

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Capitol Extension, E2.036
Austin, Texas 78701

July 16, 2009
8:15 a.m.

MEMBERS PRESENT:

C. KENT CONINE, Chair
GLORIA RAY, Vice Chair
TOM GANN
JUAN MUNOZ

STAFF PRESENT:

MICHAEL GERBER, Executive Director

ON THE RECORD REPORTING
(512) 450-0342

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PROCEEDINGS

MR. CONINE: Good morning.

AUDIENCE: Good morning.

MR. CONINE: Welcome to the Board meeting of the Texas Department of Housing and Community Affairs for July 16. We'll see if we've got a quorum here today. Leslie Bingham is not here; Tom Cardenas is not here; Kent Conine is here. Tom Gann?

MR. GANN: Here.

MR. CONINE: Juan Munoz?

DR. MUNOZ: Here.

MR. CONINE: Gloria Ray?

MS. RAY: Here.

MR. CONINE: We've got a quorum. That's a good sign.

Some of you got the memo today and some of you see that some of us are dressed fairly casually and we felt like with the oppressive heat in the middle of the summer and with all the issues, we'd dress a little casually today. So if anybody is mad about not getting the memo, I'm sorry, and otherwise, please don't be offended at our casual dress, but we're trying to do the best we can.

As most of you know, we do have a public comment period at the beginning of each of our Board meetings and allow any of you who want to speak publicly to the Board to fill out a witness affirmation form and come forward and address the Board. If you haven't filled out one and want to speak before the Board either now or during a particular agenda item, please turn that in.

We'll get started. On the top of my stack is Granger McDonald.

MR. McDONALD: Thank you, Mr. Chairman. Last month when we had the public comment period, I discussed the fact that there were several of us that returned '08 credits as part of the amnesty program prior to knowing that there was going to be TCAP or Exchange or a vehicle by which we might be able to put those deals together. So what it boiled down to is by trying to do the right thing, we eliminated ourselves from being able to participate in the Exchange program, and as a matter of fairness, I would like to ask that this item be put on the agenda for the next Board meeting to discuss how the people who did participate in the amnesty program turned their credits back in good faith, not knowing the Exchange/TCAP program would be available, how they might be handled.

I know a few of us have went ahead and made new applications for '09 and would like to know if there's something could be done to help out and give some consideration to that. I'd like to see it placed on the agenda for action.

MR. CONINE: Have you got any clue how many of those are out there, or does staff have a clue? I will research it between now and two weeks from now.

MR. McDONALD: I think somewhere between eight and twelve.

MR. CONINE: All right. We'll research it and staff take a look at that and we'll talk about it at the next meeting

MR. McDONALD: Thank you.

MR. CONINE: Thank you.

Jennifer Hicks.

MS. HICKS: I yielded my minutes.

MR. CONINE: Oh, you donated to Walter Moreau, didn't you.

Is Walter here?

MR. HAMBY: Mr. Conine, can I clarify what you just said there? Did you say we'd take a look at it at the next meeting and otherwise put it on the agenda?

MR. CONINE: My assumption is we're going to have a comprehensive agenda item on that particular issue anyway.

MR. HAMBY: Okay, great. Thank you.

MR. MOREAU: Thanks for the opportunity to speak. My name is Walter Moreau, I'm the director of Foundation Communities.

MR. CONINE: You've got five minutes, by the way. Excuse me.

MR. MOREAU: We're a 20-year-old nonprofit with a track record and a mission of creating housing where families succeed. I'm here today to ask for your support for M Station, project 09-130. I've spoken on it before, it's really our dream project as a nonprofit. We've incorporated a childcare center in addition to our learning center model, a lead goal design in our 15 units of supportive housing with services for families that have been homeless or extremely low income.

We love the location. We're right across the street from the new train station in Austin. The Children's Museum workshop is going in, the sustainable food center. Parents and kids can walk a few blocks to Campbell Elementary which is an exemplary rated school which I think is phenomenal.

Unfortunately, these features don't equate to any scoring advantage, and we've maxed out every scoring item that we could, but we're still probably not likely to win credits, we come up number two, basically a runner up.

Because there was a forward commitment from the Austin Region this year, there's only going to be one project likely in Austin this year, and the number one project is a suburban senior project. Projects in Austin especially are in high demand by investors. It is frustrating to us because in Dallas there will probably be ten projects, Houston will be 35, but in Austin there will only be one.

We hope the Board and the staff can consider M Station for '09 credits for a number of reasons. First, it will be the very first lead certified greenbelt project that you've funded, and we hope that can be a model for others. We are the highest scoring new construction family project in the competition this year but we're short. We also compete in the nonprofit set-aside. There are 20 projects in the nonprofit set aside this year. We have the second highest score but we're the only one of the 20 that's not funded the way it looks right now.

We also have strong neighborhood support. I think this is amazing, there are 75 family projects this year, only 20 have eligible neighborhood support, and of those 20 there's only our project and one other that because of the regional system don't work out.

In the last five years in Austin, the Austin Region has not awarded credits for a single new large family project, none. By contrast, this region has gotten eight new large suburban senior projects. M Station, I think, helps address that imbalance and really serves the greatest local need that

we've got in the city limits for close-in -- it's only a couple of miles from this hearing room -- housing for families that are very low income and extremely low income.

And finally, and perhaps most important, we have strong investor interest. We're really fortunate to be able to say that in Austin there are several banks, particularly with CRA needs, that they want our deal. We don't need Exchange money or TCAP money, so we're asking the Board and the staff some specific things. We hope that there might be '09 credits after you do the at-risk urban and rural collapses, there may be some additional credits left, especially because of all the Ike credits, all the projects where one developer has got multiple projects and they reach their cap.

Of the 20-some projects that are left that aren't funded, M Station will have the highest score, and we hope that can be taken into consideration and maybe in a couple of weeks there are enough credits to fund the project. If credits aren't available, we hope that we could be first on the waiting list, and as a nonprofit project we're a good backup should a nonprofit project fall off the list and you need to move one up.

And finally, we really hope that you'll think about a forward commitment, either in a couple of weeks or at the September 3 meeting. We don't need Exchange funds, the sooner we know about a forward commitment, the sooner we can finalize architecture plans and get rolling. If we stay on schedule to open by the end of 2011, then we could actually use '09 credits that might come back to the Department because of lack of investor interest somewhere else. In a way, by giving us a forward '10 commitment, we might be able to use '09 credits that get returned because of the lack of investor

demand.

In closing, we really think M Station is exactly the kind of project that should rise to the top but the scoring system and the regional allocation system being what it is, we fall just short, and we think there are some really strong reasons for the Board and the staff to still be able to fund M Station, and we hope you'll support the project.

Thanks. If you have any questions, I'm happy to answer.

MR. CONINE: Mr. Moreau, I heard you say that you didn't need Exchange funds, but I didn't hear you say you didn't need TCAP funds.

MR. MOREAU: We don't need Exchange or TCAP, we can do this deal the old-fashioned way with a bank investor.

MR. CONINE: Okay. That's all I needed to hear. Anything else? Thank you.

MR. MOREAU: All right. Thanks.

MR. CONINE: State Representative Dora Olivo. Good to have you with us today.

MS. OLIVO: It's good to be here. I think I met most of you this morning.

And I've lived in District 20, represented District 20 since '97, so I'm very familiar with the neighborhoods in the area, very familiar with the residents and I've listened to their dreams and their hopes and that's why I'm here this morning because we have several developments that are already there, apartment units that are already available for the people that live there.

And all of us here, I'm sure, are homeowners. That is one of the biggest dreams that people have, and I see people out in their yards

cutting the grass, making their homes look nice. I see home associations that are very active that want to make sure that their homes are well kept. And nobody is against developments that are low income developments, but there are some there already.

And another thing, too, that I want to mention that is really, really critical is think I think when developments are located, it's really important for there to be enough police protection. The residents that live in my district in that part of the county -- which is City of Houston and also part of Fort Bend County -- don't have enough police protection right now as it is. When they call there's some delays, and what's kind of interesting is that the neighborhoods in the City of Houston are really under Missouri City so there's kind of some confusion sometimes as to who comes first or whoever comes. So that's a serious problem right there.

And also, the transportation, we don't have transportation available, we don't have buses that come down, and unfortunately, people that live in apartments sometimes don't have the transportation they need. And I've supported some projects, some in Rosenberg, for example, where they were going to try to locate one right next to Wal-Mart where there's a lot of stuff where people can go buy their groceries walking, they don't have to go and hire somebody to drive them over there. And that's what happens in a lot of these neighborhoods, you know, when people cannot afford, sometimes they have to pay because nowadays not too many people are willing to take somebody somewhere unless they get paid, and people that live in these projects generally don't make a lot of money.

But there's some other concerns there, and there's health

concerns for prospective residents of this development. The proposed southern boundary of this project shares the northern border of a heavy industrial site which engages in petroleum and/or gas operations which may include chemicals. Many of these site operations are active 24 hours daily and related pieces of equipment can be located as close as one-quarter of a mile from the proposed southern boundary.

It is my understanding from members of my constituency that I keep in very close contact with that current residents in the surrounding areas have already filed air quality complaints concerning irritating chemicals odors spilling over the site area into the surrounding residences. Consequently, it is my belief that the health and safety of future residents of this new development may be adversely affected by the poor quality air originating from this site.

Let me tell you about one of the subdivisions, Briargate, that has been over there for over 30 years, and one of the things that happened not that long ago, a toll road was put right next to that neighborhood. And that toll road is not really accessible to those neighborhoods as for the people that live a little bit further down in some other subdivisions, so there's already that problem right there. It's a toll road that they put no barriers, you know, for the sound. You know, a lot of times you put a toll road or you put a freeway, and out of respect for the people that have lived there for so many years, you do that, you have that consideration, but it's not there. So then this would even cause more traffic to come with the apartment units right there.

And I have a constituent, Ms. Deloris Eli, who is going to be testifying in a little while, and she lives in that neighborhood. I remember a

few years ago she called me, she said, Ms. Olivo, they built this toll road, there's no barriers, I can't sleep. And she's going to be testifying about that this morning.

But aside from health concerns there are, like I said, the lack of transportation, and you don't have a lot of grocery stores that are close to this particular neighborhood. I'm really familiar, like I said, I walk this neighborhood, I've lived in this area, I live in Rosenberg but I've worked this neighborhood since '97 since I've been in office.

And I also talked about the fact of the concern about the police, the lack of police patrol. City of Houston is one of the jurisdictions there, Missouri City, but there are no really routine patrols by the people that run these forces in these neighborhoods. I mean, Briargate has about over 2,000 homes, Chasewood is there, all these subdivisions that are close to this area that are already there that, to me, there's plenty of population there, and there are already apartment units that are serving people that maybe have less resources.

And one of the things also that I want to say is there was a meeting in my district not that long ago -- and Mr. Gerber has been very gracious in working with me to make sure that people in my district have access to giving you all information, because most people, it's hard to get up here to Austin, especially with the gas, the economy -- and so there were a good number of people at that particular hearing, and that testimony, I understood, was taken and will be given to the Board members, if it hasn't already been given to them. But there were people there from the different neighborhoods.

And also the Pastors' Council, the Pastors' Council is very active there -- Pastor Deaver is president of that council -- and they're very concerned about this new development coming in because there are already areas where people rent and they're blighted, people don't take care of those properties. You have absentee landowners that don't really care, and it's really unfortunate because when I'm driving down West Fuqua and I'm seeing these sidewalks that are just all out of whack, and then the people, whoever lives there, the owners don't make sure that the grass is cut, just like across the street where the people live in their homes. That's a serious problem.

And in Briargate, like I said, that subdivision has been there for 30 years and people have lived there for that long, still wanting to maintain their values.

So I'm here this morning asking you -- I know these apartments are important and one of the things that's used against people that come and complain is it's not in my backyard -- that's not the attitude here. A lot of the people that live here are working people, just like everybody else, but they've seen apartments in the area that people have made promises, they say we're going to take care of them, they're blighted, a lot of crime. We have information where there's a lot of crime in some of these apartment units.

So I would really appreciate that you look at this very, very closely, and maybe the developer can find another good place closer to transportation, closer to hospitals, where the crime wouldn't go up, because unfortunately, the crime rate does go up sometimes with some of these apartments -- not all of them, I know that, I don't want to just generally say that everybody is like that because I know better -- but at the same time, I would

really appreciate those of you have to make these heavy decisions to really take this into consideration and really think about this. And if you have any other questions, I would really appreciate you giving them to me, if I can answer any of your questions right now, I'm ready.

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

DR. MUNOZ: I may have missed this. Do you have the project number and the name of the development?

MS. OLIVO: Yes, I'm sorry, I should have mentioned it right away. I've been telling all my constituents do the project number, so I hope I have it on here.

MR. CONINE: I've got Fondren Ranch, 09167.

MS. OLIVO: 09167, yes. Thank you for mentioning that.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Thank you, Representative, appreciate you coming.

MS. OLIVO: Thank you so much, and for the work that you do, thank you.

MR. CONINE: Deloris Eli. I wouldn't dare have reminded the State Representative of this, but everybody else, there's a three-minute time limit.

(General laughter.)

MR. CONINE: Go ahead.

MS. ELI: Yes, my name is Deloris Eli, and I'm on behalf of Briargate subdivision. I've lived there over 20 years, and what all the

Representative said is true about the areas. And also, yesterday I went into our constable's office and got a report here showing all the crimes in our area. I forgot to pass them out to you all.

MR. GERBER: Yes, ma'am, if you would just give it to staff.

MS. ELI: And that's about it, I'm here on behalf of Briargate.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your information.

Mary Ross.

MS. ELI: Thank you. Fondren Ranch project, 09167. I'm sorry, I'm a little nervous.

MR. CONINE: That's all right, so am I.

(General laughter.)

MR. CONINE: Is Mary Ross here? She's coming, okay. She's also on the Fondren Ranch project, for the rest of the Board members.

MS. ROSS: Yes, I am. My name is Mary Ross. I'm here to speak in opposition of Fondren Ranch proposed development, TDHCA number 09167. You said we have three minutes?

MR. CONINE: Three minutes

MS. ROSS: Again, my name is Mary Ross. I'm a property owner in the Briargate community and have been for over twelve years. The southern boundary of that community sits directly across the street at the northern boundary of the proposed development. It's a 30-year-old development, as the Representative has said, and I'm also in opposition to the proposed development, based in part on information that I received in the

phase 1 environmental site assessment that was sent to me later and included in this project application.

And I have specific reasons for opposing this development in that I'm very familiar with environmental issues concerning the Blue Ridge oilfield which shares the southern boundary of this proposal. Residents in that area -- my property is in Briargate, as Ms. Eli's is, and currently we have an issue with the amount of flaring that goes on less than a half a mile from the southern boundary of this development. And flaring is not healthy for any human beings and you are actually putting residents here in this location.

Now, the Briargate community is currently about 2-1/2 acres north of the northern boundary of that oilfield and they're too close to that oilfield to live healthy and comfortably without air quality issues. If you put human beings on that proposed site, these people will have constant problems.

I also have problems with the way that the assessment is written. Yes, I don't disagree that it's done by ASTM standards and all of that, what I have a problem with, as I've enumerated -- and I'll never get through in three minutes here -- are some of the conclusions. Some of the conclusions state that the assessment review and the evidence of recognized environmental conditions in connection with the property and relates that the recognized environmental condition is defined as ASTM, et cetera, but several sections of the assessment that indicates conclusions, assumptions and findings that would require further investigation, and there are areas where the consultant assumes there are no hidden conditions on the site. They assume this, they assume there are no hidden or unapparent environmental

conditions, but yet in a different section they'll say that they're not obliged to identify mistakes or insufficiencies in the information that they provided in this assessment.

Is that my time?

MR. CONINE: Just wrap it up over the next few seconds.

MS. ROSS: Okay, thank you. Those types of inconsistencies appear throughout that assessment, and it bothers me a lot. I have nothing against low income families living a quality life, but if that development is put there, I think it would be doing -- I don't want to say a crime, I'm a quasi-environmentalist, but I just feel like it would be a threat to their health and safety putting that development in that area. That would be the biggest thing among many other problems with this site, especially the fact that there's no public transportation within a quarter mile, there's no hospital within seven miles, there's no major grocery store within I think it's three miles, there's no hospital, no clinic even.

It's an awful place to isolate any population, especially that of low income individuals who may not have all of the capabilities of someone that's not in their income level might have. It's not a prejudice thing, it's just a real thing, that is an awful location to put anybody. Not only that, they cannot say that there's no environmental risk, and that's the biggest thing, when you run the risk of putting people in an area that will endanger their health and safety.

And because of these reasons and the reasons that are listed here, I ask that you not approve Fondren Ranch proposed development, TDHCA number 09167, and thank you for your time. I did not include the

phase 1 engineering assessment, it's a fairly thick document. I would be more than happy to make copies and bring them back to your staff if you would like to see them. I did not know how receptive you'd be to having such a big document to review, because I know that you have a lot to review.

MR. CONINE: We'll take that under advisement, I'm sure staff will take that under advisement, and if we need it, we'll follow up.

MR. GERBER: Mr. Chairman. I would just ask that maybe any documents that you have, Ms. Ross, that you could share with our Multifamily team, headed by Robbye Meyer, that would be great. Send them to us if you still have some of those at home.

MS. ROSS: I'll make seven copies of this and tab it out for you.

MR. GERBER: That would be great.

MR. CONINE: Thank you for your testimony. Any further questions, Dr. Munoz?

DR. MUNOZ: Just a question, Ms. Ross. I appreciate the thoroughness of your letter, and do you happen to know the status of any of these complaints that have been filed on the air quality?

MS. ROSS: No.

DR. MUNOZ: And with whom have they been filed?

MS. ROSS: The TCEQ.

DR. MUNOZ: And do you know the status?

MS. ROSS: I don't know the status of them but I think that I could probably get them online. We've been working on this, and I also co-chair the coalition against the expansion of the landfill in that area.

DR. MUNOZ: That might be relevant to include in the other

documents that you provide us with. I find that material, I think that that's substantive.

MS. ROSS: It is.

DR. MUNOZ: If they've reached some sort of conclusions to suggest the kinds of hazard that you're alluding to.

MS. ROSS: I'll be happy to pull that information and get it to you. I'll get it to Ms. Meyer.

MR. GERBER: That would be great.

MS. ROSS: Thank you so much. Are there any other requests?

MR. GERBER: Mr. Chairman, I would just like to note that I appreciate Representative Olivo and Ms. Eli and Ms. Ross coming as well to visit, to take time out of your busy schedules. It's really important for this Board to hear what constituents are concerned about, so we appreciate you making the effort to come travel here.

MS. ROSS: Thank you so much.

MR. CONINE: Thank you.

Sterling Patrick.

MR. PATRICK: Good morning. My name is Sterling Patrick, I'm the director of grants and housing for the City of Galveston, and I'm here to speak on item 6(a), project number 20090010. I'm here on behalf of the residents of Galveston to request your assistance in helping our citizens move forward in our recovery efforts by reinstating the city's NSP grant application. I'd like you to know that your staff, Robb Stevenson and Mike Gerber, have been extremely helpful and gracious to us throughout this process. Again, this

is a position we've never been in.

But the facts of the situation are contained within your Board packet and they're fairly simple. I received an email request from Mr. Stevenson to submit a formal letter of intent -- that was received on June 9. On June 10 we submitted the formal letter. On June 26, Mr. Stevenson advised us that he never received a letter.

While our primary focus has been on recovery efforts, including the preparation and the planning process for the CDBG and the non-housing and housing grant application to both TDHCA and ORCA, we have consistently managed to maintain our grant responsibilities, including those new ones that we've inherited since Hurricane Ike. The city has never missed an application submission deadline, we've never missed a report deadline, and we've never missed a timely expenditure deadline. In fact, after Hurricane Ike hit Galveston Island on September 13, we had several reports due to HUD on October 10, we didn't request an extension, we simply filed the reports and we filed them on time, and we have filed every report and made every deadline from that point on.

Our request for this appeal is on behalf of our residents. Many of you have seen the destruction of Hurricane Ike firsthand when you visited Galveston, with 90 percent of our island flooded, 75 percent of our housing stock damaged, we truly need the type of assistance that NSP funds would provide. We realize that you have a difficult decision and this is not easy, but we ask that you consider the 5,800 families that are displaced, the 60 percent of our residents who are low to moderate income who, without assistance, face tremendous obstacles in repairing their lives on their way to recovery.

We ask that you consider our request. We thank you for your time, we thank you for your consideration and we thank you for your compassion.

My city manager, Steve LeBlanc, would have liked to have been here. Through scheduling conflicts, he was not able to. I have a letter I'd like to submit to the Board on his behalf.

MR. GERBER: Thanks, Sterling.

MR. CONINE: Any questions of the witness? I'd just like to say again, we appreciate your hospitality when the Board came down to do the tour and have our meeting down there. The city was awful gracious and it certainly creates, at least in my mind, a more visual impact of what you're dealing with on a day-to-day basis, and we certainly appreciate that.

More than likely, you're probably speaking now so that you can head back to Galveston, and there's a couple of Multifamily appeals, I think, of two projects in Galveston that had to do with a city plan or something that needs some clarification. If you can stay for those, I'd like to hear your comments about that; if not, if you could huddle with staff before you leave, that would be great.

MR. PATRICK: Mr. Chairman, I'd be more than happy to stay.

MR. CONINE: Okay, appreciate that. Thank you.

Robin Sisco.

MS. SISCO: Good morning. I'm Robin Sisco with Langford Community Management Services. I would like to comment on agenda item 1(g) on the Consent Agenda. My comment concerns the notice of funding availability for the 2009 OCC Program.

My first request is that the item be moved from the Consent Agenda so that changes may be considered to Section 10(g)(1) of this NOFA regarding cash reserves for applicants applying for the HOME OCC Program. Cash reserves are required for applicants to be used for short term deficits during the TDHCA disbursement process. These reserves are not a permanent investment in the project. Basically, applicants are required to have cash on hand to pay invoices from building contractors, then applicants are to wait for reimbursement from TDHCA. In past NOFAs, applicants had to provide a resolution stating they would commit the reserve amount to the HOME project.

This new NOFA now adds that applicants must supply a variety of evidence providing they have cash on hand in the form of financial statements indicating unrestricted cash or equivalents, plus either a letter from their bank indicating current sufficient account balances or evidence of a line of credit.

While this program is meant to function as a reimbursement program, in the vast majority of cases, it does not. Small cities simply do not have the resources to pay contractors up front and wait for TDHCA to reimburse them. IN virtually every one of the nearly 20 projects our firm has administered in the last five years, cities have submitted invoices to TDHCA and paid the contractors only when funds are received from the agency. This is evident to compliance monitors through the review of bank statements and fund disbursements.

We sincerely believe the new NOFA requirements will effectively prevent small rural cities from applying for HOME OCC funds,

although I do not think that is the intent of the agency. The unintended consequence is extremely unfortunate because often these are the cities in which home reconstruction and rehabilitation are the most needed.

The amount of cash reserves required in the NOFA is \$120,000, and although in my letter we thought staff had indicated yesterday a willingness to drop the requirement to \$50,000, I need to correct that in the letter. We determined in discussions with staff last night that that was not the case, we had a misunderstanding.

We have contacted several of our small cities under 1,500 in population to ask them the amount of cash on hand they would have to cover cash reserves. They all responded that \$25,000 would be the maximum they could prove up in financial statements. Therefore, we're asking the Board to make the following changes to the NOFA, and if you look on the back of the letter I handed out, you can see the redlined version of the cash reserves. Basically, our request is that you reduce the cash reserves requirement to \$25,000 and add item 4 which would allow a letter from the applicant's CPA to suffice rather than a letter from the bank.

Thank you for your attention to this matter. These changes will make it possible for small rural financially strapped communities to continue to have access to HOME OCC funds. If the changes are not made, I know there will be a precipitous drop in the amount of applications that you receive from small communities. Thank you. Does anybody have any questions?

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

(No response.)

MR. CONINE: Thank you.

MS. SISCO: Thank you.

MR. CONINE: Heather Hancock.

MS. HANCOCK: Good morning. My name is Heather Hancock. I am here representing the firm John H. Carry & Associates who represents a neighborhood organization, BWML Property Owners Association, and just respectfully request that you reconsider our appeal. I have copies of them here. They were denied on a few different bases, but I'll keep my statement short.

We were basically supporting QCP letters for Champion Homes -- excuse me, I too am a little nervous --

MR. CONINE: Tell us which project this is about, that will be helpful.

MS. HANCOCK: This is the project number 09316 and 09317 in Galveston.

MR. CONINE: Do you know their names at all?

MS. HANCOCK: We're BWML Property Owners Association.

MR. CONINE: Okay, but the names of the projects.

MS. HANCOCK: Champion Homes, I believe. And basically submitted letters in support of these developments and were therefore denied based on basically stating that organizations were not persons living near one another. We are stating that, in fact, the property owners association is a corporation and the QAP does not specifically define that corporations cannot be considered, they are considered persons for the purpose of acting in concert toward a common goal.

Additionally, there's no basis of minimum persons. BWML Property Owners Association is a person under the statutory definition and is comprised of two limited partnerships owning adjacent properties. They maintain their principal offices on the properties, reside there, and therefore, the association further qualifies as there is no distinction between natural persons and persons as defined by the statute.

A few other points here but I'll just leave these with you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Can you just describe in layman's terms what kind of properties these are and what kind of area it encompasses?

MS. HANCOCK: Basically, one area is not livable, one area was hit by the hurricane, and so it's really one is Marina Landing, the other Bay Watch is basically just an undeveloped area, there's nothing livable on it, but one member of our property owners association does have a lease so he is an owner there.

MR. CONINE: Thank you very much.

MS. HANCOCK: Thank you for your time.

MR. CONINE: Belinda Carlton.

MS. CARLTON: Good morning. It's nice to meet you all. My name is Belinda Carlton, I am a policy specialist with the Texas Council for Developmental Disabilities. The council is federally mandated by the Administration on Developmental Disabilities Act. We're a 27-member council of individuals appointed by the governor, and our mandate is to advocate for public policy that will help the self-determination and independence of Texans

with disabilities.

I'm new to housing, I took over this role from my predecessor, Amy Young, who passed away suddenly, so I'm learning a lot. I've been meeting with your staff, they are great, they are knowledgeable, I congratulate you all on that. But today I just want to talk real generally about the critical need of people with disabilities in all of your programs, the Section 8, the Tenant-Based Rental Assistance, the HOME, the Multifamily, the Housing Trust Fund.

Individuals with disabilities are those with some of the most critical housing needs in our state. We talk about people needing to be in the AMFI, the median family income, you have low, very low and extremely low. As I understand extremely low, that's 30 percent of the median family income. Most individuals with disabilities, like my daughter, rely on Social Security income. If you calculate that, that's going to be somewhere around 16 percent, so we have a very, very extremely low income. But they need housing and they want to have a home of their own, an apartment or whatever that may be

So the council would like to ask that this become a priority. There is a mandate to address the housing needs of people with disabilities, we need to look at those needs, and along with them living on income such as \$700 a month, the need for access. In talking with staff, there's been some understanding that somehow the private landowner is responsible for making that unit accessible, putting in a ramp or whatever, they are not responsible. The individual can make it accessible but the owner is not required to provide those accommodations. So that's another area we would like you to look at.

The Housing Trust Fund, as I read the regulations, there's no prohibition from you making grants to individuals. If you're making \$700 a month, you're not going to have the ability to repay the loan. I know you want to continue using the funds, but we need not have that be a barrier. We also have a lot of individuals wanting to come out of institutions, but they need to couple those services with housing that's accessible and affordable, and these programs certainly have the capacity to do that.

I don't have written notes. I attended the stakeholder meeting on the Housing Trust Fund. I understand that they will be coming back to you this next Board meeting with their proposed plan and I'll come back and make comments then. But I think I'm done -- there you go.

MR. CONINE: Thank you for your testimony. Any questions of the witness? Mr. Gerber?

MR. GERBER: Mr. Chairman. We haven't had a chance to meet, but I'm glad you're here.

MS. CARLTON: Nice to meet you.

MR. GERBER: Nice to meet you too. You have big shoes to fill, Amy held a very special place in all of our hearts and we all still mourn her sudden passing. She was a very dynamic and capable young lady who really kept us all really grounded to issues concerning persons with disabilities. I think there's been a lot of progress made in the last year with Amy's involvement, and I know you'll pick up that ball.

With the creation of the 504 rule dealing with questions of removal of barriers and trying to expand a number of programs to make them more sensitive, not the least of which is Project Access which we're very

pleased has really helped with the de-institutionalization of individuals, giving individuals with severe disabilities choice on where they would like to live and to work through the various social services issues that are attendant with life as a disabled person. We're looking forward to expanding that partnership and just wanted to reassert our commitment to working with you and the council to make sure we're sensitive to the needs of persons with disabilities in our state.

MS. CARLTON: I want to let you know I met with Brenda Hall yesterday about Project Access and committed to her that we will try to do our part to help get the word out about Project Access. I think those relocation specialists and MRAs, we need to work more with them to make sure they know that program is there.

MR. GERBER: It's been a great program. For the Board's benefit, it was 15 vouchers initially and we weren't fully utilizing all those vouchers, getting referrals from the Department of State Health Services to de-institutionalize persons with severe disabilities. Now we're making a recommendation I believe to the Board soon moving it up to 60, and we get the voucher back because they're portable and so another PHA that runs a voucher program is oftentimes taking that voucher, returning it to the Department, we take another person off the list, and that's really been a rewarding program. I think that we've helped several hundred people at this point, so appreciate your partnership with us on that.

MS. CARLTON: Certainly, and as I said at the beginning, I congratulate all of you and your staff on your great work. Thank you.

MR. CONINE: Thank you.

That concludes the public comment portion of our agenda, and I think the rest of the witness affirmation forms that I have are for the individual specific agenda items only.

Moving on to the Consent Agenda, item number 1.

MR. GERBER: Mr. Chairman, staff requests that items 1(f) and 1(g) be removed from the Consent Agenda.

MR. IRVINE: And also, please, item 1(p)

MR. GERBER: And 1(p).

MR. CONINE: Okay, (f), (g) and (p) are going to be removed and we'll deal with those separately. I have a witness affirmation form here on (i) only for are any questions, so if the Board doesn't have any questions, we can probably move forward with the rest of item 1. Do I hear a motion?

MR. GANN: So moved.

MR. CONINE: Motion by Mr. Gann. Is there a second?

MS. RAY: Second.

MR. CONINE: Any further discussion on the Consent Agenda?

(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.

We'll go back to item 1(f), Mr. Gerber.

MR. GERBER: Mr. Chairman, we're going to have Ms.

Arellano, who heads the HOME Division, come forward, along with Tom Gouris, to walk us through that one and (g).

MS. ARELLANO: Good morning, Mr. Chairman, Board members. Jeannie Arellano, director of the HOME Division.

In response to the public comment that we received from Robin Sisco this morning, staff does not recommend a reduction in the reserve requirement, the cash reserve requirement for the OCC Program, however, we don't have any concerns with adding the additional language for item 4 under that reserve requirement for an additional method to allow a CPA letter to be accepted to provide evidence of cash reserves.

Just to give you a little background -- I'm sorry, my allergies are really bothering me today.

MR. CONINE: No problem.

MR. GOURIS: Can I just jump in and say something. The cash reserve language was the issue identified in (f) -- I'm sorry, in (g) but I think we want to look at both of those items.

MR. CONINE: We're on (f) right now. Do you want to look at them both together?

MR. GOURIS: We'll look at them both because it's the cash reserve language that's in question and we want to have a consistent pattern or consistent methodology to how we're going to do the cash reserve language, and in essence, it's a resolution that's been required for years that requires the city to say: Yes, we have the capacity to support this transaction -- because these are all reimbursement type transactions. So for all the HOME programs, they have this resolution and this reserve

requirement.

The amount of the reserve for the program activity changes by activity. The language is the same; the amount of the reserve is different based on if they're doing TBRA it's a smaller amount. If they're doing OCC it's going to be a larger amount because there's a larger risk involved, larger dollars involved.

So what we're talking about here, one, is getting consistent language in what's required for the cash reserves, and what we're recommending, generally speaking, is an adjustment to language that's been added this year that would allow a CPA to certify that the amount of funds available are sufficient for them to do the transaction, so we're good with that language. The second piece was an adjustment to the amount for this activity and that we're not comfortable with because, one, it's inconsistent with what we've been doing, it's actually considerably lower than what we've been doing, and two, it's an insufficient amount to actually support the transaction should there be a ineligible costs identified or inability for them to prove up the costs that they've provided.

