TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

12:30 p.m.
Tuesday,
August 21, 2001
Room E1.012
Capitol Extension
1400 Congress Avenue
Austin, Texas

COMMITTEE MEMBERS:

MICHAEL JONES, Chair
SHADRICK BOGANY
ROBERT BREWER
C. KENT CONINE
JAMES DAROSS
LYDIA SAENZ
NORBERTO SALINAS
MARSHA WILLIAMS

STAFF PRESENT:

DAISY STINER, Executive Director
DELORES GRONECK
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REPORT ITEMS

EXECUTIVE SESSION

ADJOURN
MR. JONES: I call to order the meeting of the Texas Department of Housing and Community Affairs Board of Directors for August 21, 2001. And the first thing on our agenda will be the roll call and a determination of quorum.

Mr. James Daross?

MR. DAROSS: Present.

MR. JONES: Mr. Shadrick Bogany?

MR. BOGANY: Present.

MR. JONES: Mr. Robert Brewer?

MR. BREWER: Present.

MR. JONES: Mr. Kent Conine?

MR. CONINE: I'm here.

MR. JONES: Mr. Gonzales?

(No response.)

MR. JONES: He is absent.

Ms. Saenz?

MS. SAENZ: Present.

MR. JONES: Norberto Salinas?

(No response.)

MR. JONES: He is absent.

Ms. Williams?

MS. WILLIAMS: Here.

MR. JONES: And Mr. Jones is present.
We have seven members present and two members absent. I do determine that we have a quorum.

I believe the next thing on our agenda is the period for public comment. Oh. Excuse me. And we would like to recognize certain special guests we have with us.

We have Johnnie Morales here from the Speaker's office. I see Johnnie at the back.

We also have Donna Chatham here, from the Committee on Urban Affairs. Thank you for being here.

We have Eddie Salinas from Governor Ratliff's office.

Eddie?

(No response.)

MR. JONES: I'm missing Eddie. He told me he was coming, though. And I think Representative Ehrhardt has been with us and will be back; she has gone on an errand.

But we're glad to have all of you with us.

I did want to turn to public comment. The first matter of public comment: I have here a statement that Senator Lucio has requested that I read.

And it states this -- and, again, this is from Senator Eddie Lucio, Jr.: "First of all, let me emphasize that I am very much in support of your agency, and want us to work together for the countless Texans who depend on
your leadership and that of the legislature. The last thing I would ever want to do is battle with the TDHCA, for that would only stymie the efforts we are making to provide affordable housing to people throughout the state. "Please know that as a State Senator, as a member of the Sunset Commission, you can count on me as you undergo a transition according to the rules and procedures established through Senate Bill 322, the Sunset Bill I authored. I speak on behalf of the entire legislature when I say that we stand behind every board and commission as you offer the State of Texas your dedication and commitment. "I also want you to be fully aware that I trust your judgment and that I do not intend to become involved in the day-to-day operations of TDHCA or any agency; that I leave entirely under your purview. But I will work and fight for the betterment of any agency through legislative efforts. On this I give you my word." And on behalf of our entire board, I would like to thank Senator Lucio for his statement. And that -- he also has some comments or -- I've been in touch with his staff about some matters with regard to an agenda item that I'll be happy to refer to the board about when we -- that item comes up. With regard to other public comment, the first
witness affirmation form I have is from John Henneberger. Mr. Henneberger, would you like to wait for that agenda item, or would you like to go now? Take your pick. It's up to you.

MR. CONINE: I think he has got a tee time this afternoon.

MR. JONES: Okay.

MR. HENNEBERGER: Let me just get it out of the way.

MR. JONES: Okay.

MR. HENNEBERGER: Mr. Chairman and members, my name is John Henneberger, also known by the staff as The advocate.

(Laughter.)

MR. HENNEBERGER: I'm --

MR. JONES: I remember you as a long-time friend and sometime critic.

MR. HENNEBERGER: Sometime -- that's right.

MR. CONINE: Can we make a movie out of that?

MR. JONES: That's how I remember you.

(Laughter.)

MR. HENNEBERGER: I'm the Co-Director of the Texas Low-income Housing Information Service, a nonprofit organization that works on behalf of housing for low-income people. I'd like to briefly touch on two matters
today.

The first has to do with the allocation of low-income housing tax credits by board -- by the board at the last meeting. I'm here to express my deep concern over the failure to meet the regional allocation goals set by the TDHCA Board in the allocation of tax credits, particularly to the border region.

As you are aware and as, I believe, the board discussed at the time you deliberated on this matter at your last board meeting, the staff recommended and the board chose to substantially underfund the allocation of tax credits in the -- in Region 8B, which is that portion of the border that comprises the area from Brownsville on up toward the Del Rio way.

This is an area that has arguably the greatest housing needs in the state, as reflected by the regional allocation formula, which the board itself adopted prior to or -- earlier this year. Nonetheless, there were tax credit deals which met threshold criteria which were available to the board to fund under the allocation last time, which -- the board chose not to do so.

The result was an underfunding of almost $1.8 million of low-income housing tax credits, which translates over the life of those credits into almost $18 million of money for low-income housing which was
underfunded to the region. It's significant that this
region stands head and shoulders above all other regions
in the state in terms of the level at which it was
underfunded in the tax credit round.

As I read the statute which was enacted, the
regional allocation requirement, the provisions of which
are set forth in Senate Bill 11 -- SB 11.12, I believe,
the department is to make every effort to achieve a fair
regional allocation of tax credits. I don't believe that
that was accomplished this time, in that there were deals,
as I said before, which were fundable, which met threshold
criteria, which were not funded in that region.

TDHCA's qualified allocation plan clearly
requires the board to make a careful documentation of the
reasons for a failure to reach the regional -- to meet the
regional allocation formula levels the board has adopted.

I call on the board now to do four things.

First of all: To clarify the department's
obligation to comply with the regional allocation goals,
specifically by adopting a policy that TDHCA will meet
regional allocation funding levels in housing programs by
funding all applications in the future that meet threshold
criteria before redirecting funds outside of a region to
another region.

Second: To modify the waiting list and forward
commitments to fund low-income housing tax credit developments in Region 8B at the levels that are called for in the 2001 regional allocation formula adopted by this board.

Number three: To publish the detailed documentation for the reasons for the violation -- for the variation of funding in Region 8B, as required in your 2001 qualified allocation plan.

And, number four: To develop and publish for public comment a plan that will offset this year's funding shortfall to the border by providing additional funds from other TDHCA programs.

Mr. Chairman and Board members, I provided detailed information about the funding levels of these various programs in the letter that I've provided you.

The second matter that I'd like to bring before the board is a matter that I just discussed with the Finance Committee, and that has to do with the bond -- the proposed bond refunding and the use of those bond -- that bond refunding to essentially make a deal work that's a single-family mortgage revenue bond deal.

I'd like to say that the comments of staff that I heard in no way indicated that it was not possible to use the bond refunding monies which are being -- which are now going to be pledged to the single-family mortgage.
revenue bond -- to use those bond refunding monies for the Bootstrap Housing Loan Program.

(Pause.)

MR. HENNEBERGER: And if you don't do what I ask, the lights will go off.

(Laughter.)

MR. JONES: You know, you can look at that two ways. There's a good side to that and a bad side to that.

MR. BREWER: He's still here.

(Laughter.)

MR. HENNEBERGER: And I seek to lead you out of the darkness that you're now in.

(Laughter.)

MR. HENNEBERGER: The -- I did hear bond counsel indicate that -- the only problem that I heard bond counsel indicate in applying bond refunding monies to the bootstrap program had to do with, quote, Representations made to the bondholders concerning the credit worthiness of the borrowers under the original indenture.

And I would suggest to you that that is a very narrow view of what those representations are. And I would urge the board -- you have a chance here to use the money in the most flexible way to apply the bond refunding to the highest priority need, which is low-income people.
And I would urge the board to carefully review this matter and to make absolutely certain that this is impossible, because this is a source of revenue which could offset a $6 million -- this biennium -- call on the Housing Trust Fund and the HOME monies which is going to have to be made under the current statute. And if there's a way to do this with bond refunding monies, I believe it would be prudent and I believe it would be in the best interest of low-income people in this state.

Thank you, very much.

MR. JONES: Thank you.

MR. CONINE: Thank you, John.

MR. JONES: Thank you, so much.

The next form I have is from Mr. Rowan Smith. Mr. Smith?

MR. SMITH: Yes. I'd prefer to wait for that agenda item. It has to do with the tax credits for the Valley.

MR. JONES: Thank you.

Ms. Mia Ford? Ms. Ford?

MS. FORD: I'm here to talk to you about the Housing Trust Fund Predevelopment Loan Program. And I have passed out some written information to you, as well, on the Texas Development Institute. I am the Director of the Texas Development Institute.
After capacity building grants, the next-best resource for initiating new affordable housing development projects is the Housing Trust Fund's Predevelopment Loan Fund. However, the loan fund will be as effective as the organization performing the marketing and the administration of it.

In past years, as I have facilitated training around the state on available financing programs, I have been disappointed in the lack of awareness by the CHDOs and nonprofit housing organizations of the Housing Trust Fund's Predevelopment Loan Fund.

There needs to be a better outreach for this year's loan fund. We need to get the loan funds out to the CHDOs, nonprofit organizations, housing authorities, and local governments all over the state who are trying to get affordable housing development projects off the ground. Texas Development Institute will get the job done.

Through our statewide training outreach, we have established the relationships and mechanisms to market the loan fund quickly and extensively all over the state. We have the technical expertise to develop the loan fund documents and to guide and counsel the applicants through the loan process, and we have experience in managing both state and federal funds.
I ask you today, board members, to award the administration of the predevelopment loan fund to Texas Development Institute or, as an alternative, let TDI partner with the agency recommended by the Housing Trust Fund staff.

The RFP allowed for up to two nonprofit organizations to administer the funds. And I believe one of those organizations should be a statewide organization, but, most of all, I maintain that Texas Development Institute is the best candidate for the job. Thank you.

MR. JONES: Thank you.

Ms. Kim Vowell?

MR. VOWELL: That's Mister, but --

MR. JONES: Oh. I'm sorry. I apologize.

MR. VOWELL: That's all right. I'll wait for the agenda item.

MR. JONES: All right.

MR. VOWELL: Thank you.

MR. JONES: Mr. Willie Alexander?

(No response.)

MR. JONES: Mr. Alexander?

(Pause.)

MR. JONES: Mr. John Barineau?

(No response.)

MR. JONES: Mr. Barineau?
(Pause.)

MR. JONES: Mr. Jerry Howard?

MRS. HOWARD: That's Mrs.

MR. JONES: Oh. Excuse me, Mrs. Howard.

MRS. HOWARD: Hello. My name is Jerry Howard; I am the Mayor Pro Tem for the City of China.

I did not want to be here today, but the disqualification of China's 2001 HOME Program application for the owner-occupied rehabilitation assistance demanded that I speak with you today. A lot of work was completed to prepare and submit our application to your agency. I actually went door to door to find people that would qualify for this program and told them that we were attempting to help them with their homes.

When I heard that the application was disqualified, I was stunned and greatly distressed, but the worst news was the reason that the program gave us for disqualification. Apparently, we were supposed to submit a form to the agency telling them that we didn't owe them a copy of our audit because we had no grants for them in the years in question. I think that's something they should know anyway, but somehow, we failed to submit the form.

A delinquent audit is one of the thresholds that HOME used this year to weed out applications. As we
told them, we did not have an audit due to the TDHCA. As you can see in the handouts I've given you, the audit certification form our independent auditor completed on July 9 and submitted to TDHCA indicates that we do not need to complete any single audit forms or submit any audit to the TDHCA.

This certification form is not an audit. If you'll look carefully, the audit certification form and its instruction sheet have conflicting information about when the form is due. From reading the instruction sheet, it is not at all clear whether or not this form should be turned in at all unless the city spends over $300 in federal and state funds.

The second document is the preliminary funding recommendations as prepared by the Texas Community Development Program in March of this year. Please note that China was awarded and is currently implementing a grant in the amount of $250,000.

My point in showing you this information is that the community development program did not disqualify our CD application that was submitted in August of 2000 because of a past-due audit certification form. We have always found that -- this part of TDHCA to be service-oriented and helpful to small towns.

The third item passed out is a July 27 letter
from the Texas HOME Program reaffirming our
disqualification because, quote, Applicant is not eligible
to apply for funds unless any past-due audit has been
submitted to the department in a satisfactory format on or
before the application deadline, unquote.

The HOME Program specifically stated that the
threshold requirement was a past-due audit. In no way did
the City of China fail to meet this threshold. If HOME
wants to change the threshold requirement to include,
quote/unquote, Past-due audit certification forms, for
next year, that is their choice, but changing the rules
before we submit applications is not the way to resolve
this issue.

I would like for you to instruct HOME Program
to reconsider our disqualification, taking into account
the actual language found in their application guide, of
their role as a partner with rural communities, rather
than a punisher, and the fact that the audit certification
form itself is a confusing and self-contradicting
document.

All I want is that -- our application to be
scored and be given a fair opportunity for funding. And I
do thank you for your consideration in this.

MR. JONES: Any questions?

MR. CONINE: Yes. I've got lots of questions.
MR. JONES: Okay.

MR. CONINE: I mean I would presume, since it's not on an agenda item, that we need to handle questions now.

MR. JONES: I agree.

MR. CONINE: This says for fiscal year ending '98, the one I'm looking at?

MRS. HOWARD: Yes, sir.

MR. CONINE: Okay. And I guess my question is: Why are we going back that far on audited statements? Did you turn in '99 and 2000?

MRS. HOWARD: We didn't have any -- we didn't have an audit due, period. In other words, there was no audit due. This was evidently the one in question, the only one that we had some state funding on. And, if you'll see, it was in the amount of $32,367.81, nowhere near 300,000. But we didn't have audits due. So why should we turn in an audit if we don't have one due?

MR. CONINE: You're saying the conflicting statements are for the box that's checked there and then the sentence right below that, which says --

MRS. HOWARD: Not only that. In the instructions on how to fill out this form, it tells you that you don't need to fill it out if you don't have an audit due. It tells you that you don't need to fill it
out.

Thank you.

I'll read the instructions to you. It says, "If the subrecipient is subject to OMB Circular A-133, the following items should be submitted to TDHCA's Compliance Division within nine months after the end of the audited fiscal year:

"Audit certification form; the single audit report submission checklist completed and signed by the independent CPA; two copies of the entire audit report issued by the CPA; two copies of any management letter issued in conjunction with the audit report; and two copies of management's response and planned corrective action on all findings, recommendations and questions contained in the audit report and management letter."

The very next statement on this instruction sheet says, "If the subrecipient did not exceed the $300,000 threshold, records must still be kept available for review or audit by TDHCA staff," which -- we had the records available. And this was the money that was spent. They were available, but, as per your instructions on the instructions on this, we didn't have to submit it because we didn't --

MR. CONINE: We kicked you out instead of asking to look at it?
MRS. HOWARD: Yes. It wasn't $300,000.

MR. CONINE: Okay. And pardon my ignorance, but where is China?

(Laughter.)

MRS. HOWARD: It's about 90 miles east of Houston, near Beaumont, Texas.

MR. CONINE: And your application was for $250,000. Is that right?

MRS. HOWARD: Yes, sir.

MR. CONINE: All right.

Mr. Chairman, I'd like to hear from staff, I guess --

MR. JONES: Yes.

MR. CONINE: -- the appropriate staff.

MR. JONES: Would that be Ms. Morris?

MS. STINER: Yes, sir.

MR. JONES: Yes, please.

MS. MORRIS: I'd like to see if there's anyone from the compliance division, as well, since they monitor the audit certificates and --

MS. STINER: I'm sorry, Ms. Morris; I should've made that clear.

The program staff depend on the compliance histories that's generated by the compliance division. I know Ms. Phillips is on vacation. I don't know if Ms.
Trevino is here.

Lucy Trevino, will you come forward, please?

Ms. Trevino is the manager of the audit division of the compliance division or -- yes.

MS. MORRIS: I'll begin to say I'm Pam Morris, Director of Housing Finance Programs. We did a very careful process with the 2001 application by making sure that we checked literally all the threshold requirements and took them very seriously. And we wanted to make sure that we weren't approving anyone to go into the scoring round that didn't meet those minimum requirements.

From -- our understanding in working with the compliance division is that they have to have the audit cert form in so that they can determine whether or not an audit is required. Otherwise, we just show them as pending receiving that form so that we know whether they're delinquent on an audit.

Some of our administrators receive funding outside of this agency, so we really don't always know what funds they may have received in order to be in compliance with the HUD federal requirements. And I'll let Lucy explain the process of collecting those certs.

MS. TREVINO: I'm Lucy Trevino, Compliance Manager. And the way the threshold is determined is by total cumulative federal expenditures. So we can't -- we
don't know if they're subject to a single audit or not until they certify to us whether they are or not. And that's the reason for this form.

The form has been in place for about three years. So most of our subrecipients, unless they're a first-time applicant, have been submitting the form year after year.

Also, as far as the City of China, I'm not prepared because I wasn't aware of this. But I'm pretty sure we've sent them several letters requesting the form back, especially if it's a 1998 that was delinquent. I'd have to go back and check our records, but typically, we send reminder letters asking that the form be returned to us, you know, several times during the year.

Also, if they have a prior certification or audit that was required, when that audit is reviewed, we'll ask for the form again to be submitted in the following year. So I couldn't tell you the details on the City of China, but, you know, if that is the case, I'm sure they were aware of it.

MR. CONINE: Given what you know now, do they meet the threshold requirements based on what she has presented?

MS. TREVINO: Apparently, after the deadline, they submitted the form that indicated they were not
subject to a single audit. But prior to them submitting
the form, we did not know one way or the other.

MR. CONINE: And refresh my memory on when the
cutoff date was.

MRS. HOWARD: June 11.

MR. CONINE: So it's fairly recent?

MRS. HOWARD: Uh-huh.

MR. CONINE: And we probably don't have any
money left in that account. Right?

MS. MORRIS: Well, we haven't completed all the
scoring. We're wrapping that up now. Because of some
other disqualifications that were added back into the
round and so -- we're off our schedule a little bit for
the funding cycle to know what funds will be awarded.

MR. CONINE: Mr. Chairman, I'm hearing a lot of
technical ambiguity, I guess, because of one side saying
one thing and one side saying the other. And I don't know
whether we want to take the time to resolve that issue
here today. I --

MR. JONES: I don't think we can --

MR. CONINE: I don't think we can.

MR. JONES: -- in light of our agenda.

MR. DAROSS: I don't think so.

MR. JONES: But I guess the only thing we can
do probably, Mr. Conine, is ask for the staff to see if

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there's any relief available for this type of situation.

MS. MORRIS: We met with Executive on two occasions to discuss all of the disqualifications in the HOME cycle. It was determined at that time that an audit certificate in essence was an audit requirement; so if they weren't in compliance at that deadline, we -- the decision was that we would stick to the disqualifications with regard to that expenditure rate and any delinquencies or loan defaults.

MR. CONINE: Well, you know, I guess I would applaud staff in dotting the i's and crossing the t's. On the other hand, I think, based on the distribution that our agency's letter went to, there was a professional grant writer involved in this particular application who interpreted the rules and regulations for not only this client but, I'm sure, others in a consistent manner that would be different than what I'm hearing.

And I'd like at least for staff to -- knowing what they know now, if they meet the threshold -- go through and finish the, I guess, underwriting requirements and come back to us next month with an appropriate response.

(Pause.)

MR. CONINE: I'll make that in the form of a motion.
MR. DAROSS: I don't think you can --

MR. JONES: I don't think --

MR. DAROSS: -- do a motion.

MR. JONES: -- you can do that.

MR. CONINE: We can't do that?

MR. JONES: No, you can't do that. I think you can --

MR. DAROSS: It's not an agenda item.

MR. JONES: I -- it's not an agenda item. I think all we can do is just ask the staff to evaluate the situation for us and report back at the next meeting.

MR. DAROSS: I think that one thing we ought to look at is: Were the letters of reminder sent, and were they received?

MS. TREVINO: And we can go back to the office and certainly get all that information for you.

MRS. HOWARD: That would be something that -- you know, if they can show us where the letters were sent to the City of China, saying that they needed the audit certification form, you know, then I can more see your point. But those letters, to me -- to satisfy me, I would appreciate seeing those.

And, also, the very fact that the HOME Program -- it specifically stated that they wanted a past-due audit. Because we did not have an audit due, we
assumed that we were not out of compliance, because there
was not an audit due. You didn't ask for an audit
certification form; you asked for a past-due audit.

    That's two different papers. Right?

MS. MORRIS: Correct.

MRS. HOWARD: You know, so --

MS. MORRIS: It's just that we --

MRS. HOWARD: -- that's what we're questioning.

You asked for two different things. In our instructions,
it was a past-due audit, not a certification form.

MR. BREWER: Yes. But you're not aware if any
letters were received and --

MRS. HOWARD: Not that I'm aware. But I'm
going to say that they -- I'm not going to say that they
weren't. I could check and see.

MR. BREWER: Okay. Thank you.

MR. JONES: Well, I would just like to suggest
that the staff, you know, review this information.
Obviously, you're just hearing it for the first time. See
what the --

MS. MORRIS: That's correct.

