

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

9:00 a.m.  
Thursday,  
June 26, 2008

Capitol Auditorium  
Capital Extension  
1500 N. Congress Ave.  
Austin, Texas

COMMITTEE MEMBERS:

KENT CONINE, Chair  
LESLIE BINGHAM-ESCARENO  
TOM CARDENAS  
SONNY FLORES  
JUAN S. MUNOZ  
GLORIA RAY

STAFF PRESENT:

MICHAEL GERBER, Executive Director

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P R O C E E D I N G S

MR. GERBER: If there's anyone who needs to fill out a witness affirmation form, they're of course in the back; please do so, and we appreciate you all being here. We'll start in just a second.

(Pause.)

MR. CONINE: All right. Good morning, and welcome.

Good morning.

(A chorus of "Good morning.")

MR. CONINE: There we go.

(Laughter.)

MR. CONINE: 'Tis the season. Welcome to the June 26 meeting of the Texas Department for Housing and Community Affairs Board. I'm going to call the roll to get started. Ms. Bingham?

MS. BINGHAM-ESCARENO: Here.

MR. CONINE: Tom Cardenas?

MR. CARDENAS: Here.

MR. CONINE: Kent Conine's here. Juan Munoz?

DR. MUNOZ: Here.

MR. CONINE: Gloria Ray?

MS. RAY: Here.

MR. CONINE: Sonny Flores?

MR. FLORES: Here.

MR. CONINE: I think we're all here.

I might just ask if there's any forms to fill out, any public comment, make sure and get the forms out and up here; we're trying to get them organized.

But before we go to anything else, we have some lenders in the room that we need to recognize this year, and I'm going to turn it over to Mike to do that.

MR. GERBER: Mr. Chairman and Board members, good morning.

As part of June's Celebration of Homeownership Month, the staff and the TDHCA Governing Board would like to today recognize members of the lending community for their contributions to affordable housing, and their efforts to increase home ownership throughout the State of Texas.

Through the issuance of low-interest rate mortgage revenue bond loans, the Texas First-Time Homebuyer Program is one of the successful in the country, and in conjunction with its network of participating lenders, originated over \$313 million in mortgage loans in fiscal year 2007, and it enabled approximately 2700 families to experience the benefits of home ownership.

To recognize their achievements, the Governing

Board today is recognizing the two top lending institutions, as well as the top producing loan officer under the Texas First-Time Homebuyer Program.

In 2007, Cornerstone Mortgage Company originated loans totaling over \$20 million; over half of their loans were made to borrowers with incomes at or below 80 percent of AMFI, and over 50 percent of the loans originated were made to minority homebuyers.

They have participated for a number of years in the Texas First-Time Homebuyer and Mortgage Credit Certificate programs, and they have had a tremendous impact on many Texas First-Time Homebuyer families.

CTX Mortgage Company is one of the nation's largest non-bank-affiliated mortgage originators, and as part of the Centex Home Team, they originated loans totaling over \$21 million, and over half of their loans were also made to borrowers with incomes at or below 80 percent of AMFI, and over 65 percent of their loans that were originated were made to minority homebuyers.

CTX has also been a participant in the Department's First-Time Homebuyer programs for many years, and we really applaud their collective efforts to try to -- and the efforts of the lender network as a whole to really increase the rate of minority home ownership in the

State of Texas.

We lag behind that in -- nationally, and we're very proud of the emphasis that's been placed there, and to hit those individuals and families who are at those lower income levels, who are ready to meet the challenge of home ownership.

So if I could, I'd like to invite Robert Heckler, who's the senior vice president for -- and regional manager for Cornerstone Mortgage Company to come on up, and be recognized, and receive a certificate from you, Mr. Chairman, and we'll ask him to come up and maybe join you by the flags and we'll take a couple of pictures.

(Pause.)

MR. GERBER: Robert, thank you for coming up, and thank you for Cornerstone's commitment, and if all of us could join in a round of applause for Cornerstone.

(Applause.)

(Pause.)

MR. GERBER: Congratulations again.

(Applause.)

MR. GERBER: I'd like to ask Mark Jensen, who's the regional operations manager for CTX Mortgage Company to come forward, and again recognizing CTX's strong accomplishments in the area of expanding home ownership in

Texas. Congratulations, Mark, and to your team.

(Applause.)

MR. GERBER: And for the loan officer of the year, in 2007, Erna Hay originated and closed 54 loans under the Texas First-Time Homebuyer Program. She's worked in the mortgage industry for 15 years, and has participated in the Texas First-Time Homebuyer Program for eleven years, and she has tremendous experience working with first-time homebuyers, addressing their needs, and the special challenges; each homebuyer has a unique circumstance, and Erna is one of the best in the business.

Unfortunately she couldn't be with us today to receive her award, but Denise Druzvik, who's the production partner for Cornerstone Management Company, is here today to accept the award on her behalf, and I'd like to ask her to come forward and pass along -- receive the certificate and extend our congratulations both, again to Cornerstone as well as to Erna.

(Applause.)

MR. CONINE: Again a special note of thanks to those who participate in our programs and help us be as successful as we can be; and hopefully again providing housing for first-time homebuyers across the State of Texas is certainly a laudable goal, and we thank all of

you for participating in our programs.

We will move to the public comment portion of our Board meeting, where we have public comment from those who want to speak either now or later on when the particular Board agenda item comes up.

I've got witness affirmation forms -- are these all the current for the front end?

Okay. How do you like being in the auditorium? All the elbow room nice? You can thank State Representative Jose Menendez, who's our first speaker. Thank you for providing the room.

(Applause.)

REPRESENTATIVE MENENDEZ: Mr. Chairman, you're very gracious in your thanks, but it's me who has to thank all of you for giving your time away from your families and your businesses to be here to do the peoples' business on our behalf, and on behalf of everybody in this room.

Mr. Chairman, Board members, good morning, and once again I thank you for your commitment to the State and the people of the State. Today I'm appearing in support of an appeal, to award points for quantifiable community participation for the Clear Creek of Fort Worth Property Owners Association.

The proposed development is not in my district,

but as I have been here before speaking for a development that suffered from a similar unintended consequence as a result of ambiguous legislative language, I'm here today again because I have a strong interest in helping people who need affordable housing.

When the Texas Legislature created the incentive in the tax credit application process, for quantifiable community participation, we wanted to encourage that developers work with local organizations to create a dialogue, about the proposed development, and seek input about the proposed development. That's the whole purpose.

Talk to the people who are going to be impacted and affected by your development. And unfortunately, when the statute was first enacted we used the term, "neighborhood organization," because it really came about as an argument or fight that came about in San Antonio between the development that had the support of one councilperson but was opposed by all the surrounding neighborhood associations.

And as we know, not every city or municipality has neighborhood associations. And not every application has a neighborhood association in close proximity. So unfortunately, we've come -- I came to learn this

afterwards.

So this has created a question as to what organizations would be eligible to participate in the quantifiable community participation process and receive points for their letters of support or opposition.

Since then we have added a little bit of definition, defined as, "an organization should be comprised of people living near one another." We wanted the people most immediately impacted to be part of the decision making process. We've also stated that a neighborhood organization includes a property owners' association.

Stated in the QAP, as I look through the statute I couldn't specifically find "property owners' association" specifically stated, but I have seen it in a recent QAP. This has been intentional. We understand that sometimes property owners' associations are formed for master planned communities that have not been built out yet, or other commercial interests.

We believe that it's equally important for those owners to have to say in a development of affordable housing in their immediate vicinity. I think if you don't provide support, it's going to be harder, especially when you go out, into outlying areas where there is nothing but

farmland and you're trying to do a master planned community, to get the points necessary, because you may not have a neighborhood association in near proximity, and so you may not get the points to qualify, and yet it may be a very appropriate and supported development.

So I'm requesting that hopefully you can see that you can consider to grant the appeal and allow the property owners' association to be part of the quantifiable community participation process; I believe these associations protect important residential and commercial interests, and I think they need to be consulted, as well as their needs be considered.

I think that if the folks who own the property, and they're developing this property, they're going to have their best interests in mind that the development be a long term success.

And so therefore I think they're going to be just as interested in the future of the development, which is what our concern was with the neighborhood association; because many neighborhood associations have been concerned that a tax credit development will lower their property values, will negatively impact their neighborhood, and so I think the fact is that we're still getting the interests of people who have a personal financial interest.

I think it's just as important, and therefore that's why I'm here today, because I feel unfortunately as a legislator I have been remiss in adding some language that could possibly help you, and help the staff, that's doing as good a job as they can, they're working hard, you've got a great staff and they're doing everything they can within the boundaries.

And so I think this is a good appeal on strong merits, and that's why I'm here today, and at this time I'd be open to any questions.

MR. CONINE: I've got one --

REPRESENTATIVE MENENDEZ: Yes, sir.

MR. CONINE: -- because the subject is on my mind basically because of some of the appeals coming forth today.

REPRESENTATIVE MENENDEZ: Yes, sir.

MR. CONINE: And I'm curious about the definition of neighborhood association as it currently exists in statute --

REPRESENTATIVE MENENDEZ: Uh-huh.

MR. CONINE: -- where it's two sentences, not one.

REPRESENTATIVE MENENDEZ: Exactly.

MR. CONINE: Where it's talking about people

living there, and then it's talking about neighborhood associations, or property owners' associations. And you would think the Legislature wanted folks to live there, and in the case of a property owners' association it could be multiple apartment complexes who didn't actually own the property let's say, but could weigh in on whether they wanted another one --

REPRESENTATIVE MENENDEZ: Right.

MR. CONINE: -- along with them. What do you feel about the -- having to have some folks living there?

REPRESENTATIVE MENENDEZ: Here's why I think it ended up written the way it was, and I think we were concerned. There were cases, and there have been cases, and you've probably heard them here before, where let's say a neighborhood association was ten miles or five miles -- nowhere near the proposed development, but was opposed to the development to begin with.

And they just wanted a way in, and so therefore you had the, in proximity, close proximity. I think, my concern or my thoughts are that if the property owners' association should probably be -- has to be either containing the application immediately adjacent; I think we need to get a little bit better definition of what we're looking for, so that we don't have the gaming

possibility, the abuse possibility.

The other way to go about it, instead of being so proscriptive, open it up and allow for your staff to have some -- and the Board, to have the ability to judge issues that come to this Board for appeal, to give you the latitude to make the decision on what someone that's what you're saying, the case where someone's saying, "I don't want any more competition," versus people who are living there and working there and have a financial interest in saying, "We'd love to have this, because you know, we need a little bit," or let's say the City or the municipality says, "We need to have a little more tax base, and we'd like to have this come into our community. We need affordable housing, it's going to spur -- the rooftop's going to spur a little bit more retail development, and right now our folks are having to drive too far for just simple services."

And so I think especially today, where the economy is, everything we can do to help incentivize and sort of spur the economy and get some of these developments going, I think it's a positive. And I think we just need to see what we can do to keep -- the unfortunate thing is, we wanted to give citizens a voice, and unfortunately we've created also a vehicle for NIMBY-

ism.

And I'm concerned, how do we strike that balance. And that balance may have to sit here with you, the Board, because you're here day in and day out dealing with these issues and how the capability to do so, more so than the Legislature does. And as you probably know, that's been a departure from my prior thought process --

MR. CONINE: I was going to say, thanks for tossing it back in our lap.

(Laughter.)

REPRESENTATIVE MENENDEZ: Well, you know, I have seen some of the unintended consequences that occur when we try to take it and make it so proscriptive, and it's unfortunate. We got to have a little bit more latitude, because there are individual considerations, and not every deal's the same, and not every community's the same.

(Pause.)

REPRESENTATIVE MENENDEZ: We should have a trust fund here for first time homebuyers, and every time a phone goes off, ten bucks goes in the --

MR. CONINE: A hundred bucks in the --

REPRESENTATIVE MENENDEZ: Ten bucks into the --

MR. CONINE: Any other questions for the Rep,

State Rep?

(No response.)

REPRESENTATIVE MENENDEZ: I just want to thank you all for your time and I appreciate your consideration.

MR. CONINE: Thanks for being here, and again thanks for the room.

Judge Terry Simpson.

JUDGE SIMPSON: Good morning, Mr. Chairman, Board members. I appreciate the opportunity to have a chance to come and speak with you.

I'm the county judge of San Patricio County. We've been blessed by having several years' worth of these OCC contracts issued to the county, and we've done some good work for a lot of the folks in our county that needed some help with their housing.

But there's been some issues that have come up I needed to speak to you about. The implementation of the 2006 OCC home contracts, the 18 month contract is not working, as evidenced by the Department giving 12-month blanket extensions to all 2006 OCC contracts.

As a result of the long closing delays, documents are turned in to Legal, where they sit for months, only to be returned for inconsequential items, that are traditionally handled by title companies at the

loan closing.

Example: A name affidavit for middle initial.

When questioned about this, the Department's answer is, they don't know if it is actually being done by the title companies, so they want to see it first.

Another example is, a woman was divorced for over 30 years ago. She bought the property she lives in now five years ago. The title company wants a marriage affidavit, which is a legal document; however, the Department insists upon a copy of a 30-year-old divorce decree; some time and money is spent locating a copy of the divorce decree. In the meantime, while gathering name affidavits, the title commitments have expired.

Standard practice is to issue a new title commitment at the loan closing. But Legal demands a new title commitment be sent to the Department, which in turn is kicked back again for another trivial reason.

Legal says they have 45 days to review the single set of loan documents, which should only take 48 hours, since prior to it going to Legal, the TDHCA closure reviews the documents and ensures accuracy.

Each time Legal kicks it back, a set of closing documents, for items such as middle initial previously mentioned, a 45-day clock starts again, which causes the

commitment to expire, which causes another delay.

I asked the Board to instruct staff to change the process; return to the 24-month contracts and return to grants instead of loans. At a minimum, I urge the Board to make the following changes:

Limit paperwork to title search, with no title insurance required; a title search shows ownership, and is acceptable by HUD as proof of ownership.

Instead of a full loan closing, allow the promissory note, coupled with assignment of a mechanic's lien to TDHCA. This gives ample protection and can be forgiven at the end of the five-year period.

Additionally, the general contractor should be listed as the contractor, with appropriate insurance and bond, to take this burden from the cities and the county.

And that's basically what I wanted to visit with you all about today, as we're seeing substantial delays in a lot of these home contracts, whereas before, we didn't have this problem. Any questions?

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Thank you for your comments, and we'll check into it.

JUDGE SIMPSON: Thank you, Mr. Chairman, Board

members.

MR. CONINE: John Henneberger. The clean-shaven John Henneberger.

(Laughter.)

MR. HENNEBERGER: Thanks. Good morning. My name is John Henneberger, I'm the co-director of the nonprofit, Texas Low-Income Housing Information Service. And I'm here today to speak in support of the staff's recommendation to the Board for the Legislative budget appropriations request of the Department; and in particular, I want to speak in support of the proposal to submit an exceptional item request for an additional \$20 million of annual funding for the State Housing Trust Fund.

The housing trust fund is probably the single most important missing piece in our state's housing resource pool. There are 37 states around the country that have housing trust funds, and I've provided you some written information about each of those state housing trust funds, and the levels that they're funded at, to give you some idea of comparative funding levels.

However, Florida provides \$600 million a year, Washington State \$100 million a year, New Jersey, \$153 million a year, Illinois \$90 million a year. Until the

last Legislative Session, Texas had about \$5 million a year in our housing trust fund.

The significance of this is that the housing trust fund is the essential equity piece that's often missing, to make housing development possible and to make it really affordable, for low-income people. Your housing trust fund with that very low level of funding, a level of funding that's so low that the State Comptroller reported several years ago that the State of Texas spends more money on magazine and periodical subscriptions for state employees than it does in funding the housing trust fund, in the total amount of money that the State makes available to provide housing for low-income people.

But that fund has done really good work. The award-winning programs on the border that provide self-help housing, \$3 million a year of your housing trust fund goes to that. Those are national models; those are programs that provide housing for the poorest of the poor, where they provide the labor themselves to build their own homes, and those are model programs.

But they basically absorb all of the money that exists within your housing trust fund; and if we're able, if we're going to be able to meet the housing needs in the future, we're going to have to have an additional equity

source of funds.

The additional \$20 million that the staff is recommending is a very modest start; it's a very responsible start, and I believe that the housing community will get behind the Department in the next session of the Legislature and make the case to the members of the Legislature that this is the critical missing element in our State's housing finance pool.

Thank you very much, and I appreciate your consideration of this matter, and I very much appreciate the staff's leadership in bringing this forward.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you, John.

Stella Rodriguez?

MS. RODRIGUEZ: Good morning, Mr. Chairman, members of the Board and Mr. Gerber. My name is Stella Rodriguez, and I'm the executive director of the Texas Association of Community Action Agencies.

Our organization represents the community action network across the state. As you most likely know, these agencies administer a wide range of programs, many of which are possible through the Community Services Block Grant program, funds received through the Texas Department

of Housing and Community Affairs.

As an example of the Community Services Block Grant, agencies would not be in a position to offer weatherization and utility assistance services as stand-alone programs, to offer -- that do not have sufficient administrative funds to run the program.

The flexibility of the Community Services Block Grant Program supports these types of efforts, and others benefiting children, elderly, disabled, and individuals in poverty.

Today I come before you on behalf of the board of directors of the Texas Association of Community Action Agencies. My board met last month in official session, and several concerns were referenced in reference to our partnership with the Texas Department of Housing and Community Affairs staff that were expressed.

Specifically, communication between TDHCA staff and the TACAA staff and network was declining, and offers to provide input on TDHCA decision-making matters affecting the programs our agencies administer, were ignored.

The TACAA board passed a resolution to petition the TDHCA Board of Directors to intervene. Subsequent to the TACAA board of directors' passing the resolution, and

unbeknownst to the TDHCA staff, Mr. Gerber and Ms. Amy Ailer [phonetic] spoke with our board and participated in our annual conference last month, hosted a meeting with the network to share the internal audit results, committed to solicit input as proposed policies and rules are drafted in response to the internal audit, provided more details and explanation regarding the CSBG formula allocation process, and has demonstrated a reinstatement of communication and partnership with TACAA staff and the Community Action Network.

Therefore, we applaud the staff's recent efforts and look forward to a growing and positive relationship resulting in enhanced services to the less fortunate population in the State of Texas.

With me today are my board members from the Texas Association of Community Action Agencies, and I'll point them out and if they can stand when I call your name.

With me is Lenoyla Wyatt, executive director of the Tri-County Community Action and Center; Dan Boyd, parliamentarian on our board and executive director of the North -- excuse me, of Community Services of Northeast Texas.

Vicky Smith, president of the board with

Community Action Committee of Victoria, Texas; Rhoda Gersh, board treasurer, with Combined Community Action Agency in Giddings; and Beverly Logan, representing the rural north, from Northeast Texas Opportunities in Mount Vernon, Texas.

Thank you for this opportunity to speak, and if you have any questions I'd be happy to answer them.

MR. CONINE: Questions of the witness?

(No response.)

MR. CONINE: Mr. Gerber?

MR. GERBER: Mr. Chairman and Board members, I just want to thank Stella for her comments. We have, as you know, as we've dealt with some transition in the Community Affairs section, we've been often -- we've been waiting as well for the results of that transition coming into the full, but also of the Community Services Block Grant and ESGP Audit, which was reported on during the Audit Committee meeting today.

The Department is very committed, and oftentimes the Community Affairs side of the house doesn't quite get the attention of the Board at its monthly board meetings as other programs have. And my intention is to really make community affairs -- bring those issues more and more, bring the plans, bring the strategic documents,

bring program awards certainly, to this Board on a more frequent basis so that over time, you will become much more familiar, and see Stella and see members of her wonderful network that do so much to help people throughout the State of Texas, here at these meetings, and sort of really work harder to give you all the policy-making choices that I think you need to make, and the guidance that we'll want to seek from you as staff.

But we're very committed together to making process improvements, and we really appreciate the -- in advance, the help of the network, to try to implement many of the things that Ms. Donoho talked about, again, from the CSBG audit. So thank you, Stella.

MS. RODRIGUEZ: Thank you.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes.

MS. RAY: I would also like to make a comment and thank you very much. It's not often that anybody comes before this Board to thank us for the outreach that has become a part of the standard procedures of the staff of TDHCA. We thank you for your support, and I am pleased with the leadership of Mr. Mike Gerber, that in all of our business we work diligently to work with our partners that help us to serve the citizens of the State of Texas. And

we do appreciate you coming before this agency --

MS. RODRIGUEZ: Thank you, Ms. Ray.

MS. RAY: -- to share the outreach on the part of the staff of TDHCA. Thank you so much for coming.

MS. RODRIGUEZ: Thank you.

MR. CONINE: Thank you.

Councilwoman Priscilla Leal? Is that correct? If I didn't mispronounce it.

COUNCILWOMAN LEAL: Good morning, Mr. Chairman, members of the Board. My name is Priscilla Leal, and I am a city councilwoman for the City of Corpus Christi. I represent the largest district in our city, and this area includes a large portion and redistrict of our economically disadvantaged, elderly, children and families. This area is known to you as Region 10.

I share our district with the Honorable Juan Hinojosa, and State Representative Abel Herrero. First, I would like to personally thank you and the great State of Texas for allocating tax credits for viable projects in regions throughout the State for challenged communities, especially Region 10.

Today's agenda Item Number 9(e) is the Buena Vista Elderly Senior Village. When finished, we'll have ten new affordable, beautiful units, built across from our

municipal golf course in this area which is within walking distance, which is in dire need of the living communities for our elderly in Redistrict 3 [phonetic].

Our elderly such as my 96-year-old mother need projects such as Buena Vista to move forward as our seniors face many challenges in our nation's hard economic times. Therefore, we, the Honorable State Senator Juan Hinojosa, the Honorable State Representative Abel Herrero, and citizens of my district; and I came here today to show my support for this project, which is a priority for the reason.

And finally, we seek your continued support, in assuring that the Buena Vista Village be awarded the tax credits, and know that you have made a difference in the lives of many senior citizens in Region 10. And for that, we are grateful. Thank you very much.

MR. CONINE: Thank you, Councilwoman. Any questions for the witness?

(No response.)

MR. CONINE: Thanks for being here today.

COUNCILWOMAN LEAL: Thank you. And thank you for your work.

MR. CONINE: Thank you.

Paul Saldana, I believe.

MR. SALDANA: Good morning, Mr. Chairman, Board members, Mr. Gerber. My name is Paul Saldana, and I'm speaking on behalf of the Northeast Austin Business Community Alliance, which is an alliance made up of eleven neighborhood associations, organizations here in Austin, along with business individuals in the northeast Austin community.

Our alliance is here today to speak in opposition of Application Number 08271, also known as the Manor Road SRO project. The applicant has a re-zoning request pending before the City of Austin to re-zone the property at 5908 Manor Road here in Austin to MF-3. That particular re-zoning case is scheduled for council consideration here in Austin on July 24.

The Windsor Park-University Hills Planning Team invested two and a half years of their time going through the neighborhood planning process. That particular neighborhood plan was adopted by our Austin City Council less than a year ago today. But give that this project's moved forward under the auspices of a Smart Housing development, it was allowed to submit a re-zoning request to the City of Austin.

The applicant, and the owner of the project, did not participate in any of that planning process during

that two and a half year planning process. There is overwhelming support to this particular project; to date we have collected over a thousand signatures in opposition to this project; and over 70 percent of the owners within 200 feet of this proposed project have submitted a valid petition.

They feel that it violates the integrity of both the land use and the compatibility standards, given that this particular project on three sides will abut single-family homes, the project is proposed to be three stories, 50,000 square feet, 110 units, that will surround single-family homes that have been there since 1950.

We feel that the project has received -- well, one of the things I wanted to note, that this particular project has received quite a bit of local media attention; and as a matter of fact, in today's editorial there is a -- this particular project is referenced in an editorial entitled, "East Austin Cannot Bear All the City Burdens."

While the City of Austin certainly has a policy and a commitment to developing affordable housing in Austin, it also has a strong commitment in policy, to encourage neighborhoods and developers to participate in the neighborhood planning process, and in this case, the applicant did not participate in that.

So we ask respectfully that you consider rejecting and denying the request for tax credit projects; and we plan to use the next few forums prior to your meeting on July 31, up until July 31, to voice our opposition. So I'd be happy to answer any questions.

MR. CONINE: Any questions of the witness?

MR. FLORES: Yes, Mr. Chair.

Mr. Saldana, repeat again about the re-zoning? You said something -- it's coming before the Zoning Commission? Is that what you said?

MR. SALDANA: It will go before the City Council. The Austin City Council has not yet made a decision to grant the re-zoning request. This -- the re-zoning request will be heard at the next Council meeting, which is not scheduled until July 24.

And at that point, this applicant would have to request all three readings on the July 24 Council meeting; I don't think the Council meets again until August 7. So they will have to request all three readings.

MR. FLORES: Okay, see if I understand. Okay, the first appearance on July 10, when would be the following three hearings? Would that follow like, once a week, once every two weeks, what are the meetings, do you know?

MR. SALDANA: It depends on the Council. The Council's schedule right now is that they would meet on July 24; they're not meeting on July 31, so the next meeting after that would not be until August 7, and it's up to the Council at the July 24 meeting, whether they choose to hear the zoning case on all three readings.

I mentioned that there's a valid petition with over 70 percent of the property owners; that means that a super-majority vote of the Council, six of the seven Council members would have to vote in favor of the re-zoning request.

MR. FLORES: Thank you.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Thank you. Appreciate it.

MR. SALDANA: Great, thank you.

MR. CONINE: Frank Fernandez. Let me -- I have also Caitlin Uzzel, Ruth Marie and Maria Lawdenslager, I think, that have been clipped to your witness affirmation form. Are they going to speak, or are they just allotting time to you?

MR. FERNANDEZ: Caitlin's allotting her time to me, and the other two will be -- briefly make some

remarks.

MR. CONINE: Okay. Let me remind you of our --

MR. FERNANDEZ: I'll be quick.

MR. CONINE: -- comment time frame that we have working.

MR. FERNANDEZ: Good morning, Board members. My name is Frank Fernandez; I am the executive director for Community Partnership for the Homeless. I am here to testify on behalf of Application 08271, Manor Road SRO, the one that was just testified on; and I'm here again to follow up on testimony from last month, to again urge you to strongly consider funding our application as a forward commitment.

To refresh your memory, it's the 110-unit development focused on extremely low-income folks with an emphasis, about a third of the units, for folks who have been formerly homeless, who are moving towards a path for independence.

What I'd like to do briefly is just emphasize or stress two things, really. One is, again, the importance of this type of housing; and two is the difficulty of these types of deals.

With respect to the importance, I said last month, there is a savagely acute need for this kind of

housing. In Austin alone, you have over 20,000 unit shortage for housing in this income range. And what does that mean on the person level?

That means you have folks who have jobs, who are homeless. It means you have folks living in squalid conditions, substandard housing; I've seen it actually in this neighborhood, brother and sister living in an apartment, no electricity, broken windows, landlord nowhere to be found.

It means you have folks paying a lot more than they can afford. There is an acute need for this type of housing. Exacerbating that fact is that these types of deals are really, really difficult. They are very capital-intensive, they are very equity-intensive, and as you've seen, they are hard to site.

And I think an example or evidence is the fact that this round you had about 200 deals submitted, or applications, and only three across the State are like ours, and that three includes us.

So when you have an application, what I would urge you is, when you have an application like ours, which is serving a huge need, given how hard these deals are, it requires -- it's something that requires a prioritization, something that's incumbent on us as a state to really

think hard about.

To speak to Paul's particular point, this has been -- we have received opposition to this project; siting has been challenging. And the pact that you have before you, and I highlighted during the last month's testimony some of the challenges we have run into where we feel there has been false information disseminated, incitement of fear, in the packet you'll see a fire that was put out, you have quotes from some of the public testimony that was presented here, comparing what we're trying to do to a concentration camp, you have a Dairy Queen owner next door to the site, and I have the picture so you can see it; he references that we have hundreds of signatures on a petition, but when you have a sign that says, you know, "Come inside, sign the petition, stop the homeless shelter, stop the homeless facility," it speaks to -- it's very difficult to engage in that kind of process, and making that good faith effort.

We've tried to work with the neighborhood and make that good faith effort; I also include a list of the meetings we have participated in, or hosted. It's up to 15 now and counting. And where we can, we do try to address their concerns.

With respect to the zoning question that he

mentioned, we are asking for an up-zoning; and he's correct, we do need to get City Council approval. But what we've done through conditional overlay is make the zoning impact less than what would be currently allowed on the existing zoning.

So we're trying to address that concern and be responsive. But in all honesty, the challenges that, the folks who are opposed to our project aren't opposed to it because of zoning; they're opposed to it because of who we are serving. And that is a challenge that any type of supporting housing deal is going to have to overcome.

State Rep Menendez kind of spoke to this issue, that you all have the latitude in your court to, how do you balance this concern about NIMBY-ism. And fortunately for us, I think we've been able to, and you'll hear now, we've been able to build some neighborhood support, as well as community support.

Two weeks ago, we did -- our zoning case was before the Planning Commission and they voted in favor of it, six to three, which I think speaks to building that broader support. And he also alluded to his valid petition, and what that basically does is, it raises the bar for us to be able to move forward. Because we need the zoning for this product to move forward.

That means we have to get six of the seven or all seven of our City Council and Mayor to be on board. So what I would argue is, actually take that and say, if we are able to get that, that says a lot about what our elected leadership and what our community values in terms of, this is a big community need; and this is also something that has broader support.

So in conclusion, I would just again urge you to strongly consider that, given the need and given how difficult these deals are, to think about a forward commitment. Thank you. Any questions?

MR. CONINE: Questions of the witness?

REPRESENTATIVE MENENDEZ: Yes, I have a question.

MR. FERNANDEZ: Yes, sir.

REPRESENTATIVE MENENDEZ: So how do you respond if the commenter prior to you referring to an absence of your presence in the planning process, planning --

MR. FERNANDEZ: He was referring to the neighborhood planning process, which occurred prior to us having site control of the project. So this was before we were even involved on the scene.

So what we've tried to do is, we weren't there when that process was going, because we didn't have a

control or an interest in that area per se; but in thinking about what are they concerned about, they don't want too much density; so we brought it. And they're concerned about, they don't want property -- or impervious cover right up to their -- to those houses, and what would be allowed under existing zoning for example is five to ten feet; you can build up to five to ten feet.

We're giving the back 120 feet; we're giving the sides 55 feet; when you're talking -- we are doing a three-storey, but we're doing a three-storey closest to Manor, which is a transit corridor, and it's stepping down two-storey to one-storey as you approach the single-family.

So we've tried to address those zoning concerns and land use concerns. We've also offered to try to do light retail in the front portion of it, to try to have a neighborhood asset too, so that everyone can benefit from it.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Thank you very much.

MR. FERNANDEZ: Thank you.

MR. CONINE: Ruth Marie?

MS. MARIE: Chairman Conine and members of the Commission. I'm Ruth Marie; I'm a resident of Windsor Park Neighborhood Association, and been active in listening to what this particular project has to present to our neighborhood association, et cetera.

This February we had our meeting, our neighborhoods' association meeting; we did vote in support of the concept. And that's the letter that you have received from the Windsor Park Neighborhood Association.

In your packets which you'll see there, once this happened, a group arose to oppose this. The first thing that came out was this handout which was available at the local -- and I forget the name of the place because I don't go there, a hamburger place, and as you can see there, it says, "Homeless housing facility."

The other thing that has happened is that we've had some active ListServe messages, which is my number two program, and there you can see where I actually made notations because I wanted to respond on the ListServe, and again listing things that were inaccurate.

And again using keywords that are, well, only draw anger and fear.

The third memorandum that I have for you shows the different numbers of organizations that were opposed

to it, in the middle of it, there were only two of these organizations that are known by the City. The rest of them somehow or another sprang up, and I have no idea who is involved in these, members of these particular associations, nor do I know what their area or their boundaries are.

We did go before the Planning Commission and as said before, it was voted six to three to support and pass on to the City Council. Prior to that meeting, we had asked for a facilitation meeting between the group opposing it and our group, and one of the things that was promulgated at that was for the opposing group to stop using the language that's in here.

And I believe you saw in the packet before, that Frank gave you, that there was a sign on this Dairy Queen, that said something about opposing the neighborhood -- of a homeless facility? That sign was still there, several days later and at the time of the PC meeting.

I have given you also seven reasons why I believe it is important for us to support this, and I think this goes along with what the six members on the Planning Commission said. And that is, that ultimately what they did was, to look at the good for Austin as a

whole.

And sad to say, even though we would hope that more of these facilities would be built in other parts of Austin, we seem to be the part of Austin that gets most of these facilities built. But I don't believe that that actually negates the fact that this is so desperately needed, that the overwhelming need of the community of Austin as a whole should take precedence. Any questions.

MR. CONINE: Any questions for the witness?

(No response.)

MR. CONINE: Thank you, Ms. Marie. Appreciate you being here. Maria Lawdenslager.

MS. LAWDENSLAGER: Good morning, Mr. Chairman and Board members.

MR. CONINE: Good morning.

MS. LAWDENSLAGER: I'm here in support of the Manor Road SRO. I've been on the CPH Board for five and a half years, and I'm currently serving as the vice president.

Before I became associated with CPH, I had been an occupational therapist for over 20 years. I was one of the first group of therapists to go down to the Rio Grande Valley, where I'm from, in the 1970s and work primarily with children with disabilities.

I came to live in Austin in 1991, and in 1999 I found myself unemployed. I searched for employment for over two years without success; at the end of two years, I had run out of money and became homeless. I am also a veteran, and I was accepted into the transitional program for veterans here at the CPH agency.

And they helped me put my life back together. There are many people like myself who have been helped by this program. You know, we've had, like, an engineer; we've had a schoolteacher; a plumber; a barber; I can name just about every profession and trade.

We've had veterans who served in World War II, Korean War, Vietnam, Gulf War, and we've even had some Iraqi veterans in our program.

Some of these veterans are able to get a job and find permanent housing without too much problem. However, there is a group of veterans that have no place to go when they get through our program, because they cannot afford the rent in this city, because a significant amount of these veterans, upon medical evaluation, are found to be unemployable due to a disability.

So they leave our program with a disability pension. Now, most of them will leave with what is called a non-service-connected disability pension, which right

now is \$930 a month. Social Security disability takes a while, sometimes years, to get. A service-connected disability pension also takes years to get and it's not very much unless you get 100 percent disability rating, and that's \$2,527 a month.

For a 30 percent disability rating, they only get \$356 a month; 50 percent disability rating is \$728 a month, and the 70 percent disability is \$1,161 a month.

