
TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

State Capitol Extension Auditorium
1100 Congress Avenue
Austin, Texas

July 28, 2004
8:00 a.m.

BOARD:

ELIZABETH ANDERSON, Chairman
KENT CONINE, Vice-Chairman
SHADRICK BOGANY
VIDAL GONZALEZ
PATRICK GORDON
NORBERTO SALINAS

STAFF:

EDWINA CARRINGTON, Executive Director
CHRIS WITTMAYER
BROOKE BOSTON
SARAH ANDERSON
TOM GOURIS
JENN JOYCE
ERIC PIKE

I N D E X

Index file is in separate Word file on disk, 728bdx, and comprises pages 2-9.

P R O C E E D I N G S

MS. ANDERSON: Good morning, everybody. I want to welcome you to the July 28 board meeting of the Texas Department of Housing and Community Affairs. Appreciate you being up early with us this morning and I appreciate you coming to order on your own.

We have a long agenda today and a lot of people that want to make comments, so we will get started. First item of business is to call the roll. The Chair, Beth Anderson, is here. Mr. Conine?

MR. CONINE: Here.

MS. ANDERSON: Mr. Bogany.

MR. BOGANY: Here.

MS. ANDERSON: Mr. Gonzalez.

(No response.)

MS. ANDERSON: Mr. Gordon.

MR. GORDON: Here.

MS. ANDERSON: Mayor Salinas.

MS. SALINAS: Here.

MS. ANDERSON: So we have five present at present, and we do have a quorum.

The board will solicit public comment at the beginning of the meeting. You have an option to either speak here at the beginning of the public comment period

or when the actual agenda item is presented. And if you wish to speak, you need to complete a witness affirmation form and provide it to the court reporter.

The first gentleman for public comment is Representative David Farabee.

REPRESENTATIVE FARABEE: Thank you, Madam Chair, board members, ladies and gentlemen. I rise this morning to address the matter of the Gardens of Burkburnett. I think this would be number 04-173. And in the interest of time, I'll just read this letter into the record, if you please.

"Dear board members, Thank you for the opportunity to express my very strong support for the Gardens of Burkburnett's tax credit application. I understand this application was recently taken off the recommended list by a retroactive scoring change. It has also been brought to my attention that this is the second time this particular application has been removed from the list through no fault of the Gardens of Burkburnett.

"This much-needed development for our area there in north Texas has the whole-hearted support of our local and state leaders, as well as the community at large. Much work has already been done locally toward this development, which is currently in a position to move

forward with a committed list of residents. Under these circumstances I believe further consideration is needed since this application was previously recommended twice.

"The community of Burkburnett is overwhelmingly in favor of this project, which fills a vital need for the citizens of this wonderful city. I respectfully request approval for this application or a forward commitment of next year's allocation to go forward -- go toward this very worthy project of north Texas.

"The Gardens of Burkburnett has my full support, and I stand ready to assist in any way to make this project a reality for our district. Your favorable consideration for this application will certainly be appreciated. Please let me know if I may offer any additional information or assistance. Thank you."

MS. ANDERSON: Any questions?

(No response.)

MS. ANDERSON: Thank you, sir, for being here.

Chris Hosek from Representative Elizabeth Ames Jones' office.

MR. HOSEK: Good morning. My name's Chris Hosek, and I am the legislative director for Representative Elizabeth Ames Jones. Unfortunately, Representative Jones had a conflict this morning and she

will not be able to attend, so I will be speaking in her place. I'm going to be reading this morning from a letter dated July 27, and make it available as I speak.

"Dear board members, I would like to register my support as the state representative from San Antonio District 121 for Seton Home Center for Teen Moms. That's TDHCA number 04149.

"Seton Home Center for Teen Moms is a transitional housing project that will accommodate 24 homeless pregnant or parenting teenage mothers ages 12 to 19 and their babies. These teens have suffered physical, sexual, and emotional abuse, neglect, and abandonment. The average age is just under 16. Intervention is essential in order to break the cycle of abuse and neglect and give these teenagers a chance to preserve their families and become productive citizens.

"The project will be operating in conjunction with an existing 24-unit facility in San Antonio that draws teens from all over the state of Texas. Seton Home's mission is to help these young women complete their high school equivalency or high school education and provide vocational training and essential life and parenting skills.

"The proposed project is sorely needed in Bexar

County. The birth rate for young mothers under the age of 15 is twice the national average. And in some pockets of San Antonio, it's four times the national average. The current facility must regularly turn away teens and their children due to lack of capacity.

"The project is a nonprofit application that formerly stood as a high-scoring application in the state with 163 points under the original QAP scoring criteria. When the Attorney General's opinion required that the QAP scoring criteria be restructured, Seton Home Center for Teen Moms was one of the hardest-hit project, losing 15 points of the 22 points previously awarded for 100 percent transitional housing.

"Although it's a high-scoring application, I'm aware there are limited tax credit allocations available for Region 9 urban and exurban projects.

"I want to recommend the Seton Home Health Center for Teen Moms to the board as a particularly deserving project. I request your approval of the tax credit application for Seton Homes for Teen Moms. This benefits -- the one-time allocation will be multiplied many times over for 24 teenagers and their children. Sincerely, Representative Elizabeth Ames Jones."

Thank you for your consideration.

MS. ANDERSON: Any questions?

(No response.)

MS. ANDERSON: Thank you, sir.

Sally Gaskin. And at this point we have a lot of people, of course, that want to make comment today. So we're going to, as is our practice, ask that you limit your comments to two minutes. And Ms. Groneck will help us kind of keep that on track. Thank you for your understanding.

MS. GASKIN: My name is Sally Gaskin, and I am the applicant sponsor for 04041, Mesa Senior's. And I just come before the board today to ask a couple of -- few considerations.

Mesa Senior's scored competitively. Unfortunately, we were conflicted out due to the one-mile rule. And there were -- the allocation -- or the recommendation for the application that we were conflicted out -- now it has some conditions.

And what I would request -- those conditions are stated in the recommendation to be satisfied by the construction loan closing, not carryover. And as we all know, that can get -- that takes a lot of time. I would, you know, respectfully request that the board consider making those conditions be satisfied by carryover to give,

you know, anybody on the waiting list -- and, hopefully, Mesa Senior's would be on the waiting list -- in the event that, you know, something happened that that application could not close.

Secondly, the -- I ask that the flood zone be recertified for all applications in Harris County. I don't know whether the board's aware, but Harris County is being completely remapped due to tropical storm Allison. The maps have started coming out. They are releasing maps every Monday.

However, the new maps did not start coming out until after the application due date. And from what we have seen so far, the maps are changing the flood zones quite substantially, and, particularly, in the Greens Bayou and tributary areas. It's -- they are expected to change very significantly. That was, of course, the area that flooded the worst.

And beyond that, just, again, respectfully request that Mesa Senior's be placed on the waiting list in the event that that -- my competitor doesn't close for any reason. Thank you.

MS. ANDERSON: Thank you. Barry Palmer? And the next person will be Tamea Dula.

MR. PALMER (from audience): [inaudible].

MR. FORSLUND: Good morning. This is with regard to Churchill at Commerce, TDHCA number 4118, which is an application in Region 3 in the rural set-aside. We're asking the board to reconsider fully funding Region 3 and funding this application.

We'd like to point out a couple of items just with regards to the way the money was allocated in this region. Number one, only 6-1/2 percent of the whole allocation was allocated to the rural region, thereby, in itself, limiting the number of applications in a very large region. This is versus the state average of 24 percent. By adding our application, we still would be at 12 percent and still well under the state average.

The only application funded in the rural set-aside is a USDA application that's using 36 percent of the total allocation versus 5 percent as the requirement. As a result, there will be no new construction in any rural markets in Region 3.

In terms of the application itself, it is the highest scoring application in the rural region by 17 points. It has very strong political support. We have received -- and, by the way, no opposition at all at any level. We've received a support letter from Senator Robert Deuell, State Representative Dan Flynn. In his

letter he said, I commend you for identifying the need for affordable apartment residences which will benefit the community and the Texas A&M University Commerce campus.

We have a support letter from the county judge, Honorable Job Babbitt. We have a support letter from the mayor and all the city council members, and each one individually signing in support of this.

We have a letter from Fred Eaton, the director of community development. And I quote: "As community development director for the City of Commerce, this letter is a confirmation that the proposed 100-unit family apartment community will help fulfill the need for more affordable housing in the City of Commerce, and the site is contained within the city comprehensive plan.

"The Chamber of Commerce" -- and I'm running out of time -- they also provided a strong letter of support and the strong need for affordable housing in their economic development efforts.

MS. ANDERSON: Could you state your name for the court reporter?

MR. FORSLUND: Oh, I'm sorry. It's Brad Forslund.

MS. ANDERSON: Thank you, sir.

MR. FORSLUND: You're welcome. I'd also like

to --

MS. ANDERSON: I need to ask you to wind up.

MR. FORSLUND: Okay. I will. I'd like to point out that we received \$150,000 federal home loan bank grant that will expire by the end of the year if we do not close. And that also that the City of Commerce has not had a new tax credit deal in seven years. And if you look at the market study, it produced a capture rate of 17 percent. So there is a strong need for affordable housing in Commerce.

So, with that, I would request that you fund this application. Thank you.

MS. ANDERSON: Thank you. Tamea Dula?

MS. DULA: I'd like to give my minutes to Tony Sisk.

MR. SISK: Good morning, board. My name is Tony Sisk, principal in Churchill Residential from Dallas. And I'm speaking today for Tyler Senior Community LP, application number 04121.

This application was on the recommended list until last Wednesday and was taken off of the list in order to fund a smaller transaction in the region, leaving this region \$440,000 underfunded. And we're asking that this region be -- that this transaction be funded in order

to use this underfunding and a little bit of excess. The urban excess set-aside -- the urban/exurban set-aside in Region 4 is only 38 percent versus the statewide average of 75 percent.

We believe that the practical effect of changing the at-risk rules to a regional basis when there's such a small allocation of money to urban/exurban dilutes the situation where it makes it virtually impossible for any new construction to be built. One at-risk transaction is using 87 percent of the entire urban/exurban allocation, and it's only 15 percent is required.

I believe that when the at-risk rules were put into effect that the allocation between urban and X urban may not have been fully thought through with the diluted effect. Tyler Senior Community had a score of eleven points higher than the next high -- the next scoring application in the entire Region 4, including urban and urban/exurban.

We have strong support letters from Mayor Joey Sieber [phonetic], State Senator Bob Deuell, State Rep Leo Berman. We have a city council resolution. We have a strong support letter from county judge Becky Dempsey, as well as a strong neighborhood support. The pastor of the

church next door has called me probably six times, you know, hoping that this transaction will be funded.

We have an approximate \$200,000 federal home loan bank that has been granted in advance for this transaction that would be lost if we don't fund by the end of '04. And there has not been another senior affordable tax credit development in Tyler in about seven years.

So we're asking that Region 4 be fully funded. And please give consideration to the effect of the at-risk rules with regard to the allocation of the -- the low allocation of urban/exurban of 38 percent versus the statewide average of 75 percent. Thank you.

MS. ANDERSON: Mr. Palmer?

MR. PALMER: My name is Barry Palmer, and I am speaking on behalf of Churchill at Commerce and Tyler Senior Apartments, the same two projects the last two speakers spoke about.

And I would ask the board to consider that Regions 3 and Region 4 are both underfunded. They are the most underfunded regions in the state with the exception of Region 13, which has already funded all qualifying applications.

I know it's a challenge for this -- for the staff with all the breakdown of the regions, the

requirement to fund at-risk, the requirement to fund nonprofit -- it's impossible to get it to come out exactly right. But there are some regions that have ended up substantially overfunded, and these two regions have ended up substantially underfunded.

In Region 4, for example, it's underfunded by 440,000, which makes up over 22 percent of the allocation that's supposed to go to Region 4. And as a result of that, the highest scoring deal in Region 4, our Tyler Senior Apartments, is not being recommended.

What I would suggest that the board consider is fully funding Regions 3 and 4 and treating the overfunding in the regions that are overfunded as forward commitments.

This would allow Regions 3 and 4 to at least get the money that was allocated for their region. It would allow for the highest scoring deal in Region 4 to be funded. It would allow for at least one new construction deal in Region 3 in the rural set-aside, whereas right now there are none.

So that is our request to the board to consider. Thank you.

MS. ANDERSON: Tina Brooks. And the next person will be Juanita Bamas from San Antonio.

MS. BROOKS: Good morning. I'm here to talk

about the Converse Village Apartments, project number 04218. But I'm going to ask if we could make our comments during the appeal period because I was just informed by Delores Groneck that the staff appeal --

MS. ANDERSON: That's fine. Okay.

MS. BROOKS: I didn't know that the staff had --

MS. ANDERSON: That's fine.

MS. BROOKS: Okay.

MS. ANDERSON: Ms. Bamas? If you want to make your comments at the agenda item rather than now then you just -- you can just tell me that from where you sit. I'm sorry.

MS. BOSTON: I just want to clarify that the development she's wanting to speak on though is not on a further agenda item. It's not an appeal that was timely filed, and, therefore, is not on the agenda for an appeal. So she may want to speak now.

MS. ANDERSON: Well, is it on 2b? Is it on the list?

MS. BOSTON: It's on the long list of 182 applications to be considered for the 9 percent, but not as an appeal. I just wanted to clarify.

MS. ANDERSON: Thank you.

MS. BROOKS: [inaudible]. We can make our comments during [inaudible].

MS. ANDERSON: Yes. And then you need to file an appeal according to the Department's rules for filing an appeal.

MS. BROOKS: And I actually have a copy here. I did file an appeal in a timely way for the board appeal. It was filed on July 20 in the event I didn't get a response from staff on time.

MS. ANDERSON: Would you go ahead and make your comments and then we'll ask the staff to address this?

MS. BROOKS: Okay.

MS. ANDERSON: Okay?

MS. BROOKS: And there are two speakers on this item. I represent the development team for this project. What I'd like to do is outline the context for our remarks this morning and then ask Sam Hughes, who is a member of the Converse Lions Club and also the city manager for Converse, to read a letter that he wrote into the public record.

We're here because the community support letter that came from the Converse Lions Club was denied due to insufficient documentation provided to show that the organization is a neighborhood organization within the

meaning of the requirement.

And as you know, there are two criteria for a neighborhood organization in a QAP. The first is that the organization is on record with the state or county, and that is absolutely something that was proven and is not an issue here.

The second criteria is that the primary purpose of the organization is working to effect matters related to the welfare of the neighborhood. And to this end, the Converse Lions Club letter stated that their mission was to create and foster understanding by providing voluntary services through community involvement.

And they also provided a web link within the context of their letter that outlined a number of community activities that they've accomplished, starting with the donation of a city park, the pavilion in the park, various park improvements, donation of playground equipment, and quarterly contributions to the Converse Library. It's actively responsible for starting that.

I believe that the difficulty in this letter being accepted is due to staff decision made subsequent to the publication of the QAP and made clear by TDHCA's counsel in the last board meeting.

And the comments made then were that a

neighborhood organization is an organization of people living near one another and having a primary purpose of working to effect matters related to the welfare of the neighborhood.

We're here just to say that the Converse Lions Club is this type of organization. All the members are members of Converse -- residents of Converse. The Lions Club is a local organization with a separate charter. It operates independently, and they're all working to support neighbors living near one another.

MS. ANDERSON: Thank you.

MS. BROOKS: And then I'd just ask Sam to read the letter into the record.

MS. ANDERSON: What is your name, sir, because I don't have a form -- a witness affirmation --

MR. HUGHES: I signed up for the appeal process against 04218.

MS. ANDERSON: Okay. Thank you.

MR. HUGHES: I'm Sam Hughes.

MS. ANDERSON: Thank you.

MR. HUGHES: Please allow me to read this letter into the record. I'm the city manager of Converse. I've held that position for ten years and I've been a member of the Lions Club for about 12 years.

Please allow me to clarify the role of the Converse Lions Club as a neighborhood organization within the City of Converse. The Converse Lions Club has been second only to the Converse municipal government in sponsoring and promoting development of the community.

The Converse Lions Club has purchased and donated 35 acres of land for the Converse city park. The Converse Lions Club financed the construction of the pavilion and adjacent restrooms in the city park. The Converse Lions Club donated \$5,000 to start the public library, and has made many contributions to finance the operations and the maintenance of the library over the years. Converse Lions Club contributed over \$5,000 for replacing children's playground equipment in the city park.

Additionally, the Lions Club has sponsored the annual Queens contest for scholarships for more than 25 years. They have contributed financing the operations of the Converse Animal Shelter.

In the context of a small city that has grown from 3,300 people in 1980 to approximately 13,000 today, the Converse Lions Club has been the prevailing source of influence and assistance in community development.

Let me say that the Converse Lions Club

predates the actual city incorporation. It has been active in the city since the forties. We were actually incorporated in 1961. So I know that the general context is the Lions Club stands for promoting eyesight. In our particular community, it is a backbone organization for promoting community facilities. Thank you very much.

MS. ANDERSON: Thank you, sir. Sam -- I mean, Lacey Lucas?

MS. LUCAS (from audience): [inaudible.]

MS. ANDERSON: Great. Thank you. Okay. Juanita -- it's hard to make this out, and I'm sorry for that. It's an address at 1014 South San Eduardo in San Antonio.

(No response.)

MS. ANDERSON: Not here? And also Carlos Moreal?

(No response.)

MS. ANDERSON: David Marquez -- the group for 04074.

MR. MARQUEZ: I believe they're going to pass their time to me.

MS. ANDERSON: Okay. And your name, sir?

MR. MARQUEZ: David Marquez.

MS. ANDERSON: Thank you.

MR. MARQUEZ: My name is David Marquez, and I'm here to speak in behalf of Urban Progress Corporation, a 501(c)(3) nonprofit that has owned Las Palmas Garden Apartments for almost 40 years.

What I'd like to do -- I never know what to say when I come up here because I don't like preaching to you guys. But I've got to ask you -- can you please turn to your board book, page 2, I. It's under at-risk allocation, because I had more of a question than I do -- it clearly states an at-risk set-aside, which is state legislated, also requires that at least 15 percent of every region's allocation be awarded to existing developments that are at risk of losing their affordability.

And I understand that the staff and the board has done a very good job because there are nine regions that are overfunded at risk, there were three regions that had no at risk, and then one region, which is the region I'm here to speak about, Region 9, was underfunded.

Now, over the last couple of months we have brought political people, we've brought residents, we've had support from our residents. In fact, a couple are here today. We've brought at least 15 through all the public hearings. We've included 57 letters of support

from residents themselves; some of them that have lived there over 20 years.

They've told you about no A.C., no heat, trying to update the apartments. But I guess what I'm trying to figure out is that, if this is state mandated, and we were only the second application in the region, why we were not considered for funding. And that's basically what I'd like to know.

MS. ANDERSON: Any questions?

MR. SALINAS: What's the name of the project?

MR. MARQUEZ: Las Palmas Gardens Apartments.

MR. SALINAS: It's in San Antonio.

MR. MARQUEZ: Yes, sir. It's an at-risk property. It's I believe about 39 years old. And I understand that it's a priority from the state legislature, from the board, from the staff that -- it seems like we're falling in between here. And I would just like to live up to the letter of the law type of thing.

MR. SALINAS: And you're saying that we have overlooked the at risk?

MR. MARQUEZ: Well, it's underfunded in Region 9. And I do know in the other nine regions it's overfunded.

MR. SALINAS: Which of the other regions that you think that --

MR. MARQUEZ: I have them listed. Region 1, Region 2, Region 3, Region 4, Region 5, Region 6, Region 7 -- Region 8 has no at risk -- Region 10, Region 11, Region 12 -- and Region 13 had no at risk.

MR. SALINAS: What's the answer from the staff?

MS. ANDERSON: Well, this is a public comment period, so --

MR. SALINAS: He's not going to be on the agenda.

MR. MARQUEZ: No, sir, I was told that I didn't have the -- an appealable appeal.

MR. SALINAS: Oh, on the appeal.

MR. MARQUEZ: Yes, sir.

MR. SALINAS: Okay.

MR. MARQUEZ: I appealed it, but I do not have an appealable appeal.

MR. SALINAS: Okay.

MS. ANDERSON: Thank you.

MR. MARQUEZ: Okay. Thank you.

MS. ANDERSON: Diana McIver? And the next person will be Michael Esparza.

MS. MCIVER: My name is Diana McIver, and I'm

here on behalf of Victoria Housing Authority -- and that's project number 04216. Victoria Housing Authority, Thomas Ninke Senior Village, scored 154 points. It is the highest scoring application in this region, and it's the highest scoring application in the state that did not receive an allocation of funds that didn't have something else like a violation of the one-mile rule or something like that.

And as you know from -- Representative Morrison was here at the last meeting, as well as city council -- has tremendous local support. That region, as of this morning, is about 200,000 underfunded. And the reason this application did not get a recommendation I believe is simply because the at-risk requirement in Region 10 took up all of the urban funds.

So what I'm here to ask is -- Victoria takes about 440,000 commitment of credits. I'm here to ask, since there's an extra 200,000, that you consider awarding credits for Victoria project 04216. Thanks.

MS. ANDERSON: Thank you. Mr. Esparza? And the next person will be Dorella Elizondo, David Vela, Yolanda Moran, Bill Brown.

MR. ESPARZA: Thank you, Madam Chairman, members of the board. I am Michael Esparza with the City

of Alice. I'm the mayor pro tem there.

And I'm here to express a concern. And we were here to -- we thought we were on the recommendation list, so we're here to speak for that. But we found out this morning that we're not on the recommendation list. And I'm just here to find out maybe from the board or from staff as to what changed from yesterday to today as far as taking us off that list. And I'd like to toss that back and wait for an answer possibly.

MS. ANDERSON: This is a public comment period.

MR. ESPARZA: Okay.

MS. SALINAS: When will he be able to ask and to get an answer? What number?

MR. ESPARZA: 04050, Alice San Diego Creek Apartments.

MS. ANDERSON: Can we have the rest of the public comment on this one, please -- if you all will just come down one after the other. Then when we finish the public comment on this project -- I'd ask you to just make brief remarks. Okay?

MR. ESPARZA: Thank you.

MS. ANDERSON: Thank you.

MS. ELIZONDO: Hi. My name is Dorella Elizondo, and I am on the city council, City of Alice.

And I'm representing agenda item 04050, San Diego Creek Apartments.

And we thought we were coming in to say thank you for the recommendation and to let you know that we've had over -- at every hearing we've had over 28 people come in to show our support for the apartments -- to tell you that it's very necessary in our community.

That we appreciated being considered and that we've had so many people who've supported us, as far as politically, organizations, our state representative, our senators. We've had everyone -- we thought we had everyone, you know, showing our support. All of our letters are recommendations.

And this morning, you know, we drove four hours and come in, and we were told that we didn't have a recommendation, and so we're at a loss. And it would be a true shame to lose this housing opportunity.

I wanted to just end with a quick story is that we had at one of our -- at one of our public hearings we had a client who was living at the Housing Authority in one of their apartments because it was handicap accessible, and his wife couldn't live with him because there was not enough room.

So we have an elderly gentleman who has to live

separate from his wife because there's not adequate housing for our community for our geriatric and for our handicapped and for our at-risk single families. So those are considerations that we hope you would take into account. Thank you for your time.

MS. ANDERSON: Thank you.

MS. MORAN: Good morning, Mrs. Chairman, members of the board. My name is Yolanda Sosa Moran. And at this time -- we've come a long way, and we've discovered that we were on the recommended list and then were pulled. I'd like to give my time, if I can, to Mr. Bill Brown, who is with us in supporting our project.

MR. BROWN (from audience): [inaudible].

MS. MORAN: Okay.

MR. VELA: Good morning.

MS. ANDERSON: Let me just -- sorry to interrupt just a second. If you want to cede time, then you can do that from where you sit. You don't need to come to the podium, because it just takes time to come to the podium and make that request. You can just do that from where you sit. Thank you.

MR. VELA: Once again, good morning. My name is David A. Vela. I'm the assistant city manager with the City of Alice here to speak on behalf of project 04050,

the San Diego Creek Apartments.

Once again, I'd just like to echo the sentiments of Honorable Mayor Pro Tem and Councilwoman Elizondo. Woke up this morning very early, traveled to get up here only to find that, for one reason or another, the commitment was pulled.

I think -- well, I know for a fact that Alice does need affordable housing, as many other communities in the state do. The particular area that this project is being considered for is an economical disadvantaged area, which would have greatly benefited from this type of development.

And should the board decide that, for whatever reason, this is not appealable, it's certainly worthy of receiving a forward commitment for tax credits in the future. And that's all I have this morning.

MS. ANDERSON: Thank you. Mr. Brown?

MR. BROWN: Good morning. My name is Bill Brown. I'm here to represent San Diego Creek Apartments, 04050.

I've been working with the City of Alice for a number of months. And the community of Alice -- they came out and have supported this with multiple letters from the community. The city has spent timeless hours working to

support this project, and this project, the same as all the projects in the Valley, are in dire need of housing.

It's been an interesting process. Originally we were -- at one point we were tied with the project of one of our competitive projects. We were tied when I got my one-point neighborhood. I felt like we would have won in a tiebreaker.

Then, with the AG rulings, we went behind, then we came up and went ahead because the -- the competitive project had points removed from leveraging. Then we went -- this morning we found out -- because apparently something's happened in the last three or four days or two days that we didn't know about.

Basically, I'm just saying that I'm competing against a project that is winning on a leveraging letter that's three paragraphs. And the result is I don't think they have board authorization from the Housing Authority Board to -- in other words, given authorization from the Board to be able to sign such a letter.

And I don't think they advertised. I think there's a whole set of federal regulations and rules that have not been followed by the Housing Authority. And to award points in that category just isn't right because there's a bunch of rules and regulations that have not

been followed.

I think that will be spoken to -- and you'll hear, I'm sure, from my competitive project about that. I appreciate it and I look forward to seeing what happens. Thank you.

MS. ANDERSON: Now, Doak Brown. Is there --

MR. BROWN (from audience): I'm going to forgo my time [inaudible].

MS. ANDERSON: Okay. Thank you. Mr. Fitzgerald? The next person will be Manuel Diaz Garza, then Enrique Barrera.

MR. GARZA (from audience): [inaudible]
Barrera.

MS. ANDERSON: Okay. Thank you, sir.

MR. FITZGERALD: Good morning to the members of the TDHCA board. My name is Rodric Fitzgerald, and I represent the American Opportunity for Housing, Incorporated, 501(3)(c) nonprofit, on the project Vista Del Sol, Rudy C. Perez Senior Apartments, which is application number 04258.

We're here today simply to speak on behalf of this project. And there are just several comments I would like to make.

The first is that the original list of the

nonprofit set-aside applications did recommend Vista Del Sol for funding. And at that time there were adequate funds available for the project.

Secondly, Vista Del Sol did not receive funding under the second and third lists of recommended applications due to the exhaustion of credits available in its region and not due to the noncompetitiveness under the new scoring calculation.

Thirdly, the shortfall in 2004 credits is due in part to a 2003 forward commitment in the amount of over a million dollars. Now, but for that forward commitment, Vista Del Sol, which is asking for \$745,000 in credits, would be funded in this region.

Fourthly, Vista Del Sol received virtually unanimous support via letters on file from area community organizations, neighborhood organizations, and every elected official from the local to the congressional level representing the community which include the Edgewood Neighborhood Association, COPS Metro Alliance Housing Committee; Richard Bocanegra, who is the supervisor of the Edgewood ISD; San Antonio city councilman Patti Radle of District 5, County Commissioner Paul Elizondo, Precinct 2; the San Antonio Mayor, the Honorable Edward G. Garza; State Representative Joaquin Castro of District 125; State

Senator Leticia Van de Putte of District 26; and Representative Charles A. Gonzalez of the 20th District of the US Congress; and certainly last but not least, Archbishop Patricio Flores of the Archdiocese of San Antonio.

Therefore, based on that overwhelming support for this project from the community and all the elected officials that represent this community, based on the fact that our good faith effort to ensure that this project adhered to both the letter and the spirit of the 2004 QAP, and, thus, was one of the highest scoring nonprofits in the state, and, based on the fact that this project was originally recommended for funding, we suggest that it is only fair, and we respectfully request that the board recommend this project for a forward commitment in 2005. Thank you.

MS. ANDERSON: All right. Mr. Barrera?

MR. BARRERA: Good morning, and thank you very much for the opportunity to come before you. My name's Enrique Barrera. I'm a city councilman with the City of San Antonio, District 6. And I'm here to speak on behalf of application number 04258, the Rudy C. Perez Apartments, which are in my district, District 6 of the City of San Antonio.

The project was recommended originally, and that's why I come before you. It is a worthy project that addresses the housing needs -- the affordable housing needs of many of the families in San Antonio, but, specifically, families in my district, District 6.

The project itself, of course, is worthy. It was -- it has been shown. You've heard the previous comments on the project. You've heard the support that it has among elected officials, people in the community, the churches. And it is also -- it's a project that will complement and continue the City of San Antonio's investment and commitment to this community -- to this area of San Antonio.

And the investment -- among other things, a showcase of affordable homes in the area -- 53 new homes that are being built in District 6, my district, to address the housing needs. And so what this does is that it complements what the city is doing to address the needs, and, especially in this case, the specific housing needs of families in this area, among other things. This is just one of them.

So what we're asking is that this board consider a forward commitment to 2005 for this project to be funded. Thank you very much for your time.

MS. ANDERSON: Thank you, sir. Alan Burrows with Representative Wohlgemuth's office. The next person will be Cindy Marquez.

MR. BURROWS: Good morning, board members. My name is Alan Burrows, and I'm with the office of Representative Arlene Wohlgemuth. I'm here to show support of Country Lane Seniors Temple Community, TDHCA number 04017, and read the following statement on her behalf.

Mr. Ken Mitchell, the developer, has a similar project located in my district, Buena Vista Seniors. This 230-unit development has been very successful, increasing the number of affordable housing options for our seniors, and becoming a valued part of the community. I have no doubt Mr. Mitchell's proposed project, Country Lane Seniors Temple Community, will have the same positive impact in Temple that Buena Vista Seniors has had in my area.

I would also like to note the extensive support Country Lane Seniors has received in the community. City, state, and county-elected officials, the Chamber of Commerce, Temple ISD, and the local Area Agency on Aging, as well as neighborhood organizations have all written letters of support.

In making a decision I strongly urge you to consider the factors that are most important to a project's success, the past performance and success of the developer and strong community support for the project. Thank you.

MS. ANDERSON: Thank you. Representative Bob Hunter.

REPRESENTATIVE HUNTER: Well, thank you so much for letting all of these good folks come before you and for your service to our great state in spending all of this time. Having the privilege of serving on the Urban Affairs Committee, I know Ms. Carrington very well on this team that she works with in supporting your efforts.

And I especially wanted to hear this morning, Ms. Anderson, all of the comments from across the state, because it helps me to understand as a member of the committee how -- the frustration level is over the state for all of these projects that are so valuable to us and so very much needed.

And I'm here on behalf this morning of a district effort in my area of Abilene -- just outside the city of Abilene, the Gardens of Tye. And they, too, like so many others, thought that they were in the money in order to go ahead and provide the necessary housing for a

small community like this, which is just struggling to be dynamic and stay alive and well.

Our Office of Rural Affairs is helping all of our communities just like Tye in order to develop and to foresee and to keep our rural Texas all over our state alive and well. And so, therefore, I was disappointed, along with many others in this room, when all of the changes occurred. And I feel like I'm almost responsible for all of this problem here because I sit on the committee.

And I want to work with Ms. Carrington and all of you in order to see what in the world we can do to help more of our communities across the state because of the expressions just this morning.

And certainly this forward commitment funding -- I'm all for that, and, especially, since I believe you have set aside a meeting in August to help you to do that and to help move forward all of these projects that are so very valuable, just like the one that I'm so familiar with and we've been so pleased in Abilene to have affordable housing go forward with both the private and the public sector, the nonprofit, as well as the for-profit sector working together over our state.

And I'm very excited about all that we can do

in the next session of the Legislature to address the needs that we have over the state in this area. And I know that you all as board members are wanting to help our Governor -- our state leaders.

I especially have worked closely with Ms. Anderson, and we just commend you for the effort that you're making this morning to try to redress and address these appeals. And we are glad that each of us has had the opportunity just like the Gardens of Tye, which is 04-172.

And 04-172 is the Gardens of Tye project where it's had tremendous community support in a very small area like this. We have the seven regions of the state where the Governor has economic development people going forward to help our smaller communities. And we know that our cities -- our big cities must be vitally alive as well. But it's just so important to keep our smaller communities going forward in this regard.

And so I'm very much for the forward commitments, Ms. Carrington, and all that you all are trying to do. And please know that I'm fully supportive of the efforts you're making this morning. I appreciate every one of you and the help that you're giving us. Thank you so much.

MS. ANDERSON: Thank you, sir. Cindy Marquez?

MS. MARQUEZ: Good morning. My name is Cindy Marquez. I just want it for the record I'm talking about application 04074, Las Palmas Garden Apartments. On the list it still has that we're in a one-mile conflict, and that application has not been on the list for several board meetings. So I just wanted to clarify that for the record.

MS. ANDERSON: Thank you.

MS. MARQUEZ: We are not in a one-mile conflict.

MS. ANDERSON: Thank you. Before we -- that's the end of the witness affirmation forms that I have for the public comment period itself. Before we proceed with the agenda, may I ask Ms. Boston to address this question about San Diego Creek and the reason that the list changed? I'll come to you. Just a minute.

MS. BOSTON: Definitely. Brooke Boston. I'm the director of multifamily finance production. And I'll expand on this a little bit more when we get to this agenda item, but basically there were some scoring changes since the board book went out.

One of the circumstances was that in Region 9 -- excuse me -- Region 10 rural the development Sierra

Royale, 04302 -- their score went up substantially. And therefore they had the highest score and were placed into the cut A category for an award. And unfortunately that bumped down the person who had the lesser score, which, in this case, was San Diego Creek.

MS. ANDERSON: Okay.

MR. BOGANY: Did -- or why did the score bump up so high?

MS. BOSTON: There had been some communications with one of the HUD offices, and they initially had indicated they had some concerns with us giving points for certain applications which had gotten -- you could get certain points if you had development-based vouchers.

And the PHAs themselves had written evidence for those. They had sent in letters saying, We commit X number of project-based vouchers for X amount of years. We found that evidence to be acceptable. And then one of the HUD offices had voiced some concern, so we took points away from this project, Sierra Royale.

Subsequently, the HUD office got back in touch with us and said they actually were okay with us moving forward with this, and that as long as we found the evidence to be acceptable, they were okay with it. So we reinstated the points. And unfortunately that all

happened at the very -- like the last few days.

MR. SALINAS: That means San Diego Creek Apartments loses out on --

MS. BOSTON: Correct. I mean, since we have to do this based purely by score, the higher scoring development is Sierra Royale.

MR. SALINAS: How did the points get out two years -- I mean, two weeks ago for people at San Diego to come in and -- San Diego Creek apartments to come in thinking that they had been approved and then they find out this morning that they are not?

MS. BOSTON: Right. Well, when we put the book up last week on the 21st, it was based on all the information we had at that time and all the scores that were in place at that time.

In this case, because the HUD office got in touch with us after the book went up, we -- I mean, we feel like to be fair to the applicant Sierra Royale if the HUD office says that they're okay with them having those points back, that we need to give them their points back.

And unfortunately that changes the list from what we put in the book.

So whenever that happens -- I mean, we definitely -- if we hear anything that causes us to change

a score, whether it's positive or negative, all the way up until, you know, last night's running of this list, we do that to make sure that our figures are accurate and fair.

MR. SALINAS: Is there anywhere that you could do some -- consider some forward commitments for San Diego Creek?

MS. BOSTON: My understanding is that will be August board meeting.

MR. SALINAS: In August?

MS. BOSTON: Uh-huh.

MR. SALINAS: Well, that's what I want to do, consider them and probably some forward commitments for the next project to consider them. For them coming in here thinking that they had been approved, coming to thank us for the commitment, and then they -- or scores changed and now they know that they're not going to get anything,

I just want you all to consider what we can do on the August --

MR. CONINE: Brooke, which HUD office are we dealing with on this one?

MS. BOSTON: San Antonio.

MR. CONINE: Okay. Thank you.

MS. BOSTON: And we did communicate with all the HUD offices to be sure that they all knew what was

going on.

MS. ANDERSON: Thank you. Bonita Williams?
Ms. Williams, would you proceed?

MS. WILLIAMS: Yes. I'm Bonita Williams. I'm an applicant seeking an allocation for housing tax credits for Nacogdoches Senior Village, number 04072.

My application has been evaluated and scored by the Department, and I have no -- but I don't think it's been to underwriting. I have no argument with how my application was scored. In fact, every -- all points in each category that I asked for I was awarded.

But since I'm satisfied with my application, I have no appeals process to go through. But my concern today is the manner in which another application in the same region was handled by the Department.

That Department [sic] is Pineywoods Community Development, number 04066. I heard that this application failed to satisfy pre-application and application threshold criteria, yet continued on through the process and was scored and ranked.

A letter that I sent to Ms. Edwina Carrington on June 23 is attached, detailing these matters, and as is Ms. Carrington's reply dated July 19. And I think it's all pretty self-explanatory. I'll go through the items or

not, depending on what you want to do.

But, board members, I find that the language in legislation and the language in the QAP is clear. Yet, this application was allowed to circumvent rules that are stated so clearly. Allowing one application to do this is disheartening to applicants that strictly adhere to the rules.

I think this erodes confidence and integrity and the authority of the QAP. I think it erodes confidence in the Department's and the board's ability to fairly score and rank its applications and allocate credits.

And, board members, I just ask you today to ensure that all applicants be treated fairly and with strictest adherence to legislation and the QAP rules and guidelines.

MS. ANDERSON: Thank you. Susan Moore?

MS. MOORE: Good morning. I'm Susan Moore. I am newly elected to the city council in Goliad. I am here in reference to application number 04082, the Fenner Square project.

When campaigning for city council -- I was elected in May of 2004 -- I did a lot of walking door to door and telephoning. And the majority of people who

spoke to me concerning this project were in opposition to that. I can only remember one lady who spoke to me in favor of the project.

On April 20, 2004, prior to me being elected, city council voted in opposition to this project. Had I been on city council at the time I, too, would have voted in opposition to the project. Again, on May 20, 2004, Mr. Driggers again requested a letter of support from the city. Once again the city council took no action on that, reiterating that they did not support the project.

My hope today is that you will seriously consider our opposition to this project for the City of Goliad. I'd like to defer the rest of my time. Ella?

MS. ANDERSON: Ella Dee Bess. And then Roney Powell.

MS. BESS: Good morning. My name is Ella Dee Bess. At the time Mr. Driggers came to our city I was on the city council -- first black elected ever in the City of Goliad.

But I'm here to say that I'm not here to represent the apartment owners in Goliad. I'm here to represent the city and the people of Goliad. I'm also a citizen of Goliad.