MR. JONES: See what the circumstances are, and
then report back to us at the next meeting.

MS. MORRIS: Okay.

MR. JONES: Let's see if there's any relief
that can be --

MS. MORRIS: All right.

MR. JONES: Yes? Do you --

MR. SPITZENGEL: Chairman Jones, I'm Bruce Spitzengel. I'm here, already listed.

MR. JONES: You're our next speaker. So --

MR. SPITZENGEL: Yes.

MR. JONES: -- if you want to speak now, come on.

MR. SPITZENGEL: Yes, I certainly would. I think it would be appropriate. I'm the professional grant writer that Mr. Conine was speaking to, and I think I can add some pertinent information.

My name is Bruce Spitzengel; I'm president of Grant Works. First of all, I'd like to contradict some of the comments that were made in terms of there being a very careful review. If you all will recall, there was nearly 47 or 50 applications that were disqualified. We came, and a representative from my company spoke. And as a direct result of that, there's now only 25 applications that have been disqualified.

It appears that we've had a careful review now. And what I'm asking for is additional careful review.

In terms of the applications that were disqualified, those that remain disqualified, based on the
information I have, were: One for not having a certification form; there are approximately nine dealing with audits; there are four that were 90 days delinquent in repayment or loan payment applications; there were expenditure performance requirements that were not met.

Out of that group of -- out of nine, seven of them are still disqualified. And I would stand by that. If they didn't meet performance standards, they should be disqualified. And it goes on.

Now, getting into audit reports and -- what you have passed out to you is from the City of La Coste. What you have is the July 27 letter.

What you have was what Ms. Howard was reading. This is the -- if you will, the instruction page. And now that you have that in your hands, you can look at the two items that are asterisked. It is confusing.

I think -- the next page is the audit certification form. You can see it's a one-page form; it's very brief.

The last is a letter dated August 20 -- well, actually, no. The next-to-the-last is a letter of August 20 in response to the second disqualification. I want to just read an out-take from that: "Thresholds must be specifically delineated and stringently followed if they are to be understandable and fair.
"HOME's threshold requirement language specifically stated that applicants with past-due audits were to be disqualified. Under no rational interpretation of this language did the City of La Coste have a past-due audit. I can see no benefit to the State of Texas, the HOME Program or, certainly, the residents of La Coste in the HOME managers' disqualification decision.

"I suggest that the HOME Program admit that they used imprecise language in their application guide, perhaps adding a broader and more detailed list of threshold documents for next year. For 2001, they should stick to the rules they set forth at the beginning instead of changing them after the fact. Please instruct the HOME Program to re qualify the city's application for this funding competition."

I think -- the next letter goes into great detail -- the July 19 letter -- in terms of that particular form. I think the fact that -- both China and La Coste were funded under the Community Development Program, which is still, up until September 1, a part of this agency, and they had these same issues.

China is currently implementing that community development project. The City of La Coste is funded for 2002, assuming those funds become available. Obviously, there's a departmental inconsistency. Whenever there's
departmental inconsistency, there's reason for doubt, there's reason for concern.

It was mentioned that you have a professional grant writer. I have been writing grants for 25 years; this is the first time I've had four applications disqualified -- even one. Two of them got reinstated. I certainly hope the other two will be reinstated, also.

One of the things that I think is obviously a problem with the audit issue is that -- I saw a report -- and it's very, very lengthy -- about how many audits are outstanding. And I saw this after, I think, July. And this information is not available on the web.

Cities constantly change administrators, city secretaries, CPAs, mayors and council members. Even if you send out notices, in small towns, these things can and do get misplaced.

We're dealing with small, rural Texas. Small, rural Texas is not a state agency. It is not a bona fide bureaucracy. In many cases the elected officials have other jobs. It's part time. In terms of their city administrators and city secretaries, those change.

I think China recently had a change.

MRS. HOWARD: Yes.

MR. SPITZENGL: These are the kind of things. What we're asking for for both La Coste and -- by the
way, Ken Roberts has just gone back to the City of La Coste; he had been gone for about three years. So they had changes.

Those are just some of the issues that I think need to be looked at, and I'm hoping -- all we're asking for is an opportunity to be scored. That's what we're hoping for. It doesn't mean we're going to get the money, just a chance to be funded or scored.

Any other questions?

(Pause.)

MR. SPITZENGL: No?

MR. JONES: Thank you, sir.

MR. SPITZENGL: Thank you.

MR. JONES: I think, with regard to both of them, if you all would, look at them based upon the information you've gotten here today, and just report back -- well, we may not ever be here again. So report back to the appropriate board --

MR. DAROSS: Yes.

MR. JONES: -- at that time.

MRS. HOWARD: Thank you, very much, for your time.

MR. JONES: Thank you. We appreciate you being here.

MR. SPITZENGL: Thank you.
MR. JONES: All right. This is all of the public comment I have. Does anybody else want to address the board?

Yes, sir, Mr. Ocanas?

MR. OCANAS: Good afternoon, Chairman, members. I'm Raymundo Ocanas, executive director of the State Association of CDCs; we represent the nonprofits that work in affordable housing and economic development throughout the state.

I have a lot in writing, so I'll just summarize my comments to you in writing, and that's just to say that we have some similar questions about the Housing Trust Fund Program for this year that I've already addressed to staff.

And some questions are already coming back to us. But I do want you to be aware that we have some questions about some potential inconsistencies with the threshold requirements for the trust fund program, as well, particularly in regard to the nonprofits' applications that were submitted for this year.

The trust fund statute for the department particularly states how much of the money that you get every biennium shall go to nonprofits. And I think that my calculations show that about 7.1 billion -- million -- I wish it was billion -- 7.1 million of your 12.6 a year
in development dollars and capacity development dollars are to go to nonprofits. And I think there's a $2 million discrepancy or difference in what has been awarded for the biennium so far, including the award that you made last year.

One other concern is that for the development awards that were made last month, there was significant waiting or -- I guess, significant attention given to the metro areas with no funding, about $210,000 out of the 5 million available, to the border, Region 8B and Region 10, I believe.

So I just want to point that out and say that we're asking additional questions. We have had several of our members that applied for funds talk to us about some inconsistencies that they saw with threshold requirements.

I'd just like to point out the fact that this last round that you approved funds for the development cycle, there was not one single nonprofit awarded funds; all nine applicants were disqualified from the process. So that -- I have no idea what that means at this point except that we're asking these questions and asking you to ask the same questions to help us understand what happened in this process, particularly in light of what we just heard with the other program that are having the same kinds of questions asked.
So I appreciate your time. And I will -- could entertain any other questions or would be happy to be available later to correspond with you about this issue.

MR. JONES: Thank you, sir.

MR. OCANAS: Thank you.

MR. JONES: We appreciate it.

At this time, that's all the witness affirmation forms I have --

Yes, sir?

MR. BARINEAU: Yes. Sir, we were out of the room when you called our names a minute ago: Willie Alexander and John Barineau.

MR. JONES: Yes, sir?

MR. BARINEAU: Can we come on up?

MR. JONES: Yes, you sure may.

MR. BARINEAU: Okay.

(Pause.)

MR. ALEXANDER: Good afternoon. My name is Willie Alexander, and I'm here to speak on behalf of Scott Street Townhomes. And the primary reason for addressing you today is that -- is regarding the awarding of tax credits for Scott Street Townhomes.

First, I want to thank you for the awarding of the credits, but the issue that I want to speak to you about is in regard to the reduction of the credits. And
they were reduced by 11 percent.

I have brought some exhibits here to give you to show you what the area looks like, and we're talking about an area that is really a depressed area and that hasn't had any development in about the last 30 years.

According to a site inspection report that was presented by TDHCA -- and this was done back on May 18 of 2000 -- it said that the surrounding area is unattractive, no real vitalization is apparent nearby and that the adjacent multifamily residences are in poor condition.

What we are asking you to do today is to -- we -- hopefully, we'll present a case as to why you should reinstate some portion or all of the 11 percent reduction.

I have a picture here that I would just like to pass around for you to look at as we speak.

(Pause.)

MR. ALEXANDER: As businessmen, we based our -- the market rents, the rents that we are -- the rents were based on studies that were performed by two credible organizations. And according to their studies, it says that Scott Street cannot achieve the maximum tax credit rents.

And they were done -- and this was as a result of a study that was done by O'Connor, which was a market study done on August 7 of 2001. And Lend/Lease
[phonetic], who will be buying the tax credits, also did a study, on August 17 of 2001, that -- the maximum tax credits would not -- the rents would not be available in this area.

What I'm showing you is, if you -- as you pass that picture around: A -- the letter "A" has to do with our project site. The letter "B" is a site with purchase options where we're going to purchase in the future for additional development.

"C" is Missionary Village, which is a Section 8 project that we've owned for the last 20 years, and "X" shows the sites of two junkyards.

The problem that we are running into is that we will not be able to charge market rate rents in this area of town -- I'm sorry -- tax credit rents in this area of town. And that -- we are committed to this area of town. And that -- and I just want to assure you that whether or not we get the tax credits restored, the 11 percent restored, or not, we are committed.

But the only problem that we run into is that, as businessmen, we made the commitment. In the end, we build the apartments -- the townhomes. The residents who will be renting these apartments -- townhomes will win. TDHCA is going to win because we're going to build a very nice townhome, as we've done before with Reed Park
And the City of Houston is going to win, and that area of town is going to win.

But what we're asking you as — from a business standpoint is: Do not penalize us as businessmen. And we're asking you to restore the 11 percent tax credits or some portion thereof.

My — I have some information here from John Barineau, who's the administrative general partner, who can give you some further details.

MR. JONES: Mr. Barineau?

MR. BARINEAU: Yes, sir. Thank you.

Well, Mr. Alexander has talked about the neighborhood, and it seems very obvious that this neighborhood is not your typical tax credit neighborhood; it is an inner-city development project on a part of Houston that hasn't had any housing development or any kind of economic activity for 30 or 40 years — although we've operated some housing nearby in that area and are familiar with the area.

So when we started out working on this project, we wanted to — we considered that the tax credit development would be a pioneer in effect and begin to try to spark and develop some economic activity in this area.

On the other hand, moving into neighborhoods — this is the Sunnyside/Foster Place neighborhood of
Houston -- you really can't expect -- you talk about, "Location, location, location," in real estate -- it's not reasonable in our opinion to expect that the department should project that we would be getting the maximum tax credit rents, which is -- as we understand after having reviewed the underwriting analysis of the department, that is the reason -- apparently, when they ran their numbers and did their revenue projections, they projected that we would be getting a higher level of debt and, with a higher level of debt, obviously, we don't need as many tax credits.

So therefore the tax credits were cut back. The predominant reason for that in the analysis is that they are projecting that this project will receive the maximum or close to the maximum allowable tax credit rents. We believe that our rents in this neighborhood will be at a substantial discount from the maximum tax credit rents because of the local market conditions; it's not as pure or clean or attractive a site, if you will, as it exists today.

Now, the information we have to support that position is, first of all, from a -- our own experience with Reed Park Townhomes, which is one of the properties hereby and is a successful tax credit property we developed a couple of years ago. It's outside this
immediate submarket, but it's nearby, and it serves as
sort of a reference point. Even that property today
doesn't achieve the maximum tax credit rents.

And there's a distinction here. I think when
the department may call or contact for what rents a given
development is getting, they get the quoted rent on the
telephone: "What are you asking tenants when they come
in?"

But, in fact, if you look at our rent roll for
August on Reed Park Townhomes there's a 4 or 5 or 6
percent difference between the average rents you're
actually achieving and the maximum target rents that you
would be asking. And that's always going to be the case.

So our first point of view here -- and it's
demonstrated by the facts -- is that we'll almost never
achieve the theoretical maximum tax credit rents even
though those are eligible by the guidelines.

Then you move into the question of neighborhood
considerations. And we feel there's no question that this
neighborhood and the ability to attract the 96 -- we're
not talking about a huge project here; we're talking about
a 96-unit project -- when they have other options, a
slight discount below the maximum would be the business-
like way to project this deal. And that's what we had in
our application.
And I think the department, in good faith, in their underwriting analysis has, in our minds, somewhat unrealistically --

And I don't want to use the word, "Naively,"

Tom, Mr. Gouris, but --

-- we think, unrealistically assumed that, Why should this property -- with the neighborhood conditions that have been described here, why should it be expected that it's going to achieve the maximum tax credit rents just like every other tax credit project in Houston?

Now, we had O'Connor and Associates, who did our original market study, do a supplemental market study that was just delivered to the department two days ago. They did a survey of all 36 tax credit properties in Houston. And of those properties, they took -- they compared what their tax credit rents were versus the maximum.

And the average tax credit rents of all 36 properties in Houston -- and there are adjustments you can make for size and all that kind of thing, but, just across the board, the average tax credit rents in Houston are all less than the maximum -- if you just average all the projects across the board. And there's a detailed study that we've submitted to the department that shows the data for that conclusion.
So, number one, no one's getting the maximum tax credit rents across the board on every tenant living on their property; there's a built-in discounting. You have holdover tenants, for example, that renew leases, and you don't renew them at the maximum. It's theoretically impossible to ever get to the point where your units are all getting the maximum rent. So that's number one.

Moreover, this neighborhood, in our view, warrants a 4 or 5 or 6 percent discount off the maximum to be realistic in terms of the neighborhood conditions that we have to equate to these other locations that are on major freeways and alternative -- represent alternative housing for the same people.

So that's the details. And we would -- we've already submitted the reports to the agency, but we would be happy to submit the summary details to the board to make it a matter of record.

MR. JONES: That would be great. Just submit them to Delores.

Any questions?

Yes, sir?

MR. BOGAN: I have a couple of questions. I'm familiar with this location of this complex. And I guess, being new to the board, this is some things I need extra explaining for.
Are you saying that you're not going to be able to make as much because of the 11 percent discount that the board recommended on lower tax credits? Because -- I'm looking at this location, and I agree with you guys whole-heartedly. And I'm happy to see that you guys are trying to do something there.

But on the flip side of this, this project is inside the loop of 610. It's probably -- you've got one on Yellowstone and yours on Reed Road -- so you've gotten two other projects within that period of time. And just being in real estate in Houston, I've never seen one of these affordable home projects ever advertise looking for tenants. I -- that's just me. And I just have never seen any advertising.

So then you've got the medical center, which is a mile or half-a-mile away from this project, where you've got a bunch of condos and townhomes where the starting rents for a one-bedroom probably are about $600 a month over there. And then you've got the A-plus apartments, which are probably getting 8- or $900 a month starting at a one-bedroom.

And I just can't see why people wouldn't want to come to your nice project inside the loop in that area based on what the rents are going to be, because you're going to be cheaper than everybody else that's in that area.
general area. And I'm just trying to understand why you feel this is going to be a hindrance, because it looks like you've got a lot of things going for you in that location.

I mean it's blighted, but you're going to revamp it. So why do you think you're not going to be able to get your market rents there?

MR. BARINEAU: Are you saying the market rents, or the tax credit rents?

MR. BOGANY: The tax credit rents, the ones that you're saying that we cut back.

MR. BARINEAU: Well, the tax credit rents, of course, are, I mean, obviously, restricted to people by -- based on their income and how they qualify, whether they're 60 percent or 50 percent. And so that's the market we're focusing on.

MR. BOGANY: Right.

MR. BARINEAU: We're -- we've set aside -- 85 percent of these units will be tax credit units: Half at 60 percent and half at 50 percent.

MR. BOGANY: Okay.

MR. BARINEAU: So to talk about the condos around the medical center and the higher-end apartments, the class A apartments, and that kind of thing -- those folks are not going to move into the Sunnyside/Foster
Place neighborhood. And, of course, they would have the capability of paying higher rents if they were to move there; they're living in what they would consider a more desirable neighborhood, given where they're coming from.

And I think that's -- so you're talking about a different population of people who would be income-eligible or income-qualified for tax credits versus the rest of the world, including nurses, nurses' aides and people that might be working at the medical center and that type of thing, who could afford higher rent.

They're not going to move to Foster Place/Sunnyside -- Mr. Bogany, you're familiar with that neighborhood -- as opposed to just save a few dollars on the rent. But, even so, they're going to be -- most of those are going to be over income, anyway.

MR. BOGAN Y: Right.

MR. BARINEAU: We're talking about the band of income of eligible people in the 60 percent eligibility range for tax credits. Those folks won't be able to afford those higher apartments you're talking about that are over by the medical center, or the condos; they're going to be looking for lower-cost housing. And that's what tax credits are supposed to represent.

MR. BOGAN Y: All right.

MR. BARINEAU: And given a choice, I would
think that there needs to be a slight incentive to be a
pioneer moving into a new development in an area that's in
the early stages of revitalization. And that's why we're
looking for projections of maybe 30- or 40- or $50 per
less unit than the surrounding tax credit properties that
you mentioned, which are really on major freeways.
They're --

MR. BOGANY: But you're not -- but you're about
a quarter-of-a-mile from 610 right there at that location.

MR. BARINEAU: Oh, yes I know. But visibility
and access -- those are factors.

MR. ALEXANDER: You do have to go four -- at
least four blocks down inside that loop --

MR. BOGANY: It's about a quarter-of-a-mile.

MR. ALEXANDER: -- to get to where we're going.

MR. BOGANY: Yes. I -- you know, I think
that -- I'm glad to see you guys doing the project. But I
also believe when you go into these projects -- and I
don't understand why none of the tax credits -- maybe
because the tax -- nobody's marketing these properties.
And I --

MR. BARINEAU: Oh, they'll fill up. I'm not --
we're not saying they're not going to fill up --

MR. BOGANY: So why do you --

MR. BARINEAU: -- no matter what the rent was.
The question -- there's a question of volume, and there's a question of price.

MR. BOGANY: Okay.

MR. BARINEAU: There is not a question of having 96 families; we're very confident that there are 96 families --

MR. BOGANY: Okay.

MR. BARINEAU: -- that will -- that are in need of this housing and will want to live in this housing. We suspect that most of them are going to come from the immediate neighborhood because they already have connections through family and that type of thing.

I will say, though, that those families are probably going to be of somewhat lower economic average incomewise. Perhaps, because of their -- because of the neighborhood and the way it exists now, they're going to be moving -- this will be an upgrade of housing for them in some -- in where they're living now. Maybe they'll be paying a little more rent, frankly, than what they're paying in some other places.

But Park Yellowstone, being on a major freeway, people driving in to and from work in downtown Houston every day -- they see that property. They may live in Pearland or Missouri City, and they drive right by it.

The same for Reed Park Townhomes. There's the
visibility from the freeway of the building, and they say, Hey, that's apartments that's closer to work; let me go knock on the door about renting there.

   We won't get that type of drive-by traffic. And traffic -- any apartment developer will tell you that traffic and drive-by is probably 80 percent or 90 percent of the people that rent apartments from you. So that's why we say, Not on a major freeway.

   MR. BOGANY: All right.

   MR. BARINEAU: But it's also the physical conditions of the surroundings. This neighborhood, with the junkyards that Willie mentioned -- there's some boarded-up buildings there -- all of which represent development challenges, by the way. We're taking a risk to go in there.

   We know we can find the families. We're confident we'll find the families. We know what we're doing --

   MR. BOGANY: But you don't think the families --

   MR. BARINEAU: -- but we don't think we're going to get the maximum tax credit rents.

   MR. BOGANY: Okay.

   MR. BARINEAU: We think it would be unfair -- we don't -- lenders are not going to give us credit for
the maximum tax credit rents. And that's the bottom line.

What will it -- the department may think we can get them, the board may think we can get them, but, if a lender -- we have a letter from Lend/Lease, who had their own market study done, and they don't think we can get them. Now, five years from now --

MR. JONES: We appreciate it.

MR. BARINEAU: -- or ten years from now, maybe it will be different.

MR. BOGANY: Yes. Okay.

MR. JONES: Any further questions?

MR. BOGANY: No. I'm through.

MR. JONES: Okay.

Hearing none --

Do you?

MR. CONINE: Yes.

MR. JONES: Okay.

MR. CONINE: I have a question in a totally different direction. I guess that would be -- and I understand this is on the agenda items for later on --

MR. JONES: It is.

MR. CONINE: -- this particular project, along with others. But -- and I'm -- and I guess we don't have any other public comments relative to any of the -- well, we do, but those are coming later.
MR. JONES: Yes, they're coming later.

MR. CONINE: But I guess I would question the appropriateness of Item 5(c) being on the agenda to begin with. I was of the understanding that we had a July 31 statutory deadline. And that -- in the four years I've been here doing this, this is the first time I've seen folks kind of coming back to the well a month after. And I just would like some staff comment on that.

MR. JONES: Ms. Stiner?

MS. STINER: Yes, sir?

MR. JONES: I'll tell you what. Since you -- I don't think there are any more questions for you all. We thank you for being here, appreciate it.

MR. BARINEAU: Thank you.

(Pause.)

MR. JONES: Ms. Stiner?

MS. STINER: Yes, sir.

The item is on the agenda because it was my understanding -- at the last board meeting, Mr. Conine, staff indicated that they would be taking a look at those that had requested additional credits. Now, if I misunderstood that, I --

MR. BREWER: That was my understanding, too, that they were to bring us back a list of --

MR. CONINE: Well, I'm confused as to which
credits he had cut. Was it -- did he have credits cut by our underwriting staff that came into the meeting, on the sheet, or did he have credits cut by the board action?