So --

MR. CONINE: Would you wrap up this --

MS. LAWDENSLAGER: Okay.

MR. CONINE: -- if you can.

MS. LAWDENSLAGER: They need a place to live when they finish with our program, and we need affordable housing such as this development that we're proposing. Thank you.

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

(No response.)

MR. CONINE: Thank you very much.

MS. LAWDENSLAGER: Okay.

MR. CONINE: Robert Ford.

MR. FORD: Good morning; thank you for letting me speak.

My name is Robert Ford, and I live in Palestine, Texas, and I oppose the housing tax credits application 08-185 for Historic Lofts of Palestine.

My -- I live in the South Side Historic District, which is a residential, National Register and local historic district where part of this project will be located.

The developer's application, additional documents submitted to the State, and City of Palestine officials including those who spoke to this Board in May, they all emphasize the importance of this project for revitalizing the historic downtown buildings in my city.

However, this project will also include a new apartment complex in the Southside Historic District. The -- Palestine is a small town. There is a crucial difference in the buildings, scale and development between these two areas.

The South Side is a residential neighborhood, one that has survived neglect and inappropriate zoning changes. Talking with its residents, especially those living close to this proposed development, I know they are concerned for what this project will do to our neighborhood of Victorian houses and cottages.

I'm here speaking for some of my neighbors.

We've written this agency, and I ask you to read our letters. We have related reasons for our opposition, but I would ask you to consider the following.

There's three points: First, the portion of the Palestine Lofts Project to be built in the South Side will not fit the character or nature of this district. The scale of the development will be out of keeping and placement with the historic structures in the District. The effects on traffic flow alone will be significant.

Second, the statements in the developer's application and a third-party report are inaccurate, misleading, or do not reflect the true nature of the South Side Historic District, including misstating the age of our houses.

And finally, the City of Palestine officials have provided inaccurate or misleading information to prevent residents from registering significant opposition.

As a result, I do not believe this project has received scrutiny by the citizens of Palestine, and I believe that officials who should be charged with protecting our neighbors and our neighborhoods from unwanted development, have instead worked to bring that development to us with no concern for what we think or want.

This includes how a newly-created neighborhood

association has been used in this process. My house is less than two blocks from the proposed apartment complex, but 100 years ago, my house was owned by United States Congressman Alexander White Gregg. His best-known accomplishment was writing the legislation for the seawall in Galveston, something that has helped protect Galveston for a century.

I ask you to help the residents of my neighborhood, who are working to restore and save architectural treasures of Palestine, to protect it from inappropriate and poorly-considered development by denying the developer its housing tax credits that are being requested.

I instead encourage you to award these important credits to projects that are more fully appropriate for their towns and for their citizens. And I thank you for your time.

MR. CONINE: Any questions of the witness?

MR. GERBER: Mr. Chair?

MR. CONINE: Yes, sir.

MR. GERBER: If Mr. Ford would be good enough to provide me with the specific list of misrepresentations in the application, although the Department's challenge period has passed, I will be glad to review them. But I

will need them by close of business tomorrow.

MR. FORD: Well --

MR. GERBER: -- just the specific items that you say that the developer and -- has misrepresented in the application.

MR. FORD: -- I've already done that.

MR. GERBER: Okay.

MR. FORD: And attached to them is a binder that was attached to my letter that was sent two weeks ago.

MR. GERBER: Okay, great --

MR. FORD: Okay?

MR. GERBER: -- I'll be sure to take a look at it. Thank you very much.

MR. FORD: Thank you, sir.

MR. CONINE: Tanya Wharton.

MS. WHARTON: Good morning, Mr. Chairman, and Board members. My name is Tanya Wharton. I'm the assistant to the project manager for the National Farm Worker Service Center. I represent the owner of Casa Alton, TDHCA member 07-302.

I will read three letters of support from Hidalgo County Commissioner Precinct 3, Hidalgo Urban County Program and the City of Alton. All parties could

not be here today with us.

The first letter comes from the County Commissioner of Precinct 3. "Dear Board Members -- Dear Board of Directors. I am writing this letter in support of the low-income housing tax credit new construction program, Casa Alton.

"This proposed development will be located in Hidalgo County Precinct 3, which is growing rapidly. While we are excited about this growth, it also creates a corresponding need for affordable housing. Casa Alton's 76 units will provide safe housing for numerous low-income families in the area.

"We understand that projects like these need subsidy funding in addition to their tax credit awards; but unfortunately, we are not in a position to be able to provide funding directly to the project.

"Although we wish we could provide financial support for projects such as these, there is a limit to the funds that we have available. Hidalgo County also has a number of colonias that require our support, along with an increasing need for infrastructure improvements.

"We appreciate the effort of both the National Farm Worker Service Center in trying to create affordable housing projects in Hidalgo County, and of the Texas

Department of Housing and Community Affairs. In your efforts to ensure that those projects can be built, we ask that you grant the request to amend the tax credit application for Casa Alton.

"Without the amendment, the project will not be financially feasible, and the families that will potentially live in that development will have to wait even longer for safe, affordable homes.

"Thank you for your consideration and your continued service. Commissioner Joe Flores, Hidalgo County Precinct 3."

The next letter comes from the Urban County Program. "Dear Board of Directors. I am writing this letter as a demonstration of Hidalgo County Urban County Programs' support for Casa Alton, the proposed new construction development at Alton, Texas, that will provide housing for low-income families in the area.

"As you are aware, there is a growing need for safe, affordable housing in the Rio Grande Valley, and projects like these are responding to that need.

Hidalgo -- "

(Sound of electronic tone.)

MS. WHARTON: Can I continue?

MR. CONINE: Quickly.

MS. WHARTON: Okay. "Hidalgo County Urban County Program has given financial support to a similar project in Edcouch, Texas, which is another low-income housing tax credit project owned and operated by the National Farm Workers Service Center.

"While we are able to buy a home loan to the project at Edcouch, we are unfortunately not in a position to do the same for Casa Alton. However, we are familiar with the work of National Farm Worker Service Center, and hope to see them continue to provide housing to the families of Hidalgo County.

"We ask that you help us in our effort to provide much-needed housing in the area by granting the request to amend the request for Casa Alton. Thank you for your time and support," and this is Diana R. Serna. She's the director of Urban County Program.

I do have an additional letter from the City of Alton in support of Casa Alton also.

MR. CONINE: Be glad to submit it for the record --

MS. WHARTON: Okay.

MR. CONINE: Thank you, Ms. Wharton.

MS. WHARTON: You're welcome.

MR. CONINE: Any questions of the witness?

(No response.)

REPRESENTATIVE MENENDEZ: Well, I'm not certain whether the witness can answer this --

MR. CONINE: Could I ask you to use the microphone and punch the button right there? There you go.

REPRESENTATIVE MENENDEZ: I'm not certain whether you're in a position to answer this, but from my -- the facts that I've been presented with on the case, you're asking for extension and significant change in the rent structure that was originally proposed.

Which according to staff would have resulted in -- is that the right one? Casa Alton?

MS. WHARTON: Yes.

REPRESENTATIVE MENENDEZ: That would have resulted in lower points assigned to the original proposal?

MS. WHARTON: She's --

MS. COBURN: I can [inaudible] if that's --

MS. WHARTON: -- Jean Coburn is going to answer that, she's --

REPRESENTATIVE MENENDEZ: What would have been the outcome, with those points having been lowered?

MR. CONINE: Why don't we wait until we get to

the agenda item to hit that particular comment --

REPRESENTATIVE MENENDEZ: Okay.

MR. CONINE: -- and if you'll just hang around, if you want to redirect the question to you, that would be great.

REPRESENTATIVE MENENDEZ: I'll ask the question again.

MS. WHARTON: She --

MS. COBURN: Sure. That -- you are speaking of the same amendment request. I guess we did -- we are requesting --

MR. CONINE: Will you identify yourself for the record?

MS. COBURN: Oh, I'm sorry. I'm Jean Coburn --

MR. CONINE: Okay.

MS. COBURN: -- representing National Farm Worker Service Center.

REPRESENTATIVE MENENDEZ: I'll tell you what. I'll ask the question again --

MS. COBURN: Okay.

REPRESENTATIVE MENENDEZ: -- later on in the agenda.

MS. COBURN: Great.

REPRESENTATIVE MENENDEZ: To give you an

opportunity --

MS. COBURN: Yes, sir. Thank you.

REPRESENTATIVE MENENDEZ: Thank you.

MR. CONINE: In the spirit of a head's up warning, the Tyler group is -- I've got five witness affirmation forms here, none of them are signing off to the other people, and under our new public speaking policy you're only allowed three. So, you might decide what you want to do before I get to you here in a few minutes.

Mike Lankford.

MR. LANKFORD: I'm not with the Tyler group.

MR. CONINE: I know you're not. But you wanted to speak on something else, didn't you?

MR. LANKFORD: Yes, sir, I did.

MR. CONINE: Come on up; because I'm not calling the Tyler group up yet. I just wanted them to get together to get five down to three. You know how that goes.

MR. LANKFORD: Chairman Conine and members of the Board, my name is Michael Lankford, from Houston, Texas. And actually I'm not exactly sure as to whether this is requesting a point of order.

But it regards the challenges regarding applications that was presented in the workshop

application back last fall.

It was a new -- in the Power Point presentation, it was a new document, and there was a date of June 15 assigned to the deadline to make challenges for the appeals or other applications.

And knowing that the Board had a number of requests for appeals and the complexity of the appeals, I would request that that date be moved, in that there are, in my case, an application that was negatively affected based on information that was not known to myself until the Board Book came out last Thursday, the 19th.

So there was actually information that I would have acted on earlier if I had known that. So technically under the way the application reads today, I would be past the June 15 date; and what I would request is that I have -- or any application that was negatively affected by appeal being granted to a different -- to another or competing application, have until the next Board meeting, or seven days prior to the next Board meeting, to support their challenge, which I think would be July 14, seven days before the July 21 Board meeting.

MR. CONINE: Okay. We do have some challenges on the agenda today. Is that correct?

VOICE: Yes, sir.

MR. CONINE: And would staff like to respond to Mr. Lankford's issue?

MR. GERBER: I'll [inaudible].

MR. CONINE: Or I'd like for staff to respond to Mr. Lankford's --

VOICE: Certainly.

MR. HAMBY: It takes two of us to respond to this, Mr. Chairman.

MR. CONINE: In your case, I understand why.

MR. HAMBY: Yes, thank you. I'm here being your conscience reminding you what you're supposed to do; no, it's a --

Today, on the agenda, the challenges that come before you: Two years ago we note we took out the Board interaction with the challenges, and the challenges that are before you today are for information purposes only.

You rewrote the rules, I believe it was two years ago, to have the challenges be resolved by staff, and if they disagree, then it's an appeal point on a particular item; although I'll also remind you that other applicants are not allowed to appeal applications of another party.

And so the challenge process was created to do that. In our public hearings last year we had a large

call to do several things with challenges, but one of those was to provide a date certain in which we would finish the challenge process. And that was publicly discussed in our rules last year, and it was made very obvious, and so it is something that this Board and the public at large was aware of.

MS. BOSTON: Brooke Boston. And I would just note that the reason for the deadline for the challenges is so that the degree that the challenges do have an impact on scores are able to account for that. So if the Board does choose to consider this, the date proposed is probably a little too tight, because that's the day the Book actually goes up, which would make it nearly impossible for us to do anything with it, so.

And the information is also available on the website the whole time.

MR. CONINE: That was going to be my next question, is how did Mr. Lankford -- I guess you don't know, because you don't know what he found. But has there been any information that's been recent, after -- when this Board Book went up, that wouldn't have been available before June 15. Because that's what he said there was, and the question is, is there or isn't there.

MS. MEYER: I guess it takes three of us to

answer this question.

(Laughter.)

MR. CONINE: Please identify yourself for the record.

MS. MEYER: Robbye Meyer, Director of Multi-Family. The challenges were posted with the Board materials, and that's probably what he's referring to, is that's when he saw the first reference to that law again. It's in your -- a copy of that log is in your Board materials.

MR. CONINE: Any other questions of staff while we got them here.

MR. FLORES: Yes.

MR. CONINE: Mr. Flores.

MR. FLORES: You said the key word there, Brooke, you said, too tight a time limit. It seems like they need a relief to defend themselves before we get to this Board meeting, because somebody's poisoning the well, and he deserves a -- or he and all, deserve I think the time to respond, at least to defend themselves.

So how do we fix it, is the answer to the question.

MS. BOSTON: I think potentially July 7, which would be 14 days before the Board meeting, and therefore

it's seven days before the Book goes up, that still gives time for them to have a dialogue with us, would be much more reasonable.

MR. FLORES: Well, we need to fix it obviously, but that's my request.

MS. BOSTON: Okay. And because that deadline is in the QAP --

MR. FLORES: Yes --

MS. BOSTON: -- you all will need to -- I guess there will need to be a formal action, because that's a rule that you're awaiting. Right?

MR. HAMBY: Actually, we probably would have a deadline problem, because it is a form of rule. There is no process for a challenge to come before this Board. So it had to be in terms of an appeal, or else we'd have to do a rule amendment, and of course since it's a QAP with a rule amendment, we have to get the Governor's blessing to do that as well, and we'd have to post that in the *Texas Register* and have a public hearing on the subject.

MR. FLORES: Well, we can't fix it today, or perhaps this round, but we can for the future.

MR. HAMBY: Well, you certainly can for the future, but Ms. Boston just asked if you can't waive the rule; the reason you can't waive the rule is because

there's no provision for a challenge to come before you. And so you have to have something on your agenda before you, so you can waive it.

You can't just --

MR. CONINE: But I'm still not comfortable -- excuse me, Mr. Flores, but I'm still not comfortable with a date being picked, you know, back, yonder, and we've obviously got a situation here that would be a -- something we just didn't see that would be in conflict with an open and transparent process for the community at large.

So I would suggest you get your heads together and let's see if there's another way to fix it, or if there's any way possible. Rather than trying to do this on the fly, we might think about it and come back to this issue when we get to the challenge.

DR. KELLER: Okay --

MR. FLORES: There's two problems here. One is, how do we fix this one --

MR. CONINE: Right.

MR. FLORES: -- versus between, how do we fix it permanently?

MR. CONINE: Right.

MR. FLORES: And so, I don't know how we fix it

right now, but in the future, when we get back to the rules the next year I want to formally ask you to fix it.

MR. CONINE: Right.

MR. GERBER: We'll do that. Mr. Chairman, if I could just --

MR. CONINE: Sure.

MR. GERBER: -- accept your suggestion. Why don't we hold off on this and let staff work on this for just a little bit and we'll come back to the Board at an appropriate point.

MR. CONINE: Is that okay with you, Mr. Lankford?

MR. LANKFORD: The 7th is fine. I just -- today is day is not much of --

MR. CONINE: Okay.

MR. LANKFORD: -- the opportunity to present my side of the case.

MR. GERBER: Obviously, other issues that are attendant with this. Give staff a couple of hours and we'll get back --

MR. LANKFORD: I appreciate it.

MR. GERBER: Thank you.

MR. CONINE: Thanks for pointing that out.

Mike Harms.

MR. HARMS: I'd like to move to 6(d) if I could.

MR. CONINE: 6(b).

MR. HARMS: (d), as in --

MR. CONINE: (d), as in dog?

MR. HARMS: As in dog.

MR. CONINE: Very well, we will move you to there.

(Pause.)

MR. CONINE: Okay. Tyler group, Mayor Barbara Bass.

MAYOR BASS: Good morning.

MR. CONINE: Good morning, how are you?

MAYOR BASS: Fine. How are you?

MR. CONINE: Great. Let me just ask you before you get started, because of the public comment policy we have, people can yield time to you, and you can gain up to five minutes each for three people. Or --

MAYOR BASS: We've got three total that will --

MR. CONINE: Three total that are going to speak.

MAYOR BASS: Yes.

MR. CONINE: Okay.

MAYOR BASS: Good morning, Mr. Chairman and

members of the Board. I'm Barbara Bass, Mayor of the City of Tyler. I'm here on behalf of TDHCA 08-262. That is the Lakeview Apartment Homes; it is in a development called North Chase Development.

Tyler is the largest city, as many of you know, in East Texas. We are in a regional market; we've had a tremendous amount of growth over the last few years. We have a retail area of over 600,000; our daily population expands from our census of 85,000 to about 270,000. We are a medical, retail and commercial enterprise region for the area.

Over the years, Tyler has moved south, and the needs of our community in the north are not being served.

In the year 2000 we were designated as a retirement community, and as late as two years ago, we were re-certified as a retirement community. Our population is somewhat older than the State of Texas, with over 15 percent of the population 65 and older.

Our certification as a retirement community includes getting certified in assessment of housing, employment, emergency medical services, education, recreation, taxes, safety, and many other criteria, and that information is in your packet.

Within the last year, we completed a strategic

initiative within our community, and identified areas where we were being under-served in affordable housing. There's a chapter in your packet called the North End Revitalization; that is a particular area that we're looking at revitalizing.

The City of Tyler, both the Council and our neighbors, are very excited about this new project in North Tyler. As you will see in the Tyler 21 Project, the north end, we have had limited growth and even decline in our growth in those areas, and we need more additional households in the north end, particularly in the affordable housing area.

We are very interested in housing for people who are retired, and older people. We have had no major developments in this area for over 30 years. So you can see the excitement.

There is a letter in your packet from Comfort Keepers. In that particular letter, we are asking that this committee consider Comfort Keepers, a community or civic organization that demonstrates community support, other than quantifiable community participation, which will warrant our project two additional points, from my understanding.

We contend that Comfort Keepers is a business

that qualifies as a community support organization under Section 50.9(I)(18) as a community partner, and would like your consideration on that.

The Council and the City of Tyler as I said are very excited about this project; we are excited about the potential of growth in North Tyler. Our studies show that we need over 3,000 new homes in that area to make that part of the community viable; we have approximately 7,000 at this point, and they're telling us 10,000 rooftops.

We'll have this with the growth of that area, and we think affordable housing in that area is one of the things that we need to look at first.

So your consideration of this project, and the points that are needed is most appreciated. Thank you. And we'll have several other speakers that get more into the detail.

MR. CONINE: Thank you Mayor Bass. Any questions?

(No response.)

MR. CONINE: Next is Ed Thompson, is who I have written down here.

MAYOR BASS: Bob Priestner.

MR. CONINE: Oh, okay --

MR. PRIESTNER: Bob Priestner. I'll be the

next one. Thank you, Mr. Chairman and Board members.

What I just want to briefly talk about -- I'm here on behalf of TDHCA Application 08-262. And what I want to just briefly talk about is really how a lot of development occurs around -- and nothing happens in a vacuum.

And it's important to look at how these developments impact the adjacent property, as you've heard from speakers so far today.

As Mayor alluded to, Tyler spent about two years developing a comprehensive plan. A lot of time went into it, and a ton of community input and support. And this is a direct result of that Tyler 21 process. In your packet you'll see a map of the North End Revitalization Plan. Bob Garrett, whom I think some of you I think have gotten to work with, was instrumental in the development of the North End Revitalization Plan.

This project is specifically identified in that map. It's a mixed-use development on the north side known as North Chase. It's important to look at, when you look at the development of the plant itself, while we're looking at just the elderly tax credit project, it's part of an overall development. This development is developed around trails, green space that connects to existing city

parks, recreation centers; we have Trinity Mother Frances Health Clinic; Boys and Girls Club; we've got two elementary schools. First Tee program is going on the southern end of the project.

It's part of a truly master planned community.

And those of you who have been in development understand that a sustainable community provides housing types for all levels of income, and all age groups.

Not only is this project part of a bigger picture, but we've designed it specifically into the overall picture. The need for elderly housing and affordable housing goes way back. Not only is it identified in Tyler 21, but in your package too, you'll see a map that shows all of the tax credit projects that have been approved in Tyler since 1988.

What you'll see in there is that the red dot indicates the only other elderly tax credit project that has been constructed in Tyler. And it was done back in 1995, so it's been 13 years, and it's across town; the green dot represents our proposed project.

So there's truly a need up in this area. Additionally, the East Texas area had a lot of the effect of the Rita and Katrina. We've got 42 families right now, plus 38 additional disaster housing assistance families

who were not voucher holders in Louisiana, but are now being assisted by HUD.

Not only that, but we've got 1208 applicants right now in the Tyler area who are on the active voucher waiting list. So the need for this type of housing, affordable and elderly, is tremendous in this area.

The other thing I want to point out is, this is an opportunity for public-private partnership. This satisfies the IRS Section 42 opportunity because of the combination of the city and the developer going together, and providing this type of development.

This also gives TDHCA a great opportunity to leverage housing tax credits, not just for the elderly housing or tax credit housing that we're looking at, but also in helping promote and develop the Tyler 21 vision, which again we spent two years developing.

This benefits more than just the elderly residents who are going to live here, but the entire community. It's important to point out also when we look at the area where projects have been developed, that most of these have been stand-alone projects. And this project that we're proposing is truly part of a master planned community, and it's designed into and an integral part of the overall development.

So in closing I just want to sum up; it's a result of Tyler 21, a long process, a lot of community support. There's a tremendous need for elderly housing in this area; it gives us public-private partnership, and the entire community is 100 percent behind the project. Thank you for your time.

MR. CONINE: Thank you, Mr. Priestner.

COUNCILMAN CARAWAY: Good morning, Mr. Chairman, Board. I'm Ralph Caraway, City Councilman, City of Tyler. And I'm here to speak on TDHCA 08-262. As the Mayor and Mark have already stated, the importance of this development in the area of our city is much needed as a catalyst for change.

I represent that area, and it's an area that is -- the location is perfect; it's close to downtown; we have transportation through our city transit that really helps that area.

Some of the things that we have in that area that are so vast to that housing project is, we have a First Tee golf course, we have recreation centers, we have Boys and Girls Club, we have Walking Club. But the thing that is missing the most is the housing.

Mark showed you a map a few minutes ago, the distance between the city of 85,000, and the affordable

housing for the elderly is something that we really suffer from. Not only serving as City Councilman, I also serve as a pastor in this city, and I understand the needs of affordable housing in our city.

One of the things that Tyler does have, we have several housing facilities, we have one for medical facilities, but what we'd really like is affordable housing for our seniors. And a study's been done by O'Connor & Associates that shows that this is a vast and very desperate need if we're going to develop that area.

The Mayor alluded to earlier, it has been over 30 years since any project of this sort has been done in the north end of Tyler. Planning and Zoning have already approved this program, so we're happy about that; but we're also happy about the City's commitment, over \$700,000 has been firmly committed by the City towards this project.

We compared this project to other projects around the state. The City of Killeen has three developments by this developer, all of which are 100 percent occupied by the City, and we believe and we know for a fact that this will work in our city, and we've come to make our appeal.

And in your packages, there are some

references, the color pictures of the one that was done in Killeen, that we are using as our scale model. And so we thank you for your consideration, and we appreciate this opportunity to come and share with you today. Are there any questions.

MR. CONINE: Any questions of Councilman Caraway?

(No response.)

COUNCILMAN CARAWAY: Thank you for your time.

MR. CONINE: Thank you for your time; appreciate you being here.

Wilbert Austin?

(No response.)

MR. CONINE: He's not here? Okay, Charles Edwards.

MR. EDWARDS: Thank you, Mr. Chairman and members of the Board. My name is Charles Edwards, and I'm here to speak on behalf of the City of Bonham, Mayor Roy Floyd and City Manager Corby Alexander in reference to Agenda Item Number 6(h), which is an extension request for Contract Number 1000487.

The City of Bonham has successfully completed one HBA contract, and this is the second; there are approximately 9900 residents in the City of Bonham. The

City is requesting an extension on this contract in order to assist a low-income family.

This household consists of five individuals, three of which are children, utilizing an American Dream Down Payment Initiative is the only option that this family that this family as to owning a home.

The closing on the home has exceeded the contract end due date, due to the City awaiting a response from HUD regarding a conflict of interest. We feel that HUD will favor allowing the household to be assisted, and once this household has been assisted, the City will close this project.

I would like to thank you for your time, and hope the Board will recommend approval for this contract amendment.

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

(No response.)

MR. CONINE: Thank you.

MR. EDWARDS: Thank you.

MR. CONINE: Cynthia Bast.

MS. BAST: Good morning.

MR. CONINE: Good morning.

MS. BAST: I'm Cynthia Bast of Locke, Lord,

Bissell & Liddell, and as some of you know, I have represented Investment Builders of El Paso and its principal Ike Monty for about 13 years.

Mr. Monty would have liked to have been here today but had a pressing family situation, so he asked that I give you some brief comments on his behalf.

He wanted to bring to your attention the Desert Villas tax credit application for 94 family units in El Paso. This is an older part of El Paso, near the intersection of Alameda and Coronado, where there has not been much new, affordable development recently.

Again as you know Investment Builders has an excellent track record with its performance and its developments that it has done with the tax credit program.

The two most recent tax credit awards that Investment Builders have received have waiting lists, collectively of almost 2,000 people.

And that goes to the issue. There is clearly a need for additional affordable housing in El Paso, and traditionally El Paso does not have a particularly large allocation of tax credits available. With only about a million dollars available this year, based on current scoring, it is possible that that allocation may be used up with only one project being awarded.

So if this Board does decide to reach further to assist El Paso, we hope that the Desert Villas property will be on your mind as you make those tax credit awards.

Thank you.

MR. CONINE: Thank you, Ms. Bast. Any questions?

(No response.)

MR. CONINE: Guess not. Barry Kahn.

MR. KAHN: Good morning, everyone. My name is Barry Kahn. I'm a developer from Houston, Texas. I also serve on various state, federal housing groups, and -- in various capacities.

I'd like to address something that's an imploding problem for all of us, that's -- we're going to have to work through and that is, utilities.

Unfortunately, this is an issue that's come to light in the last six to nine months with escalating oil and gas prices, which in turn is going to result in significantly larger utility allowances when we are faced with resets during the upcoming year.

I will acknowledge that staff has been very good on trying to come up with different solutions, but we're going to have to go a lot further. With utility increases going up anywhere from 30 to 50 percent, and the

problem we've been facing the last five years with flat rents and no assurance of getting any increases in rents, and with ongoing increased operating expenses, there's going to be a breaking point with a lot of projects.

We're all here to create and develop new, affordable housing; it's tremendously needed in the State of Texas, all of us work very hard.

Unfortunately, older properties are going to be facing the problem in the most severe manner. And I can't say working on various committees, talking to -- whether it's Congressional people, state legislators, people with the public utility companies, here in the State of Texas, that there's any real good solutions that are quick.

But as John Henneberger brought up, you know, that he was thankful that money is being provided with the Housing Trust Fund for new developments, the reality is, this money is going to be needed to preserve existing affordable housing.

Otherwise, many of these projects are going to be caught in a squeeze, particularly the older ones where the syndicators don't have much at stake, and the credits have run a significant portion of their course, there's going to be a point in time when they're unwilling to support the negatives that currently exist.

There's a lot of properties that are going back to investors. And unfortunately, there's probably going to be a lot more as these utility allowances are passed through. And there's, as I say there aren't any good solutions; we're all going to need to work together; I don't know if it's appropriate that there's a task force.

Texas, unfortunately is in one of the worst positions, because of the deregulated utilities. Most other states don't have this, and so their problem isn't becoming as much of a crisis in certain circumstances or certain instances as it is here in Texas.

And since it is a Texas problem, we're going to have to find some Texas solutions. And I volunteer my time, but -- and I'm sure there are several others, I know, who are active developers, been in this business for over 12 years and who are willing to also work, and make this work, or at least try to work.

Because what we don't want to lose is our affordable housing stock, and I'm happy to answer any questions.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you, Mr. Kahn.

MR. KAHN: Thank you.

MR. CONINE: I apologize for missing Mayor Carolyn Saltar when the Palestine issue was up; you're welcome to come forward, Madam Mayor.

MAYOR SALTAR: Good morning, Chairman, members of the Board, Mr. Gerber. I'm Carolyn Saltar, I am the Mayor of Palestine, Texas, a town of about 17,000, about 45 miles south of Tyler in between Dallas and Houston.

I appreciate your service on the Board and I realize the difficulties you sometimes have balancing personal interests with the well-being of the general public.

I'm here to speak in favor of Project Number 08-185, which is the Historic Lofts of Palestine. I approached the Landmark Group, who is presenting this project for tax credits, two years ago. We have a blighted downtown, and we recently became a main street city, a National Main Street City, in hopes of revitalizing our downtown.

We've been told by several economic development consultants that one of the key issues in bringing better jobs and better employers to our city is to improve the appearance of our downtown, and bring businesses into our downtown.

The Landmark Group has selected three buildings

to rehab, and I asked for them specifically because I'd heard their presentations at national conferences. They had an excellent reputation with the Texas Historic Commission and with the communities that they serve, with having excellent clientele in their rental properties.

And they have very good relationships with their downstairs renters, which are almost all retail businesses.

They also as a part of the package need to locate an apartment building which will be about two blocks, within walking distance, a sustainable distance for them to shop in our downtown, as well as three blocks from our local Kroger, so that the people who live in that housing can access our downtown, support it, and go to Kroger without even using a car, which is one of the models I think we're going to have to use in the future.

Our town is predominantly blue collar; we have five prisons that are the major employers in the county, and two Wal-Mart distribution centers. So most of the people in town will actually qualify for these rents; they're also talking about the people who do clerical help for me in my office; I am a physician.

So a good starting salary in Palestine is \$10 to \$12 an hour. We have a lot of senior residents on

fixed incomes, and a lot of single-family folks, and we have a very large Hispanic and Black community; we have a very mixed population in Palestine, and predominantly a lower educational level.

So this is the sort of thing that we absolutely need, and I wanted to ask you to please support forward tax credits for this project. I believe that the problem with the apartment building in the South Side Historic District has been somewhat overstated by a prior speaker; that apartment building is across the street from the Union Pacific Railyard; 25 feet from it, and there is an apartment complex on the south that's the same site; a funeral home and a bank on the north; and a bed and breakfast and an antique store on the east.

So it is in the middle of a commercial district; there's already a well-established precedent for apartment living, and also many rental properties in that community.

I really would implore you to give these forward tax credits to our community; you've supported it before with other affordable housing, and I'm sorry I overstepped my time. Do you have any questions?

MR. CONINE: Any questions for the Mayor?

(No response.)

MAYOR SALTAR: Thank you very much.

MR. CONINE: Thank you for being here, sorry I kept you waiting so long.

MAYOR SALTAR: No problem.

MR. CONINE: I'll try Councilman Wilbert Austin one more time?

COUNCILMAN AUSTIN: I'm here, sir.

MR. CONINE: There you are.

COUNCILMAN AUSTIN: To the officers of this Committee here, my name is Wilbert Austin, I'm City Councilman of District 1 in Waco, Texas. I think I have one of the largest districts, areas in the City of Waco.

We asked -- we are here to support 08-280, Costa Maria. It's so hard down in our area where we have a lot of Hispanics, and they've gone down, and we have a few houses built by Habitat, and Neighbor Works.

But the apartments that they have proposed to build for us down there, it would be a great deal for us.

It's a library on one side, a family practice on the other, right in front of where they're going to build those apartments.

And the Oakwood Neighborhood Association do support it; the City of Waco do support it; Mr. Jeff Wall would have been here today; he's director of housing, but

he had another commitment. and the McLennan County Commissioners support this effort.

And we are just saying to this Committee, that we would love for you all to take under consideration this apartment complex that they are proposing to build for us, as it will have a tutoring room, a game room, after the kids get their tutoring; the library, brand-new library is right across the street from it; they're going to have security, all these things.

And I know how important it is to move out of substantial housing to a house that is comfortable. I came up down the street from where they're proposing to make that, some 50 years ago, and it was a terrible place to live, but it was the only place we had to live at that time.

So we know that kid, that person who have these old people that live down there, that have substantial housing to live in, so we would just urge you to, if you would, to give us the credits that we need to get this apartment complex built on this site. So if you have any questions.

MR. CONINE: Any questions, Ms. Ray?

MS. RAY: The question that I had is --

MR. CONINE: Would you mind hitting your

microphone button, Ms. Ray, thank you.

MS. RAY: I apologize, Mr. Chairman.

What project are we talking about, here?

COUNCILMAN AUSTIN: 08-280. Costa Maria --

MS. RAY: Got it, thank you.

COUNCILMAN AUSTIN: Yes, ma'am.

MR. CONINE: 08-280, Costa Esmeralda.

COUNCILMAN AUSTIN: Okay, you got it. Thank  
you.

(Laughter.)

MR. CONINE: Something like that. Thank you  
for being here.

Okay, that's all of the witness affirmation  
forms I have for just the general comment period; I have  
obviously several still left for each individual item. Is  
there anyone left out there that wants to speak in the  
general comment section before I close public comment?

(No response.)

MR. CONINE: Good, we got them all. Okay,  
closing public comment. Moving to the Consent Agenda,  
Items 1(a) through (m) -- no, wait a minute; it goes  
further than that. Items a) through r). Do I hear a  
motion on the Consent Agenda?

MS. RAY: So move.

MR. FLORES: Mr. Chairman --

MR. CONINE: There's a motion to my left, and there's either -- probably a question to my right.

MR. FLORES: Yes. The status of the TDHCA Fraud Line --

MR. CONINE: Wait a minute. Which --

MR. FLORES: Well, I --

MR. CONINE: -- is that Item j)? Would you like to pull Item j) off the -- would you like to pull Item j) off the --

MR. FLORES: Yes, I'll just pull it out of there and we'll discuss it later.

MR. CONINE: All right. There's a motion to -- well, there's a request to pull Item j). Any other requests from the Board?

(No response.)

MR. CONINE: I have a motion to approve from Ms. Ray. Do I have second?

MR. FLORES: Second.

MR. CONINE: Second to approve, on Items 1 through r) except for pulling Item j) off. Any discussion of that motion?

(No response.)

MR. CONINE: Seeing none, all those in favor

signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Going to Item I j), Mr. Gerber.

MR. GERBER: Ms. Donoho, why don't you come forward and give an update on the status of --

MR. FLORES: It's actually more of a legal question.

MR. GERBER: Okay.

MR. FLORES: So it's actually Kevin rather than Sandy. Thank you, Sandy.

Council, the fraud line is an 800 number that anyone can call, and the way I understand it is, those calls are subject to the Freedom of Information Act, and I just want you to tell me if I've got that right or not.

MR. HAMBY: The calls would be subject to the Freedom of -- or it's actually the Texas Public Information Act, the state law on the matter. There are some exceptions; if they qualified for the exceptions, they would not be open to disclosure.