So I don't know if you want to read the language again?

MS. ARELLANO: If adding an "or" for item 4, a letter from its CPA indicating that based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity in order to effectively administer a HOME OCC Program grant, however, staff suggested that be made more generic to whatever activity they're applying for.

MR. CONINE: I have a question here, I understand that the past is the past but these are different times, and in my opinion, every

municipality in this country is strained budget-wise and probably strained cash-wise, and so what I'd like to delve into is what is the risk you're trying to protect the department from, and I heard you say an ineligible cost sneaking in. I need to understand what the turnaround time is because if you're fixing up a house or you're building a house, there's monthly draws and we generally don't do anything over 100 grand, and you're wanting them to have \$120- in the bank, that's more than the cost of the whole house. So kind of explain what's going on here.

MR. GOURIS: They're typically doing two to five homes.

MR. CONINE: Not at the same time, generally, but under a contract.

MR. GOURIS: But often two at a time, and that's where the \$120- came from because there used to be a \$60,000 limit on the amount of the funds, so we had established that base a while back at \$120- so they could do two at once. Now that limit is up to \$80-, and so arguably, we should be considering increasing that limit because it's not just an ineligible cost but it's an ineligible household, if it's determined ultimately that the household was ineligible for some reason, there's some fraud or misuse or what-have-you, then there would be that issue. So we haven't recommended increasing that limit to \$160-, we just recommended keeping it where it was.

There's not really a concern -- well, there hadn't been a concern about that previously, the reason this issue came up is because we added some language that changed what used to be required. They used to be required to provide an audit to show their financial capacity and the resolution, now we're switching, they still have to provide the resolution but instead of the

audit, we're saying you can provide financial statements. In so doing, we wanted some assurance that somebody else looked at it so that the resolution wasn't approved in haste without full disclosure to the council knowing that they're responsible for \$120,000 in this case or \$50,000 in a contract for deed outage.

So to ensure that they recognized it, we wanted to get them to actually write us a letter from a lender or a line of credit or something else to support their claim that they can support that resolution, approve that resolution.

MR. CONINE: And what's the frequency of reimbursement, typically?

MS. ARELLANO: It typically depends on the contract administrator. Some of them wait until the units are actually done at the end of the three to four months or 60 days that it takes to construct the homes, so it's pretty much up to them. Their inspections are required but it's up to them on when they submit their draws to us and the documentation.

MR. CONINE: They can do it once a week if they wanted to? We don't have a limit?

MS. ARELLANO: We don't have a limitation on it.

MR. CONINE: That's a fallacy in and of itself, but we'll move on, because we should have it monthly or bimonthly or something.

MS. ARELLANO: As long as the documentation is submitted.

MR. GOURIS: We'd collect them up if they kept submitting them.

MR. CONINE: Doesn't logic tell you, though, that the frequency

of reimbursements would directly correlate to how much cash they really need to have on hand to be able to do these transactions. If they do it every week, they're not going to run up a whole lot of bills in a week on \$80,000 house.

MR. GOURIS: But again, for convenience sake, a significant number of them wait till the whole project is over and get reimbursed for the entire project. They would get a construction or use other resources.

MR. CONINE: I keep thinking about smaller rural communities in Texas that generally don't do this, someone else is doing it for them.

MR. GOURIS: Right, and they're working with a consultant who is oftentimes advancing the funds until the project is completed.

MR. CONINE: Any other questions?

MR. GOURIS: One suggestion, if we were going to look at an adjustment, we should look at it across the board -- which is why we brought all of them down -- we should look at the same kind of thought process for all the other HOME activities, and this is what we did originally, we took some sort of percentage of what we thought the out was. If we think the out of \$120- is too much for OCC, then use that same justification to come up with a different out, whether that's just one home or what-have-you.

The problem really is that with these smaller communities, if there is an outage and they don't have the resources to address the problem, whether it be construction issues or whether it be some falsification of documentation, they're still responsible for it.

MR. CONINE: And the consultant and the city are vouching for the qualification of the resident prior to construction to us. Is that correct?

MR. GOURIS: Yes.

MR. CONINE: So if they mess up, then what you're saying the risk to the department is we've got to pay it back to HUD.

MR. GOURIS: Right, and then try to get it back from them.

MR. CONINE: And then we try to get it back from them.

MR. GOURIS: And they're telling us now that there's not a resource there to do that, and we're saying you need to be aware that you're going to need a resource there in case that should happen.

MR. CONINE: And with what frequency in our history of the OCC Program has that occurred?

MR. GOURIS: It has happened, not that the entire property --

MR. CONINE: Frequency, 1 percent half a percent?

MR. GOURIS: We are actually dealing with some duplication of some significant amounts, a duplication of -- at the last Board meeting.

MR. CONINE: We'll get to that agenda item here in a minute.

MR. GOURIS: So that's the kind of thing we're talking about and we're trying to have a consistent policy to address it.

MS. ARELLANO: And we've run into significant issues on the monitoring end where you've got some construction issues that have come up that we can't put additional HOME dollars in to fix at that time, and the city or the county does not have the reserves available to address those construction issues that occurred due to issues with the contractor or lack of construction oversight, those kind of issues. And we've worked extensively with our monitoring group to try to work our resolutions for some of those things.

MR. CONINE: I hate to dominate the conversation, Board members, and I'm sorry, but how much money are we talking about here in the

OCC Program on an annual basis.

MS. ARELLANO: \$15 million, \$16 million.

MR. CONINE: Okay. Tell me a little bit about the discussion on the \$50,000 number. When I'm conflicted between both sides, I generally try to meet in the middle somewhere.

MR. GOURIS: That was my error.

MR. CONINE: You made an error?

MR. GOURIS: In haste.

MR. CONINE: I want to make sure the reporter got that down. Go ahead.

(General laughter.)

MR. GOURIS: In haste to try to get a response, I was focused on the alternative language, the "if" or the "or" statement, and knowing that it was an issue for all the cash reserves, I pulled the first example of cash reserves out. It, coincidentally, was for a different program, one that had a \$50,000 limit, and so even though I highlighted the area that we are suggesting to be changed and that wasn't highlighted, they misunderstood what we had said. Now, we clarified that with them last night once we realized that. This all happened in a matter of four hours yesterday, so we've been moving pretty quickly to try to get this understood and resolved.

The \$50,000 limit was never a proposed limit for the OCC Program. Again, if we were to do something, we would want to have some different rationale. We have some rationale for the \$120-, we would want some different rationale to support the new number.

MR. CONINE: Well, as a blanket statement, I think we ought to

look at all the rest of these HOME activities because times are tough and I'm very sensitive to that right now, and I want to do whatever we can do to help facilitate these projects to get done in smaller communities because the economy needs it, if nothing else, not only the homeowner needs it but the economy needs it, the plumber, the electrician, the lumber guy, everybody needs it.

MR. GOURIS: What if we were to -- and I'm not sure, I'm just coming off the top of my head here, but what if we were to --

MR. CONINE: Mine too.

MR. GOURIS: -- if we were to approve the NOFAs today but then come back at the next meeting with a rationale for each of the reserves for each of the accounts and allow you to make adjustments to those in the NOFAs at the next meeting, or we could hold off, not release the NOFAs, either way.

MR. GERBER: Maybe we could delay till a little later today and have a chance to maybe have some official staff sidebars.

MR. CONINE: Well, if I could, I'd like to ask Robin to come back up and comment on what she just heard staff say, because we might hear a little different slant.

MS. SISCO: My experience with the HOME Program has been that these reserves have never been needed, but I've only worked on about two dozen or a little fewer projects. When we go to our small cities, we explain to them that the cash reserve element is in the resolution, we explain what it's for as it's explained in the NOFA, it's for short term deficits. We also explain to them the history that we had experience with that the draws have been paid

regularly and we have not had a city have to utilize their cash reserves. At that point, the cities have been willing to go ahead and sign a resolution because they desperately need these funds.

The cities do not have \$120,000, we're talking about cities 1,500 and less, most of the cities that we apply for are that size. We called several of our cities of that size who have applied in the past and received funding, asked them if you had to pay out a draw right now because the state said they wouldn't or couldn't pay it, what amount of money would you have to do it, and most of them said we could prove up probably \$25,000 but that would be the absolute max that we could prove up.

MR. CONINE: With your experience, what's been our average turnaround time on draw submissions, is it a week, ten days, two weeks?

MS. SISCO: From the time we turn it in, anytime from ten days to about three weeks, usually it's not longer than that. You were asking about the frequency of draws, we normally turn in a draw at 50 percent construction complete and then at 100 percent construction, and then retainage.

MR. CONINE: When I heard you describe your conversation you normally have with most cities, I didn't hear you say that there is a chance that could screw up or somebody could screw up and we're going to owe this money back, you're going to have to take a hit to HUD if that happens -- a rare occurrence but sometimes it happens. And I think it's critical that the cities understand that this isn't just a cash reserve for operating capital, it can actually take a hit.

MS. SISCO: Well, that's a little bit of the part that I do understand what you're saying, however, the cash reserves are simply stated

in the NOFA that they are simply that, to cover operating deficits during the disbursement process. \$120,000, you could screw up and qualify all five homeowners and they not be qualified and then \$120,000 is not going to cover the Department's deficits. I think that's a separate issue. If you screw up and you mis-qualify everybody in the program, then HUD is going to say to TDHCA you owe back all of that, \$390,000, not just \$120-.

MR. CONINE: Let me stop you there. Jeannie, does the NOFA actually say what she just said, and that is the cash reserves are just for operating deficits, not potential exposure to reimbursement in case of a screw-up, or is that somewhere else in the document.

MS. ARELLANO: No. The NOFA does actually say -- and it's said this for years -- that it is to allow for any deficits in the administration of the program and to wait for the reimbursement process. Do you want me to point you to the language?

MR. CONINE: No. I think I've had enough of this conversation for right now. I'd like the Board to consider tabling this matter until we can get some of these issues worked out. I'm not comfortable, as you can tell, and maybe some of my other Board members are not comfortable with where we are based on the testimony I've heard this morning, and it's just two weeks, we can put it back on the agenda in a couple of weeks and get it rolling.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move to table agenda items 1(f) and 1(g) until our next meeting.

MR. CONINE: Is there a second?

MR. GANN: Second.

MR. CONINE: Second. There's some more discussion from staff.

MR. DORSEY: If I can speak up real quick. Cameron Dorsey, I'm the HOME Program manager.

We have a rental NOFA and I'm not sure which agenda item it's in here, but the HOME rental item in 1(g) --

MR. CONINE: We're only talking about 1(f) and (g).

MR. DORSEY: Right. We have a lot of tax credit transactions that are hoping to get funds at the next meeting and approval of this NOFA will be important for facilitating that.

MR. CONINE: Would you amend your motion to just pertain on (f) and (g) to the HOME OCC Program issues?

MS. RAY: Mr. Chairman --

MR. HAMBY: Actually, Mr. Chairman, could you lay it on the table for today and come back to it. If you can't get your answers today, then you can move it on to the next meeting.

MR. CONINE: Okay, yes.

MR. HAMBY: Then it provides time to work out this issue.

MR. CONINE: We're going to be here all day anyway, that's fine.

MR. HAMBY: It provides you with the time as opposed to making time certain.

MS. RAY: I brought my pajamas.

MR. HAMBY: And you're the only one on the Board that we

want that to be true of.

(General laughter.)

MR. CONINE: Go ahead and restate your motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Yes, Ms. Ray.

MS. RAY: I restate my motion to table items 1(f) and 1(g) for a point later today for resolution.

MR. CONINE: Do I hear second?

MR. GANN: Second.

MR. CONINE: There's a second. 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.

All right, item 1(p).

MR. GERBER: Mr. Chairman, this is: Presentation, Discussion and Possible Approval of a Resolution Authorizing the Issuance of Residential Mortgage Revenue Bonds, 2009 Series A, and Residential Mortgage Revenue Refunding Bonds, 2009 Series B for Program 74.

As of July 6, 2009, TDHCA has only \$27 million in remaining allocation from Program 70 at a 5.75 assisted mortgage rate for very low, low and moderate income Texans seeking to purchase their first home. On June 29, 2009, the Board approved an application to the Bond Review Board to draw down \$55 million in 2008 volume cap, along with \$30 million in HR-3221

volume cap. Today staff is seeking final approval of an \$85 million bond issuance, along with a \$22.6 million refunding of the residential mortgage revenue bonds, 1999 Series B, C, D issuance with respect to the finance structure proposed target mortgage rate, timing and size of the issue.

We've surveyed our lenders, there's strong demand for our product with down payment assistance, and staff has taken a conservative look at this demand and estimates that Program 74 funds should be available through April of 2010. We're going to be setting aside 30 percent of the structure for families with income less than 80 percent of AMFI, we'll also set aside 20 percent of the structure for targeted areas within the State of Texas. Both set-asides, along with the remaining bond proceeds, will be available with 4 percent down payment assistance in the form of a deferred zero percent second lien due on sale mortgage loans which will be forgivable after ten years.

Depending on the day of pricing and market conditions, TDHCA is expecting the first lien mortgage rate to be between 6.35 and 6.55 percent. The first lien mortgages will be securitized and all mortgages will be marketed to very low, low and moderate income residents of Texas, and we expect that 740 new first-time homebuyers will be able to take advantage of the program.

We're requesting approval of resolution 09045 as posted with two changes: one, relating to the prior bonds, the 1999 Series E bonds will not be refunded; and two, Bank of America, one of our co-managers, will be selling TDHCA bonds through their wholly owned subsidiary, Merrill Lynch and Company. Staff is recommending approval of resolution 09-045. And Matt, do you or Elizabeth have anything else you want to add to it?

MR. POGOR: Any questions?

MR. GERBER: With that, we would ask for a motion.

MR. CONINE: Do I hear a motion?

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation to approve resolution 09-045, authorizing the issuance of residential mortgage revenue bonds.

MR. CONINE: Motion to approve. Is there a second?

MR. GANN: Second.

MR. IRVINE: Clarify that that's with those changes.

MR. CONINE: With the amendments.

MS. RAY: With the amendments.

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.

MR. POGOR: Thank you.

MR. CONINE: Thank you. Moving on to item 2, Audit Committee Report. Ms. Ray.

MS. RAY: Mr. Chairman, the Audit Committee met yesterday evening at five o'clock at a duly scheduled Audit Committee

meeting, and I'd like to introduce at this time our internal auditor, Ms. Sandy Donoho. And Ms. Donoho, I understand you have some new staff. Would you like to please come forward? Ms. Donoho, if you would, introduce your staff and give the Board a brief summary of the outcome of the Audit Committee meeting yesterday.

MS. DONOHO: Okay. My staff, unfortunately, is not here today, they're trying to finish up an audit at the 11th hour, but we have three new auditors: Betsy Schwing is one of them. She came to us from UTMB. She has about 14 years of audit experience. And then we have two new auditors that just graduated from Texas State University, Derrick Miller and Jill Borkman. Hopefully we'll be able to introduce them to the full Board at the next Board meeting.

The Audit Committee met yesterday, we approved a new revised version of our audit plan, we made a few changes. Based on some external audits that were done by the State Auditor's Office, a couple of things fell off our plan, Disaster Recovery, two projects there, for example, a Section 8 project that hinged on some policies and procedures that have not yet been revised, and we added some monitoring of the ARRA funds. And the next audit that we'll be working on -- we're finishing up the followup on the OCI programs right now, and the next audit we'll be working on is the 4% Tax Credit.

And then we discussed briefly two external audits, the Statewide financial audit that had no findings for our LIHEAP Program, and also a HUD audit that had some findings for the HOME Program.

MS. RAY: Thank you, Ms. Donoho. Are there any other

questions from the Board on actions taken? I'd like take this opportunity, Mr. Chairman, to commend our internal auditor for the work that she's done to bring on staffing to address the issues that are always on the table as to how we implement and operate our programs, but just as importantly, to develop a plan for addressing the influx of money under the stimulus plan. We're very grateful to Ms. Donoho for that. We had a very comprehensive meeting with the full staff of the TDHCA Board in attendance. I would like to commend Mr. Gerber for that and for the dialogue that went on yesterday. It helped us to appreciate the complexities of our programs.

I'd also like to introduce to the community a new member of the Audit Committee. Mr. Tom Gann has been appointed by Mr. Conine to serve on the Audit Committee, so that would be myself as the chair, Mr. Gann and Ms. Leslie Bingham as members of the Audit Committee.

If there are no further questions.

MR. CONINE: I have a question, Ms. Ray.

MS. RAY: Yes, sir.

MR. CONINE: Thank you very much. And this will probably admit to the fact that I read my Board book last night and didn't read it earlier in the week, but I have a concern about the memo on the HUD affordable housing and financial monitoring memo audit, the HOME Program.

MS. RAY: Yes, sir. Mr. Chairman, we are going to be talking about that in a little bit further detail at the executive session.

MR. CONINE: Okay. Forget about the amounts of money right now, I'm concerned about the processes of the separating of dollars

between the recapturing and the program income side of what was there, and obviously we have some deficiencies in that area that need to be addressed. Have you had discussions with Bill Dally, Mike Gerber, whomever, to satisfy you that the staff is making those corrections?

MS. DONOHO: We just finished an audit of program income as well, and we noted that issue but HUD had already brought it up, and so HUD actually addressed that. The issue, I think, is that HUD requires certain recaptured funds to be not program income to go back to those entities, and so it's, the way I understand, an accounting issue, and my understanding is that that's being addressed by Mr. Dally and Mr. Cervantes, so maybe Mr. Cervantes would like to comment on that.

MR. CONINE: Would you like to step up, David, and address that? This was kind of a surprise to me and I don't like surprises, so let's here it out.

MR. CERVANTES: David Cervantes, director of Financial Administration.

And yes, as you read the audit report, there is a reference to the program income and the accounting for the program income, but the understanding regarding program income is there has never been a question of the accounting of the program income. When HUD came in, they indicated that not just the tracking of program income and the repository and, of course, sending it back to HUD, but that there was an additional feature to program income, and that is that there is normal repayment condition versus recapture condition.

So up until the audit, there was an accounting of program

income as a whole, as you can see in the report, there is a reference in there about the program income that we collected over a period of time, so the accountability has always been there, and HUD acknowledged that fact, but it was just the separation of those two particular categories. And the reason they require it is because if you have normal repayment program income, you can take 10 percent off of that portion and use it for administration for the state, the recapture portion you cannot.

Part of that discussion also involved whether any program income had been taken on any of it to date for administrative purposes, and the answer to that question was no. So we thought they were going to recommend basically stating go ahead and begin the process of separating it, you can take 10 percent off the normal repayment portion of program income and move forward. After they went back to headquarters and visited with their authorized individuals, they came back and said, Well, we think it would be best for you to go back to January of 2005, do a reconciliation, create a separation of it, and then let us know what the result is, even though we know you haven't generated any admin for TDHCA admin purposes.

So that's what you find in the report, that's the reconciliation that is being conducted. As of today, I think we're moving to the latter part of 2007, and as you can see in the report, our deadline is August 31 to complete the reconciliation to be able to report back to HUD as far as the accountability, the separation, and the outcome of what that separation is.

So once again, there never has been a question of the pool of program income that has come into the Department, it really has just

been the separation and the potential for any admin having been applied as it relates to the 10 percent you can take off the top.

MR. CONINE: We've been administering the HOME Program since 1992 and accounting for the HOME Program since 1992.

MR. CERVANTES: That's correct.

MR. CONINE: Is this the first time a HUD audit has pointed that fact out to us?

MR. CERVANTES: This is the first time that that had been pointed out to use, yes, sir.

MR. CONINE: And it's probably because at some point back in the early 2000s we started recycling some of these HOME dollars.

MR. CERVANTES: Well, I think most of the review and oversight that have been provided in the past have been more so about making sure that as we collected the program income that it got recorded in the IDIS system which is the HUD system for reporting and that we remitted that back to HUD, got credit but applied it first before we went in and got any further federal dollars. And so we've addressed that from the very beginning because our contract management tracking systems have built-in edits in that any time a new draw comes in that there's a recognition that we have received program and that we have it on hand, it gets applied first to the first draws that make it in the door.

So that has been the typical oversight, that's been the typical discussion on program income, and up until this point this is the adjustment that they've asked us to make, but they do concur with us that as far as the accountability of program income, it is intact and can be

accounted for as a whole. So we're going through the process right now, we're actually ahead of schedule, we think by the end of the month we'll have the outcome of the reconciliation, and as we indicated in our report, we will submit the results to them and hopefully get independent verification that those records are in order.

MR. GERBER: Anything you want to add, Tom?

MR. CONINE: Thank you, Mr. Cervantes. Tom?

MR. GOURIS: If I might just add that the Department has worked diligently with HUD to try to work through these things. They were here this spring, they had left us with the impression that things were really in good shape. Our response letter was fairly lengthy for consideration of how we left things and they gave us some extra time to respond, we responded by June 30. That response isn't in your packet and I think it's unfortunate because it would have been helpful to kind of layer through. You've seen what their concerns are and didn't get the responses -- timing didn't work for us to put that in there like we should have.

But I think the biggest issue has been the changes that have gone on with how HUD has interpreted things, particularly program income, and as I mentioned at the Audit Committee yesterday, the way things had been recast for us actually put us in a double bind because the \$26 million or so in program income that we generated primarily since the 2000-2002 era had created a need for us to spend that first and created a need for us to account for that before we could account for our new funds. So it made more of a burden -- a good burden -- for us to be able to have to spend and fund those activities.

MR. CONINE: We don't need to dwell on this much longer. My concern is I can understand how programs screw up occasionally, I have a real hard time with accounting screw-ups because they're typically standard, typically they understand -- they're repetitive, and I'm appreciative of Ms. Donoho and Ms. Ray's committee for having brought this up and I know you guys are under the gun to get it fixed and I know you will get it fixed, I just wanted to make sure that was the case

MR. GOURIS: For sure. And I think our relationship with HUD is improving daily. We received a letter the night before last on the CAPER and it had very glowing remarks -- it had still some issues and still some things that had to do with this, but I think we really are improving that relationship and making sure that we're on the same page with things.

MR. GERBER: We'll make a point of reporting back to the Board and keeping you apprized of this issue.

MR. GOURIS: Definitely.

MR. GERBER: And we're having an ongoing daily conversation with HUD to make sure that we address these and other issues.

MR. GOURIS: On many fronts, yes.

MR. GERBER: Yes, it's a robust conversation, and we'll make that an item to keep you updated on this agenda until it's no longer an issue.

MS. RAY: Mr. Chairman, I would not like for this Board to leave this subject with the impression that there was, in fact, an accounting screw-up, there was not, it was more of a communication issue between

our Department and HUD and dealing with the complexity of the HUD IDIS system, and I believe that Mr. Cervantes and his organization, Mr. Dally's organization, and several other divisions within the Department have come together in a very professional way to address the issues between us and HUD, and I think we're on the right track and moving in the right direction. And we can talk about it in a little bit more detail to satisfy you during the executive session.

MR. CONINE: That sounds great, and again, I thank you and your committee's effort for watch-dogging that which is what needs to happen. Appreciate it. Thank you.

MR. GERBER: Mr. Chairman and Madame Vice Chair, I would just like to add also that it kind of was understated by Ms. Donoho, but the work that the Internal Audit team has been doing in support of the Department's ARRA mission has been really key. As we take on these new dollars, we've really worked hard to take the benefit of her experience and her team's experience to try to really do some risk mitigation the whole way through, and obviously it will point to some areas. As we work through implementation, audits will be conducted but we're very appreciative of her and her team maintaining that independence, but gain the benefit of that experience. So we thank her for that.

MS. DONOHO: Thank you. Any other questions?

MR. CONINE: Thank you, Sandy. Appreciate your work.
Moving on to item 3 under the Rules, Mr. Gerber.

MR. GERBER: Mr. Chair and Board members, item 3(a) is a request for approval to publish a draft of proposed rules for Disaster

Recovery programs for comment in the *Texas Register*. TDHCA has received funding, as you know, from HUD to provide disaster assistance on many fronts. Rules are necessary to effectively monitor the activities under disaster assistance and to ensure program benchmarks are achieved and disaster funds timely spent. Contracts between the sub-recipients and TDHCA for these Disaster Recovery funds will include benchmarks that are enforceable under these rules.

Publishing the rules in the Register opens the period for public comment. Staff will bring the proposed rules back to the Board to be addressed after the public comment has concluded. Staff is recommending a motion from this Board to authorize the publication of these Disaster Recovery Program rules in the *Texas Register*.

MR. CONINE: Do I hear a motion?

MS. RAY: So moved, Mr. Chairman.

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

DR. MUNOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item 3(b).

MR. GERBER: Mr. Chairman, item 3(b) is the presentation, discussion and hopefully approval to publish the proposed repeal of 10 TAC, Chapter 2, the Texas Bootstrap Loan Program, and a draft of proposed new 10 TAC, Chapter 2, Texas Bootstrap Loan Program for public comment in the *Texas Register*. The Texas Bootstrap Loan Program rules were initially adopted by this Board on February 1, 2007. The recommended rules presented today include changes that were the result of Senate Bill 679 that aligns processes with the reservation system and incorporates changes that are recommended by the Department's Internal Audit Division.

Upon approval by the Board, the proposed rules will be published in the Register and released for public comment. Public comment will be for at least 30 days and a final recommendation of the proposed rules will be presented to the Board in October.

Again, this draft of the rules does include numerous changes that were recommended in previous internal audits, and we're appreciative of the guidance, again, we've gotten from Internal Audit and the hard work of our OCI Division to make sure that those were in sync, as well as with the statutory changes that were needed to make sure that we had a compliant program.

Again, we'd ask for a motion to approve this body of rules to release them for publication.

MR. CONINE: I have a couple of witness affirmation forms on this agenda item. John Henneberger.

MR. HENNEBERGER: Good morning. My name is John

Henneberger. I'm the co-director of the Texas Low Income Housing Information Service, a nonprofit organization that works on the behalf of poor people and their housing needs in Texas.

I want to say, first of all, that this revision of the proposed rules that are before you are much improved from the version that was previously submitted in the Board packet. Our concern with these rules is this: the Bootstrap Program is a really unusual program, it helps the poorest people to be able to become homeowners in the state. I mean, you've put families in homes with \$7,000-\$8,000 annual incomes, and you've made them homeowners, and by and large, there's been some issues about some people paying, but by and large, it's pretty well worked out.

The way you've been able to do that is you've provided a portion of the money for the materials, and those families, working through nonprofit organizations have built the houses with their own labor. So it's a combination program: they put up the labor, you put up some money for the materials.

The changes in the rules, the one change that still causes me a little concern in the rules that you're considering, has to do with the issue of if a family has been behind in a payment of debt for three months in the last twelve months, that they would be ineligible for assistance under the Bootstrap Program. And what I would like to clarify is I would hope that that would apply -- I'm a little nervous about that applying in general because we are really talking about poor folks and we don't want to exclude them from bettering their situation. By and large, these people are

in a situation where they're now paying too much for housing and that is stressing their ability to make payments in general, and we don't want to get in a situation where we deny them the option of being able to come in and get a loan under the Bootstrap Program, build a home for themselves and reduce their housing costs so that they're better able to make their payments.

At the very least I would hope that this requirement not apply to rent. In other words, I think it's understandable if a family under this program had been having a hard time and been making late payments on their rent, because in most cases their rent will have been many times more expensive than their end payment under a Bootstrap loan. We want to get them out of a rental situation where they're paying \$700-\$800 a month and get them into a Bootstrap loan where they're paying \$350 a month or so for the house.

So I think it's important that the Board clarify that that late payment situation not be applicable to rent, and that's my request.

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

DR. MUNOZ: As I read it here, it's talking about 30 days late on three different months in a twelve-month period -- 30 days late. That's a quarter of the year.

MR. HENNEBERGER: Yes, it's a significant amount, and in a normal situation, you wouldn't be giving those people a loan. But this is really a very much different program than a normal situation.

DR. MUNOZ: Having owned properties myself, that's not a week, five days, two weeks late, 30 days every other month.

MR. HENNEBERGER: Right. A very large portion of the households who participate in this program are farm workers. By the nature of their employment, they are very often significantly in arrears over a protracted period of time in the non-seasonal employment period. And I'm not trying to open it up to deadbeats and people who just aren't making payments and the like -- and I think the Department has done a good job, it's done an extraordinary job, this is a program that's a national model.

You're looking to tighten up here, you've not imposed these type of guidelines before, this is new, these are new additional credit underwriting requirements which have never been applied to this population before. I'm just counseling that we be very careful when we do that because we don't want to completely eliminate the ability of these extremely poor families to achieve this really extraordinary thing.

MR. CONINE: Ms. Ray.

MS. RAY: Mr. Chairman, I'd like to hear from staff on that recommendation, on where they stand.

MR. CONINE: Mike, Homer, somebody?

MS. RAY: Somebody tell me what the staff's opinion is. I understand Mr. Henneberger, but I really would like to hear from staff to get the other side of that, because I have my own personal opinions about it, but I'd like to hear more objective.

MR. GONZALES: Good morning, Board chair and Board members. My name is Raul Gonzales and I'm the direct lending officer for the Texas Department of Housing.

The intent here is not to include any kind of rental

verification or rental history on this particular item. What we're looking for is not only to protect the integrity of the program but also to be able to make sure that the homeowners who are coming in are not just coming in for a loan but to make them successful homeowners for the long term. So the intent here is not to include the rental history. Now, it is taken into account and it is reviewed, but this particular item is strictly on consumer retail debts that we're looking at.

MS. RAY: What would the position of the staff be if they clarified that specifically in the language of the rules as it pertains to rent?

MR. GONZALES: There's no objection at all. We can clarify and perhaps include some language to the extent to say any consumer retail debt, and we can definitely run that through our legal counsel as well.

MS. RAY: Thank you for that clarification.

DR. MUNOZ: Which would then address the other point.

MS. RAY: Exactly.

MR. GONZALES: Yes, sir.

MR. GANN: Do you look at medical payments at all?

MR. GONZALES: Medical payments are not taken into consideration, and further in the rules it does state that any medical accounts are not taken into consideration and looked at as derogatory.

MR. GANN: Good.

MS. RAY: But the language will now be adjusted to be specific to consumer.

MR. GONZALES: Correct, yes, ma'am.

MS. RAY: Okay, I'm comfortable with that.

MR. CONINE: Any further questions of the witness?

MR. GERBER: Kevin, any concerns, issues?

MR. CONINE: I have one more witness affirmation form.

Matt Hull.

MR. HULL: Thank you, Mr. Chairman. My name is Matt Hull, I'm the executive director with Habitat for Humanity of Texas, and we agree with what Mr. Henneberger said about the consumer debt issue and we're very pleased to see that staff is willing to work to explicitly exclude rent as well. And I want to thank Mr. Cabello and Mr. Gonzales for working with us before the rules were published and between the time that the rules went out last month and this month and making some further clarifications that we think really improved the program.

I still have one concern with the program, and that is in several places in the rules it mentions and it references the Texas Residential Construction Commission that the homes have to be registered with TRCC, that contractors have to be registered with the TRCC, the NOHP, the contractor through the Bootstrap Program, have to be registered with the TRCC. And as we all know, the TRCC has been Sunsetting and starting on September 1 will be undergoing its year-long wind-down period, and after September 1 -- or after August 31 of this year, they will no longer be taking action on any new registrations by homebuilders or by contractors.

So I would just like to find out that there might be some conflicts in these proposed rules to where NOHPs or others won't be able

to comply. Say if their registration lapses September 15 before these rules take effect, they would no longer be able to register with TRCC after August 31 of this year, even though TRCC will be doing monitoring and compliance between now and August 31, 2010, but there will be gradual wind-down where more and more times they'll be out of compliance.

So I don't know, just after every reference to TRCC, you need to put if applicable or something. I would just hate to run into a situation where there's no way that they'll be able to comply with the way that the rules are actually written.

MR. CONINE: Can we add that verbiage in there, Mike?

MR. GERBER: We certainly can, and Mr. Chairman and Vice Chair, with the Board's concurrence, we would recommend a motion to go ahead and approve the rules with the change that Matt suggested, as well as I know staff is right now working on language to address the rental issue as well.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: Are you finished?

MR. HULL: Unless there's any questions. Thank you for your time.

MR. GERBER: Thanks, Matt.

MS. RAY: Mr. Chairman, I move the staff recommendation to publish the rules in Title 10, Texas Administrative Code, with the recommendations on addressing consumer credit as well as the TRCC.

MR. CONINE: Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. 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.

We're going to take a ten-minute break.

(Whereupon, a brief recess was taken.)

