

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Capitol Extension
Room E1.028
1500 N. Congress
Austin, Texas

9:30 a.m.
Thursday,
December 20, 2007

BOARD MEMBERS:

ELIZABETH ANDERSON, Chairman
KENT CONINE, Vice Chairman
SHADRICK BOGANY, Member
NORBERTO SALINAS, Member
GLORIA RAY, Member
SONNY FLORES, Member

STAFF:

MICHAEL GERBER, Executive Director

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- l) Presentation, Discussion and Possible Approval of the selection of an outside management firm to oversee the production of approximately three housing units in response to the Housing Trust Fund Texas Grow Home Demonstration Program Request for Proposals (RFP) issued October 15, 2007

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P R O C E E D I N G S

MS. ANDERSON: I call to order the December 20 meeting of the governing Board of the Texas Department of Housing and Community Affairs, and the first item of business is to call the roll.

Mr. Conine?

MR. CONINE: I'm here.

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: I'm here.

MS. ANDERSON: Ms. Ray?

MS. RAY: Here.

MS. ANDERSON: Mr. Flores?

(No response.)

MS. ANDERSON: I hope he'll be here soon. Mayor Salinas?

MAYOR SALINAS: Here.

MS. ANDERSON: We do have a quorum present and we have some special proceedings this morning, but we're going to wait a few minutes on those because I want Mr. Flores to be here for that.

So we will proceed with public comment. You are all familiar that we welcome public comment on this board and we'll take your comments either here at the beginning of the meeting, or if you prefer, when we actually come to each individual agenda item.

So the first witness will be Mike Clark.

MR. CLARK: My name is Mike Clark. I'm here as the president of the Texas Affiliation of Affordable Housing Providers, and I have

two topics I want to discuss with you in public comment this morning.

The first is we want to convey our thanks and appreciation to Shad, formally, for all the work he's done the last six years on this board, and how much we appreciate what he's done and the time he's had to give. We have arranged, though, once a month we're going to have a paper delivered to him, and we're going to tie up two or three days of his time, just so he can feel like he's still around. So we do appreciate it. Thank you very much.

I have one topic to discuss, and basically it's just -- we've had some preliminary discussions with staff -- we want to run up a red flag this morning for you on the Tax Credit Program relative to the recent pending crisis on pricing. This morning's rates -- we checked them this morning -- the tax credit rate on the 9 percent deals is below 8 percent, down to 7.93 this morning, 4 percent deals is down to 3.4 percent. We're very concerned, I think, as an industry that it's going to affect not only some existing deals -- we've seen some walk-aways some syndicators on existing deals, equity providers, and also some re-trading and repricing on those deals.

And so I think we're very concerned long term in terms of this year's allocations, this year's round of credits, and what we'd like to be able to do, as this continues to tighten up -- and frankly, it's a very volatile situation, as most of you know -- is be able to set up some meetings with staff to talk about kind of what the options are and what things could be changed and what direction could be considered in underwriting or in the program itself to be able to make sure that we can still produce affordable housing out of the round this year despite the issues relative to pricing.

We've already presented that to Mike, who has indicated that the staff would be more than willing to sit down and have those discussions, so we'll look forward to that. I think we have some ideas on ways that it can still be workable and we'll try to work backwards from that perspective.

And that's really what I have to say this morning. I appreciate your time, and merry Christmas.

MS. ANDERSON: Merry Christmas.

MR. CONINE: Madame Chair, question, and maybe for Mike as well, maybe we could set up for the next month's meeting a couple of syndicators to come talk to us about that subject to the board just so that we would be as clued in on what's happening on this issue as anything else.

MR. GERBER: Yes, we'd be glad to do that. Also, I think there's some legislative activity in Washington that we probably need to have some additional staff discussions on and then brief members of the board of directors.

MR. CLARK: There's some partial fixes and some pending legislation on the D.C. side that the homebuilders are involved very closely and we're monitoring too.

MR. GERBER: We'll likely need to notify the board before January 31 because I think some of those activities are happening.

MR. CLARK: Believe me, we can certainly have a couple of the syndicators and lenders that spoke to us yesterday here to talk to you.

MR. CONINE: That would be great.

MR. CLARK: Thank you.