I am against this housing project. I was also

against the way I was approached by Mr. Driggers during the process of him trying to get the housing. I was also discriminated by him in so many ways. I was also threatened by him in so many ways, telling me, me being the person that I am, he's surprised that I was against this housing for the people, meaning the blacks. I didn't see it that way.

Also I was threatened by taxes, and I was also threatened by a letter that he wrote with some obscenities that he faxed to me and almost threatening me to sign it, saying that if I didn't sign it I would be sorry because I'm up for reelection.

And I guess he succeeded in what he was doing, which I know he did because I was not reelected because he went to the citizens telling them that I was totally against it. I was not, to a certain point. I was against him and his tact of how he was using me as being black to try to persuade the black people of Goliad.

And talking with the citizens of Goliad, this housing project would not fit them in their budget because of the rent that he was -- he offered to them was more than what they were going to be paying with their -- already paying in housing. And I just didn't like the threats that was given to me.

MS. ANDERSON: Roney Powell.

MR. POWELL: [inaudible].

MS. ANDERSON: Thank you, sir. Leslie Holleman.

MS. HOLLEMAN: Good morning, members of the board. My name is Leslie Holleman. I'm the developer and sponsor of the Chisholm Trail Senior Village in Belton, Texas, which is in Region 8. I'm just here to make a quick simple statement about the region in general.

When we began the process on the first recommendation was we were on the list. We've since traded positions for being recommended a couple of times.

And the bottom line is in this region there's four very tightly competitive good applications, and there's enough money for three.

And we're real happy to be back on the list. But I would urge you to consider the odd-man out -- because we've traded for that spot in the last month -- is a worthy project for a forward commitment. And currently that project is the Country Lane Seniors in Temple, and that's our competition. I like that region, but, again, I feel like there's four worthy projects, and the odd man out here should receive a forward. Thank you.

MS. ANDERSON: Thank you. I want to thank you

for coming up to speak in favor of one of the projects in the same region. I applaud you for that.

MS. HOLLEMAN: And we're not affiliated with them, but I'm aware of it. Thank you.

MS. ANDERSON: Okay. That is the -- those are all the witness affirmation forms I have for the public comment period. So we will proceed with the agenda. The first item is presentation, discussion, and possible approval of the minutes of the board meeting of June 28, 2004.

MR. CONINE: Move to approve.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Item -- the next item -- Ms. Carrington.

MS. CARRINGTON: Thank you. The next item is an emergency item that was posted to our agenda late last evening. And it is an adoption of emergency amendment to

the 2004 Housing Tax Credit Qualified Allocation Plan and Rules, Title 10, Part 1, Chapter 50, Emergency 2004 Qualified Allocation Plan and Rules, with revised preamble, and then the withdrawal of the current emergency amendment.

And Barbara Dean from the Attorney General's Office is here with us this morning and is going to be presenting this item. Thank you.

MS. DEAN: Thank you. Barbara Dean with the Office of the Attorney General. I'm in the administrative law section. And first of all, let me just state, so that everyone understands, there will be no changes to the text of the rule. So I just want to say that right off the bat.

What we're looking at is the preamble of the rule. And just to refresh the memory of the board, I'll just real quickly go through a little chronology. Of course, you know the board adopted the 2004 cycle QAP -- and I believe it was approved by the Governor in December.

And then on June 23 of this year, the Office of the Attorney General came out with an opinion that affected some of the priority ranking of the QAP. The board acted very quickly in response to this opinion and adopted an emergency rule at their -- I believe it was the

July 8 board meeting -- and filed this emergency rule with the Texas Register.

Now, due to the delay in publication at the Texas Register -- it's usually 10, 12 days -- something like that -- it came out Friday, the 23rd. But the rule is effective on filing. So it has been effective ever since it was filed shortly after the board meeting.

Over the last couple of days there have been meetings with staff and the Governor's Office. As you know, the QAP has to be approved by the Governor. And as -- through the course of these discussions the Governor's Office had some questions about the preamble. They would like to see the language expanded a little bit just to clarify -- help to clarify the nature of the emergency and what brought about the rule. And I think they'd be more comfortable with that.

So, in response to that, what -- we've discussed with the Texas Register what was the best way to go about doing that, because, of course, the easiest route would be if we could simply file with the Texas Register some kind of supplementation or expansion.

Unfortunately, the way bureaucracy works, the Texas Register advised that really what we need to do is to file a withdrawal or termination of the existing

emergency rule and then file another one with the new -- with the expanded preamble.

In reality, it's not as big a change as it might sound. The Texas Register advised that if we file the new emergency rule at the same time as we file the termination and withdrawal of the existing one, it doesn't void out the existing one. The text remains the same.

In other words, from the day that you filed your original emergency rule, that text was the same as the text we're talking now. And so there will be no gap between the original filing of the Texas Register -- with the Texas Register and the new filing that we're having to do, which is the same text. So there will be no gap. It will relate back to the original filing, and it will satisfy the Governor's request.

So the request that we have today is to file this expanded preamble -- same text -- no change in the text. But because of the way the bureaucracy works and the way the Texas Register works, it is a little more complicated perhaps than need be.

I'd be glad to read the revised preamble if you -- unless you have an objection. I know you have a huge docket today. So I can read through it if you'd like me to.

MS. ANDERSON: I think it might be nice to read it --

MS. DEAN: Okay.

MS. ANDERSON: -- because it came up on the web last night and we have a lot of people here.

MS. DEAN: Okay.

MS. ANDERSON: I think it would be nice to read it. Thank you.

MS. DEAN: The revised preamble will read as follows. Now, there may be a couple of minor clerical changes because it has to be formatted for the Texas Register and they will insert codes and so forth.

The Texas Department of Housing and Community Affairs (the Department) adopts on an emergency basis the amendment of Section 50.9 relating to application submission, adherence to obligations, evaluation process, the required pre-certification and acknowledgment, threshold criteria, selection criteria, evaluation factors, staff recommendations.

The text of the amendment is unchanged from the text of the emergency rule amendment as published in the July 23, 2004, edition of the Texas Register, which is being withdrawn in a separate simultaneously with the filing -- simultaneous with the filing of this emergency

rule amendment.

While the text of the rule amendment is unchanged, the emergency amendment is readopted in order to provide an expanded preamble. The Department adopts the amendment on an emergency basis pursuant to Texas Government Code, Section 2001.034.

The Department finds that the amendment is required by state law in order to conform to Attorney General Opinion GA0208 published on June 23, 2004, and to comply with Section 2306.6724(f), Texas Government Code, requiring the Department's board to issue final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan no later than July 31.

In addition, Texas Government Code, Section 2306.6724(b), requires that the Governor approve, reject, or modify and approve the Qualified Allocation Plan. The Office of the Governor has requested this additional action, which, coupled with the July 31 deadline, is another factor that necessitates this emergency rule making.

In addition, the Department also finds an imminent threat to the public welfare requires adoption of this amendment on fewer than 30 days' notice, in that the

public welfare will be harmed by the delay or failure of development of additional low income housing that would be authorized by the amended QAP.

This amended section is also adopted on an emergency basis pursuant to Chapter 2306, Texas Government Code, which provides the governing board of the Department with the authority to adopt rules necessary for the efficient administration of the Department's housing tax credit program.

MR. CONINE: Could you highlight the differences in this preamble and the other preamble? Normally, you know, we'd have either bold or underlined differences. And we don't -- I'm not seeing that here on my --

MS. DEAN: Well, because this is a whole -- a totally new one, this is the way we would file it with the Texas Register. But I apologize for not having the contrast for you.

MS. ANDERSON: We didn't vote on the preamble itself. It's not part of our --

MS. DEAN: Go to the rule; just go to the rule.

MS. ANDERSON: It was not part of our action before.

MS. DEAN: So this is new.

MR. CONINE: So this is all new.

MS. DEAN: Yes. The language on the preamble is new.

MS. ANDERSON: The original preamble referred to the opinion of the Attorney General. What -- I think one of the things that the Governor's Office would like to see is the reference to the July 31 deadline. I think that was very important to them. They felt like it was important notice and they would like to have it in there.

MR. CONINE: Okay. Thank you.

MS. DEAN: Any other questions?

(No response.)

MR. CONINE: Move for adoption.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Thank you, Ms. Dean.

MS. DEAN: Thank you.

MS. ANDERSON: We have -- we -- I'm going to allow three more people to make public comment. I'll going to reopen the public comment period because they don't have an appealable item. So, with the indulgence of the board and the audience, we'll reopen public comment. And the -- Don Young, George Hopper, and James Justice.

MR. YOUNG: Thank you. My name is Don Young. I'm with the Gardens of Texas. Bit of the confusion this morning was because we were not advised until this meeting convened that our appeals had not been -- had been denied. And the reason was that we consciously tried not to mention the AG's opinion, because we felt it was piling on TDHCA.

The reason given to me that we did not qualify on these was because we did not say it was an issue of the AG's opinion, which turned all of our scores upside down. So I apologize for the confusion.

I'm talking to you about the Gardens of Tye, TDHCA number 04-172. I'll make it as brief as possible. The Gardens of Tye, since the pre-app was submitted in January, has been on the top by usually 14 points of all of its competition until the AG's opinion and then the emergency request afterwards. And we lost about 17 points -- 16 points.

This development has enormous public support -- from the mayor, from the state senator, from the state representative. At our public information meeting we had over ten people sign up reservations for a 36-unit development. Since then we have received 17 more requests for reservations for -- so we're almost totally pre-leased -- all right -- now on a preliminary basis.

The city of Tye almost brought the whole darn town with them. But, you know, we have several back here -- if you would stand up -- including the mayor pro tem, head of the Economic Development Corporation.

MS. ANDERSON: Can you wind up?

MR. YOUNG: Okay. And really we want to be on the record on making this appeal because, you know, we will probably appeal the situation that we have here.

MS. ANDERSON: Thank you.

MR. YOUNG: Thank you very much.

MS. ANDERSON: George Hopper.

MR. HOPPER: [inaudible].

MS. ANDERSON: Okay. You have two more minutes, Mr. Young.

MR. YOUNG: But I wound up.

MS. ANDERSON: But if he -- if you would like to -- and I have three developments listed here --

MR. YOUNG: Yes, ma'am.

MS. ANDERSON: -- so --

MR. YOUNG: Yes, ma'am.

MS. ANDERSON: So you might want to take two minutes and talk about the other two.

MR. YOUNG: Okay. The Gardens of Early -- TDHCA number 04-174. Early's zoning passed unanimously. It passed the council unanimously. The mayor, Mayor David Brooks, State Representative Jim Keifer, State Senator Troy Fraser all heartily endorse this.

Again, like Early -- like Tye, Early was in the lead in its category for virtually the entire time until July 20. Then it disappeared as a result of the AG's opinion.

As I stated earlier, this one also -- we only received notification that our formal appeal could not be heard later on because TDHCA was unable to get us the fax in time.

You know, we have dealt in good faith all along. I'm sure all the other developers have dealt in good faith all along. And I'm sure you have as well. So we certainly request your reconsideration of our removal from the list, and, if not, a place on the 2005 agenda for carryforwards. Okay. Shall we go to the third?

MS. ANDERSON: Yes, you either need to fill out another witness affirmation form --

MR. YOUNG: We did --

MS. ANDERSON: I have Mr. Justice.

MR. YOUNG: -- for all three.

MS. ANDERSON: You have two minutes --

MR. JUSTICE: [inaudible] Mr. Young.

MS. ANDERSON: Okay. Thank you. I feel I should say, sir, that for Gardens of Early you do have an underwriting appeals right because of the conclusions drawn in the underwriting report. And you need to pay attention and make sure you file that appeal timely.

MR. YOUNG: Oh, that appeal has been filed timely.

MS. ANDERSON: Okay. Okay. Fine.

MR. YOUNG: And so we were surprised a bit. And so I'm assuming that we'll be back on with Early this afternoon. I don't know, because we were told this morning that we would not be heard this afternoon --

MS. ANDERSON: Some of -- we will continue to hear underwriting appeals, depending on the scheduling and the timing of when it was denied by the E.D. and when you made a board-level appeal. We will hear underwritings appeals at the August 19 meeting.

So you need to follow the Department's appeal process and exercise your -- you know, your rights under that process.

MR. YOUNG: Okay.

MS. ANDERSON: And now if you -- Mr. Justice has ceded two minutes to you.

MR. YOUNG: That's right. And this is for the Gardens of Gladewater, TDHCA number 04-176. As in the other cases, Gladewater has led in their category in service Region 4 rural for the entire time until the AG's opinion appeared. And it, as well -- about half of the allocation for service Region 4 rural has been moved to service Region 4 urban.

We are the last -- we are the highest scored development not to be included in each of these three that we have discussed. And I guess that we will continue our process in August. Thank you so much. And I apologize for the confusion --

MS. ANDERSON: Thank you, sir.

MR. YOUNG: -- but we were quite confused as well.

MS. ANDERSON: Okay. Thank you, sir.

MR. YOUNG: Thank you.

MS. ANDERSON: Okay. We're going to take a

ten-minute -- and I mean ten minute -- break. Sir? Yes, Mr. Mayor?

MR. SALINAS: 15?

MS. ANDERSON: 15? Shall we let the mayor have 15 minutes? Yes, sir. We'll have 15. Thank you. And we'll reconvene in 15 minutes.

(Whereupon, a short recess was taken.)

MS. ANDERSON: For agenda item 2(a) I have three letters from members of the Legislature to read into the record at their request.

The first one is from State Representative Terri Hodge:

"Dear Ms. Boston, I'm writing to express my full support of the proposed plans to revitalize the Frazier Court Housing Complex in southeast Dallas.

"As an advocate for affordable housing for senior citizens and low-income families, I have first knowledge of the need for a project of this magnitude for this community.

"The completion of the Frazier Fellowship Townhouses will reflect the pride and satisfaction of the residents of the south Dallas community. Experience has shown that preserving communities stimulates revitalization of the area and enhances economic growth.

"The Master Plan that was developed by the Dallas Housing Authority will replace the outdated and substandard Frazier Courts Public Housing project. I applaud Dallas Housing Authority for their commitment to providing public housing residents with well-designed homes that create a wholesome environment and safe living environment. I urge the state to support the request for approval of the low-income housing tax credit application. Thank you for your consideration."

The next letter is from State Senator Kevin Eltife:

"Dear Ms. Carrington, I'm writing to once again voice my support for the Gardens of Gladewater project, project 04176. This development was initially recommended for approval by your staff and now has fallen out of contention due to a change in scoring methodology resulting from an Attorney General's opinion.

"If it's not possible to approve this development for funding this year, I would ask that the board grant a forward commitment from next year's funds.

"As you know, rural Texas tax credits were oversubscribed this year, and such projects are sorely needed. The Gardens of Gladewater will provide senior housing and is supported by the local community.

"Thanks to you and the TDHCA board for your consideration and for your dedication to improving the lives of Texans through affordable housing initiatives."

And the third letter is from Representative Chente Quintanilla:

"Dear Chairman Anderson, on behalf of the constituents in District 75, and, specifically, for those families that live in east El Paso, I voice my strong opposition to the Cedar Oak Townhome Limited Apartment application submitted to TDHCA.

"I commend TDHCA for not recommending the project on July 13, 2004. According to our research in TDHCA's notice posted on your web site regarding the real estate analysis underwriting report for the 2004 tax credit round, Cedar Oak Townhouse was not recommended to the following.

"The market study was not self-contained, did not include a summary form or rent comparison matrix, did not calculate an accurate demand, and did not calculate unstabilized supply.

"The underwriter calculated an inclusive capture rate of over 25 percent. The anticipated developer fee cannot be repaid within 15 years. According to state records there are currently 338 units of low-

income housing tax credit in zip code 79936. And within one linear mile of the proposed development there is in existence 111 low-income housing tax credit units plus 236 units to Section 8 subsidized housing.

"This clearly demonstrates an overabundance of low-income housing and public housing in the immediate area of the proposed development. Therefore, I humbly request that if the investor submits the appeal concerning the above recommendation that you and the board deny to grant approval of an award for this development.

"In addition, I believe the board must consider not waiving the rules, as it will not be fair to the residents in that community and other investors. Any waiving of the rules may result in a liability to the state and enhanced preference practices. What is the purpose of establishing rules if they are meant to be broken?

"If TDHCA grants this appeal on Cedar Oak Townhomes, you're saying your own rules do not matter and that you can waive those rules whenever one feels like it for whatever reason.

"This type of subjectivity was a huge problem for TDHCA about three or four years and led to an intense sunset review process that almost caused the abolishment

of TDHCA.

"The state sets forth rules, and applicants must be forced to follow them.

"Once again, I thank you for not recommending the above project and trust that you will deny the appeal at your next board meeting scheduled on July 28. Should you have any questions, please do not hesitate to contact me."

Okay. Agenda item 2(a), presentation, discussion, and possible approval of Housing Tax Credit items. And this 2(a) is appeals to the board from Housing Tax Credit applicants on application matters. Ms. Carrington?

MS. CARRINGTON: Thank you, Ms. Anderson. For the board's information, the way we are going to take these items today -- you have the agenda in your book that was published and put on the web site on July 21. That included a list -- your agenda item includes a list of appeals that were timely filed and were also put on the web site and were in the board's book. So those are in project number order.

Then the board received an addendum called the Board Appeal Addendum. And that is dated July 28. And this was actually available I think yesterday or day

before and was put up on our web site also. Those are also in project number order.

There are I believe three of the appeals -- also the ones on the 28th were timely filed -- their appeal was timely filed within the requirements of the Qualified Allocation Plan. They were just not filed in time to be included as part of the actual board agenda. So those have been also timely filed.

Most of the developments that you find listed -- most of the appeals that are listed on the agenda are stand-alone. However, there are three of them that -- as you take the appeal on the agenda of the 21st, we will be going to the board addendum book, because there was either a -- an additional appeal on that same development or there is supplemental information that is in the addendum book.

So, basically, for the board's information, you have one large binder that was the appeals that came out on the 21st, and then you also have the board addendum appeal book, which is dated July 28th.

So, with that, I would like to introduce Ms. Jenn Joyce. And Jenn is the program analyst in the multifamily division. And Jenn has worked with all of the applications during the application cycle. She was the

contact person in staff for the applications. And Jenn is also the person in our department who has handled all of the appeals.

So as we look to decide from a staff perspective who was the one that we felt was most qualified to do the presentations on these appeals, we definitely felt that Jenn Joyce was the person for that. Ms. Boston and our general counsel are also going to be available to answer any questions the board might have.

MS. ANDERSON: And may I, just for the interest of those of you all that have -- want to make comment, what we're going to do is we're going to take these appeals and let the staff make their presentation, and then we will pause for public comment on the appeal and then the board can make a motion. Make sense? Okay.

MS. JOYCE: Hi. Jenn Joyce, program analyst for the multifamily finance production division for the Department of Housing.

I am prepared to give a brief synopsis of the entire appeal. And so I'll go ahead and give all points of that appeal. And if you need me to come back up as each one is addressed, that's completely fine.

The first one is for South Union Place, 04-024. The applicant submitted an appeal to the executive

director on June 14 disputing the denial of the QCP, the Quantifiable Community Participation points in the application. They requested points for both the South Union Civic Club and Old Spanish Trail Community Partnership.

If you turn to the first tab of 04-024 -- you might be actually looking in your addendum book -- I'm not sure. Okay. This is -- the first book we're going to go through is the original board agenda item. You have two very thick binders with a lot of appeals, but don't worry. Many of them have been rescinded.

And while you're waiting, as Ms. Carrington said, the yellow pages that you see behind the tabs separate each part. You'll first see the board appeal that was presented to us, the executive director's response, the executive director's appeal, and behind that any QCP documentation that you might want to review. Ms. Anderson, you were especially interested in that at the last board meeting.

Okay. Regarding the South Union Civic Club, no documentation was provided in the letter to prove that the organization's boundaries included the development site, as is required by that section of the QAP. Additionally, the letter failed to give a brief description of the

process used to determine the members' position of support.

And interestingly, as you might note in the appeal, they took the wording -- the members -- how -- requested the process used to determine the elected members' position in terms of getting that opposition or the support. And what they took that as to be is describe the elected members' position and how they were elected. And so they did describe that, but did not describe what we were looking for in terms of how they came to the support or opposition.

Let's see. Likewise, the letter from Old Spanish Trail Community Partnership was not eligible for the same two reasons. It was not eligible because we do not consider it a neighborhood organization. It is a coalition of 52 civic clubs and 67 businesses organized to promote economic development in the areas. Therefore, neither were considered.

Additionally, the applicant submitted an appeal to the executive director subsequent to the other appeal and -- requesting that the pre-application points be reinstated. Basically, they requested pre-application points at pre-application. At pre-application, if they're not going to get the full application points, then they

need to request them there as well.

They chose not to. They forfeited -- they actually didn't forfeit. They just did not request those pre-application points because they chose to serve transitional housing, which was going to give them an additional 15 points. So they felt that that seven points was not as interesting to them as the full 15.

What they're basically stating in their appeal is that the -- due to the Attorney General's interpretation, they are losing more points than they would have had they requested those pre-application points and are requesting at this time.

The Department could not award those points that the applicant did not request in the application pursuant to the QAP. They needed to request it actually.

MR. CONINE: Which project is the second one then?

MS. JOYCE: Both of them are for 04-024. So there are three separate --

MR. CONINE: Oh, okay. I'm sorry.

MS. JOYCE: -- items that they are appealing. And this is all on your first board action request.

MS. ANDERSON: And they're on the approved list at this --

MS. JOYCE: Correct.

MS. ANDERSON: That we have in front of us.

MS. JOYCE: Correct. And he said he still did want to appeal just --

MS. ANDERSON: Okay.

MS. JOYCE: -- because there are so many other outstanding appeals.

MS. ANDERSON: Mr. Barineau? And Julie Jackson has ceded her time to him.

MR. BARINEAU: Well, thank you very much. My name is John Barineau, and I'm here with respect to the appeal on 04-024, South Union Place, that Ms. Joyce just talked about.

And I ask the board's indulgence. We are on the approved list and we're cautiously optimistic and have our fingers crossed that we'll stay there. But there's been so much movement over the last few weeks and, with other appeals pending, we really cannot take a chance but to take the full court press to the very end. So thank you very much.

With respect to the first appeal regarding the QCP points, of course, we were -- we really felt like the evaluation of the two letters were factually wrong in two respects. They said that there was no documentation

indicated that they have the boundaries of the project included in it.

And with respect to the Old Spanish Trail Community Partnership, they specifically stated that their boundaries included all of zip code 77021, which, indeed, by clear-cut representation in the letter itself, the zip code of the project is 77021. Now, there was no additional maps or documentation, but the certification of the chairman or the president should have been sufficient in that regard.

With respect to the second letter that was indicated as not indicating the boundaries, there was a direct statement in the letter by the president of the South Union Civic Club that the project site, South Union Place, was, indeed, in their specific boundaries. And they also described geographically.

This other matter of interpretation of whether the apostrophe of S goes before the S or after the S with respect to how did the position of the writer of the letter, which I guess we naively interpreted meant how the president who was speaking for the organization was elected in the first place, you might say that could have been more clear in the QAP the way it was originally written. We admit ignorance in that regard.

But the spirit of what was intended by these letters -- and this was only two of nine letters, by the way, that were written in support specifically in the geographic area -- we thought we should have the right to at least have a administrative deficiency dealt with in the context that usually you allow for that purpose.

And we were encouraged at the July 8 meeting that such consideration was given by the board to another application that, indeed, moved ahead I think 12 more points as a result of that. And so that shows how we can't afford to give those points away if there's any consideration or waiver that the board could consider in that regard.

With respect to the seven points on the pre-application, it was just mathematics. Obviously, at the time of the final application, if you were looking at 15 points -- additional points to be obtainable by going 25 percent transitional housing, which, by the way, is the whole purpose of the pre-app is to give you a competitive positioning, we understand, to see what the playing field is --

(Sound of bell.)

MR. BARINEAU: Do I have two more minutes?

MS. ANDERSON: Yes.

MR. BARINEAU: Two more minutes? It would have been obvious that we would select the box that says we want to forfeit the seven in order to pick up 15. Whereas, in retrospect -- I know we're all dealing with a roller coaster and the ringer that was thrown in by the Attorney General -- but if we were to amend our application, looking at the points score as they are now in place, we would have obviously selected the seven points.

As it was, we reduced our points. We gave up seven -- picked up five -- net minus two. The calculation at the time was to give up seven and pick up 15. So that's a little of an anomaly, but that is the calculus and how it worked there, and we acted in good faith and felt like those seven points should be -- allow us to have a second crack at those seven points for that reasoning. Thank you very much. If there's any questions, I'll be happy to answer.

Oh, by the way, those two organizations I mentioned that wrote the quantifiable community participation letters did submit additional letters clarifying the geographic boundaries and how they got together, attended all the meetings, and arrived at their reasoning for supporting the project as an organization.

Thank you very much.

MS. ANDERSON: Questions?

MR. CONINE: Is this Old Spanish Trail Community Partnership similar to the other regional superneighborhood in Houston that we dealt with last time?

In other words, did it have listed the individual members of the civic partnership on one side, and were all those registered with the state and --

MS. JOYCE: We did not.

MR. CONINE: -- registered with the state?

MS. JOYCE: I can look to see if it was registered with the state. That's this one?

MR. WITTMAYER: Chris Wittmayer, the Department's general counsel. One major shortcoming of the letter of the Old Spanish Trail Community Partners is they make no mention whatsoever of the boundaries of their organization.

They simply say that they're a coalition of 52 civic clubs, 67 businesses to promote economic development along the OST corridor of Houston and surrounding neighborhoods, including Scott Street Corridor in and around Loop 610 South. This includes all of zip code 77021, but at no point in their letter or documentation have they said that we have boundaries and this is what

they are.

MR. CONINE: Well, I'm sure they -- make sure everybody understands where the Old Spanish Trail was. I mean, we probably all should know that I guess, I would presume. Or did we make any effort to look it up?

MR. WITTMAYER: We required in the QAP that they state and provide documentation of their boundaries. And given the volume of letters, we were not able to do much research on each letter. Okay?

MR. BOGANY: I have a question.

MS. ANDERSON: Go ahead, Shad.

MR. BOGANY: Looks like to me that the boundary would be 77021. If you stated that that's the zip code at the beginning [inaudible], the boundaries of that zip code [inaudible] that area. And weren't you just reading it? Isn't that pretty much that boundary and that zip code in that general area? And this project is a mile down the street from Scott OST Corridor. It's a mile-and-a-half.

And why couldn't we use the zip code boundaries -- I mean, I don't know. It just seems like if I say zip 77021 that's my boundary.

MS. ANDERSON: Why did that not meet the Department's test for the criteria about stating that the development was in the boundaries?

MR. WITTMAYER: Because they don't state as we asked in the QAP to state and provide documentation of your boundaries. Nowhere in their letter did they say that these are our boundaries.

MR. CONINE: I'm sure if you took it to the extreme, any citywide group would say that a zip code is included in their boundaries. And we want it to be a neighborhood group -- and we felt like the Legislature felt like it should be a neighborhood group. But, again, I -- to me, the Old Spanish Trail probably indicates some sort of area that's probably well known to Houston, not so well known to me --

MR. WITTMAYER: Or to me.

MR. CONINE: -- but would not be inclusive of the whole town; it would be a subset of the town.

MR. BOGANY: But he just stated some boundaries along Loop 610 South. I mean, read that part that you have --

MR. WITTMAYER: The Old Spanish Trail Community Partnership is a coalition of 52 civic clubs and 67 businesses organized to promote economic development along the OST Corridor of Houston and surrounding neighborhoods, including the Scott Street Corridor, in and around Loop 610 South. This includes all of zip code 77021.

MR. BOGANY: I don't know, Chris. It just seems -- I understand the point of [inaudible] specifics. But it just seemed like we're splitting hairs here. And to me, you just gave me boundaries. And I guess from a [inaudible] side, they don't know those boundaries. But I know I would consider the boundaries you just gave me as a --

You know, and I just -- because I know them. But I think if I was not from Houston, I probably wouldn't know what that is. He didn't say down those two, down Scott, north of 610 or whatever. But it just seems like to me those are boundaries.

MR. WITTMAYER: No doubt you're familiar with that area. The members of EARAC, when they were reviewing the area, were not familiar with the area.

MR. BOGANY: I'd like to make a motion that we approve this appeal based on the boundaries. The other two issues I'm not as clear.

MS. JOYCE: I was just going to say, there's three actual components to this appeal. I just want to make sure that --

MALE VOICE: It's a civic club.

MR. GORDON: I guess what concerns me is what is the -- it says 67 -- let's see -- 52 civic clubs and 67

businesses. I'm not sure that's consistent with the superneighborhood that we approved last month. That's what's concerning to me.

MS. JOYCE: The superneighborhood that we approved last month -- I think that the issue was whether or not it was on record with the state or county.

MR. GORDON: Right.

MS. JOYCE: That is not an issue in this. It was actually that all of the boundaries that they describe state including. It does not actually give us the actual boundaries so we can tell what it is, and we were requiring additional evidence to that. And we did not receive it. So the state and county issue is not an issue here actually.

MR. CONINE: Well, we received it, but it was after the date.

MS. JOYCE: No, we never received the documentation. Well, we might have in the appeal. I might be speaking out, but I don't believe that they did.

MR. CONINE: Because he said they furnished follow-up letters.

MS. JOYCE: Okay. Then perhaps it's behind your tab. I don't remember seeing it actually where we got the map that we needed. We had clarification -- I

mean, in written form. I can look.

MR. BOGANY: And I guess --

MS. JOYCE: I do see it, yes, for South Union. It's in your appeals packet.

MS. ANDERSON: And it's in -- it also is for Spanish Trail, but it was received on July 14 rather than by the --

MS. JOYCE: Correct. And the QAP is explicit in its requirement for appeals that you cannot consider any information received after the timely appeal -- the date that we review the QCP documentation.

MR. BOGANY: I wouldn't have a problem denying the appeal if they hadn't mentioned streets and loops in the corridor [inaudible]. If they had just said -- not mentioned any of those things then I would say they have -- we should deny their appeal. But they mentioned the corridor, which, to me, is a boundary.

And I'm saying from Houston I know what those boundaries are based on what he just said. If he did not mention 610 Loop then I would have said, Okay, you're talking southeast of 610 Loop all the way out to Sunnyside and some those other areas.

And I just feel that based on their description -- and I guess it's just a matter of

interpretation of our rules. And I'm sure you can give that same -- in an area as big as Houston. To me, it's defined, and I think the zip code helps define it when he says zip code, because I know what those boundaries are. And I'm willing to bet those zip code boundaries are pretty close to what that corridor is that he just described.

MR. CONINE: There was three reasons listed in the letter that we denied their appeal -- or the staff denied their appeal. Two of them deal with the boundaries and whether it's a neighborhood organization or not. The other one was the member -- the number of members and the description of the process.

Can you review that with me one more time as to what they actually said in the letter -- because he was referring to an apostrophe being in the wrong place or something.

MS. JOYCE: They are -- what we were asking for basically was a description of the process used to either reach the entire organization's support or opposition. They read the phrase, The process used for the organization's members' support. And I believe -- I'm sorry, I'm misphrasing that.

But basically they read it to be how the

members were elected rather than how the members' support came to a consensus. Was it a vote? Was it --

MR. CONINE: So in their letter they said how those members got to be --

MS. JOYCE: They provided --

MR. CONINE: -- elected president, vice president --

MS. JOYCE: Correct. They provided their bylaws, and that gave that process. We asked, Determine the members' position. That's the exact word in the QAP -- Determine the members' position. They took that as how they were elected.

MR. BOGANY: Okay. So what's the third one?

MS. JOYCE: The third was -- insufficient documentation was provided to show that the organization is a neighborhood organization within the meaning of the requirement. Would you like elaboration on that?

MR. BOGANY: Yes.

MS. JOYCE: My notes -- and, Chris, feel free to chime in here -- as a coalition of 52 civic clubs and 67 businesses organized to promote economic development. We don't consider that within our interpretation of the meaning neighborhood organization -- those living near one another.

We also, because the boundaries were a little nebulous, couldn't tell the actual size of -- and we didn't have documentation to indicate that -- the size of the boundaries.

MR. CONINE: Madam Chairman, I'm getting that same sinking feeling I had at the last meeting.

MR. GORDON: What is the difference between this one and the superneighborhood that we approved last month?

MS. JOYCE: I'm sure that the boundaries are completely different. I can't recall the exact size of the superneighborhood last month. I think the bigger issue with the superneighborhood last month was whether or not it was on record with the state or county.

And because that is such a huge requirement, you all took all of the other documentation they provided showing all the different components being on record with the county or state. And this is not an issue here. They are actually on record with the county or state. It was the other items that were -- they were disqualified for.

MR. BOGANY: And in that zip code there is a great possibility that there's 66, 67 businesses because I'm from the [inaudible] the area. I know there's businesses up and down that corridor along 610, along OST,

along Scott -- all of those businesses. And there are civic clubs all -- you know, there are small areas and little small ones all through there. But I'm willing to bet also that those civic clubs [inaudible] in superneighborhoods in that area, too.

I think -- and I'd like to make a motion that we approve the boundaries they submitted and accept the neighborhoods areas -- because I see those neighborhoods as being a part of that area. They're not down -- five miles away. They're right there in that general area. And I'd like to make a motion that we -- the other one I'm not interested in but these two here --

MS. ANDERSON: Okay.

MR. BOGANY: -- because they go together.

MS. ANDERSON: Mr. Wittmayer, is that motion that we acknowledge two of the three conditions under which the letter was declined -- is that sufficient, or do we have to find -- we have to overturn the staff's action on all three of the issues, including the one remaining issue, which is about did they include their process for how they arrived at a decision to support the development?

MR. WITTMAYER: They have to satisfy each ground separately. So if they fail on any ground then the letter would not be eligible to be scored.

MR. BOGANY: Okay. Then I withdraw my motion.

MR. CONINE: Move to deny the appeal.

MR. GORDON: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next one for the board's consideration is one where you're going to be looking at both books. It is 04-032, Los Milagros in Weslaco, which is in Region 11. It is the next one in the book that you're currently in. But then going to your appeals book, you will also see 04-032 -- and it is the second tab in your appeals book.

MS. JOYCE: The first appeal for Los Milagros Apartments, 04-032, is regarding -- his initial request to the executive director was that he wanted the average that many applications received for the average quantifiable community participation letters that we scored.

So basically for -- if they met two tests --

one, that they submitted a certification to us that they know of no neighborhood organizations; and, two, that they -- no letters were received for the particular development, then they could receive the average of all the points that we've given.

That went from a one point to actually two points now because of the letters that were reinstated as of the last board meeting. So we're not actually talking about 1 point here; we're talking about 2, although the appeal is for one.

However, interestingly, the executive director denied the appeal for that average. But the board appeal now before you is actually requesting that we consider all nine of the QCP letters for scoring.

And the second appeal that we have is 04-032. Again -- and I'm just going to kind of read a bit of the writeup that you have before you in the addendum. And Mr. Wittmayer would -- will elaborate on this if we need it beyond this.

The applicant submitted the appeal to the executive director regarding an 8-point reduction of low-income targeting points. The appeal asserts that Rowan Smith is not on the board of Bazra International Ministries and that there is no conflict of interest

according to the Qualified Allocation Plan.

The Department, however, determined that Rowan Smith is related to the nonprofit subsidy provider. Therefore, the points requested were not awarded. The relationships are evident from a number of factors, including that the applicant or principal appears to have been involved in the creation of the nonprofit Bazra. And acted registered agent, Mr. Smith, is the principal and the contractor and property manager identified in Bazra's applications.

The applicant and Bazra share addresses with the employees -- and employees appear to act in both entities. Texas Regional Properties, with Rowan Smith, Jr., as its principal, paid the application fee for Bazra applications. Rowan Smith, Jr., represented himself as the owner's representative at meetings of Bazra applications. And Exhibit 2 for application for 04-299 stated that Bazra was affiliated with the applicant.

MS. ANDERSON: We have public comment on 04-032. Is that right? Mr. Rowan Smith.

MR. SMITH: I yield my time to John Pitts.

MS. ANDERSON: Okay.

MR. PITTS: Good morning. I'm John Pitts. I'm an attorney and also am president of Bazra International

Ministries. And I appear before you on behalf of myself, as well as Bazra International Ministries.

As Ms. Joyce mentioned, there are two different appeals. There are other issues that we have been discussing in the last couple of weeks dealing with the support orders from the nine neighborhood organizations. I'll ask you to look at two of those in particular.

One support letter from La Estancia [phonetic] Property Owners Neighborhood Association, a neighborhood organization. This is a low-income housing project located adjacent to the tract for Los Milagros. The association is made up of the tenants of the La Estancia Apartments. The boundaries of the neighborhood organization include the entire Hidalgo County. And that neighborhood organization issued a letter and petition signed by its members showing its support of the project.

La Horancia [phonetic], another organization that is within three blocks of this project, again formed by the tenants of the project, again sent a letter and a petition -- a letter signed by its officers and a petition signed by many of its members in support of the project. That's addressing the first issue.

And there are other neighborhood organizations that have sent letters, and the argument would be the

same. Their distance from the proposed project is further, but they're all located in Hidalgo County and their boundaries are all Hidalgo County neighborhood organizations.

The relationship between Bazra International Ministries and Rowan Smith -- yes, Rowan Smith did create Bazra many years ago when it was appropriate for a developer to create a nonprofit organization. Once the Internal Revenue Service and this organization gave him notice that he could no longer be on the board, he resigned.

I am, as I indicated, the president. We have -- and I have a list of the members of the board of our Bazra International Ministries. We are an independent board. We make independent decisions. We have taken the board on a tour of all of the projects down in the Valley in Region 11.

We have a contract between Bazra International Ministries that we discussed at the board meeting, approved by the board -- contract with the Texas Regional Asset Management to manage our projects down in the Valley.

I'm just having a difficult time seeing -- granted, the history is there of the association. But at

present -- I am an attorney, as I mentioned. I use an office at Rowan Smith's office. I have a separate office over there in his building for Bazra International Ministries. So our address is the same.

We share a secretary. I have my own secretary. Obviously, it's a law firm and then I have a secretary at -- for Bazra. So we -- Rowan's secretary is my secretary. And so you will see what appears to be maybe a linkage, but the linkage is just not there.

I have several other issues that I'd like to mention. One is that Senator Lucio asked me last night to read a letter, which I have an original and one copy. And I will give Delores the original. And it is addressed to you, Madam Chair.

"Dear Ms. Anderson, I am writing you again regarding Los Milagros Apartments, which is being proposed for construction in my district. As I mentioned to you before and reiterate in this letter, it is important to me that this project is constructed.

"I understand that the project is under review. I ask that you please consider awarding the developer low income tax credits for 2004 or that you consider awarding a forward commitment for 2005 so that the developer may begin construction.

"Based on the information I had received from Nova Braddock and Company, it appears that Region 11 has been shorted in the past several years. A forward commitment would assist greatly in correcting this situation. Signed, Eddie Lucio, State Senator."

Any questions?