MR. CONINE: We'll reconvene the Board meeting, please.

MR. GERBER: Mr. Chairman, I'd like to just mention that Limuel Price with Representative Yvonne Davis's office was here -- I think he's still here, I hope he's still here. And Tatiana Aura who is here as well, who is always good to stick with us through these meetings, and works for the House Urban Affairs Committee and for Representative Davis as well. So welcome, we appreciate you being here as well.

MR. CONINE: Okay, thank you. Item 4(a), Presentation of the Monthly Status Report, and it says Brooke Boston here.

MR. GERBER: And it would be Brooke Boston, and she'll give a quick overview on where we are in ARRA.

MS. BOSTON: Hi. Brooke Boston.

First, on an agency-wide basis, we were working on several

things. One is relating to procurement opportunities specifically relating to the Recovery Act. We are taking some initiatives, both on a contract basis as well as on an agency-wide basis. On a contract basis we're requiring that every contract recipient with any Recovery Act funds will have to post any of their procurement opportunities on our website, and also, they have to post their job postings on Work in Texas which is part of an executive order that Governor Perry put out.

So the good thing is by the procurement being sent up to us, they'll, of course, have to follow any state or federal procurement regulations additionally, but by it coming up to us, when we get contacted and someone says how do I find out about a procurement opportunity relating to a Weatherization recipient, we don't have to say oh, contact all 50 Weatherization recipients, we can just refer them to one spot on our site. And then, of course, our procurement opportunities will also go up there as well, so it's nice one-stop shopping just to keep people informed.

We also are adding a list serve specifically for the Recovery Act so if people are interested in learning about either programmatic activities or procurement opportunities can subscribe to that list serve.

We've also designed a requirement tool that's really essentially just a grid or a table that identifies different requirements under Recovery Act or different federal regulations and then specifies for each of our funds how those do or do not apply, and it represents our counsel's opinion on whether those do or don't apply, so it ensures uniform application of our counsel's opinion relating to each of those regulations.

We've also designed some contract language that's going to

go into every Recovery Act contract. It includes things from the Executive Order 70 from Governor Perry, as well as just some other things that we know apply across everything, and so we've made sure those are going in.

We're just at the point this week, actually, of the boilerplates for contracts for almost half of the Recovery Act money being approved through legal, because those contracts should be going out in the next few weeks.

And then we also have put out a request for information, or I think it's about to be released, relating to asset management activities which we'll get information about that for tax credit exchange, tax credit assistance, and then also rental activities relating to disaster recovery. And then as you can imagine, just the Financial Administration and IS side of trying to make all of these funds work within our current systems, it's not as simple as it would seem, and so Curtis Howe and David Cervantes are doing huge amounts of work on that, and then also relating just to space and getting ourselves situated for that.

And the only other thing I wanted to mention, in your books you have a program-by-program breakdown of what's been going on with each fund, and the big thing I want to mention is that on Weatherization, the training academy RFP -- which is an RFP for training and technical assistance relating to Weatherization -- actually was released this week, so that's our first big RFP.

And then I would just mention, as well, you have NSP awards today, and then on the meeting on the 30th you're doing awards for all of Weatherization and all of Homelessness Prevention and Rapid Rehousing, so between those today and then the 30th, you're doing about

\$500 million plus in stimulus awards -- so yea Board.

MR. CONINE: Great. I notice we've received some publicity recently on both our Weatherization funds and the Homebuyer Tax Credit Assistance programs, and it's good to see the Department get good press. It's also good to then follow up a month or two later and show where it went and so forth, and I'm sure you're acutely aware of that, and I wanted to say congratulations so far.

MS. BOSTON: Thank you.

MR. CONINE: Any other questions for Ms. Boston?

MR. GERBER: Mr. Chairman, if I can just interject on procurement opportunities, we have really taken to heart trying to make sure that our sub-recipients also are making procurement opportunities available to all Texans and making sure that those are widely publicized through both the Department, the Texas marketplace, through their own individual networks, but with the volume of work here, making sure that it trickles to those have capacity and have skill sets who can do this work. Like in the case of Weatherization, we need more homebuilders, we need more trades people and making sure that they're all aware of those opportunities is really something of great emphasis. And I know Brooke is putting a lot of time into, as is our procurement staff, and Brenda Hall, who has been doing a lot of work in the ARRA accountability office. So I just wanted to make note of that.

MR. CONINE: Okay. Moving on to item 4(b), Mr. Gerber or Gouris.

MR. GERBER: Tom.

MR. GOURIS: Tom Gouris, deputy executive director for Housing Programs. Hello again.

MR. CONINE: It's you again.

MR. GOURIS: It's me again, sorry.

MR. CONINE: My nightmare.

(General laughter.)

MR. GOURIS: As we've been discussing over so many months now, there have been difficulties in the financial markets providing unique challenges to completing tax credit transactions, and there have been several pieces of federal legislation that have been passed to try to assist us in moving forward with these developments that are much needed.

Last May, two meetings ago, you all approved and modified a plan for the Tax Credit Assistance Program, or TCAP program. That plan is designed to try to maintain tax credits in a transaction to try to help them move forward with the existence of tax credits in the 2007, 2008 or this year's 2009 awardees. Today we're going to talk about the cash assistance to states in lieu of low income housing tax credits, or the Section 1602 Program, what we tend to be calling it here is the Exchange Program, or I think I've heard it called the TCEP program as well.

MR. CONINE: Exchange would be fine.

MR. GOURIS: Exchange is what we're going to call it. But I wanted to take a minute to walk you through what we've done with TCAP so that you can understand the continuum of funding opportunities there are available, that we've made available, that we're trying to make available

and kind of give you the thought process behind where we are.

The TCAP program provided \$148 million to the State of Texas and it allows us to do assistance in the form of a loan or forgivable loan, potentially even a grant. It's tied to HUD through the HOME avenue, although it's not restricted as HOME funds are restricted. Some of the things that affected our Davis Bacon environmental, they do have to comply with those federal requirements, but most of the other HOME requirements are not attached to the program.

What we did two months ago is created a program that allowed us to have separate tools within the TCAP umbrella. The first tool was an incentive to increase price -- that was pretty straightforward. If you increased your price you would be able to potentially use one of the other tools to access funds and to fill the gap in deals. The first real initiative that we created was the equity bridge initiative. The equity bridge initiative was a tool to allow for the ultimate investor to delay a portion of their contribution to the project for five to ten years, and in so doing, the hope was that they would realize a better yield with their investment, and therefore, one, be willing to complete and close a transaction, and two, be willing to possibly raise the price or maintain the price that they had indicated previously.

The second tool that we created was a permanent loan replacement tool and this also had a couple of reasons for doing it, a couple of purposes. One was that it provided more assurance for the investor, again -- or reduced the likelihood of foreclosure activity because the permanent conventional loan would be reduced, and therefore, the

likelihood of foreclosure on that permanent loan would be reduced with our funds coming into to support some of the permanent funds.

We could also fund the entire permanent financing which would then also benefit the development because what we're seeing is permanent financing is very tough to get to right now. If you're closing on a deal right now, we're seeing rates 6 to 8 percent, but if you're closing on a deal with a forward commitment, we're seeing rates at 10 percent and there's a difficulty there in getting transactions accomplished if the rates have gone up for future permanent financing. So that permanent replacement tool was one that we thought would be able to flatten those rates or keep those rates where they were and thereby make these deals more viable and get them to close as tax credit transactions.

And then the third initiative that we provided in the TCAP program was a credit replacement initiative, and that initiative would actually take the credits back, buy them back from the applicant, in essence, and provide an interest-free forgivable loan that would be forgiven after 15 years after the initial compliance period. And the idea there was where you couldn't sell all of your credits or you couldn't sell a portion or all of your credits, you could return those credits to us and we'd give you the TCAP cash and then we could reuse those credits elsewhere with another transaction.

So those are the continuum that we have so far. Today we're adding the potential for the Exchange Program, this is a separate program that's not a HUD program, it's a Treasury Department program, and it's a two-step process program: we get credits returned to us and we

take those credits and return them to the Treasury, the Treasury gives us cash that we can then use as we see fit as long as it applies to a tax credit like development, someone who is willing to do a tax credit deal.

The problem is getting those credits returned to us is something that we need to think about how we're going to do that and if we need to provide some incentive for folks to do that, namely, some of that cash that we're going to get back would go so that they could then develop their transaction.

So in your board package is a writeup with a number of questions and a number of considerations and answers, and then at the end of it, the last two pages are sort of a strawman of some ideas that we've cobbled together so far as to what we might want to do based on the discussions we've had. Hopefully, we will look at that, gain some direction from you all today, hear what the public has to say about some of their ideas as far as preference for rural and what-have-you, and then move forward at our next meeting with a more definitive program.

With that, I'll stop and if you have questions, I'll be glad to answer them.

MR. CONINE: Any questions of Mr. Gouris before we start through the witness affirmation forms?

(No response.)

MR. CONINE: The first witness is David Koogler.

MR. KOOGLER: Good morning. My name is David Koogler, I'm with Mark Dana Corporation; we develop affordable housing using tax credits and other programs. Thank you for this opportunity to talk

with you this morning.

I've submitted my comments in writing and I think all of you have received that letter, so I won't repeat all of that, I know you have a lot to do today. The only additional comment I would make with respect to the Exchange Program is I noticed in other comments that there may be a misconception that Region 6 doesn't need any help because investors are real excited about Region 6. I have heard that Houston is seeing some interest right now from investors, but I've also been told that it doesn't stretch much beyond Houston, and Region 6 is a large region so I wouldn't want it to get tagged with that.

We have a project in Galveston and it is not seeing the increased interest, at least the people that I've called lately on the same information have told me that the interest does not extend that far south. So that's my only additional comment.

If you have any questions about any of the written comments or would like for me to summarize them, I'm happy to do that.

MR. CONINE: Why don't you just summarize them in a bullet point since we just got your letter just a second ago.

MR. KOOGLER: All right. Well, I won't go through all of them because some of them are a little detailed.

MR. CONINE: Pick the top three.

MR. KOOGLER: The top three are, again with Region 6, I urge the Board to adopt staff's recommendation with respect to the way they've suggested to making exchange credits available to the Ike credit projects.

The other comment I have is given the timing and the various deadlines that are currently inherent in the program, I urge the Board to adopt and exchange program that would put the exchange funds into the project early and only require that those exchange funds be spent by the December 31 deadline rather than requiring that projects be completed by December 31. That gives you a little bit more time to get these done.

And then really the third thing is we are all under a tight deadline -- and I'm really focusing on '08 and '07 projects -- but with respect to the '08 projects that have their 10 percent deadline looming, I would like to make sure we all kind of keep our eye on that and try to facilitate a program that can close in time to facilitate the 10 percent test and deadline, and if we can't do that, consider some flexibility in extending that deadline, if that's possible. Those are my top three.

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

(No response.)

MR. CONINE: A quick question, I guess for you, if an '08 deal turns in credits on exchange, does it become an '09 deal so the 10 percent test gets pushed out or not, the date gets pushed out or not?

MR. GOURIS: We do not believe that that's the case, it will continue to maintain its '08 date.

MR. CONINE: So we need to do what he said, be cognizant of that.

MR. GOURIS: Yes, sir.

MR. CONINE: Okay, thanks. John Henneberger.

MR. HENNEBERGER: My name is John Henneberger with the Texas Low Income Housing Information Service. I am not a developer of low income housing but I am concerned about the policy issues, and that's what I want to bring before the Board today is to ask you to consider the underlying policy issues in the direction of this program.

I know you're going to hear a lot from the industry and I think they have proper concerns about all the procedural things associated with how do you get this market working again. But from a larger view, the goal here is to try to get affordable housing for low income people. For a long time we have been unable to have the type of resources that allow us to achieve housing subsidy for people whose incomes are very low. I added up the resources that this TCEP and other programs and the Tax Credit Program generally provide. These programs account for 75 cents out of every housing dollar available to all of the cities in the State of Texas as a whole, this is a huge program, this is the big enchilada.

How this program houses people and who this program houses largely shapes who gets housed in affordable housing in Texas, and I want to suggest that the staff be instructed to look at ways to use this program in order to take the existing applications for tax credit projects and require of them some deeper income targeting on a small percentage of the units in the development, and as a goal, I would like to see us be able to achieve 15 or 20 percent of units in urban areas, affordable at 30 percent of median family income, and within rural areas to achieve a similar percentage of units affordable at 50 percent or 45 percent of median family income.

This is a once-in-a-lifetime opportunity to redesign and re-implement the Tax Credit Program, and I urge the Board to consider this critical underlying policy issue to make funds available for this population which the disability advocates, the low income advocates and others will all tell you is the people who have the greatest housing need in the state, yet we have never had the resources to be able to address that need. I urge you to ask the staff to look at this program carefully and see if there isn't some way to squeeze a little bit more affordability, a few more units of lower rent units in these tax credit deals as we go forward in this process.

The rules all haven't been written at the federal level, there may be additional flexibility coming down the pike. So that's my request and thanks very much.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. Granger McDonald. I assume you're going to speak on an issue different from the one you spoke on earlier.

MR. McDONALD: Maybe.

MR. CONINE: Let me just put that down as a requirement.

MR. McDONALD: A different issue then. I'd like to agree with what David said previously, except for Region 6, I have no applications in Region 6, don't think Region should get any money at all.

(General laughter.)

MR. McDONALD: But he's absolutely correct about the placed-in-service date being an issue, and the one thing that I would like to

add to that is we've just got to get this program moving, both TCAP and Exchange, as fast as possible because the placed-in-service dates are going to be a tremendous burden on trying to get construction done, just a matter of getting sticks and bricks in the air in time, it's just going to be really bad. We've enjoyed the wonderful drought but when we get this to happen, we're going to have tremendous flooding and rain will come, and it's going to be really ugly.

So with that, I'd just like for you to press forward as fast as you can on this; that may mean an August meeting.

MR. CONINE: You want this job?

(General laughter.)

MR. CONINE: Mike Sugrue.

MR. SUGRUE: Good morning, Chairman Conine, Board members, Mr. Gerber.

I would like to say something else along the lines where Granger was heading -- I don't care about Region 6 either --

(General laughter.)

MR. SUGRUE: But I would like to ask the staff or ask you to ask staff to talk to Tony Friedman about this placed-in-service issue. We may need a private letter ruling. He believes that the Exchange Program will put a new two-year window out there, placed-in-service and the 10 percent test are both going to be huge issues. Yesterday I was in Dalhart, Texas -- a wonderful place, Dalhart -- speaking with the mayor, I was visiting with the mayor about the property.

MR. CONINE: How's the cheese up there?

MR. SUGRUE: The cheese is still good, that's part of what I'm here to talk about. Representative Swinford, who does not represent Dalhart but is a neighboring representative, has called the mayor to find out if this housing property is going to go ahead because the cheese factory is starting phase 2 with 120 to 150 jobs and no housing, so they want to know when we're going to do something. Of course, the mayor is asking me when are we going to do something. I don't know but I'm heading to Austin tomorrow, im going to ask them when are we going to do something. So it's gone downhill to you all which is probably uphill for me, but I want you to know what I'm hearing out there.

MR. CONINE: Cheese always runs downhill.

(General laughter.)

MR. SUGRUE: So anyhow, the issue is sooner versus later, and I agree that they didn't have a winner in Dalhart last year -- we're talking about southeast Oklahoma, obviously -- but far North Texas and the blizzards can come, weather can come, if we start, we can expect rain or snow or frozen ground, so whatever we can do to get it started. But I think if we can clear up this two-year window issue or question -- and Tony Friedman works for the agency, he'd be the guy to get the answer from.

MR. CONINE: Yes, there's a lot of people working on that particular issue. I was on a phone call with Tony not too long ago, and my concern was that in spite of all the great effort that they're trying to get the deadline extended, until it gets extended, we have to operate under the assumption that we're not going to get it extended and the Board has to make decisions with that in mind. And the earlier testimony had the little

wrinkle of maybe us putting our money in a little early on some of the qualified costs so that you could get the project 80 percent finished and we'd have all the money in by then and you'd still be okay on the December 2010 date. I think the Department is going to be flexible working with your construction lenders on that issue -- we had one conversation about that already -- we'll try every wrinkle we can to get it done quick.

And the other thing I need to say is I looked at the application log for the first time just the other day and it's huge. Our staff has done a yeoman's job to this point -- it's a little early to give too many atta-boys, but if you consider what our staff has to do just with the '09 dump, along with the '07 and '08 dump that's coming, they're going to spend weekends and nights and so forth to accommodate you guys to the best degree, and so every time you see one of them, tell them thank you as we go through this process. Compared to other years, this is amazing.

MR. SUGRUE: In my position with TAAP, we do appreciate what staff has done to try to clean this up. I realize that they are trying to put ten pounds of something into a five-pound sack, because when we get all the applications put together, it's almost like doing three years in one, and we appreciate that and we understand that. However, we keep asking for time is of the essence and anything we can do as a development community, we're happy to help any way we can as well. Thank you.

MR. CONINE: Well, I just wanted to say that publicly, and thank you for your comments.

MR. SUGRUE: And we appreciate that, thank you.

MR. CONINE: You bet. Jeff Crozier. As Mike says, there

will be a lot of pizza ordered over the next 60 days.

MR. CROZIER: Good morning, Chairman, Board. Jeff Crozier, executive director of Rural Rental Housing Association. I might make the comment also that, unfortunately, the '10 QAP is staring us right in the face as well, so not only the staff having problems with '07, '08, '09 --

MR. CONINE: You could have done anything but bring that up.

MR. CROZIER: And I thought that was going to be a tough one to hear.

MR. CONINE: Why don't you back up and start again.

MR. CROZIER: All right, Let me start by saying that I'm going to be here just a short time today. For you people that were here last month, my comments are going to be exactly the same; for those of you that weren't here, you've read the transcript, you know what I'm going to say.

There's a lot of people out there, we'd like to reiterate that this plan takes into account, at least it gives us down the road a fix in the '07 and '08 problem. It's going to give those guys, through the Exchange Program, an ability, and the Rural Rental Housing Association would like to say we're for the plan as presented by the staff.

Getting to the '09, once again we recognize what you just said, Chairman Conine, about the ability to move forward and get going fast and what needs to be done, but we also want to look at the priority list we'd like you to consider on ease of syndication, deals of getting done, and right now we're finding that if you talk to anybody in the world, there's going

to be a lot of people behind me that are going to stand up and say they disagree with my comments, but if you give them the list of the rural at-risk, the at-risk, the rural, the cities in the 100,000 person population range in the urbans, they'll all rank them the same way. If you had to say out of these five, what order would you put the most difficult syndication deal to the least difficult, they'll all be in the same boat.

Now, whether you want to give us a priority or give extra money or whatever, that's completely up to you and we certainly going to accept anything the Board gives us, but we'd just like you to consider that don't forget about the rural guys out there because we're really struggling trying to get something to happen and we appreciate any help you can give us. That's all I have.

MR. CONINE: Jeff, how would you suggest that we as a department can get our arms around a rural deal that can attract a syndicator, or even a partial syndicator, let's say, versus a rural deal that can't attract any? That should be two separate buckets. I'm talking '07, '08 or '09 because our goal is to take the two buckets we've got and spread it out as far as we can spread it, and we need to be able to discern -- you know, Walter Moreau stood up here earlier and said he didn't need any Exchange or TCAP, he can get his deal done -- well, he's in Austin, Texas and I can appreciate the fact that he can get it done. But everybody else may or may not say the same thing, and I don't know how to tell who's right and who's wrong. How would you suggest we do that to the rural folks?

MR. CROZIER: Well, it's a double-edged sword. First of all, I think I agree that the TCAP and the Exchange funds, gap financing is the

best way because it stretches the dollars out and that's what all these programs are always about leveraging and getting the best bang for your buck. When I'm standing up here, I'm reporting what my guys are telling me is that there are no syndicators for credit deals in rural Texas, and so therefore, our only options are either the full equity replacement under the TCAP program or this Exchange Program.

Now, talking with you and other members out in the community, I think when the dominoes start falling, maybe there are some guys, some syndicators may come up and say okay, we may like Lubbock or Abilene or Lufkin or wherever it may be, but the little bitty towns, Gun Barrel City and Dalhart and places like that, so it may be -- and I appreciate what John Henneberger said back there about getting lower income folks, but boy, in those little towns of Dalhart and places like that, market rate is low income for those communities and sometimes we may have to, like you say, have different pots of money. But I certainly agree and I think our community would agree that if you could get a syndicator and these programs were used as gap financing, I think they'd say that would be the best use of the money because, once again, it leverages things out, and then at the end of the day if the money hasn't been used, then you can go do the full equity replacements or whatever they may be.

I personally, just after going to the application workshops the last couple of days that we had on TCAP and Exchange, Terry Anderson, a consultant in the business, she said she looked at a deal where Fannie Mae is now quoting 9-1/2 percent on debt. Well, boy, you look at '07-08 credits that came in at right around that 85-90 cent range on

credits, and all of a sudden debt goes up to 9-1/2 percent, all of a sudden you've really now thrown a wrench into the mix that we weren't counting on 30 days ago or 45 days ago. And that's why I've always been a proponent throughout the process of just staying as flexible as we possibly can because this deal may work today, tomorrow it might not work. I mean, poor staff.

MR. CONINE: We need to think of a way -- and this is not just directed at you but to everybody in the room -- we need to think of a way for the Department to take the temperature of the syndication market over the next two to three weeks, whenever the application times hit, as a gut reality check, and we just need some help figuring that out from you guys.

MR. CROZIER: And I'd absolutely concur with that.

MR. CONINE: And you can think about that and decide on how best to do that and report back later.

MR. CROZIER: Like I said, every day it's like one phone call I get through talking to somebody about oh, my God, there's nothing we can do; and I'll hang up the phone and I'll pick up somebody else that says hey, what about this deal on TCAP funds; and I say you need a syndicator to make the TCAP funds work; oh, I've got one onboard ready to go; well, where were you last week when I stood up in front of this Board and said there were no syndicators in rural Texas. Like I said, that's why I want to come up and just say, you know, as this all plays out, let's make sure that don't forget about my guys.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

MR. CROZIER: Oh, and by the way, for a shameless plug, please be watching your mailboxes because on August 10, 11 and 12, the Rural Rental Housing Association will be having our annual convention and trade show in Corpus Christi, and each of you are going to be invited. This year's theme is: Housing 2009, Shake, Rattle and Roll. So watch your mailboxes for your invitations

MR. CONINE: Thank you for that. Tom Langdon.

MR. LANGDON: Mr. Chairman, Board members, and Mr. Gerber. I'm Tom Langdon with the Oak Hills Housing Fund, a new statewide Texas equity fund.

MR. CONINE: You're the guy we're looking for.

MS. LANGDON: Right here. Over the last few months, we've assembled a team with Alpha Barnes as asset management compliance agent, Resnick Group as our financial advisor and auditor, the Locke Lord Firm as our attorneys, and a group of broker-dealers around the state who are going to offer this fund to every investor that we can find in the state. They're going to turn over every rock to try to find equity for these projects. And thanks to the tireless efforts of Cynthia Bast, the first offering document hit the streets this week, and our brokers are going to be out calling on banks, insurance companies, investor-owned utilities and industrials to try to raise this money as quick as we can.

We're not going to have any of it raised by the deadline for TCAP so that's going to be a difficulty, but the fund is designed to be truly

statewide, meaning that we're going to have small towns, big cities, preservation, new construction all included in the fund so that we try to meet some of the needs that have been expressed by people from Dalhart, LaMarque, Gun Barrel City and downtown urban projects.

But a couple of things that I wanted to comment about on this item, first is that the staff has put in Herculean effort and they're to be commended for innovation, thoughtfulness about how to accommodate investment in projects in Texas. Three or four things that we think could be tweaked: one is that the document that we read on the agenda item indicated that the exchange should be a full exchange, and we're looking at corporate investors who are going to be asking us to limit their exposure to the project to somewhere in the 60 to 65 cents on the dollar of the tax credit amount. So it would be advantageous, I think, to have the ability to have both tax credits and TCAP and private investment in the same partnership's investment. So we'd advocate that a partial return of credits be allowed.

Additionally, the contribution levels -- or let's say the timing of the contribution of the TCAP funds -- and we haven't seen what happened with Exchange funds -- is on a staged basis that is probably a little bit too late in order to accomplish the spend-out by the required deadline, so we'd advocate spending earlier in the development process.

And then thirdly, to allow the liens taken under the TCAP program, and additionally under Exchange, if you choose to go that way, to be junior to commercial loan liens so that we can attract the bankers to bring in the debt that's needed to fully complement the capital mix.

Those are my main comments. We're just hopeful for success in the marketplace to raise this money so that we can participate with you and all these good folks to make these deals happen. Thank you.

MR. CONINE: Well, thank you for your comments and we wish you the best of luck, and you probably couldn't afford to pay for the advertising you just got with that statement. You'll be getting some phone calls, I'm sure. Thank you.

Barry Palmer.

MR. PALMER: Good morning. My name is Barry Palmer, I'm with the Coats Rose Law Firm. I wanted to talk a little bit about the mechanics of closing the TCAP and the Exchange fund deals.

As we're seeing it, most of the TCAP money is probably going to go to '08 deals or else '07 deals that have extensions of placed-in-service deadlines, so all of those deals will now have a placed-in-service deadline of December of 2010 and so they'll all need to close by the end of this year to have time to get placed in service. In addition, the Exchange Program, because of its deadlines, those deals are going to need to close by December in order to get completed by 2010.

We don't know how many there will be of each of these deals, but if you assume an average TCAP award of \$3 million, there may be 50 TCAP deals, and there might be a like number of Exchange deals that all have to close by the end of this year, so that's 100 deals in which the Department will either be a lender or an investor which is a massive undertaking from my side of the street, being the legal side, looking at getting those deals closed.

And so I'd like to make a couple of recommendations as to how we could best approach this because this is just going to be a massive undertaking by your staff, and you've got a great staff but this is too many deals. So would recommend that you get outside counsel to do the legal work on these deals -- it could be overseen by your lawyers -- and that you also look at getting third-party asset managers like syndicators to do the due diligence to try to close the Exchange deals. I think that there are a number of qualified people out there, all the lawyers that used to represent syndicators don't have much to do these days, all of the syndicators have some time. So that would be my suggestion on how we could try to deal with this Herculean task.

MR. CONINE: Okay, thank you. Any questions of Mr. Palmer?

MR. PALMER: And incidentally, I don't want the job.

MR. CONINE: You're conflicted out anyway.

(General laughter.)

MR. CONINE: Thank you. Tamea Dula.

MS. DULA: Good morning. I'm Tamea Dula with Coats Rose. I'm here today to talk to you about Evergreen at Wiley, a wonderful project in Region 3, it's number 09171, and I'm talking to you about that project in the context of question number 4 on the Exchange Program: Do you want to open the Exchange Program to applicants other than those that receive tax credits?

Wiley is a great project with a lot of local support. Those of whom were here at the meeting before last heard why we have too much

support, we have a mis-identification of the senatorial district that was discovered after March 1, both senators do support the project, the mayor of Wiley supports it enthusiastically. The problem is we appealed the termination fo the application because the notice given back in January was inadvertently given to the wrong senatorial district because this is in an area that's totally undeveloped, no roads, no street numbers, and it was mis-identified by both the developer and the senator's office.

Unfortunately, Mr. Hamby advises us that the Board does not have the discretion to grant our appeal and let this project -- which is a high-scoring project -- proceed in the tax credit process. So I'm here to ask you to exercise your discretion in a different way: answer yes to question number 4 with regard to the Exchange Program, let this project which was terminated for a technical reason but is otherwise very, very viable and is with a very strong developer who always closes their projects in the year in which the award was granted, it has a very good experienced nonprofit involved, it is a very good deal.

Let it participate in the Exchange Program. The federal regulations permit this. Unfortunately, the draft policy or the bullet point policy that has been presented by staff currently does not include permitting a terminated project to be in the Exchange Program. But this could solve Granger McDonald's problem too. Why don't you open it up to anyone who has applied for tax credits during the pertinent years, 2007, '08 and '09. If the project still has site control and its still viable, then we can utilize all of this money that the federal government has given us in order to get us through this economic crisis.

In closing, Wiley is a very strong project. It has been two years in the making, it applied for tax credits last year, didn't get them, this year it's a very strong contender had it not been terminated. We ask you to exercise your discretion.

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

(No response.)

MR. CONINE: Pat Barbola.

MR. BARBOLA: Mr. Chairman and members of the Board. My name is Patrick Barbola from Fort Worth, Texas, Fountainhead Companies. I'm handing out a short just two-page letter, giving some comments on the Exchange Program. But rather than go through that, let me just summarize the top three points and then I'll try to answer one of your questions.

Under state policy there is a law that states the Board should give preference and priority to available funding sources to at-risk properties. I'm requesting the Board to consider a way of how you can use the Exchange Program to grant this priority to at-risk properties. In the 2009 application, there really appears to be ten or eleven current applications. Under the Exchange Program for 2009 -- which you're allowed to exchange 40 percent of the funds -- if we go under the current numbers, that means the at-risk developments in Texas, if you would just take 40 percent of your 15 percent allocation -- which is what at-risk usually gets -- that would mean about \$3 million, \$3.2 million of at-risk properties would be eligible for funding under the Exchange Program.

One alternative to just making the policy decision -- which I

think you have a right to -- saying we're going to fund and allow to exchange all at-risk properties -- I would like for you to consider one alternative which is allowing a high scoring at-risk property which probably would be eligible for funding in the top scoring under the regional allocation system, whether it's urban or rural, to be considered for both. For example, if you have the highest scoring property in, say, Region 8 or 6, that property, if it could be eligible for the Exchange, would be scored under the regional allocation system and allowing, at the same time. So that way you could go further down the list of the at-risk for the Exchange Program.

This becomes relevant as a practical matter. As drafted under Treasury regs, the funds have to be expended by December 31, 2010. That seems like 18 months from now, but in the building business -- Mr. Chairman, as you know -- 18 months on new construction is nothing. We have to find a way to spend the funds in the next 18 months. Acquisition and rehab properties, we can do it. We usually can get through in six to seven months. Even a large one will take us eight, but just consider that.

Going back to the chairman's question of how you can get a current view of the syndication market, I think the easiest way is get on the telephone and talk to the syndicators, call Boston Capital, Tom Dixon, and say, Tom, are you interested in deals in Houston with an experienced developer? At the same time you can ask him are you interested in a 36-unit deal say in Goldwaithe, Texas and we have a 20-property experienced developer also -- he will tell you the small deals, at-risk, especially USDA, they're not interested in. That would be the quickest and easiest way.

I heard the buzzer and thank you for your time. Do you have any questions?

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. Michael Hartman.

MR. HARTMAN: Good morning, Mr. Chairman, members of the Board, Mr. Gerber. My name is Michael Hartman with Roundstone Development in Dallas.

First off I'd like to say the staff is doing a yeoman's job for sure from personal experience. About a month ago, I sent Robbye an email on a Saturday morning asking her a question, I got a response at 8:30 Saturday night, she was in the office.

This program is designed for job creation, as well as bringing affordable units, and the thing is it's trying to get jobs going as quick as possible, so the points I'd like to address is how do we do that.

I think the first thing is you have two distinct pots to deal with here, the 2007 and 2008 deals. You've already underwritten them, they've already committed to you what they're going to do, you have all of that done. The only thing that would have to be done to get them moving under the Exchange Program is to have them give you updated numbers for their costs, their income and expenses, and their potential sources using Exchange funds. That would allow you to move very quickly on those, get deals started and get construction going which is going to create jobs for the people of Texas.

For the 2009 deals, you asked about rural deals and I would

echo exactly what Pat is saying: we have asked numerous syndicators if they have any interest in rural, and every time we get a resounding no. What I'm afraid of is if we do not put a priority in the Exchange rules for rural deals, none of them are going to get done. The only program that's going to help them is Exchange. They really don't work on TCAP because you're not going to be able to syndicate the credits for rural deals. You were talking about two different buckets, Mr. Conine; so far I'm only hearing there's one bucket, and the answer is no.

The last thing I wanted to address was Treasury came out with some new guidance a couple of weeks ago on the Exchange Program, and one thing in particular they said in there is that Exchange funds do not have to be traced to eligible costs. There is an overall limitation on the amount of Exchange funds that can go into a deal based upon eligible costs, but on individual draws, they can be drawn to fund ineligible costs up to that overall limit. Therefore, because we have that deadline as you talked about, 12/31/2010, I would echo that once a deal has been signed up, underwritten and it's starting construction, that you use Exchange funds first before you use any other funds.