Some of those could be, an internal audit investigation, if it becomes part of an internal audit

review, or an investigation that may not be subject to disclosure.

But all of the materials that the Agency receives are subject to the Texas Public Information Act, unless they meet one of the exceptions.

MR. FLORES: And part of that would be, the phone number that the call comes from, I assume. Is that correct?

MR. HAMBY: Well, there is a mechanism by which it can be an anonymous call, and so I would have to actually get a ruling from the Attorney General on that. I don't know if that would be an exception or not.

MR. FLORES: Well, as soon as you reveal where the number comes from, obviously, you know, it could reveal the person that's making that call; and the whole idea is to make it anonymous.

How much trouble is it to get an Attorney General ruling on such a thing?

MR. HAMBY: Well, it would be a public information request, and so we'd submit a request to the Office of Public Information Rulings for the Attorney General's office, and normally it takes 60 to 90 days to get a public information ruling.

MR. FLORES: Well, I would like to make the

request that we do request a ruling from the Attorney General, and then -- on that one item, regarding the telephone numbers.

MR. HAMBY: Okay.

MR. FLORES: If indeed we have to reveal them as such, I would prefer we did not, obviously. That's a state law that's something we have to comply with.

MR. HAMBY: I will verify before we do the actual request that there's not already a ruling out there; I'm sorry I just don't know the answer to that.

MR. FLORES: Well, that will get me --

MR. HAMBY: If not, Mr. Gerber or Mr. Conine would have to make that request.

MR. FLORES: Okay, thank you.

MR. CONINE: No other pertinent information or comments?

MR. HAMBY: No, it was -- we don't actually receive the numbers, but because we would be paying for the information at the time, it becomes part of the public information request, and it would have to be included in the contract that extensions would be there.

MR. CONINE: Okay. So we're going to leave it where they're going to get us that information?

MR. FLORES: Yes. And if indeed you have to

make that request, Mr. Chairman, please do so. But it depends, it may be that it's already --

MR. CONINE: I'll take care of it on that one; I'll take care of you on that one.

MR. HAMBY: When I'm clarifying, are we delaying the implementation, or are we just determining the question?

MR. FLORES: No, I'm not delaying the implementation, I'm just -- want you to get that clarified for me, for the Board.

MR. HAMBY: Will do, sir.

MR. CONINE: Any other questions on Item 1 j)?

(No response.)

MR. CONINE: I see Item 1 j) is a "no action required" on this sheet; do we need to go ahead and pass it, pass any kind of resolution on 1 j) at this point?

MR. HAMBY: This particular group of items is an acceptance of the Audit Committee's meeting; so you do need to go ahead and accept it.

MR. CONINE: Do I hear a motion --

MR. FLORES: I so move.

MS. BINGHAM-ESCARANO: Second.

MR. CONINE: There's a motion and a second to approve Item 1 j). Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Moving on to the Action Items, Item 2: Possible Appointment by the Chairman of the Board, Committee. Most of you heard this morning, if you were in the Audit Committee you heard some discussion about the internal audit of our Community Affairs Division, and Mr. Gerber spoke during the public comment period about our focus on some of our community affairs items.

I'd like to ask Dr. Juan Munoz to chair a task force of the Board, to be responsible for some of the community affairs oversight, with staff, and ask Mr. Tom Cardenas to serve with him on that task force.

If you two guys would take on that task, and provide a direct liaison to both staff and internal audit, relative to the community affairs and report back when necessary on your findings, and help Executive Director Gerber bring that department to better focus and more light, and I think that would be a good thing for these

two Board members to work on.

So would you guys take that challenge on? I appreciate you doing that.

Okay, Item 3, Legal Division. Mr. Hamby.

MR. HAMBY: Mr. Chairman, members of the Board. This is an item of what in the legal world we call, first impression, not only in the State of Texas but we believe, in the country.

One of our properties that we had funded with lower income tax credits ended up getting a Form 8823 for failure to use the utility -- they overcharged the rents because of the utility allowance problem.

And with that, then they would lose their credits, and their legal team and others and the owner itself worked with the IRS, and may have come up with a settlement agreement to reinstate those credits.

However, one of the terms is that the State actually agree that we want those credits reinstated; and so this matter was something we haven't done before, and so it comes to the Board to have a discussion about whether you want to do it at all, or whether you want to impose penalties or anything else.

MR. CONINE: Okay. Any discussion amongst the Board?

MS. RAY: Mr. Chairman?

MR. CONINE: Ms. Ray?

MS. RAY: If you don't mind me asking a question --

MR. CONINE: Yes, go right ahead.

MS. RAY: -- Mr. Hamby, which agenda item was this particular discussion about?

MR. HAMBY: This particular discussion?

MS. RAY: Yes. Because we had an agenda item in the Board materials concerning that particular issue, about the utility allowance; it was quite lengthy. Did you have a particular agenda item on that one?

MR. HAMBY: Yes. This is actually Agenda Item 3 a), and it's the Gardens of Gladewater that has requested this letter from the State of Texas. And what we've ended up doing is, saying that we would, if the Board approved, the staff believes it was a mistake, and there was no intention to overcharge the rents.

As Mr. Kahn recently said, utility allowances are very confusing; we have been working as much as we can to ease that problem. It's not actually a Texas problem, it's a HUD problem, and an IRS problem that we have limited control over what we can do.

This is one of the things that this particular

owner actually did work with the IRS; we have been told, and the IRS has actually said, Does the State support this reinstatement.

And again, it's a matter that we have not done before, so it clearly falls into the Board policy arena to say, We believe that we should or should not ask for the reinstatement of these.

The arguments of course in favor of it are, we would hopefully be able to maintain the affordability if the IRS reinstated; the arguments against of course is, they didn't meet the rules that are laid out before them.

So we have difficulties in supporting people who don't actually follow the rules. The staff, the compliance staff has indicated they believe, in looking at it, this was an error --

MS. RAY: I got it, Mr. Hamby.

MR. HAMBY: Okay.

MS. RAY: And as I understand the staff recommendation on that particular item is that, approve the staff's recommendation, send a letter to the Internal Revenue Service providing support to reinstate the Gardens of Gladewater in the Housing Tax Credit program?

MR. CONINE: Yes, and I have some public comment we need to listen to.

MS. RAY: Okay.

MR. CONINE: Excuse me for missing that. Evan Haugh? You want to come with him, come on up. I have Evan Haugh, George Haugh, and Eric Ofiela, in no particular order.

MR. HAUGH: Thank you, Chairman Conine. This is a case in which I'm distributing the response that was given by the Gladewater Housing Authority when the request for the utility allowances was made.

This was an allocation in the first year of its operation, as all the properties do you make the request for the utility allowance. And what was given, as you can tell, is not exactly the standard HUD form. A lot of the rural housing authorities don't really comply with the HUD utility allowance regulations in what they give to us.

And as you can see, what they've provided to us was quite confusing. What was checked on this was, water, sewer, trash removal. But then, when the audit was done of the property, in 2007 after the first tax credit year had expired, TDHCA determined that this utility allowance for this property and for the property in Gladewater only included electricity, and not the water, sewer and that.

And as you can tell, we requested that from the housing authority, the information they gave us was at

best confusing; at worst erroneous. And we set the rents based upon what the housing authority gave us.

And immediately when the TDHCA had audited it, made the correction, and began just doing electricity as part of the utility allowance. So immediately we took action to correct it, and we're here to answer any questions you might have, and unfortunately since the audit didn't happen until after the end of the first year, the property is out of compliance during the entire time unless we reach an agreement with the IRS, and that's what we've done, subject to the TDHCA writing a letter of support for us.

And we of course -- since we believe it wasn't necessarily our fault, we would like to not have any penalty above and beyond what was assessed by the IRS, and so we ask for your consideration. If there's any questions, thank you.

MR. CONINE: Any further questions?

MS. BINGHAM-ESCARENO: Mr. Chair, I'd move staff's recommendation to send the letter of support for reinstatement.

MR. CONINE: Motion --

MR. FLORES: Second.

MR. CONINE: -- in favor with a second by Mr.

Flores. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. HAUGH: Thank you.

MR. CONINE: Thank you.

If the floor doesn't mind, I'm going to move to Item 8, Disaster Recovery Division items. Mr. Gerber or Ms. Crawford, either one.

MR. GERBER: Mr. Chair, thank you. Let me kick-start this if you would, and let me provide first of all an update on Round One of funding.

We'll try to treat this somewhat as Round One and Round Two. And so the order might -- well, there's only two items here, and we have our COG partners here as well, and they'll be speaking about an amendment to their plan, they're going to be each requesting -- each of them will be requesting an extension.

As you all know, our -- the movement of the \$40 million of Round One money, it's been a very, very

challenging process, but we are seeing tremendous progress being made by our partners through the Councils of Government; to date, 192 houses have been replaced and another 144 are under construction.

And the next item that you're going to see again on the agenda is a request to extend the two-year CDBG contract so that the assistance can continue for the full complement of 435 homes, which are all the COGs collectively have contracted with the Department to build or to repair or to replace.

DP's Texas Council of Governments has delivered 58 homes to homeowners, has 14 additional homes pending delivery, and has construction contracts in place for six rehabilitation projects that are going to be starting at the end of June.

Houston-Galveston Area Council has delivered 53 homes to homeowners; has four houses under construction, 14 that are under contract, and four homes that are pending delivery, and an additional 35 homes in various stages of the contracting process as of today.

And the Southeast Regional Texas Planning Commission has done tremendous work, delivery 77 homes to homeowners, four are under construction, 18 more homes are ready to begin construction as of today, and the Planning

Commission is working closely with its two subcontractors, the City of Beaumont, City of Port Arthur, to move them forward.

They've been a little bit -- they've had issues within those two communities, but the Regional Planning Commission has provided them a lot of technical assistance, and the City of Beaumont today has 41 houses that are either out for bid or under contract, and the City has 14 homes that are under construction and has replaced two houses so far.

And in Port Arthur, seven houses are out for bid, 18 construction contracts are signed, and construction is expected to begin on those in early July, 16 units are today under construction and two houses have been replaced so far.

The bottom line is that there is an awful lot of work to continue; it's been very challenging as we all know from the various requirements of the federal Department of Housing & Urban Development, and without wanting to belabor the point, staff strongly believes that both -- that all three of the Council of Governments are very much deserving of an extension to their contracts; we are proposing an extension until -- Kelly, what's?

MS. CRAWFORD: The end of the year, December

31.

MR. GERBER: -- December 31, and we've been assured by all three Councils of Government that they believe that they will be able to complete the full complement of 435 homes by that date.

MS. CRAWFORD: Yes, sir.

MR. GERBER: And so turning quickly first I guess to Item 8 b), we would ask the Board to approve an extension of those three contracts until the end of the year.

I know that the three COGs have representation here today, and I don't know if they would like to -- this would be an appropriate point, Mr. Chairman, to, if they would like to add something to the mix.

MR. CONINE: Well, I have John Moody, Don Atwell, Chuck Wimple, and Polly --

MR. GERBER: Well, that will actually be for Round --

MR. CONINE: Two.

MR. GERBER: -- for Round Two. But we have Shaun Davis from Southeast Texas Regional Planning Commission --

MR. CONINE: All right.

MR. GERBER: -- Chuck Wimple is here from

Houston-Galveston Area Council; Holly Anderson is here from DPS Texas Council of Governments, and I don't know if any one of you would like to speak, this would be an appropriate point, certainly.

MR. DAVIS: Mr. Chairman, Board. I don't think I have a witness affirmation form on file, but I'm Shaun Davis, from --

MR. CONINE: You can fill one out before you leave.

MR. DAVIS: I'll be happy to.

MR. CONINE: Thank you.

MR. DAVIS: Be happy to. I'm Shaun Davis, I'm the executive director of the Southeast Texas Regional Planning Commission. Just wanted to take a moment to ask your approval of this contract extension.

As you all know, we've worked very hard together; the Board, staff of TDHCA and the COGs to get to this point where we are now where we're finally -- we've got traction, rubber's meeting the road and we are heavily into construction, and we feel like there's just no question that we'll be able to, all three COGs, finish our contractual obligations by December 31, and would really appreciate your approval of that request. I'd be happy to take any questions you might have.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Do I hear -- anybody else that wants to speak? Kelly, you want to speak?

MS. CRAWFORD: Mr. Chairman --

MR. CONINE: Hang on, when you're ready --

MS. CRAWFORD: -- I'm sorry, but they're attached to that amendment request; there are also two other amendment issues to go along with two other of the COGs --

MR. CONINE: Okay.

MS. CRAWFORD: -- that are budgetary in nature; minor movement or --

MR. CONINE: Why don't you go ahead and make --

MS. CRAWFORD: -- reclassification.

MR. CONINE: Why don't you go ahead and make those presentations, and --

MS. CRAWFORD: Okay.

MR. CONINE: -- this pertains to 8 b), right?

MR. GERBER: Yes, sir.

MS. CRAWFORD: Okay.

MR. CONINE: Go ahead.

MS. CRAWFORD: Okay. In addition to the extension of the time request, HGAC is requesting

reallocation of funds from rehabilitation to reconstruction, and requesting an increase in the project delivery line item, by \$75,000, to support the activities that are going to be required for them to complete construction activities through December 31.

They've stated there will be no corresponding reduction in beneficiaries, and the regional planning commission is also requesting a reallocation of funds on behalf of their contractors, they're requesting a transfer of \$2,087,100 from the City of Beaumont's rehab category to the reconstruction category, and \$1,663,811 from the City of Port Arthur's rehabilitation category to the reconstruction category. Their beneficiaries will be reduced by 80.

MR. FLORES: Kelly, you're asking for a motion to extend the time, as well for the reallocation of funds for all three councils?

MS. CRAWFORD: Just two.

MR. FLORES: Just two councils. And the councils are --

MS. CRAWFORD: Yes, sir. DPS Texas doesn't need any; they've had some ahead of time, and they've had an opportunity to have this type of budget amendment in the past.

MR. FLORES: What about the time extension?

MS. CRAWFORD: Oh, yes. All three COGs need that extra time.

MR. FLORES: Okay.

Mr. Chairman, I move the time extension for all three COGs and the budget reallocation for the Southeast Texas?

MS. CRAWFORD: Yes, sir.

MR. FLORES: -- COG; what was the --

MS. CRAWFORD: And HGAC.

MR. FLORES: -- HGAC COG.

MR. CONINE: Motion by Mr. Flores; is there a second.

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion.

MS. RAY: The only discussion I had, Mr. Chair, was, where I got my -- this has been so --

MR. CONINE: Would you press your button again, one more time.

(Laughter.)

MS. RAY: -- when I got my Board Book, this particular piece of our business has been such an arduous and painful and long process, I was elated to see houses

being built; I was elated to see the citizens of this devastated area being served, and I'd like to compliment all of our community partners and our staff for moving us to this point, and I am strongly in favor of the motion.

MR. CONINE: Thank you. Thank you, any further comments from the Board on this motion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Now to Round Two --

MS. CRAWFORD: And I want to throw just a little bit more on Round One.

MR. CONINE: Okay.

MS. CRAWFORD: We actually have 197 homes done as of today; we had five more hit the ground since yesterday so -- it's coming pretty quickly now, and thank you for your support.

For Round Two, as you may remember, the State tried to give greater latitude to the City of Houston and Harris County for their allocation of \$60 million to serve

Katrina evacuees. However, HUD has determined that they require our direct involvement in the management and oversight of these contracts; therefore you'll be seeing more detail in our updates of these programs.

The City of Houston submitted a reimbursement request for public service expenses from October '07 through March '08. We have conducted a monitoring visit, to review the documentation associated with the request, and we're working closely with them to address issues noted to comply with the HUD requirements.

We expect all those issues to be resolved within the next week, and we will then send their request to HUD for reimbursement. That's \$7.9 million, that will be out the door.

The Department is also currently working with Harris County to determine their final scope of services, to cover their identified needs in serving the Katrina evacuee population. We expect to have that completed shortly, and will have more of an update for you next month.

For the multi-family projects, September 13 of last year, the Board awarded \$81.1 million to repair or rebuild seven affordable multifamily rental properties damaged or destroyed by Hurricane Rita.

The construction work, once completed, will restore 813 rental units to house low-income individuals and families. To date, four of those seven properties have closed on their loans, and they've started construction and demolition on those developments. Two more are expected to close no later than July 31, and we're working closely with the final development to determine when that transaction can occur.

And before we go to Don Atwell and ACS to give you an update on the Homeowner's Assistance Program and the Sabine Pass Restoration Program, I wanted to let you know that last Thursday and Saturday I was in Newton and Jasper for a series of orientation meetings that ACS is doing to bring the homeowners together, to learn more about their applications and the process that's going to be required for them in getting their homes done, repaired or replaced.

And what I saw out there was a tremendous collaboration between ACS, the faith-based community, the Southeast Texas Interfaith Organization and the legal aid community, namely Lone Star Legal Aid and Texas Appleseed.

They are all coming together in these orientation meetings to show the applicants the assistance and commitment that exists to help those homeowners get

through this process and into a safe, secure and decent home.

And I want to extend my personal thanks to all those involved in helping us bring this program to those homeowners who are so much in need.

(Applause.)

MS. CRAWFORD: And Don Atwell's here now.

MR. ATWELL: Mr. Conine, Mr. Gerber, members of the Board, good morning.

MR. CONINE: Good morning.

MR. ATWELL: Thank you for allowing me to come back in front of you again this month and tell you what's going on. There's been a lot of activity over the last month in both the Homeowners' Assistance Program and Sabine Pass Restoration Program.

One of the big things is the RFPs for the contractors. I went out and we actually do the proposal that we do, Friday for manufactured housing and on Monday for the other three types of proposals.

There were 92 contractors that requested RFPs, so that's a good number. You know, I don't expect that we'll get 92 responses back, but I do expect a good number, so that's an exciting part of the program, the capacity to actually build the homes.

In the Sabine Pass Restoration Program there are 99 applicants; 67 from Round One, and 32 new applicants that hadn't applied previously. We're in the eligibility determination process for Sabine Pass, five of the folks have been found eligible, and on average, for those that haven't been found eligible yet, they're missing two documents out of the package that needs to be completed, and so the call center is working with them to get those applications completed, making outbound calls to them individually, and walking them through what's missing.

The two documents that seem to be the most difficult right now are the income verification and the allowable activities form, and so we're helping them work through that process.

Kelly mentioned all of the activity that's gone on related to community outreach, and one of the things that's going to make this program successful, I believe, is a grassroots effort; talking to the local communities, getting them involved, letting them -- having the homeowners understand that the program is moving forward.

And when they hear that from the pulpit or from some other person in the community besides Don Atwell, whom they don't know from anybody, it makes a difference.

And so we have been spending a lot of time on outreach activities.

You have a packet or a sheet that I handed out earlier that talks about the orientation activities. There have been -- there will be six orientation meetings, and those are just general meetings about the program. We've mailed 3,315 letters to people, inviting them to these meetings, and to date we have had 848 people actually attend the meetings.

So about 20 percent of the folks already have actually sat down with us and talked about the program. So I think that's a pretty exciting number.

In addition, we have another orientation meeting in Port Arthur on this Saturday, 926 letters went out to Port Arthur; so hopefully we get a good showing there as well.

(Sound of electronic tone.)

MR. CONINE: You can have more time if you need it.

MR. ATWELL: Okay. Kelly mentioned our work with Lone Star Legal Aid and Appleseed, and they've just been incredibly helpful, looking at the applications, seeing what makes sense from their perspective. They've been working with this population for a long time, so

incorporating some of their comments now into the application process, and I just wanted to let you know that things are moving forward. Originally we were supposed to start processing the Homeowner Assistance Program applications in September, and we actually started those in June; so things are going well there.

And just thanks for all the support, Mr. Gerber and Ms. Crawford, in the process.

MR. CONINE: Any questions for the witness.

(No response.)

MR. CONINE: On behalf of the Board, Mr. Atwell, appreciate your diligence in this effort, and any time Ms. Crawford brags on you like that, that says something to me, so --

MR. ATWELL: Thank you.

MR. CONINE: -- than you for all your efforts.

MR. ATWELL: Thanks, Kelly.

MR. CONINE: Mr. Moody, or Holly, you want to speak?

MR. MOODY: No, I'm just here to support Don here.

MR. ATWELL: And he does a great job.

MR. CONINE: Yes he does.

MR. MOODY: Thank you.

MR. CONINE: Okay. Moving on to Agenda Item Number 11, right before lunch we're going to do this item and then we're going to break for lunch, for 45 minutes or so. Mr. Cervantes. Or Mr. Dally. Okay, 11 a).

MR. DALLY: Thank you, Mr. Chairman and Board members, Mr. Gerber. Item 11 a) is the Department's proposed policy decisions for the 2010, 2011 Legislative Appropriation Request.

The LAR in its final form is submitted to the Governor's Office, and the Budget of Planning and Policy will be submitted in mid-August. The LAR is used by the LBB and Senate Committee on Finance and House Committee on Appropriations to determine the appropriate funding levels for each agency.

The LAR includes both historic and requested funding, as well as associated performance measures on households served. Your board packet includes within it the 2000-2009 bill pattern which is our current appropriation.

It also includes a policy letter from the LBB and the Governor's Office of Budget and Planning regarding a 10 percent reduction. There's also an estimated baseline budget that does not include the 10 percent reduction.

And finally, there's a schedule of proposed 10 percent reductions by strategy, and a summary of the 10 percent reduction proposal.

And then finally there's the proposed exceptional items and rider changes.

For 2010 and 2011, state agencies have been asked to identify where a 10 percent reduction in general revenue could occur with the least impact on the agency's mission. That schedule can be found at page 13, showing by strategy and dollar amount the impact on programs of each reduction.

Staff is seeking the Board's approval of the proposed schedule of general revenue reductions to strategies, in order of least impact for a total of a 10 percent reduction, or \$1.4 million for the biennium.

On the next page, staff is proposing three exceptional items to increase funding for general revenue, as follows: the first would be the restoration of the 10 percent reduction to strategies in the previous schedule; the next item is a request that John Henneberger spoke to you earlier this morning, and that's our request for an additional \$20 million each year for the Housing Trust Fund, which would represent a 300 percent increase over the \$7 million which we received each year of the last

biennium.

To put that in perspective, this is still less than half the annual allocation of HOME federal funds which is approximately \$40 million. Since the Housing Trust Fund are state dollars, they have fewer limitations and are more flexible than the HOME program dollars, and that's their importance, and I think John alluded to that too, that that's often the missing gap financing piece.

We're proposing with this additional funding to expand home ownership programs, and programs such as the Bootstrap, for multi-family, gap financing, particularly in rural Texas and also other rental assistance; for supportive housing and the strengthen the Department's partnership with the Texas Homeowners' Home of Your Own, HOYO; and to fund nonprofit capacity building.

The Department at this time has not determined specific amounts for each of the items above; I'm sure we'll go through the process of the next two months before we submit our LAR officially and put some specific numbers and dollars to particular programs.

There's also -- finally, there is a report that once the appropriation is given to us, that we, as part of the Housing Trust Fund, that we file a plan with the Senate Committee of Finance and House Appropriations and

the LBB on a housing trust fund before we begin each year, and that's due in October.

Our third request would be, the Department is requesting \$7-1/2 million each year for the System Benefit Fund that would allow TDHCA to serve an additional 1875 households to augment the Department's Weatherization Assistance Program. Current spikes in energy costs make energy efficiency efforts on residential homes all the more cost-effective, for both individual households and the state as a whole.

Finally, staff is seeking to modify two riders and propose one new rider. Staff will be working with the LBB and Governor's Office of Budget and Planning and the Legislature to fine-tune some riders to provide flexibility between the single-family and multi-family home and housing trust fund strategies to allow for some transferability of funds between either a single-family or multi-family strategy.

And finally to amend the mortgage bond rider to conform with our statute on down payment assistance. Currently, the rider reads -- talking about income levels of 60 percent or below, and we're putting into the statute that became law, it talks about an 80 percent. Are there any questions with regard to the LAR?

MR. GERBER: Mr. Chairman, Board members, I would just add that the Department is very excited about this exceptional item dealing with the Housing Trust Fund.

We have been able to do some very innovative programs, where we've put a little bit of seed money into, and have resulted in getting quite a bit of production that's now under way in a variety of areas, and this kind of an expansion has been talked -- of the trust fund, has been talked about; it was talked about extensively during the last Legislative Session, we think we're going to have a very good case that will go to prove up to the Legislature that we can really use these funds to make a real difference in the lives of low-income Texans.

And we've talked to many members of the community at large, and part of the reason is that we have not assigned specific dollars to specific tasks, is that the nature of our business is really one of change, and the needs that we would assign now and lock in, in legislation really wouldn't make the most use of the fund; it would be better to do as we did last year, which is to wait, get those funds through, and then do as the Department has always done, work through a round-table process, make sure that stakeholders are having input; low-income housing advocates are having input, that, you

know, regional concerns are being taken into account, and perspective; and then submit a plan as we did last year, to the appropriations committees, authorizing committees, Lieutenant Governor and Governor and Speaker of the House.

And approach it that way. So we -- while there's a little bit of open-endedness to the Housing Trust Fund, I think that's something that most states have really taken strong advantage of, and that we're hoping to take the benefit of here in our state.

MR. CONINE: And the comment you made of working in conjunction with, and with the help with the Governor's Office, Ms. Jackie King's back there, and we look forward to you working with all of us, to try to get this done.

I do have one public comment related to this item. Cyrus Reed?

MR. REED: I can still say, good morning, and hopefully by the end we'll still be in the morning because I think I have three minutes.

I'm Cyrus Reed, I'm conservation director of the Lone Star chapter of the Sierra Club. Now, usually the Sierra Club does not come before TDHCA, but we've got 25,000 members in Texas and they've told us, the biggest issue in Texas is one that relates to TDHCA, and that's

energy, and energy use and energy cost.

You've got a budget item that's very important to us as part of your exceptional item request, which is the weatherization funds. As you know, back when we deregulated electricity markets we set system benefit funds which all Texans pay can be used for three purposes: energy assistance, consumer education and weatherization.

Unfortunately, as you know, the Legislature hasn't appropriated since 2003 any money for TDHCA for weatherization. We have had some money federally and some money from the IOUs as part of their energy efficiency programs.

But we've been spending far less than we used to on energy efficiency, and it's the cheapest, the quickest and the cleanest way to get our energy use.

I went on your website, I gave you a two-page or a Table 3, I got this off your website and I've requested additional information; you've got 14,000 people on the waiting list; you had a gentleman earlier asking, What are we going to do about utility costs.

We need to get these people off the waiting list and have them served. And what I'm saying is, Great, you're asking for \$15 million, but let's be a little bolder. You were funded at \$10.7 million back in 2003;

2004, 2005, no money spent for weatherization from SBF; 2006, '07, no money spent from SBF; 2008-2009, the current biennium, no money spent from SBF on weatherization.

I think you should ask for \$85 million; let's go back to \$10 million a year, and we know how the legislative process works; you guys ask for money, they don't give you what you want but they give you something.

If you ask for \$15 million, I think you're low balling it.

I think you should -- you've got about a month before you have to submit this, and we have low-income housing advocates and we have environmental advocates who are starting to say, you know, Sierra Club doesn't want new coal plants, we don't want new nuclear plants, but we're going to need to build them unless people get more efficient with their energy.

And this is a good way to hit a part of the population that cannot afford to weatherize their homes. So I'm asking you to be a little bolder, I could tell you the work in Spanish that I could say, but I won't say it.

(Laughter.)

MR. REED: And ask for more money than \$15 million. I say you should ask for \$85, you're probably not going to do that, but I'll be telling the Senators and

the Reps that this is a good use of money, but ask for more than \$15 million.

And the second point I'm going to make, which isn't directly related to LAR, H.B. 3693 by Straus, and this kind of goes back to the gentleman before, said, You guys and any use of your public money should have some minimum standards for energy efficiency, whether it's rehabilitation, or new homes.

(Sound of electronic tone.)

MR. REED: I'm going to be participating in your summer round table; let's get some more energy efficiency in your QAP process, and your homebuilding process, so as we build new homes, we make the cost to the consumer less on energy, because they're spending less money on energy efficiency.

And final point, the Governor's Competitiveness Council Energy Plan had a specific recommendation on the QAP that you put in some points to encourage developers to start looking at things like solar water heaters. And I'm happy to participate in those July round tables, and see if we can't get some extra points to encourage solar power. Some people are actually going to start to generate electricity off of their homes, and thus lower the cost.

So ask for more money, guys. Let's be bold.

MR. CONINE: Thank you, Mr. Reed.

MR. REED: Thanks.

MR. CONINE: Any questions of the witness?

MR. FLORES: No, but I'm assuming that he's  
volunteering to go lobby for us on behalf of --

MR. REED: I'm paid by Sierra Club, and part of  
my job is to lobby for things that are good for the  
environment.

MR. FLORES: We have your name and telephone  
number.

(Laughter.)

MR. REED: Thanks.

MR. CONINE: Okay. We need to -- we need a  
motion to approve Mr. Dally's LAR request --

MR. FLORES: So moved, Chairman.

MR. CONINE: -- and the rest, and the other  
agenda items that he articulated.

MR. FLORES: Wait a minute; how many things --

VOICE: Three.

MR. FLORES: I thought it was the LAR --

MR. DALLY: No, I was speaking solely on 11 a),  
the LAR, so --

MR. GERBER: So we'd be approving the

recommendations of staff to include these exceptional items in the budget and the LAR as it stands now, although the LAR will come back to the Board for final approval.

Will it come back for final approval in -- this is final. This is it. Is that right?

MR. DALLY: Well, if we make some significant changes. Let's say we in the next month and a half before -- we file it on August 13, so that's when it becomes a final document. If we make some policy decisions or want to propose some different set of policy decisions, or maybe increase some funding, then that means something we could bring back to you --

MR. CONINE: We have two Board meetings between now and then.

MR. FLORES: Okay. Let's go at it again, Bill. What kind of motion do you need? I thought we were approving the LAR? And Mike says we're approving the LAR plus some other things.

MR. DALLY: We're approving the LAR, and the LAR will include these exceptional items. We're seeking today the approval of the LAR.

MR. FLORES: But it includes all those items we spoke about before.

MR. DALLY: Yes. That's correct.

MR. FLORES: I so move --

MR. CONINE: We got a motion --

MR. FLORES: -- Chairman, that the LAR --

MR. CONINE: -- we need a second.

MR. CARDENAS: Second.

MR. CONINE: Second from Mr. Cardenas. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. DALLY: Thank you.

MR. CONINE: We going to 11 b), or --

MR. FLORES: Bill, you going to move on to 11 b), or David --

MR. CONINE: David's going to do 11 b).

MR. CERVANTES: Good afternoon, Mr. Chairman, members of the Board, Mr. Gerber. I'm David Cervantes, director of financial administration, and behind tab 11 b) you will find the 2009 draft operating budget for your consideration and possible approval.

The focus of the information in your packet can be located in the first five pages after the Board Action Request. On page 4, we've included a comparison by expense object schedule. This schedule provides cost categories, and budget comparisons between 2008 and 2009, and variances.

It also provides full time equivalent information and methods of finance data. The first three pages work hand in hand with the schedule. Within these pages we describe the typical nature of these categories and explanations to the significant variances. In summary, the proposed budget is for \$23.3 million, and it represents a 2.9 increase from last year's budget.

The budget includes a 2 percent cost of living increase; this increase was approved by the Legislature during the last session. The budget funds 246 full time equivalents, and this does not take into account the 64 that are assigned to the manufactured housing division, for a total of 310 full time equivalents for the organization as a whole.

Salaries, wages and payroll-related costs represent 80 percent of the budget. The other main categories are professional fees, travel, repairs and maintenance. The budget also complies with a

legislatively-mandated out-of-state travel cap of \$125,392.

Finally, on page 5 we turn our attention to the methods of finance. There are six main types of methods of finance, which are sources of funds received by the Department. I looked at page 5; as you go to page 5, the six sources, general revenue of course are state funds that are appropriated to TDHCA; we also have earned federal funds, which basically we strike an indirect cost rate with the federal government to be able to bring in federal dollars for the purposes of support functions of the agency.

We also have federal dollars that are coming in on our federal admin funds, and the fourth one is an important one, and I'd like to pause it just for a second; appropriated receipts housing finance. And the reason I bring this one in particular to your attention is because, these are the admin fees that we generate from the single-family, multi-family issuance of bonds.

And these are the admins that we generate on those; it also has to do with the tax credit initiatives that we have. And finally the compliance fees that we generate.

As we move over to Tab 11 c), these are the

methods of finance that are being discussed in 11 c) and are being isolated in the housing finance budget. Okay?

Finally, we have inter-agency contracts. We have a small contract that we have with the Office of Rural Community Affairs, and then appropriated receipts. One of our charges, TDHCA is also to support the manufactured housing division.

So we also bring in approximately \$500,000 from the manufactured housing division to help support our operations at TDHCA. The remaining portion of the information in your packet provides additional detail by division. At this time the financial administrative division is prepared to certify the financing for the 2009 operating budget. That concludes my presentation. I'm available to take questions if you have any.

MR. CONINE: Any questions on the 2009 Fiscal Year operating budget?

(No response.)

MR. CONINE: Can I get a motion to approve?

MR. CARDENAS: I move that we approve.

MS. RAY: Second.

MR. CONINE: Moved by Mr. Cardenas, second by Ms. Ray. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. CERVANTES: Thank you very much. If I can turn your attention to Item 11 c), Item 11 c) is the submission of the proposed 2009 Housing Finance Budget. This budget is for \$11.7 million. It represents about 51 percent of the overall budget that I just discussed.

The budget is a subset of the whole operating budget, and shows the housing finance revenues that support the Department. As previously noted, we are prepared to certify the financing associated with this budget.

At this time, we seek your approval for the housing finance budget.

MS. RAY: So move, Mr. Chairman.

MR. CONINE: Motion by Ms. Ray. Is there a second.

MR. FLORES: Second.

MR. CONINE: Second. Pretty confident of the income side of this plan?

MR. CERVANTES: Very confident, sir.

(Laughter.)

MR. CERVANTES: The money's in the bank.

MR. CONINE: We'll sell those bonds.

MR. CERVANTES: That's right.

MR. CONINE: Any other discussion.

MS. BINGHAM-ESCARENO: Mr. Chair, I just have a question, would it be appropriate to make a motion for us to explore Mr. Cyrus's Sierra Club's recommendation of a look for a little bit more in the SBF coffers for weatherization?

MR. CONINE: We can do that right after we finish this motion.

MS. BINGHAM-ESCARENO: So sorry.

