward commitments that

were made earlier today, waiving all TDHCA fees, which I think we've seen support for, extending the amnesty period through the 2009 application period because of the penalty points or waiving those penalty points altogether, and joining with us to ask the Legislature to have these specific projects removed from the developer's caps for 2009 -- because that's the other scenario that is playing out.

Or, alternatively, joining with us to ask the Legislature to -- for emergency legislation to undo all of these definitions that have created harm to this particular project, because the federal law allows you to do what we're asking you to do. And it's simply a definition of application round in the QAP -- or in the state statute that is causing this distress. And I don't think that's what the Legislature intended.

So I'm here in the Christmas spirit asking for you to work with us to find some kind of relief for these projects. Again, these are projects that were ready to close, they're going to produce housing, and we just need a way to make them work in spite of the circumstances of the financial crisis. I thank you very much. Any questions?

MR. CONINE: Any questions of the witness? Mr.

Flores?

MR. FLORES: Ms. McIver, do we have something in writing on all those things? That's a longer list of things you gave us --

MS. McIVER: Yes, you do. You should --

MR. FLORES: What does it look like? I have a --

MS. McIVER: It looks like this.

MR. CONINE: Right there.

MR. FLORES: DMA Development.

MS. McIVER: Yes.

MR. CONINE: That's her.

MS. McIVER: And it's got the laundry list.

MR. FLORES: I'm glad to know which ones they are. Thank you.

MS. McIVER: Okay.

MR. CONINE: Okay. Dr. Munoz, go ahead.

DR. MUNOZ: Can I ask Kevin to respond to --

MR. CONINE: Sure. General counsel?

DR. MUNOZ: Kevin, how would you respond to their contention that it's not an '09 award -- an '08 award previously '07 commitment and then --

VOICE: Could you speak up?

MR. HAMBY: Your mike's not on.

DR. MUNOZ: I'm asking general counsel how would he respond to their position of it's not an '09 -- it wouldn't be an '09 -- it would be an '08 commitment.

MR. HAMBY: The '08 commitment question -- the difficulty is that all applications that are eligible for award in the 2008 round had to be approved on a list that was approved or accepted by the Board on June 30 of this year -- on or by June 30 of this year. The Board did so, and none of these applications would be on that list. So, therefore, they're not eligible for funding in the 2008 round. And that's statutory.

MR. CONINE: Was the -- was this project or either of these two projects on the list that we approved earlier that went -- that aren't going to get the -- that are going to apply for 2009 but have the fees waived? This is a different --

MR. HAMBY: No, these were not returned credits. These are people who have had the credits, and the list that you approved was for those --

MR. CONINE: The ones before it was returned. Okay.

MR. HAMBY: Returned credits --

MR. CONINE: Thank you.

MR. HAMBY: -- identified on that list -- not

the amnesty credits, but just the ones on that list.

MR. CONINE: Okay.

DR. MUNOZ: A second question.

MR. CONINE: Yes, sir.

DR. MUNOZ: Either you or Tom might be able to answer this. I don't think I was on the Board when Rita occurred. She referenced an expedited process as in the case of Rita.

MR. HAMBY: That was actually a Congressional allocation that was specifically done for limited counties. And, therefore, it wouldn't violate the uniform application round that's also required in the statute -- to have a uniform application process.

So statutorily we were preempted by the federal requirement that we spend those funds in only those rounds, and they came to us after the ceiling was set. So it was set for this specific round and the applications were limited to a certain number of areas that were impacted by Hurricane Rita.

DR. MUNOZ: Will those conditions exist in this instance?

MR. HAMBY: No, sir. There's no -- there's a difficulty, but it's a general economic difficulty. It's not been declared a disaster. There's not been any



federal implication that these funds be used, you know, akin to -- I mean, like we have the specialized funds that we just had for Hurricane Ike that we just did the swap out on. Again, those are federally preempting the regional allocation funding because they're telling us where we have to use them.

So they're already set aside out of the general application group. Even though we are going to do all of those as one round next year they're set aside -- they're not part of the regional allocation, they're not part of -- those funds can't go anywhere else.

And so because of the laundry list -- and we have deadlines in the statute. June 30 you have to have the ability to have posted -- every application that's eligible for funding has to be listed on the June 30 that the Board accepted. July 31 all awards have to be made. And it just goes through that list.

DR. MUNOZ: All right. So materially and statutorily these conditions are different from what occurred or what was present previously.

MR. HAMBY: Correct. The Rita funds --

DR. MUNOZ: The reason I ask is it strikes me intuitively as that being a reasonable proposal on their part.

MR. HAMBY: Well, the difference is --

DR. MUNOZ: I want to know why we can't do it.

MR. HAMBY: Statutorily you have the limitations, like I said, of the June 30 -- all eligible applications have to be on the list for the '08 round. For the '09 round -- to do a separated round we have a uniform application requirement that's in Subchapter DD as well for -- I think I lied there -- I don't think in actually Subchapter DD. It's in 2306 -- for uniform application round where all the applicants have to be similar situated.

You can certainly waive any fees for reapplication. You just passed a policy, so you'd have to amend the policy on how to -- if you wanted to do some sort of set aside for these funds. I think you could do it. I haven't obviously researched this. I saw this for the first time earlier this morning I think and heard discussions about it earlier this morning -- I didn't actually see it.

But, I mean, that would be the best that you could do is come up with some sort of set aside that would be in addition to -- you know, all the funds that are returned here will go for deals that didn't make. It wouldn't guarantee them to these particular rounds -- I

mean, these particular applicants, but you might be able to do that. I haven't researched it completely to see where there might be chirp up point in the statute on that.

DR. MUNOZ: Okay. Thank you.

MR. CONINE: Charles Shelton?

MR. SHELTON: Chairman Conine, members of the Board, thank you. I wore my Christmas tie in keeping with the ambience of the meeting today. Appreciate your giving us this opportunity to speak to this.

While Amarillo was not a victim of either of the two hurricanes that struck our state I would declare to you that the economic and circumstances are the equivalent of a physical hurricane. They've certainly affected our project in Amarillo.

Ms. McIver spoke of the \$2 million that we have either spent or obligated ourselves to in preparation for funding this partnership and doing the extensive rehabilitation of the Canyons building. And that is a huge issue for Sears Methodist Retirement System, a faith-based, not-for-profit organization.

More specifically though, I'd like to tell you -- put a human face on this. And, Mr. Gerber, I thank you for dropping into the Canyons a few weeks ago. Ms.

Beck, our administrator, told me of your visit.

And we have over 100 residents in that building right now. It's a seven-story former northwest Texas regional hospital building -- beautiful building. But parts of it -- the major parts of it are over 80 years old, and the HVAC system in particular and the plumbing system in particular have to be replaced or that building will have to be taken out of service within the next two or three years. That's all there is to it.

And so I come to you pleading the case of those 110 residents who are living in that project, some of whom have already been displaced in preparation for the beginning of the rehab. And they are just living from day to day in limbo, and it's a miserable situation for people in their eighties and nineties having to live like that.

And so I just beg you to come to some kind of solution so that we can go forward with that project. Thank you very much.

MR. CONINE: Thank you. Any questions of the witness?

(No response.)

MR. CONINE: Jean Latsha? And she's got some dedicated time, so she's up to five minutes.

MS. LATSHA: Good afternoon again. Jean Latsha

with National Farm Workers Service Center in Casa Alton. I guess I just wanted to reiterate really what I had spoken about before since it was really pertaining to this agenda item and not as much my own, and also to really ask, since I think I was the only developer to come up here for the previous agenda item, although it was I think 21 developments and 10 million plus in credits, I'm one developer who wants about \$700,000 in credits. So if you decide to rule differently on this agenda item I would like to be lumped into this group.

And if I'm in the 2009 round please remember Casa Alton come July 2009. Thank you.

MR. CONINE: Great.

MS. LATSHA: And Happy New Year.

MR. CONINE: Thank you too. Toni Jackson? Or Antoinette -- whichever one you'd like to go by.

MS. JACKSON: Whichever you would like to call me, Ms. Chair.

MR. CONINE: Virginia in a bowl game this year?

MS. JACKSON: You know, I -- so let's talk about those Red Raiders.

MR. CONINE: I seem to recall they were in one last year.

MS. JACKSON: Oh, man.

MR. CONINE: Go ahead.

MS. JACKSON: Please excuse us, all the Board members. I apologize for your Chair. Well, I guess everyone already knows I'm Antoinette, and Toni, Jackson, and I'm here with Coats Rose.

I am representing Covington Townhomes, which is award number 07164, and the Texarkana II Neighborhood Ventures Limited, which is an instrumentality of the Texarkana Housing Authority.

I am here because although I recognize and respect the opinion provided by your general counsel I do disagree with that interpretation of the statute. No disrespect, Mr. Hamby, but I feel that he is looking at this in the most strict sense. And I do not think that this is a legal matter as has been indicated.

Unfortunately, I am speaking without the benefit of any written documentation as submitted to the A.G.'s Office so I don't know the exact question that they, in fact, ruling on, and we don't have anything in writing.

However, I really feel that this is not a legal matter, but this is a discretionary matter for the Board to determine as set forth by the QAP. As you noted in the recommendation from staff, as also was indicated by Ms.

McIver, this recommendation spoke to the 2009 credits. Like Ms. McIver mentioned earlier, what we are looking at is asking for the 2007 credits to be rolled back in to 2008 and then given out and awarded as a 2008 award.

This deal, like many others, is very pregnant.

We are ready to go. We have the support of our investor and have not had a decrease of our credit price as of yet by our investor. However, what they want is backing relief for us to be able to know that we're going to be able to get constructed and placed in service in time.

Covington Townhomes is one phase of a HOPE VI that was awarded to the Texarkana Housing Authority, and it is very important to the Texarkana community and that Texarkana award of HOPE VI.

So I ask that you consider what has been put before you. Again, I do feel this is a discretionary matter and it's not a legal issue -- or a legal interpretation -- but can be made -- a determination can be made at the discretion of this Board. Thank you.

MR. CONINE: Thank you. Any questions of the witness?

(No response.)

MR. CONINE: Eric Opiela. Long time, no see.

MR. OPIELA: And like Antoinette, Toni,

Jackson, I normally don't put myself in the position of disagreeing with Kevin Hamby, but I'm Eric Opiela representing CDHM Group on Aurora Meadows, which is one of the pregnant seven that are before you today.

I must disagree with the interpretation of Mr. Hamby. And I want to address some of the issues that he brought up in relation to Ms. McIver's commentary. First of all, this is not an '08 -- these are not '08 applications. These are '07 applications. And so the requirement in Chapter 2306 that applications in a round be placed on the list and approved by July 31 wouldn't apply in this case because they weren't '08 applications. They're, indeed, '07 applications.

Secondly, the uniform application requirement in relation to trying to move these to a mini-round at the beginning of '09 has been superseded in the past. We've had the Rita credits back in '06, if you recall, where we had a mini-round before the regular round, and there is precedent for having a mini-round for exigent circumstances, such as what we have here today.

In addition to the relief requested by Ms. McIver, we'd also like to request two other forms of relief, one of which I think could apply to all of the seven pregnant applications and then one that would be



unique to our application in Maverick County.

First of all, many '07 applications, including Aurora Meadows and Ms. McIver's, were allocated '08 tax credits in response to the legislation that was passed earlier this year. As an alternative to the forms of relief that she proposed, we would alternatively ask that we be allowed to return our '07 tax credits and then receive an increase in allocation of '08 tax credits to the one that we received earlier this year in an amount to make up the difference.

I believe that wouldn't run afoul of some of the issues that Mr. Hamby has brought up to the A.G.'s Office because there is already an allocation that's been made of '08 tax credits to these developments. It would then extend the placed in service deadline. That's what we're all here for. We've got to find a way to extend that placed in service deadline.

MR. CONINE: Could I stop you right there for just --

MR. OPIELA: Yes.

MR. CONINE: -- a hypothetical moment?

MR. OPIELA: Sure.

MR. CONINE: If we hypothetically had a mini-round wouldn't you adjust your numbers to current

situations anyway?

MR. OPIELA: Well, this would be if we chose the route of going with '08 tax credits.

MR. CONINE: Okay.

MR. OPIELA: A mini-round would be the alternative that Ms. McIver --

MR. CONINE: Okay.

MR. OPIELA: -- suggested. And that would be of '09 tax credits. And you're correct in that instance.

MR. CONINE: Okay. I thought you were still referring to that.

MR. OPIELA: No, no. This would be of '08 tax credits. So it would be done today. We would turn back our tax credits in and you would award us an increase in the previous allocation of '08 credits you made --

MR. CONINE: Gotcha.

MR. OPIELA: -- in the amount of the difference. And then, finally, the alternative we would ask for this particular project that I don't believe would apply to any of the other seven is an extension of the placed in service deadline because Maverick County is on the FEMA disaster list as a result of a weather event that happened in that county. And so on the basis of that -- at least from my understanding when talking with my

client -- that they are on that FEMA list and we would ask for this project to have an extension of the placed in service deadline.

Again, just like all the other applications, our syndicators are concerned that we won't be able to complete construction before the end of 2009. And so that's why we're asking for these two alternatives, one specifically for us, and, in the event that it would help all the rest, we'd like for the other ones to take advantage of the alternative I mentioned in addition to the ones that Ms. McIver brought up.

