

BOARD MEETING OF THE
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Room 437
Waller Creek Office Building
507 Sabine
Austin, Texas

11:00 a.m.
Friday,
January 26, 2001

BOARD MEMBERS:

MICHAEL JONES, Chairman
ROBERT DAROSS
C. KENT CONINE
MARSHA WILLIAMS
LYDIA SAENZ
DONALD R. BETHEL
ROBERT BREWER
MARGIE BINGHAM
DR. FLORITA GRIFFIN

ALSO PRESENT:

DAISY STINER, Executive Director

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P R O C E E D I N G S

1
2 MR. JONES: I would like to call the Board
3 meeting for the Texas Department of Housing and Community
4 Affairs of January 26, 2001 to order. And as we begin our
5 meeting, I would like to recognize a few honored guests
6 that we have with us. We have Danette Rich here from the
7 Governor's office.

8 Danette, good to see you.

9 We have Paul Hudson here from the Governor's
10 office.

11 Paul?

12 (Pause.)

13 MR. JONES: It's good to see Paul, wherever he
14 may be.

15 DR. GRIFFIN: There he is at the back.

16 MR. JONES: Here he is.

17 Hey, Paul, how are you?

18 We have Michael Grimes here from Senator
19 Harris' office.

20 Michael?

21 And Johnnie Morales from the speaker's office.

22 And I know I saw Donna Chatham. She was here.

23 Hi, Donna.

24 Donna's here from the chairman's office.

25 So we're so glad to have you all with us.

1 The first order of business would be the roll
2 call. James Daross?

3 MR. DAROSS: Present.

4 MR. JONES: Donald Bethel?

5 MR. BETHEL: Here.

6 MR. JONES: Margie Bingham?

7 MS. BINGHAM: Here.

8 MR. JONES: Robert Brewer?

9 MR. BREWER: Here.

10 MR. JONES: C. Kent Conine?

11 MR. CONINE: Here.

12 MR. JONES: Dr. Florita Bell Griffin?

13 (No response.)

14 MR. JONES: Absent.

15 Lydia Saenz?

16 MS. SAENZ: Present.

17 MR. JONES: And Marsha Williams?

18 MS. WILLIAMS: Here.

19 MR. JONES: And Michael Jones is here. So I
20 determine that we do have a quorum.

21 The next order of business will be public
22 comment. And I have certain witness affirmation forms.
23 And at this time, I would like to give everyone the
24 option -- who has signed up for public comment -- of
25 either speaking immediately or speaking at the time of

1 some item on the agenda. So if you could tell me which
2 you will prefer to do, we will accommodate you in that
3 respect.

4 The first one is Mr. Bobby Bowling.

5 MR. BOWLING: I'd prefer to speak when you
6 address the QAP.

7 MR. JONES: The QAP? All right. Thank you,
8 sir.

9 Mr. Rowan Smith?

10 MR. SMITH: The same thing: On the QAP.

11 MR. JONES: Mr. Don Markson?

12 MR. MARKSON: The QAP, also, please.

13 MR. JONES: Mr. Johnson?

14 MR. JOHNSON: The QAP.

15 MR. JONES: Mr. Leonard?

16 MR. LEONARD: Yes, sir. I'd like to speak now
17 if I could, sir.

18 MR. JONES: You certainly may.

19 MR. LEONARD: Good morning, Mr. Chairman and
20 fellow board members. My name is Mark Leonard, and I'm
21 here representing the Texas Youth Build Youth Works
22 Coalition.

23 As you well know, the Texas Youth Works program
24 is a program that began under your administration
25 approximately four years ago. And I'd like to just thank

1 you for the support that you've given the program all
2 along; I believe it has been a very successful program.
3 In its first cycle of fundings, 60 homes have been
4 produced, and 464 young people -- these are high school
5 drop-outs -- have been served by the program.

6 I'm here today to just kind of update you on
7 discussions that we've been having with staff, Ms. Stiner,
8 Ms. Cedillo and Ms. Morris. And we have been trying to
9 identify additional funds to keep the program going.

10 In the five-year consolidated plan, although it
11 was recognized as a successful program, no additional
12 monies were put into it. And over the last several
13 months, we have managed, working with staff, to identify
14 approximately \$1 million in funds that can be added to the
15 program.

16 And I'm here just to congratulate the staff on
17 the fine job they've done with working with the Coalition.

18 The Coalition looks forward to continuing intensive
19 negotiations with staff, and the reason for that is that
20 the commitment from the State of Texas for the Texas Youth
21 Works program is an absolute necessity to have in hand
22 when the individual programs apply directly to HUD for the
23 Youth Build monies.

24 The Youth Build monies are used to pay the
25 stipends to the young people who are completing their high

1 school education and getting on-site job training. The
2 Texas Youth Works program has provided interim
3 construction financing for materials, labor and some of
4 the other costs -- site acquisition costs. The two have
5 to go hand in hand.

6 During the two years -- the two funding cycles
7 in the Texas Youth Works program, the eight organizations
8 around the State of Texas that were funded by the Texas
9 Youth Works program received a little over \$3.8 million in
10 the HUD funds. An additional leverage of about another
11 \$1.2 million among the groups brought the leverage ratio
12 up to close to three to one.

13 So we believe the program has been very
14 successful in leveraging both private foundation dollars
15 as well as other federal monies. We look forward to the
16 continued funding of this program.

17 I can't help but think that in the battle cry,
18 or whatever it might be, that I believe we can all get
19 behind, and that is to leave no child behind -- that this
20 particular population, these youth at risk, ages 16 to
21 24 -- that this program may be better than any other
22 program that the Department is involved in is the last
23 attempt to work with these young people, get them to
24 complete their secondary education, earn scholarship money
25 to go on and continue their college education and, in the

1 meantime, have job skills that will make them very
2 marketable out in the employment fields.

3 So I wanted to just commit the continued
4 participation of the ten non-profit organizations around
5 the state that are members of the Coalition, eight of them
6 that have been funded by the Department, and look forward
7 to continue to work with them.

8 Our goal is to have a commitment from the
9 Department under the Youth Works program by June 1; that's
10 the date annually that applications directly to HUD for
11 the Youth Build monies have to be submitted. And you're
12 not competitive unless you go in with a commitment of
13 interim construction funds.

14 So I realize that time is short and everybody
15 has got many things on their tables, but the Coalition
16 will work in whatever way is necessary to get this job
17 done. I thank you for your attention.

18 MR. CONINE: Mr. Chairman, can I ask a
19 question?

20 MR. JONES: Mr. Conine?

21 MR. CONINE: How many -- you said you've been
22 through two funding cycles now -- is that correct --

23 MR. LEONARD: Yes, sir.

24 MR. CONINE: -- with the Texas Youth Build.

25 MR. LEONARD: '98 and '99.

1 MR. CONINE: How many kids last year did you
2 affect, influence, job train or whatever the case may be?

3 MR. LEONARD: Okay. A total of 464 young
4 people between the ages of 16 and 24 participated in the
5 program. Of that number, a very high rate, 351, completed
6 their education and their training and went on to further
7 employment or are still in the program still being
8 trained.

9 MR. CONINE: You actually place them in the
10 private sector?

11 MR. LEONARD: Yes, sir. There are job
12 placement -- once the secondary education component is
13 completed and they've completed their on-site job skills
14 training, a very important part of the program is the job
15 placement, the leadership training that goes along with
16 that, and the individual counseling that's provided to the
17 young people so that they can work out whatever other
18 situations are going on in their lives.

19 And as I've mentioned, this is the one program
20 that provides that particular age group, that at-risk age
21 group, with the assistance that they need and that will
22 keep them out of poverty and out of our judicial system.
23 Approximately 80 percent of the young people served by the
24 Texas Youth Works program have had some interaction with
25 juvenile services or have been adjudicated. So --

1 MR. CONINE: Yes. I've got some thoughts for
2 you, but we can talk about it after the meeting.

3 MR. LEONARD: Very good. Thank you, very much.

4 MR. JONES: Thank you, sir.

5 Ms. Maxwell?

6 MS. MAXWELL: I'd like to talk on the QAP.

7 MR. JONES: Ms. Andre?

8 MS. ANDRE: The QAP.

9 MR. JONES: Okay.

10 Joe McCartt?

11 MR. McCARTT: The QAP, please, sir.

12 MR. JONES: Ms. Langendorf?

13 MS. LANGENDORF: QAP.

14 MR. JONES: Mr. Clayton?

15 MR. CLAYTON: Mr. Chairman, members, I would
16 speak in relation to an item on your agenda, the ex parte
17 rule. This department, this agency, has a great task to
18 do: Fulfilling the needs of low-cost housing for
19 moderate- and low-income families. And as you well know,
20 there has been a lot of question, doubt and criticism over
21 the years as to some of the activities, and a lot of it, I
22 think -- and most of it -- totally unjustifiable.

23 But to me, this might be one way of improving
24 the -- at least the perception out there in the arena and
25 keeping some of you board members off of the hot-seat,

1 because -- an ex parte rule is used in a lot of agencies.

2 And this is simply -- and this particular issue
3 that we're talking about has been recommended to the
4 Sunset Commission, and they're highly in favor of it. But
5 it applies only during the cycle and applies to the tax
6 credit program. And when that cycle is ended, the members
7 who are applicants for tax credits could not contact board
8 members and lobby them personally; they work only with the
9 staff, and then staff makes their recommendations to you.

10 And that way, therefore, the Board is not --
11 does not have any inclination to have heard sources from
12 high-pressured lobbying from these clients that are
13 applying for tax applications -- credit applications. And
14 it -- to me, it's just a sensible thing; it's a protection
15 to you, and I think it might be a perception to -- cause a
16 perception that would be very helpful out in the
17 community.

18 And that's all I have, Mr. Chairman.

19 MR. JONES: Thank you, Mr. Clayton.

20 Any questions?

21 (Pause.)

22 MR. JONES: We would love to get off the hot-
23 seat.

24 MR. CLAYTON: Thank you.

25 MR. JONES: Thank you, sir.

1 MR. JONES: Mr. Barry Palmer?

2 MR. PALMER: QAP.

3 MR. JONES: Mr. Ray Ocanas?

4 MR. OCANAS: QAP.

5 MR. JONES: And those are all the witness
6 affirmation forms I have. Have I missed any?

7 (Pause.)

8 MR. JONES: And for those who have not spoken
9 as yet: It seems like everybody wants to speak with
10 regard to the QAP; so when we take up that item, we will
11 open the meeting up for public comment once again if
12 that's the pleasure of the Board.

13 MR. BETHEL: We could just pass on the QAP.

14 (Laughter.)

15 MR. JONES: I don't think that's an option.

16 I then would turn the Board's attention to Item
17 Number 1, which is the presentation, discussion and
18 possible approval of the minutes of the board meeting of
19 December 8, 2000.

20 MR. BETHEL: I move approval.

21 MR. JONES: The Chair has had a motion that
22 they be approved. Is there a second to that motion?

23 MS. WILLIAMS: Second.

24 MR. JONES: The motion has been seconded by Ms.
25 Williams. Any discussion?

1 (Pause.)

2 MR. JONES: Any suggested amendments or
3 revisions, supplementations or additions?

4 MS. WILLIAMS: Mr. Chair?

5 MR. JONES: Yes.

6 MS. WILLIAMS: On page 4, I think -- right
7 before where it says, "Report Items," I think there's a
8 misspelled word in the Board versus the executive
9 director. I think versus should be V-E-R-S-U-S.

10 MR. JONES: Okay. Well, I'll accept that as an
11 amendment.

12 Will you accept that as a friendly amendment,
13 Mr. Bethel?

14 MR. BETHEL: Yes.

15 MR. JONES: Okay.

16 (Laughter.)

17 MR. JONES: So we have the motion on the floor,
18 as amended. Are we ready to vote? I assume we are.

19 All in favor of the motion please say aye.

20 (A chorus of ayes.)

21 MR. JONES: All opposed say nay.

22 MR. BREWER: I have to abstain. I wasn't here
23 at the meeting.

24 MR. JONES: Yes.

25 MS. SAENZ: I abstain, also.

1 MR. JONES: Okay.

2 The ayes have it.

3 We will then turn to Item Number -- I need
4 those back.

5 MS. BINGHAM: They're going to record the names
6 and give them back to you.

7 MR. JONES: Okay. Well, I think it's time now
8 to --

9 MR. BREWER: Oh, to do it?

10 MR. JONES: -- call them.

11 MR. BREWER: We moved to that pretty quickly.

12 MR. JONES: Yes, we did.

13 We now will move to Item 2 on the agenda, which
14 is the Presentation, Discussion, and possible Approval of
15 Low Income Housing Tax Credit Items, and I will turn that
16 over to Ms. Bingham.

17 But before I turn it over, would you like me to
18 call for public comment?

19 MS. BINGHAM: Yes, sir.

20 MR. JONES: All right. On 2a. And the first
21 one is Mr. Bobby Bowling.

22 MR. BOWLING: Thank you. Thank you, ladies and
23 gentlemen, for your time this morning. I apologize. I
24 hadn't had time to go through the most recent memo with
25 some of the updates to the QAP with what I was prepared to

1 speak on, but I notice that some of the items are
2 addressed.

3 But I'll go ahead and start with what I was
4 going to speak to you on anyway. I realize that at the
5 point of time we are in the game with approving the QAP,
6 so my suggestions are not in order to delay or maybe to
7 address some of this minutiae more on a staff
8 discretionary basis or a board oversight basis.

9 Before I start, I'd like to mention that with
10 these comments I'm about to present to you, I did address
11 staff at the round table discussion that was held last
12 September. I participated in the public hearing that came
13 to El Paso in December, and I've also submitted my written
14 comments before the deadline of -- I think it was December
15 23 or somewhere in there.

16 But the three items that I think are still
17 lacking or need to be addressed at some point in the QAP
18 are, first of all, Senate Bill 1112 comes into play for
19 the first time this round, and I believe that the statute
20 that was drafted by Senator Shapleigh from El Paso states
21 very clearly that the service regions and the allocations
22 based on service regions shall occur and that they are a
23 direct express mandate for the low income housing tax
24 credit funding.

25 I think that the current language or the

1 proposed language in Section 50.6 which states that this
2 formula will establish targeted tax credit amounts for
3 each of the state service regions I think needs to be
4 looked at real closely and make sure that it's not just a
5 target or a goal for the department, but that the statute
6 actually does mandate that the funds be allocated in this
7 manner.

8 The second item and the third item that I have
9 to address come from my experience in last tax credit's --
10 last year's allocation of the tax credits. Our proposal
11 last year scored 88 points in the nonprofit set aside, and
12 staff cited two reasons for denial for our project, while
13 awarding another project in El Paso with 79 points.

14 The two reasons were 90-plus letters of
15 opposition on file that the staff had received from our
16 community. And under the open records acts, I flew down
17 and took a look at the letters that you have on file. Out
18 of the 92 letters that are on file, one has an original
19 signature.

20 And I think just as an overall procedure for
21 staff to accept letters with photocopied signature in all
22 funding or in all consideration of requests for
23 applications for funding should be something that needs to
24 be taken care of or administered.

25 There was lots of discussion at the round table

1 meeting as to how to further address legitimate complaints
2 or legitimate opposition within a community. Again, I
3 would just ask at this point that instead of getting into
4 minutiae in the QAP, I think 32 pages for a QAP is
5 probably enough.

6 But if staff could just lend some oversight,
7 maybe some common sense, maybe a courtesy call to the
8 developer or to one of the public officials that's on
9 file, that -- do you know there's some purported
10 opposition to this project in your community, in which you
11 may be on record of supporting or you're the builder-
12 developer involved in the process.

13 And the last item that I'd like to address, and
14 I think it's probably been addressed a little bit in the
15 revisions to the QAP with the issue of concentration was
16 the other second item that staff cited on our last year's
17 proposal.

18 Staff cited a concentration issue existing, and
19 the site that they've made reference to was a 40-home
20 single-family residential project that was about a mile
21 within our project. And our market studies showed
22 tremendous need, tremendous demand in our submarket.

23 It showed an absorption rate of approximately
24 20 units per month. So without any real objective
25 criterion regarding concentration, it just seems kind of

1 arbitrary or unsubstantiated when you have a market study
2 that shows tremendous need and demand, and yet a -- just
3 the word, concentration issue exists, is enough to
4 invalidate an application.

5 I think, like I said, with the revisions, I see
6 something in here about a tax credit project not being
7 within two miles of an application. I think that maybe
8 addresses that. But, again, I'd just like to appeal to
9 staff and to the Board for some discretionary caution with
10 regard to that.

11 So it doesn't appear arbitrary. It keeps you
12 out of the hot seat, Mr. Chair, and -- as you just said.
13 But I think the more objective standards you can get into
14 the process, I think the less arbitrary and subjective it
15 appears to applicants, politicians, and citizens of the
16 State.

17 I thank you for your time. And, in closing,
18 I'd just like to mention that with regard to my
19 application from last year, it's a good site. We plan on
20 submitting it again, and, you know, I don't -- if there's
21 somebody at staff I need to meet with to address these two
22 items, which I think are -- can be clarified very easily,
23 you know, like I said, I intend on submitting the same
24 application again.

25 I'd like to work with the Department and get to

1 the bottom of some of my issues.

2 MR. JONES: Mr. Bethel?

3 MR. BETHEL: You said that there was 90 letters
4 of opposition, and only one had an original signature.
5 Were -- the others were copied?

6 MR. BOWLING: Yes, sir. The others were a form
7 letter with photocopied signatures on the bottom. We've
8 actually interviewed some of the people who left their
9 address and name legible where we could go and approach
10 them.

11 Not one person we've talked to has said that
12 they had ever seen that letter. They remember signing a
13 form or a petition with blanks, and it just kind of had a
14 blanket statement at the top of it: "I oppose the
15 project" -- blah, blah, blah, so --

16 MR. JONES: Mr. Conine?

17 MR. CONINE: Could we get a little clarity on
18 Senate Bill 1112, because as Mr. Bowling has said -- We
19 shall, I think, was the words he used and in our book on
20 page 8 of 32, there's a definitive paragraph which seems
21 like there's some other -- there's an "if" and an "other"
22 and all that other kind of stuff, so I would like a little
23 clarity.

24 MS. STINER: Senate Bill 1112 requires that we
25 allocate tax credits on this regional [indiscernible]

1 basis. We've come up with a formula. I think the
2 language of the QAP speaks to the bill that says that
3 after a period of time, if you haven't gotten adequate
4 applications from that region, then those funds can be
5 used in other regions.

6 So that's the qualification that also is a part
7 of that bill. For instance, we don't want the credits to
8 remain in Region 10 or 9 -- I wanted to a pick a region --
9 for an inordinate amount of time and lose the ability to
10 use those credits, so that's the criteria that's explained
11 in the QAP.

12 MS. BINGHAM: So in other words, if you don't
13 have an application from Region 10, what are you supposed
14 to do -- send that money back to Washington? That's
15 basically what the staff is recommended is that you would
16 do applications in all regions, provided that they submit
17 applications from all regions and all other criteria is
18 met. I think that's the only condition.

19 MR. CONINE: Other criteria being some scoring
20 and so forth. Yes, I'd hate to see us get trapped into
21 a --

22 MS. BINGHAM: I don't think scoring is a
23 factor. If you don't have but one application from a
24 region and it gets a low score, it will probably get
25 funded. But if it doesn't underwrite or there are some

1 other issues, there's an overwhelming sense of opposition
2 and it allows flexibility, we'll fund it at that.

3 The senator from that district may not want it.

4 The community may not want it, but it allows flexibility
5 that if you don't get any applications in a region, you
6 can't fund any applications in a region. You --

7 MR. JONES: Thanks. If the people don't quit
8 talking about me being in the hot seat, I'm going to feel
9 like this is the electric chair.

10 MS. BINGHAM: A rope is better.

11 MR. JONES: That makes me feel so much better.

12 (Laughter.)

13 MR. JONES: I thought there was something about
14 injection.

15 Mr. Smith.

16 MR. SMITH: Board and Chairman, my name is
17 Rowan Smith. I'm from Houston, Texas, and I participate
18 regularly in the LIHTC program. I want to commend the
19 staff and the Board for, I think, a very good QAP this
20 year. I think it addressed a lot of the concerns that
21 everybody had in a very fair way.

22 And I don't have any -- hardly any objections
23 to anything, but I do have one issue that I'd like to
24 bring up before the Board in the bonus points section. I
25 haven't seen this amendment recently today to it, but in

1 the bonus points section, it says that the Department will
2 qualify the sites as either being excellent or poor.

3 You can get two points if it's excellent, and
4 you can lose four points if it's a poor site. I think
5 that's a fair bonus point situation, but, however, as a
6 developer, I think there needs to be clarification in
7 there as to what constitutes an excellent site and what
8 constitutes a poor site.

9 Because if we know going into the deal before
10 we go to spend a whole heck of a lot of money -- 30- or
11 \$40,000 in application -- that our site's going to be
12 rated poor, then we won't go for that particular site.

13 I think that this is just -- there's been so
14 many other areas in the QAP this year where they've made a
15 lot of definitions and clarifications on their point
16 systems -- how they come up with them -- and I think this
17 is just one area that needs to be clarified as well, and
18 it will go a long way in giving the developers direction
19 and speed up the process and cut down on a lot of costs
20 and waste of time.

21 And, of course, it would keep us from
22 submitting a lot of applications you're going to turn down
23 anyway if it's a poor site, so it would save you time.

24 MS. BINGHAM: Rowan, I agree with you 100
25 percent on that. In many instances, the sites in low- to

1 moderate neighborhoods have not -- somebody to drive out
2 and see a site in an extremely low-income area and decide,
3 that's not desirable. I know in some instances, it's
4 indicated that other folks might do that as well.

5 But in many of the areas that are targeted for
6 inner city revitalization, they have to get started
7 somewhere, and to just go out and arbitrarily decide that
8 this site is not -- beginning to ranking sites. You're
9 right. You don't have -- I'm wrestling with that myself.

10 You don't have a definitive answer.

11 You know, some people say, Well, it's near the
12 railroad. Well -- and HUD has got issues with the
13 railroad. Well, I live near the railroad, and in many
14 instances, it's the only place we could live was over by
15 the railroad. So beauty is in the eyes of the beholder.
16 In some folks' minds, living near the railroad is not so
17 bad.

18 So I think with the new rules from HUD -- I
19 mean, from the Internal Revenue Service -- about city
20 revitalization efforts giving preference to inner city
21 revitalization and allowing local officials to comment on
22 those things, I think that if the local government and its
23 citizens have decided that this area is targeted for
24 revitalization, including housing and economic
25 development, we probably don't need somebody just passing

1 by saying, Oh, but that's a run-down area; that's a poor
2 area, so I have my own issues with that.

3 MR. SMITH: Well, also, in areas of the State
4 where I focus a lot of development on, which is lowest
5 median income areas of the State, projects just won't work
6 unless they're either a QCT or a DDA.

7 And if it's in a QCT, you're pretty well -- you
8 know, sometimes those sites aren't as excellent as you
9 could find in a DDA or in a big city, where you don't
10 have -- where the numbers work a little better, so you
11 could --

12 MS. BINGHAM: I can -- I'm going to give you an
13 example. In the City of Houston, for example, in the
14 Akins [phonetic] homes area, you have a project that was
15 developed by Isaac Matthews [phonetic] that some people
16 thought that site was not the best site.

17 It happens to be in the area that had not had
18 new construction of housing in about 30 to 40 years.
19 Guess what? It's 100 percent occupied, not 99 percent
20 occupied, and they've got a waiting list. So the fact
21 that it probably wasn't ranked high in somebody's mind --
22 you know, it's an old area.

23 But people live there. It's a beautiful
24 development, and it's probably -- the way it's going, it's
25 attracting other activity in the area.

1 MR. SMITH: So, anyway, that's my comment to
2 it, is that if you could come up with some kind of --
3 direct the staff to come up with some kind of definitions
4 and clarifications as to what constitutes those things, it
5 would help a lot. Thank you much.

6 MR. JONES: Thank you, sir.

7 Mr. Dan Markson?

8 MR. MARKSON: Thank you, Mr. Chairman, members
9 of the Board. It's a pleasure to be here today. I'm
10 going to speak to you on behalf of myself personally and
11 also as the chair of the Housing Credit Group of the
12 National Homebuilders Association.

13 I want to generally commend you on the QAP.
14 There was a couple of areas that I would urge you to stand
15 firm on that may come under discussion today. And one
16 area in the QAP that I just want to point out may cause
17 some unintended additional problems.

18 That area is the additional points for deeper
19 targeting to go to 50 percent of the median, from 30 at 50
20 to 50 at 50. What's going to happen there is it's really
21 only going to work in big cities and in the high median
22 income areas, and in the rural and poorer cities like San
23 Antonio, it's just going to create a bigger gap with the
24 mortgage.

25 And although we would all philosophically love

1 to do that, there is an additional nonphilosophical
2 problem that I'll raise with that. I don't think that
3 there's enough soft money out there for the poorer cities
4 to make that work right now. There's also an issue --

5 MS. BINGHAM: Dan, what section is that in?
6 What section is that?

7 MR. MARKSON: You know, I'm not exactly sure.
8 I missed it, and somebody pointed it out to me this
9 morning, so if I have a wrong draft, please correct me.

10

11 MS. BINGHAM: Okay. We'll find it. Thank you.

12 MR. MARKSON: Do I have a wrong draft?

13 MS. BOSTON: No, you're correct.

14 MR. MARKSON: Okay. I'm correct. Okay.

15 Because I didn't comment on that in writing because of
16 that.

17 MS. BOSTON: It's 50.7(e).

18 MR. MARKSON: And I did some analysis some time
19 ago on San Antonio, and I know it would be devastating for
20 development there, and San Antonio's probably the
21 wealthiest of the poor counties.

22 In addition, we're all, or most of us, trying
23 to do mixed income. And although I think that if you,
24 through the proper screening and the proper marketing, you
25 can mix a wide range of incomes, and we're doing it -- the

1 lenders and investors do not necessarily agree with that.

2 And I think this will further make loans
3 difficult. It's going to -- they're going to look for
4 more assurances and more guarantees. And in some
5 instances, they're even just taking your market-rate units
6 and whacking them to the tax-credit rents. So the
7 question is what level will they bring them to?

8 There are three other areas I want to point
9 out. One is per unit-cost awards. Should that come up
10 today, it seems to us that there's little need in Texas
11 for a limitation on the per unit credit.

12 Texas is one of the most efficient producers,
13 if not the lowest in the country, and certainly among the
14 big states. And my fear is that with the new -- Nancy
15 Johnson's new provision on community revitalization, that
16 over time, we're going to be doing more urban in-fill
17 buildings, which is great, but they're going to be at a
18 much higher cost level.

19 So if you put this cap on, you're really going
20 to limit the ability to do different product types.

21 MS. BINGHAM: Is that in the rules or is that
22 in the administrative guidelines?

23 MR. MARKSON: That is the new change --

24 MS. BINGHAM: Okay.

25 MR. MARKSON: -- from Nancy Johnson.

1 MS. BINGHAM: I know her changes.

2 MR. MARKSON: I'm commenting on -- this is not
3 in the QAP.

4 MS. BINGHAM: Oh, okay.

5 MR. MARKSON: I'm merely commenting on this
6 because --

7 MS. BINGHAM: Okay. You had me confused.

8 MR. MARKSON: -- it's my understanding that
9 that may be brought up for your consideration today --

10 MS. BINGHAM: I got you. Okay.

11 MR. MARKSON: -- so I just want to -- because I
12 can't speak necessarily in order.

13 MR. JONES: Ms. Bingham, I think he's
14 addressing other public comment on that issue, is how I
15 would interpret it.

16 MS. BINGHAM: I got it. I didn't see that.

17 MR. MARKSON: Yes. No, no. It's not in there,
18 and I want to thank you for not having it in there, you
19 know. And, in addition, there's all kinds of volatility.