MR. CONINE: That's okay. Is there any other discussion on the motion on the floor, for this budget?

(No response.)

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

(A chorus of ayes.)

MS. CRAWFORD: Opposed?

(No response.)

MR. CONINE: Motion carries. That concludes Item Number 11 --

MR. CERVANTES: Thank you very much.

MR. CONINE: -- I believe Ms. -- thank you, David.

MR. CERVANTES: Thank you, sir.

MR. CONINE: -- Bingham wants to, brought up something that she'd like to discuss.

VOICE: Do we need a motion to revisit?

MR. HAMBY: Of course you can direct staff to work with that? It's not actually on the agenda to propose that, so it either needs to be, you know, the LAR discussion, and an amendment to the LAR vote, or just a direction to staff before your next board meeting to explore that and give the Board a report on it one way or the other.

MR. CONINE: I think the direction to staff will do that, will work just fine.

Would staff do that for us?

Okay. We're going to break for a 45-minute lunch, try to be back at 1:00 and go into Executive Session while we're lunching. Mr. Gerber.

MR. GERBER: Mr. Chairman and Board members, on this stage, June 26, 2008, a regular meeting of the Board of the Texas Department of Housing and Community Affairs held in Austin, Texas. The Board adjourned into a closed

executive session as evidenced by the following:

(a) opening announcement by the presiding officer that the Board will begin its executive session stage, June 26, 2008, at 12:10 p.m.;

(b) the subject matter of this executive session deliberation is as follows:

(A) the Board may go into executive session, close its meeting to the public on any agenda item that's appropriate and authorized to by the Open Meetings Act, Texas Government Code, Chapter 551;

(B) the Board may go into executive session pursuant to Texas Government Code Section 551.074, for the purposes of discussing personnel matters, including to deliberate the appointment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee;

(C) consultation with attorney pursuant to Section 551.071(a) of the Texas Government Code; or

(D) consultation with attorney pursuant to Section 551.071(a) of Texas Government Code, (1) with respect to pending litigation styled *Brandal v. TDHCA*, filed in the State Court of Potter County; (2) with respect to the litigation -- pending litigation styled *Rick Sims v. TDHCA*, filed in federal district court, which

is a new filing of a previously-dismissed suit; (3) with respect to pending litigation styled, *The Inclusive Communities Project Incorporated v. TDHCA, et al.*, filed in federal district court; (4) with respect to any other pending litigation filed since the last Board meeting.

(Whereupon, at 12:15 the meeting was adjourned to lunch and executive session, to reconvene at 1:10 p.m.)

A F T E R N O O N S E S S I O N

MR. CONINE: The Board is back in session now after an executive session, so you going to read the --

MR. GERBER: That's right. Mr. Chairman, the closing announcement is that the Board has completed its executive session of the TDHCA Governing Board on June 26, 2008, at 1:10 p.m. And no action was taken.

MR. CONINE: Okay. Let's go to Item Number 7 if we can, Board members. Item Number 7, the Bond Division Items. Either Mr. Gerber or Mr. Matt Pogor, one of the two.

MR. GERBER: Mr. Pogor, why don't you take the lead.

MR. POGOR: Okay, Mike. Chairman and Board members, Item 7 a) is requesting approval of Morgan Keegan & Company to provide drawdown bond underwriting services for TDHCA Single-Family Mortgage Revenue Bond Recycling Program. On May 8, 2008, the Board approved issuing a request for proposed for underwriting proposals for investment banking firms interested in developing a drawdown bond program for TDHCA single-family mortgage revenue bond recycling program.

The drawdown bond program will allow TDHCA to capture and preserve tax-exempt limited authority for use

in future single-family bond issuances. TDHCA received three responses from -- to the RFP, which were evaluated by Bond Finance and our financial advisors at RBC Capital Markets. Based on the responses, Bond Finance recommends Morgan Keegan & Company as underwriters for TDHCA drawdown bond program. Morgan Keegan proposed a private placement structure which was least expensive for fees and ongoing costs.

Morgan Keegan has also never failed to fund a requested draw, nor has it had a failed remarketing for the drawdown bond program, over its entire 12-year history. Staff is recommending approval of Item 7 a).

MR. CONINE: There's a staff recommendation, do I hear a motion.

MS. RAY: So move, Mr. Chairman.

MR. CONINE: Motion to approve by Ms. Ray. Do I hear a second?

MS. BINGHAM-ESCARENO: Second.

MR. CONINE: Second by Ms. Bingham. Is there any other discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. POGOR: Chairman and Board members, Item 7 b) is requesting approval for Resolution Number 08-024, authorizing the extension of the certificate purchase period for Single-Family Mortgage Revenue Bonds, 2006 Series FGH, Program 68.

The certificate purchase period relating to this -- to TDHCA Single-Family Mortgage Revenue Bond 2006 FGH, Program 68 will terminate on September 1. Within the first origination period of 18 months, a significant amount of \$121 million of the \$131 million mortgages have been purchased.

Staff recommends for a one-year extension of this certificate purchase period, which would allow the \$10 million remaining funds to be purchased by our trustee. Currently, all of these funds have loans awaiting to be closed; half the loans are for new homes under construction, and the other half are existing homes waiting to close with a 5.65 unassisted mortgage rate, or a 6.20 assisted mortgage rate.

If any of these loans should not close, the extension of the certificate purchase period would allow

ample time to fund and close new loans. Staff is recommending approval of Resolution 08-024, Item 7 b).

MR. CONINE: Do I hear a motion?

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

MR. CONINE: Is there a second.

MR. FLORES: Second.

MR. CONINE: Motion and a second, any further discussion?

(No response.)

MR. CONINE: Sure you can sell them all?

MR. POGOR: Yes.

MR. CONINE: Okay. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: Motion -- any opposed?

(No response.)

MR. CONINE: Motion carries.

MR. POGOR: Chairman, Board members, Items 7 c) and 7 d) are reversed on your electronic format, just for your information. Item 7 c) is requesting approval of Resolution Number 08-021, Authorizing Ratification of TDHCA's Notice to Remove UBS as Remarketing Agent, and Approve a New Remarketing Agent for TDHCA's Single-Family

Mortgage Revenue Variable Rate Demand Bonds, 2004 Series A Junior Lien, 2004 Series B, 2004 Series A, 2006 Series H, and 2007 Series A with J.P. Morgan Securities.

With approval of this resolution the Board will remove UBS as remarketing agent for the 2004 Series A Junior Lien, the 2004 Series B, and the 2006 Series H Bonds, and assign J.P. Morgan Securities to replace UBS as Remarketing Agent, and will also ratify J.P. Morgan Securities as Remarketing Agent for the 2006 Series A, and the 2007 Series A, Bear Stearns structures.

The removal and ratification of these financial institutions was predicated on the fact that on June 1, 2008, J.P. Morgan purchased Bear Stearns and on June 5, 2008, UBS closed their municipal finance division.

Bond Finance, along with RBC Capital Markets, our financial advisors, has reviewed and analyzed all of their marketing agents, and has determined that J.P. Morgan Securities is very capable of continuing to give the Department excellent remarketing on all the above-mentioned variable rate demand bonds.

Staff is recommending approval of Resolution Number 08-021, Item 7 c).

MR. CONINE: Do I hear a motion?

MR. FLORES: So move.

MR. CONINE: Motion, is there a second?

MS. RAY: Second.

MR. CONINE: Barely made it through --

(Laughter.)

MR. CONINE: Any further discussion?

(No response.)

MR. CONINE: You sure those J.P. Morgan guys know what they're doing --

MR. POGOR: I think so.

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. POGOR: Chairman and Board members, Item 7 d) is requesting approval of Resolution 08-025, authorizing application to the Texas Bond Review Board for reservations of 2008 Single-Family Private Activity Bond Authority, and Presentation, Discussion and Approval of the Single-Family Mortgage Revenue Bond underwriting team for Program 71.

Of the \$189 million in volume cap available in 2008, TDHCA has approved \$60 million for use with our

mortgage credit certificate program. Bond Finance is coming to you today to draw down the remaining 2008 volume cap of \$129 million, which the Department could use with our next structure, Program 71.

If Bond Finance does not use the entire allocation, the remaining volume cap will be warehoused using our drawdown bond program. On January 1, 2008, or January 31, 2008, TDHCA approved UBS as our senior underwriter for Program 71. On May 6, 2008, UBS announced a plan to shut down their municipal finance division if they could not find a buyer. On June 5, UBS closed its financial -- finance division.

Bear Stearns is next up to complete the final leg of our three-team rotation; on June 1, 2008, J.P. Morgan acquired Bear Stearns, along with the same professionals, banking team that worked with our TDHCA prior bond issuances.

Staff is recommending approval of J.P. Morgan Securities as senior manager to replace UBS at this time.

Staff believes TDHCA could be in need of lending funds by October 2008, and TDHCA will need a senior manager to develop cash flows for credit rating agency approval, by September 1, 2008.

Bond Finance will be working with J.P. Morgan

Securities to develop a bond structure for Program 71 that we will bring back to you, at the Board meeting -- the September 4 Board meeting. Staff is recommending approval of Resolution 08-025, Item 7 d).

MR. CONINE: Okay. Do I hear a motion?

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

MR. CONINE: Ms. Bingham has a motion. Is there a second?

MR. CARDENAS: Second.

MR. CONINE: Second by Mr. Cardenas. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. POGOR: Thank you, Mr. Chairman. One quick note; right after this I'm leaving with J.P. Morgan and our other staff to start working on a working group for this Program 71. I will also be needing Eric Pike and his assistants to help me with that group. So he has an item,

4, I believe, that's -- if we could have addressed next. Appreciate your help on that.

MR. CONINE: So when you all bail out and leave us, it's because of nothing we did or said.

MR. POGOR: Well, we're working hard right after we leave here, trust me.

MR. CONINE: Let's move to Item 4, then, on the agenda. Thanks for your good work, there on that --

MR. POGOR: Thank you, sir.

MR. CONINE: And Texas Homeownership Division, Mr. Pike.

MR. PIKE: Good afternoon. Eric Pike, Director of the Texas Homeownership Division. And this is Item 4 a). In August 2004, staff developed an RFP to solicit responses from loan servicing companies to act as master servicer for a period of two years under the Department's Single-Family MRB Program, with the discretion to renew and extend the agreement at the end of a two-year term under three annual options.

On October 14, 2004, staff recommended, and the Board approved, the selection of Countrywide as master servicer. In accordance with the terms of the contract, the agreement was extended by the TDHCA Board on August 2006, and again on August 2007.

Their current contract is expected to expire on October 14, 2008. Staff is requesting the third option be exercised under their contract to extend the period to December 13, 2008.

Under the current contract, Countrywide has been the servicer on Programs 62 through 70; as Matt just mentioned to you, we're going to be beginning work on structuring a Program 71.

Countrywide currently performs compliance review, lender approval, loan registration, and loan servicing functions on all MRB programs released during their term.

The next single-family MRB program is anticipated to be released in mid-October of this year. Since servicing values have fallen significantly due to a number of factors, staff is seeking a 2-1/2 month extension of their current contract in order to take advantage of their favorable pricing, by including them in the upcoming structuring process.

Staff recommends approval of an extension through December 31 of this year, for Countrywide to continue to serve as master servicer for our single-family MRB program.

MR. CONINE: Okay. Staff recommendation, is

there a motion?

MR. FLORES: Yes, move --

MR. CONINE: Motion to approve down at Mr. Flores. Is there a second.

MR. CARDENAS: Second.

MR. CONINE: Second.

MR. CONINE: Second by Mr. Cardenas. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor -- whoops, oh, wait a minute. Yes, I got a comment, here. Dottie Sheppick. Just about went through it.

MS. SHEPPICK: Mr. Chairman and distinguished members of the Board, thank you for the opportunity to address you today.

My name is Dottie Sheppick; I'm executive vice president for the Strategic Products Team at Countrywide.

And today I just want to make a few comments about Countrywide, Bank of America, some background, and our current status.

In 1969, Countrywide was started by Angelo Mozilo and his partner, David Loeb. For almost 40 years, Angelo and Countrywide were considered the leaders in affordable housing, becoming the nation's number one

lender to minorities and families in under-served neighborhoods; and that number one designation stood for many years.

During that time, Countrywide grew to 60,000 employees and diversified in mortgage lending and related business. In 1996, I was hired to manage a team of people dedicated to providing a full range of support services to all of our production divisions for the origination of affordable housing loans, and to ensure we provided excellent service to housing finance agencies and nonprofits, who offered programs for first-time homebuyers and other under-served markets.

We implemented programs such as the Rural Housing Services 203(k) Section 8 for home ownership, community land trusts, down payment assistance programs funded by HOME CDBG, and other federal funding sources, including mortgage revenue bonds.

Texas Department of Housing and Community Affairs was one of our first master servicing clients, in 1999 and remains a valuable and critical business partner.

In 2007, we funded over \$300 million, and were one of the top originators in your program. Nationally, my team supported the production of over 33,000 loans in mortgage revenue bond programs, for \$4.8 billion to first-time

homebuyers.

Through all of the changing times, my team and our focus has not changed. Many of us have been dedicating our careers to affordable housing for ten, 15 or 20 years.

In January 2008, Bank of America announced their intention to purchase Countrywide. On April 22, Bank of America announced new, stricter guidelines for the combined company. On April 28, Bank of America announced details of an unprecedented community development and foreclosure relief program.

On June 5, the merger received federal reserve approval, and yesterday the shareholders, including me, voted for the merger. The closing is expected to take place next week, on July 1.

I am proud and anxious to become a part of the Bank of America organization, while continuing to provide the same level of excellent service and dedication to TDHCA and affordable housing.

For example, the recently announced Bank of America commitment to communities that I mentioned earlier demonstrates the recognition and need to raise the bar for the combined company, and includes a \$1.5 trillion community development and investment goal, \$40 billion in

mortgage modifications and workouts, and a ten-year, \$2 billion corporate philanthropy budget. My team is looking forward to a new era, renewing our personal commitment to you and affordable housing. Thank you.

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

(No response.)

MR. CONINE: Appreciate those thoughtful words. Okay, we have a motion on the floor. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Item 5, Housing Resource Center Items, Ms. Brenda Hull.

MR. HULL: I'm Brenda Hull, Manager of the Housing Resource Center. Mr. Chairman and Board members, Item 5 a) is the agency's strategic plan for fiscal years 2009 through 2013. The plan communicates the agency's goals, directions and outcomes to various audiences including the Governor, the Legislature and the general

public.

The plan outlines the Department's approach to addressing the affordable housing and community service needs of lower-income Texans. The plan, due every biennium, was developed within the context of the state's overall goals and budget to generate specific outcomes that tie directly to the Department's budget structure.

As a first step in submitting both a strategic plan and the legislative appropriations request, which is Item 11 a) of the Board agenda, the Department has requested changes to its budget structure and performance measures.

The Governor's Office of Budget and Planning, and the Legislative Budget Board have approved the majority of these requests. The plan is due July 11, 2008, to the Governor's Office, the LBB and several legislative committees. Staff would like to request permission to make minor changes to the plan, including small clarifications, editing for consistency and minor stylistic changes.

Staff recommends approval of the plan with the minor changes mentioned.

MR. CONINE: Okay. Thank you, any discussion?

(No response.)

MR. CONINE: Is there a motion?

MR. FLORES: Move approval.

MR. CONINE: Move approval from Mr. Flores,  
any -- is there a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further  
discussion?

(No response.)

MR. CONINE: These are minor changes now.  
Seeing no further discussion, all those in favor signify  
by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chair, if I could just add to  
the Housing Resource Center and to Brenda in particular,  
this is a tough document to put together every year, and  
it requires a lot of coordination, and she did a great  
job. Thanks.

(Applause.)

MR. CONINE: Moving on to Item 6, HOME  
Division, Ms. Arrelano.

MS. ARELLANO: Jeannie Arellano, director of

the HOME Division. Mr. Chairman and Board members, on Item 6 a), on December 20, 2007, the Board approved a tenant-based rental assistance notice of funding availability, which made available approximately \$3 million of de-obligated non-committed HOME funds. The NOFA was published in the *Texas Register* on January 4, 2008, applications were accepted until 5:00 p.m., Friday, May 30, 2008.

The TBRA program provides eligible households rental subsidies, including security and utility deposits, to tenants, for up to 24 months and earning 80 percent or less of the area median family income, the AMFI, as defined by HUD.

In accordance with federal requirements, not less than 90 percent of the households assisted must have incomes at or below 60 percent of the AMFI, tenants must also participate in a self-sufficiency program and the rental unit must be their primary residence.

The NOFA limited administrative funds to 4 percent of the contract project awards for the TBRA activity. Staff has provided a brief description of the applicants being recommended for an award. Staff recommends approval of Christian Community Action and Burke Center for Home TBRA Program Award. Staff also

recommends approval of 4 percent of total project funds awarded for program administration, as indicated on the attached award recommendation log.

MR. CONINE: Okay, and the staff has recommended approval. Is there a motion?

MS. BINGHAM-ESCARENO: So move.

MR. CONINE: Motion by Ms. Bingham. Do I hear a second?

MR. CARDENAS: Second.

MR. CONINE: Second by Mr. Flores, the one I heard, anyway. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Opposed?

(No response.)

MR. CONINE: The motion carries.

MS. ARELLANO: Item 6 b)?

MR. CONINE: Yes.

MS. ARELLANO: Mr. Chairman, Board members. A Homebuyer Assistance NOFA which made available \$6 million of de-obligated and uncommitted HOME and American Dream down payment initiative funds, was also approved by the

Board on December 20, 2007. Same as the TBRA NOFA, this NOFA was published in the *Texas Register* on January 4, 2008, and the final deadline to receive applications under this NOFA was Friday, May 30, 2008.

The HBA program provides assistance to first-time homebuyers earning 80 percent or less of the AMFI as defined by HUD for down payment and closing cost assistance. The amount of HBA funds to any household cannot exceed the greater of 6 percent of the purchase price of the single-family housing, or \$10,000.

Staff has provided a brief description of the applicants being recommended for an award, and staff recommends approval of the City of La Feria and Midland Habitat for Humanity for a HOME HBA program award.

Staff also recommends approval of 4 percent of total project funds awarded for program administration.

MS. RAY: Chairman, [inaudible].

MR. CONINE: Motion to approve by Ms. Ray. Do I hear a second?

MS. BINGHAM-ESCARENO: Second.

MR. CONINE: Second by Mr. Cardenas. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor

signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 6 c)

MS. ARELLANO: Mr. Chairman, Board members, in July 2007 the Board approved the home rental housing development NOFA which made available \$15 million to be utilized for qualified applicants to develop affordable rental housing.

Subsequent to the publication of the NOFA and at the December 2007 meeting, the Board amended the NOFA to reflect changes necessitated by the final adopted HOME program rule. The department released and published the amended NOFA in December 2007. At the May 2008 Board meeting, the Board approved an increase of \$12 million, to the total amount of funds available under this NOFA.

The NOFA allowed applicants to apply for funding on a statewide, first-come, first-served basis and the applicant deadline was June 2, 2008. The Department has received 35 applications for funding requests, totaling in excess of \$33 million. Twenty-four of the applications received include a housing tax credit allocation request, and are continuing to be reviewed for

possible award recommendations, in conjunction with the tax credit awards at the July 2008 Board meeting.

The application before you today has requested only HOME funds, and has completed all three phases of the application review process, in accordance with the HOME program rule, and the eligibility and threshold criteria established in the NOFA.

The real estate analysis division has evaluated the application and the underwriting report is attached. The report reflects that the proposed transaction is feasible if a significant portion of the debt is allowed to be in the form of a grant or forgivable loan, and is recommended under that assumption.

The applicant has also requested a waiver of the HOME Rule, 10 T.A.C. 53.47(a) (vii) which would allow HOME funds to be awarded in excess of the \$3 million program limit. If the Board chooses not to approve the waiver of the HOME rule, the applicant is requested to receive an award from the Housing Trust Fund to finance the \$250,000 based on the application submitted that is in excess of the \$3 million limit in HOME funds.

As discussed at the May 2008 Board meeting, using funds from both programs would increase the long term administrative burden on the property. Because of

the limited availability of HOME funds, the department has had a cap of \$3 million per applicant, and it is within the Board's right to waive this cap, and funds are available to award to this applicant.

Staff recommends approval of Creekview Apartments, for a HOME rental housing development program award in the total amount of \$3,250,000, a waiver of 10 T.A.C. 53.47(a)(vi) to exceed the cap, and subject to the conditions in the underwriting report.

MR. CONINE: I have some public comment on this particular item. Mark Mayfield?

MR. MAYFIELD: Thank you, members of the Board. My name is Mark Mayfield with the Texas Housing Foundation, and I just actually just want to comment to compliment this Board and Mr. Gerber and this staff, Jeannie and Barbara and Tom and Cameron and all of them.

We've been working on this deal for three years, and -- along with a deal over in Llano, and you obviously know the history of it, and through perseverance, things can happen. And I just want to publicly acknowledge and thank this Board for their commitment to developing rural housing.

MR. CONINE: Thank you. Okay. We're ready for a motion.

MR. FLORES: Well, I'm not ready for a motion --

MR. CONINE: Okay.

MR. FLORES: -- but I'd like to question staff regarding the \$250,000 over the \$3 million limit.

MR. CONINE: All right.

MR. FLORES: I don't know who the -- Jeannie, there you are. Have we done this before? Exceeded our \$3 million mark?

MS. ARELLANO: I don't believe so.

MR. FLORES: Why should we do it for these guys?

MS. ARELLANO: We have the funding available, for it; it does create an administrative burden on the applicant and the development to have to have two loan closings for two different sources of funds that are both coming from the agency; \$3 million would be coming from HOME and \$250,000 from Housing Trust Fund.

It would facilitate the transaction to have the total funding come from one source.

MR. FLORES: So it's a given that we're going to give them \$250,000 out of the other fund, is what you're saying?

MR. CONINE: That's what staff's recommending.

MS. ARELLANO: That's what we're recommending.

MR. FLORES: That's what you're recommending,  
yes.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes, Ms. Ray.

MS. RAY: May I speak as a point of order?

MR. CONINE: Sure.

MS. RAY: I --

MR. CONINE: You may.

MS. RAY: -- as a point of order, I would like  
to move staff's recommendation, and then open the floor  
for discussion of the motion.

MR. CONINE: Okay. There's a motion to approve  
on the floor. Do I hear a second?

MS. BINGHAM-ESCARANO: Second.

MR. CONINE: There's a second. We can continue  
the discussion now. Mr. Flores?

MR. FLORES: I'm trying to figure out whether I  
want to want give them the 3250, that's all. I'm  
thinking --

MR. CONINE: That may take a while.

MR. FLORES: It may, but they got a quarter  
million dollars here they got to worry about.

MR. CONINE: Right, right. Any further

discussion, any other questions of the staff?

MS. RAY: Mr. Chairman, I'd like to speak in favor of the motion, and in favor of exceeding the \$3 million award cap. I think the point that staff, number one, makes the recommendation for it, and the funds are available, and given the explanation that the staff made, I think is reasonable and prudent.

To all concerned, it will cause an administrative burden to do it any other way, and there's no need for the administrative burden.

MR. CONINE: Any other discussion? I'll call --

DR. MUNOZ: Well, let me just follow up on --

MR. CONINE: -- Mr. Munoz.

DR. MUNOZ: -- Sonny's question. Is there a likelihood that this sets then a precedent for others? The longer I serve on the Board, the more impressed I am with peoples' interpretation of the process, and how they can present an increasingly improved case for themselves.

I'm just curious whether this sort of sets a precedent where others might see an opportunity to exceed that \$3 million. Does this require legal --

(Laughter.)

MR. CONINE: Yes, it must have.

MR. HAMBY: Dr. Munoz, fortunately Boards don't set precedents; they do set trends, but they don't set precedents, so you're not bound by any future -- this decision will not bind you to future decisions. It may open up a door where other people race in to ask for additional funds and ask for a waiver of that particular rule.

In the past, that rule has always been in place because of the limited funds that we've had available. Because of our aggressive, or -- our aggressive requirement to spend funds, people have been returning funds in greater levels, so the funding is available at this time.

Were the funds not available, I'm sure the staff would not make that recommendation, but because they are available, because of the returns that we've been getting, the de-obligations we've been getting --

DR. MUNOZ: Maybe precedent was the wrong term; the expectation, will others have the expectation that this consideration will also be extended to them. And is there a likelihood that the money will be there in the trust fund in this same way in the future.

MR. HAMBY: Well, actually this is HOME dollars, and that's why -- but it's actually a

recommendation to use the HOME dollars because the trust fund dollars are more flexible. And so we tend to guard the trust fund dollars more closely. Any time you create any exception, there will be people who come and say, "We're just like them, and we deserve it."

MR. FLORES: That's right.

MR. HAMBY: That said, there's a balancing effort that the staff can do, that you can direct the staff to do, to provide you with information on when these type of funds are available, when it makes more sense and it doesn't, when the project -- I mean, that is why you have a professional staff.

You don't -- you can follow your staff's advice; you can not follow your staff's advice. But that's why we have the HOME staff there, to give you that advice as to when it's available, when it's not, and when it seems to be the best use of funds.

MR. FLORES: Okay.

MR. HAMBY: But no one can insist that you follow the precedent that you set today.

MR. GERBER: And Dr. Munoz, I would just add that, you know, there are flexibilities within the HOME program; this has been a project that came before the Board of course at the last Board meeting, and it's been

a -- I would suggest, a miserable experience for many of the people in the development community that have been trying to piece this thing together.

It's been tough to build this, to pull the financing together for this deal, and I think that the staff has been impressed by the need. And with these additional -- and given the decision of the Board last, at the last Board meeting to go ahead and waive that local match requirement, we felt that there was a, you know, certainly support on the Board for getting that project going in Johnson City.

When we use HTF dollars, you know, we felt that that was something that really wasn't in the Department's interest. That it would be far better to use these flexible HOME dollars and preserve those very flexible HTF dollars for those other worthwhile things that we're trying to do with seed money for other kinds of affordable housing efforts throughout the State, and hence the need to -- and the request to go ahead and provide that additional \$250,000.

Whether or not it would be available in the future instances, I think it would be on a case by case basis, and at the discretion of the Board. But this is a development that we are long familiar with, and I think

we've all been impressed that there's been a lot of need in Johnson City; there were a couple of NOFAs out there in the past that this development was trying to take advantage of; it just never quite got over the hump.

It's been a hard, difficult project to do, and one that we felt was worthy of Board consideration of an exception.

MR. CONINE: Any other discussion?

(No response.)

MR. CONINE: Seeing none, I'll call for the vote. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 6 d).

MS. ARELLANO: Mr. Chairman, Board members. Information shared in this item relates to both Item 6 d) and 6 e). On March 24, 2008, the Department received its funding approval and grant agreement from HUD. The approval and agreement included \$40,043,225 for the Department's 2008 allocation of the HOME program.

The Department's 2008 consolidated annual action plan, which I'll refer to as the CON plan, includes

a set-aside totaling \$5 million for the rental housing development activities, and as a basis for the presentation of this NOFA to the Board, \$2 million of the \$5 million that are set aside for the rental housing preservation program, which is designed to provide funding to proposals that involve the acquisition and rehabilitation of existing affordable housing that is at risk of losing the benefit of a subsidy.

As proposed, the NOFA makes funding available to eligible applicants for the development of affordable rental housing for low-income Texans. The funds are subject to the regional allocation formula; for each uniform state service region, an open application cycle method will be used to process applications received in response to this NOFA.

At the Board's direction at the May 8 board meeting, department staff held a roundtable on June 6, 2008, with interested participants to discuss the following two questions posed by the Board:

One, is the 10 percent leveraging requirements for rental developments appropriate in all situations, and what should the lien position of the department be when HOME funds are used in conjunction with other housing funding sources?

The roundtable was attended by 17 members of the development community and diverse concepts were discussed. While an absolute consensus was not achieved, there was considerable support and preference expressed for eliminating the 10 percent leveraging requirement altogether; and you will most likely hear support today for the elimination of the requirement.

If such elimination was not possible there was support for a sliding scale of the leveraging requirement based upon the size of the city in which the development was proposed, or based upon the level of rents that could be achieved in the market. Staff does not support the complete elimination of the 10 percent leveraging requirement, but understands the difficulties experienced in proposing rental housing development in rural communities.

Therefore, to address the input of the roundtable, staff is recommending and has included in the NOFA a partial exception to the 10 percent requirement for developments that are proposed in areas where the HUD fair market rents are less than or equal to the high home rents.

Staff also proposes to include a partial exception to the 10 percent leveraging requirement if the

applicant provides a resolution from the local government indicating support of the proposed property when a financial contribution from the local government to the development is also being made.

Please see the sliding scale in your Board Book that is being proposed by staff for leveraging based upon the inclusion of these two concepts. Please note the chart needs to be clarified to add "equal to," to each of the four items where it says, "fair market rents, less than" high home and low home before -- they're the four last rows in the chart.

But those need to be clarified also, add, "equal to." And also one correction needs to be made in the fifth row to reflect "less than" for the fair market rents when there is not a financial contribution from the local government.

Staff has performed an analysis of the fair market rents and low and high home rents for places in Texas, based on the analysis and the sliding scale recommended by staff; 206 of the 213 places have fair market rents that are less than or equal to the high home rents, and would result in a 7 percent leveraging requirement based on the sliding scale.

This requirement could be reduced an additional

2 percent to a 5 percent requirement if a financial contribution was made by local government.

Additionally, 51 of the 213 places have fair market rents that are less than or equal to low home rents; in these areas, the leveraging requirement would be 4 percent, which could further be reduced to 2 percent with a financial contribution from local government.

There was also considerable support for doing away with the underwriting requirement of a first lien for the department, when the department has the largest amount of funds in the development. The department's lien priority requirements are not expressly defined in the proposed NOFA, and therefore no changes to the NOFA are proposed.

Staff believes that this issue should be further discussed and addressed in a department-wide loan policy, to be adopted by the Board. The staff is in the early stages of developing such a policy to bring to the Board later this year.

The proposed NOFAs attached with blackline reflecting staff's recommendation regarding the 10 percent leveraging requirement, the blackline is made to the draft version of the NOFA submitted to the Board at the May 2008 meeting.

Staff recommends approval of the 2008 rental housing development program NOFA, and approval to release for publication in the *Texas Register* with the revision that corrects the fifth row to stating "less than" instead of "greater than" and also adding, "equal to" to the four lines.

MR. CONINE: Okay. I've got public comment on this item. Mike Harms.

MR. HARMS: Good morning or good afternoon. I'm Mike Harms, I'm with the Center for Housing and Economic Opportunities. I'd like to address the issue of the 10 percent rule. I've done a quick analysis of the scale that's in your Board Book, and so far I've found no county in the State of Texas that the fair market rent is less than the high home rent, so therefore even with the letter of approval from the local community, from the city, then you're still requiring 8 percent commitment, outside commitment.

I recommend at least for one year that you eliminate the outside requirement entirely, see what kind of applications you get, and I think you'll get good applications from rural communities, and without that, I think you're going to stay the course and you'll get very few applications unless of course they're combined with

tax credits or other financing. But mostly with tax credits.

So it still eliminates a huge amount of rural communities; I've got a very successful project in Luling, we've got additional acreage attached to our 22 units; we could put an application in tomorrow, but we cannot raise \$200,000 in Luling, Texas.

We were able to do it in Floresville, it was pulling teeth, and we spent a lot of time trying to raise the money rather than developing the housing. Thank you.

MR. CONINE: Mr. Harms?

MR. HARMS: Yes.

MR. CONINE: Were you involved in the roundtable that staff had, the discussion?

MR. HARMS: The one that I was tied up, that I had made a commitment to be in a class in Washington, D.C. was June 5; I did have a proxy at that meeting. She took good notes and filled me in for a couple of hours as to what was proposed and what was coming up. But I could not be there.

MR. CONINE: Well, I guess my point was, you know, we asked staff to go back and take a hard look at this leveraging requirement and meet with you guys --

MR. HARMS: Right.

MR. CONINE: -- and make sure that we came to some resolution. And if -- I understand why you weren't there, I'm not blaming anything --

MR. HARMS: Yes, I couldn't; that was just the one thing I couldn't --

MR. CONINE: -- would be out the door with folks who would be in agreement with you if this wasn't something that was agreeable to the roundtable that took place.

MR. HARMS: Well, it's --

MR. CONINE: You know, Mayfield was just here. He's -- you know, he was the one that got this whole thing going, yet he's not registered to talk against it. So I'm just having a hard time -- if we've gone through the effort to try to get together with the development community to come up with something that works, I'm just having a hard time understanding why this won't work.

MR. HARMS: Maybe they hadn't had a chance to analyze it. It's --

MR. CONINE: Okay.

MR. HARMS: -- okay.

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

(No response.)

MR. CONINE: There's a motion -- we need a motion one way or another on the recommendation of staff.

MS. RAY: Mr. Chairman, I move staff recommendation.

MR. CONINE: Ms. Ray, motion to approve. Is there a second?

MR. CARDENAS: Second.

MR. CONINE: Second, Mr. Cardenas.

MR. FLORES: Mr. Chairman --

MR. CONINE: Yes, Mr. Flores.

MR. FLORES: -- discussion?

MR. CONINE: Yes. I was getting to that.

MR. FLORES: Oh, okay. I just -- your train was moving a little fast, I thought I might miss it.

(Laughter.)

MR. FLORES: Jeannie, do we still have the first lien on these? Is the first lien still into the process?

MS. ARELLANO: In the NOFA? NOFA doesn't identify the lien position that we would be taking.

MR. CONINE: I think what she addressed was, they were going to just have an internal staff discussion of the superiority of liens when ours is bigger than theirs, in this process, and they're going to come back to

us later on. But currently there is no policy change within what we're recommending --

MR. FLORES: There is no policy change, okay. Thank you.

MR. CONINE: Is that right --

MS. ARELLANO: Correct.

MR. CONINE: -- I don't know if I'm wording it right. That's what I heard her say.

MR. FLORES: Well, I was trying to clarify. Thank you.

MR. CONINE: Okay. Motion, there's a motion to approve with a second. Any further discussion.

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. ARELLANO: Okay, Item 6 e) the Community Housing Development CHDO Rental Housing Development Program NOFA, for which the department's 2008 CON plan includes the mandatory 15 percent set-aside for CHDOs, totaling \$5,966,488. Just like the RHD NOFA just

approved, the NOFA makes funding available to CHDOs for the development of affordable rental housing for low-income Texans.

The proposed NOFA is attached with the blackline reflecting Staff's recommendation regarding the 10 percent leveraging requirement as we just discussed.