MR. SALINAS: I would just consider that the first time that we talked about these people being approved for [inaudible] protest from [inaudible]. I think you all remember that.

MR. PITTS: That is correct, Mayor. This has been on the approved list until just recently.

MR. SALINAS: Till recently. I just want to make sure that the other people that got appealed the last time had nothing to do with this [inaudible] list. I know that they have been changing, and the staff could probably give us a better [inaudible] of the points that he lost? Does it gain? -- or positive change.

I know that we talked about this area getting as much as we can for our community [inaudible]. And I'd just like to get some answers as why how it changed and --

MS. JOYCE: Regarding this specific appeal, it had nothing to do with any of the past appeals or the AG opinion. This is purely because of information that the

staff received. And we have since determined this related party issue and taken away the points.

MR. SALINAS: But it has nothing to do with other ones getting additional points for matters that received -- we talked about Los Santerra?

MS. JOYCE: Correct. Yes. It does. And taken into consideration the appeals for all -- for this particular region and any other changes from the AG, there has been movement based on that. I thought you were asking was that why he was brought off of the list and this eight-point reduction was -- is what we were discussing.

MR. SALINAS: The eight-point reduction is because of the -- it should be about the association with the nonprofit?

MS. JOYCE: Yes, sir.

MS. SALINAS: Oh, okay. And [inaudible].

MS. JOYCE: Mr. Wittmayer?

MR. SALINAS: Is he saying that the association with the nonprofit is the same? Why did they lose the points?

MR. WITTMAYER: The requirement in the QAP is that he receive an allocation of funds from a nonprofit organization which is not related to the applicant. And

when we reviewed the documentation, the staff concluded that they were related -- that they had a relationship -- that there was a connection between the two.

And that review was facilitated by the documentation which was available, not only in Mr. Smith's two applications, but there are three other applications from Bazra International Ministries, which is the nonprofit at issue here.

In reviewing that documentation, the staff concluded that they were related based on some of the facts that Mr. Pitts outlined. Mr. Smith was involved in the creation of this nonprofit. It is true that he subsequently was no longer a director or the registered agent. They share addresses, and employees seem to act for both entities.

The Texas Regional Properties, with Mr. Smith as the principal, paid the application fees for the three Bazra applications. We determined that was evidence of their being related.

Also, Mr. Smith represented himself as the owners' representative at public meetings on the Bazra International Ministries applications. And in Exhibit 2 for application 04-299, which is one of Mr. Smith's applications, he indicated that Bazra was affiliated with

the applicant.

Based on all that evidence, we concluded that the nonprofit was related to the applicant.

MR. SALINAS: So you're saying that this is why he lost those points?

MR. WITTMAYER: Exactly right, Mayor.

MR. SALINAS: [inaudible] has to do with the agency.

MR. WITTMAYER: He would have to receive a funding commitment from a nonprofit which is not related to him.

MR. SALINAS: Would this board consider forward commitments at a later date as the project --

MR. WITTMAYER: I believe in August or September, the board will review possible forward commitments.

MR. SALINAS: I would consider that this board consider some forward commitments.

MR. WITTMAYER: Would the board want me to address the QCP letters?

MR. CONINE: Yes.

MR. WITTMAYER: The primary disqualifier there was that all these letters indicated the boundaries are all of Hidalgo County. Hidalgo County has a population in

excess of 500,000 people and land there in excess of 1,500 square miles.

And just looking at the language and understanding the plain meaning of the word neighborhood organization, the Executive Award Review and Advisory Committee determined that these were not neighborhood organizations based on that large land area that they were covering.

MR. GORDON: I'm looking at some of the letters in here. And they say that it was insufficient document to show that it was a neighborhood organization. There's only a few of them that it mentions the -- I guess the area. Was there two reasons that the letters were denied? Or were some of them denied just because the -- they -- he didn't show that they were a neighborhood organization?

MR. WITTMAYER: As I stand here right now, the fact that stands out in my mind is that, as I recall, the letters were basically essentially -- or essentially identical -- eight of the letters -- with the exception of the ninth letter from Rio Grande Habitat for Humanity. And I think their service area was even larger.

MR. GORDON: All right. And I had one other question on the fees that were paid on the application.

Who paid the fees? I guess this goes back to the Bazra.

MR. WITTMAYER: The documentation in the three Bazra International Ministries filed indicate the fees were paid by checks signed by Rowan Smith, the applicant on his two applications.

MR. GORDON: Not the nonprofit?

MR. WITTMAYER: The nonprofit had three applications. Rowan Smith signed the checks for those applications.

MR. GORDON: And the checks were on behalf of the nonprofit?

MR. WITTMAYER: Yes.

MS. ANDERSON: Okay.

MR. SALINAS: And you're saying that there's not --

MS. ANDERSON: Okay.

MR. CONINE: Were they nonprofit accounts or were they Texas Regional or some other entity accounts?

MR. WITTMAYER: I believe they were Texas Regional accounts.

MR. PITTS: May I respond to --

MR. CONINE: Yes.

MR. PITTS: Thank you. My law practice takes me out of the state for many days during a week. I'll be

in Arizona the rest of this week.

And, yes, at the time that we were faced with, I could not be present to sign checks. And Bazra International Ministries has paid those back -- those monies back to Texas Regional Properties. I mean, it was -- there was no intent that that would be a check that was both signed and paid for by another entity. It was -- it's been reimbursed already at this point.

MR. GORDON: But at the end of the day, the funds came out of the nonprofit?

MR. PITTS: Correct.

MR. CONINE: Mr. Pitts, how long has the entity been around?

MR. PITTS: Well, the only thing I can answer that is how long I have been involved, and I have been involved for three years.

MR. CONINE: Three years?

MR. PITTS: And we have had applications each year we've been granted, thanks to this board's wisdom -- been granted these projects in the past and have not had a -- this issue raised at all in the past.

MR. CONINE: What's the size of the board?

MR. PITTS: There are five of us.

MR. CONINE: And there's not any other

provisions for check signing other than you.

MR. PITTS: That's right.

MR. CONINE: You are it. Right?

MR. PITTS: I'm it.

MR. CONINE: Okay.

MR. GORDON: And Mr. Smith didn't have any involvement in the decision. I mean, it was an independent board?

MR. PITTS: Yes, it is.

MR. GORDON: Okay.

MR. PITTS: And I have a list of those board members. I can provide that to you with their addresses.

I am the only member of the board that does not live in a QCT in Houston.

(Pause.)

MS. ANDERSON: You need to complete a witness affirmation form if you want to speak -- okay? -- because you yielded your time.

MR. GORDON: I guess I have one question on the letters. Is it -- do you look at each one of these letters, or -- because some of them are talking about neighborhood organization and -- is there just not enough information to know what they are? I'm sorry to bounce around.

MR. WITTMAYER: As I recall, eight of the nine letters are all identical, and we looked at each individually to determine that. And we determined, because of the size of the -- boundaries indicated all of Hidalgo County that that did not constitute being a neighborhood organization.

MR. GORDON: Do we have to rule on all of them or one of them? Can we rule --

MR. WITTMAYER: If you rule on one of the eight, you've essentially ruled on all eight.

MR. GORDON: Okay. All right.

MR. PITTS: Again, a response, if I may.

MR. GORDON: Sure.

MR. PITTS: There's no indication, either in the statute or the QAP, that the neighborhood organization's boundaries cannot be a countywide boundary.

If that is some place I've missed that, Chris -- so, to try to knock these out -- these letters out based on the fact that it's a countywide, I really need to see some backup on that.

MR. SALINAS: Are those recorded in Hidalgo County?

MR. PITTS: They're recorded both in Hidalgo County and the State of Texas. They were formed as

limited liability corporations with the State of Texas.

MR. SALINAS: Why wouldn't it be Hidalgo County -- is considered Hidalgo County as basically recorded as a neighborhood?

MR. WITTMAYER: There is no guidance in the legislation, other than the words neighborhood organization. So our task then is to try and understand what that means.

So we looked at the dictionary meaning of neighborhood, and the root word neigh means near. Neighborhood is people living near one another. A neighborhood organization, thus, is an organization of people living near one another.

I think a prime example of that would be a homeowners association, a small-type Houston civic club, which is essentially a homeowners association. But we thought, clearly, a organization whose boundaries encompassed an entire county with a population in excess of 500,000 people and a land area in excess of 1,500 square miles, that that was not an organization of people living near one another.

MR. CONINE: I going to move to deny both appeals.

MR. BOGANY: Second.

MR. PITTS: May I respond to one thing?

MS. ANDERSON: Sure.

MR. PITTS: I mention in my discussion is that La Estancia is a project located right next door to this proposed project. And if we are going to use Mr. Wittmayer's definition of neigh being near, I don't think you can get much closer. They both live within the proximity of that project and also live adjacent to the proposed project.

MR. CONINE: Is this the --

MR. SALINAS: Which one?

MR. CONINE: -- ninth letter?

MR. PITTS: No. I think your ninth letter is the Habitat. Is that correct? Okay.

MALE VOICE: Is it the Las Estancia letter?

MR. SALINAS: What does he have to do to stay in?

MR. WITTMAYER: If the letter had indicated that the boundaries of this organization were some small area around this proposed site, then it would have been acceptable, but the letter indicated that their boundaries were the entire county, and that is the issue.

MR. CONINE: [inaudible] for consistency purposes from the last meeting. We need to stay

consistent, at least through this particular cycle, and then we can fix it at the next time.

MR. PITTS: Yes. And I agree with that, Mr. Conine. But, again, I say that there is nothing in the statute -- nothing in the present QAP that would just have us define as a neighborhood organization as any smaller area or any larger area.

MR. CONINE: We need some help with the Legislature to define it next time.

MR. PITTS: That will work.

MS. ANDERSON: Or a definition in the QAP for us to consider courtesy of the working group.

MR. CONINE: Right. Motion on the floor.

MS. ANDERSON: Yes. We have a motion on the floor.

MR. GORDON: I guess I'm concerned with the Bazra Ministries, because I think we have Mr. Pitts, who's testified here that there is some separation. That's a concern to me that, you know, we may be splitting hairs on that. But I understand.

MS. ANDERSON: Do we want to take these separately? There are two, you know, distinct appeals.

MR. CONINE: I'll amend my motion to take them separately if you'd like? Move to deny the appeal on

community quantifiable participation -- or whatever it is.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. CONINE: Move to deny the appeal on the related party transaction.

MS. ANDERSON: I don't hear a --

MR. BOGANY: Second.

MS. ANDERSON: Okay. A motion's been made and seconded. Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(A chorus of nays.)

MS. ANDERSON: I don't know what we just did there. I'm sorry. Can I see the ayes, please?

MS. SALINAS: The ayes?

MS. ANDERSON: I mean -- and you voted -- you seconded the motion since you don't -- in favor of the motion? Yes, you did. And did you vote in favor of the motion? Okay. And then -- and Vidal voted in favor. And may I see the nays, please? The vote is three to three. The motion fails.

MR. CONINE: That's interesting.

MS. ANDERSON: So we are ready to entertain a motion.

MS. BOSTON: Could you clarify?

MS. ANDERSON: It was a three-three vote on the motion to deny the appeal. Therefore, the motion to deny failed, I believe.

MS. BOSTON: Which means the appeal is approved.

MS. ANDERSON: No. Which means we don't -- we -- what would the board's pleasure be at this point?

MR. SALINAS: I would think that we consider them for full commitment at the August meeting. I don't know.

MR. CONINE: I'll be happy to do that.

MS. ANDERSON: Yes. But I think we need to -- do we need to dispense with this appeal? I mean, do we

need to --

MR. WITTMAYER: Since there's not a majority to approve the appeal, I would think that the staff decision to deny the clients would stand.

MR. SALINAS: I would ask the board to consider the forward commitment at the August meeting for consideration, if it's okay with the board.

MR. CONINE: It's okay with me.

MR. PITTS: As you would guess, I would have a response to that. It seems to me that if you have a vote denying a motion -- or not passing a motion, then you must have another vote to either pass or reject the appeal.

MALE VOICE: We just did.

MR. PITTS: Can you reject the --

MS. ANDERSON: Why don't we --

MR. CONINE: Must have majority vote to approve the appeal.

MR. PITTS: But you just had a motion on a part of that appeal. And I'd like to have a vote on that second part -- those 8 points.

MR. CONINE: So we had two separate motions. And one passed and one tied.

MR. PITTS: So a three-three tie is what?

MR. CONINE: You have to have a majority of the

vote to -- majority of the board to have the board grant an appeal.

MR. PITTS: Okay.

MR. CONINE: And it did not get a majority of vote.

MR. PITTS: Okay.

MR. SALINAS: For consideration -- consider forward commitments for this project at the August meeting.

MR. PITTS: Okay. And I will give Delores the letter from Senator Lucio.

MS. ANDERSON: Are you Mr. Powell --

MALE VOICE: Yes.

MS. ANDERSON: I made a mistake, because I have a witness affirmative form here from him. And I -- on this transaction. Sir?

MALE VOICE: I yield my time to Rowan Smith.

MS. ANDERSON: Well, I had -- I made a mistake. I didn't call for him.

MALE VOICE: [inaudible] make mistakes.

MS. ANDERSON: Well -- but I think -- Mr. Smith, would you like to -- and then after you speak, sir, would you fill out another witness affirmation form because your original one was yielded to Mr. Pitts.

MR. SMITH: Okay.

MS. ANDERSON: Okay.

MR. SMITH: I just want to have a quick comment. I want to thank you all for the work that you're doing under tremendously confusing circumstances.

There is a lot of fear in this room because of what can happen based on all of this confusion. And there may be some way of resolving a lot of that. And we hope and pray that the board will do the right thing for everybody in the room and for the Agency and for the citizens of United States -- I mean, of Texas.

And I'm here to just say one other thing. We did file an appeal -- and I have the documents in my office -- based on all three projects, Bethany Gates, The Harvest, and Los Milagros being inconsistent -- or illegal according to the QAP -- in other words, bringing up the issue of the AG's opinion. So I just want to make a record of that.

And that wasn't mentioned as one of the appeal records, and we do have documentation on that. I can supply that to the board if -- you know, at a later time.

And with that, I appreciate your looking at the forward commitment solution to this whole problem.

You know, as a developer, we had to take what

was given to us. And we've spent a lot of money and a lot of time and a lot of effort. We've got staff that have done a lot of work to try to meet the requirements that were fairly presented to us under the QAP.

And then we have a lot of changes in that and that causes a lot of confusion and sadness on our staff's part -- that they didn't know what the heck to do about this. They thought they were doing the right thing.

So I appreciate your heart and your spirit to try to alleviate this problem. And I thank you very much.

MS. ANDERSON: Thank you, sir. Let's go to the next one.

MR. WITTMAYER: This is Chris Wittmayer, the general counsel. If I could just be heard on one point that Mr. Smith raised to an issue about he was appealing based on the AG opinion.

And he did send us a letter in that regard, but he didn't state any specific grounds. And the QAP requires that the applicant must specifically identify the applicant's grounds for appeal. And if he has grounds -- if he wants to make a record that he was making that appeal --

MS. ANDERSON: Has the Department responded in writing to that appeal as it was stated?

MS. JOYCE: We did -- he mentioned three. We did for two of the three. This particular one -- it's actually on hold for there being a response. We don't have a time requirement. But we did for the other two. And those are mentioned in the appeal board book.

MS. ANDERSON: And you will follow the Department's appeals process in responding back to him on these appeals.

MS. JOYCE: Yes, ma'am. Sure.

MS. ANDERSON: Thank you.

MR. CARRINGTON: The next item is 04-052, Chisholm Trail Senior Village. And this appeal has been withdrawn.

Moving to the next one, 04-057, Stone Hollow Village, Stone Hollow has requested to be taken at the end of the appeals. So with the --

MS. ANDERSON: Somebody's out of town.

MR. CONINE: Because somebody's not here?

MS. ANDERSON: Yes. Somebody's at a memorial.

MR. CONINE: Okay.

MS. CARRINGTON: 04-079, Baybrook Park Retirement in Webster -- this one has been withdrawn.

MS. ANDERSON: The staff isn't going to have much to do today.

MS. CARRINGTON: 04-085, Redwood Heights in Houston, Region 6. You have an original appeal -- well, you have one appeal in your book of July 21. You also have an addendum appeal in your addendum book.

MS. ANDERSON: Now, I have a note about Redwood Heights. It sounds like we had two grounds for appeal. And the applicant is withdrawing the appeal on one ground, but wants to continue the appeal on low-income targeting? Could the applicant speak up and -- did I get that right?

MR. DEYOE: That's correct.

MS. ANDERSON: Okay. So we only have a one-part --

MS. CARRINGTON: Okay.

MS. ANDERSON: -- appeal.

MS. CARRINGTON: And, Ms. Joyce, would that one part appeal be in the book on the 21st or would that be in the addendum book?

MS. JOYCE: That's -- the only support for that is the addendum, which --

MS. CARRINGTON: The addendum book.

MS. JOYCE: -- is noted with the asterisk in your addendum book.

MS. ANDERSON: Can we just stop for just a second? I just want to make sure that -- even though the

appeal for Baybrook, 04-079, was withdrawn, I want to confirm that Mr. [inaudible] and Ms. Bass declined to make comment.

MR. DEYOE: We do.

MS. ANDERSON: Thank you. Thank you very much. We all thank you.

MS. CARRINGTON: Would you like me to also state the others that I've received just to make sure that we're all on the same page for the withdrawals or as we go?

MS. ANDERSON: As we go.

MS. CARRINGTON: Yes, ma'am.

MR. DEYOE: Part of the appeal that we withdrew regarding the [inaudible].

MS. JOYCE: Oh. Then I take that back. The original appeal, which does not have the asterisk in your first book, is 04-085 considering the QCP, quantifiable community participation.

MS. ANDERSON: Okay.

MS. JOYCE: And in the interest of time, I am just going to say that we denied -- and actually -- just one moment.

(Pause.)

MS. JOYCE: Okay. Chris is looking at one

thing. But I'll go ahead and say we denied all three. Northside was -- for these letters, so they're asking for three separate letters. One is for Northside. There were 12 board of directors that were listed. And so we did not consider that giving an actual list of members. In looking at where the board of directors actually lived and resided we did not consider it a neighborhood organization, because they did not live near the development in the neighborhood.

The bottom of the letter gives a description of boundaries as northeast Houston, and we considered that, again, kind of going along the lines of size of the neighborhood to be too large to be considered.

Regarding Bonita Street, they only, again, gave the board of directors as the list of members rather than an entity that -- in fact, they say in their appeal that there are -- there's not an ability for their organization to have members. It is just a nonprofit. Those board of directors do not also live in the neighborhood from the documentation we were able to see.

Again, the boundaries were considered too large by EARAC -- and, again, not composed of neighbors, rather a board of directors living in various locations throughout Houston.

Regarding East Tex Jensen [phonetic], it's not on record with the county, it's not on record with the county or state. And you will see in the appeal that they did make what they considered to be a correlation between the 04-268 Lansborough Apartments that we did reinstate last time. However, Chris is looking at this again.

But I did not find any evidence in that appeal -- I'm sorry -- in the original documentation provided to us that indicated that all the subcomponents of that were on record with the county or state. So they did acknowledge that they're not on record with the county or state -- that they're asking you to look at 04-268 and your consideration there. However, they did not provide the same evidence that that 04-268 did -- Lansborough.

MR. CONINE: Have you got public comment?

MS. ANDERSON: Yes, I do. Ms. Bast, and Mr. Deyoe has yielded his time to Ms. Bast.

MS. BAST: Good morning. For the record, I am Cynthia Bast; Locke, Liddell, and Sapp, representing the applicant.

I sort of feel like the student who prepared too hard for the final exam, because here I am, and all my appeals are dropping. So I had to find something to say to you guys.

MR. CONINE: We'll bill them anyway, I'm sure.

(General laughter.)

MS. BAST: You guys heard that. Invoices are in the mail, everybody.

Thank you, Mr. Conine.

MR. CONINE: Speaking up for the lawyer profession issue.

MS. BAST: We have three neighborhood support letters that were given to the Department in this case. The first, as mentioned by Ms. Joyce, is Northside Plaza, Inc. Northside Plaza is a nonmembership nonprofit corporation. It is permitted under Texas state law for a nonprofit corporation to not have members and to be solely represented by members of the board of directors.

And so the letter did say, These are our directors -- these are the people who make our decisions.

It did say, We make our decisions by discussion and voting. So we believe that, given that it cannot be a membership corporation under form of organization, that the board of directors should be considered the appropriate representatives of the organization for making this decision.

And the second reason for denial on Northside Plaza was that insufficient documentation was shown to

show that the organization is a neighborhood organization.

This organization's letter states on its letterhead that its mission is to provide support and outreach for the residents of northeast Houston.

But then it goes on to be more specific. It says that its boundaries are 610 south to Little York north and Hersh Road east to Hardy Toll Road west. So we have a very defined geographic area.

The people who serve on this board are dedicated -- regardless of whether they live in that community, their dedication as fiduciaries of this corporation is to provide support in this particular geographic area and this neighborhood of Houston.

I've got essentially the exact same points with regard to Bonita Street House of Hope. Bonita Street House of Hope is also a nonmembership, nonprofit corporation. It has a board of directors, again, who duly represent the corporation. The letter specifically said that that board of directors made its decision to support this development by support -- by discussion and voting.

Similarly, the Department found that this was not a neighborhood organization within the meaning of the QAP. Bonita Street House of Hope is actually organized to promote affordable housing opportunities for low-income

people in a defined region in Houston.

And, again, that defined region is the most northern Little York Road east to Hersh Road west to Hardy Toll Road and south to Kelly. So, again, we have a defined spot in Houston that this organization is serving.

Finally, we have the East Tex Jensen Superneighborhood Council. The reason for not scoring this letter was that insufficient documentation was provided to show that their organization was on record with the county and the state.

That is correct. It is not on record with the county and the state. But as mentioned by Ms. Joyce, in the Lansborough appeal at the last board meeting, the board considered one of these superneighborhood organizations that was not duly on record.

I personally checked the Secretary of State and Comptroller's web sites in terms of the membership of the East Tex Jensen Superneighborhood and did find certain of their members to be on record with the State.

So those are our points of appeal. I'd be happy to address any of them with you.

MR. GORDON: I've got a couple of questions.

MS. BAST: Yes, sir.

MR. GORDON: Your nonprofits that do not have,

quote, members, how are the board of directors elected?

MS. BAST: Let's see. I believe I have the Article of Incorporation. Typically, a board of that nature is self-sustaining. When there's a vacancy on the board, the board -- the remaining board members elect to fill that vacancy. And I thought I had the Articles of Incorporation, but I apologize. I don't have them in here.

MR. CONINE: Have they been around for a while?

MS. BAST: Apparently I didn't prepare well enough for my final exam.

MR. CONINE: Right. Flunked one of the questions.

(Pause.)

MS. BAST: The Articles of Incorporation of Northside Plaza were filed on July 15, 1991. The Articles of Incorporation of Bonita Street House of Hope were actually amended on March 29, 2004. And it was the amended Articles that were submitted with the letter.

MR. CONINE: Amended.

MS. BAST: Uh-huh.

MR. GORDON: And what do they say -- that the board's self-sustaining?

MS. BAST: I don't have that in front of me,

but I believe the board is self-sustaining.

MR. CONINE: Can I get counselor's response to the boundary description that she said included in the letter and maybe an amplification on what the reasons were again?

MR. WITTMAYER: Chris Wittmayer, the Department's general counsel. These letters were not scored for several reasons each.

The East Tex Jensen Superneighborhood -- there the primary ground was it was not on record with the state or county.

The Northside Plaza letter -- there the letter indicates that -- well, let me turn to it. The first issue is about the lack of members. The QAP requires that they provide the information to the Department on the number of their members. And we concluded that a nonmembership organization, while certainly a legal nonprofit organization, was not the type of neighborhood organization to come within the meaning of this statutory requirement. So that was one ground.

And that was also the case with the second letter, Bonita Street House of Hope. This may seem somewhat tied to the [inaudible], but we required in the QAP that they both state their boundaries and provide

documentation of their boundaries. They did state their boundaries but did not provide any documentation of their boundaries.

Also, as to Bonita Street House of Hope, in order to get some insight into that, we just looked at the documentation that they provided. And their Articles of Incorporation I believe included a list of their directors at the time of incorporation, which happened to include their zip codes. And we know that it was from quite a number of different zip codes.

And from that we concluded that, even if we considered that the board members were members of the organization, they were from diverse areas and did not seem to be people living in this neighborhood.

MR. CONINE: Were they inclusive of the boundaries that they described in the letters? Or do you know?

MR. WITTMAYER: We did -- I do not know that. I would -- my best surmise would be that they were not because it was -- just from the different numbers in the zip code, then my general thinking about the size of the zip code.

MR. CONINE: But wouldn't you -- couldn't you ascertain that a person could live outside of an area but

maybe have a business located in the area and would have an interest in an area?

MR. WITTMAYER: Entirely possible.

MS. ANDERSON: Is -- I don't want to put words in your mouth, but I'm trying to understand your characterization. And my sense is that these may be -- these are nonprofits. They may even be housing-related nonprofits, but that that does not make them a neighborhood organization based on the way we've been interpreting it on other applications.

MR. WITTMAYER: That was the consistent determination of EARAC.

MS. ANDERSON: Okay.

MR. CONINE: But what we're saying here though is that we're not -- we're rejecting nonprofits that don't have any membership. And that goes for a lot of nonprofits out there I believe.

And they have definitive boundaries, which they've provided information on. And they've been around for a little while it sounds like -- weren't just created for this purpose. And what was the other -- the technical thing that you mentioned?

MR. WITTMAYER: Well, part of it is they're not -- there's no evidence that the board members are

persons who live in the neighborhood.

MR. CONINE: Yes. Well, that -- and the reason I just stated a minute ago is enough for me.

MR. GORDON: Plus, on the superneighborhood, did we confirm that some of the organizations that are of that superneighborhood are registered?

MR. WITTMAYER: Ms. Bast has stated that, but we were not provided any documentation to that effect.

MR. GORDON: Okay. Could you say that the board members -- the board of directors are members of these nonprofits? I mean, maybe you didn't state it, but you did list some individuals.

MR. CONINE: Well, the membership would be described in the articles, would they not? And if it doesn't have some sort of category then --

MR. WITTMAYER: The articles state that they are nonmembership organizations.

MR. CONINE: Right.

MR. GORDON: And the reason for that is exactly what Ms. Bast says -- how you vote for your board of directors and things like that.

MR. CONINE: The boundary description that they provide in the letter, was that documented in some other document?

MR. WITTMAYER: It was not.

MR. CONINE: So there's no reference to the boundary description prior to this application in any other document that you found.

MR. WITTMAYER: The letters included a description of the boundaries, but did not include any documentation of the boundaries.

MR. CONINE: I feel like a lawyer.

MS. ANDERSON: Well, but your letter -- your QCP letter doesn't cite that as a -- doesn't cite lack of documentation of boundaries. It just says --

MR. WITTMAYER: Insufficient evidence that they were a neighborhood organization.

MS. ANDERSON: Right. It doesn't -- I mean, it doesn't talk about -- none of these letters I think talk about boundaries at all. They talk about the definition of a neighborhood organization as your grounds for not scoring them.

MR. WITTMAYER: Right. And then trying to determine whether or not it was a neighborhood organization -- it was helpful to know something about what its boundaries were.

MR. CONINE: Move to deny both appeals -- or all three appeals.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item for your consideration would be 04-120. It is incorrectly identified as 04-121 on your agenda -- Sedona Springs Village. That is also one that is asking to be deferred to the end of the agenda.

MR. CONINE: Is it the same reason?

MS. CARRINGTON: Yes, sir, it is.

MR. CONINE: Okay.

MS. CARRINGTON: Those are the same applicants.

MR. CONINE: Thank you.

MS. CARRINGTON: The next one for your consideration is 04-158 -- has just withdrawn their appeal -- hot off the press information.

MS. ANDERSON: Now, I had one witness affirmation form for 04-158. Do you defer your right to

speak as well?

MALE VOICE (from audience): Yes.

MS. ANDERSON: Thank you very much.

MS. CARRINGTON: The next item for the board's consideration is 04-162, which is Travis Place Apartments. And it is located in Lubbock. And this is one that the -- there's only one appeal. And that is in your book of July 21.

MS. JOYCE: Basically, of the -- this is regarding one of quantifiable community participation again for two letters. Of the several letters that were appealed in the executive director's appeal, to the board they're asking us to look at the Boys and Girls Club of Lubbock and North and East Lubbock Community Development Corporation.

A letter from the Boys and Girls Club of Lubbock did not meet the requirements because it serves, again, all of Lubbock County, not a specific neighborhood.

And the letter from North and East Lubbock Community Development Corporation did not meet the requirements because it serves the north and east areas of Lubbock, which is a five-mile by six-mile area and not, again, a specific neighborhood. Therefore, we did not consider the letters.

MS. ANDERSON: Okay. Mr. Tim Smith. I have two people to give public comment. Thank you.

MR. SMITH: Good morning. For the record, my name is Tim Smith with Travis Place Apartments. Get to the point.

The one letter that I'd like to talk about is the North and East Lubbock Community Development Corporation. This development is located in a major redevelopment center in the city of Lubbock. The city, the county is trying to pour a lot of money to see this side of Lubbock be developed.

Part of this organization's purpose is just to oversee the redevelopment in that area. We held many meetings with different neighborhood organizations, and we invited most of them -- all to these two meetings. This organization was at present, and the letter even states that they were there. They had seen the outreach that their developer had done to the community.

The reason other letters from the neighborhood organization didn't make it -- they weren't on record.

But this just covers a five by six-mile area, which is this neighborhood is in. So in terms of overseeing and looking for housing issues the development economically of the community, this organization just has

that specific purpose just for a small area in a great big city.

And based on that, we think it meets the definition of a neighborhood organization.

MR. CONINE: How long has the entity been around?

MR. SMITH: I think two to three years. At the time that the city designated this a redevelopment agency they asked to have some organization created to help oversee this.

MS. ANDERSON: Thank you. Ron Hance?

MR. HANCE: My name's Ron Hance. And I'm an opposing developer in that region. And I just want to address the economic development corporation letter.

There were several issues as far as it being a neighborhood organization that were not addressed in the agency's denial. And this is not a neighborhood organization. The reason it's not a neighborhood organization is that it's -- the city formed it approximately a year-and-a-half ago.

The city's funding it. The city council's appointing its boards. It's -- in the letter of support for the other organization, the other issue that was addressed is how the economic development corporation came

to its conclusion.

And the letter specifically says that -- and I'll read it. It says, The applicant's outreach to the community has been extraordinary. Several neighborhood organization meetings were held in the attempts to discuss the proposed project. Consequently, the various neighborhood associations and concerned citizens proposed -- posed pertinent questions and received satisfactory responses regarding the project. The general consensus supported this development.

So what this letter is actually saying is that the economic development corporation board did not vote to support it. What it's saying is that the executive director of the economic development corporation went to some meetings and the general consensus was that they supported it.

So there was no vote or process by the economic development corporation. And that's the reason I spoke -- and I am speaking in opposition of this letter -- this appeal.

MS. ANDERSON: That's the right kind of behavior. Thank you both.

MR. BOGANY: I'd like to make a motion to deny the appeal.

MR. CONINE: Second.

MS. ANDERSON: Discussion about the motion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next appeal for the board's consideration is 04-163, Riverview Apartments located in San Angelo. The main part of the appeal is in your July 21 book. However, you need to look at the appeal book behind that number to actually see the letters -- the quantifiable community participation letters. So we apologize that this appeal is actually in two places.

MS. JOYCE: For Riverview Apartments, 04-163, the applicant is specifically appealing the letter from the League of United Latin American Citizens. The letter did not meet the requirements because it serves, again, the entire county, not the specific neighborhood. And that's actually the main reason. Thank you.

MS. ANDERSON: Mr. Smith?

MR. SMITH: Yes, ma'am. On this letter, LULAC actually is a national organization of itself -- very active all over.

When the -- when we were meeting with the local LULAC chapter -- there's actually two of them in San Angelo -- the letter was written. And LULAC does cover various regions. In fact, District 5 covers I think 55 counties -- and the District 5 president is here. But this actual LULAC chapter that wrote I think is Chapter --

MS. JACQUES: 637.

MR. SMITH: -- 637. Active -- is very, very active in this specific neighborhood. In fact, I'll let the chapter president talk about the different issues they have advocated, even in rental housing and apartments right next door to the development that we are looking to develop.

MS. JACQUES: Good afternoon. My name is Elma Jacques. I am the president of LULAC Council 637. I've been in LULAC for 25 years. We just celebrated our 75 years in serving the whole world -- or the whole United States.

And we support this development. We have met several, several times with this corporation. And we have the need for new apartments and new housing, for specially

for our minority community.

We, as LULAC, represent -- I represent that particular neighborhood. I'm the one that gets the complaints from another project that is real close to where this project is going to be. And it's so rundown that we really need it. I think it will enhance the minority. It will enhance our problems with the apartments. So I wish that you would consider it and let us build this apartments for our community. Thank you.

MS. ANDERSON: Question? Thank you.

MR. SMITH: If I could just say one other thing. In terms of the actual coverage area -- and the District 5 president can say something in regards to this that these are local LULAC chapters -- and more than one in San Angelo.

But if there is an issue outside in a small town where there's no LULAC chapter, the district will get together and the chapters that are nearest will come and advocate for any issues.

MR. BOGANY: I have a question. Are you saying that in San Angelo there are more than one LULAC chapter?

MS. JACQUES: Yes, sir.

MR. BOGANY: And so this particular chapter --

MS. JACQUES: I'm the one that lives close to

this particular area.

MR. BOGANY: Okay. So then your chapter would govern this area.

MS. JACQUES: Yes, sir.

MR. BOGANY: Okay. Thank you.

MS. ANDERSON: I have I think Angie Menchaca?

MS. JACQUES: No. But Mr. Suniga is the district director.

MS. MENCHACA (from audience): [inaudible]

MS. ANDERSON: Okay. Thank you. Yes, sir. Go ahead. I'm sorry.

MR. SUNIGA: Thank you. My name is Mike Suniga, Jr., and I'm the district director that covers, like he says, 55 counties. To give you an example, we were in Quanah, Texas, last night, and we had a town hall meeting to address issues of health, school dropouts, even racial police profiling -- the whole nine yards last night. And then we came in about one o'clock, slept a couple of hours, and wanted to be here to help Mrs. Jacques to be sure that you understand that this council covers that area.

And if they need any help, and with that community just like Miles or other small towns, then the district comes in -- and we're all volunteers -- and help

out with the problems.

And our district was organized in 1972. And we're very proud of it -- District 5, one of the best districts in the state of Texas. And you know -- those of you who might be acquainted with west Texas, you've got to travel 75 miles or 100 to go anywhere. So this is the way we live up there. So we enjoy it and hope that you all consider this. Thank you.

MR. SALINAS: This LULAC that is close to the development is recorded within their own chapter?

MS. JACQUES: Sir?

MR. SALINAS: How many chapters do you have in LULAC?

MS. JACQUES: We have two right now, and we're forming another chapter.

MR. SALINAS: So one is close -- the one you belong to is close to the project?

MS. JACQUES: The one I belong to -- right. Right. I go in [inaudible] the issues -- and that particular apartment is next door to where these are going to be.

MR. SALINAS: So you're recorded with the county --

MS. JACQUES: Yes.

MR. SALINAS: -- as a chapter?

MS. JACQUES: Yes.

MR. SALINAS: I move that we go ahead and approve the appeal subject to that LULAC has several chapters within this county and several chapters within the state. And if they're recorded with the county and they're close to -- and they serve the purpose of an organization in the neighborhood, I would think that they would meet the approval of the appeal.

MR. BOGANY: I second.

MS. ANDERSON: Discussion?

MR. GORDON: I guess I'm concerned that we're setting a precedent here for a national organization -- and while it has regional offices, I'm just concerned that this -- I don't think this fits within the concept of the neighborhood organization that we're --

MR. CONINE: Chris, could you --

MR. GORDON: That's my concern. I mean, I --

MR. CONINE: Refresh our memory right quick on the logistical reasons for the rejection -- the boundary is April 1 -- whatever it was.

MR. WITTMAYER: The statute and the QAP require that the neighborhood organization have boundaries which include the proposed development site and that they

provide a letter which states their boundaries and provides documentation of their boundaries.

I have the LULAC letter in front of me dated April 14 on LULAC letterhead. And at the top of the second page of the letter it states, Our service area includes the region of Tom Green County.

When EARAC reviewed that language, the first question we had was, well, does service area -- does that define boundaries or is that just where they do their service? And then considering the region of Tom Green County, we concluded that that was not a neighborhood organization because of the size of the county.

MR. CONINE: Did they describe their boundaries in any other way other than that?

MR. WITTMAYER: I do not believe they did. No, that's the only description of LULAC.

MR. CONINE: So they didn't even describe -- they didn't -- in their letter to us, they didn't detail as a QAP request their boundaries?

MR. WITTMAYER: That's the only language that is at all relevant to boundaries.

MR. CONINE: Did you get -- did they get the membership -- did you go through how they arrived at their support? Did they do that?

MR. WITTMAYER: They state that we met with the representative, and our board of directors approved the development unanimously.

MR. CONINE: So, again, it's a board thing.

MR. WITTMAYER: [inaudible] members.

MR. SALINAS: [inaudible].

MR. WITTMAYER: We have 18 members and a board of directors which serves as the governing body.

MR. SALINAS: Serves as [inaudible]. You say that they failed to respond as being a neighborhood.

MR. WITTMAYER: Yes, sir.

MR. SALINAS: Do you understand that?

MR. SUNIGA: Yes, I do -- what he's saying. And I'd like to address this by saying that this council does only cover that particular area. Now, a lot of people get confused because, when we have like call from out of -- around the area [inaudible] and the district comes in. But --

MR. SALINAS: But you understand what they want?

MR. SUNIGA: Yes.

MR. SALINAS: Boundaries on that chapter that you have close to the --

MR. SUNIGA: Sure.

MR. SALINAS: -- complex. Do you have those boundaries that you -- and I understand how you all work. But do people set the boundaries in that chapter?

MR. SUNIGA: We can if --

MR. SALINAS: Well, I don't know that you can attempt it now.

MR. CONINE: No. Too late.

MR. SUNIGA: We can't do that.

MR. SALINAS: The only thing that we would like to ask the board -- I know that they're not -- and one of the things that we want to do here is follow the rules -- is that they need to present the boundaries to that chapter and all that communication between the neighborhood and the people that are presently -- the developer did not know that they have to produce the boundaries of neighborhoods.

So I would like to withdraw my motion -- my second because of the boundaries that are not present. And I also would ask that you consider this for forward commitments.

MR. CONINE: Motion to deny the appeal.

MR. GORDON: Second.

MR. BOGANY: I think you had a motion and a second to approve. I think we need to withdraw that.

MS. ANDERSON: Did we have a motion --

MR. SALINAS: I withdraw my motion.

MS. ANDERSON: Okay.

MR. CONINE: I heard him say he withdrew.