20 I'd love to sit down with all of you at some point and
21 show you how much my development changed from the day I
22 got the credits to the day I closed it, but, you know, if
23 you put a cap on, you may not have the ability to work
24 with those changes.

25 And that's not after you get the allocation;

1 that's before you get the allocation and while you're
2 structuring the deal that I'm referring to.

3 In addition, I understand that there may be
4 some discussion on per developer limits. And in order to
5 have one successful deal go forward today, you really have
6 to be working on a lot of developments, and that's good
7 for the State.

8 That's good for you that we're investing money
9 in a lot of different things. In some instances, it takes
10 us two or three years to put a development together, but
11 if you put on caps that I know some people are talking
12 about on each developer, you're going to crush the private
13 enterprise incentive to try to put more good developments
14 together. And, again, that's also not in your QAP.

15 And, finally, I understand that there's going
16 to be a potential push like there is every year to
17 increase the set-aside to nontaxpaying entities. And I
18 have a memo on file with Ms. Stiner that you can read, but
19 I would just point out that in the recent federal
20 legislation that went through, the criteria for
21 consideration of tax status was removed.

22 And that was intentionally removed to make
23 production more efficient. I'm not going to reiterate all
24 the stuff that you've heard before about the cost
25 differentials between for-profit builders and non -- and

1 taxpaying builders and nontaxpaying entities, but there's
2 a significant cost differential.

3 In some cases, GAO went to -- as high as
4 18,000, and there's different ways you can account for
5 that, but there is still a different cost there. And I'm
6 sure that some other folks will want to talk about that
7 later.

8 So, again, I would just urge you to stick with
9 the 10 percent set-aside, and I also want to commend you
10 on the change in allowing for-profit social service
11 providers to now participate, because we want to provide
12 the services, but we want to provide it at the lowest cost
13 and have the best provider out there, regardless of --

14 MS. BINGHAM: That was also in a Nancy Johnson
15 bill that's been signed. Right?

16 MR. MARKSON: Yes, that was the Department's
17 response to that, and I want to commend you on that.
18 Thank you very much.

19 MR. JONES: Mr. Johnson?

20 MR. JOHNSON: Sox Johnson with the Rural Rental
21 Housing Association. Good morning to you all. I have a
22 little handout here. I don't expect anybody to read all
23 of this, but I wanted to address basically two items that
24 we've commented.

25 And I've worked with the staff, and I

1 appreciate Director Stiner's and Chernov's and the staff
2 working with us on some of these issues to get better
3 clarification.

4 One thing we find each year as we come back
5 with this evolving QAP -- we think we corrected something
6 one year, and then the next year, we've realized we
7 didn't. And I wanted to limit my remarks in the interest
8 of time to two items here.

9 However, if I didn't agree with all that Dan
10 Markson said, I did agree with a lot of what he said. I
11 want to toss that in. On --

12 MR. BETHEL: Did you and Dan grow up in the
13 same neighborhood?

14 MR. JOHNSON: Yes, but he hasn't learned how to
15 talk yet --

16 (Laughter.)

17 MR. JOHNSON: -- so we're still working on
18 that. One of these issues -- and you'll see I've done
19 some excerpts here just for your benefit, but I think I
20 can get to the bottom line of some of them. Just to
21 clarify, I even had a discussion with Chernov this morning
22 and David Burrell to further be sure I was understanding,
23 so some of this is in the form of clarification.

24 We were concerned last year when the practice
25 changed regarding size of projects. There were a number

1 of projects. In the past, we'd always tied rural
2 definition for eligibility to compete in the rural set-
3 aside. That's, in my mind, where it always was from the
4 inception.

5 But last year, it got interpreted a little bit
6 different. The 76 units, which is something we've
7 supported all the time to spread the money further in
8 rural areas, as a maximum size, and we felt that that
9 should be limited only to projects competing in the rural
10 set-aside.

11 In the revisions this year, it has been
12 addressed under definition of rural to say instead of just
13 with Texas rural development making it eligible, that it
14 had to be making application in a rural set-aside. That's
15 on page 5 of your total QAP. So they address that.

16 The main point I want to get to is to me -- and
17 I'm hoping that's the way this is being interpreted -- 76-
18 unit maximum size applies only to projects competing in
19 the rural set-aside. Otherwise, the 250-unit applies.

20 For clarification, what happened last year,
21 there were some projects that were located in a rural
22 area, defined by Farmer's Home, but had applied for more
23 than 76 units, like the project in Kyle, and there's
24 several others -- and they were thrown out because they
25 were in an area.

1 They were competing in a general set-aside of
2 the nonprofit, and, to me, that was never the intention,
3 and I'm hoping that that will be the clarification in the
4 way we interpret what is said here, that 76 units applies
5 only to the rural set-aside.

6 And, also, even with Texas RD application,
7 under their 538 guaranteed loan program that we hope to
8 get some funding sources from to work here in Texas at
9 some point, that program may be some places that -- to use
10 that 538 that you could justify by your market studies and
11 so forth to go more than 76 units.

12 So if they did, what we were saying they should
13 do is compete in the nonprofit or general set-aside, if
14 they want to go over that, even though the project is
15 located in a rural area, if it can otherwise support it.
16 So that's basically our point on the size of project, and
17 hopefully, my interpretation is right.

18 And, if not, somebody will correct me here, and
19 we can all leave here understanding what we put down here.

20 Because it didn't make it real clear about those that
21 were competing in the general and the nonprofit, that they
22 could go up to 250, if they could, even though they may be
23 located in a rural area.

24 The other issue that I had relates to the
25 processing, and there is a memorandum of understanding, as

1 I've indicated here, that's been in existence with Texas
2 RD, and there's also one with HUD, and there we
3 attempted -- and I was real pleased when you put it in the
4 scope a few years ago, and I think it's great that it's
5 there, so that we didn't have to totally clutter up the
6 QAP with some little things that need to be worked out to
7 cut and reduce duplication and all those things between
8 some of the agencies, and that's what's contained in the
9 QAP, between them.

10 Due to a law change this year, there was a
11 change in the market studies.

12 MS. BINGHAM: How did you let that happen?

13 MR. JOHNSON: I didn't know it was going to
14 happen, but it's led to some confusion that some of our
15 people right now are needing to understand because the way
16 they've done it with the Texas RD before is Texas RD
17 basically when they approved and worked, and under the
18 memorandum of understanding they -- TDHCA would simply
19 accept Texas RD's market study and feasibility
20 information, and they would share.

21 One thing that did not happen that I think
22 should have been happening to TDHCA or if an application
23 was in Texas Rd should have been providing for your
24 application with tax credits a copy of the market study.

25 One of our concerns now is that you may wind up

1 having to get two different market studies prepared. I've
2 talked to staff. I've talked to some analysts, and
3 certainly I would hope that the memorandum of
4 understanding could be -- remain in force, that you go in
5 and get some more specific language and work out something
6 so that a person wouldn't have to get a market study
7 prepared under one format and guidelines for Farmer's
8 Home, or --

9 MS. BINGHAM: Maybe we can clarify that. If
10 Chernobyl can answer that -- does he know --

11 Chernobyl, can you comment on that now?

12 MR. JOHNSON: And I think he agrees with me,
13 and I'll raise one more point, and then I'll be through on
14 it. Before, there haven't been required a market
15 feasibility study --

16 MS. BINGHAM: I know it. But it's in the law,
17 so could you hold up and let him answer one question, and
18 then we can, and then we'll get to the next one.

19 MR. JOHNSON: Okay. All right.

20 MS. BINGHAM: It's got in the law some kind of
21 way. That's why I wanted to know how you allowed that to
22 happen. Your lobby wasn't up --

23 MR. NJIE: For the record, I'm Chernobyl Njie,
24 manager of the tax credit program. That is one of the
25 amendments that became effective January 1. There is no

1 exception to providing the market study, whether the
2 property is a Farmer's Home project, an existing rehab, or
3 new construction.

4 MS. BINGHAM: What about -- too, though, if the
5 developer had one under Farmer's Home, and then they come
6 apply for tax credit for the same development, are we
7 allowed under the new law to accept the other one?

8 MR. NJIE: I don't think that will be
9 necessary. The standards that we have and the standards
10 we obtain with Farmer's Home are similar, so they would
11 need to add a supplement to address the issues.

12 MS. BINGHAM: Thank you. That helps. You
13 don't have to do two.

14 MR. JOHNSON: If that's the intent, that's
15 great if we're going in that direction. I didn't know --
16 because I've had difference of prices. It could increase
17 the price 500 to \$1,000 to do one that would meet with the
18 guidelines here, so one market study ought to satisfy
19 everybody, and they should be addressed, and that's what I
20 was suggesting.

21 MR. CONINE: That isn't what he said, though.
22 That isn't what he said. He said we're going to require a
23 supplement. That's what I heard him say.

24 MR. NJIE: Yes, we have --

25 MR. CONINE: And they don't do those free, I

1 don't think.

2 MR. NJIE: That's what I'm saying. We
3 addressed primarily the same things, but we require in our
4 guidelines certain elements to be addressed that are not
5 in Farmer's Home's guidelines. That would not, in my
6 opinion, necessitate a complete and new application.

7 It will have a section which addresses TDHCA-
8 specific standards in the current market study that
9 Farmer's Home does.

10 MR. CONINE: Could we not, in our memorandum of
11 understanding with the Farmer's Home, let them know that
12 so that they could do that with the first appraisal, if a
13 developer has an intent of bringing it on over here?

14 MR. NJIE: Well, that's the way we're going to
15 handle it.

16 MR. CONINE: Isn't that the way to handle that?

17 MR. NJIE: Yes, sir.

18 MR. CONINE: Okay.

19 MR. JONES: And more specific revision of the
20 memorandum of understanding to address how it was done,
21 and which set -- what guidelines you're going to use. I
22 think that would be the perfect way to handle that.

23 MR. BETHEL: Would you address his first
24 concern?

25 MR. NJIE: His concern about the 76 units --

1 that is our interpretation, that if you're applying in the
2 rural set-aside, the project will be limited to 76 units.

3 A project may be located in the rural area and exceed
4 that limit, provided it is in the general set-aside.

5 MR. BETHEL: Okay. That's what we want. We
6 agree with that.

7 MR. JOHNSON: One other deal on market studies
8 relating -- and we may want to stay here, because this is
9 what we're still not clear on.

10 MS. BINGHAM: I think we want to hear from
11 somebody else about now.

12 MR. JONES: On the market studies, when
13 rehabilitation is involved, Farmer's Home has not -- or
14 rural development has not required a full third-party
15 market study. You know, you may have a 20-unit deal out
16 there and going to do some minor revisions.

17 They haven't required it as long as they made
18 the determination it's occupied; there may be people on
19 the waiting list. All elements would appear there's a
20 market.

21 There hasn't been a market study prepared on
22 those before. And in my discussion with Chernow, I think
23 he felt that now, you're going to have a market study on
24 anything --

25 MS. BINGHAM: That's the law now, so that's why

1 you should have gotten that dealt with.

2 MR. JONES: So I wanted to clarify that.

3 MR. NJIE: Yes, again, the statute doesn't make
4 any exceptions regarding that, and it explicitly states
5 you have to have a market study to determine the need for
6 low-income housing. We can work with a Texas RD to define
7 what sort of issues will be addressed if a project is an
8 existing project. There is no getting around submitting a
9 market study.

10 MS. BINGHAM: No, it's in the law now.

11 MR. BREWER: Chernobyl, one more thing now. We've
12 heard what Mr. Conine has said. Now, you say that's the
13 way it is, but is that in writing in the QAP -- because I
14 think his problem is, you know, should it be there,
15 because if he's confused --

16 MS. BINGHAM: There's an existing agreement
17 that would have to be modified. You see, we have an
18 existing agreement with them that's going to have to be
19 modified to be consistent with this law. It will have to
20 be. We have an agreement now that covers the current
21 law -- I mean, the current -- that covers the old law.

22 Now we're going to have to amend it to make it
23 clear.

24 MR. NJIE: That is correct. Under the MOU
25 right now, Farmer's is exempt from providing that market

1 study, so we will have to amend that MOU.

2 MR. BREWER: Okay.

3 MS. BINGHAM: Yes, we've been working with
4 them.

5 MR. CONINE: In the private sector lot, we have
6 to do a market study and an appraisal, both, that would
7 meet the requirements of the banking industry and the OCC
8 and other regulatory groups, and you might want to do the
9 same appraisal of the market study that would meet Fannie
10 Mae's requirements.

11 You know both of those ahead of time. You tell
12 the appraiser to do it -- design it to both. He quotes
13 you one price, and it's covered. So I would think we'd be
14 able to do the same thing.

15 MR. JOHNSON: Thank you.

16 MR. JONES: You'd better go before you wear out
17 your welcome, Mr. Johnson. Ms. Bingham said you may have
18 done that.

19 Ms. Susan Maxwell.

20 MS. MAXWELL: I am Susan Maxwell. I'm a public
21 policy specialist with the Texas Council for Developmental
22 Disabilities, and we've chatted before. Our concern about
23 the QAP this time is that it lost the points for
24 developers to provide buildings at the 504 standard of the
25 Rehab Act of 1973, and it's gone to a lesser standard.

1 And we're concerned. We like part of the way
2 it's written now, in that it would provide the developers
3 to do a rehab for somebody that needs to have the units
4 accommodated to their needs. But it won't provide those
5 extra 5 percent of the units to be large enough for a
6 wheelchair to access bathrooms and kitchens. And so
7 that's one part that we're real concerned about.

8 The other thing is we like the townhouse rule.
9 We think that's really cool. And as a side issue, we'd
10 just like to support -- we would support the TDHCA's data
11 base to include accessible units in it somehow and tracked
12 throughout the State so that when we have people that are
13 looking for these units, we can put them in touch with the
14 developments that have the units in them.

15 Are there any questions?

16 MS. BINGHAM: Well, I noticed that as you
17 mentioned, the improvements I saw in that was, first of
18 all, that the handicapped accessibility is no longer a
19 point item as a part of the threshold, and that you can --
20 that the developer has the flexibility of waiting until a
21 person appears to -- in order to modify that unit for his
22 particular disability.

23 MS. MAXWELL: That's fine. We support that.
24 It's just that it doesn't make 5 percent of the units with
25 the large enough hallways or bathroom and kitchen space to

1 get around for people that are mobility-impaired.

2 MS. BINGHAM: Chernob, could you comment on
3 that?

4 And could we have a developer comment on that
5 as well?

6 MR. NJIE: I believe it does. The requirement
7 is that up to 5 percent of the units -- first of all, all
8 parties are required to meet fair housing if they are
9 covered buildings. And the provision we have in the QAP
10 will require that those units be fair-housing accessible.

11 The modifications will happen when the tenant
12 leases up the project, so I think they will be built to
13 the fair-housing standard.

14 MS. MAXWELL: That's fair housing. 504 goes
15 beyond fair housing.

16 MS. BINGHAM: Well, my understanding is that
17 504 would require them to do a certain number of units up
18 front. And what this does is when the tenant shows up,
19 you modify it for their benefit.

20 MR. NJIE: Fair housing has standards for
21 wheelchair-bound tenants, so those are the standards that
22 will be utilized to modify the units.

23 MS. BINGHAM: Could you --

24 MS. MAXWELL: I guess I understand it
25 differently.

1 MS. BINGHAM: Could a developer that's going to
2 be required to do this let us know if they think it is --
3 the rule is broad enough for them to make -- do the
4 wheelchair accessibility?

5 MR. NJIE: There are specific technical
6 requirements under the Fair Housing Act under ANSI
7 standards for making the units accessible, fully
8 accessible --

9 MS. BINGHAM: And that includes wheelchair-
10 accessible, so it's in here.

11 MR. NJIE: I can get a copy --

12 MS. STINER: Maybe you could spend some time
13 with Ms. Maxwell, Chernob. Maybe one of your staffers
14 could spend some time with Ms. Maxwell just to take over
15 the --

16 MS. MAXWELL: And teach me --

17 MR. NJIE: I can get a fair housing manual,
18 which shows all the specifications.

19 MS. BINGHAM: We think we got it covered.
20 That's his bottom line.

21 MR. BETHEL: Mr. Chair?

22 MR. JONES: Yes.

23 MR. BETHEL: It would be helpful for me if the
24 ones that's speaking on the QAP -- if they could cite what
25 section they're speaking about. By the time I find it,

1 they're through talking. I know I'm pretty slow down
2 here --

3 MR. JONES: Yes, with regard to Mr. Bethel,
4 this is a remedial board meeting.

5 MS. BINGHAM: Mr. Bethel, it's at the bottom of
6 page 12. It's at the bottom of page 12.

7 MR. BETHEL: Well, there's a reverberation of
8 about three minutes.

9 MR. JONES: I understand.

10 Ms. Sarah Andre? And, Ms. Andre, if you could
11 cite us to the section --

12 MS. ANDRE: Yes.

13 MR. JONES: -- and when you do that, kind of
14 look down at that number.

15 (Laughter.)

16 MS. ANDRE: It's Section 50.7(d)(1)(C). Here's
17 a copy of my comments in written form. I am here to
18 comment -- that's the same section that Ms. Maxwell --

19 MR. JONES: Most of us can read it --

20 MS. ANDRE: -- was commenting on, and I don't
21 want to be repetitive, but I do want to state that using
22 Section 504 standards would go beyond the Fair Housing
23 standards, and Fair Housing is wonderful, but it does not
24 provide as many units that are actually usable by persons
25 who have a mobility impairment.

1 And using Section 504 standards would increase
2 the number of units. So I would really like to encourage
3 the Board to consider using Section 504. I like what's
4 been done already, especially the townhouses. That is
5 great.

6 But I really do think that you need to consider
7 using Section 504. And with regard to a developer's point
8 of view, I think that having a developer come back in and
9 make modifications is an excellent idea. That would be
10 really good for a lot of people.

11 But if it's done beforehand, that saves time
12 and money for everyone. And just because a unit is
13 Section 504, is to those standards, doesn't mean that a
14 person without a disability can't use it. It just means
15 that it's there and ready to be used.

16 And if it doesn't have that standard, a person
17 who has a disability can't use it. So that's why I would
18 like you to consider that. Do y'all have any other
19 questions? Okay. Thanks.

20 MR. JONES: I appreciate it.

21 Mr. Joe McCartt?

22 MR. McCARTT: Could you come back to me in a
23 little bit?

24 MR. JONES: Okay. Do you want to speak on the
25 QAP?

1 MR. McCARTT: Yes, the --

2 MR. JONES: Okay.

3 Ms. Jean Langendorf.

4 MS. LANGENDORF: Good morning. I'm Jean
5 Langendorf with the Home Of Your Own program and United
6 Cerebral Palsy.

7 Good morning, Mr. Bethel.

8 MR. BETHEL: Good morning.

9 MS. LANGENDORF: You know exactly why I'm here.
10 We are -- I am also talking about Section 50.7(d)(1)(C),
11 and I have written testimony from myself as well as from
12 the disability policy consortium, Jonas Schwartz, who was
13 unable to be here this morning, as he is meeting with some
14 legislators.

15 Our concern -- we are supportive of the changes
16 that have been made. We are asking, as Ms. Andre and Ms.
17 Maxwell have said, for the Board to consider going
18 further, to adopt the Section 504 standards as a threshold
19 criteria, because this would, in fact, give us units that
20 would be readily available and do have more features than
21 those that come with Fair Housing.

22 We can get into detail, and I have worked quite
23 a bit with your staff on trying to have them understand
24 the difference between a 504 unit and a Fair Housing unit.

25 I'm sure any developer can tell you the difference

1 between a 504 unit and a Fair Housing unit, and it is
2 cost, and I'm sure that's why there are objections.

3 For us and in light of recent federal
4 decisions -- Supreme Court decisions with the Onstadt
5 [phonetic] decision, more and more people are going to be
6 looking for community placement.

7 There's going to be an effort required by that
8 Supreme Court decision that people are going to be needed
9 to be moved out of nursing homes, and these are
10 individuals that are going to have significant mobility
11 impairment.

12 So our concern is we're talking about
13 developments on down the road that there are, in fact,
14 going to be some units available. And my -- I guess one
15 of my big concerns about the way it's proposed right now
16 is that it is a matter of upon presenting yourself, that
17 if you have a disability, you're going to ask for some
18 modifications that need to be considered reasonable.

19 Our concern would be what somebody might
20 consider reasonable, and what somebody else might not
21 consider reasonable, and a lot of that's going to be
22 determined by cost. And if you don't have any units that
23 offer this kind of greater accessibility, it is going to
24 be a costly item.

25 My other concern is if we leave it to those

1 that present themselves at the time, I guess our concern
2 is the outreach. There is no provision in here that you
3 do any outreach for people with disabilities, so our
4 concern, again, would be that the people that we're trying
5 to get served and that will be moving into the community
6 from nursing homes are going to need actual units to be
7 available.

8 So that's the issues we have. We definitely
9 support the townhouse aspect of it, because we do see that
10 as a very big obstacle in any kind of a development. We
11 do support staff on that. We do have to say this is a --
12 it is a step, but we would like the Board to consider
13 going a step further.

14 That would really, truly -- as we're talking,
15 these are not units that are going to be on the ground
16 next week. We are talking down the road, and we are being
17 faced with a Supreme Court decision that I know some
18 members of TDHCA are aware of, that are going to have a
19 great impact.

20 And the State as a whole is going to be
21 addressing that during this legislative session. I
22 appreciate it. I'll answer any questions.

23 MS. BINGHAM: I have a question. Are you aware
24 or have any of your clients applied for occupancy at any
25 of the tax credit units that are online today and waiting

1 for tenants and have been turned down or anything? Do you
2 have any of those statistics?

3 MS. LANGENDORF: That they've been turned down?

4 MS. BINGHAM: Yes, that they've been turned
5 down.

6 MS. LANGENDORF: Now, we have a hard time
7 finding out where they are.

8 MS. BINGHAM: Okay.

9 MS. LANGENDORF: And we do support the idea of
10 a data base very much, so --

11 MS. BINGHAM: I thought we had requested that
12 the data base --

13 MS. LANGENDORF: -- is where the units are.

14 MS. BINGHAM: -- be -- yes --

15 MS. LANGENDORF: Yes, there is -- yes.

16 MS. BINGHAM: Okay. The -- I'm not a
17 developer, but cost is a big issue and -- with me, and I
18 guess in anybody's life. The point is that, you know, we
19 can talk about the developer this and the money this and
20 the money that, but the idea is that in order to attract
21 people to come in and participate in the program, there is
22 a profit motive.

23 And if you put -- and I'm aware of developments
24 that are totally occupied in a lot of these markets -- tax
25 credit -- except for those that have been equipped for

1 handicapped accessibility.

2 Now, if you are out there with your name on a
3 \$6 million loan, you can't close into perm until you reach
4 a certain percent occupancy, and you are almost there
5 except for the units that you are holding, that we have
6 required that you hold for occupancy for persons -- that
7 are already built out, that's cash flow that they're
8 losing.

9 MS. LANGENDORF: Are we requiring them to hold
10 it under this QAP?

11 MS. BINGHAM: We did in prior years, and what
12 it has done -- it has prevented the developer from closing
13 on his permanent loan. And all this talk about
14 developers -- they don't get it.

15 MS. LANGENDORF: Well, we've never supported
16 the idea of holding any unit open. We do support
17 marketing those units.

18 MS. BINGHAM: That's what we did.

19 MS. LANGENDORF: We have not been --

20 MS. BINGHAM: We required that they hold. We
21 thought we -- I thought we did that to satisfy your
22 concerns. We required that they not only build the
23 units -- build them out at the time, but that they market
24 them and that they hold them.

25 And what has happened is that in some markets,

1 they are not absorbed. Now, how can we tell somebody
2 they've got to sign that note that you continue to do this
3 or that you build something out that you don't know that
4 you're going to be able to -- your market study doesn't
5 even support.

6 We underwrite it. We underwrite it based on
7 proposals and market studies, and now we're saying, Oops.

8 You've got to put X number of units out there for this,
9 that. That's not supported by the documents, and they're
10 left holding the units.

11 So in working with the groups, we thought and I
12 think we've made improvements, you said, last year. Don't
13 give them points for it; make it a part of threshold.
14 That has been done in this QAP, in the recommendations of
15 this QAP.

16 We said that we will hold it open for -- we
17 will require them to build out the unit when the family
18 comes to the unit and build it out for that individual's
19 needs and desires, not for somebody with a different kind
20 of disability.

21 I think we have gone a long way. But to
22 penalize -- and, you know, we talk about the HUD standards
23 with 504. Well, I'm here to tell you that the tax credit
24 program is the most successful production program in
25 America. The other programs are not the most successful

1 production programs in America. This program is.

2 And Texas has a good record. So I'm saying we
3 want to support the accessibility issue, but we want to do
4 it in a reasonable, cost-effective manner. That's been my
5 position. And, you know, I hate to see the developers not
6 stand up and speak for this issue, because I know people
7 will accuse them of being greedy and X, X, X, but it's
8 just a real-life issue.

9 What we said a few years ago is what we would
10 do is have those developers and those units out there, and
11 in many instances where people have not reached 90 percent
12 occupancy and be able to close on their permanent loans,
13 get off the hook financially, is those units that are
14 handicapped-accessible that they built out are still
15 sitting there.

16 What motivation would they have not to market
17 them and put people in them if they're losing money? I
18 don't think there's an ulterior motive. I just think
19 we're making progress annually. But I appreciate your
20 concern.

21 MS. LANGENDORF: I agree holding them was never
22 a good --

23 MR. CONINE: Isn't it two years, Cherno?
24 Didn't we put two years in the QAP?

25 MR. NJIE: We modified that. Effectively now,

1 it is the lease-up period.

2 MR. CONINE: During the lease-up period.

3 MR. NJIE: That's correct.

4 MR. CONINE: We hold them during the lease-up
5 period, and then when we're done, we're done with the
6 market unit.

7 MR. NJIE: That is right.

8 MS. BINGHAM: But you've still got the 5
9 percent.

10 MS. LANGENDORF: Well, there are no units now.

11 MR. CONINE: What?

12 MS. LANGENDORF: There will be no units now.

13 MS. BINGHAM: Well, you have the 5 percent,
14 don't you?

15 MS. LANGENDORF: No. There's no units now --
16 correct -- in the proposed QAP, there are no --

17 MR. CONINE: No 504 units, but there's ANSI
18 units.

19 MS. LANGENDORF: -- no modified units. There's
20 no modified units.

21 MR. CONINE: Right.

22 MS. BINGHAM: They're ANSI standards units.

23 MR. NJIE: Well, why do you say that? I guess
24 I'm confused. Up to 5 percent of the units would have
25 been modified based on the ANSI standards, at the

1 developer's expense.

2 MS. LANGENDORF: Upon request.

3 MR. NJIE: That's correct.

4 MS. LANGENDORF: But there's no units. There's
5 no physical unit unless somebody appears. Okay. And so
6 for that -- at the beginning of that development, for that
7 development, there will not be units. That's all I'm --

8 MR. NJIE: There will be units when there is
9 effective demand for the units. And you have effective
10 demand when somebody who is both income qualified and is
11 disabled come into an apartment and say, I want to rent
12 this unit.

13 MS. BINGHAM: They're required to build it out
14 at that time and make it ready for that client.

15 MS. LANGENDORF: No.

16 MR. CONINE: Yes, I want to speak to your
17 comment about not knowing where they are. I think if we
18 as a department can't provide you information of where
19 every tax-credit deal has been done over the last 14 years
20 in this State -- you can get that information and pass it
21 onto your members and continually seek those opportunities
22 where they can move into those particular places.

23 I think we would like your help in that area so
24 that we can meet some of the demand thresholds that have
25 been talked about here earlier. We've got several people

1 in this department who can tell you where they are.