MS. ANDERSON: Thank you.

Jenny Ainsworth.

MS. AINSWORTH: Good morning. I'd like to talk to you just very briefly today about the proposed HOME rules that are on the agenda. The first concern that I have is covered on page 14 -- you'll see it there in your handout -- regarding the contract terms.

It's not unusual for the surveys, appraisals and title commitments that are now required for the HOME Program to take three months to complete after they are ordered. TDHCA has stated that loan closings cannot be scheduled before a minimum of 30 days after all documentation has been submitted, thus reducing the three-month window between fund commitment and loan closing to a maximum of two months.

In addition to this, the contract terms requiring all loans to be closed at 15 months conflict with the procedural requirements of submitting all project setups and support documentation by 16 months in the general contract administration section. Furthermore, these procedural requirements dictate that all demolition must be complete by 16 months. In short, the contract administrators are required to complete all loan closings at 15 months but are not required to submit all project setups and backup documentation until 16 months, at which point demolition must also be complete.

Requiring that 100 percent of construction be complete 60 days prior to the contract end date effectively reduces the contract term to 20 months. The experience of the contract administrators that are implementing the 2006 HOME Program speaks to the impracticality of the proposed

benchmarks. These issues within the time line require clarification before being implemented in future contracts.

The second concern I'd like to discuss is found on page 73 of the action item, and it involves the contract amendments. The reorganization of the HOME Division and the institution of the Performance Management Team is a welcome change, we really appreciate that. It will surely help to quicken the contract amendment request process which generally takes two months or more to complete. In light of these improvements, providing a single point of contact for each contract, the most effective way to deal with benchmark amendments is on an informal basis, through the contracts assigned performance specialist as the staff member most intimately involved in the contract implementation.

The contract amendment request process should remain dealt with as directed in the proposed rules, however, benchmark amendments should be excluded from this process.

Thank you for your time, and merry Christmas.

MS. ANDERSON: Thank you. Robin Sisco.

MS. SISCO: Good morning. My name is Robin Sisco and I'm with Langford Community Management Services. I also served on the HOME Advisory Task Force.

I would like to talk to you about the proposed 2008 HOME rules. There are three specific rules I'd like to discuss. The first is on page 53 of your action item, it's Rule 53.31(m). It states that in the event the housing unit ceases to be the principal residence of the household, the

forgiveness of the loan, if applicable, will cease unless the property is transferred by the de-biased decent or operation of law upon the death of the homeowner to a household whose annual income does not exceed 30 percent of the area median family income.

The problem with this is it does not address Rider 5 provisions. The most efficient way for the department to recycle money is to forgive the loan if another HOME-eligible household acquires the home rather than to recapture it, then award it to another entity, then award it to another HOME-eligible household. We recommend that the last change include "that is the household whose annual income does not exceed 30 percent AMFI or falls under Rider 5 provisions."

The second rule is 53.85(16). It regards soft cost limitations, and it's on page 27 of the action items. There the staff recommends decreasing the line item cap since the inspections are limited to one particular construction activity and some inspections can be combined. However, if two items are combined and inspected at the same time, the contract administrator can only charge for one inspections. This doesn't justify reducing a line item amount that has remained unchanged since year 2000. The costs associated with performing inspections, such as gasoline, employee costs and insurance, have risen dramatically over the last seven years. They certainly have not decreased.

At a minimum, we recommend leaving the line item unchanged at \$200 per inspection, a fairer price to acknowledge the increased cost of doing business would be at least \$250 per inspection. And you can see there

how the change would read on the action item in the figure.

The final item regards the same rule, that's 53.85(16), regards progress inspections. Staff is recommending that the city or county and the homeowner sign all progress inspections, however, most homeowners move in with a relative during construction of their home, often out of town and sometimes even out of state. This requirement creates an impossible situation. It requires a very low income, often elderly homeowner to incur the cost of travel back and forth to review and sign off on progress inspections. So we recommend removing the wording requiring homeowners' signatures on all progress inspections.

Thank you very much.

MR. CONINE: One question. When you said we recommend, who is we?

MS. SISCO: Myself and members of the task force that I've discussed this with.

MR. CONINE: The HOME Advisory Task Force?