MS. ANDERSON: Okay. So can we start again?

MR. CONINE: Move to deny the appeal.

MR. GORDON: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Thank you.

MS. CARRINGTON: The next one for your consideration would have been 04-191. The mayor has been helping me with Boca Chica, which has been withdrawn, as has the next one, 04-192, Providence at UT Southwestern in Dallas, Region 3.

MS. ANDERSON: May I just be certain that James Thomas does not want to speak to this item?

MR. THOMAS (from audience): No, I do not.

MS. ANDERSON: Thank you very much.

MS. CARRINGTON: Thank you. And the next one for the board's consideration has also been withdrawn. That is 04-193, which is Providence at Edinburg, located in Edinburg.

MS. ANDERSON: And I also have witness affirmation forms from A. Ramirez, Laurentina Juarez, Estella Trevino, Deedie McKinney, and Paulo Valencia. Do you all decline your opportunity to speak?

(Pause.)

MS. ANDERSON: Yes. Come forward, ma'am. And please state your name for the record.

MR. BOGANY: Which one is this?

MS. CARRINGTON: 04-193, Providence at Edinburg.

MS. ANDERSON: The appeal's been withdrawn, but I'm asking if they want the courtesy to speak to us anyway.

MS. TREVINO: Thank you. My name is Estella Trevino, and I'm the executive director of the Edinburg Housing Authority.

And I'd just like to thank the board for allowing us to be here today. And I thank you all on behalf of all the senior residents from the City of Edinburg. We thank you from the bottom of our hearts.

MS. ANDERSON: Thank you.

MS. TREVINO: And the rest of our people do not wish to speak.

MS. ANDERSON: Okay. Thank you very much.

MS. CARRINGTON: The next one for the board's consideration is 04-255, Freeport Oaks, located in Freeport, Region 6. This appeal is in your board book of July 21.

MS. JOYCE: 255 and 261 -- I believe both were withdrawn.

MS. ANDERSON: Okay.

MS. JOYCE: Yes. 04-255 and 04-261 were both withdrawn.

MS. ANDERSON: Mr. Kilday, would you like to speak or --

MR. KILDAY: I will pass.

MS. ANDERSON: Thank you, sir. And, Mr. Cook?

MR. COOK: I pass.

MS. ANDERSON: Thank you, sir.

MS. CARRINGTON: With exhausting the list that was in the board book, the next book that the board needs to be looking at is the one that is titled as your board appeal --

MS. JOYCE: 299 is actually included in the

addendum.

MS. CARRINGTON: Thank you very much. 04-299 has also been withdrawn. Thank you.

MS. JOYCE: It's included in the addendum actually. That documentation of [inaudible] to the agenda was rescinded and then put in the addendum.

MR. CONINE: So is it still on or is it off?

MS. JOYCE: It's the -- it's second to the last that we have scheduled now --

MR. CONINE: All right.

MS. CARRINGTON: On the addendum.

MS. JOYCE: On the addendum.

MR. CONINE: Okay.

MS. JOYCE: Okay.

MS. CARRINGTON: [inaudible] it's still one for this one, but not on --

(Simultaneous discussions.)

MS. JOYCE: Yes. And must he withdraw --

MS. ANDERSON: Wait just a minute, Ms. Joyce.

MS. JOYCE: Okay.

MS. CARRINGTON: We have notification that two more have been withdrawn that are on the agenda list. And those two are 04-120, which is Sedona Springs Village in Odessa. And the other one is 04-057, which is Stone

Hollow Village in Lubbock.

MS. ANDERSON: Just a second, Jenn. As I've done before, just to make sure that Ms. Bast, Mr. Hance, and Mr. Hance waives their opportunity to speak.

VOICES: We do.

MS. ANDERSON: Thank you very much.

MS. CARRINGTON: And I believe that that does address each of the items that were on the -- in the board -- actually on the agenda.

MS. ANDERSON: Okay.

MR. CONINE: So how many more do we have?

MS. ANDERSON: The addendum.

MS. CARRINGTON: The addendum. Some of them we have handled.

MR. CONINE: Just curious.

MS. JOYCE: 302 has also been withdrawn.

(Simultaneous discussions.)

MS. JOYCE: That's the last one, Ms. Carrington?

MS. CARRINGTON: Yes, the last.

MS. JOYCE: 04-032. Yes, 04-302.

(Simultaneous discussions.)

MS. ANDERSON: And I'd ask the pleasure of the board. I mean, do you need another break?

MR. CONINE: Yes.

MS. ANDERSON: The audience may need another break also. And --

MR. CONINE: If we've only got one or two left I could make it.

MS. ANDERSON: No, there are four.

(Simultaneous discussions.)

MS. ANDERSON: We're going to take -- is ten minutes long enough this time, Mr. Mayor?

MR. SALINAS: That's okay.

MS. ANDERSON: All right. Ten minutes. Thank you.

(Whereupon, a short recess was taken.)

MS. ANDERSON: We are back in order and ready to continue.

MS. CARRINGTON: Thank you. The next item for the board's consideration is 04-017, which is Country Lane Seniors in Temple. And we have now moved, remember, to the addendum book.

And staff has asterisked all of the tabs in the addendum book so there was a way that you all could keep them separate from the addendum and the nonaddendum. But it's 04-017.

MS. JOYCE: Ms. Anderson also asked me to

provide some clarification on the addendum appeals that are coming forward. Just after 04-156 is your board book is 04-173, the Gardens of Burkburnett. That is not listed on your appeal addendum list that was given to you. However, it was included in the actual board book. And I would assume we'll probably hear that after 04-156.

In addition to that, there are two other appeals that were filed timely that the Department was made aware of today, and we are ready to present on those I assume at the end of all of the appeals.

And that is for 04-218, Converse Village, and 04-174, Gardens of Early. I believe that you will receive the appeal documentation for 04-218, Converse Village, and we will be discussing 04-174 and the similarities for another appeal that the applicant has.

I'm not sure if you want to handle it just before the -- I'm sorry -- just after 04-175, which is in your addendum -- and it is the same applicant.

That being said, I just also wanted to point out that the QAP is explicit in the appeals requirements, in that all appeals must be handled and filed in a timely manner. All appealable issues regarding scoring, whether it be the AG opinion, all past scoring notices, quantifiable community participation -- all items that

would affect, to my knowledge, the recommendation to the board in terms of each development should have already been made.

And so there probably will not be any appeals filed in a timely manner in the August board meeting. But I did want to let you know that.

FEMALE VOICE: With the exception of
[inaudible] --

MS. JOYCE: I'm sorry. With the exception of underwriting financial feasibility -- that caveat we discussed earlier. Okay.

Moving on. Country Lane Seniors, 04-017. They are -- there were two appeals that were received, one dated July 12, one dated July 19. The one regarded July -- I'm sorry -- submitted July 19 is regarding the Attorney General's opinion and just a general appeal of the score.

The other is for quantifiable community participation submitted on July 12, and I would like to point out that, while we did provide the documentation for those quantifiable community participation letters in your packet, they should not be considered as an appeal and are not presented to you as such because it was not filed in a timely manner.

So regarding the Attorney General's opinion and the points being scored, those are the -- that's the only item that we have for you right now.

MS. ANDERSON: Okay. Patsy Luna. And the next person will be Bishop Tolbert.

MR. MITCHELL: Could I say something real quickly?

MS. ANDERSON: Yes.

MR. MITCHELL: The members of Citizens for Progress will speak first.

MS. ANDERSON: What is your name, ma'am?

MS. MORALES: Good morning. My name is Judy Morales, and I'm here in behalf of the Citizens for Progress. And we're here to ask that you recognize Citizens for Progress as a bona fide neighborhood organization.

I serve as the vice chair person of this organization. I have lived in Temple all my life. I live and work in that community and I live in that neighborhood. I grew up in east Temple.

The Citizens for Progress purpose has been to work in our community to revitalize east Temple by addressing the housing issues, the infrastructure issues, education, and economic development in our area.

We meet -- Citizens for Progress began meeting in the year 2000 -- started as a grass root -- and it still is a very grass root neighborhood organization made up of local interested citizens who either work or live in that area.

We've been very active in helping to mobilize and educating ourselves, as well as the neighbors in that area to make a positive difference and to upgrade our area -- to make it safe. By doing this we are working with different agencies and partnering with different groups.

Citizens for Progress has also conducted many surveys when we host our community neighborhood organization forums. We work with the city and -- on their direction on their CDBG funding and HOME funding.

And we ask that you recognize us as a full organization. We are here to also support the Country Lane's project and also the Village at Meadowbend project, which is in Region 8. And we ask that you consider this and put us back into as a bona fide organization. We will now call on our chair person, Dr. Lee Crossley.

DR. CROSSLEY: Thank you. My name is Dr. Lee Crossley. I'm the chairman for the Citizens for Progress and co-founder. I would like to pass on some information

here, if I may.

I would like to say, first of all, we do support the Country Lane Seniors Temple community project, and also we support the Village at Meadowbend, 04-145. We will support them.

But I would like to also note that we are requesting that the board hear our appeal under disqualification of Citizens for Progress. Even though an official appeal was not filed by June 24, 2004, at that time the project that we are supporting, County Lane Seniors Temple community, was the number two ranked project in our Region 8 and scheduled for approval. Therefore, we saw no need for an appeal.

However, the board at the June 28 meeting later approved Country Lane project. This project was taken off the approved list when the board approved a ten-point new category for rents on July 8.

As soon as the applicant found out about the new category, we immediately filed an appeal. Regardless of whether or not you hear our statements as an appeal, we believe that we still have the obligations to score our written statements in accordance with the intent of Senate Bill 264.

We believe that denying our appeal does not

relieve your responsibility to fix -- to show that our written statements were scored in accordance with Senate Bill 264 and consistent with letters submitted with other neighborhood organizations.

The rule states that the written statements for neighborhood organizations will be scored as the number two priority [inaudible] in Senate Bill 264. Senate Bill 264 does not require the neighborhood organization to file an appeal in order to be scored.

We believe that our neighborhood organization is receiving unequal treatment with the other neighborhood organizations that had appeals approved by the board on July 8, 2004. We worked almost two months on the information submitted --

MS. ANDERSON: Sir, I need to ask you to finish up.

DR. CROSSLEY: Okay. Today we are submitting our information to you that we submitted on June 28 and the report that was submitted. And we ask that you -- request that you give staff instructions to provide us with detailed written explanation of why we were disqualified. Then when we know the reason, we will come back to discuss these reasons with you in the August board meeting. I'm out of time?

MS. ANDERSON: Yes, sir.

DR. CROSSLEY: Okay. Thank you.

MS. ANDERSON: Ms. Luna?

VOICE: [inaudible].

MS. ANDERSON: Well, I'm taking the forms in the order that I have them. And Ms. Luna said she would like to speak first when this item came up on the agenda. So I'm trying to honor that.

MS. LUNA: Good afternoon. My name is Patsy Luna. I represent District 2 on the Temple City Council, which is predominantly the east Temple area, which is a low- to moderate-income, very diverse population.

The Country Lane Seniors project is very important to the revitalization of the area and for support of the aging population.

Here is one problem that we have. July 3 issue of our hometown newspaper -- Temple living center moves up tax credit list. And that was after your June meeting. And they used information from that meeting to write this article. So our folks think it's approved. I'd like to just read you an excerpt from the letter that I provided you there from our mayor, William A. Jones III.

In June the Attorney General had all projects ranked in accordance with the established state law, and

we found the Country Lane Seniors project to be ranked second in the region. On July 7 the rules were changed again, and we found a severe penalty imposed on this project, resulting in being ranked fourth and unfunded.

The new point system imposed on July 7 precluded the Temple project from participating in the factor involving income levels of the tenants. Why? Because the city of Temple had committed earlier to provide \$110,000 and utility improvement dollars necessary for the success of the project.

The TDHCA scoring system change does not allow the applicants to participate in the local match factor and the tenant income level factor. Since the change in the rules occurred after all applications had been submitted for months, there was no opportunity for us to consider changing our application to address this recent change.

The city of Temple in this case might have been better off by not financially assisting the developer. This is not fair to the Temple residents, especially if a point scored occurred in accordance with the Attorney General's direction and it be scored in accordance with the legislative specifics identified in the law.

Due to the scoring formula changes, this

project, which was funded in June and is now unfunded, we request that it be considered strongly for a forward commitment.

I've been a member of Citizens for Progress since 2000 -- its inception. And that was long before I was elected to the Temple City Council. And I assure you it is a neighborhood organization. Thank you.

MS. ANDERSON: Thank you. Bishop Tolbert?

BISHOP TOLBERT: That's right.

MS. ANDERSON: Is that right?

BISHOP TOLBERT: You did good.

MS. ANDERSON: Okay.

BISHOP TOLBERT: Good afternoon, Madam Chairperson. I want to give some reasons that we should be approved for forward commitment for the County Lane Seniors in Temple.

First of all, the TDHCA board approved this project on June 28, 2004, in the preliminary list of approved projects. Secondly, the approval of Country Lane by the board was announced in an article on the front page of the Temple Daily Telegram on June 3, 2004. Pulling this seniors project at this late date would create bad publicity for the TDHCA.

The city of Temple has committed \$110,000 in

funds to the project. And if the project does not go forward, the funds may be lost, in that in the event that the city of Temple is not able to renew the commitment.

Fourthly, the project is the only new construction seniors project who can give the seniors in Temple the opportunity to take advantage of the Scott & White health care program for seniors.

Number five, the applicant is disputing that the application for Country Lane Seniors Temple community was properly scored and ranked in accordance with the AG opinion because the application was not fully scored in the two categories, income levels and rents, because the rules prohibit the project with leveraging funds with a city from participating in scoring in the low-income targeting category at the 30 percent AMI level -- Exhibit 13.

Finally, the applicant is disputing the disqualification of Citizens for Progress as a qualified neighborhood organization and the failure to award points for the letter and supplemental information submitted by Citizens for Progress.

I pastor a church that is right in that target area. And we really need this -- time's up. We need it.

MS. ANDERSON: Thank you, sir. Mr. Mitchell?

MR. MITCHELL: Good afternoon. I'm Ken Mitchell. I have some handouts here.

We are requesting only a forward commitment. We are not asking to take anybody's place that's on the approved list. And I do appreciate Leslie -- Leslie Holleman saying a few good words for us. You know, we've been going back and forth. And one week she's on the approved list and I'm not. And, you know, then I'm calling her and saying, Hey, you know, gosh, I got approved, but, you know, I'm sure sorry you didn't. And then two weeks later she called me and said, Gosh, you know, I'm approved and you aren't.

So it's time to, you know, quit trying to knock each other off. And I'm certainly not doing that on my appeal today.

I want to make you aware of a situation that -- in the scoring which worked adversely to me because I had this leveraging of funds -- or commitment from the city for \$110,000. And if you'll look at this sheet here -- and I've compared my scoring with a competitor -- and the competitor's a good project -- I'm all for them, you know, too.

But it all goes back to the next page on leveraging. If you use leveraging points, you could not

take any points in Exhibit 13 -- and I've highlighted those exhibits. And so it's either/or.

You're put in a position of choosing which you want to do -- target low income families or try to get city funds. And really you should be able to do both, you know, because if you have city funds, you are in a better position to serve low-income people at the 30 percent level.

So we're put in the position of choosing which way we would go. Most of the developers -- I am so short -- could I have just a quick second?

MS. ANDERSON: Sure.

MR. MITCHELL: Okay. Most of the developers chose item 13 because there were more points. And when the new scoring came out for AG's opinion, we moved up -- or my project moved up because we had leveraging. And that was how -- it was number five [inaudible] both lists.

What really took me off the list is the July allocation of ten points, because those ten points -- six of those ten points went to Exhibit 13, which I was not eligible to participate in. So out of the ten points, I was ineligible for six of those points.

Now, if you look at the bottom of the calculation in my denominator they put 12, which is the

maximum points for 13 -- I couldn't get any -- in the numerator they put zero. Well, that diluted my fraction so much that I only came out with 3 points. And even though if we're targeting in the 40 to 50 percent, I had six-eighths -- or should have been entitled to [inaudible] my points.

But if you'll look at that line --

MS. ANDERSON: I need to ask you to wind up or have either Ms. Harman or Mr. Watson yield time.

MR. MITCHELL: Ms. Harman?

MS. HARMAN: Yes.

MR. MITCHELL: Thank you. And if you look at the results of the July results of it, I had three points -- although I was ahead at this time to July 8 I only had three points. And my competitor, because he or she was in Exhibit 13, got eight points, which is a five-point difference. And if you look at the overall scoring on these two exhibits, I scored 17 points -- he scored 24. It is a net loss of seven points for me.

So I can stand up and say, even though this was encouraged, you know, by the Legislature, it is a big mistake. And it was a big mistake to go this direction because so many points were given in the other category.

Let's see if I have anything else here. I want

to comment on this right here -- the staff explanation of the July 8 change. If you can please find that in your package. The July 8 change was made to make adjustments between low-income targeting and leveraging.

And it says, For leveraging -- and in those applications that originally pursued points for low-income targeting in lieu of -- or instead of leveraging because the points were higher -- and I pointed out the points were higher -- will again be appropriately incentivized. And so that, to me, is a problem. [inaudible] should be able to be in both categories and not have to pick one over the other.

And so I guess what I'm asking -- I'm not trying to interpret the law at all. It's impossible to reconcile the Attorney General's opinion with the QAP. And I think you've done a good job. But this project was a victim in the process. And appreciate your consideration for a forward commitment. Thank you very much.

MS. ANDERSON: Thank you, sir. Mr. Watson?

MR. WATSON: Madam Chairman, members of the committee. My name is Mark Watson. I'm the city manager of Temple, and it's a pleasure to be here today. I have one handout -- late-night reading. I know that it's tough

to catch all that -- just some comments.

But as you can see, we have a lot of passion. We have, in looking at our scoring charts, three projects at 149 and one at 147. And those have been in various lead points at different times.

Our thoughts today are that we don't need to knock anybody else off the pedestal, and we would ask that you really look at this region and the need for future commitment. We would love to have that considered.

This is a seniors project, the only one seniors project of the total four. And we think that that would be a viable consideration by TDHCA. These projects have been wonderful for our community, which only got back into the tax credit programs about two years ago. And the demand is overwhelming.

Infrastructure -- I just point out that as you look at your new regulations in the coming year, cities across the state, not only Temple, will have to consider whether to commit funds or not in these projects.

And usually when you're targeting low- to moderate-income areas, the infrastructure is in deplorable shape. And so I know that in the case of the Country Lane project, we are going to have to -- because of the size of that project and the condition of the lines, we are going

to have to make some extensions across some state highway.

And that's something unreasonable to ask of a developer on a project like this. And I think you'll see those all across the state.

We would ask your favorable consideration on a future commitment. We think these are great projects and they've been very beneficial to the low- to moderate-income folks within our community. And thank you for your consideration and time.

MS. ANDERSON: Thank you, sir. Now, we have appeals on two issues. Is that right? Two QCP and -- or you said QCP, no, because the appeal wasn't filed timely.

MS. JOYCE: The QCP was not filed timely. And the other appeal is general AG scoring.

MS. ANDERSON: Okay.

MR. CONINE: No action.

MS. ANDERSON: So there's no action. But you advise us on any -- is there any action that --

MR. WITTMAYER: The board could deny the appeal as untimely.

MS. SALINAS: What can we do to do a consideration on the allocation?

MR. WITTMAYER: I'm sorry, Mayor. I --

MR. SALINAS: What can we do to consider a

forward commitment on the --

MR. WITTMAYER: The board will consider forward commitments I believe at the August or September board meeting. Concerning the one issue, I understand he's just requesting a forward, and that will be considered at that time. Concerning the QCP appeal, the board could deny that just as untimely.

MR. CONINE: Have we written a written response back to them yet? Because I think I remember him saying that we haven't.

MS. ANDERSON: I think it was yesterday or --

MS. JOYCE: A written response -- let's see.

MS. CARRINGTON: It looks like it went out from the agency on July 27.

MR. WITTMAYER: Yesterday.

MS. CARRINGTON: So that was yesterday.

MS. JOYCE: I'm not sure if he did receive it.

We did say that the Department's interpretation of the Attorney General's opinion has not changed since the July 8 board meeting. And Section 50.9(g)(12)(d) of the Emergency Qualified Allocation Plan that the Board of Texas Department of Housing and Community Affairs approved on July 8 is explicit in its requirements for the qualification of points under this item. We also

indicated to him that -- regarding the points for QCP could not be considered and why.

MR. SALINAS: So [inaudible] they're not doing an appeal.

MS. JOYCE: We included this as an action item -- as an item to appeal because he didn't articulate in the appeal exactly which scoring items he was appealing, but did address his general issues with the Attorney General's interpretation -- staff's interpretation of that. So it sounds like his actual appeal was more for a forward than that of point scoring items.

MR. SALINAS: So what would you recommend that we do if he's not asking for the appeal?

MR. CONINE: Move to deny that appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: The next item would be 04-032, Los Milagros. And the board has heard that appeal.

The next one is 04-033, which is Bethany Gates -- the Bethany Gates Apartments.

MS. JOYCE: This one is somewhat similar to the other, in that the appeal itself was somewhat nebulous. And so staff is basically saying -- excuse me -- the actual item right now before you is the applicant is appealing a score change subsequent to the Attorney General's opinion.

However, no specific score change was actually articulated in the appeal, because these were somewhat rushed coming back from the applicants as the executive director was making determinations, we allowed this as an action item.

However, it should also be noted that appeals were received on June 30 and July 13 regarding subsidy points, pre-application points, and points for Senator Jones' letter of support. We cannot consider those, again, because they were required to be filed to the Department no later than June 24, as required in a scoring notice that we sent to them.

However, I am prepared to address those items as needed if the appellant comes up and wishes to discuss

them. I'm sorry?

MR. BOGANY: Which one are you on?

MS. JOYCE: 04-033, Bethany Gates.

MR. CONINE: If you could give us the region, that would be helpful.

MS. CARRINGTON: It's Lubbock.

MS. JOYCE: 1?

MS. CARRINGTON: Region 1.

MS. JOYCE: Region 1.

MR. CONINE: Thank you.

MS. JOYCE: You're welcome. So if he chooses to discuss it, I am prepared -- staff's opinion on each of those other items that we don't have for your consideration. But other than that, as I said, it is a general appeal of scoring based on the Attorney General's opinion.

MR. CONINE: Is there any public comment?

MS. ANDERSON: Yes, there is public comment on this. Mr. Smith?

MR. SMITH: I yield my time to John Pitts.

MS. ANDERSON: Mr. Pitts. And I won't forget you this time.

MR. PITTS: I would like to discuss one of the issues that Ms. Joyce mentioned, and that is the letter

from State Representative Delwin Jones. That letter was dated January 29, 2004, and was included in our application packet. And here it is.

MS. JOYCE: We did receive that letter that he is referring to. However, unfortunately, the Senator Jones' district is -- excuse me -- District 83. The actual development district is 84. So your board book does reflect the support of Senator Jones. However, we cannot award points because it's not a district of the development.

MR. SALINAS: But we listed the [inaudible] the right state representative did not write to --

MS. JOYCE: Correct. We did not award points because it was not the correct district for the development. However, we did put in the board books support -- we did indicate that support from Senator Jones.

MR. SALINAS: Okay.

MS. JOYCE: I'm sorry -- Representative Jones. Pardon me.

MR. PITTS: I don't think he wants that promotion. He had the opportunity. I'll just need to look into that. I'm the one that did the research on that to be sure, and asked Delwin if this was his district.

And he told me it was. And I just need to go back on that. So I may be back to you on that yet.

We did file an appeal last week -- or the week before based on the Attorney General's opinion based on the rescoring. And we have not yet gotten any response from that, as it was indicated earlier. So I'm then asking for a forward commitment -- for consideration for a forward commitment.

MR. CONINE: Move to deny --

MS. ANDERSON: Oh, I have one more witness.

Mr. Palasota?

MR. PALASOTA: I yield my time to John Pitts.

MS. ANDERSON: Okay. Thanks.

MR. CONINE: Move to deny any appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: The next development for the

board's consideration if 04-070. This is Cedar Oak Townhomes. And I believe this is Region 13. It's located in El Paso.

MR. GORDON: Madam Chair?

MS. ANDERSON: I'm sorry.

MR. GORDON: Yes. On this one, because of my firm's involvement with Mr. -- the developer on this on other issues, I feel like that it's in the best interest of the board that I will recuse myself on this appeal. I've discussed this with counsel, and so I'm going to recuse --

MS. ANDERSON: We respect that, appreciate that, and enjoy yourself.

(General laughter.)

MS. CARRINGTON: And staff's presentation on this development will be Tom Gouris. Mr. Gouris is the director of real estate analysis. And, as you might suspect, this one relates to financial feasibility of the transaction.

MR. GOURIS: And market.

MS. CARRINGTON: And market. Thank you.

MR. GOURIS: Tom Gouris, director of real estate analysis. This transaction appealed their underwriting report for a number of reasons.

We concluded in the underwriting report that the market study was not self-contained. It didn't include a summary form, it didn't include a rent matrix, it didn't include a number of features that we require market studies to contain. It also didn't include a calculation of demand, and it didn't include an accurate calculation of the supply in the area. The applicant appealed on all of those issues.

We also -- a combination of all that was that the market study didn't conclude -- their conclusion of inclusive capture -- it was in error. And when we recalculated that, based on the information that we know about that market, that should have been in the market study. We calculated an inclusive capture rate that exceeded our 25 percent tolerance.

And then the last item that they appealed on and that we had remarked on in our underwriting report was that the deferred developer fee can't be repaid in the 15-year time period that we allow based on our analysis of the cash flow net operating coming into the property. It was going to insufficient to net out operating income to repay what we anticipate to be the deferred developer fee. And they appealed on that issue.

And that has to do with the change in the cost

of the project. They had originally filed this application based on the fact that they were going to be able to get an extra eligible basis of 130 percent boost because the property had been -- county had been a DDA. And this year the property's no longer a DDA.

So they were given the opportunity to resubmit their application. And when they did that they converted to 100 percent/60 percent transaction, which would have been a good enough transactional change.

But they also increased their costs significantly at the same time. And that increase in cost is more than the -- was significantly more. Originally, we would have been slightly below them in cost -- or they would have been slightly below us in cost. Subsequently, they were slightly above us in cost. We ended up using their cost. And when we did so, the gap that was created was too big for them to be able to repay.

MR. CONINE: The -- on the market study -- ironic to me that we've got a market study I guess with that many deficiencies in it that you reported. Is this one who's on our list and has been supplying market studies to us in the past?

MR. GOURIS: They have supplied market studies to us in the past. They haven't been a big producer of

market studies for us. We have recommended, aside from the issues associated with this transaction, that we remove the market analyst from our list.

There's a process for them to get reinstated on our list, and I think they're expecting to be able to do that. They've already made some inroads at trying to get the information that was needed to get back on the list.

MR. CONINE: Okay. Thanks.

MS. ANDERSON: We have a number of people that would like to make public comment on this transaction.

Ms. Bast?

FEMALE VOICE (from audience): [inaudible]

MS. ANDERSON: That's fine. I just take them as I got them.

MR. MONTY: Thank you, Madam Chair, board members, Edwina, and staff for the opportunity to process our appeal. My name is Ike Monty. I'm speaking on 04-070, Cedar Oak Townhomes.

I have filed over 50 applications with the Department and never had an application not clear underwriting. I was also on the list initially -- the initial recommended list. I'm here to explain, not to argue, but to simply clarify a couple of underwriting points.

Certain points of our appeal have been approved, along with some of the underwriting recommendations. So in effect I have half of an appeal. Should the board grant our final appeal, I think it's important -- and that's why we passed the documentation under the separate blue cover.

This development is 160 units. It's a townhome development. This product is very well accepted in our market and is similar to one that the board has toured.

It's in a growing part of town on land that's properly zoned for the development, and does not require any further approval. So there has been some miscommunication with the underwriting department, and that is what brings us here to your doorstep.

We would not be taking a project from a competitor in Region 13. And it's important to note that our region has been historically underfunded. By not funding this development it would be approximately 34 underfunded. I think the area deserves the project.

In closing, we highly respect underwriting's efforts, but the ex parte makes it difficult to communicate and clarify issues. Just a little history on the development, the development was submitted and we were not in a DDA. We were instructed by the Department to

submit new numbers. And at that point in time, we also submitted a new market study.

But everything has been dealt on an administrative deficiency. But when it comes down to the numbers, I think underwriting is using two sets of numbers to underwrite the deal that's in front of you today.

Thank you very much.

MS. ANDERSON: Thank you. Ms. Bast?

MR. MONTY: Cynthia Bast.

MS. BAST: Ms. Anderson, I believe that several of the affirmative forms that you have are yielding time to me. But I will try very hard not to go over -- too far over the two minutes.

MS. ANDERSON: Do we want to address that right now? Ms. Vonberg?

MS. VONBERG: Yes.

MS. ANDERSON: I mean, if you want to yield time you just can say yield time.

MS. VONBERG: Yes.

MS. ANDERSON: Okay. Mariann Alvarado?

MS. ALVARADO: I yield time.

MS. ANDERSON: You think that's enough?

MS. BAST: That should be fine. Thank you.

MS. ANDERSON: One never knows.

MS. BAST: For the record, again, I am Cynthia Bast --

MR. CONINE: [inaudible] the hour, don't you?

MS. BAST: -- of Locke, Liddell, and Sapp. And we are counsel to the applicant bringing this appeal.

First of all, I want to point out Mr. Gouris cited several deficiencies in the market study. And we believe, based on the response to appeal that we have received from the Department, that we have resolved some of those issues.

So we think that we are now down to two issues that I want to summarize for you. And then I'll step from the podium and let some of the professionals explain those issues in more detail.

The first issue has to do with the capture rate. The underwriting department asserts that in calculating the capture rate, the market analyst should have included the Americas Palms project, which is an existing tax credit applicant.

And we don't understand that position and believe that it actually deviates from the underwriting guidelines. The underwriting guidelines state that the capture rate calculation should include the applicant's property, along with all previously approved but not yet

stabilized comps.

As you know, funding for Americas Palms is not approved until this board meeting concludes today, so it is not a previously approved nonstabilized comp. So we don't think that it should be included in the capture rate calculation.

Mr. John Prior, the market analyst on this deal, is here to testify that the capture rate would be below the Department's 25 percent threshold if the Americas Palms project were not included.

The second issue has to do with ability to pay the deferred developer fee within the time frame required by the Department, which is essentially the financial feasibility issue. And I will try to provide some further explanation for the issue that Mr. Monty addressed.

When the applicant submitted its tax credit application, it did believe that the project was still in a DDA and entitled to the 130 percent boost. So the applicant calculated all of its budgetary numbers accordingly.

Subsequently, the Department advised the applicant that it was not in a DDA, issued an administrative deficiency, and allowed the applicant to revise the numbers. At that time the applicant

specifically asked if all of the numbers, including the credit amount, could be changed. And the applicant believed that it was advised that the credit amount could be changed.

Consequently, when the administrative deficiency was submitted by the applicant, it contained a new set of numbers and a new credit amount. The applicant received one further communication from the Department about those new numbers that were submitted and responded to that request, and then heard nothing else about concerns with regard to financial feasibility until the underwriting analysis was posted.

We think that the basis cited for the staff in this infeasibility has to do with the fact that the new construction budget submitted with the administrative deficiency does not support the old credit amount. And we don't understand why you're comparing the old credit amount to the new construction budget when the applicant was specifically told that the numbers could change.

The applicant believes that this is resolvable. The applicant, in fact, based on this new information from the Department in the underwriting analysis that the old credit amount must be used, has prepared said numbers that show the deal to be financially feasible.

The applicant believes that it can be financially feasible and is willing to adhere to whatever underwriting conditions need to be placed on the transaction so long as the decision of underwriting can be overruled and this transaction can be deemed feasible and, therefore, back in the hunt, if you will, for a recommendation.

See, the bottom line is we think we had a miscommunication here. And as Mr. Monty said, he's submitted many applications and never had something quite like this happen. He understood that all of the numbers could change, including the credit amount. We have -- we don't have clarity as to why the old credit amount is being used with the new numbers.

And so I will yield the rest of my time to John Prior, the market analyst, who can speak to the capture rate issue, and to Keith Puhlman, the CFO of Investment Builders, who can answer any more detailed questions regarding the construction budgeted items. Thank you.

MS. ANDERSON: You're welcome.

MR. CONINE: Can we let staff respond to those two issues --

MS. ANDERSON: You bet.

MR. CONINE: -- to those two issues before we

hear somebody else to cloud my mind?

MS. ANDERSON: That's fine. I wouldn't want to cloud your mind.

MR. CONINE: Mr. Gouris? You're speechless.

MR. GOURIS: Yes, I am speechless. With regard to the staff indicated that an increase in the credit amount was allowed, you know, I certainly wouldn't -- I wouldn't have opined that way. I don't -- I have checked today just now and -- before we finished the underwriting report with program staff, and they gave me the same feeling that they would not have opined or suggested that the credit amount could increase.

It's a pretty unique situation. We haven't had this sort of situation come up during the round. You know, it would somewhat be a unfair advantage I would think to adjust your credit amount while everyone else doesn't get that opportunity based on what, you know, has fallen out. So I would just --

MR. CONINE: So it's your belief that we didn't communicate the fact that it could be -- could move --

MR. GOURIS: I certainly checked into it, and I believe we did not.

MR. CONINE: And it would be our position -- or your position that the responsibility for finding out

whether it was in a qualified census tract would fall upon the developer originally. And when it didn't -- or when it was found not to be there then he obviously needed to bump up his credits in order to get the thing covered.

MR. GOURIS: Not necessarily in this case. If he had just switched -- because he had market units in this original development plan. He -- and what he did was he moved those market units to tax credit units and got credit for those. And that would have been sufficient. In fact, that would have been sufficient to fill the gap.

MS. ANDERSON: Had the construction costs not gone up.

MR. GOURIS: Where I'm -- I mean, I'd like to hear what they have to say about the construction costs because we've heard -- their resubmission indicated a significant increase in the construction costs -- 11, 16 -- some significant increase in construction costs.

In their appeal response they indicated that those costs have now fallen back down and they can build it for something that's, you know, more -- a few -- more financially feasible. And they very well may. It's just difficult for us to deal with which set of numbers are we going to be looking at, too.

MR. CONINE: Okay. Switch to the other issue

now, the one on the list that was supposedly included in the capture rate calculation. The Americas Palms --

MR. GOURIS: Right.

MR. CONINE: -- market study?

MR. GOURIS: That isn't the only one that they missed. But based on their calculations, that would be the one that would put them over based on ours. Another one they missed would put them over as well.

But based on their calculation, that one would put them over. It scores higher so it does have a priority. And that's how we look at it. It's not unlike the priority for bond transactions.

MR. CONINE: What she was saying though, if you left Americas Palms out, because it wasn't approved, which sounds to me the way she recited the QAP, it shouldn't be in there to begin with. Is that correct?

MR. GOURIS: That's not the way we have interpreted the QAP. And that part of the language isn't in --

MR. CONINE: So tell me how you're interpreting it.

MR. GOURIS: We've always interpreted to -- because those are known transactions, we always look at the inclusive capture rate for all the transactions that

might be coming up. And we make a determination -- or give information on what happens to the capture rate if they're all included, if -- you know, which is a priority.

In fact, we have at least --

MR. CONINE: How would a market analyst know about that?

MR. GOURIS: Because a market analyst knows what's in the pre-applications, and they also know what's been posted in the applications. And they have 30 days after all the applicants are submitted -- applications are submitted to complete their market studies.

MR. CONINE: Okay. We can hear from the market analyst now.

MS. ANDERSON: Mr. Prior?

MR. PRIOR: Thank you. My name is John Prior, with Prior and Associates. And after we had a chance to reevaluate the demand analysis and include the projects that we missed the first go round and also we came -- we recalculated and we came to a demand of 1,000 units. The underwriting report came to a demand of 987 units.

There's no question if we include both -- all the four projects that are mentioned in our appeal, as well as in the response from the underwriting, that the capture rate would go up above the 25 percent. If you do

not include the Americas Palms under [inaudible] the capture rate is below that -- it comes out -- in our analysis comes out 22.5 percent. So that's our analysis of it.

The other point, which I think is a larger one is, in the underwriting report, although it was not addressed in the response, was a concern about an over-concentration of units in the eastern El Paso market area, which I think is a real -- the other issue behind this.

And we think that there is room for all those for a couple of reasons. One, the area is in a growth corridor. Over the last -- during 1990s we captured about 50 percent of the household growth in the city of El Paso. It's projected to continue to capture about 18 percent.

It has a current -- it has a vacancy rate of 4-1/2 percent. It's going to need, by our calculations, 375 units between now -- the time the report was written and when the products will be placed in service.

There's 409 -- the four projects are Meadowbrook Townhomes, 25 units, Americas Palms, Tropicana Palms, and the subject. All those together have 409 tax credit units. There's nothing else in the pipeline in that market area. And it's gaining about 375 and it's got a vacancy of 4-1/2. So on a [inaudible] sense, we do not

think that bringing all four of those projects on would bring the market out of balance.

In addition, one of the projects, Meadowbrook Townhomes, has been leased and it's been 100 percent occupied since March of 2003.

The other thing is we also don't think it's an overconcentration in the area based on a larger scale thing. This area -- this market area has a median income that's 30 percent above the city. It also has a lower rentership rate -- 26 percent as opposed to 38 percent.

We feel that the project is -- will attract some lower income families and will not provide an overconcentration. In fact, when you tally up all the -- from the list of TDHCA, tally up all the planned and proposed tax credit -- existing and planned and unapproved tax credit projects in the market area, after all is said and done, the market area would -- total units in -- of tax credit units in the market area would be 23 percent of low-income qualified households. And we had used a very small conservative market area.

MS. ANDERSON: Thank you, sir. I have one question for you, sir. Did I -- I want to make sure I heard you correctly. That if Americas Palms is included that you said that it does take the -- your calculations

say that it takes the capture rate up above 25 percent.

MR. PRIOR: If the market area that we defined in our report -- if Americas Palms was included it would push the capture rate above 25 percent.

MS. ANDERSON: Okay. Thank you. Question for staff? Or are you ready for the next witness?

MR. CONINE: Ready for the next one.

MS. ANDERSON: Mr. Puhlman.

MR. PUHLMAN: Madam Chair and honorable board. My name is Keith Puhlman. And I want to answer any questions you have about the construction costs or the development budget going up. I can give you a brief summary or answer specific questions if you like. The --

MR. CONINE: We have heard testimony that costs had gone up, and I'm confused as to why it went up. Can you just briefly explain --

MR. PUHLMAN: Sure.

MR. CONINE: -- to us what happened?

MR. PUHLMAN: Okay. What happened was we believed that we could -- that we converted to the 60 percent as the net operating income for the project went up. And the permanent loan is based on the net operating income of the property. So we qualified for a larger -- about \$344,000 permanent loan.

This money -- the 344- could have been applied to pay our development costs -- development fees quicker.

Or we could use that extra money to upgrade the materials and the fixtures -- the light fixtures, plumbing, and such, and provide a better -- even better product.