2 MS. LANGENDORF: They can't tell you because
3 the QAP has changed every year. It's not like you can
4 say, Okay. There's a tax credit project over here, and
5 it's going to have -- of the 200 units, it's going to have
6 ten units to serve people with disabilities.

7 Because every QAP has changed any kind of
8 requirements, and they were points. Do you know what I'm
9 saying? I mean, it's not as if --

10 MR. CONINE: All it takes is a phone call to
11 the management company, and you'll find out real quick.

12 MS. LANGENDORF: Yes.

13 MR. NJIE: The entire list of inventory for tax
14 credit project is on our website.

15 MS. LANGENDORF: How many --

16 MS. STINER: I think she was saying to identify
17 those units that have been targeted for the disabled, and
18 all of them have LURAs. We'll work with you in
19 identifying and creating a data base between the two of
20 our organizations.

21 MS. LANGENDORF: Okay.

22 MS. STINER: Maybe that can be in the MOU we're
23 talking about. Okay.

24 MS. LANGENDORF: That would be wonderful.
25 Thank you. There are still no units, though.

1 MR. JONES: Thank you.

2 MS. LANGENDORF: You're welcome.

3 MR. JONES: Could the record also reflect that
4 Dr. Griffin has joined us. I also would like to note at
5 this time I saw Representative Ehrhardt come in. It's
6 good to see you.

7 MS. EHRHARDT: Thank you.

8 MR. JONES: Mr. Barry Palmer.

9 MR. PALMER: Hello. My name is Barry Palmer.
10 I'm an attorney from Houston, and I practice extensively
11 in the tax credit program and have for a number of years.
12 I don't have a specific section of the QAP that I want to
13 reference. I would just like to make a general comment
14 that I think that the staff has done an excellent job this
15 year with the QAP and the changes that they have made. I
16 know that they have spent a tremendous amount of time
17 receiving extensive comments and have analyzed that very
18 carefully.

19 I think that it's a very difficult balancing
20 act that this Board and the Department has to do in the
21 tax credit program. It's a very competitive program, and
22 there are competing interests that are very different from
23 the for-profit community, the nonprofit community,
24 developers of senior facilities and family facilities,
25 housing authorities trying to do projects that serve a

1 very low income, so that there are different
2 constituencies that have different interests.

3 I think that this QAP on balance is fair to
4 everyone, and I would urge the Department to adopt it as
5 it currently exists. I think it also balances the need
6 for objective standards versus the need, in some cases,
7 for some subjectivity.

8 While we all like objective standards, there's
9 a limit to what you can do in this program with objective
10 standards. I remember back in '94 when we went almost
11 entirely by points, we ended up with the six highest-
12 scoring deals in the State all being in Bryan-College
13 Station.

14 So you have to have some degree of subjectivity
15 in the process in looking at things --

16 MS. BINGHAM: We've got them all in Houston
17 this year.

18 MR. PALMER: That's right. And one area where
19 I think that it's important to have some subjectivity in
20 the staff is in analyzing cost per unit and tax credits
21 per unit. I know there's been some discussion on having a
22 set, firm limit of credits per unit or costs per unit.

23 I know that on the projects that I work on,
24 there is vast differences between the costs per unit and
25 the credits per unit, based on a number of factors. It is

1 much more expensive to develop in the inner city when
2 you're trying to do a revitalization in downtown Houston
3 or in the center of Dallas.

4 Land is much more expensive than what you can
5 get suburban land in small communities for. Costs are
6 higher for construction. In a lot of those cases, you
7 have Davis Bacon wages that kick in because there's some
8 federal dollars in the project.

9 So it's very difficult to set a number
10 throughout the State of credits per unit or even cost per
11 unit. The Department has, right now, some guidelines on
12 cost per unit, but staff can review the factors and make
13 some exceptions for those because of various factors.

14 I would encourage you to allow the staff to
15 still have some subjectivity in that area. Thank you.

16 MR. JONES: Thank you, sir.

17 Mr. Ocanas?

18 MR. OCANAS: Good afternoon. Thank you for
19 letting me appear before you. I will be brief with my
20 comments since I'm last. I hope that you means you saved
21 the best for last.

22 I want to congratulate, first of all, the board
23 of directors for the job they've done. You've been -- the
24 agency and you've been under a lot of scrutiny, and I just
25 want you to know that the good things you've done over the

1 past several years do not go unnoticed.

2 So I usually appear before you to criticize the
3 agency and to offer productive criticism and point out
4 problems. I don't say that I've stopped doing that, but I
5 definitely want to make sure that today you know that we
6 appreciate the work that you do.

7 I want to make sure that you understand,
8 though, that the public definitely understands that you,
9 the Board, set policy for housing in Texas and that
10 setting that policy begins in this room, and I want to
11 make sure that we -- that you agree that you are the ones
12 that set policy for this agency.

13 I think my concern has been that it appears
14 every once in a while in the QAP responses that staff is
15 setting policy on behalf of the Board, or even responding
16 for the Board.

17 So with that said, I will go really quickly to
18 point out the issues that we recommended in our public
19 comment responses, or public comment submission to the
20 Board, and I just want to preface all of that by saying
21 that the Sunset decisions that have now been made and will
22 be put into the legislative bill for the agency already
23 included some of the things that we recommended in our
24 public comments, and I'm actually surprised that the staff
25 did not include those things in the QAP revisions or

1 accepted the public comment on them, based on the
2 decisions already made by Sunset.

3 So I want to point out and match up the
4 decisions Sunset made, which it seems like you all are
5 moving forward with a lot of those, and I have a quote in
6 my comments about Ms. Stiner saying that 85 -- or a number
7 of the Sunset recommendations in the state auditor's
8 office findings have already been addressed, so I'm a
9 little confused as to why these things were not included
10 in the QAP.

11 So I'll go straight to it.

12 MR. BETHEL: I've got a question.

13 MR. OCANAS: Sure.

14 MR. BETHEL: You said legislation has already
15 been introduced for the Sunset recommendations?

16 MR. OCANAS: I don't think it's been
17 introduced --

18 MR. BETHEL: Has the Sunset recommended --
19 there is a bill that's going to be introduced with that
20 specific language?

21 MR. OCANAS: Right. That's my understanding of
22 how the Sunset process works. I don't --

23 MR. BETHEL: But you do know that the bill
24 that's introduced is not -- that what -- the Sunset
25 recommendation is not going to be the final bill --

1 MR. OCANAS: Sure.

2 MR. BETHEL: -- probably, is it?

3 MR. OCANAS: And we'll duke it out during the
4 legislative process with everybody, I'm sure. Yes, I
5 understand. I do understand, though, that when the Sunset
6 decisions were made that this body and the staff accepted
7 the validity of those findings, and said that you would be
8 working towards addressing the findings in there that show
9 the problems, and would then be working on the
10 improvements, based on the recommendations.

11 I'm -- that's still your position -- right? --
12 the Board's position, that you agree --

13 MR. BETHEL: Well, I don't know that I agree
14 with everything they said.

15 MR. OCANAS: Okay. You don't have to agree
16 with everything I say either, so I understand.

17 MR. BETHEL: Okay.

18 MR. OCANAS: Nevertheless, let me go straight
19 to my recommendations. First is total and complete public
20 access to all applications for tax credits. This is on
21 page 3 of my comments. I mention applications for credits
22 should be made available for public scrutiny within 30
23 days after the deadline.

24 I would actually be open to modifying that, and
25 I bring you some examples of -- specifically from the

1 Illinois QAP and the Florida tax credit program and their
2 rules with the QAP. Both of them state up front that the
3 information being submitted by any developer, that it be
4 understood that anybody presenting an application has to
5 know that the information submitted is going to be made
6 public, so that you go ahead and avoid any problems with
7 the release of public information.

8 According to the staff response, 52.104 of the
9 government code that talks about public information
10 release and any exceptions of that, that that was the
11 issue -- the reason staff wouldn't agree with making the
12 applications public.

13 Both Illinois and Florida currently make the
14 applications public, so I don't know that as a matter of
15 public policy, it's bad policy. If we need to make sure
16 that we comply with the Public Information Act, then the
17 Illinois QAP, I think, is the best.

18 It says that if you have any exceptions in what
19 you're submitting, stuff that needs to be excepted from
20 public disclosure, that you just state it up front, and
21 that the agency will then review it and review your
22 alleged request for not disclosing it, and then make a
23 determination.

24 And I'm sure we could do that with our attorney
25 general's office, if that's necessary. So the attachment

1 that I have from Florida actually even shows the schedule.

2 The way they do it is not even the way I recommend it.

3 They actually review all of the applications for a certain
4 period of time.

5 During the preliminary scoring, they issue the
6 preliminary scores. Then for three weeks, the
7 applications are made public to everybody. Everybody can
8 come in and look at, you know, who is the full development
9 team, to make sure the rules you said about the maximum
10 allocated to one developer are actually met, to make sure
11 that there are no misunderstandings about who is
12 represented on a development team, that if there are any
13 issues with this disability compliance or past history of
14 bad compliance, that any of that is revealed immediately
15 once you see who's participating on the development.

16 After the initial public review, then the staff
17 and the Board take the applications up again, deal with
18 any appeals, any comments received from the public, and
19 then go through the further process of making the final
20 recommendations and awards.

21 The second comment I have -- and I -- that one
22 was not, Mr. Bethel, anything that was in the QAP
23 originally, so I didn't cite a section for that reason.
24 Number two that I have is increasing the nonprofit set-
25 aside to 20 percent, and that is in 50.6(b) of the QAP.

1 And I have example language from the Illinois
2 QAP as one of my attachments, and also Sunset decision 4.1
3 is something that I think -- to take into consideration
4 that asks or requires the Department to increase their
5 participation in public housing authorities and
6 nonprofits.

7 Number three is the issue of --

8 MR. JONES: Before you leave that --

9 MR. OCANAS: I'm sorry?

10 MR. JONES: -- could you address the issue
11 that's already been brought up today in public comment?
12 We've already heard we shouldn't do this -- you've
13 probably heard that. Right?

14 MR. OCANAS: Sure.

15 MR. JONES: And the argument is made repeatedly
16 that the reason we shouldn't do this is because of
17 efficiency --

18 MR. OCANAS: Right.

19 MR. JONES: -- that the nonprofits inherently
20 are not as efficient as for-profits, and so that this --
21 it would be a mistake to raise this threshold. Would you
22 address that argument?

23 MR. OCANAS: Sure. I would take issue with
24 that, and I have before, before this body and before
25 Sunset. There's a general accounting office report that

1 did a study, I believe, about three or four years ago of
2 tax credit developments and assessed the differences and
3 why there might be higher costs between for-profit
4 developments and nonprofit developments.

5 And the GAO found that there weren't any
6 significant differences if you accounted for the reality
7 in the tax credit projects. And that's -- the details are
8 what actually make a difference. It was found that for-
9 profit developments typically have smaller unit sizes,
10 while nonprofit developments have larger unit sizes to
11 accommodate larger families -- that's one issue that makes
12 the cost go up, and anybody can attest to that.

13 One of the other findings was that the location
14 of nonprofit tax credit projects usually was in poor
15 neighborhoods, that you just heard from several people
16 that are asking you not set a cap, saying the same thing,
17 that costs are usually higher in poorer urban
18 neighborhoods, the same -- and usually you're going to
19 find that nonprofits are the ones attacking the most
20 challenged neighborhoods.

21 And I believe -- and I don't remember what the
22 third finding was, but I believe those are the three
23 most -- two most important ones, that, yes, a nonprofit
24 possibly can have more expensive projects. This was a
25 national study, though.

1 I would be happy to have someone help me engage
2 in a study of Texas nonprofit versus for-profit projects
3 and really assess if there's a huge difference in Texas or
4 not. Costs are lower in Texas to begin with; anybody will
5 attest to that.

6 I don't -- I think the GAO itself in its
7 closing comments said that the findings basically didn't
8 find significant differences in their costs. And I'd be
9 happy -- I've provided you with that GAO before; I'll be
10 happy to provide it again.

11 MR. JONES: Thank you, sir.

12 MR. CONINE: Let me kind of follow up on that.
13 Why do you think the non-profit deserve a more increased
14 status when the market study says what size the units will
15 be and what the demand is?

16 The tax status of a developer is not going to
17 make a unit bigger or make it smaller.

18 MR. OCANAS: I understand.

19 MR. CONINE: Why do you advocate -- you're
20 getting better treatment than somebody else?

21 MR. OCANAS: That's all right -- for two
22 reasons. I don't know that we're getting better treatment
23 by this department.

24 MR. CONINE: Well, from ten to twenty would be
25 better.

1 MR. OCANAS: I would say no better than the
2 rural set-aside would be, you know, getting better
3 treatment than everybody else or disability --

4 MS. BINGHAM: That's location.

5 MR. CONINE: Yes, that's geography, I think.

6 MR. OCANAS: Sure. I think that there's two
7 reasons. One is including the Sunset decisions, that the
8 State now has a duty to deal with the preservation issue.
9 And it has been found nationally that the entities that
10 are best to serve to keep a property either permanently
11 affordable or the longest affordable are going to be the
12 nonprofits.

13 So if you want to build the capacity of those
14 groups -- you're doing about six deals a year with
15 nonprofits right now. This would maybe make it 12 to 15,
16 with the new increase that you just got.

17 So why not try to make sure that you're
18 training more new nonprofits, especially in the rural
19 areas, which is an issue I know the rural legislators are
20 talking to us about, that you help that capacity.

21 And you do it by experience, just like you're
22 talking about you want to have -- make sure you give
23 developers an opportunity to develop experience; the same
24 goes for nonprofits. You've had a very limited experience
25 up until now because you've been limited to about six

1 projects a year. And worse than that --

2 MS. BINGHAM: Who's been limited?

3 MR. OCANAS: Well, the program itself has
4 funded traditionally only five or six nonprofit projects
5 every year, and that's been looked at as a cap. And I
6 wasn't the only one that commented --

7 MS. BINGHAM: No, we have a cap of 10 percent
8 for the non --

9 MR. OCANAS: For a cap, exactly.

10 MS. BINGHAM: That is the minimum amount that
11 we can do by law.

12 MR. OCANAS: Right.

13 MS. BINGHAM: We have always known -- nothing
14 has stopped the nonprofits from competing in the general
15 set-aside, or from doing projects in the rural set-aside.

16 MR. OCANAS: I understand.

17 MR. CONINE: And haven't they won some awards
18 in both those areas?

19 MS. BINGHAM: Yes, they have gotten more
20 projects.

21 MR. CONINE: Yes.

22 MS. BINGHAM: They've gotten projects -- 10
23 percent out of the nonprofit set-aside, and they've got
24 developments out of the general set-aside. What's the
25 problem with competing?

1 MR. OCANAS: I still think that you're failing
2 in trying to address the capacity needs, especially in
3 rural and border Texas. You haven't been funding projects
4 in border Texas, as has been shown by need. And one of
5 the types of developers that can address that need is the
6 nonprofit community.

7 You know, if you make it 15 percent, that will
8 be great. But I do think that you need to take a good
9 look at what capacity you need to build in this State to
10 deal with the issue of preservation. You're losing
11 thousands and thousands of units.

12 The developers -- the for-profit community has
13 commented to you that they would rather not see a
14 preservation set-aside at all. They commented to that
15 effect during the Sunset hearings, and I'm sure that they
16 would have commented during the public comment period, but
17 you know that you've got a preservation need now.

18 MS. BINGHAM: We've got a preservation set-
19 aside --

20 MR. OCANAS: Sure.

21 MS. BINGHAM: -- in this QAP.

22 MR. OCANAS: And in spite of comment to the
23 contrary, so why not the same thing?

24 MS. BINGHAM: So if you have a nonprofit that
25 brings a preservation project, and I'm assuming we could

1 fund it regardless of who brings it, whether the nonprofit
2 or for-profit.

3 MR. OCANAS: Exactly.

4 MS. BINGHAM: I think the Nancy Johnson bill
5 did a good job of leveling the playing field. Why are we
6 going back?

7 MR. OCANAS: I think you -- in Texas, you
8 haven't leveled the playing field quite yet. The --
9 nationally the findings are that in terms of low-income
10 housing developments, nonprofits produce about 15 percent
11 of the stock; 85 percent has to be done by the private
12 sector.

13 I totally agree that we need them as partners,
14 but if you level the playing field in Texas by making sure
15 that you address the capacity needs of nonprofits, you'll
16 be doing the State a good public service, and that, I
17 think, is good public policy.

18 The third issue is the issue of preservation,
19 and we've already addressed that. I'm glad that there is
20 something in the QAP about it. Another issue from Sunset
21 was to limit the maximum amount a developer can get over
22 three years to be 2.4 million.

23 My recommendation is the same as last year, to
24 lower the maximum in one year to 1.2 million per year, and
25 you can do with it whatever you think is best, whether

1 it's adopting the Sunset recommendations that you thought
2 were good, or, you know, trying to reduce the maximum
3 amount a developer can receive in one year.

4 And, again, that's just to make sure that you
5 have good, equitable distribution of credits throughout
6 the State.

7 I don't know that you're getting -- right now,
8 you don't have any one development getting more than \$1.2
9 million of credits every year anyway, so this would just
10 say that the maximum in one year a developer could get is
11 one deal, so you definitely would be addressing needs in
12 other areas that aren't currently getting addressed by
13 increasing the number of people applying and getting
14 funded.

15 Section 50.256 -- that's the definition of a
16 nonprofit project. I wholeheartedly disagree with the
17 staff recommendations to change the definition of a
18 nonprofit, and I hope that that change is addressed.

19 I have included tax credit rules from Florida
20 that still say that the nonprofit have to have 51 percent
21 participation in the deal in order to be considered a
22 nonprofit project. That was removed by staff this year in
23 the QAP.

24 Finally, I support again -- a comment was made
25 previously about documenting and awarding points in some

1 way for public support for a project, and I know that
2 it's -- the staff response to me has been, How do you
3 document negative support?

4 Well, we saw it by the people in Wimberley.
5 They will show up; they will knock on your doors, and they
6 will get things done through Sunset, which is what they
7 did.

8 But definitely, the best way to gauge positive
9 support is by letters of support. So I bring you the --
10 an attachment from the Illinois QAP which shows how points
11 are given in that state for letters supporting development
12 under the tax credit program.

13 That's it. I tried to keep it short and sweet,
14 and if you have any questions, I'd be happy to answer
15 them.

16 MR. JONES: Thank you, sir.

17 MR. OCANAS: Thank you.

18 MS. BINGHAM: Mr. Chairman, could we have a
19 five-minute break?

20 MR. JONES: We sure could. We'll be adjourned
21 for five minutes.

22 (Whereupon, a short recess was taken.)

23 MR. JONES: Back on the record.

24 Mr. Joe McCartt.

25 MR. McCARTT: Not necessary any more.

1 MR. JONES: Okay. He does not wish to speak.

2 Mr. Dick Kilday.

3 MR. KILDAY: Thank you, Mr. Jones. Mr. Chair,
4 and members of the Board, Ms. Stiner, I'm Dick Kilday from
5 Houston, Texas, Kilday Realty Corp., and I'd just like to
6 say that, you know, you guys have a tough job every year.

7 I think you've done a great job addressing the QAP this
8 year, and you've made a lot of changes in response to
9 suggestions from Sunset and from public comment.

10 And I think you're to be commended. It's a
11 tough year. A lot is going on, obviously. And I would
12 just like to make four or five quick references. I don't
13 have paragraphs. I guess I'm speaking to paragraph 50, or
14 Section 50.

15 I think the nonprofit set-aside at 10 percent
16 is kind of part of the fabric of the code, and certainly
17 achieves the objectives of the Department and the program,
18 and I think that that ought to stay as is.

19 Certainly it's not limited. It has upside
20 potential, and that happens, I think. As far as tax
21 credits -- a cap on tax credits per unit or per foot or
22 something like that and also cost per -- a cost cap -- I
23 don't believe either of those should be imposed.

24 Certainly we know what reasonableness is, and
25 we are -- we live in a subjective world, and our projects

1 are subjective in many cases, although we try to quantify
2 them by numbers. And I agree with Barry Palmer.

3 I think that that's an excellent point, that we
4 just have to look at the situation and the project and
5 certainly the Department has demonstrated that it can, you
6 know, make a decision as to reasonableness.

7 I believe the set-asides are where they ought
8 to be. I think you've hit the mark there. The 15 percent
9 rural set-aside is very good. Some of those projects have
10 a tough time scoring and competing, and we need to get
11 units in the rural areas, and that's what we're doing.

12 The 10 percent -- the new 10 percent elderly
13 set-aside -- I know that elderly projects -- doing one and
14 have done one, and I may have another application -- it's
15 hard to score on those, and so that's -- I think that's a
16 good move.

17 And I think it's excellent that we don't have a
18 cap and that we can move the credits around as they need
19 to be used, if they aren't used in a particular area like
20 a rural area.

21 I'd like to say that as far as a maximum on tax
22 credits to any one developer or number of projects or
23 whatever, I think that's -- I won't say absurd, but that's
24 certainly unnecessary because, I mean, you might be doing
25 an extra-large project or you might be doing something

1 that's needed very desperately in an area, or both.

2 And I just think that the people that are
3 producing -- you know, free enterprise should never be
4 snuffed out. I think that's part of what we're hearing
5 today is that, Hey, let's get this thing on a -- and let's
6 all average it up here, and I believe that fairness ought
7 to be certainly present in every case.

8 But I believe free enterprise is probably the
9 reason we're all here, so that should be protected at all
10 costs. And, again, I just want to commend you on your
11 work, and I'll look forward to another good year. Thank
12 you very much. I'd be glad to answer any questions.

13 MR. JONES: Thank you, sir.

14 And that concludes all the witness affirmation
15 forms I have. I assume there's nobody out there that
16 would like to speak to the Board.

17 And with that, I'll close public comment then,
18 and return us back to Agenda Item 2a, Ms. Bingham. Excuse
19 me. I was just going to -- we're through with public
20 comment, and we go back to Item 2a, Ms. Bingham.

21 MS. BINGHAM: Okay.

22 MR. JONES: Excuse me. I'm sorry.

23 MS. BINGHAM: That's okay. Thank you. Well,
24 this is the time of the year, I assume, that -- there have
25 been some comments about rule-making and at what point

1 what is done.

2 This is certainly that time of the year when
3 the Board is to take what staff has recommended and revise
4 it, modify it, tear it up, throw it out the window, bring
5 it back, do whatever the Board feels it needs to do in its
6 policy-making vision.

7 This is certainly the time to do that. So at
8 this time, I would think it's time to bring up Cherno and
9 let him walk through -- he and David have an opportunity
10 to walk through the staff recommendations and the Board
11 look at what changes and modifications they want to see
12 made.

13 MR. NJIE: Thank you, Ms. Bingham, board
14 members. My name is Cherno Njie, manager of the tax
15 credit program. What we have before you is staff
16 recommendation, and we conducted a lot of public hearings
17 across the State and getting public comments about the
18 proposed QAP.

19 Even prior to staff proposals back in November,
20 we convened a couple of workshops to brainstorm with
21 developers, advocates and stakeholders in the program to
22 clarify some of the issues that we're working through to
23 get feedback before we make any proposals to the Board.

24 After the November board meeting and approval
25 of the QAP, we have public hearings in Tyler, Plainview,

1 Mercedes, San Antonio, El Paso, Dallas, and Austin.

2 Written comments were also received by staff from
3 interested parties.

4 So the QAP that we're presenting here has gone
5 through a lot of thought, a lot of revisions. And I don't
6 know how you all want to present this. I can walk through
7 each and every item or address any of the questions that
8 you all may have.

9 What is your preference?

10 MS. BINGHAM: Why don't we start with going
11 through the new Nancy Johnson bill and some of the high
12 points of what has been changed at the national level?
13 And that bill was signed into law recently.

14 MR. NJIE: There is a memo included in your
15 packet which deals with modifications to the proposed QAP
16 as a result of changes in federal law. The statute was
17 amended effective January 1, 2001, and the changes are
18 listed as follows: There is an increase in the housing
19 cap, meaning the \$1.50 per capita is now effective this
20 year.

21 (Applause.)

22 MS. BINGHAM: Thank all our supporters. How
23 much does that represent in real dollars?

24 MR. NJIE: That should give us about \$30
25 million this year.

1 MS. BINGHAM: We were at 24 million and that's
2 30, now, times ten -- okay. So we're looking at --

3 MR. NJIE: That's correct.

4 MS. BINGHAM: -- so we're looking at 300
5 million.

6 MR. NJIE: And that does not require any
7 specific changes to the QAP, only in the calculation of
8 the credit. Changes also affected the reversal of the
9 housing stacking rules, basically addressing how you
10 utilize the credit, what parts you utilize first, and the
11 order in which that happens.

12 There were amendments which have some bearing
13 on the QAP, specifically the selection criteria. The
14 amendments give priority or requires that we give
15 preference to projects in existing -- existing properties
16 that are part of a neighborhood revitalization plan, so in
17 my memo, I have outlined that we have proposed a
18 modification of the QAP in response to that change in the
19 law.

20 The change also affected an Exhibit Number 210
21 in the QAP, and this relates to supportive services. The
22 change basically removed the preference for nonprofits to
23 provide these supportive services. Likewise, the
24 Department is proposing that those services can be
25 provided by any entity, both nonprofit and for-profit. The

1 amendment also requires that we give preference to tenant
2 populations with children. That was already part of the
3 QAP, so we just revised the language a little bit,
4 providing opportunities for projects to provide three-
5 bedroom and four-bedroom units.

6 The amendment also affected incentivized
7 projects with eventual tenant ownership. This has always
8 been part of our QAP, so no change is being proposed as a
9 result of that.

10 One additional amendment is to -- for projects
11 that are in qualified census tracts and that also
12 contribute to community revitalization. If you will
13 recall, the QCTs used to be given five points in the 2000
14 QAP.

15 In our earlier proposal, we wanted to remove
16 those points because we felt there was already a great
17 deal of product in qualified census tracts. In light of
18 the new changes, we are restoring two points back to the
19 QCTs.

20 The next requirement is for a market study. As
21 was discussed earlier, Farmer's Home projects were exempt
22 from providing this study, and we've now made it mandatory
23 for all projects to provide market study.

24 The amendment also touches on compliance
25 monitoring. This is already part of the QAP, so no change

1 is proposed. Documentation of discretion was also part of
2 the amendment. The Department already documented that we
3 will expand on the documentation that we have currently in
4 the Board books and to applicants and the general public.

5 Another amendment was the extension of the time
6 to meet the temp centers. This is the end-of-year
7 requirement for project owners. The amendment basically
8 allows them up to six months to meet that requirement.

9 We're not proposing any changes as a result of
10 that, simply because we wanted to wrap things up before
11 the end of the year, before having to deal with new
12 applications in a subsequent year.

13 There is also an amendment regarding eligible
14 basis. Eligible basis is the cost that basically
15 determines your credit basis. The amendment includes
16 community service facilities as eligible for tax credits,
17 and we're going to amend underwriting guidelines
18 accordingly.

19 The amendment also affected changes in the
20 definition of qualified census tracts, and we're proposing
21 an amendment in light of that.

22 The final amendment was for Native American
23 housing. Again, no change is effected in the QAP. We
24 will make the amendments in our underwriting guidelines.
25 So that covers the new proposals as a result of --

1 MS. BINGHAM: Okay. So that covers the new
2 bill, so why don't we go to what seems to be the more
3 controversial items and try to address those. We may as
4 well take them head on.

5 The provision that would have to do with
6 handicapped access -- why don't you explain what is being
7 proposed and describe your view of the -- of some of the
8 pros and cons on that.

9 MR. NJIE: Well, the issue of accessibility --

10 MS. BINGHAM: Why don't you take us to the
11 exact -- the board members to the exact page and the
12 latest changes first.