MR. CONINE: Isn't the disaster relief sort of automatic so you already have the extension -- or not?

MR. OPIELA: I believe they previously applied and were denied. And I don't know the circumstances of that, and maybe the staff can speak to you.

MR. CONINE: Okay. I'll ask them here in a minute.

MR. OPIELA: And, like I said, I just know from talking with my client that that was the case.

MR. CONINE: Sure.

DR. MUNOZ: You referred to a precedent for exigent circumstances.

MR. OPIELA: Yes.

DR. MUNOZ: Okay.

MR. OPIELA: That was a hurricane. That was a disaster event. This is an economic hurricane.

DR. MUNOZ: Got the additional funding through Congress.

MR. OPIELA: And it was additional funding through Congress. So there are -- you know, there are differences in what happened in '06 and what we're in right now. But, again, you know, this is an unprecedented stagnation in the credit markets. And we really -- just like all the rest of the deals this one is about a million dollars pregnant, and we really are ready to go. It's just we have to find some solution to the placed in service deadline. That's what we're trying to offer you today. Thank you.

MR. CONINE: Thank you. Dennis Hoover?

MR. HOOVER: Dennis Hoover again speaking about Hyatt Manor Apartments, 07271. This is also an '07 deal.

It's a USDA rehab of 65 units in Gonzales, Texas, and had trouble interesting a syndicator in a rural market. But I have one interested now, but because of the falling equity prices and the gap created there I had to go back in for -- I've applied for HOME funding. I don't know the schedule of when that might come up.

My syndicator is fairly concerned that might not be able to get the HOME funding, get closed with the syndicator, do the rehab, and get finished by the end of 2009. And so it sounds like there are several ideas on the table here, but I'm also fairly concerned that time's getting short for all that happening. So whatever help you could extend us would be greatly appreciated.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. Mr. Pegram? Ron Pegram? Terri Anderson's next.

MR. PEGRAM: Mr. Chairman and the Board, I'm Ron Pegram. I'm here on application number 07289, Peach Tree Seniors. This is an '07 application that has been commonly referred to as being pregnant.

And, just like the other developers before you, we are looking for and seeking relief with respect to the placed in service date. And I want to say that I think there's a tremendous amount of gratitude for the efforts that the Board has put forth to help try and resolve this issue.

After the November Board meeting I left feeling that I could go and get my deal closed, but once I approached the lender and the lender says to me, No, we're

not going to complete underwriting this deal because of the closeness to the placed in service date, then that made it very difficult to advance the deal and move it forward.

And I understand that in the Board's eyes at this point there's maybe thought being given to having these applicants reapply. But, as mentioned, there's a considerable amount of financial consideration that needs to be given. This deal has over a million dollars in it already. Our building permit is approaching a point where it's about to expire. And, as we look at the 2009 QAP, we actually -- my deal -- we would actually have to reconfigure in order to comply with the 2009 QAP.

So I have a concern that in trying to reapply as a 2009 applicant my costs to implement this deal is going to actually increase because I'm going to be duplicating costs that I've incurred already. That potentially puts the deal in jeopardy from a financial feasibility standpoint.

So there are a number of things that we as developers have to look in determining whether to reapply because there are other cost considerations that come into play. So I just ask that the Board consider that, and if we can at all find something short of having to reapply to

provide the relief that's needed it would be greatly appreciated. Thank you.

MR. CONINE: Thank you. Any questions of the witness?

(No response.)

MR. CONINE: Terri Anderson?

MS. ANDERSON: Good afternoon again. Chairman and Board members, I'm Terri Anderson, Anderson Capital, LLC. I'm here to speak on behalf on Villas on Rayford Carrollton Senior Housing, LP. It is application number 073033, as well as application number 08096.

We were given \$465,534 in housing tax credits from 2007. That amount equates to 35 percent of our total tax credit award, which \$903,621 has come from 2008. We have the same issue with placed in service for 35 percent of the units.

Our request would basically be -- we actually are a special circumstance. We are not an applicant that was '07 and not on the '08 list that was actually approved because we did receive a forward commitment. I would like consideration to be given to all 2007 transactions obviously.

But Villas on Rayford Carrollton Senior Housing is not pregnant -- it's in labor. We've got \$2.6 million

in cost already expended on this transaction. We are currently through the underwriting process with our construction lender and we do have a syndicator who is onboard. And we are very much ready to close.

But the placed in service deadline -- at least if we can be given consideration to only have to place in 35 percent of the tax credits by 12/31/2009 that would give some relief. But because we were already on the 2008 application list we could actually return our 2007 credits and receive a full 2008 application.

MR. CONINE: I thought you said you were a 2008 forward.

MS. ANDERSON: We had a split allocation. We were a 2007 --

MR. CONINE: Aha.

MS. ANDERSON: -- \$465,534 allocation and a 2008 \$903,621 --

MR. CONINE: You're one of those really weird ducks, aren't you?

MS. ANDERSON: Yes, sir. Quack, quack.

MR. CONINE: All right.

MS. ANDERSON: Yes, sir.

MR. CONINE: Any other questions of the witness?



(No response.)

MS. ANDERSON: We appreciate our consideration.  
Thank you.

MR. CONINE: Thank you. That's all the witness affirmation forms I have on this agenda item. Any further questions of staff?

MR. FLORES: Yes. As far as --

MR. CONINE: Mr. Flores. Go ahead.

MR. FLORES: Where is all of this money coming from on 2008? I thought we awarded all that. Is there some money in the pot for 2008?

MR. GOURIS: What they're proposing is to return the money they have and then receive it again -- the same amount.

MR. FLORES: Just change the year.

MR. GOURIS: Just change the year.

MR. FLORES: Okay. And that's assuming that it's legal -- and there's a question whether the legality of it. And, of course, Kevin's already given us an opinion and Ms. Jackson has given us a non-researched opinion -- kind way of saying it. What would be the -- what would happen if we delayed this until the next meeting when we had some more information for the -- if we were able to do this, number, one, and, two, whether it's

a good thing or not?

MR. GOURIS: I think that to the extent --

MR. GERBER: The information piece that's missing is really the A.G.

MR. GOURIS: But that will take a while.

MR. GERBER: 180 days.

MR. HAMBY: And you will not get an opinion before -- just about the same time these people would have to be placed in service. So I think the delay -- and, obviously, I don't want to have it characterized that Toni didn't do research on the subject -- I'm sure she did. It's just we have a difference of opinion, and I happen to represent you guys and they happen to represent people who are interested in having dollars. That's our difference of opinion. Lawyers can look at things a lot of different ways.

MR. FLORES: You mean, it's not the first time.

MR. HAMBY: Yes, I understand. But the delay would be you're just -- you've then exceeded the amnesty period, which they have until January 3 or 2 or whatever it is. And then they would have the problem of if they returned the credits they would have penalty points.

And, in addition to that, if they didn't have a resolution in February there's probably absolutely no way

they could ever meet a placed in service deadline because they would have to close and the build from the February period -- because we have that six-week window -- or seven-week window that we're not going to have a meeting in.

And I -- they would be able to address that better than I, but I believe that would be the big legal hurdle.

MS. BINGHAM-ESCARENOS: Kevin, while you're up there -- so -- and would we be in the same boat if we -- if you got an opinion on the set aside idea?

MR. HAMBY: Right. Any Attorney General opinion -- they give themselves 180 days. And my experience has been, even when I worked at the Attorney General's Office, that they meet that about half the time and it extends beyond that about half the time. So 180 days is kind of like the minimum -- again, if you want to formal Attorney General opinion.

We can get an informal Attorney General, which means it's the opinion of the attorney writing that letter -- we did not seek a letter opinion -- I'm sure Barbara would give me one if we asked for it. We've had that conversation already so we've already gotten the informal Attorney General opinion, which is each round is

discrete and we should not do this.

MR. CONINE: Mr. Gouris, I'm intrigued slightly by the concept of the mini-round. But in thinking while people were testifying -- rather than let me think I'll let you speak. What kind of time frame -- if we were to amend the QAP -- the 2009 QAP for a mini-round in February, which would be essentially the earliest we could do it, is there much of a chance that the award process could take place much earlier than that normal July award process date for the normal round?

MR. GOURIS: If we went to the -- if we amended the QAP we would bring that back to you in February. It'd go out for 30 days and then be finalized probably April.

VOICE: The next meeting then 30 days after that.

MR. CONINE: So you're bumped up against -- essentially you're bumped up against July anyway.

MR. GOURIS: Yes, so it would be -- the earliest we'd be able to do it would be -- you know, get a round in in June or July.

MR. CONINE: All right.

MR. GOURIS: Right in the middle of our other round.

MR. CONINE: It would seem to me like that

we -- even though these folks have -- are still in the game -- not like the other '07 folks that we dealt with earlier who, you know, already surrendered.

But these folks, in my mind, should be somewhat on par with those folks, even though -- if we can't give them '08 credits, which it appears to be the case, then I heard a couple of things in the public comment testimony that make some sense to me.

One, if we were to waive the fees commensurate with the group that we did previously -- but the other thing that would be a question in mind, Mr. Gouris, is if we were to put an asterisk by these seven and the previous -- how many were in the previous group? Do you remember? Ten or whatever it was?

Anyway, kind of lump them all together and say that we would encourage them to utilize the 2009 restrictions -- the 2009 QAP. But if it's a hardship or creates, you know -- there's a lot of times they can't do it just physical with the way the land works out and the units worked out -- we would allow those projects to go through the 2009 process under the 2007 QAP, which is what they qualified at.

Would that -- do you see any issues associated with that if we were to do something like that?

MR. GOURIS: Thanks, Kevin.

MR. CONINE: Wait a minute. Before I get a legal opinion can I get a practical opinion?

MR. HAMBY: Well, the 2007 no longer exists because we remove it from the --

MR. CONINE: But the conditions precedent to the 2007 --

MR. HAMBY: Well, I know, but --

MR. CONINE: -- would still --

MR. HAMBY: -- you wouldn't have a current rule to do it and you're having new applications.

MR. CONINE: If I'm waiving the QAP I can go back.

MR. HAMBY: No, you can't create a rule. You cannot do that, sir. If the 2007 rule does no longer exist -- because we withdraw it completely each year that we do it. We have a 2008 and a 2009 right now.

MR. CONINE: In the process of amending the 2009 QAP --

MR. HAMBY: You could readopt --

MR. CONINE: -- I could pull up the verbal adoption of the 2007 and say for these numbered deals it goes --

MR. HAMBY: And you would have to publish that

in the Texas Register; you would have to --

MR. CONINE: I know. We've got to do that anyway. MR. HAMBY: Okay. You'd be back to June. So we'd have three --

MR. CONINE: We've got to do that anyway.

MR. HAMBY: Okay.

MR. CONINE: Now, let me have the practical issues.

MR. GOURIS: The staff in the Department are extremely talented, and I think we could work out whatever you need us to do in that regards. I think practically speaking, you know, we could figure it out. I think it would be a legal issue and timing issue more than anything else because the timing would be coincidental with timing of the working though the '09 round. And that would put additional --

MR. CONINE: Well, again --

MR. GOURIS: -- take additional resources --

MR. CONINE: -- I'm just expressing one Board member's intent. It's up to general counsel to figure out how to do it.

MR. GOURIS: Right.

MR. CONINE: Yes.

VOICE: Hard to remind you it can't be done.

DR. MUNOZ: Let me ask a question. How does that -- how does what you are just vaguely describing -- or sketching out -- how does that impact, you know, what has been described as these pregnant seven, and, in one case, already in labor and crowning? You know, I mean, what happens?

MR. CONINE: Well, here's what I was -- again, just thinking off the top of my head. If we were to go through a regular 2009 process and let this group of 20 '07 projects filter through and they'd be scored and underwritten and everything else -- just as normal. And some might be winners this time and some might be losers.

But if they had a little asterisk beside their names and they were a loser the Board would have the discretion to issue forwards or do whatever we want to at that time, which would buy them plenty of time to get this project developed and -- because I am very concerned about people having invested a million dollars or whatever the case is and have it go away. So you would have within your discretion, unless counsel tells us otherwise, that you could do --

DR. MUNOZ: The time between now and June and with process in June '09 wouldn't affect their deals adversely?



MR. CONINE: I'm sure they all would say that they would to some extent, but they would probably do everything within their power to salvage them.

MR. GOURIS: Can I jump in?

MR. CONINE: Sure.

MR. GOURIS: The thing that we heard -- because several of them have told us that they believe that they can get them placed in service in the time frame that's available to them now -- by the end of the next year. The problem is that there are syndicators who they may or may not have closed with yet are very uncomfortable with that time frame. And that's where the relief is needed.

DR. MUNOZ: [indiscernible] is too soon?

MR. GOURIS: Yes. The syndicators are saying they don't believe that they can get it done in that year. They want more time, and that's what the hold up is. So by waiting --

DR. MUNOZ: The added time would be preferential.

MR. CONINE: Now you're under federal law. You just -- you jumped one notch between state law and federal law.