Staff recommends approval of the 2008 CHDO Rental Housing Development Program NOFA and approval to release for publication in the *Texas Register* with approval to make the same revisions previously mentioned for the RHD NOFA.

MR. FLORES: Move approval.

MS. RAY: Second.

MR. CONINE: There's a motion to approve by Mr. Flores with a second by Ms. Ray. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. ARELLANO: Item 6 f), at the May 2008 Board meeting, the Board approved an increase of \$12 million in

the total amount of funds available under the existing RHD NOFA and \$6 million in the total amount of funds available under the CHDO NOFA.

That action made available uncommitted and de-obligated HOME funds for applications and funding requests received by the department in response to these NOFAs. The application deadline for both of these NOFAs was June 2, 2008, and both of these NOFAs are oversubscribed.

Staff will continue to review all applications received for eligibility and feasibility, and for possible award recommendations at the July 2008 Board meeting, since most of the applications received include a housing tax credit allocation request.

The previous two items requested Board approval of the new 2008 HOME, CHDO and rental housing development program NOFAs. Since these NOFAs have been approved by the Board, staff requests approval to transfer any un-awarded balances in each of the current NOFAs no later than October 1, 2008, to the applicable new 2008 RHD and CHDO NOFAs approved today.

MS. RAY: Move approval.

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

MR. CARDENAS: Second.

MR. CONINE: Second, any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Jeannie.

MS. ARELLANO: Mr. Chairman, Board members. The Department's 2008 COM plan includes the \$2 million set-aside to serve persons with disabilities, and is the basis for the presentation of this NOFA to the Board.

Over the last several months, HOME staff has attended meetings with the department's disability advisory work group, to gain a greater understanding of the community's housing need and obtain input on the programming of these funds, for housing programs to assist persons with disabilities.

HOME staff recommended uncommitted and de-obligated funds from previous years that had been set aside to assist persons with disabilities, and through that analysis, an additional \$1.1 million is available to assist housing programs for persons with disabilities.

It is important to note these funds are subject

to previous statutory restrictions with \$429,659 restricted to non-participating jurisdictions, and the remaining \$745,648 are available statewide.

On June 2, 2008, HOME staff attended the disability advisory work group meeting and received the following input regarding the programming of both the 2008 allocation and the reconciled Persons With Disabilities funds.

In order to facilitate distribution of the uncommitted and de-obligated funds following the non-PJ requirements, the recommendation is to combine these funds with the \$500,000 from the 2008 allocation for rental housing development as defined in the COM plan.

This would make a total \$1,675,307 available for rental housing development, with \$429,659 restricted to non-PJ areas, and \$1,245,648 available for any area of the State.

The proposed NOFA makes funding available for proposals which involve new construction, rehabilitation, or acquisition and rehabilitation of affordable rental housing development activities that serve persons with disabilities. With the exception of the \$429,659 [sic] not available in a PJ, the funds are available statewide and are not subject to the regional allocation formula.

An open application cycle method will be used to process applications received in response to these NOFA. The proposed NOFA is attached, and includes staff's recommendation regarding the 10 percent leveraging requirement as previously discussed.

Staff recommends approval of the 2008 rental housing development program for persons with disability NOFA, and approval to release for publication in the *Texas Register*, with the revision that allows the leveraging requirement with the sliding scale approved in Item 6 d) and 6 e) today as the leveraging requirement for the non-PJ funding request only, and requires a 10 percent leveraging requirement for funding requests located in the PJ; and then also the revisions from the RHD and CHDO NOFA adding the "equal to" language and correcting the "greater than" to "less than" for the low home without local government support.

MR. GERBER: Mr. Chairman, we also appreciate the help of the disability advisory work group; they've -- they were very helpful as we vetted this and gave us good insight.

MR. CONINE: Okay. Is there a motion?

VOICE: No, there are no public --

VOICE: No public comments?

VOICE: No.

MR. FLORES: Vote approval.

MR. CONINE: Motion to approve, is there a second.

VOICE: Second.

MR. CONINE: Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Okay?

MS. ARELLANO: This item presents three amendment requests to HOME contracts. The first is for Frio County, in owner-occupied housing assistance program contract which is requesting a six-month extension amendment that would result in a total cumulative contract extension of 24 months; that's a correction from your Board Book; it listed 13 months.

Frio County requested an amendment to extend the contract by six months, to October 31, 2008, and to reduce the number of households served from ten to six. If approved, this would be the county's second amendment.

The first was approved by the Board on November 9, 2006, and extended the contract by 18 months from an original end date of September 30, 2006 to April 30, 2008.

This contract is one of the several for which Carlos Corlena Vargas [phonetic] served as consultant; the first consideration for this request is that this contract is one that has made the most progress of the Corlena Vargas contracts.

In November 2006 and with the approval of the first amendment, the Board required the termination of the consulting service provider agreement with Mr. Corlena Vargas. Frio County procured another consulting firm in December 2006, and six households are currently set up in the apartments contract system, four of which have been completed.

Two of the completed homes are manufactured housing units, while the other two have been rehabilitated. Because the contract is now expired as of April 30, 2008, the extension would allow for the completion of two activities which were already set up in the contract system prior to contract expiration.

One of these two activities is for the reconstruction of the housing unit. Due to a misunderstanding on behalf of the new consultant regarding

the processing of the amendment request, the existing home associated with this activity was demolished in April 2008.

This action by the administrator violates section 4(e) of their contract, which states that any home demolished that cannot be completed within 90 days prior to the end of the first amendment, becomes the responsibility of the administrator for completion, unless approved prior to demolition.

The second activity is a housing unit that is planned to be rehabilitated. The loan closing is pending the processing of guardianship documents by the county.

The second consideration for this amendment is that the HOME Division performance and program staff have provided extensive technical assistance to move this contract forward. The completed units in this contract are some of the first to move successfully through the Department's now loan closing process for the owner-occupied housing assistance program.

The additional extension in household reduction for this contract, which experienced significant challenges due to a previous consultant, would validate the successful efforts of the county, its new consultant and the HOME staff. Based on current rules and

contractual requirements, staff is not recommending approval of this request; however, should the Board choose to provide an additional time extension, staff recommends the conditions that are listed in your Board Book.

MS. RAY: Is there any public comment, Mr. Chairman?

MR. CONINE: There is, matter of fact. Ken Coignet? I'm going to mess it up, I'm sorry.

MR. COIGNET: That's all right. Thank you, Mr. Chairman and Board members. As Jeannie mentioned, we took this contract over in early 2007 and we've made quite a bit of progress, and the only reason the house was demolished was because there was a misunderstanding -- I'm sorry, Ken Coignet. [power interruption] and he was unable to attend today.

But I just wanted to give -- Jeannie has given you the update on it, we're basically done with four, trying to finish the fifth, and we're waiting on the loan documents for a sixth homeowner. But we do have -- we did get five of the loans closed, and then we're in the process to finish up that last house. And we'll ask for the Board's approval of this extension so we can finish this project out.

MS. RAY: Mr. Chairman, I'd like to hear from

the witness about the issue of the demolition and the recommendations of the staff that the costs associated with the demolition would not be --

MR. COIGNET: We -- that loan was closed in February, I believe, and we were ready to demolish that structure. They were making plans to move out and it took them a while to move out. We had already contracted the staff and they had assured us that -- or basically had assured us that this -- the amendment was going to be handled in-house, and was not going to need to come before the Board.

So we proceeded with the understanding that it was going to be extended, and we were going to be able to finish that project. That's the only reason that we went ahead with it. And the only other structure that, he's still waiting on his loan documents, so we obviously haven't done any work on his house; but we were within the guidelines on when we were ready to do the demolition. It just so happened that it got pushed back into that month of April.

MS. RAY: What was the cost of the demolition?

MR. COIGNET: The county did the demolition; that was part of their match.

MS. RAY: I see, I see.

MR. COIGNET: And in fact, the foundation has already been -- I mean, the foundation was demolished and the foundation is already there. So -- on that one structure.

MR. CONINE: Mr. Coignet, have you read the staff recommendation here in our Board Book?

MR. COIGNET: No, and in fact, I spoke with Larkin and he mentioned that staff was going to recommend that they -- that the Board approve our -- approve the time amendment request, or the time extension request.

MR. CONINE: Jeannie, would you show him a copy of the six bullet points or eight bullet points, just to make sure he understands what he's getting ready to get into if the Board so chooses.

(Pause.)

MR. COIGNET: Yes, that's --

MR. CONINE: Pretty much okay?

MR. COIGNET: Yes, that's going to be fine. We're just trying to get this project closed out so they can --

MR. CONINE: Well, I just want to make sure you understand what staff had in our Board Book.

MR. COIGNET: Thank you.

MR. CONINE: Any further discussion of the

witness?

(No response.)

MR. CONINE: Thank you very much.

MR. FLORES: Ready for the motion?

MR. CONINE: Ready for the motion.

MR. FLORES: Move to approve the time extension with the eight different stipulations as shown on the Board Book recommendations.

MS. RAY: Second the motion.

MR. CONINE: Motion and a second on the floor.

Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chair, if I could just add, and I know it sounds like there was a misunderstanding somewhere in this, but I really want to caution everyone about the demolition of a house. You really lock in this Board when a house is demolished, and that's why we were very, very clear in the rules, about that, and staff needs

to make sure that we have that clear understanding with our contract administrators, and those who administer these contracts need to be disabused of the idea that if they demolish a house, that this Board is going to be -- feel compelled to deal with the contract administrator that might not be performing well.

There's a -- that's just an important prerogative of this Board, and we just want to make sure that staff is giving the right instructions, but also that you folks who are doing contract administration work also are aware that, you know, read your contracts; read what it says; make sure you get clarification, and if you don't feel like you've got clarification from staff, go to Jeannie or call me.

MS. ARELLANO: And staff is very clear on that. That is the direction that we provide in providing technical assistance, especially reviewing these contracts which are older contracts, that are not always necessarily covered by the new policies.

We certainly give that guidance when we provide the technical assistance. And also, there are penalties that are available to the Board, for the Board's use, to impose on situations like this.

MR. CONINE: Town of Anthony?

MS. ARELLANO: The second request is from the Town of Anthony, also an OCC contract, which has requested an amendment to extend the contract end date by six months from April 30, 2008, to October 31, 2008, and to decrease the number of households required by the contract from four to two.

If approved, this will be the Town of Anthony's second amendment. The first amendment, which was approved at the November 9, 2006 Board meeting, extended the contract end date from September 30, 2006 to April 30, 2008. Additionally, the contract required the administrator to comply with the 2006 HOME rules, which included the loan requirement for the OCC program.

This contract is also one of several for which Carlos Corlena Vargas served as consultant. As with Frio County, at the directive of the Board, the service provider agreement with Mr. Corlena Vargas was terminated.

The Town of Anthony procured another consultant, Mr. Tom Nance, in March 2007. The first consideration for this request is that the town was identified the two households they intend to assist under the contract, the environmental clearance was completed with the assistance of the home environmental specialist on August 3, 2007 for these households.

The administrator began working with the division's performance team in November 2007, at which point multiple issues were identified in the ownership documents and the income verification documentation. The second consideration is that the Town of Anthony experienced difficulty in accessing the department's contract system, which delayed approval of the activity setups.

They plan to complete rehabilitation on the two households they will be assisting. The first home has an estimated rehabilitation cost of \$33,000, while the second home has an estimated rehabilitation cost of \$37,000.

Neither of the homeowners have existing mortgages on the properties. The initial appraisal submitted for these two households reflect a value that exceeds the amount of assistance to be provided for the rehabilitation only of the homes.

The current loan policy requires the loan amount to be calculated by subtracting the initial appraised value, and 10 percent of the final appraised value from the final appraised value. In order to proceed with the loans for these households to be assisted, staff recommends that the loan amount equal the amount of assistance provided, with no adjustment for the initial or

final appraised values.

Without this Board action, staff has no ability to originate a loan to assist these households. The Town of Anthony and their consultant believe that the additional time is sufficient to allow for the completion of loan closing and rehabilitation of the homes, with the assistance of the performance staff, the administrator has made significant progress since August 2007, when they did not yet have environmental clearance.

Based on current rules and contractual requirements, staff is not recommending approval of this request; however should the Board choose to provide an additional time extension, staff recommends the conditions listed in your Board Book.

MR. CONINE: I have no public comment on this item. Any questions of staff?

(No response.)

MR. CONINE: Is there a motion.

DR. MUNOZ: Move staff's recommendation.

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

MR. FLORES: Mr. Chairman, I'll make the second, but I need the -- got to get some staff input, here.

MR. CONINE: All right.

MR. FLORES: While we've got her on the floor anyway, but Jeannie, has the administrator made aware of the stipulations you've put on here?

MS. ARELLANO: Yes.

MR. FLORES: Yes, okay. Thank you.

MR. CONINE: Let me clarify --

MR. FLORES: The staff recommendation is to deny.

MR. CONINE: Right.

MR. FLORES: That's what I'm moving.

MR. CONINE: I want to make sure that we all understood what the motion is. The motion is to deny, currently, this request.

MR. FLORES: To deny the request.

MR. CONINE: Correct.

MS. RAY: Mr. Chairman, I move to speak against the motion?

MR. CONINE: You can --

MS. RAY: I mean, I --

(Simultaneous discussion.)

MS. RAY: I'm sorry. I rise and speak against the motion, in that I am in favor of allowing the additional time extension, having sat through this painful

process as this moved forward, and what went on in the communities, the changing of the consultant, the impact on the families that are associated with rehabilitating these homes, and I am more in favor of allowing the time extensions, with the provisions provided by the staff.

The reason I'm opposed to it is because families will be impacted. And families have been out of their homes, their homes have been in disrepair or in the process of being repaired, and if we do not approve the extension, the families are going to be the ones to be hurt. And I do not wish to see the citizens in these particular two cases to be hurt by this action.

MR. CONINE: Any other discussion?

MR. FLORES: Yes. Madam Chairman?

MR. CONINE: Yes.

MR. FLORES: Jeannie, could we postpone --

MR. CONINE: Did you say, Madam Chairman?

MR. FLORES: Oh, I'm sorry.

(Laughter.)

MR. FLORES: Could we change that --

(Simultaneous discussion.)

MR. FLORES: It's a long afternoon.

Jeannie, would it hurt anything to postpone this for one month? Or for -- until the next Board

meeting?

MS. ARELLANO: It would just be additional delay to the households, getting --

MR. CONINE: Get the house started by -- we're creating a new end game here, so time is --

MR. FLORES: Well, my --

MR. CONINE: -- time is critical in this.

MR. FLORES: -- concern is this. I mean, the no conversation, and there's no one here representing the city, and so here we are trying to, you know, one-party negotiations here, and that's not a good way to have negotiations. So if we delay it, it seems like that would allow you time to discuss with them, see if they were willing to accept the stipulations that we would put on the motion, if indeed I could convince the rest of my fellow Board members to pass the motion to keep the contract alive.

DR. MUNOZ: Withdraw my -- well, let me ask you a couple of questions.

MR. FLORES: Wait a minute. She hasn't answered my question.

MS. ARELLANO: When we worked on these amendment requests, we spent a lot of time talking to the communities and the consultants that are involved, and

the -- besides the communities knowing, being aware that the items coming to the Board for approval or denial, we -- these stipulations that staff is recommending are things that are -- we've had in discussion with them to determine what the best outcome would be for both us and them.

MR. FLORES: So you've had previous discussions leading to this --

MS. ARELLANO: We've had several.

MR. FLORES: Okay.

MS. ARELLANO: We've had several discussions with them.

MR. FLORES: All right. Thank you.

DR. MUNOZ: Yes, but here's my question: First of all, there seems to have been a series of issues with this situation. Of particular concern is the point of these properties being under-appraised of the money being invested to rehabilitate them, among other issues.

And then the point right now that you made, that you are in conversation with these folks, so that they understand these sort of points, these additional requirements that will be imposed on them, should this -- should these exceptions be made.

But a minute ago, somebody making the same

case, a fellow that was up here a minute ago, was not aware of those points, in the case involving him. So now you're saying that these folks are aware of these points.

Because if we approve it, under these stipulations, there's no one here to recognize as the fellow did, as the gentleman did just before, that they will adhere to these requirements.

So then if we pass this, it would be without their understanding or assent to these additional expectations?

MS. ARELLANO: What -- I want to address your one comment about them being under-appraised. They're not under-appraised, they're appraising at a value that is higher than the amount of the assistance that we'd be providing, so it presents a challenge in structuring the loan.

So we are recommending that since these are for rehabilitation only instead of reconstruction, that we make the loan amount, the amount for the rehabilitation, that is the amount of work that's actually going to occur to the property.

I don't believe that the communities or the consultant would have an issue with that; it's actually in some ways a benefit to them, because otherwise we would

not have a way to originate a loan.

I can't speak to why Mr. Coignet wasn't aware of what the Board -- recommendations of staff was, because we do communicate that to them. We're working closely with them through the process, and we let them know that it's going to the Board when the Board Book is posted, and it's available for public viewing.

MR. GERBER: Dr. Munoz, I would just add also, many times these are, you know, very economically challenged communities; it's hard for a lot of them to come long distances, here. And so I know staff has been in touch with these communities and been working closely with them.

And is it correct, Jeannie and Laura, that were the Board to approve these -- this set of conditions, that your belief is that, and understanding from them is that they would be able to comply with that.

MS. ARELLANO: Correct.

MR. GERBER: So while staff's recommendation remains that we would recommend denying of it because of our programmatic rules, should the Board wish to exercise its discretion within those as the policy setters, they would be able to comply with these terms.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes.

MS. RAY: I respectfully request that the maker of the motion withdraw his motion.

(Laughter.)

MR. CONINE: You've been pinching on him for about three minutes.

MS. RAY: I have, I have.

MR. CONINE: There's a motion on the floor and a second. Any other discussion.

DR. MUNOZ: I'll withdraw my motion, Mr. Chair. If that language had been inserted in the recommendation I may not have made the motion, that additional language that Mr. Gerber just offered.

It just seems a bit contradictory to me to say, We recommend denying, however, under these circumstance, et cetera -- so I'll withdraw my motion.

MR. CONINE: Motion's been withdrawn. Is there another motion?

MS. RAY: Mr. Chair.

MR. CONINE: Yes, ma'am.

MS. RAY: I move that we -- the Board approve the additional time extension, with the recommendations or the conditions of the extension recommended by the staff.

MR. CONINE: Another motion on the floor, is

there a second.

MS. BINGHAM-ESCARENO: Second.

MR. CONINE: There's a second to her motion.  
Any further discussion.

DR. MUNOZ: With the understanding that those people affected by those additional stipulations are not here to assent to those --

MR. CONINE: Yes.

DR. MUNOZ: -- right?

MR. CONINE: I think we understand that.  
Seeing no further discussion, I'll call the question. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Town of Bonham.

MS. ARELLANO: The third request is from the City of Bonham. This is a homebuyer assistance contract, to extend the contract by six months to October 31, 2008, and to reduce the number of households served from ten to four.

If approved, this would be the city's second amendment. The first, approved February 13, 2008, extended the contract by six months. The city has served

three households to date, and a fourth has been identified. The fourth household set up in the Department's contract system is a familial relative of a Bonham city council member, therefore creating a conflict of interest.

The first consideration for this request is that the housing market in northeast Texas, much like the rest of the state and country, has tightened during the last few months. This has resulted in fewer households purchasing new homes and participating in the homebuyer assistance program.

Second, the conflict of interest issue for the fourth identified household has resulted in the delay and it's the primary reason for the city's contract extension request. The conflict of interest process is near resolution; the city has completed its responsibilities in the process and is awaiting a ruling from HUD, which will likely favor allowing the household to be assisted.

Based on current rules and contractual requirements, staff is not recommending approval of this request; however should the Board choose to provide an additional time extension, staff recommends the conditions in your Board Book.

And there was someone here from the City of

Bonham earlier today.

MR. CONINE: I remember that. Okay.

MS. BINGHAM-ESCARENO: Mr. Chairman, move to approve the extension, with the conditions listed in staff's recommendation.

MR. CONINE: Motion to approve the -- an extension of time. Is there a second?

MS. RAY: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. ARELLANO: Okay, you're almost rid of me (laughs).

Mr. Chairman, Board members, on January 31, 2008, the Board approved the Housing Trust Fund 2008 Homeownership Super NOFA program, which made available \$1 million to be utilized for the rebuilding and rehabilitation of affordable housing for homeowners, and

gap financing or down payment assistance for first-time homebuyers.

Eligible households must earn 50 percent or less of the AFMI as defined by HUD, with incentive provided to serve households earning 30 percent or less of the AMFI. Applications from units of general local governments, nonprofit organizations, for-profit organizations and public housing authorities are being reviewed on a first-come, first-served basis.

The final application deadline for the home ownership Super NOFA is tomorrow. Attached is an application log reflecting all applications received in response to this NOFA.

The 2008 Homeownership Super NOFA is currently oversubscribed by \$750,000, three applications are currently undergoing review and will be considered at an upcoming Board meeting if they meet the department's eligibility requirements.

While there is insufficient funds currently available in the NOFA, in order to allow staff to make award recommendations for these last applicants, the Board has the ability to use the funds to this activity using un-programmed funds available through the receipt of loan repayments and the de-obligation of previous awards.

Since the NOFA application deadline date is tomorrow at 5:00 p.m., and the NOFA is already oversubscribed by \$750,000, staff recommends Board approval to increase the funding available for this NOFA up to \$1 million. If additional funding is approved by the Board, any future award recommendations will be presented to the Board for approval.

Attached is an award recommendation log and staff has provided a brief description of the applicants being recommended for an award. If the award recommendations are approved, no funds will remain available under the NOFA unless the Board chooses to approve additional funding to address the oversubscription of current applicants in the amount of \$750,000, and/or any additional applications that may be received prior to 5:00 p.m. tomorrow.

Staff recommends approval of Community Council of Southwest Texas, Community Housing Services Corporation and the City of New Braunfels for a Housing Trust Fund Super NOFA award. Staff also recommends approval of the increased funding of up to \$1 million.

MR. CONINE: So we're doing two things; we're giving them more money, and approving these recommendations.

MS. BINGHAM-ESCARENO: Move to approve the staff recommendations.

MS. RAY: Second.

MR. CONINE: Motion to approve both, along with a second. Is there further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. ARELLANO: Thank you.

MR. CONINE: Thank you, Jeannie.

MR. CONINE:

VOICE: Good job, Jeannie.

MS. ARELLANO: Thank you.

MR. CONINE: Yes, Jeannie.

VOICE: Now the fun stuff.

MR. CONINE: Now we get to the hard core stuff.

For all you people that are left, Item 9. Housing Tax Credit Program item. Ms. Robbye Meyer.

MS. MEYER: Robbye Meyer, Director of Multi-Family Finance. The first item, Item 9 a) is the

Presentation, Discussion of Housing Tax Credit Amendments.

The first one is for Casa Alton. Chairman and Board, the owner is requesting approval to change the rent and income restrictions originally proposed for this development.

The original rent and income targetings were ten units at 30 percent of area median income; ten units at 40 percent of area median income; 17 units at 50 percent of area median income; and 36 units at 60 percent of area median income.

The amended targets would be, 46 units at 50 percent of area median income; 25 units at 60 percent, and then five units at market rate, thus eliminating all the 30 and 40 percent AMI units. The original application score would have been two points lower for these proposed changes, and to answer Dr. Munoz's question earlier, the reduction in the points would not have made -- it wouldn't have affected the recommendation at that time; however it might have affected another applicant's decision to compete in the region.

The owner is also requesting to eliminate the second bathrooms from all the two-bedroom units, and to combine the laundry room and clubhouse buildings into one building, thus reducing the common area by 315 square

feet.

The owner states that this request is made to reduce the cost of development because it is not financially feasible to include the original features as originally proposed in the application.

Staff has strong concern for this owner's ability to bring this development to completion. They've made numerous changes from the first submission of the application, the owner will only have until June 30, 2008, to meet the federal requirement to incur 10 percent of the development cost within six months from carryover date; that's two business days from today.

While the development with the proposed changes would meet the department's rules and guidelines, these are significant changes and may have impacted the decisions of other applicants to compete in the region.

The original application was dependent on the ability of the syndication prices, and that the site work and the other costs had been sufficiently evaluated by the applicant.

Based not only on the reduction of the syndication price but also the increases in site work, direct construction cost and interim financing, the development is no longer financially feasible.

The underwriter does not recommend the approval of the requested changes because it changes significantly, diminishes the level of affordability that was originally proposed in the application.

Staff is recommending the Board deny the amendment request because the development will not serve the lowest income level tenants as originally proposed. The applicant has not begun significant construction, and the credits should be returned if the development is no longer financially feasible.

MR. CONINE: I have witness affirmation form Jean Coburn.

MS. COBURN: Good afternoon. I'm Jean Coburn. Sorry if I'm nervous, I feel like I'm trying to pitch a complete game and I'm on the last out, but go ahead, run to the plate.

I'm here to ask the Board to approve our request for an amendment to Casa Alton, TDHCA Number 07-302. And really quickly, to comment on some things that came up in some earlier agenda items. I understand the Board would be reluctant to set precedent, per se, on an amendment request that is making changes to rent restrictions; but at the same time, there was also comments made about the difficulty of some of these

projects.

And I appreciate the opportunity to present the exceptional circumstances behind this project. To start with a little history, this application was not awarded tax credits at the July 2007 Board meeting, along with the other 207 tax credit awardees. The award was given to another application in Region 11 which beat Casa Alton by one point after they won a challenge that involved affordable housing need scores.

A few months later, the other application was terminated due to issues with their site, and our application became the next in line for an award. To speak to the comment about other applications possibly not competing against us, this other one absolutely was in close competition with us, but had to drop out.

Other than that, the next highest scoring application I think was 30 points, at least, behind us. So I don't think that it would have affected anybody else in the region.

To continue, we were awarded tax credits in December 2007. The late timing of this award coincided with market changes which we're all aware; offers from lenders and syndicators expiring; and construction costs estimates rising. In addition, because we were not

awarded credits in July, we missed opportunities to obtain additional funding from local political subdivisions, since we were not pursuing them because we had no deal.

During the public comment section of today's Board meeting, you heard letters from the Hidalgo County Urban County Program, the Hidalgo County Commissioners' office, and then also the City of Alton if it had been read; stating that they want to see this development built but they no longer have funds available to give to the project. Perhaps this would not have been the case had we been awarded credits in July, instead of December.

To speak to the changes in the market, this project was originally underwritten with equity pricing at 87 cents, but we have found that at least for this particular project, it is at best at 83 cents, with some syndicators offering prices in the '70s.

This created a substantial financial gap of the project, and in addition, the timing of the equity contributions has shifted from our original offers with more of the equity coming into the back end of the project. This results in the need for a larger construction loan, and therefore a significant increase in interim loan interest, creating an even larger financial gap.

Because re-underwriting was necessary due to the changes in the marketplace, and lack of additional funding, we also took a closer look at our construction costs --

(Sound of electronic tone.)

MS. COBURN: -- I believe I have some additional time.

MR. CONINE: Wrap it up.

MS. COBURN: As we began to renegotiate with syndicators and lenders. We based these estimates on a similar project that is currently under construction in the same region; it is the same number of units, designed by the same architect, and is being built by the same general contractor so we feel our construction costs, our estimates as of right now are accurate.

TDHCA staff in their report to the Board mentioned that several changes had been made to this application. However, these changes were not made due to deficiencies in the TDHCA application, but to meet requirements that were set by the USDA; this is a USDA set-aside project.

We satisfied the USDA requirements by changing the shape of our site, which resulted in changes to the architectural plans, and therefore some of the

underwriting.

In addition, changing the site requirement, that required obtaining a new ESA. And so because this affected so many areas, this change seemed rather significant, although in essence it was simply a small reduction in the acreage used for the site; we just had to move the property line over a little bit.

TDHCA has also expressed concern about our project readiness, particularly in regards to the 10 percent test. We are not unaware that this deadline is Monday, June 30. However we have purposely not spent the funds required to meet this 10 percent deadline, as we are waiting on your decision on this amendment request.

We've been working with our accountants in preparation for this deadline, and have materials purchased, contracts drafted and ready to sign, so that we're able to meet that deadline upon your approval.

If we are denied today, we will have to -- we will have no choice but to return the tax credits. And we didn't want to be on the hook for \$900,000 if we have no financially feasible project.

This leads me to my next point. If we were to return these credits and they were to be returned to Region 11 for the 2008 allocation, currently there are

three pending allocations -- applications in Rural Region 11, and three 2005 developments that were awarded binding agreements through that same allocation; all of that totals a little over \$1.7 million in requested tax credits; however the Rural Region 11 allocation this year is over \$1.8 million.

So all of these projects are going to be funded anyway, without us returning our tax credits. If our credits are returned and then re-allocated throughout the State, Rural Region 11 and the families of the Rio Grande Valley will be ultimately under-served.

In addition, staff suggests that the reduction of affordability of this project is a reason to deny our request for an amendment; however the three applications currently in Rural Region 11 do not include much deeper income targeting than our amended application.

All three include 40 percent of their units at a combination of 30 percent AMI and 50 percent AMI, with  
5 --

(Sound of electronic tone.)

MS. COBURN: -- percent at 30 percent AMI.  
This gave these 2008 applications the full 22 possible points for that scoring category; our application was also originally awarded that full 22 points. The change we are

now proposing would have awarded us 20 points instead.

In addition to that, we are now including 60 percent of our units at 50 percent AMI; we decreased the number of units that were at 60 percent, and increased the number at 50 percent. And also, as pointed out the 2 point reduction would not have affected our recommendation for an award.

The rent schedule used in the three pending applications in the 2008 round are a result of a recent change in the QAP. The 2007 QAP does not give points for this affordability structure; it only gives points for having 10 percent of the units at 30 percent AMI, which is what we had originally --

MR. CONINE: I must ask you to wrap it up.

MS. COBURN: Yes, sir. We could adjust our affordability to reach that other scoring category that is now in the 2008 QAP, but I think the change in the QAP, without really knowing what the reason was for it, is because in today's market, it's really financially unfeasible to have 10 percent of your units at 30 percent AMI.

If I used the 2008 QAP rules right now, though, I could still have 22 points. And some 30 percent units.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much.

Do I hear a motion, or any other questions of staff?

DR. MUNOZ: Well, Mr. Chair, that was quite a bit of information. I'm just curious if staff has any sort of response, because there was quite a few things there that were introduced, maybe originally. You know, in my summary I don't see anything, any mention of this USDA and having to comply with that, and how it affected their design.

And I mean, is there any staff response to what's been introduced?

MR. CONINE: I'm assuming -- while you're conferring, Ross Elliot and Anthony Villasenor and Jennifer Holstrom are saying they wanted to yield time to Ms. Coburn; that's what you wanted to do, and not speak.

(No response.)

MR. CONINE: Okay.

MR. GOURIS: The -- Tom Gouris, Director of Real Estate Analysis. The application -- we did know that there was USDA funds involved; the applicant had anticipated that USDA funds were involved. When they received the award late last year, you know, we talked at

length about readiness to proceed, being able to move forward.

There was quite a conversation about their being able to acquire the property in time to actually be an award from last year. They spent a lot of time and energy trying to get that accomplished, believing and telling us that they believed, that they were ready to proceed.

What they're proposing today and now is a vastly different transaction, that includes very little of the affordability protections that were originally proposed.

It would have been maybe one thing had they split the difference, and had some affordability in there; but they've eliminated all but the maximum affordability that they can provide, because they don't need to -- for points reasons, they don't need to go any deeper.

So it's a little challenging for us to say that -- to agree with their arguments that this is all new stuff that's come up during the past six months or past few months, when really this is stuff that should have been vetted last year, even before they made application to us, to know what sorts of requirements USDA might have.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: Staff?

MR. FLORES: One more. Tom, the 30 and 40 percent AMIs that were changed, from 10 and 10 to zero, did the Department of Agriculture requirements have anything to do with that change?

MR. GOURIS: I don't believe directly; they didn't say, You can't have 30 and 40 percent units, if that's what you're asking.

MR. FLORES: That's what I was asking, yes.

MR. GOURIS: Yes. I think what they're saying is that the transaction, because syndication prices have changed and other things weren't locked down, that now the financial structure of the transaction has changed significantly, and for their lenders to be comfortable with the transaction, they need more income, and so they can't meet the affordability levels that they had pledged last year.

MR. CONINE: Mr. Cardenas?

MR. CARDENAS: Mr. Chairman, I move that we accept the staff recommendation.

MR. FLORES: Second.

MR. CONINE: Motion to accept staff recommendation and a second. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Item b).

MS. MEYER: The next item on the agenda, 9 b) is another amendment. And it deals with housing tax credits and the HOME amendment. It's Hamilton Senior Village, 07-177. In 2007, Hamilton-Charger Senior Properties, L.P. received an award of HOME funds in the amount of \$225,000 to be amortized over 30 years, and an annual allocation of housing tax credits in the annual amount of \$339,782.

On May 12, 2008, the owner submitted a request to increase the amount of HOME funds to \$1,223,992, with an amortization of 40 years, and an interest rate of 1.5.

In order to address the concerns of the syndicator and the underwriter, the owner is requesting approval to change the unit mix from 20 two-bedroom units and 16 one-bedroom units, to four two-bedroom units and 32 one-bedroom units.

This conversion will decrease the net rentable area by approximately 3280 square feet; to compensate for these changes requested, the owner proposes to change the rent and income restrictions from four units at 30 percent, and 32 units at 60 percent of AMI, to four units at 30 percent, 14 units at 50 percent, and 18 units at 60 percent AMI.

The owner has indicated that the changes will satisfy the syndicators' concerns, address the concerns of the department's original underwriting regarding the potential excess of two-bedroom units targeting 60 percent incomes, and will generate and allow the development to better meet the needs of the market.

If the Board approves these amendments to the application, these changes will result in a reduction in income that will necessitate a reduction in the debt service.

The development was originally projected to utilize a USDA 538 loan and HOME funds for all of its permanent financing. The owner now wishes to replace the USDA 538 loan with additional HOME funds from the department with a rate that is below the applicable federal rate.

To meet the federal maximum unit subsidy

limitations for the increase in HOME funds, the owner must designate at least eleven HOME-restricted units and include each type unit.

The Board may approve these additional funds out of available de-obligated sources from previously awarded eligible contracts for circumstances considered unique or extenuating by the department's Board.

The development was originally approved and continues to meet the department's real estate analysis rules and guidelines, and therefore staff has no basis on which to recommend the change to the original Board-approved HOME funds or tax credit awards.