So we elected to do that. However, when we did that, it increased the cost, or the eligible basis, above the original tax credit requested. So we had about \$52,000 or so in additional tax credits we were requesting based on the increasing costs that we made.

However, the increase, again, was for things over and above the amenities that we had stated in the original proposal. However, we can do it for the original credits requested and just remove those additional amenities and do it for basically the original construction cost.

We just did not understand whether we could request additional credits or not. It was our understanding that we could. And so we felt that in order to make it, you know, more marketable and reduce future repair and maintenance cost that we could spend more money on the project.

MR. CONINE: So your testimony is that you could roll back to the original amenities, go back to the

original credit amount, and still build the project?

MR. PUHLMAN: Yes, sir.

MR. CONINE: Or would be feasible under those terms.

MR. PUHLMAN: Yes, sir. Yes.

MR. CONINE: Tom, did you suggest that to him or we just haven't had time to do that with all this that's going on?

MR. GOURIS: We did not suggest that additional -- I mean, it's a fairly significant change in the structure. We'd need to understand -- because we reevaluated the cost based on the new information they provided. So they'd have to provide a new set of information --

MR. CONINE: Right.

MR. GOURIS: -- to tell us which amenities were being taken out. And it wasn't just a clarification. That's a -- you know --

MS. ANDERSON: I know that on the private activity bond transactions that we oftentimes, you know, sort of ask the developer and underwriting to kind of go off for a few days -- and, you know, we approve things subject to, you know, kind of going off and working it out because it's a -- you know it's a different program with a

different set of requirements.

Would you refresh my memory? Have we done that same kind of thing for underwriting reports with the 9 percent round before?

MR. GOURIS: No, not at that level. We have requirements that say, you know, if our -- if they haven't met our tolerances we have to ask for them to tell us what the difference is on certain items. But there's not nearly the back and forth that happens with a bond transaction. There's not any of that significant back and forth that happens with a bond transaction.

MR. CONINE: Is there any more public comment?

MS. ANDERSON: Yes, there is.

MR. PUHLMAN: Could I make another --

MS. ANDERSON: Yes, sir. We sort of interrupted you in midstream. I'm sorry about that.

MR. PUHLMAN: Okay. Well, because in the past there have been some discourse between the applicant and the Department, in that if they didn't understand something they would give us an administrative deficiency or ask for clarification.

And it seems that this year that was not quite as available, if you will, as it has been in the past years -- you know, I'm sure because of the complexities of

the changes and all the issues that have come up and time constraints. We just -- we were asked to give some clarification on operating expenses, for instance. We provided that to them. Without making any changes, we gave them the evidence and they accepted that.

But we were never given an opportunity for any clarification on the construction costs. And there were some -- the numbers that we submitted, along with our appeal, bring us within 1 percent of the Department's guidelines for the construction -- the Marshall Swifts construction costs.

So we feel like we provided them with a set of numbers that meet all of their qualifications, and we're just asking that they disregard, I guess, the previous one where we're requesting more credits.

And by the way, the amenities that we're removing are not any amenities that were originally stated. All the originally stated amenities are still being provided. We were just going to provide additional upgrades in fixtures and things like that.

MR. CONINE: What's the difference in the two credit amounts -- the old number and the new number -- or the original number and the new number?

VOICE: Fifty-five?

MR. PUHLMAN: Yes, a little bit over fifty.

MR. CONINE: Okay. Thank you.

MS. ANDERSON: Thank you, sir.

MR. PUHLMAN: Any other questions?

(No response.)

MR. PUHLMAN: Thank you.

MS. ANDERSON: Vivian Rojas?

MS. ROJAS: Good afternoon. My name is Vivian Rojas, and I'm the city council representative for District 7 in El Paso, Texas, which is the district where this proposed Cedar Oak Townhomes project would be located.

TDHCA staff is recommending against this project. The main reason is the market study in the application which proves that there is too much supply of low-income housing in the submarket and not enough demand.

As a matter of fact, according to your own underwriter's report, the board must waive its own rules to support this project.

I believe that it is wrong to waive your own rules in order for a project to be supported. As a city council representative, there are times when contractors and developers don't follow the rules. And we, as the city council, cannot support their projects. If they

don't follow the rules, we don't support the project. I suggest TDHCA follow their own rules.

We have already read a letter of opposition regarding this project written by Representative Chente Quintanilla, who represents the district on a state level.

El Paso County Commissioner Charles Scruggs, who represents this district on a county level, and myself, as a city representative, have also submitted letters of opposition regarding this project for 2004.

By funding this project, TDHCA is taking a risk and increasing liability for the state of Texas by going against their own rules.

Another point made in the underwriting report is the market study does not show that there's a lack of supply of low-income housing in the area. And your staff report also states that there is no demand for new low-income housing in the submarket.

I have received a letter from Mr. Rudolph Monteo, president/CEO of the Housing Authority of El Paso, Texas, regarding statistics for the 79936 zip code where this project is to be located. There are 53 scattered sites of public housing units and 839 privately-owned Section 8 houses and/or apartments. With this data you can make the determination that there is too much low-

income housing in this subdivision.

As you can see on the map in your board packet, there is quite a few amount of low-income tax credit projects. And I also wanted to state that, as a city council representative, I was able to obtain the support of the mayor and the other council representatives that passed a resolution in April opposing this project. And I'd like to ask if I could read that resolution for the record.

MS. ANDERSON: Your time is -- and I ask the people that aren't testifying not speak. Okay? Thank you. Do you have a copy of the resolution that you --

MS. ROJAS: Yes.

MS. ANDERSON: Let's perhaps do it that way unless you -- unless there's -- I don't think there's anyone else here that would yield time to you.

MS. ROJAS: Well, I just wanted to wrap up by saying this project is not financially feasible. And as you can see, there is a clustering of low-income housing in that area. I do have a petition of over 400 signatures from the residents in that area. And that was submitted to TDHCA. And I'd like to submit additional letters that the residents gave me to bring to you today.

MS. ANDERSON: Great. Thank you.

MS. ROJAS: Thank you. And I request that you not support this appeal.

MS. ANDERSON: Thank you, Ms. Rojas. Mr. Bogany?

MR. BOGANY: I have a question for Ms. Rojas. Do you have a problem with Diana Palms or Americas Palms?

MS. ROJAS: With --

MR. BOGANY: [inaudible] these are the two other projects that are in El Paso. And, you know, I -- you always hear about the need for housing in that area. And I just had a question. Do we have any problems with Diana Palms or Americas Palms in that area?

MS. ROJAS: Well, there are already two brand new tax -- low-income tax credit housing. And that's just up the block. One's for seniors citizens, and that was sponsored with DMVD [phonetic]. And then there's another income -- low-income tax credit housing units that exist as well for mixed families. And --

MR. SALINAS: But his question was do you have any problems with the other ones also? You have Diane Palms and Americas Palms. Those are in your same community. That resolution that you gave us today -- that means that you don't want us to support any of them, or are you just --

MS. ROJAS: No, I'm talking about Cedar Oaks.

MR. SALINAS: So what's the difference between one and another one? They're in the same area.

MS. ROJAS: Well, basically --

MR. SALINAS: [inaudible] this before I think last year. I don't know when.

MS. ROJAS: Well, basically, as I stated, with the market analysis and with the financial --

MR. SALINAS: The answer should be the same for Americas Palms and Diana Palms. I think [inaudible].

MS. ANDERSON: Mr. Gouris, do you want to tell us about --

MR. SALINAS: Can you tell us that --

MS. ANDERSON: -- about the market area --

MR. SALINAS: [inaudible]

MS. ANDERSON: -- whether it is or it is not the same market area?

MR. SALINAS: [inaudible].

MR. GOURIS: The market area -- Americas Palms is roughly the same area. And it's roughly the same area as Tropicana Palms from last year.

MR. SALINAS: [inaudible].

MR. BOGANY: What about Diana Palms?

MR. GOURIS: They concluded with a different

demand calculation. It's basically the same as -- it's slightly different, and they didn't include some of the other transactions that are included here. Americas Palms is further to the south. I think you've got a map attached to your underwriting report if you can find that.

MR. SALINAS: Who sponsored it?

MR. GOURIS: Americas Palms is further to the south.

MR. BOGANY: So at this time is Diana Palms, which is one of the [inaudible] -- is it in the same area?

MR. GOURIS: No. it's not.

MR. BOGANY: Okay. And what about Americas Palms?

MR. GOURIS: Americas Palms is in the same area.

MR. BOGANY: So we recommended that one. I don't see the city councilman telling me that she doesn't want that one there.

MS. ROJAS: That's not in my district either.

MR. BOGANY: So where is the other compadre? You got a resolution from the city council.

MS. ROJAS: Regarding the Cedar Oak project.

MR. BOGANY: I just find [inaudible] to divide -- to make a decision on one project or the other

[inaudible].

MS. ROJAS: Sir, I have opposition from the residents that I represent.

MR. BOGANY: Then why do you not represent Americas Palms? Why did the city council give you a resolution? And why did the state representative, whoever he is --

MS. ROJAS: Americas Palms is in District 6. It's represented by another city representative, Mr. Paul Escobar. I represent District 7. This constituency is in District 7, and they are the ones who filed the petition.

MR. BOGANY: I have one more [inaudible] and then we'll move on.

MS. ANDERSON: Sure.

MR. BOGANY: Who's the state representative for Americas Palms? Do you know?

MS. ROJAS: [inaudible] in San Antonio.

MR. BOGANY: Okay. Where is it you have --

(Simultaneous discussions.)

MR. BOGANY: I'm sick and tired of it.

MS. ROJAS: I will tell you, Chairman, that the residents of that area contacted Representative Quintanilla, and that's how we got him involved in this particular situation -- because they asked him for

assistance.

MR. BOGANY: Is Quintanilla in District 6?

(Simultaneous discussions.)

MS. ROJAS: Yes, he does. That's why they asked him for assistance.

MR. BOGANY: From my standpoint, if we as a board see things that can correct [inaudible], we've done the best that we can do, but it bothers me when you come up -- and I think -- personally, I think it -- I truly believe -- and I'm just tired -- don't use me to police your own areas.

MS. ROJAS: Believe me, it's not political. This petition was filed by the neighbors on their own accord, and they submitted it to me, asking me to assist them. And that's why I'm here. I'm representing them.

MR. BOGANY: Thank you very much.

MS. ROJAS: Thank you. Do I leave the letters?

MS. ANDERSON: Yes. Absolutely. Wait. Ms. [inaudible], if you'll take those handouts, and then we can pass them down the row.

MS. ROJAS: Thank you.

MS. ANDERSON: Sure. Mr. Gouris, before we proceed, let's -- Mr. Bogany has a question.

MR. BOGANY: One more question. Based on the

new information obtained from the market analyst, do your thoughts and your process, based on what he said -- does that change any of your thoughts on this project as being feasible? And I just really have a problem where one excessive capture rate and the other one is not, has been approved.

But based on the information that you had, are you -- do you feel that this project is any better off today than it was before you got here?

MR. GOURIS: No, sir.

MR. BOGANY: Okay. Thank you.

MS. ANDERSON: While you're up, can you -- I mean, can you give us your thoughts on why developments that aren't -- you know, they're not exactly in the same place, but are in the same part of town -- why one market study might clear the capture rate and the other one didn't?

MR. GOURIS: Sure. There are -- I mean, each market study is done and tailor-made for the development that it's being -- that study, to determine if it's got the right market area. And that's the key thing is how do we define the market area.

Yes, they're basically the same market area, but maybe not exactly. This particular market area

included a property that is right on its border, I'm guessing. I don't have the other market study in front of me, but I'm guessing that the other market study avoided that section, you know, that -- whatever, section of town. And it's a little bit further to the west, so it may have been justified in doing so.

We don't generally -- we -- obviously we scrutinize every part of the market study that needs to be scrutinized, and we do look at the market area that they've chosen. It's a very rare instance where we'll say, you know, you've chosen the wrong market area. We have one of those coming up, I think, but it's very rare.

In this case, the other issue that causes the market analyst's numbers to be -- show such high demand, one of his factors in calculating his demand included a turnover, which we allow turnover to be calculated.

From what we can understand from this market study, it looks like he improved 100 percent turnover. That's not reasonable. That's not justified, based on our own, based the other data that we have. And that was why our demand number is so much less than his number, based on the market area that he defined. And that's what we have to go by with this project.

MS. ANDERSON: We have more public.

MR. SALINAS: Are you really -- Tom, are you really comfortable with what you've told us, and you're ready to defend it anywhere, as far as you know how risky and these projects are defeated, and people have come down here, and we've had some political people come here, [inaudible] 2003, or 2002 -- you might get lost on this case. But you are -- you feel comfortable that you can defend your stand today?

MR. GOURIS: There is nothing that I would prefer to do than to not say we can't do a transaction because of a [inaudible] rule.

MR. SALINAS: What I'm saying is, you're comfortable in saying --

MR. GOURIS: I am.

MR. SALINAS: -- the same thing --

MR. GOURIS: Yes, sir.

MR. SALINAS: -- two months from now, because it's going to get there.

MR. GOURIS: I'm comfortable that what I'm recommending today and what I've recommended in my report --

MR. SALINAS: Right.

MR. GOURIS: -- isn't going to change.

MR. SALINAS: In the same areas?

MR. SALINAS: Yes, sir.

MR. SALINAS: Okay.

MS. ANDERSON: Let's hear it -- we have some more public comment. Joe Alvarado, please. And the next -- I'm sorry?

MR. ALVARADO: I yield my time.

MS. ANDERSON: To whom?

MR. ALVARADO: Mr. Prior.

MS. ANDERSON: Maria Espinoza. I'm sorry, let me make sure I understood. Mr. Alvarado, you yielded your time to Ms. Bast?

MR. ALVARADO: No, Mr. Prior.

MS. ANDERSON: Okay. Just -- okay. You have two turns.

MR. PRIOR: I just wanted to say two things. One is the capture rate that we submitted -- it was the IRM, was 52.3. As to the question of the difference between Americas Palms and Cedar Oaks -- the difference was it was a different market area. They were two miles to the east of where the proposed site is.

We have extended our market area back to the west. They went further over to the west. They went as -- over to Montana, which was an area with lower incomes and a higher rentership grade. And that explains

why we went to -- they came out with a higher demand. The underwriting report for that said 3,000 total demand for that broader area within the Americas Palms.

MS. ANDERSON: Thank you. Maria Espinoza.

MS. ESPINOZA: I yield my time to Mr. Puhlman.

MR. PUHLMAN: The main issue is the financial feasibility. Again, I stress that we provided a whole new set of numbers that support the \$985,000 original request for tax credits without making any reductions in amenities, or any of those things to the application.

So as far as it being better off financially, it certainly is. We show -- our calculation is that we'll collect our developer fee within ten years, and that -- which is well within the 15-year guideline. Our -- again, our construction numbers are within 1 percent of Marshall Swift. We've followed the guidelines set up in the underwriting guidelines. And we meet every one of those, with these new numbers.

They've just got to -- you know, I'm not sure that they've had time to evaluate all the numbers. I can spend the time to do it with them right now, or whenever their convenience is.

But we -- you know, the project works at the 985 original amount. I know there was some confusion

possibly as to what numbers to go with. But we've provided them with a final set of numbers that meet all of their guidelines.

MS. ANDERSON: Questions of this gentleman? I have one more. Thank you, sir. Martha Gomez.

MS. GOMEZ: I yield my time [inaudible].

MR. MONTY: Over the years I've gotten to know a lot of the board members and a lot of the staff members. But it really comes down to an issue of where we asked if we could change the credit.

We were told we could. We're talking about a \$50,000 increase in the credits. We have supplied a set of numbers to Tom, and we know the deal works with the original credit.

You all are the customer. We've always tried to be accommodating. So we're actually making it work under the 985, where theoretically we could be asking for the -- you know, the higher amount. So we're trying to get to where we need to be under the rules and regulations.

MR. CONINE: Could you speak to the political opposition of this project, please?

MR. MONTY: I'd be happy to do it. I'd just like to start out by saying that, you know, we're here to

support all applications in Region 13. We think that it's a little silly to be pitting councilpeople against each other. It's a resolution. I apologize, Madam Chair, for the outburst. But it's a similar resolution to last year.

There was one councilperson that -- John Cooke, that did not vote for the resolution. And we find it, you know, very silly that, you know, in a city that needs the housing so bad, that we're fighting over this bone, if you will.

And you know, quite frankly, you know, that business is supposed to be fun. But in response to Olivia Rojas, she wouldn't meet with us. We had four meetings. Nobody showed up. Chente Quintanilla would not meet with us.

You can't fight an opponent that we can't see, although sometimes we know he's around. In a nutshell, that's what it is.

MR. CONINE: Okay. Thank you.

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

MR. BOWLING: Madam Chair, would I please be -- since my projects were brought into this?

MS. ANDERSON: Have you filled out a witness affirmation form?

MR. BOWLING: No, but I will as soon as I -- is -- if you would allow me to speak. I didn't presume that my projects would be brought into this debate. But I'd like to offer some defense of some of the allegations that have been made about some of my projects in this region.

MS. ANDERSON: I'll allow it.

MR. BOWLING: Thank you. You know, the thing that, Mr. Bogany, is going on here is I think that staff is upholding the rules.

I think that the way the rules are laid out for all of the developers, when we see the preapplication, we see the points, we know where we stand. We know if we're going to get funded pretty much in preapplication, pretty certainly once you turn in the full application. We usually are experienced developers. We usually get the points we're going to ask for.

What's happening here with this project is, is you have the lowest-scoring project in El Paso that was allowed to change its application in its entirety.

I outscore him by 25 to 30 points, depending on what scoring round is looked at. I just -- I would like, if we're going to throw everything out, and everybody in Region 13, because it's underfunded, gets to redo their

projects, I have units that are 30 percent AMFI, but I'm not even getting points for my project.

My projects -- I'm right at the maximum of the deferred developer fee I can give up. By allowing my competitor to come here and completely rehaul his application, I just think it's an issue of fairness. And I wasn't going to come speak here today. I was going to rest with your decision.

But since I've been pulled into this, Americas Palms is, you know -- I don't know how they drew their line, but their project is two miles -- it's really an in-fill project. Mine is on the outer edge of the city where the growth corridor is. My growth corridor is basically vacant land and to the west and to the east. It's a different market area for me.

Now, for them, since they are pulling from existing units, the 800 units that are there for the housing authority -- they're there to the east and to the south. They are three miles from my project.

So to answer a question, why is there too much low-income housing when it's pertaining to this project and not to mine, that's just the way the lines are drawn.

I'm on the outskirts of their project. But I'm not within two miles of the housing authority. So --

MR. BOGANY: I just want to give him --

MS. ANDERSON: Do you want to ask him --

MR. BOGANY: Yes.

MS. ANDERSON: Okay.

MR. BOGANY: First of all, okay, if you've got -- the problem that I've got is that when you have a political people come up here and tell us that we have too much low-income housing in my area, you know, I have a concern that your projects are being approved, and I don't see any political opposition to your projects. That's the concern I have.

Now, if this project doesn't meet the criteria, and Tom has just said that nothing could change, so I'm okay with the staff's recommendation. I'm okay with the staff debating and analyzing and looking at it. But the problem I've got is you politically -- whoever they are, coming down here every other month telling us something about somebody's else project we don't need. We don't -- but they're not saying it about yours.

And I've yet to see one political resolution or one person write a letter saying I would like Bobby's project. Okay. But every time he brings one up here, we get somebody coming up here who -- I've got a problem with that. And that's my issue.

Now, if staff says it doesn't work, I'm okay with that. They've analyzed it. I'm okay. But I'm tired of politicians, the city councilmen, all you guys coming from El Paso telling me about somebody's project, but you never say anything about Bobby's project.

Okay. And he's got a lot of them and you've got a lot of them. My problem is that you bring this board into the political fight, and it shouldn't be that way. Okay. And that's the problem I've got. I'm just tired of it.

MR. BOWLING: I understand.

MR. BOGANY: There are other things I could be doing with my time, except listening in a hearing where political people come up with resolutions on all this stuff. I'm tire of it. I don't need it.

MR. BOWLING: Yes, sir. I understand. I would just offer that, you know, there is a way to properly develop, in my opinion. And it is to take the input of the community in at the decision-making process before you go out and invest in a parcel of land.

And that's always been our history in 50 years -- 55 years of building in El Paso. You'll be hard-pressed to find in that 55 years any political body that's opposing one of Tropicana Homes's developments. I'm the

Texas Association Builder of the Year. I'm the State Association President. I have an outstanding reputation because I do things right, Mr. Bogany.

MR. BOGANY: But this --

MR. BOWLING: I sit down and I meet with the politicians --

MR. BOGANY: Bobby, the staff is a neutralizer.

MR. BOWLING: Yes, sir.

MR. BOGANY: To me, the staff wouldn't tell us if this project is a good one or not.

MR. BOWLING: I understand.

MR. BOGANY: And that's the other way I look at it.

MR. BOWLING: I just felt I needed to be giving you a --

MR. SALINAS: Getting that letter from Chente Quintanilla, the way he wrote it, and having [inaudible] from us not to approve his project, the way the last time you couldn't remember the scenario of the daughter of the past mayor, has been treated [inaudible], and how he -- she always treated us. And then we bring somebody else today, it doesn't change the rules.

You know, you should trust -- this is why we admire our staff. And I don't think that they're going to

change their mind. I think we have good staff, and we listen to them, and they work hard, and this board works hard. And I don't think we need anybody from the city council come and tell us not to do something, because we're going to accept it -- what is right here. That's not going to change anything. I mean, I don't think --

MR. BOWLING: And I understand that, and I appreciate --

MR. BOGANY: And I would vote for this project in a minute, [inaudible] Tom --

MR. BOWLING: I understand.

MR. BOGANY: -- Tom's guideline.

MR. BOWLING: I understand.

MR. BOGANY: I could care less who came in from El Paso.

MR. BOWLING: Yes, sir.

MR. BOWLING: If I could just say, you know, regardless of what the --

MS. ANDERSON: Let's not have a debate between the board members and the witnesses.

MR. BOWLING: Okay. Yes, ma'am.

MS. ANDERSON: It's okay. It's okay. Thank you very much.

MR. SALINAS: I think we can have -- we've been

fair. We gave you some forward commitments the last time --

MR. BOWLING: Yes, sir.

MR. SALINAS: -- because we hadn't done some.

MR. BOWLING: Yes, sir.

MR. SALINAS: I think this board -- it's critical be out there.

MR. BOWLING: I agree, Mayor.

MR. SALINAS: Okay.

MR. BOWLING: I agree. And I appreciate staff, too. Just to -- so thank you.

MS. ANDERSON: Thank you. That's the last public comment on this transaction.

MR. SALINAS: Motion?

MS. ANDERSON: Well, there is no -- apparently there is no motion on the floor, Mr. Mayor. I just -- straining to hear a motion.

MR. BOGANY: I move that we accept staff's recommendation.

MR. CONINE: Second.

MR. GONZALEZ: Second.

MR. BOGANY: And I agree with Kent.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: All opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Okay. We're going to take a 30-minute break.

MR. SALINAS: What for?

MS. ANDERSON: For lunch. And we'll be back at two o'clock. Thank you.

(Whereupon, at 1:25 p.m., the hearing was adjourned, to reconvene at 2:10 p.m., this same day, Tuesday, July 28, 2004.)

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

MS. ANDERSON: Please take your seats and we will reconvene. Let me just -- Mr. Mahesh Aiyer. Are you in the room? Yes, sir. We heard -- we took action on this agenda item this morning. So it's already been dealt with by the board. Thank you.

Okay. All right. Go for it.

MS. CARRINGTON: The next appeal for the board's consideration is Project Number 04-082. And the name of the development is Fenner Square. It's located in Region 10. And the community is Goliad.

MS. JOYCE: For Fenner Square, we have recently denied six points of the applicant for consistency with local planning. And it was because we received information from the city pointing out an issue that basically the point is asked that we made an error in our initial review in awarding nine points. And rather, we should have awarded six points.

Any time we're given information anonymously or nonanonymously about a particular application, we definitely do take all of that into consideration when we look at our process. So we denied the applicant three of the nine points.

Basically what happened is that the department

determined that their \$55,834 that was initially an item for local and private -- excuse me, item 14(a), which was under local and private resources.

That \$55,834 for high-speed internet access is not considered to be a development cost. However, in our initial review, we did consider it to be a development cost. Really, it's a long-term operating cost. So what happened is, removing this item from the contribution, it ends up equating to, once we take in the formula prescribed in the QAP, \$1,623 per low-income unit, which is -- nets an award of six points rather than nine points.

The applicant is appealing this particular item, saying that it should be considered as development costs.

MS. ANDERSON: Thank you. I have several people who want to make public comment. Mr. Gary Driggers first, and then Mr. Leo Gleinser, please.

MR. DRIGGERS: Madam Chair, members of the board, my name is Gary Driggers, and I'm the developer for Fenner Square in Goliad, and I have some information I'd like to pass out for you.

First of all, I'd like to thank the staff for all their hard work, and especially Jennifer. She's been helpful with me. This is my first application. And as

she said, we just heard about this denial of points in the last -- it's been about six days.

And the issue is this, and this is why we want to clarify. The first page that you have there is the award that we received from the Goliad Community Network.

And the reason we feel that this is infrastructure is because this award allows us to provide wireless internet service to all of our units for \$10 a month. And that is what is on the next page.

The service provider quoting a rate, and in Goliad there is only two choices of service. There is wireless and there is fiberoptic cable. And our point is this, is that because of this award that we received, we have reduced our infrastructure cost.

It would be the same as if we received an award for mobile phones and we decided to give every one of our residents free mobile phone service, and we didn't put any phone lines in.

We believe that the dollars that we saved from not putting in the phone lines counts as saving infrastructure costs, which goes to the spirit of the QAP.

And because of that, we are appealing the decision by the staff.

With that, I would like to pass out, just 30

seconds, my colleagues here that have come a long way, and of course, have waited a long time, are going to speak to the benefits of Fenner Square. And I would like to pass out some more information about that.

MS. ANDERSON: Mr. Gleinser. Next will be Mr. Martinez.

MR. GLEINSER: Good afternoon. Thank you for allowing us to meet with you this afternoon. Leo Gleinser, Senior, a resident of Goliad, and I believe you have something to this order in your handout.

This is my property right here immediately adjacent to the Fenner Square project. And I have had an interest in that property since 1953. And my wife and I have made that our homestead since 1968. And we have been there continuously since that time.

And we know that we were having some problems with our tax base and our -- we need something like this to generate stimuli in the community. And that's why we feel that it is imperative that we get something started like this. And we have -- Goliad being the county seat, we have the entire school system in the city.

We have the tax offices, the school districts, all that in the -- and we do, and I have a lot of property left for taxable purposes. And we certainly need a boost

like this and a shot in the arm. We would appreciate your favorable consideration of our request. Thank you.

MS. ANDERSON: Thank you, sir. Mr. Martinez. And next will be Linda Koehler.

MR. MARTINEZ: Members of the board, board members, ladies and gentlemen, my name is Benny Martinez.

I'm a native of Goliad, a ninth-generation Texan. We've been there since the time they built those missions in Goliad in 1749. I know most everybody in Goliad, and I know that this is a dire need.

I have seen the way some of these people live. And nobody in this great country of ours, in America, needs to live in deplorable conditions the way some of these older people live, mainly the elderly, who have to spend most of their money on drugs, on medication.

I know that a few people -- only a few, have misconceptions about this project. They figure it's going to bring in a bad element. It's going to bring in poor people. They figure, well, poor people are bad people. But that is not true. That is absolutely not true.

Not all poor people are bad. Just like not all rich people are good.

(Laughter.)

MR. MARTINEZ: And I guess God must love poor

people, because He's sure made a lot of us. Thank you.

(Laughter and applause.)

MS. ANDERSON: After Ms. Koehler will be Mr. Zavesky.

MS. KOEHLER: Hello, I'm Linda Koehler, Director of Economic Development for Goliad County. And I'm also secretary for the Goliad Community Network.

Goliad County Judge Harold Lanzer [phonetic] and the Goliad County Commissioner's Court unanimously support Fenner Square, because Fenner Square will help fulfill a housing shortage in our county, create much-needed jobs during construction, and place a nontax property on the tax rolls for approximately \$830,000.

Goliad County held two public hearings on this issue. Over 100 people got up for support, except three.

Or rather four. Three city council, and one apartment owner. The rest was unanimous support for this project.

Addressing the internet and the Community Network. We started back in 2000 with a TIF Grant. Our County had regular dial-up network. They asked SBC for faster internet, and they said no; it would at least eight years. So we went after a TIF Grant. The first one we didn't get. The second one we got.

The -- during our work, we discovered that we

wanted to serve the entire community, because our community needs help with technology. Fenner Square, by providing an infrastructure to Fenner Square, Fenner Square will become a public access point for computer training and computers for all citizens in Goliad County and the residents there. So it reflects a very much-needed project. Thank you.

MS. ANDERSON: Thank you.

MR. ZAVESKY: Good afternoon. I'm Buddy Zavesky, former mayor of the City of Goliad, a city councilman, and newly-elected.

This morning you've heard from a city councilman or two. And I want to enlighten you on a few things.

I've gotten into the politics arena again the first part of this year, and because of some things that had been going in -- within the city, I withdrew my name. But my name was on the ballot.

Eight days before the election, I got back into the arena and won. I beat the mayor in the vote count. Not -- it's not anything good or bad. But my project was Fenner Square. And what you heard this morning is could be -- could not be any further from the truth.

The City of Goliad is a colonias. It lacks.

Like Mr. Martinez said, we have people living in poverty.

We are just now in our outlying areas getting water, because we have places like Clan and Berclair that don't have water.

This is a plus to us. We're getting a piece of property that was owned by the school back on the tax roll, plus we're getting those apartments that people can live in, and better themselves.

IF we're -- if this project comes to fruition, everybody wins. This is a win/win situation. The decisions you make today -- there will be no bigger decision than the one you make for the little town of Goliad.

And I ask you when you make this decision, and when you make your voice heard, when you walk down that hall, the second name you see on there is Goliad. A place in history, a place to remember. I ask you to please remember Goliad.

MR. DRIGGERS: Madam Chair, [inaudible].

MS. ANDERSON: I have no more witness affirmation forms. If a board member has a question or a --

MR. CONINE: Tell us again why we -- why we're here.

(Laughter.)

MS. JOYCE: Basically, \$55,834 for high-speed internet access was included in the development cost when we calculated this point item. When the City of Goliad wrote us, letting us know several items that they felt were inaccuracies in our review, we did decide that yes indeed, based on the application submitted, we should not have awarded these extra three points.

So instead of nine, we should have awarded six, when we take out that \$55,834, because we did not consider it to be development costs. There has been information provided in the appeal that was not -- we did not have available for our own review, that might indicate -- and it's up to you to decide whether or not it's development costs, or you know, long-term operating costs.

Later on in the appeal, he -- they have -- let's see -- it's entitled at the very top, No-Dial Net. It's a fax, and it looks to be about five pages to the very end of this appeal documentation.

MR. CONINE: Uh-huh.

MS. JOYCE: And it's kind of what he was discussing now. And rather than it being what we initially saw, which was over a ten-year period, giving a reduction in his internet fees, it's now saying that it's

more of an up-front cost that will end up lowering his development costs.

And I'm not sure if he would like to come up and clarify that, because again, this is new to us as well.

MR. CONINE: Bring him up.

MS. JOYCE: Uh-huh.

MR. CONINE: He's reducing his development costs by 50-some-odd thousand bucks. And yet, we're taking points away for reducing that. I'm having a hard time making the connection.

MS. JOYCE: It's because we do not consider it a development cost. We consider that long-term operating costs. Development costs would be the initial --

MR. CONINE: That was the original 55,000?

MS. JOYCE: The original 55,000 was included in his development costs, and merited nine points.

MR. CONINE: Okay.

MS. JOYCE: When we took out that 55,000, because we decided that it wasn't, it was more long-term, rather than development --

MR. CONINE: The nine points was for what?

MS. JOYCE: Nine points was for this item 14 in our scoring, which has a maximum value of nine points. It

goes in increments of either -- you can either be awarded three, based on how much per unit you're getting, six or nine. He originally was given the full nine. When we took out that amount, he was then given six instead.

MR. CONINE: Help me.

MS. ANDERSON: What is item --

MR. CONINE: 1,014.

MS. JOYCE: It's leveraging.

MS. ANDERSON: Oh, okay.

MR. CONINE: Leveraging?

MS. JOYCE: Leveraging.

MR. CONINE: Now --

MS. JOYCE: Sorry. Leveraging from local and private resources.

MS. BOSTON: If I could just clarify it. The reason why we changed -- or the reason why she was saying that originally it was a development cost but then we didn't accept it -- the evidence we had at the time of application was like a 40-year contract that this is how much the internet service would be per year over 40 years, which comes up to \$50,000.

So it was really more to do with operating costs.

MR. CONINE: Right.

MS. BOSTON: And the new evidence that is provided in the appeal actually shows that the way it's structured is indeed that it's costs you won't have to bear at the development end, but we did not have that information in the application, which is why at the time we thought it was a different situation.

MR. CONINE: But that's not leveraging. If he doesn't have to bear the cost, it's still not leveraging.

MS. BOSTON: But it's through a subsidy that he's not having to bear the cost.

MR. CONINE: That's a pretty good reason. Now, it's a different technology.

MS. BOSTON: An in-kind service is the way they're presenting it.

MR. CONINE: Okay.

MS. JOYCE: And keeping in mind that we as a staff do not have the ability to recognize this information that's given to us after the actual application submission. You do have that discretion.

MR. SALINAS: Is their appeal to give them back the three points?

MS. JOYCE: Yes, their appeal is basically for three points.

MR. SALINAS: I'm going to move that we go

ahead and approve the appeal.

MR. BOGANY: Second.

MS. ANDERSON: Sorry. I'm sorry.

MR. CONINE: I waited as long as I could.

MS. ANDERSON: I know. And you were very patient. Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no?

(No response.)

MS. ANDERSON: Motion carries. All right.

Now, before we go ahead, yes -- again, I want to ask Mr. Mahesh Aiyer, because I saw some nodding, you filled out a witness affirmation form for an item that the board took action on earlier in the day. And the gentleman in front of me has -- I believe said something which made me want to -- would you please stand, sir, and tell me what your point is?

(Telephone rings.)

MS. ANDERSON: Oh, someone just got fined \$100.

MS. CARRINGTON: The trust fund gets \$100.

MS. ANDERSON: Nobody's going to collect.

Go ahead, sir.

MR. BARINEAU: Just a point of formality here.

We first out [inaudible] I heard the board vote no. I would like the other [inaudible] quantifiable committee participation points [inaudible] was a difficult judgement there [inaudible] to talk about it.

But the second element of appeal had to do with the seven pre-application points. There was no further discussion or what I've heard, specific vote on that.

MS. ANDERSON: Is this your development we're talking about, 04?

MR. BARINEAU: 04-24. There were two items of appeal.

MS. ANDERSON: If the staff would look at that for just a second and see what the board actually did and didn't do. And we'll come back to it if we need to. Thank you, sir.

MS. BOSTON: We talked about it already.

MS. ANDERSON: Okay. Whoever -- speak.

MR. WITTMAYER: Chris Wittmayer, the General Counsel. This was the very first item you considered, 04-024. And that raised an issue of quantifiable community participation, and also an appeal related to seven points

for pre-application. And the applicant is alleging that the board's action did not dispose of the seven-point pre-applications. If the board would just clarify whether or not it did, that will resolve it.

MR. CONINE: I think I made the motion originally for both, but then we split it into two, and a second revised motion. So it's the consensus of the board that it was denied across the board on all issues.

MS. ANDERSON: Two separate motions, both denied. The appeal is denied, and both --

MR. CONINE: I think the transcript will bear that out.

MS. ANDERSON: Thank you.

MS. CARRINGTON: The next item is 04-085, Redwood Heights, and you have heard that one in conjunction with the one on the agenda.

The next is 04-140, the Villas at Costa Cadiz. It's my understanding it has been withdrawn, but their -- yes, Mr. Markson?

MR. MARKSON: I just wanted to share one minute with this.

MS. CARRINGTON: And as Mr. Markson is coming up, Region 9, San Antonio.

MR. MARKSON: Thank you. I just wanted to

share my rationale for withdrawal. We're -- because of the increase in bond proceeds that's coming in, we feel there is a good chance that we're going to get hit in the bond lottery. We're number 105. So we are withdrawing on that basis, and hope we're successful. Thank you.

MS. CARRINGTON: Thank you. 04-156, College Street Apartments. This is located in Region 6 in Richmond.

MS. JOYCE: This again is an appeal that is regarding the Attorney General's opinion, and staff's recommendation based on that.

MS. ANDERSON: Mr. Tim Smith.

MR. SMITH: Good afternoon. College Street Apartments was originally on their recommendation list for Region 6. But in the ensuing rollercoaster we've all been dealing with, the Attorney General opinion, emergency rule for a two-point category was added to the QAP, giving points based on the percentage of the number of 50 percent, 40 percent and 30 percent units that are served on this development.

College Street Apartments is serving units at the 30 percent level of AMFI. And under this category, under Section 13 of the QAP, College Street did not secure outside subsidies, so there were no points awarded on

that. But it is still financially feasible, and was originally recommended.

Now with this new rule, the 30 percent -- the units at 30 percent of AMFI are not counted in that as well, even though there was no provision of original subsidy needing to be attached to these units to qualify them. It is still serving 50, 40 and 30 percent units and is financially feasible.

And we would like to respectfully request that in the spirit of serving as many low-income individuals as possible, and the development is still financially feasible, that the 30 percent units for College Street Apartments would be counted in this calculation for points.

MR. CONINE: Same situation we had with the Temple project.

MS. JOYCE: Only slightly different, in that the way that the emergency QAP reads is that the -- this particular scoring item that he's referring to is based on the points that are awarded. And because we did not award points for this particular item, we cannot give him points for it. And I think that he's saying that as well.

That he was not awarded the points, but he thinks that those particular units should be taken in

consideration for the QAP. The emergency QAP is explicit in how we're interpreting this.

MR. CONINE: Move to deny the appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. The next one on the board's agenda, 04-163, has already been considered.

The next one to be considered is one that is in your book but is not listed on your agenda, and that is 04-173. And you do have the information for it. And it is the Gardens of Burkburnett. And it is located in Region --

VOICE: Two.

MS. ANDERSON: Thank you.

MS. JOYCE: If I may just kind of --

MS. ANDERSON: Please be seated until the staff makes their -- thank you.

MS. JOYCE: If I might just provide some clarifications for the next few items. Of all of the appeal letters that they were discussing earlier this morning regarding several of these developments, I believe it was Mr. Hopper up here earlier, there were three that the department considered appealable. Actually, I'm sorry, change that. Two that the department considered appealable to present to you today for the board, 04-173 and again, it's one of those that's just kind of a general we didn't like the way that the AG opinion affected my score, so therefore I'm appealing it.