13 MR. NJIE: Page 12, I believe, of the QAP.

14 MS. BINGHAM: Page 12 -- that's the January?

15 MR. NJIE: That's correct. January board
16 documents, page 12. On that Exhibit 101(c).

17 MS. BINGHAM: Why don't you explain the
18 difference between this year's, last year's, the comments
19 that you've received, and the pros and cons.

20 MR. NJIE: Last year, this was one of the
21 selection criteria, and points were awarded for providing
22 units of, I believe, up to 10 percent to persons with
23 disability. You were required to -- during your lease-up
24 period, to hold those units vacant while you market to
25 certain persons.

1 We received a lot of comments that we shouldn't
2 be giving points for projects that are required to comply
3 with federal law anyway. And the points were being given
4 because of the marketing involved, not for the -- not for
5 complying with federal law.

6 But we've amended that to include it as a
7 threshold requirement. This is one of the issues that I
8 think there were sharply divergent views between people
9 who were advocating a 504 standard and those who were
10 advocating a Fair Housing ANSI standard.

11 The language we've proposed is a compromise.
12 We've worked with the advocacy groups. We've worked with
13 the Texas Association of -- Texas Affiliation of
14 Affordable Housing Providers. We got their input before
15 we implemented this, so we believe it is a good balance
16 which requires the owners to comply with Fair Housing and
17 also to pay for the 5 percent of the units to be modified
18 at their expense when there is effective demand for the
19 unit.

20 It also includes townhomes. Townhomes are
21 exempt under the Fair Housing Act. What -- we are
22 requiring the townhomes be redesigned to include at least
23 one bathroom and one bedroom on the ground floor and also
24 comply with the Fair Housing standards.

25 So this is a Fair Housing manual, and it goes

1 in some detail in terms of giving you guidelines for
2 designing your units so that they're modifiable and that
3 can be adapted for persons in a wheelchair.

4 MS. SAENZ: Can I ask a question, please?

5 MR. JONES: Sure.

6 MS. SAENZ: The young lady that just spoke a
7 little while ago -- she says that no units will be built
8 like that, only when someone comes and asks for a unit to
9 be built with someone with disabilities.

10 MR. NJIE: The units will be designed to
11 include the dockings [phonetic] and all the architectural
12 requirements for modification when there is somebody to
13 lease the unit. That is correct.

14 They're not going to be built waiting. They're
15 going to be built when there is demand for the unit.

16 MS. SAENZ: All right. Let's say that all the
17 units are leased up, and then someone comes with a
18 disability that wants to lease.

19 MR. NJIE: Under the Fair Housing Act, those
20 units can still be modified at the tenant's expense.

21 MS. SAENZ: And so they get rid of whoever is
22 there?

23 MR. NJIE: No. If there is a vacant unit, and
24 a tenant applies to the property --

25 MS. SAENZ: No. But my question is if there's

1 no vacant units --

2 MS. BOSTON: Well, even with the previous
3 suggestion, those units would not be held vacant. Even if
4 you have them built specifically and they were already
5 modified, they still wouldn't be held vacant.

6 MS. SAENZ: Well, I thought that's what they
7 said that they kept them --

8 MR. CONINE: Just during the initial lease-up,
9 and then you can rent them to anybody.

10 MS. SAENZ: Oh.

11 MR. CONINE: After the project is finished
12 and --

13 MS. SAENZ: All right.

14 MS. BINGHAM: So for anybody that wants to make
15 changes to that, I guess we can make them any time. But
16 let's go to another hot-button item. I guess it's not
17 that hot since it's been changed into law.

18 We had already changed it in our bond program,
19 is that the Nancy Johnson bill that was signed into law in
20 January removed the requirement that supportive services
21 had to be provided by a nonprofit organization. Now those
22 services can be provided by both -- by either a nonprofit
23 or a for-profit entity.

24 Chernow, you may want to spell out for the board
25 members exactly what page and number that is in case there

1 are revisions. Why don't we talk about that?

2 DR. GRIFFIN: Madam Chairman, I've got a
3 question about that. Can I ask it while he's looking at
4 that?

5 Mr. Chairman, can I ask a question while he's
6 looking?

7 MR. JONES: Just a second. I'll answer that
8 question in just a minute. I need to seek legal advice.

9 MR. NJIE: That is on page 21.

10 VOICE: Twenty-one?

11 MR. NJIE: Yes.

12 MR. CONINE: Of the QAP now?

13 MR. NJIE: Yes.

14 MR. CONINE: You're on the QAP?

15 MR. JONES: I'm sorry, Dr. Griffin. You cannot
16 participate in this discussion based upon advice of the
17 attorney general's office.

18 DR. GRIFFIN: But I just have a question.

19 MR. JONES: Again, Dr. Griffin, based upon
20 advice of the attorney general's office, you cannot
21 participate in this discussion.

22 DR. GRIFFIN: Fine, Mr. Chairman.

23 MR. JONES: Thank you.

24 MS. BINGHAM: Okay. You're on page 21, you
25 say?

1 MR. NJIE: Page 21, and it's Exhibit 210. This
2 report of service provision has been expanded basically to
3 open it up to whatever entity, regardless of tax status.

4 MR. CONINE: Does this also include a
5 governmental entity, like if a city has a supportive
6 service program?

7 MR. NJIE: Sure.

8 MR. CONINE: And I think there was some
9 questions at least that I've heard of that it went before
10 when it said non -- when it said tax-exempt or
11 nonprofit --

12 MR. NJIE: Or a public entity.

13 MR. CONINE: Public entity, nonprofit, or
14 anybody.

15 MR. NJIE: Sure.

16 MR. CONINE: Okay.

17 MS. BINGHAM: Mr. Njie, let's go back. Are you
18 sure that's on page --

19 VOICE: That's on page 20.

20 MS. BINGHAM: Okay. I'm looking at the first
21 right of refusal. What exhibit is it?

22 MR. NJIE: Exhibit 210.

23 MS. BINGHAM: Okay. 210. Okay. That's 220.
24 Is -- okay.

25 MS. BOSTON: At the bottom it should read 2001

1 QAPJanBoard.

2 MR. BETHEL: And Exhibit 210 starts on page 20?

3 MR. NJIE: On 21.

4 VOICE: It's this one here.

5 MS. BINGHAM: Why don't you read it?

6 MR. NJIE: Yes, it reads, "Project provides
7 supportive services to tenants: Evidence that the project
8 owner has an executed agreement with a for-profit or a
9 tax-exempt entity for the provision of special supportive
10 services to the tenants."

11 It deletes any requirement that the project
12 owner be a 501(c)(3) designated entity. And the project
13 or service provider must be an existing organization
14 registered to conduct business in the State of Texas.

15 MR. CONINE: Can I ask another question? Are
16 faith-based institutions registered to operate in the
17 State of Texas?

18 MR. NJIE: Faith-based are included in this.
19 We can make that amendment.

20 MR. CONINE: I think we need to make sure
21 that -- I don't know whether they have to file a permit or
22 register --

23 MS. BINGHAM: What was the question, Mr.
24 Conine?

25 MR. CONINE: Are faith-based institutions --

1 church projects or various religious activities that could
2 provide social services -- do they have to register in the
3 State of Texas, or would that be a kick-out?

4 MS. BINGHAM: No, they would have to register.
5 They have to register if they are qualified -- if they
6 are going to be qualified nonprofit organizations, they
7 have to register with the Internal Revenue Service.

8 MR. CONINE: But that's not the State of Texas?

9 MS. BINGHAM: No, that's with the Internal
10 Revenue, but they have to provide the Department with the
11 IRS determination.

12 VOICE: For faith-based?

13 MS. BINGHAM: Yes, any nonprofit.

14 MR. CONINE: Can we wipe out that, "registered
15 in the State" or modify it?

16 MS. BINGHAM: Faith-basis nonprofit or any
17 other nonprofit.

18 MR. NJIE: Okay. We can -- you're concerned
19 about the language relating to "registered in the State of
20 Texas?"

21 MR. CONINE: I mean, I want to make sure that
22 it's not just your friend, Joe, that's got a new deal
23 going. I think the point you're trying to make is we want
24 it to be an ongoing entity of size and substance. But I
25 also want to make sure that they're included in this

1 particular definition.

2 MR. NJIE: So you want the revision to reflect
3 the faith-based organization and to delete any
4 registration requirements?

5 MR. CONINE: No.

6 VOICE: No.

7 MR. CONINE: I guess my question is -- and I'm
8 asking for somebody else's opinion other than mine -- are
9 faith-based institutions registered in the State of Texas?
10 Would they meet this criteria?

11 MS. BINGHAM: No, faith-based institutions are
12 not registered -- faith-based nonprofit organizations do
13 have to register with the Internal Revenue Service just
14 like any other nonprofit entity.

15 The only difference is they say they are
16 affiliated with XY church; that's the only difference.
17 But they have to register when they apply for projects
18 under the nonprofit status just like any other nonprofit;
19 they show the Department their Internal Revenue --

20 MR. CONINE: Then they add the Internal Revenue
21 to this --

22 MS. BINGHAM: Right.

23 MR. CONINE: -- as an additional --

24 MR. NJIE: I think we can --

25 MR. CONINE: -- coverage --

1 MR. NJIE: -- satisfy that by saying the
2 service provider must be an existing organization, period.

3 MR. BETHEL: Instead of registered -- you're
4 saying that it's got to be registered in the State of
5 Texas.

6 MR. NJIE: That's what I'm saying.

7 MR. BETHEL: So then the faith-based
8 institutions would not qualify.

9 MR. NJIE: So --

10 MS. STINER: Existing organization has a
11 different connotation, doesn't it, than just --

12 MS. BINGHAM: Existing organizations, whether
13 they be faith-based or nonprofit, have all got an Internal
14 Revenue status, and they're not registered in the State of
15 Texas; they're registered under the Internal Revenue Code.

16 MR. CONINE: That's correct.

17 MS. BINGHAM: So you can't make them -- say,
18 You've got to be registered somewhere they don't register.

19 MR. CONINE: Let's just add the IRS to their --

20 MR. NJIE: Or registered with the Internal
21 Revenue Service.

22 MR. DAROSS: I've got a question about the
23 language also. It's a different direction. And I'm not a
24 corporate attorney. But I don't -- a corporation, whether
25 it's for-profit or nonprofit, as I understand it, doesn't

1 register anywhere.

2 You file articles of incorporation. And if
3 you're a foreign corporation, you get qualified to do
4 business in the State of Texas, but I have no idea what
5 the word, registered, means. The nonprofits don't have to
6 register with anybody.

7 MR. NJIE: Nonprofits have an IRS designation.

8 MR. DAROSS: That means that they are
9 recognized as an exempt organization. They're not
10 registered.

11 MS. BINGHAM: Right. I think the difference is
12 registered versus recognized.

13 MR. NJIE: Okay. We can amend that language to
14 reflect that the organization should be either registered
15 or recognized by the Internal Revenue Service or other
16 governmental entity.

17 MR. CONINE: I like that a little better.

18 MR. JONES: Yes, to make the record clear, as
19 we work through these amendments, how are we going to
20 handle this? Are we going to have a blanket motion to
21 approve --

22 MS. BINGHAM: I guess we can make a motion as
23 we go.

24 MR. JONES: Okay. Or are we just going to make
25 a motion as we go? Okay. So the motions as we go will be

1 motions to amend the staff's proposals as we discuss. And
2 then at the end, we'll make a motion to approve the staff
3 recommendations as amended by prior motions.

4 Is that how we're proceeding? Okay. So we
5 really have a motion on this issue?

6 MS. BINGHAM: For recognize versus registered.

7 MR. DAROSS: Yes, what's the intent of that
8 sentence?

9 MR. NJIE: The intent is to make sure that this
10 is an existing organization, is not to-be-formed
11 organization. It has some certification, some standing
12 currently.

13 MR. BETHEL: So what was your proposed --

14 MR. NJIE: What did I say again?

15 MR. DAROSS: And you're not talking about just
16 limiting this sentence to nonprofits?

17 MR. NJIE: No.

18 MR. CONINE: I think maybe the word you crossed
19 out may be even more apropos --qualified?

20 MR. DAROSS: I think you crossed out the wrong
21 word.

22 MR. CONINE: Yes, you leave "qualified" in
23 there if a faith-based or any other group is qualified.
24 Part of that qualification would be meeting the IRS regs
25 and whatever else at the national level, wouldn't it?

1 Would it not?

2 MS. BINGHAM: Let the attorneys comment on it.

3 MS. BOSTON: A service provider must be an
4 existing organization qualified by the IRS or another
5 governmental entity.

6 MR. DAROSS: That would work. Because if it's
7 a for-profit corporation, then it qualifies to do business
8 by filing articles of incorporation or by filing the
9 articles to transact business in the State of Texas.

10 MR. NJIE: Sure. That works.

11 MS. MARKS: I agree with the changes.

12 MR. CONINE: I make a motion to amend this
13 language to exactly what she just said.

14 MR. JONES: A motion has been made. Is there a
15 second?

16 MS. BINGHAM: I second.

17 MR. JONES: The motion has been seconded. All
18 in favor of the motion, please say aye.

19 CHORUS: Aye.

20 MR. JONES: All opposed, nay.

21 (No response.)

22 MR. JONES: The ayes have it.

23 DR. GRIFFIN: I abstain, and I'm glad you got
24 to that point.

25 MS. BINGHAM: Okay. That was -- so we've dealt

1 with the -- are we going to take motions in case any board
2 members have anything to add or change with the
3 handicapped issue?

4 (No response.)

5 MS. BINGHAM: I'd just like to comment also on
6 the issues that Mr. Sox Johnson raised. Mr. Brewer,
7 Chernow needs clarification of the existing -- of the fact
8 that we do have an existing signed document with the
9 Rental Rural Housing Association and how we're proposing
10 to amend that to incorporate the new law change.

11 MR. NJIE: The existing MOU basically outlines
12 how we are going to work with Texas Rural Development in
13 exchanging information and in preventing duplication of
14 effort.

15 We have essentially relied on them to certify
16 that the project is feasible. That's why we don't require
17 the market study. If they have agreed to fund the
18 project, that's good enough for us.

19 So we will amend that language to require that
20 any market study submitted will include portions of it
21 addressing specifically tax credit issues.

22 There are variances in what they require and
23 what we require. Our effort here is to minimize
24 duplication, and I don't believe, based on my review of
25 the market study requirement that they have, it's going to

1 be minimal duplication in this effort.

2 So we'll go back. We have a standing MOU that
3 can be amended, and we'll work with them to flesh out
4 those issues.

5 MS. BINGHAM: There was another point raised
6 about the two points -- the early -- the two points for
7 area and site selection issues. Could you take us to that
8 paragraph and page?

9 MR. NJIE: I think that that's the bonus
10 points.

11 MS. BOSTON: Are y'all looking at your black-
12 line copy?

13 MS. BINGHAM: Exhibit what? Exhibit -- what
14 exhibit is it?

15 MR. NJIE: It's page 23.

16 VOICE: It's not an exhibit. It's the bonus
17 points.

18 MS. BINGHAM: Okay. It's bonus points. I got
19 it.

20 MR. NJIE: The site evaluation criterion here
21 is designed to make sure that sites that are deemed to be
22 full will not rise in the ranking, and -- while elevating
23 those that are rated as excellent.

24 We recognize that there is an element of
25 subjectivity involved in this. There is no doubt about

1 it.

2 What we propose to do is to make our site-
3 evaluation criteria or checklist available as part of the
4 application process so the developers will get a sense of
5 what we are looking for.

6 And some -- in some cases, areas that are
7 lower-income or has -- have a large number of vacant or
8 dilapidated buildings have been in the past deemed to be
9 undesirable simply because of that. We're sensitive to
10 that issue.

11 We will take into account the contribution of
12 the project as part of the revitalization effort in the
13 community. Some projects in lower-income areas would add
14 more to revitalize than a project in a suburban community.

15 There is no easy way to do this, though.

16 MS. BINGHAM: Okay. Let me go back. If in the
17 bonus point category, we give another two points to a
18 project located in a QCT and contributes to a concerted
19 community revitalization plan. To qualify for these
20 points, the project owner in addition to submitting
21 Exhibit 102 must also submit a letter from a city or
22 county official which verifies that the development is
23 located within a qualified census tract.

24 That is in the bonus points, and that is
25 consistent with the new bill. But, however, when you go

1 back to your previous exhibit, you have already given
2 points for being in a -- in that area and also
3 contributing towards the revitalization efforts.

4 So I wonder why we're double-dipping --

5 VOICE: On the project characteristics?

6 MS. BINGHAM: -- yes, on the project
7 characteristics. Over here -- let me go to that exhibit.

8 In Exhibit -- under Exhibit 201 --

9 MR. NJIE: Yes.

10 MS. BINGHAM: -- we already give them five
11 points for being in a qualified census tract and having a
12 letter from the city officials. But if we go back toward
13 the end and also give them two more points, what's the
14 point there?

15 MR. NJIE: Exhibit 201 merely gives you points
16 for locating in an enterprise zone.

17 MS. BINGHAM: Okay. That's the point I wanted
18 to make. If you are going to be located in a difficult
19 development area, that's one thing, because that's defined
20 by HUD. You're in a targeted county; that's defined by
21 HUD.

22 C, you're in a designated federal empowerment
23 zone that a city applies for from HUD, and such
24 development submits a letter from the county official --
25 city or county official -- that's C.

1 And then, D, you're in a city-sponsored tax-
2 increment zone, public-improvement district. Those
3 districts are designed for the expressed purpose of
4 encouraging inner-city revitalization. So you get the
5 points under that category.

6 So why do you need them over here in this two
7 points added. I mean, you're just adding and adding and
8 adding, so I would make a motion to delete the last two
9 points because you --

10 MS. STINER: For the QCT?

11 MS. BINGHAM: No.

12 VOICE: Paragraph 1(c)?

13 MR. NJIE: Can I --

14 MS. BINGHAM: I understand that, but the QCT
15 should have been added over here under the other points.

16 MR. JONES: If we could, could we get the
17 motion on the floor before we discuss it?

18 We have a motion from Ms. Bingham.

19 MS. BINGHAM: I would have -- make a motion to
20 move this extra two points for QCTs over under Exhibit
21 201, and you get five points for the whole thing, for
22 being in a QCT, a difficult development area or enterprise
23 zone, empowerment zone, LURAs -- all that's the same
24 thing.

25 MR. JONES: We have a motion by Ms. Bingham.

1 Is there a second?

2 MR. BETHEL: I'll second.

3 MR. JONES: The motion's been seconded.

4 Discussion, please.

5 MR. CONINE: Where is the list you're reading
6 from? I'm sorry.

7 MS. BINGHAM: Go to Exhibit 201. It's
8 identified as Development Location. Evidence that the
9 subject property is located within one of the geographical
10 areas described in subparagraphs (a) through (d). Then
11 when you go to (a) through (d), you've got a difficult
12 development area. That's defined by HUD.

13 Targeted Texas county -- that's defined by HUD
14 and the State of Texas; a designated federal empowerment
15 zone is decided by HUD and the city or county in which
16 it's located. City-sponsored tax-increment zone is
17 defined by the city.

18 And QCT over there for those extra points is
19 also defined by HUD, so all those ought to be moved under
20 one category and give one five points or whatever points
21 and be through with it.

22 MR. CONINE: What I wanted to speak to -- and
23 I'm glad you raised the issue because I was at an
24 affordable housing conference yesterday and the issue of
25 this renaissance of inner-city housing is great, but

1 there's no affordability to it when you do it on a
2 conventional basis.

3 And my thoughts were how can we incentivize the
4 development community to come back in town to do an
5 affordable product downtown or close to a downtown and
6 reward them enough points for that? So I think I'm in
7 favor of what you just said because it does that, to some
8 degree.

9 It cuts down all the sprawl issues and some of
10 the other --

11 MS. BINGHAM: Well, my point is this: I guess
12 it's all over the page. If you -- I'm not opposed to --
13 it's also part of the new move in the -- I mean, in terms
14 of the federal legislation. But even if you give it seven
15 points, you've just got it all over the place.

16 If you moved it and you got five points -- make
17 up my mind, whether we're going five points, six points,
18 or seven points. But to have it all over the map is what
19 I'm having problems with. If it's worth seven points,
20 it's worth seven points.

21 MR. CONINE: It looks like, Chernob, paragraph
22 (d) allows for the, you know, particular city to designate
23 just about whatever area they want to designate if they
24 want to target that particular product going into that
25 city. Is that correct? Am I reading that correctly?

1 MR. NJIE: That's correct. The provision (c)
2 and (d) are not qualified census tracts. Those are
3 enterprise zones and empowerment zone: (c) is enterprise
4 empowerment; (d) is city-sponsored improvement area, so
5 they are not specifically qualified census tracts.

6 MS. BINGHAM: I understand. But I'm just
7 saying if we just did a paragraph to say that all of
8 those, (a), (b), (c), and (d) are qualified census tracts,
9 qualified census tracts are going to get 130 percent
10 credit. Right?

11 MR. NJIE: That's correct.

12 MS. BINGHAM: That's one incentive to being
13 there. So if you just add all of those, whatever they
14 are, city-sponsored, HUD-sponsored, State-sponsored -- if
15 you add them all -- I don't care whether you give them
16 five points, six points, or seven points, but they need to
17 be on the Exhibit 1 -- under that Exhibit 201 that deals
18 with location.

19 VOICE: May I comment?

20 MR. NJIE: So you would delete Item 2 on the
21 bonus points and move it over to location?

22 MS. STINER: Let's move it, yes. That's
23 subpart (e).

24 MS. BINGHAM: Yes, move it over. And it's the
25 Board's discretion whether they want to give it seven

1 points or five points.

2 MR. CONINE: Did we just say eliminate
3 paragraph (c) on page 23 and take those two points and
4 move them over to here? Is that what you said?

5 MR. DAROSS: Paragraph (d).

6 MS. BINGHAM: Well, you got -- so it would be
7 (e).

8 MS. STINER: Over here. Which one are you
9 talking about? They're talking about taking (d) right
10 here.

11 MS. BINGHAM: Oh, yes. I'm talking about (d),
12 project located in a QCT and contributes to concerted
13 community revitalization effort. That's --

14 MR. BETHEL: The motion was to eliminate that
15 paragraph --

16 MS. BINGHAM: Yes, from that section --

17 MR. BETHEL: Yes.

18 MS. BINGHAM: -- and make it either --

19 MR. BETHEL: 201 without any points. I mean --

20 MS. BINGHAM: Yes.

21 MR. BETHEL: -- the same points.

22 MS. BINGHAM: Yes, without any points. And Mr.
23 Conine suggested that we up the whole category for 201 to
24 seven points. I don't -- I have no preference on that.

25 VOICE: Is that where you want it?

1 MR. CONINE: Okay. Yes, I think that's what I
2 said. I'm pretty sure that's what I said.

3 MS. BINGHAM: Well, I'll make the motion that
4 we move it --

5 MR. JONES: We already had one motion -- so
6 let's just amend your -- do you understand what I'm
7 saying? Let's amend your motion. Go ahead. State your
8 amended motion, and then Bethel will second it.

9 MS. BINGHAM: Okay.

10 MS. STINER: State it.

11 MR. JONES: If you would, could you state your
12 motion --

13 MS. BINGHAM: I will amend my motion to move
14 the paragraph that deals with location under QCT over to
15 (e) under development location and bring the points
16 forward to make 201 a total of seven points.

17 MR. JONES: And the chair will recognize that
18 Mr. Bethel has seconded it.

19 MR. BETHEL: I second it.

20 MR. JONES: Thank you. Further discussion of
21 the motion?

22 (No response.)

23 MR. JONES: Hearing none, are we ready to vote?
24 All in favor of the motion, please say aye.

25 CHORUS: Aye.

1 MR. JONES: All opposed, nay?

2 (No response.)

3 MR. JONES: Abstentions?

4 DR. GRIFFIN: I abstain.

5 MR. JONES: The ayes have it.

6 MR. CONINE: Can we go back to paragraph (c),
7 because I'm still a little bit disturbed about that. It's
8 a six-point swing, and can be very subjective and
9 obviously kick out some folks.

10 MS. BINGHAM: Under which exhibit?

11 MR. CONINE: On page 23 of 33, right above your
12 (d), the one you just moved --

13 MS. BINGHAM: Okay.

14 MR. CONINE: -- paragraph (c), right there. I
15 guess I'd like just to get it on the floor and make a
16 motion that we delete paragraph (c).

17 MS. SAENZ: I second that.

18 MR. JONES: We've got a motion to delete
19 paragraph (c), and it has been seconded by Ms. Saenz. A
20 discussion of the motion?

21 Mr. Bethel?

22 MR. BETHEL: Well, I don't know what criterion
23 you're on. What are we going to use as excellent and
24 as -- that's on sites -- on site visitation and the
25 staff's going to make the determination of whether it's an

1 excellent site?

2 MR. NJIE: That is correct. The site-selection
3 ranking takes into account the amenities in the area,
4 employment base, other elements, accessibility, et cetera.

5 In the past, we have not taken into account the project's
6 contribution in revitalizing the community.

7 This is one element that we're going to include
8 to assess how the project will help in revitalizing the
9 community. So there is no definition right now as to what
10 is an excellent site. It depends on the site-inspection
11 team.

12 MS. BINGHAM: Well, if you -- we've done what
13 we did just a few minutes ago and give preference to and
14 followed the law in terms of the Johnson bill and given
15 preference to revitalization areas, all this paragraph (c)
16 is doing is conflicting with that. So it just needs to
17 go.

18 MR. CONINE: Call for the question, Mr. Jones.

19 MR. JONES: All right. Further discussion?

20 VOICE: Mr. Chair, I have one question. Isn't
21 the Department evaluating the sites now without
22 preference? That would be my question.

23 MR. CONINE: The normal underwriting process
24 will take care of that.

25 MS. BINGHAM: That's for the bank and

1 everybody.

2 MR. JONES: Are we ready to vote?

3 VOICE: Yes.

4 MR. JONES: All in favor of the motion please
5 say, aye.

6 CHORUS: Aye.

7 MR. JONES: All opposed, nay?

8 (No response.)

9 MR. JONES: All abstentions.

10 DR. GRIFFIN: I abstain.

11 MR. JONES: The ayes have it.

12 MS. BINGHAM: I'm sure other board members may
13 have some other issues. Those are mine.

14 MR. JONES: Thank you, Ms. Bingham.

15 MS. BINGHAM: We can go to the rest of the
16 board members' issues.

17 MR. CONINE: I've got a couple just -- that
18 came through the public comment that come to my mind
19 anyway, the one about the applications as we receive them
20 and score them and have them open for viewing and so forth
21 before decisions are being made. I'd like to explore that
22 with Cherno, I guess, and ask for your comments relative
23 to that.

24 MS. BINGHAM: Why don't you bring Betty Marks
25 into that conversation as well.

1 MR. CONINE: That would be great.

2 MR. NJIE: The request for making the
3 applications public -- we've received that in the past,
4 and we have referred the matter to the AG's office for a
5 ruling regarding what portions of the application can be
6 released during the decision-making process.

7 And the ruling has been that we couldn't
8 release the application because of information that is
9 contained in the application. We could adversely affect
10 one applicant over another and could affect the
11 Department's ability to award credits on a competitive
12 basis.

13 So even if the Department were to require that
14 applications be released, I believe unless the applicant
15 waives those rights, we would still have to notify each
16 applicant and have them consider whether they would invoke
17 any privileges regarding to trade secrets or anything that
18 is contained in their application.

19 MR. JONES: Can I jump in on that? I want to
20 make sure I understand something. The AG's ruling said
21 that tax credit applications are exempted from disclosure
22 under the Public Information Act, so that if somebody
23 demands to see them right now, we don't have to supply it
24 under the Public Information Act. Is that true, or does
25 it go further than that?