MR. GOURIS: By waiting till February or to a future date you -- we would effectively be jeopardizing

their ability to close these transactions today -- in the next, you know, couple of weeks or whatever they need to close them in. And that would then jeopardize their ability to maintain those syndication agreements -- investor agreements. Is that --

MS. McIVER: And that's correct.

MR. CONINE: You finally got one.

MR. GOURIS: I got one right. I can feel the love today at this moment.

MR. CONINE: Okay. Any other questions of staff? I would entertain a motion on this agenda item unless Sonny's going to make me do it again.

MR. FLORES: No, I'm not. I don't want to violate a state law. If my back was turned and my counsel's telling me that you can't do it, and I don't want to sit here and argue law --

MR. GOURIS: Can I throw two more two cents in?

MR. CONINE: Sure.

MR. GOURIS: If they were to return these credits and you weren't going to give them back if they were going to return them historically we've put them back into that region so we were oversubscribed for some of those regions next year. I mean -- I don't know -- you've already carved out --

VOICE: [indiscernible].

MR. GOURIS: If it goes back to that.

MR. CONINE: Under the concept I laid out it doesn't cost them anything to reapply and you've got the asterisk by them. Again, after you get through your whole issue of those that come up in May and those that come up by June 30 we still have the ability to essentially go forward and pick and do whatever we want to do.

MR. GOURIS: Right. My thought would be though that these might have an asterisk to be -- if they returned to be in front of the waiting list '09 deals because they were '07 deals, if that makes any sense.

MR. CONINE: Yes. I mean --

MR. GOURIS: I don't know if --

MR. CONINE: -- again, we'd have to amend the QAP to do that. But I certainly don't want to resolve that issue right this minute. I'm just trying to get them -- I'm trying to keep them alive at this point.

MR. GOURIS: Okay.

MR. CONINE: Any other discussion?

MR. FLORES: Can you keep it alive without [indiscernible]?

MR. CONINE: Well, no, because -- I don't know.

MR. FLORES: I'd like to have a recess.

MR. CONINE: The amnesty period ends when now?

MR. GOURIS: The second of January.

MR. CONINE: Yes, we've got an amnesty period issue.

MR. FLORES: Why don't we have a recess right now?

MR. CONINE: You want to have a recess right now?

MR. FLORES: Yes.

MR. CONINE: Would the rest of the Board like a five-minute recess? Five-minute recess serious?

(Whereupon, a short recess was taken.)

MR. CONINE: Okay. We're still on Item 2(e) I guess -- is this (e) -- yes, this is (e). Let's see if we can craft a motion that will get us where we want to be -- maybe not everybody wants to be, but at least where everyone would have a chance. I would say that we would move that the items listed on this -- the projects listed on this agenda items be --

MR. HAMBY: There aren't any listed.

MR. CONINE: I thought there was.

MR. HAMBY: No. General global policy, so that's why -- it's a general global policy so there are none listed directly.

MR. CONINE: Really? I thought we were down to seven.

MR. HAMBY: Well, they said we're down to seven but we don't have the verification of all those different items that they're talking about. But --

MR. CONINE: Oh, you don't have them.

MR. HAMBY: -- we don't have the seven --

MR. CONINE: So the way I should differentiate this is for the 2007 projects who still have not closed.

MR. HAMBY: Or do not have a disaster extension based on --

MR. CONINE: Okay.

MR. HAMBY: -- for federal policy or if not closed or remain open --

MR. CONINE: My preference would be we'd have an actual list of those projects in this motion. So subsequent to the motion either passing or failing can we get a list put together by staff?

VOICE: I believe you're about to get one.

MR. GOURIS: I've got a list that was handed to me just now by the Development Committee. The reason why we don't have a list is because, again, we don't know when things close unless they report that to us, and they don't necessarily need to report --

MR. CONINE: Okay.

MR. GOURIS: -- if they've closed or not. So we can give you a list of what -- the last time we asked if they had closed or not. But things have changed since that. But I can name off the ones that Diana just gave me that were circled if that would be helpful.

MR. CONINE: Let's just say the -- any 2007 project -- now we heard from Terri Anderson -- she had a partial 2008, but I'm going to include her in this 2007 bucket.

MR. GOURIS: Okay.

MR. CONINE: Okay? That still has not been closed will have the opportunity to reapply in the 2009 round with the Department waiving the application fee and the Department waiving the commitment fee if it has been paid -- in other words, making that 2007 fee applicable to the 2009 application. And the Board will consider at a future meeting waiving -- excuse me -- any amendments that would be required to the 2009 QAP to make this list of 2007 projects -- let me see how I want to phrase that.

We want to amend the 2009 QAP to grant preference for the 2007 applications that are moving forward and to -- if the developer proves a hardship of the 2009 -- any of the obligations under the 2009 QAP,

other than those that have statutorily been imposed on us by the Legislature, that this Board would consider at a future Board meeting how to allow that project to qualify under the 2007 QAP instead of the 2009 QAP --

MR. GOURIS: And waive all fees.

MR. CONINE: -- under the terms that are not statutorily --

MR. GOURIS: Required.

MR. CONINE: -- required.

MR. GOURIS: And I presume you'd want us to bring that amendment process back to you in February --

MR. CONINE: At that February meeting.

MR. GOURIS: -- and request that any applicants that might have such considerations bring those to our attention, say, by middle of January.

MR. CONINE: That would be great if they would.

MR. HAMBY: I just need to clarify the word preference because we can't move people above the top ten statutorily required point structures.

MR. CONINE: Okay. Right. By the word preference what I meant to describe is a -- an ability for these projects -- two things -- an ability for these projects to be able to not have to qualify under every provision of the 2009 QAP.

MR. HAMBY: So waive the threshold, and on some of the items it would be in conflict with the 2007 -- bring you individual waivers on those items that are non-statutory.

MR. CONINE: Correct. And since all these projects will now have '09 project numbers on them there's no way I can keep track of which one was which. So we need the staff to put some sort of asterisk or designation on those particular projects as they move through the system in our normal format.

MR. HAMBY: And, just to clarify, are you looking for any kind of point preference below the line that would help them raise to the top? And what happens in the --

MR. CONINE: We'll decide at the February meeting.

MR. HAMBY: And the -- if they're in a region that is already oversubscribed based on the new issues they should submit that application.

MR. CONINE: They should submit that application, and the Board has discretion at the July or August meeting or September meeting.

MR. HAMBY: Thank you, sir.

MR. CONINE: Thank you.



MR. FLORES: Mr. Chairman, on the fees -- don't we just want to waive the application fee?

MR. CONINE: Yes, I think I said that, but if I didn't say that's what --

MR. FLORES: But not the commitment fee.

MR. CONINE: Yes.

MR. HAMBY: You said both.

MR. CONINE: Application fee and commitment fee.

MR. HAMBY: I think what he means is that we would apply the 2007 commitment fee to the commitment fee in 2009, and that additional credits that they requested and received as part of an award -- then that would be credited to the 2009 commitment fee and they would just pay the difference.

MR. CONINE: And --

MR. HAMBY: And then that amount --

MR. CONINE: It would be -- you know, my understanding of the motion -- that the project would consistently be the same as it is in the 2007 application as to the number of units and the land area and the, you know, major principles of the project, although the costs will change and the syndication proceeds will change and all that, and staff's to consider -- reconsider those

changes as they underwrite the project.

MR. HAMBY: It's essentially the same except for sources and uses.

MR. CONINE: Correct.

MR. HAMBY: Okay.

MR. GOURIS: There is one issue that has been brought to my attention about the notifications that have had to have been made by December 8. But I believe that's for pre-application? Is that right?

MS. MEYER: Do they follow the 2009 QAP requirements as far as --

MR. CONINE: There's no notifications required before our February meeting, are there?

MS. MEYER: Yes.

MR. CONINE: There is?

MS. MEYER: They have to --

MR. CONINE: Only if they pre-app?

MS. MEYER: If they're filing a pre-application they have to have already -- they've had to request neighborhood information.

MR. CONINE: Yes, we probably need --

MR. HAMBY: You could waive the pre-app points and give them the pre-app points based on the application fee.

MR. CONINE: Yes, we can do that later. I would say no to the -- they've already given notification to the neighborhood and gone through all the meetings and so forth. Again, the practical reality here is we're just trying to extend them into '09 to buy them some time. But we're not guaranteeing them -- we're just trying to.

MR. GOURIS: So we would -- again, we would bring back to you in February a list of all the things that they would be seeking modifications of the QAP for them.

MR. CONINE: That would be helpful for this Board to be able to modify or amend the 2009 QAP to specifically address those issues.

MR. GOURIS: And we'd put all of their great brains to work to help us with that list to get to us by January 15.

MR. CONINE: You've got enough work to do. You can get all the help you can get.

MR. GOURIS: Fair enough.

MR. CONINE: That's a very long motion.

MS. RAY: I second the motion.

MR. CONINE: Seconded by Ms. Ray. Any further discussion?

(No response).

MR. CONINE: All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Thank you for your due diligence. 2(f).

MS. MEYER: We don't have anything for 2(f).

MR. CONINE: 2(g).

MS. MEYER: 2(g) is presentation for the 2 million cap limitation. The Department's governing statutes set forth a limitation in the amount of allocation any given applicant may receive in an application round. The limitation is 2 million per applicant.

Due to unforeseen events of this year developers and applicants were not able to plan or avoid this limitation as they have in the past. Many developers and applicants are faced with having to decline the additional credits that they received this year rendering the developments infeasible. Some applicants have asked this Board to consider allowing their additional credits to come from the 2009 ceiling instead of from the 2008 ceiling.

The Board requested to advise the Board of a list of the applicants who exceed this limitation, and a list is provided in your Board materials. Staff is recommending that the executive director have the discretion to allow 2009 ceiling to be used for forward committing, if needed, for these developers that exceed the 2 million limitation.

MR. CONINE: I have one witness affirmation form. Bobby Bowling?

MR. BOWLING: I agree with staff recommendation.

MR. CONINE: Good. Have a seat.

MS. RAY: Mr. Chairman?

MR. CONINE: Madame Ray.

MS. RAY: I move staff recommendation.

MR. CONINE: Motion to approve. Is there a second?

MS. BINGHAM-ESCARENOS: Second.

MR. CONINE: Second by Ms. Bingham. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 2(h).

MR. GOURIS: Chairman Conine, Board, Staff denied the initial request for the issuance of -- I'm sorry -- transfer of ownership -- where am I?

MR. CONINE: 2(h), Tom.

MR. GOURIS: Thank you. This is a transfer in ownership from -- for an '07 unclosed transaction. And staff initially denied the request based on both the 2008 Qualified Action Plan and the portfolio management compliance rules which -- because the new entering general partner was in material non-compliance at the time.

They have sense cleared the non-compliance hurdle, which is a 30-point hurdle. I think they're at 29 -- 28 -- just below the 30-point mark -- but they have cleared it. The owner originally asserted that the Department -- to the Department that the change in the general partner was needed because of additional funding from the City of Brownsville and Cameron County Housing Authority no longer wanted to continue as general partner.

Staff had indicated that that wasn't sufficient reason to show that there was an abnormal need for this extraordinary request.

In the course of the appeal the owner asserted that the reason for the transfer was really the removal of the general partner at the request of the equity partner.

However, again, the equity hasn't closed and so the equity partner really had no standing in being an equity partner to remove a general partner because they haven't -- don't have an actual interest in the partnership at this time.

To meet the requirement at an experienced developer at application -- and this is the reason why the syndicator had said they wouldn't get into this transaction -- or investor did -- because the original G.P. didn't have the experience necessary. But to meet the experience requirement at application Odyssey Development who was [indiscernible] the transaction and considered by Department to be the experienced developer.

And the letter that we had received at the time of this posting -- take that into consideration.

Since the Board book was posted we have received a letter -- a more firm letter from the syndicator directing that they would not move forward with the transaction without the change in general partner.

Staff's not recommending the change because, again, they could apply and have this new ownership

structure be part of the 2009 application round.

MR. CONINE: I've got a couple of witness affirmation forms here. Bill Fisher, John Shackelford, and Esiquis Luna.

VOICE: Mr. Luna will go first --

MR. CONINE: Okay.

VOICE: -- then Mr. Shackelford.

MR. LUNA: Mr. Chairman, members of the Board -- and, Mr. Chairman, I regret that I have to put you on the strain of pronouncing my first name. It's Esiquis Luna.

MR. CONINE: Esiquis.

MR. LUNA: And you can see the rationale for my contemplating changing my name from Esiquis Luna to Esiquis Garcia.

MR. CONINE: I apologize for butchering it.

MR. LUNA: Oh, that's quite all right. Squeaker, Eskimo -- you name it -- I've been called it.

MR. CONINE: Mr. Luna. How's that?

MR. LUNA: That's correct. During the public comment the mayor of Brownsville came before you, and he wholeheartedly supported the allowing of the ownership transfer from the Cameron County Housing Authority to the Brownsville Housing Authority. And I, as the executive



director of the Brownsville Housing Authority, echo our mayor's sentiments.

It's a win-win situation for all of us in that you go from a housing authority that has no tax credit experience to the Brownsville Housing Authority that has already 13 years' experience with tax credits. We have four very successful four credits, and in that light we have an extremely experienced group of managers within the housing authority that are ready, willing, and able to assist this new endeavor with the tax credits.