I took one of the deals that we have and looked at it, if you fund at construction closing, the land, architect and engineering surveys, building permits, 25 percent of developer fee, you're talking about using 25 percent of the Exchange funds right at the initial closing. Therefore, after that, if they were used to fund draws, you could get all the Exchange funds out in about a seven- or eight-month period.

Thank you very much.

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

(No response.)

MR. CONINE: Tony Sisk. Tony, I've got you written down for 4(b) and 4(c), so you can take a stab at 4(b) right now, and tell me if you want to come back for 4(c).

MR. SISK: Tony Sisk, Churchill Residential, a developer in the DFW area, so I shouldn't say anything about the TCAP funds.

MR. CONINE: I'll call you back on the next agenda item.

MR. SISK: All right. On the Exchange funds, I would basically just emphasize to use Exchange funds as much as possible on the prior year '07 and '08 deals and not use up too much of the TCAP funds which I know is probably the intent, but I would just encourage the completion of the rules for the Exchange Program to get, hopefully, all of the prior year deals funded which can be funded 100 percent with Exchange funds and save as much as possible the TCAP funds for '09, and possibly some consideration to all of the applications that can close by a certain date and possibly put a higher commitment fee by the applicants that can close quicker/sooner, just to get more projects started sooner would be a possible suggestion with the Exchange funds.

And then one other comment which could also apply to the Exchange funds is that with commitments of tax credits there are commitment fees that are typically due in a relatively short order and many of the tax credit commitments will not work without use of either the Exchange funds or TCAP, so I would suggest that staff and Board give

consideration to a delay of paying the commitment fees until the applicants know whether or not the Exchange or TCAP funds that are necessary could be approved. So that's a general comment that could apply to Exchange funds also. Thank you.

MR. CONINE: That's all the witness affirmation forms I have on item 4(b).

Tom, do you want to come back up. And the best way to handle this, I think -- I know you want some direction from the Board as to policy -- but just kind of lay out the time frames right now that you think staff can function within for the Exchange Program, let's just start with the time frames, kind of go from there. When do you think the applications should be?

MR. GOURIS: Toward the back -- in fact, I think on the last two pages or last page and a half, there is a time line that we didn't update but it was the time line we had for our presentation for last month. I think most of those deadlines, while we would have to push those initial ones back a little bit, I think most of the end deadlines we can still push toward and set as goals. I think where we would be talking about, obviously, instead of an approval at this meeting, we'd have an approval at the July 30 meeting; instead of an August 3 to 7 date for folks indicating that they wish to exchange, we'd probably push that back a week or so to August 15; and then from there, still try to get recommendations to you in October so we could move forward that way.

Herculean or yeoman probably aren't the right words, I think those are the challenges. We've done a lot of work so far, but you're right,

the real challenge is what's in front of us to get through to those dates. Absent meeting those dates and even meeting those dates, we do face a real challenge in getting to a disbursement completion by the end of next year. I think we have talked with some lenders about possibly being able to front-load, if you will, for eligible costs, there has been some discussion, though I don't think it's as clear as was suggested with regard to --

MR. CONINE: The temporary funding of ineligible costs?

MR. GOURIS: The temporary funding of ineligible. I think there's still some debate there and I think it puts us at some risk as well which being an old credit underwriter, I'm kind of adverse to risk. But certainly we could fund or front-load more of the eligible costs while the construction lender funds the balance. Now, for '08 transactions and '07 placed-in-service extension, those transactions still would have to place in service by the end of next year, so it may only give them an extra couple of months to finish up some things while they still have placed the units in service by that deadline.

MR. CONINE: I think the key for a lot of the guys in the room and gals in the room is they know they've got to spend some money to get construction ready but they don't know whether they have Exchange or TCAP money worked out, and the reluctance is to go spend \$200,000 and not have that end of the stick worked out, so the system we devise and the time frame we devise needs to take that into consideration, that somehow we can give maybe a preliminary list or something for those that after you get the applications for both in the shop and you kind of get a handle for both.

MR. GOURIS: And I think that's doable.

MR. CONINE: We need some early warning signs so that they can go -- most of these guys are river boat gamblers and if they think they've got a pretty good shot at it, they'll go ahead and spend some money. And the architects and engineers will take a little risk with them. But you hate to ask them to do that and not have any clue whether or not they're going to get there.

MR. GOURIS: Certainly if we get notice of intent to return and request exchange by the 15th, I can imagine that we would be able to run numbers and be able to present and hand and front to you by the September 3 Board meeting, a sense of how that's going to fall out. Some of it depends on what decisions we make today and next time, of course, and some of that with regard to, say, prioritizing rural deals, I took a little look at that and tried to get some preliminary what would that look like.

MR. CONINE: I think we've got some good letters here, I've gotten three in the last 24 hours that have some good thoughts in them, and I know you haven't had time to work that over yet.

MR. GOURIS: Well, I mean, if you want, I can tell you what I have digested on that so you can get a sense.

MR. CONINE: Sure.

MR. GOURIS: Remember, we can only turn back 40 percent of this year's allocation, and we right now, can turn back none of the exchange allocation so it's only 40 percent of our regular '09 allocation. And for the sake of discussion, I'm not thinking about the '07 and '08 because they'll exchange and they'll theoretically just get back what they

got and they'll take care of themselves, so we're only talking about the '09 deals.

So if we can only exchange 40 percent of the allocation, that would come to roughly \$174 million in Exchange dollars. If we did all of the rural deals that are in the money to do -- or better said, the allocation that we normally would expect to fund, that would amount to approximately \$123 million of that exchange. So the lion's share of Exchange would go towards rural transactions. It would leave about -- instead of exchanging 40 percent of our urban transactions, we'd exchange about 6 percent of our urban transactions. So that's a real decision concept. I didn't look at the numbers on if we also added all the at-risk transactions but my guess, just off the top of my head, is it would gobble the rest of it up. So some food for thought with regard to prioritization.

And clearly, you asked earlier about what are the syndicators saying and what is the reality. I think the reality is something of the moment for a particular deal and a particular syndicator, a particular time. Clearly, what they've said to us in general conversations has been we're not doing rural deals at all, yet I got a call yesterday from an applicant who excitedly told me that they've got a rural deal locked down at 92 cents using equity bridge with our TCAP program. That's fantastic, if it happens, it's fantastic.

MR. CONINE: Now they want to shoot the guy who called you.

MR. GOURIS: And shoot me probably for saying it, but I don't know if that's a real deal, that's a call, and so I don't know.

(General talking and laughter.)

MR. GOURIS: I actually got a similar call about a month ago with the same kind of dynamic and then a week later got a call back and said yes, they changed their mind. So I'm eternally optimistic, but generally.

MR. CONINE: I'm surprised we didn't get any public testimony as to the proposed structure of the transaction where we're taking an equity piece and so forth. One area we haven't really looked at that I want some tax counsel to look at is in the area of cash flow and depreciation and who can use the depreciation and who can't, and how much of the partnership do they need to own in order to be able to use appreciation. Because the old concept of the 1-99 ratio may not work in that scenario and I'd like for it to work for these guys as much as possible. It's an extra added benefit that they're going to get that they wouldn't get from a normal syndication program, and we just need to make sure we structure it so it will work.

And the other thing is the early pay-in, those will be funding participation agreements with big banks, little banks, medium-sized banks. I think we need to get some legal work done there fairly quickly so that we might have a standard participation agreement that we could hand to the folks once they know they get approved so they can have their lenders starting to work through the legal issues of that. So based on some of the comments I've heard, that's some of the issues we may want to think about.

MR. HAMBY: And just so you'll know, Mr. Chair -- Kevin

Hamby, general counsel -- we have already had some initial discussions with outside firms that we currently already work with about could they take on this work if, indeed, the Board went to this structure. We obviously haven't advanced it because we didn't have exactly what the Board wanted to do structure-wise.

MR. CONINE: Right.

MR. HAMBY: So I think we have already somewhat geared up in anticipation of doing that, and I gave Bill the great news I probably need more outside counsel funds next year -- which he gave me no assurance I would get, but he does know that.

MR. CONINE: So you have a mind set to out-source some of that stuff.

MR. HAMBY: We already do. We have three attorneys in-house, and to do as Barry pointed out, 100 deals between now and the end of the year.

MR. CONINE: Let me ask about the asset management. I assume we're going to get an RFP out on the asset management side, and my understanding is that the Exchange money, that is a expense that's allowed to use Exchange money for. Is that correct?

MR. GOURIS: It is, it isn't, and it is -- I think the latest is that it is.

MR. CONINE: You're talking like a former president. What did you say?

MR. GOURIS: Yes, sir, I believe so. Our current best information is that we could pay for some asset management activity out of

Exchange funds.

MR. CONINE: How do you do that over a 30-year period, or 15-year period, or whatever it is.

MR. GOURIS: I think the idea was you would fund some for the asset management activity that occurs during the construction period during the construction period, and then the asset management activity that occurs later, you'd charge a fee for from cash flow of the property. I think that's the structure we've been looking at and contemplating, not front-loading asset management fees.

The bigger issue for us isn't the fee to administer an asset management activity, it's the funds necessary to supplement a debt service hiccup that the Department won't be able to come to the table with, at least based on our current financing structure and organizational structure and what-have-you. Theoretically, a syndicator would have those capacities or an investor would, and historically has. Another alternative would be to create a reserve requirement. Those reserves would likely still not be eligible costs to be funded with Exchange so they'd have to be funded with the conventional permanent financing or other sources of financing. We're looking at ways to try to pay a developer fee and then immediately convert it into some sort of reserve, but I'm not sure that that would stand the test of what that was actually funded for. So those are the sorts of things on reserves.

I will say one thing, there was a comment earlier about the commitment fees, and Congress did a great thing -- well, they gave us this great opportunity to do Exchange and to do TCAP, however, they didn't

allow any administrative costs to be funded, so our only way to fund the activity's actual work, the legal work, the review work, all the additional work that's going on, is through our tax credit commitment fee. We can continue to charge the tax credit commitment fee as we always have, so as allocations for tax credits are made, we're recommending that the commitment fees be paid in accordance with the time lines associated with the QAP because that is, in fact, how we'll fund the activities for TCAP and Exchange, and actually, we're depending on those funds as our source of financing those activities.

MR. CONINE: So a guy gets an '09 allocation, when is his commitment fee due?

MR. GOURIS: Towards the end of August the commitment fees are due.

MR. CONINE: Well, he's not going to know -- he's going to apply for the exchange by then.

MR. GERBER: Robbye, could you step up so she can record this?

MS. MEYER: Robbye Meyer, director of Multifamily. The commitments go out about a week after you make the final awards and the commitments are due back ten days after we submit those, that we issue those commitments.

MR. CONINE: So they've already programmed that into their thinking anyway, and '07 and '08 have already paid.

MS. MEYER: That's correct.

MR. CONINE: All right. Well, any other questions from any

other Board members?

(No response.)

MR. CONINE: I know you want probably more direction than what you've gotten.

MR. GOURIS: Well, a couple of the key things are is there a preference for rural, as we talked about, a preference for a full exchange, or would we want to allow a partial exchange, some of those bigger picture issues.

MR. CONINE: What are your comments on the partial exchange? That's an innovative concept to have three folks to the party instead of just two.

MR. GOURIS: Well, I don't know if I understood the comments that I heard correctly, but it sounded like the reason -- we set up the TCAP program to be able to do a partial exchange, effectively, with the credit replacement tool.

MR. CONINE: Right.

MR. GOURIS: What I think I heard was that the TCAP, while a great concept, timing isn't going to work, and therefore, we need to allow Exchange to do a partial, and then the comment went on to say we can actually merge and get TCAP in there as well. So I'm not sure if the timing really works out that way. I think we could do a partial Exchange, aside from those comments, I think we could do a partial Exchange, I think that is going to drain price, I think that's what will ultimately happen. If we say an all or nothing exchange, if there's any investor interest in Texas at all, we've got a fire sale on credits with the TCAP program, very good

yields, excellent opportunities, but if you don't do it, you're done, you're out for the year, that's the option, if you have an absolute exchange. So other than that --

MR. CONINE: Have you talked to anybody -- and I'm switching subjects, I guess, a little bit -- on the deferral of a syndicator putting his money in the transaction and using TCAP as a bridge? Has there been any conversation with syndicators that that's an attractive alternative that you know of?

MR. GOURIS: Yes -- I'm going to say definitely there's been interest. The problem is that the back-end investors are more limited, and they're not acting in a yields maximizing manner, they're acting in a manner that says: Look, I've got these much fund, I know I have the CR-80, and that's all I care about; your bridge thing, I understand it but there's going to be more complexity to it, I'm just going to offer you 60 cents anyway if I'm going to do a deal -- or not offer anything at all.

MR. CONINE: That's a shame, because that's pretty creative, I thought.

MR. GOURIS: It's entirely frustrating. However, I think there's been a little bit, you sneak a little interest here and there, and to the extent that the TCAP does do some financing, some loans that get repaid, it's a tool that we might be able to build upon in the future, assuming the Tax Credit Program continues. So I really do think it's an innovation that we're going to be able to continue to work with. It wasn't embraced the way that I think we all had hoped that it would be.

MR. CONINE: Okay. Could you talk to us about the Ike

credits for a minute and how, in your mind, the best way to treat those '08 deals that got awarded Ike credits last year?

MR. GOURIS: What we had contemplated in the strawman draft policy was that they would get preference because, frankly speaking, they applied for regular credits, there wasn't such a thing as an Ike credit when they applied, and when they finally were awarded, they still were awarded a regular credit, it was only subsequently that the Ike credits came into being, and because we didn't have an over-subscription of applications in those regions, we were given guidance to swap out those regular credits for Ike credits because at the time we were told that the Ike credits could not be carried forward, you either used them at that time or you lost them.

Subsequent to that, in fact, fairly recently, it's been indicated that we can now carry the Ike credits over, so we could do one of two things: we could swap them back or we could just give them priority with exchange, and I think the easiest thing to do would be give them priority with exchange because if they keep them as credits, they can keep them as Ike credits, if they wish to exchange, they should just get the priority before any deals this year get to exchange. Again, there's a conflict there, though, if we use the 40 percent that we have to allocate this year, if we gear toward rural, then it's very likely there is not enough to fund all of the Ike credit forwards that we did.

MR. CONINE: So back to your example, your whatever the million --

MR. GOURIS: \$174- total, \$123- would go to rural, we'd have \$50- left.

MR. CONINE: The Ike credits would drain off enough where the at-risk, for instance, couldn't get done.

MR. GOURIS: Right. So I think there's some real choices there, just because we only can exchange 40 percent of the '09 credits.

MR. CONINE: Would you also address the potential of using some of the CDBG allocation for some of those Ike projects because that's kind of wavering in the background, unrelated to this program but still could probably accomplish what we want to accomplish.

MR. GOURIS: Yes, there's a significant amount of funds -- and I might not be the best one to tell you how much but there's a significant amount of funding available in that region through us and through some of the locals to do multifamily, I think 10.6 percent of the total \$1.7- is going to be geared toward multifamily, and so there are going to be opportunities for these deals, either through us or through locals, to be able to look toward those funds instead of the Tax Credit funds.

MR. CONINE: When are we going to deal with that issue, the CDBG funding issue on a timetable perspective on the Multifamily side?

MR. GOURIS: We have a NOFA out there now, \$58 million, a very small one.

MR. GERBER: That's a separate issue.

MR. CONINE: I know it's a separate issue.

MR. HAMBY: We have to get some guidance from the Governor's Office.

MR. GERBER: But it's the next two weeks.

MR. CONINE: Are we going to be able to make the next Board meeting with it?

MR. GERBER: I hope so because we're looking to take a plan out in early August

MR. HAMBY: And to clarify what Tom was discussing there is that obviously if the Department controls the funding, the CDBG funding and our plans says we're going to give preference to Tax Credit deals and we would not be buying back the tax credits, they would just have this alternative funding available to them in the CDBG for the areas. Currently the way we're doing it, as you recall, is that the locals are making all the decisions for the most part except for the \$58 million that we reserved out, and that would be the 10.6 percent that's required to be developed for multifamily development could go to the locals or we could keep it ourselves to exchange out those

And I think that's where you're discussion is, Mr. Conine, if we kept that 10.6 and used it to fund Tax Credit deals that are not eligible for the exchange, that would be somewhat of a trade-out and probably a fairly stiff competition because CDBG requirements have less requirements on them than do Tax Credit deals.

MR. CONINE: The one thing, Tom, on that particular issue of potentially using CDBG money as opposed to anything else, that's where you need to let me know whether or not we need an August meeting, as Mr. McDonald suggested, to help facilitate rapid decisions on discussions with a developer that happens to have a project that falls into both buckets or all three buckets, and if you need some policy decisions or something

with an August meeting, you need to let me know. I don't know whether September is early enough or not. I'm sensitive to that. If we could fund two projects out of CDBG money instead of Exchange money and allow that Exchange money to go to two other projects, we're dollars ahead.

MR. GOURIS: Timing is critical. Though we may not know who is wanting to exchange until the 7th, the 15th or something like that of August, and so the earliest we might be able to even digest that information and report back would probably be the September 3 Board meeting.

MR. CONINE: As an underwriter par excellence, would you address Mr. Henneberger's comments on sprinkling some lower rent units into this program and the difficulties that that might present?

MR. GOURIS: It's probably more than a reasonable policy because it's a one-time event that we're receiving these funds as cash rather than as credits, we have a lot more control over how we allocate them. That being said, it would do a couple of things. One, it would increase the time that it would take to digest these funds and get them moving back because whereas just an exchange wouldn't require a re-underwriting, a re-evaluation because we're just looking at the sources of funds and just swapping out sources of funds, effectively, there would be a little bit of looking at it but it wouldn't be significant.

To address everyone must do a certain additional level of 30 percent units, I think, would necessitate a re-review of those deals to make sure they're still viable. We can do it, it would consume a little bit more time. We can address who's going to get it and then how they'd get it.

I mentioned earlier that the debt structures for these deals

have changed a little bit, and I think it was mentioned by a couple of the speakers that the interest rates for permanent financing have gone up. Even if they haven't gone up, even if they don't go up and we just use the debt rates that we'd used before, there's a certain amount of debt service that has to occur on a property, and that's already been kind of tuned in or tuned up to what the rents and expenses for a property were.

So if at this point, because the equity piece is not equity but just cash from us instead, it doesn't affect the debt piece and the debt service piece, and so the ability to reduce rents further really isn't necessarily there. I mean, we could tweak them down to a 1:15 debt coverage ratio or try to tweak it down, but they still have to service the debt. Now compound that with the fact that debt is more difficult to get or the interest rates are going up, that just puts that much more of a squeeze on the debt service capacity of a transaction.

Lowering the rents at this time, while it is a laudable goal and it is something we need to figure out how to do, I don't believe in my years of seeing this that this is the tool that's going to give us that opportunity by itself. If for some reason things change and we could do TCAP and Exchange to do 100 percent of a transaction, then certainly we could say all of them have to be at 30 percent because there's no debt service on that or could be no debt service. But as it is, we don't believe we can combine the TCAP Program and Exchange Program to fund 100 percent of a transaction because the combination will still be limited to the eligible basis or eligible basis plus land depending on what version of guidance you're working off of today.

MR. CONINE: Good, thank you for doing that. I wanted you to say that instead of me having to say it.

Any other comments on item 4(b) at this point?

(No response.)

MR. CONINE: You'll get some more direction, you'll get some more conversation, you'll get some more input between now and our meeting a couple of weeks from now. I want to read through some of these letters and kind of see what some of the folks are suggesting and we'll try to help staff come up with an appropriate recommendation for the next two weeks from now meeting on the Exchange Program.

MR. GOURIS: Appreciate that. And if I might just say so that everyone knows how much -- I mean, the entire Board has been helpful on this, but Mr. Conine, you in particular have been extraordinary in your guidance in this and I really do appreciate it.

MR. CONINE: You guys are doing a great job, we'll keep fighting through it.

Yes, sir.

MR. HAMBY: Mr. Conine, I just wanted to point out that with the time lines, with the meeting being so close, when we start doing those changes, it's likely that this particular topic would be a three-day posting instead of the seven-day that the Board has requested, so we'd have the weekend to upgrade those drafts.

MR. CONINE: Very likely.

MR. HAMBY: I just wanted to make sure that everybody was aware of that here that you need to look at that in a short period of

time.

MR. CONINE: Let's move on to 4(c) right quick while we've got everybody in the mood. Is there anything you want to say to go ahead and set it up?

MR. GOURIS: Actually, yes, I do. Exciting news after that. We've been working with HUD for the last number of weeks trying to get our HUD plan for TCAP approved. Last night we made some additional last-minute changes. When you approved the plan, you gave us the direction to go ahead and be able to make adjustments as needed. I don't believe any of those adjustments need additional Board approval because most of them were taking from what's in one of the supplemental pieces and just adding it, showing it, referencing it in the plan.

We will today publish the revised plan and I've gotten a call while we were in the meeting here from HUD saying that they would approve the plan with these tweaks in it, so that's really great news. She was going to send me an email later today to confirm that. I do want to make sure that Executive has had a chance to review it as well, make sure we're on the same page with it, and so we'll get that out later today

But that being the case, and one of the changes that we talked about yesterday with HUD was that we extend the deadline for the initial TCAP application deadline one week. It was set for tomorrow, we've already actually received a number of applications, a number of folks have asked that it be extended to we figure out what Exchange is going to be. I think that would potentially harm the interest in TCAP and I really do want to see TCAP be successful in its own right. I think there might be some

marriages in TCAP and Exchange but I think there's also going to be some folks that can move forward with TCAP today so I don't want to extend it too far.

I think giving it a week of public scrutiny, to the extent that it needs that, and a week's more time to get everything settled would be appropriate. So I'm recommending, based on that conversation, that we extend that initial deadline only one week.

MR. CONINE: Okay. I have a couple of witness affirmation forms. Tony Sisk.

MR. SISK: (Speaking from audience.) I'll pass.

MR. CONINE: You're going to pass, okay. And to complete the trifecta or hat trick or whatever you want to call it, Granger McDonald.

(General laughter.)

MR. McDONALD: (Speaking from audience.) Pass.

MR. CONINE: Okay, then that's all the witness affirmation forms I had on that. Staff has made a recommendation we delay for a week the TCAP applications. Do I hear a motion?

MR. GANN: So moved.

MR. CONINE: Thank you, Mr. Gann. Is there a second?

MS. RAY: Second.

MR. CONINE: Second. Any 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: It's still early, isn't it. I need to take a five-minute break this time, anyway, just right quick, and then we'll probably go until noon-ish or maybe a little after when we're going to do an executive session/lunch during lunch today and reconvene about 1:30 or so. Let's take a five-minute break right now so we can finish up with some other stuff.

(Whereupon, a brief recess was taken.)

MR. CONINE: I went longer than five minutes, and it was not going to be all my fault that I did.

MR. GERBER: Mr. Chairman, moving on to item 5.

MR. CONINE: Item 5, Disaster Recovery, Mr. Gerber.

MR. GERBER: Ms. Newsom, why don't you give a very quick overview of where we are with various CDBG rounds.

MS. NEWSOM: You bet. Sara Newsom, deputy executive director of Disaster Recovery.

Mr. Chair and Board, in Round 1 the COGs have drawn down about 80 percent of their funds. We expect that round of funding to be finished and done by the end of October. In Round 2 the City of Houston's expenditures are about 72 percent of the \$42 million that they were allocated, Harris County has drawn down about 17 percent of their \$21 million that they were allocated.

The Multifamily allocation of \$82.7 million is going well. I think we've got three grand openings or ribbon cuttings scheduled for

August. It will amount to, over those seven developments, about 833 rental units, so that is going well.

MR. GERBER: August 4 we'll be opening formally 350-plus units among three different properties down there, so that's very good news.

MS. NEWSOM: The Round 2 Rita with the ACS update, they are moving very quickly. We, as of today, are at 609 under construction starts with 127 houses finished, so that is even better than what was reported in your Board books. But yes, that is moving very quickly. They've added two additional contractors to the mix: America's Home Place, and Compass Point Homes. I understand that they will be awarding contracts to them starting very quickly, like even this week, so we will even see greater progress on that front in the very near future.

Under the FEMA Alternative Housing pilot program, we anticipate doing about 15 homes under that pilot program that we have with FEMA. Two of them are on the ground, we're turning over the keys to a third one today, however, we've had some issues. On October 12 we issued a notice of default to the Heston Group for failure to perform under the agreement. Heston's initial response was insufficient so we asked for additional information and a subsequent letter was sent June 25 requesting that additional information. We're actively monitoring the situation, working with them, and at this point we're unsure that the contract will continue forward with Heston, but we are working with them in an attempt to deliver these homes as quickly a possible.

MR. CONINE: Could I stop you there?

MS. NEWSOM: Yes, sir.

MR. CONINE: I have a witness affirmation form from someone from the Heston Group, and it seems to be a good time to go ahead and address that issue. Richie Suarez. He's gone, okay. Thank you. Go ahead.

MS. NEWSOM: That's my update on the awards.

MR. GERBER: Let me pause for a second on the Heston issue because that is a significant contract that has gone on for too long and it was intended to be a turnkey alternative to the FEMA trailer. We received \$16 million and there's lots of reasons that it has been dragged out, there are many reasons that it has been drawn out, but we're dealing with a variety of issues on it, and I would just note that we have pretty much attempted to reset the contract but the end of that window of opportunity to reset it is drawing to a close.

I don't know that we're going to be able to get this contract over to a place where we need it to be. And over the next two weeks we will continue to work through those issues but it will be an item free-standing on the agenda at the next Board meeting. This is just an issue that you can either place the units on the ground or you can't. All states are having trouble with their FEMA alternative housing pilot programs. These are programs chosen by FEMA that they've turned over to the states to test and they've set up just a variety of barriers that have made it very difficult, and the results are that right now we have two on the ground and 50 in the warehouse and lots of need in Southeast Texas. And so expect that to come forward.

MR. CONINE: Okay.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I'd like to ask Mr. Gerber a question about the Heston homes. Those were those, when we were in New Orleans and we looked at those what we thought were very viable alternatives to the FEMA trailer.

MR. GERBER: Yes, ma'am.

MS. RAY: And they have not been able to perform.

MR. GERBER: They're able to get the product, they're good at building the product in the factory, but the challenge of working with the family, doing the environmental review, meeting the requirements that FEMA has set and then actually placing the home and doing the subsequent monitoring has proven to be very difficult.

MS. RAY: That's unfortunate.

MR. GERBER: The product itself looks nice and I think we're very proud to stand with them on the product and I think it could do a lot of good, but doing that good depends on it actually being put out in the field.

DR. MUNOZ: Question: What will be the alternative should this contract be terminated?

MS. NEWSOM: Well, we'll have to work in connection with FEMA to decide how we're going to handle that component. There is another side to this pilot program. FEMA is also wanting us to do a group site and we're working with the City of Houston on a group site which will

provide 40 to 50 houses in a central location, so we may can get someone to come in and just put those up.

MR. GERBER: And I saw Donald here as well, I don't know if Mr. Sampley is still around. Perhaps at the end of the presentation he can come back up and just shed a little light on the group site part of it, because we need to move quickly if we're going to do a group site, and if we're not, then we need to call it a day.

MR. IRVINE: If I might provide just a couple of comments about it, Mr. Gerber and members. I think that for FEMA it's always been very clear that this is several issues. One is the development and production of the unit itself, and the other is the installation and testing. Testing, of course, is not just testing of the unit but it's testing of the entire process, and what we're finding is that the entire process is very cumbersome. We are a long way from the concept of a home in a box that can be delivered and installed in eight hours.

This is an extremely intricate process that's involving engineering, slab construction, utility issues, permitting issues, all manner of complexities. So it's nice that these kinds of issues are being vetted and addressed in a test situation, but the reality is we really need somebody, and we hope it can be Heston, but if it can't, then we'll move on to the next alternative. We need somebody that can really understand and orchestrate and move these logistical aspects quickly.

MR. GERBER: And the Department has always believed that we've needed this capacity, and an alternative, given what happened with Hurricane Ike, is clearly needed, and we've put out an RFP where we

have actually secured manufactured housing providers who know what they're doing when it comes to the installation of a home throughout the state who are in a network with the Department ready to go should that service be needed and should funds be available. We're similarly doing something with trailers because the federal government's capability to provide those trailers wasn't there during Hurricane Ike, so we're trying to fill that void through a network, again, contingent on funding being available, but working with folks who really know about housing and how to get it on the ground and how to meet those local requirements.

The challenge here is that you've got a team that's very skilled at producing the product but has not had the experience of working through the myriad issues of actually placing that product on the ground and getting it cleared for people to live in it.

The exciting thing about these homes is that throughout Southeast Texas -- not in the Houston area, not in Houston specifically because that group site is eventually going to be coming down, but the intention in Southeast Texas was to go and actually give those homes to those individuals. In many cases -- and Ms. Ray, you saw the product -- it will be the nicest house that some of these folks will ever own.

So it's been a source of frustration and we're working with Heston's counsel and with others to try to work through. We hope that we can get them across but time is short.

MR. CONINE: Moving right along.

MS. NEWSOM: I'm finished with that update.

MR. CONINE: On 5(a)?

MS. NEWSOM: On 5(a).

MR. CONINE: Move on to 5(b).

MS. NEWSOM: All right. In March of this year we received an award from HUD in the amount of \$1.3 billion for Ike disaster awards. It's anticipated about \$620 million of that will be administered by us for housing activities. That money was allocated by the local organizations COGs to set how much each area would receive, and out of the eleven COGs, there will be about nineteen entities that will be administering these funds in the disaster areas. So we have received those applications, we are in the process of reviewing those, we will bring some of them up in a later issue, but that money is on its way out the door or it's closer out the door. Six out of the eleven COG regions will do housing activities, and as I said, about nineteen cities, counties and COGs will be administering those funds.

A second element of the Ike funding was \$58 million set-aside for multifamily. That NOFA went out, it is out on the street right now. Friday we'll close the small 36 units or less applications, and Monday the application cycle will open up for larger complexes and close towards the end of August. So that is out on the street and we expect lots of response.

MR. CONINE: Sara, can I stop you there? Richie Suarez has shown back up from the Heston Group and would like to speak to the Board, and I'll let him go ahead and do so.

MR. SUAREZ: Good afternoon.

MR. CONINE: How are you doing?

MR. SUAREZ: I was just listening tot he comments and I

apologize for not being present. My name was called and there was actually a medical emergency, but I really can't miss the opportunity to address some of the things that were just said.

It's slightly concerning the inaccuracy of the information that's being provided, and one of the key things that I heard was that in East Texas there are two houses on the ground. Well, in fact, there are four houses on the ground as of now, by the end of this week there will be five, and by the end of the month there will be six total. And the reason for the recent increase in productivity is due to a recent receipt of sites from TDHCA to Heston -- the more sites we have, the more sites we can work on, the greater economy of scale there is in the project and the more efficient that the operations become.

Additionally, while we certainly appreciate the praise on the buildings themselves, the issue of an eight-hour installation was something relative to temporary housing, obviously. In East Texas we're building permit housing, permanent foundations and permanent permitting processes, et cetera, it requires some additional time.

But with that being said, I would hope that the information that the Board receives becomes more reflective of reality in the future, and Heston has made significant strides to work with TDHCA to bring a greater level of efficiency into what is a pilot program which is a program that by nature was anticipated from the beginning to have certain problems. But the expectation was that those problems would be overcome and documented and lay the foundation for future deliveries.

So with that being said, we're very appreciative of the

opportunity with TDHCA to recalibrate the program, and for the most part, we feel that momentum is being gained very quickly, we look forward to execution of a deal with the City of Houston which would allow -- we've gone from four to six to what is now eleven cleared sites out of about 90 to 100 throughout the program that's supposed to be completed by the end of this year. The City of Houston is 40 total and the time is ticking, the year is closing out, and the ability for us to meet TDHCA's expectations -- which is our primary objective -- is that we need sites to work on. Sites to work on allows us to structure the logistics involved, bring efficiency to the program operations.

With that being said, Heston is very happy to be a part of this program, we'll continue to finance the program without guarantee of recompense, and look forward in faith that TDHCA will lay out some processes and procedures that can be predictable and workable in the program, and I thank you.

MR. CONINE: Thank you. Mr. Suarez, hang on just a second. I think you can sense the frustration from the Department's side and I would obviously suggest -- and the Board has now heard your response and I would suggest that this would require an immediate hand-holding sort of situation between your company and the Department over the next couple of weeks if this is going to get worked out, and you need to share that with your associates as well.