MS. STINER: No. They were recommended by the underwriting staff. There were --

MR. CONINE: Right.

MS. STINER: There were various categories. Some had been increased according to the underwriting staff, and the board took action at that particular meeting to cut those back down to the original amount.

MR. CONINE: Right.

MS. STINER: And it -- I understood that the staff was instructed to take a look at that and bring it back the next time --

MR. CONINE: That wasn't --

MS. STINER: -- and tell the --

MR. CONINE: That wasn't my understanding, Mr. Chairman. And, again, I -- it's a legal question more than anything else. And we need some help there, because we do have the statutory deadline of the 31st of July in the QAP, and I don't know, you know, what -- I guess we can always go down, but I don't think we can go up.

MR. JONES: Well, that's take that up when the agenda item comes up, if we could, because I do think that needs to be addressed.
If we would, then I'm going to close the time for public comment. Is there anyone else that would like to comment?

(Pause.)

MR. JONES: Hearing none, public comment will now be closed.

Before we do anything else on the agenda -- as I've noted, this is the last time that I know of that this particular board will meet, in light of our Sunset legislation. And there has been one person that has served the State of Texas so well, so unselfishly, and helped this board do its function day in and day out that we would be very remiss if we did not recognize her.

And I would like for the board to stand with me and applaud and congratulate Delores for everything she has done for us through the years.

MR. CONINE: Absolutely.

(Applause.)

MR. JONES: This is an individual that is a true Texan and has served Texans in her job very unselfishly. There's something in the Bible about having a servant's heart, and this lady has one, and it is just nice to know her and be her friend.

With that, I'd like now to turn to our other agenda items. The first item is, number one, The
presentation, discussion and possible approval of minutes of the board meeting of July 31, 2001.

MR. CONINE: Mike, can I propose that we push that off and let me go back and re-read what Ms. Stiner's interpretations of some of the actions were in there?

MR. JONES: Well, I -- we sure can. Let's hold that agenda item until another time --

MR. CONINE: Thank you.

MR. JONES: -- unless there's an objection.

Any objection?

(Pause.)

MR. JONES: And can I also note for the record that Mayor Salinas has joined us?

It's so good to have you.

MR. SALINAS: Thank you.

MR. JONES: We will then move to Item 2, which is the report of the Programs Committee.

Mr. Brewer, would you mind doing that for us?

MR. BREWER: Okay. The Programs Committee met. And what I'd like to do now is just have Stacy Higgins come up and take and brief Items 2 and 3 to the board.

Stacy?

MS. HIGGINS: Good afternoon, Board, Mr. Chairman and Ms. Stiner. And I'm also fortunate that I have our manager, Keith Hoffpauir, up here with me, as
I am Stacy Higgins, and I am the Senior Planner for the Housing Trust Fund. And I'm here today to present you with staff recommendations for the Predevelopment Loan Program.

On June 1, the department issued a request for proposals for the Predevelopment Loan Program, looking for up to two nonprofit organizations to administer these funds. We received seven proposals and -- on July 3. And out of the seven proposals received, we had one, from Ark-Tex Council of Governments, that scored a perfect 100.

Ark-Tex Council of Governments was the only proposal, as I just noted, to score the 100. They provided the most extensive and detailed marketing plan of the seven proposals that we found. Ark-Tex demonstrated extensive experience in administering programs on behalf of governmental entities, including revolving loan programs and other loan programs.

And Ms. Burtchell from Ark-Tex is here. If the board has any questions for her for -- about the proposal submitted or about their program -- does the board have any questions at this point?

MR. DAROSS: Yes. I have one question --

MS. HIGGINS: Okay.

MR. DAROSS: -- addressing what Ms. Ford spoke
to us about earlier. The RFP said that we were -- we would have possibly up to two agencies to receive this award. Could you address the fact of why you just limited it to the one?

MS. HIGGINS: We limited it to one because we had one that scored 100 and the next three scored 95. And so it was just a matter of simplicity, because it was flexible with the RFP. It was some flexibility we were trying to give ourselves to make sure that the program was developed in the best way possible. And the way the scores came out, it just was the logical choice.

MR. BREWER: Mr. Chair, I recommend approval for the award of the 2001 Housing Trust Fund Predevelopment Program Award for Ark-Tex Council of Governments.

MR. DAROSS: I second.

MR. JONES: A motion has been made by Mr. Brewer and, I think, it was seconded by Judge Daross. Any discussion, question or comments?

(Pause.)

MR. JONES: Hearing none, are we ready to vote? I assume we are.

All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please
say nay.

(No audible response.)

MR. JONES: The ayes have it.

Mr. Brewer?

MR. BREWER: Stacy, let's do the third item.

MS. HIGGINS: Certainly.

This deals with the correction of an incorrect amount awarded last month during the Capacity Building Program funding. This is for the Habitat of Humanity of El Paso. When the data was entered into our database when the 64 proposals came in, the dollar amount was entered incorrectly.

And that's basically what happened. And so this action is just to correct that and bring their dollar amount to the correct level. These funds will come out of local funds.

MR. JONES: Any questions?

(Pause.)

MR. BREWER: Mr. Chair, I recommend approval of the funding in the amount of $10,200 for Habitat for Humanity of El Paso, Inc. to resolve an incorrect amount award approved for the 2001 Housing Trust Fund Capacity Building Program.

MS. SAENZ: I second.

MR. JONES: We have a motion.
MS. SAENZ: I second.

MR. JONES: Is there a second? Okay.

A motion by Mr. Brewer, seconded by Ms. Saenz.

Further discussion, questions or comments?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No audible response.)

MR. JONES: The ayes have it.

Thank you.

MS. HIGGINS: Thank you.

MR. BREWER: On Item 4, the Presentation, discussion and possible approval of the letter of endorsement for the Housing Bond and Credit Modernization and Fairness Act S. 677, Michael Lyttle will brief the board on that.

MR. LYTTLE: Good afternoon, Mr. Chair, fellow Board members and Ms. Stiner. We are looking at Senate Bill 677, which is being considered by the U. S. Congress right now. This piece of legislation, among other things, will repeal what's referred to as the ten-year rule in single-family mortgage bond yields.

There are a number of state housing finance
agencies and state housing corporations that are working
together with the NCSHA, which is the National Council of
State Housing Agencies, in lobbying Congress, if you will,
to pass this piece of legislation. As I pointed out to
the Programs Committee this morning, we need to be very
careful because we are a state agency against the lobbying
provision.

Therefore what we would like to do is simply
raise the awareness of this legislation to the Texas
congressional delegation by pointing out some facts and
how we believe this piece of legislation would affect
Texas. We believe it would affect it in a very favorable
way in creating approximately $160 million in additional
bond authority, as well as creating about 2,200 qualified
home loans for Texans.

Therefore we think it would be a good idea for
the board to send this letter to the Texas congressional
delegation, simply raising the awareness of the
legislation and offering them the opportunity to get more
information from our staff if they request that.

Are there any questions?

(Pause.)

MR. JONES: No questions? Okay.

MR. BREWER: I make the motion that we approve
the letter of endorsement for the Housing Bond and Credit
Modernization and Fairness Act, S. 677, to be signed by Chairman Jones.

MS. WILLIAMS: Second.

MR. DAROSS: Second.

MR. JONES: The motion has been made and seconded.

We had a tie between you two. How about Ms. Williams'? She's further away. Maybe I heard her first.

Any further discussion, questions or comments?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No audible response.)

MR. JONES: The ayes have it.

MR. BREWER: Okay. The next item on the agenda was the possible approval of HOME Program award in the amount of $500,000 for the United Cerebral Palsy for home buyer assistance and rehabilitation. Pam Morris will make that presentation.

MS. MORRIS: Good afternoon, again.

In the 2001 consolidated plan for the HOME Program, we had made a statement, that, We strongly support and encourage the collaboration between the
department and the Home of Your Own Coalition. We have since received an application from then and have processed that for this recommendation. We are recommending that 500,000 be awarded to United Cerebral Palsy for down-payment assistance and for architectural barrier removal.

They encourage people for home ownership, 100 percent persons with disabilities. They have a set-aside of two households that will be at 30- and below, as a requirement in their contract, and then the remaining can go up to 80 percent and below. And that's a total estimate of 20 households served statewide. And that's just to go in accordance with what we had stated in the 2001 consolidated plan.

MR. BOGANY: I move that we approve the HOME Program award for United Cerebral Palsy in the amount of 500,000 for home buyer assistance and rehabilitation.

MS. WILLIAMS: I second.

MR. JONES: We have a motion made by Mr. Bogany and seconded by Ms. Williams. Further discussion, questions or comments?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, nay.
(No audible response.)

MR. JONES: The ayes have it.

Discussion of the appeals policy?

MR. BREWER: The presentation and discussion of
the appeals policy -- we tabled it to bring it straight to
the board as a matter of information.

And who's going to be presenting that, David?

David Burrell will make that presentation.

MR. JONES: Thank you.

MR. BURRELL: Good afternoon, Mr. Chairman,
members of the Board and Ms. Stiner. I'm David Burrell,
Director of Housing Programs.

Back during the fall of last year, the Sunset
Commission recommended that we develop an appeals process
policy for the housing programs. And back in January of
2001, a committee was formed; it was primarily made up of
Ms. Williams as a board member and several staff members.

We developed an initial policy which we
presented to the board in March, on March 27, of this
year. And during that meeting, the board tabled the
policy so that we could get some clarifications. In the
process of getting those clarifications, we also had the
legislation session.

And as a result of the legislature passing
Sunset -- I'm sorry -- Senate Bill 322, there were some
specific items which they required of the housing programs. One of those items is the development of an appeals process specifically for the tax credits program.

So as a result of that legislation, we pulled the tax credits portion from this initial appeals process policy, and we're going to include it in our QAP as part of the annual qualified allocation plan.

That QAP is currently being developed, and it will be presented to you all during the September board meeting. And shortly after you all approve the initial draft, then we'll put it out for public comment. And the final QAP is to be reviewed and possibly signed by the governor on December 1.

The original appeals process for the rest of the programs -- we have gone back and we're making revisions to take out items that had been included in that for the tax credits program. We plan to have that to you all at the September board meeting, but, once that -- you all approve the initial draft, then we'll have to go back and take it through the rules process, also.

So it will actually be somewhere in the latter part of 2001 or the first part of 2002 before the policy will be finalized.

MR. JONES: Is that it?

MR. BREWER: That's it, sir.
MR. JONES: That's just a report?

MR. BURRELL: Just a report.

MR. JONES: Any questions for Mr. Burrell?

(Pause.)

MR. BURRELL: Thank you, all.

MR. JONES: Thank you.

MR. JONES: Does that conclude the Programs Committee, Mr. Brewer?

MR. BREWER: Yes, sir.

MR. JONES: Thank you.

We then turn to Item 3 on our agenda, which is the discussion of the report of the Finance Committee.

Mr. Conine?

MR. CONINE: The Finance Committee met this morning, Mr. Chairman. And on Item 3(a), the approval of the Fiscal Year 2001 operating budget, the Finance Committee voted to bring it to the board and recommend it for approval. But I'd call on Bill Dally now to walk us through it to the board's satisfaction.

MR. DALLY: Good afternoon, Board members, Mr. Chairman and Ms. Stiner.

MS. STINER: Good afternoon.

MR. DALLY: I've made a presentation at the Finance Committee, looking chiefly at pages 2 and 3, which are the agencywide level. To get to the bottom line, if
you will, turn to page 2. Under that second column, you'll see that this budget's proposed at 31,180,370; that is an increase overall of $3,181,347.

I highlighted some of the major issues. This is no different than prior budgets; it's chiefly salary and wages and payroll-related costs for 66 percent of this budget. There was an across-the-board 4 percent raise given by the legislature, so all the standing salaries that people have at the end of this year will bump up 4 percent come September.

I then showed you in that salary schedule that that has the equivalent effect of about $747,000 worth of change. The rest of those would be merits and reclassifications and longevity pay.

MR. CONINE: Now, remember, Mr. Dally, that the --

MR. DALLY: Okay.

MR. CONINE: -- whole board hasn't seen that schedule. I think it was just the Finance Committee --

MR. DALLY: Oh.

MR. CONINE: -- unless it was passed out.

MR. DALLY: Let's --

MR. CONINE: And I don't know that they need it. I'm -- just make sure that they know --

MR. DALLY: Yes. Let me -- I passed out
several items, one being that one-page salary schedule. In addition, I had sent out a letter to board members regarding this budget, dated August 16.

MR. CONINE: That's right. There's three columns of bumps -- well, four.

MR. DALLY: Yes. Sent a letter.

Also, we made an error when we were putting together the org. chart for the book that you received. On page 31, we had put in the department as a whole, as opposed to -- what we were trying to do was show manufactured housing individually.

MR. CONINE: That's right.

MR. DALLY: I think that I'll be repeating myself here, but one thing I want to bring to your attention is that this budget brought to you today is TDHCA as it has been in the past. With the new legislation, this will actually be carved up and end up in three different entities, and each of the other two will have their own boards.

And we'll be bringing their portions of the budgets to them individually. And then, as that's done, I feel it's appropriate to bring back to you an amended budget that, finally, this is what the department has after the subdivision with the other groups.

The other thing I think I pointed out was, if
you go to page 3, you'll see each of the divisions and the
comparison of their budgets and the changes between the
two years. And then, in that far right-hand column,
you'll see there have been some minor changes in FTEs.

And you will note that individually, some of
the areas' salaries will have rather large increases, much
more so than you would expect, and that's generally
because they've either had an addition of FTEs from one
area to another or they're the one that was sending the
FTEs and, consequently, will have an unusual drop in
salary and wages.

MR. CONINE: Would you mind also going over the
other little piece of the 27 FTEs so that --

MR. DALLY: Okay.

MR. CONINE: -- with the likelihood of any of
us sitting here today ending up here next month, there'll
be some history there?

MR. DALLY: Okay.

And I'll back up and say, you know, we've
brought several different waivers to this board, most of
which were for the fiscal year that's expiring. Those
have since been withdrawn, and the only waiver that's
still pending is -- we have a waiver of 27 FTEs related to
the additional duties that we saw as part of Senate Bill
322, our Sunset legislation.
And those are not until -- I'm not -- I don't even want to bring those forward into this budget, because they're not approved yet. They weren't appropriated. And so we'll have to have sign-off from the governor's office -- and the speaker's and the House appropriations committee and Senate finance in order --

MR. CONINE: I want to --

MR. DALLY: And it may be something less than 27. And so when that happens, I will bring back an amendment --

MR. CONINE: I just want to make sure --

MR. DALLY: -- to amend this budget.

MR. CONINE: -- that the board recognizes that it's not in these numbers --

MR. DALLY: Right.

MR. CONINE: -- and that there will be an amended budget, I guess, once we get those -- the approval for that or anything less than that at some fairly large number --

MR. BREWER: Yes.

MR. CONINE: -- because 27 people don't come cheap, I don't imagine.

MR. DALLY: That's correct.

MR. BREWER: And that 27 counts the regional coordinators. Right? Doesn't that 27 --
MR. DALLY: Yes. Yes, it does.

MR. BREWER: Okay.

MR. DALLY: And that's a new function. We have -- centrally, that area has done one plan for the State of Texas. And now that Sunset recommendation --

MR. BREWER: Right.

MR. DALLY: -- wants it to get out in the field. So --

MR. CONINE: Would you mind sending me, at least, a back-up for that request? I'd like to see the paper work on that.

MR. DALLY: I've got a copy with me I can get to you.

MR. CONINE: Thank you.

MR. DALLY: The other thing I wanted to point out to you is: On this page 3, as you'll see, are methods of finance, the first being general revenue. I -- the percentages you see in the column are changes between years. But what I want to do is just give you -- out of the 100 percent total of 31 million, this is how the percentages break down.

General revenue makes up 18 percent. We've got a line item in there for a system benefit fund at -- it's about a half-a-percent. Federal funds make up 27 percent of the budget.
Appropriated receipts make up 49 percent of the budget, and those appropriated receipts are the fees associated with manufactured housing titling and inspections and licensing; they also include our tax credit fees, the department funds that we get off our bonds to help pay for our programs. And those fees and those revenues are set by the board.

Now, this budget includes some of the fund balances that we have collected today, but they also include a projection of what we expect to see over the next year. Should we have economic slowdown or not meet some of those predictions, then we have two choices: We can trim the budget to adjust to what the revenue stream is going to be, or we can look at it and consider changing the fees.

But those would be the choices for the board. And some of these will be contemplated by other boards, i.e., manufactured housing and the OCRA board.

And then, finally, we've got earned federal funds at about 6 percent. The remaining part of the book is each individual division showing their particular budget by line items.

And I'll be happy to field questions and get back to you, but the one thing to remember is that this budget will come back and be amended. It's just -- I
mean, as a matter of course, it will have to. As we go to take the manufactured housing division -- as that board meets and we subdivide that piece out, we'll bring back the results to this board.

And with the Office of Community and Rural Affairs, that will actually -- eventually, when they're ready and they're in place, there will be a transfer of these budget resources and assets to that group.

MR. CONINE: Let me go ahead and move, Mr. Chairman, and get it on the table for discussion that we approve the Fiscal Year 2002 TDHCA operating budget.

MR. BREWER: I second it.

MR. JONES: We have a motion made and seconded.

Further discussion, questions or comments?

Yes, Ms. Williams?

MS. WILLIAMS: I have a question --

MR. JONES: Sure.

MS. WILLIAMS: -- with regard to the low-income housing tax credit. I know that you mentioned it one of the handouts, the August 16 -- that the low-income housing tax credit added $400,000 to their budget for construction inspections. And that was 1,620 percent more than it was last year. It was 24,000, and then the budget's for 413,000. I'd just like -- I mean that's a huge increase.

MR. DALLY: Yes, it is. And we've been
doing -- we've been mandated to do those inspections for about two bienniums. And when that first came out in our appropriations bill, it was after we had established our LAR and our budget. So it was handled off budget.

What happens is -- we contracted with architects and engineers to go out and inspect about three different times during construction of those buildings, and then bill the developers to pay that. And that's all part -- that's described in the QAP. What we've done now is bring it on budget.

So it has been off budget. We've been offsetting and reimbursing. When we have the expenses to pay, we would collect the revenues, and then that would be an offset. But we're actually bringing it onto budget this time.

MR. JONES: Any questions?

(Pause.)

MR. JONES: Hearing none, are we ready to vote? I assume we are.

All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(No audible response.)

MR. JONES: Item 3(b) -- the ayes have it.
Excuse me.

MR. CONINE: Item 3(b) will be the approval of the Fiscal Year 2002 Housing Finance Division operating budget.

Mr. Dally?

MR. DALLY: Yes.

This ends up being a subset of the original budget. And it -- what it is -- it's detailing out the appropriated receipts associated with the housing finance division and would not include the manufactured housing appropriated receipts or fees.

MR. CONINE: Would you please point it out in here, where the board members can turn right to it, in case they have any questions?

MR. DALLY: Okay. I'll -- (Perusing documents.)

(Pause.)

MR. DALLY: Tab B.

MR. CONINE: Okay. Got it. I was looking in the budget book. It's separate and apart from that. Correct?

MR. DALLY: Yes. I'm sorry. It's within the board book.

MR. CONINE: Okay.

Mr. Chairman, I'm going to move that we approve
the Fiscal Year 2002 Housing Finance Division operating budget.

MR. BOGANY: Second.

MR. JONES: We have a motion made by Mr. Conine and seconded by Mr. Bogany. Further questions or comments?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No audible response.)

MR. JONES: The ayes have it.

MR. CONINE: Okay. Item 3(c) will be the approval of Proposed Issuance of Multifamily Mortgage Revenue Bonds for the Greens Road Apartments in Houston, Texas.

MR. BOGANY: So move.

MR. CONINE: Do we want a presentation?

MR. JONES: We have a motion.

MR. BOGANY: Oh.

MR. CONINE: There's is no -- he jumped right on that.

MR. JONES: Well, that's okay. We can have a motion.
Do we have a second to the motion?

MS. SAENZ: I second it.

MR. CONINE: I'll second it, yes.

MR. JONES: Okay.

A motion has been made and seconded. And, now, discussion?

(Pause.)

MR. JONES: Any presentation needed?

(Pause.)

MR. JONES: Hearing none, I assume we're ready to vote.

MR. CONINE: Good job.

MR. JONES: Yes.

All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(No audible response.)

MR. JONES: Motion carries.

MR. CONINE: Next we have the approval of the proposed issuance of Multifamily -- you know what? I'll bet I didn't do a --

MR. JONES: Resolution number?

MR. CONINE: -- resolution number on that. Can we amend that --
MR. JONES:  Sure.

MR. CONINE:  -- last motion?

MR. JONES:  Why don't we do that?

MR. CONINE:  That one --

MR. JONES:  That was Greens Road, wasn't it?

MR. BREWER:  Yes.

MR. JONES:  And that --

MR. CONINE:  Robert, what number is it?

MR. JONES:  And that resolution number is 01-30, for the record.

MR. CONINE:  Mr. Chairman, can we agree by acclamation or something to put that into the record?

MR. JONES:  Yes. Without objection, that will be put into the record.

MR. CONINE:  Okay.