So not -- we don't have a specific action, but because it was such a timeliness issue, we're allowing it as an action item as a recommendation to you. We also had 04-175, which you have the documentation there. And that's all of an underwriting and feasibility issue.

However, in addition to that, there is 04-174, which you don't have documentation for in your book, but the staff is prepared to talk to you more about that as well.

So the first that we're taking under consideration is Gardens of Burkburnett, 04-173. And again, it's just the general issue with the AG's interpretation -- AG opinion, excuse me, and the scoring.

MR. YOUNGS: Thank you very much. The handout that you are receiving has included in it --

MS. ANDERSON: State your name for the record. I'm sorry.

MR. YOUNGS: Donald Youngs, Development Director, Gardens of Texas.

MS. ANDERSON: Now, I remember that you spoke earlier. Did you complete a second witness affirmation form?

MR. YOUNGS: Pardon? We have affirmation forms in --

MS. ANDERSON: Well, I have one for Ivan Haugh, Judy Youngs, and Mark Feaster.

MR. YOUNGS: Okay.

MS. ANDERSON: So you need to complete a witness affirmation form.

MR. YOUNGS: But she -- Delores --

MS. ANDERSON: Well, but he spoke this morning also. Thanks. Go ahead. Sorry.

MR. YOUNGS: Anyway, in there, since we have three appeals, and we're talking about all three of these are included in the handout that you have, and the one that we're talking about is Burkburnett, as Jennifer said, this is one that deals almost exclusively with the issue

of the AG's opinion, where the Gardens of Burkburnett was leading throughout.

With the changes that came about at the end of June, then we've lost considerable points, and we would, after having been named on the list as the approved -- as one of the approved developments, and we would strongly request your reconsideration, either in the 2004 or in the 2005. And I yield the rest of my time right now to Mr. Mike Tugman, who is also on the --

MS. ANDERSON: I don't have a witness affirmation form for him either.

MR. YOUNGS: I believe --

MS. ANDERSON: Did he speak this morning as well?

MR. YOUNGS: No. There is an affirmation that I gave to Ms. Groneck.

MS. ANDERSON: Oops. What's the person's name?

MS. GRONECK: What was his name again?

MR. YOUNGS: Mike Tugman. And after that is Mr. Fudge.

MS. ANDERSON: I don't have that one either. Okay. They'll need to complete a witness affirmation form after they speak. Okay?

MR. YOUNGS: Okay. Sorry about that.

MR. TUGMAN: I know it's been a long day. My name is Mike Tugman. I'm on the city council of Burkburnett. And I'm here representing Mayor Bill Benson. He was not able to be here. And I think more importantly, I'm here representing my mom.

The Gardens of Burkburnett project is the first senior citizen project we would see in Burkburnett exclusively for seniors. We have had a tremendous amount of support and zeal for this kind of a project coming to Burkburnett, just a little bit of information for you.

Burkburnett's population of people over 55 represents about 23 percent of its population, according to the 2000 census. We're seeing a 40 percent increase in the number of citizens over 60 years old in Burkburnett since the 1990 census.

I am a CPA in Burkburnett, Texas, so I deal with a lot of the local people, and I can tell you that from my little client list of 900 people, there is over 50 of those who would qualify for this kind of a project.

Additionally, we are close to Sheppard Air Force Base. Sheppard Air Force Base is in the process of losing their housing. And those people, airmen, are looking for housing in Burkburnett. Seniors who would move out of their homes into this kind of a project would

open homes for the Sheppard Air Force Base people.

I wanted to point out one thing. We were told that in 1993 we had got funding credits. But I want you to understand that was for a improvement, not an expansion of an existing low-income housing facility. None of those facilities were for seniors.

We haven't' had any new units of any kind in Burkburnett for over 30 years. And again, the support in our community is overwhelming. The Burkburnett Economic Development Corporation has approved over \$50,000 towards this project.

I understand that we're in a bad situation. I would just ask that you consider us for the 2005 forward funding. Thank you very much.

MS. ANDERSON: Thank you. Sir, would you please -- yes, you need to fill out another one. I'm sure you filled it out before, but it's lost in the traffic.

MR. FUDGE: Good afternoon. My name is Barney Fudge. I was born and raised in Burkburnett, and have been practicing law in that small community since 1976. So I have a close affinity with the community and the people there.

Our town is -- we have one industry you might consider major. It's called Ameron [phonetic]. That's

the only thing that's within our city limits. Outside our city limits, and we have Sheppard Air Force Base, which Mike alluded to. It's one of the largest training bases in the world.

A lot of people move in to their permanent stations and wind up retiring in our area. Also, within eight to ten month -- Sheppard is within eight to ten miles of Burkburnett. We also have PPG, General Motors, Howellnet, [inaudible], all major corporations.

And Mike's alluded to the fact that 23 percent of our population is 55 and over. And I think that percentage is going to continue to increase as time passes, because the demographics of the baby-boomers that are now reaching that 55/60 age group.

So we think we're a real fertile area for retirement in Burkburnett, and we actually have no senior retirement housing at all. And we think that it would really help Burkburnett to get this. And we really do need it.

In my practice, I could identify at least 15 people who would want to occupy a facility like this if we had it. And in church on Sundays, one of my junior high school teachers sits behind me with three of her elderly lady friends. And every time I sit down, they ask me, How

is the apartment complex coming?

We've gone through the thing you've already heard about where we've -- I've had to tell them we're all -- we're off it. It has kind of disappointed them a little bit.

But we do have a need for it. And since June 19, there has been a lot of things that have happened in reaction to the fact that we thought we were on the approved list. There are engineering firms that have been retained to design the project --

We have Leisa Fudge is supposed to have turned in one also. She was going to relinquish some time to me, if that's --

MS. ANDERSON: Is that what you'd like to do, Ms. Fudge?

MS. FUDGE: Yes.

MS. ANDERSON: All right. Thank you. Sir, you can continue.

MR. FUDGE: The construction and permanent funding details have already been completed. The tax syndicator has completed its due diligence. The construction contracts are being negotiated. Two Texas and two Kansas executives have completed their compliance training.

And pending this board's approval, either by reinstating this as a funded project, or letting this go as a -- in the 2005 funding, construction could start as -- in October.

Certificates of occupancy would be expected during the third quarter. And what we're really trying to say is, if we could get approval, this project is ready to proceed, and it could be ongoing.

Everybody that we know of has dealt with each other in good faith. The City of Burkburnett is enthusiastic about this project. The planning and zoning board unanimously approved it. The citizens of Burkburnett are excited about it.

We had a public meeting about this project in Burkburnett. And at that meeting, 16 people signed up. It's a 36-unit project. And in one meeting, we had 36 sign up. And I think Mike and I could identify enough people that would fill this project up if we had it.

Both our representatives, Senator Craig Estes, and David Kirby, are in support of it. And we would appreciate your consideration to either reinstate the project, or if not, let it be in the 2005 pre-funded. Thank you.

MS. ANDERSON: Mr. Ivan Haugh. Now, it's

indicated here that you want to speak on three different developments. Sir, what --

MR. HAUGH: I yield my time to Mister Youngs.

MS. ANDERSON: To whom, sir?

MR. YOUNGS: He's yielding it to Mister -- to me. But I -- what is said is good enough.

MS. ANDERSON: Ms. Yonts.

MS. YONTS: I yield.

MS. ANDERSON: And Mark Feaster.

MR. FEASTER: That would be what --

MS. ANDERSON: Okay. Thank you.

MR. CONINE: Move to deny the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. The next appeal for the board's consideration is 04-175, The Gardens of Mabank, which is located in Region 3.

MR. GOURIS: Tom Gouris, Director of Real

Estate Analysis. The applicants appealed their underwriting report in this transaction. The underwriting report reflected that they -- we were not going to be able to recommend the transaction because of insufficient funding to allow the project to be financially feasible.

The reason for this is primarily due to the reduction in net operating income that we expect, based on the fact that the rents that they had indicated were not achievable according to their original market study, and according to our follow-up study -- market evaluation of what's around in that area.

They had proposed something in the order of 775, I think, rent. And the market study said 625. And when we went back to look, they submitted in the follow-up information that suggested that they could -- that they should instead, instead of looking at the community surrounding the property, that they could compare to Terrell, and that in Terrell, that they were getting higher rents.

By going to Terrell, they would be bypassing Kaufman, and avoiding some other areas in that vicinity that had lower rents. And even in Terrell, we're seeing rents that aren't -- that the full potential of the taxpayer rents aren't being achieved there. So that's the

bottom line on that.

MS. ANDERSON: Mr. Don Youngs.

MR. YOUNGS: There are two issues here. One is the points. And the other is the financial feasibility. And I will pass on the points, and I will yield to Mr. Mark Feaster the rest of my time so that he can address the financial feasibility, please.

MR. FEASTER: Good afternoon. My name is Mark Feaster. I'm with Continental Realty in Topeka, Kansas. And trust me when I say that we'd rather be working this out with staff than appearing before you today. But time just ran out on us.

We received the notice from TDHCA underwriting that the project was not financially feasible on July 15.

To give you a little background, underwriting originally contacted us May 26. And part of that contact was that our rents were under the allowable rents for that particular area, which does happen to fall in the Dallas MSA.

And it was suggested that we raise to the maximum allowable level. We were also asked at that time for information to verify income from cable t.v., and to justify the expenses per unit that we had used in our pro forma.

Within 24 hours, we had responded with audited financial statements from similar projects that we have that supported both the t.v. income and the expense per unit that we put in the pro forma.

Just as a side note, we use a dish system in our projects that allow us to provide cable t.v. to all tenants, or all the tenants in the units at somewhere between 25 and \$28 a unit.

We've done this in several projects that we do in Kansas. And those were the numbers that we plugged in the pro forma.

We heard nothing from underwriting until seven weeks later, when in the response we got they said that this information was in Kansas and not in Texas, so therefore wasn't pertinent to this particular development.

When we received the notice on the 15th, it was indicated that we had till July 22 to respond to and make an appeal. But it was strongly urged that we try to do that by Monday the 19th.

So we hurriedly supplied some information to meet that 19 deadline. Since that time, we have some updated information that Mr. Gouris referred to that is in the packet there that goes a little further than what was sent to them in that initial response.

One other thing I want to point out is within the underwriter's analysis, the Mabank development, which is in the Dallas MSA, was closely matched with Athens for rental rates, which is in the Henderson MSA. And in their analysis, that lowered greatly the projected rents that we used in the pro forma.

On the expense side, the underwriters, citing a database, used the expenses for Mabank at \$3,227 a unit, while Athens was underwritten at 2,987. So I'm not sure what the database reflects, but it does appear that the underwriting or the database that was used on the expense side was from the Dallas MSA database, and the underwriting on Athens' side was in the Henderson County MSA, while no rent comparisons were allowed -- were considered from the Dallas MSA.

I could continue. Am I on my time now?

MS. ANDERSON: Did we have him before?

MS. GRONECK: Yes, we had the time for it.

MR. FEASTER: Okay. I'll continue. Boston Capital, by the way, who is our equity provider, has underwritten these units at \$3,000 a unit. Since our first reply to staff, Real Estate Services, Inc., has produced a more detailed analysis that supports market rates in the 730 to 795 range, placing our market rating

units at 750, and a 60 percent AMFI units of 715.

Boston Capital, who is --

MS. ANDERSON: Sir, I need to ask you to wind up.

MR. FEASTER: Okay. Well, let me just cut to the bottom line, then. We feel that we can justify \$700 market rate. We have provided a new pro forma at \$700 that makes this a viable project. And the actual bottom line is Boston Capital, who is our partner, is going to invest over \$1,600,000 in the project.

And First State Bank of Athens, our lender, have underwritten this, and feel that it is a viable project. Thank you for your time.

MS. ANDERSON: Thank you. Mr. Gormley. And next will be Ms. Confer.

MR. GORMLEY: Madam Chair, members of the board, TDHCA staff, it's a pleasure to be here, and thank you for this opportunity to discuss how Boston Capital looks at this deal.

Through our underwriting process, we have an extensive due diligence process. When we sign a deal up, we go down, really kick the tires and see where the deal operates at. And operating expenses, as you well know, are probably the most important aspect in these deals.

If you are skewed by 100 or \$200, it can definitely put a hurt on the deal. But we pride ourselves on having an extensive database with properties that are operating in the region.

In this particular region, we have about 3,000 units currently in operation. It gives us extensive knowledge in what operating costs are currently in that area.

I'd like to read a letter that we've written in support of this appeal, in a request to amend the assumptions that the underwriting staff has used.

"Ladies and gentlemen, I'm writing on behalf of Continental Realty and Continental Real Estate, Inc., whom we have participated with in prior tax credit developments.

"We are the tax credit equity syndicator for three projects in Kansas for this developer, and we have letters of intent with them to provide equity for six Gardens of Texas projects currently under consideration.

"Based upon the findings of your first recommended list of projects, we had agreed to commence our due diligence on all six of the applications. We currently have comparable market surveys from each market, and are working to underwrite these individual

developments to forward to our committee.

"We are aware that Continental Realty, Inc., has appealed to TDHCA findings on five of the six applications that have previously been recommended for funding. This letter is in regards to the appeal for Gardens at Mabank.

"In regards to your underwriter's analysis of the Gardens at Mabank, we have seen additional comparable market rate rental surveys of one development that was missed and projects that were started after the initial market study performed by [inaudible] and Appraisals.

And I can kind of wrap up and say that we concur with the developer. Based on our analysis, we feel that \$700 is definitely an achievable rent. Also, based on our database, and also with the market study that we have in hand, we believe that \$3,000 is definitely attainable operating expense. And in prior participation with this developer, they've met those benchmarks every time. Thank you.

MS. ANDERSON: Thank you. Ms. Confer?

MS. CONFER: Lorine Confer. And I'm the city administrator with the City of Mabank. But I'm here today on behalf of Representative Brown, Betty Brown, who is out of town, to submit a letter into the record.

It reads, "It has come to my attention that Continental Real Estate was denied funding for the referenced project, and has now filed an appeal.

"I would like to reiterate my support to this much-needed project, because 30.2 percent of Mabank households are occupied by individuals 65 years of age or older. The need for affordable senior housing is a growing concern.

"This project would give seniors who can no longer maintain a single-family home, but are not ready for an assisted living facility or nursing home, another option.

"Therefore, I urge you to give this careful consideration, as you review the appeal from Continental for tax credit status in regards to Gardens of Mabank." Thank you.

MS. ANDERSON: Thank you. Judy Junell. And next will be Judy Youngs.

MS. JUNELL: Hello, and thank you for your time. I'm Judy Junell, a lifelong resident of Mabank, fifth-generation person there.

What we see in our area is that Mabank is a different market than Terrell and from Henderson County. We are a part of Cedar Creek Lake. I've been in the

banking industry in the Mabank area for 23 years.

The people we have coming down to live at our lake are having to move back to Dallas because there is no affordable housing, and this type of housing, with the amenities that we need in the Mabank area. And it's someplace that I might want to live in in five years.

The city council passed this, our Mayor deputy pro-tem in 2003, unanimously, to fund the project. The city has committed \$25,000 to the development. Larry Teague, who is our mayor, who could not be here today, has sent this letter.

"As a lifelong resident of Mabank, mayor since 1995, business owner and real estate broker," and he has no real estate interest in this event whatsoever, "since 1974, I believe that I have a pretty good understanding of our city.

"Additionally, I own and manage over 30 rental properties in and around our community. On this basis, I believe that I also have a pretty good feeling for what rental rates are in Mabank and in the surrounding communities.

"I was surprised yesterday when I was advised by the management of the Gardens of Texas that TDHCA's internal analysis of our community suggests that the

rental rates proposed by their organization are higher than market will bear, and higher than TDHCA will permit them to charge, thus rendering their proposal invalid.

"Hopefully, I will be able to attend the July 28 board meeting so that I may personally address the board on this matter. If I am unable to arrange my schedule, then we will plan to send someone who is able to read my comments into the record.

"Let me preface the following comments by stating that the City Council of Mabank, Texas, and I as mayor, fully support the construction of the development, and are confident that it will be completely pre-leased at the rates proposed by the Gardens of Texas, prior to completion of construction and receipt of [inaudible] documents.

"There is nothing like the proposed development in the Mabank area. And we again hope if you can't put it on our funding for this year, that you allow us to go on the funding for the 2005." Thank you.

MS. ANDERSON: Judy Youngs.

MS. YOUNGS: I yield.

MS. ANDERSON: Is there any -- Mr. Ivan Haugh.

MR. HAUGH: I yield.

MS. ANDERSON: Thank you, sir. That's all the

public comment.

MR. BOGANY: I have a question for Tom. Based on the information that you've heard, the financial situation -- does anything change when we look at it from a financial situation -- I mean, it seems like everything is there in it, and whether or not did you get some information today that you didn't take into consideration when you were trying to come up with the right -- whether or not this was feasible?

MR. GOURIS: Well, I certainly didn't hear from the president in real estate in the City of Mabank and get any statistics or any data or documentation to back that up.

I had that information, you know, their -- I could see there may be some adjustment to the rent. But we went back to the applicant for this transaction to try to get some more information, to try to understand why the market analyst said 625, and they are saying 750 or whatever.

And they came back, and the market analyst said, Oh, well, we didn't mean to be in Henderson County.

We really meant to be in Terrell. And that's what we really -- that's what we're really comparing to. And that didn't cut it either, as far as rental rates go.

So from the information that we had, and the information that we were able to evaluate from the market analysts and from our own information about what's in that -- in those communities there, we haven't -- from that information, have not been able to get to their rental rates.

MR. CONINE: Did you -- and was he correct in his assumption that we may be using Dallas expenses, though, in the underwriting analysis?

MR. GOURIS: Well, not so much that they're Dallas expenses, but they would be consistent with expenses from that local area, because they'd take into account utilities and water, sewer and trash PHA allowances from that actual PHA allowance. So there could be some variation there.

There could also be variation in the tax rate. And the combination of those things can make two properties that are in the same region, the same rural area, but in different cities, differ in operating expenses by 200 bucks, which is a -- per unit, which is about what the difference is here.

MR. CONINE: And so where did you end up on your -- now, I heard Boston Capital say they had 3,000 units. 3,000 a unit would work. Where did you come?

MR. GOURIS: We're at 3,227. The applicant was at 2,960. The applicant also included 2,750 in secondary income. And that was the cable income that we weren't -- didn't get comfortable with, and we went to 15 as their limit.

They -- but the big issue was about 50 -- about \$43,000 in additional rent -- rental income that we didn't think it was --

MR. CONINE: That's the difference between the 625 in the market study and the -- and of the hundred or whatever?

MR. GOURIS: Right.

MR. FEASTER: Could I respond to one thing which maybe would clarify one thing? Mr. Gouris has not seen the final market analysis from Boston Capital, or he has not seen the final rent comparable that makes the adjustments from Mr. [inaudible].

Those are in your packet. That is part of the information that we couldn't get to him in time for the appeal, and we -- that but that is in the packets that we supplied to you.

I might also point out, he mentioned taxes and insurance. And I think in our pro forma, our taxes and insurance were actually lower than what their database

showed for that particular area.

MR. CONINE: Could you come on up again, sir, so I could ask you one more question. I think where we're -- staff is having a problem, and I'm having a problem, a little bit, is he keeps referring to the market study. Yet you haven't supplied any of the things that you've talked about are coming from Boston Capital or somebody other than the market analysts that's causing the problem currently.

MR. FEASTER: Correct.

MR. CONINE: Have you had a chance to go back to the market analyst and have him look at it one more time?

MR. FEASTER: We decided that when he did the initial one, he went to Athens rather than work back up the highway to Dallas, which we felt -- and one of our partners has lived in that area for five years. That's actually why we're there in the first place.

We felt that it might be better for staff's understanding if we went to the local people to find local rental rates. So that's why we engaged Mr. Jim Justus [phonetic] to come in and look at that.

I might add that all of the rentals that he uses in his analysis, again, which Mr. Gouris hasn't seen,

are in Mabank. They're not Kaufman, they're not Terrell, they're not anywhere else. They're right in the City of Mabank.

It was an oversight that we probably should have supplied that to him today at the same time that we were putting those into your packets.

MR. CONINE: But you guys -- I mean, I -- this is a -- the one out of the six that you've tried to get through here, that's based on an underwriting appeal, as opposed to getting caught in the other problem --

MR. FEASTER: Correct.

MR. CONINE: -- which I appreciate, and certainly no disrespect to anything you guys are doing. We appreciate your effort in -- to do in what's obviously in rural Texas what probably needs to be done.

MR. FEASTER: Uh-huh.

MR. CONINE: And we're going to hear -- we're not going to hear underwriting appeals again at our next month's meeting?

MS. CARRINGTON: August 19. Yes, sir.

MR. CONINE: I'm going to make a motion we defer this particular appeal to that meeting.

MR. SALINAS: I'll second it.

MR. CONINE: Because it's not affecting the

scoring. It's just the underwriting. Correct? Staff?

MR. FEASTER: It removed us from the recommended list.

MS. CARRINGTON: Right.

MS. BOSTON: Right now, because we consider them infeasible, they aren't eligible to compete. So there is no way they can be given an award today. Obviously, though, if you table it to August and you all are discussing forwards, then you could do what you wanted, based on that information at that time.

MR. CONINE: Or if others fall out that are currently -- that would be on the list at the end of the day, create some more room, there is always a possibility of waiting lists, and scores, and all -- in regions. That whole formula.

MS. BOSTON: Sure. So --

MR. CONINE: Right. Right. So I guess my -- I don't have enough information to help you today. The only thing I can do is hurt you.

MR. FEASTER: Well, we don't want that.

MR. CONINE: And you don't want that. And you get it -- the thing scores high. I mean, it's just an argument with Gouris, which everybody has when they come in.

MS. CARRINGTON: Real estate analysis, Mr. Conine.

MR. CONINE: Mr. Real Estate Analysis --

MR. GOURIS: Don't I wish.

MR. CONINE: Sir, I think the motion to defer, for her to table until we get to the next month's meeting is probably going to -- you're going to end up in the same place company.

MS. ANDERSON: Would you like to say something? I'd just ask you to sit -- you can sit right there, or -- but do you have anything else to say?

MR. GOURIS: I need a clarification if --

MS. ANDERSON: Okay.

MR. GOURIS: If this information is information I do need to -- I should be looking at and including in a revision, and then how would that apply to any other transaction they would want to provide. I think the information that, you know, we had one earlier that was requesting that we looked at additional information as well.

MR. CONINE: On underwriting?

MS. ANDERSON: This is back to this issue about whether the 9 percent round, we -- how much back and forth we typically have?

MR. GOURIS: Yes, and we've -- I'm just looking for clarification. I mean, we've had an opportunity to exchange that information. I'm glad to look at more information that's provided. But I'm -- you know, at what cost will that be to other transactions that might not have that opportunity?

MR. CONINE: I was just trying to get him all in the same bucket of appealing the underwriting decisions, as opposed to you know, points on or something else. So that's all. And you obviously hadn't had a chance. But whether or not you deserve a chance to look at new information or not is the issue.

MR. GOURIS: Right.

MR. CONINE: And --

MR. GOURIS: Okay. Let me just throw out also that if -- so far, it -- you know, depending on what else -- what other transactions you all might ask us to look at here on the list that we know of as of now, we don't see any other not recommends from underwriting based on this list. If you have some others that we haven't looked at yet, there may be some issues.

So the underwriting issues that are going to be addressed at the next meeting are going to be based -- are going to be primarily conditions and the amount of the

award, the amount of recommended award.

MR. CONINE: Well, if we grant -- let me ask you this. What happens if we grant the appeal in this case?

MR. GOURIS: You'd waive whatever requirement was in as a condition, and either have us go back and look at those things, or just say we believe them and go on down the road. And it, you know, basically overrule the underwriter.

MR. SALINAS: Let me be frank with you.

MR. CONINE: Hang on a second. I'm thinking through this for just a second. It may -- I guess in the normal course of exchanging information with the applicants, from an underwriting standpoint, don't you normally dialogue with them and say, Hey, I don't believe that. And I need to get this. And -- isn't there some degree of dialogue that normally takes place?

MR. GOURIS: Yes. And we feel like we did that. We got a response back from the market analysts. It -- we didn't feel like it was sufficient. We didn't continue to dialogue, because we can dialogue to the end.

MR. CONINE: Right.

MR. GOURIS: We made the query. We got information back. We collected other information from

other transactions that we know about, and we made a recommendation based on that.

MR. SALINAS: But they got the notice on the 15th of July. Right?

MR. GOURIS: Well, they're -- we initially queried them in -- back in May. And because of changes to the list, you know, our office -- our priorities shifted from -- a little bit. So we weren't as active on that transaction.

But the request was still outstanding. We -- you eventually got information back, and eventually got back to digesting that information, and that's kind of the process.

MR. CONINE: Well, I'm going to withdraw my motion to table this simply because I don't have enough information.

MR. SALINAS: I'll withdraw my second.

MR. CONINE: And I guess I'll move to deny, because the information we do have is all they had to work on. And in order to be fair to everybody else, I move to deny the appeal.

MR. HOPPER: Sir, I was the gentleman that Jim Anderson spoke with in the rebuttal. I mean, can I -- do I need to -- can I say --

MS. ANDERSON: Did you complete a witness affirmation form, sir?

MR. HOPPER: Yes, I did.

MS. ANDERSON: What is your name, sir?

MR. HOPPER: My name is George Hopper.

MR. CONINE: And I'm changing this -- we've got --

MS. ANDERSON: I saw your name on the handwritten list in red ink I was given. But I don't have a witness affirmation form for you. Hold on a minute. Do we have a second on this motion? Was it seconded and I just didn't hear it?

MR. CONINE: No, it wasn't seconded, I don't believe.

MS. ANDERSON: I'll second it. Would you come up and speak, please?

MR. HOPPER: My name is George Hopper. I'm vice president of Continental Realty. I did not intend to speak today. I really don't rather enjoy being here, and I feel somewhat like we're trying to point fingers back and forth.

I felt like I had a good rapport with Mr. Anderson, but I feel like we did not have the chance to be able to have the dialogue, to be able to go back and forth

and exhaust all the facts. And that's why we appealed it, and that's why we're here today, simply because we don't feel we have exhausted everything that could be exhausted.

I'm not saying I'm against him. I'm just saying I think we have more to say before we get to the end of the road. And really, that's all I have.

MS. ANDERSON: Thank you.

MR. SALINAS: How many days did you all have to discuss the transaction?

MR. HOPPER: We initially found out in May. As soon as he gave me the information via fax, we turned around all the information that he required and requested. We really didn't hear anything else until Thursday evening, I believe, the 15th of July. From that time, we made a plan to fly down to Mabank, engage the appraiser, go through and look for the additional properties that we knew were there in Mabank.

MR. SALINAS: You did do that?

MR. HOPPER: Pardon?

MR. SALINAS: Did you all do that?

MR. HOPPER: Yes, we did that. To try and get that in by the 19th, by five o'clock. We had the information in. We had the letter from Boston Capital in this week, before Friday. However, we didn't have the

adjustable grid to show that. We since have got that together.

MS. ANDERSON: Thank you, sir.

MR. SALINAS: Can we reply to that?

MS. ANDERSON: Yes. Let's --

MR. GOURIS: Well, to be fair to staff, I think you have to recognize that we had documentation in hand. It said six -- the round said 625. The applicant said something greater than that. We asked for clarification. What we got was clarification that said, Let's look at Terrell.

You know, we got -- we did get clarification. You know, we can go back and forth, and that's fine. But that is a very, very difficult thing to do, especially when this kind of research should have been done at the beginning, in my opinion. I mean, then you'd know what the rents really are, and if they feel comfortable about them, the -- when we're talking with --

(Timer sounds.)

When we talked at workshops, we always talk about providing any substantiation for things that seem out of the ordinary. And responding to our, you know, requests with, you know, documentation.

So I do not -- I mean, I certainly empathize.

And I certainly would love to have the resources available to staff to be able to hound for information and to be able to negotiate and work through these transactions at a much more detailed level than we even get to now. But you know, there is -- there are resource limitations, and there are time constraints. And there is fairness to the other applicants.

And you know, I know I'm not going to go very far on that, but that's, you know --

MR. CONINE: They -- on the application -- the application said how much? 700 and change?

MR. SALINAS: Six-twenty -- 675.

MR. CONINE: No, no, no, no. The market study said 625.

MR. GOURIS: Their -- 60 percent is what? 750? And their market rate is 775. And the --

MR. FEASTER: Could I clarify that just a minute? That would have been after --

MS. ANDERSON: Excuse me. Would you please sit down, sir, while a board member is questioning a member of the staff? I'm sorry, but the -- you know --

MR. FEASTER: I'm sorry.

MR. GOURIS: And it may have been done. We did get information throughout the process, and we may not

have had the original original in here, but --

MR. CONINE: Well, that is my point. Where I was heading with this is if your application says a rent substantially higher than what your market study then comes in at, and you hired the market study, why didn't you guys change it then? Why are we waiting until now to do it? How much time had elapsed between --

MR. GOURIS: There is a little bit of a timing issue, in that the application is due, and the market study is due 30 days later. But how to go backwards and fix that --

MR. CONINE: No, you knew they had a problem.

MR. GOURIS: But they should have recognized that there was back in April. And they -- when we asked about it -- you know, the information about Mabank should have been at least queried and obtained then.

MR. CONINE: And I like Mabank, too.

MR. HOPPER: Sir, at that point in time, we did turn around and we did go and provide the information.

MR. CONINE: Stand up and use the microphone.

MR. HOPPER: I'm sorry. At that point in time, when we found out about that, we did go back, and we found that information. And that's what we gave to them about Terrell.

MR. CONINE: About how much Terrell, instead of --

MR. HOPPER: Yes, because we were trying to look for cities that were relative. But at that point in time, there were two developments currently under construction that are pre-leased in Mabank that were not under construction.

So that we thought we had done that.

MR. CONINE: Right.

MR. HOPPER: And we didn't know that we hadn't fulfilled that until July 15. If we would have known that, we would have gone back and continued to prove here is another -- you know, here's projects that do prove and substantiate our rental rate.

MR. CONINE: People in Terrell don't like the people in Mabank, and the people -- they won't pay that kind of rent.

MS. ANDERSON: Discussion -- any other questions? Discussion on the motion. Everybody remember what the motion is? All right. I assume we are ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no. Motion carries.

MR. SALINAS: No.

MS. ANDERSON: The motion carries. Excuse me, Mayor.

MR. SALINAS: No.

MS. ANDERSON: Mr. -- Mayor Salinas voted no. And I believe he's the only person that voted no. Thank you.

MS. CARRINGTON: The next item for the board's consideration is 04-222. When you flip to that tab in your appeals book, the yellow page is for an incorrect development that was at Costa Cadiz.

MR. GOURIS: There was another Gardens. 174.

MS. CARRINGTON: I don't know where it is.

MS. JOYCE: It's the one we've been talking about.

MS. CARRINGTON: I'm sorry.

MS. JOYCE: One of the two additional appeals that we'll be hearing today. This is related to -- at Gardens of Early.

MS. CARRINGTON: So it's at the end?

MR. GOURIS: Right.

MS. JOYCE: Well, we could go to the end, or just address it. There are just so many similar issues. That's why we thought we'd put it --

MS. ANDERSON: That's fine with me. I've got the sheets right on top here.

MS. CARRINGTON: In that case, I will correct. 04-174, Gardens of Early.

MR. GOURIS: The appeal we received on this application only was a basic appeal. It was a one-page appeal that said, "We appeal the underwriting and the inclusive capture rate." And it didn't give any other detail about what specifically we erred in, to get to that appeal.

The original we did not recommend the transaction because of an inclusive capture rate issue. The market analyst used 70 percent renter percentage, and he also used a market area that included three counties, which is probably -- which is the largest market area definition that I've seen since we've been requiring market area definitions in our market studies.

The market analyst concluded a capture rate of 15 percent in error, based on what should have been a calculation of 102 unstabilized proposed units. Over 202 units of demand would have been a 50 percent capture rate.

That would have still been acceptable, except for the fact that when we looked at the more appropriate renter percentage, we ended up with a much-lower demand

number, and a inclusive capture rate well over 100 percent rate.

MS. ANDERSON: Tom, you might indicate that this is in elderly, so that the capture rate can exceed the 25 percent. That it can go up to 100 percent on the elderly.

MR. GOURIS: Correct. Both elderly and rural. We can do so on both accounts. But it can't get both. It can't go to 200 percent.

MS. CARRINGTON: Thank you.

MS. ANDERSON: Don Youngs.

MR. YOUNGS: Thank you again for allowing me to come here. I was going to defer to the city administrator of Early, his comments prior to Mr. Feaster's. This morning when we were advised that we were not approved to speak, then the city administrator left.

I don't know if we will have a chance to come back in August and discuss this or not, because he would like very much to discuss it with you. So I will proceed without him.

And on that basis, I will state that I will defer to Mr. Feaster, who will talk about the financial feasibility issue. Thank you.

MS. ANDERSON: Thank you.

MR. FEASTER: Hello, again. My name is Mark Feaster with Continental Realty. Just a couple of things that I wanted to address on this issue. And most of it has to deal with the inclusive capture rate that Mr. Gouris mentioned.

We went back and looked at the market study that we had done. We also compared it with a market study done for another project in that PMA that is in Brownwood.

Based on our underwriter's assumption that 25.7 percent of total units needed would be for senior, we came up with a total need for senior housing of 136 units. When we look at both reports together, our 36, coupled with the 89, which is an average that the two underwriting reports used of available housing, shows that -- a total inventory of 125.

So using those numbers, and calculating the inclusive capture rate, we came up with 92 percent, which is under the 100 percent allowable for maximum senior housing. Those are just using numbers that were already out there in underwriting reports.

The only other item I wanted to add -- to address as far as financial feasibility is we have talked with our lender, our original pro forma used 7-and-a-half percent, it looks like. And we have a letter in the

packet that says, you know, our interest rate on the perm loan, based on today's market is committed at 6.75. So we submitted a new pro forma that does show this is a viable project.

And again, Boston Capital and Stearns Bank of St. Cloud, Minnesota, who is our lender on this particular project have both underwritten it and approved it.

MS. ANDERSON: Is Mr. Thomas the gentleman that you were speaking of, that's no longer here?

MR. FEASTER: Yes, ma'am.

MS. ANDERSON: Okay. Okay. Judy Youngs?

MS. YOUNGS: I yield.

MS. ANDERSON: Ivan Haugh? Quinn Gormley.

VOICE: He just left.

MS. ANDERSON: Okay.

VOICE: [inaudible].

MS. ANDERSON: That's it. I have a question. The comment that -- Mr. Gouris, that was just made about the interest rate commitment changing. Did -- are you -- were you in receipt of that information, or is this -- or not?

MR. GOURIS: No, but it's sort of superfluous to our decision here, because we weren't making the comment that it wasn't feasible. But that would certainly

help its feasibility. But we were making a comment that it was -- it --

MS. ANDERSON: Okay.

MR. GOURIS: -- exceeded inclusive capture rate.

MS. ANDERSON: Good point. I got derailed.

MR. CONINE: So his -- once again, his market study that came in says it exceeded the capture rate?

MR. GOURIS: No, it did not.

MR. CONINE: It did not.

MR. GOURIS: No.

MR. CONINE: Yours did.

MR. GOURIS: Ours did. Our re-evaluation of his information.

MR. BOGANY: Did you compare your information with what he had? In other words, you said his does not exceed but yours do. Did you check to make sure that you were -- you guys were looking at the same apples to apples?

MR. GOURIS: Yes, we used his information to -- to recalculate inclusive capturing based on, you know, what we think he should have taken out of his own report.

And we calculated conclusive capture rate based on that, not based on some third party data some place else. So

based on that -- that market analysis information.

MR. BOGANY: Okay.

MR. CONINE: Move to deny the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no?

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: Then I believe the next item for the board's consideration is 04-222, which is Primrose at Highland. It is in Region 3, it's located in Dallas, and, as I was saying just a minute ago, at least in my board book, I go to a yellow page that has the incorrect name.

It has the Villas at Costa Cadiz, but if the board will turn the page, then you have the information on Primrose at Highland.

MS. JOYCE: I would also point out that the action item is for the correct development of 04-222.

What is incorrect, as Ms. Carrington said, is the name and, then if you look below, the information on applicant location, etc. That's also incorrect. It's a bad cut and pasting job. I apologize.

However, if you do need that information, it is in your other reports that we provided to you. So the paragraph itself is correct.

This item is an appeal regarding low-income targeting, so leveraging of funds from the city of Dallas.

As you might remember from the last board meeting, in order to receive points for leveraging, we must have received commit -- evidence of commitment by June 14, 2004.

We received a letter on June 11, 2004, and I'm quoting it: "As discussed with Mr. Jack Tashnick of your office, the department will consider funding your request of \$175,000 contingent on securing the state housing low-income tax credit." So the commitment is contingent on the award.

Secondly, in -- on June 24, 2004, we also received a letter saying again, basically, that they could not offer that commitment -- that evidence of commitment because they are contingent on the award of tax credits.

The appellant is making the correlation between

the city of Houston issue we had last time and this item and I'll remind you now, that City of Houston -- it was whether or not the loan was forgivable. That -- whether or not it was forgivable was contingent on whether or not it had a positive cash-flow or negative cash-flow, so it actually kind of is a separate issue. We're dealing more with evidence of commitment and whether or not we had it.

MS. ANDERSON: Mr. -- I know I'll mess this up -- Sulakhe?

MR. SULAKHE: Good afternoon. I'm Deepak Sulakhe with Primrose at Highland and I want to thank Madam Chairman and the Board for giving me this opportunity to present the appeal.

As you can see in the initial letter, we -- the City of Dallas has said that this funding is contingent on us getting the award, along with city council approval. And I'm paralleling that to the Houston deal because the City of Houston has come out with a similar letter and I'm talking with the City of Houston staff and they have said that we will not present it to city council if you don't get a reservation of the tax credit award.

The City of Dallas is using the very same position. They are saying that if you don't have the reservation, I don't see the need to present it to my

board, so you get your reservation and then I will present your request for funding to the board. So I really don't see the difference between the two letters.

I want to add that this deal is -- has got the points for community support, and it's got the points for support from elected officials. So the City of Dallas and the council member who has written a letter of support has basically said that he supports the deal and that there is unanimous support in terms of the City of Dallas backing up this particular project.

As evidenced by the points that we have received from the community support and from the support from the elected officials.

Based on this, I can request that the board grant my request -- give me the points on the subsidy leveraging, along with the additional points that we need -- the additional seven points that we missed because of the other five percent variance. Thank you.

MS. ANDERSON: Mr. Jeff Spicer? I'm sorry?

MR. SULAKHE: He's not here right now, so I think he will pass.

MR. CONINE: Move to deny the appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion. Hearing none, I

feel ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: Next item for the board's consideration is 04-224, Common of Grace Senior. This is located in Region 9, which is in Kaufman County.

Excuse me. I'm sorry. Region 6, Houston.

Excuse me.

MS. JOYCE: I'll warn you this one's a little complicated. You might want to take notes. I apologize. It is kind of complicated.