MR. SUAREZ: Right, and like I said, we're in a period of recalibration right now and we're hoping that we can get -- the primary issues affecting efficient operation are very simple: the number of sites that

we have to work on and financial procedures for reimbursement, and that is all.

MR. CONINE: Any other questions of the witness from other Board members?

MR. GERBER: Mr. Chairman, I would just note that we're not in a period of recalibration, we're in a period of resetting the contract because the contract has been deemed in default, and we're working to address those issues and it's a legal process, and we will work through them over the next two weeks. But if you bring your president and your counsel and have them ready to talk to the Board at the next Board meeting, I'd be grateful.

MR. SUAREZ: What we'll do, the president of our company is currently experiencing some medical difficulties.

MR. GERBER: Your lawyer will be fine.

MR. SUAREZ: Thanks.

MR. CONINE: Thank you. Appreciate your testimony.

Sorry, Sara, go ahead.

MS. NEWSOM: All right. For Ike 1, we're going to bring you some --

MR. CONINE: You're on (c) now?

MS. NEWSOM: I'm on (c) now, I think I'm finished with (b).

MR. CONINE: Just following the bouncing ball here, go right ahead.

MS. NEWSOM: (c) we are pulling from the agenda since we have nothing to report right now, we'll bring it back another day.

MR. CONINE: All right, go to (d).

MS. NEWSOM: (d) is: Discussion and Approval of the Recovery Program Award Recommendations. So out of Round 1 there are six cities and counties that have submitted their applications and we are bringing them before you guys for conditional approval. It is East Texas COG, Harris County, Montgomery County, Galveston County, City of Galveston, and the South East Texas Regional Planning Commission, which amounts to about \$418 million. Again, it would be conditional upon us reviewing some of the deficiencies that we need to address with the entities, and get some more program descriptions

We have had a request to provide information that would allow comment on the program activities that these entities are offering, so we may want to bring that in more detail to the next meeting on July 30, and it could be conditional upon that.

MR. GERBER: And Mr. Chairman and Board members, I would just add that the intent of these funds, as directed by the governor, was to provide locals with maximum flexibility in their use. That said, that doesn't mean a waiver of accountability, so ensuring that the public understands fully how these funds are used and that we have full programmatic details is very important, and that the public has an opportunity to weigh in and to help refine the programs locally. We've received some very broad parameters on each of these programs and feel like we can conditionally make a recommendation to the Board today for the award of the \$418 million.

However, as we walk through this, there will be other points,

certainly during contract issues and a myriad of other points as the program gets ready to be rolled out that we will insist upon more details from them that we will report back to this Board about specific activities, how they'll be implemented, what the eligibility requirements are, and how other key program markers are being set and how benchmarks are being met.

MS. NEWSOM: Very good.

MR. CONINE: I have a witness affirmation form from John Henneberger. Is this your third time up too?

Mr. HENNEBERGER: Last time, I promise. John Henneberger, Texas Low Income Housing Information Service.

My concern is what is the Board going to define as its role in the review of this hurricane assistance money. This is \$418 million, this is really more money than we were talking about in the Tax Credit Program at an extended period of time a while back. I understand that the governor has made a decision that these funds are not going to be administered in the same way that Round 2 of Rita was. My organization, and I think most of the advocacy community, believes that the way that you all are administering the Rita 2 funds is getting good results, that that's a good way to do things, but nonetheless, the decision has been made that these funds are going to be administered at the local level, but I suggest to you that this Board still maintains a responsibility here.

First of all, the State of Texas is on the line financially for the proper expenditure of these funds. These are Community Development Block Grant funds that come to the state and the state is ultimately

responsible for the proper operation of these funds, and the state also must submit to HUD a comprehensive description of how this money is going to accomplish the goal of getting the people who have lost their homes to Hurricane Ike rehoused.

We aren't there yet in this. These six applications which I had a chance -- the staff, Mr. Gerber and Ms. Newsom generally allowed me to look at this morning and gave me copies of, these are not complete. These applications do not contain critical information, some of them don't contain information about what the income limits are of beneficiaries, they don't contain a lot of critical information. Now, I understand the need to move quickly and I think that what the Department is asking for here, the staff is asking for is the ability to move forward and continue those negotiations to gather that information.

I suggest to you, though, that this Board's responsibility is ultimately looking at this collection of all of these individual contracts by all of these individual cities in their totality to make certain that if you're a victim of Hurricane Ike, say in Galveston or in Montgomery County or in Port Arthur, that you have an ability to get some level of service that is predictable, that you have some ability to assume that just because you live in one jurisdiction doesn't mean you're not going to be eligible for assistance because that jurisdiction didn't make provision for your particular case, that there needs to be some predictability of benefits across the geographic areas.

And I would suggest to you that this Board really should ask the staff to prepare essentially a matrix by geographical area delineating

the number of rental households that need assistance, the number of homeowner households that need assistance at various income levels, and that they then put on that same matrix what these cities are proposing to do so the Board can identify where the gaps in services are in this and consider this information before you make a decision which essentially binds the allocation of all the available money.

My fear is in the end what will happen if you don't do that, if you don't exercise the big picture view of this, that there will be gaps in services, there will be populations of low income people who will not be assisted by virtue of the fact they live in a particular geographical area or they have a particular family situation or need.

So I'm asking you if you conditionally approve these, at your next Board meeting ask the staff to provide that level of information, that overview of the need and show you how all of these nineteen different entities that are going to be providing assistance, how they plug into meeting that need so you see where the gaps are and you can address those problems. Thank you very much.

MR. CONINE: Thank you for your testimony. Any questions of Mr. Henneberger?

(No response.)

MR. CONINE: Does staff have a problem with what Mr. Henneberger has suggested?

MS. NEWSOM: Absolutely not.

MR. GERBER: We generally agree, and in fact, I would add that we sort of get two bites of the apple, we've got this first tranche of

funds that we're allocating, and then, of course, the \$1.7 billion that's coming of which we expect that we'll probably administer about half of it, will hopefully help to fill some of those gaps. But you're right, unless you know where those gaps are, it's hard to make those policy choices, and I think we need to do a better job of identifying them.

I think today's effort is to give broad approval to these categories and to signal that they're on the right direction, moving in the right direction and that we can begin a contract discussion, but before anything gets consummated, I think that there's more detail that we need to expect and that the Board should expect with regarding eligibility criteria, who's being served, what needs are being met, and the other issues that some of which John laid out and some of which we also know there are some deficiencies that we've asked HUD for some waivers like on Harris County incentive program, we don't know that Harris County will ever receive that waiver -- in fact, we're getting signs that they might not, signals that they may not. So what's Plan B?

So this is going to be an ongoing process but we felt comfortable bringing some information forward today in the interest of time, knowing that there was a lot more to do before the programs actually get rolled out, not the least of which is that public discourse.

MR. CONINE: So we need a motion to conditionally approve these six groups with some feedback.

MS. RAY: And I think, Mr. Chairman, that's pretty much the recommendation of the staff, it is a conditional award.

MR. CONINE: And what about getting back to us by the

next meeting, is that too quick?

MR. GERBER: That would be great.

MR. CONINE: Works for staff?

MR. GERBER: Absolutely.

MR. CONINE: All right. Are you making a motion?

MS. RAY: Yes, sir.

MR. CONINE: Motion by Ms. Ray to approve conditionally the staff recommendation. Is there a second?

MR. GANN: Second.

MR. CONINE: Mr. Gann, thank you. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Item (e), Ms. Newsom

MS. NEWSOM: Item (e), we brought this before the Board previously about the Sabine Pass set-aside that was allocated under the Rita allocation. There is about \$5 million in uncommitted funds. We have gotten recommendations from the residents in the community saying that they would like to have some additional items added to their homes, such as permanent shutters that would protect the windows on these elevated homes, concrete pads to prevent erosion from the foundations if water

comes in and out during storm surges and would help harden their homes and mitigate future storms.

We have received costs and we're bringing those back that it would cost about \$2 million to offer these mitigating factors to the about 120 homes in the area.

MR. GERBER: Which may still leave some money left over.

MS. NEWSOM: Which may still leave some money left over. We are also going out for a last ditch effort to identify any additional residents that would need assistance.

MR. GERBER: Ms. Newsom and I were actually down in Sabine Pass last week and they're making very strong progress, we saw about 30 houses that were already up, another 20 houses or so under construction, en route to a total population of about 75 being served there -- that's the universe that we're hoping to serve. The quality of the product is strong, but they're in a very unique spot and storm shutters and pontoons -- there's a lot of things that are really needed in the time of a storm to make that community less vulnerable to damage. But we thought that those seemed to be a reasonable set of additional things.

MR. CONINE: I'm still having issues with that second bullet point. Do you have an idea how much money we're talking about there on compensating the homeowners for money they've already spent?

MS. NEWSOM: We do not.

MR. CONINE: That's just too open-ended for me, and I don't know how you feel about it. I know I expressed this issue last time when this thing was postponed, but I just feel like we need a cap on a per-

house basis of what that action item or that activity is going to provide because that can get way out of hand real quick, I think.

MS. NEWSOM: For the compensation side?

MR. CONINE: I don't know how they're proving it because, you know, bring in your VISA bill for Lowe's or Home Depot or whatever, because that was money that was spent years ago and I don't tend to keep receipts that long, I don't know about everybody else. I just think it's a red flag, if we throw it out there, they're going to come in droves with stuff that you're going to put the Department or whoever is sitting there trying to evaluate that in an untenable position.

MS. NEWSOM: Actually, we're not recommending a compensation program with this.

MR. CONINE: What does that say?

MS. NEWSOM: Well, these are ways that we could use the funds; we're coming in with additional mitigation issues.

MR. GERBER: These are things we heard that locals might want.

MS. NEWSOM: These are things we heard that they would like to see.

MR. GERBER: Another option that we recently heard was the option of going and doing some additional water improvements, including construction of a water tower there. Given the needs of folks for housing, the intent was always to have the set-aside of \$12 million for Sabine Pass, use as much of it as you can, and the original action plan was then to shift it over to the larger homeowner assistance program and

help folks there.

MR. CONINE: So why don't you try again to tell me what you're recommending.

MS. NEWSOM: We're recommending that we allow some additional mitigation which would be storm shutters and concrete pads under the building themselves.

DR. MUNOZ: Why not explicate precisely those mitigation recommendations here.

MS. NEWSOM: pardon me?

DR. MUNOZ: Why not describe precisely those mitigation recommendations here, concrete pads, whatever the case may be, as opposed to vaguely referring to areas that could be included. Why not identify precisely. Is that what the chairman --

MS. RAY: As I understood it, Mr. Chairman, your concern was not so much for bullet number 1 or bullet number 3, but your concern was for bullet number 2, the compensation to homeowners that already paid for it out of their own pocket. You have no problem with 1 and 3, you had a problem with number 2.

MR. CONINE: Right.

MS. RAY: And that's what I think he was asking clarification on.

MR. CONINE: If we're going to do 1 and 3, I'm comfortable with that. If you're saying we can eliminate out of the staff recommendation number 2, then I'm ready to go.

MS. NEWSOM: Yes, very good.

MR. GERBER: And Dr. Munoz, I think we are specific about storm shutters and the concrete pads, I think there's some other erosion techniques that they're trying to use down at Sabine Pass as well that might be helpful. Each property is different, it's a very difficult situation down there and each homeowner is different, and this would enable us to serve those homeowners who would just be receiving these program benefits, not necessarily who have gotten a new house or who have gotten other benefits from this program, we can go a little broader and serve others in that community and keep those dollars there as intended.

MS. NEWSOM: Right. But at this point, all staff is recommending is extra mitigation and anything over the elevation cost, the \$30,000 cap on elevation, and that's what we have provided costs for in about \$2 million. So we could spend \$2 million out of that \$5- that's remaining.

MR. CONINE: Got it. Any other discussion, questions?

(No response.)

MR. CONINE: Anybody like to make a motion? Dr. Juan?

DR. MUNOZ: Well, is the motion removing bullet point 2?

MR. CONINE: Pretty much.

DR. MUNOZ: I move staff's recommendation, however, eliminating the second bullet.

MR. CONINE: Do I hear a second?

MS. RAY: Second.

MR. CONINE: Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

DR. MUNOZ: Just a quick question, not to exceed \$2 million.

MS. NEWSOM: Not to exceed \$2 million.

DR. MUNOZ: That doesn't say that.

MS. NEWSOM: It doesn't say that. You asked for costs. In our original recommendation to the Board, we brought that the executive director, or I think you guys gave us the authority to take anything in excess over the caps to the executive director for approval. Then you wanted to know how much it would cost so that we would know what we were looking at as far as accepting this recommendation, so that's what we were doing this Board meeting.

MR. CONINE: I think the intent of his motion was once you spend 2 million more bucks, come back to us.

MS. NEWSOM: Come back, okay, we can do that too.

MR. CONINE: Thank you. Okay, going to (f).

MS. NEWSOM: The Board previously approved if there was an accessibility package that was necessary for these homes that there was a \$15,000 cap per home to take care of all the accessibility requirements for the homeowner. We are finding that some of these

accessibility requirements are exceeding that \$15,000, specifically those houses that have been put up on stilts and putting little elevators, that seems to be where primarily our costs are exceeding. We're asking for the Board to either approve that we grant the executive director the authority to evaluate any items that are in excess of these caps and evaluate those on a case-by-case basis, or raise the cap above the \$15,000 cap, or for us to continue to bring each and every one to the Board for approval as we identify those that exceed that \$15,000 cap.

MR. GERBER: And as with almost every home in this project, it's been considered on a case-by-case basis, and as long as the costs seem reasonable, we ask that I have the authority to be able to go a little bit beyond. Obviously, if something is completely out of whack, we'll be bringing it back to the Board.

MS. RAY: Mr. Chairman.

MR. CONINE: Yes, ma'am.

MS. RAY: I move to adopt a policy that would grant the executive director the authority to evaluate and grant an increase on a case-by-case basis based on an executive team review, and bring extraordinary cases back to the Board for approval.

MR. CONINE: Do I hear a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any more 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 (g).

MS. NEWSOM: Item (g) has to do with wind and hazard insurance for homes in these hurricane-prone areas. In December of last year, there was a \$3,500 cap for three years of flood insurance and the Board approved up to \$4,500 per home for cost to hazard and wind insurance. We're seeing that it's costing us more to get these properties insured because of wind damage and because of flood insurance, and it is anticipated that the cost to the program for Sabine Pass will be about another \$100,000 or \$120,000 due to the increased cost. So we're seeking that the Board establish another policy regarding when the cap is exceeded for hazard and flood insurance beyond the caps that you approved in December of '08.

MR. CONINE: Well, this is a little different in my mind. You surely should have a track record on what that stuff is costing these days, and can you give us an idea of instead of \$4,500 what it's costing, or instead of \$3,500 what it's costing?

MS. NEWSOM: I'm sorry, I cannot. I can get those numbers to you guys next time.

MR. CONINE: To me, I don't have a problem with Mike getting enough rope to hang himself, but we ought to be able to pretty much peg that down in Sabine Pass what an insurance company is charging for wind and hazard and what the government flood insurance is,

and we can just raise the caps to cover that. That's kind of the direction.

MS. RAY: That would certainly be the direction that I would expect when we come in, say that it was \$3,500, you approved \$4,500, now we need more. It seems like we would be prepared -- you should be prepared to tell us how much more we're talking about, instead of giving it to us in gross numbers, you said another \$120-, what does that mean.

MR. GERBER: Let's come back with some better numbers.

MS. RAY: It's kind of like you're mixing apples and oranges here.

MS. NEWSOM: Okay. We'll be glad to come back with some better numbers.

MR. CONINE: Put that off until the next meeting. You withdrew that item. Go to (h).

MS. NEWSOM: Under Rita 1 we have three COGs that are administering those funds. We have about \$250,000 of excess admin or admin that we could turn over to program dollars and an additional \$500,000 of uncommitted program dollars. What we would like to do is amend the contract for South East Texas Regional Planning Commission and give them an additional -- I'm sorry, it's \$600,000 instead of \$500,000 -- it would be an additional \$850,000 which would allow them to do about twelve more houses.

MR. CONINE: Do I hear a motion?

MS. RAY: So moved, Mr. Chairman.

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. 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: And Mr. Chairman, just to clarify, by October 31.

MS. NEWSOM: By October 31.

MR. GERBER: No extensions.

MS. NEWSOM: Rita 1 should be done.

MR. CONINE: I heard her say that earlier.

We are going to go into executive session in Room 24 and we'll probably reconvene at about 1:15 or so, maybe 1:30, right in that range.

MR. GERBER: On this day, July 16, 2009, at a regular meeting of the Governing Board of TDHCA, 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 would begin its executive session today, July 16, 2009, at 12:15 p.m.

The subject matter of the executive session deliberations is as follows: a) The Board may go into executive session on any agenda item appropriate and authorized by the Open Meetings Act, Texas

Government Code Chapter 551.074; or b) The board may go into executive session pursuant to Section 551.074 for the purposes of discussing personnel matters including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee; c) consultation with attorney pursuant to Section 551.071(a), Texas Government Code: 1) with respect to litigation styled The Inclusive Communities project v. TDHCA, et al filed in federal district court; 2) with respect to pending litigation styled M.G. Valdez Ltd. v. TDHCA filed in district court in Hidalgo County; 3) with respect to EEOC claim from Don Duru; 4) with respect to any pending litigation filed since the last Board meeting; 5) potential sale of agency owned real estate and/or sale of loans.

(Whereupon, at 12:17 p.m., the meeting was recessed, to reconvene this same day, Thursday, July 16, 2009, following conclusion of the executive session/lunch recess.)

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

MR. GERBER: Mr. Chairman, the Board has completed its executive session of the TDHCA Board on July 16, 2009, at 1:30 p.m.

MR. CONINE: Thank you. Are we ready to put 1(g) back on the table? Will you make a motion to take 1(g) off the table?

MS. RAY: Mr. Chairman, I move that we take item 1(g) off the table for further discussion and consideration by the Board.

MR. CONINE: Is there a second?

MR. GANN: Second.

MR. CONINE: Thank you, Mr. Gann. 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. Gouris.

MR. GOURIS: In item 1(g) what we've talked about is modifying the section with regard to reserves which is 10(g)-I on page 6 of 17 of that NOFA, modifying it for all the Single Family activities -- there's three Single Family activities -- but leaving it the way it is for the rental and the Colonia model subdivision. So the modification would be to combine in that subsection

sections I and II into one item, and then add an "or" at the end of that statement and change what was listed there as item III to become II, leave it the same and make that an "or" -- that's the line of credit -- and then have a new third alternative with the language that we had been discussing and including what had been previously what was provided in these kinds of activities which was the CPA opinion.

So the language would read: "The CPA opinion letter from the most recent audit and a statement from the CPA that indicates, based on past experience with grant programs and past audits, the applicant has in place the best practices and financial capacity necessary in order to effectively administer a HOME Program grant." So the dollar amounts would remain the same as far as what the resolution says, but this would give them the extra level that we were looking for for some consideration looking at it and it would give them the feeling that they could continue to sign the resolution knowing that they've got the experience to have been able to do these in the past without a problem. So that's the compromise.

MR. CONINE: Read me the language again on the available line of credit or equivalent language. How did you reformat that?

MR. GOURIS: That would have what was item III,

so that would stay the same except for the label on it would become item II. The one right before that would be incorporated into -- what was I and II would be combined to be I --

MR. CONINE: What page are you on again?

MR. GOURIS: 6 of 17.

MR. IRVINE: Tom, just for the sake of clarity, could you read the entire section with numbers as you're proposing it to be?

MR. GOURIS: Sure. "Cash Reserve. Each awarded applicant would be required to spend funds according to program guidelines and request funds from the Department for eligible expenses. Applicants must evidence the ability to administer the program and commit cash reserves of at least \$120,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount of the commitment must be included in the applicant's resolution and budget. Applicants must submit: I. Financial statements indicated adequate unrestricted cash or cash equivalents to utilize as cash reserves and a letter from the applicant's banker/financial institution indicating that current

account balances are sufficient; or II. Evidence of an available line of credit or equivalent of at least \$120,000; or..." what we read before about the opinion letter.

MR. CONINE: Okay. So it's the "or" language that gives them the ability to say we may not have \$120- in cash reserves but our net worth is that and we can get there if we have to.

MR. GOURIS: Right, and we still get the resolution we always got that made them recognize they may have that kind of requirement.

MR. CONINE: Is that okay with you?

MS. SISCO: (Speaking from audience.) That's good with me.

MR. GOURIS: And we want to mimic that language, it's not always \$120- but we want to mimic that language in all those other places I mentioned. Also, we pulled down the NOFAs for (f) and we want to do the same thing in those NOFAs because those are both Single Family NOFAs, so we'll have to come back and do that.

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

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move to accept and publish the wording for item 1(g) as amended by the staff.

MR. CONINE: Do I hear a second?

DR. MUNOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Thank you for working through that, staff and Board. Move for reconsideration on item 1(f), do you want to do that?

DR. MUNOZ: So moved.

MR. CONINE: There's a motion to reconsider.

MR. GANN: Second.

MR. CONINE: And a second by Mr. Gann, 1(f) to add the same language.

MR. GOURIS: To be consistent with the language.

MR. CONINE: Do I hear a motion?

DR. MUNOZ: So moved.

MR. GANN: Second.

MR. CONINE: Motion and a second. Any further discussion?

(No response.)

MR. CONINE: 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. Item 6(a), Mr. Gerber.

MR. GERBER: All this rulemaking on the fly. Item 6(a): Presentation, Discussion and Possible Action for Appeals on the neighborhood Stabilization Program. Chairman and Board members, this agenda item contains two appeals: one for the City of Nacogdoches, the other for the City of Galveston.

The application for the City of Nacogdoches was disqualified for the Neighborhood Stabilization Program as it was received by the Department past the application deadline. The deadline as stated in the Texas NSP NOFA was April 27, 2009. A printed application, as required in the NOFA, was received by the Department on May 4, 2009, seven calendars late, and I denied this appeal and staff recommends that the Board also deny the appeal for the City of Nacogdoches.

The application for the City of Galveston was terminated for failure to provide a timely response to an

administrative deficiency, and the Texas NSP NOFA allows for ten business days to respond to an administrative deficiency notice. The City of Galveston did not respond within the allowable time period to the request to authorize the application as the lead applicant by providing a letter of intent to apply and signing the certification section of the NSP application. The deadline was June 9 and an insufficient response was received by email on June 9. An extension was granted until June 12 and an acceptable response to the administrative deficiency, along with the appeal letter, was not received until June 29. I denied this appeal as well.

The difference between the two appeals is that this application from the City of Galveston, although deficient, was received by the application due date, whereas, the application for the City of Nacogdoches was never eligible. The termination of the Galveston application resulted from the attempt to resolve administrative deficiencies in an otherwise eligible application.

Staff recommends that the Board deny the appeal of the City of Galveston as well. And I know we have comments on both of these appeals.

MR. CONINE: We do. Lila Fuller.

MS. FULLER: Good afternoon, Chairman and Board members, I'm Lila Fuller, city secretary for the City of Nacogdoches. And as noted in your board action request, the City of Nacogdoches did submit our Neighborhood Stabilization Program grant application electronically on May 1, hard copy on May 4 which we realize is after the deadline as stated in the NOFA, and it was appropriately disqualified.

We were not aware of the NSP funding opportunity until April 28, the day after the deadline, and because of our need for funding for this type of application, we contacted the Department, we verified with staff that nothing would preclude us from submitting an application late, and we quickly put together an application for submission in hopes that it would be given consideration.

The City of Nacogdoches is located in Nacogdoches County and has currently identified over 50 dilapidated single family houses in our community that are in need of demolition in order to preserve the neighborhoods and eliminate associated health and safety issues these structures pose. With the economy the way it is, we feel that this problem will only continue to grow.

These homes have been approved by the city commission for demolition, however, there are currently not enough city

funds to demolish more than five to ten structures per year, and with the budget cuts that we are seeing in the upcoming budget years, we do not feel that there will be any more funding allocated for demolition by the city. Liens may be filed against these property owners by the city to collect the cost of demolition, however, these liens are rarely paid.

The continued existence of the remaining condemned structures creates depressed property values in these neighborhoods and is discouraging to other property owners to maintain and redevelop their own properties. The funding provided by the Texas Neighborhood Stabilization Program would allow the City of Nacogdoches to bring pride and revitalization to the neighborhoods this blight affects. Our proposal calls for land bank activities to give incentives for neighborhood redevelopment by aggregating vacant land to be redeveloped for housing for low income persons in our targeted areas in our city that have not benefitted from redevelopment activities for some time.

Nacogdoches County is designated as a select pool eligible in this program and your Department has verified that no other entity in Nacogdoches County has applied for this funding. We understand that funding for the select pool was under-subscribed for the NSP and we

respectfully request that the City of Nacogdoches be given the opportunity to compete for these funds. That's all that I have.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your testimony.

Sterling Patrick.

MR. PATRICK: Good afternoon, Mr. Chairman and Board. Again, my name is Sterling Patrick, I'm the director of grants and housing for the City of Galveston.

We're again requesting your assistance in reinstating our Neighborhood Stabilization application for our residents of Galveston. This morning we discussed the facts of a letter requested, a letter sent and the letter never received. I take full responsibility for that because that is my job.

One of the things that we need you to understand, if you would, our residents have been devastated by a hurricane. Every piece of assistance that we can get to help our residents will help them recover. Now, when you look at Galveston, there's a perception that we're an affluent community, we've got great mansions on Broadway, we've got a number of tourist attractions and we've got some great festivals that you can come to, but when you peel behind that cloth, you see that 60 percent

of our residents are low to moderate income, that means that 60 percent of them can qualify for Section 8 housing.

If you look a little further, you see that our per capita income is only \$23,875. After that, you look at 23 percent of our residents live in poverty.

You look at those pre-Ike economic factors and you look what happens when you have a hurricane that directly hits your community, floods 90 percent of your island, damages 75 percent of your housing stock which means over 18,000 houses have been damaged, according to FEMA estimates, over 61 percent of those damages are uninsured, 5,800 of our families and residents are still displaced, 40 percent of our businesses have not reopened, every city employee from the city manager down to the maintenance worker has taken a 3 percent cut to stave layoffs, our bond rating has dropped -- and this is directly from the storm -- has dropped from an A rating to a triple B. When you look at all those factors, every dollar that we can get to help our citizens recover, especially that 60 percent that's low and moderate income, need this assistance. Without the assistance, they cannot recover.

Earlier today you passed a \$160 million housing Disaster Recovery Program fund for us conditionally. 87.5 percent of those dollars are going to direct services,

brick and mortar, we can tie one benefit to that. Unfortunately, that's not going to be enough when you look at over 18,000 housing units for folks that we have to replace. So we're simply requesting your assistance to help our residents in the recovery efforts. Without these funds and without your assistance, our residents will have a long road on recovery and we need to do everything we can from city staff's part to help them. And so we're simply humbly asking you to reinstate our application.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you for your testimony.

I've got one more, David Danenfelzer. He had to go. That is all the witness affirmation forms I have.

MS. RAY: Mr. Chair.

MR. CONINE: Yes, Ms. Ray.

MS. RAY: I'd like to hear from staff, in staff's writeup it mentioned that this program was overall over-subscribed and should we take an action to reinstate either one of these applications, where would that put us, how would we handle that?

MR. STEVENSON: Board Chair, Mike, Board members, my name is Robb Stevenson, I'm the manager for the Texas NSP Program. It is true the program was over-subscribed, but that includes what we considered as

available funding. If you'll notice in item 6(b) when we get to it, you'll see columns in the Board writeup that showed a direct allocation request and then also as available request, and as available was simply a method to allow applicants to ask for funding in access to what staff has allocated to county regions. It's essentially a wish list of sorts.

We took the money for Galveston and Nacogdoches away from the direct request and put it in the as available request to fund those overages. So if we were to fund them, we would take the money back out of as available and put it back into the direct request.

MS. RAY: Thank you very much.

MR. STEVENSON: You're welcome.

MS. RAY: How are we going to address these, one at a time?

MR. CONINE: Sure, we can do them one at a time. We can do Nacogdoches first if you'd like.

One more question, Robb. The city secretary from Nacogdoches said they weren't aware of the program until a day later. How did we publicize the program to a city like Nacogdoches?

MR. STEVENSON: We followed HUD requirements, we post it on our website for the 15 days and we also send out list serves via all the departments list serves. I

don't know if Nacogdoches is on a department list serve but I would assume so.

MR. CONINE: Okay. Dr. Munoz.

DR. MUNOZ: Related to the appeal by the City of Nacogdoches, I move staff's recommendation.

MR. CONINE: Motion to approve staff's recommendation. Do I hear a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. 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.

DR. MUNOZ: Related to the appeal by the City of Galveston, I move that we grant the appeal.

MR. CONINE: Motion made to grant the appeal to Galveston. Do I hear a second?

MS. RAY: I second the motion.

MR. CONINE: Second by Ms. Ray. 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.

MR. GANN: No.

MR. CONINE: Motion carries.

Item 6(b), the big list. Robb, are you going to do this?

MR. STEVENSON: Good afternoon, Robb Stevenson again. Item 6(b) is the request to approve, deny or approve with amendments the Neighborhood Stabilization Program award recommendations.

As you may recall from a previous Board meeting when you approved the NOFA, the State of Texas was awarded approximately \$173 million for the Neighborhood Stabilization Program. Of that, \$71 million was directly awarded to 14 cities and counties in the State of Texas and the state was awarded the balance, approximately \$102 million. What we have done here is to go ahead and award out that \$102 million. Staff took the original HUD allocation method and expanded upon it a little bit to tweak it for the Texas experience in foreclosures and abandonment. That resulted in certain cities and counties that received direct funding already to receive a little bit more funding from the state as well in certain cases.

And as you'll see in the Board writeup, we have a list. We received 70 applications and we were able to make 61 different funding recommendations for you today.

MR. CONINE: Any questions of Robb? If not I'll entertain a motion.

MR. BOSTON: I wanted to point out a couple of clarifications.

MR. CONINE: Okay, I guess you may.

MS. BOSTON: First, I just wanted to note that on the staff recommendation on this we're actually also asking that the executive director have authority to grant amendments in certain cases, and I wanted to clarify that when it says the executive director that that would be either the executive director of TDHCA or ORCA, depending on who the administrator of that contract is because ORCA is administering some of the select pool contracts on these.

And the other clarification would be that the list that you're going to move to approve would, of course, now include Galveston because the prior item was just their appeal being granted.

MR. CONINE: Right.

MS. BOSTON: And then the column that's called Direct As Available would be every number in there is going to be proportionately reduced by an amount to cover

the award amount going to Galveston.

DR. MUNOZ: A question for Brooke. What would be examples of amendments that the executive director might grant?

MR. STEVENSON: If I may, a good example of an amendment would be we hope to recapture funds, there's some fairly expedited on the NSP as the Congress has labeled the NSP emergency funding, so we in turn took HUD's recommendation and placed some very, very hefty benchmarks so we may have to capture some funding. In this scenario we would be asking that the executive director have the authority to then recapture the funds and award it to another grantee up to 25 percent increase in the original award that you approve today.

DR. MUNOZ: Up to but not to exceed 25.

MR. STEVENSON: Not to exceed; anything over 25 percent we would take back before the Board.

MR. CONINE: Is the amendment item actually 6(c)?

MR. STEVENSON: Different amendment.

MR. CONINE: That's a different amendment, okay. Any further questions of the witness?

MR. STEVENSON: I might also quickly add, sir, that we're requesting that the Midland County funding recommendation be postponed to the July 30 Board meeting

to give them a little bit of an opportunity to respond to the administrative deficiency letter, they weren't quite able to resolve everything.

MR. CONINE: Dr. Juan.

DR. MUNOZ: Move staff's recommendation,

MR. CONINE: Move staff's recommendation, with a second by Ms. Ray, or not?

MS. RAY: Yes, but I think the motion should be staff's recommendation plus adding the City of Galveston and removing the City --

DR. MUNOZ: As amended to provide the City of Midland additional time to satisfy administrative deficiency.

MR. CONINE: We've got a motion and a second.

MS. RAY: Second.

MR. CONINE: Is there 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.

Good job, Robb.

MR. STEVENSON: Thank you. I think Brooke

Boston and I are going to tag-team on 6(c), if I could ask her to come back to the podium.

6(c) was the motion to approve or deny, it's requesting permission to submit amendments to the action plan for the Texas Neighborhood Stabilization Program, should one become necessary by the action of the Board today. There's a couple of different reasons for this, I'll briefly go over the first one.