Now we're moving on to 3(d): "Approval of proposed issuance of Multifamily Mortgage Revenue Bonds for the Meridian Apartments, Fort Worth, Texas, in an amount not to exceed $14,310,000." And that would be Resolution --

MR. JONES:  01-31.

MR. CONINE:  -- Number 01-31.

MR. JONES:  Do we have --

MR. CONINE:  I'll make that in the form of a motion, I guess.
MR. DAROSS: I'll second it.

MR. JONES: Okay.

A motion has been made and seconded; it was Judge Daross who seconded it. Further discussion, questions or comments?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, say nay.

(No audible response.)

MR. JONES: The ayes have it.

MR. CONINE: Item 3(e): Approval of proposed Mortgage Revenue Bonds for the Wildwood Branch Apartments, Fort Worth, Texas, in an amount not to exceed $14,365,000. That would be Resolution 01-32, I believe.

MR. JONES: I believe you're right.

MR. CONINE: I'll make that as a motion.

MR. BOGANY: Second.

MR. JONES: A motion has been made and seconded. Further discussion, questions or comments?

(Pause.)

MR. JONES: Mr. Bogany?

(Pause.)

MR. JONES: Okay. Hearing none, I assume we're
ready to vote.

   All in favor of the motion, please say aye.
   
   (A chorus of ayes.)

MR. JONES: All opposed, nay?

   (No audible response.)

MR. JONES: The ayes have it.

MR. CONINE: Next will be Item 3(f) --

MR. JONES: Before we turn to that, I do need
to read a letter to the board just for a second: "To the
Board" -- and this is signed by Marsha Williams -- "RE:
The approval of resolution approving documents relating to
the issuance of Residential Mortgage Revenue and Refunding
other related matters," which, I believe, is this one.
Correct?

   MS. WILLIAMS: That's correct.

   MR. JONES: "Ladies and gentlemen, I must
recuse myself from voting on the referenced matter because
our firm represents mortgage lenders which may participate
in the issuance of such bonds," signed, "Marsha Williams."

And please note for the record that before any
discussion is taken on this matter, she is leaving the
room. So we'll let Ms. Williams leave the room, and then
turn it back over to Mr. Conine.

   (Pause.)
MR. JONES: And she has left the room.

Mr. Conine?

MR. CONINE: Well, hang on. I lost my sheet --

my cheat sheet.

MR. JONES: Kind of like Elvis leaving the

building?

MR. CONINE: Yes.

MR. JONES: Yes.

MR. CONINE: Approval of a resolution -- this

is 3(f), now: "Approval of resolution approving documents

relating to the issuance of Residential Mortgage Revenue


Series 2001E, and other related matters." And on this, I

will call Byron Johnson up to make a presentation. We

need to have, I think, a board discussion on it.

And, Mr. Johnson, you might just hit the high

points relative to what we're trying to do here. Rather

than going into the details of the Finance Committee on

the makeup of the entire funding, you might just hit the

high points and then let us throw it open for discussion.

MR. JOHNSON: Okay.

Good afternoon, Mr. Chairman, members and Ms.

Stiner. We are attempting to issue mortgage revenue bonds

and refunding bonds in the amount of $151 million. We

plan to issue the bonds under two tax plans. The first
series will be Series 2001A, B and C. The second issuance would be 2001D and E.

We are warehousing a certain portion of this year's volume cap in order to attempt to mitigate negative arbitrage and yield drift. We have -- because of the decline in short-term rates and the relative stability of long-term rates, we have incurred in the market something that's referred to as negative arbitrage, the spread between those short-term rates and the long-term rates. On $65 million, that equates approximately to $80,000 a month.

We are splitting up our volume cap in an effort to mitigate the cost to the department. If the department continued this year to issue bonds at one time, we probably would have to come out of pocket with about $4 million to cover negative arbitrage and capitalized interest during the origination period.

The issue will offer down-payment assistance to borrowers. We are restricting the cap of AMFI of the buyers to 60 percent of AMFI. We anticipate that 4 percent of the mortgage amount will be available to the borrowers, and we're offering down-payment assistance to approximately 50 percent of the borrowers under the program.

We anticipate two -- that we will offer two
mortgage rates: An unassisted and an assisted rate. The unassisted rate will be in the range of 5.95 to about 6.25, and the assisted rate will be in the range of 6.75 to about 7 percent.

We anticipate pricing the issues September 11 and October 3, and we'll be closing the issue on October 18. And if there are any questions, I'll be welcome [sic] to respond to those.

MR. JONES: Any questions?

(Pause.)

MR. JONES: I just have one, and I direct it to Elizabeth.

We've already talked about this once. And by asking you, I don't mean to be redundant, but Mr. Henneberger urged us to carefully review this matter and make sure it is impossible to do what he's requesting. As I read your letter and as I remember your comments to the Finance Committee, it is impossible. Correct?

MS. RIPPY: That is correct.

MR. JONES: Okay.

MS. RIPPY: We've made representations to bondholders. And once the funds are released from the indenture, they can be used for these purposes. Your contract will provide for that. But while the funds are under the indenture, you're subject to the restrictions
that are there.

    MR. JONES: Thank you, ma'am. I just wanted to
make sure of that.

    MR. CONINE: Could I get her to -- wait a
minute.

    MR. JONES: Sure.

    MR. CONINE: Could I get her to comment on
the -- her last sentence of her letter, though, saying
what we're including in this particular indenture, so that
the rest of the board will understand?

    MS. RIPPY: And --

    MR. JONES: Feel free.

    MS. RIPPY: The supplemental indenture that
relates to this refunding will provide that the
department, when funds are -- savings are produced as a
result of this refunding over time and are released from
the indenture, you'll be contracting now to use that money
for the purposes that the rider requires for the bootstrap
program.

    Or if that direction from the legislature
changes over time, you'll have the ability to go to
whatever program the legislature directs you to use those
savings for.

    MR. CONINE: To get it on the table, Mr. Chair,
I move for approval of Item 3(f).
MR. JONES: Mr. Conine made the motion.

MR. BOGANY: Second.

MR. SALINAS: How much are the real numbers?

MR. JOHNSON: The real numbers?

MR. SALINAS: 155-?

MR. JOHNSON: The amount of the transaction will be 151- or something like that -- 151,535-

MR. BREWER: I've got 155-. It says --

MR. JOHNSON: 151,385-. What I handed out -- and I passed it out to the members this morning -- was a corrected version of the write-up.

MR. SALINAS: Of the 160- in the --

MR. JOHNSON: Correct. And --

MR. SALINAS: 155,135-?

MR. JOHNSON: 151-.

MR. SALINAS: So it's 151 --

MR. JOHNSON: 151,385-. This, I believe --

MR. BREWER: We need the right total.

(Pause.)

MR. SALINAS: Is everybody on the same page, or am I the only one?

MR. BREWER: No.

MS. SAENZ: No. You -- I've got the same thing.

MR. BREWER: I've got 155,135- on --
MR. JOHNSON: Okay. Well, 155,135-.

MR. BREWER: Okay. You're saying 151-?

MR. JOHNSON: Yes.

MR. CONINE: I'll amend my motion to accept that number.

MR. JONES: Okay.

MR. SALINAS: 155?

MR. JOHNSON: 155 --

MR. JONES: And it's Resolution --

MR. JOHNSON: -- 135-.

MR. JONES: It's Resolution 01-33.

MS. RIPPY: Thirty-three is the correct resolution number.

MR. CONINE: We'll amend it for that, as well.

MR. JONES: Okay.

For those board members that may be new: Ms. Rippy is our bond counsel from Vinson and Elkins. So that's why we've addressed those questions to her, for those of you that may not know her.

And we certainly appreciate your advice and your counsel in these matters.

MS. RIPPY: Well, you're welcome.

MR. JONES: Okay. Further questions, comments or discussion?

(Pause.)
MR. JONES: Hearing none, I assume we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, nay?

(No audible response.)

MR. JONES: The ayes have it.

Mr. Conine?

MR. CONINE: Item 3(g), Approval of Senior Managing and Co-Senior Managing underwriting firms for detailed research and preliminary structuring of Mortgage Revenue Bonds secured by certain subprime mortgage loans, and other related matters.

And, Mr. Johnson, would you like to do that one, as well?

MR. JOHNSON: Yes, sir.

Mainly --

MR. CONINE: And let me also say for the record that the Finance Committee approved Items (g), (h), (i) and (j) in a block to get them to the board. So we'll have the presentations here.

Go ahead.

MR. JOHNSON: In January of 2000 or thereabouts, the department staff started working on research into the subprime market in trying to determine whether this was something the department should pursue.
In May of 2001, the legislature authorized the department to offer, if feasible, subprime mortgages to low-income residents of the State of Texas using mortgage revenue bonds.

The bill doesn't require the department to comply with the requirements of the subprime mortgage loan mandate should such a subprime mortgage loan program endanger the financial viability of the department.

If you look in the third paragraph of the write-up, one of my colleagues pointed out that the language -- I stated there that we possibly may not adversely affect the department's financial condition using the approach we're taking. He said that was kind of wishy-washy. Well, yes, because, you know, we're going to try our best to come up with a program that doesn't place our current bond indentures in the risk of being downgraded.

This is a program that, because of the inherent credit quality of the underlying mortgages, requires insurance or reserves to guard against those types of losses. So with that in mind and -- I passed out or had passed out to you three recent articles.

The first one was one that appeared in Business Week: "Have banks been giving tequila to a drunk?" And it's talking about how subprime mortgages and subprime
lending has been very volatile. And most of the bank failures recently are attributable to subprime lending.

The second article is from a trade publication called Inside B&C Lending. And it points out that serious delinquencies are up primarily due to the weakness in the economy.

And the third article, which was last week's, is -- was from The Wall Street Journal, and it states that, "As the economy slows, subprime lending looks even riskier." And the biggest thing that caught my attention there -- and bond counsel advised me of this article -- was that Bank of America is pulling out of the market totally. So I thought, Wow.

And what -- once again, what we're trying to do is not become a subprime lender but offer, somehow, someway, through the bond program, whether it be through tax-exempt bonds or taxable bonds, an alternative -- to very low-, low- and moderate-income people an alternative to the traditional subprime mortgages that are out there on the market right now.

It is -- I wouldn't say it's impossible, but it is a formidable task. And I would like to get started with the task of researching and looking at different bond structures as soon as we can. And with that, I will entertain any questions or comments.
MR. JONES: Yes, sir?

MR. BOGANY: Personally, I think this would be a waste of your time. And I say this from the standpoint that affordable housing shouldn't be going out for pawn shop-type mortgages.

And I totally believe to put people that -- who are less educated and not as familiar with affordable housing financing and give them high interest rates to get them in homes -- and to lenders who charge them a bunch of fees to get them in there -- with fees and monies coming from us because we're making down-payment assistance -- and all of those sorts of programs -- I think, would just be very volatile.

And with Bank of America pulling out, with my own experience with first-time home buyers going out there -- this is where -- all the foreclosures that we're getting right now. Then they get these subprime loans. They can't refinance them. Then they get hit with a three- or four- -- Well, you can't refinance me; I'm going to hit you with a $5,000 prepayment penalty.

And I just think the people who don't need this are affordable housing people. And if you're in the financing, great. Go do it. If you decide to move forward with this -- and I think this should be tailored to something like the Timely Rewards program that Fannie
Mae has that has the -- after you pay your bills on time for two years, they drop the rate 1 percent.

   And think about -- they have a truth-in-lending statement that should be signed at the time of the application so the new consumer knows what the interest rate's going to be. It -- all of this information should be provided to that consumer up front. But to first-time home buyers being able to go subprime? I mean it's ridiculous.

   And being able for us as a government to partner with them to help mess over these people, I just totally disagree with this. I think this is just not a good thing. And you -- unless you can come up with something with a lot of safeguards to protect those individuals, I would be totally against us even researching or doing anything with this.

   MR. JOHNSON: And --

   (Pause.)

   MR. JONES: Mr. Conine?

   MR. CONINE: Do you want to respond to that?

   MR. JOHNSON: Yes.

   MR. CONINE: Because I will if you don't.

   MR. JOHNSON: I -- well, I agree with Mr. Bogany in that we as a department should not be subprime lenders. And I think the objective of the bond finance
and single-family lending divisions would be to offer a subprime product or a product to the credit-challenged that would not have the prepayment penalties, the mandatory arbitration and the other bells and whistles that go along with the subprime-type product.

So I agree. And that's why I really prefer to start to do the research to see if we can come up with a product like that in our, shall we say, bond program.

And another aspect that I want to bring out is that the legislation requires that we set aside 40 percent of total annual bond volume. That's a lot. That's -- with the new volume cap amounts, that's like 70- or $80 million.

Originally, the staff thought that this should be something that should be a component or a small component of what we do. And so what we would like to do is take a look and see if we can come up with that type of product and then bring it back to you for approval to go forward or to just say, I don't think this is what the department should be doing.

MS. WILLIAMS: I'd like to make a comment, Mr. Chair. There was legislation during the last legislature that specifically prohibits bond program money from having mandatory arbitration clauses in it.

MR. JOHNSON: Yes, ma'am.
MR. CONINE: Let me if I can -- I probably would agree with my friend from Houston if the ultimate research ended up showing it the way you described it. But I've seen so much creativity in the REFI structure here mentioned just a minute ago, plus my knowledge of what's going on in the 49 other states, that it makes we want to at least go out and put my toe in the water and see what's out there.

And Byron and his staff are not going to be doing the majority or the lion's share of the research. I think that what has been proposed here is that some investment bankers that have our best interest at heart have agreed to do the research, go scour the land, if you will, and go see if we can structure it an A and a B piece. You know, I think that has possibilities.

But I'd hate to foreclose and shut the door on creativity right now. And I'd be for approving this recommendation.

MR. JOHNSON: And may I please add that the two banks we're recommending both have done -- at least, in fiscal year or calendar year 2000, roughly $6 billion of these types of securitizations each.

MR. BOGANY: And I guess my thing is that I'm where the tire meets the road. And I'm going to tell you right now that this is pawn shop mortgaging, and those who
cannot afford it should not be being sold down the river for fees, and this is what's going to happen.

I don't want to take the board's time or your time giving you examples of the problems that I see with these types of mortgages. And if you can come up with something that protects that consumer, I'm all for it, but it needs to be able to protect that consumer because the products that are out there now don't protect the consumer --

MR. JOHNSON: Yes, sir.

MR. BOGANY: -- at all.

MR. CONINE: Mr. Johnson, you need to point out, I think, that the list of investment bankers that are going to do this is on the following page in our book.

MR. JOHNSON: Yes, sir.

On the following page, I've listed for Senior Manager Bear Stearns and Company and for Co-Senior Manager Salomon Smith Barney. And --

MR. BREWER: Right at --

MR. JOHNSON: This is Tab --

MR. BREWER: -- Tab 3(g).

MR. JOHNSON: -- G.

MR. SALINAS: Let me ask a question. What he's saying is that people that cannot afford a house should not be given an opportunity to become a first-time home
MR. BOGANY: No, I'm not saying that.

MR. SALINAS: Well, what is that -- I just need to --

MR. BOGANY: Okay. Well, my clarification is that if you have credit issues and you've been challenged because of whatever issues, then you should work on those issues to get you from C- to A Paper-type loans.

And when FHA, who doesn't credit score at this particular period of time, is out there, when you've got Fannie Mae with the new Timely Rewards program that's available to these people, if they set up repayment programs, then I feel that there are enough products out there that could be partnered with those products we could partner with.

I don't think we need to go out onto the open market and give somebody a 12 percent interest rate at 7 percent. And I'll give one example of a subprime loan I got a call yesterday on. A lady has a $69,000 mortgage with $1,200-a-month payments. And she's selling that house now because she has been there a year-and-a-half and now can no longer afford the house. That's what I want to try to eliminate.

So I'm saying if you can -- if you've got issues, then work on those issues, you know, and not just
getting in more issues, because I don't -- I just see it all rolling, snowballing on them.

MR. CONINE: How long is this going to take, do you think?

MR. JOHNSON: We're thinking about putting in at least four months -- four to five months.

MR. SALINAS: But it would be something like -- I agree with him on a 12 percent interest. And -- but there is a lot of people out there that would like to own their own homes. And they become responsible citizens and taxpayers, at least, in our communities. So --

MR. JOHNSON: And --

MR. SALINAS: I don't know about that 12 percent. I know that these bankers are interested in helping. I'm sure you're not going to be able to get those people to pay 12 percent, especially the way the market is right now.

MR. JOHNSON: Well, one advantage that we have is that we would be using tax-exempt cost of capital to a certain point. A limitation on that is that we have this arbitrage restriction of 1.125 percent. So how do we compensate the department for taking on the additional risk yet keep the rate below what the traditional subprime market is? And that's the type of challenge we're looking to try to address.
MR. BOGANY: Yes. And I would just like to say, if we could, partner with Fannie Mae with their Timely Rewards and maybe see how we can take that program that they've done as a pilot -- and now they've kind of opened it up to some other lenders -- and maybe partner with that, because there's some light at the end of that tunnel -- not at 10 percent or 12 --

MR. JOHNSON: Right.

MR. BOGANY: And they are adjustable rates, Mr. Salinas. We're not talking about fixed interest rates; these rates adjust. And I'd like to see us put caps on the fees that can be charged, and so -- I mean, because that's what it's all about.

MR. JOHNSON: And I think that's where we're headed, in that we want to offer an alternative -- a subprime product but alternative subprime product that doesn't have the high fees, doesn't have the prepayment penalties and doesn't make you sign a mandatory arbitration statement. And so if we can get that, we'll bring something back to you and say, Look, this is what we have, this is an alternative.

If -- plus, if we can get it structured so that investors will buy the bonds, that's another challenge. So --

MR. CONINE: Mr. Chairman, I move we approve
staff recommendation on Item 3(g).

MR. DAROSS: I --

MS. WILLIAMS: Second.

MR. DAROSS: -- second it.

MR. JONES: Okay. We have a motion made by Mr. Conine and seconded by Ms. Williams. Further questions, comments or discussion?

(Pause.)

MR. JONES: I really encourage you to work with some of the people that have given you input on this issue. That's just the only comment I have. I think it has been a good, good discussion, and, hopefully, you can continue it as you move forward and not just, you know, at a board meeting, because some of these people that, as we've heard, are where the rubber meets the road can probably give you some really valuable input.

MR. JOHNSON: I will be calling you.

(Laughter.)

MR. JONES: Thank you.

Any further discussions?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.
MR. BOGANY: Nay.

MR. JONES: The ayes have it.


MR. JOHNSON: This is an idea that we've been discussing with M. R. Beal. It was done previously or -- something similar was done back in '94. The indenture does have some wealth built up in it, and it's trapped in the indenture; as Ms. Rippy stated earlier, funds released from the indenture are subject to certain restrictions and requirements.

What we would like to do is explore ways of somehow securitizing or monetizing some of that wealth; we don't want to pull everything out, but we want to maintain, you know, the appropriate levels of credit enhancement and credit ratings in the -- on the indentures. But what we're looking at doing is issuing taxable bonds and allowing the indenture, and not mortgages, to secure the debt service on those bonds.

In order to do that, we may have to switch from the single-family indenture to a junior lien or a subordinate-type indenture. But I think it's something, given the amount of -- well, we don't like to use the words "unfunded mandates"; that's a bad word or a bad
phrase -- the amount of work that the department has in
front of it, we think that this may be a good way of
funding or financing some of those activities.

MR. CONINE: And this is research, again --
MR. JOHNSON: Once again, this is research.
MR. CONINE: -- that will come back to the
board?
MR. JOHNSON: And we will present the structure
to you.
MR. CONINE: Move for approval of (i), Mr.
Chairman.
MR. DAROSS: Second.
MS. SAENZ: I second.
MR. JONES: We have a motion that has been made
and seconded. It was made by Mr. Conine and seconded by
Ms. Williams.
MR. JOHNSON: It was (h). That was Item (h).
MR. CONINE: By Ms. Saenz.
MR. JONES: By Ms. Saenz? Excuse me. I'm
sorry.
It was (h). Is that correct?
MR. CONINE: I thought it was (i) -- 3(i).
Excuse me.
MS. SAENZ: No.
MR. JONES: 3(i)? Okay. 3(i).
MR. CONINE: I think. Was it (h)?

MR. BREWER: I thought it was (h).

MR. CONINE: (h)? Excuse me.

MR. BREWER: (h).

MS. SAENZ: It was (h).

MR. CONINE: I'm jumping ahead of myself.

3(h). I apologize. I amend my motion to state 3(h).

I -- it's getting late.

MR. JONES: I understand.

So we have a motion that was made, and it was seconded by Ms. Saenz.

And, also, the court reporter has asked that we all turn on our microphones when we speak, or she will kick you.

(Laughter.)

MR. JONES: Any further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay?

(No audible response.)

MR. JONES: The ayes have it.

MR. CONINE: Now I'm going to go to 3(i).

MR. JONES: Thank you.
MR. CONINE: "Approval of Senior Managing and
CO-Managing underwriting firms for researching structuring
Single-family Mortgage Revenue Bonds, Series 2001A, and
other related matters."

MR. JOHNSON: This is --

MR. CONINE: You've got two minutes.

MR. JOHNSON: I'm sorry?

MR. CONINE: You've got two minutes. Go ahead.