1 MR. NJIE: Only during the review period. Once
2 the applications are submitted, they are open to the
3 public. During the competitive bidding process -- but
4 after the bidding process --

5 MR. JONES: But now, again -- but my question
6 is something different. I understand that, and I can
7 understand why there would be reasoning to allow us to
8 allow them not to become public during the competitive
9 bidding process.

10 But now I'm going back to what is the attorney
11 general opinion that we got say? Does it merely say that
12 we don't have to, or does it say we would violate some
13 law, any law, federal, state, local, you know, regulatory,
14 you-name-it, if we did disclose it, or violate any rights
15 to privacy or anything else in talking about what I
16 address it to, but, you know, whatever?

17 VOICE: Federal --

18 MR. JONES: Okay. That's my question.

19 MS. MARKS: And that's exactly right. What
20 you're doing is you're asking for an exception to the open
21 records. The open records basically says that all of your
22 information is a matter of public record.

23 MR. JONES: Again, clearly I understand the
24 AG's opinion is that we don't have to disclose. I
25 understand that. Does the AG's opinion go further and

1 tell us that if we did we would violate some statute or
2 law or regulation or right of privacy or anything else.
3 Does that make sense?

4 MS. MARKS: Yes. Okay. Maybe I should ask the
5 AG, but I believe that what they're saying now is that
6 where there are trade secrets and that the third parties
7 who would be affected by the release of that information
8 can come into the AG's office and request on their own --
9 in other words, if the Department asks for a waiver or
10 asks for an exception, that there is certain information
11 contained in the application that would affect third-party
12 trade secrets, certainly that information, that they have
13 the right to go to the AG's office and make their brief,
14 basically why the information should not be released to
15 competitors.

16 MR. JONES: Let's make sure I understand the
17 answer to my question then. The answer to my question is
18 the AG's office opinion that we're referring to goes
19 further and says that we would perhaps, if we did allow
20 such disclosure during this process, violate laws,
21 statutes or rights of the individuals that are making the
22 applications. Correct? It says that?

23 MS. MARKS: I'm not sure if that particular
24 opinion says that. That's my understanding from the AG's
25 office is that --

1 MR. JONES: They've given us that information
2 at some point in time?

3 MS. MARKS: Yes.

4 MS. STINER: Betty.

5 Excuse me. Mr. Chair?

6 MR. JONES: Yes.

7 MS. STINER: We do have that opinion somewhere
8 upstairs, don't we?

9 MS. MARKS: Yes.

10 MS. STINER: I mean, we have enough lawyers
11 here to --

12 MR. JONES: Yes, but --

13 MS. STINER: -- interpret it.

14 MR. JONES: -- but again, the reference that
15 you gave me, Ms. Stiner, about the opinion only discusses
16 whether or not we have to give it out.

17 MS. STINER: Yes. I --

18 MR. JONES: If it -- if there -- if we have
19 anything from the AG's office that goes further than that,
20 I'd like to know that. And what I'm taking from Ms.
21 Marks' comments is that we do and that they have gone
22 further than that.

23 MS. STINER: And I'm -- all I'm asking -- all
24 I'm saying is that I've read that opinion and I don't
25 remember that it goes further than that. But of course,

1 she is a general counsel.

2 And I'm saying in order for all that to be
3 cleared up, let's go get the opinion and make sure that
4 that opinion, if it does go further in that, we can
5 affirmatively say that.

6 I'm not asking for anyone to make an
7 interpretation of it. But we do have the opinion here in
8 writing. So it wouldn't be difficult to make sure so we
9 can answer the chairman's question that they go a step
10 further and say, you know, what may be a particular
11 incident beyond that. That's all I'm suggesting.

12 MR. JONES: We have a representative from the
13 Attorney General's Office, Brenda Loudermilk.

14 And would you like to address this point?

15 MS. LOUDERMILK: I would like to. I don't know
16 the specific ruling, but I suspect it was under what was
17 called a permissive exception for competitive bidding
18 information.

19 And that is not required by law to remain
20 confidential. That -- the agency may accept and may
21 assert the exception if it asks for an opinion by the
22 Attorney General.

23 However, over and above that, if the
24 application that you're talking about has information in
25 it that the applicant feels is a trade secret or financial

1 information that the release of which would substantially
2 cause them harm, then you have a duty to inform those
3 people of that and give them the opportunity -- and go
4 ahead and ask for an Attorney General's opinion, give that
5 information to the Attorney General.

6 They then have the burden to submit to the
7 Attorney General reasons and information that would allow
8 the Attorney General to decide whether or not, indeed, a
9 particular application is excepted from disclosure because
10 of a trade secret or financial information.

11 You can in the first instance make a decision
12 that there's no other state or federal law -- and I don't
13 have that information whether there is or is not -- but if
14 there is no other state or federal law that makes these
15 applications confidential or the information, you can
16 certainly put out in your process how you intend to treat
17 it and whether it would be otherwise open.

18 It would also probably be a good idea from a
19 practical standpoint as to require those applicants, if
20 they intend to assert a trade secret or financial
21 information, that at the time they submit that application
22 they clearly mark that information and give you the heads
23 up that there is such information, at least from their
24 viewpoint that it's in there.

25 MR. CONINE: And that, I think, is exactly what

1 the Illinois statute says furnished by Mr. Ocanas in his
2 submission here. Have you had a chance to read this
3 and --

4 I know you have.

5 But have you had a chance to look at this
6 language and see if it might be appropriate?

7 MR. NJIE: Yes, I have read the language, yes.

8 MR. CONINE: And so if we disclose ahead of
9 time on a QAP that it's going to be public information and
10 put the burden on the applicant to say whether or not any
11 of this stuff is -- should be confidential or whatever in
12 the future, is there anything in the Attorney General's
13 opinion that somebody's running down that that would -- is
14 that going to violate any of that statute --

15 MR. NJIE: No.

16 MR. CONINE: -- any of that opinion?

17 MR. NJIE: What that would require us to do
18 when the application is received if there is any assertion
19 of privilege is to send the facts to the Attorney General
20 and hold the application pending a ruling.

21 MS. BINGHAM: In other words, what Mr. O'Connor
22 is requesting of us he should request of the Attorney
23 General when we get the information -- when we get the
24 applications, as opposed to just a wholesale disclosure of
25 applications that we have on hand prior to making a

1 decision during the competitive process.

2 MR. NJIE: We can include language that the
3 information is going to be available to the public. Like
4 she said, if there is anything in here that you wish to
5 assure privilege, make that known to us.

6 So when we receive the applications, we will do
7 the regular procedure in seeking an opinion from the AG's
8 office. Pending a decision, that application will be
9 held, not available to the public.

10 MS. LOUDERMILK: May I interject in here?

11 MR. JONES: Yes.

12 MS. LOUDERMILK: You've got --

13 MR. JONES: Certainly.

14 MS. LOUDERMILK: -- two procedures going on,
15 how you all administratively want to deal and make this
16 information available versus some member from the public
17 coming in and asking for a specific application.

18 If you set up a procedure and you announce in
19 your bid process that you are going to have, as part of
20 the bid process those applications are going to be open,
21 in the first instance I guess a potential applicant is
22 going to decide how badly they want to participate in your
23 bid process. And how -- and they're going to be on notice
24 then that you consider it to be open and you will open it.

25 I cannot advise you today because I haven't

1 given enough thought to it whether just by having that
2 procedure then and announcing it's going to be open and
3 anybody can come in and look at it at their will, whether
4 or not that invokes some extra duty on your part not to do
5 that outside of the Open Records Act.

6 MR. CONINE: If we had fewer applications
7 because of that it would not be a bad thing in this
8 particular instance.

9 (Laughter.)

10 MS. LOUDERMILK: There's an overall general
11 kind of principle that you contract with a governmental
12 body, you know, at your peril. And if you're willing to
13 get the benefits then you have to do the responsibilities
14 of it, too.

15 And otherwise, you should -- you might not
16 normally release something like this. But in order to get
17 the benefits you would, you know, comply with the
18 procedures that are there.

19 MS. BINGHAM: Don't we also need to look at the
20 other -- the burden on the person that's receiving that
21 information? There are two issues I wanted to bring up.
22 The --

23 Maybe we should check the other law that deals
24 with having information involving individuals, banking
25 relationships, credit files, credit history files and

1 other information that have been deemed private under
2 other state statute. Separate that from the other
3 information in the application.

4 MS. LOUDERMILK: You certainly can do that as a
5 matter of procedure. But --

6 MS. BINGHAM: Well, what I'm saying is I have
7 not -- I'm generally aware of the law because I have to
8 apply it at the City of Houston. I may be able to tell
9 that XYZ applicant applied for a 140-unit apartment
10 project and it's going to be located on XX street.

11 But I'm not -- and I'm not -- my city attorney
12 tells me under state law I'm not allowed though, to take
13 his information from the file, even if it's requested
14 under public information, and say that his credit score is
15 available, his bank statements are available, his
16 financial statements and all those issues -- other items
17 that he has submitted to me are just laying open for the
18 general public to be --

19 MS. LOUDERMILK: That has to be determined on a
20 case-by-case --

21 MS. BINGHAM: That's --

22 MS. LOUDERMILK: -- basis --

23 MS. BINGHAM: That's my point. You
24 can't cover --

25 MS. LOUDERMILK: -- before the Attorney

1 General.

2 MS. BINGHAM: -- all this on the QAP. And
3 then there are other issues. What do these groups who use
4 this information -- they have to -- it should be -- the
5 idea that -- the law that I've reviewed is that it should
6 be available to somebody, even the legislative members.
7 They have to sign something that says they will not take
8 it some other place or let somebody else review it. So
9 it's a very difficult issue.

10 And, you know, Mr. Chairman, I would suggest
11 that it is so difficult that perhaps, you know, if we can
12 deal with some of these other issues and take a 30-minute
13 break to have the lawyers go look up all the information
14 and give us a recommendation.

15 MR. CONINE: I'm on board with you on the
16 financial information. I think that should not be
17 disclosed to anybody. I don't think anybody in this room
18 would agree to that.

19 But where the project is, what -- how many
20 units it is and all the other project type data, I think
21 is not a bad idea.

22 And I'd like for the attorneys when they do
23 this 30-minute exploration to see what sort of exemption
24 that we can make in some language in the QAP that would
25 exempt all the financial information that we're concerned

1 about, but let the project information flow if the public
2 wants it.

3 MR. JONES: If I could -- could I direct a
4 question to Ms. Stiner.

5 You know, I had asked you and the staff on some
6 of these issues that I thought would come up to say, Well,
7 if the board decided it wanted to do something like this
8 what would the language look like. Did you all come up
9 with some proposed language on this?

10 MS. STINER: Voila. I don't know that we got a
11 legal review of it. But staff did. And that's probably a
12 basis for the legal people to start from.

13 MR. JONES: Right. It would be a place to
14 start looking at it.

15 MS. STINER: Yes, sir. And this is what the
16 staff came up with.

17 MR. JONES: And again, the language the staff
18 came up with, they said that if, in fact, the board had
19 some desire in establishing public access, the wording for
20 Section 5 -- excuse me -- Section 50.4(c) is,
21 "Availability of applications for public viewing.

22 "One extra copy of every application must be
23 submitted at the time of the application submission. Such
24 documents will be made available for public viewing within
25 30 business days of the close of the application

1 acceptance period.

2 "Public viewing of files must take place
3 between the hours of 8:00 a.m. and 5:00 p.m. on any day
4 which is not a Saturday, Sunday or a holiday established
5 by law for state employees.

6 "Communication with staff or board members
7 based on public viewing of files regarding the content of
8 such files will not be permitted."

9 So why don't we give that language --

10 MS. STINER: You've got something different
11 than I have?

12 MS. BOSTON: I was just -- in reference to the
13 proposals that were just being discussed about the
14 exception language, additional sentences could possibly
15 be, "All applicants have an opportunity to submit a
16 request to the Attorney General for an exception for
17 portions of the application. Sections of the application
18 for which an applicant elects to assert the privilege of
19 exceptions should be clearly marked."

20 And that would possibly cover some --

21 MR. JONES: Well, why don't we follow Ms.
22 Bingham's suggestion,

23 MR. CONINE: Yes.

24 MR. JONES: -- if it's okay with you, Mr.
25 Conine --

1 MR. CONINE: Yes.

2 MR. JONES: -- to let the proposed language
3 that's been worked on by staff be refined with the help of
4 the attorneys. And they can come back to us as Ms.
5 Bingham said, in 30 minutes and make a proposal that we
6 can vote on one way or the other.

7 Thank you, ma'am.

8 MS. STINER: Yes, sir.

9 MR. JONES: All right. So we'll let the
10 attorneys move forward with that. And I think Mr. Conine
11 had a couple of other points he'd like to make.

12 MR. CONINE: I don't know. I've forgotten by
13 now. Just go to somebody else.

14 MR. JONES: Okay.

15 MR. BREWER: Mr. Jones, I have one. I'd
16 like --

17 MR. JONES: Yes, sir, Mr. Brewer.

18 MR. BREWER: I'd like to have the issue on the
19 Section 8, which is part of the QAP.

20 If we could take a look at that, Chernoz?

21 MR. NJIE: Yes.

22 MR. BETHEL: Should the attorneys go ahead and
23 start work on that? Or do you want to --

24 MR. JONES: Yes. I was hoping they would, yes.

25 MS. STINER: Yes.

1 MR. BETHEL: Yes.

2 MR. JONES: I was going to turn them loose if
3 they --

4 MR. NJIE: I will call Suzanne Phillips, who is
5 the Director of Compliance, to address the Section 8
6 issue.

7 MR. BREWER: Mr. Chair, before we get into
8 that, I would just like to remind the board that a few
9 months back that we set a policy on Section 8. And then
10 what the board asked the staff to do is to go back and to
11 work out the administration of our policy.

12 And that -- what they have done is they have
13 included portions in the QAP. But we wanted to go over
14 those -- that with the board to see if the board is in
15 agreement.

16 And so at this time, Suzanne, if you'd kind of
17 walk us through that so that we cover all the points --

18 MS. PHILLIPS: Do you --

19 MR. BREWER: -- and what page it's on and
20 everything.

21 MS. PHILLIPS: It starts on page -- it's at
22 Section 50.8.

23 MR. JONES: If you would hold the microphone I
24 think it would help us.

25 MS. STINER: Or talk louder.

1 MR. CONINE: Act like a rock singer.

2 MS. PHILLIPS: Thank you. It starts at Section
3 50.8. And on my document it's page 25.

4 The section that we modified and that covers
5 the Task Force recommendation and the board policy
6 actually begins on page 26. And under (e)(1).

7 We included in Section 1 the language that's
8 underlined, "Owners and managers of all tax credit
9 properties placed in service after August 10, '93 are
10 prohibited from having policies, practices and procedures
11 of screening criteria which exclude applicants solely
12 because they have a Section 8 voucher certificate."

13 This language is slightly modified from that
14 language that was adopted by the board policy. And part
15 of those -- part of that was due to a request that we got
16 from the Internal Revenue Service as part of his
17 informal --

18 MS. STINER: Suzanne, just a minute. May I
19 just interrupt to clarify one thing. The board adopted a
20 policy and then asked us to go out and look at those
21 specific management requirements. This is one of those
22 specific management requirements versus the policy.
23 Right?

24 MS. PHILLIPS: Well, no. That language that I
25 read was actually part of the policy.

1 MS. STINER: Oh, okay.

2 MS. PHILLIPS: And the way --

3 MS. STINER: Sorry.

4 MS. PHILLIPS: And the way the policy -- the
5 bullet point -- the way it reads exactly is, "Managers and
6 owners of LIHTC properties are prohibited from having
7 policies, practices, procedures and/or screening criteria
8 which have the effect of excluding applicants because they
9 have a Section 8 voucher certificate."

10 And the modification of the language here was
11 basically the -- had the effect of -- it -- the policy
12 that was adopted goes on further to say that, "The
13 verification of such exclusionary practice on the part of
14 the owner or the manager by TDHCA will be considered a
15 violation and will result in the issuance of a notice of
16 violation and if appropriate, issuance of a Form 8823 to
17 the Internal Revenue Service.

18 "And any violation of the program requirements
19 relative to this policy will also impact the owner's
20 ability to participate in future TDHCA programs."

21 We went on to say in the policy that the
22 properties that have land use restricted agreements
23 executed after August 10, '93 are governed by Section 42
24 of the Internal Revenue Code, which clearly prohibits,

25 "Refusal to lease to a holder of a voucher

1 certificate because of eligibility under Section 8 of the
2 United States Housing Act of 1937 because of the status of
3 the prospective tenant as such a holder. For these
4 properties this policy is mandatory and compliance is
5 expected.

6 "For those properties whose LURAs are dated
7 prior to August 10, '93 the requirements are not as
8 strong, but owners and managers of tax -- of LIHTC
9 properties at this age are encouraged to obtain their own
10 legal advice relative to compliance.

11 "Whatever the case TDHCA intends to strongly
12 encourage compliance with this policy by all LIHTC
13 properties."

14 What staff attempted to do was to take this
15 policy statement and incorporate it into the QAP and the
16 rules and then further take those management suggestions
17 and incorporate those suggestions into the QAP, as well.
18 The --

19 And as we were writing this we had numerous
20 conversations with the Service because one of the things
21 that we wanted to talk to them about was the enforcement
22 and whether this language that we were using would be
23 described as a reasonable interpretation, both for the
24 projects going forward -- for the 2001 going forward and
25 also for the 1993s through the 2000.

1 And the primary reason that we backed off on
2 some of those is that the Service has asked us to defer
3 some of the specific language so that they could work
4 through a -- the process with the IRS, the -- HUD and the
5 DOJ to determine what they believe reasonable standards
6 and also to identify what they believe are illegal
7 obstacles, i.e., the obstacles that appear to be
8 discriminatory practices.

9 Because there's a little bit of -- there's two
10 things happening here. We're trying to determine what's
11 specific discrimination against a protected class and then
12 what's a violation of the LURA.

13 Section 8 tenants are clearly eligible in the
14 Tax Credit Program. But at what point that eligibility
15 becomes protection is what we've been involved with the
16 discussions with the Service and the -- and HUD about.

17 So what we tried to do is -- in this language
18 was to, in fact, get the policy of the board into the rule
19 and then work out the administrative issues with the
20 Service and what they've told us to be some guidance --
21 written guidance that they would give us in the future.

22 So as we go into the actual document, what
23 we've tried to do is to identify some specific enforcement
24 criteria.

25 So what we've described in the QAP would be

1 that a violation of the policy, which would be denying
2 occupancy to a Section 8 tenant, would result in an
3 automatic finding of material non-compliance.

4 That means that if we would identify an owner
5 that was specifically turning away Section 8 tenants and
6 follows -- following the policy language -- interpreting
7 that -- then that would automatically preclude them from
8 participating in the Tax Credit Program until they
9 corrected that violation.

10 And then the second level of enforcement would
11 be -- as far as the management requirements, the marketing
12 requirements -- would be a LURA violation. And the LURA
13 violations are -- is not a automatic material non-
14 compliance, but is a -- has a value of ten points.

15 Material violations, which would be the policy
16 violation and which is actually an interpretation or the
17 Department's interpretation of the existing regulation,
18 would be a 30 point violation.

19 We also talked in the -- this section of the
20 QAP about the processes that the Department would use to
21 monitor.

22 And the way we've done it is to incorporate the
23 marketing requirements into a management plan that each
24 property owner would have to have.

25 And that management plan would include an

1 affirmative marketing plan and then the posting of the
2 Fair Housing posters in all of their leasing offices and
3 those other items that the Task Force suggested as the
4 specific management requirements, the cooperation and
5 communication with the PHA, the Fair Housing logo and
6 posters.

7 And then the Department would also have a
8 listing of all of the projects on the web site. And then
9 those owners would be required to communicate directly
10 with the PHA of their willingness to take Section 8
11 tenants under their property.

12 MS. STINER: Thank you.

13 MR. BREWER: The -- let's address the one issue
14 on minimum income requirements. Because that was not put
15 in there.

16 MS. PHILLIPS: This one was the -- probably the
17 most controversial of all of the specifics that were put
18 out for comment.

19 MS. BINGHAM: I think it was almost like home
20 ownership.

21 MS. PHILLIPS: We had put out -- we had put in
22 the original -- or in the proposed QAP that minimum income
23 requirements for Section 8 voucher and certificate holders
24 would not exceed 2.5 times the portion of rent that the
25 tenant pays.

1 We had two favorable comments from the public
2 and we had ten or 11 comments that were in opposition to
3 that specific multiplier.

4 We took the public comments into account when
5 we suggested the language that is in your black line copy,
6 along with a request from the Service that they be allowed
7 to define clearly what they interpret, along with HUD, as
8 reasonable minimum income standards.

9 MS. STINER: Okay.

10 MR. BREWER: But, Mr. Chairman, the problem I'm
11 having with those, I feel that there ought to be a
12 percentage or something that -- so that the property
13 owners know, you know, just like HUD does. HUD has a 40
14 percent, you know, figure that they use on what the people
15 pay and everything.

16 And I'm just concerned if we don't say anything
17 to this issue that I think we're being unfair to the
18 property owner, as well as the individual. But I don't
19 have that figure exactly.

20 What would you recommend, Suzanne, if we put
21 in -- put the number in there?

22 MS. PHILLIPS: Well, we've talked -- at this
23 point -- you know, I've been involved in the Tax Credit
24 Program since its inception. There are industry standards
25 that we see across the country that seem to be consistent

1 from state to state.

2 What we have in our compliance manual and what
3 we train in Texas is that to the extent that a project
4 owner establishes minimum income requirements that they
5 must be consistent. And to the extent that it's a Section
6 8 tenant that they should take, not the entire amount of
7 rent but only the portion of rent that the tenant is
8 required to pay.

9 Generally what we've seen is that most owners
10 use a three time standard. The reason the 2.5 was
11 suggested is because the way the Section 8 program works
12 it has a 40 percent component in it. And that 40 percent
13 component directly relates to the 2.5 percent.

14 This past week I was at an NCSHA meeting
15 with -- most all state allocating agencies were present.
16 I think out of the 47 or 48 allocating agencies, 35 were
17 there. And we had a specific panel discussion on this
18 matter.

19 And we had an informal survey to ask what
20 states specified -- or whether states specified a minimum
21 income requirement. And without exception there were no
22 states that had imposed a minimum income requirement
23 unless there was one already imposed by the state.

24 In some states minimum income -- or income is
25 protected or is included as part of their protection. But

1 even those states don't specifically use a multiplier when
2 talking about minimum income requirements.

3 They are more focused on the fact that when
4 income issues are taken into account, it's not just
5 employment, that it could be the 10-F or food stamps so
6 that those types of assistance would be taken into account
7 when someone determines whether or not a prospective can
8 meet their debt obligations under a lease.

9 MR. JONES: Mr. Brewer, besides the staff
10 recommendations, which I presume will be part of the
11 blanket amendment that they've gone over with us, do you
12 have another amendment you want to make in this area?

13 MR. BREWER: I would like to see something in
14 B with the minimum requirements though, as far as the
15 percentage goes. But quite frankly, I -- you know, I
16 don't have a recommendation on the percentage. I mean, I
17 didn't really see anything wrong with what the Task Force
18 come up with or what was in there initially and -- unless
19 someone else does.

20 MS. BINGHAM: The two-and-a-half represents
21 what? It was two-and-a-half times the amount that the
22 tenant would pay.

23 Let's assume that it's a -- can somebody walk
24 me through an example? If the apartment rent is \$400 and
25 the tenant pays 200, then we're saying they have to have

1 two-and-a-half times that. Do we exclude anything, food
2 stamps or anything --

3 MS. PHILLIPS: Food stamps -- those types of
4 assistance are not included in the calculation of annual
5 income. It's typically employment income, asset, regular,
6 recurring cash, whether it's from, you know, a part time
7 job or whatever. But typically, those types of
8 assistance --

9 MS. BINGHAM: Mr. Brewer, what --

10 MS. PHILLIPS: -- would not be included.

11 MS. BINGHAM: -- what -- where is the -- you
12 know, you've served on this Task Force. I'm trying to
13 learn from you. What is the -- what harm is done -- or do
14 you see any harm done from not having a ratio?

15 MR. BREWER: Well, Margie, I just see the good
16 that it's done. Because I have a Section 8 property, you
17 know, with HUD. And I was just trying to equate what we
18 have to provide the type of housing we do that this would
19 be beneficial to, you know, have a percentage ourselves
20 because it would make it more --

21 MS. BINGHAM: So what do you use?

22 MR. BREWER: -- affordable.

23 MS. BINGHAM: What do you use?

24 MR. JONES: Why couldn't you use the same
25 percentage?

1 MR. BREWER: You could, I would imagine. They
2 just changed it. I don't have all the particulars on it.

3 It was 30 percent and then it went up to 40 percent.

4 Tony, would you mind --

5 Suzanne, do you know how that -- how it -- can
6 you explain how they got to the 40 percent? Because one
7 thing HUD's done, too, is if a person wants to spend more
8 of their own income for a higher rent they can do that,
9 too. But --

10 MS. BINGHAM: Well, what --

11 MR. BREWER: -- the government's still only
12 going to subsidize so much money.

13 MS. BINGHAM: What we are -- what I know to be
14 used is that the -- you know, on the income and rent
15 restrictions that the -- that it cannot exceed more than
16 30 percent of the --

17 MR. BREWER: Yes.

18 MS. BINGHAM: -- gross income for the
19 individuals -- the wage earners. And then you add a
20 component for utilities, if paid. Okay. So I -- not
21 having served on the Task Force, I don't know if
22 there's -- what you got to --

23 MR. BREWER: Well, that's all -- basically all
24 the --

25 MS. BINGHAM: So I don't know why -- does

1 anybody have any problem with using the -- that regular
2 test?

3 Tony, you have an idea?

4 MR. FREEDMAN: I'd -- the -- HUD limits the
5 amount of rent a tenant can pay out of pocket.

6 MS. BINGHAM: That's what I'm saying. Thirty
7 percent. And that's --

8 MR. FREEDMAN: What HUD -- no, Ms. Bingham.

9 MS. BINGHAM: It's not going to --

10 MR. FREEDMAN: If you rent the unit at the
11 payment standard --

12 MS. BINGHAM: Right.

13 MR. FREEDMAN: -- then you'll pay 30 percent
14 out of pocket. But under the law you can, in fact, rent a
15 more expensive unit and pay more out of pocket. And the
16 law, I believe, in '98 was changed to say that even still,
17 that you can't spend more than 40 percent out of pocket.
18 So --

19 MS. BINGHAM: So a total of 40?

20 MR. FREEDMAN: Yes, ma'am.

21 MS. BINGHAM: Okay. So what -- I guess what
22 I'm trying to say is what's the harm in having something
23 like that in this rule?

24 MS. PHILLIPS: Well, this --

25 MS. BINGHAM: Or is there any harm?

1 MS. PHILLIPS: I don't believe there's harm. I
2 think that the question that came up through this process
3 is whether or not this would be a reasonable application
4 and a reasonable criteria --

5 MS. BINGHAM: Well, we use HUD rules on
6 everything else on the -- 60 percent --

7 MS. PHILLIPS: Yes.

8 MS. BINGHAM: -- of this, the 50 percent of
9 that. I wonder why we can't adopt the other --

10 MR. BREWER: That's what I'm wondering.

11 MR. JONES: Ms. Bingham and Mr. Brewer, you all
12 kind of convinced me. I -- you know, it's just why don't
13 we?

14 MS. BINGHAM: Why don't we just use the HUD
15 rule and drop it in there. And -- you know.

16 MS. PHILLIPS: There's really -- it's at the
17 board's will. I mean, there's --

18 MS. BINGHAM: May I make a motion, please?

19 MS. PHILLIPS: It's just that --

20 MR. JONES: Yes. Ms. Bingham, you can make a
21 motion.

22 MS. BINGHAM: Mr. Chairman, I'd like to make a
23 motion that we adopt the HUD income and rent restriction
24 levels for the -- for this section of the QAP and --

25 MS. STINER: By using this qualifier, 2.5?

1 Or --

2 MS. BINGHAM: No. Using the HUD 30 or 40
3 percent test. And he said in one instance -- the way I
4 use it in the City of Houston on the income and rent
5 restriction, the family can't pay more than 30 percent of
6 their gross income for rent.