In the Consolidated Plan for the State of Texas, if in any given program you exceed an individual funding category by more than 30 percent, you're requested to do an amendment, you're required to do an amendment to the action plan. By your action today, we actually did receive actual applications that differed from the amounts that were printed in the NOFA which would go over 30 percent, so we have to do an amendment for that purpose.

And I believe Brooke will discuss the other reasons.

MS. BOSTON: And the other thing that we wanted to mention or also get your permission for as part of the motion would be that as we are submitting the plan amendment to HUD, to the extent that we do that, that the Department be allowed to make programmatic changes under NSP 1 that are consistent with what I'm going to call a bridge notice that's been issued by HUD. What the bridge

notice is NSP 1 is this fund right now, NSP 2 actually you're about to take action on in the next item and we're in the midst of applying for funds.

The regulations that HUD released for both are different and then they released the subsequent bridge notice that kind of reconciles the differences between the two. Some of those are retroactive to NSP 1, however, our plan and our NOFA didn't reflect any of that because we didn't know it at the time, so all we're asking you guys today is that to the extent we turn in a plan amendment to HUD, that we also have permission to make it consistent with the bridge notice if we so choose.

MR. CONINE: Okay.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation.

MR. CONINE: Staff recommendation for item 6(c). Is there a second?

MR. GANN: Second.

MR. CONINE: Mr. Gann, thank you. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor say aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. 6(d)

MR. STEVENSON: Moving right along. Item 6(d) is to approve or deny permission to submit an application to the U.S. Department of Housing Urban Development for the second round of NSP 2 funding. NSP 2 differs from NSP 1 in various aspects, but probably the most important related to this item is that the State of Texas would not be awarded an allocation. We have to compete with all other states, nonprofits and other units of general local government, as well as consortia of those different entities. We have prepared an application for \$110 million, it is based upon the NSP 1 amount and structure. The only difference would be that we have not included land banking in our NSP 2 application.

We felt it was necessary to go ahead and apply for NSP 2 for two main reasons. The first main reason was the demand that we got back from NSP 1; we were simply over-subscribed with requests. And the second reason is that HUD has placed some very high thresholds for application for NSP 2; they require that you have \$5 million worth of need, have the ability to move 100 units, and also have experience in the activity for which you're applying in so much that you've done 75 units in the

activity for which you're applying in the past two years.

We feel that this will exclude many of our even large but certainly middle to small size cities and many of our nonprofit organizations who do good work. So we'd like to go ahead and secure an amount of funding for them and then turn around and hold an application cycle.

MR. CONINE: Any questions of Robb at this point?

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation.

MR. CONINE: Move staff's recommendation to submit an NSP 2. Do I hear a second?

DR. MUNOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. STEVENSON: Thank you, sir.

MR. GERBER: Mr. Chairman, I would just note

that Mark Wyatt from ORCA is here and we've been pleased to be in partnership with ORCA on NSP 1 and look forward to working with them on NSP 2. No longer ORCA, Texas Department of Rural Affairs -- soon, September 1. Appreciate you being here, Mark.

MR. CONINE: TDRA, what are we going to call them? We've got to come up with something. I like ORCA myself, the killer whale.

(General laughter.)

MR. CONINE: Item 7(a), Mr. Mike.

MR. GERBER: I'll let Robbye Meyer come on up and work through Tax Credit amendments.

MS. RAY: She just stepped out.

MR. GERBER: The first one is Brandywood Apartments, number 95005, and the owner is requesting to amend the LURA by reducing the number of restricted units by 49. The development received tax credits in 1995 and has been subjected to flooding numerous times since that.

The subject development is to be part of a severe repetitive lost grant program and as such, will lose 17 buildings which contained 258 units, leaving 440 units available in the total development. This will reduce the number of low income units by 49. Although being part of the program was a voluntary action, FEMA would have had the option to increase the flood insurance rates 150

percent each year if the owner had refused to participate.

The land will be converted to green space, the owner estimates a possible recapture of \$380,000.

Staff is recommending approval of the request to amend the LURA to be 100 percent of the units as restricted and release the 258 units. The Department does not have the ability to modify the 8609s of the IRS, however, and the Department will be required to issue IRS Forms 8823. Again, recommending the approval of that amendment.

Robbye, anything you want to add to it?

MR. CONINE: Staff is recommending approval.

Is there a motion?

MS. RAY: Mr. Chairman, I move staff's recommendation to approve.

MR. CONINE: Moved staff recommendation to approve. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. 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.

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(No response.)

MR. CONINE: Motion carries.

MR. GERBER: The next item is Village Park, number 05629. The Board first heard this amendment back in April and at the April meeting the owner discussed the financial burden of installing ceiling fans in all the bedrooms of the development which was a threshold requirement in 2005. The Board instructed staff to work with the owner to find a compensatory amenity that would benefit the tenant. The owner has worked to install built-in microwave ovens in every unit at a cost of between \$135,000 and \$165,000. In addition to the microwave ovens, the owner requests consideration of an equipped computer learning center and furnished community room as amenities to offset the lack of ceiling fans in the development. The features are beneficial to the development and were not represented in the application for scoring points or for meeting threshold.

The development is the rehabilitation of an existing apartment complex. The owner requests approval for these changes in the application to resolve deficiencies and for revisions to resolve discrepancies in reporting. The approvals are needed to allow the cost certification review to proceed. Although staff cannot recommend approval to omit the ceiling fans, staff does

recommend approval of all other parts of the owner's request, noting that the Board may approve the request including the ceiling fans. The fans, again, were a threshold item in 2005 and a provision for their replacement by substitutes is absent from the rules. Staff does recommend appropriate penalties in this case because the request was made far after the implementation.

MR. CONINE: I do have one witness affirmation form, Blake Brazeal.

MR. BRAZEAL: I really don't have anything to say. I signed up unless I needed to say something, but you charged me and Robbye to work together on this and get together with a plan. I feel like we have done that and we're ready to go forward with the substitution of the microwaves and the items listed in the writeup.

MR. HAMBY: Could you identify yourself for the record?

MR. BRAZEAL: Blake Brazeal.

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

(No response.)

MR. CONINE: Do I hear a motion?

MR. GANN: I make the motion we approve the staff's recommendation.

MR. CONINE: Motion to approve staff's

recommendation by Mr. Gann. Is there a second?

DR. MUNOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. CONINE: 7(b).

MR. GERBER: 7(b) is: Presentation, Discussion and Possible Action on Housing Tax Credit Appeals. I'm going to let Shae Gamble, supported by the very able Robbye Meyer, to work each of these appeals.

MS. GAMBLE: Good afternoon, Mr. Chairman, Board members, Mr. Gerber.

MR. CONINE: Hello, Ms. Gamble. How are you?

MS. GAMBLE: I'm doing wonderful today.

MR. CONINE: Good.

MS. GAMBLE: Chairman Conine and Board, we have nine appeals that involved application terminations and four appeals and the award of points associated with the score awarded to applications.

Before I get started, I wanted to take a moment and address comments that you heard earlier during the public comment when the representative for the BWML Property Owners Association spoke to you about the developments in Galveston, the Champion Homes at Bay Walk and Champion Homes at Marina Landing, and wanted to let you know that we did find them to be ineligible for QCP, we did send them a letter to that effect, they appealed that decision to the executive director.

The executive director answered that appeal denying the appeal, and in the letter from the executive director they were directed to -- or they were informed that if they wanted to appeal to the Board, they had to have their appeal in to us by a certain time, and they did not appeal the executive director's decision, and that is why they are not on our agenda for appeals, if there was any questions about that.

If not, we will move forward. The first four appeals are regarding points awarded to applications. The first two we'll present together because they involve the same issue, really, for the same applicant, and this is a different appeal for Champion Homes at Bay Walk and Champion Homes at Marina Landing. The applicant is appealing community revitalization points that were not awarded under Section 49.9(i)(13) of the Qualified

Allocation Plan and rules, the QAP.

To be eligible for these points, an applicant must provide evidence of a community revitalization plan. Such evidence must include an ordinance, resolution or otherwise recorded documentation of a vote taken by the local elected governing body specifically adopting the community revitalization plan. Also required is a letter from the chief executive officer or other local official with appropriate jurisdiction of the local governing body, stating that the development site is located within the targeted development areas outlined in the community revitalization plan. The applicant provided documentation of the City of Galveston's efforts to rebuild but did not provide any of the evidence specifically required by the QAP.

Staff recommends that the Board the appeals of both 09316, Champion Homes at Bay Walk, and 09317, Champion Homes at Marina Landing.

MR. CONINE: I've got some witness affirmation forms on this particular item. It looks like Bill Fisher and Robert Onion in some combination.

MR. ONION: I yield my time to Bill Fisher.

MR. FISHER: I get the time and I'll try not to have to use it. Board members, good afternoon, I'm Bill Fisher, I'm with Odyssey Residential and this is regarding

the points on our two applications in Galveston; they are the only applications in Galveston.

Got to be a plan, got to be a vote, got to be in the targeted area. Surely we have to acknowledge there are plans for revitalizing Galveston. The COGs did plans, you all have been allocated tax credit money for them. And a prelude to that, in your packet are the three or four ordinances that the city passed in January of '09 to help facilitate this process, telling HUD, their congressman, the governor that they needed funds to do repairs, mitigate hazards, revitalize, retrofit, there's a whole series of those.

Obviously we've adopted plans, you've adopted plans, the COGs have adopted plans, and most of the housing money allocated under the CDBG Program has been allocated to the City of Galveston. Mr. Patrick gave me a letter from the City of Galveston confirming that, in fact, the two properties are in the City of Galveston.

So I think this is one of those issues where the staff is looking for a perfect package that they see oftentimes from communities as opposed to just a package that's just compliant, and our position is our package may not be perfect -- because I've done those in the past, I've specifically had the council or the county government adopt a resolution that was spot on, but the flip side,

even though we don't have that here, we clearly have the three key elements of the requirement to get the points

And I think the concept that there isn't a community revitalization plan for Galveston is ridiculous.

Did they take action? I think the resolutions, as a prelude to getting all these funds comply with that, and of course, I did get a letter saying that our projects are in the target area.

So with that, I would ask the Board to overturn the executive director's denial and grant us the six community revitalization points for our properties in the City of Galveston. Be happy to answer any questions?

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: This was the one that I mentioned earlier that I'd asked Mr. Patrick to kind of hang around on to see if he could give us a city perspective from his side on. Again, because this one and the other one are both in Galveston and I want to do all I can to help Galveston, I'm just curious about your response.

MR. PATRICK: I will give you the official opinion that I know of as of April.

MR. CONINE: Okay.

MR. PATRICK: On April 9 our city council authorized the city manager to draft a letter to Mr.

Gerber advising that the City of Galveston was not in support of any additional rental projects. City Council Member Elizabeth Beeton was supposed to bring that letter to a public hearing that was happening, I believe, after April 13 or 14, and the letter identified that we currently have 15 apartment complexes that are low income housing tax credit properties, a total of 579 units. The two properties in question would bring a total of 488 units, I believe, additional units to the island, and at that point in time in April, our council was not supportive of the project.

What has happened, I do believe -- and this is simply from a staff level -- current council and previous councils have always thought the way to revitalize neighborhoods and stabilize neighborhoods in Galveston were through home ownership. Obviously most of us in the housing industry know that's not always practical and it's definitely economical. But what we've seen lately, even with our public process on our housing disaster application to your office, is that our council has seemed to have a slight change toward rental units, basically from the public outcry that we identify money to fix rental units, but there is still no official change in position.

The Urban Land Institute is working in

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Galveston, they are assembling a technical assistance panel, they've had two meetings, two workshops in Galveston to try to get us to understand holistically that all housing, the provision of decent, safe, affordable housing should be for all of our residents. But from a council official viewpoint, I have nothing other than what was drafted by the city manager on April 13, and it should be in your record.

MR. CONINE: Does the city have a comprehensive plan which is, I guess, what was being referred to, or is the hurricane relief the comprehensive plan?

MR. PATRICK: No, sir. We view the documents as two separate documents. The city has a citywide comprehensive plan that takes in consideration from zoning to neighborhood development to all sorts of things, transportation and connectivity. We consider that our comprehensive plan. Our hurricane disaster housing recovery programs are those simply designed to help us recover from the devastation of Hurricane Ike. We did supply Mr. Fisher with a letter stating his request was that could you supply a letter that states that the two properties are located within Galveston. We did that because the properties are in Galveston. That as in no way supportive of the project, and again, I can only tell you what our council instructed our city manager to do

back in April.

MR. CONINE: Mr. Fisher, are these acquisition rehab deals or are they new construction?

MR. FISHER: If I can, Mr. Conine, again, I appreciate Mr. Patrick's comments. He's right because I have met with the city officials starting in April and May and they've certainly come around to the prospect of since there is funds available to utilizing them. And I certainly don't want to imply that there's been any official change but they've certainly changed being open to discussing the issues. But ultimately it comes back to: is there a recovery plan, there is a recovery plan; am I located in the recovery area, I am; and did they take votes on it, I just don't think there's any doubt about that.

MR. CONINE: The recovery plan and the comprehensive plan are two different things.

MR. FISHER: This is a community revitalization plan so it can be a plan -- just to be specific, if you look at your Board package and Mr. Gerber's letter to me, it's actually very broad: a plan of any kind, whatever they call it, as long as they've taken a vote on it and you're in the area. Mr. Gerber, if you don't mind, there's a quote in your thing, if you'd read it, about what constitutes a plan. It's a plan, it can be of any

name -- I'm not referring to a comprehensive plan, a revitalization plan, a plan that targets areas for blight, rehabilitation, revitalization, and those are specific in the resolutions that they've passed to go to HUD, the governor or the Congress to get the money that are in these plans.

What I told the staff in the original application was we know there's a plan, your NOFA for the hurricane credits is a plan, and so there's clearly a revitalization plan for Galveston, it's in the target area, you have been given money specifically for it, and they're not normal tax credits, as you know, they're credits that cannot be exchanged, they can't be carried over, and so this is an opportunity to acknowledge that those three elements exist. And that's why I've asked for the points because I think we're clearly entitled to them.

MR. CONINE: Sharon, could you reiterate what your translation of that was?

MS. GAMBLE: Yes, sir, absolutely. Mr. Fisher is correct, the QAP, it doesn't have to be called a comprehensive plan, we accept that. However, the plan does have to be a plan that we're provided evidence that the local governing body has adopted by vote.

And I don't know how closely you looked at the information that Mr. Fisher sent, but the resolutions that

he sent have nothing to do with a community revitalization plan or anything of that nature, they are for federal hazard mitigation, they are resolutions to the governor asking them to loosen rules, resolutions to FEMA asking them to change rules, that sort of thing. It's sort of a thing of just a whole lot of information but is it what's required by the QAP. Staff's opinion is that it's not.

MR. CONINE: Any other questions of the witness or Ms. Gamble?

(No response.)

MR. CONINE: We're taking both of these at the same time, I guess?

MS. GAMBLE: Yes, sir, they're the exact same issue, same documents.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation

MR. CONINE: Move staff's recommendation to deny.

MS. RAY: To deny.

MR. CONINE: Is there a second.

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. 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.

Going to Ventana Point.

MS. GAMBLE: Yes, sir. The next appeal is Ventana Point. The applicant is appealing the score received for quantifiable community participation. The department received a letter in support of the above-referenced development, however, the receipt of the letter was after the required deadline. In accordance with Section 49.9(i)(2) of the 2009 QAP, the letter must be received by the Department or postmarked no later than February 22, 2009. The receipt after the deadline disqualified the letter from consideration for QCP.

Staff did review the letter and documentation submitted by the Renaissance 1960 Improvement Corporation and determined that the organization was better described as a community development organization and could possibly qualify for points under Section 49.9(i)(18), community input other than QCP. According to the organization's own formation documents, the corporation will engage in community revitalization projects benefitting the general

public, provide civic service educational opportunities for area students to be involved in their community revitalization efforts, engage in cultural, educational and social programming promoting the diversity of the area, and perform such other functions as may be necessary or appropriate to fulfill the purposes of the corporation.

Furthermore, the applicant appeared to acknowledge that the organization would not qualify for QCP because the applicant submitted a letter from the same organization for points under Section 49.9(i)(18) community input other than QCP. The applicant did receive points for the Renaissance 1960 Improvement Corporation's letter under that section of the QAP.

The allocation of tax credits is a competitive process that requires completion of an application by all eligible applicants to be fairly evaluated. The quantifiable community participation component of the scoring process is particularly based upon information received from neighborhood organizations. The organization clearly submitted a QCP packet after the published deadline. The deadlines and organizational material were consistently applied to all QCP participants. Staff believes the correct score was awarded; staff recommends the Board deny the appeal.

MR. CONINE: A couple of witness affirmation

forms. Mary Davis.

MR. LYTTLE: Mr. Chairman, if I may, I have a letter from a state representative on this issue that I was asked to read into the record.

MR. CONINE: You don't look like Mary Davis.

MR. LYTTLE: No, not at all. I'm sure she looks much better than I do.

(General laughter.)

MR. CONINE: Go right ahead.

MR. LYTTLE: Michael Lyttle, director of Public Affairs with TDHCA. This is a letter sent to Mr. Gerber from State Representative Patricia Harless, it's dated July 14, 2009.

"Dear Mr. Gerber, Recently I learned that the status of Renaissance 1960 as a neighborhood organization had come into question in relation to the senior tax credit project Ventana Point, 09201.

"It is my understanding that a neighborhood organization is 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. Renaissance 1960 is exactly this type of organization.

"Under the leadership of Mary Davis, this

organization works with the residents of the community, including those who live closest and will be most affected, to ensure that proposed projects, everything from new development to the revitalization of existing shopping centers and abandoned buildings, improve the area and are in the best interest of the impacted neighborhoods. In fact, when I first met with the NRP Group, the developer of this project, I directed them to Renaissance 1960 because of this vital role they play in our community.

"Their primary goal is to nurture an area-wide culture of neighbors taking action to ensure that the quality of life is preserved and improved. Given the type of work that they do in our community, I urge you to reconsider your position on the status of Renaissance 1960 as a neighborhood organization.

"Thank you for the opportunity to submit this letter. Please feel free to contact me if you have any questions. Sincerely, Patricia Harless, State Representative."

MR. CONINE: Thank you, Mary Davis -- is Mary here? Is Mary here?

SPEAKER FROM AUDIENCE: Yes, she is. Actually Dan is going to go first and then Ms. Davis.

MR. CONINE: Okay. Mr. Markson.

MR. MARKSON: I'm Dan Markson, the NRP Group. Thank you for the opportunity to speak about this issue because I'm very passionate about this. I was going to take my shirt off to show you the scars from the flaming arrows that were in my back from this neighborhood a year and a half ago, but DPS told me I could not do it.

When we came to this area to do a family deal a year and a half ago or two years ago, we were run out on a rail, and it took us a year and a half to work with the neighborhood to get our first development up, to convince them that we were real, we were going to live up to our commitments, we've done so. I've been to probably a dozen of their meetings, they're all composed of people that live within the neighborhood. They're as real as you can get, and we're honored to have their support, and I hope you'll consider the appeal. Thank you.

MS. DAVIS: My name is Mary Davis and I'm executive director of Renaissance 1960.

I was a little aggravated, I've got to tell you, when I heard that we were denied our existence, and I thought that makes me a little angry but then I thought you guys have no idea kind of where we are and maybe if I came and explained how we got started and why we're organized the way we are that it might make a difference.

We operate basically between Interstate 49 and

249 and 1960, that's about a 7-1/2 mile stretch. In that stretch there are many, many housing subdivisions and over the years that 1960 stretch has declined. We were in our prime in the '70s, and you can imagine what's happened now, we really are an urban -- much to the chagrin of many of our residents, we really are an urban population right now. And so we're suffering with how to handle some of the changes that have taken place in our neighborhoods because of the fact that we are in no-man's land, and that means we're in the ETJ of Houston, we have to be diligent about what the city council in Houston is doing -- and I hope there's nobody here from there -- because they impact so greatly what happens in our neighborhoods. And so that's one of the tasks that we take on.

What has happened, under the direction of Patricia Harless and Debbie Riddle, by the way, whose areas we work in, they told us two or three years ago if you guys don't get all your splinter groups -- which in a seven-mile stretch with residents, you can just imagine how many we have -- under one umbrella so that you can make some kind of change, then you're not going to ever get anywhere.

We are not gathered together as a group to deny housing, we are here actually supporting the NRP project because we took the time to go to the projects that he's

done, talk to his staff. I have a construction and architectural background so we went to the finished ones, we went to the projects that were under construction and actually looked to see what was going to happen to our neighborhoods.

What happened is we took the lead, the neighborhoods said, Okay, if Renaissance is okay with it, we're okay with it. So that's the kind of role that we play, not only in that but with social issues, we're now dealing with massage parlors that have sprung up on 1960, so you can see it's a whole how does everything in our community impact the neighborhoods. That's what we're about. And I'm a volunteer executive director -- if you can find funds in any of these programs, I'd be loving to talk to you to pay a staff.

Now, how do I answer you didn't get my letter. I put it in the mail and I've certified that I've done that, I don't know how else to -- I don't have control over any of that.

But I hope you will understand that that is how we are dealing with the changes that are happening in our neighborhoods, and I really truly believe you need to look at how that organization is formed because I've got people in other areas of town in the ETJ around Houston calling and saying how did you do this, how are you making such an

impact.

So I'll be glad to answer any questions you might have. I'm pretty passionate too.

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

(No response.)

MR. HAMBY: There is no quorum, but in addition to that -- here's a quorum -- this is a problem we have consistently in the Harris County area, the City of Houston, in particular. The definitions, we enlarged it to be able to include super neighborhood groups, as you remember, probably three years ago, I think, is when it was. This group even exceeds that now, so this is a pretty wide open kick in the door to QCP in a consistent manner everywhere else in the state.

This group, as you heard the testimony, my neighborhood groups, several groups. It's not what was intended in the statute, the statute is very clearly persons living near one another. We did award them the points for the business community, so they are getting some points for this, but they're not a QCP.

MR. CONINE: Any other questions or comments?

(No response.)

MR. CONINE: Then I'd entertain a motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation.

MR. CONINE: Motion to accept staff's recommendation to deny. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. 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.

Taylor Farms.

MS. GAMBLE: The scoring appeal for Taylor Farms, TDHCA number 09314, the applicant is appealing the score for quantifiable community participation, QCP, pursuant to Section 49.9(i)(2) of the QAP.

The Department received a letter for QCP from the Urban Campus Property Owners Association prior to the February 27 deadline. Upon receipt and review of the information submitted to the Department, staff was unable to verify the existence of persons living near one another within the organization's defined boundaries. After

multiple attempts to get the needed information, staff discontinued contact and concluded the organization did not qualify.

Only after the scoring notice was issued did the organization provide an expired seller's temporary residential lease for one household. Staff was told they would receive additional information but no additional information was provided. Persons occupying one household does not meet the test of persons living near one another.

Staff recommends the Board deny the appeal.

MR. CONINE: There are no witness affirmation forms on this one. Any questions of staff?

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation.

MR. CONINE: Move staff's recommendation. Is there a second?

DR. MUNOZ: Second.

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

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MS. GAMBLE: The rest of the appeals are regarding application terminations. As you know, the allocation of these tax credits is a competitive process that requires completion of an application by all eligible applicants to be fairly evaluated. Acceptance of an application with significant missing or inconsistent information provides an applicant with the competitive advantage of adjusting deliverables after knowing what the competition has submitted. Staff believes that in these instances the inconsistencies and missing information were more than mere oversight. The applicants' inability to cure the matter in the appeal response clearly indicates that the omissions were not accidental or oversight and provides evidence that the applications were incomplete when they were submitted.

The first four appeals are the subject of such significant missing and inconsistent information. The applications were terminated due to a violation of Section 49.9(a)(10) of the QAP which states that an application is ineligible for an allocation of housing tax credits if a submitted application has an entire volume of the application missing, has excessive omissions of documentation from the threshold criteria or uniform

application documentation, or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department as determined by the Department.

If an application is determined ineligible pursuant to this section, the application will be terminated without being processed as an administrative deficiency. To an extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the determination letter to the applicant.

The initial staff review of each of these four applications revealed the application to be ineligible for consideration because of the omissions, paired with the clarifications or corrections required, rendered the applications so unclear, disjointed or incomplete that a thorough review could not be reasonably performed.

The first appeal we have is Mexia Gardens, it's TDHCA number 09107. This application had numerous deficiencies. At this time, all the outstanding deficiencies have been resolved with the exception of one.

Section 49.9(h)(8)(B) of the 2009 QAP requires the installation of a sign on a development site prior to the submission of the application. The time, date and location of the public hearing is required to be published

on the sign. The applicant did not correct the information on the sign until March 18, 2009, which was after the February 27, 2009, deadline. Therefore, the applicant did not meet the requirements of the QAP.

Staff recommends the Board deny the appeal because the applicant did not meet the requirements of the QAP.

MR. CONINE: I have a couple of witness affirmation forms on this one. Frank Pollacia.

MR. POLLACIA: Thank you. My name is Frank Pollacia and I'm an architect from Plano, Texas. Mr. Chairman, lady and gentlemen of the Board, thank you for this opportunity to speak to you. I would like to address the deficiency item of the notification sign for public hearing for the project 09107, Mexia Gardens and the deficiency of the deletion of the text for the date and time of the meeting.

There are three points I would like to bring to the Board in regard to the review of this deficiency. The first point is in regard to the City of Mexia. This is a city and a community that has never been served by a tax credit program. The project in Mexia began after the 2007 July Board meeting and TAAP conference. From that conference in the rural rental housing segment there was a discussion of nearly 700 communities in Texas that had

never been reached or served by tax credit developments. From these discussions, it became clear that in order to reach these communities, it would take extraordinary circumstances, circumstances that would be beyond the price of the land, beyond the participation of the city, beyond the income levels of the population, and would take the additional 130 percent boost in tax credits for hard to reach areas. This project in Mexia, after two years of effort, reached this point of extraordinary circumstances that it would take to make a viable tax credit program.

The second point I would like to make about this development in Mexia, or the Mexia Gardens project, is that it is non-competitive in the region. By non-competitive, it is the only application in this region, it is the only rural application in this region. In fact, that statement is correct for the past year, there were no other rural applications in this region. Therefore, should the Board see to approve this application and oversee what we've done by our error, this would actually be the first time that a rural application had been awarded in this development in this area for nearly two years.

The third point is in regard to public notification. As true with many small rural towns in Texas, the information about the events of developments

travels quickly. This site is located near public schools in Mexia and it would be difficult to imagine that no one has heard of this development. Nonetheless, the project notifications for public meeting of the City of Mexia for the resolution were published in the newspaper, the public meeting was held and the resolution passed with a unanimous vote. All in the audience, all in attendance were pleased to see development come to Mexia. Please refer to the documents in your packet, please note that there is a letter from the City of Mexia signed by the mayor and all of the members of the city council.

In conclusion, we request that these three points be included with your evaluation of this appeal. A city and community that has never been served or reached with a tax credit development, an entire region for which this is the only application, and the use of the local public meetings and public notifications at the local level to serve as forgiveness for the error of a few short days in fault for the notification of the sign. Thank you very much.

MR. CONINE: Thank you. Cynthia Bast.

MS. BAST: Good afternoon, Cynthia Bast of Locke Lord representing the applicant for this appeal.

You may recall hearing a little bit about this project at the last -- it wasn't a Board meeting, it was a

Board non-meeting, I guess.

MR. CONINE: Gathering.

MS. BAST: A Board assembly for public testimony. At that time you received a packet of information that included the newspaper article about this particular project, and letters signed by all of the city council members of the City of Mexia supporting this project.

This is an application for new construction in Mexia, and as Mr. Pollacia noted, the only application in all of Rural Region 8. Although there were deficiencies in the application, they have all been resolved except for the issue of this public notice sign, and that's an issue that requires your judgment.

According to the QAP, the applicant was supposed to install a sign on the property that contained certain information about the development and about the proposed TDHCA public hearing for the particular region in which the property is located. The sign was installed timely but the applicant made an error because they didn't realize that they needed to add the public hearing because the public hearing was not in Mexia, the public hearing was, I believe, in the Dallas area, and so they didn't think that they had to put the notice of the public hearing on the sign especially since there was going to be

a public hearing in front of the city council in the City of Mexia. And so that was their error. When they found out they made the error, they did change the sign.

Now, as you know, the intent behind the signage requirement in the QAP is to make sure that all of the constituents have proper opportunity to display their interest in a particular project and to comment upon it, and in fact, the QAP allows certain written notices in lieu of a public sign when a public sign cannot, for some reason, be installed. So the QAP acknowledges that there is more than one way to notify the public of a coming tax credit property.

So in Mexia there was a public hearing before the city council at which the city council passed a resolution of support for this project. There has been an article on the front page of the local newspaper, and that was on March 28. So with that local public hearing, the newspaper coverage, the applicant really does believe that the citizens of Mexia have been duly notified about this proposed development, have had opportunity to make public comment. In fact, with those various communications, there has been no opposition whatsoever voiced from any constituents, and as you know, the entire city council has signed a letter of support.

So because of the unique situation here with

this being the only rural application in Rural Region 8, and if this application is terminated, there will be no tax credits for Rural Region 8 this year, we hope that you grant this appeal in your discretion. Thank you.

MR. CONINE: That's the last witness affirmation form on this particular issue.

SPEAKER FROM AUDIENCE: Mr. Chairman, can I add some information? I need to fill out an affirmation form.

MR. CONINE: Yes, you need to fill out a witness affirmation form, but go ahead.

MR. BARBOLA: I just want to correct something that was said. My name is Patrick Barbola, Fountainhead Companies. I'm sure it was an oversight and they didn't mean to say what they did, but I wanted to correct the Board. There is a tax credit property in Mexia, it was constructed five or six years ago. I know it's there, it's currently operating because I own it.

In addition, under the general deal for Region 8 Rural, this is not the only rural application. It may be listed in at-risk, but there are six properties in rural at-risk in Region 8. I just wanted to correct that information for the Board. Thank you.

MR. CONINE: Thank you.

MS. GAMBLE: Mr. Chairman, I also wanted to point out that this is a specific rule that is in the QAP,

so if you were to grant this appeal, it would require that you waive that rule.

MR. GERBER: Mr. Chairman, Board members, if I could just interject. This has been a challenging application, as Shae mentioned at the beginning. We've worked hard in a tough environment to try to be as lenient as we can and to try to give people time to clear up deficiencies, but there have been some that we have just not been able to get across.

This has been a very difficult one, and the rules about the signage and public notification, we understand about innocent errors, but they do question just the readiness of this project to proceed, and this has been a difficult one to move along. And so staff stands by its recommendation of asking that this be denied because it does not seem, in our opinion, that this project is quite ready.

MR. CONINE: Any other questions of staff?

(No response.)

MR. CONINE: I'll entertain a motion.

DR. MUNOZ: I move staff's recommendation

MR. CONINE: Dr. Munoz moves staff's recommendation. Do I hear a second?

MR. GANN: I'll second.

MR. CONINE: Second by Mr. Gann. 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. Willow Meadow Place.

MS. GAMBLE: Willow Meadow Place was another one of the applications that was terminated for failure to meet threshold requirements. We terminated the application, they appealed to the executive director, and at the time that they appealed to the executive director, they still had the following significant items outstanding.

As unit 4 plans the applicant submitted -- I'll say what appears to be but it is a copy of the unit layouts from a rental brochure. These do not meet the requirements of the QAP as they do not include legible dimensions and scale. Further, the depictions do not include the A-3 unit, the 633 square foot units; the B-1 units on the depictions were shown as two-bedroom, 1-1/2 bathroom units when they were just one bathroom. And then the depictions that they sent for the B-3 units and the C-

1 units were cut off so they were incomplete, we really couldn't tell what they were.

The applicant didn't submit a letter of zoning from the local political subdivision stating the zoning status of the development, the applicant didn't submit a certificate of name reservation for the general partner, the applicant didn't submit financial statements or statements of no assets for the general partner, and the applicant did not submit an executed settlement statement or recent audited financials for the seller.

They have since provided -- I believe that after -- with their Board appeal they did provide the rest of the documents. It was much later than the deadline for them to have submitted that stuff, though, and we think it was, again, evidence that it was just an application, a development that just wasn't ready. Staff recommends that you deny this appeal to be consistent with other decisions made in this application cycle.

MR. CONINE: I have a witness affirmation form from Barry Palmer, and he's got some designated time so he's got five minutes.

MR. PALMER: Good afternoon. I'm Barry Palmer with the Coats Rose Law Firm on behalf of the applicant.