MR. JOHNSON: -- identical to (h), appointing
the underwriting firms. Senior Manager is M. R. Beal, and
Co-Managers are George K. Baum and Siebert Branford.

MR. CONINE: Move for approval of 3(i), Mr.
Chairman.

MR. DAROSS: Second.

MR. JONES: We have a motion that has been made
by Mr. Conine, and it was seconded by Judge Daross.
Further discussion, questions or comments?
(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please
say nay.

MR. BOGAN: Nay.

MR. JONES: The ayes have it.
MR. CONINE: Item 3(j), Approval of recommended underwriting firms for the structuring and sale of the department's Mortgage Revenue Bonds for single-family mortgages, and other related matters.

Mr. Johnson?

MR. JOHNSON: In 1996, the department selected underwriting firms for investment banking services. Since ’96, there have been numerous mergers which resulted in firms being acquired or dissolved or getting out of public finance. In March, the board approved an RFP for investment banking services.

Staff reviewed those responses or — reviewed the responses received as a result of the RFP, and staff recommends the following: That six firms be appointed as senior managing underwriters; the firms would be assigned as co-senior and senior manager; each team -- there will be three teams of two; each team will senior-manage a transaction; the next time that team comes up, the firm that was the co-senior will then become the senior manager; the senior manager will then become the co-senior manager.

This will rotate deals among the firms, and we won't have one firm monopolizing or underwriting all of the bonds. And it will open the department up to, I guess, some creative and -- more creative and innovative
ideas from the investment banks.

The staff also recommends that the board
appoint six investment banks as co-managing underwriters.
We want to maintain a larger pool size. These firms'
primary responsibilities will be to sell bonds, but they
will not be precluded from participating as a senior
manager should they bring in a truly, truly unique
financing idea.

And I want to add that the firms appointed as
senior managing underwriters -- although they are senior
and co-senior, they also would be eligible to participate
as co-managers.

MR. CONINE: Move for approval --

MR. JOHNSON: The firms --

MR. BOGANY: Second.

MR. JOHNSON: Okay.

MR. JONES: We have a motion made by Mr. Conine
and seconded by Mr. Bogany: That they be approved as
presented.

MR. CONINE: Did you have another comment you
wanted to make?

MR. JOHNSON: I was just going to read the list
of firms off.

MR. JONES: Well, you can do that --

MR. CONINE: Okay. Go ahead.
MR. JONES: -- for the record.

MR. CONINE: For the record.


MR. JONES: We have a motion that has been made and seconded. Further questions, comments or discussion?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(No audible response.)

MR. JONES: The ayes have it.

MR. CONINE: That concludes my report, Mr. Chairman.

MR. JONES: Thank you.

That concludes the Finance report. Why don't we do this? Why don't we take a short recess, until 2:30? We'll start promptly at 2:30 and continue with the Audit...
Committee report.

MR. JOHNSON: Thank you.

MR. JONES: Thank you.

(Whereupon, a short recess was taken.)

MR. JONES: I'll call the meeting back to order.

And I believe we're on Item 4, the report from the Audit Committee.

Mr. Conine?

MR. CONINE: You would right when I have a cookie in my mount.

MR. JONES: I did it on purpose.

MR. CONINE: Item 4 is going to be easy. The Audit Committee met this morning and listened to the reports of the internal auditor, as well as three staff members: Nothing out of the ordinary, I don't believe, and nothing that I believe requires action of the board at this time.

I will tell you that in relation to the very last item listed there under Item 4, the preliminary security audit, we've made great strides over the last 12 months relative to some of the viruses that are going around and being able to catch them and not be down for any measurable length of time.

The one that was given to us as an example was
the Code Red virus, or whatever the name of it was. And we were shut down for about an hour while several other agencies and departments were shut down for three, four or five days.

So they're to be commended for the work they're doing, I'm sure, on a shoe-string budget. And we look forward to them continuing their good efforts.

But in response to the rest of the reports you see listed here, nothing extremely out of the ordinary.

The Audit Committee agreed to meet again in October to go over an annual review, some reports that are still outstanding and to set the 2002 audit plan. That concludes my report, Mr. Chairman.

MR. JONES: And a wonderful one it was.

MR. CONINE: It's an exciting subject.

MR. JONES: All right.

Okay. Well, that will bring us then to Item 5 on the agenda, which is the presentation, discussion and possible approval of low-income housing tax credit items, which I'll turn over to Ms. Stiner.

Did you -- were you able to review the minutes, Mr. Conine, to your satisfaction?

MR. CONINE: Yes. I still have a problem, I guess, with 5(c) being on here --

MR. JONES: Okay.
MR. CONINE: -- but not (a).

MR. JONES: Okay. Well, let's do 5(a) then.

And I think the first thing we need to do on 5(a) is to hear from Mr. Vowell. He wanted to speak.

MR. DAROSS: Before we do that, we had -- you had passed on the approval of the minutes --

MR. JONES: Okay.

MR. DAROSS: -- in order to give Mr. Conine an opportunity to look at it. And I'll move for approval of the minutes, but I must say that I was saddened -- deeply saddened that Delores did not give us the opportunity to read all 237 pages of the minutes from last meeting.

MS. GRONECK: Do you want them? They're here.

MR. DAROSS: I don't think so.

MR. BOGANY: I'd second that.

MR. JONES: Well, we have a motion --

MR. BOGANY: Second.

MR. JONES: -- that they be approved.

And we have a second.

Mr. Bogany?

(Pause.)

MR. JONES: Right there.

MR. CONINE: You've got to speak up.

MR. JONES: From now on, if you make the second, just throw this at her.
(Laughter.)

MR. JONES: And she'll know, based upon what direction it came from, who made the second.

(Laughter.)

MR. JONES: All right.

Penny, I'm sorry they're mean to you. I just can't understand it. I hate them.

Okay. Further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(No audible response.)

MR. JONES: Motion carries.

Then, with everyone's permission, we'll turn to Item 5(a). And I think --

MR. VOWELL: Mr. Chairman, I'm just here to answer questions if you have any.

MR. JONES: Okay. Great. Thank you.

MR. VOWELL: Thank you.

MR. JONES: We then will turn to Item 5(a).

Ms. Stiner, would you like to present that?

MS. STINER: Thank you, Mr. Chair.
Staff is here to present that.

Charles Nwaneri will make the presentation on behalf of the Low-income Housing Tax Credit staff.

MR. JONES: Thank you.

MR. NWANERI: Good afternoon, Mr. Chair, Board members and Ms. Stiner.

MS. STINER: Good afternoon.

MR. NWANERI: My name is Charles Nwaneri; I'm the Chief Accountant for the Low-income Housing Tax Credits Program. And today the staff is making the recommendation on the possible approval for four tax-exempt bond transactions.

And these four bond deals are located -- two are in Houston, and two are in Fort Worth. And all four of these bond deals are targeting 100 percent low-income tax credit; there is no mixed income. All four bond deals are located in qualified census tracts. So, in other words, all four of them are getting the 30 percent increase in basis to boost their eligible bases.

All four also are within their first year from bond review board-leased, meaning that they are all targeting rents that are 50 percent or less for rent, maximum rent that they could charge their tenants. Starting with -- and all four, in particular, have demonstrated consistency with the local consolidated plans.
of the cities, and all four have -- none of the four has material noncompliance issues.

Beginning with the Meridian in Forth Worth:
The owner is Brisben Meridian Limited Partnership. And the general partner is Brisben Hickory Bend, Inc., 100 percent owned by Don Paxton. All of these four projects are new constructions, and the issuer is TDHCA. They are asking for $929,154, and the staff is recommending $924,154, although they're qualified for more money than what they requested.

They are producing 280 units, all of which are low-income housing tax credit. They have a total of 343,381 square feet. And they've under real favorably, at 1.09, approximately, to the minimum acceptable debt coverage ratio set by the department.

The second one is the Wildwood Branch in Fort Worth. This also, as I mentioned, is a new construction. The owner is Wildwood Branch Townhomes Limited Partnership. The GP is Brisben Hickory Bend, Inc., again, 100 percent owned by Don Paxton. They are requesting 998,496. The department is recommending $856,163.

They are also producing 100 and -- 280 units, all of which are 100 percent tax credits. The total development cost on this project is 21,202,471.

The third is Greens Road in Houston, Texas.
The owner is Greens 14 Partners Limited. The GP is Lausanne Company, L.L.C., and it's 100 percent owned by Richard Wilson. It's a new development, and the issuer is Fannie Mae. They're requesting $635,401, and the department is recommending their request.

They are producing 224 units, all of which are low-income housing. The total development cost is 14.5 million, and they under the rate favorably, with a DCR of 1.11.

And the fourth is Park Row Apartments in Houston. The owner is Park Row Limited. The GP is Park Row Development, L.L.C., owned 50 percent by Dwayne Henson and 50 percent by Steve Ford. The issuer is Houston Finance Corporation. They requested $774,485. The staff is recommending $764,807.

They are producing 248 units, out of which -- all of which are low-income housing tax credits. The total development cost is $17,627,425. And this fell under rate favorably at 1.10.

These are all the tax-exempt bonds -- all the four tax-exempt bonds that staff is seeking approval for possible issuance of determination notices.

MR. CONINE: Mr. Chair, I'll make the motion that Item 5(a) on our agenda be approved per staff recommendations.
MR. BOGANY: Second.

MR. JONES: It's made by Mr. Conine and seconded by Mr. Bogany.

MR. ONION: Could I approach the board?

MR. JONES: Sure.

MR. CONINE: You may.

(Pause.)

MR. ONION: In the Finance Committee, I had indicated to put a bookmark in on Wildwood with regard to the property itself. If you will, look in your write-up under the site plan, which, I believe, is the second page -- the third page.

You will see that the property has some topography challenges. The actual layout of the apartment complex is on top of that ridge, which requires an extensive amount of retaining walls, as well as additional concrete for the stair-stepping of the individual buildings for each of the units.

Tom Gouris, the chief underwriter, indicated that the amount of the development was 21,202,471. The developer indicated it was 23,736,515.

MR. CONINE: You mean million?

MR. ONION: Excuse me. Yes. 23,736,515 --

MR. SALINAS: Is he with the staff, or is he --

MS. STINER: Yes.
MR. SALINAS: Okay. Would he want to give his
name for the record?

MR. JONES: Please.

MR. CONINE: Robert Onion.

MR. ONION: Oh, excuse me. Robert Onion, director of Multifamily.

MR. SALINAS: Okay.

MR. JONES: Thank you.

MR. ONION: The issue here is under site work and what could be verified at the time of the underwriting report. The borrower has provided to us additional information showing that there are additional costs with regard to additional site work, as well as hard costs with regard to concrete and other items.

The underwriting department is in the process of reviewing that. Our chief underwriter is here -- Tom Gouris. He can give you more of a background of where he is today.

The problem that we have is that this is scheduled to close September 11 and the reservation will expire September 13. This will not give us an opportunity to come back to you and ask for additional credits.

What I am suggesting is that the amount of credits that the borrower requested be the amount that is set, subject to verification of the underwriting
department of the eligible basis. And so I'm recommending
that or -- suggesting that at this time.

The developer's here to give you an explanation
of some of the difficulties of the site and why this is
not just a normal apartment complex from -- with regard to
construction. I think this is something that can be
resolved in the next couple of days, but, unfortunately,
due to the reservation time with the bonds, they have to
close within 120 days, and there's just not another
opportunity to approach the board with the corrected
amount.

MR. SALINAS: What is the corrected amount?

MR. ONION: The corrected amount of eligible
basis that could be verified by the underwriting
department.

MR. SALINAS: That would be what, 998?

MR. BREWER: Yes.

MR. ONION: Yes, sir.

MR. SALINAS: And they're recommending what?

MR. BREWER: 856.

MR. NWANERI: Staff is recommending $856,163
based on information they submitted at the time the file
was underwritten.

MR. SALINAS: What would you recommend now?

MR. NWANERI: Well, Robert presented some
discussions this morning, and we did receive some
information this morning before we left the office. But
in consultation with -- Tom Gouris, the chief credit
underwriter -- the director of credit underwriting, has
not had the time to review it.

So part of what we are here to seek is -- if
the board approves, then -- at the time the application
comes in for submission and cost certification, the
department may have the time and the opportunity to
increase the application request up to the amount they
requested in the -- for -- in the amount of 998,496.

MR. CONINE: Could we get Mr. Gouris to comment
on that, please?

MR. JONES: And please state your name for the
record.

MR. GOURIS: Tom Gouris. I'm the Director of
Credit Underwriting for the department.

Yes, I did receive some additional information
this morning from the Brisben Companies regarding the
allocation of site work costs. And the -- when we
originally underwrote this project, we recognized that the
site work costs were going to be high, and we requested
from the applicant through one of our conditions and
through Robert a detailed breakdown of those site work
costs so that we could verify it from a third-party
engineer.

And that was our number one condition in that report. And they've been working to try to get that information to us. What they provided to us this morning was a breakdown that they provided, that they did themselves, instead of a third party doing that breakdown. And so we're still working with them to try to get some conclusive verification of what those costs really are.

MR. JONES: Well, you know, you guys put us in a really bad position.

MR. CONINE: Yes. It's very, very --

MR. JONES: I mean it is a heck of a position to put this board in. And I think -- well, whatever

MR. GOURIS: It is.

MR. CONINE: It's over twice the normal --

MR. GOURIS: Yes, sir.

MR. CONINE: -- site work.

MR. GOURIS: Yes, sir.

MR. BREWER: Mr. Chair, why don't we take these individually? And then we can comment on that when we get to that one.

MR. JONES: We had a motion on the table.

MR. CONINE: I withdraw my motion.

MR. JONES: It has been withdrawn. So the Chair will entertain any motions any board member may wish
MR. BREWER: Okay. I would make the motion for approval of Project Number 01427, Meridian Apartments, Fort Worth, Texas --

MR. JONES: We have a motion. Do we have a second?

MR. BREWER: -- subject to the conditions that are in the underwriting.

MR. SALINAS: Are they here today?

MR. DAROSS: I'll second.

MR. SALINAS: Are these people here today?

MR. BREWER: Meridian?

MR. ONION: The developer on this transaction that we're --

MR. SALINAS: On the first one in Fort Worth.

MR. BREWER: No.

MR. CONINE: Mr. Vowell --

MR. ONION: The developer representative is.

MR. VOWELL: Kim Vowell. There's not a question -- on the Meridian property, there's not an underwriting issue.

MR. SALINAS: Okay.

MR. BREWER: Did you have a question on it?

MR. SALINAS: No. I just don't want them to come back and say -- well, you know, it's pretty hard to
change the recommendation at the very end, especially with
the odds that they'll have to come back --

MR. BREWER: Well, they won't have any problem
because they're getting --

MR. JONES: Well --

MR. BREWER: -- what they asked for.

MS. STINER: On this one.

MR. BREWER: On this one, sir.

MR. SALINAS: Well, that's -- yes, they're
getting what they want. So what --

MR. JONES: We're taking them one at a time.

MR. BREWER: We're taking them one at a time.

MR. JONES: This is number two, Wildwood.

MR. SALINAS: Okay.

MR. BREWER: Yes, sir.

MR. JONES: The motion then would be on the
Meridian Apartments, and it has been made and seconded.

Further discussion with regard to the Meridian
Apartments?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay?

(No audible response.)
MR. JONES: The ayes have it.

And then we'll turn our attention, I would suggest, just by the order, to the Wildwood Branch Apartments, which is the one where there is a problem with regard to underwriting.

MR. DAROSS: Well, so that it can be discussed, I'll move that we approve the bond issue as to the Wildwood Apartments.

MR. CONINE: At which amount?

MR. BREWER: Yes. At which amount, Jim?

MR. SALINAS: The one recommended by the staff?

MR. DAROSS: The one recommended by the staff.

MR. SALINAS: 856?

MR. DAROSS: I mean we have to have something to vote on.

MR. SALINAS: 856?

MR. DAROSS: Yes, 856.

MR. SALINAS: Okay. I'll second that.

MR. JONES: So we have a motion that it be approved, by Judge Daross, and seconded by the mayor. And that would be with regard to it as it's written in our board books, at the 856- figure.

MR. BREWER: But my understanding is that they won't be able to do that deal if they just get the 856.

MR. ONION: There will be approximately 100
percent of deferred developer's fee. In going through with this transaction and closing, there certainly is the added risk that the additional credits will not be received, and so that has to be viewed. And Tom can certainly address this. I think we're just a day or two away from verifying these. These are issues that are related to the site work, and we normally don't have this situation because we have a more level piece of ground on which to develop. That's why it becomes difficult and additional information is needed.

We have received the itemized breakdown of those additional costs. The engineer had indicated that he's in agreement with it. I think what we want from them is the third-party engineer to cite these costs as additional verification. So we're right there; we're a day or two away. Again --

MR. DAROSS: I guess my question on that is: Has there been an earthquake or some other seismic activity that, all of a sudden, created this site problem since the day that the application was first submitted?

MR. ONION: It -- no, sir. The difficulty is going through the development process and -- in getting the engineer to verify those costs, design the plans and the specs specific to what it's going to take in order to complete that development. And that takes additional
time. And that's where we are today, and, like I said, we're a day or two away from rectifying it.

Certainly, the credits are set based upon the eligible basis as determined by the underwriting department. And if given an opportunity to provide additional information, I think we'll get to that number.

MR. CONINE: You stated something just a tad different which may end up changing my mind.

MR. ONION: Okay.

MR. CONINE: You said that the developer provided us the information this morning, and then -- in your first comments. Then you said his engineer is now on board with those particular numbers, which -- and then there's a third-party engineer that we hired to review those numbers and give us up or down.

I -- if his engineer furnished the numbers, I'm a little more comfortable rather than just the developer saying, "We've got X lineal feet of retaining walls," and coming up with a number. If there is an engineer document, whether it's his own or anybody else's, I feel a little more comfortable about granting him the ability to go up subject to third-party review.

MR. ONION: Well, let me clarify that. The borrower, through their construction arm, provided the numbers. A letter was written by the engineer referencing
those numbers, saying he's in agreement with it. What the
department is looking for is a letter from the engineer
with those numbers on it.

MR. GOURIS: With their -- them deriving of
those numbers, he gave a blanket letter saying these are
consistent with a project of this type.

MR. ONION: And --

MR. CONINE: But they're not specific?

MR. ONION: And, to further clarify it --

MR. GOURIS: Not the specifics.

MR. ONION: -- we do not have a third-party
costing person that arrived at this number.

MR. CONINE: You use Marshall and Swift --

MR. ONION: This is --

MR. CONINE: -- locally, don't you?

MR. GOURIS: This is why we emphasize, when the
site work costs are extraordinary, to have the engineer's
detailed cost justification, because we don't have an
internal mechanism other than that, other than what they
provide. And if we just use what the developer themselves
said, instead of the engineer, we're -- you know, we don't
have as much comfort with that.

MR. CONINE: Right. I wouldn't, either.

MR. GOURIS: Yes.

MR. CONINE: But if we're days away and we've
got a couple more engineers that are going to ante up some opinion, I think I can get fairly comfortable with it, especially it being a 4 percent credit, versus a 9 percent credit.

MR. ONION: Yes, sir.

MR. CONINE: That's all the questions I've got, Mr. Chairman.

MR. JONES: Okay.

We have a motion on the floor, and a second. Any further discussion?

(Pause.)

MR. BREWER: What --

MR. CONINE: I'm going to --

MR. BREWER: What would it do to the deal, Robert, if we go along with just the --

MR. SALINAS: 856?

MR. BREWER: -- 856?

MR. CONINE: I'm going to give the staff the authority to --

MR. BREWER: I'm worried about the people that are going to get the 280 houses.

MR. CONINE: I think we ought to give the staff the ability. I'm going to vote against the current motion on the floor.

MR. JONES: Would you like to offer an
amendment to the motion?

MR. SALINAS: But my question is -- they come here today. He makes a recommendation on 856; he's the guy in charge. And then two guys stand up and tell us different. So who are we going to take the lead from? Because we've got the guy that's making the recommendation to us and telling us this is an $856,000 deal, and then we've got two guys, one on each side, that says we've got to change it.

MR. NWANERI: Actually, his recommendation doesn't take away any portion of my recommendation. Mine is based on his. It -- my recommendation was predicated on the underwriting --

MR. SALINAS: Yes. See, you all could have gotten --

MR. NWANERI: -- at the time. So we all in a group --

MR. SALINAS: -- together yesterday --

MR. NWANERI: Yes.

MR. SALINAS: -- to be able to come here and be able to work, you know, as one. I mean you all can see how we can get confused here.

MR. ONION: Yes.

MR. NWANERI: Right. But the only problem we had is: As of yesterday, we didn't have the information
we had this morning. And --

MR. SALINAS: Well, we didn't have it --

MR. NWANERI: -- we had it --

MR. SALINAS: I mean we didn't have it until right now.

MR. NWANERI: Right. He came in and dropped it on our way to over here. And we did realize that the amount was grossly, you know, cut from underwriting, but it was based on information that was available at the time it was underwritten.

And so, in addition, we are just asking for an opportunity that, if the information they have submitted meets the needs to go up on their credits, that the staff has the ability to increase it at cost certification, given the fact that this is a tax-exempt bond transaction.

MR. JONES: That's true.

All right. We have the motion on the table that has been made and seconded to approve it as it was presented at the $856,000 figure.