So I would ask that you consider the ownership transfer of the tax credits from the Cameron County Housing Authority to the Brownsville Housing Authority. Thank you very much.

MR. CONINE: Excuse me, Mr. Luna. We've got some questions I think. Dr. Munoz?

DR. MUNOZ: Mr. Luna, do you know the answer to part of the staff documentation regarding the confirmation from the equity investor?

MR. LUNA: No, sir, I don't. That would probably be answered by the developer. He would be better prepared.

MR. CONINE: Do you know the answer to -- did I hear a compliance score issue with your particular agency?

MR. LUNA: Well, I know that they scored above 30. We were out of non-compliance. There were some issues concerning some physical -- for example, some railings, some documentation and the resident files that were resolved. And there was a question whether, you know, really we were out of compliance. And the end result was -- and I didn't know the final score until right now that, in fact, it was reduced from about a 60 down to a 29.

MR. CONINE: Okay. Any other questions? Bill Fisher and John Shackelford.

MR. LUNA: Thank you.

MR. FISHER: Thank you, Board members. Happy holidays. Bill Fisher, Odyssey Residential. This Board has spent the last four months dealing with hardship. The marketplace for placing and closing the debt and equity and gap financing on these transactions has been well documented. You all have acknowledged that today with all the efforts that you were clearly making to do anything you could within the rules to allow the '07 transactions to close.

The hardship here is directly related to those circumstances. The real equity investor that first [indiscernible] bringing to the table is insisting on a

long-term general partner, which is the housing authority, to have experience in the program and have certain levels of financial strength, which they do because they have other tax credit developments.

DR. MUNOZ: Here it says that they may only be the proposed equity partner. Are they or aren't they?

MR. FISHER: They are the equity investor. Once the transfer from TDHCA we can move forward to closing on the transaction. We have a fully negotiated limited partnership agreement with them. My understanding if this is approved today we would close in the next few business days.

We have a permanent loan commitment from Fannie Mae that LPA's negotiated. We have an interim construction loan from IBC. We've addressed some financial risk issues. We have \$6 million in this property. It's a rehab preservation transaction. We paid \$5.4 million, including closing costs, for it. We certainly have at least another 600,000 in it. And the transaction is ready to close.

We're asking the Board here to simply flip the switch. The switch here is the substitution at the request of -- insistence of the equity market the way it currently exists for one housing authority that has

jurisdiction over Candlewick to be substituted for the only other housing authority that has jurisdiction over Candlewick.

I agree to the extent that to the TDHCA rules Odyssey fills the experience requirement, but not for the equity market. And in the structure of these transactions the housing authority really wants us out as soon as possible. And they're looking to not only manage the property, keep it in compliance, but maintain it for a long period of time and then own it under the Section 42 option at the end.

In addition, in this one we have gotten a \$20 million extension of the HAP contract that goes with this that's another financial piece of this puzzle. The investor believes that the larger housing authority who has jurisdiction there is in the best position to shepherd that subsidy over the primary compliance period.

So the issue of hardship I think is obvious. We're facing a hardship of a market that's very difficult to close. Investors are insisting -- they're not flexible at all -- they're insisting on what they want. They've insisted on what they need here. The QAP says if there's a hardship this Board can approve the transfer. We'd ask you to do that.

There was a question Mr. Conine asked earlier, there's no money changing hands between Cameron County and the Brownsville Housing Authority. They're simply trying to facilitate a closing on the development. And I appreciate your consideration and hope you'll approve it.

I was going to yield some time to the chorus again because that seemed to put everybody in the holiday spirit, but thank you.

MR. CONINE: John Shackelford.

MR. SHACKELFORD: Thank you, Mr. Chairman, members of the Board, and Mr. Gerber. John Shackelford on behalf of the developer and owner.

And just to reiterate what Mr. Fisher said, we believe this is a hardship that qualifies under the QAP rules. I'll point out that hardship is not a defined term under the QAP, and it says only in parenthetical a potential bankruptcy, removal of a partner, et cetera. And I would take into -- ask the Board to look at what does et cetera mean under the economic circumstances and what the equity markets are, what the credit markets are at this time -- that you consider this to be an absolute hardship pursuant to the rules of the QAP.

I heard Mr. Gouris say that we have not closed. That's correct. But, as Mr. Fisher said, we had an all

call -- conference call yesterday with another one scheduled for Tuesday. This deal will close before the end of the year. It won't be on your 2007 list that Mr. Conine's looking for. We can close it and not have it be an issue carrying over to next year for any consideration.

Everything's at the table. The construction lender's at the table, the perm debt's at the table, the equity provider's at the table -- we're all good to go. And yesterday was what's going to hold this thing up -- getting Board approval. So that's what we're down to.

We do think we qualify under the terms of the QAP for a hardship. And even if we -- under very strict interpretation you do not believe so, since it's undefined, I think you've got the discretion and the authority of this Board to take into account all the factors.

And, lastly, I would point out that just recently Mr. Conine, in connection with discussing Item 2(e), mentioned the word hardship to sort of allow those developers on the deals that was before the Board at that time to try to qualify to the extent they can except for those requirements that are statutory.

So I think there's consideration by everyone on the Board to try to assist the developers in closing. And

this one's keyed up and ready to go.

MR. CONINE: Any questions -- excuse me. I'm sorry.

MR. SHACKELFORD: Any questions you have --

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. Okay. That's it for the witness affirmation forms. Any further questions or do I hear a motion?

MS. BINGHAM-ESCARENOS: Mr. Chair, I move to approve the change of ownership.

MR. CONINE: Ms. Bingham motions to approve the change in ownership. Do I hear a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussions?

MR. FLORES: Mr. Chair, just a question to our staff. Other than in our technical definition of hardship it says that there was inconsistencies of information provided. Did you not have the information needed? It appears from the write up that was done prior to two weeks ago there was some question on the information provided -- the documentation.

MR. GOURIS: Yes, the documentation regarding

[indiscernible] was -- had we gotten more correspondence from them representing their need for a transfer in order to close the transaction. That's what we were looking for. But, I mean, I have some concerns in that I'm not sure that this is all that's going to be requested in this transaction. They've already indicated that there's some additional potential changes in the funding sources and some other potential changes that could occur.

That's not on point today, but that's what happens with these kinds of transactions when you get a new G.P. and then they're starting to look at this now and saying, Well, gee, this is different.

MR. FLORES: But I don't see the --

MR. HAMBY: I believe the inconsistencies, Mr. Flores, were whenever we originally received this request that we were told by the applicant who was making the request that there was a political change in Cameron County and they no longer wanted to do the deal.

Whenever we said, Well, that's not a hardship, therefore, it doesn't qualify, we received a whole different set of information about why this is a hardship deal. And so I think that's the inconsistencies is that there's been no --

MR. FLORES: Okay.



MR. HAMBY: -- consistent message throughout. They didn't start with, Our syndicator wants us to do this.

MR. FLORES: I guess I can't see the harm of changing the partner here other than maybe a lack of information. But if that's there then I guess I don't have a problem.

MR. HAMBY: The reason that we don't allow the request to be changed during -- prior to 8609 issuances is because what you end up with is people shop deals and you end up with somebody making an application and then subbing them out as soon as the deal is awarded. Let's say there's somebody you don't want in a deal at this time. I don't know at the time whether or not they would have required this -- I don't know what their compliance score was. I see Patricia nodding her head.

This deal would have been terminated had Brownsville asked for it at the time because they would have been out of compliance. And so now that they are back in compliance they're suddenly in the deal again. So they would not have gotten this application -- would have been terminated in the application period.

And that's what you try to avoid and why we don't let these transfer happen before 8609s are issued

unless it's through an affiliated party because we've already done all the due diligence with the application when it's an affiliated party in the application. So that's the harm is because you end up shopping these deals looking for people who can do them.

I'm not saying that happened here. I'm just saying that's what the problem is.

MR. FLORES: I understand. But this is a nonprofit we're talking about here, so the environment may -- thank you.

MR. CONINE: Any other questions of staff at this point? (No response.)

MR. CONINE: Motion on the floor to approve the transfer. Seeing no further discussion all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Let's -- with the Board's indulgent we're going to skip to Item 7.

MR. GERBER: Mr. Chairman --

MR. CONINE: We going to miss one?

MR. GERBER: Item 3 is going to be pulled. I just want to let the community know that we will be

holding a roundtable at some point over the course of -- at some point over the next month about fees. All fees that the Department collects or has responsibility for or any involvement with will be on the table.

On Item 4, just very quickly knocking that one out of the way, this was a multifamily bond rules to the public. What we're seeking here if the final repeal of the old rule to be replaced by the new rules. There were green building additions and fee changes -- those are the most significant changes for the 2009 multifamily housing revenue bond rules. And we would ask the Board's approval of those multifamily housing revenue bond rules.

MR. CONINE: If you're going to bring that one up -- wasn't that addressed at the beginning of the meeting on a percentage of completion issue and some definition -- that's on a different deal?

MR. GERBER: That's compliance.

MR. CONINE: Okay. The compliance rules.

MR. HAMBY: That's the compliance rules that are out for public comment, and the public comment closes today. So those were public comments on the rule that will come to you in February.

MR. CONINE: Okay. All right. Good enough. All right. Do I have a motion on the rules for Item 4(a)?

MR. FLORES: Move approval.

MS. RAY: Mr. Chair --

MR. CONINE: I have a motion to approve by Mr. Flores and probably seconded by Ms. Ray. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Now Mr. Chairman, we'll jump down to Item 7, which is disaster recovery. Kelly Crawford, our deputy E.C. for disaster recovery, is going to present those items. Kelly?

MS. CRAWFORD: Good afternoon, Mr. Chair and Board members. Item 7(a) is an update from the Disaster Recovery Division on the progress of the CDBG housing activities under round one and round two CDBG funding, as well as the FEMA Affordable Housing Pilot Program.

For round one a total of 350 homes have been replaced. 68 are under construction and another 67 are under contract or out for bid. We've expended 52 percent

of the funds and expect a 75 percent expenditure of funds by February 5.

MR. CONINE: Great.

MS. CRAWFORD: For round two -- quickly go through the Houston program. The City of Houston has expended approximately 46 percent of its \$42 million allocation. Harris County has expended approximately 4-1/4 percent of its \$21 million allocation.

And for the multifamily update, on September 13 of last year the Board approved -- or awarded \$81.1 million to repair or rebuild seven affordable multifamily rental properties damaged or destroyed by Hurricane Rita. The construction work once completed will restore 813 rental units to house low-income individuals and families.

You have a table provided in your Board book, but I want to update that. All of the seven developments have closed on their loans and have started construction or will be under construction by the end of the year.

MR. GERBER: I would just add, Mr. Fisher's deal was the last one closed -- the last of seven -- and we were delighted. Keep building.

MS. CRAWFORD: And some highlights on the Homeowners Assistance Program and the Sabine Pass Restoration Program -- 2,570 families have returned their

applications. 1,529 applications are complete and are in the eligibility determination phase. 181 home inspections have been conducted and 79 home selection meetings will have been conducted by the end of the year. That's 79 families that will have picked their homes, the style of their home, the color scheme of their home, et cetera, by the end of the year. And Mr. --

MR. GERBER: I would just add, this entire process is getting ready to ramp up in a major way. We're ramping up the environmental -- last environmental step that is required by HUD. The eligibility process for literally hundreds of people -- approaching a thousand people -- is well underway. And by January 9, when we're able to begin construction, we believe that we will begin the process of building about 45 homes over the month of January. We'll start and complete about 45 homes in the month of January.

We'll then be ramping that up steadily to where we're building about 115 homes per month starting in about March. And our hope is that by June we will actually have 650 homes completed, on the ground, and done.

We are also having open bid right now for additional capacity from the home builder community to participate in this program. We've received some

additional responses from that which we originally had received some months ago.

So we think we may even be able to expand that quite a bit because we know that a lot of the folks who are working on this program are going to want to have involvement certainly with Hurricane Ike, and we want address the needs of Rita folks first. And then hopefully when those Ike dollars begin to move, which our colleagues at the Office of Rural Community Affairs, have lead responsibility for and we'll find out what our allocation is to address housing issues.

But hopefully that will dovetail nicely because, again, many of those counties that were evacuated were certainly impacted by Hurricane Ike as well. So a lot of construction starts in the new year. And I know Don Atwell is here with ACS -- will be able to report on that and show us some pictures about what's been built during the month of January at the February 5 meeting.

MS. CRAWFORD: And three homes will be ready for occupancy in Sabine Pass by the end of the year. And --

DR. MUNOZ: Are these -- I'm sorry for interrupting.

MS. CRAWFORD: No problem.

DR. MUNOZ: Are these like the homes that I'm looking at?

MS. CRAWFORD: Yes, sir.

DR. MUNOZ: That's pretty extraordinary.

MS. CRAWFORD: Amazing foundations -- we think those are going to really withstand any potential future events.

MR. GERBER: This is actually beyond what's expected in that we're using these concrete pillars. These houses we believe will withstand --

DR. MUNOZ: 160 miles an hour -- is that what this is saying?

MR. GERBER: Yes. And I will tell you that with hurricane --

DR. MUNOZ: Because in Lubbock we get them about 120.