7 MR. JONES: But how's --

8 MS. BINGHAM: And then Tony --

9 MR. JONES: -- that work?

10 MS. PHILLIPS: I'm not --

11 MR. FREEDMAN: Again, it depends on the rent of
12 the unit, Ms. Bingham.

13 MS. BINGHAM: Right. I knew that.

14 MR. FREEDMAN: So if they're renting more
15 expensive units they are permitted to use more.

16 MS. BINGHAM: That's right. To pay up to 40
17 you said?

18 MR. FREEDMAN: Yes.

19 MS. BINGHAM: Okay. So we need the both of
20 those in there. That's the HUD criteria. Why are we
21 running from it?

22 MR. CONINE: I thought we were talking about
23 minimum incomes though, relative to --

24 MS. BINGHAM: Well, but that's -- it is
25 minimum --

1 MR. BREWER: Well, that's what it is.

2 MS. BINGHAM: That's what it is. It's income
3 and rent. That's the way HUD describes it. Income and
4 rent restriction. And you do both.

5 MS. PHILLIPS: So we -- is the question, Ms.
6 Bingham, that using the 2.5 multiplier --

7 MS. BINGHAM: What?

8 MS. PHILLIPS: The 2.5 multiplier?

9 MS. BINGHAM: I'm not using the multiplier.
10 I'm --

11 MS. PHILLIPS: Okay.

12 MS. BINGHAM: -- I'm using the maximum -- I'm
13 using the income and rent test. Income not to exceed the
14 HUD limit of 30 percent. They say -- HUD claims that
15 you're a rent burden if you pay more than 30 percent of
16 your gross income.

17 But like Tony is saying that if you -- they
18 allow you, if you are getting a more expensive unit, to go
19 up to 40. We need to put both of those benchmarks in
20 there and adopt their criteria.

21 And if we are -- Mr. Conine --

22 MR. CONINE: I just need some specific
23 language. It's --

24 MS. BINGHAM: Okay.

25 MR. CONINE: I'd be, I think, a little more

1 comfortable with some specific language.

2 MR. JONES: Well, I tell you what. Why don't
3 we take a five-minute break so you can make some specific
4 language in your motion. And we'll be back in five
5 minutes and we'll plunge on.

6 (Whereupon, a short recess was taken.)

7 MR. JONES: I call the meeting back to order.
8 We've heard back from those wonderful public servants --
9 they do us all so much good -- the lawyers. And they have
10 provided a proposed change concerning the -- making the
11 applications available to the public.

12 And if I could, I will read it to the board.
13 And then if any board member wants to move that we adopt
14 this change, you can do so. The chair would entertain
15 that motion.

16 They've suggested we add a section (c) and a
17 section (d) to 50.4 to read as follows: "Availability of
18 application. Applications for tax credits are public
19 information and are available upon request.

20 "Exhibits to an application will not be
21 available for public disclosure until after the board
22 approves the allocation for tax credits in accordance with
23 the Texas Public Information Act, Government Code Chapter
24 552(d), confidential information.

25 "An applicant shall mark each exhibit or a

1 portion thereof that the applicant considers confidential
2 as a trade secret or commercial or financial information
3 in which the applicant desires not to be disclosed under
4 the Texas Public Information Act.

5 "A request for such information shall be
6 processed in accordance with Section 552.305 Government
7 Code."

8 MS. BINGHAM: Read that one more time, Mr.
9 Chairman.

10 MR. JONES: Sure.

11 MS. BINGHAM: First -- just that first part.
12 I'm sorry.

13 MR. JONES: Okay. "(c), availability of
14 application. Applications for tax credits are public
15 information and available upon request. Exhibits to an
16 application will not be available for public disclosure
17 until after the board approves the allocation for tax
18 credits in accordance with the Texas Public Information
19 Act Government Code Section 552."

20 Do you desire me to read (d)?

21 MS. BINGHAM: No, I got it. I got.

22 MR. JONES: Okay. Would any board member like
23 to move that that be approved?

24 MS. SAENZ: I move.

25 MR. DAROSS: I'll second.

1 MR. JONES: Okay. It's been moved that it be
2 approved and seconded. Discussion?

3 MR. CONINE: I want to talk about amending it
4 to after the application date has expired, I guess, or
5 whatever you want -- between there and the time we decide
6 on which one of the deals get credit.

7 Because it doesn't look -- it doesn't do any
8 good to look at applications that we approve. I think the
9 idea on public disclosure is looking at every one that was
10 submitted and being able to see who your competition is.
11 And if there's questions you want to raise, you can raise
12 them at that time, before we decide as a board who gets
13 credit and who doesn't.

14 MR. JONES: This does that. It just does not
15 disclose the exhibits to the application.

16 MR. CONINE: Oh, I'm sorry.

17 MR. DAROSS: The application's open all the
18 time.

19 MR. JONES: The application's open all the
20 time, which is the information you are referring to. It
21 just does not disclose the exhibits.

22 MR. CONINE: The exhibits are the financial
23 information we're talking about?

24 MR. JONES: Yes.

25 MR. CONINE: Excuse me.

1 MR. JONES: Okay. Can I -- I'll read it one
2 more time.

3 MR. CONINE: Yes. I --

4 MR. JONES: Okay. "(a) Availability of
5 application. Applications for tax credits are public
6 information and are available upon request. Exhibits to
7 an application will not be available for public disclosure
8 until after the board approves the allocation for tax
9 credits in accordance with the Texas Public Information
10 Act Government Code Chapter 552."

11 So the application itself will be -- whether
12 it's granted or not, will immediately be available as
13 public information.

14 MR. CONINE: Okay. Now, I --

15 MR. JONES: The exhibits.

16 MR. CONINE: Now I have a problem with
17 burdening our staff, I guess, through the submission
18 period. Can we -- is it -- does it make sense? Give me
19 some help, staff, relative to --

20 MR. NJIE: Are we talking about making it
21 available after the close of the cycle prior to a
22 decision? Or are we making it available as submitted to
23 us?

24 MR. JONES: As submitted is the way I would
25 read that.

1 MS. STINER: That would be --

2 MR. CONINE: Well, I'm trying to find a middle
3 ground. And that's after the submission cut off date and
4 the incoming --

5 MS. STINER: I would think it would be after
6 the -- I'm speaking for you all's staff. Because I would
7 have to deploy some folk down there to help you otherwise.

8 I'm -- I would suggest that it be after the
9 acceptance period close.

10 MR. CONINE: Right.

11 MS. STINER: Because it would be very
12 burdensome each time an application come in to have
13 that --

14 MR. CONINE: Right.

15 MS. STINER: -- application available.

16 MS. BINGHAM: Uh-huh. Now, what -- let me --
17 let's talk about exhibits. What are some examples? I
18 know financial information, those are things. But what
19 are some other examples of exhibits?

20 MR. NJIE: Well, I suppose partnership
21 documents?

22 MS. BINGHAM: What?

23 MR. NJIE: Partnership documents.

24 MS BINGHAM: Oh, okay. Thank you.

25 MR. JONES: Okay. Well, then -- okay. Let me

1 make the proposed change. And then we'll see if the --

2 MS. STINER: Okay.

3 MR. JONES: -- movants and --

4 MR. CONINE: Move to amend.

5 MR. JONES: Well, why don't we just see if
6 they'll accept it first.

7 MR. CONINE: Okay.

8 MR. JONES: And then we'll go. So it would be,
9 "Applicants for tax credits are public information and
10 available for -- upon request after the," closing date --
11 is that --

12 MS. STINER: After the application acceptance
13 period --

14 MR. JONES: After --

15 MS. STINER: -- closes.

16 MR. NJIE: That's correct.

17 MR. JONES: After the --

18 MR. NJIE: After the close of the --

19 MR. CONINE: I hate to --

20 MR. NJIE: -- application acceptance period.

21 MR. CONINE: I hate to keep suggesting things.

22 But in the spirit of helping staff out -- to be troubled
23 the least can we put -- shall we put a number of days --

24 MS. STINER: Yes.

25 MR. CONINE: -- that there would be open to,

1 say 30 or 45, maybe 45 days so that they can be harassed
2 for -- with public and -- disclosure and information for
3 45 --

4 MR. JONES: You're --

5 MR. CONINE: -- days but then it's over.

6 MR. JONES: Legally, you're not going to have
7 an opportunity to do that.

8 MR. CONINE: Oh, really?

9 MR. JONES: Yes. Once you make it public
10 information, you're not going to be able to shut it down.

11 MS. STINER: Uh-huh.

12 MR. CONINE: Okay. I tried.

13 MR. JONES: Okay. Let me read it -- let me
14 read (c) since it's been amended one more time.

15 And, Mr. Conine --

16 MR. CONINE: I'm eating a cookie.

17 MR. JONES: "Applications for tax credits are
18 public information and available upon request after the
19 application acceptance period closes. Exhibits to an
20 application will not be available for public disclosure
21 until after the board approves the allocation for tax
22 credits in accordance with Texas Public Information Act
23 Government Code Chapter 552." And then (d) remains the
24 same.

25 Would you accept that as a friendly amendment

1 to your motion?

2 And the person who seconded accepts it, also?

3 And Mr. Conine says, Thank you very much.

4 Further discussion?

5 (No response.)

6 MR. JONES: Are we ready to vote on this
7 motion? I assume we are. All in favor of the motion,
8 please say aye.

9 (A chorus of ayes.)

10 MR. JONES: All opposed to the motion, please
11 say nay.

12 (No response.)

13 MR. JONES: All abstentions?

14 DR. GRIFFIN: I abstain.

15 MR. JONES: The ayes have it. Thank you.

16 Then we'll move from that to Ms. Bingham was
17 going to make a motion with regard to a proposed amendment
18 when we kind of took the five-minute break.

19 MS. BINGHAM: No, that was Mr. Brewer's going
20 to make the motion on the two-and-a-half times that equals
21 the 40 percent.

22 MS. STINER: Did they put it back in there? Or
23 is she just --

24 MR. BREWER: I'm going to --

25 MR. JONES: Okay. We will -- you ready, Mr.

1 Brewer?

2 MR. BREWER: I'm going to let Suzanne explain
3 it and then I'll make a motion.

4 MR. JONES: Okay.

5 Suzanne?

6 MS. PHILLIPS: One of the comments that we
7 received was from a -- one of the professional trainers
8 for the Tax Credit Program. And he's pretty well known.
9 I think he's also a member of the National Home Builders
10 Housing Credit Group.

11 And he suggested that to the extent that we
12 maintain the 2.5 times the tenant paid ratio that we would
13 also allow a minimum income that would give the residents
14 the ability to demonstrate that they have the financial
15 ability to maintain their apartments in a sanitary manner,
16 pay their utilities, in case their utility bills were
17 greater than what the utility allowance defined.

18 And he suggested a minimum income of \$1,500 per
19 year. And based -- and he used that based on his review
20 of hundreds of tax credit files across the country. We
21 had other people who recommended higher amounts.

22 MR. JONES: Sure. Go ahead. Mr. Brewer?

23 MR. BREWER: You know, we did one thing that
24 I -- we need just a little bit more discussion from the
25 point of view --

1 Suzanne, I'd like you to look at this because
2 this is what we, the Task Force, have come up with. And
3 see if it's not saying the same thing that you are because
4 I'd be more comfortable with these two suggestions really.

5 Would you take a look at this? Because it's saying the
6 same thing.

7 MS. BINGHAM: Yes, it's saying the same thing.

8 Uh-huh.

9 MR. BREWER: But it's a little more
10 comprehensive.

11 MR. JONES: Well, why don't we come back to you
12 then, Mr. Brewer --

13 MR. BREWER: Let's do that.

14 MR. JONES: -- after she has a chance to look
15 at that. Because Mr. Conine said he had something.

16 MR. CONINE: Back on page 24 of 33 we had the
17 discussion of -- or at least, public comment relative to
18 how much per project and how much per applicant and all
19 that kind of stuff. And I don't want to mess with those
20 numbers.

21 But there is one sentence in paragraph one
22 there --

23 MS. BINGHAM: What exhibit is it?

24 MR. CONINE: I'm on page 24 of 33 right up at
25 the top of the page. It's -- the top of the page says,

1 Number one, the Department shall issue tax credits. That
2 paragraph. You got it?

3 MS. BINGHAM: Okay.

4 MR. CONINE: As it gets further into that
5 particular paragraph, it says the -- "These limitations
6 will apply to all affiliates of any applicant, developer,
7 project owner, general partner, sponsor or their
8 affiliates or related entities unless otherwise provided
9 for by the Department."

10 I think I'd like to suggest a word change from,
11 The Department to, The Board, so that we would be made
12 aware if those have been made. There may have been some
13 exclusions or some differences in the past that we haven't
14 been made aware of. And so if we change Department to
15 Board, that takes care of that.

16 I make that as a motion.

17 MS. BINGHAM: Could you read the whole thing
18 again, please?

19 MR. CONINE: Sure.

20 "These limitations will apply to all affiliates
21 of any applicant, developer, project owner, general
22 partner, sponsor or their affiliates or related entities
23 unless otherwise provided for by the Board."

24 MS. BINGHAM: Okay.

25 MR. JONES: So --

1 MR. CONINE: So we --

2 MR. JONES: -- we will accept that formal
3 motion. Is there a second?

4 MS. SAENZ: I second that.

5 MR. JONES: And it's seconded by Ms. Saenz.
6 Further discussion of the motion?

7 (No response.)

8 MR. JONES: All in favor of the motion, please
9 say aye.

10 (A chorus of ayes.)

11 MR. JONES: All opposed to the motion, please
12 say nay.

13 (No response.)

14 MR. JONES: Abstentions?

15 DR. GRIFFIN: I abstain.

16 MR. JONES: The ayes have it.

17 And anything else?

18 (No response.)

19 MR. JONES: Let me do this. I will -- I had
20 asked the staff in preparation for our meeting, after
21 going through public comment, to just not to say we were
22 going to do it, but just say, prepare some language on
23 certain issues to see if in fact, you know, the board
24 wanted to make changes to them they could.

25 Let me raise a couple of those issues. And if

1 anybody does have a motion with regard to the issue, let
2 me know because we do have some proposed wording.

3 One was raising the non-profit limit to 20
4 percent as had been suggested. Any board member
5 interested in that?

6 MS. SAENZ: I --

7 MR. JONES: Okay. Ms. Saenz --

8 MS. SAENZ: I'd like to see --

9 MR. JONES: -- would you like to make that
10 motion?

11 MS. SAENZ: I will -- yes, I make that, that we
12 raise the 10 percent for non-profits to 20.

13 MR. JONES: So Ms. Saenz would make the motion
14 that we change Section 50.6(b)(1) and (4) so that the set-
15 aside limit is raised from 10 percent to 20 percent. Is
16 there a second to the motion?

17 MR. DAROSS: I'll second.

18 MR. JONES: Okay. The motion's been made and
19 seconded. Discussion?

20 MR. BETHEL: Is that a floor or a -- that's a
21 floor, isn't it? It's got to be 20 percent --

22 MR. JONES: Yes. It is a floor.

23 MR. BETHEL: It's a floor?

24 MR. JONES: What -- the 10 percent now --

25 MR. BETHEL: The 10 percent's a floor.

1 MR. JONES: -- is a floor. That's correct.

2 MR. BETHEL: So then we got -- if we do that
3 we've got 20 --

4 MR. JONES: As a floor.

5 MR. BETHEL: -- non-profit, 15 --

6 MR. BREWER: -- rule --

7 MR. BETHEL: -- rule. What else we got?

8 MS. STINER: Elderly, 10.

9 MR. BETHEL: Ten for elderly at preservation?

10 MS. STINER: Ten percent across all of those
11 set-asides. And how much they lease for general. It's
12 55.

13 MR. CONINE: You want ten for Lamesa, too?

14 MR. NJIE: No.

15 MR. CONINE: Is this the discussion period?

16 MR. JONES: It is.

17 MR. CONINE: I think that it would fly against
18 what's happened in our -- some of our federal legislation
19 here recently. And again, I think the market takes care
20 of itself relative to the product that's awarded, the tax
21 credits, not necessarily the tax status of the particular
22 entity. So I'd have to speak against the motion.

23 MS. BINGHAM: I have to speak against it for
24 the same reasons, that the federal legislation is moving
25 against that direction, as well as the market issues.

1 And, in fact, that is a -- the 10 percent is not a
2 ceiling, it's a floor.

3 MR. JONES: Further discussion?

4 (No response.)

5 MR. JONES: Are we ready to vote?

6 (No response.)

7 MR. JONES: I assume we are. All in favor of
8 the motion, please say aye.

9 MS. STINER: Aye.

10 MR. JONES: All opposed to the motion, please
11 say, nay.

12 (A chorus of nays.)

13 MR. JONES: Abstentions?

14 DR. GRIFFIN: I abstain.

15 MR. JONES: The nays have it.

16 MR. CONINE: Okay.

17 MR. JONES: The next one that was brought up in
18 public comment was raising the maximum tax credit
19 allocation to -- excuse me -- lowering it to 1.2 million,
20 as opposed to 1.6 million. Is anybody interested in
21 discussing that?

22 MS. BINGHAM: I am.

23 MR. JONES: Thank you, ma'am.

24 MS. BINGHAM: Although I agreed with a lot of
25 the changes that we made last year, one of the things that

1 I can -- in my summary of them that we increased the red
2 tape, we lowered the dollar amount. So I don't see any
3 need to further reduce the amount.

4 Again, the marketplace will take care of that.
5 We have 30 million as opposed to 24 million. So I don't
6 see a need to lower the limit any further.

7 MR. CONINE: And in addition to that, I think,
8 again, speaking for some of the revitalization of some of
9 our inner cities and the definite need for affordable
10 housing in those areas, we may find that that 1.8 is too
11 small relative to providing some of that housing, and
12 raise it later on.

13 So I'd like -- at least from a public
14 standpoint, I'd like some input in those areas as you go
15 through your deliberations on trying to provide some of
16 that sort of housing.

17 MR. JONES: Then hearing no motion on that, I
18 will then move -- the Chair will move -- the other issue
19 that came up in public comment was Section 50.2.56, where
20 we had changed the definition with regard to non-profits
21 so that it now was simply an ownership interest, as
22 opposed to a local mission-driven non-profit that
23 controlled or materially participated in the development.

24 MS. BINGHAM: Oh, well, I need to determine --
25 before I comment I need to determine do we have non-

1 profit as identified by -- in two sections of the QAP,
2 one, the definitions as identified by the IRS, so we can't
3 change that.

4 The next one is when the non-profit is
5 participating -- or when an applicant, whether he be for-
6 profit or otherwise, go into business with a non-profit.

7 Hopefully, we haven't made it a shotgun
8 wedding. But I'm trying to figure out -- if you could
9 read that again? Why do we need to mess with the
10 definition just because it's a -- I mean, is this a
11 voluntary relationship, Chernoz?

12 MR. NJIE: Yes. There are two provisions. One
13 is the set-aside. In the set-aside --

14 MS. BINGHAM: One is the set-aside. You can't
15 change that. That's the law.

16 MR. NJIE: That's correct. But one thing we
17 have done that is quite apart from the law is to say that
18 in the set-aside the non-profit must control the general
19 partner.

20 MS. BINGHAM: That's --

21 MR. NJIE: Must be 51 percent.

22 MS. BINGHAM: -- law.

23 MR. NJIE: No, that is not law.

24 MS. BINGHAM: What is it?

25 MR. NJIE: That is Texas.

1 MS. BINGHAM: That's Texas? Okay.

2 MR. NJIE: Yes.

3 MS. BINGHAM: Okay. What does the law -- what
4 does the federal statute say about the --

5 MR. NJIE: It merely --

6 MS. BINGHAM: -- 10 percent?

7 MR. NJIE: -- requires that the non-profit be
8 a general partner and materially participate in the
9 project.

10 MS. BINGHAM: And by materially participate, we
11 have to assume that 51 percent is control?

12 MR. NJIE: Well, on -- in the set-aside that's
13 correct.

14 MS. BINGHAM: Oh.

15 MR. NJIE: We have raised that standard.

16 MS. BINGHAM: Okay. So --

17 MR. NJIE: On the federal law --

18 MS. BINGHAM: -- where are you? Are you on
19 the set-aside non-profit or are you on another non-profit?

20 MR. JONES: I'm on 50.2.52.

21 MS. BINGHAM: Which one is that? 50 point --

22 MR. NJIE: What page are you --

23 MR. JONES: And the public comment was that we
24 had changed it. And they wanted it returned back.

25 MR. NJIE: That's correct. We have.

1 MR. JONES: Okay.

2 MR. NJIE: During the -- in the proposed QAP,
3 we had deleted that language requiring control if you are
4 participating in the non-profit set-aside. That has been
5 restored.

6 MS. BINGHAM: Could the person who made the
7 comment come up and let us know what area they are talking
8 about so --

9 MS. STINER: Are they here?

10 MR. JONES: Sure.

11 MS. BINGHAM: Who was it?

12 MR. JONES: Mr. Ocanas.

13 MS. BINGHAM: Okay. Could he come up and tell
14 us exactly what -- under which scenario he's talking
15 about.

16 MS. STINER: Cherno, can you direct us to --

17 MR. JONES: Mr. Ocanas?

18 MR. OCANAS: Bottom of page 5.

19 MS. BINGHAM: Which section are you alluding
20 to?

21 MR. JONES: Bottom of page 5.

22 MR. OCANAS: This is a non-profit -- the
23 definition of a non-profit.

24 MR. NJIE: Look at page 5 of your document.

25 Page 5 --

1 MS. BINGHAM: Okay.

2 MR. JONES: At the very bottom.

3 MR. NJIE: -- of the black line copy.

4 MS. BINGHAM: Oh, okay. Oh, under definitions.
5 Okay.

6 MR. DAROSS: We hadn't changed anything.

7 MS. STINER: That's the point. That's --

8 MR. DAROSS: Oh. We did it last year or the
9 year before or --

10 MS. STINER: When was it -- oh, okay. I'm --
11 Chernobyl and Brooke --

12 MS. BOSTON: The difference is when we --
13 after -- based on public comment, we had a lot of comments
14 saying, We would like you to reinstate control. We did do
15 that. The difference is that we did not do it in the
16 definition for non-profit -- qualified non-profit
17 organization. We did it under set-aside.

18 That allows if someone is willing to do a joint
19 venture, they can still qualify for the joint venture
20 points without having to have control. They just wouldn't
21 be in the set-aside.

22 MS. BINGHAM: They'd have to -- but they can
23 participate?

24 MR. NJIE: That's correct.

25 MS. BINGHAM: And at any level. And that would

1 satisfy, in some cases, the syndicator because -- or they
2 can switch roles during certain periods. For example, if
3 you're doing construction, the syndicator may say, Well, I
4 don't want to -- I need a for-profit entity to sign the
5 guarantees until this project is built and beefed up and
6 then we can reverse it. What you have done -- give that
7 option.

8 MR. NJIE: That's correct. Look at page 10 of
9 your -- where it's Re Set-Asides, regional allocation
10 formula and set-asides.

11 MS. BINGHAM: In other words, if I sign a
12 million -- \$10 million note I want control until -- and I
13 can reverse and give the non-profit management and let
14 them work on it after my guarantees are run off and I'm no
15 longer liable for the debt or --

16 MR. OCANAS: I guess my comment was -- and
17 maybe it has been satisfied by the staff -- why bother
18 removing it from the qualified non-profit definition?
19 What's the benefit to the Department or to the program?

20 MS. BINGHAM: Well, the benefit --

21 MR. NJIE: Because --

22 MS. BINGHAM: -- under the 10 percent set-
23 aside --

24 MR. OCANAS: No, I understand.

25 MS. BINGHAM: Okay.

1 MR. OCANAS: What I'm saying --

2 MS. BINGHAM: Okay.

3 MR. OCANAS: -- is under the definition of
4 non-profit, it was removed. It's still in that set-aside.
5 Maybe my concern is satisfied there. But why did you
6 bother removing it from the definition?

7 MR. NJIE: Because it would impede the joint
8 venture relationship that we fostered --

9 MS. BINGHAM: Right.

10 MR. NJIE: -- in one of our exhibits. In
11 other words, we -- generally, non-profits are less
12 experienced than for-profit developers. We wanted to
13 foster a relationship between non-profits and for-profit
14 without prescribing that the non-profit maintain control,
15 without prescribing either maintain control. That is
16 purely a business decision that has to be worked out
17 between the parties.

18 MS. BINGHAM: Right. And it may reverse -- it
19 may be one control during construction. When the
20 guarantees run off then it could be non-profit total
21 control. It -- but it's a business decision. It's a --

22 MR. CONINE: I like the current language.

23 MR. OCANAS: Thank you.

24 MR. JONES: Thank you.

25 Okay. No interest in that. The last one that

1 I'll bring up is the public comment, the suggestion --
2 well, really two more -- the suggestion that former staff
3 and board members be prohibited from involvement with
4 submitting a tax credit application for three years after
5 they leave the Department or board.

6 Any board member interested in that?

7 MR. BREWER: Should be whatever the law says,
8 not -- I don't --

9 MR. CONINE: We have a -- there's a state
10 statute already, isn't there, on --

11 MS. BINGHAM: Yes. We got a revolving door
12 statute that's currently under the law.

13 MR. CONINE: Okay.

14 MR. JONES: No interest in that. And then the
15 final one was -- the final suggestion that we've heard in
16 public comment was the prohibition of ex-parte contact
17 with board members by developers. Any board member
18 interested in that?

19 MR. CONINE: You know, on the one hand that
20 sounds good just offhand. But --

21 MR. DAROSS: Sounds wonderful.

22 MR. BREWER: Sounds good to me.

23 MR. CONINE: You know, I tend to -- before I
24 make decisions like to get as much input as possible. And
25 a lot of times just a notebook full of papers is not the

1 best way for me to hear about something. So I -- you
2 know, I -- you know, I have mixed emotions. One of those
3 favorite mixed emotions on that one.

4 MR. JONES: Well, I'm just bringing it up if
5 there's any board member that wants it discussed or wants
6 to make a motion on it.

7 MR. DAROSS: Well, let me go ahead and make a
8 motion that developers be prohibited from ex parte
9 communication with board members. Now, the time period is
10 where I have a problem with it. Is it just during the
11 application period that was suggested or totally?

12 MR. JONES: Well, I think that's up to us.
13 I -- you know, I think -- you know, the time period that
14 would be -- to me if you were going total quote unquote it
15 would be from the time the application is submitted until
16 the time it is either approved or not approved by the
17 board. That's the total time period. I don't see any
18 other time period.

19 MS. BINGHAM: I, too, have mixed emotions about
20 it. But the biggest concern I have about it is, you know,
21 you describe contact. And I know what the revolving door
22 policy at the -- that's already a part of the law talks
23 about is with the intent to influence.

24 So, you know, in order to deal with it, you got
25 to know -- you got to be listening to the conversation

1 almost. It creates a burden of, Yes, you talked to Paul
2 but what did you talk to him about.

3 I know in my life I serve as Director of
4 Housing for the City of Houston and serve on boards with
5 some developers who develop tax credits. Some of them do
6 business with the City of Houston.

7 So it's similar to the revolving door policy to
8 state you're supposed to -- you're not to contact them
9 with intent to do something. Who defines intent?

10 I think one of the things the rule would do is
11 just to -- the honest people will get penalized and those
12 who want to talk and lobby -- it's like gun control.