MR. BREWER: But we -- I thought that was going to be withdrawn.

MR. JONES: It has not been withdrawn.

MR. DAROSS: I haven't done it.

MR. JONES: The motion has been made, and it has been seconded.
MR. DAROSS: I mean if the feeling is that we ought to allow the staff the leeway to increase this thing, the thing to do is to vote against the motion.

MR. JONES: That's correct.

MR. DAROSS: And that's -- even though I made the motion, I'm going to vote against it.

MR. JONES: I understand. But we had to have the motion to be able to --

MR. DAROSS: We had to have something to discuss.

MR. JONES: Yes. We have the motion that has been made and seconded. So --

MR. BREWER: Okay.

MR. JONES: -- let's vote on it unless there's further discussion.

MR. BREWER: All right.

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

MR. SALINAS: I will vote -- aye.

MS. SAENZ: Aye.

MR. JONES: There are two ayes. All opposed to the motion, please say nay.

(A chorus of nays.)

MR. JONES: The nays carry.

MR. CONINE: Mr. Chairman, I'll make a motion
that we approve the Wildwood Branch Townhomes Limited Partnership at the 856,163 level but allowing staff, based on further input from the engineer, as well as cost certifications, to allow the applicant to go up to $998,496.

MR. BREWER: I second it.

MR. JONES: The motion was made by Mr. Conine and seconded by Mr. Brewer. Further discussion?

MR. SALINAS: We set a precedent here; so we can do that on other items?

MR. BREWER: Yes.

MR. CONINE: We have done.

MR. BREWER: We've done it before.

MR. SALINAS: Oh, I know you've done it before. But are we going to do it later? So I don't have any problem with the motion, but, I think, sometime, somehow, we just have to do -- what we get from the staff and then change it in a matter of minutes in the board meeting. So I just don't agree.

MR. JONES: I -- and I would echo the mayor's comments. I think that --

MR. SALINAS: It's terrible.

MR. JONES: You know, I think

MR. SALINAS: I think this is the problem that we've been having here and why we get in the media. We
just don't have our things together. Sometime, we're just going to have to.

MR. CONINE: Let me, if I could, amend my motion to make sure that all three branches of the staff agree on the increased cost being allowed -- and the tax credits -- including the underwriting department.

MR. JONES: Further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

MR. SALINAS: Nay.

MS. SAENZ: Nay.

MR. JONES: The nays were Ms. Saenz and the mayor. And the Chair will join in voting nay.

Which brings us to the Greens Road Apartments.

(Pause.)

MR. JONES: Is there a motion?

MR. BOGAN: I move that we accept the Greens Road proposal.

MR. JONES: Okay.

MS. WILLIAMS: Second.

MR. JONES: A motion has been made and seconded. Further discussion?
MR. JONES: All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, nay?

(No audible response.)

MR. JONES: The ayes have it.

Which brings us to the Park Row Apartments.

(Pause.)

MR. JONES: Is there a motion?

MR. CONINE: I move for approval.

MR. BOGANY: Second.

MR. JONES: A motion has been -- I think it was Mr. Conine who made the motion.

MR. CONINE: Yes.

MR. JONES: And then it was seconded by Mr. Bogany. Further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(No audible response.)

MR. JONES: The ayes have it. Motion carries.
Item 5(b) at this time --

MS. STINER: That has been pulled --

MR. JONES: It has been pulled?

MS. STINER: -- from the agenda, sir.

MR. JONES: Okay. Great.

Which brings us to Item 5(c). Mr. Smith would like to comment on Item 5(c).

Mr. Smith?

MR. CONINE: Can -- do you mind if we have some sort of resolution of whether or not it's appropriate to be on the agenda or not?

MR. JONES: I will bring that up --

MR. CONINE: Before we --

MR. JONES: -- as soon as we have public comment. I do think that we've always allowed everybody to speak on anything they wanted to, whether it was on the agenda properly or not. So --

MR. CONINE: I got you.

MR. JONES: -- I feel the obligation to allow Mr. Smith to comment on it.

MR. CONINE: All right.

MR. SALINAS: Is this public comment?

MR. JONES: I then will --

MR. BREWER: Yes.

MR. JONES: Yes, this is public comment.
MR. SALINAS: Okay.

MR. BREWER: Yes.

MR. JONES: Mr. Smith was recognized, Mayor, prior, and requested to defer it until this time.

But let me make sure that everybody understands what the Chair is ruling here. I am not taking up the issue about the agenda item being properly here; I'm just merely allowing public comment to be reopened and completed.

MR. CONINE: Okay.

MR. JONES: Thank you, Mr. Smith.

MR. SMITH: Okay. Thank you.

My name is Rowan Smith; I'm from Houston, Texas, and I'm here to talk about the additional tax credits that the board talked about at the -- that I brought up for the El Pueblo Dorado Apartments in the -- in Pharr, Texas.

Now, in regards to -- these other items on the agenda I don't know about, but in that meeting last month, I submitted this documentation to the board, which everyone reviewed. And it is -- my recollection of what happened at that meeting was that the board had some questions about it because it was in a Valley area and there was quite a difference in tax credit amounts per unit. That and --
MR. JONES: If you could -- I need to interrupt for a second. We have a board member that's going to have to leave and wants to look at another agenda item. I promise I'll come right back to you --

MR. SMITH: Okay.

MR. JONES: -- but we're going to change our agenda just for a second.

MR. SMITH: All right.

MR. JONES: And then we'll be right back to you, sir. And I apologize.

MR. SMITH: Okay.

MR. JONES: If we could, I'd like to turn our attention to Item 6 because we have a board member that's having to leave. Let's do that before he leaves.

(Pause.)

MR. JONES: I would like to take up Item 6, which is the presentation and discussion of a letter requesting the attorney general's opinion. And I will do that unless there's an objection from a board member.

There was -- I believe all of the board members have received a copy of it now, but there was a letter written by Ms. Stiner requesting an attorney general's opinion concerning the Sunset legislation, Senate Bill 322, I believe. And that letter has caused a great deal of concern on the part of the legislature.
I have asked Michael Lyttle, if he would --

he's our public information officer -- to summarize for me

the legislative reaction.

If you would, come down.

And I'll be -- I wanted to report on this to

all the board members because it has received some press.

And I have also received some comments from various

members of the legislature.

And I guess I'll summarize, Michael. And if

you want to go into more detail, please feel free to,

because I know you and I have both had conferences. And I

know Ms. Stiner has had conferences, and I'll turn it over
to her, too.

I have gotten or received inquiries about the

matter from the governor's office, I've received inquiries

about the matter from the lieutenant governor's office,

I've received inquiries about the matter and talked to

people from the speaker's office, and I have talked to,

also, legislators. And for that reason, I wanted to bring

it up before the board and make sure you all were aware of

it since it is something that has drawn a great deal of

attention.

I would say that the legislative reaction to

the letter as best I can term it --

And, Michael, if -- and I'm going to broad-
breast this and try to give broad statements.

The legislative reaction has been fairly concerned. They have viewed it as maybe our department, when they have looked at the Sunset legislation, instead of moving forward and trying to cooperate with it and -- as opposed to that is us taking an aggressive stance against certain parts of it. And there has been a lot of concern about that.

The second concern about that that has been expressed to me that I wanted to express to all of the board members is -- I have been asked repeatedly what role the board played with regard to that particular letter. And I wanted to tell the board exactly what I have said.

And, in fact, I believe, each of you got a letter yesterday from Senator Lucio, where he has asked each of us, in writing, to state whether or not we knew of the letter before it was sent. My plan is to do this: To respond on behalf of the board as Chairman of the Board that I, as Chairman of the Board, did not know of the letter before it was sent.

I don't -- I've talked to a number of board members, and I don't know of any board member that did. So I assume that no board member did. And if that's different, I really request that you all let me know, because I plan to put that in a letter to Mr. -- Senator
Lucio. Senator Lucio also told me to request each board member to respond to him in writing on that issue.

So there has been a great deal of concern expressed to me that the board was not aware of the letter before it was sent. And I have told them that the board was not aware of the letter before it was sent.

With that, that's kind of the reaction I have gotten. I would say that the legislature -- I think that -- as we've gone through the Sunset process and then as we've gone through the aftermath of it, I think, the department has strived mightily to improve its relationship with the legislature. I don't know that I can say this has improved it.

I do think there are some real concerns that have been raised that I thought the board needed to know about, and I wanted to raise that to the board's attention. So those are kind of my comments.

I guess, Michael, you know, you've gotten a lot of responses from people, too. I'll give you the opportunity to give them and give Ms. Stiner the opportunity to address this issue.

MR. LYTTLE: Well, Mr. Chair, the responses I've heard have been both from legislative staff as well as members of the legislature and advocates. Unfortunately, it has been universally negative with
regards to this letter. I have attempted in my role to explain as best as I could understand the intent that Ms. Stiner had, and I feel that it's only fair that, you know, she should talk about that.

MR. JONES:  Sure.

MR. LYTTLE:  The two problems that at least I've heard from these individuals have been: Number one, that it appeared to them from their information that there was a disconnect between the executive management of the agency and the board of directors; and the second issue they raised is their -- regardless of the noble intent of the question, the perception of that letter has been that we don't want to comply with S.B. 322. And that has concerned a great many people that I've talked to.

MR. SALINAS:  Can I ask -- is it okay to ask a question?

MR. JONES:  Sure.

MR. SALINAS:  Is this a letter, or a request?

MR. LYTTLE:  Well, I mean it -- we refer to it as a letter, but my understanding is it was an actual request to the attorney general's office for an opinion --

MR. SALINAS:  And --

MR. LYTTLE:  -- for them to make a legal --

MR. SALINAS:  Don't they have to ask permission from the board to ask for a legal opinion from the
attorney general's office? Isn't that the way it should
work: That if anybody on this board would like any
information from the AG, it should be done on a board item
and asked by who ever is going to ask for it for the
approval of the board?

MR. LYTTLE: Well --

MR. SALINAS: I mean --

MR. LYTTLE: -- I'm not in a position to
make --

MR. SALINAS: -- you refer to it as a letter,
Mr. Chairman, but -- is that a request for an attorney
general's opinion, or is it a letter?

MR. JONES: It's a request for an attorney
general's opinion --

MR. SALINAS: Okay.

MR. JONES: -- as what I've --

MR. SALINAS: Then we should address it as a
request from the AG's office --

MR. JONES: Okay.

MR. SALINAS: -- from --

And you're saying they want to know if it was
requested by this board?

MR. LYTTLE: "They," meaning the legislature?

MR. SALINAS: Well, whoever's asking the
questions about the request.
MR. JONES: The -- what transpired was: A letter was written by Ms. Stiner to the attorney general's office, requesting the attorney general's opinion as to the constitutionality of our Sunset legislation and certain provisions in it. And the act -- the questions that I've received repeatedly were: Did the board know of such a letter before it was sent and authorize it?

MR. BREWER: But haven't we had other opinions asked of the attorney general's office on different policies that have been signed by the executive director without our input? I mean there are things that happen in everyday business, so I'm just curious. I mean --

MR. CONINE: Yes.

MR. SMITH: The executive director does have that power. I'm Paul Smith from Legal. And I do know that the executive director has the power without the board to --

MR. SALINAS: Then she should answer in saying, Well, I did it on my own, and not on behalf of this board.

MR. BREWER: Well --

MR. SALINAS: I can tell you one thing that --

MS. STINER: Excuse me. That would be --

MR. SALINAS: I will tell you that --

MS. STINER: -- or appear --

MR. SALINAS: -- if I would like an opinion

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from my county -- as an elected official of my county -- from our district attorney, I have to go through my district attorney to get an attorney general's opinion before I can get it myself.

I don't know that it was ever on the agenda for us to question the legislature or if she has that right to do it on her own, which is fine. But I think it's no surprise to anybody that it was not on our board's agenda.

So now, you know, I just got confused between a letter and a request for an opinion.

MR. JONES: And at this point, I recognize Ms. Stiner.

MS. STINER: Thank you, Mr. Chair.

I -- let me -- before I go any further, let me just tell you -- share with this board my just astonishment that a staff member would get up and have information to share with this board that hasn't been shared with the executive director. And if he has been instructed to do that, I'll take that as a direction by this board, but I find that just to be astonishing.

If someone would have asked me, I would have shared this with you before you did it here at this session.

As I talked to you about this last week, Mr. Jones, I went over with you -- which I want to go over
with the board right now -- what prompted me to seek an opinion from the attorney general. But first, let me respond to Mr. Salinas' question.

The executive director, under 23.06, has the authority and the power granted to the executive director to administer the day-to-day operations of the department. And intrinsic in that, as Mr. Smith indicated, is the authority to ask for an attorney general's opinion on legislation that the department may want to have clarified for purposes of running the department on a day-to-day basis.

So, you know, if there's a further question on authority, I think that could be pulled out more clearly by the legal department and the attorney general's office. So I just wanted to respond to that.

But Mr. Jones asked me this question some time ago, and I have taken the opportunity to put some remarks down in writing because I want to make sure this is part of the record. He also alluded to the fact that, in addition to himself -- and, I suspect, Mr. Lyttle -- having conversations with members of the legislature that I have, too -- I've only had one conversation with Representative Pete Gallego on yesterday, where I explained to him what prompted this request.

It is not questioning the constitutionality of
SB 322; it's asking for clarification of two provisions of 322. And I'll get to that a little bit later. But I do want to say we had that conversation, and he told me he was offended by the -- by my requesting an opinion. I apologized to him and said that it wasn't intended to offend him.

So let me apologize to any other legislative persons in this audience or that have queried the Chairman or Mr. Lyttle on why the opinion was granted. It was not intended to offend anyone.

So I want to make this very public before everybody in this room, before God and before the State of Texas: That I apologize if I offended and stepped on anyone's toes.

But as executive director of the agency, I think it was quite clear, as Mr. Brewer has indicated, that there has never been a directive before or any amendment to 23.06 to require that the executive director seek authority from the board before asking for a legal opinion from the attorney general. If that's the direction of this board, I will be happy to comply with it in the future -- or whoever happens to be sitting in the seat of the executive director in the future.

I've heard several references here to, Today, it's not a given that the board will be back. Well, it's
not a given that I'm going to be back, either. But I think that it's important for whoever sits in this seat to know clearly where their authority comes from to do their job on a day-to-day basis.

So with that said, I would like to read into the record what I shared with Rep. Gallego on yesterday and what I hope to share with this board and what I attempted to share with Mr. Jones on last week.

Unfortunately -- Paul is here from the legal department, but the attorneys that I instructed to seek an opinion are not here today for various reasons. So they can't make themselves available to you to talk to you about the discussions we had. So I'm not asking you to accept my word on that; you can verify it with them whenever they're back if you wish to pursue it further.

But let me just read this into the record, please, for the purposes of this board and for all in attendance and for the public and for purposes of this record: "Senate Bill 322, as everyone knows, is the Sunset legislation for the TDHCA. It added additional revolving-door requirements for five TDHCA staff positions; one of those is for the executive director of the agency.

"With the exception of those five positions, all other State of Texas employees must comply with the
revolving-door policy under the General Code at Chapter 572" -- and it's pretty clear -- I mean that has been around forever -- how that law -- particular law is applied -- "SB 322 provisions relating to the revolving door for those five positions are relatively new. "And what was not clear to me about the additional revolving-door requirements of SB 322 was how it would be enforced against me in particular, being the executive director, and, even if I'm not here as the executive director, whoever comes after me as the next executive director for the next two years, and those four other positions when the new law takes effect on September 1.

"My question to legal was: If any of those five position-holders, specifically me, wanted to know how to avoid criminal prosecution, since violation of the new law is now a criminal offense, what could I look to or what could they look to to provide an affirmative defense against prosecution under SB 322; further, whether it was me or the next executive director, how would the new provisions impact my future employment in the State of Texas or my ability to continue to make a living in the area of housing, which has been my profession for the last almost-30 years, since it does question and impact the ability to continue making a living in that arena if you
want to do business with the State of Texas.

So since the answers to those questions could not be provided to me by TDHCA legal staff and be relied upon as an official legal opinion for the State of Texas, I queried the Attorney General in the letter.

"Secondly, there was an ex parte provision under SB 322, and the only thing that I asked to have done was to seek clarification on how far reaching those requirements would be for the TDHCA staff members designated as members of that executive award and review advisory committee.

"Since the designated members also have other responsibilities in the TDHCA which require that they communicate and interact with the developers and related parties and applicants to the tax credit program on a regular and ongoing basis, I wanted an opinion for each of us, particularly me, as to how to limit my communication with applicants so as to be in conformance with SB 322 and their ability to keep carrying out their normal and regular jobs.

"And in some cases specifically, I needed to know if, before you accepted a telephone call during that blackout period or a letter from any person during the blackout period, you needed to have those persons affirmatively certify that the person was not an applicant
or a related party of an applicant before I or any member
of that committee violated the ex parte rule.

"I felt that the ex parte rule as it applied to
these positions was a bit different from the ex parte in
the tax credit program that applied to the board members.
The board members, certainly with all due respect, don't
work in the department on a day-to-day basis. So they
wouldn't have the same kinds of challenges that those
position holders would have if a call came in and you
decided not to talk to them.

"But that was it. So the request to the
attorney general's office was to provide me as the
executive director of the department with some direction
so that everyone could be in conformance with those two
provisions of SB 322."

Again, I want to close with -- I have the
utmost respect for the legislators who work in the State
of Texas to develop laws. But as all of you know here in
the audience, and particularly those of you that are
lawyers, the laws are on the books, but it's the
implementation that kills you.

So I wanted to be sure that I was clear in
performing my job responsibilities. And even, as I said,
if I'm not here, the next person, I think it's important
that anyone coming into this position and working with
those persons so named would be clear on how to proceed with implementing SB 322.

We're well underway with SB 322. Our Rep. Gallego yesterday -- if what's needed is for me to visit with everybody who has been offended personally and apologize, I'll do that. But I think the fact remains that this is the clarification that I was seeking. I have the authority under the covered rules. I didn't see anything in SB 322 to change that, either, to request that this as the executive director of the agency.

But, again, if the directions are coming from this board that the executive director of the agency, regardless of who that is, whether it's me or someone else, needs to seek the authority from this board to request an attorney general's opinion, then that -- I have no problems with it.

But I wanted to be sure I got my thoughts down on the record because it has been told to me that this has created a firestorm out in the general community. That's very, very -- I regret that very much because it wasn't meant to do that. The firestorm that was created by this letter is in my opinion not responsive to the two narrow questions that I asked in that particular letter.

I was also told that my conversation with Rep. Gallego, who happens to be an attorney -- that the case
law and the arguments that were laid out were overreaching. Again, I apologize for that. I asked the attorneys to be very clear and narrowed it down to those provisions. It seems as if that wasn't interpreted that way. So, again, we -- I apologize for that.

But in terms of asking for those clarifications, that's what I thought I had the authority to do as the executive director. And those are the two provisions that, regardless if it's me or whom ever comes after me, we'll have problems with, particularly the one is criminal if you violate it.

So thank you, Mr. Chair, for the opportunity to speak to the board about that and to clarify that. And I'll respond to any direction this board is wanting to give me relative to that.

MR. BREWER: Mr. Chair, I have another question.

I'd like to know from Mr. Smith: In regards to the authority that has been given to the executive director to seek an AG opinion, is that mandated by a -- the legislature, or by this board?

MR. SMITH: It's by the Government Code Section 23.06 --

MR. BREWER: Thank you.

MR. SMITH: -- the legislature.
MR. BREWER: Thank you. And --

MR. SALINAS: Did you know that, that that was -- that she had the authority to ask on her own?

MR. JONES: Can I interrupt here because --

MR. BREWER: Yes.

MR. JONES: Mayor, if I could address this question? The question has not been whether she had the authority to do it or not. The question has been whether this board supported the letter. And that's what the legislators want to know.

MR. SALINAS: Well --

MR. JONES: And that's the question that has been asked repeatedly by the legislators. And that's the one I wanted to bring up today.

MR. SALINAS: Well, I think that Ms. Stiner just answered that. She said that she took it on her own to ask because she needed to get some advice from -- and public information should have told the legislature that she had done it on her own, as she -- like she told Mr. Gallego, that she needed to clarify some items on the bill, which makes it utterly -- the only answer would be that Ms. Stiner is telling them that she did it on her own.

MR. DAROSS: Mr. Chair?

MR. SALINAS: I didn't know about the so-called
letter or the attorney general's opinion, but I've gotten several calls. But I haven't talked to anybody about it. But I would think that if she has the authority to do that, then, if the legislature wants to change it, they need to go back in in the next session and change that -- or if this board has or the board that's coming has the authority to do that.

I myself would agree that anybody that works for the agency as an executive director should advise the board before asking for an AG's opinion.

MR. BREWER: But I think we've got to be careful --

MR. SALINAS: It's a --

I understand. But as a good working relationship between the executive Director -- and I'm new here -- and the board, it would be only logical to tell the board what she was going to do and, of course, she had the authority to do it and she was trying to take care of some other problems that she was foreseeing coming for not only herself but some other staff members -- which I don't have any problems with.

But I think that the legislature or the -- Senator Lucio would have to be told that this was an action done by Ms. Stiner on the way she just explained here today. Or do we still have to write him a letter and
tell him that we had nothing to do with it?