The underwriter notes, however, that the changes in regard to the tax credit award will not be viable without the changes in the HOME award. Staff does not recommend the approval of the amendment request because the development is still financially viable pursuant to the rules and guidelines of the department.

However, staff acknowledges that the proposed changes in unit mix and AMI would be more in line with the market study, and would serve more lower-income Texans at 50 percent of Area Median Income and below.

MR. CONINE: I've got public comment on this one. Louis Williams.

MR. WILLIAMS: Chairman, members of the Board, my name is Louis Williams and I'm from Nacogdoches, Texas.

And I'm the general partner of Hamilton-Charger Senior Properties.

And this project is a 36-unit senior complex there in Hamilton, and basically, guys, what has happened is that we took a second look at it after talking to the syndicators and everything, and we've got another senior complex that we just brought online; it was an '06 project, there in Nacogdoches and it was Nacogdoches Senior Village; one-bedrooms went like hotcakes, and my two-bedrooms didn't quite go as well as what we thought.

So I think it would be very prudent on my part before we jump off into Hamilton Senior Village to make the change to where we have a product that lies a lot better than what we originally proposed.

I know this is a late point in trying to make a change, but like I said, I think it would be very prudent on my part to come up with a better product to meet the demand that's -- that we've experienced firsthand this last four or five months.

So that's the reason why we're requesting this amendment. And one thing though I just wanted to bring up is that we are sort of a lower-income tenant than what we

originally proposed; and I think it's just a better product all the way around, and I hope you all go my way on this one. Thank you all very much. Is there any questions?

MR. CONINE: Mr. Williams, are you familiar with the staff recommendations, assuming the Board chooses to do this, and all the changes, the difference in HOME funds, and so forth that go along with this --

MR. WILLIAMS: Yes, I'm very familiar; I was the one that came up with it.

MR. CONINE: Okay.

(Laughter.)

MR. CONINE: Wanted to make sure you understood what the parameters might be.

MR. WILLIAMS: Yes, sir.

MR. CONINE: Okay. Thank you.

MR. WILLIAMS: Is there any other questions?

MR. CONINE: Any other questions of the witness?

MS. BINGHAM-ESCARENO: I'd like to move that we accept the owner's request to modify the unit mix, but with staff recommendations on the limitation of the increase in HOME funds and the allocation of the units per [indiscernible] recommendation.

MS. RAY: I second that motion.

MR. CONINE: There's a motion and a second to accept the changes offered by the developer. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: The motion carries.

9 c).

MS. GAMBLE: Mr. Chairman, Board. Before I get started I want to -- with the appeals here, I want to direct your attention to the packet that you received this morning from Robbye Meyer. This is -- oh, I'm sorry.

Sharon Gamble, Competitive Housing Tax Credit Administrator.

You have a packet of information that's been added since the publication of the Board Book, and it contains information for five of the appeals that we're going to discuss here today.

The first appeal is for Oasis at the Park, TDHCA Number 08-145. This applicant is appealing the

eligibility of the scoring determination for the application. The applicant requested points pursuant to Section 50.9(I)(15) of the 2008 QAP, Economic Development Initiative.

The applicant selected the option and application which has the requirement that the development be located in a designated state or federal empowerment or enterprise zone, urban enterprise community or urban enhanced enterprise community.

A deficiency notice issued on April 28, 2008, informed the applicant that the rules require a letter from a city or county official stating that the development is in one of these areas specifically named in the rule.

The scoring was reduced because the applicant failed to submit evidence that the development is located within one of the designated zones or areas as previously stated.

The applicant submitted additional information after the Board materials were published. The letter from the applicant states, "The regional transportation authority is a political body and quasi-governmental agency which created an urban renewal zone."

This letter still does not meet the

requirements, because it's not a designated state or federal empowerment enterprise zone, urban enterprise community, or urban enhanced enterprise community.

Even if the letter was acceptable, receipt of the letter at this time is well beyond the date of application submission and the deficiency time period. Staff recommends the Board deny the appeal.

MR. CONINE: Okay. We have David Marquez, please.

MR. MARQUEZ: Good afternoon, Chairman, Board members.

MR. CONINE: Good afternoon.

MR. MARQUEZ: My appeal is kind of simple. It's a simple yes or no, how's that.

We did submit in the application originally from the rural transit -- regional transportation authority. It is a government body that was created by the city and the county, and also small cities that surround that.

They created a Texas Renewal Zone, so that they could receive Texas transportation dollars. And so our project falls within this three-mile radius. And so when we submitted this letter, we looked at the Tab 14, and we have followed everything that Tab 14 says.

"Verify that the proposed development is located within such a designated zone; verify that the proposed development is eligible to receive the state or federal economic development grants or loans; verify that the city, county still has available funds."

We have done all that. The difference in what staff's recommendation is and where we're at is two words.

We call it the Texas Renewal Community, or the RTA does; and the QAP calls it a designated state enterprise zone, or Texas State urban enterprise zone.

The Oasis at the Park has received \$493,000 to date from the City of Corpus Christi; there were three tax credit applications that applied to the City of Corpus Christi. I believe a letter that was sent from the City of Corpus Christi supporting Oasis at the Park it was an RFP that went out for HOME funds, and so the city council supports only Oasis at the Park.

But so does the RTA, and other agencies within the city of Corpus. So all we're asking is that even though our letter doesn't state, "designated state" and it says, "Texas Renewable Community," that we understand staff can't look beyond that because it's not in the QAP, but we ask that the Board look beyond that.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much.

MR. MARQUEZ: Thank you.

MR. CONINE: Any further questions of Ms.

Gamble?

(No response.)

MR. CONINE: Do I hear a motion --

DR. MUNOZ: Well, let me ask a question. The empowerment zone and what they called it, is there some definitional language that exists somewhere that could be juxtaposed and say, Well, in order to be an empowerment zone, A, B and C have to be accomplished, and whether that could be juxtaposed to the -- whatever title they gave it locally?

(No response.)

DR. MUNOZ: Are they accomplishing the same thing, or is there no definitional language?

MS. GAMBLE: Well, there's no way for -- I can't answer that right now, because I'm not sure what this zone is that they created was. What I have to look at and what we had to look at when we were scoring applications was the fact that the QAP, in its distinct wording, specifically requests these specific zones; these were the ones that were agreed upon in the language of the

QAP.

And so that's where the -- because he was not able to prove that he was in one of these mentioned zones or areas, we weren't able to award the points to him.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes.

MS. RAY: I'd like to address staff and the general issue here. It appears to me that a regional transportation authority, and an enterprise zone are really not the same thing. They don't appear to be the same thing at all, if you understand what an enterprise zone is, and the purpose of an enterprise zone, and understand what went into the QAP as a result of that.

I appreciate the developer's position, but it's certainly not an enterprise zone, and it's certainly not a federal empowerment zone; it's a regional transportation authority, which is different, in my opinion.

MR. CONINE: Okay. Any other comments, one way or the other?

(No response.)

MR. CONINE: Questions?

(No response.)

MR. CONINE: Do I hear a motion?

MS. RAY: Mr. Chairman, I move staff

recommendation.

MR. CARDENAS: Second.

MR. CONINE: Motion, and a second by Mr. Cardenas for staff recommendation. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

VOICE: Opposed.

MR. CONINE: Oh, there is one opposition.

VOICE: Two.

MR. CONINE: There is two oppositions.

VOICE: How do you vote, Chairman?

MR. CONINE: Do I have to?

MS. RAY: [indiscernible].

MR. CONINE: Motion carries. We're now to 9 c) I guess. Is that right? I mean, what's the next one.

MS. GAMBLE: The next one's going to be Suncrest Apartments.

MR. CONINE: Suncrest, okay.

MS. GAMBLE: 08-182.

MR. GERBER: Timber Village has been withdrawn.

MS. GAMBLE: Oh, yes, sir. 08-240, Timber Village withdrew their appeal.

MR. CONINE: Okay.

MR. GERBER: So moving on to Suncrest Apartments?

MS. GAMBLE: Yes.

MR. GERBER: Go ahead.

MS. GAMBLE: All right. You have in your packet of added information there, an updated version of the Board Action Request. The information that was given on the back of that with the relevant development information as far as applicant, was a misprint. The real applicant is Sound Preservation 105 L.P.

The development is proposing the rehabilitation of 100 units, and will be located in El Paso County. It's in the at-risk set-aside, and serving the general population, and they're requesting \$392,669 in tax credits. That's the only difference to that one.

This applicant is appealing the eligibility of the scoring determination for the application. The applicant request points pursuant to Section 50.9(I)(27) of the 2008 QAP, Leveraging of Private State and Federal

Resources, which requires the applicant to submit evidence of funding that is from a private, state or federal resource be in addition to the primary funding, the construction and permit loans, and be issued from a lender that is not the same as the primary funding source or an affiliated source.

In response to a March 25, 2008, deficiency notice, the applicant submitted an updated summary Sources and Uses of Funds form, and the financing narrative, both of which show that a HUD 236 interest reduction payment fund as part of the conventional first mortgage loan from PNC Multi-Family Capital, the primary funding source.

The funds are not in addition to the primary funding, and the funds are issued from the same primary funding source. The score was reduced because the applicant failed to submit evidence of funding that meets the QAP requirements for points under this item.

Staff recommends the Board deny the appeal.

MR. CONINE: Okay. I have a witness affirmation here, Jeff Spicer.

MR. SPICER: Jeff Spicer, State Street Housing Advisors. I think what's going on here is that the development-based rental subsidy received through the 236 IRP, which is interest reduction payment, which is being

received directly from HUD, the payments received will be received from 2009 through 2015, a total \$464,821.

The confusion is that the subsidy is coming directly from HUD, however, the mechanism used to monetize that subsidy is a loan, which is also being provided by the same company providing the first mortgage loan.

The 236 subsidy, which is a development-based subsidy, being provided by HUD, is then turned into a loan; and we specifically clarified this in the financing narrative to show that this loan is separate, and based on different payments, from what your first mortgage loan is being based on.

Again, it's a separate source. HUD is not PNC. HUD is providing the subsidy, not PNC. PNC is providing the mechanism to monetize the subsidy being provided by HUD.

I think we clearly demonstrate in the funding narrative both additional funding, this is funding provided by HUD that would not otherwise be available in the first mortgage loan, it's separate, being provided by HUD, again, not PNC; and it's, the other criteria for points is that it's more than 2 percent of your total sources of uses. And the \$464,000 equals approximately 6 percent of the funds.

MR. CONINE: Thank you. And Mr. Spicer, I guess I'm confused. The PNC loan is, they're going to warehouse that loan, just a normal deal, or is it --

MR. SPICER: What happens is, HUD, where the loan is not -- what happens is, the 236 IRP subsidy does -- eventually goes directly to the lender, to support a second loan. So there's a primary mortgage on the property --

MR. CONINE: Who does that come from?

MR. SPICER: The primary mortgage is coming from PNC, supported by the NOI of the property.

MR. CONINE: Okay. So it's not insured by anybody else.

MR. SPICER: No.

MR. CONINE: Okay. And so, moving back a step now, Robbye, Karen -- I'm back to staff.

It doesn't appear to me, if what Mr. Spicer's saying is correct, that you got, you know, a HUD 236 interest reduction loan, and a conventional PNC non-insured loan, is coming from two different sources. Why are we saying it's coming from the same source?

MS. GAMBLE: Because if you -- as it's presented on the sources and uses form that was presented by the applicant, it's indicated as being from PNC; it's

not indicated as being -- it's indicated as being from PNC and from the IRP payment.

And that's what we have to look at when we're determining what the source of the funding is, and on the sources and uses fund, he has it indicated as a second mortgage loan from PNC.

MR. CONINE: Okay.

MR. GERBER: Tom, why don't you add to it --

MR. SPICER: If I could clarify, based on the QAP, the development-based subsidy does not need to be shown in the sources and uses in order to qualify. Because it's development-based subsidy.

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis. The 236 loan is a preexisting transaction, and that loan is going to be terminated, but the interest rate reduction from the preexisting loan is going to continue. And PNC is going to monetize that IRP, that interest rate reduction payment that's been coming in, they're going to monetize that with money from PNC in exchange for getting those payments from the IRP.

So the IRP loan is really old and cold money, and it's considered old and cold money, otherwise it would be a subsidy that would have to come out of basis potentially if it's new money, because it's a federal

subsidy.

So from a big-picture standpoint we'd consider that old and cold money; it's not anything new to the transaction.

MR. CONINE: Tom -- you [inaudible].

(Laughter.)

MR. GOURIS: Because the IRP already exists; it exists today. It has existed for years, and what they're doing is, they're going to extinguish the existing debt and create two new instruments, one to take out the original debt, and the second to monetize that interest rate reduction payment that is able to continue to come to the project.

Jeff, is that --

MR. SPICER: That's essentially correct.

MR. GOURIS: And so, from a -- if these points were awarded, we'd be looking at this transaction two different ways at the same time; we'd be saying it's old and cold for the purposes of whether it comes out of basis and those issues, but we'd have to be looking at it as new money for the purposes of points.

And that doesn't make intuitive sense to us, that's why we've recommended to you all that you look at it all as old and cold, which means it's not new money,

which means they don't get the point for it.

MR. CONINE: I still don't understand the issue. I mean, I hate to be dumb about this. It sounds like to me, he's got, under his sources and uses even though it's old, he's got two different sources of funding. And --

MR. GOURIS: It's --

MR. CONINE: Not the same, just because it said "PNC" on the application doesn't make it the same, to me.

(Simultaneous discussion.)

MS. MEYER: If you look at the sources and uses, and there should be a copy in your Board materials, it actually -- it shows it all as their primary mortgage, in their first mortgage on the property. So it's all together. So as far as staff is concerned, it's considered a primary funding source, and it's all in their first mortgage, and therefore it's coming from PNC, and it's coming from their primary lender, and it's not eligible for these points. That's kind of the bottom line.

MR. CONINE: Okay.

(Simultaneous discussion.)

VOICE: Mr. Spicer, do you have a response to this?

MR. CONINE: I didn't hear what he said.

VOICE: I can't hear you. Put the mike on. We can't hear.

MR. SPICER: What we're claiming is that this is a development based subsidy coming directly from HUD, which it is. We have to apply for the 236, IRP loan. When we terminate the mortgage it goes away. We had to make an application; we have 400-some-page HUD application for the IRP loan, for the IRP subsidy to continue.

That's in our application, and we are saying this is a development-based subsidy; and under the QAP it allows a development-based subsidy to qualify for leveraging.

MS. GAMBLE: And what we're saying is that, in the application documents submitted by the applicant, the sources and uses funds, this money is not indicated as a development-based subsidy. It is indicated as part of a loan that is coming from PNC. So -- and that's the difference.

It's what's indicated in the application and for our review when we look at this document; when we look at this document, we're looking -- if it's a subsidy on the sources and uses, then that's great; we'll, you know, look in other places to see what's going on with that

subsidy. But that's not how it's indicated in the application.

MR. CONINE: What do you think, now that you've heard his explanation?

MS. GAMBLE: I've heard his explanation before, and I still think that it's not a subsidy; it's not taken out of eligible basis, it's shown as a loan in the sources -- summary of sources and uses fund, and that's how we treated it when we were scoring the application.

MR. FLORES: Seems like to me, Tom Gouris, that his mortgage payments are reduced, whether you call this a subsidy or whatever you call it; so therefore his basis in the project is substantially less than it would have been the other way, whether it's old money or new money or whatever.

So I don't see the problem, I guess, of -- whether it's called a subsidy, or it's called whatever, or whether it comes from wherever it does. He has a lesser obligation by having this money come in, into the project. You know, it makes the project more viable.

MR. GOURIS: That's correct. He's monetized this asset of the project, which is an interest rate reduction payment --

MR. FLORES: And so explain to me what our

problem is, so that the latest form he might have not filled out right, you took points off, it appears for, I can't put my hand on --

MR. GOURIS: I think there are really two issues. One is that the way that he monetized it is by getting a loan from the same lender, at the same time as the primary loan, and that is why he -- that's the PNC loan, and the new money is coming from PNC.

He's paying for that loan with a subsidy that's old and cold, that if it's considered to be a new thing for him, a new activity, then it would be a federal subsidy that would come out of his eligible basis and we'd have to reduce his credits by an amount equal to the formula for how much of it to take it out.

MR. CONINE: But it sounds like to me he's willing to take that exposure.

MR. GOURIS: That's not how he made application.

MR. CONINE: Why would he appeal to try to get points if he knows the possible outcome can be a reduction of eligible basis?

MR. GOURIS: Because this is a confusing situation, and he could probably convince you -- us, that we could look at it one way --

(Simultaneous discussion.)

MR. GOURIS: All right. We can look at it one way for one purpose and another way for another purpose.

MR. CONINE: Sheesh.

MR. GOURIS: I mean, that is a possibility. I -- but that makes it confusing -- that further confuses the situation.

MR. CONINE: That's what we pay you for, is to un-confuse us.

(Laughter.)

MR. GOURIS: Well, that's why we write these things up.

(Simultaneous discussion.)

MR. CONINE: I mean, he's taking a federal resource, a HUD loan, and leveraging it. I mean, that's what it says, "Points for leveraging a private, state or federal resource." I'm --

MR. FLORES: Tom, I'm to the point that I'm either willing to wait another month for you to explain it to me in a back room somewhere, or two, I'm willing to give him the benefit of the doubt. Which one do you want me to do?

MR. GOURIS: As long as we can -- I mean, if we can understand the direction that we're -- that you all,

if you've given the benefit of the doubt, do we look at the -- do we look at these funds as new, and therefore require them to be taken out of basis, I don't think he's run that gamut with his client yet, so I don't know if they're willing to, you know, whether they're willing to do that or not. But we can go either way.

VOICE: Kevin is squirming over there, did you like to say something?

MR. CONINE: He just doesn't like him to recommend stuff to you.

VOICE: Oh, okay.

MR. HAMBY: Actually I don't like getting involved in these. I was just saying that, because of Tom's discussion, that you could probably solve both issues at the same time and say, it's fine if we give this point, you understand you lose your eligible basis; and make it all part of one motion so there's not a confusion, it's all done at the same time, and that addresses Tom's concern.

MR. FLORES: Mr. Chairman, I think I'm going to make that motion. And I don't know how to frame it, but I think he just said it.

VOICE: Kevin, why don't you clarify what that --

(Simultaneous discussion.)

MR. HAMBY: You would make the motion to grant the appeal, with the stipulation that this not be considered an eligible basis. Is that right, Tom?

MR. GOURIS: Right.

MR. FLORES: Thank you. That's my motion.

MR. CONINE: If that's what Section 42 requires. Okay. Is there a second to that motion?

MS. RAY: I'll second the motion.

MR. CONINE: The motion is seconded. Any further discussion? For the confused?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: The motion carries. For the confused. Park Ridge is the one I have next.

MS. GAMBLE: Okay. I'm getting there, in this big book. Okay. This applicant is appealing the eligibility of the scoring determination for the application. The applicant requested points, pursuant to Section 50.9(I)(19) of the 2008 QAP, Developments and

Census Tracts with No Other Existing Same Type Development Supported by Tax Credits, which requires that the census tract be listed as eligible in the 2008 housing tax credit site demographic characteristics report.

In response to an April 17, 2008, deficiency notice, the consultant for the applicant stated that he based his decision to move forward with the application upon demographic information released by the department on December 8, 2007. On that date, the housing tax credit site demographic characteristics report was posted to the department's website.

The document was found to have errors in the data presented. On December 12, 2007, the document was removed from the website, and the department issued a ListServe announcement, alerting the applicant community of this fact, and cautioning the applicant community that demographic data issued on or prior to December 12, 2007 should not be relied upon for any information regarding the 2008 housing tax credit applications.

Staff does not deny the error made. Excuse me, the error, and made every effort to notify the public to avoid reliance on the information. Consultant has worked with the department for several years and certainly understands the complexities of the programs and

application materials. This consultant relied upon the correct information released by the department for another application in the 2008 cycle, for this same point item.

The consultant is using the department error as convenience for this appeal, when he had the correct information in hand as evidenced with the other application.

The scoring was reduced because the correct information was available, prior to the application submission. Staff recommends the Board deny the appeal.

MR. CONINE: I have a witness affirmation form from Mark Mayfield.

MR. MAYFIELD: Again, good afternoon, Board. I'm Mark Mayfield with the Texas Housing Foundation.

The Parkridge Development has been a sister, companion to the development we did over in -- was just discussed earlier in Johnson City, when we abandoned the idea of doing the private activity bond deal, with both Johnson City and Llano, see, and both of these communities are in Region 7.

We chose to go with the HOME route, with the application -- through the application process for Johnson City, and through the tax credit process for the community of Llano. That being -- it made more sense to do that,

for obvious reasons.

That being said, I just wanted a little bit of that history, and I would like to just yield my time to Mr. Spicer, Jeff Spicer, who's been our consultant on this.

MR. SPICER: And we're not trying to say that we relied upon the wrong information. We initially made a statement -- we initially made a decision to move forward, right on December 2008 when this stuff was posted; and our decision to go forward with that application was based on what staff had posted.

But obviously staff said, Hey, later one, we made a mistake, we corrected it. We're just looking for the same, you know, staff had made other mistakes and we had a Board meeting in January that said, Hey, go ahead and use the higher of the two need scores based on staff mistakes.

We're just looking for a similar clarification here, acknowledging the mistake. We moved forward based on the, you know, the initial staff publication, and fully realize that, you know, certainly that was changed at a later date, but we had already made a decision by the time the errors were recognized and re-posted, to go forward with the application. That's all we're asking. Thank

you.

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

(No response.)

MR. CONINE: Do I hear a motion?

MR. FLORES: Move staff's recommendation.

MR. CONINE: Motion to staff recommendation.

Is there a second.

MS. RAY: Second.

MR. CONINE: Second. Is there any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Moving on to the Sphinx at Fiji Senior. All right.

MS. GAMBLE: This applicant is appealing the penalty of a scoring reduction due to the late receipt of information needed to satisfy a deficiency notice. Pursuant to Section 50.9(d)(4) of the 2008 QAP, Administrative Deficiencies, points were deducted because

an item from the threshold review deficiency notice was received after 5:00 p.m. on the fifth day.

A deficiency notice was issued on March 27, 2008, and was required to be satisfied by 5:00 p.m. on April 3, 2008, to avoid any point loss. Required evidence of a hold harmless letter was not received by the Department until after 5:00 p.m. on April 3, 2008.

Therefore, the final score was reduced by five points. The hold harmless letter is required for evidence of appropriate zoning, as outlined in Section 50.9(h)(7)(B)(ii) of the 2008 QAP.

This applicant and consultant have participated in the housing tax credit competitive program for several years. The requirements of threshold and of administrative deficiency process have changed very little over the last few years. The applicant and consultant should both understand the complexities of the program, and application process.

The applicant and consultant assert that the delay was the fault of the city of Dallas. Staff disagrees because the application and the submission of any information for that application is the sole responsibility of the applicant.

The deficiency process allows an applicant to

clarify or correct information submitted at the time of application, but it also has time limits for that information to be clarified or corrected. This applicant and consultant did not provide that information within those parameters. Therefore, the applicant should have the appropriate penalties applied.

To allow one applicant to violate the deficiency time frame undermines the application process as a whole for all other applicants participating in the program. Staff recommends the Board deny the appeal.

MR. CONINE: Okay.

MS. GAMBLE: And there is -- there was extra information submitted for this appeal also.

MR. CONINE: I got five forms and only three get to play, so pick the order, the batting order. John Shackelford?

VOICE: Chairman, Mr. Agumadue, first; Mr. Obeso, second; [inaudible], last.

MR. CONINE: Got it.

MR. AGUMADUE: Good afternoon, Mr. Chairman Conine and members of the Board. My name is Joseph Agumadue. We've been doing tax credit for quite a while; we have quite some developments out there that stand out. Nothing comes close to what we build.

And we've worked a lot with the City of Dallas, and then the last two years or so, we were able to get two deals built in the City of Dallas, that are 100 percent leased right now.

The Sphinx at Fiji is fairly unique in the sense that it's part of a bigger development, a master planned development that includes this development, and we've been working with the City's -- a fairly low, blighted area part of the City, and looking for funding to be able to make a place possible.

And we have assembled a large acreage, and this development is part of it. We worked -- it involved so many agencies; the City of Dallas, the county, and the North Texas Council of Government. North Texas Council of Government alone has committed up to \$5 million on this development, which includes this deal.

The City of Dallas has committed \$1.2 million, which we have utilized to purchase, and we are demolishing a warehouse right now that's on this site. We -- and this deal has gone through the City Council, the City of Dallas, at least four times, and each time just to request for some kind of funding or some kind of approval, you do have a resolution from the City of Dallas put in the deal.

The City has been working to develop two Uvalde

districts. One of them is called Transit Uvalde. The other one is called Trinity District, Trinity Uvalde.

Either of the districts will allow us to do what we are planning to do here without going through a zoning process. We've been working with the City, the City has been going back quite a few years; all along, we thought we already had that in place.

About the 22nd of February, when we are about to submit the application for this tax credit, we went to the City, found out that indeed none of these districts was final, and that we were required to submit a zoning application. We did. And the City of Dallas has acknowledged that indeed they have received that.

In the process of all this, when we submitted that, they said, Well, the Transit Uvalde is going to be in place by the time your new application goes through. So, fine. So whatever it is, that's fine.

We received the deficiency notice from this agency; I made a request for the City to give us the necessary letters that we needed, including of course, which we delivered, a letter that would indeed hold the City harmless in case this zoning doesn't -- didn't go through.

A few days before this went down, we found out

that really there was no record, the City didn't have our application processed. Well, it came down to the day. I got down there personally; there was not a record even of our application. The City was not processing it under primary stat, any of this district was [indiscernible].

I called the agency from there and said, This is what we are faced with. How can we solve this? They said, Well, it's in the QAP, do what you can. I went to the director of planning; it happened to be a Planning Commission day. They called her, after the meeting; I told her, Listen, this is what we are faced with. All this money is about to really be compromised if we don't get this letter from you, I mean, a letter that indeed we have on file for zoning, and you have received the hold-harmless letter for about -- that's all.

A city that has put all these money out for these -- a pretty simple thing. And then she said, Well, we are sorry, we didn't get the process started, and at that moment we started into the process of getting a zoning application through. Running from one end to the other we finally got everything processed, they gave us the letter, that indeed we had submitted for zoning that was faxed from their or emailed from there, and it came in late.

What I'm saying is that, as a developer, who understands the burden and what it takes to prepare this application having done it so many times, we knew that zoning was required; we applied for zoning as called for by the QAP. The City of Dallas understands, and they put a lot of money in the deal.

(Sound of electronic tone.)

We have done our part; that's what we're required to do. The City, to give us a simple letter, that indeed we have applied for, it is a pretty simple thing. Somehow it couldn't come out. We have gone back to the City, the City Manager acknowledges that indeed there was some kind of bungling, or some kind of confusion related to this. What we are asking you is that indeed, our responsibility is to request this letter; it is not to write the letter.

And I do have a representative from the City of Dallas here, sir.

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

(No response.)

MR. CONINE: Mark Obeso?

MR. OBESO: (Corrects pronunciation). Excuse me. I am representing the City of Dallas, and I'm here

today to speak in support of the SDC Fiji Senior Villas project, the 130 senior apartment project, that's part of the Fiji Compton Sustainable Development Master Plan.

This project is comprised of about 21 acres, that will also be a mixed-use development, and it's adjacent to a DART rail line. The Fiji development is a real important component of the Dallas Transit-Oriented Development efforts, sitting in between two DART lines, two DART rail stations at Eighth Street and Corinth, and at the Morel Street Station.

The Fiji Compton plan has approximately 61 privately-held properties, that are being acquired as we speak, and 21 Dallas Land Bank lots that are also going to be conveyed to SDC for the development. The City has never before taken the approach of advancing \$1.2 million in city funds to acquire and demolish property prior to tax credit allocation approval.

This investment is only one piece of a multi-phase revitalization of the Corinth-Lancaster corridor, and the Fiji project itself will serve as a gateway to revitalization of this important rail corridor, which leads south to the UNT campus in Dallas, and will complement the Trinity River land use plan which is also adjacent to the Fiji project.

201 Fran Way has been acquired, and it's in the finishing stages of the demolition, making way for the low-income tax credit of 130 units. Fiji was also, as Joseph mentioned, was previously awarded \$2.8 million from the Regional Transportation Council and North Texas Council of Governments, and the City of Dallas has provided an additional \$700,000 in infrastructure support, and that's also in progress.

We respectfully request that you consider our request, support the project and approve the appeal. Thank you.

MR. CONINE: Thank you --

MS. RAY: May I ask a question?

MR. CONINE: -- yes. Ms. Ray has a question.

MS. RAY: I understand all of that, what you spoke about in support. You have any information about the City of Dallas not having provided the letter on the zoning?

MR. OBESO: And I'm sorry that I can't speak to that. I'm in the housing department, and I hadn't been involved at all in what transpired through Development Services --

MS. RAY: That's all I need.

MR. OBESO: Thank you.

MR. AGUMADUE: We do have a letter from the City Manager that was sent in to you, in that regard.

MR. CONINE: Thank you.

MR. GERBER: Mr. Chairman. If I could ask a question of the City of Dallas, because Dallas has just been a -- has had its issues with the tax credit program.

At the time that the applicant came to you all, this was a second run by the City of Dallas, because we're dealing during -- to clear a deficiency, why didn't you deal with it, on the front end, and then why didn't you deal with it in a timely way, the second time?

MR. OBESO: And like I said, that's a Development Services Department process.

MR. GERBER: But you're representing the City here today.

MR. OBESO: Yes, I am.

MR. GERBER: I just want to know why the City of Dallas didn't deal with it, once or -- now twice, and why it's falling on the department.

MR. OBESO: Yes, I -- and again, I'm sorry I can't answer that. Thank you.

MR. CONINE: John Shackelford.

MR. SHACKELFORD: Mr. Chairman and members of the Board, and Mr. Gerber. As you can see this is part of

our issue we have sometimes in dealing with the City of Dallas that makes it a little difficult for developers to get through the morass of the bureaucracy sometimes.

I know I have a difficult task before me today of convincing you to waive the rules, and not opening Pandora's Box for this Board to have every developer come before you seeking some sort of a waiver of a rule when they meet a deadline.

But as staff pointed out, this developer has been before the department a number of years doing developments successfully. They know the rules, they were not negligent, they were not reckless in not trying to follow the rules, and to address your question, Mr. Gerber, there are two different processes.

We had one issue at threshold, we filed the application immediately back on February 27. It doesn't get processed. The reason why it doesn't get processed is, what I understand is because the City of Dallas was going through two new zoning processes of different overlays that just got approved, but not all the rules are written.

And so the staff was telling our -- my client that, We don't need to process it because when this gets approved, you've got your zoning. So they didn't process

it. And so he then gets -- goes by the City, can't get the letter that he needs, then the deficiency notice comes out, he goes back again, ends up finding they didn't even process it, they don't have a record of receiving it, receiving the application, he does have evidence of the application being received, it's in your package.

And that's when, then on the last day he's running around, scurrying, trying to get the City official to give the letter, and it doesn't get to you until 20 minutes too late, he had to do a whole new application again because they didn't have receipt of it, but you do have that.

City Manager A.C. Gonzales did the letter to the Board that you have in your packet there, that does say that they bear some responsibility for not being diligent in providing the letter that was necessary for the developer.

So I know there was confusion at two different stages here; at threshold, and again after we got our deficiency notice. And if you have any --

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Any further questions of the witness?

(No response.)

DR. MUNOZ: Well, I don't have a question. But I would like to underscore a line in this letter, because to me it's quite telling, from the Assistant City Manager, A.C. Gonzales. That "it was not our intention of the City to be unresponsive." I mean, to me, that's accepting a significant degree of culpability. Just that.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes.

MS. RAY: I move to grant the appeal.

DR. MUNOZ: Second.

MR. CONINE: Did I hear a second down there?

DR. MUNOZ: Yes.

MS. RAY: Yes.

MR. CONINE: There's a motion to grant the appeal, motion by Ms. Ray, second by --

MS. RAY: I'd like to speak in favor of a granting of that appeal. I realize that a significant deadline was missed, by a day, but I also recognize that a significant investment on the part of not only the developer but on the part of the City of Dallas, for millions of dollars on the part of the City of Dallas, and I believe that the error was on the part of the City of Dallas, and not on the developer, and sometimes you have

to make a decision to be -- not be penny-wise and pound-foolish.

For that reason, I think we should grant this appeal, and not lose all this money over one day.

MR. CONINE: Any --

MR. FLORES: Mr. Chairman, I want to speak against the motion, or -- for the rest of you to vote against it. There's a reason for these deadlines. We have people come before us time and time and time again. They all have good excuses. Excuses don't count. It is the responsibility of the owner, it is the responsibility of the consultant, it is the responsibility of that lawyer over there to go out and make sure that that paperwork gets turned in on time.

You had eight days to do it; you could have sat outside in the hallways of every bureaucrat in the City of Dallas to get it done, and it wasn't done. I am not going to sit here and take responsibility for the developer not taking care of his business. So for that reason I urge you to vote against the motion.

MR. CONINE: Any further discussion --

DR. MUNOZ: Let me -- I'd like to amplify the remarks by Ms. Ray. I think when you have a project with this kind of sizable investment, 130 units for the

elderly. Right? Of a high quality, with broad support -- I mean, these are precisely, in my opinion, the kind of projects where we should exercise some appropriate -- and judiciousness.

I mean, I think the letter very clearly states the responsibility, and certainly more could have been done to expedite this letter which was eventually in hand, it seems to me that the project managers made a good faith effort to satisfy this requirement in a timely way, and you have an official document from the City recognizing their culpability, their responsibility, for this not being done in a timely way, for which they were not responsive. So I suppose I would contrarily encourage the Board members to vote with the motion.

MR. CONINE: Any further discussion?

(No response.)

MR. CONINE: I guess it's time to vote. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(a chorus of noes.)

MR. CONINE: Motion fails.

MS. RAY: It's three over here, to two.

MR. CONINE: It was?

MS. RAY: Yes.

MR. CONINE: There's three for?

MS. RAY: Yes, sir.

MR. CONINE: Two against?

MS. RAY: Yes, sir.

MR. CONINE: Motion --

MS. RAY: Carries.

MR. CONINE: No, I vote against. Motion fails.

MS. RAY: But you only get to vote on a tie,  
don't you?

MR. CONINE: Huh?

MS. RAY: You only get to vote in terms of a  
tie.

MR. CONINE: I gave you a tie.

MR. FLORES: Chairman can make or break a tie.  
Check the Roberts Rules of Order. The tie is a loss.