13 MR. DAROSS: Well, having had some experience
14 with the --

15 MS. BINGHAM: All of the criminals end up with
16 them.

17 MR. DAROSS: I've had some experience with the
18 rule against ex parte communication. And that's with
19 attorneys and -- had cases in front of me as a judge. It
20 did not prohibit communication with those attorneys
21 altogether.

22 MS. BINGHAM: Uh-huh.

23 MR. DAROSS: It prohibited any kind of
24 communication with respect to the case that was in the
25 court.

1 MS. BINGHAM: I -- yes. I understand. And,
2 you know, even with lawyers there's a club. So, you know,
3 if you're another lawyer that attend a social function,
4 you get an opportunity to discuss whatever you want to
5 talk -- to discuss. It's just the people who wouldn't
6 normally be privileged enough to be in those settings.

7 So I think this is the same kind of rule. And
8 like I said about gun control, you know, you can control
9 folk lives to the extent that only the criminals got a
10 right to carry a gun because the law-abiding citizens get
11 strangled by laws and regulations. I think this is just a
12 typical example of that. And I can't support it.

13 MR. JONES: Well, we have a motion. Do we have
14 a second?

15 MR. BETHEL: No, I wasn't going to second it.
16 That's --

17 MR. JONES: Is there a second to the motion?

18 MS. SAENZ: I second.

19 MR. JONES: Okay. The motion has been made and
20 seconded.

21 Would you like to discuss it, Mr. Bethel?

22 MR. BETHEL: Yes. The problem I have with
23 this -- if you're in a city like Houston with, you know,
24 there's a little different thing about like, Margie --
25 developers in Houston.

1 But you -- where we are -- and you have like,
2 Lamesa and your next door neighbor is doing a -- I mean,
3 not your next door neighbor, but it is next door, 30 miles
4 or something, they're doing a project --

5 I don't know how -- I would think that the
6 board would have to just -- yes, you'd have to be self-
7 governing. And it's the same thing if there's a bill
8 coming before the Legislature, well, you talk to your
9 representative or senator -- I just have a problem with
10 it. And I don't know how to -- it's going to be self-
11 enforced, I guess. I don't know.

12 MR. JONES: You know, I'd respond to that, Mr.
13 Bethel, by just saying, I -- you know, I'm familiar, as
14 Judge Daross is, with ex parte rules concerning judges.
15 And they work quite well in my opinion. I think they're
16 very easy to enforce.

17 MR. BETHEL: Yes?

18 MR. JONES: I would have to say that I believe
19 the vast majority of lawyers would never talk to the judge
20 about a case pending in front of him. I mean, that is
21 just unthinkable for most of them. Now, some people may
22 debate that. But I believe that in my --

23 MR. BETHEL: Are you saying that --

24 MR. JONES: -- heart to be true.

25 MR. BETHEL: -- lawyers are more honorable

1 than --

2 MR. JONES: No. I --

3 MR. BETHEL: -- developers?

4 (Laughter.)

5 MR. JONES: No. I'm saying that --

6 MR. BETHEL: You said it. I didn't. But it
7 sure was sweet to hear those words. No doubt about it.

8 MS. BINGHAM: Well, you're the only that
9 believes it, if you do.

10 MR. JONES: And, Bethel, you're going to
11 believe -- yes, you're going to hear about it the rest of
12 your life then, boy.

13 Anyway, what I -- my comment is this. That I
14 think if you had such a rule -- I respect developers. I
15 think they'd respect it. I think that if a developer
16 called you up and said, You know, I want to talk to you
17 about this project, you'd say, Hey, I really can't do
18 that, that they'd understand that.

19 I think that if you had such a rule, it would
20 make it easier for the board members through this season.

21 I think you'd get, you know, more people to be willing to
22 do what we do, perhaps, if you had such a rule.

23 And then finally, I think if you had such a
24 rule, it puts the decision-making process, other than the
25 approval, right where it belongs. And that's on staff.

1 And doesn't get the board involved in it at all.

2 So I think that there's some good points to it.

3 So I would just, you know, just raise that in rebuttal to
4 your statement.

5 MR. BETHEL: Yes. Would that include printed
6 material that's sent to you?

7 MR. JONES: It does include that. Sure it
8 would.

9 MR. BETHEL: I might go along with that.

10 MR. JONES: But anyway, we have a motion and
11 second. Any further discussion of the motion?

12 (No response.)

13 MR. JONES: Okay. Hearing none, are we ready
14 to vote?

15 (No response.)

16 MR. JONES: All in favor of the motion, please
17 say aye.

18 (A chorus of ayes.)

19 MR. JONES: All opposed to the motion, please
20 say nay.

21 (A chorus of nays.)

22 MR. JONES: Okay. And abstentions?

23 DR. GRIFFIN: I abstain.

24 MR. JONES: Okay. So let me -- all in favor of
25 the motion, please raise your hand. Okay.

1 All opposed to the motion, please raise your
2 hand.

3 The motion carries.

4 Anything else? We've got Mr. Brewer's issue
5 that's on the table.

6 MR. BREWER: You've got it done?

7 MS. BINGHAM: Oh, we're going to leave him
8 behind. He is operating too slow here.

9 MS. PHILLIPS: Ms. Cedillo asked me whether or
10 not establishing a -- an addition to the 2.5 -- how a
11 minimum or a floor would affect the population with
12 disabilities. And a brief conversation in the hall with
13 Ms. Langendorf -- because she asked that I put back on the
14 table the discussion that the Task Force had when they
15 initially put the 2.5 multiplier on the table.

16 MS. BINGHAM: Well, let me interrupt you.

17 MS. PHILLIPS: Okay.

18 MS. BINGHAM: Well, what did Mr. Brewer request
19 that you do?

20 MS. PHILLIPS: He had --

21 MS. BINGHAM: Why don't we get to what he --

22 MS. PHILLIPS: He asked me to take the Task
23 Force --

24 MS. BINGHAM: Look at that.

25 MS. PHILLIPS: Uh-huh.

1 MS. BINGHAM: Okay.

2 MS. PHILLIPS: -- which is the 2.5.

3 MS. BINGHAM: Okay.

4 MS. PHILLIPS: And does -- it does not
5 contemplate a floor or a minimum income.

6 MS. BINGHAM: Okay.

7 MR. JONES: Isn't that where we're at though,
8 as to whether or not to use the 2.5?

9 MS. BINGHAM: Yes, that's what I thought. I
10 thought we --

11 MR. JONES: All right.

12 MS. BINGHAM: -- had graduated to -- at least
13 to that point.

14 MR. JONES: Yes. I think that's where we are.
15 So --

16 MS. PHILLIPS: All right.

17 MR. JONES: Is there a motion?

18 MS. BINGHAM: Mr. Bethel won't get to Lamesa
19 tonight if we keep on.

20 MR. JONES: Is there a motion in this regard?

21 MR. BREWER: Yes. I would make a motion that
22 we use the 2.5

23 MS. BINGHAM: And --

24 MR. JONES: Which would be to re-insert that
25 language that was in there.

1 MR. BREWER: To re-insert the language.

2 MS. BINGHAM: I second it. And with the
3 comment that it equals the 40 percent, according to HUD
4 rules -- according to Mr. Freedman.

5 MR. CONINE: What page is that on again one
6 more time?

7 MS. PHILLIPS: It's page 26.

8 MR. CONINE: Twenty-six. The problem I have
9 with it is that every human being and family --

10 MS. BINGHAM: What --

11 MR. CONINE: Twenty-six.

12 Needs some sort of minimum daily living
13 allowance in a property. And if their income is, you
14 know, a hundred dollars a month --

15 MS. BINGHAM: Why don't you show him the sheet
16 that Mr. Brewer had? I think it explains that. Let him
17 see the example. It explains that.

18 MR. CONINE: Again, there's no floor in this.
19 I'm trying to create a --

20 MS. BINGHAM: Okay. I --

21 MR. CONINE: Okay.

22 MS. BINGHAM: -- understand that point.

23 MR. CONINE: A floor.

24 MS. BINGHAM: I understand where you're coming
25 from.

1 MR. CONINE: Because we're all for mixed income
2 projects and we'll all for all that kind of stuff. But
3 there -- I mean, just to eat and pay utilities and --

4 MS. BINGHAM: Uh-huh.

5 MR. CONINE: -- it requires something. And I
6 think to force that same owner who's put his name on
7 his -- on the guaranty on that note -- to put at risk, you
8 know, even though he's getting the rent --

9 MS. BINGHAM: Why don't you suggest a floor?

10 MR. CONINE: Oh, now you're -- now this is the
11 hard part.

12 MR. BREWER: Well, Suzanne, why don't you --
13 have you got a floor --

14 MS. BINGHAM: Huh?

15 MR. BREWER: -- on that?

16 MS. BINGHAM: But Mr. Brewer got some -- sat on
17 the committee and he got some issues about having
18 something.

19 MR. CONINE: I personally -- you know, I don't
20 know what minimum wage is and all that kind of stuff. And
21 of course, the disabled don't get a chance to work 40
22 hours a week. I understand that. But to me, you know, it
23 takes --

24 MS. BINGHAM: Mr. Chairman, could I make a
25 suggestion?

1 MR. CONINE: Yes.

2 MR. JONES: Certainly.

3 MS. BINGHAM: Could we -- Mr. Conine is in
4 building and in property management. Mr. Brewer sat on
5 the committee. Can we approve this document subject to
6 their review and come up -- and have enough -- a final
7 something on it?

8 MR. JONES: I don't know that you can do that
9 legally. I -- you know, I don't think we can, Ms.
10 Bingham. I'd be --

11 MS. BINGHAM: Well, then we're going to need
12 another break then.

13 MR. JONES: Well -- or either that or -- you
14 know, I really think that if we don't pass the motion, we
15 will adhere to Mr. Conine's concerns. I mean, I
16 understand his concerns.

17 MR. CONINE: I'm just trying to amend the --

18 MR. JONES: We could -- yes, I understand that.
19 But I mean, we're either going to have to pick a figure,
20 which I think is going to be very hard to do and that's
21 what everybody is having trouble with -- and that's where
22 the motion, I think, gets killed -- or it doesn't get
23 killed -- but where the motion becomes very hard to draw
24 up.

25 It's because nobody asked to sit on this dais

1 has a figure in mind for this floor that you're
2 suggesting. It's been suggested several times now and
3 nobody has a figure.

4 I think if you leave it as vague as it is when
5 it was originally presented by staff, your concerns are
6 accommodated.

7 MR. CONINE: Right.

8 MR. JONES: I think we can change it as Mr.
9 Brewer has suggested it be changed -- we have a motion on
10 the floor to that effect, it's been seconded by Ms.
11 Bingham -- then I think that, you know, unfortunately your
12 concerns are not alleviated, but the other concerns are,
13 you know, sustained. It's either that or we just pick a
14 figure and put it in there.

15 MR. CONINE: Yes. If a family of four is
16 paying \$4 a month out of his pocket for the rent and the
17 Section 8 voucher's picking up the rest and he's making
18 \$10 a month then he qualifies under the two-and-a-half
19 rule. And I just think that's ludicrous.

20 MR. JONES: And I guess I think that's when
21 you'd vote against the motion.

22 MR. BREWER: Well --

23 MR. CONINE: Okay.

24 MR. JONES: Unless there's a figure to put in
25 there for the floor. I mean, if there is one --

1 MR. BREWER: Suzanne looks like she wants to
2 say something.

3 Go ahead.

4 MS. PHILLIPS: Well, to go back to the Task
5 Force, some of the issues -- this issue was discussed at
6 great length. And what was suggested as part of the --

7 MS. BINGHAM: Where is Mr. Henneberger? Didn't
8 he bring up this issue?

9 MS. PHILLIPS: -- was that the owners would
10 then also be allowed to have criteria that included credit
11 reports, criminal history and those -- I think there were
12 four -- I go back to the -- credit, criminal and rental
13 history could also be taken into account.

14 So in addition to the 2.5, there were
15 additional criteria that an owner could use that would
16 allow him to turn down a Section 8 tenant who had, you
17 know, a negative credit history, a negative rental history
18 or a criminal record.

19 And the Task Force believed that --

20 MS. BINGHAM: Well, don't --

21 MS. PHILLIPS: -- that that would take into
22 account those issues.

23 MR. CONINE: There may be a better way to solve
24 this. And that's that hundred percent paragraph --
25 sentence right above that, If Section 8 pays 100 percent

1 of the rent, the project owner may establish other
2 reasonable minimum income requirements. Why does that
3 hundred percent have to be there? Why can't it be 80
4 or 70 or some other number?

5 MR. NJIE: It can be.

6 MR. CONINE: If we did that, then my concern
7 about the guy who's just going to pay \$4 a month out of
8 his pocket goes away.

9 Because if the market rate for that unit's 400
10 bucks then if that number was -- I'm not that good at
11 math -- but if that number was 80 percent then he'd be
12 paying \$80 a month and 80 times two-and-a-half would be
13 whatever that number is. Maybe the right number is 70. I
14 don't know. I'm thinking out loud here, obviously.
15 But --

16 Any comments from the public?

17 (Laughter.)

18 MR. CONINE: Oh, gosh. Not them.

19 MR. JONES: Mr. Henneberger?

20 MR. HENNEBERGER: I can spare the board. My
21 name is --

22 MS. STINER: Mike?

23 MR. HENNEBERGER: My name is John Henneberger.
24 I'm the co-director of the Texas Low Income Housing
25 Information Service.

1 Mr. Conine, I understand your concern. But I
2 really think that the HUD -- if you look at it, there
3 are -- this is not unique to the Tax Credit project. I
4 mean, other landlords, private landlords who don't take
5 government subsidy, other landlords who have HUD
6 properties and the like who take Section 8 tenants are --

7 We allow HUD to promulgate a set of regulations
8 which defines what reasonable rent is on the part of the
9 tenant. And the federal government guarantees the balance
10 of the rent.

11 So really, you're -- we're trying to create a
12 special set of minimum rent categories that apply just to
13 Tax Credit projects when I really don't think we have to
14 do that.

15 MR. CONINE: Well, there's one major
16 difference.

17 MR. HENNEBERGER: I wish Mr. Clark was here.

18 MR. CONINE: There's one major difference.
19 We're signing personal guarantees on notes on these
20 projects. And in your other example, they're not.

21 MR. HENNEBERGER: Oh, but they are. They
22 clearly are.

23 MR. CONINE: Well, not --

24 MR. HENNEBERGER: I mean, private landlords do
25 and -- as do --

1 MR. CONINE: 221(d)(4)s -- last time I --
2 221(d)(4)s don't require personal guaranty, I don't
3 believe.

4 MR. HENNEBERGER: Well, a (d)(4) might not.
5 But you know, certainly a privately own -- private -- but
6 irregardless of that, you know, if --

7 MS. BINGHAM: Irregardless of that.

8 MR. CONINE: Yes. I mean, that's a big thing
9 to me.

10 MR. HENNEBERGER: Well, but -- I mean, where --
11 the -- HUD is guaranteeing that the rent will be paid.

12 MR. CONINE: I understand that.

13 MR. HENNEBERGER: So the liability becomes an
14 issue of a management issue, as I understand your concern.
15 It's one of, Is this tenant going to trash the place, Is
16 this tenant going to be a bad tenant in some way and, Is
17 the minimum income standard a good way to be able to judge
18 whether they're a good tenant.

19 The Task Force talked about this like for three
20 days. And what we came up with, with the Apartment
21 Association agreeing with us, Mr. Clark and others here in
22 this room, we decided that we needed to leave in place all
23 of the other standards, that you could get credit reports,
24 criminal background checks, all of those type of things.
25 Those are the good management tools which are in place

1 that allow an owner to be able to exercise the type of
2 discretion that they need.

3 But this income issue had -- that it's sort of
4 been hijacked, if you will, as a vehicle to exclude
5 Section 8 tenants from occupancy in the thing.

6 But that those other tools were sufficient to
7 allow the owners of those properties to guaranty that if
8 they had a bad tenant, they had somebody who had no income
9 and had trashed the previous place where they had lived or
10 who had, you know, just come out of prison and didn't have
11 a job and that type of thing, you could do the criminal
12 background check, you could do the other property
13 reference check, you could do the -- you could do all
14 the -- the credit report.

15 You can do all that type of stuff but you just
16 can't use the minimum income standards as a subterfuge to
17 get around the requirement -- the federal requirement that
18 Section 8 tenants are allowed to reside in tax credit
19 projects. This is the only thing we're asking for in
20 this.

21 And this is the central point, I think -- this
22 is the most important thing that the Task Force struggled
23 with. Certainly, the most contentious thing.

24 And we did get, as Mr. Brewer I think will tell
25 you, a unanimity of -- a reluctant unanimity of opinion,

1 including my own, because I wanted more. But, you know, I
2 mean, I think we constructed a standard that we thought
3 could get us there.

4 MR. CONINE: Can you speak to my comment about
5 the hundred percent and whether that should be -- could be
6 something less and why a hundred and --

7 MR. HENNEBERGER: I'm sorry. I --

8 MR. CONINE: It -- in our language that the
9 committee provided it says, However, Section 8 pays a
10 hundred percent of the rent for the unit. The project
11 owner may establish other reasonable minimum income
12 requirements to ensure that the tenant has financial
13 resources to meet daily living expenses.

14 And I guess what I'm suggesting -- and I'm kind
15 of hanging on this 80 percent number and the more I think
16 about it -- because that at least provides indirectly a
17 minimum standard that -- letting me know it's not
18 ridiculous -- letting me know it's not zero.

19 MR. HENNEBERGER: Okay. I'm having just a real
20 difficult time getting my brain around this one. I'm
21 sorry.

22 MR. NJIE: It's in that language there, right
23 there.

24 MS. PHILLIPS: It's underlined.

25 MR. NJIE: It's underlined.

1 MR. HENNEBERGER: Well, there's a whole page of
2 underlined data. The -- what you're saying is that you
3 would not apply this standard -- I'm sorry.

4 MR. BETHEL: It's under B. Start at the
5 bottom. Go up to B.

6 MR. HENNEBERGER: Okay.

7 MR. CONINE: It's Section 8 pays --

8 MR. HENNEBERGER: Yes.

9 MR. CONINE: Up to 80 percent of the rent. And
10 the owner could establish the amount of other minimum
11 income.

12 MR. HENNEBERGER: Well, you know, I think
13 then -- you know, I don't see what that gets us really. I
14 mean, what -- how does that resolve the problem that
15 you --

16 MR. CONINE: Well, if a guy -- if Section 8's
17 paying 90 percent --

18 MR. HENNEBERGER: Yes?

19 MR. CONINE: -- then he would have to make
20 other income requirements if --

21 MR. HENNEBERGER: Well --

22 MR. CONINE: -- at 80 or below he could do the
23 two-and-a-half test and be done.

24 MR. HENNEBERGER: I guess the logic of it --
25 and it seems to me like what we're trying to do is we're

1 trying to open up Tax Credit projects to tenants who have
2 HUD Section 8, not just to tenants who have virtually no
3 income and get HUD Section 8. But to all tenants.

4 And there are many working tenants who have
5 Section 8, they got as low-wage job. A lot of people move
6 from welfare to work that have got these welfare Section 8
7 certificates.

8 MS. BINGHAM: Give me an example of a tenant
9 who would, I guess -- who -- what kind of tenant do you
10 have that Section 8 is paying a hundred percent of their
11 rent?

12 MR. HENNEBERGER: It's probably going to be a
13 disabled person.

14 MS. BINGHAM: Okay. That's what I'm saying.
15 Disabled person, 80 year old person living in -- lying in
16 his bed with home health care coming in may have a hundred
17 percent of his rent paid by Section 8. No other income.

18 So under your scenario, Mr. Conine, you
19 wouldn't serve that person?

20 MR. CONINE: Well --

21 MS. BINGHAM: Look up. Because --

22 MR. CONINE: Social security income.

23 MS. BINGHAM: -- they're paying a hundred
24 percent versus 80 percent or 90 percent.

25 MR. CONINE: All right. Social security income

1 would be there under your example.

2 MS. BINGHAM: Well --

3 MR. HENNEBERGER: Well, but --

4 MS. BINGHAM: -- some people don't have social
5 security benefits.

6 MR. HENNEBERGER: And part of it gets into
7 how -- what's defined as income --

8 MS. BINGHAM: And those are the ones that find
9 themselves in public housing.

10 MR. HENNEBERGER: -- as the housing authority
11 calculates.

12 MR. CONINE: I want to let Henneberger win one.
13 Let's go.

14 MR. HENNEBERGER: Bless you.

15 MR. JONES: We have a motion. We have a
16 second. Are we ready to vote?

17 I'll kill you. I swear I'll come down there
18 and kill you.

19 (Laughter.)

20 MR. JONES: We have a motion. We have a
21 second. Are we ready to vote?

22 (No response.)

23 MR. JONES: All in favor of the motion, please
24 say aye.

25 (A chorus of ayes.)

1 MR. JONES: All opposed to the motion, please
2 say nay.

3 (No response.)

4 MR. JONES: Abstentions?

5 DR. GRIFFIN: I abstain.

6 MR. JONES: They ayes have it.

7 All right.

8 MS. STINER: You finished?

9 MR. JONES: I'm finished.

10 MS. STINER: There was a typo on a provision in
11 the QAP that the staff would like to correct.

12 Chernob, I'm trying to look for a cite. It's
13 50.7(e)(3)(e). Just give the page number.

14 MS. BINGHAM: What's that?

15 MS. STINER: It's a typo.

16 MS. BINGHAM: Oh, yes. That's right.

17 MS. STINER: 50(e). They're going to give you
18 a page number in just a minute. I'm citing the cite.

19 50.7 --

20 MR. NJIE: It's on page 20.

21 MR. CONINE: That a boy.

22 MS. BINGHAM: Okay.

23 MR. NJIE: At the top of the page the item F
24 dealing with density. "Proposed development is designed
25 as a multi-story elderly development or highrise of a

1 project." The 20 should be a 21 to 24. And the 25
2 should -- the second item should be 25 units per acre to
3 28 units per acre.

4 MS. BINGHAM: Twenty-five instead of that 24?

5 MR. NJIE: That's correct.

6 MS. BINGHAM: I make a motion that we accept
7 that.

8 MR. BETHEL: Second.

9 MR. JONES: Motion's been made and seconded.
10 It was made by Ms. Bingham and seconded by Mr. Bethel.

11 Discussion?

12 MR. CONINE: Are we capping out at 28?

13 MR. NJIE: That's correct. Yes.

14 MR. JONES: Discussion?

15 (No response.)

16 MR. JONES: Are we ready to vote? I assume we
17 are. All in favor of the motion, please say aye.

18 (A chorus of ayes.)

19 MR. JONES: All opposed, nay.

20 (No response.)

21 MR. JONES: Abstentions?

22 DR. GRIFFIN: I abstain.

23 MR. JONES: The ayes have it.

24 MR. NJIE: The other one was on page 12
25 regarding the accessibility for persons with disabilities.

1 We wanted to ensure that for projects designed as
2 townhomes that all units must meet fair housing. All
3 units -- let me see. Oh, okay. Let me read the exact
4 language.

5 "The amendment will commence up to 5 percent of
6 all tax credit of restricted units. The project owner
7 shall provide reasonable accommodation or modifications on
8 a one-time basis in conformance with the ANSI standards as
9 required by the tenant with disability. Project owner
10 shall incur the related costs for the reasonable
11 accommodation and/or modifications.

12 "Properties that are designed as townhome
13 units, the project owner must include one bathroom and one
14 bedroom on the ground level of all units."

15 So we are adding, Of all units, to ensure that
16 project owners understand that we're not just talking
17 about 5 percent, we're talking about all units.

18 MR. BETHEL: I make a motion we accept that.

19 MR. BREWER: Second.

20 MR. JONES: Motion's been made and seconded.

21 Discussion?

22 (No response.)

23 MR. JONES: I assume we're ready to vote. All
24 in favor of the motion, please say aye.

25 (A chorus of ayes.)

1 MR. JONES: All opposed, nay?

2 (No response.)

3 MR. JONES: Abstentions?

4 DR. GRIFFIN: I abstain.

5 MR. JONES: The ayes have it.

6 Does anybody have anything further?

7 If not, Ms. Bingham, would you like to make the
8 blanket motion?

9 MS. BINGHAM: Oh, okay. I would move that the
10 board accept and recommend to the Governor the 2001
11 Qualified Allocation Plan with the changes that have been
12 adopted by the board up to this point.

13 MR. BREWER: I second it.

14 MS. BINGHAM: Chernow, do we need to repeal the
15 other one?

16 MR. NJIE: We will do that after this one is
17 signed.

18 MS. BINGHAM: Okay.

19 So that's my motion.

20 MR. JONES: The motion's been made. Is there a
21 second?

22 MR. BREWER: Second.

23 MR. JONES: It is seconded by Mr. Brewer.
24 Further discussion of the motion?

25 (No response.)

1 MR. JONES: Hearing none, are we ready to vote?
2 I assume we are. All in favor of the motion, please say
3 aye.

4 (A chorus of ayes.)

5 MR. JONES: all opposed to the motion, please
6 say nay.

7 (No response.)

8 MR. JONES: Abstentions?

9 DR. GRIFFIN: I abstain. And I'd like to note
10 that I abstain involuntarily because of the Attorney
11 General's opinion so as not to delay the board's progress.
12 And I'd like for that to be in the minutes.

13 MR. JONES: Thank you.

14 The ayes have it.

15 Ms. Bingham, Item 2(b).

16 MS. BINGHAM: Okay.

17 MR. CONINE: I thought we did that as --

18 MR. JONES: Have we done that as part of this?

19 MS. STINER: Yes, we did that as part of the --

20 MR. JONES: Is that to be included in the prior
21 motion?

22 MR. CONINE: He read it into the record. I
23 know that.

24 MS. STINER: Yes.

25 MR. JONES: Okay.

1 MS. STINER: Did we get all of them in now,
2 Chernoo? Okay.

3 MR. JONES: So those amendments have already
4 been adopted by the board?

5 MS. STINER: Yes.

6 MR. JONES: Thank you.

7 MS. BINGHAM: We've got that.

8 MR. JONES: All right. We will then move to
9 Item 3 on the agenda, which is the approval of the 2001
10 State of Texas Low Income Housing Plan and Annual Report.

11 Ms. Stiner?

12 MS. STINER: Thank you, Mr. Chair. Sara Dale
13 Anderson [phonetic] will be making the presentation on
14 behalf of --

15 MR. JONES: Oh, excuse me. We're going to have
16 to take a five-minute recess at this point. Thank you
17 very much.

18 (Whereupon, a short recess was taken.)

19 MR. JONES: I call the meeting back to order.

20 Ms. Stiner?

21 MS. STINER: Thank you, Mr. Chair.

22 Sarah Dale Anderson will make the presentation
23 on behalf of Staff; they've had a real thorough public
24 hearing process on the State Low Income Housing Plan, and
25 she's going to present it. We have some legislative

1 mandates that have been included in it that she will
2 highlight, and I think she -- at the end, she will talk
3 about some potential changes that relate to changes in the
4 QAP that we just made.

5 So I will turn it over to Sarah, Ms. Anderson,
6 and let her walk us through that.

7 MS. ANDERSON: Thank you. For the record, my
8 name is Sarah Anderson; I'm the Director of Strategic
9 Planning in the Housing Resource Center.

10 I was actually going to ask if the Board would
11 like me to go through general issues in the Low Income
12 Housing or if you'd like me just to cut to changes in the
13 plan.

14 MR. JONES: I'd -- you know, whatever they want
15 you to go through, why don't you let them ask you?

16 MS. ANDERSON: Okay.

17 MR. JONES: But why don't we cut first to the
18 changes? And then I'll leave it up to Board members to
19 ask what they wish to inquire about.