MS. SISCO: The HOME Advisory Task Force. I also have the original response to the proposed rules that was written by the Task force, and I'd like to hand that out as well.

MR. CONINE: Thank you.

MS. ANDERSON: Mr. John Henneberger is the next witness, and then Dan Markson.

MR. HENNEBERGER: Good morning. My name is John Henneberger. I'm the co-director of the Texas Low Income Housing

Information Service. I'm here today to provide the board a little update on a pilot program that we're working on with the department to thank you all for your support and to recognize the good work the staff has done on this.

In the wake of Hurricane Rita, we became concerned about the failings that we saw in the FEMA program for providing long-term housing assistance to low income hurricane disaster survivors. We spent \$72,000 on putting a FEMA trailer on the ground that houses people for 18 months; we pull a FEMA trailer off and we leave it to the state to do what you can to try to help people out of the problem after that.

We've been working, as I said, with the staff for about nine months now, I guess it's been, or a little more, to put together a pilot program to try to come up with a better solution for the next time we face a major natural disaster that affects low income people.

The program is a joint project of the Texas Association of Architects, Chase Bank, Housing Texas, Texas Low Income Housing Information Service, and a number of other folks. We went to the Texas Society of Architects and asked them to invite all of their members to help us come up with a better design for modular housing product that could be put on the ground that would be a permanent long-term solution as an alternative to a FEMA trailer. This sounds a little bit like a Katrina Cottage but it's learned a lot of lessons from the problems that we've had with the Katrina Cottage. It's a permanent structure, it's designed by an architect, they are not Katrina Cottages and they're not FEMA trailers.

We have 160 teams of architects, Texas architects

participating. Almost 400 architects from around the state will be submitting designs on January 4, in response to an open request for a design competition, to come up with a better solution in this regard. The judging will take place here at the Capitol on January 8, and we hope to be able to make an award to the three best designs on January 31. And we're hoping that your board meeting is still on January 31 so we can combine the events.

There will be an exhibit of all the designs submitted by all these Texas architects in the basement rotunda of the Capitol for the week of January 25 through 31. And I'm proud to say that Mr. Bogany has agreed to be one of the jurors to pick the winning designs. We have a host of architects, local elected officials --

MR. CONINE: Wait a minute now. He's a Realtor.

MR. HENNEBERGER: Well, our feeling was that he knew what people wanted as opposed to architects.

MR. CONINE: Or builders?

MR. HENNEBERGER: We've got a builder.

MR. CONINE: Okay, good.

(General laughter.)

MR. HENNEBERGER: So anyway, we want to thank you all very much for your support on this. I'm hoping this will let us be prepared the next time we face a major catastrophe -- God forbid, but we will -- and Texas will be poised to be in the forefront of the nation in terms of being able to respond to these type of problems in the future.

Thank you very much.

MS. ANDERSON: Thank you. Dan Markson. The next witness is Jason Marshall.

MR. MARKSON: Madame Chairperson, members of the board. In this season of miracles, I have two for you. One is I'm going to be real short, and the second is that we got the COs for Commons of Grace.

(Applause.)

MR. MARKSON: And I thank you.

MS. ANDERSON: Thank you. That's great.

MR. CONINE: Nice job.

MS. ANDERSON: You need a Christmas vacation.

MR. CONINE: Not him but a few workers do, I'll bet.

MS. ANDERSON: Go ahead, Jason.

MR. MARSHALL: Chairman, members of the board, good morning. My name is Jason Marshall. I'm here to talk about a particular agenda item, agenda item 7(a) which is one of the amendments, in particular for the Rosemont at Hidden Creek. I apologize, but I don't know whether I'll be here at the time the agenda item comes up, so that's why I'm addressing you now.

I represent Southwest Housing Development Company, the developer of the project. I won't describe in detail the amendment, I'm sure staff will do that later, but basically involves a shift of twelve units from two-bedroom to one-bedroom and some change in the parking. Substitute improvements were made.

Basically speaking, this was caused by a change in the design

between the preliminary and final design that was necessitated by the City of Austin waterline easement being relocated. Obviously, it would have been better had this amendment request been made prior to now; it wasn't, and we accept, under the new rules, that there will be a penalty.