MR. GERBER: Of the 300 plus homes that we had on the ground using round one Rita money we only lost one manufactured home. I'll also tell you that the reports are in on the multifamily units that have been built over the last five years that we've received word on. The construction practices that the development community employed held up extraordinarily well, and we have very minimal losses in the number of units from the



multifamily.

DR. MUNOZ: Now, Mike, if it wouldn't be too taxing on the agency, you know, it sure would be nice if you could maybe get one of these families to come to one of our meetings --

MS. CRAWFORD: Sure.

DR. MUNOZ: -- and tell us about their home.

MR. GERBER: Do one step better. Why don't we go there and do a meeting in Beaumont?

DR. MUNOZ: Or do that.

(Pause.)

MR. FLORES: I'd like to have a visit -- you can find out what happens when a hurricane hits. Guys from Lubbock don't understand what happens when a hurricane hits, you know.

MR. FLORES: Mr. Gerber, the unit price of these very substantial buildings -- how much per building?

MR. GERBER: For these homes the unit price was \$60,000.

MR. CONINE: Cost plus.

MR. GERBER: Well, what's the unit price?

MR. ATWELL: For the homes --

(Pause.)

MR. CONINE: Don, you've got to get to the

microphone.

MR. GERBER: \$52,000 for the home itself. The elevation underneath it was \$28,000. Then there's also an additional \$15,000 for some who required certain accessibility features.

MR. ATWELL: In Sabine Pass it exceeds what the rest of the region had because of the unique nature of being on a [indiscernible] round.

MR. GERBER: Don Atwell's from ACS and his crew has been doing the work.

MR. ATWELL: And you summarized that well.

MR. FLORES: And the elevation?

MR. ATWELL: 14 feet. That's at 14-1/2 feet.

MR. FLORES: Above what?

MR. ATWELL: BFE -- base flat elevation.

VOICE: That's an engineering term.

MR. FLORES: Don't worry. We have a lot of flooding where I come from. It's about as flat as this table. That's why I was concerned.

DR. MUNOZ: The tide level, as you know, Don, was 15 feet, you know -- at least in the Galveston area it was so you know what that means.

MR. ATWELL: And how high it's going to go up is based on the FEMA maps for flooding.

MR. FLORES: Of course. Yes.

MR. GERBER: To save some money, Mr. Flores, what I was telling -- with some folks what we're doing is when we elevate the house we just put the family in the house and then elevate them.

MR. ATWELL: Mr. Gerber, one of the pictures you have there actually has a couple standing. And that's the Flores family. And they just wanted to say thank you to the Board for their new home. So I'll pass that along. Thank you.

MR. CONINE: Are you finished, Kelly?

MS. CRAWFORD: No, sir.

MR. CONINE: I didn't think you were when Michael go rudely interrupted. Go ahead.

MS. CRAWFORD: He's always welcome to interrupt me.

MR. CONINE: Yes. Uh-huh.

MS. CRAWFORD: Item 7(b) is a request for changes in the maximum benefit limitations under the Homeowners Assistance Program and the Sabine Pass Restoration Program. That is one of the things that will allow us to meet the numbers that we're projecting as we go through the year.

On November 13 the TDHCA Board approved

Amendment 6 to the Action Plan, which altered the reconstruction maximum benefit restrictions under these programs. And the Board directed staff to obtain further public comment.

We conducted a public roundtable on December 8 to gather input and comment from the citizens and organizations that were directly impacted by the storm. In advance of the meeting we provided the public with the handout and put in the Board materials, which outlined both the Board's proposed limits from November as well as the proposed staff recommendation currently revised in this action request. 22 people attended the meeting and 100 percent supported the increasing the maximums in the program.

In addition to the limits in the write up staff also recommends Board approval for up to \$10,000 per home for costs to address local code requirements, such as septic systems, off street parking, water wells, underground electrical services, and those types of items that can't and won't be required in every single home.

As with all program costs these costs are competitively bid and must be determined reasonable land must be approved by TDHCA. Staff recommends Board approval of these maximum limitations.

MR. CONINE: Any -- let's see. Wait a minute. No public comment on (b). Any other comments from -- or questions from the Board to the staff?

MS. BINGHAM-ESCARENOS: Move approval.

MR. CONINE: Motion to approve from Ms. Bingham. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Second from Dr. Munoz. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. CRAWFORD: Thank you. Item 7(c) is a request for Board approval of Orange Navy Homes request for a total increase in award by 1,632,000 and 25 units conditioned on certain requirements as outlined in the Board materials.

Specifically, Orange Navy is requesting additional CDBG funds in the amount of \$270,000 to offset the costs required to meet the Texas Historical Commission

required mitigation. Further, the applicant is requesting that the Board approve an additional 25 low-income units for a total increase in award by \$1,632,000.

The applicant request is included as part of the Board materials.

MR. GERBER: Mr. Chairman and Board members, we had anticipated that this project was going to have a challenge from the Historical Commission, so we had set aside a little bit of funds in anticipation of that. It's been about a year that it's taken to work through those issues with the Historical Commission to preserve some of the more architecturally significant part of the historic Orange Navy Yards and to work with the city in that regard. And Mike Ikeberry, who is not here, has been working pretty heavily. I don't think he's here.

MS. CRAWFORD: They are here.

MR. GERBER: Great. And it's just a -- it's a tremendous project. And this will allow 25 additional units to come onboard. So I think we're getting not only the original value intended but even more because of this deal with the Historical Commission.

So we would strongly recommend and commend this to you.

MR. CONINE: I have a couple of witness

affirmation forms here. Barry Palmer?

MR. PALMER: Mr. Chairman, we only signed up for that in the event there were any questions or issues on this.

MR. CONINE: Thank you very much. Is there a motion from the --

MS. RAY: Mr. Chairman, I move staff's recommendation.

MR. CONINE: Motion to approve staff recommendation by Ms. Ray. Is there a second?

MR. FLORES: Second.

MR. CONINE: Second by Mr. Flores. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, I would note we also --

MS. CRAWFORD: Thank you.

MR. GERBER: -- we have a strong letter of

support from State Senator Tommy Williams. And I've heard from other officials about this project as well. And I thank you for all you're doing to move this along.

VOICE FROM AUDIENCE: Mr. Chairman, we would like to invite all of you to come to Orange sometime maybe in January or February --

MR. CONINE: We'll try to make it down there at some of the -- one of the meetings next year. How's that?

VOICE FROM AUDIENCE: Thank you very much.

MR. CONINE: I'll try to make that commitment.

VOICE FROM AUDIENCE: Thank you.

MR. GERBER: Mr. Chairman, if we continue on to Item 8. The first item is the presentation, discussion, and possible approval of Program Year 2009 Community Services Block Grant annual funding allocation.

CSBG funds are used to ameliorate the cause of poverty in communities. The contracts are scheduled to begin January 1, 2009, and end on December 31, 2009. And the appendix in your book represents the proposed CDBG funding amounts for each of the 48 eligible entities.

Staff is recommending approval of the 2009 CSBG awards. It's based on a formula determined by our rules.

And the total is \$31,311,979.

MR. CONINE: Is there any discussion or



questions?

MS. RAY: Mr. Chairman?

MR. CONINE: Ms. Ray?

MS. RAY: I think Mr. Flores -- defer to Mr. Flores.

MR. FLORES: Thank you. How do you get to be a qualified agency to apply for these funds on these rural communities?

MR. GERBER: Amy, do you want to talk about -- these -- most of these agencies are long established outgrowths of the federal War on Poverty and --

MS. OEHLER: Yes. Most of them were established in 1964, and they were deemed eligible entities. And there are some organizations who were a part of that original group who had performance problems.

And we have terminated those contracts and then gone through a request for application process. And after that process is complete the Governor designates them as an eligible entity.

(Pause.)

MS. OEHLER: Correct -- terminated with hearings.

MR. FLORES: What?

MS. OEHLER: The terminations --

MR. FLORES: You were interrupted by counsel who's giving you instructions.

MS. OEHLER: Right. He just wanted me to mention that whenever we terminate contracts either they have to relinquish them or we have to go through a hearing process.

MR. FLORES: But I know some of them service particular areas -- southwest Texas, south Texas, northeast Texas. Are all 254 counties in some way or other touched and covered?

MS. OEHLER: Yes, sir.

MR. FLORES: So my old hometown in Brooks County is somehow stuck in there somewhere in the middle of all these huge things. Okay.

MS. OEHLER: Yes, sir. And, in fact --

MR. FLORES: So all 254 get a shot at it.

MS. OEHLER: Yes. And if I --

MR. FLORES: All 254 counties. Okay. Thank you.

MR. CONINE: Any other questions of staff?

(No response.)

MR. CONINE: I'd entertain a motion.

MS. RAY: Mr. Chairman, I move --

MR. CONINE: Ms. Ray --

MS. RAY: -- to accept staff's recommendation.

MR. CONINE: -- moves approval. Is there a second?

MR. FLORES: Second.

MR. CONINE: Second by Mr. Flores. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Thank you, Amy.

MR. GERBER: Mr. Chairman and Board member, on Item 8(b) -- this is a presentation, discussion, and possible approval of the 2009 CSBG state discretionary notice of funding availability.

What we just approved was 90 percent of the available funds for the program year 2009. There is -- with the additional 10 percent, which comes out to be \$1.5 million, we are --

MS. OEHLER: Actually, there is 5 percent that's for the discretionary funds and 5 percent is for state administration.

MR. GERBER: I'm sorry. 5 percent that's available for state discretionary funds, which is \$1.5 million. We are taking 600,000 of that and pulling that aside for the -- for in the event of another disaster, natural or otherwise.

The remaining \$900,000 has historically been given to a number of agencies. We heard earlier today from representatives of Native Americans -- of a Native American center that's received funding. There have been other organizations that have received funding, both tribal communities, farm worker communities, as well as other community action agencies that have had special projects.

The intent of those discretionary funds though is to try to do innovative things here in Texas that would hopefully move more persons to self-sufficiency. And so rather than have it to be the same folks continuing to get the funds year in and year out we've decided to bring this to the Board and open up the process and have it be a competitive process.

We work very closely with community action agencies and with the Texas Association of Community Action Agencies -- Tim Reese is here representing them -- and others to try to come up with the right combination of

eligible activities that happen on both the statewide level, at tribal level, at migrant farm worker level -- were there other categories?

MS. OEHLER: There were four categories -- the Native Americans, migrant seasonal farm workers, innovative projects, demonstration projects -- I'm sorry, those were in one category -- and in statewide initiatives.

MR. GERBER: And these funds would be available beginning in -- awards would be made in April.

MS. OEHLER: Yes, April 1.

MR. GERBER: And the applications would be due in February.

MS. OEHLER: January 20.

MR. GERBER: I'm sorry -- January 20.

MS. OEHLER: And we would bring the recommendations to you in February.

MR. GERBER: So our hope is that -- we're really trying something new here with this program in trying to open up so that this -- there are competitive dollars out there for new participants in our programs to try to access these dollars to do innovative things.

One of the things that I've been personally very interested in has been the VITA sites -- the tax

preparation sites to help more low-income take advantage of the earned income tax credit, which has been used very effectively by some communities action agencies and by others. But it's something that we -- the state of Texas leaves a lot of money on the table. And that could go really to help and could [indiscernible] to low income persons in a very meaningful way.

So there are initiatives like that that we hopefully will be able to provide some seed money for that -- one year of funding, two years of funding may be able to really -- you know, make a difference in the lives of low-income persons.

So that's the intent of moving to a discretionary and competitive program -- moving the discretionary program to a competitive program. We ask your approval of a motion to take the NOFA out.

MS. OEHLER: And, actually, I'd like to add two things. One, we'll bring the awards to you at the March 12 Board meeting. And then also I'd like to request approval of the NOFA with the deletion of one form that was put in inadvertently. It's the public hearing form that's part of the NOFA packet.

DR. MUNOZ: Well, I'd just like to add something.

MR. CONINE: Sure.

DR. MUNOZ: That with the workgroup that you empowered -- we had a very vigorous conversation this morning, including the proposal which I, of course, endorse. And my understanding is that those applications -- that the workgroup will also be involved in examining those applications and also making recommendations.

MR. CONINE: Great. Glad to hear that. Okay. Any further discussion or questions?

DR. MUNOZ: I'll move that we accept staff's recommendations.

MR. CONINE: As amended.

DR. MUNOZ: As amended.

MR. CONINE: Okay, Dr. Munoz. Is there a second?

MR. FLORES: Second.

MR. CONINE: Seconded by Mr. Flores. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chairman, why don't we go back to Item 5, which is the Neighborhood Stabilization Program -- and an amendment to that program as submitted to HUD as part of our [indiscernible] December 1.

MR. GOURIS: We're asking for ratification of that plan that was submitted to HUD on December 1. As you might recall, last month we brought to you a draft plan and indicated to you that there's a very short time fuse to get this application in and to get this funding moving forward.

The plan was submitted December 1 -- and you have a copy of that in your Board package. The Department is going to be working with the Office of Rural Community Affairs and Texas State Affordable Housing Corporation to administer \$102 million with TDHCA taking the lead role.

The plan calls for applications to be submitted within 30 days of notification on our website that HUD has approved the amendment to the plan. And staff is preparing to bring to you the guidelines that will help us work the plan -- work the program in February.