MR. JONES: I have promised to write him a letter because he asked that I confirm whatever I said in writing.

Judge Daross?

MR. DAROSS: Yes. Mr. Chairman, it seems to me that there are two different issues here. And first, let me say that I'm not sure how Mr. Lyttle ended up in the hot seat.

MR. LYTTLE: Yes. I'd like to know myself.

MR. JONES: Well -- and let me address --

MR. DAROSS: I don't think he has done anything other than report to you --

MR. JONES: That's correct.

MR. DAROSS: -- what you asked him to report to you --

MR. JONES: Right. And what --

MR. DAROSS: -- and what he has heard.

MR. JONES: Exactly what transpired is: I was going to report to the board, because I felt I needed to, the comments that I have received from the legislators. I asked Mr. Lyttle to come up because I knew that he had been receiving a lot of calls, too, which is --

MR. DAROSS: Which, in his position, you would expect him to have.
MR. JONES: Right. And the only reason I know that is because a number of people have said, "I want to talk to the chairman of your board; who is that?" and Mr. Lyttle has referred them to me and he has done me the courtesy of telling me when I was going to get calls.

So I did it, though, thinking that he was our -- you know, a public information purpose, that it was good for him to give the reaction of what he has heard -- as well as good for me -- because I thought that would give a more fair presentation to the board --

MR. DAROSS: Right.

MR. JONES: -- of what was going on.

MR. DAROSS: And, Mike, I would agree with that.

MR. JONES: Okay.

MR. DAROSS: And I think he's been --

MR. JONES: And that's the reason I called him up there.

MR. DAROSS: All right. The two issues that it appears to me that this board should be considering at this meeting: Number one -- well, first, let me back up and say that although I am an employee of the Attorney General, I am not in the opinion section, and I do not purport to say that I know anything about how the opinions division views these requests. So I'm going to ask the
official member of the Attorney General's office who is
here, Mr. Walker, to speak to that issue.

But the two questions are -- number one, what
authority does the executive director have under the law
to request an attorney general's opinion? And the second
one is: As a matter of policy and a matter of relations
with the board, what should the executive director have
done regardless of what the law says that person may do?

And I'd like Mr. Walker, if you could, to
address at least the first issue. I'm not sure if you can
speak to the second one; I think that's for our
consideration.

MR. WALKER: I've been asked to use the
microphone. So I'll --

MR. JONES: Okay. Sure.

MR. WALKER: -- trade chairs.

(Pause.)

MR. WALKER: For the record, my name is Don
Walker, and I'm an Assistant Attorney General. And I am
here as an Assistant Attorney General.

The process for requesting Attorney General's
opinions is set forth in the Government Code. It has a
list of certain persons who are authorized to request and
to whose request the Attorney General is authorized to
write an official opinion. One of those listed
individuals is the heads of all other state boards, which, I think, would apply in this circumstance.

Our opinions division follows some treatment of this issue from a 1984 Attorney General opinion, JM 149, where they wrote that it has long been the policy of the Attorney General's Office to accept requests submitted by the secretary, the executive director or the executive secretary of a board -- and this -- different boards have different names for their chief operating officer or CEO or whatever you want to call it, and that's why those are the three there; they're not three people on the same board -- to accept those requests on behalf of the particular board, but the request should reflect that the board desires the opinion.

In essence, I think the way I read this is that the opinions committee will accept a request from an executive director, but they want to have an idea that that is within the desire of the board itself. And I think that probably links to Judge Daross's second question.

And I believe that, as Ms. Stiner had stated, the executive director does have the authority under your particular statute and in general to run the day-to-day operations of the agency. And boards should not and should not really want to micromanage an agency, and
that's consistent advice that we give to all of our boards.

I think it's also within a board's authority to set a policy procedure that deals with how this might be done. If the board wants to know after the fact that an opinion has been requested and asks for a copy to be sent to the individual board members so they know what's going on, I think they could do that.

If they would like to know ahead of time just to get a copy of what the request will be so that, if they had some input or some question among themselves or with the executive director, they could do that. I would suggest that going beyond that might -- as to whether it violates the law is probably not a question that would necessarily come up.

But in terms of just a practical matter in dealing with the operation of an agency, it's probably best to leave most of the details to the executive director. So, hopefully, that has answered your question.

MR. DAROSS: It has. I take it that what you're saying is that the opinions committee of the attorney general's office views a request from an executive director of an agency as essentially being the voice of the board and as having the imprimatur of the board in asking that -- for that opinion.
MR. WALKER: Yes, sir. I believe so.

MR. DAROSS: All right.

MR. WALKER: And if it happens that that later turns out not to be, that could also be communicated to the Attorney General's office, and it could be dealt with appropriately.

MR. DAROSS: Thank you.

Now, that essentially sets up the second part of my question, and that is: Whether in this particular case on this particular issue with the particular legislature that we've been dealing with over the last year, the board should have been involved in, first, deciding whether or not this letter should have been sent at all.

And, second, after seeing the language of it — I'm not saying that I want to second-guess the language, but I have to agree with the members of the legislature who have said that this letter was very confrontational in nature. I mean it was basically saying, You people didn't know what you were doing when you were writing this legislation; rewrite it.

MR. JONES: And I do think that -- to be fair to Ms. Stiner, it was not written by Ms. Stiner, it was written by our Legal.

MR. DAROSS: Right. I --
MR. JONES: That's obvious.

MR. DAROSS: I understand that.

MR. SALINAS: Did you ever get an opinion back?

(Laughter.)

MR. WALKER: It takes a little longer than that.

MR. BREWER: Yes.

MS. STINER: No, not yet.

MR. CONINE: I have a couple of things. I heard Ms. Stiner suggest that -- whether or not she's here or not, I guess she wanted to understand how the law affected her. And I'm curious as to whether or not we wouldn't seek our own outside counsel -- we'd bifurcate an employee, versus a private citizen, and we'd seek our own outside counsel relative to a private citizen, and we'd ask the attorney general if we're an employee.

I don't know the rules relative to that. I'm just asking that as a question.

MS. STINER: There's also a 50 percent chance that I would be here. So I think that, in that sense, I'm still a public employee.

MR. CONINE: Oh, sure. I mean I'm just -- but I'm saying that the way you framed your statement, I think, included the potential of you not being here. And --
MS. STINER: Yes. That's --

MR. CONINE: And I think the letter was pretty well written relative to the effect of questioning the AG's office as an employee and not as a private citizen.

MS. STINER: Oh, yes, sir. And I thank you for that. And I want to make that perfectly clear. It was written from the -- my official capacity as being an executive director the day I wrote that letter. So it was not anticipated that I would ask for the attorney general's opinion as a private citizen. So thank you. I'd like very much to clarify that.

MR. CONINE: The other question I have is, I guess, that -- you probably didn't do this in a vacuum, that you consulted with potentially the four or five employees that were also affected by the legislation. And I'm curious as to when those discussions started and, I guess, why they weren't in the July 19 letter that you wrote to Mr. Jones and the rest of the board relative to our response on Senate Bill 322.

It wasn't listed as something we were going to go do. And I'm curious as to why that was left out of this letter.

MS. STINER: Well, I -- let me clarify. Any reference to the other four staff persons was only a reference from a standpoint because of their names. I, as
the executive director, took the liberty of writing and asking for an opinion because I, as the office holder, am included in both of those provisions. So any opinion from the attorney general's office would apply to them.

But, no, sir, I did not consult with them. I was asking for the opinion strictly from the standpoint of me being the office holder -- an office holder mentioned in both of those provisions.

One director made an inquiry to the legal department regarding ex parte. And, of course, she is named as one of the other staffers on the executive awards committee. But that was the only other staff person that raised the question as to how they were to conduct themselves in implementation of the ex parte rule.

MR. CONINE: When did you ask the general counsel to start work on this? Because it was obviously before the July 19 letter to the board, and -- because of all the details that are in that, it had to be quite a bit of time. And I'm just curious as to when the process started.

MS. STINER: The process started as soon -- very closely on the heel of the law being passed. Again -- I'm going to reiterate this because I want to be sure that you are instructing me and you instruct the next person who may come after me. It -- historically, I -- it
has never been a matter of getting permission from the board to ask an attorney general's opinion.

I think what I got out of Mr. Walker's comments to you is that if that's the policy of this board, then, certainly, we need to embrace that. But when I did it, it was not, and it did not enter into any of the discussions I had: That a final, prerequisite check was to pass this by the board.

MR. CONINE: And why it wasn't included in your letter of July 19, when we had asked at the July -- the way the letter starts off, you asked during the July 12 board meeting for a summary of our response to Senate Bill 322. And you --

MS. STINER: Right.

MR. CONINE: And you gave, you know, several examples of things you were doing, but this letter wasn't one of them.

MS. STINER: Well, I don't even recall what you're referring to over there, but I don't -- I can't tell you what my mind-set was then, but, if you'll give me some time, I think I can remember it. But I don't know if -- what my mind-set was when I wrote this and why it wasn't one of the things that was -- I mean I didn't represent what I was working on. There were dozens of others that I was working on, too, that I didn't mention.
So to go back and try to determine what my mind-set was on this particular day, I'm not able to tell you. But I --

MR. CONINE: Well, I think our concern at the July 12 board meeting was, Are we responding in an appropriate manner to all the issues involved? And just, you know, common sense was -- would tell you that in your response, I would think, you would list out everything you were going to do.

And if this was contemplated well before that, which you're saying it was, right after the legislation was passed, it seems to me that you should have included it in the list of things we were going to do to comply with Senate Bill 322 as a department.

MS. STINER: So -- common sense. So I'm stupid and ugly?

MR. JONES: No.

MS. STINER: No.

MR. JONES: It's just common sense.

MS. STINER: No, it's not common sense. I appreciate your observation, but it was not done. And I don't know how to go back and fix that. And I don't know how to go back and tell you what the mind-set was of not including it and telling you.

At that time, we outlined for you several steps
we were taking to implement SB 322, and none of this was untrue. Just by omission, that one wasn't put in there. But I can't go back and tell you what my mind-set was.

It certainly -- and I hope this is not the presumption and the inference: That it was meant to not let the board know what I was doing and it was an opinion as -- again, that I'll mislead this board. And I hope that's not the assertion or inference, because I would never do that.

I just since I've been in this position -- and, again, I think the -- you know, again, I -- it is very, very easy to continue to do things that you've done all along. But I certainly am not resisting any instructions from this board for future letters to the attorney general -- and even for this one; if you want, I think Mr. Walker referred that you have some leeway on this one if you want to take some action.

So I'm certainly not resisting any of that. But to go back and try to re-create what my mind-set was on July 19, I'm not able to do that.

MR. CONINE: Well, I would -- Mr. Chairman, I think I would be for retracting this particular letter. If we've got to write a letter to the attorney general's office -- all of us have to respond to at least one senator, it sounds like -- because I haven't gotten the
letter yet. But we ought to withdraw the letter and maybe
reframe the issue a little differently.

    Our General Counsel is not here on how she
particularly framed this letter, but I think we would want
to review any sort of constitutionality question on
anything this sensitive and that has been this sensitive.
It's just -- that's just common sense to me.

    MR. DAROSS: If that's a motion, I'll second
it.

    MR. BREWER: Yes. Well, I'd still like to
know --

    MR. JONES: Mr. Walker --

    MR. BREWER: -- about the legal on it.

    MR. JONES: Mr. Walker, could I get you to
address something? I think, though -- and this is -- I'm
the one that put this on the board agenda, and I did not
anticipate action at the time I did it last week.

    I put, "Presentation and discussion of letter
requesting Attorney General's opinion." And the reason I
put it there was that I wanted to make sure -- excuse me.
The reason I put it on the agenda is that I did not know
for sure that all -- at that time that all the board
members had received the letter. And I was getting so
many calls, I knew you all probably were, too. And I knew
that it needed to be discussed.
However, I did not put it as an action item. So can we take action with it listed the way it is on the agenda, Mr. Walker?

MR. WALKER: Well, I believe you can, Mr. Chairman --

MR. JONES: Okay. Thank you.

MR. WALKER: -- because, at the very first part of the agenda, it does say, The board will meet to consider and possibly act on the following. So that does --

MR. JONES: Thank you.

MR. WALKER: -- apply to all of the items.

MR. JONES: Thank you, Mr. Walker. I appreciate it.

MR. SALINAS: My question is: Do you want to reflect the opinion? I mean this is beyond our control here. I'll make a motion.

MR. BREWER: Well --

MR. SALINAS: Do you think so? I mean --

MR. BREWER: -- how can we direct --

MR. SALINAS: -- she asked for it. And she has the authority to do it. I mean I would think that we should be asking her if she wants to do it or not.

MR. BREWER: Yes. I would --

MR. SALINAS: I wouldn't want to tell her by a
vote of this board to go ahead and retract her request.

I would think it would be entirely up to you Ms. Stiner.

I -- that's my opinion.

MR. CONINE: Yes. I think my motion or my comment was -- before it got converted into one was that we reframe the issue in a little bit different manner relative to the verbiage used to the attorney general's office.

And I, for one, because of the sensitivity of the Senate Bill 322, would love to see what -- the language on this particular issue -- not all attorney general opinion letters that are issued by this department or any other, but on this particular issue, I'd like to see us recraft and reword our wording and maybe even, you know, get some outside counsel relative to some of the issues that were raised in the letter.

MR. SALINAS: But if we didn't ask for an opinion, how can we be asking to retract that opinion?

MR. CONINE: Well, we can retract it and ask it again, I think. That's what I'm saying we do -- suggesting that we do. And again, I'm --

MR. SALINAS: I don't think this board has done anything wrong.

MR. CONINE: No. I don't --
MR. SALINAS: We've asked for nothing from the AG's office. She has the legal authority to ask --

MR. CONINE: Yes. But the executive director responds or reports to the board. And --

MR. SALINAS: After she gets her opinion --

MR. CONINE: -- she has taken an action that we're responding to.

MR. SALINAS: After she gets her opinion back. Right? I didn't ask for it. So -- and I did not know of it. I think that she already explained to us why she did that.

MR. DAROSS: Well, I was not aware of it. I did not ask for the letter to be written. And I'm very uncomfortable with the language in which the letter was written. And --

MR. BREWER: Well, I'm --

MR. DAROSS: -- I'm really uncomfortable --

MR. BREWER: -- uncomfortable with how that senator got involved in it. I haven't seen his letter yet. But if she asked an opinion of the attorney general, how did the legislators get involved in it already, when we don't even know about it?

MR. JONES: They were copied by the attorney general's office when they acknowledged receipt of the letter. Since it dealt with the Sunset legislation, I
believe the people that testified before that committee, as well as all the legislators involved, were sent copies of the letter acknowledging receipt of the letter by the attorney general's office.

Is that correct? I mean that's what -- our view of things.

MR. WALKER: Well, that wouldn't surprise me. There's a very broad list of people who are given copies of all of the requests made to the attorney general for opinions, as well as a listing on our web site, as I recall, of all of the letter requests that are made to the attorney general's office.

So it's a matter of public knowledge, and there is a specific list, as I understand it, of people to whom notice is given of request letters. Now, that's not anything that happened specifically because of this or in relation to this letter request.

MR. JONES: The motion that I hear on the floor that has been made by Mr. Conine, if I could restate it, would be that legal be instructed to revise the letter and bring it back to the board, whatever board may exist, at the end of this month and present -- I mean there's no reason why Ms. Stiner can't make a request for an opinion and this board can't make a request for an opinion.

And to revise it and make a request for an
opinion after it had been approved by the board -- I mean that's the motion that I hear --

MR. CONINE: Well, I --

MR. JONES: -- Mr. Conine making. So --

MR. CONINE: I had -- I guess I had the retraction of the one that's in there currently --

MR. JONES: Okay.

MR. CONINE: -- as a portion of my motion.

MR. BREWER: Can we actually do that? If she asks for an opinion and it's the law --

MR. SALINAS: Do we really want to ask for --

MR. BREWER: -- she can -- we can tell her to withdraw it? Or --

(Pause.)

MR. JONES: I think this question is directed to Mr. Walker from Mr. Brewer.

MR. WALKER: Yes. I believe the opinions group would welcome some direction from the board. In terms of whether it's legal for the board to withdraw it or for the board to direct the executive director to withdraw it, whichever way it chooses to do that or whether it wants to do both, I think, the board has the authority to do that.

MR. SALINAS: Well, why do we want to include ourselves in this, I mean, when we have not asked for it?

MR. WALKER: Well, the board is responsible --
MR. SALINAS: Are you asking us to do it? You are our counsel. Right?

MR. WALKER: No. I --

MR. BREWER: No.

MR. WALKER: I'm from the Attorney General's Office.

MR. BREWER: He's from the attorney general's --

MR. SALINAS: I know. But he represents us?

MR. JONES: Yes. He represents the State of Texas --

MR. SALINAS: And --

MR. JONES: -- which is us.

MR. SALINAS: -- which is us.

So what are you recommending to us to do?

MR. DAROSS: Well, he's not recommending anything. What -- we're making a motion here --

MR. SALINAS: Well, I think that it's clear that we had nothing to do with the request. If that's the message that we want to send all the legislature, that we had nothing to do with it, then make the motion.

MR. CONINE: That -- it's clear at this meeting.

MR. SALINAS: Because we had nothing to do with --
MR. CONINE: It's not clear at the attorney
general's office, though.

MR. BREWER: Well, it will be when Lucio --
Sen. Lucio gets our letters. Right?

MR. CONINE: No.

MR. BREWER: Well, I --

MR. CONINE: It's not going to the attorney
general.

MR. BREWER: Well, I'll courtesy-copy him, I
mean. If you all send them to him, I can send one to Sen.
Lucio, I mean, if it will help.

MR. WALKER: Well, if I may --

Yes, sir?

MR. BOGANY: You know, I don't understand why
we just -- the letter that Ms. Stiner talked to Mr.
Gallego about -- why she just can't copy everybody in the
legislature on that letter and -- because it's basically
stating what she said. Now, I read the letter myself, and
I didn't get what she said; I get what you guys got out of
the letter. But she has just now clarified what she
meant.

And Chairman Jones just said that legal counsel
wrote the letter. And so why can't she just take what she
has written and just have it copied out to everyone?

MR. SALINAS: Where's our legal counsel?
MR. CONINE: He left.

MR. SALINAS: Well --

MR. DAROSS: She's not here today.

MR. SALINAS: See, that's another problem, you know. We hire legal counsel, and then they don't show up.

(Laughter.)

MR. JONES: They're entitled --

MR. DAROSS: They're entitled to vacation.

MS. STINER: One took a daughter to college.

And so I think that's -- you know, you've got to let them do that. And the other one had scheduled vacation before this board date, and couldn't withdraw, because the state just doesn't have the luxury of reimbursing dollars that they've spent.

So it is a little odd for neither one of them to be here, but I apologize for that, Mr. Salinas. Mr. Smith, who's here, works for them, but he's not the -- either of the attorneys that assisted with us.

MR. SALINAS: Well, we're in the hell of a shape.

MR. BREWER: Yes.

MR. SALINAS: We're in the hell of a shape.

Well, we travel 500 miles to get there, and then we don't have our counsel here when we have a mess here about an opinion.
MR. BREWER: And we put Mr. Walker on the
spot --

MR. SALINAS: And she has the right to ask.

And now we want to make a motion to retract it? Or -- all
I think we should do is just send a message to the
legislature that we had nothing to do with the opinion.

MR. CONINE: I think the board would send a
tremendous message to everyone involved if we retracted
the letter, recrafted it, got our approval and then sent
it again.

MR. SALINAS: Would you want to do that, Ms.
Stiner? I mean you are the executive director. Would you
want to do that? Would you accept an amendment to your
request?

MS. STINER: I most certainly would, Mr.
Salinas.

MR. SALINAS: Okay.

If that's the case, then let's get it done.

MR. JONES: All right. So we have a motion by
Mr. Conine, and he stated it well, I believe. Ms. Saenz,
I believe, seconded it.

MS. WILLIAMS: Do we have a quorum?

MR. JONES: Did I hear that right?

MR. CONINE: Yes. We've got five.

MS. WILLIAMS: Do we have a quorum?
MR. JONES: Yes, we do. We have a quorum.

MR. SALINAS: Okay. So what is the amendment to the request for the attorney general's opinion?

MR. JONES: Okay.

But why don't you state your motion again, Mr. Conine?

MR. CONINE: To ask the executive director to retract the letter from the Attorney General's office and to -- for the board to have a chance to review the rewritten letter requesting the items that the executive director asked for an opinion on at our next board meeting.

MS. WILLIAMS: I second.

(Pause.)

MR. JONES: It has been seconded by Ms. Williams. I'm sorry about that.

MR. SALINAS: This is discussion?

MR. JONES: Discussion, yes, sir.

MR. SALINAS: Ms. Stiner, do you have any problems with that?

MS. STINER: What I'm going to suggest is that -- as Mr. Conine has said, the legal people aren't here -- who will be drafting the letter. Of all the things I am, I'm not an attorney. So I'm going to let them draft it and get it back to this board. I don't know
the procedures you'll go through. We'll consult with the attorney general and see how you retract an opinion --

    MR. SALINAS: The only one that would --

    MS. STINER: -- and substitute it for another.