They are appealing, basically, four separate QCP, or Quantifiable Community Participation, letters.

The first one is superneighborhood number 47; it's not on record with the state. And the boundaries are also not provided in the letter. That was the reason. They do say in the appeal that they are aware it's not on record with the state.

Greater North Forest is an appeal not on record with the state and is not a neighborhood organization. There is also Greater Houston, which is on record, but we

do not consider it a neighborhood organization consistent with EARAC reviewed these letters again, because it was a six board member and -- six board member only nonprofit without the option of having members -- we do not consider it a neighborhood organization.

MS. ANDERSON: Commons of Grace, I think.

MS. JOYCE: 04-224, Commons of Grace. Yes.

And this is -- and so those were the first three and this next one is a prime example of why we require process in reviewing these letters.

We had two conflicting entities within the same organization giving us information. Basically, for each Houston city of superneighborhood, it met all of the requirements, all nine. So it was a superneighborhood that, for instance, had gone above and beyond and had registered itself with the state. So that was okay. And all other nine items.

The president of the superneighborhood wrote us a letter detailing a whole lot of opposition and -- so that was the letter that would score. In addition to that, we received letters from --they're saying again, the East Houston City of Superneighborhood from a -- many of the members of the organization stating that they actually had voted to say that they wanted to support the

organization but that the president went beyond what they had actually voted and offered opposition.

For that reason, and all of these letters are included in your packet -- for this reason -- because we had no way of knowing at the time -- we scored the letter because it did meet all nine requirements but we scored it as a zero.

The appeal that you have before you is again adding a little complication to it. It's asking that we score the letter, however, they're looking at the support option of it and we never received a letter of support from this particular neighborhood organization. We just received documentation saying that yes we voted and we voted to actually support it.

There were no reasons why and there was nothing directly to us as a QCP letter, to use that word loosely.

So the only one we have on record is the opposition.

Good luck.

MS. ANDERSON: Mr. Taylor? And next will be Mr. Clemons.

MR. TAYLOR: Good afternoon. Thought I'd wake you with that one; best time reading. Guess I woke you up.

In our letter to the TDHCA, I refer to request

for appeal. Maybe I'm kind of shaky but the last one that was very confusing everybody from neighborhood. The civic clubs make up the superneighborhood and our president, Joyce Willis, she went for whatever she wanted to do, in support of another project, which we had no problem with that.

But there never was a meeting to say that we are not going to approve the Commons of Grace. So what she did was, I guess, was in spite of other words, she wrote a letter in opposition without the council's approval. She wrote it and she sent it. And that -- she wanted to cost us points, but it wind up didn't cost us any points.

But the civic clubs represent the superneighborhood, not one person, so what we're asking for is for our points to be restored based on the fact that the civic clubs and our organization represent this superneighborhood and not just one person representing the neighborhood.

She -- I don't know she did what she did. Not based on the concerns of our other civic clubs in the superneighborhood. There are approximately eight civic clubs that make up this organization. Eight of them voted for and three of the four that didn't vote, one was

president, other was president's sister, other was president's brother. So that's how that came about. What can I say?

MS. ANDERSON: Harvey Clemons. That's it on that one.

MR. CONINE: The one letter that Johnson was super regional -- superneighborhood, whatever the heck they call it in Houston -- is that letter consistent with the other letter we granted the appeal to?

MS. JOYCE: There are actually two superneighborhood letters that we're talking about.

One is Superneighborhood #47 and one is the East Houston Fedigass. The Superneighborhood #47 it is not on record and we also -- they did not include documentation on the boundaries.

The other one for Lansborough, one in Houston that we did grant based on that, provided a lot of evidence showing that many of the other civic clubs were on record. This one did not.

So in the fact that, yes, it's not record at the state or county, the other East Houston, that's not even an issue. It actually has met all of the requirements for scoring a letter.

It is -- keep in mind, the letter that we

received, the only one that we have to actually score on is opposition so we would actually be awarding negative points if we considered it.

We do not have one in support, although they are asking for points for support.

MR. BOGANY: Are they saying that the person who wrote the opposition went against what the group said that they wanted?

MS. JOYCE: Correct and the only documentation we have of that are letters going back and forth and to us. None of which actually outline any reasons for support, which is what we would use to score. So we don't have anything to score.

MR. BOGANY: So they need to replace the person that's running that superneighborhood?

MS. ANDERSON: Are you going to -- would you like to change your mind?

MR. CLEMONS: Yes.

MS. ANDERSON: I think that's permitted.

MR. BOGANY: Can we put it up to a vote?

MR. CLEMONS: Good evening and thank you and you've got a lot of patience. It's been a long day for you and I'll try to make it easy.

The lady who's the superneighborhood president

and the treasurer is her brother and the vice-president is her sister. We were at the community meeting and everybody on that board -- on the superneighborhood -- was in support of those three people.

They wrote letters and I think you have the letters here. They wrote letters in support of it but the letter that your staff is counting is the letter that came from the president, who spoke i.e., as the -- on behalf of the superneighborhood. But it really wasn't a mandate by the superneighborhood. It was the opinion of the president, if that provides any clarity.

So what we're trying to say -- if there are twelve people on the superneighborhood and seven letters come in support, it should be -- it should override the person's personal opinion.

MR. GORDON: Do we have any board --

MS. ANDERSON: I have one more person who would like to make public comment. Sally Gaskin.

MS. GASKIN: My name is Sally Gaskin, and I just want to provide a little bit of information regarding this situation.

The superneighborhood did give me a letter of support for my Mesa Senior Development. They did that; there was a process that we had to go through, the review.

There was a vote. It was taken back in November of 2003 in anticipation of this round.

The superneighborhood did write a letter of opposition. They were very upset that that letter of opposition was not scored or was given a zero score. And we're trying to figure out how do they make their position known and in reviewing the appeals process, the only entity or person that can appeal is the applicant.

Superneighborhood doesn't have any means of appealing. And basically, you know, when I told them that, that they didn't have an avenue for appealing this score, or lack of scoring of their letter, you know, their kind -- they don't know what to do and we didn't have time really -- they didn't make a decision as to what to do -- they really wanted to come here today and, you know, but decided that because they felt that they could not have a basis for appealing, that you know, it wouldn't be -- do them any good.

I think that they do have a position. There is -- there's always two sides to a story and we'd like to have that position known in making -- before the board makes any kind of decision on -- particularly on support.

I mean, their letter was the only letter that qualified for scoring. And they feel that they did have a

process and that, you know, it may not have been completely known to Commons of Grace but there was a process followed.

And that is outlined in their opposition letter. And I can only state that they weren't here today because they didn't feel that they could appeal. Or that they had an avenue.

MS. ANDERSON: Thank you.

MR. BOGANY: I think the problem, Madam Chairman, I think the problem is with the president of the superneighborhood, and I would assume that she represents the group, because she's the leader of the group. And it seems to be a little politics there too -- in that situation.

And I just -- would feel that if somebody in the group wrote a letter representing the whole group, just as we would accept her signature as proof positive and other members of the group didn't agree. But the majority voted.

We would still accept her signature because she is the leader of the group. And I'll make a motion that we deny the appeal.

MR. CONINE: Second.

MS. ANDERSON: Discussion. Hearing none, I

assume we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Oppose, no.

(No response.)

MS. ANDERSON: Motion carried.

MS. CARRINGTON: Next item for the board's consideration is 04-271, Cornerstone, which is located in Region 7 in Austin.

MS. JOYCE: This is actually an appeal for housing trust funds. The housing trust fund rules -- it's all in the same appeals packages so -- the housing trust fund rules this year basically refer to the QAP threshold requirement and we required the same threshold for housing trust fund as we do for tax credits.

This particular application is only applying for housing trust funds. They are applying for \$36,624 and there is enough housing trust funds left after all our recommendations and then some.

Basically, they did not provide the required public notice to the clerk notification in -- by the January 15, 2004 deadline. They did make all subsequent notifications; they just were untimely. So they are appealing their termination because they did not meet the

threshold requirement to notify the city and county clerk by January 15, 2004.

MS. ANDERSON: Thank you. There is one person that would like to speak. I think it's -- I can't tell if it's Mr. or Ms. Fletcher. Oh, Ms. Fletcher.

MS. FLETCHER: Good afternoon. I'm Wesla Fletcher and I'm with Mary Lee Community and the Cornerstone is one of our projects. And I can tell you right now, I'm overwhelmed. I'm not an attorney. I'm not a real estate agent and I don't have a bunch of people supporting me. This is it.

I'm the only one speaking to this. We applied for \$36,624 for housing trust fund. We are rehabbing 22 units and building eight new efficiency apartments who are formerly homeless and who are disabled, either mentally or physically disabled.

And as you know, there are just lots of requirements and this is the first year that they made the threshold same. We spent \$12,000 trying to fulfill the requirements because the threshold is the same as the tax credits. And you may ask, you know, you must be nuts to pay \$12,000 down here for [inaudible], but we're desperate.

This would really help us to finish this

project out for these people. We were terminated because we failed to file the letter requesting information about our neighborhood association.

We are a part of the Zilker Park Neighborhood Association. We did -- and I want to appeal this, I guess, for three reasons.

One, is because we did fulfill the intent of the QAP. We did supply a letter from the Zilker Park Neighborhood Association for their support. There isn't anything better than they would want us to do by rehabbing and bring up their real estate prices by rehabbing our apartments.

The second reason is we were also told later that it was likely that Travis County didn't even have a list of neighborhood associations and so we probably wouldn't have gotten anything back.

And then the third is I don't believe that we'd be shutting another nonprofit out by appealing this and receiving those funds.

It's small change to you, I'm not -- but it's big to us. It means a lot to us and I'm sorry that that was something we -- I admit we missed it. So but I don't think it would impact anybody but us in a positive way. We could --

MR. CONINE: Could I ask staff this is a true statement?

MS. JOYCE: It's the -- the Housing Trust Fund this year is very under-subscribed so that is correct. We have plenty still to allocate. This is unfortunate we're restricted because they didn't meet the threshold requirement. We don't have that discretion to allow it to pass.

MR. CONINE: Move to grant the appeal.

MR. BOGANY: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carried.

MR. CONINE: Could you write your state legislator, ma'am?

MS. CARRINGTON: Next for the board's consideration is 04-299, the Harvest Apartments, located in Region 11 in Mercedes.

MS. JOYCE: The Harvest Apartments is appealing three separate items as well as another that is

unappealable.

One of the items we've already discussed -- when we discussed 04-032 and forgive me, I've forgotten that development number, but it was basically the issue with Bazra and the board and the related party issue. And I believe that the board chose to deny that appeal.

The other issue is a basic appeal of the Attorney General opinion and their affected points that they've had from that.

The appeal that is not considered in this is the request that we review all nine of the Quantifiable Community Participation letters that they had. It was not filed in a timely manner. It should also be noted that those were the same letters for 04-032 that you also denied, so you've discussed those same letters. Although this -- in this case, it's not appealable and 04-032 it was.

The main item that they're actually appealing here is their termination. They were terminated because, pardon me -- the applicant's July 21st appeal of the termination, the executive director responded by stating that the applicant did not publish the required notice for the newspaper, two times in the 30-day period.

They were required to publish in two

newspapers, one for their local area, the other for the MSA because they're located within an MSA. They published in the MSA and they did not publish for their local -- in their local newspaper, which is called Mercedes Enterprise.

We submitted -- so they were terminated because of not meeting that threshold requirement. In addition to that, we did send them a deficiency notice giving them opportunity to show that they actually had published in the newspaper.

They were unable to do so, so an additional reason for the termination is because that they did not respond to the deficiency notice, thus expiring the 10-day required deadline.

MS. ANDERSON: Mr. Smith?

MR. SMITH: Yield.

MS. ANDERSON: Mr. Pitts.

MR. PITTS: I think I'd like to yield to Ms. Fletcher. Let her come back.

The termination as to the newspaper -- to address that first -- we did publish twice in The Monitor, which is a newspaper out of McAllen, which is the county seat of Hidalgo County where this property is located.

That newspaper has a daily circulation of

30,635, Sunday circulation of 49,530. Compared to -- and that's a daily -- just indicated -- compared to a weekly newspaper that is in Mercedes, has a small circulation.

We did publish twice. We published in the newspaper that we've again published in before. And not understanding again why this newspaper is being rejected this time.

As to the others, you've heard this before -- the Bazra, the related party, again I have a difficult time seeing that these points are not granted because of the fact that I contend -- continue to contend that there is not a relationship between Bazra and Texas Regional Properties or Rowan Smith.

As far as the neighborhood organizations, you've heard that before -- again, we have two neighborhood organizations. One is next door to this project and another neighborhood organization that is three blocks away.

Again -- as I mentioned earlier, there is no indication in the statute that you cannot have a neighborhood organization that is not county wide nor is there any indication in the QAP. The AG's opinion, again, I mean, you've heard this from other developers today and other witnesses saying it turned everything upside-down.

We were unable to reapply. We were unable to remedy what the AG's opinion did to us.

MS. ANDERSON: Yes, sir. Mr. Palasota.

MR. PALASOTA: I'd like to yield to Rowan Smith.

MS. ANDERSON: Okay.

MR. SMITH: I'm Rowan Smith from Houston, Texas.

On the appeal for the newspaper, this particular site is located in Hidalgo County. It is not located in a city. The only newspaper that services that county is The Monitor.

We are between Mercedes and Weslaco in Hidalgo County. And that is the only paper that's available to us in Hidalgo County and that's where we're located.

MS. ANDERSON: Thank you, sir. Questions?

MR. CONINE: And my question was going to be, what makes the Mercedes paper the paper of choice versus The Monitor?

MS. JOYCE: We had staff review this in detail and the requirement is that if it's located in an MSA, then it must notify in both and we -- the exact language, it might help.

In communities located within the metropolitan

statistical area, as it is in this case, the notice must be published in the newspapers of both the development community and the metropolitan statistical area, unless the local newspaper of the development community is published at least five times a week, in which case, the notice need only be published in the local newspaper of the development community.

Staff determined that the other newspaper, I'm sorry, I'm forgetting --

MR. SMITH: The Monitor.

MS. JOYCE: Thank you. Or actually The Mercedes Enterprise was one that it should have.

It did confirm with the newspaper itself and all that information requesting the documentation was submitted in the deficiency notice and they did not respond.

So we didn't even get the information back from them stating they didn't believe they needed to.

So again they were terminated for not notifying that particular newspaper, providing notice, and for not getting back with us within the deficiency time period.

MR. SALINAS: They didn't notify you at all that The Monitor was the local paper?

MS. JOYCE: Correct. And so I have nothing to

do with it. No research done on that particular newspaper.

I can't say that staff definitely looked into whether or not this particular paper should -- they should've been notified and we found that they were.

And this was also based on information given to us during the review.

MR. SALINAS: You're talking about MSA? You talking about what?

MS. JOYCE: Metropolitan Statistical Area.

MR. SALINAS: Which one is you talking about? We got two.

MS. JOYCE: McAllen, I believe.

MR. SALINAS: So The Monitor is in McAllen. And MSA -- McAllen we do not consider MSA. So there's only one MSA in the valley, in Hidalgo County, which is McAllen.

MS. JOYCE: Correct.

MR. SALINAS: So why wouldn't The Monitor be --

MS. JOYCE: Staff determined that it was -- let's see -- let me see -- we have no notes. I have no notes based on the McAllen Monitor. We did note that that's where they did publish it and that was considered in their review.

However, it was determined -- and again asked for them to justify who they did notify in that deficiency notice. We determined based on the information that was given to us, that it was the incorrect newspaper.

And we asked them to expound on that and they did not. So this is all new information to us in terms of their impression that they should have done in The Monitor.

MR. SALINAS: Well I can tell you that more people get The Monitor in Mercedes than the Mercedes newspaper.

MS. ANDERSON: May I ask Mr. Pitts a question? Can you shed some light on why you -- or why you -- or why Mr. Smith did not answer the deficiency notice?

MR. PITTS: I think Mr. Smith probably can answer that better than I.

MR. SMITH: I was out of the country in Israel all during this time. Didn't even know about it.

Now, another thing is that the -- we didn't think there was a deficiency anyway, because the letter was already in there, and we had an issue with them before on another criteria -- I think it was zoning -- where they realized that we were not in Mercedes, but we were in

Hidalgo County, so I figured once they knew that we were in Hidalgo County, that should not be any reason for this other type of action.

MS. ANDERSON: Thank you, sir.

Jenn, would you address the comment about being in Hidalgo County and not Mercedes and why, therefore, we need the Mercedes newspaper?

MS. JOYCE: Yes. Based on what staff was just telling me, I think I may have come across differently than I intended.

They had to publish in two. They did in one, which was The McAllen Monitor. They are still within the MSA, so the requirement is there for both newspapers.

He's saying, if I hear him correctly, that his reading -- he was out of town when we sent the deficiency notice to him and he assumed that because we -- because of a past zoning issue, that perhaps we were mistaken.

The fact of the matter is we sent him the deficiency notice requiring proof that both newspapers -- there was publishing in both newspapers and it was only in one, unfortunately.

The other required newspaper we didn't get a response on nor was it published in.

MR. PITTS: I guess I'm confused. If it were

not in the city of Mercedes, what is the local newspaper when you're not in the city at all?

MR. CONINE: The QAP requires two. Two --

MR. PITTS: I'm hearing that but where would we have published it?

MS. ANDERSON: I mean --

MR. CONINE: Mercedes.

MR. GORDON: I have one question on the letters. You said these letters were not timely filed on his end? Is that different from the other project, the nine?

MS. JOYCE: For this particular item that they did not respond on was the -- that was filed in a timely manner.

MR. GORDON: The letters were?

MS. JOYCE: Yes. That particular item was and if I may go back through one more time --

The newspaper article issue was filed in a timely manner. The eight point deduction for low-income targeting for the Bazra related party issue was filed in a timely manner. It was also filed in a timely manner for a general AG opinion issue.

It was not filed in a timely manner for the QCP documentation.

MR. GORDON: Okay.

MS. ANDERSON: But what's driving the termination?

MS. JOYCE: The driving the termination is they did not respond within the deficiency period of the ten days --

MS. ANDERSON: Okay. On --

MS. JOYCE: -- so that automatically is --

MS. ANDERSON: -- on the newspaper issue?

MS. JOYCE: -- on the newspaper issue. That automatically leads to termination.

In addition to that, they did not meet the threshold requirement which would have been a termination as well.

MS. BOSTON: I just want to clarify one thing. The -- excuse me -- the opportunity for the discussion about whether it shouldn't have been required for Mercedes perhaps because it was in the county -- the administrative deficiency process is such that if you believe we issued you a deficiency incorrectly, you just write back and tell us.

You know, you receive the letter, then you write back and you say, we don't think this deficiency is appropriate. And there have definitely been circumstances

where people dispute their deficiency and if we believe they're right, we would have remedied it.

But because we got no response at all during the ten days, for us the termination is indeed because the deficiency was not responded to at this point and it's kind of almost too late from our administrative process to have a debate whether it was or wasn't appropriate.

MR. GORDON: Right. But did they lose their appeal rights if that happens? If you don't respond?

MS. BOSTON: I guess from my perspective, they can appeal the termination, but at this point I don't -- I mean we don't even have --

MR. GORDON: I understand, but they're not waiving -- they're waiving discussing it with you within the ten days but I don't think they're waiving coming to the board.

MS. BOSTON: Oh, correct. And I'm not trying to say that.

MR. GORDON: Okay.

MS. BOSTON: Yes.

MR. CONINE: Move to deny the appeal.

MR. GONZALEZ: Second.

MS. ANDERSON: Discussion.

MR. GORDON: I have one question on the

Bazra -- is there any difference in the facts on this one than on the other one?

MS. JOYCE: I think we would both agree that, no, there are not.

MR. GORDON: Okay. Are we going to vote on these issues -- than what are we moving to deny?

MR. PITTS: Let me. There is one difference here that the contribution of Bazra in this situation is that we're contributing the land where the project is being built.

MR. GORDON: Okay.

MR. PITTS: And again, I have gotten since this morning the -- Bazra was created in 1997. I've got all those documentations. We have a contract again -- the same arguments I made this morning.

MR. GORDON: Okay.

MR. PITTS: But the facts here are a little bit different as to what we're doing.

MS. ANDERSON: Well, if I -- I know the last time we took all these separately, I guess I'd just be looking to counsel.

I mean, if the driving issue is to -- is for the board to address the appeal for termination, unless -- I mean, if that were -- if that appeal were upheld by the

board, then we would need to hold votes on the other items to see if points should be added and once it was reinstated -- am I going the right way?

MR. PITTS: Thank you.

MR. GORDON: Then I have one question of counsel. This -- the QA -- so basically, they're supposed to be published in two papers. Is that what you're saying? -- the requirement?

MR. WITTMAYER: On the QAP, they are required to be published in two papers. If they wanted to contest this issues, as Ms. Boston explained, they have a ten-day deficiency period to do that.

They failed to respond within the ten-day period. They're now appealing their termination on that basis to the board.

MR. GORDON: Okay. It's your position -- it's staff position that it should have published in two papers. Right?

MR. WITTMAYER: Correct.

MR. GORDON: And the basis --

MR. SMITH: Let me make this other comment.

Normally a deficiency notice for a threshold criteria is given early on in the process and we had received a lot of threshold criteria deficiency notices

early on in the process on several projects, which we responded to.

This is a deficiency notice that came up way later in the process and while I was out of town. And I don't think it's fair for us to be subject to whenever they want to give a deficiency notice when the timely manner for the deficiency notice for a threshold criteria was early on when they were given that.

In fact, this was not an issue and the threshold requirement was passed. It wasn't on the deficiency list for the original deficiencies --when they gave us the deficiency notice list on this project.

MS. ANDERSON: Thank you. Jenn, is that correct that there was a staff error in the first set of deficiency notices that went out and that it just wasn't noticed?

And what is the time delay between the first deficiency notice and then this one?

And number three, were there any deficiency -- other deficiency notices to other applicants that went out at approximately the same time as this deficiency notice to this applicant?

MS. JOYCE: Sure. Others? You asked if it was a staff error in us detecting this. I would venture to

say no.

However, another applicant or actually an anonymous person in the community wrote us, letting us know that he should have done both. And as with many applications, we did go -- it is our -- it is in due diligence to investigate that and we did.

We found that it was correct. So it could have possibly been a staff error initially. Again with this anonymous letter, we looked into it. We determined that it was an issue and we issued a deficiency.

The QAP is really clear that we can issue a deficiency throughout the entire application review time period. At the time we issued this deficiency, historically underwriting deficiencies also would have been issued at the same time.

We ask for several fax numbers and contact e-mails and phone numbers and -- communication with this department at this time as well.

You asked if other applications have gone through this same process. Yes, unfortunately --

MR. CONINE: Was there communication with the department while he was out of town?

MS. JOYCE: There was communication with the depart -- there has to be.

When you submit a deficiency notice -- when we submit a deficiency notice, we confirm the fax receipt with the applicant and we did do that. We did that by phone and we also have the documentation that it was received by his office.

MR. CONINE: Okay.

MS. JOYCE: You asked also if other developments --

MS. ANDERSON: Received in the same time frame.

MS. JOYCE: Yes. We have been issuing deficiencies consistently for the last several weeks. We're all trying to clarify scoring and also having received many, many anonymous letters.

This is a very self [inaudible] community and unfortunately we had a lot of anonymous letters to respond to.

So, yes, this definitely is not an anomaly.

MS. ANDERSON: Thank you.

MR. SALINAS: You have the same criteria for everybody to --

MS. JOYCE: Sir, I'm sorry; I can't hear. The requirement for the QAP for the threshold item of the two newspapers, if you're within the MSA, is consistent and reviewed across every application. Yes

MR. GORDON: I guess I'm still -- follow me through this.

If I don't respond to your letter, I can still come to the board and address exactly the same information that I would have presented to you in my letter to the notice of denial. Right?

MS. JOYCE: If I might, from staff perspective -- the termination was based on not responding to the deficiency notice.

MR. GORDON: Okay.

MS. JOYCE: So that's what we're basing the termination on. Yes, he has a right to appeal any termination and we're addressing the deficiency documentation which was a requirement because he did not meet the threshold.

We didn't get a chance to secondary review the threshold documentation. Him providing that evidence to us now, unfortunately it doesn't do any good because we needed it to perform the review. We didn't get it in a timely manner, so the termination happened.

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

(A chorus of ayes.)

MS. ANDERSON: Oppose, no.

MR. GORDON: No.

MS. ANDERSON: One no. Motion carries.

MS. CARRINGTON: The next item I have is 04-302, Sierra Royale. Now, I do have that this has been withdrawn. I think we need to verify that.

MS. ANDERSON: Yes, I believe it has but I still have witness information forms. I'd like to ask these people if they would still like to make comment. Mr. Kenneth Cotten?

MR. COTTEN: My name is Kenneth Cotten, for the record. I'm here to represent the City of Robstown, Texas.

We are in full support of Sierra Royale Apartments, which is TDHCA project number 04-302. We have been working with Sierra Royale for about nine months. We've had monthly meetings and have been in constant contact with us: updates, e-mails, daily phone calls. This is a quality gated community which we do not have in our community of Robstown.

It should set precedence and the quality of the project is exactly what we're looking for in Robstown. It's the type of housing we need for our community. We fully support this and we're very pleased that this

project has been recommended for Region 10.

As a matter of fact, starting tomorrow we'll have an economic summit and we'll be able to have this as part of our economic summit in Robstown. And it's a great project for our city. And we're looking forward to it. And we appreciate your time, consideration, staff, and the council for recommending this project for the city of Robstown. Thank you.

MS. ANDERSON: Thank you, sir.

MR. CONINE: Madam Chairman? On point of personal privilege -- how you doing Kenny?

MR. COTTEN: All right.

MR. CONINE: Hadn't seen you since college and I'd just like --

MR. COTTEN: It's been a while.

MR. CONINE: Good to see you, buddy.

MR. COTTEN: You're looking years --

MR. CONINE: You've got a lot more hair than I do --

(General laughter.)

MS. ANDERSON: Next is Sylvia Ramirez. Then Ms. Bast, then William Brown. Do you all want to speak? Ms. Ramirez? Okay.

MS. RAMIREZ: Madam Chairman and members of the

board, my name is Sylvia Ramirez. I am here representing the Congressman Salmon Ortiz and his commitment to the projects Sierra Royale, project in Robstown, Texas 04-302.

I would like to thank you for your consideration of the 14 points that have been reinstated and thank you for everything. I've been sitting -- I used to sit on State Board. Thank you for everything you've done today.

MS. ANDERSON: Thank you. Ms. Bast? I'm going to ask you all to -- we're going to really watch the time. We're about to lose a board member. We haven't voted this list yet. It's ten after four in the afternoon, just keep that in mind.

MS. BAST: Yes, ma'am. I will be very brief. The 14 points have been reinstated for this project and we appreciate that. There was some confusion regarding the Housing Authority's assistance for this project. We believe that has been clarified.

We believe the applicant did everything required in the QAP. We believe that the assistance was properly approved by the Housing Authority's board, and therefore we appreciate that you all carefully and diligently investigated this matter and renewed the 14 points for this project.

And as you just heard, the city of Robstown is excited about this going forward. Thank you.

MS. ANDERSON: Thank you. William Brown?

MR. BROWN: He's going to give --

MS. ANDERSON: And you, sir, are Mr. --

MR. BROWN: Doak Brown.

MS. ANDERSON: I'm sorry.

MR. BROWN: Doak Brown.

MS. ANDERSON: Yes, sir. Go ahead. That's fine.

MR. BROWN: For the record, my name is Doak Brown. I'm an attorney and I'm part of the development for San Diego Creek Apartments, which is competing with the Robstown project.

As late as yesterday, our project was being recommended over the Robstown project. We're being recommended over the Robstown project because it lost points -- it was originally allocated under Section 14 of the QAP.

As of this morning, TDHCA staff has reversed its decision to withdraw points from the Robstown project and re-awarded the lost 14 points to Robstown.

Section 14 of the QAP requires a commitment for funding. The fact of the matter is the letter which you

all have a copy of, which was issued by the Robstown Housing Authority, did not meet the requirements of being a commitment for funding development-based vouchers.

Title 24 of the Code of Federal Regulations, Part 983, sets forth the regulations which govern the issuance of development-based vouchers. I have provided you all with some of the important sections of Part 983.

The letter issued by the Robstown Housing Authority is not a valid commitment for the following reasons.

First, the Robstown Housing Authority was required to adopt written policy for the competitive selection of applications to the Housing Authority for the development-based vouchers prior to issuing a commitment, as set forth in Section 983.51 of the regs. This had to have been done prior to issuing the commitment to any developer.

Second, prior to issuing a commitment to the Housing Authority, pursuant to Section 983.51 was required to advertise this competitive selection process for the development-based vouchers at least once a week, for three consecutive weeks. I emphasize the competitive selection process meaning that anyone has the right to compete for these development-based vouchers.

Third, as required by Section 983.38 of the regs, the Housing Authority must notify the regional office of HUD of its intent to issue development-based vouchers. HUD was never notified that the Robstown Housing Authority intended to issue development-based vouchers.

Fourth, as required by Section 983.4 of the regs, the competitive selection process for the development-based vouchers must be approved by regional HUD office. Regional HUD office never approved the competitive selection process.

Nothing has been approved by HUD that the regulations require for this Housing Authority to be able to issue development-based vouchers. Any one of the reasons I have just stated is enough to prove that this is not a commitment for development-based vouchers.

Even if the Housing Authority and this applicant had followed all the regulations required to issue development-based vouchers, there's still no guarantee that this applicant would have beaten out other applicants in the competitive process.

For all these reasons, we do not feel that this letter, which the project received from the Robstown Housing Authority, should be awarded any points under

Section 14 of the QAP. This letter is not a true commitment for funding as required by the QAP.

If the board does end up awarding the Robstown tax credits, we ask that you make the award conditional upon them complying with all the regulations that are required for development-based vouchers.

MS. ANDERSON: Mr. -- I'm going to mess up this name -- Rick Deyoe. Yes, sir. Sure. Thank you for your testimony.

MR. DEYOE: Good afternoon. My name is Rick Deyoe. I'm the Filitex Corporation, the applicant for the Sierra Royale -- project in Robstown.

First, I would like to thank the board for going through this process that we've been going through diligently today. I'd also like to thank the staff for diligently going through the applications.

Our application was submitted -- it included the commitment letter from the City of Robstown Housing Authority. The application was reviewed. The application never received any administrative deficiency as it related to our commitment. It was never an issue that the commitment satisfied the rules of the QAP. In fact, if you'll look at the QAP, nowhere in the QAP does it even state that HUD approval is required anywhere.

It, in fact, states that an applicant is required to have a commitment notice from a local, governmental, or nongovernmental agency. I would challenge the board or the staff to tell me how HUD can approve a nongovernmental entity's commitment letter.

So the first off -- that would be point number one.

Secondly, I have forwarded to you all copies of all of the letters of support and these are follow-up letters received by us this past week; one from US Congressman Solomon Ortiz. We've received a letter from the State Senator. We've also received a letter from the State Representative, as well as the mayor of Robstown.

And we also have included in your packet a follow-up letter from the City of Robstown Housing Authority. The Housing Authority has been committed to this project from day one and they remain committed to this project as you can see from their follow-up letter.

We -- as we mentioned, we have no appeal on the table at this time. We appreciate the fact that our points have rightfully been reinstated and we just wanted to say thanks.

MS. ANDERSON: Thank you. That's all the public comment. For this deal.

MS. BOSTON: If I could just clarify. Yeah, we don't. It's withdrawn so this is just public comment. But if I -- could I address the PHA issue?

In a nutshell, what had happened is we had gotten a -- our department had been contacted by a San Antonio HUD office, which in initial conversations indicated that they had concerns that they had not approved this -- the PHA's approval of this development.

The letters from all the PHA's and I would say cumulatively we probably had 50 applications who got letter from PHA's for development-based vouchers on points either on low-income targeting or leveraging.

Our review is that the letter uses the word we commit vouchers, give the numbers of vouchers, and term of years. In this case, they definitely did that. And so -- signed by the executive of the PHA. We find that to be acceptable.

I can tell you on 98 percent of the PHA letters, they are conditioned upon HUD approval, which is fine with us. I mean, we would not expect it not to be. And, you know, we would also not expect the PHA to go through all the bid process and all the approval from HUD if they never get a credit deal and there's no project. So for us a conditional commitment like that is very

acceptable.

It's not, I mean, we talked a lot about that and from our staff perspective, we feel like that's still a solid commitment. And so we did go back and after discussing that with further length with HUD, they agreed that they found it acceptable as well if we did, which is why the points were reinstated.

And I just want to be real clear that we applied the same review process on this issue to every application who had development-based vouchers.

MS. ANDERSON: That's very helpful. Thank you, Ms. Boston.

MS. CARRINGTON: The last one that I have is 04-218, which is Converse Village and that is the other one like the Gardens of Early, that I do not believe you have anything in your book related to that. Is that correct, Ms. Joyce?

MS. JOYCE: I'm sorry.

MS. CARRINGTON: Converse Village? And can you tell us what region that is in?

MS. BOSTON: It's in Region 9.

MS. CARRINGTON: Thank you.

MR. WITTMAYER: We just received this, but it is a timely filed appeal concerning Quantifiable Community

Participation.

The EARAC actually wrestled a good deal with this one, whether or not they were a neighborhood organization. It's a -- the Lion's Club of Converse. They stated their boundaries are the city of Converse.

We discussed whether or not a Lion's Club really has boundaries. Would they accept a member from outside Converse if they wanted to join? They met all those requirements.

We were also concerned about the size of the city of Converse with about a population of 13,000. Then we also compared that to some of the large Houston super-Neighborhoods that were in the same ballpark.

So EARAC wrestled with this. It's a close question whether or not it is a neighborhood organization and whether or not it has boundaries. And they're taking an appeal of those issues to the board.

Ultimately, EARAC determined that it was not a neighborhood organization.

MS. ANDERSON: Okay. I have some public comment. Ms. Brooks? Next will be Mark Luft.

MS. BROOKS: The issues that we wanted to bring to the board's attention in terms of whether or not the Converse Lion's Club is considered a neighborhood

organization is -- first, to just address the -- we made an assumption that the staff could see a Lion's Club and think of it as a larger regional or national organization.

The Converse Lion's Club is separately incorporated. All of its members do live in the city of Converse. Its mission requires its members to do fund-raising for community support activities. All of that fund-raising is initiated within the city of Converse and all investments have been made in the city of Converse.

Sam Hughes is here to speak again this afternoon, if you would allow, since he is -- he is a Lion's Club member -- a Converse Lion's Club member, Converse Lion's Club member and city manager. But it's important to understand, I think, the history of the activities of the club in the city and how long they've been active.

All of their physical activities have happened within Converse and within half a mile of the project. They've raised the money to buy the land to create the city park. They started the library, as I mentioned this morning. The library's across the street from the site. The park is half a mile away.

You know, they've been at this for a very long time. The service area is the city of Converse. The city

of Converse is about six square miles, which I think in light of some of the geographies we've talked about today, it's -- that's relevant.

And a lot of that area is vacant land. So it's historically have been a small community with a very dedicated neighborhood organization and has recently in the last ten years experienced growth.

MS. ANDERSON: Are you Mr. Luft? I'm sorry I can't hear you. Thank you.

MR. HUGHES: Good afternoon. I'm Sam Hughes, City Manager of Converse, also a Lion's club member and again let me continue the briefing I gave you this morning.

We're a small city. Within the city, there are a total of three homeowner's associations at this point. Two of them are less than a year old and one of them is at the very opposite end of the city.

So we looked around within the context of something that has meaning for a neighborhood organization that says they support and represent the citizens of the city and the best candidate we had was the Lion's Club.

And that was based on the Lion's Club has been driving community projects for Converse even before incorporation. And so I ask you to look at the

perspective from our point of view and what options were available and we believe this was the best candidate and we believe indeed they qualify as a neighborhood organization for our city.

So on that basis, I ask your favorable consideration.

MS. ANDERSON: Thank you, sir. You have a question for him?

MR. BOGANY: Not so much a question -- a question for staff.

MS. ANDERSON: Okay. Thank you, sir, for your testimony. Wait just a second, Ms. Holloway. Do you want to wait and hear the third public --

MR. BOGANY: I want to hear the third and then I want to --

MS. ANDERSON: Okay. Ms. Holloway?

MS. HOLLOWAY: Good afternoon. Thank you, Chairwoman Anderson, members of the board and staff.

My name is Laura Holloway. I am the legislative director as well as the committee clerk for State Representative Carlos Ureste. I am here on behalf of him.

The Converse Village Housing Project, which is project number 04-218, would be located in Converse which is in Chairman Ureste's district, District 118.

Our district is in Bexar County and is comprised of about nine smaller cities, which Converse is a part of, and San Antonio. I appreciate you giving me -- this housing project a chance, especially for allowing them to present their case today.

I have provided you with a copy of the letter of support submitted by Chairman Carlos Ureste for the Converse Village Housing Project. I understand that the letter was not received in time to be counted for points.

I believe that Chairman Ureste's father-in-law was in the hospital in ICU at this time and we could not obtain a signature.

Respectfully, I would like for the letter to be read and considered for this housing project.

Chairman Ureste is definitely in support of this project and would like favorable consideration in granting the appeal.

It is also our understanding that there was a letter from the Converse Lion's Club that was not considered, and therefore no points were awarded for this letter of support.

I understand that this letter would be worth about 12 points and it could put the Converse Village Housing Project in a position of approval if the letter

were to be considered.

I would ask for favorable consideration in granting points for this letter as this organization is a pivotal organization in the community and supports this housing project.

Chairman Ureste believes that this affordable housing project is needed in this community in order to promote more economic development. I hope --

MS. ANDERSON: Thank you all. I'm looking forward to it, I assure you.

Okay. That's the end of the public comment.

Mr. Bogany, you have a question?

MR. BOGANY: I have a question for Mr. Wittmayer, and it's actually a couple of questions.

MR. WITTMAYER: Yes, sir.

MR. BOGANY: In regard to this, have we approved any Lions Clubs, any of these neighborhood clubs since we've been doing --

MR. WITTMAYER: We have not, no.

MR. BOGANY: Have we denied any Lions Clubs that have come in --

MR. WITTMAYER: I don't recall denying any specific Lions Clubs.

FEMALE VOICE: I don't recall any of those.

MR. BOGANY: So we've not gotten letters from Lions Clubs at all since --

MR. WITTMAYER: I don't recall any of the letters to Lions Clubs. We may have had some letters from Rotary --

MR. BOGANY: Rotary --

MR. WITTMAYER: -- or similar type organizations. We generally thought of as community organizations. We wrestled with this more because of the very small community issue.

MR. BOGANY: Okay. Thank you.

MR. GORDON: I have a question. Did the letter otherwise comply with everything other than it just came from the Lions Club?

MR. WITTMAYER: The issues related to the boundaries being --

MR. GORDON: Boundaries --

MR. WITTMAYER: -- being the city and the nature of the organization --

MR. GORDON: Right.