As Ms. Gamble stated, the standard for termination of an application is either missing an entire

volume, and excessive omissions of documentation, or the application is so unclear, disjointed or incomplete that a thorough review cannot be reasonably completed. In this case, we had five deficiencies which Ms. Gamble outlined which were all very minor that have all been corrected.

One, the floor plans. The floor plans were submitted but they didn't have dimensions. The project is a rehab where there's no changes to the dimensions of the project. The developer mistakenly thought he could just submit the floor plans that he had, but when he learned that he needed to get revised floor plans, we have since submitted revised floor plans with dimensions.

The second deficiency was no zoning letter. Now, this project is in Houston and so there is no zoning in Houston, and in the application the applicant thought that it would be sufficient to submit an affidavit of no zoning which he put in the application. He was later told he needed something from the city saying there is no zoning, so we obtained that, we submitted a letter saying there's no zoning in Houston. But clearly, this is not the type of thing that would prevent a thorough review of the application.

The third thing was the name reservation of the general partner. Now, we had made a name reservation for the limited partnership which has a very similar name to

the general partner, and when he called the Secretary of State to reserve the general partner's name, he was told by the Secretary of State that you don't need to reserve it because you've already reserved the limited partner's name which is so similar nobody could use that name without your permission, and so they didn't submit it. Well, they learned through the deficiency process that they needed to have the name reservation and so they got that and then that has been submitted.

The fourth thing was the statement of no assets for the general partner. Like many tax credit transactions, this is a newly formed entity that has no assets and you're required under the QAP to either submit financial statements or a statement that you have no assets. They had included the statement of no assets in the paper form of the application, but somehow in the transmission to the electronic form -- and this is the first year that we've had the completely electronic application so you're seeing more deficiencies because of that because in the conversion sometimes things are lost -- so that was not in the electronic version but it's since been provided, merely a letter saying that this newly formed entity has no assets, again, not something that would prevent a thorough review of the application.

And the final thing was the seller's closing

statement showing the acquisition of the property. Because this is an identity of interest transaction, you're required to provide a closing statement showing the acquisition of the property and how much you paid for it.

But this property was acquired as part of a portfolio acquisition where there were five properties acquired together and it was one closing statement for the whole transaction and the developer thought that that couldn't be related to the acquisition price of this property, so he didn't include it in the original application. But that was easily fixed and it has now been provided.

So all five of these deficiencies were, in our view, very minor deficiencies that would in no way prevent a thorough review of the application. They have all since been provided. Now, to terminate an application, that is a drastic remedy or drastic action and should be reserved for only the most egregious situations where there are missing volumes or serious, serious deficiencies, not for five minor deficiencies like this. So we would ask the Board to reinstate this application. Thank you.

MR. CONINE: Okay, I think that's all of them I have for Willow Meadow Place.

MR. GERBER: Shae and Barry, do we have an executed settlement statement or the seller's most recent audited financials?

MS. GAMBLE: We do now.

MR. GERBER: We do have it now? When did we get it?

MS. GAMBLE: We got that -- it's a lot of documents.

MR. CONINE: Well, the question would be when you asked for it and then when you got it.

MS. GAMBLE: Well, we asked for when we -- well, actually that kind of leads right into what I was going to say when I stood up. We originally terminated this application or sent the termination letter on May 8, 2009, and at that time when we sent the termination letter, as you saw in your book, you've heard about the five that we talked about here today, in the original termination letter there were 21 deficiencies, and if you can define minor deficiency, but staff believes that the deficiencies are relevant to what we're talking about here today.

Unit floor plans, it's very basic that you have to have your unit floor plans, and it's also very obvious that what they submitted did not meet the requirements of the QAP. A title policy or a title commitment, for that matter, just basic documents that are supposed to be in the application that just weren't submitted, and organizational documents. If you know the QAP tells you

that you have to have a name reservation for the general partner, then someone at Secretary of State's office tells you you don't need that, I think your answer should be: Yes, I do. They may sound minor but they're not minor omissions.

MR. CONINE: Ms. Ray.

MS. RAY: Mr. Chairman, may I ask staff a question?

MR. CONINE: Sure.

MS. RAY: There were originally 21 deficiencies.

MS. GAMBLE: Yes, ma'am.

MS. RAY: And you sent them out a deficiency letter and asked them to respond by X date?

MS. GAMBLE: No, ma'am. We sent them a termination letter.

MS. RAY: You didn't send them a deficiency letter.

MS. GAMBLE: No, ma'am, because pursuant to this section of the QAP, if the Department determines that an application as submitted has these significant omissions --

MS. RAY: And there were 21.

MS. GAMBLE: Exactly. Then we terminate the application without it being processed.

MS. RAY: So you terminated the application on what date?

MS. GAMBLE: On May 8.

MS. RAY: May 8, and at what time did they respond with these, quote, deficiencies?

MS. GAMBLE: Their response was due within seven days, it would have been the same time as a deficiency notice, the response was due May 15.

MS. RAY: Did they get all of the information in by May 15?

MS. GAMBLE: No, they did not.

MS. RAY: Thank you, that's all the information I needed.

MR. HAMBY: Can I add something to that before Mr. Palmer? I think it's important if you look at the letter that we sent or that actually Robbye sent, we actually tell the people that we're sending these massive, that the executive director, because this is the first time we've done this electronically, et cetera, has allowed, has reinstated people if they send in everything off of this deficiency letter. They still didn't do it, and I think that's an important part. We actually told them in this draft letter if you send in everything, Mr. Gerber has actually allowed people to come back in. And so I think that's very telling, we still didn't get

everything back in whenever we sent them that note saying that there was a chance that they could be reinstated.

MR. CONINE: Mr. Palmer, did you want to say something?

MR. PALMER: Yes. I just wanted to be sure that the Board understood that 21 deficiencies in the initial run-through, that is not more than average. Most applications that I see get initial deficiency letters in the administrative deficiency process that have anywhere from 20 to 30 items listed. So if you're going to disqualify people based on the number of deficiencies if it's over 20, half the applications that you have pending right now would be disqualified.

And in fact, the termination letter said it wasn't the number of deficiencies, it was the seriousness of the things that were omitted on that list of five things, and you've heard the five things that were on that list of omissions, and for you to take the step to terminate an application, the standard in the QAP is was it so incomplete as to prevent a review of the application and can you look at that list of five things that weren't there originally but that are there now and would any of them prevent a thorough review of the application.

MR. CONINE: Can you respond to the timeliness of the response?

MR. PALMER: When they originally received the termination notice, they responded to that 21-point list and the five things that stayed on the list, there was some misunderstanding on their part on those things. They attempted to respond. Like, for example, on the floor plans they thought that they hadn't submitted the floor plans or that you hadn't gotten the floor plans in the original application, and so they resubmitted the same floor plans that they had submitted in the application.

MR. CONINE: But you're not addressing the timeliness as to when they did that.

MR. PALMER: It was in response to the second --

MR. CONINE: It wasn't by May 15.

MR. PALMER: No.

MR. CONINE: Was it by June 1, was it by June 15? Was it dribbles and drabs over time?

MR. PALMER: No. All five of those items were responded to at the same time and that response package -- do you know when it went in? -- June 3.

MR. CONINE: All right, thank you. Any other discussion or questions?

MR. GERBER: Sharon, is it fair to say that now two weeks from the end of an eight-month process we still have questions about the size of, dimensions of various

types of units, we don't have a clear picture of exactly what is intended to be built?

MS. GAMBLE: We do have it now as of June 3.

MR. GERBER: As of June 3 we have it.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation in this case, and I would also like to speak to -- well, when you call for discussion.

MR. CONINE: All right. Motion to accept staff recommendation to deny. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Discussion?

MS. RAY: Mr. Chairman and to the staff and to the general audience, it certainly is not at this time nor has it been the Board's position to be flippant or frivolous about the process. It is our position that the Tax Credit Program is a highly competitive process. We certainly understand that there are opportunities for mistakes and we have been very lenient in many, many cases, but we very strongly believe that because of the competitive nature of the Tax Credit Program, it is better to deal with issues on the front end than it is to deal with more complex issues as we get into the process and someone else has been knocked out of the process, and it

certainly is not because of five deficiencies or necessarily 21 deficiencies, it is adherence to the process in the QAP.

MR. CONINE: There's a motion on the floor to approve staff's recommendation for denial. 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

MS. GAMBLE: Mr. Chair, the next appeal is another termination for failure to meet threshold requirements. At the time that the applicant to the executive director, the Village of Kaufman, TDHCA number 09308 still had the following significant items outstanding: the financing narrative as required by Section 49.9(h)(6) of the QAP was not provided, certification of principal form was not provided for the Housing Services, Inc.; in response to the items regarding appropriate documentation to support the inter-generational housing type, the applicant selected both family and elderly as the housing type which is not an

allowable selection, and none of inter-generational documentation was submitted.

And I'll just explain that just a little bit. With this development it's one development that has an elderly component and a family component doesn't meet the requirements of inter-generational and so they checked both family and elderly.

MR. CONINE: Is it new construction, Shae?

MS. GAMBLE: No, it's not.

MR. CONINE: It's a rehab deal.

MS. GAMBLE: The square footage on the unit floor plans was still inconsistent with the rent schedule and the Part F building configuration form; a title commitment for the development site showing the name of a member of the development owner or the developer as the proposed insured and showing the seller as the current owner of the property was not provided; the certificate of name reservation or application for name reservation from the Texas Secretary of State for the developer was not provided.

The applicant did submit further documentation after receiving the executive director's denial of his appeal, and while the applicant disagrees with our assessment of his application, staff stands by its assessment. In addition, the application was submitted as

inter-generational but it doesn't meet the requirements of an inter-generational development. Staff recommends the board deny the appeal to be consistent with other decisions within this application cycle.

MR. CONINE: We have a witness affirmation form from Owen Metz.

MR. METZ: Thank you, Chairman and Board. I could take Mr. Palmer's response and have him speak for me in kind of the same thing, but I think this goes a little beyond that in that it's an extremely unique development.

One thing Shae didn't mention is that it's a scattered site rural development, it's governed by one, project based Section 8 half contract that's been in place since 1980. That's how this site was originally developed and that's who it's continued to be operating and how our proposed application contemplated the development.

One site is fully elderly, one site is fully family, there's a community building on one of the sites that serves both sites. Our application didn't propose to build another clubhouse and have separate leasing staff because it's just not feasible for a rural development that's only 68 units, so we really were limited and were a little bit unsure on how to even submit the application, and that's why I think beyond the omissions and beyond the substantially incompleteness of the application, I think

it boils down to just a misunderstanding of how to best look at this development and how to fit it in a box where I guess it doesn't fit in a box.

Discussions with staff has made it clear that they view it almost a Fair Housing type issue where you're renting to two different housing types, two different sets of units and somehow that that breaks Fair Housing. HUD has been operating the property and providing rental subsidy for the past 28 years, I talked to HUD counsel and they just don't see how this breaks Fair Housing, and we're just unsure to how to really move forward on this. We're willing to work with staff and create a separate rental policy if we really need to, we can build a separate clubhouse on the other sites, but it just seems a little unfeasible and impractical for this development.

So I guess I'm just asking the Board here to consider the uniqueness of the transaction and allow our application to at least have a chance and work with staff to figure out a solution on how to best preserve this housing and give it a needed renovation. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MS. GAMBLE: This was one -- just to give more information -- this was one that when the termination letter went out had 27 deficiencies -- again, the number

not being important but the severity of the information that was missing being the important thing, coupled with the fact that as with the last application, we did send a termination letter, they did have an opportunity to fix everything that was listed in the termination letter within the seven days and they did not do that.

MR. CONINE: Thank you. Do I hear a motion, more discussion?

DR. MUNOZ: When was the first letter?

MS. GAMBLE: May 8, and it was due on May 15.

DR. MUNOZ: And when did they submit?

MS. GAMBLE: They submitted on May 14 but their submission was incomplete.

DR. MUNOZ: And when was it due?

MS. GAMBLE: The 15th.

DR. MUNOZ: And the letter that I'm looking at on the 14th was incomplete with every question being responded to in italics?

MS. GAMBLE: That's correct.

DR. MUNOZ: Was incomplete?

MS. GAMBLE: Was incomplete. That's a lot of writing, I know. I'm going to try to find the executive director's response. The items that were still outstanding were the financing narrative certification of principal forms -- I believe this is the nonprofit that's

involved. Again, a workable explanation of the type of development that it's going to be, if it's going to be inter-generational, it has to meet inter-generational, if it's going to be family, it has to meet family, if it's going to be elderly, it has to meet elderly, those sorts of things. The title commitment, the certificate of name reservations for the developer, still some significant omissions even after their May 15 response.

And again, in the termination letter, it says that if you submit the information the executive director may let you back in and we still didn't get the information.

DR. MUNOZ: Okay.

MR. CONINE: I'll entertain a motion.

MR. GANN: I move that we accept staff's recommendation.

MR. CONINE: Staff recommendation motion made by Mr. Gann. Any second?

MS. RAY: Second.

MR. CONINE: 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. GANN: I did have one question. Rural communities are a different animal, and how would he have answered that question and got it right?

MS. GAMBLE: Well, as far as he did mention that he didn't fit into any of the boxes and there's a reason for that, and then the main reason -- when he initially applied, he checked inter-generational as the development type, and that means that you can have within one development you can have elderly units and you can have family units and you can have them in separate facilities but there's certain accommodations that you have to have in order for it to meet inter-generational. It has to have separate leasing offices, there have to be activities that actually sort of try to involve the groups with each other so that it's not --

MR. GANN: So someday I want to probably address that. We don't have a mechanism for small communities to have elderly mixed basically with family.

MS. GAMBLE: Well, we do.

MR. GANN: But the economics of a small unit doesn't qualify.

MS. GAMBLE: Well, literally that's what inter-

generational is and that's part of the reason that we have it is so that you can do a mixed development of that type.

MR. GANN: I don't want to delay that but that's a point.

MR. CONINE: There's a set of requirements that are in the QAP now. As we do the QAP for next year, you can take a look a hard look at that and see if there needs to be a carve-out maybe for smaller communities or whatever, but it's there.

MR. GANN: I think it's a good thing. Maybe we can address that later.

MR. CONINE: Sure, absolutely.

Casa Messina -- no, wait a minute.

MS. GAMBLE: The next two, Casa Messina and Casa Alton are pulled from the agenda. They did not appeal timely -- actually did they did not appeal.

MR. CONINE: Well, they certainly didn't do it timely.

MS. GAMBLE: Exactly. So then the next one will be Windfern Point Apartments.

This application was terminated under Section 49.6(a) of the QAP. During the review of the application., staff discovered that the development was located within the 100-year flood plain. Staff requested confirmation from the development engineer that the development was

indeed in the 100-year flood plain. While the development was previously financed with an FHA loan from HUD and the applicant has applied for funding from the City of Houston's HOME program, the development does not currently have federal funding assistance as required by the QAP, and it is within the 100-year flood plain.

In addition, this application was terminated for material non-compliance under Section 49.5(b)(2) of the QAP. During the review process of the application, the Department performed a compliance status evaluation. Housing tax credit properties with a score of 30 or higher are considered to be in material non-compliance. This review determined that Creekwood Apartments, TDHCA file number 94023 currently has a score of 36 and Garden Gate Apartments, housing tax credit file number 93040 has a score of 32.

At this time, Creekwood and Garden Gate apartments have no uncorrected issues of non-compliance, however, because of the number and types of violations associated with these properties, even though all of the issues are corrected, the cumulative score for each of these properties exceeds 30 points and these are properties that are in this applicant's portfolio. Pursuant to Section 49.5(b)(2) of the QAP, the Department is required to disqualify an application for material non-

compliance, and staff recommends the Board deny the appeal.

MR. CONINE: I've got some witness affirmation forms here. Doug Rippetto. Cynthia Bast is going to go first. Is anybody yielding to you?

MS. BAST: No, sir. Cynthia Bast of Locke Lord. Before you hear the testimony on the actual circumstances of the appeals for termination based on material non-compliance for Windfern and Chaminade, I did want to address one legal issue that I do think is relevant for your consideration.

In the staff writeup it does indicate that the Board cannot waive the material non-compliance rules, but I do want to make you aware of this one distinction and that is this: the governing statute for TDHCA says that the Department shall debar a person for participating in the Tax Credit Program if that person is in material non-compliance. That is all the law requires.

To implement the law, TDHCA's staff and Board creates the rules of the QAP, they create procedures and deadlines. The QAP defines, for instance, who is a person, it defines the date on which the non-compliance will be reviewed. So it is the rules and not the law that established the actual timing for when the compliance record is reviewed. And as you know, rules of the QAP can

be waived; of course, law cannot be.

So in that context, the compliance monitoring function is ongoing, compliance scores can change throughout the year as inspections occur, as deficiencies are noted, as responses are submitted, as non-compliance points burn off over a period of time. So theoretically, a housing tax credit property could be in material non-compliance on May 1 and not in material non-compliance on May 2. But if the only measurement occurs on May 1, then under the rules of the QAP you would debar that participation.

Now, it is understandable and necessary that the staff has these deadlines to properly administer the program, however, the QAP does allow the Board to waive certain parts of the QAP rules for good cause shown, and for instance, in the prior example, if someone was in material non-compliance on May 1 but not on May 2, the Board may think that there is good cause to waive the rule to allow that application to go forward, and they'd be waiving the rule with regard to the deadline for material non-compliance but they would still be consistent with the law because the board would not be awarding tax credits to a project that was in material non-compliance.

So in summary, there is an important distinction here between waiving the law -- which, of

course, cannot be done -- and waiving certain rules which can be done and can be consistent with the law. I wanted to give you that background before you heard the specific information on these appeals, and I thank you.

MR. CONINE: Doug Rippeto.

MR. RIPPETO: Thank you, Board, for hearing us today. My name is J. Rippeto, Juniper Investment Group. We're the proposed developer of Windfern and Creekwood and Garden Gate are also in our existing portfolio.

The first issue, the flood plain issue, if I can just address them in this order, the flood plain issue and then the compliance issue. Windfern is approximately 50 percent in X, 50 percent in AE which is the 100-year flood plain. The property is also directly in the tract of Harris County Flood District's controlled White Oak Bayou Project. It is a project that is nearly complete, detention ponds on either side of the project, one is complete, one is scheduled to be completed in the next 30 days.

According to Harris County Flood Control District, this will be one of 1,500 properties brought out of AE when in fact, the next FRM is issued. They're on record basically highlighting where that's going to be and when this map is redrawn they'll be compelled at the completion of the White Oak Bayou project, the section of

which Windfern is in is nearly complete. This will be rezoned or redrawn out of AE and into X, into the 500-year plain.

In the interim, the developer is willing to provide -- our expectation is that that will all occur during the renovation period and that that should be done by the time that Windfern is put back into service -- it is an existing property, it's an existing 200-unit property. I'll also say that it is in unincorporated Harris County. It is obviously in Houston metro but we've applied under the Harris County CDBG program for federal funds.

The developer will provide federal flood insurance on the five buildings that are affected, and we'll also figure out a method, the most practical method, whether it's through abatement or directly buying tenant insurance for the downstairs occupants in those buildings that are affected until the situation is confirmed and the new FRM is published and these buildings are confirmed by FEMA to be out of AE and into X.

As far as the material non-compliance of Creekwood and Garden Gate, frankly, this is our first application for credits, we are really in the business, both conventional and affordable business, we have bought properties in the past that were through their credit

receipt period but still in the first 15 years, typically in years 11 through 15. We have usually renovated and improved these projects. They have oftentimes been in significant disrepair and had problems.

Creekwood was bought in 2004, it was 50 percent occupied, in terrible condition, we put close to a million dollars into it, it has been stabilized and doing well since. Oftentimes when we do this, we inherit some legacy non-compliance points. When there's transfer, there's oftentimes points that are, if you will, amortizing or phasing out because of the way the declining balance system works. At Creekwood we only have one legacy point, at Garden Gate, with our existing score of 32, we have eleven legacy points. That project was only acquired in the summer of '08.

At Creekwood there is one significant violation that exists, it's ten points, happened at the first of '07, we felt like we responded to it promptly and completely in March of '07. Compliance officers changed, we didn't follow up as diligently as we should, and became aware actually through this process that this was an unclosed violation. We attempted to address it right away but obviously, and as Ms. Gamble said, it is now a closed situation but it remained on our records two plus years afterwards. So we would just like some consideration.

I would just close by saying Windfern operates under a Harris County LURA, it's a bond finance project, the bonds are in default, it's likely if this application or if this appeal is unsuccessful, it's likely to, through foreclosure, be removed from the affordable housing pool.

It does have local support, and that's kind of really all I have to say about the two matters. I appreciate your time and your understanding.

Bill Choice with the management company is with me as well to answer any specific questions you might have about the mechanics of answer on the non-compliance issues

MR. CONINE: I was going to call on him next if he wants to come up.

MR. CHOICE: I was going to yield.

MR. CONINE: That's all the witness affirmation forms I have on Windfern at this point. Counselor

MR. HAMBY: I was going to just address Ms. Bast's point if you would like me to.

MR. CONINE: Sure. I love it when you guys spar a little bit, it makes it entertaining.

MR. HAMBY: We don't spar, we mildly disagree. Ms. Bast is correct, you have that ability given to you by statute to move things that are non-statutory that you have written in your QAP. As I always remind you whenever we start talking about moving dates in the QAP, the QAP

had several roundtables the QAP had significant comment. If you remember back to your binder last November or last September when you approved the final QAP, we gave you a reasoned response of hundreds of comments or lots of comments where everybody had an opportunity to discuss this issue. Then you sent it over to the Governor's Office where everybody gets to talk to the governor about what's right and wrong with the QAP, and he signed it, and it becomes what we try to pass out, as Ms. Ray said, the very competitive resources that come from there.

The compliance rules that you pass, virtually at the same time, frequently, in 60.122 is where we talk about this previous participation. There are two elements of previous participation from the compliance rule standpoint, not from the QAP standpoint. One of them allows that whenever you have previous participation that you, the Board, has decided that it can come back to you to decide whether or not you should or should not waive, or not waive but give them some sort of discretion. That's also a statutory right that's provided to you which you reserved in Section (f) of that same section.

Section (d), however, what this Board has passed says that if there is major non-compliance discovered during the previous participation review, the application will be terminated, period -- doesn't say

we'll reconsider it, we'll look for a different way to approach it, it says the application will be terminated -- that's any application in any program, not just this one, it's across the board.

What Ms. Bast is asking you to do is to set aside all that public comment, your vote on it, the governor's vote on it, the staff's work on it and say we're not going to be worried about those deadlines and anybody who, during the time that you start applying until we make award that comes into major non-compliance -- or comes out of major non-compliance can race to you and say please reconsider. That's a very onerous process to put on staff. It's a very onerous process to put on yourselves because even if you do it, you have to come up with a good cause for granting somebody who is in non-compliance.

Waiving the deadline will not put them back into the program. If you can decide there's a reason they should come back into the program if they're not in major non-compliance, then you have to state that on the record and that's how they get back. So what she's asking you to do is a pretty significant change, not only does it ignore all the public comment, the governor's viewpoint and your viewpoint and everything we did with the QAP, all those deadlines that we turned down when the state reps call us

and say I didn't know that was the deadline and we said no, when cities call us, all those people, and saying we're going to ignore that deadline for somebody who at some point was in major non-compliance -- at May 1 is when that point was but they were clearly in major non-compliance, so that's a pretty big step to take. But she is technically correct, you have the right to do that.

MR. CONINE: Any other questions for Mr. Hamby?

MS. GAMBLE: Mr. Chair, I really want to point out again that the non-compliance is just one issue upon which this application was terminated, there's also the flood plain issue and the QAP does not have an allowance for mitigation of a property that's in the flood plain, the QAP simply says that if it's in the flood plain and it doesn't meet the Department's requirements, then we can't award it.

MR. CONINE: You might want to jot that down for the future QAP. Any other discussion?

(No response.)

MR. CONINE: Do I hear a motion?

MR. GANN: Mr. Chairman, I move that we accept staff's recommendation.

MR. CONINE: Motion by Mr. Gann. Do I hear a second?

MS. RAY: Second.

MR. CONINE: 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. Chaminade.

MS. GAMBLE: The next appeal is for Chaminade Apartments, TDHCA number 09288. This application was terminated for material non-compliance under Section 49.9(b)(2) of the QAP. During the review process of the application, the Department performed a compliance status evaluation. This review determined that the Center Park Apartments, a HOME rental development, was in material non-compliance on May 1, 2009.

Although the non-compliance issues have been corrected and the property is no longer in material non-compliance, staff terminated the application pursuant to Section 49.5(b)(2) of the QAP because the property was in material non-compliance on May 1, 2009. Pursuant to this section of the QAP, the Department is required to disqualify an application for material non-compliance. Staff recommends the Board deny the appeal.

MR. CONINE: I have three witness affirmation forms. Ms. Bast -- somebody else is going first. Mr. Radle.

MR. RADLE: Thank you. My name is Rod Radle, I'm the executive director of San Antonio Alternative Housing Corporation. We are a nonprofit located in San Antonio, we operate in San Antonio and in Austin, Texas.

As far as housing preservation, our main concentration is working on older properties and restoring them with major renovation. We are a recipient of the McArthur Preservation Award and are doing those projects as we speak.

Chaminade Apartments which is the application, the 9% round that is being disqualified or discussed for disqualification, is a high ranking application. It ranked second in the state set-aside, has community support, and staff has recommended it for funding.

The project in question, Center Park Apartments, we acquired eight years ago under bond financing, we had HOME funds from TDHCA and we had a million and a half dollars in rental rehab from the City of San Antonio. A lot of community support. Ms. Rae Hood from the community worked with us, and in fact, we've named the community center after her, and she has volunteered there over the past years.

We discovered in August -- and I'd like to also thank counsel because I think he has set the stage for us here -- good cause. We never want to be in material non-compliance but there are some things that come up that we will address when they come up but we have no way of knowing they're going to come up. In this case, Center Park Apartments has an underground gas system which supplies all the gas for heating and all the gas for cooking and all the hot water on the property. We discovered in August of 2008 that there were several leaks in the system.

When we took over the property eight years ago, we tested it, the system was fine, we even did some access and did cuts across the pipe to see if it was in good shape and it was at the time. Since then it has deteriorated and a determination was made that we had to turn off the gas and go ahead and replace the entire system. We worked with the City of San Antonio, we got them to go ahead and free up over \$200,000 in our own HOME income from our other programs to go to this project which they approved.

We ran a temporary above-ground system to get gas established to all the residents immediately within two weeks of this coming up. In the interim, we went ahead and provided microwave ovens, hot plates and

transportation to another one of our properties on the east side of San Antonio for showers until we got the temporary system in place.

The full replacement of the system, after it was designed and approved by the city, started on February 15. We ran over a half mile of trenching and piping on the entire property, replacing the entire system during the next seven weeks. During that seven-week period, though, we were notified by TDHCA and HUD -- because it has a HUD-insured loan -- that they would push to do a physical inspection during this replacement period. We knew it was going to be an impossible task to go ahead and meet the guidelines for the inspection with this major undertaking.

HUD went ahead and gave us a five-week extension from the first part of November to December 15, TDHCA chose not to, they said they would be coming and that we would have 90 days to provide the information back to them after these things had been remediated.

To make a long story short, we did not pass the inspection, the inspection took place from TDHCA's inspector on the 7th of November. We received notification that we failed nine weeks later, dated January 20, we received that letter on the 26th. Staff worked diligently to get all the documentation which was

actually too much to send through the email and so it had to be overnighted up to TDHCA staff -- and they were very cooperative working with us, that's not in question.

The inspection that took place from HUD, the same inspector walked the property five weeks later and passed us. We did the remediation. There was a lot of remediation that had to be done on that property, and we admit that, because of what was going on. We were focused on one thing during that three-month period and that was getting gas back on to the property. Those remediations did take place, we did pass the HUD inspection that took place in November, we did supply the material to TDHCA documenting -- and that took actually more time than the gas replacement, the documentation but we got it up here

We received a call on the 30th of April stating that there was additional items needed. A letter was sent out to us on May 1, we provided that information back to TDHCA and we were cleared on the 13th.

I agree, you have to have rules, rules are needed or we'd all go crazy, especially in the 9% tax credit round, I understand that. But also to have an orderly manner in regards to any project where you have a situation like this come up, there has to be the capacity to go ahead and say this is extenuating circumstances and the owner and management company acted in a prompt and

judicious fashion to correct that situation. I think that is the situation here and we ask you to please take a hard look at this waiver so that we can move forward on the Chaminade property. If you have any questions, I'll be glad to address them.

MR. CONINE: Any questions of the witness? For the Board's information, he did have someone allowing him to speak a little further than the three minutes.

Cynthia -- excuse me, Dr. Munoz.

DR. MUNOZ: So this massive gas project which was the principal area of non-compliance has been fully reconciled.

MR. RADLE: Well, let me back up. It's one of the items. What happens when you have a situation on the exterior, we had sidewalks cut open, we had asphalt cut up and everything. Yes, everything has been corrected, and we had to hire a secondary contractor to come in from the 7th of November until the middle of December to do all the modifications and corrections that had to take place to get into compliance. But yes, the gas repairs were totally done and it's a 100 percent new system.

MR. CONINE: And all the sidewalks are replaced and all the landscape is put back in.

MR. RADLE: Yes. One of the big things we had was drainage because so much of the dirt had been shifted

around, we had to replace and get the proper drainage from all the building units, all of that has been addressed and corrected.

MR. CONINE: Thank you.

MR. RADLE: Thank you very much.

MR. CONINE: Patricia, why don't we have a provision in our compliance for situations like this?

MS. MURPHY: Hi, Patricia Murphy, chief of Compliance and Asset Oversight.

We generally do not reschedule inspections and we do require continuous compliance throughout the affordability period.

MR. CONINE: Well, time out. That last statement is impossible to do given the nature of owning and running an apartment complex for 15 years. So kind of go from there.

MS. MURPHY: Okay. The uniform physical condition standards inspection that was conducted in November of 2008 identified deficiencies not related to the major system failure that he's described to you. It included graffiti, holes in bedroom doors, floor covering damage, broken windows, water stains, inoperable GFIs, holes in walls, leaky faucets, tripping hazards and infestation. Similar conditions were identified during the 2007 UPCS inspection that was conducted.

In addition, this property has non-compliance issues related to ineligible households, failure to maintain documentation, rents over the program's limits and failure to do inspections.

MR. CONINE: Okay, that helps clarify things. But go ahead and ask your question.

MS. RAY: My question, Ms. Murphy -- and I think Ms. Gamble addressed it as well -- that the material deficiencies have been resolved.

MS. MURPHY: Yes, correct.

MS. RAY: Thank you.

MR. CONINE: Given that the gas situation was the only item and it still probably wouldn't have passed, based on what I'm hearing, we need to think about in the future situations that might arise out of those sorts of situations, especially on older projects, we dedicate the water and sewer lines to the city, the city can come in and tear up a parking lot and driveway for God knows how long to fix something, and that to me is an extenuating circumstance almost beyond the owner's control, and we need to have a carve-out position in our compliance for that.

MS. MURPHY: We definitely do in the case of a natural disaster, the Revenue rulings provide for all of that kind of delay in your inspection.

MR. CONINE: What about just for old pipes?

MS. MURPHY: Old pipes, if they're identified during your inspection, they need to be repaired and we give you 90 days and we extend it for 180.

MR. CONINE: You and I will talk offline later. Thank you. I'll have to win you over later.

(General laughter.)

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: It is not my intent to speak in favor of the applicant in this particular case, but I'm intimately familiar with this property. In 1967 in the height of the Vietnam War, my husband was a low level sergeant -- mark that down, that's been a while ago, 1967 -- these apartments were spank brand new on the scene in the city of San Antonio, and they shipped my husband off to Vietnam and I had three little children and I was delighted to be able to move into this brand new facility that for God's sake back in those days had central air conditioning and a playground. And I watched that property over the years -- and it was so then out of the control of Mr. Radle -- go down into the dirt, it became a neighborhood eyesore.

And I am here to personally tell you that Mr. Ron Radle and his company saved that complex. It was an

absolute mess and he brought volunteer resources not only from the City of San Antonio but from across the nation and had volunteers come in and rehabilitate that particular project. It was horrible place to live and Mr. Radle saved it.

Of course, the board can make whatever decision they wish to make in this particular case, but I certainly believe -- I personally believe that there are extenuating circumstances surrounding this particular 2008 material non-compliance, and I'm very pleased to hear that he is in compliance at this point.