    MR. SALINAS: The only one that would be able to have this motion completed would be you -- that you are willing to do what Mr. Conine is wanting us to do.

    MS. STINER: Oh, yes, sir.

    MR. SALINAS: You are?

    MS. STINER: By all means. I've been directed by the board to do that. I'll most happily comply.

    MR. SALINAS: But it -- okay. Well, there you go.

    MR. BREWER: Well, are we --

    MR. JONES: All right. We have a motion then on the table that has been seconded. Any further discussion?

    MS. WILLIAMS: Mr. Jones?

    MR. JONES: Yes?

    MS. WILLIAMS: I'd just like to say for the record that I really feel that the attorney general's office does want some sort of direction from this board, and I think we should give it.

    MR. JONES: Okay.

    MR. SALINAS: Well, she should give us -- he
should give us a recommendation.

MR. JONES: All right. We've had a motion that has been seconded, and we've had discussion. Any further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, say nay.

(No audible response.)

MR. JONES: The motion carries. Thank you, so much.

Now, I'm sorry for that interruption, Mr. Smith.

MR. SMITH: Okay. I will make mine --

MR. JONES: Here you go again.

MR. SMITH: -- real brief now.

MR. JONES: Great.

MR. SMITH: But let me just -- I'm going to -- this is my understanding of what happened at the last board meeting, just to be real frank with you. I got up and I made a presentation to the board about the tax credits being cut on El Pueblo Dorado Apartments.

The board had some conversations with Cherno
about whether or not, you know, they could put -- was there some funds available to do that. And Cherno said there might be. And he said that he would get with us and -- get with me and the staff and try to work it out -- something out for the next meeting. So that's what I did, and I put together the presentation based on that.

All right. I mentioned at the last meeting that I had some updated current construction costs on the project that we're building right now in Donna, Texas, the Amistad Apartments. It was a 2000 allocation. It's 90 percent complete, 35 percent occupied. And it cost -- according to this front letter on the first page, it cost $53.83 a square foot to build. I have a computerized cost report that shows that.

The tax credit allocation that we asked for for El Pueblo Dorado is $52.02. It's a little bit over what the legislated amount is; according to the QAP, the maximum amount is $52 a square foot.

So it's -- we know it's going to cost us more than what -- the maximum that the TDHCA allows for construction costs down in the Valley, because you've got to bring a lot of imported, high-skilled labor down into that region. That's why it's one of the -- it's considered a difficult development area by HUD, you know, in that area.
So we are asking that based on what the board's action was last week -- last month on this particular project -- all these other ones I don't know about, but, on this one, it's of record in the record that we did make mention of this project in the last board meeting. I'm requesting that the board grant the project its tax credits back.

Now let me just say another thing so that we can get the project built. At cost certification, when the project is completed and we go through a cost certification process with an auditor on the use of the tax credits -- okay -- on the whole cost to the project, the eligible basis -- if there's a gap in there because interest rates have fallen or gone up or a tax credit equity has gone up or come down, or -- whatever the requirements are of financing, if there's a gap in there, they do a gap analysis and, if there's any credits that need to be returned, we have to return those credits.

So what we're trying to do is build, you know, some housing -- needed housing in the Valley. I know what the costs are. I've done a thousand units in the Rio Grande Valley. I've built them under my own construction company, and we know the construction costs.

And compared to all the other -- a lot -- several other tax credit projects that were granted tax
credits -- I'll go down the list, because we have a list here. Timber Ridge, between 7,900 credits a unit to 11,486 units of -- credits per unit have been granted by the same staff that has cut the credits on our project.

Now, our project, El Pueblo Dorado, is -- has received 6,709. We requested 7,400 or -- $7,345 in credit. That's not much. But it's a lot because that difference in credits cuts out of the construction budget $700,000. I can't make that up, you know.

So that's my request.

MR. JONES: Thank you, Mr. Smith.

MR. SMITH: Okay.

MR. JONES: Any questions?

(Pause.)

MR. JONES: Okay. I -- the Chair is going to make a ruling, but I do want the board members to know what ruling I've made and tell you basically the -- how I've dealt with these situations at past board meetings.

After public comment has been closed -- and it was closed several hours ago -- just a minute ago, as we started discussing this item, I've received three witness affirmation forms of witnesses that want to speak with regard to these tax credit items.

Once we start a debate on something, unless I have allowed somebody to delay their comments, I have
closed public comment and not allowed additional public comment unless a board member had a question that he wanted somebody to address. And then I've let them speak. I will continue to follow that process now, since public comment was closed several hours ago, unless there's a board member that would like to hear them speak; if there is, I will open public comment once again.

MR. SALINAS: How many people are requesting?

MR. JONES: Three.

MR. SALINAS: Three? Well, if we gave Mr. -- if we gave one an opportunity, I would think that --

MR. JONES: No. I did not. He -- during public comment, he came, and he wanted to speak --

MR. SALINAS: But he was the only one that asked?

MR. JONES: Yes. He was the only one that asked, and he delayed his comments until the agenda item. And I allowed him to do that. These people, after public comment has been closed, are now asking to speak. If any board member would like to hear them speak, I will allow it; if not, we will move forward.

(Pause.)

MR. JONES: Okay. Public comment will remain closed. We are on Item 5(c).

Ms. Stiner?
And I do think, also, we have an issue that Mr. Conine wants to raise as to whether or not we should address this.

Mr. Conine?

MR. CONINE: Again, as I stated earlier during the public comment, that -- I thought that we had a statutory requirement in the QAP to resolve these issues by July 31. I have since gone back and reviewed the minutes that we approved a few minutes ago.

And on page 8 in, roughly, the middle paragraph, it said that -- says, "Mr. Bogany stated that the department staff looked at these particular projects. If staff feels that these projects are going to need more credits to make them work better, that the board is micromanaging. He asked the staff to provide answers as to why they recommended additional credits for some projects."

So there's no -- in my interpretation of that particular paragraph, there's no particular invitation to come back.

Secondly, I was provided with some comments directly from the court reporting which Mr. Njie was quoted in here by saying when he was addressing the board, saying that, "Hopefully, we can in the coming month or so see if there are additional ways we can make those
projects a little bit more whole in terms of the credits that were reduced.

"We recognize the points raised by Rowan Smith regarding the lower rents in the Valley and the need for more equity to be able to finance the projects. So we don't want to handicap a project from the get-go. So we will pray to the board to go ahead and look at those projects again with the intention of adjusting the credits upward."

Now, that was a statement by Mr. Njie. I don't think there was any board action that either agreed with that statement or asked them to come back, simply because, as the rest of the meeting went forward, we read specific numbers off specific lists, and they were entered into the record, and they were approved.

Thirdly, I'd mention that under Agenda Item 2(e) -- I guess it is -- relative to the appeals policy, which -- you know, I kind of get a hunch that this is what this is, an appeal. In the fourth paragraph it says -- in our report that we received earlier -- "As a result of Senate Bill 322, the Low-income Housing Tax Credit portion of the appeals process has been removed from the agency's proposed appeals process policy."

"The Low-income Tax Credit Program, in accordance with the requirement in Senate Bill 322, will
include its prescribed appeals process in the rules as a part of the program's QAP. The QAP is the process used for rules in the Low-income Housing Tax Credit Program, and the QAP will be revised this fall and must be approved by the governor December 1, 2001."

Aside from all -- aside from whether or not we have the authority to even go back and do that, I just think it sets a terrible precedent to come back and come back and come back. And I need some help --

MR. SALINAS: And --

MR. CONINE: -- with that ruling.

MR. SALINAS: I agree with you about us coming back and back, like we just did about an item ago -- on another item that we had. And I said, We're going to set a precedent.

My only question here is on -- and I agree with you on coming back.

The only thing is that the treatment the South Texas, or 8B, region has gotten for -- as far as I see it on El Pueblo Dorado -- these tax credits is 67.09 per unit --

Is that per unit, Mr. Smith?

MR. SMITH: Yes.

MR. SALINAS: While we have people and you have other areas for 11,486, where you have a need that is
greater than in any other part of the state in 8B. I think we were accommodated something like $5.5 million, and we only appropriated 4.3-.

My question was: Why were we shortchanged by a million? Or am I wrong? I mean why do we have projects in our area that are rated at a 72 the last time and areas that were rated at 66 and got funded -- and monies pulled away from 8B for a portion of the rest of the state?

One of the -- then, of course, you might have some price for labor, but you also are -- we are known to be cheap labor. But I don't think that should be an excuse for the people that are getting involved in doing these kinds of buildings. I think you all have an effort in South Texas of groups that are saying that you have to pay not only the minimum wage, but it's always -- now up to about $8 an hour.

I see the request from El Pueblo Dorado. And I don't know Mr. Smith at all. But I think that it's only fair that I say this because -- on behalf of this area which -- I know that I represent the whole state, but I also would like the people on this board to look at the need and the necessity that we have in South Texas.

Now, we also would like to put people in -- first-time home buyers in homes better than doing all this. But I think there is a request here. And I would
like for Mr. Njie to --

Are you recommending that these tax credits be changed? Or why wasn't that done before or why do we have to be here today --

MR. CONINE: Can we resolve the issue of whether it should be on the agenda or not before we get into specific cases?

MR. JONES: The board will entertain any motion. It's obviously on the agenda. I mean so it is on the agenda. There could be a motion that it be taken off the agenda and that we not act on it.

MR. CONINE: I'm --

MR. SALINAS: Well --

MR. CONINE: Then I make that motion, just to get the thing going. I move that we remove Item 5(c) from the agenda and not deal with any of these issues relative to what it says in our QAP.

MR. SALINAS: Well, why was it put on the agenda to begin with? And why didn't we --

MR. DAROSS: Well --

MR. SALINAS: -- take action on it before?

MR. DAROSS: I'll second the motion, but it -- I'm not sure that we need a motion of what -- your position is that we had a deadline of July 31 to vote on tax credit allocations. That deadline has passed.
Therefore we can't vote on anything more legally.

MR. CONINE: That's the --

MR. DAROSS: Isn't that the position?

MR. CONINE: -- the instruction of -- and I'm doing it from a real weak position, because I don't have legal counsel here to tell me.

MR. JONES: Yes.

MR. SALINAS: Well, that's another --

MS. STINER: Well, let me --

MR. SALINAS: That's another problem.

MR. JONES: Ms. Stiner?

MS. STINER: May I respond to --

MR. JONES: Yes, you may.

MS. STINER: -- it? Legal is not here.

MR. BREWER: No.

MR. JONES: Ms. Stiner?

MS. STINER: The QAP requires that the tax credits be allocated by July 31. The -- it does not anticipate that, if credits become available, you can't adjust developments as you move forward.

The reason it's on the agenda? Because of the same provision, Mr. Conine, that you read and concluded from that we weren't instructed to come back to the board we understood as instruction to come back to the board. And there was no vote on it, but
those -- that's what we understood. So that's how it came on the agenda.

MR. CONINE: That suggestion came from staff, though, not the board.

MS. STINER: I understand that. But the board didn't say not to or didn't say to. And that's why we came back with it as -- again. I mean --

MR. CONINE: Well --

MR. SALINAS: But nobody has answered the question about why the tax credits are lower for the people in South Texas than it is for San Antonio and Houston and everybody else. Can you answer that question?

MS. STINER: I --

MR. SALINAS: I mean --

MS. STINER: Excuse me.

MR. SALINAS: -- this is for my information.

MS. STINER: Oh, sure. I understand, Mayor Salinas.

May I, Mr. Chairman?

MR. JONES: Yes, please do.

MS. STINER: Mr. Njie is not here today. Mr. Nwaneri did not respond to the letter. So I don't know that he has all of the -- I know that Mr. Njie laid out for you all of the various aspects of why it happened.

I'm not sure. Because I don't mean to speak for you
but --

MR. JONES: Ms. Stiner, would you like to speak to that?

MS. STINER: No. I don't --

MR. JONES: Okay.

MS. STINER: -- have the letter here, either.

MR. JONES: Okay.

MS. STINER: I mean there were various reasons. Tom is here. To -- I see him motioning. Tom Gouris, who is the chief underwriter, perhaps can speak to that.

MS. STINER: Thank you, Tom.

MR. GOURIS: Thank you.

To the extent -- I'm Tom Gouris, Director of Credit Underwriting. I think I can speak to why the amount of the cost of projects are -- as proposed are less -- as underwritten are less in the border region. And that's because -- we use a costing service called Marshall and Swift, and, you know, it's -- they have multipliers for each subregion of the state and for various cities.

And in this particular region, they have a lower multiplier to use to confirm -- to help us confirm the cost of a project. And it -- I looked at it yesterday. And compared to the Dallas area, for example, it's -- Hidalgo and Cameron Counties are about an 11
percent difference.

MR. SALINAS: Well, I don't think they're right.

MR. GOURIS: I --

MR. JONES: All right. We then have a motion on the floor, and it has been seconded.

MR. CONINE: Yes. Let me add to the discussion on the motion. I --

MR. JONES: Thank you.

MR. CONINE: I don't believe that postponing this for a month or not doing it at all until we get -- at least get some letter of opinion on what we have here today is going to make or break any of these projects. They all are in their current designing plans. I mean we have problems with projects not getting started a year-and-a-half later after they get the credits. So --

MR. SALINAS: And then they get the tax credits all over again.

MR. CONINE: Right. So I don't think --

MR. SALINAS: I mean I don't mind --

MR. CONINE: I don't think getting --

MR. SALINAS: -- if we fix the problem, but let's go ahead and fix it.

MR. CONINE: I don't think getting an appropriate response to my fellow board members is going
to in any way jeopardize any of these projects.

MR. JONES: Okay. We have a motion on the floor; it has been made and seconded. Are we ready to vote, or further discussion?

(Pause.)

MR. JONES: Hearing no discussion, I assume we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, nay?

MR. SALINAS: I will vote against the motion.

MR. JONES: Okay.

The motion carries. The ayes have it. We will not act on Item 5(c).

Now Item 7 is, I believe, the next item on our agenda, which is, Consideration and possible action on posting the position of the executive director of the Texas Department of Housing and Community Affairs.

I had been contacted by the governor's office, saying that in light of the legislation we have pending that Ms. Stiner has referred to, the new board -- not us, another board -- will move forward and hire an executive director under that legislation.

They asked me some time ago if our board would move forward and help in that process by going ahead and
posting the position -- and, in fact, there was even some
discussion about interviewing -- so that the new board
would be ready to move forward on that issue.

I told them that, obviously, our board did not
want to do anything to usurp any function of the next
board and were wanting to comply in every respect with the
Sunset legislation and with its intent, as well as its
letter, and said that we probably wouldn't feel
comfortable with doing anything beyond the fact that we
would be happy to post the position so that applications
could be received and a pool of applicants could be
established for the new board to move forward with when
they were in place.

I discussed this with Ms. Stiner some time ago.
And, you know, the question came up based upon an opinion
from our legal department, which was that we could not
post a position that was not open. I reported that to the
governor's office and told them that our legal had told me
that we could not post the position because it was not
open.

That issue has now been addressed by the
attorney general's office, as well as by the governor's
general counsel's office. And they have both told me that
they believe we can post the position so that an applicant
pool can be established for the next board.
So that brings us to Item 7. And, certainly, everybody needs to understand that there's no prohibition whatsoever from Ms. Stiner applying for the job and being the next executive director, in my opinion. I'm not trying to interpret the statute, but there's no reason that that can't be done.

But it does contemplate that the new board will hire an executive director when you read the legislation. So this is in an effort to conform with that legislation.

MR. CONINE: What are the details on posting a job such as this? Is it any different than what we do on -- you know, because I get the letters where -- we've got a little posting letter for various positions. Is there anything different from what we do normally?

MS. STINER: I think this is new territory for this board because the executive director here to date has been a gubernatorial appointee. And when I was hired, it was not relative to any posting. So we'll have to try to figure out how from a board level the posting would be handled. We have no history on that from that perspective.

MR. CONINE: So, Mike, are you -- Mr. Chairman, are you comfortable with the mechanics of posting it at this point?

MR. JONES: Yes. And the mechanics of it that
I would suggest is that we have the Secretary to the board help us with it, working with the general counsel's office of the governor, as well as with the attorney general's office, because that's the only avenue I have in order to accomplish this.

And all I'm trying to do is do an administerial act that's going to further the wishes of the executive branch of government, that we just move forward on behalf of a new board and get them an applicant pool started.

MR. DAROSS: Do we need a motion?

MR. JONES: I think I would prefer it that we do. I think this has been listed as an agenda for action. And if we're going to do this, I would like to have the approval of the board.

MR. DAROSS: Well, I move --

MS. WILLIAMS: So move.

MR. DAROSS: -- that we post it.

MR. JONES: Okay. The motion was made by Ms. Saenz --

MS. WILLIAMS: Ms. Williams.

MR. JONES: It was made by Ms. Williams -- Excuse me. It has been a long day.

MS. SAENZ: Second.

MR. JONES: It's seconded by Ms. Saenz.

Further discussion on the motion?
MR. SALINAS: The AG's -- are we on the right track here by posting the position? I mean, being that we don't have our legal counsel here, you're the next in line. So are we on the right track here by doing this?

MR. WALKER: This is within the Board's authority, yes, sir.

MR. SALINAS: Okay.

MR. WALKER: I would note the agenda item references, "Selection of an executive director by the Board to be appointed by the Governor." That should be, "To be approved by the Governor." The statute requires --

MR. BREWER: Right.

MR. WALKER: -- the governor's approval, and not appointment.

MR. JONES: Well, I guess it's unartfully worded. It was referring -- that, "To be appointed," was referring to the new Board to be appointed by the governor.

MR. WALKER: Oh, yes. Okay.

MR. JONES: Okay.

MR. WALKER: Thank you.

MR. JONES: It's very unartfully worded. I wonder who did that.

(Laughter.)

MR. JONES: Okay? All right.
Okay. Well, we have a motion on the floor, and it has been seconded. Is there any further discussion of it?

(Pause.)

MR. JONES: Hearing none, are we ready to vote?

All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed to the motion, please say nay.

(No audible response.)

MR. JONES: The motion carries.

Our next item is the executive director's report.

MS. STINER: I don't have anything to report, Mr. Chair.

MR. JONES: Okay.

And the next item would be the executive session of the Board.

Okay. On this, the 21st Day of August, 2001, at a regular Board meeting of the Texas Department of Housing and Community Affairs held in Austin, Texas, the board of directors adjourned into a closed executive session as evidenced by the following opening announcement by Presiding Officer: "The board of directors will begin its Executive Session August 21, 2001 at 4:12 p.m.
"The subject matter of this Executive Session deliberation is as follows: Personnel matters; number two, consultation with attorneys concerning pending litigation, Cause Number GN102420, the Encinas Group of Texas and William Encinas versus the Texas Department of Housing and Community Affairs, et al., in the 53rd Judicial District Court of Travis County."

And at this point, we will go into executive session on those matters.

(Whereupon, at 4:12 p.m., the Board met in closed, Executive Session.)

MR. JONES: I'll call this back into session.

We're back into an open meeting.

I hereby certify that an Executive Session of the Texas Department of Housing and Community Affairs, was properly authorized pursuant to Section 551.103 of the Texas Government Code and posted with the Secretary of State's Office seven days prior to the meeting pursuant to 551.0044 of the Texas Government Code and that all members of the board of directors were present, with the exception of Mr. Shadrick Bogany, Mr. James Daross and Mr. Vidal Gonzales, and that this is a true and correct record of the proceedings pursuant to the Texas Open Meetings Act, Chapter 551, Texas Government Code.

The subject matter of this executive
deliberation was as follows. Personnel matters: Action taken, none.

THE REPORTER: Your microphone's not on. I'm sorry.

MR. JONES: I'm sorry. Do you want me to start all over again?

MR. CONINE: No.

MS. WILLIAMS: No.

(Laughter.)

MR. JONES: Consultation with attorneys concerning pending litigation, Cause Number GN102420, the Encinas Group of Texas and William Encinas versus the Texas Department of Housing and Community Affairs, et al., in the 53rd Judicial District Court of Travis County, Texas: Action taken, none.

The board of directors has completed its Executive Session of the Texas Department of Housing and Community Affairs on August 21, 2001, at 4:30 p.m.

MR. CONINE: Mr. Chairman?

MR. JONES: Yes, sir?

MR. CONINE: I'd like to, if I could -- again, not knowing who's going to be back and who's not going to be back, it has been a pleasure to serve on this Board with this group and all the staff that are here.

If we're -- at least, if I personally am not
back, I appreciate all of the efforts that we've made over the -- over time. And we'll, you know, kind of see how -- what the governor's office has in store for the rest of us, but I just wanted to say thank you to everybody.

MR. JONES: I join you. Thank you.

MS. SAENZ: Me, too. And I won't be back.

(Laughter.)

MR. JONES: You've been very kind to all of us. And I would like to say this: We've been through some storms, but the future's bright.

Is there a motion to adjourn?

MR. CONINE: So move.

MS. SAENZ: I second.

MR. JONES: A motion has been moved and seconded. All in favor, say aye.

(A chorus of ayes.)

MR. JONES: The ayes have it.

(Whereupon, at 4:30 p.m., this board meeting was concluded.)
CERTIFICATE

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: August 21, 2001

I do hereby certify that the foregoing pages, numbers 1 through 195, 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.

08/29/01
(Transcriber) (Date)

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