We were hoping to get them to you today, but we had a couple of things going on so we didn't make that



goal. But we will bring them to you in February, and, actually, we'll probably publish them early to give lots of folks opportunity to comment on and understand where we're anticipating and going. But we'll bring them to you in February, get them approved, and then immediately roll into an application round if we get approved by HUD.

MR. CONINE: Okay. Any further discussion? Questions?

MR. GERBER: Mr. Chairman, I just note that we are pleased to be in partnership with the Office of Rural Community Affairs and Texas State Affordable Housing Corporation. Katherine Closmann's in the back representing them and we appreciate her being here and working together on it. So glad we're --

MR. CONINE: Okay. I'll entertain a motion. Oh, wait a minute. Wait a minute. No, that's the next item. I'd entertain a motion.

MR. FLORES: [indiscernible], Mr. Chairman.

MR. CONINE: Motion to approve by --

MS. BINGHAM-ESCARENOS: Second.

MR. CONINE: -- Mr. Flores, second by Mr. Bingham -- Ms. Bingham -- excuse me. I'm not thinking correctly. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

(Pause.)

MR. FLORES: What are we on?

MR. CONINE: 6(a). Maycheck [phonetic] hasn't been here very long. He can wait a little longer. He's been out and had a nice lunch somewhere around town, you know.

MR. TOM GOURIS: 6(a) -- there are no appeals at this time. But 6(b) there are appeals on the binding agreements. So I'm going to let Audrey Martin, who oversees our cost certification process, talk to you all.

MS. MARTIN: Thank you. Audrey Martin, senior cost certification specialist in the Real Estate Analysis Division.

Chairman, Board member, Item 6(b) is the presentation, discussion, and possible action on Housing Tax Credit Appeals of rescissions of binding allocation agreements for 2008 Housing Tax Credits.

Six appeals appear in your Board materials.

However, I am happy to report that two of these have been pulled from the agenda because they have been able to meet all requirements for the issuance of IRS Forms 8609. Those are the first two appeals. They are Mesa Vista Apartments, which is 05026, and the Gardens of Taylor, which is 05034.

In 2006 the Board approved a policy that awarded additional tax credits to 2004 and 2005 9 percent developments. And those additional credits were awarded from the '07 and '08 tax credit ceilings respectively.

Today the Board is hearing appeals for four developments who have had their '08 tax credits rescinded and who have not met all requirements for the issuance of IRS Forms 8609 in order to have those credits reinstated.

The 2008 tax credits have to be allocated by December 31, 2008, via the issuance of 8609s in order for those tax credits to be valid. The 2005 tax credits for these developments, which make up the bulk of the allocation, do not have this same deadline and they have not been rescinded. So we're only talking about the additional '08 credits today.

In order to ensure that the year-end deadline for the 2008 tax credits could be met staff sent notifications to all owners in mid-October setting a

December 1 deadline for them to meet all requirements for the issuance of 8609s so we could meet that year-end deadline.

We set this earlier December 1 deadline for two reasons. First, it was to allow enough time for the processing and execution of the 8609s, and, second, it was to allow the owners enough time to appeal any staff decision, if necessary, to the executive director and to the Board.

As of today, as I've said, four developments have had their '08 tax credits rescinded and have not been reinstated. The first two of these appeals are very similar, so in the interest of time I'd like to present them together.

Similarly, the second two are very, very similar -- I'll also present those together. Staff is recommending that the Board deny each appeal because as of today there are requirements that still remain to be met.

The first two appeals that I'd like to discuss are Sphinx at Luxar, which is development number 05082-08025. The other is Sphinx at Reese Court, which is 05095-08030. The 2008 tax credits for both of these developments were rescinded because they did not meet the December 1 deadline.

As of today both developments have the same two requirements outstanding. They need to present a nothing-further certificate that shows that the LURA has been recorded for the development and that there are no liens on the property. And they also need to get clearance of the final construction inspection.

Both of these developments had amendment which were heard by the Board during earlier agenda items and which were approved. The final inspection was waiting for Board approval of these amendments. So now that the amendments have been approved the final inspection can be cleared. The only item that remains outstanding is the nothing further certificate.

Now, because this requirement has not been met as of today staff is recommending that the appeals be denied. However, the owner has indicated that they've ordered the nothing further certificate and that they can get that to us before the end of the year. Now -- I'm sorry?

MR. GOURIS: So to wrap up on these two, if you were to grant the appeals we would need to ask that there is a date certain before the end of the year that we got the nothing further certificate or deny the appeal and they would lose those '08 credits only. And we might want

to go ahead and take those -- or take comment on those two.

MR. CONINE: I've got a handful.

MR. GOURIS: Okay.

MR. CONINE: Well, not on those two. Wait a minute. Joe is signed up for 6(c). He's not signed up for 6(b).

MR. AGUMADA: Actually, I had [indiscernible].

MR. CONINE: You want to speak now?

MR. AGUMADA: Yes, I do.

MR. CONINE: Come on up.

MR. AGUMADA: Good afternoon, Mr. Chairman and the members of the Board. Well, as of now technically we have cleared all our standing issues with the exception of nothing-further certificate, which basically we need to get from the county that would indicate that the LURA has been recorded.

As of today -- actually as of last week and the week before the LURA has been recorded. The Department does have the original recorded document. They just need the county to indicate -- show that the document has been recorded. The County of Dallas is saying that it won't show on their system until the 23rd of December and I can get it out to the Department. That's really what we're

waiting for.

So it's been recorded. The Department does have the original recorded LURA certified by the county. And that will take care of every outstanding issue.

MR. CONINE: Okay. Any questions?

MS. RAY: Mr. Chairman, I move to approve the appeal pending the receipt of the documents by the 23rd of December.

MS. MARTIN: Did you say the 23rd?

MR. AGUMADA: 23rd is what the county told me. That's when it would show on their system, so I probably need like a day more to get it to you. It's possible before then.

MS. RAY: Let's say the 27th.

MR. CONINE: Whatever that Monday is.

MS. MARTIN: Staff was recommending the 29th.

MS. RAY: 29th?

MS. MARTIN: 5:00 p.m. on the 29th.

MS. RAY: Then I amend my motion, Mr. Chairman, to change that date to the 29th of December.

MR. CONINE: Is that Monday night?

MS. MARTIN: Yes.

MS. RAY: That's Monday night. That is correct.

MR. CONINE: Motion to approve the appeal subject to delivery of documents on the 29th. Is there a second?

MR. FLORES: Second.

MR. CONINE: Second by Mr. Flores. You have a question?

VOICE: No.

MR. CONINE: Okay. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. MARTIN: The next two appeals are for Cathy's Point and Madison Point. We'll take these together as well.

The credits were rescinded because the final construction inspection has not been cleared by the Department for either of these. For Cathy's Point there is one item remaining, which is the installation of 14 SEER HVAC units.

For Madison Point they also have to install 14



SEER HVAC units, but have an additional item outstanding, which is accessible routes to all first floor units. And that requirement is actually a federal Fair Housing requirement that all first floor units be located on an accessible route.

Staff is recommending that the Board deny the appeal. However, if the Board chooses to grant the appeal and to direct staff to execute 8609s prior to all final construction inspection requirements being met staff recommends that the owner be required to enter into an escrow agreement with the Department -- that the owner would have to escrow a certain dollar amount, which should be approximately equal to the cost of the remaining improvements. And those funds would not be released without Department approval.

In addition, staff would recommend that if the escrow agreement is unable to be finalized by December 29 the 2008 tax credits would be forfeited. That, again, is just to allow us enough time to issue the 8609s. So we would want the funds to be escrowed and, obviously, all parties to have signed off on the agreement.

MR. CONINE: Okay. We've got plenty of witness affirmation forms. Cynthia Best, Eric Opiela, Donald Pace -- three of you get a shot at us. And he's got extra

time.

MR. OPIELA: Cynthia and I will pinch hit for each other here real quick. We should be quick.

As stated by staff, both of these projects have one outstanding issue in Madison Point and Cathy's Point has two outstanding issues. What happened in these projects is the contractor put 13 SEER rather than 14 SEER coil units on the outside of the building. We've already begun the process of replacing those. However, the process will not be complete prior to December 31 of this year.

What we are asking is that the Board approve a escrow agreement, much like a tri-party agreement between the Department, Wachovia, who is providing the financing, and the developer to hold the funds that are set aside to pay for these final improvements in escrow until the Department completes its final inspection.

We have here the substantiation for all of the funds -- the purchase orders and the actual costs on that.

And to substantiate it we have \$79,000 remaining in Madison Point for the replacement of those units and 234,980 for Cathy's Point, which will also cover the cost of the replacement of a sidewalk that does not have a step on it with a ramp. And so that includes both the redesign

and the construction of that.

And we expect to have all of those items completed by no later than March 30 of this next year. And we'd like an -- we'd like the Board to direct the staff to have an escrow agreement that will take care of that.

There's one other issue with Cathy's Point, and that is a provision in the limited partnership agreement which limits the purchase of tax credits by Wachovia to \$500,000.

The TDHCA gave an additional allocation earlier this year and staff is recommending to decrease that allocation by \$21,540. And we have -- and the reason for that reduction is because the Wachovia limited their purchase to \$500,000. We have an additional purchaser of those additional \$21,000 in tax credits -- have a commitment to purchase those. And so it will provide equity.

And so we ask the Board to allow the 8609s to be issued prior to December 31 in the full amount for each project pending the finalization of an escrow agreement with the Department, Wachovia, and the developer. And we're here for any other questions.

MR. CONINE: What are you going to do with the

other \$21,000?

MR. OPIELA: Becklar [phonetic] Incorporated is going to purchase those 21,000 in tax credits and provide equity for those. So that way we'll get the full benefit of the additional 21,000 above and beyond what Wachovia had committed to purchase in the limited partnership.

MR. CONINE: And Wachovia consented to that?

MR. OPIELA: We have a Wachovia representative here as well. Mainly we're working -- there is no provision prohibiting that in the limited partnership agreement, and this is the only way we can get those tax credits.

MR. CONINE: Interesting. Okay. Any questions of Mr. Opiela? Ms. Bast?

MS. BAST: Good afternoon. Cynthia Bast of Locke Lord. I am actually here representing Wachovia Affordable Housing, which is both the investor and the lender on these two transactions.

They do want to know that -- you to know that they are participating and cooperative in this process and that, in fact, they will also be willing to be a party to this agreement with TDHCA so that they, as the financing party, have some control over withholding draws and such to make sure that this accounting does happen.

Mr. Gouris did advise me -- and I need to correct the record -- we think we got the numbers wrong. We propose an escrow of \$200,000 for Madison Point and \$150,000 for Cathy's Point. And just as a final note, the tri-party agreement has been drafted. It is in a form that is substantially similar to a form that has been used in other similar circumstances with TDHCA.

This is a mechanism that we have used from time to time when there is something outstanding that needs to be completed but the 8609s need to be issued timely. I just did one of these back in October when some issues remained outstanding and the 8609s needed to be issued.

So this is not a unique situation. It's been done before. We are ready to go. We have a draft tri-party we're ready to talk to Mr. Hamby about. And we would appreciate your support of this appeal so that we can get this done and have these credits fully utilized. Thank you.

MR. CONINE: Is -- one question, Ms. Bast, that comes to mind that I probably should have asked Mr. Opiela. But in the 21,000 in extra credits in the second limited partner -- has the ownership percentage been whacked up and divulged to the Department as well?

MS. BAST: I don't think that those numbers

have been finally determined yet in terms of what ownership percentages will be.

MR. CONINE: Pro rata distribution on --

MS. BAST: I believe it would be a pro rata situation.

MR. OPIELA: We only became aware of this recently, and so --

MR. CONINE: Okay.

MR. OPIELA: -- we've been working to get that done.

MR. CONINE: Okay. Is there anybody -- Donald Pace?

MR. PACE: They said everything --

MR. CONINE: They said everything you --

MR. PACE: -- I was going to say.

MR. CONINE: Okay.

MR. PACE: That was all I was going to do was explain what happened.

VOICE: And, indeed, we've already provided the draft language for the escrow agreements to the Department as well. Thank you.

MR. CONINE: Okay. Any other -- any questions of staff? Mr. Gouris?

MR. FLORES: I move staff recommendation --

MR. CONINE: Wait a minute. You don't want to -- I don't think you want to do that. The staff recommendation was to deny.

VOICE: That's right.

MR. FLORES: Well, okay. I move to grant the appeal --

MS. RAY: With the escrow --

MR. CONINE: Subject to an escrow agreement.

MR. FLORES: -- with the escrow balance 200,000 on one project and 150,000 on the other one.

MR. CONINE: I don't know that staff's had a chance to review those numbers or whether they agree to them or not. You want to comment on that -- on the amount of the escrow agreement?

MR. GOURIS: To the extent that we've been able to review them they appear to be reasonable. We rounded up a little bit so they're more than the credit amount and we feel pretty confident that they'll get the work done.

MR. CONINE: All right.

MR. GOURIS: If you'd like us to look at it further and that would be a minimum amount we'd be glad to do that. But I'm --

MR. CONINE: Since the escrow amount changed while we were standing here for both projects I would

rather the motion say subject to staff approval --  
whatever the escrow amount is.