And Mr. Chairman, I move --

MR. HAMBY: I actually need to discuss something with you all before you do that, if that's at all possible.

MR. CONINE: Okay. I just want to find out if either she or her kids left the graffiti that was still there.

(General laughter.)

MS. RAY: It was still new when I left it, only stayed there a year. And I became a homeowner. When we walked out of there and my husband came home safely from Vietnam, we were able to buy our very first home and live the American dream to be a homeowner in these United States of America.

MR. CONINE: Mr. Hamby, you're up.

MR. HAMBY: I actually need to discuss something with you in executive session.

MR. CONINE: We need to go into executive session. Mr. Gerber, would you read whatever it is.

MR. GERBER: Yes, I will.

MR. IRVINE: This is Tim Irvine, for the record. The Board may go into executive session and close its meeting to the public on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551. This an adjournment to confer with counsel pursuant to Section 551.071(a) Texas Government Code. The time is 3:40.

(Whereupon, at 3:40 p.m, the meeting was recessed, to reconvene following conclusion of the executive session.)

MR. GERBER: Mr. Chairman, the Board has concluded their executive session at 3:55 p.m.

MR. CONINE: Thank you. Patricia, would you come back up, please, and articulate the material non-compliance issues for this project one more time?

MS. MURPHY: Yes. Their findings of non-compliance, all of which are corrected at this point, are: household income above the limit upon initial occupancy; failure to maintain tenant income certification and

documentation; gross rents exceed the allowable program limits; failure to conduct housing quality standards inspections; and violations of the Uniform Physical Condition Standards.

MR. CONINE: Any questions of Patricia at all? Yes, sir, would you like to respond one more time?

MR. RADLE: Just to clarify -- and staff can correct me if I'm wrong -- my understanding is all of the issues with regards to the files, the incomes and all of that were corrected in April.

MS. MURPHY: Yes.

MR. RADLE: There were two separate issues: one was a file audit, one was a physical inspection. The file audit was corrected in April and the other items we documented were after that.

MS. MURPHY: The last physical inspection correction, there was some back and forth between our staff and the owner, and the last thing was corrected in May of 2009.

MR. RADLE: The documentation.

MR. CONINE: In the file or the physical?

MS. MURPHY: The physical.

MR. CONINE: The file was done prior to May 1?

MS. MURPHY: Correct.

MR. CONINE: Thank you both for the

clarification.

Any further discussion or questions. If not, I'll entertain a motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Yes, Ms. Ray.

MS. RAY: I move to grant the appeal of Chaminade.

MR. CONINE: There's a motion to grant the appeal of Chaminade. Is there a second?

(No response.)

MR. CONINE: Motion dies for lack of a second. Do I hear another motion?

MR. GANN: Mr. Chairman, I move that we accept the recommendation.

MR. CONINE: Motion by Mr. Gann to accept staff's recommendation. Do I hear a second? I'll second it. There's a second to the motion. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed.

MS. RAY: No.

MR. CONINE: Motion carries.

We're going to Woodland Park I.

MS. GAMBLE: Actually, we're going to Woodland Park at Greenville, Phases I and II, and we're going to do those the same because they involve the same issue for the same applicant.

MR. CONINE: Okay.

MS. GAMBLE: The applicant is appealing the termination based on failure to meet the eligibility requirements of Section 49.5(a)(7) of the QAP. The Developments are proposed to be located in Greenville, Texas which has 2.89 units per capita supported by housing tax credits or private activity bonds.

Pursuant to the QAP, the applicant must submit evidence of prior approval of the development from the governing body of the appropriate municipality or county containing the development, and must include in the application a written statement of support from that governing body referencing this rule and authorizing an allocation of tax credits for the development. This evidence must have been received by the Department no later than April 1, 2009, and may not have been more than one year old from the date that volume 1 was submitted to the Department, which in the case of both of these applications was February 27, 2009.

Both applications included a resolution from

the City of Greenville, however, the resolution that was included was passed on January 8 of 2008 which is more than one year before the applications were submitted. Further, the resolution is for the award of tax credits for a single development containing 120 units, 48 one-bedroom units, and 72 two-bedroom units; whereas, these are two developments and the developments are not the same as the one development that's mentioned in the resolution that was provided by the applicant.

Staff recommends the Board deny the appeal.

MR. CONINE: I have a witness affirmation form for Mark Feaster.

MR. FEASTER: Good afternoon, and thank you. I'm Mark Feaster with Hurst Development here to speak about Woodland Park at Greenville I and II.

The City of Greenville adopted the resolution of support for 120 units of senior housing in January of '08. At that time we had applied for and staff had recommended a 4% tax credit application. The site was purchased, engineering was completed, plans were finished, but a delay in closing resulted in our equity partner backing out of the transaction and so our application was withdrawn at that time.

When we applied for 9% credits, Greenville had been reclassified from ex-urban to rural. Staff indicated

we could file Phase I and Phase II applications to utilize the same site and the same plans and engineering that we had completed for our 4% application.

The original resolution of support was adopted within one year of the application process but was over one year from the date that we filed volume 1. The resolution was adopted with no expiration date and council indicated to us at that time they had dealt with numerous requests for multiple resolutions for the same developments in the past and a resolution with no expiration date should mean they would not need to revisit this development.

Because the resolution is for the same 120 units of senior housing proposed in our Phase I and II applications, and because the resolution has no expiration date and is still valid, I would ask that our application be reinstated for consideration of award of '09 tax credits. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Shae?

MS. GAMBLE: I'll just reiterate the requirement of the QAP that the resolution has to be within the limits set by the QAP, that is not more than a year old from the time the application is submitted, and

this resolution clearly violates that provision.

MR. CONINE: Any questions of staff?

(No response.)

MR. CONINE: I'll entertain a motion.

DR. MUNOZ: move staff's recommendation.

MR. CONINE: Dr. Munoz moves staff

recommendation to deny the appeal. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. 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. GAMBLE: The next appeal is for the Point Royale Apartments 09112. The application was terminated because the applicant failed to maintain control of the proposed development site. Pursuant to Section 49.9(h)(7)(A) of the 2009 QAP, a contract for sale and exclusive option to purchase or lease must remain valid for the entire period the development is under consideration for tax credits.

Staff's review indicates that there are two contracts involved with this development. The first is between the actual owner of the property and the proposed seller of the property; the second contract is between the proposed seller of the property and the applicant. The contract between the proposed seller and the applicant remained valid through timely executed amendments, however, the contract between the owner of the property and the proposed seller has a lapse period between April 20, 2009, and May 26, 2009.

Staff recommends the Board deny the appeal.

MR. CONINE: Witness affirmation for the fourth time, Granger McDonald.

MR. McDONALD: And I can assure you I'd rather have a root canal than come up here when it's staff 14, appellants zero.

MR. CONINE: Really. You know how to play the odds.

MR. McDONALD: I'm not real smart but I'm catching on.

(General laughter.)

MR. McDONALD: The one difference between our appeal and I think everything else you've heard today is all these other people had problems that were something that they could fix or something that was their own doing.

That is not the case with us. We contracted for a piece of property, actually didn't even know that there it was a flip deal. We had a title policy, title policy didn't show it, it showed that everything was in good order, and we proceeded on.

We get down through the contract stage, it comes to light that it's a flip, everybody is still happy with it. The real problem that we had, it didn't trouble us when we found out that it was a flip because the seller and the actual landowner were perfectly sanguine with what was going on and it seemed like the contract was running along smoothly.

We kept making our extension payments, as noted by the staff recommendation, to the title company. The title company says you still have a contract. We have a letter from the landowner saying that he had verbally agreed to the extensions. His problem was he lives in London, he was traveling Europe, was not anywhere where he could get to sign the documents. The real question here is what in the hell is a man that lives in London doing with a piece of property in Victoria, Texas, but that I don't know the answer to.

We're in a situation where we did everything we were supposed to do. For the gap period, we didn't even know there was a gap period, the staff told us there was a

gap period. There was nothing we could do about it after we found out about it. We're getting the death penalty over something that was not in our control. I would also that if anybody else who has a contract for a piece of property, if the seller at some time decided not to sell th property, even after there was an award of tax credits, those people would have no ability but to sue, invoke specific performance, very much the same that we have. And I don't think that we have had anything change that makes us different than any other applicant other than the period between someone else's contract that we didn't even know about and was not a party to

MR. CONINE: Well, now, if you thought the seller was the real seller and had a title policy that said they were the real seller and you submitted that with your application, how did we ever find out?

MR. McDONALD: Beats the hell out of me.

MR. CONINE: Just looking at the title?

MR. McDONALD: The revised title run.

MR. GANN: How is that situation solved?

MR. McDONALD: It's solved because by the letter that the landowner and the person who is selling it to me have agreed they had a contract the entire time, it was a verbal contract, they've agreed verbally to the extension, we have a letter that I think is in your file

from Mr. Afsar and from Mr. Smith, and Mr. Afsar finally got around to signing the extension and getting it back.

MR. GANN: You do have the extension, though. Right?

MR. McDONALD: Yes, sir.

MR. CONINE: Any other questions of the witness?

MR. IRVINE: Well, I see our counsel sitting forward if you'd rather clarify the point. I mean, you can't really have a verbal contract for the transaction involving real property.

MR. GANN: That's why I was asking. But you've got an extension now. Doesn't that cover it? So it's covered really if he's got the extension.

MR. CONINE: I want to get some dates going here.

MR. HAMBY: The challenge, Mr. Gann -- Kevin Hamby, general counsel -- the challenge is, of course, we say that you can't have a gap and in any transaction if the parties agree, even if the contract goes cold, if the parties agree later, it's perfectly fine except when you have a third party that's reviewing it saying I'm not going to give you funding unless you've owned the property continuously. All the parties can agree that they're going to revive the contract but it doesn't meet the test

of the QAP that says that you have to have a continuous ownership, and as Tim rightly points out, you can't have any verbal agreements in the State of Texas for title to land.

MR. CONINE: But if Mr. McDonald had no knowledge until we evidently researched the title and on some date let him know that there's an owner out here that we need to deal with, and then subsequent to that did that contract show up all of a sudden somehow someway?

MR. HAMBY: Just because it's you, Mr. Conine, I'll remind you that ceinture -- one of those great legal terms -- si not a requisite, you don't have to have knowledge of what the deal behind you is, you have to have your knowledge, and the fact that we knew means that Mr. Granger could have found out -- that's what David Long calls him, Mr. Granger -- Mr. McDonald could have had the knowledge as well.

MR. CONINE: You can call him Old McDonald if you want to.

MR. HAMBY: I don't think so, he's not that much older than me. He's very young and vital, Mr. McDonald, as far as I'm concerned.

(General laughter.)

MR. CONINE: I'm still confused about what we knew and how we knew it and how we then -- have you seen

the contract between the seller and the owner?

MS. MEYER: Yes.

MR. CONINE: I mean, you'd have to to know it fell out.

MS. MEYER: It has to do with the title documents and we have the title documents between the development owner and the seller and the way --

MR. CONINE: But wait a minute, he submitted his title run with his contract between the buyer and the seller, but then somewhere you found out that there's an owner somewhere.

MS. MEYER: Correct.

MR. CONINE: I'm still confused.

MS. MEYER: Because the landowner which is Investicore was actually on the title policy or the title documents, and everything wasn't following, and so we actually had to get in touch with the seller and he's going well, there's another contract. So we asked for that contract and when we started tracking the documents back, we found that.

MR. CONINE: Now I understand.

MS. MEYER: And we contacted Mr. Granger.

MR. CONINE: Old McDonald, whatever.

MS. MEYER: I'm not calling him Old McDonald either.

(General laughter.)

MR. McDONALD: And that happened when you asked me for a copy of my extension.

MS. MEYER: Correct.

MR. CONINE: That had continuous.

MS. MEYER: Correct. Between our applicant and the seller everything is tracking perfectly, it's th one little 20 days, 30 days that we're missing. But the QAP does specifically state that we have to have continuous ownership.

MR. CONINE: And we've got something in writing from the owner, the London, that says he's still good with that contract being in force and effect.

MR. HAMBY: But there is that annoying little problem in the State of Texas, you have to own land to sell it -- well, you don't have to but it prevents fraud. But you have to have any kind of contract title for land in writing.

MR. GANN: That's a statement to our staff on how technical they can get the little stuff. So congratulations, I guess.

MR. CONINE: One more comment, Old McDonald.

MR. McDONALD: It was just pointed out to me that you can have a verbal contract for real estate in Texas but it's not enforceable if it's not in writing.

MR. CONINE: But it's now in writing, just past the date. Okay. I guess we're open for a motion

MR. GANN: I guess there's some times you just don't really want to do something, and I really don't want to do this but I've got to do it. I'll have to say that I recommend that we accept staff's recommendation.

MR. CONINE: Motion to accept staff's recommendation to deny. Is there a second?

MS. RAY: Second.

MR. CONINE: Ms. Ray seconds the motion.

MS. RAY: Begrudgingly.

MR. CONINE: 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 those opposed.

(No response.)

MR. CONINE: Let's just say I don't think the motion passed, I don't think it failed, I'm not sure what happened to it. Let's try that again. All those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All those opposed.

(No response.)

MR. CONINE: Motion carries.

Where are we going next, Malibu?

MS. GAMBLE: To the final appeal for today.

The final appeal today is for Malibu Apartments, TDHCA number 09159. This application was terminated for the incorrect certification of notification. As a result of a challenge to the application, the Department verified that the applicant incorrectly certified on the certification of notifications form by checking the box that indicated that the applicant knew of no neighborhood organizations within whose boundaries the development is proposed to be located.

Review of the documentation submitted with the challenge and in the applicant's response to the challenge clearly shows that the applicant did have knowledge of a neighborhood association whose boundaries may include the development site and who was identified by the city official's office. In addition, Section 49.8(d)(3)(A) and Section 49.9(h)(8)(A) of the 2009 QAP states the applicant must list all neighborhood organizations on record with the county or state or that the applicant has knowledge.

Not only did the applicant not certify correctly, the applicant did not submit the information necessary for the Department to uphold its public responsibility in the notification process. By the

applicant's own admission, the evidence clearly indicates that the applicant had knowledge of the neighborhood organization. Therefore, prudence on behalf of the applicant would have been to notify them. Requirements for the applicant was to notify the Department of the organization's existence.

Staff recommends the Board deny the appeal because the applicant failed to meet the requirements of the QAP

MR. CONINE: I've got several speakers here. Royce Mulholland.

MR. MULHOLLAND: My name is Royce Mulholland, I'm the president and CEO of the Mulholland Group, and I thank you for the opportunity to come before you and address the group. On behalf of the Mulholland Group and the over 900 residents of the Malibu Apartments, I'd like to thank you for this opportunity to present our case for reinstatement of our application.

Before getting into the technical aspect of our disagreement with the determination of the Department, I'd like to provide some information on my company and myself.

I spent nearly 25 years or more than half my life providing affordable housing to a wide spectrum of people in need. I developed numerous state programs and policies to serve homeless individuals and families, created

programs that produced rental and home ownership opportunities while serving in the administration of a former New York State governor. I left state government as the chairman of the housing sub-cabinet, the highest ranking post at the time.

I assisted in drafting the state's first program legislation for the allocation of the Section 41 low income housing tax credits, and subsequently drafted the first qualified allocation plan for the State of New York. In addition, and probably most relevant, in April of this year, New York's current governor, David Patterson, appointed me as a member of the Board of New York State HFA -- where you guys sit now.

During the past 18 years I've built a business that's financed, owned and operated nearly 6,500 units of affordable housing in five states representing nearly \$500 million in development. We have pioneered the use of 501(c)(3) bonds in financing affordable housing, implemented programs to provide educational, health, job placement and recreational programs for residents of our communities. I'm the first private developer in the nation to build a privately financed full service medical center located right on the site of a low income apartment community which we own and operate in Virginia.

Given this extensive legislative and

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operational experience, I know the importance of stating clearly the requirements a state shall require in order to secure funding. It needs to be clear, consistent and leave no room for interpretation. My years of experience in drafting legislation can tell you it is an imperfect science, however critical to maintaining a level playing field for applicants to compete. It is this type of imperfection that I believe I am now being unfairly penalized.

In drafting the Texas statute in the qualified application plan, it is undisputable that the notification requirement, whether based upon knowledge or notification by elected officials was pursuant to sections of the QAP that clearly state that groups needed to be disclosed had to be registered with the county or state. We did that. The Department's specification for our termination said I should have ignored the specific language of the statutory intent and disclosed any and all groups whether or not they were registered with the county or state, i.e., don't follow the QAP.

The draft of the QAP and the governing statute states otherwise, in my opinion, and it is for this reason I felt compelled to answer in the manner I did. Clearly my work with the local Austin housing agency, the Malibu Tenants Council indicates my clear intention to provide

notification to as many residents of north Austin as possible. Additionally, why would I testify at a public hearing in front of the city council of Austin if I was trying to conceal notification of what my intentions were at the Malibu property.

We did not knowingly or capriciously intend to withhold information from the Department. Rather, we strictly followed the Department's instructions given to us during their tax credit application workshop and strictly followed the state's qualified allocation plan. After spending several hundred thousand dollars and nine months in the application process, after the Department's extensive review and recognizing that Malibu is the highest ranked application in the region, we don't believe the penalty of termination fits the alleged violation.

In reviewing the Board book, we noticed other applications were provided the opportunity to correct the same exact notification without losing points or being terminated. I believe we have clearly met the spirit and the explicit intent of the qualified allocation evidenced by the Austin City Council endorsing the project, the City of Austin's housing agency approval of a substantial funding award and two substantial endorsements of the proposed project received from the North Austin Civic Association and the Malibu Tenants Council.

Further, during the past nine months none of the city's elected officials or neighborhood organizations, all of them having full knowledge of our proposal, have yet to object to our application. Finally, absent the funding, Malibu will continue to face decline of its physical plant, the welfare of over 900 residents of the property and the surrounding community, jeopardizing and ultimately potentially succumbing to the problems of its neighborhood property, that of crime, drugs and prostitution.

I respectfully plead with you to allow me to be part of the revitalization of the Malibu community and the resurgence of this portion of north Austin. Even if you were to agree with the staff's finding, it does not rise to the level of terminating this vitally needed revitalization plan and eliminating the Malibu residents' opportunity to better their lives.

And in response to Ms. Gamble, we never received a response from any of the city officials with regard to our notification letter. And that was something that the challenger just got wrong. Thank you.

MR. CONINE: Any questions of the witness?

MR. MULHOLLAND: Let me turn it over to Sarah Andre.

MR. CONINE: I've got her next, Sarah Andre.

She also has five minutes.

MS. ANDRE: Good afternoon. My name is Sarah Andre. It's been a long day, and on behalf of our entire team, I'd like to say thank you for your attention at this late hour in the day. I'm here to discuss Malibu Apartments, application 09159. this application scored highest in the region in the competitive rankings and we're here today purely because of the challenge that was filed by our competitor.

In the appeal process, the executive director upheld the termination stating that the application hindered TDHCA's ability to fulfill its notification responsibilities and that we incorrectly certified our knowledge of the neighborhood organization pursuant to the QAP. For clarity, you should know that we did know of and worked with two city registered organizations.

I'd like to take this time how neither of the reasons cited by Mr. Gerber can possibly be legitimate causes for termination.

This is the public notification form that we're required to fill out, and as you can see in the letter in your packet, the executive director claims that we hindered the Department from notifying neighborhood organizations. As you also know, TDHCA and the applicant are required to notify the same organizations,

neighborhood organizations on record with the county and state. Applicants list the required organizations in this form and then the Department notifies those organizations.

As you can also see on the form right here, it references Section 49.8(d)(3)(B) of the QAP.

If the executive director agrees that we weren't required to notify a particular organization -- as he did in his letter -- it just simply defies logic to also claim that we hindered the Department from notifying that same organization. There's no way that TDHCA can fail in its duty to notify an organization that it's not required to notify in the first place. The applicant can't possibly hinder TDHCA by not providing the name of an organization that TDHCA is not required to notify

The real issue at hand today is whether or not we correctly certified our knowledge of neighborhood organizations as defined in the QAP. As you can see on the exhibit, the QAP language is as follows: The applicant must list all neighborhood organizations on record with the county or state whose boundaries include the proposed development site as outlined by the local elected officials or that the applicant has knowledge of.

As written, this sentence is confusing. However, if you diagram the sentence, you can understand its meaning. The issue at hand is the phrase "or that the

applicant has knowledge of." That phrase is a dependent clause. This is an exhibit that tells you what a independent and a dependent clause are. The certification form in question, a dependent clause just can't stand alone and make sense, it has no subject. It must, by its nature, refer back to the subject in the previous clause.

So in this case that subject is neighborhood organizations on record with the county or state.

The certification form in question clearly states at the top that the applicant is certifying in accordance with Section 49.9(h)(8)(A). So everything that you would read down here goes back to that definition that I just read which is: neighborhood organizations on record with the county and state. Therefore, the only organizations we could possibly have certified that we have knowledge of would be organizations on record with the county or state.

When the executive director and other staff use this section from the QAP as justification that the Malibu developer did not meet the requirements, they misread the language, they claim that we should list any organizations that we have knowledge of, regardless of whether they are on record with the county or state.

It's understandable why there's confusion. In the 2008 QAP, organizations on record with the city were

part of the required notification process, however, TDHCA specifically and intentionally removed any reference to city registered organizations that are not also registered with the county and state in the 2009 QAP, and thus, they thereby removed the requirement to notify or certify knowledge of those organizations. The organizations in question in the challenge were registered with the City of Austin but were not registered with Travis County or with the State. Therefore, we were not required to notify them or to certify our knowledge of them, pursuant to the definition in the QAP.

We based this conclusion on a very close reading of the rules and specifically noted the changes from 2008 to 2009. I hope you will use your discretion as Board members to reinstate the application. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Senator Gonzalo Barrientos.

SENATOR BARRIENTOS: Mr. Chairman, members of th Board, may I reserve the position of closing if there are other people to testify?

MR. CONINE: Yes, you may. I just received one other, Colby Denison, he'll be speaking against, and the Senator will be speaking for, making the third person for. Go ahead.

MR. DENISON: My name is Colby Denison and I have an application in this round in Austin, so I guess I'm a competitor. I'm not speaking against but just to say that my application had a neighborhood organization that supported us that was not registered that I did not receive information from the city or anybody, but I did have knowledge of it. And I've been developing tax credit projects for about four or five years and it's very clear to me and in every application round that I have to notify and tell you about any neighborhood that I have knowledge of, whether the city or whoever told me about it or not.

So just wanted to know that I'm an applicant every year and that's a pretty clear requirement that I follow. Thank you.

MR. CONINE: Thank you. Any questions?

(No response.)

MR. CONINE: Senator.

SENATOR BARRIENTOS: May it please the Board.
Thank you, Mr Chairman.

MR. CONINE: Yes, sir.

SENATOR BARRIENTOS: First of all, I want to thank you all for serving. It's not an easy job, so I thank you for coming here from all over the State of Texas to serve the people of Texas.

Now, contrary to my ten years in the House and

20 years in the Senate, I will not filibuster, it's been a long day for you.

(General laughter.)

SENATOR BARRIENTOS: I just want to point out a few little items here. As you probably know, I served in the House and Senate for 30 years form Austin.

Originally, how I came in contact with this area of helping our fellow Texans was that I was chairman of the Sunset Commission, and I forget the exact year now, but I passed legislation hat redid the Texas Housing Agency. We had a situation where the Texas Housing Agency was involved in corruption and shenanigans and so we undid it and put it together with the Texas Department of Community Affairs, and the rest is history.

We merged the two agencies, redid it to give a hand up to many of our fellow Texans. Previously under the other regime, shall we say -- and I think it might have been under Democrats, as a matter of fact, and I'm not going to bring politics into this, but that was the situation -- whenever something is wrong, something is wrong, period -- they were in the past trying to help people at the very high end of the money scale. The idea was to help our fellow Texans who were in the middle class and low income, and that's what started to change.

So what do we have here today? A termination,

a termination of an application which has the major support of everybody who I know, the state representative in the area, the city council, the people of the organizations that are out there, and it's sorely needed in our capital city of Austin -- which is your city also, regardless of where you come from. Texas Tech, proud of you, my niece went there, graduated, is going to be a lawyer pretty soon.

So what do we have here? A termination because robbing a bank? No. Bad-mouthing the Dallas Cowboys? No. A box which is checked or not checked. And by the way, that's interesting because the legislation has redone, by Senator Lucio -- and I talked to him yesterday -- has those exact words which you mentioned a while ago about listed with the county or state. Yet the rules added or that the applicant has knowledge of. I'm not a lawyer, folks, but I can tell that's a little bit moving into legislating, so think about that one also. The legislative intent has always been from those years when I was beginning the Senate to help our fellow Texans, not a handout but a hand up.

Now let me finally finish with this. In trying to keep big government out of the way of doing the practical things and not a heck of a lot of red tape, that's what we're all supposed to be about in Texas. Now,

we have a challenge here and someone said a while ago that it's very competitive -- you were right. Competition is one thing, but competition with substance should be what it's about.

And I'll finish with this because you've had a long day. It reminds me of a story, in terms of this challenge, that in the olden days -- I think it was maybe in the days of Christ -- there were two merchants who had businesses right across the street from each other, and boy, they just didn't like each other. They would sit outside their doors and see across the street who is going in to shop here and who is going to shop at the other. They didn't like each other.

And one day an angel came to one of the merchants and said, Merchant one, the Lord has sent me to grant you whatever you want. You want riches, you'll be the richest man in the land. You want children, you'll have many children. Whatever you want you will be granted, but remember, the merchant across the street will receive twice what you ask for. So that man said, Well, in that case, strike me blind in one eye.

Let's think about this competition. I ask you to reconsider this and talk common sense and do for the people of Texas and this district which I gave up a couple of years ago, but 30-40 people a week call me to try to

help. So by your leave, if I can answer any questions, I'd be happy to.

MR. CONINE: Any questions for the Senator?

MR. GANN: No, thank you.

SENATOR BARRIENTOS: Thank you for your time.

MR. CONINE: Thank you for your testimony.

Do you want to follow up, Counselor?

MR. HAMBY: I want to follow up. I want to take you back to last year again when we were drafting the QAP. One of the issues that we were discussing at that time is how much public input we should have, and fortunately, we have a lot of people who have a great deal of passion about this program, including the person who just diagramed a sentence for us which being lawyers, we don't really care how they diagram out, we know what they say. The reality is that it was an expansion, it was not a narrowing.

We did remove the city requirement because we wanted to be bigger than that: any knowledge you have of a neighborhood group, you're supposed to list -- that was the intention. I think that, and because I did sign off on the QAP and said it was legal -- as the governor did -- I don't think it's going into legislative affairs to have that expansion because the purpose of that section is to have as much public discourse as we can so we have better

developments in communities. That's why you're supposed to provide knowledge.

DR. MUNOZ: Let me ask a question, Mr. Hamby. How do you calculate, how do you define knowledge that you may have, beyond it being utterly speculative? Is there evidence to capture that you had private knowledge of these homeowner associations, et cetera?

MR. HAMBY: Well, you should probably at least build up your knowledge base to go ask the city if there's a registered homeowner group right in your area.

DR. MUNOZ: It doesn't say city, it says county or state.

MR. HAMBY: Or any knowledge that you have. If you're going to go into a city and a community like Austin --

DR. MUNOZ: What if at the moment you haven't any knowledge? It doesn't say and you are thus compelled to carry out whatever due diligence in excess of county or state to inform yourself of existing homeowners associations.

MR. HAMBY: And that would be true, I think there is some evidence in the record that they knew that this homeowners group existed. And the argument they're making is these people are registered with the city, therefore, we didn't have to talk about them. They're

using a technical legal argument that says that it's not on the county -- Sarah, you had your chance -- they had the knowledge that they weren't on the county or the state, they knew they were in the city but they didn't bother to put them down because they didn't want to put them down apparently. It is a certification so we can, I guess, depose somebody and see if they had knowledge at the time that they signed that form.

DR. MUNOZ: Is there evidence somewhere that they had knowledge?

MR. HAMBY: Yes -- I'm getting a nod here from our staff, yes.

DR. MUNOZ: Documentation at the city level?

MS. GAMBLE: I have here, and it's in your packet -- unfortunately the pages aren't numbered but it's attachment A that was sent actually to us by the applicant. It's an email from Rita Nowak, and Rita Nowak, at the bottom of her email lists her affiliation with the city as the Community Registry Coordinator, City of Austin, Communications and Public Information Office. And the text of this email is to Mr. McLaughlin. It says: "Joe, I'm attaching two text files containing the neighborhood information you requested. The files are labeled on the top as to which address they represent. I hope this is what you needed. Please let me know if need

anything additional."

This email is dated December 8, 2008. The certification form that the applicant submitted in their pres-application which is the actual certification signed certification page, that is different than the page Ms. Andre showed, the signed certification page, this applicant checked the box saying I know of no neighborhood organizations within whose boundaries the development is proposed to be located, and that form is dated January 6, 2009.

DR. MUNOZ: If I may, did you want to respond somehow?

MR. MULHOLLAND: The Rita Nowak communication that was sent on the 8th, I call it the magic letter, we didn't mail our letter till the 8th, it didn't get to the city till the 18th. We spoke with the correspondence unit in the city. They have on record and we can show the Board they didn't send a response, they didn't send a response saying the communication you got three weeks ago from Rita Nowak with regard to two other non-related projects we were looking at in the City of Austin is the response for the Malibu project. Every other applicant in Austin got a letter back but us, responding to the very detailed form letter that the agency requires us to send out.

It's interesting, 15 other applicants get disqualified for not strictly following the qualified allocation plan, we follow it strictly and get thrown out.

What's the message? To say that that fragment in a 212-page application doesn't refer back to the section that says county and state is a reach and unfair, and that's what we're saying.

MR. HAMBY: Have we heard from any of the ones that supposedly exist out there?

MS. ANDRE: From the neighborhood organizations, have we heard from them?

MR. CONINE: Yes.

MS. ANDRE: Yes, and we have a letter of support from them.

MR. CONINE: The ones that aren't registered with the county or state?

MS. ANDRE: Correct. They are registered with the city.

DR. MUNOZ: How many are there?

MS. ANDRE: There are at least two.

DR. MUNOZ: And you have letters from both or one? At least one?

MS. ANDRE: Well, one for sure.

MR. MULHOLLAND: I think you have a copy in front of you from NACA, and the other group indicated they

were neutral.

MS. ANDRE: I'd just like to say that the email that the staff read was provided to TDHCA by our direct competitors in this round.

MR. CONINE: Any other questions of either staff or the witnesses? Dr. Munoz.

DR. MUNOZ: Let me say this and then I'm prepared to make a motion. I don't want to go into a syntactical sort of devolution of this phrasing but I'm troubled because it strikes me as a bit disingenuous to explicitly mention the state and county and then obligate an organization submitting an application of this magnitude to a non-existent definition of city. We've had a number of cases here that have been excluded because of this strict definitional adherence and yet it strikes me that in this case we're discussing abandoning, eschewing that language and introducing language like city that doesn't exist. So that being the case, I'd like to make the motion that their appeal be granted.

MS. RAY: Second the motion.

MR. CONINE: Motion and a second to go ahead and grant the appeal. 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.

Item 8.

MR. GERBER: There are no underwriting appeals,
Mr. Chairman.

MR. CONINE: Really. Item 9.

MR. GERBER: There are no appeals in the HOME
program.

MR. CONINE: Really?

MR. GERBER: Yes, sir.

MR. CONINE: Executive report?

MR. GERBER: I think the only thing I've got
for you is a HOME funding report that's in your Board
book, and we are holding a QAP roundtable as part of the
TAAP conference on Tuesday, July 28 at 3:30, and we are
also holding a QAP roundtable one week later, still to be
finalized with location, but we believe it's going to be
held on August 3 here in Austin, and we welcome industry's
input and the advocacy community's input and everyone who
is interested in the 2010 QAP -- hard to believe we're
already there.

MR. CONINE: Please don't.

MR. GERBER: With that, we adjourn until two

weeks from today.

MR. CONINE: I want to say again thanks to the staff. You guys are doing a great job. You're in the middle of a huge tidal wave. Just keep it up, and we'll celebrate at the end. We stand adjourned.

(Whereupon, at 4:43 p.m., the meeting was concluded.)

CERTIFICATE

IN RE: TDHCA Board Meeting

LOCATION: Austin, Texas

DATE: July 16, 2009

I do hereby certify that the foregoing pages, numbers 1 through 263, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Nancy King before the Texas Department of Housing and Community Affairs.

7/23/2009
(Transcriber) (Date)

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