MR. WITTMAYER: -- it's a neighborhood organization. Correct.

MR. GORDON: Right. So the only issue is whether or not it's a neighborhood organization.

MR. WITTMAYER: Correct.

MR. GORDON: Okay.

MS. ANDERSON: Mr. Wittmayer, how would you -- would you view this similarly or differently than the local chapter of the LULAC appeal we dealt with this morning?

MR. WITTMAYER: As I recall, the LULAC appeal, that was a countywide organization in a rather large county with a large population, and that was a distinguishing factor.

MS. ANDERSON: Okay. Thank you.

MR. GORDON: If this organization was involved in, you know, neighborhood purpose projects, you know, because it's a very small town and it seems like there's not a lot of organizations, do you think that is a factor?

MR. WITTMAYER: I think the size of the city is a very key factor. The nature of the community work, I think is laudable, but it doesn't go to the issue, because a community organization does that kind of work also, as opposed to a neighborhood organization.

MR. SALINAS: You did understand that -- did that -- a lot of discussion on neighborhood certifications in other cities, and we need to find out what precedence you're going to have to give, because then you'll have

every last club in every city applying as neighborhood organizations -- of what kind of population are we looking.

MR. CONINE: What -- didn't we vote on something with this group earlier this morning? Or did we not vote on it? What would happen?

MR. WITTMAYER: I think we started, but then they wanted to come back and do it later.

MS. JOYCE: They were initial public comments, and we said that it wasn't appealable. They provided us documentation that indicated something was filed timely, and so they are appealing.

MR. WITTMAYER: Okay.

MS. ANDERSON: That's the missing piece.

MR. CONINE: Now I understand. You'll have to ask her.

MS. ANDERSON: Sir?

MR. LUFT: Can I speak for a second?

MS. ANDERSON: Have you completed a witness affirmation form?

MR. LUFT: Yes, ma'am. I'm Mark Luft.

MALE VOICE: You gave up --

MS. ANDERSON: You gave up -- yes.

MALE VOICE: Yes, he gave up --

MS. ANDERSON: Just -- yes, you can --

MR. LUFT: [inaudible] Thank you for allowing me to speak for a second.

My former position is I was a staff member of the former HUD secretary. And in my involvement in working in the San Antonio regional area and so forth, [inaudible] development and housing.

This project is an essential part of us as far as what the Lions Club does. It promotes education for the children and so forth like that to make them better productive citizens and encourages home ownership. So I think they're a valuable asset and have socially redeeming values.

Thank you very much.

AUDIENCE: [inaudible].

MALE VOICE: You need to talk to the boss.

MS. ANDERSON: I'll tell you what, this is it on this one,, you all.

MR. PALMER: My name is Barry Palmer, and I represent one of the projects that is currently on the list in Region 9 for funding. I just want to point out to the board that if this appeal is granted, it will push off two projects that are currently on the list for Region 9.

And I don't think that throughout this process,

that clubs such as Lions Clubs or Rotary Clubs have ever been considered to be neighborhood organizations. And so while this project, I'm sure, is a very good project, I think that you need to think about the ramifications on all of the applicants considering a Lions Club here to be a community organization -- or a neighborhood organization.

Thank you.

MS. ANDERSON: What's the board's pleasure?
You all are mighty quiet.

MR. BOGANY: I move that we do not [inaudible].

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

MALE VOICE: No.

MS. ANDERSON: Motion carries.

Okay. Right, we're done?

FEMALE VOICE: Yes.

MS. ANDERSON: That is the last appeal. We're

going to take a ten minute break and then we're going to come back and move on with the agenda.

(Whereupon, a short recess was taken.)

MS. ANDERSON: I'm going -- I have a few witness affirmation forms on 2(b) that I'm going to take before the staff presentation on this, and I'm going to -- these are not related to appeals and, you know, it's ten till 5:00, so I ask you to use your judgment on whether or not speak here.

The first one is Anita Kegley.

Yes, ma'am.

AUDIENCE: [inaudible]

MS. ANDERSON: Thank you very much.

Vaughan Mitchell?

MR. MITCHELL: No comment.

MS. ANDERSON: Thank you, sir.

Robert Joy?

(No response.)

MS. ANDERSON: Robert Joy?

(No response.)

MS. ANDERSON: Daniel Allgeier?

MR. ALLGEIER: Yes. I'll be brief. My name is Dan Allgeier. I'm talking with reference to the La Villita Apartments, 04014, in Brownsville. We survived

the AG repointing and we're pointed. We got taken off yesterday by an at risk project.

Region 11, the Lower Rio Grande Valley, in the urban area, over half the allocation's at risk, you're only building 100 units in a very growing region. Earlier we were talking about -- in an appeal -- about Weslaco getting a forward commitment.

I realize forward commitments are totally at the board's discretion. But after the dust is settled on all these appeals, I want to just remind you all that La Villita is the highest pointed deal in the region that has not been funded.

And with that, I just ask that you consider that when you consider forward commitments. Thank you.

MS. ANDERSON: Thank you, sir.

And Randy Stevenson?

(No response.)

MS. ANDERSON: Randy Stevenson?

(No response.)

MS. ANDERSON: Okay. Mr. David Marquez, I just received another witness affirmation form from you. Who are you, sir? David Marquez? Regarding Las Palmas?

You spoke earlier, sir. What's the nature of this request for additional comment?

MR. MARQUEZ: A couple of reminders.

MS. ANDERSON: That's not in order at this time. Thank you very much.

Ms. Carrington?

MS. CARRINGTON: Thank you, Madam Chair. We'll move now to item 2(b). And I would like to read into the record the language that is on the board agenda.

I would like to read this into the record on item 2(b). This is board action on staff recommendations concerning developments for the 2004 housing tax credit program allocation round, final commitments for allocations of tax credits and waiting list from the list of all applications submitted (final commitments may be made in an amount not to exceed the requested amount with the exact amount being the amount recommended by staff in the underwriting analysis and subject to underwriting conditions and subsequent board decisions on underwriting appeals).

Also added, and subject to the Governor's approval of the final emergency qualified allocation plan and subject to any additional successful appeals.

So with that language, those are the considerations and the subject to's under which the board will be making the recommendations today on the final

commitments.

I will point the board -- as Ms. Boston is coming up -- I will point the board to their book that says, July 2004 Multifamily Board Book, Housing Tax Credit Recommendations.

What you have in the front of that book is about an eight page memorandum that goes through the rationale for the recommendations on our 2004 tax credit allocations, and also for the 2004 waiting list.

MS. BOSTON: Okay. Let's see. I wanted to point out a few things that we had mentioned in the board book that [inaudible]. One was that there were outstanding fees for an applicant -- on two applications, and I do want to confirm that we did get the payment and so those were fine. Just wanted to bring that up.

And, Mr. Conine, you had asked that I point out to you the differences. We have a new list this morning that each of you all were provided, and the date on the bottom right hand corner is Tuesday, July 27. That's the one that I'm working from.

Mr. Conine had asked that I point out the differences between this list and the list that was in your book. One difference was -- do you want to hear all the scoring changes from that time, or just the ones that

impacted the book?

MR. CONINE: The winners and losers are really all --

MS. BOSTON: Okay. In Region 9, project 01431, Alhambra, which you'll see is the second list down, on the end portion of nine, urban/exurban. It dropped off the list and it was -- in its place we added 04149, Seton Home. That was because Seton Home -- they originally had been in a tie and they got back one point because we had made an administrative error on a calculation.

In Region 10, 04302 -- and you all have heard about this through the day already today -- 04302, Sierra Royale -- this is ten rural, I'm sorry -- had been added and it had replaced San Diego Creek. And that was because of the PHA point issue.

And then in Region 11 -- do I need to go slower? Okay. In Region 11, 04193 was added, and this is 11, urban/exurban. And we dropped 04014. And as mentioned to you just a moment ago, because of the way the scores came out on that one, Providence at Edinburg became the highest scoring at risk, so we had to take it first.

And then because it didn't satisfy the entire at risk set-aside, we then kept Providence at Boca Chica, which was already up there, and then La Villita dropped

off. So those were the only changes between the book and the list this morning.

MS. ANDERSON: How did Providence at Edinburg become the highest scoring at risk?

MS. BOSTON: It -- and this is the one that Jenn may want to speak to. They -- it got back -- I want to say a total of 25.

MS. JOYCE: What's that number?

MS. BOSTON: That's 04193.

MS. JOYCE: I got that. I don't have my scoring sheet with me, the review. It was -- the -- okay.

There was a public meeting transcript that we considered to be incomplete, and then evidence was given to us that during the deficiency time period, the staff did not review at the time that basically ended up saying that, yes, it was complete, it was just short and seemed to be incomplete. So we gave six points there.

We ended up reinstating another nine points for allied targeting, low income targeting because of the PHA subsidy, because that nine points ended up becoming reinstated, then the new AG interpretations for rents, it's -- it ended up changing the ratio basically, bringing it up from a two to, I believe it was an eight -- no, a seven, actually I think it's a seven. It was a seven.

So there was a seven point increase there. We ended up reinstating the leveraging points. We ended up reinstating six points for the transcript as well. And I think that was all.

They did not get their pre-app points back. And also cost per square foot [inaudible] -- cost for square foot, after a detailed analysis, we just ended up saying that, yes, we were able to give them those points from the documentation they gave us. However, there will be separate underwriting conditions that we would have to look at.

MR. CONINE: Okay.

MS. BOSTON: And just to clarify. Obviously we don't normally make that many adjustments on an application that far along. They had had an appeal even at the executive director level, and it was only when they submitted their board appeal that we finally got sufficient justification to explain them and the justification -- no new evidence was provided, but the justification was enough to justify the point adjustments, which is why we did it. But it was only of a received part of the appeal and so that's why it seems late.

The only other thing I wanted to go through -- we've talked in the past about how, with these lists,

there's always -- based on the amount of the credits requested for each deal, it never comes out exactly to the amount of money we have in each region.

Well, obviously that's been compounded this year by the fact that we now have 26 pots since each region split into rural and urban/exurban. We have the set-asides, you overlay all that, and we're never going to quite make it all fit just right.

So there definitely are some regions that are going under a little and some that are going over.

We -- as the executive award review advisory committee met, they took those into consideration. We tried, as a general rule, to not have any region go under by too much. This year there wasn't a mathematical cut-off point. It was just more, you know, just trying to look to see what was fair.

One of the anomalies that we came across as we did this was, in some, what they -- by not doing the next deal on the list, would be under by 50 percent, but by doing it would be over by 90 percent. And so on some of those it was just kind of like a, you know -- I mean, how far under or over do you want to go?

We feel like the recommendations are fair and that we've tried to balance the funds out as much as we

can within the allocation formula and all the set-asides.

I would like to comment on one comment that was made earlier about Region 9 at risk. In one of the comments, it was pointed out that in Region 9, the at risk percentages are not -- the 15 percent set-aside, which is per region, is not being fully met.

And I do want to acknowledge that that is right. We are -- once they -- man, I even figured this out just a minute ago -- we're under by, I want to say, about 9 percent for the at risk set-aside. So we're very close and I know that the -- you know, we're required to do 15 percent.

However, the other funds -- you'll see one is a forward commitment, which we obviously can't undo, and the other two awards are nonprofit, which is classed as a federal set-aside, and so, you know, again, one of the conflicts we come up with so many set-asides in regions, is that sometimes you have to decide what trumps what.

And in this case, we took the two nonprofit set-asides -- or took the two nonprofits bills and took the at risk and the way the executive award committee saw that was, we're only 9 percent under and we thought that was close. So that's the one thing I do want to point out and make sure everybody understands.

From the list that you have in your hands, based on the actions from the appeals -- and just another observation that Tom and I had made while we were sitting here -- the original list we submitted to you all this morning, we had 579,000 in credits that we had not committed.

And we have decided not to try and pick and choose what would be the next deal, because nothing jumped out as the obvious by looking at each of the regions. And because we didn't know what the action today with the appeals would be.

Based on that, I'd like to recommend the addition of two applications to the list. We're recommending that in rural Region 4, that Gardens of Gladewater, 04176, be added. We're not recommending anything else being taken off in Region 4.

Even with adding that, we are still under. And I'm embarrassed to say to some degree it must have just been an oversight. So that's one recommendation, and it would be for the 260,918, obviously contingent on underwriting and the final credit amount.

And then the other recommendation is in rural Region 10, and we are recommending the addition of 04082, Fenner Square for 195,062. Again, we are not recommending

that anything else be taken off.

We are under in that region, and we'll be going over by 13 percent, which is pretty in keeping with how much we're over in some of the other regions.

By adding those two, those two together are 455,000 in credits. And so there's about 120,000 that we won't have allocated. That's pretty normal for us to have somewhere between 50 and 150,000 left.

And our recommendation would be that we will kind of hold on to that, so to speak, and as any deals potentially fall out, that would be added to what would be coming back for the waiting list.

Any questions?

MS. ANDERSON: I have a question. We heard to say earlier this morning that referenced the Pineywoods Community development, and I just want to ask if the staff is -- continues to be comfortable that the issues that testimony raised and that we've been dealing with off and on and we've been hearing about off and on for several meetings, that you're comfortable with this, and now I'm embarrassed to say, I'm not even sure it's on the list. I'm just tired.

MS. BOSTON: It is on the list. It's in Region 5 rural.

MS. ANDERSON: Okay.

MS. BOSTON: Yes. And she had pointed out three issues and we have issued her a letter dated July 19 addressing those three issues. And looking back at the letter again this morning, it raised one question for me, so I double checked with my staff to be sure I understood.

Definitely I feel like, with the site control and the zoning -- I mean, you all even heard the hearing and testimony on the zoning -- I think those are fine. The one about the notification to the school district, when she stated in her letter that we had not -- that we let the applicant do those notifications later in the game, I was surprised, because that isn't generally how we did it.

In clarifying, the circumstances are that it's a scattered site property. You probably remember that. And so the bulk of the sites are in one school district. And they notified that school district.

They didn't realize the other properties weren't even in that school district, and so we did allow -- and we did this occasionally if someone didn't know about a particular individual, we would allow like real minimal additional notifications. And in this case, in June, we did ask them to notify the other school

district, but it obviously wasn't the first time or -- well, it wasn't the school district -- sorry.

It wasn't that they'd never notified a school district. They had notified the school district for the bulk of the scattered sites. So we felt like that was an acceptable administrative resolution to the deficiency. And that -- so, yes, we're fine with the development.

(Pause.)

MS. ANDERSON: While the board's kind of looking at the list, this has been a challenging year for the applicants; it's been a challenging year for the department, and I think it appropriate as we prepare to, I assume, have a motion on the floor concerning this list, we're anticipating a lot of new legislation and associated rules, and this board, I believe, and the staff appreciates the cooperation that we have received from the development community in kind of working through the growing pains of these issues.

So I want to thank the development community for their cooperation. I want to thank this very hard working staff for all the hustling they did to incorporate these in our procedures and practices, and then actually, you know, score all the applications, make numerous adjustments to the scores, and I -- then I ask us to --

after we vote today, to also look -- I also think the board realizes that with all these changes, that there, and you heard comments today about considering forward commitments -- that we may be in a -- the board, you know, I believe, will certainly consider forward commitments in light of all the changes that have come through this cycle this year.

And certainly I think, I hope and expect and believe that we will all move forward constructively for next year. There are things that we need to fix, you know, we have the QAP coming up, and I invite your participating in that process so that we have an even stronger program moving forward.

MR. CONINE: I think I'll be just a tad more aggressive than that, and ask that we give our hard-working staff a good round of applause --

(Applause.)

MR. CONINE: With that, Madam Chairman, I make the motion that we approve the list as amended by Ms. Boston for the 2004 tax credits.

MR. GONZALES: Second.

MS. ANDERSON: Discussion?

MR. BOGANY: I just have a quick question. So the list that we are approving is the 2(b) list?

MR. CONINE: This list.

MR. BOGANY: Oh, just this list here?

MR. CONINE: Yes, the two that make up --

MR. BOGANY: It's the addition of two --

MS. BOSTON: Correct. It's the one that has
July -- Tuesday, July 27, 2004 on the bottom corner.

MR. BOGANY: So if there was something on this
list that we thought might need some consideration,
whatever, as long as it's on this list, we're --

MR. CONINE: That's right.

MR. BOGANY: -- that's what we're approving?

MS. BOSTON: Correct.

MR. BOGANY: Thank you.

MS. BOSTON: The -- I guess I want to clarify.
The way that each region is broken down, you know,
there's the A's and the N's, and so you approved the A's
plus the two I said, but you didn't approve the N's.

MS. ANDERSON: But they're eligible for --

MR. BOGANY: Right. They're eligible for going
to forward commitment --

MS. ANDERSON: And they all go on a waiting
list?

MS. BOSTON: Correct.

MS. ANDERSON: Subject to [inaudible], subject

to the Governor's approval, emergency rule.

MS. BOSTON: Correct.

MR. BOGANY: Can I ask a quick question about [inaudible]. I noticed on Region 6, you have a project that scored pretty high, Ambassador North Apartments, and advised a one mile, and we have a couple that look -- struck me as obvious that this is an acquisition region. And it seems as though any time we can fix something up, even though it's down the street from something that's new or close by, we ought to be able to make an exception to that one mile rule in that situation.

So any rehab where you're fixing, taking dilapidated --

MS. BOSTON: This is a legislative requirement and it does not allow us to give preference or to exempt acquisition rehabs from the rule.

MR. BOGANY: Okay. So it would be something that we need to correct in the QAP.

MS. BOSTON: In legislation,

MR. BOGANY: In legislation. Okay.

MS. BOSTON: Okay. Yes.

MS. ANDERSON: Any other discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're

ready to vote. All in favor of the motion, please say, aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

(Applause.)

MS. ANDERSON: If I can -- and I know a number of you -- if you will leave quietly, because your business may be done, but ours is not. So please be quiet as you're leaving.

The next agenda item -- and take your trash, pack out your own trash, please.

MS. BOSTON: If I could just ask for clarification, that you all did approve the waiting list simultaneously, or if you want that as a separate motion?

MS. ANDERSON: We approved the waiting list --

MS. BOSTON: Okay.

MS. ANDERSON: -- simultaneously.

MS. ANDERSON: Let's go to item 2(c), which is the issue of determination notices on -- walk, but don't talk.

Okay. Item 2(c), we have three issuances of determination notices, tax exempt bond transactions with

other issuers. And I do have comment on some of these.
Okay? But you go ahead.

MS. CARRINGTON: Staff presentation, the first one for the board's consideration is 04426, Kensington Place Apartments to be located in Houston. It's new construction; it is family. The Houston Housing Finance Corporation is the issuer on this transaction. It is a priority 1C transaction that is being developed in a census tract that has a higher median income than the area median income of the census tracts around.

Staff is recommending an allocation of credits on this particular transaction. It's \$542,560 and no letters of support or opposition. I note that it is consistent with the local consolidated plan for the City of Houston.

MR. BOGANY: So move.

MR. SALINAS: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The second item for the board's consideration is 04432, Willow Springs Senior Residences to be located San Marcos. The Capital Area Housing Finance Corporation would be the issuer on this transaction. It is elderly. This is also a priority LC transaction. Again, same kind of higher median income in the census tract than the area around.

You'll notice on the board's summary, the requested credit amount on this development was \$485,866.

The recommended credit allocation amount is zero, and the reason -- if the board will go to the underwriting analysis, which is the -- one, two, three -- third page, not recommended due to the following: significant outstanding cost, and site and cost changes in the new market study were not provided 60 days prior to the board meeting. The original of record market study and revisions could not support less than 100 percent inclusive capture rate.

Unlike our 9 percent transactions, we have much more leeway and flexibility in being able to work with the developer on these transactions. And our rule says that the market study we use, the cost that we use must be into the agency 60 days prior. The board does have the ability

to waive those requirements because they are in the QAP.

What you will find as you look at this, is that as staff re-evaluated this transaction based on the new market study and the new costs that were submitted to us, then staff would be in a position to recommend the transaction; however, there are five considerations that we would put on this transaction that are on the page, the top of page 2 on the multifamily underwriting analysis.

So the board would need to waive basically the 60 day requirement to have the information in prior to the date that the board considers the application. If the board chooses to waive that, then, from a financial feasibility standpoint, the transaction does work.

And then, as I said, there are five conditions that we would want put on the determination notice that must be satisfied prior to the closing of the bonds and the allocation of the tax credits.

MS. ANDERSON: Okay. Does that conclude the staff's presentation?

MS. CARRINGTON: Yes.

MS. ANDERSON: You want a motion or you want to have comment first?

Okay. Mr. Stuart Shaw. Two limit -- two minute time limit is in effect.

MR. STUART SHAW: Madam Chair, directors and Ms. Carrington, I'm Stuart Shaw. I'm here on behalf of Hunter Road Affordable Housing Limited, owner of Willow Springs -- the proposed Willow Springs Senior residence in San Marcos. I'm a co-developer, along with a subsidiary of GMAC, as well as the San Marcos Housing Authority, who also serves as our general partner.

I've been trying to develop this property as a senior apartment residence for a couple of years. And in the last year, the City of San Marcos, the Mayor of San Marcos, San Marcos Housing Authority, the local neighborhood organizations, the environmental leadership of San Marcos, the Capital Area Housing Finance Corporation, and other elected leaders that -- you have received some letters from or you will in just a moment when I pass them out -- have joined me -- they have joined me in agreeing that this is a good use for this site and they're all in support of this use for this site.

It's a great site on the southwest side of San Marcos. The only multifamily site left on the southwest side -- on the west side of San Marcos. It's a great location for a seniors community. Beautiful site.

We've taken that into account the project design. We've got a [inaudible] that's sheared from the

road way with a year round pond, large oak trees, walking paths and picnic areas. It's really a nice project.

And that's one of the reasons we came back later with extra costs is because we did upgrade this project. Capital Area Housing Finance Corp produced the bonds for this project last summer, and has since met in a special session in June, and voted unanimously to proceed with the project.

You'll, I think, see that you've got a letter, in that packet I just handed out, from Capital Area in support of the project. You have a letter from the mayor of San Marcos, and from an elected official -- and I think you have a elected official, Senator Wentworth -- has already supported this. And some of the housing authorities who are either in support of it or not in opposition to it.

So generally -- subsequently while we were working with TDHCA staff through the underwriting process, we had expressed concern we weren't meeting the minimum criteria for a capture rate, and so -- with our capital market research report. So we decided to seek clarification and we hired O'Connor and Associates to prepare a report clarifying the CMR -- the capital market research report.

Anyway, as part of their work, O'Connor prepared a supplemental report for the benefit of TDHCA, our investors, lenders and for ourselves. I believe you have copies of all these reports in the O'Connor supplemental letter of clarification as well as market report.

The O'Connor clarification letter states that capital market research -- the original market report, would have yielded a satisfactory result in terms of inclusive capture rate had it used TDHCA approved market criteria in its computation.

So -- and then, the supplemental O'Connor market report includes an acceptable capture rate a second time; however, it does so using a different, smaller primary market area of about 250,000 inhabitants.

TDHCA staff, in my opinion, I believe accepted the findings of the supplemental report, but conclude we did not meet the requirement of filing a complete tax credit, you know, as you know, 60 days prior to the time.

In closing, we have our debt and equity lined up, and we're proceeding to close by August -- could I get someone to yield about 30 seconds to me, Madam Chair -- Casey Bump -- okay.

MS. ANDERSON: What's your name, sir?

MR. STUART SHAW: Casey Bump.

MS. ANDERSON: Okay.

MR. STUART SHAW: It will just take 30 seconds.

In closing, we have our debt and equity lined up and we're proceeding to close on August 6. I mean, we can meet that deadline. We're asking you to please help us resolve this situation in our favor and approve our application by waiving the 60 day rule and thereby allowing staff to accept the supplemental O'Connor clarification letter and market report.

And I'm done. Thank you for hearing me. I would like to ask that Mr. Buddy Trotter be allowed to speak next. He is with O'Connor and Associates, if that's all right.

MR. TROTTER: I'll be very brief. I know it's been a long day.

My name is Buddy Trotter. I'm with O'Connor and Associates. We were hired subsequent to the preparation of the original market study to both clarify and supplement the market study. We find the market to be very healthy there. The -- most of the properties that we surveyed responded to us; they seem to be at stabilized occupancy.

The project appears to -- the submarket appears

to be able to -- (Timer sounds.) Boy, that was quick --

MS. ANDERSON: That was too soon.

MR. TROTTER: The submarket appears to be able to accept and absorb the project properly and I don't see any big issues with it.

And I'll be happy to answer any specific questions the board might have.

MS. ANDERSON: Mr. James Hunley?

AUDIENCE: [inaudible]

MS. ANDERSON: I don't have a witness -- well, no, no -- yes, I do. Come on. I've got a bunch of them. Okay.

MR. JIM SHAW: Madam Chair, members of the board, Ms. Carrington, my name is Jim Shaw. I'm the executive director of the Capital Area HFC. I'll be very brief.

I just wanted to let you know that we have been working with the developer, with your staff throughout this process. We do stand ready to issue the bonds, and we'll be meeting tomorrow, in fact, to go through the final bond resolution.

So I'm just here in support of the project, and urge you to do the same. Thank you.

MS. ANDERSON: Who would like to have go next?

AUDIENCE: I'm sorry.

MS. ANDERSON: That's all right.

AUDIENCE: [inaudible]

MS. ANDERSON: Okay.

AUDIENCE: [inaudible]

MS. ANDERSON: Okay.

MR. PALMER: I know today you've been faced with a lot of tough decisions on requests where you knew that if you granted an appeal you were going to adversely affect someone else. That is not the case here. This is a seniors project that is ready to close; it will have no adverse affect on any other allocation.

The market study, the complete application was submitted more than 60 days in advance of the board meeting, including the market study. We were asked by staff for clarification and expansion on the information provided in the market study, so we hired another market firm to go out and clarify that.

This is not dissimilar in my mind from the situation that the board was presented at the last meeting on another transaction where the initial market study was presented, staff asked for further review and the developer brought in supplemental information.

The only difference there was it was the same

market study firm doing both the first and the second report, as opposed to two different firms. But that seems like a very small distinction.

The department has typically allowed leeway on 4 percent transactions to allow developers to supplement their applications and provide clarification, and that's really all that we're doing here, and ask for your support.

Thank you.

MR. TIJERINA: Hi, I'm Carlos Tijerina. I am here in my capacity as vice chairman for the Board of Commissioners for San Marcos Housing Authority. I'm here to relay a message to you and that is that we, the Board of Commissioners, have voted unanimously to support this project and would urge you to do the same thing, to go ahead and recommend approval of it.

Thank you.

MS. ANDERSON: Thank you, sir.

Mr. Hunley?

(No response.)

MS. ANDERSON: Mr. Bump, you don't want your minute and a half?

MALE VOICE: Unless you have questions [inaudible].

MS. ANDERSON: Yes, we'll -- then we'll do that.

Mr. Cornwell?

(No response.)

MS. ANDERSON: Tina Brooks?

(No response.)

MS. ANDERSON: Albert Sierra.

(No response.)

MS. ANDERSON: Sorry. I'm just trying to make sure I'm not missing somebody that -- Richard Cruz?

(No response.)

MS. ANDERSON: Okay. And then let the record reflect I also have a letter of support from State Representative Patrick Rose, that I'll just share with the board members in lieu of reading into the record.

MR. CONINE: Is that the one we got?

MS. ANDERSON: You did get -- you did just get -- you all -- I guess you all already copies of it. Okay.

All right. That's the conclusion of public comment on that item.

MR. CONINE: A question of Tom, I guess. Aside from the 60 day requirement, the information you got did meet -- it did take care of your concerns as to the

capture rate? I think -- was that the issue?

MR. GOURIS: Yes. The new market study did take care of our capture rate concerns.

MR. CONINE: And they went through and recalculated based on methodology that you're comfortable with?

MR. GOURIS: They revised the market area and recalculated based on a more appropriate market area.

MR. CONINE: Okay. I'll move that we approve Willow Springs Senior Residences in San Marcos for the -- the requested amount, will it remain the same, the 485,866?

MS. CARRINGTON: 482,804.

MR. CONINE: 482 --

MS. CARRINGTON: 804.

MR. CONINE: -- 804.

MS. CARRINGTON: Yes, sir.

MR. CONINE: So all you need's an approval, isn't it?

MR. SALINAS: No, they wanted to waive the 60 days.

MR. CONINE: Yes, waive the 60 day requirement.

MR. SALINAS: I'll second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The last multifamily with a local issuer for the board to consider is the Cornerstone Village Apartments located in Houston. The Harris County Housing Finance Corporation would be the issuer on this transaction. It is new construction, it would be for the elderly. It's a priority 1A, 50 percent of the units with rents at 30 percent of 50 percent, and then 50 percent of the units at 30 percent of 60 percent.

Staff is recommending an allocation of tax credits in the amount of 400 and -- I see a discrepancy here. The report in the board book says recommended amount of 420,188, which was the applicant request. However, what is printed on the summary sheet is 415,267.

So, Mr. Gouris, which number is it?

MR. GOURIS: It's the latter.

MS. CARRINGTON: It's 415,267.

MR. GOURIS: That was the underwriting

recommendation, yes.

MS. CARRINGTON: Okay. Thank you.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Item 3(a), and this is housing trust fund rental awards.

MS. CARRINGTON: Correct. What is before the board is to approve two housing trust fund rental development awards. We released a NOFA for \$2 million back in the winter. The application deadline was March 1. We received 10 applications.

All total, they were requesting a little over 1.6 million. There were seven of those 10 that were determined eligible that were requesting in excess of 1.4 million.

Staff is actually recommending two of these

housing trust fund rental development awards totaling \$673,235, because the other five, to make up the total seven that were eligible were requesting tax credits, and none of those five, as I look at the list, are applications that were added to the list today.

Is that correct, Ms. Boston?

MS. BOSTON: Your presentation is correct, with one addition. Based on the successful termination -- there had been the deal that had been the HTF application that had been terminated and you all reinstated it on appeal. Because it's undersubscribed, we would also be adding that to the recommendation list conditioned on our final review.

Staff pointed out to me that we never finished the entire review because they were terminated. So it was project 04271, it's the Merrilee Community development, and it was 39,624. And so we're recommending that that be added to the list and approved, conditioned on underwriting and a final staff review.

MALE VOICE: What were the other two?

MR. CONINE: Here it is.

MS. CARRINGTON: The Village at Morningstar, which is 04213 in Region 8 -- I'm sorry -- Region 6 and the housing trust fund amount would be \$200,000; 04278,

Region 7, Vistas Apartments, and that amount is 400 and -- and that's located in Marble Falls, and that is \$473,235.

And so those were the two recommendations that totaled up to the \$673,235.

MR. CONINE: Move for approval --

MR. BOGANY: Second.

MR. CONINE: -- of the recommended list. Plus the addition.

MS. ANDERSON: Second, you said?

(No verbal response.)

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item for the board's consideration is the approval of 14 housing trust fund capacity building awards. Our recommended amount is \$410,650. We published a NOFA, we had a deadline of June 9. We've had 16 applications that were submitted, two

were ineligible, so we have a total of 14 that we are recommending.

That is in excess of what was available in the NOFA, which was \$400,000. But we do have some extra funds in what we call local funds which are loaned as payments, and that allows us to go up to the 410,650.

In applying for these, it must be a nonprofit, they can only receive the award two years in a row. So some of these are second year awards, and I think that at least in one situation, there was an award one year, they stayed out a year, they received an award last year, and they are on the recommended list for receiving an award this year.

The board does have a list of the total of 16 that were received. And the 14 that are being recommended and they range from approximately 25,000 an award up to the highest being 34,500.

MS. ANDERSON: Ms. Carrington, I have a question. Do these -- is there something -- is there a forcing factor that causes the department -- the board to have to act on these today? Do we have a funding deadline between now and the next meeting?

MS. CARRINGTON: No, I believe that -- and the single family staff tell me that certainly the disaster

awards could be postponed and I would --

MS. ANDERSON: But we're not -- I'm not talking about those. I'm just talking about --

MS. CARRINGTON: On trust fund awards, can they also be postponed until the next board meeting?

FEMALE VOICE: Yes.

MS. ANDERSON: Well, I -- because otherwise I'm going to take us through a whole long series of questions, because I have serious -- and I did not see these -- you know, the board book had a lot in it. And I didn't -- you know, I'm -- I didn't see them until Monday night, and we've got scores from 22 to 78 and that causes me to have a lot of questions.

So I just think it might be better to put it on the -- to table it till the next meeting and then I can get my questions answered in the interim. So is there any -- so I would move to table this till the next meeting.

MR. CONINE: Can you do that?

MS. ANDERSON: I don't know if I can, but if I can't, will you?

MR. CONINE: I'll second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Thank you.

MR. CONINE: Counsel would tell us if we were doing it wrong.

MS. ANDERSON: I hope.

MS. CARRINGTON: Moving along?

MS. ANDERSON: Yes. I'm sorry. I'm sorry. Go right ahead.

MS. CARRINGTON: Item 3(c) is requesting the board's approval of one home CHDO rental housing development award. We have an open cycle, we have \$9 million that is available in this -- in the home CHDO rental housing development awards.

It's an open cycle. This is the first application we've had that we have processed all the way through. They are applying for, and we believe they are eligible for, a \$1.5 million loan in home funds. They're also eligible for a \$75,000 operating grant, and what we say is that we are recommending that this development be

awarded these funds.

It is Lexington Court, which is located in Region 4. It's a total of 80 units. And staff is in the process of processing other applications, but this is the first one to actually come through for us in this open cycle.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item is 3(d), and this is approval of six home rental develop -- rental preservation development awards. They total \$2,835,000. This was a second NOFA that we have that isn't an open cycle and it's 9 million for preservation, rehabilitation of existing multifamily developments.

And the list that we are recommending for you is on the back of this page and it is one, two, three,

four, five, six applications and loan requests totaling anywhere from 320,000 up to 650,000.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item for the board's consideration is item 3(e), and this is the award of seven 2004 disaster relief program awards. All four owner occupied assistance, and that is the money that we provide for either substantial rehabilitation or reconstruct of single family homes that are owned.

We actually have three disasters that these awards address. A disaster in September of '03, in November of '03 and April of '04. And you can see the applicant's at the bottom of this list, the region they are in and the amount that is being requested in project funds.

And then they are also eligible for administrative funds; it's 4 percent of administrative funds to all seven applicants. So actually, the amount for sticks and bricks is \$3,396,600. And then the amount of administrative funds being recommended is 135,864, for a total of 3,532,464.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote.

MR. SALINAS: Is this the second round of [inaudible]?

MS. ANDERSON: These people haven't received -- these recipients have not received disaster recovery funds from the department before?

MS. CARRINGTON: No, they have not.

MS. ANDERSON: We did some a couple of months back for other disasters.

MR. SALINAS: Well, doesn't -- they've gotten some money before. Right?

MR. PIKE: Excuse me. Eric Pike, director of single family.

Brooks County did receive an award, I think it was about a month or so ago -- in May.

MR. SALINAS: [inaudible]

MR. PIKE: Yes.

MS. ANDERSON: Then this --

MR. PIKE: And that was for a different --

MS. ANDERSON: This was at -- this is different disaster --

MR. PIKE: That was a different disaster.

MS. ANDERSON: -- though.

MR. SALINAS: I mean, they've have several, but I just wanted to know if we've seen them -- I've seen --

MR. PIKE: Absolutely. You're correct. You have seen them before, yes.

MR. SALINAS: Okay.

MS. ANDERSON: Any other discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next to the last item for the board's consideration is item 3(f) and this is the approval of one home investment partnership award for tenant based rental assistance under the Olmstead set-aside. The total amount of this award is \$109,386.

The department has actually made \$4 million available for program years 2003 and 2004. Our NOFA was in the amount of about 3.5 million, and we have one award that we are recommending to the board today for 103,194, with administrative funds totaling 6 percent of \$6,192.

I will say, as I have talked to staff about this, we are generally very, very disappointed in the amount of interest that we are getting under this set-aside. And if you notice, in your write-up, we held several application workshops across the state in February of 2004 trying to generate interest in this funding.

The eligible applicants are units of local government, housing authorities and nonprofits. Sarah Anderson has been working with the promoting independence board, and tells me that she has made it very clear to the advocate community that if these funds are not applied for and utilized by year end that there is a very, very good possibility that there will not be this kind of set-aside available next year.

MR. BOGANY: Do you need a motion?

MS. ANDERSON: Yes.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The last item for the board's consideration is item 3(g) which is approval of two preservation incentive program development awards. These two awards would total \$755,000, which would leave a balance of \$542,002 in this account. And the board may remember that basically this is the program that we are funding from those below market interest rate loans.

And the two applications that are being requested -- this is also on an open cycle, and so we take these and review them as they come in, and the two that we have that we are recommending to the board today are Old Town Apartments located in Region 4, for 280,000 and Katy

Manor Apartments located in Region 6, for 475,000. So two awards totaling \$755,000, leaving a small balance in this account.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MALE VOICE: Vote?

MS. ANDERSON: I --

MALE VOICE: Second.

MS. ANDERSON: Do we -- I mean, I'm not aware that we need an executive session; therefore, we don't need an open session.

Ms. Executive Director, I always forget your report. I'm not going to do that this time. Would you like to make a report?

MS. CARRINGTON: We had an urban affairs committee meeting on July 16. It was the last one. They

will be putting together an interim report that I would imagine we will see in September. Yesterday we testified in front of the Senate Intergovernmental Relations Committee talking about housing in rural areas of Texas; both were satisfactory.

MS. ANDERSON: I mean, I agree it was -- is that that -- no, I just -- I wasn't invited to the Senate.

Is that the -- does that complete your report?

MS. CARRINGTON: Yes, it does.

MS. ANDERSON: I would be remiss -- and I'm afraid they're not here -- but I'd be very remiss in not thanking GMAC, Newman and Associates and Paramount Financial Group for their -- thank you guys.

(Applause.)

MS. ANDERSON: That was awesome. I don't think we've ever had that done before. I -- you know, you've built a heck of a lot of good will up here and in the community. It was very generous and lovely of you all to do that and, you know, made things a lot nicer for all these people who were here at this very lengthy meeting. So you all are just awesome and terrific.

We also want to thank Senator Gonzalo Barrientos for his securing of the use of the auditorium

for us today. We appreciate that greatly.

Any other business to come before the board?

(No response.)

MS. ANDERSON: I'll entertain a motion to adjourn.

MR. CONINE: Move for adjournment.

MR. BOGANY: Second.

MALE VOICE: Second.

MS. ANDERSON: Any discussion?

(No response.)

MS. ANDERSON: We are adjourned. May I thank the board.

(Whereupon, at 5:45 p.m., the meeting was concluded.)

C E R T I F I C A T E

IN RE: TDHCA Board
LOCATION: Austin, Texas
DATE: July 28, 2004

We do hereby certify that the foregoing pages, numbers 1 through 375, 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.

Diane Swinney 8/2/2004
(Date)

Dorothy D. Stavrou 8/2/2004
(Date)

Molly Barker 8/2/2004
(Date)

Terri Starkey 8/2/2004
(Date)

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