But staff does recommend approval of the amendment, again, considering the substitutions made and they consider it relatively minor, there was no loss of units at the project. Because of that, we would recommend that the board consider a one point score deduction for the next two application periods as the penalty. And I do not represent the general partner, I'm hopeful that they'll be here to talk to you in more detail when the agenda item comes up, in particular, but I don't represent them so I don't want to speak on their behalf. And I'd be happy to answer any questions that I can.

MR. CONINE: If you're not the general partner, who are you?

MR. MARSHALL: Represent Southwest Housing
Development.

MR. CONINE: The developer.

MR. MARSHALL: Yes, sir.

MS. ANDERSON: Great. Thank you very much.

I also have several letters that came to the department from elected officials -- I'm not going to read the entire letters. From Senator Mike Jackson, he writes to us concerning the 2008 HOME Program rule changes and refers to a letter he received from Mayor Ralph Stenzel, the mayor of Santa Fe, Texas. Mayor Stenzel was concerned first about the changes made in the 2006 HOME rules, and is now concerned about the restrictions and

changes posed in the 2008 HOME Program rules, and feels that the HOME Task Force recommendations have been ignored.

From State Representative Yvonne Toureilles, she also writes to express concerns about the proposed rule changes affecting the HOME Program. She is asking that the agency reevaluate the proposed rules and further study the impact they may have in South Texas, requests the board not adopt the proposed measures at this meeting.

From Senator Craig Estes there's a letter reflecting concerns raised by local elected officials in his district about the HOME rules, asks the board to postpone adopting any changes until the board can provide a detailed account of the impact on the 2006 HOME rules on the Owner-Occupied Program.

And then there is a letter from the mayor of Bowie, Texas, also concerning the HOME rules, although this letter is actually written before the revised rules went up on the website, and he's expressing concern that the city must act as a general contractor under the 2006 HOME Program Owner-Occupied contract.

So with the conclusion of those letters, that concludes the public comment, and then we'll have additional comment at various agenda items.

So the first item on the agenda then is the Consent Agenda.

MR. CONINE: Move approval.

MR. BOGANY: Second.

MR. GERBER: Madame Chair and board members, if I could

highlight a couple of small changes to the Consent Agenda. First, in item 1(e) which is the HOME Homebuyer Assistance Program NOFA, there is an error in the regional allocation formula chart that's on page 2 of that NOFA. The regional allocation formula chart indicates \$2-1/2 million distributed among 13 uniform state service regions, however, the correct amount available under this HBA NOFA is actually \$6 million. So the \$6 million is reflected in the board action item and is in the text of the NOFA as being distributed through the RAF to maximize the funds available in any particular region. So if it's approved today, it will be updated for \$6 million.

The second is on item 1(l) relating to the Comprehensive Energy Assistance Program. There's a correction to the backup document for the action item. The temporary 90-day contract for the Community Action Corporation of South Texas is shown at \$58,628; this is incorrect; the correct amount for the temporary contract will be for \$32,067.

And so we'd ask for those changes.

MR. CONINE: I accept those changes as part of my motion.

MR. BOGANY: Second.

MS. ANDERSON: Discussion on the motion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

Agenda item number 2 is Internal Audit Report.

MS. DONAHO: Good morning. I'm Sandy Donaho, your internal auditor.

We have our Presentation, Discussion and Possible Approval of our proposed 2008 Internal Audit Plan. We developed the draft Internal Audit Plan by considering work carried forward from the 2007 plan, as well as management requests and projects identified by various board members. There's a copy of the draft plan in your board book.

The first two projects on the plan are complete, and I'll be talking about those shortly. They're on the plan because they were completed during fiscal year 2008. There are three new projects on the plan: the Community Services Block Grant and Emergency Shelter Block Grant Monitoring Programs in Community Services which is one project, and the Border Field Program and Bootstrap Program in the Office of Colonias Initiatives which are the other two new projects.

There were two projects that were delayed from the fiscal year 2007 plan: Disaster Recovery Programs Payment and Draw Processing, and the Sub-recipient Monitoring Processes. These two projects were delayed in order to have a sufficient number of payments for testing purposes.