MR. GOURIS: That's fine.

MR. CONINE: Rather than us dictating a number.

MR. FLORES: It's a substantial amount of  
money. I'd like --

MR. CONINE: I know, but --

MR. FLORES: -- that's fine.

MR. CONINE: -- you know, the bouncing ball  
keeps moving around. I want to make sure staff's happy  
with it. Okay. I've got a motion from Mr. Flores and a  
second by Ms. Ray to do these on an escrow agreement I  
guess and also approve the additional credit purchase by  
the additional investor on the second transaction as I  
recall. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Where are we  
going next? 6(c). Okay.

MR. GOURIS: Not needed. We're good.



MR. CONINE: We're done now on 6(c)? Man, we're just trucking. Oh, wait a minute. I had -- well, that was dadgum Cynthia again. How many -- you filled out a thousand of these witness affirmation forms, girl. Okay. Let's go to 9 I guess. Item 9(a).

MR. POGOR: Good afternoon, Board Chairman, Board members. 9(a) is requesting approval of Resolution 09-014 authorizing entering into a new a new float fund investment agreement for the residential mortgage revenue bond, 2000 Series B-E, 2001 Series A-3, and 2003 Series A.

Each month a residential mortgage revenue bond, the RMB Program, receives prepayments and repayments from the mortgage loans. These funds are held and invested in a guarantee investment contract -- a GIC -- until they're sent in and principal and interest bond payments are due.

These RMB funds were invested in a GIC with American International Group, AIG. On September 15 AIG was downgraded by Standard and Poor's from AA- to A-. The AIG downgrade had a potential of having our three AAA rated RMB bonds downgraded.

Bond finance worked with our financial advisors, RBC Capital Markets, for several weeks along with our rating agencies to resolve this potential issue. After several working group meetings, including staff,

our financial advisors, bond counsel, and disclosure counsel, a decision was made to withdraw our funds from AIG on October 10, 2008. All funds from AIG were returned without incurring any cancellation or termination fees.

Staff is requesting approval to enter into a new float fund guaranteed investment contract with a new provider to replace AIG for the short-term investment of indentured funds. Staff will be working closely with our GIC broker, Grant Street Incorporated, to solicit investors through a competitive bid process. Staff is recommending approval of resolution 09-014, Item 9(a).

MR. CONINE: Any discussion? Questions? Do I hear a motion?

MS. RAY: Mr. Chairman, I move staff's recommendation.

MR. CONINE: Move staff approval -- staff recommendation for approval by Ms. Ray. Is there a second?

MS. BINGHAM-ESCARENOS: Second.

MR. CONINE: Seconded by Ms. Bingham. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. POGOR: Board Chairman, Item 9(b), 9(c), 9(d), 9(e), and 9(f) are very similar. I'd like to just kind of go through an overview with those, and we can either take those up individually or however you prefer.

Chairman and Board members, Item 9(b), 9(c), 9(d), 9(e), and 9(f) are requesting approval from -- of their respective resolutions authorizing the Department the convert the interest rate and mode on several single family variable rate mortgage revenue bonds and approve new remarketing agreements or amendments to remarketing agreements that will allow for variable rate reset mode changes depending on marketing conditions and approval of their respective reoffering circulars.

As you remember from our November 18, 2008, Board meeting, staff's plans on replacing our existing liquidity providers, DEPFA and DEXIA, which in turn will help move our bank bonds out to a market. Until that happens our professionals, along with staff, are also recommending that the Board delegate authority to the Chairman of the Board or executive director, the

authorized representatives, to direct our remarketing agents the ability to change the interest rate mode of our variable rate demand bonds based on market conditions.

The authorized representatives shall select an interest rate mode that will produce an economic benefit to allow the bond to be successfully remarketed. Based on marketing conditions at the time of the submission of these actions staff expects to direct a change from a weekly mode to a daily mode. Currently these -- there is a market for DEXIA daily bank bonds as investors are more than likely to invest in variable rate demand bonds that are reset daily.

If new liquidity providers are found before the reset conversion to daily mode is completed or if there is an economic benefit to changing the interest rate and mode in the future staff is requesting Board approval to allow for variable rate reset mode changes depending on market conditions. Staff will inform the Board if reset mode changes are made.

To ensure proper disclosure to the market TDHCA has prepared several new public offering documents, known as reoffering circulars, for public -- for Board approval.

These reoffering circulars will give investors detailed information about the structure and the liquidity

providers that may be replacing DEXIA and DEPFA, along with updated TDHCA financial information.

Board resolutions associated with these action items 9(c), 9(d), and 9(e) will help diversify the remarketing agencies for TDHCA. Of the total \$191.8 million dollars in total DEXIA variable rate demand bonds J.P. Morgan is currently remarketing \$149.9 million in variable rate demand bonds, CitiGroup is remarketing 6.9 million, and Piper Jaffray is currently remarketing 35 million.

By approving the above resolutions -- the mentioned resolutions -- Piper Jaffray will be remarketing 98.8 million, leaving J.P. Morgan with 93 million.

Staff is recommending approval of Resolutions 09-015, Item 9(e), 09-016, Item 9(c), 09-017, Item 9(d), 09-018, Item 9(c), and 08-019, Item 9(f).

MR. CONINE: Do I hear a motion?

MR. FLORES: Motion to approve.

MR. CONINE: Motion to approve by Mr. Flores.

Do I hear a second?

MS. BINGHAM-ESCARENOS: Second.

MR. CONINE: By Ms. Bingham. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. POGOR: Thank you.

MR. CONINE: Thank you. Trying times.

MR. GERBER: Mr. Chairman, if we just turn quickly to Item 11(a), which is the OCI item. This is an award for Webb County, an award under Colonia Self-Help Center Program. Webb county successfully completed project activities under [indiscernible] contracts. We're recommending the amount of 1.2 million in accordance with the plan's self-help program rules. And we'd ask the Board to approve those funds.

MR. CONINE: Is there a motion?

MS. BINGHAM-ESCARENOS: So move.

MR. CONINE: Motion by Ms. Bingham. How about a second?

MR. FLORES: Second.

MR. CONINE: Second by Mr. Flores. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

VOICE: Jeannie [indiscernible] 10(a).

MS. ARELLANO: Jeannie Arellano, director of the HOME Division. And if it's okay we'd like to review agenda 10(n) first, the fund balance report.

MR. CONINE: 10(m)?

MS. ARELLANO: N, as in Nancy.

MR. CONINE: N, as in Nancy. Okay. Change it up a little?

MS. ARELLANO: This is a report that you've seen before, and it is the report that we prepare monthly. And it's the Department's internal tracking of available balances of HOME funds.

The beginning balance of this report is the previous month's total of HOME funds that were available in HUD's IDIS system. This total includes primarily funds that have not been awarded to a contract administrator, which may include a balance of funds from an undersubscribed NOFA, deobligated funds and programming

can be received. And the reconciliation provides a monthly reconciliation of activities that affect the Department's balance with HUD and ends with the balance of the current HOME funds available in IDIS.

The report also separates into the two categories of funds, the CHDO funds and non-CHDO funds. And those are further segmented into federal and programmatic set asides and open NOFAs.

Finally, the fund balance report provides a grant total of HOME funds available for programming after mandated set asides, Board approved awards that do not have contracts -- executive contracts or commitments, and published open NOFAs that -- and open NOFAs that have been reserved.

The current report reflects roughly \$9.4 million available for programming. And after analysis of the subscription rate of various open NOFAs staff is making recommendations for the programming of those funds for the action items that I'll present after this. And details regarding the status of all the current open NOFAs are also provided in the Board item. I just wanted to see if you have any questions.

MR. CONINE: Any questions of Ms. Jeannie?

(No response.)



MR. CONINE: No questions. Thank you.

MS. ARELLANO: So I'll move on to Item 10(b).

MR. CONINE: B? Okay.

MS. ARELLANO: The HOME awards.

MR. CONINE: What happened to A?

MS. ARELLANO: I'm sorry. A was pulled.

The --

MR. CONINE: Okay.

MS. ARELLANO: -- administrator requested to pull the appeal.

MR. CONINE: Now you can go to (b).

MS. ARELLANO: Okay. B. These are HOME loan recommendations. On July 31 the Board approved our 2008 single family NOFA, which made available roughly \$22 million for single family activities. Approximately 16 million is made available for the Owner Occupied Housing Assistance Program, almost 3.5 million was available for Homebuyer Assistance, and 2.5 million was available for the Tenant-Based Rental Assistance Program.

The NOFA provided an open application process and the funds were subject to the RAF until October 15, 2008. On October 16 any funds not requested were made available statewide to any region but still remained within the activity -- HOME program activity set aside

specified in the NOFA until January 15, 2009.

On January 16, 2009, any funds not awarded or requested will be made available to any region for any activities that are available under the NOFA until the earlier of the award of all the funds or April 30, 2009.

To date we've received 53 applications totally a little over \$17 million, 39 applications totally \$12 million, and project funds were received by the October 15, 2008, deadline that was subject to the RAF.

Applications subject to the RAF were submitted in all regions except for Region 2. Eligible applicants were funded in each HOME activity based on the availability of funds in each region and area type. Eligible applicants that were not funded utilizing the RAF process due to an oversubscription or the funds available were not sufficient to reasonably fund an application were ranked in order by date and times received and will be recommended for funding under the funds available after the collapse.

There is note that Webb County application number 2008-0084 requested \$240,000 in project funds and \$4,800 in administrative funds and proposed to assist eight households. Staff is recommending the number of units be reduced to four due to the amount of funds

requested and the maximum amount of assistance per unit under the OCC Program.

There is detailed information provided in the write up and do thank you all for your guidance and support and consideration of these awards. And if they're approved today, today's awards will assist 254 families throughout the state of Texas.

MR. CONINE: That's a nice round number -- 254 counties, 254 families.

MR. GERBER: Jeannie, with respect to Webb County, is -- are they in agreement in reducing the number to four?

MS. ARELLANO: I need to ask Cindy if she's been in contact with them.

MR. GERBER: It's basically four --

MS. ARELLANO: It's basically to their benefit because otherwise we'd put in their contract that eight would be required as opposed to the four. They can still do either if that's what they end up determining assisting, but they're contractual requirement will be four.

MR. GERBER: Okay.

MR. CONINE: Okay. Is there any other questions?

(No response.)

MR. CONINE: If not I'll entertain a motion.

MS. BINGHAM-ESCARENOS: Move to approve staff's recommendation of the allocation.

MR. CONINE: Move to approve staff recommendation of the HOME awards. Is there a second?

MR. FLORES: Second.

MR. CONINE: Second by Mr. Flores. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Motion carries.

MS. ARELLANO: Item (m) is -- we're presenting several of our NOFAs -- current open NOFAs for some changes. And I'll detail the NOFAs individually and their current status on them.

The Rental Housing Development NOFA was one that was approved on July 26, and it was originally a set aside of \$5 million for new construction, rehabilitation, acquisition, and rehabilitation of affordable rental housing, and the 2008 CHDO NOFA set aside right under \$6 million.

Subsequent to approval of these initial funding levels the Board approved transferring all the money that's under our 2007 NOFAs to the 2008 NOFAs. To date staff has transferred almost \$9.5 million in uncommitted funds from the 2007 Rental Housing Development NOFA to the 2008 Rental Housing Development NOFA for a total available balance of almost \$14.5 million.

The Department has a total of \$15 million in pending applications under this NOFA, which is a oversubscription of approximately \$500,000. Staff received four applications under the 2007 Rental Housing Development NOFA that also submitted applications for housing tax credits under the 2008 competitive cycle.

These four applications were not previously reviewed and awarded HOME funds because they were placed on the waiting list for tax credits. At the November 13 Board meeting the Board directed staff to review all applications on the waiting list for forward commitments of the 2009 housing tax credits.

Since the original HOME NOFA has closed staff recommends transferring these applications to the 2008 Rental Housing Development NOFA and using the received date of July 26, 2008, the first day of the application acceptance period for this NOFA.

If approved in conjunction with the recommended additional funds described below the available new funds to any of the other applications received before the date of this meeting will not be impacted. These for applications total \$1,875,000 in HOME funds.

As for the CHDO NOFA we've transferred \$370,000 in uncommitted funds from the 2007 CHDO NOFA to the 2008 CHDO NOFA. As a result the total available balance of funds in the 2008 CHDO NOFA is \$6.3 million. To date the Department has received one \$4 million application for funds under the 2008 CHDO NOFA which, if funded, would leave a balance of approximately \$2.3 million in that NOFA.

Based on the current level of requests and the significant amount of 2007 HOME funds awarded to developments layered with 9 percent housing tax credits staff expects applications received during the next several months to far exceed the current available funds.

Staff has also received an increase in interest from applicants that have already received Department funds but need additional sources of funding due to the tightening credit and debt markets.

Staff recommends transferring some additional funds from the approximate 9.5 million balance of funds

available for programming discussed previously in the HOME fund balance report for new housing development and revising the current CHDO and all RHD NOFAs as follows.