20 MS. ANDERSON: Okay. You have before you a
21 list of four changes and two potential changes. The first
22 two will look familiar; they are identical to changes that
23 were made to the five-year or -- three-year consolidated
24 plan that was brought before the Board in the December
25 board meeting.

1 The first -- it's on page 137 -- involves a
2 portion of the HOME action plan and, specifically, a
3 \$500,000 set-aside within the HOME program for the Texas
4 Home of Your Own Coalition as that has been a partnership
5 between -- that the agency has been with HOYO, we felt
6 that the language -- the following language should be
7 included, that being: "To ensure the continued success of
8 the Coalition, \$500,000 of the special needs set-aside
9 will be reserved for HOYO."

10 In addition, the second, as I mentioned, was
11 also -- the second change was also part of the
12 consolidated plan. And it was just the removal of a line
13 which had to do with consultants and CDBG. Both of those
14 were approved by the Board last board meeting.

15 The third has to do with a performance measure
16 number that was reported for the Tax Credit Program.
17 Initially, it was reported that they did 8,887 units in
18 2000. Those numbers were adjusted -- what went to LBB --
19 and that has been changed to 10,720 units.

20 The fourth has to do with the inclusion of the
21 summary of public comment in the appendix: Two potential
22 changes for which we can't -- I can't -- I could not have
23 brought before the Board before now. One has to do with
24 any changes that came with the Qualified Action Plan. As
25 you've just voted, the plan will reflect those changes

1 within the program statement for the Tax Credit Program.

2 Also, the second one has to do with -- we're
3 currently in the middle of working with HUD on our three-
4 year plan. There will be possibly some changes to program
5 statements having to do with the CDBG, HOME and ESG
6 programs. Those will be reflected, also, in the Low
7 Income Housing plan if we have to make any changes.

8 And that would be it for changes; otherwise
9 everything is as it is, and you have the copies of the
10 plan. And I'll take any questions if you have any.

11 MR. CONINE: A real generic question. Those
12 who like to critique the Department and the agency have
13 all -- have said we don't have a plan. You know, I keep
14 hearing that even legislatively, we don't have a plan.
15 Have you responded in those changes to some of those
16 issues in this plan? And overall, do you feel like it's a
17 worthwhile path to follow?

18 MS. ANDERSON: I think that we've made initial
19 changes toward that. To have a real plan requires a lot
20 more demographic information and a lot more research than
21 what the agency currently has. And, as you know, in our
22 exceptional items request, we have put forward to have
23 more employees out in the field doing research to be able
24 to put together a 10-, 20- or 30-year plan.

25 This is a step ahead from last year. It takes

1 into account the funding as far as what we have, and it
2 puts a -- it has laid out a strategic plan and a
3 subsequent action plan.

4 So I would say that from the previous years,
5 yes, it's more of a plan that I think the legislature
6 specifically is looking for -- and the constituents. I
7 wouldn't say that this is the ultimate and best we can do,
8 but we're certainly working toward getting there.

9 MR. CONINE: What would you -- are there some
10 resources you need to improve upon this plan next year?

11 MS. ANDERSON: For the most part, the resources
12 are staff and the money to pay them, and travel, et
13 cetera, and that's what we've put in in our exceptional
14 items request: Six additional employees to work in the
15 field to do research, to work with local entities to do
16 market -- generally market-type studies and that sort of
17 thing, centralizing the information so that we can put
18 together a statewide plan.

19 MR. BREWER: Sarah, how do you feel that we did
20 in meeting our plan and everything for the past year?
21 Because it looked like -- it looks like -- to me from the
22 plan for last year, we did a lot of good things --

23 MS. ANDERSON: Oh, certainly. I think we've
24 done --

25 MR. BREWER: -- and met a lot of goals and had

1 a lot of great -- good things happen --

2 MS. ANDERSON: Yes.

3 MR. BREWER: -- in affordable housing.

4 MS. ANDERSON: Definitely. I think that the
5 agency did a wonderful job of addressing the legislative
6 bills that came through last year, pilot programs --
7 addressing those issues. Our performance measures for
8 this year are really high; it hasn't been verified yet by
9 the LBB, but they're upwards of 89 percent.

10 I think the agency has certainly improved in
11 its numbers but, also, in its attempt to work with outside
12 entities and folks in inclusion with agency programs.
13 So --

14 MR. BREWER: Well -- and I think we -- 89
15 percent is a great accomplishment, working with the
16 bureaucracy and the things that we endure with the things
17 that are leveled on us. So I appreciate your comments.

18 MS. ANDERSON: Thank you.

19 MR. DAROSS: I move that we adopt the 2001
20 State of Texas Low Income Housing Plan and Annual Report
21 with the amendments that were suggested just to us by Ms.
22 Anderson.

23 MR. JONES: We have a motion.

24 MR. CONINE: Second.

25 MR. JONES: And there's a second. Further

1 discussions --

2 DR. GRIFFIN: Yes.

3 MR. JONES: -- or comments?

4 DR. GRIFFIN: Mr. Jones --

5 MR. JONES: Yes?

6 DR. GRIFFIN: -- I have discussion.

7 Just informally, at the break, you informed me
8 that you and the Attorney General had decided that I could
9 not participate in this item. Is that still your desire:
10 To deny me the right to participate in this, as you did
11 Item Number 2? This is Item Number 3 on January 26, 2001.

12 MR. JONES: Let me be very, very careful in how
13 I respond to that. I and the Attorney General and members
14 of HUD who've sent certain demands and letters to us have
15 met and tried to determine those items on the agenda that
16 HUD believes you can participate in and those items on the
17 agenda that you cannot. Your attorney was invited to be
18 part of that meeting; he chose not to be.

19 The Attorney General has been advising me on
20 where she believes HUD feels, under the communications
21 they have sent to us, the items are that you can
22 participate in and you cannot participate in.

23 If you insist on participating in items that
24 HUD has told us that you should not participate in, the
25 Attorney General -- and I think I quote her right, and,

1 certainly, you know, you're entitled to come on this
2 record any time you want to -- has told me that we have no
3 option -- because we cannot bar you from participating, we
4 have no option but to seek relief from a court before the
5 Board goes any further.

6 DR. GRIFFIN: Well, thank you, very much, Mr.
7 Chairman. I was simply asking a question. So I think
8 that with that explanation, you have explained it. In
9 essence, you are barring me from participating. And I
10 voluntarily accept your bar, but I just needed it in the
11 minutes. Thank you.

12 MR. JONES: Okay. And my statement stands for
13 what it is.

14 DR. GRIFFIN: And so does mine.

15 MR. BETHEL: We have a motion and second.

16 MR. JONES: We have a motion. It has been
17 seconded. Further discussion?

18 (Pause.)

19 MR. JONES: Are we ready to vote? I assume we
20 are.

21 All in favor of the motion please say aye.

22 (A chorus of ayes.)

23 MR. JONES: All opposed to the motion please
24 say nay.

25 (Pause.)

1 MR. JONES: Abstentions?

2 DR. GRIFFIN: I abstain.

3 MR. JONES: The ayes have it.

4 We'll move to Item 4 on the agenda, which is
5 the presentation, discussion and possible approval of the
6 report from the Audit Committee.

7 Mr. Conine?

8 MR. CONINE: Thank you, Mr. Chairman.

9 In your board package, there's one action item
10 I'd like the Board to take action on; it's a resolution
11 which requests for the establishment of an Administrative
12 Fee Reserve threshold.

13 The recommendation by Staff recommended that
14 the Board approve a resolution establishing a maximum
15 threshold for the Administrative Fee Reserve expenditures
16 of \$100,000 per fiscal year that may be charged against
17 the Administrative Fee Reserve without specific approval
18 from the Board and the authorization of the executive
19 director is approved, expenditures which may be made from
20 the Administrative Fee Reserve for other housing purposes
21 that do not exceed the maximum threshold amount
22 established.

23 In essence, what that says is we're giving the
24 executive director the latitude to spend up to 100,000 out
25 of our reserve and anything above that comes back before

1 the Board. The Audit Committee unanimously recommended to
2 approve this to the Board, and I so move.

3 MR. BREWER: I second it.

4 MR. JONES: We have a motion and a second.
5 Further discussion of the motion?

6 MR. CONINE: Let me amend it to say Resolution
7 Number 01-02.

8 MR. JONES: We have a motion that has been made
9 and seconded. Any further discussion of the motion?

10 (Pause.)

11 MR. JONES: Hearing none, are we ready to vote?
12 I assume we are.

13 All in favor of the motion please say aye.

14 (A chorus of ayes.)

15 MR. JONES: All opposed to the motion please
16 say nay.

17 (Pause.)

18 MR. JONES: Abstentions?

19 DR. GRIFFIN: I abstain.

20 MR. CONINE: One other point of information, if
21 I might, Mr. Chairman? The Audit Committee has completed
22 the performance evaluation of our internal auditor, Mr.
23 Gaines. And I'll just -- can I quote from the last line?
24 "From the committee's perspective, Mr. Gaines performs
25 admirably and professionally."

1 And I think that that process went well and has
2 been done. And his performance -- written performance
3 evaluation will be on file if any of the board members
4 care to review it.

5 MR. JONES: Thank you, Mr. Conine.

6 Okay. We'll then move to Item 5 on the agenda,
7 which is the presentation, discussion and possible
8 appointment of committee by Board to develop appeals
9 process for agency housing programs.

10 Ms. Stiner?

11 MS. STINER: Thank you, Mr. Chair.

12 Several of our major divisions within the
13 Department have an appeals process, including CDBG and
14 some of our community affairs division. The Housing
15 programs divisions do not have an appeals process once a
16 decision is made.

17 Additionally, one of the recommendations that
18 came out of the Sunset review of the agency and which will
19 be contained in a bill that they're moving through the
20 legislature this session has to do with establishing an
21 appeal process for the Tax Credit Program.

22 So what we want to present to the Board today
23 is a recommendation for the Board to establish an internal
24 committee to start working on an appeal process for the
25 housing programs across the board. We thought that we

1 didn't want to do one for the Tax Credit Program in
2 isolation; we wanted to cover all of the housing programs.

3 So Mr. Burrell has come up with the recommended
4 names of some staffers, but we'd like very much for the
5 Board to appoint a board representative if that's your
6 desire.

7 Mr. Burrell?

8 MR. BURRELL: Good afternoon.

9 DR. GRIFFIN: Do you have that list?

10 MR. BURRELL: Good afternoon, Mr. Chairman,
11 members of the Board and Ms. Stiner.

12 MR. JONES: If you would, hold that up. I
13 think --

14 (Pause.)

15 MR. JONES: Thank you, sir.

16 MR. BURRELL: As Ms. Stiner was saying, during
17 the Sunset Commission review, it was recommended that we
18 establish a board appeals process committee. And we had
19 worked with Ms. Stiner back during the fall to try to come
20 up with some programs.

21 And now we are requesting that the Board
22 approve -- appoint a committee which would be primarily
23 staff members, but we also want to request that the Board
24 appoint one board member which would be on that committee
25 to represent the Board while we're developing the

1 committee and information. And then, upon completion of
2 an appeals process, then we would bring the policy back to
3 the Board for approval so that we would have a complete
4 operating process here.

5 At the current time, we have the process in the
6 CDBG program and in community affairs. And we'd like to
7 make sure that housing has something very similar to that.

8 MR. JONES: And who would the folks be?

9 MS. STINER: You gave me a list, and I don't
10 have it, Mr. Burrell. Do you have your list?

11 MR. BURRELL: Yes. I have a list here.

12 (Pause.)

13 MS. STINER: It would be my suggestion that it
14 be: A board representative as determined by the Board;
15 David Burrell, who is Director of Housing Programs; Tom
16 Gouris, who is Director of Underwriting; Sandy Mauro, who
17 is Director of Community Development; and Ann Paddock from
18 our legal department. Those are the recommended, of
19 course -- and Ms. Groneck, as a member of the executive
20 administration -- Delores Groneck.

21 MR. BETHEL: Is that by position, or are -- the
22 committee we're going to -- I mean if it's going to be a
23 standing committee, should it not be by position? I
24 mean -- you had it pretty much by position, instead of by
25 the person?

1 MS. STINER: No, sir. It's not intended to be
2 a standing committee.

3 MR. BETHEL: Oh, okay.

4 MS. STINER: It's only a committee to work to
5 put together the appeal process --

6 MR. BETHEL: Oh, okay. I'm sorry.

7 MS. STINER: -- and then report back to the
8 Board.

9 MR. BETHEL: I'm sorry. Okay. I thought we
10 was already doing the -- okay.

11 MR. JONES: Okay. Do we have a motion?

12 MR. BETHEL: I'll make that motion.

13 MR. JONES: Well, do we --

14 MS. STINER: You'll need to say --

15 MR. JONES: Do you want to include in your
16 motion who you're going to add from the Board?

17 MS. STINER: Or not?

18 MR. BETHEL: Let's see.

19 MS. STINER: Or not?

20 MR. BETHEL: I would defer to the Chair to
21 appoint someone since he appoints committees.

22 MR. JONES: Ms. Williams, would you serve?

23 MS. WILLIAMS: Yes, sir.

24 MR. JONES: Okay. I would --

25 MR. BETHEL: Okay. I'll --

1 MR. JONES: I would suggest Ms. Williams --

2 MR. BETHEL: All right. I'll --

3 MR. JONES: -- to you, Mr. Bethel.

4 MR. BETHEL: I'll make the motion that Ms.
5 Williams serve from the Board.

6 MR. JONES: We have a motion. Do we have a
7 second?

8 MR. BREWER: Second.

9 MR. JONES: We have a motion that the committee
10 be approved and that -- seconded by Mr. Brewer that the
11 committee be approved and that those individuals who were
12 read into the record be part of the committee.

13 (Pause.)

14 MR. JONES: We have a motion that the committee
15 be approved and that the individuals whose names were read
16 in the record, with Ms. Williams, be included on the
17 committee. Any further discussion of the motion?

18 (Pause.)

19 MR. JONES: Hearing none, are we ready to vote?

20 (Pause.)

21 MR. JONES: All in favor of the motion please
22 say aye.

23 (A chorus of ayes.)

24 MR. JONES: All opposed to the motion please
25 say nay.

1 (Pause.)

2 MR. JONES: Abstentions?

3 (Pause.)

4 MR. JONES: Are there any abstentions?

5 (Pause.)

6 MR. JONES: Ms. Stiner?

7 MS. STINER: Yes?

8 MR. JONES: Can we talk to you?

9 MS. STINER: Sure.

10 (Discussion held off the record.)

11 DR. GRIFFIN: Is this an item that I need to
12 abstain on, Mr. Chairman?

13 MR. JONES: Yes. It's an item that --

14 DR. GRIFFIN: I don't have a problem with
15 abstaining, but I need to --

16 MR. JONES: Okay. Thank you. So I'll call for
17 the vote again.

18 All in favor of the motion please say aye.

19 (A chorus of ayes.)

20 MR. JONES: All opposed, nay.

21 (Pause.)

22 MR. JONES: Are there any abstentions?

23 DR. GRIFFIN: I abstain.

24 MR. JONES: Thank you, ma'am.

25 The motion passes.

1 All right. Why don't we do -- if we could do
2 it out of order -- Item 7, which is the first quarter
3 investment report unless there's an objection from a board
4 member?

5 (Pause.)

6 MR. DALLY: Good afternoon, Mr. Chairman, board
7 members and Ms. Stiner.

8 MR. JONES: Good afternoon.

9 MS. STINER: Bill.

10 MR. DALLY: Under Tab 7, you'll find the
11 quarterly investment report, as required by the Public
12 Funds Investment Act. This is for the quarter ending
13 November 30, 2000, and I'll skip to the highlights.

14 Overall, the portfolio increased in size due to
15 the issuance of a single-family issue and the RMRB issue
16 of about \$125 million. We also had a lot of activity in
17 the multi-family area. We had about three of those deals
18 close this year, which added about \$40 million to the
19 portfolio.

20 Those things are -- typically, as plot proceeds
21 are received, we'll put those in investment agreements.
22 And then they will be used over time as -- to buy and
23 purchase mortgage-backed securities. The portfolio
24 consists of about 65 percent mortgage-backed securities,
25 28 percent kick investment agreements, 4 percent

1 repurchase agreements and 3 percent other.

2 Overall, the market value of this portfolio
3 increased due to the decline in interest rates over that
4 quarter. As sort of a bench mark, the typical single-
5 family mortgage was about 8 percent in August. It has
6 gone -- it had gone down to 7.65 in November. And as a
7 result, the portfolio as a whole has increased.

8 And those, I think, are the highlights unless
9 there are other questions.

10 MR. JONES: Any questions?

11 MR. BETHEL: I make a motion that we accept the
12 first quarter investment report.

13 MR. DAROSS: Second.

14 MR. JONES: We have a motion that has been
15 made, and it has been seconded. Any further discussion?

16 DR. GRIFFIN: Is this an item I need to abstain
17 from?

18 MR. JONES: I don't believe so.

19 MR. JONES: All in favor of the motion -- do we
20 have any further discussion?

21 (Pause.)

22 MR. JONES: Hearing none, I assume we're ready
23 to vote. All in favor of the motion please say aye.

24 (A chorus of ayes.)

25 MR. JONES: All opposed to the motion please

1 say nay.

2 (Pause.)

3 MR. JONES: The ayes have it.

4 DR. GRIFFIN: I abstain.

5 (Pause.)

6 MR. JONES: Thank you, sir.

7 And at this point, before we take up Item
8 Number 6, I believe, we need to go into executive session.

9 MR. CONINE: And we'll let her do it as the
10 Director?

11 MR. JONES: Okay, yes.

12 Do you want to go ahead and do the executive
13 director's report before we do that?

14 MS. STINER: Sure.

15 MR. JONES: Great.

16 MS. STINER: Is Mr. Lyttle here?

17 (Pause.)

18 MS. STINER: Do you want to do a summary of
19 legislation, or not? Kind of surprise us.

20 MR. BREWER: I think his answer was, Not.

21 (Laughter.)

22 MR. CONINE: We'll be here all night.

23 MR. JONES: Yes, the answer was, No.

24 MS. STINER: Now just --

25 (Laughter.)

1 MR. LYTTLE: For the record, I'm Michael
2 Lyttle, Director of Communications and Government
3 Relations.

4 I think I can sum most of the legislation in
5 telling you that we have a Sunset bill that I'm told will
6 most likely be filed next week. This legislation will
7 have the recommendations that the Sunset Commission sent
8 forth -- was it two weeks ago -- in their meeting, I
9 believe. And we'll kind of wait and see what happens
10 with -- as a result of that.

11 There are also a number of other bills that
12 have been filed that deal with colonia issues. I know
13 there's one issue with regard to -- a bill that was filed
14 this week that looks at the terms of how colonias are
15 defined. There are a number of other bills that deal with
16 water rights and things like that, but I would not
17 describe them as major pieces of legislation.

18 One piece of legislation that Senator Moncrief
19 filed involves the extension of contract for deed across
20 statewide. Instead of applying strictly to colonias, it
21 would take -- go statewide. And that's another piece of
22 legislation that we're following. Next week, we will have
23 a complete report that I know we'll be filing with the
24 Board in terms of what's out there and how it will affect
25 the agency.

1 Any questions?

2 (Pause.)

3 MS. STINER: Thank you.

4 MR. JONES: Thank you.

5 MS. STINER: Our next report is on the building
6 configuration. We came to this Board earlier this summer
7 to talk about a waiver to our capital budget in order to
8 do reconfiguration of our lease space.

9 Is John Gonzales in the room?

10 (Pause.)

11 MS. STINER: Mr. Gonzales, will you come
12 forward and give the Board an update on where we are with
13 this particular issue, please?

14 MR. GONZALES: Good afternoon. For the record,
15 my name is John Gonzales, Director of Administration.

16 As Ms. Stiner said, last August, we came in
17 here and gave you an overview of a line-item budget that
18 is a budget that talked about the building
19 reconfiguration. And we were looking at an expenditure of
20 \$275,000.

21 At that time, our plans were to reconfigure the
22 building because we had to get out of the third floor by
23 the end of December. We were negotiating with GSC at that
24 time and managed to get a hold-over on our lease on the
25 third floor until the end of August. Through their own

1 discussions, internal a special date [phonetic] refused us
2 the waiver, and so we had to get off the third floor and
3 we had to reconfigure.

4 Now, since Sunset has made an additional
5 recommendation to the legislature, we have appealed to
6 them again. They've granted us the waiver to the 153
7 Rule. We're currently renegotiating the hold-over lease
8 for the third floor and, also, talking to LBB to allow us
9 to expend the funds to reconfigure the building.

10 And we've looked at several different options
11 that could happen with doing reconfiguration, from a high
12 to a low, and, also, depending on whether or not we have
13 additional FTEs to the exceptional items listed in the
14 LAR.

15 But that's where we are right now. We've
16 been sending out communications to employees. There are
17 some communications that we've sent out, and I think you
18 have, also, a copy of a letter that was sent to the Board
19 members that describes where we were with the building
20 reconfiguration.

21 I'm open for questions.

22 (Pause.)

23 MR. JONES: Thank you, sir.

24 MR. GONZALES: Thank you.

25 MS. STINER: Thank you, John.

1 I think the next report, the MOU with the
2 Justice Department and HUD and regarding the Section 8 --
3 I think that has all been discussed within the context of
4 our limited discussion on the Section 8 admittance policy.

5 So I don't feel the need to make that presentation this
6 afternoon.

7 The last issue that I wanted to speak to -- and
8 you heard Mr. Leonard, who came before you -- I think he
9 was one of the first speakers this morning -- in public
10 comment speaking to the Youth Works program. As you will
11 recall, in our consolidated plan here and in presentations
12 to the Board, we indicated that Youth Works was a program
13 that we wanted to continue; our task was to identify a
14 source of funds and financing and to try to structure that
15 program within the Department.

16 In our attempt to reconcile our funding
17 availability balances, we've identified some funds that
18 the CFO have certified that we will be bringing to this
19 full board next month in order to make a recommendation.
20 But I wanted to let you know in response to Mr. Leonard's
21 comments that there has been a great deal of work and
22 meetings and guidance by our oversight committee, the
23 Housing and Urban Affairs along this -- these issues.

24 So next month, we'll be bringing back to you,
25 hopefully, a -- well, next month, we'll be bringing to

1 this board a program to continue Youth Works within the
2 Department. So I just wanted to get that on record and to
3 let you know that we have continued to look for ways to
4 fund what we feel is a very, very viable and important
5 program to provide housing -- affordable housing
6 throughout the state, as well as to provide advantages to
7 this disadvantaged class of juveniles between the ages of
8 16 and 24.

9 That concludes my Director's report. I just
10 wanted to add to what Mr. Lyttle told you -- made a
11 presentation. We will get out to you what, once we have
12 it, is the final recommendations of the Sunset Commission.

13 I don't think we've done that yet, but we'll put that in
14 the mail to you by next week.

15 That concludes my report.

16 MR. JONES: Thank you, ma'am.

17 Any questions?

18 (Pause.)

19 MR. JONES: Hearing none, I presume we're ready
20 to go into executive session.

21 On this day, January 26, 2001, at a regular
22 board meeting of the Texas Department of Housing and
23 Community Affairs held in Austin, Texas, the board of
24 directors adjourned into a closed executive session, as is
25 evidenced by the following:

1 The board of directors will begin its executive
2 session today, January 26, 2001, at 3:39 p.m. The subject
3 matter of this executive session is as follows:

4 Personnel matters: Discussion and possible
5 approval of the performance evaluation for the executive
6 director, under Section 551.074, Texas Government Code,
7 and; receive advice of counsel, under Section 551.071, on
8 litigation and anticipated litigation (potential or
9 threatened litigation), under Section 551.071 and 551.103,
10 Texas Government Code litigation exception, and;
11 consultation with attorney pursuant to Section 551.071(2),
12 Texas Government Code.

13 And we'll go into executive session.

14 (Whereupon, the Board met off the record in
15 executive session.)

16 MR. JONES: I will now call the -- it's turned
17 off.

18 MR. DAROSS: You can just holler.

19 MR. JONES: Holler? Okay.

20 I will now call the board meeting of the Texas
21 Department of Housing and Community Affairs for January
22 26, 2001 back into session.

23 The executive session of the board of directors
24 was completed on January 26, 2001 at 4:03 p.m. The
25 subject matters that were deliberated were: Personnel

1 matters, discussing the possible approval of performance
2 evaluation for executive director, under Section 551.074,
3 Texas Government Code, and; to receive advice of counsel
4 under Section 551.071, litigation and anticipated
5 litigation (potential or threatened litigation) under
6 Section 551.071 and 551.103, Texas Government Code
7 litigation exception, and, finally; Number Three,
8 consultation with attorney pursuant to Section 551.071(2)
9 of the Texas Government Code.

10 No action was taken on any of those items.

11 I hereby certify that this agenda of an
12 executive session of the Texas Department of Housing and
13 Community Affairs was properly authorized pursuant to
14 Section 551.103 of the Texas Government Code, posted at
15 the Secretary of State's Office seven days prior to the
16 meeting, pursuant to Section 551.044 of the Texas
17 Government Code, that all members of the board of
18 directors were present and that this is a true and correct
19 record of the proceedings, pursuant to the Texas Open
20 Meetings Act, Chapter 551, Texas Government Code, signed
21 by myself as Chair.

22 And with that, I will note that we are back in
23 open session, and recognize Mr. Conine, the Chair of the
24 evaluation committee.

25 MR. CONINE: Thank you, Mr. Chairman.

1 The evaluation committee has met a couple of
2 times now and has agreed upon a process to finish the
3 evaluation of our executive director that we'd like to
4 move for this Board to take action on. We have completed
5 a form that was a compilation of three or four other forms
6 from other states that we feel like is a useful tool in
7 this evaluation; that form will be submitted to all the
8 Board members sometime very soon.

9 And we ask for the Board members to respond on
10 their evaluation and to get those back to the chairman for
11 compilation. We will also ask Ms. Stiner, if she would,
12 to fill out the evaluation form and then submit it back to
13 the chairman of the evaluation committee.

14 And at such time, the evaluation committee will
15 then get back together, after we've gotten those forms
16 back, and review and compile those issues. We will then
17 meet again and make a recommendation to the Board; the
18 Board will hear the same reviews and probably have an
19 opportunity to meet with Ms. Stiner at that point and
20 visit with her and come to a final conclusion on her
21 evaluation at a future board meeting.

22 So we feel like that since this is the first
23 time we've gone through this process, it's one that will
24 serve us very well this time, and, obviously, we'll be
25 looking for things to improve it. But that's our

1 recommendation to the Board at this time, and I so move.

2 MR. JONES: And I'll accept that form of a
3 motion. Is there --

4 DR. GRIFFIN: And I second.

5 MR. JONES: There's a second to the motion.
6 Discussion of the motion?

7 (Pause.)

8 MR. JONES: All in favor of the motion please
9 say aye.

10 (A chorus of ayes.)

11 MR. JONES: All opposed say nay.

12 (Pause.)

13 MR. JONES: The motion carries. With that, the
14 Chairman would entertain a motion to adjourn.

15 MR. BETHEL: I move to adjourn.

16 MR. DAROSS: I so second.

17 MR. JONES: Motion to adjourn made and
18 seconded. All in favor say aye.

19 (A chorus of ayes.)

20 MR. JONES: The ayes have it. Thank you.

21 (Whereupon, at 4:10 p.m., this meeting was
22 concluded.)

C E R T I F I C A T E

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MEETING OF: TDHCA Board Meeting
LOCATION: Austin, Texas
DATE: January 26, 2001

I do hereby certify that the foregoing pages,
numbers 1 through 214, inclusive, are the true, accurate,
and complete transcript prepared from the verbal recording
made by electronic recording by Penny Bynum before the
Texas Department of Housing and Community Affairs.

02/05/01
(Transcriber) (Date)

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