Other projects on the 2008 plan are required by audit standards or by statute. These include: followup on prior audit findings -- I'll be talking about that later; discussing and developing the Fiscal Year 2009 Audit Plan; revising our charter and policies and procedures to comply with new audit

standards; producing reports as required by statute; and coordinating external audits.

Are there any questions on the draft Audit Plan?

(No response.)

MS. DONAHO: I request that the board approve the 2008 Audit Plan.

MR. BOGANY: We move that we approve the 2008 Internal Audit Plan.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. DONAHO: Item (b) on the agenda is Presentation, Discussion and Possible Approval of our proposed Fraud Hotline.

Internal Audit frequently receives reports of potential fraud, waste or abuse on the part of agency employees, sub-recipients and contractors. Often we receive these complaints via mechanism that doesn't allow us to have sufficient information to follow up on them. We've evaluated a proposal from a private company called The Network. They're a third-party

administrator of anonymous hotlines; they provide 24-7 reporting mechanism via phone, fax, e-mail or postal mail. For the department to receive anonymous complaints, there's a short two-page summary of their services and costs in your board book.

Their screening instrument would be tailored to ensure that the department receives only reports on calls that meet our criteria. We'd work with them to develop that criteria and that would ensure that we do not receive general complaints that should be addressed directly by the department. For example, we don't really want people calling in saying their mortgage payment is late or anything like that, so we'd be able to screen those calls out.

Are there any questions on the Fraud Hotline proposal?

MR. BOGANY: Sandy, I just want to tell you I am glad we're trying to get this in place, and I hope the board will continue to push this forward so hopefully we will head off problems before it blows up on us. So I'm just glad you jumped on it, and I'm sure the Audit Committee and the board.

Do we need a motion to approve?

MR. CONINE: Might as well have one.

MR. BOGANY: I move that the proposal from Internal Audit to have a TDHCA Fraud Hotline be put in place.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Sandy, how soon will it be up and running?

MS. DONAHO: Once we've signed the contract, they said they could have it up and running in about two weeks. So I would assume we would meet with them and work that out and probably within a month or so.

MR. CONINE: Let's hope they don't get any calls.

MS. DONAHO: The next two items are the Internal Audit Reports on the 9 percent Competitive Housing Tax Credit Program. The first report that we issued was on the Pre-Application and Notification Processes. The Multifamily Finance Production Division has adequate processes to track application files through pre-application and notification phases. We identified a few opportunities to strengthen these processes.

The division should consistently date and time stamp pre-applications and payments as they are received. The date and time that the pre-application and payment was received was not on five of the 79 files we tested. We were able to find some of those dates on other documents, but that's something that needs to happen.

All the requirements of the pre-application process included in the QAP should be reviewed and documented. Proper site control

documentation was not collected in three of 79 files tested.

Pre-application review sheets should be completed correctly, any deficiencies should be explained and documented. We found errors in five of 79 files we tested, but the errors were not documented on the review sheets.

And the division should develop processes to document compliance with the notification requirements for elected officials, and the notification of opposition rules. All 22 applicants who received opposition to their developments were notified as required but the supporting documentation was not consistently retained. So they did get notified, it was just that the documentation was not in all of the files.

Are there any questions on this audit report?

MR. CONINE: Can you give me an example of the second one where it says proper site control documentation was not collected in three of the 79 tested?

MS. DONAHO: I believe that the site control documents were not documented that they were collected. So I don't think that they didn't not get what they needed to get, it was just that in the file they didn't document that it had been received.

MR. CONINE: So there was a real estate contract floating around somewhere, it just wasn't in the file you looked at?

MS. DONAHO: Right.

MR. CONINE: Okay. Thank you.

MS. DONAHO: And we felt like everything should be

documented in the file so you can go back and piece those things together.

MR. CONINE: Thank you.

MS. DONAHO: Any other questions on this report?

(No response.)

MS. DONAHO: The other 9 percent Competitive Housing Tax Credit Program audit we did was on the Application and Award Processes. The Application and Award Processes of the program ensure that applications meet the criteria for awards and that awards are given to the most competitive applications in each region.

We identified some errors and deficiencies in the application files that were overlooked by staff, however, we did not identify any applications that should not have been awarded tax credits since the deficiencies that we found could have been corrected had they been noted and the applicant had an opportunity to correct them.