Transferring \$5 million from the Department's deobligated funds and program income balance to the 2008 Rental Housing Development NOFA, revising the RHD NOFA to allow CHDO applicants to apply and receive up to \$4 million per development as allowed under the NOFA in the current rules. If approved staff would utilize all of the funds available under the CHDO NOFA before accepting applications under the RHD NOFA, and revising both of the 2008 RHD and CHDO NOFAs to include an abbreviated application process for developments that have a recent tax credit allocation or HOME contract with the Department.

If approved this would codify an existing process that executive has made available in the wake of the current economic environment.

Additionally -- last item for the multifamily NOFAs -- staff has also received input to allow HOME loans repayable from cash flow. The current RHD and CHDO NOFAs do not allow loans that are repayable from cash flow. Due to the current level of applications and based on additional research done by staff, staff does not

recommend revisions to allow for cash flow debt structures.

It should also be noted that the Board previously approved a version that was proposed by staff to allow forgivable debt under limited circumstances. The most apparent reason is the Department has limited funds available with 13 applications pending and \$19 million in funding requests.

With preliminary review [indiscernible] submitted an application that has repayable loan terms requested. And just some of the research that we have done is that we've received approximately \$2.3 million in program income in the last 12 months that's almost exclusively from repayable loans. Of the current portfolio 65 percent have never made a current cash flow portfolio -- 65 percent have never made a payment and 75 percent haven't made a payment in the last 12 months. 85 percent of these loans were made prior to 2002.

MR. GERBER: Have some oxygen.

MS. ARELLANO: Indicating the very low probability of repayment from a cash flow loan as contrasted with our amortizing loans.

Lastly, program income from amortizing loans will over time expand overall the proceeds, enabling the



Department to fund more worthy multifamily developments.

I'm going to go through single family NOFAs since the recommendations include all of the NOFAs.

The single family NOFA, the one that you just approved awards for -- similar to the RHD NOFAs, in order to keep funds available or to meet HUD commitment requirements, staff recommends transferring \$4 million and declaring funds from the approximate 9.5 million balance of funds available for programming that I discussed in the HOME fund balance report agenda item.

The additional \$4 million is recommended to be set aside for the Owner Occupied Housing Assistance Program until the program activity collapse in the NOFA in January of 2009. We're continuing to receive requests for funding and anticipate recommending numerous awards at the February Board meeting also. I tried to make it fast.

MR. CONINE: You did good. You read well. We have one witness affirmation form left in the whole day. And his name is Mike Sugrue -- saved the best for last.

MR. SUGRUE: I don't know that I'd go that far. All right. Good afternoon, good evening, Merry Christmas again. Boy, what a day. Mike Sugrue, Solutions Plus.

I'm here to give you the saga of Chandler, Texas. And it has to do with RHD NOFA and what I think

need to be done -- or needs to be done if we're going to provide housing to some of the rural Texas counties.

I believe we have 254 counties. I would venture to say probably 200 counties cannot be served the way it's currently written. Here's the saga of Chandler.

Chandler, of course, came in '07 for an application -- didn't work.

We didn't have enough points. We came back for an '08 application after they formed a neighborhood organization. We got enough points. They thought they were getting 80 senior units. The market being what it is you can't sell the credits. I go back to City Council. They don't like me very much anymore because now I have to rescind the 80 units of senior housing I was going to give them, and they already have a 15 person waiting list.

And they asked me, What should I do with these.

I said, Well, the nice people at the Agency have asked me to try to do this with all HOME funds, so I'm going to give it shot, so let me see what I can do with that.

So I come back -- and I've learned a lot more about HOME than I ever thought I was going to know between now and then. And Barbara Skinner and I have had a great conversation about 80 percent home rents, which I had a hard time getting through my thick skull because there's a

55 rental level but an 80 percent tenant can occupy it -- and I had a hard time getting my arms around that. But that's a federal program, not state.

But when I was doing the tax credit deal I had to ask the city for 5 percent of total development cost, which was \$400,000. They had to leave that money in until C-0 and they would get it back. Now, with -- if they want to do it with HOME I've got to ask them for 5 percent of total development cost, which is 160,000. They were real happy about that until I tell them, No, it needs to stay in at least 20 years, but probably 40 to make the deal work. They say, Excuse me, we don't have kind of money to give you for that length of time.

So then we say USDA works on the parity -- let me go get USDA. And the NOFA as it's being proposed will allow if I do 50 percent of the units at 30 and 50 percent incomes I can request a 50 percent forgivable on the HOME.

So if I get 3 million on HOME I can ask for a million-and-a-half to be forgiven.

However, after meeting REA rules with Tom here and keeping my expenses to 65 percent I can pay back basically a million-two, not a million-five. So if the people in Chandler are going to get any housing at all we're going to have some modification. I'll stop there

and see what question you may have about that.

Now, I also ran the numbers for 100 percent at 30 -- 100 percent of the units at the low 50 percent 30s and 50s and could be, you know, crass and ask for 100 percent forgivable, but we understand the need to recycle the HOME funds and that would not work.

But even then if I tried to do that with the cash that would be available from operations after expenses could probably pay back a little over 700,000. So might as well go for the million-two and put in the other units at 55 percent income level, if you will -- but they're called high home or 80 percent units. And Cameron can correct me, I'm sure.

MR. CONINE: I've got to ask Jeannie a question. Where did Jeannie go?

MR. SUGRUE: She's right here.

MR. CONINE: Did you understand a damn thing what he said?

MS. ARELLANO: 55 percent of it.

MR. CONINE: Okay.

MS. ARELLANO: Cameron is very familiar with the transaction, and if you have questions --

MR. CONINE: Let me ask more of a policy question here. This NOFA is going out for public comment

or this is is?

MS. ARELLANO: The NOFA is already out. It's already an open NOFA. We are just making adjustments to some of the language and requirements in the NOFA.

MR. CONINE: And he's asking to make more adjustments --

MS. ARELLANO: I believe that's --

MR. CONINE: -- in order to fit Chandler into a box that --

MR. SUGRUE: And others.

MR. CONINE: And others. Right. Because if he's got problems then others will have problems. And we've attempted to work with USDA on numerous occasions, you know, somebody might want to comment on how that relationship. Cameron, you want to go ahead and comment on the technicality of what Mr. Sugrue has laid on the table?

MR. DORSEY: Sure. What we've done is -- sorry. Cameron Dorsey, multifamily program administrator in the HOME and Housing Trust Fund Programs Divisions.

What we've tried to do is -- in the HOME Program for rental deals we've created an open cycle application process. And in doing so you don't have the competitive nature where you score applications based on

things like repayability of the debt and that type of thing. So we've had to establish a minimum threshold that makes sense where we can commit all of our funds, but we don't expect too little of transactions in terms of income targeting, repayment of the funds, and that kind of thing.

So at the current threshold level we expect we will be able to commit all of the funding we have available, and that's why we've requested to -- recommended to add an additional 5 million to the NOFA.

You know, I agree -- I've worked with Mike on his deal on the phone pretty extensively with him. And I think doing this transaction -- 30 units in Chandler -- with virtually 100 percent HOME financing under the current NOFA would be very, very difficult. I do agree with that.

However, I would point out that, you know, HOME funds -- all of these funds are only available in non-participating jurisdictions which are primarily rural Texas anyway. And being that, you know -- they're only available primarily in rural Texas and we still have the level of application that we've got. You know, we're oversubscribed right now.

So, you know, we've got deals that we're looking at in Holland, Texas, and Maybank, Texas, and

Huntington and Eagle Lake and, you know, pretty rural places, given a lot of these transactions do propose rehabilitation of existing USDA 515 deals. But, you know, we've got to establish a minimum requirement and try to make -- create a requirement where we can commit all our funds, but still get a good level of deep-rent targeting and that kind of thing.

And so that's what we've tried to do. And, you know, staff can't recommend changing the entire NOFA based on Mike's particular deal. I mean, if the Board would like, you know, direct staff to look at his deal in particular and the circumstances of it and maybe recommend -- or look at a different structure for that deal, then, you know, we will gladly do so. But in terms of changing the NOFA, you know, staff just can't recommend that at this point.

MR. CONINE: Okay.

MR. SUGRUE: And don't you agree the real issue is new construction? It works -- it does work pretty well with rehabs -- if you're doing USDA rehab. But new construction is very, very difficult.

MR. DORSEY: New construction would be very, very difficult. I think that there are many places in rural Texas that could make it work. It would be very,

very, very tight. But that -- you know, prior to November there was no provision for any debt forgiveness, so, you know, we're taking a crack at it. And to the extent that we can't commit all of the funds -- and we can take a look at it in the future and look at revising that so that we can commit all of the funds we've got.

MR. CONINE: There's nothing preventing him from pushing you to the point where you would submit his project in the form of requesting amendments from the Board in order to make it fit I would presume.

MR. DORSEY: Well, he hasn't made application --

MR. CONINE: Right.

MR. DORSEY: -- for the HOME funds yet. So, you know, staff could not recommend the type of structure that he's requesting. However, if you all would like us to take a look at it in this particular case we certainly would.

MR. CONINE: It sounds like to me there needs to be some further dialogue relative to the rural development community and their ability -- for oversubscribed under this format then we've got -- and we need another format to fit some areas there needs to be some degree of consensus before we have to deal with it.



MR. DORSEY: I would point out that we did have kind of a roundtable discussion several months back about the leveraging requirement and about second lien position issues and that kind of thing. And some of these issues have been talked about in previous discussions. And, you know, it just comes down to this is a limited resource and the expectation to get as much of the funds repaid as possible is really important because it's a very important source of program income for the Department that can be recommitted.

MR. SUGRUE: I don't disagree with trying to get as much of it repaid as possible. But the purpose of HOME funds is to be able to put housing on the ground. So obviously I agree -- let's get it back as much as we can, but let's provide the housing and get back what we can.

MR. CONINE: Well, if there's a -- my concern is your statement that there's a bias toward rehab the way it's structured versus new construction -- and I have a concern about that. And if that's the case then I want to -- I want staff to take a look at resolving that bias, especially for these small, you know, 20- and 30-unit projects all over the state. Because there's no syndicator in the world today that's going to buy a tax credit in those small deals like that.

And I don't mind doing some rehab, but I don't want to be forced by the structure of the program to be doing all rehab versus no new construction. And if that's the case we need to fix it.

MR. GERBER: Mr. Chairman, can I --

MR. CONINE: Sure.

MR. GERBER: -- propose that perhaps we approve the NOFA, but it being contingent on staff bringing it back to you before the end of the week -- we'll have some additional dialogue this week -- well, or early next week, with Mr. Sugrue and with Jeff Crozier and others to make sure that we're responding to that concern, and then issue it at that.

MR. CONINE: Well, that's why I asked the question that you can also come back and ask for -- you know, this thing's outside the box, will the Board approve it not. And there's no guarantees, but I just don't want staff to tell him, no, we're not going to deal with it because it doesn't fit into the box day one. That's kind of where I'm going.

MR. GOURIS: If he makes application we can go through the appeal process when we deny it, but to give you some solutions we can also -- if he doesn't make application between now and next Board meeting we can come

back at the next Board meeting with additional modifications to the NOFA, assuming there's still funds available, to try to address some of these things.

And then, of course, the next batch of HOME funding will be coming down the pike and that will be incorporated in that next NOFA too.

MR. SUGRUE: And one other thing that's just -- it's applicable -- I'm currently sitting on a million-seven HOME award for Chandler when it was a tax credit deal, which we were going to add to to be able to try to do new construction. And that's -- instead of turning it back I was asked to see if we couldn't make it work as all HOME to begin with. So I don't want to keep funds away from someone else who might be able to use them if this turns into something I can't do.

MR. CONINE: I understand. But it's -- as you saw with the tax credits there's a process for rescinded funds, and we don't like to usurp that process if we can keep from it.

MR. SUGRUE: I understand.

MR. CONINE: Okay. Thank you.

MR. FLORES: So if we approve the NOFA now we can then tweak it in February to see if we can some balance on new construction versus reconstruction.

MR. CONINE: That's what I'm hearing.

MR. FLORES: So I make that a motion.

MR. CONINE: So a motion to approve all the NOFAs, single and multifamily. Right?

MR. FLORES: Yes.

MR. CONINE: Right, Jeannie? All the NOFAs getting approved. There's a second by Dr. Munoz. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. I believe that concludes our agenda for the day. Oh, we've got the executive director's report.

MR. GERBER: I will leave the items in the Board book for you all to review. I just wanted to just -- I want to especially commend the HOME division. I think it's real important to note what happened here in the award of 254 homes for low-income Texans. That's an extraordinary accomplishment and we look forward to seeing those homes get built in the months ahead.

Also I think it's also important to note that the issues you all dealt with today were issues that deal with moving forward the construction of about a billion dollars -- total value of about a billion dollars when you talk about the '07 and '08 credits and the total value of that construction. That's an incredible amount of economic stimulus to the state of Texas that you all are having a direct hand in setting policy for.

We appreciate your attention to the issues, the guidance you've given us over the last year, and we wish you all very happy holidays.

MR. CONINE: And I'd like to echo that as well. Appreciate everybody participating through the year. Everyone have a Merry Christmas and Happy New Year. Thank you. Meeting's adjourned.

(Whereupon, at 4:05 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: December 18, 2008

I do hereby certify that the foregoing pages, numbers 1 through 238, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing & Community Affairs.

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(Transcriber) 12/22/2008  
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