MS. RAY: It was three to two; it was not a  
tie.

MR. CONINE: I can't vote.

MS. RAY: Yes, you can.

MR. CONINE: Oh, yes. I can vote.

MS. RAY: But you make it a tie, then you --

MR. CONINE: So it fails.

MS. RAY: I stand corrected.

MR. CONINE: It fails because it didn't pass.  
Right?

VOICE: Correct.

MR. CONINE: Correct. Chelsea Senior  
Communities -- Dr. Munoz?

(No response.)

MR. HAMBY: This is one of those time periods,  
because it's an appeal, where you are a quasi-judicial  
board, and so on a three-three tie, the motion fails, we  
still have to have a motion to either approve or -- this  
going to --

MR. CONINE: We've got to revote it.

MR. HAMBY: Got to revote.

MR. CONINE: Let's take a five-minute break.

(Whereupon, at 3:30 p.m., a recess was taken,  
to reconvene at 3:35 p.m.)

MR. CONINE: Okay, we're back in session. We  
got to get the rest of the crew in here. Where are they.  
Everybody that's left here, we're under a severe time  
constraint with Board quorum requirements and flights and  
everything else, so we need to just try to rush through  
the rest of this, what we got left, as best possible, so.

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes.

MR. GERBER: May I may interject on things, I just wanted to note that I've asked the representative from the City of Dallas who is here that we have a real need as a Department on the staff level to work and engage the City of Dallas.

I hope you'll take that to your City Manager and to the officials that you report to, that we really do need to figure out how to make the tax credit program work, or if it's not going to work, then it not work, in the City of Dallas.

But to leave people in the lurch, and to leave staff in the lurch is really -- I think puts this Board and the staff in a significant bind, and you see that reflected here today.

We -- I'll be in touch with you and I hope you'll leave your card with my staff, so that we can make sure that we engage properly, because we do not want this issue to reoccur.

And Mr. Chairman, my commitment to you is that perhaps you and I could visit with the City's --

MR. CONINE: Yes, come on up --

MR. GERBER: -- officials, and --

MR. CONINE: We'll be glad to --

MR. GERBER: -- try to make some headway.

MR. CONINE: -- try to facilitate a meeting, get with the mayor and whatever else we need to do. We're waiting on the Board members to show back up so we can revote that issue. I hope somebody's tracking them down.

(Pause.)

MR. CONINE: Okay. We're all back, the motion is going to be brought back to the floor on the motion to approve the Sphinx at Fiji Senior amendment request. Is that right?

VOICE: Yes.

MR. FLORES: Well, we're going to move staff recommendation, Mr. Chairman, I hope.

MR. CONINE: Excuse me?

MR. FLORES: I thought we were going to move staff recommendation.

MR. CONINE: No, I think the motion -- we have to revote the motion that's on the table, because it didn't pass the last time. Correct?

MR. HAMBY: No. It failed. So you can move -- make any motion you want to --

MR. CONINE: So we need a whole new motion.

MR. HAMBY: If you remake that motion --

MR. CONINE: I need a whole new motion, is what I need.

VOICE: Could I say something?

MR. CONINE: No, sir. You may not. You can sit down.

MR. FLORES: Mr. Chairman, I move staff recommendation.

MR. CONINE: There's a motion for staff recommendation. Do I hear a second.

MS. BINGHAM-ESCARENO: Second.

MR. CONINE: There's a second. All those in favor of the motion, signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All those opposed?

(A chorus of noes.)

MR. CONINE: The motion fails. Do I hear a new motion?

(No response.)

MR. CONINE: Maybe --

MS. RAY: Mr. Chairman --

MR. CONINE: Yes, ma'am.

MS. RAY: -- I move to approve, to grant the appeal of the -- Fiji.

MR. CONINE: Motion to grant. Is there a second.

DR. MUNOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All those opposed.

(a chorus of noes.)

MR. CONINE: Motion carries. Moving to the Chelsea Senior Community.

MS. GAMBLE: This applicant is appealing the scoring determination for the application. The applicant requested points under Section 50.9(I)(2) of the 2008 QAP for quantifiable community participation, which requires that a qualified neighborhood organization submit a letter of support for the purpose of scoring points for the application.

The application did not receive the full 24 points for the letter submitted by the Acres Home Super Neighborhood Council, because Acres Homes did not meet the requirements of the QAP, and representatives for Acres Homes failed to respond to a deficiency notice requesting that the information required to meet the requirements be submitted by April 22, 2008.

That -- the representatives of Acres Homes received notice from the department by email, by fax and by telephone regarding the deficiencies to their QCP letter; they did not respond to department notices.

Further, according to a letter received from one of the representatives after the deadline, the Acres Homes representative only replied to the notice after they were contacted by the applicant, and he provided them with a copy of the notice.

Pursuant to Section 50.9(I)(2) of the QAP, the applicant is currently forbidden from providing production assistance for the purpose of QCP points.

The applicant states the neighborhood organization did not have sufficient time to respond to the deficiency notice, because the notice was not attached to the email the neighborhood organization verified receiving. The applicant asserts that his involvement does not violate the QAP by providing production assistance.

However, if the organization did not receive the deficiency notice from the department, they would not have been able to draft the letter they submitted to the department on April 24, 2008, without the assistance of the applicant.

The organization did not contact the department regarding the QCP letter, until after the applicant had given them a copy of the notice. Acres Homes did not respond timely to the department's deficiency notice, and the applicant provided assistance to Acres Homes' representatives, which is a clear violation of the QAP. Therefore, the points were not awarded.

Staff recommends the Board deny the appeal.

MR. CONINE: Okay. I've got some public comment here. Michael Harris, Barry Palmer, Chernon Njie.

MR. NJIE: Mr. Chairman, Board members. My name is Chernon Njie. I am the developer and general partner for the project. The department contends that the actions that I took in sending a copy of a letter that I requested on the open records, to the neighborhood association, violates the production assistance provision of the QAP.

The provision in the QAP regarding assistance clearly talks about writing letters, providing facts, as providing assistance in drafting letters, et cetera. I merely provided a copy of a letter, that the applicant -- that the neighborhood association did not receive, according to the president of the organization.

That does not constitute production assistance. Upon receiving the letter, they responded in a timely

manner, within the seven-day window that would ordinarily be available to them had the letter been received by email from the department.

This is clearly a procedural matter, it's not substantive, because the documents in question were in fact provided by the neighborhood association. The only thing that was missing was that they did not stipulate exactly, by putting a "X" on the form, on the map stipulating where this particular application was.

With that, I have a representative of the Acres Home neighborhood association here to speak on behalf of the organization.

MR. CONINE: That would be Michael Harris?

MR. HARRIS: That is correct.

MR. CONINE: Okay.

MR. HARRIS: Mr. Chairman, members, on behalf of the Acres Home Super Neighborhood Council, thank you for your indulgence. Dr. Martin was scheduled to be here this morning; her mother became seriously ill last night and asked that I appear on her behalf to entertain any questions that the Board may have.

With respect to the letter, there was an email sent, but the email purportedly had an attachment to it, and so when Dr. Martin responded to the email, in the

affirmative that she had received the email, she was responding basically to a prior request, because the subsequent email did not necessarily have the attachment that delineated the notice for the additional information.

As previously stated, with the application, the initial filing, there were -- the map was produced. However, there was an omission of just an "X" on the map, specifically identifying the location where the project would be completed.

This project is a very needed development in the community for the seniors in that community, and the Super Neighborhood Council urge your support for this appeal. Thank you.

MR. CONINE: Barry Palmer?

MR. PALMER: My name is Barry Palmer. I'm with the Coates, Rose law firm, and I'm here to speak in opposition to this appeal. We represent two projects that are in front of this project, and if this appeal is granted it means that this deal will get funded and somebody else won't.

And we all work under the same rules when it comes to community support points. All of the developers are allowed to do certain things, but they're not allowed to prepare letters or help the organization; they can meet

with the organization, and request the support points.

And then it's left to the organization to send in a letter, and oftentimes, you know, sometimes the letters will qualify and sometimes they won't. Sometimes the neighborhood groups will mess up something procedurally, and you don't get the points.

But that happens to a number of developers, and one of the developers that I represent, also the same thing happened. They didn't get the community support points, even though the neighborhood group supported their development, and sent in a letter, it had deficiencies, and they didn't respond in time, and didn't get that cleared, and so they didn't get the points.

So now to allow this developer and this community group additional time beyond the deadline is not fair to the other developers that competed using the same rules.

And I know it seems harsh to miss a deadline by a couple of days and to have that cause you not to get funded; but when we're in a competitive situation like this, and all the developers are faced with the same rules and the same deadlines, it creates an unfairness to other developers who are competing, when additional time is given to one developer.

So I would respectfully request that you deny the appeal.

MR. CONINE: Any questions of the witness?

MR. HARRIS: Mr. Chairman, may I have a follow up?

MR. CONINE: Yes, sir. One quick follow up.

MR. HARRIS: Quickly. Such that there is no ambiguity with the Board, the applicant did not prepare any letters, on behalf of our Super Neighborhood group, and it was not discovered that we did not have that deficiency notice until that was produced; it was not two days when we responded, actually we responded the same day by sending a fax.

And then the very next day, had a priority mail delivered to the department with that document. Thank you.

MR. CONINE: Okay. Any further discussion?

(No response.)

MR. CONINE: Do I hear a motion?

MR. FLORES: Mr. Chairman?

MR. CONINE: Yes.

MR. FLORES: Before I make a motion, could I ask a question of staff?

MR. CONINE: Certainly.

MR. FLORES: Let me see if I have this right. We have two points here. One is, did the developer give any assistance to the organization, the Super Neighborhood. I think that's one question. The other question is, did they respond timely. Is --

MS. GAMBLE: Yes, that's correct. Those are two points.

MR. FLORES: Okay.

MS. GAMBLE: Either of which -- both of which would, in our opinion --

MR. FLORES: It doesn't matter --

MS. GAMBLE: Yes.

MR. FLORES: -- figure, any one of the two, is enough to throw it out.

MS. GAMBLE: Exactly.

MR. FLORES: Okay. Mr. Chairman, I move to accept the staff's recommendation.

MR. CARDENAS: Second.

MR. CONINE: Motion and a second to accept staff recommendation. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Opposed?

(No response.)

MR. CONINE: Motion carries. I hate to do this to you guys, but I am going to switch off the appeals for a minute, and go to Item 10 --

MR. GERBER: Item 9 e) --

THE CLERK: Or 9 e)?

MR. GERBER: We're going to Item 9 e), which is the approval of the award list.

MR. CONINE: And I assume the balance of the appeals are already on the list. Is that right?

(No response.)

MR. CONINE: Okay. So we're not going to have any issues there.

MR. GERBER: Okay, real quick.

MR. CONINE: 9 e).

MS. MEYER: Okay. I'll shorten this up. This is the list that -- do what, now?

MR. CONINE: You better.

MS. MEYER: I'm going to. I'll make it brief.

In accordance with 2306.6724(e), the department is required to supply a list of approved applications for which the Board will choose or that staff will make recommendations to the Board at the late July meeting, and

the Board will award final awards at the end of July.

Just to give you a brief overview, we had 197 preapplications, which is relatively the same as last year, we had 212; and right now we have 101 current applications, approved applications on the list, totaling \$74,674,174 currently competing for \$41,148,732 in available tax credits.

There are two reports in front of you. One is the -- all the applications that are in the at-risk and USDA set-aside; it's a two-page report. And then you have all of the other applications that are competing in the regional set-aside.

All of these reports, they also include the forward commitments that were made in 2007 out of the 2008, and those are all designated by "A"s on the right hand side in the status column; those are all "A"s, they're already awarded.

And it also has applications that were awarded additional credits out of the 2008 ceiling, and those are also by "A." All the ones that you're looking at for the "P"s are the 101 applications that will be available for final award in the late July meeting.

MR. GERBER: So Mr. Chairman, staff is asking for a motion that the Board -- for the Board to approve

and issue the attached recommended list of the 2008 housing tax credits pursuant to 2306, or government --

MS. BINGHAM-ESCARENO: Move approval of the list.

MR. FLORES: Second.

MR. CONINE: There's a motion and a second to approve the list. I've got a Frank Ainsa [phonetic]?

VOICE: He's no longer here.

MR. CONINE: No longer here, that's good.

(Laughter.)

MR. CONINE: George King is yielding time, and then looks like it's Deborah Guerrero, but I'm not sure --

VOICE: She's on the next --

MR. CONINE: Oh, you're on something -- Oh, you're on 10 c). Never mind. Okay. Motion and a second is out there. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Mr. Chair, moving very quickly to Item 10 a) which is Jason Avenue Residential, this is a tax-exempt bond application, requesting 4 percent tax

credits; it's a Priority 2 application, proposing the construction of 252 units, targeting an inter-generational population. Staff is recommending \$1,183,606 in housing tax credits be awarded, in association with this development. There's no opposition.

MR. CONINE: And probably no witnesses here either. Do I hear a motion?

MR. FLORES: Move approval.

MR. CONINE: Is there a second?

MS. RAY: Second.

MR. CONINE: Motion and a second. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. 10 b)

MR. GERBER: Go ahead and quickly do a --

MS. MEYER: 10 b) is a refunding, this particular application, Addison Park Apartments was originally funded in 2004, January 2004, and we are requesting the Board's permission to refund those bonds

under a different financial structure to better make it -- that financially viable.

Staff is recommending an amount not to exceed \$14 million in tax-exempt bonds, and the resolution is 08-023.

MR. CONINE: Do I hear a motion?

MS. RAY: Move staff's recommendation.

MR. CONINE: Is there a second?

MR. CARDENAS: Second.

MR. CONINE: Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

MS. MEYER: The next one is Costa Ibiza. This is a tax-exempt bond development where TDHCA is the issuer. We did have a public hearing for this one, this is a Priority 2 application, 216 units of new construction serving general population, and it will be a publicly-offered transaction with city community capital.

Staff is recommending approval in the amount

not to exceed \$15 million in tax-exempt bonds, and \$879,252 in tax credits, Resolution 08-022.

MR. CONINE: You don't want to talk, do you, Deborah?

MS. GUERRERO: Only if you need me.

MR. CONINE: Great. Is there a motion?

MS. RAY: Move staff's recommendation.

MR. CARDENAS: Second.

MR. CONINE: We have a motion and a second for approval. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Opposed?

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: I would note, Mr. Chairman and Board, that NRP did a great job in organizing the community and doing their due diligence as directed by this Board.

MR. CONINE: Good. 10 d)?

MS. MEYER: 10 d) is the inducements. We have one application, and it's Providence at Grand Parkway in

Katy, Texas, the application will reserve approximately \$15 million in 2008 volume cap, and staff is recommending approval of the inducement resolution, 08-026.

MR. CONINE: 10 d).

MS. RAY: 10 d).

MR. CONINE: Do I hear a motion?

MS. RAY: Move staff's recommendation.

MR. CARDENAS: Second.

MR. CONINE: Motion, and a second by Mr. Cardenas. Any other discussion?

(No response.)

MR. CONINE: Glad to see another one in Katy. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Back to 9, wherever I was --

MR. GERBER: 9 c) and Fairwood Commons Seniors.

MR. CONINE: 9 c).

MS. GAMBLE: Mr. Chairman, the next four we can really -- while we can certainly handle them separately, they all have the same issue. And these are all regarding neighborhood associations for purposes of QCP scoring,

where there are no inhabitants within the boundaries of the neighborhood organization.

08-229, Fairwood Commons Senior Apartments, 02-261, Towne Center Apartment Homes, 08-262, Lake View Apartments, and 08-278, Four Seasons at Clear Creek. I would like to point out that 08-262, Lake View Apartments does have a second part that we'll get to afterwards.

But it --

MR. MAYFIELD: I'll withdraw that. The second part of that.

MS. GAMBLE: You'll withdraw that? Okay.

Okay, so I'll go through one of them, and just know that the issue is the same for all four of them.

We received letters of QCP support -- this is for Fairwood Commons Senior Apartments, 08-229, a letter of -- for quantifiable community participation was received from the Old Austin Highway Commercial Property Owners Association.

Our department determined that this organization does not meet the definition of a neighborhood organization, primarily due to the fact that the organization has no one living within their boundaries.

The organizations submit an appeal through

Cynthia Bast of Locke, Lord, Bissell & Liddell, stating that since the QAP says that neighborhood organizations include property owners' associations, that they should be included as a neighborhood organization, and then she also states that the phrase, "living within the boundaries" can include commercial areas where people work, because those people may not reside there but they are living when they are there, and so they do live there.

The department disagrees with this, and we recommend that you deny the appeal.

MR. CONINE: Okay. I've got multiple witness affirmations on this one; Brandy Spencer, Terry Campbell, Cynthia Bast, Sarah Anderson. Who would like to go?

(Pause.)

MR. CONINE: I knew one would.

MS. BAST: You know I'll step up. I know we are trying to hear all of these together to expedite time. I do want to point it out, that factually there is a little bit of a distinction between Fairwood Commons and the other three, but I'm sure you will hear that distinction as this testimony is made.

Again I am Cynthia Bast of Locke, Lord, representing the applicant for this proposed elderly development in the City of Bastrop. This is a cooperation

between the Bastrop Housing Authority and Campbell, Hogue and Associates as developer.

The applicant received a letter of support from the Old Austin Highway Commercial Property Owners Association which was intended to receive the full points under quantifiable community participation.

And staff determined, as you heard from Ms. Gamble, that the association itself does not qualify as a neighborhood organization, so therefore the letter is not eligible to receive these points. And that is the finding that we are appealing here today.

To give you a very brief bit of background, in 2001 the Texas Legislature set forth a set of priorities in TDHCA's governing statute, for the items that should be prioritized in the competitive process for tax credits.

And one of these was evidence of quantifiable community participation, which we call QCP, evidenced by a written statement from a neighborhood organization, and that is a key term in the statute.

The Legislature wanted a formal mechanism whereby the people surrounding a property who are most impacted by that development could provide input on the tax credit application process.

Just so you understand, applicants who receive

letters of support that are counted receive 24 points; applicants who receive letters of opposition receive zero points; applicants who do not receive a letter, or whose letter is not scored, receive 12 points.

Because this is the second-highest scoring category under the QAP, the results of these kinds of appeals and these kinds of questions often determine whether an application will be successful in the competitive process.

As you heard from Representative Menendez this morning, when the QCP legislation was passed, the Legislature did not include a definition of neighborhood organization, and there was no other definition anywhere in Texas statute. So we spent several years with appeals such as this, before some of you were sitting on this Board, trying to figure out what a neighborhood organization was.

So to try to address this problem, in the most recent Legislative Session the Legislature defined a neighborhood organization as: "An organization that is composed of persons living near one another, within the organization's defined boundaries for the neighborhood, and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood.

"A neighborhood organization includes a homeowners' association, or a property owners' association." Based on this definition, we believe that the Old Austin Highway Commercial Property Owners Association is a neighborhood organization, and that its letter of support should count.

First of all, the definition specifically says that a neighborhood organization includes a property owners' association. There's no dispute that this is a property owners' association. The language does not say, a neighborhood organization may include a property owners' association; it does not say, a neighborhood organization may include a property owners' organization if there are people living there.

It simply says, "a neighborhood organization includes a property owners' association," and on that basis alone, we believe that the letter should be approved and counted.

But additionally, we believe that the organization does meet the other requirements of the definition. It has defined boundaries, it's been created to support the welfare of this area; and even though the current participants are commercial enterprises and not residents, there are people living and working in these

businesses every day. And it doesn't make sense for commercial property owners to be prohibited from participating in this process, when they have legitimate economic interests associated with the proposed affordable housing development, just like homeowners do.

So for these reasons, and the reasons you will hear in additional testimony, we respectfully request that you grant this appeal and award QCP points for the letter of support from the Old Austin Commercial Property Owners' Association. Thank you.

MR. CAMPBELL: Mr. Chairman, Board members. Terry Campbell, Campbell, Hogue & Associates. We are the developer for Fairwood Commons. Early last year we joined with the Bastrop Housing Authority to explore the possibility of additional senior units in the community of Bastrop. And after satisfying ourselves that there was a market for additional units, we set about trying to come up with a location that we felt would be suitable for local residents.

And in looking at senior housing, we were looking for something that we thought would be very convenient, and provide the lifestyle that they would be looking for.

I don't know whether we got lucky or maybe

after all these years we're finally figuring out how to pick good sites, but we really picked a good one this time around. But it is in the commercial zone; just a couple comments on the site.

To the west is a new HEB grocery and pharmacy; to the south are medical office buildings; directly to the north and abutting our property is a retail shopping center, including two banks, a Beall's department store, several eateries and other local shops; and to the east, as it turns out, we have a new senior care facility that has just started construction in the past, actually this week. So there will be people living on that parcel very soon, probably by the first of the year.

Initially we met with the property owners and the City, as we normally do; I wanted to make sure everybody was on board before we went forward. There was support from the organization, as Cynthia mentioned, and in looking at the overall program, and we've done a number of senior deals over the years, if we were to put a senior property, for example, in the middle of some neighborhood that may have an organization or it may not, maybe near amenities but probably not, you know, I'd like to opt for getting seniors as near the amenity package as possible.

If they can walk to the grocery store, or

across the street in this case, to the pharmacy, I think it just makes a lot of sense. I think it makes a lot of sense from a public policy standpoint, and I think from a real estate standpoint it just makes a lot of sense.

So I would ask that you consider the appeal and grant this for us. Thank you very much.

MR. CONINE: Any questions of the witness?

(No response.)

DR. MUNOZ: I have a question for staff, Mr. Chair.

MR. CONINE: Okay. Dr. Munoz.

DR. MUNOZ: Okay. How do you justify exclusion of the letter, on the point that -- where the language is clear that it -- that property owners are clearly stated in statute, or the provision. And this may be a little redundant, Kevin, because I know we sort of discussed this before, but --

MR. HAMBY: Well, I believe the issue here is, how you do statutory interpretation. The State of Texas has statutory interpretation rules, and certainly not Ms. Bast's vast history with this program, she also forgot to mention to you that in the past, this Board has turned down organizations because they were not named neighborhood organizations, and that is one of the reasons

that was put into the definition.

If you'll notice, the definition is statutory.

It's also in the QAP, but it's also statutory. That definition is lifted directly from last year's QAP. So the Legislature intended to adopt the definition of a neighborhood organization that's -- that the department has used.

So if you read the entire passage, it would make no sense to have rigorous organization requirement for people living there, and none for businesses. I mean, the statutory interpretation to me is pretty clear, I don't think it's that difficult. I understand the argument; it just doesn't seem to make sense to me.

MS. RAY: Mr. Chairman, it -- based on what you said, Kevin, in the interpretation of what a neighborhood organization is, the common denominator would be, people living within the area.

MR. HAMBY: And I understand that everybody who's in those businesses or presumably everybody who's in those businesses is alive; but it doesn't mean they're living there. Sometimes we feel like we live at work, but that's not actually true. We actually have permanent residences that we claim homestead exemptions for, and -- yes.

And so while I appreciate the definition of these people being breathing, I don't believe that was the question that the staff or the Legislature had intended at the time.

So that is a key component. And again, to allow a homeowners' organization or a business property owners' association, and what we were trying to clear up, I believe, with that language was that, these people can meet this definition.

Because at one time, if you had businesses in your organization, we declared it not to be a neighborhood organization. And so this instead made it clear that you could have, if you will, a mixed-use neighborhood organization; that you could have businesses, you could have people living near each other. But the definition we have in the QAP, and the one that was adopted in the first part, not the second sentence but the first sentence of that, is that they have to be living near one another.

So that would qualify that you have to have neighborhood people living in the neighborhoods.

MR. CONINE: Can you read us the definition of the statute, please.

DR. MUNOZ: Right. Is that 50.9(I)(2)?

MR. HAMBY: That's actually the QAP; I'll grab

the statute, I don't have it --

DR. MUNOZ: Right.

MR. HAMBY: -- it is the exact same thing, but if you want it out of the book, I'll grab it.

MR. CONINE: I'd like to -- yes. Again, because I heard Representative Menendez's testimony this morning, and I stand confused.

MR. HAMBY: And I'm certainly sympathetic to that issue, and we have tried desperately to fix this QCP, but what -- if we interpret it to that direction, then a definitional section would override an actual piece of legislation, which is why I say, the piece of the statute, 67.10(b)(2) that would then cause us to have the problem of, a definition would outweigh a piece of specific legislation, or specific statute.

DR. MUNOZ: And that's what you're about to read?

MR. HAMBY: I'm about to read the definition. As soon as I find it.

MR. CONINE: Of a neighborhood organization, okay.

MR. HAMBY: "23(a): 'Neighborhood Organization' means an organization that is composed of persons living near another, within the organization's

defined boundaries for the neighborhood, and that has the primary purpose of working to maintain and improve the general welfare of the neighborhood." There's a period there, and then we have:

"A neighborhood organization includes a homeowners' association or a property owners' association."

DR. MUNOZ: So that's exactly here. So how do you -- how can we possibly preclude this letter from a property owners' association?

MR. HAMBY: Because it has to meet the "neighborhood organization includes" one. It means it's inclusive of it; it doesn't mean it's exclusive of it. So it doesn't mean that a property owners' association or a homeowners' association is automatically a neighborhood organization.

DR. MUNOZ: No, I think one could very easily argue that property owners certainly exist within the neighborhood and are invested in its maintenance and improvement, and its general welfare.

MR. HAMBY: And that's true, and that's why we more or less, this language reverses what we had been previously interpreting, and allows property owners and organizations to be included in neighborhood

organizations.

Because if you go back to 67(b)(10) --

DR. MUNOZ: But not property associations that replace neighborhood --

MR. HAMBY: Correct. They are included within, but they are not necessarily automatically a neighborhood organization, which is the interpretation that Ms. Bast and others have asked you to take; that just being a property owners' association overrides a neighborhood organization.

When you go back to 6710 --

MR. CONINE: I don't think that's what --

DR. MUNOZ: I don't think that's what --

VOICE: No, replace it as an alternative.

(Simultaneous discussion.)

MR. HAMBY: Well, but you would override, because you wouldn't have to meet any of the neighborhood organization requirements.

MR. CONINE: But is the word, "or" in there?

MR. HAMBY: No.

MR. CONINE: Yes, it is. "Neighborhood organization or," it says, "or property."

MR. HAMBY: Well, no, the neighborhood organization, it's a homeowners' association or a property

association, we're taking that to where homeowner association is yet another term that some people organize under.

No one organizes under a neighborhood organization; it's just what's in the statute. So we were defining what "neighborhood organization" means, or the Legislature was defining what "neighborhood organization" means, in the statute. It means a homeowners' association, and a property owners' association, if it meets the terms of the neighborhood organization.

DR. MUNOZ: And the terms being, within the defined border, persons living near one another, existing for the welfare and improvement of the neighborhood.

MR. HAMBY: Correct.

DR. MUNOZ: I mean, you know, I certainly wouldn't argue that a property owner has the same daily considerations as a family, as a homeowner. But to say that they don't have many of the same concerns, and certainly committed to its welfare of the neighborhood, the neighborhood doesn't thrive, the business doesn't thrive.

MR. HAMBY: Well, this is a statutory definition, though. So you'd have to believe -- you have to go with Ms. Bast's second level; even if you agreed

then that property owners' association just goes to Ms. Bast's second level, that working someplace is the same, the Legislature meant, living, was working there.

MS. RAY: Mr. Chairman?

MR. CONINE: I'd say it's the other way; you could own property and not even work there. It's just that you care about -- because you own property, because you own real title to something, you care about it.

MR. HAMBY: But the Legislative definition of a neighborhood organization, which is what is in 67(b)(10), or 6710, is that a neighborhood organization may comment; so you have to be a neighborhood organization. However, a property owners' organization and a homeowners' association can be considered a neighborhood organization for purposes of 6710.

DR. MUNOZ: right.

MR. HAMBY: So that's where the difference is. You have to still meet 6710, it's not just definitional; you still have to meet 6710.

MR. CONINE: I just wonder how the, "or property owners' association" got stuck in there.

MR. HAMBY: Well, it's because it's both. They are two different things. A homeowners' organization is not necessarily a neighborhood organization.

MR. CONINE: Recognizing the fact there is other kinds of organizations, and other forms of ownership that also might care and want input.

MR. HAMBY: Correct. But that's not what's in 6710. Neighborhood organizations are in 6710.

MR. CONINE: Well, I understand that. But that's just to keep them from adding -- saying all the other verbiage a second time.

MR. HAMBY: Well, but 6710 wasn't changed, and the Legislature adopted the definition that the department has used, as the definition of a neighborhood organization. So we have required for many years that you be living near one another in order to be a neighborhood organization.

MR. CONINE: Ms. Ray, you had a question?

MS. RAY: The only comment that I'd like to make is that, with the discussion that came from Representative Menendez this morning, if the Legislature did not intend that a neighborhood association meant people living next to one another, there would be no need to bring it back before -- for statutory reconsideration.

I think his testimony really supports the staff in this particular case.

MR. CONINE: Okay. Any other questions?

(No response.)

MR. CONINE: Issues?

(No response.)

MR. CONINE: Are we going to vote on -- I guess we need a motion to vote on -- wait a minute. Is there anybody else left to talk? I don't guess I've -- just on that one. Which one were we doing? I've forgotten.

VOICE: Fairwood Commons.

MR. CONINE: Fairwood Commons?

MS. RAY: Mr. Chairman, I would --

MR. CONINE: -- on the motion that's going to carry over to the other three, so -- for the same sort of --

MS. RAY: My recommendation would -- to allow the motion to consider all four of them, since they're all dealing with --

MR. CONINE: Well, I'd rather just do it one at a time if you don't mind.

MS. RAY: Okay.

MR. CONINE: We can as easily -- the witnesses can yield their time if they so desire, but I don't want to foreclose them out if they have a special situation.

MS. RAY: I understand.

MR. CONINE: So let's just talk about Fairwood

Commons Senior Apartments.

MS. RAY: Mr. Chairman, I move staff recommendation.

MR. FLORES: Second.

MR. CONINE: There's a motion and a second for staff recommendation, which I guess would be to deny the appeal. Any further discussion.

DR. MUNOZ: I just have a question.

MR. CONINE: Yes, sir.

DR. MUNOZ: Michael, is this interpretive dilemma, is this routine? Are we going to -- have we faced this excessively in the past? Will we face it in the future? It seems awfully reckless to not try to reconcile this somehow with greater definition, because I mean, I think a reasonable sort of reading of this, and I'm not in opposition to the motion necessarily, but you could certainly see the argument, and the strength of the argument.

Are we -- can do we do something, is it --

MR. GERBER: We can and we will, and we have. We've tried to -- this has been one of those areas of the QAP that has been a subject of lots of legislative interest, and we'll continue to, as there are creative interpretations put forward, and we just need to adapt the

statute to the right thing.

But certainly the department's goal, both in the QAP as well as what we seek from the Legislature is to give the development community clarity.

DR. MUNOZ: I mean, we certainly just -- I mean, we just need to better define neighborhood versus property versus whatever other associations might possibly exist.

MR. GERBER: It's certainly our yearly -- this is a yearly struggle -- a matter that the appeals certainly deal with each year.

(Simultaneous discussion.)

MR. CONINE: And I also have a whole lot of doubts about this. I think commercial interests, raw land interests, if you own property in an area where there's going to be projects, then you have a right to speak up, and say what you ought to. And I view the definition -- I view the word, "or" very consequential in the definition for me. Is there any other discussion?

(No response.)

MR. CONINE: If not, I'll call the question on the motion, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. I'm going to I guess let's read off the other three and see if there's anybody else that would like to speak.

MS. GAMBLE: 08-261, Towne Center Apartment Homes, and also 08-2626, Lake View Apartments.

MR. MAYFIELD: Obviously, I withdraw.

MS. GAMBLE: Okay.

MR. CONINE: Good idea. We got the Lake View, the Four Seasons at Clear Creek, Kelly Nelson?

MS. GAMBLE: If I may speak on 08-278, Four Seasons at Clear Creek in Fort Worth, a little bit of a different opinion, here. Again, this is a QCP issue. The neighborhood organization here, or the appeal argues here that the neighborhood organization -- excuse me.

The applicant states that the area covered by the association is under development, and a developer-formed organization for the benefit of future residents, and that the whole purpose of a property owners' association is to implement a master plan that will benefit the neighborhood.

The department feels this is a planned community, and the department's decision to -- or the

determination that this association is not eligible for these points in no way infringes upon the association's ability to form association and to set whatever parameters for that planned community that they wish to form.

But it's still, there's no persons living within the boundaries of this organization, and so for that reason, they don't qualify for the points.

MR. CONINE: Kelly?

MS. NELSON: Good afternoon. Mr. Chairman, Board members, my name is Kelly Nelson, and I represent the Clear Creek of Fort Worth Property Owners' Association.

I was here actually last month at your Board meeting talking about this same subject, and telling you a little bit about our master planned community.

So I would like to go ahead and kind of go over some of the things I went over with last time and then kind of expand.

We are a mixed-use neighborhood, in the City of Fort Worth. We consist of 414 single-family lots, 204 duplex units. The proposed multi-family project, the Four Seasons at Clear Creek, a commercial tract, and over 28 acres of park and open space, that will include amenities such as playgrounds, pavilions, walking trails and adult

fitness equipment.

And all of these amenities are available to everyone that lives within the POA boundaries, they're all accessible including the future residents of the Four Seasons at Clear Creek.

We are down the street from the high school, and the new ninth grade campus, and we are directly across the street from the high school running track and the soccer fields. Our project is currently under development; we have zoning and preliminary plat approval, obtained tree removal permits for the areas to be developed, and we have an approved park plan and submitted a final plat.

Our project is well underway. We are a neighborhood designed to appeal to persons and families with diversified incomes, as well as being multi-generational.

We are providing housing for people as their lives change and their lifestyles change. They don't have to leave their friends, if let's say they want to move from an apartment into buying a brand-new house; they don't have to leave their schools.

If they want to move from an apartment maybe into a duplex so they can have a yard for the kids and the

dog. And our neighborhood people, they don't have to leave just to find the kind of housing that they're ready for.

The 2008 City of Fort Worth Comprehensive Plan addresses affordable housing. The strategies and policies are to encourage and provide support for higher-density mixed-use, mixed income developments; integrate and disperse affordable housing and low-income housing into neighborhoods throughout the City; enhance capacity to address affordable housing needs by partnering with private sectors and neighborhoods.

Our project, Clear Creek is a perfect example of the type of neighborhood that the City of Fort Worth is looking for to accomplish their goals and objectives.