The department does a good job of ensuring that the information maintained in the Multifamily Finance Production database is complete and accurate and that the information provided to the board correctly represents the information in the database so you guys are getting the correct information.

Two complete independent reviews should be performed on each application. They currently do two reviews but they aren't independent of each other so there's a tendency for the second reviewer to agree with the first reviewer without maybe making an independent assessment. So we found at least one error that was identified in five of the seven files we tested

that should have resulted in an administrative deficiency notice but did not. So if they did those reviews independently, that would help.

Department should require the applicant to notify the department if the applicant, the development owner, the developer, the guarantor or any of their related parties is subject to any criminal proceedings during the course of the tax credit cycle. Department should improve the organization and structure of the application files in order to increase the likelihood that errors are identified and corrected.

The department should also ensure that the information submitted to resolve deficiencies is complete and correct, and that the application review sheets include all of the QAP requirements. There were 26 QAP requirements not included in the review sheets that were used during the application review process. If they include them, it will ensure that they meet all of those requirements.

Department should post the application log information and scoring sheets as required by the Government Code. The department doesn't post an actual application log, but the information that's required to be in the log is posted, but in some cases it's posted in multiple places and we felt like if it were more easily identified or perhaps there were a map to where all that information is located that it would be easier for users to be able to locate the information.

Department should ensure all documentation required by the QAP is included in the commitment notice checklist and that reviewers make sure that the required information is received.

Are there any questions on this audit

MR. CONINE: Mr. Gerber, it says management agrees with our findings and is working to implement our recommendations. Can we have some staff comment on that?

MR. GERBER: Robbye, why don't you come on forward.

MS. MEYER: Robbye Meyer, director of Multifamily Finance.

We did agree with the findings for the most part, and our review sheets for the '08 cycle are not completed at this time, so the recommendations that they've made will be incorporated in those review sheets for staff.

MR. CONINE: Do you find that this has kind of been an enlightening or helpful process with the department staff relative to the 9 percent Tax Credit Program?

MS. MEYER: Extremely.

MR. CONINE: In general?

MS. MEYER: Extremely. It's been very helpful.

MS. ANDERSON: Although, in my lifetime on this board, we haven't ever had an audit of the Tax Credit Program by Internal Audit.

MR. BOGANY: And one of the things along with that, the findings were very small, and for not having ever had it done and nobody watching, it still was being done fairly very, very good. I applaud staff for you guys keeping everything in line so you were able to withstand an audit, even though it had never been done. I appreciate that.

MS. ANDERSON: It should give the people that participate in

the 9 percent program confidence in the way we run the program.

MR. CONINE: Thank you.

MS. DONAHO: And the last item for me is Presentation and Discussion of the status or prior audit findings. In our review of the prior audit issues database, we identified 282 prior audit issues that were not cleared by Internal Audit or closed. Not all of these are Internal Audit issues, some were external auditors or our annual financial report audits, those sorts of things. We organized these issues by division, we requested that each division provide the supporting documentation to clear their issues.

So of the 282 outstanding issues, 36 have been recently cleared by Internal Audit in the last month or so and closed, and there's a list of those in your board book. There are 186 issues that were reported as implemented and we've received the supporting documentation and are working our way through that. As time allows, we'll be looking at that documentation and creating the work papers and closing those issues.

There are nine issues that are pending or action delayed. We'll be following up on those every month. And then we extended the due date for 51 issues, I think mostly in the HOME Division, that needed additional time to respond because of their workload in other areas. So eventually we'll get those in and start working on those too.

Are there any questions on prior audit issues?

MS. ANDERSON: I just want to thank you for going back, as we talked about, and just sort of going back and seeing so we can get everything buttoned up over time. So it's good work and a good report, and

appreciate all your efforts.

MS. DONAHO: Thank you.

MR. GERBER: And I would just add we have learned a lot by going through this process, and Sandy and her team have been great working with our management folks, our staff folks to work through it. It's been a very helpful process in terms of getting everything buttoned down the way we want it to be.

MAYOR SALINAS: [Inaudible; mike not on.]

MS. DONAHO: Out of the 282 that are in our database that are still not confirmed by Internal Audit that they've been closed, there are 36 that we've gone through the supporting documentation that's been provided to us and cleared them.

When they send in the documentation, for example, if the recommendation from the prior audit is that they do a reconciliation of two different financial reports, they would send us a document that says here is how we do this and here is our policy and procedure for this and here is a copy of these two things that we reconciled. And then we'd sit down and examine that and see if we think that's sufficient or not, and if we do, then we'd close the issue. So we've worked through 36 of those in the past month.

MAYOR SALINAS: What's going to happen to the other 244?

MS. DONAHO: We'll eventually work through all of those too. We've gotten support for 186 of those, and so as time allows, we'll be working through to close those issues as well. And then hopefully at the end

we'll have a handful of issues that we're waiting to be implemented.

MAYOR SALINAS: Give us a timetable. When will you be done?

MS. DONAHO: I'm hoping to have worked through the 186 issues that we have to look at the supporting documentation on within the next year. It may take that long because this is a project where we're doing our other audits, and then as time allows, we're going through this documentation, so maybe by the end of the fiscal year, I hope. And then when we get the other issues in, we'll be working through those as well.

So most of these issues have been implemented by management, it's just a question of Internal Audit independently confirming that they've been implemented.

MAYOR SALINAS: Well, hopefully you can remind us and not forget them so we can get them done in the next twelve months.

MS. DONAHO: Yes, I hope so.

MS. ANDERSON: In most cases the issue from the audit has been taken care of, it's just that it's good practice for Internal Audit to then come back around and independently verify that it really was implemented.

MS. DONAHO: It's actually required by our audit standards.

MS. ANDERSON: She's cleaning up some stuff that wasn't closed.

MAYOR SALINAS: Okay. Well, let us know when you get through.

MS. DONAHO: Okay, I sure will. Thank you.

MS. ANDERSON: Thank you, Sandy.

MR. CONINE: Madame Chair, kudos to the outgoing Audit Committee chairman as well as the members of the Audit Committee. Appreciate their hard work.

MS. ANDERSON: Absolutely.

MR. BOGANY: Thank you.

MS. ANDERSON: The next item on our agenda concerns department rules, final orders of rules.

MR. GERBER: Ms. Arellano is going to walk us through the HOME rules. Go ahead.

MS. ARELLANO: Good morning. Jeannie Arellano, HOME Division director.

This item is a request for the board to approve for adoption the department's HOME program rule that's been out for public comment. The general public comment that we received from the HOME Task Force was also included in this board action item, however, as noted in the writeup, staff provided only a general response unless it included a public comment that specifically addressed something in the proposed rule.

The staff and I took a great deal of time thoroughly reviewing all the public comment that we received, including the HOME Task Force public comment, and we believe that we've made well thought-out administration and policy change recommendations to the proposed rule for adoption.

The most significant changes were made in the areas of the loan structure for the OCC Program to make a change to deferred forgivable

loans, and also in the area of the limitations on the soft costs, both the line item caps and overall percentage caps.

MR. CONINE: Jeannie, we had a couple of -- do we have any public comment on this?

MS. ANDERSON: I have one person to make public comment.

MR. CONINE: Let's go ahead and hear that.

MS. ANDERSON: Tres Davis, please.

MR. DAVIS: I know you're shocked that it's me making the comment. Good morning, everybody. I'm Tres Davis with Grant Works and the HOME Task Force, and I'm going to speak on three items real quickly on the proposed rules.

The first one being 53.8(e), the documents supporting the mortgage loans, and in the original draft rules you had recommended as using as-built appraisals for the second appraisal, and that's been stricken from the draft rules that were then published to the board book, and we really recommend putting that back in. We're finding the appraisers take about three months to get out to these rural communities, so it's really delaying the process, and if we can get them both done at the same time, it's more cost-effective, it meets industry standard, and it just lets us move forward quicker. So we really recommend putting that back in.