Our property owners' association not only has a responsibility to protect our current property owners, but it also has a responsibility to protect the approximately 230,000 persons that will call Clear Creek home.

We are a neighborhood. This proposed multi-family project has the opportunity to be a part of our neighborhood. And we feel that our POA should be declared eligible to participate in the QAP process.

Thanks for your consideration, and I'll answer any questions that you might have.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Deborah Guerrero?

MS. GUERRERO: Thank you, Mr. Chairman, and I'll be brief. Just to outline what is -- what we feel is different and unique to this particular development.

First of all, my name is Deborah Guerrero and I'm with the NRP Group. And we are co-developers of this particular application along with Merced Housing Texas.

And as you know, NRP takes working with the community very, very seriously, as demonstrated with Costa Ibiza and Mr. Gerber's comments earlier, we take it very, very seriously, and when we first embarked on this particular development, we went to the City of Fort Worth asking who do we work with, who's a registered neighborhood association.

And the Clear Creek of Fort Worth Property Owners' Association was registered as the neighborhood association in this area. And so in good faith we worked with them. We had them support our development, and the fact that property owners' associations are defined as neighborhood associations should not be ignored.

The -- as far as the intent of the Legislature, I think what Representative Menendez spoke to this morning

is the fact that, those immediately impacted, those organizations that are closest to the proposed development, should be recognized.

And in this particular case we're talking about a master planned community, that includes single-family residential, duplexes and a commercial component. And because they're not currently completed should not in any way disqualify them from having input into this development.

And to be a part of this development as an affordable housing provider is a great opportunity in the City of Fort Worth, especially when we're all over the State of Texas trying to convince neighborhoods that affordable housing is a positive, and will have a positive impact in their neighborhoods.

So as far as what makes us unique, I hope you will consider these special circumstances, and grant us the appeal. Thank you very much for the opportunity to speak.

MR. CONINE: Thank you, any questions of the witness?

DR. MUNOZ: Yes, I have a question.

MS. GUERRERO: Yes?

DR. MUNOZ: You said that you went somewhere,

and that this was a registered homeowners' association?

MS. RAY: Neighborhood association.

DR. MUNOZ: Neighborhood association?

MS. GUERRERO: Yes, sir. This --

DR. MUNOZ: So who were they registered with?

MS. GUERRERO: The City of Fort Worth. In some cities here in the State of Texas, in the case of the City of San Antonio, City of Dallas, City of Houston, some of the larger urban and maybe even some of the smaller communities, the city has a database of neighborhood associations and organizations, and the property owners' association is registered on the City of Fort Worth website.

DR. MUNOZ: So it --

MS. GUERRERO: As the association in this area.

DR. MUNOZ: -- but it's registered as a property owners' association, not a homeowners' association.

MS. GUERRERO: Yes, sir. But again, the neighborhood associations includes homeowners, property owners, and just voluntary neighborhood associations. So they're all listed on the neighborhood association/organization database.

DR. MUNOZ: Is there a formal process for

registering those organizations? I mean, they may simply be, you know, some website and they don't want, you know, two categories, so they put them all together. I mean, they're -- is there some kind of form that's filled out, that says, "These are the features of this property or homeowners' association"? That is consistent with the expectation of homeowners and neighborhood associations?

MS. NELSON: Yes, there is. The City of Fort Worth, we filled out multiple pieces of paperwork, and you submit your boundaries and your bylaws, and the amenities, it's basically your full plan for your neighborhood, and that's now you register.

DR. MUNOZ: That's how you register a property association.

MS. NELSON: A property --

(Simultaneous discussion.)

MS. NELSON: -- it's all under the heading of -- yes, as a neighborhood. Property owner associations can register as well as homeowner associations. Both are -- both registered.

MS. GUERRERO: And they can't have overlapping boundaries.

MS. NELSON: No overlapping boundaries.

MR. CONINE: Thank you. Any further

discussion.

MR. HAMBY: I just have to address that; the state statute actually specifically excludes registration with the city, so the State Legislature chose not to accept city registrations; you have to registered with the county or the state.

So if you're on the city registration, and they have many -- and most cities do have registrations, and it's probably more logical to be on the city registration, but the statutory language is that you have to be registered in the county or state. So a city registration doesn't count.

MS. GUERRERO: I just want to make one comment real quick; he's absolutely right. However, the TDHCA does require us to go to the city council, personnel of the city, and request neighborhood organizations; I mean, you all require us to do that. And usually the councilperson refers us to the website, to identify who that is; so just FYI.

Statutorily he's correct. However, the requirements that you ask us to do is to actually go to the city and ask them.

MS. NELSON: We're registered with both the state and the city.

DR. MUNOZ: Okay. Thank you.

MR. CONINE: Any further discussions or I need a motion. This is on Four Seasons at --

MR. FLORES: Move staff's recommendation.

MS. BINGHAM-ESCARENO: Second.

MR. CONINE: There's a motion for staff recommendation that's been seconded, which is to deny the appeal. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

DR. MUNOZ: Opposed.

MR. CONINE: The motion carries.

Northside Apartments.

MS. MEYER: Chairman, Board. Hopefully this is the last thing. This applicant is appealing the termination of the application. We had this appeal in front of you at the May Board meeting and it was tabled until staff could get additional guidance from the IRS as far as one of the issues concerning the termination, and that was the violation of the general use provision and Section 42.

What we've been instructed from the IRS is that, the applicant would have to request a private letter ruling from the IRS, and we would condition this award if it receives an award, we would condition that award to have that private letter ruling done at carryover.

The other part of that termination was for failure to meet a threshold requirement of readiness to proceed. For USDA applications and actually for all applications, the developments are required to present a commitment of their permanent funding, and they have not been able to do that, they have not been able to submit their permanent financing from USDA.

They are actually that letter be brought about from the national office of USDA; we received the letter and that's in your packet of information that we gave you earlier this morning, that says the national office is reviewing the information; however -- and they will return a verdict as quickly as they possibly can, however they haven't met the requirement of threshold at this time, and staff is recommending that the Board deny the appeal, because they have not met the threshold recommendation -- I mean, the threshold requirements.

MR. CONINE: David, come on down.

MS. RAY: [inaudible] Mr. Chairman --

MR. CONINE: This is the 08-147, Northside Apartments under 9 c).

MR. MARQUEZ: Yes, sir. My name is David Marquez, I represent the Hidalgo Housing Authority, and the Northside Apartments. We came before you last month on May 8, and before our presentation, staff and I believe your attorney took us outside and said, Listen, this is the recommendation that we're going to make, this is what the Board has told us, so you guys move forward and work through your issues.

So we did that, and so now we've hired Nixon & Peabody, and we're very pregnant with them; they're a very expensive law firm. We have Congressman Hinojosa's office, we now have Barney Frank's office, which is a general purpose ruling that Ms. Meyer talked about in terms of being able to allow farm labor residents in low-income housing; so we have moved forward, and I think a letter has been given to you that recently was sent by the USDA, they said they would answer quickly.

So we've gone through a lot of pains since May 8 to move forward. And so USDA, like HUD and other agencies, are a big animal. What we're trying to do is, to take care of 289 units and a rehab of some 1200 residents. And as I heard a couple of weeks ago, I think

Mr. Gerber was in front of Jose Menendez and the Urban Affairs Committee, their mandate is to, let's do more for rural housing; let's do more work with USDA.

Well, we're trying to do that. And so we've made the necessary applications to USDA, it's a little bit different than what they're accustomed; if it was a normal transfer of physical assets, a normal TPA, we probably would be out of this process.

But because we have a \$5.4 million grant, that we are actually trying to take as a grant and use an eligible basis, to the limited partnership which is done with HUD money, HOME money, all the time; it's new to the USDA, it's not precluded by law, by regulation; they've just never done it before.

And in the conversation that was with, as it states in the letter, that USDA said, If they're not doing it, they should be doing it, your people were a part of that conversation.

Mr. Gouris actually made the comment of saying, All the exercise that we're doing right now is something that we're going to have to do anyway, in the time to come because USDA has projects in rural south Texas especially, and I know of two that we're going to bring before this agency next year.

So all we're asking is what you gave us permission to do last time, is to continue to see through these programs. And so -- and these issues. And that's what we're here for today.

MR. CONINE: Any questions of the witness?

MR. GERBER: Mr. Chairman?

MR. CONINE: Yes, Mr. Gerber?

MR. GERBER: If I may just interject, and I appreciate where you're coming from, and I think one of the reasons staff worked so hard to try to work with you to try to come up with something to address the general use provision was because of our commitment and the commitment of this Board every year is to try to do these kinds of innovative and important projects, meetings, special populations.

That said, the entire \$5.4 million is pending with USDA --

MR. MARQUEZ: Actually, the \$5.4 million has already been granted to the Housing Authority of Hidalgo.

Okay? What we're waiting for, because we did this in kind of an open book, if they would have received the funds and just used it, in the LP, then what happens is, they would have actually met threshold with USDA.

But what we did was, that when we submitted it

to TDHCA we also alerted USDA that this is what our plan was. Because with 289 units, you cannot begin to rehab with the \$5.4. You need the tax credits to be able to bring this project up to date.

And people that live along the border and specifically the two Board members on the border, you know what it takes to create housing there. And I don't have to tell this Board that; you guys know that already. So --

MR. GERBER: And I appreciate that, Mr. Marquez. Let me ask Mr. Gouris if he could stand for a sec, because one of -- and maybe join me at the podium, because the thing I'm most concerned about for this Board is that we have what we need in order for Mr. Gouris and the underwriting team to underwrite, so that we know the deal is viable, which means that there's a level of -- that we've ensured that the commitments are place, so that he can underwrite. If -- let Tom answer that question.

MR. MARQUEZ: Well, let me address one thing. We do have the commitment for the \$5.4; in the structure that we need it to be in, that's what we're awaiting USDA; and that's what we're waiting for legal, to do.

MR. GERBER: Okay, great. If you'd let Tom go ahead and just explain -- Tom Gouris, Director of Real

Estate Analysis. Can you underwrite this deal?

MR. GOURIS: I don't believe we can, because we don't know if it's going to be a grant or a loan; we have no idea. And then there's an additional \$1.9 or so, in previous grant funds that we've been told by USDA at the state level that those funds cannot be granted, and that's another element that we just don't have any idea how those funds are going to be transferred into this transaction.

And so there's no way for us to actually underwrite it. It's just not ready for it to move forward.

MR. GERBER: Tom, can you underwrite this, is there a way to underwrite it in one of two different scenarios.

MR. GOURIS: Without knowing what the terms of the -- if they were going to structure it as a debt instrument instead of a grant, there would be no way to know what that is until we know what those terms would be, and every other development would have a commitment that would reflect terms that would go with that source of funds.

We don't have that here because it's a grant, and as a grant, it should come out of basis. But the way to get it to not do that is to make it in the form of a

loan, which they're talking about doing but we don't have any of that documentation, because we don't believe that -- they don't know if they can do that or not.

MR. GERBER: Is there any period of time that would be reasonable for -- where you could get clarity between now and a date certain, do the things you need to get the underwriting done, and that would enable you to get to a point where you could -- where you'd be recommending or not recommending. Where the deal could be properly underwritten, given that we have had issues with USDA in the past.

MR. MARQUEZ: May I say something?

MR. GERBER: No. This is --

MR. MARQUEZ: Well, because I'm working on the --

MR. GERBER: I understand, and I'm --

MR. GOURIS: From what I understand, we haven't gone through the threshold review process with this transaction yet, and so there may be many other things that are lacking in this transaction. You know, we realized what the big things were and went towards those right away.

After threshold review it would come to underwriting, if it could be underwritten. It's not

impossible, but that we know that they -- that this primary piece of information that's critical to an understanding of what the transaction is was not provided, and the other transactions in -- you know, that are competing, did provide it, it would be -- there's a -- you know, run through; but to answer the question, Could we do it? You know, we can do a lot of things and that's probably something we could do; date certain, you know, we'd need a couple of weeks to go through threshold and to underwrite, and that's presuming that everything is there.

And we're a couple of weeks before -- I mean, we're coming up against some --

MR. GERBER: Yes, a real critical window here --

MR. GOURIS: Yes.

MR. GERBER: -- and that's what I'm worried about too.

MR. GOURIS: Right.

MR. GERBER: Well, I'm sorry to do this. I think that the staff's position has to stand, that there's just not a -- having all of the financial pieces of this lined up, I don't think the staff can do what it needs to do to properly underwrite this deal. And so staff will stand by its recommendation to the Board.

MR. MARQUEZ: Madam Chair, may I make a comment?

MS. RAY: You may.

MR. MARQUEZ: Because we have been working with the Congressional members and USDA, and they have moved forward, what we would like to do is be able to see it through until the end of the month, until the next Board meeting. And the reason being is because, we could have stopped this process back in May 8, but you, the Board, or at least through your staff, told us to continue to work, and we did.

And let me tell you something; we have actually made a lot of headway; to be able to get USDA national involved at this level, I don't know any other way to be able to accomplish this, Mr. Gerber.

So on your instructions, or the Board's instructions, we moved forward, and we've been working, we really have. And we understand the restraints that the staff has; but to at least allow us to get to that point.

We've expended that much time, money, and effort and political capital to get to that point. We really have. So --

MS. RAY: Thank you, Mr. Marquez. We appreciate your input.

The Chair would entertain a motion?

MR. FLORES: Could I ask the staff a question?

MS. RAY: Certainly.

MR. FLORES: Mr. Gerber, or whoever can answer the question. It appears that we can't move forward until we get an IRS ruling. Is this correct? Because there's a statement in here --

MR. GERBER: Well --

MR. FLORES: -- I think the first paragraph.

MR. GERBER: -- if the Board so wished to go and award tax credits, it would be conditioned on a private letter ruling that the applicant would be seeking from the IRS, to address this issue as well as the other -- the Ysleta tribe, which was proposed for El Paso, to keep them in the round.

MR. FLORES: But the --

MR. GERBER: There's a chance that --

MR. FLORES: -- same writeup says that that would tax six to eight months --

MR. GERBER: That's correct.

MR. FLORES: -- that would be way beyond, you know --

MR. HAMBY: There is, if I may interject --

MR. FLORES: Please.

MR. HAMBY: Kevin Hamby, General Counsel. There is another issue, in the housing legislation that's moving through Congress right now there has been an insertion into the bill that would allow general use provisions if it's to be waived if it is funded with federal funding.

So there is a two-form way that it could be cleared, either through an IRS private letter ruling, and usually it takes a long time but the IRS has actually said they're interested in addressing this issue if it doesn't get fixed statutorily, so it may be something that the IRS is teed up on.

And -- but that does not deal with the other issue. But the general use issue, you could -- I would feel comfortable with the Board moving forward subject to getting this cleared up, either through legislation or through IRS private letter ruling.

MR. FLORES: Even if it takes six to eight months?

MR. HAMBY: If it takes six to eight months, what we'd probably do is, come back and talk to you about doing maybe a forward commitment for next year, or something, and releasing the credits to go on.

But we would not anticipate a six to eight

month, even though that's typically what it takes for an IRS ruling; but the IRS is interested in resolving this issue, because it is a nationwide issue, it's not just a Texas issue, and in fact we've been told that syndicators, based on actions we're taking in Texas, are not writing farm worker housing loans all over the country, because they want to see what Texas does first, and see if the IRS resolves it.

So the IRS has a deep interest in resolving this issue.

MR. FLORES: Okay. So --

(Simultaneous discussion.)

MR. FLORES: -- if I take everything you've said and then boil it down to one sentence, is that we may be able -- it appears that we may be able to overcome that obstacle. That's correct?

MR. HAMBY: We may get resolution to; whether or not we can overcome it, I don't know. But we may get resolution.

(Simultaneous discussion.)

MR. FLORES: And the second question is, to Mr. Gouris and the underwriting, because then you get into the part about, can we afford it. And you said you couldn't, and Mr. Marquez is sitting there, that he'll leverage this

and that, and that, and he can make it work.

So I'm trying to find out, can you make the underwriting work.

MR. GERBER: Right. And Mr. Flores, let me clarify. I think there's two issues, and I think we -- I think the Board has done yeoman's work to keep them in the game on the general use issue. That in my mind is really separate from the financing piece that was due and should have been submitted fully at the time of application.

So their financial ducks aren't in a row; USDA is problematic and always has been, in many of these instances; and the question is, how much longer can we wait on USDA for Tom to have adequate time to go and underwrite?

I mean, I appreciate the fact that, you know, we kept you in the game, but you still have to have your ducks in a row. And -- on the financing piece. So they really are two separate --

MR. FLORES: I understand that. I'm trying to find out if I can overcome them. And I haven't got the answer on the second one; I got the answer to the first one.

MR. GOURIS: And I mean, we have been working with USDA and we will continue to work with USDA to see if

we can't see this get resolved one way or the other, for this transaction and for others.

And what might be a better solution is that if it gets resolved, allow them to apply in the next year's round, because it has to get resolved one way or the other. They're not ready to move forward, because it's not resolved right now. Every other development that's in the game has commitments from their lenders and their funders for what they're doing, and how they're going to do it.

They've got a commitment from USDA for the funds, but not how to do it with tax credits. Because they're telling us that they can't, and now they're going back to Washington to try to say, Well, isn't there a way that we can use these funds for -- with a tax credit transaction.

That question hasn't even been answered, much less the, how will we use them with tax credits, be answered. So I think it's going to be a multi-step process to find out if they can, and then how can they, and then it's going to take a lot more than just a couple of weeks to find out if they possibly can, if the law would even allow it.

MR. FLORES: But we have a choice of either,

you know, denying the appeal and killing it and it's over and dealt with; or two, we put it back in the pot, contingent to, there's all these contingencies that they have to go make it work, meanwhile it's built up that --

(Simultaneous discussion.)

MS. RAY: Mr. Flores and Mr. Gouris, with your permission and consideration, I -- the Chair recognizes Brooke Boston.

MS. BOSTON: I have been asked what another solution might be, and one thing that we could do is to give approximately two weeks, to -- just for us to evaluate the threshold and at least see what other things are missing, and issue the deficiency notice and give them two more weeks to try and get it worked out with USDA.

MS. RAY: The Chair would entertain a motion?

MR. FLORES: To postpone action until the next Board meeting, Madam Chair.

MS. BINGHAM-ESCARENO: Second.

MS. RAY: I think the staff's recommendation was not until the next Board meeting, but two weeks.

MR. FLORES: But we're not going to meet in two weeks.

MS. BOSTON: Right. I think the deadline --

MS. RAY: To allow staff to work with the

developer.

MS. BOSTON: Right.

MR. FLORES: Right. But they can't move on their own. They require Board action.

MR. GERBER: We have terminated, you'll be in effect reinstating.

MS. BOSTON: Well, I think we'd just be tabling the item, the appeal would come on the next meeting, but the -- you're directing us that during that time, we'll do those things. And he'll work on doing his thing.

MS. RAY: The Chair accepts the motion on the part of Mr. Flores.

MR. FLORES: Exactly. Thank you, Madam Chair.

MS. RAY: Is there a second?

VOICE: Second.

MS. RAY: It has been moved and seconded, to table this action until the next Board meeting. Is there further discussion?

(No response.)

MS. RAY: Hearing none, are you ready for the question?

VOICE: Yes, ma'am.

MS. RAY: All those in favor, please say aye.

(A chorus of ayes.)

MS. RAY: All those opposed, no?

(No response.)

MS. RAY: The ayes have it, and we will hear this item at the next board meeting.

MR. MARQUEZ: Thank you very much.

MS. MEYER: We do have one more item.

VOICE: Two.

MS. MEYER: 9 d) is a waiver for the Ysleta del Sur Pueblo Homes I, it's a competitive application that has some tax credit round. This applicant is requesting several waivers of threshold requirements from the 2008 qualified allocation plan and rules. One is 50.987(d)(ii), it deals with current property tax valuations which require the applicant to provide evidence of the current property tax valuation for the proposed development site. According to the applicant, the proposed site is located on Pueblo land that is designated as a sovereign nation, and is not subject to local taxation. The Pueblo does not assess any property taxes for its own purposes.

The second waiver is 50.987(d)(iii), it's the title policy and commitment which requires the submission of a current title policy or commitment of title, according to the applicant, the development will be

located on tribal trust land, which is owned by the tribe but held in trust by the federal government.

The land in trust cannot be bought or sold, and the only method of establishing title is via a title status report, or TSR from the U.S. Bureau of Indian Affairs.

According to the applicant, the receipt of the TSR is an acceptable method in other states; obtaining a TSR can take several months, though, and the applicant has submitted an attorney opinion in place of that TSR.

50.9(h)(8)(A)(I) certification of notification requires the certification of the requested neighborhood information from the local governing official, and the applicant states that the Pueblo would be the sole entity to notify or request information from, and the Governor of the Pueblo certifies that there are no neighborhood organizations to notify.

The applicant requests the Board to not only waive the notification requirement but also to award the application the full 24 points for quantifiable community participation, or allow them to receive 6 points of support other than QCP.

The last waiver is 50.9(h)(8)(B), is signage on the property, and all applicants are required to install a

4 x 8 sign on the proposed development site that gives pertinent information about the development, and any public hearings to be conducted. This section also requires it to be placed within 20 feet of the main roadway.

Because of an irrigation canal along the property line, the sign had to be located more than 20 feet from the roadway, and the applicant is requesting the Board's approval of that location of the sign.

Understanding the limitation on Pueblo land, staff recommends the Board approve the waiver requests for 1 and 4, but staff recommends the Board deny the waiver requests for 2 and 3 because the applicant did not attempt to acquire the information required for these threshold items, and waiving these requirements undermines the competitive nature of the housing tax credit application process, and could negatively affect other applications in the region.

MS. RAY: I have two witness affirmation forms on this item. Mr. Carlos Hisa, and Mr. Albert Joseph, if you would come forward. Mr. Carlos Hisa, will go first.

MR. HISA: Well, I'm giving Mr. Al Joseph my time.

MS. RAY: Okay. And if you would identify

yourself, Mr. -- you're Mr. Albert Joseph?

MR. JOSEPH: Yes. My name is Albert Joseph. I'm the housing director for the Ysleta del Sur Pueblo.

MS. RAY: Okay.

MR. JOSEPH: I'm passing out copies of the same thing that I'm going to review; it's just the first few pages that we're actually going to read; the rest is backup material. By the way, good evening, Madam Chair and Board members.

In our application submitted on February 9, 2008, we attempted to convey to the TDHCA staff members that our project, Ysleta del Sur Pueblo Homes I, would be unlike any other project the TDHCA had ever received.

To our knowledge, our application is the first tax credit application for a project located within the boundaries of a Native American reservation, and fully sponsored by a federally recognized Indian tribe, ever to be submitted to TDHCA.

Given the unique nature of our project, located on tribal trust land and given our unique status as a sovereign nation, a designation granted to us by the United States government, our application contains elements which do not necessarily fit the mold of a typical TDHCA sponsored project.

At today's meeting we would like to discuss each of the four areas where we feel the intent of the State's QAP is being met. However, given our project's characteristics, we were unable to provide the exact documentation TDHCA requests.

In our opinion, we attempted to provide TDHCA everything possible in order to best satisfy the intent of the threshold requirements of the QAP. Therefore, we request the Board acknowledge our waivers, allow our project to continue in the competitive -- in the competition for credits, and consider the uniqueness of projects located on Indian reservations for future rounds of participation within the low-income housing tax credit program.

County and property taxes. The QAP indicates that the applicant should provide a current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the development site. Fact: the project is located within the boundaries of the Ysleta del Sur Pueblo reservation; given the pueblo's status as a federally-recognized Indian tribe, the pueblo is not subject to county taxes.

The fact that the pueblo does not assess

property taxes. In lieu of submitting information regarding county taxes and property taxes, both of which are not applicable, we submitted the following items: Signed letter from the Ysleta del Sur Pueblo governor, stating that the project is exempt from property taxes, and that's that Exhibit A-1; tribal resolution Number TC-008-08-2008, affirming that the project will not be assessed county or property taxes, at Exhibit 2, A-2.

An attorney's opinion stating that the project will not be subject to taxes levied by the State of Texas, the County of El Paso or any local taxing jurisdiction, and that's Exhibit A-3. An attorney's opinion stating that the tribe itself does not levy or assess property taxes --

MS. RAY: Excuse me, Mr. Joseph.

MR. JOSEPH: Yes.

MS. RAY: On the particular issue dealing with the taxes, I'd like to ask staff if in fact your recommendation is to waive that portion. Is that correct?

MS. BOSTON: That's correct. We're already recommending --

MS. RAY: They're recommending that one. If you'd move to the part that they are -- where you're in opposition, I think it will save all of us some time.

MR. JOSEPH: What was your recommendation on title policy?

MS. BOSTON: Title policy, that is one that needs to be discussed.

MR. JOSEPH: Okay.

MS. BOSTON: We do need [indiscernible] title policy and verification of notification, the tax evaluation and signage, staff is already recommending to the Board that they waive it.

MR. JOSEPH: On the signage one?

MS. BOSTON: Yes.

MR. JOSEPH: Okay. So I just -- I mean, I'll just cover the two, then, that they're recommending -- okay?

(No response.)

MR. JOSEPH: All right. On title policy commitment. The QAP requests that the applicant provide one of the following: current title policy which shows the ownership of the project site; or a current title commitment with a proposed insured matching exactly the name of the owner and the title of the site vested in the name of the seller/lessor, as indicated on the sales contract, option or lease; if the title policy or commitment is more than six months old, then a letter from

the title company indicating nothing further has transpired on the policy or commitment.

Fact: The project is located within the boundaries of the Ysleta del Sur Pueblo reservation. The land upon which the project is located is tribal trust land. That land is owned by the Ysleta del Sur Pueblo but held in trust by the federal government.

Fact: Title policies and title commitments are only beneficial for fee simple land. Because the land is in trust, obtaining a title policy or title commitment would produce a wholly irrelevant document, not worth the paper it is written on.

In lieu of submitting a title policy or title commitment, we submitted the following items: An attorney's opinion, stating that the pueblo will -- has sole ownership of the development site, confirming that there are no prior encumbrances, zoning or other restrictions on the site which would prevent the operation of the proposed project.

Documentation from Florene L. Gutierrez, the BIA superintendent, United States Department of the Interior, to Jerry Griffin, Director of Valuation for the El Paso Central Appraisal District, dated October 12, 2000 evidencing the property has been taken into trust by

conveyance to the United States of America.

(Sound of electronic tone.)

MR. JOSEPH: Title insurance commitment from Chicago Title Insurance Company, dated July 12, 1999, obtained prior to conveying the subject property in the trust. As with the county and property taxes, on February 21, 2008, we were instructed by TDHCA staff that if our project was unable to provide the exact documents requested in the QAP, a waiver would have to be granted by the TDHCA Board of Directors.

And I refer to an excerpt from TDHCA's response, which was the same as the one I didn't read in the previous one, because we skipped over that part, but it says, "Staff believes that the proposed alternative documentation is an acceptable alternative based on the facts presented. However, because the rules are clear on this subject, the applicant would need to request a waiver of department rule, which may only be approved by the department's governing board.

"Therefore, while staff does not see a conflict here, only the Board may grant the waiver."

MS. RAY: Thank you very much.

MR. JOSEPH: Now the staff is recommending that you don't grant the waiver.

MS. RAY: Thank you very much, Mr. Joseph. Let me ask -- I'd like to ask consideration of the Board, if you feel that you have enough information to make a motion on this subject?

MR. FLORES: I don't have enough -- I need some information from the staff. Tom Gouris, probably could answer, or Robbye. We always require a first lien, and we require a LURA. How can we do that on a -- sent to a foreign nation.

MR. JOSEPH: I'm sorry, sir. I didn't understand what --

MR. FLORES: That's not for you, sir; I'm asking her --

MS. RAY: These questions are addressed to the staff.

MR. FLORES: I don't know who the appropriate one, Robbye or Tom, but how can we do that if we can't put a first lien, or we can't put a LURA, on essentially a foreign nation.

MR. HAMBY: Actually there is no lien on this property, for us, because it's a tax -- a LURA question would be a different question, and the -- restrictions run with the land. But they do not necessarily take precedent on the land, so it would continue to run. We would

probably have to research it completely, but because the covenant runs with the land, the restrictions are that they would operate it in the manner consistent with the tax credits.

So they'd have to have the right rents, they'd have to do the proper test, it would not violate the ownership of the land, because we don't take any ownership of the land, which would be the question, that we could not violate the trust, but the covenant running with the land should be able to continue forward, and if they failed to do that, then we would assess them penalties for failure to do it, to do what they're doing on the buildings.

MR. FLORES: So what you're saying is, we could approve their request, and issue funds to them, and be within our rules, regulations and statutes, and HUD rules?

MR. HAMBY: Well, it's not HUD's rules, it's the IRS rules, actually.

MR. FLORES: Or IRS.

MR. HAMBY: And the IRS rules assume -- they agree to participate in the IRS program, so if they receive the funding, they would have to have both the 15-year and the 30-year -- or the total of 30-year compliance period.

And that would be placed on the land; it would not, again, we don't take any ownership in the land, and that's one of the problems with LURAs, is you have to enforce them through the courts; you can't put liens, you can't do any of those sorts of things because of the LURA.

We don't -- they sell the credits, and so the syndicator would have the lien issues on this property, and I believe they already have a syndicator in place that understands tribal lands and has worked with them in the past. The LURA would be filed I guess with the Governor.

I don't know who we would file it with; that might be a question, who we file it with. We'd probably have to file it with the governor of the tribal lands, that it would indeed be enforced.

MR. FLORES: Have we ever done that with the Indian nation that's recognized --

MR. HAMBY: We have not. But it has been done in other parts of the country, so we'd probably look to other people to ask them questions about how they did it.

MR. FLORES: -- the IRS or someone would have some experience in these, that, you know, they could point to.

MR. HAMBY: Well, the IRS hasn't actually approved these things, but they have been approved in

other parts of the country, so we have something to work with.

MR. FLORES: Okay, thank you.

MR. CARDENAS: Madam Chair?

MS. RAY: Mr. Cardenas.

MR. CARDENAS: I would like to move that we approve this with all four waivers.

MS. RAY: Is there a second?

MR. FLORES: Second.

MS. RAY: It has been moved and seconded that all four waivers are approved as requested, by the applicant. Is there further discussion?

(No response.)

MR. RAY: All those in favor, please say aye.

(A chorus of ayes.)

MS. RAY: All those opposed, no?

(No response.)

MS. RAY: The ayes have it, and the waivers have been approved as requested by the applicant.

MR. JOSEPH: Thank you very much.

MR. HAMBY: I'm sorry. I do need to qualify that this is still -- this still has the issue of the general use provision, that if they are successful, they will have to get a letter ruling from the IRS, so we know

that the legislation covers them as well, beyond the [indiscernible] funding. So it may still be an issue, but that is still an issue that's part of this.

MS. RAY: Before you take off, Mr. Cardenas, I'd like you to take this document home, take a look at it, and give that full consideration?

MR. CARDENAS: All right, will do.

MS. RAY: Okay. We have one other item on the agenda, for the Presentation and Discussion of Challenges to the Housing Tax Credit Applications. Robbye Meyer.

MS. MEYER: This item relates to a log that the department maintains to track challenges and allegations made against applications during a competitive application cycle.

The department allows unrelated parties to an application to submit challenges against an application pursuant to 50.17<sup>©</sup> of the qualified allocation plan and rules.

A challenge may pertain to any part of the application, including but not limited to, eligibility, selection, and threshold.

Staff reviews the challenges, we submit the challenge to the applicant, the applicant responds, and then we make a determination from both sides of the

challenge and from the applicant, and then we post that information on our website.

The log that you have attached here, actually this is another one of your replacement forms. The very first challenge, we received information on that challenge after we posted the Board materials, and the resolution for that challenge has changed.

It was a challenge for the income and rent restrictions, and the actual challenge, there was an employee unit that was in that calculation which we should have removed when we made the calculation; so in error, in the Board package, we jumped to conclusion on that one, and we did the calculation wrong.

So therefore, the applicant actually overrules, and the challenge is not upheld.

MR. HAMBY: [inaudible] real quick?

MS. MEYER: Sure.

MR. HAMBY: I'm sorry. I just want to interrupt to put on the record that we do not have a quorum, so there will be no action taken from this point forward.

MS. RAY: There are no action requirements.

MR. HAMBY: Right, I understand. I just wanted to make sure it's in the record and the transcript.

MS. MEYER: And on the second challenge there, there was additional information also submitted to us, and the staff is reviewing that, so there may be a change, and there may not be, at the next meeting. And we will submit a new report at the next meeting so you'll see the other challenges that are before you.

MS. RAY: Thank you. Brooke Boston?

MS. BOSTON: And I just wanted to mention, Mr. Flores, you'd asked a question earlier relating to challenges, and the extension of time. And in that particular case, we talked to the applicant a little bit more about what exactly he was referring to, and his interest was in actually challenging an appeal decision by our executive director, which is an unchallengeable item, so I don't know that would have been a germane change anyway but I wanted to make sure we answered you.

MS. RAY: For those of you Board members that are not aware, this is not a Board item other than to --

(Simultaneous discussion.)

MS. RAY: Yes, I just want to bring up the fact that you may not have heard that Mike's brother -- Mike is president and participating in this meeting but his brother is very, very ill, please keep him in your thoughts and considerations. We would appreciate that.

And also, in your Board packet, in your folder there is a National Conference on State Housing Boards that's going to be held in Asheville, North Carolina. I find these conferences are very educational because you get to interact with Board members from across the nation, and you get a very good exchange of ideas. I would like for you to take that into consideration as well.

Ms. Boston, is there any further business to come before this Committee?

MS. BOSTON: No.

MS. RAY: There being none, the meeting is adjourned.

(Whereupon, at 5:05 p.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: June 26, 2008

I do hereby certify that the foregoing pages, numbers 1 through 332, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing & Community Affairs.

\_\_\_\_\_  
(Transcriber) 07/02/2008  
(Date)

On the Record Reporting  
3307 Northland, Suite 315  
Austin, Texas 78731

List of Speakers  
TDHCA Board Meeting June 26, 2008

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Judge Terry Simpson	John Shackelford
John Henneberger	Cherno Njie
Stella Rodriguez	Michael Harris
Priscilla Leal	Terry Campbell
Paul Saldana	Barry Palmer
Frank Fernandez	Kelly Nelson
Ruth Marie	Deborah Guerrero
Maria Lawdenslager	Carlos Hisa
Robert Ford	Albert Joseph
Tonya Wharton	
Jean Coburn	
Mike Lankford	
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Bob Priestner	
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Cynthia Bast	
Barry Kahn	
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Evan Haugh	
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Mark Mayfield	
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