The second item I'd like to address is reducing admin funds from 4 to 2 percent, and that's figure 53.85(c). And on the second page of the little handout I just gave you, I just did a calculation showing what the change from the 12 percent to the 16 percent soft cost does, and then the

reduction from the 4 percent to 2 percent in admin. Per house, what we're seeing is the maximum increase that this would allow is \$647, but the real world addition of costs that we're finding for doing the loan closings and the items that are required to get us to loan closing are a low average of \$2,500 a unit, and a high of about \$3,000. Some of them are actually going above that. So you can see the \$647 doesn't even begin to offset those additional costs. So we recommend putting the admin back to the 4 percent, leaving everything at 16 percent. It still won't completely offset the costs but it will certainly help.

And then the final thing I'd like to talk about is just in the definitions section, 53.2. It stated that all eligible forms of match are already accepted by the department, and I think there may have been some confusion that was my comment, and actually consultants, developers and contractors, if they're hired to work on a project right now, can't donate anything to the department as match. HUD has a letter that was presented to the task force that recommends allowing that because it is allowable by HUD and by OMB Circular, and it's an easy form of match to document for the department. It's often things that are negotiated contracts down, that difference can be donated, or if a contractor goes in and puts an extra and doesn't charge for it, that can be donated. So we recommend allowing that.

That is it, other than I hope everybody has a merry Christmas, a happy Chanukah, and a safe and prosperous New Year.

And also, I want to thank staff for their thorough review. They really did a great job this year, I think, of looking at the rules, going through them, the responses were very well thought out, and you can tell a lot of time

and effort was put into it. So we really appreciate that. That's not only me but also from the task force. So thank you.

MR. BOGANY: Madame Chair, I have one question. Why does it take 90 days to get an appraisal, over 90 days?

MR. DAVIS: What we're finding is in a lot of these rural communities, there are not any appraisers, A, in the community so they've got to come from a different town, and for them to schedule and to come over, that's just what it's taking. Like City of Orange Grove, for example, which is very close to Alice, we could not get an appraiser from Alice to go over to Orange Grove, we could only find one from Corpus, and they were 90 days out before they were willing to make the trip. Same thing up in Bowie, we had the same problem there.

MR. BOGANY: But they are selling houses in those areas.

MR. DAVIS: Not very many. There's really not a lot of sales going on in those areas. These are towns that are very stable and you just don't see the sales.

MR. BOGANY: Well, I would think with today's technology, you know, appraisals shouldn't be taking 90 days.

MR. DAVIS: Amen, I agree.

MR. BOGANY: It just floors me because I know you can get an appraisal done in a day.

MR. DAVIS: If you're in an urban area.

MR. BOGANY: In an urban area. But it's not like somebody has got to be willing to make some sort of income out there.

MR. DAVIS: Well, in Orange Grove, we found one guy that was willing to go over from Alice but he was going to charge \$3,000 an appraisal, so it would have been \$6,000 a house for the before and after, and we just couldn't do that. And he could have done quicker, so yes, but it wasn't really --

MR. BOGANY: One more last question and I'll leave you alone. Appraisal Institute, have you guys gone to the Appraisal Institute and said, Hey, we've got a problem in the rural communities, is there any way you can work with us with your group to try to get these appraisals done or give us a group that are willing to work with us at a reasonable price?

MR. DAVIS: I can't honestly answer that, I don't know, but if we haven't, we sure as hell will now, I'll tell you that.

MR. BOGANY: The Appraisal Institute, a gentleman in Houston called Frank Luco, who was president of that, you probably might want to call him. Because 90 days, that just blows me away.

MR. DAVIS: I agree. We've been very shocked by that too.

MR. BOGANY: Okay, thank you.

MR. CONINE: We probably ought to get staff to make that call as well.

MR. BOGANY: Yes.

MS. ANDERSON: Thank you. That concludes the public comment on this agenda item.

MR. CONINE: Jeannie, the way this process typically works is you have all the meetings with the advisory council and incorporate some of

the changes and don't incorporate a few of the others, and then when the HOME community sees which ones made it and which ones didn't and they come back with pretty sophisticated pieces of paper that they've handed out today, I guess commenting in general, the process, as you see it, do you see where the advisory task force has had sufficient input, or is there some tension, I guess, between staff and the advisory task force at this point?

MS. ARELLANO: I believe that the HOME Task Force had sufficient input. I actually participated, was onboard and attended all of the meetings, and as noted in the writeup, already made administrative changes to how we run the program -- for example, making the contracts effective the date that Mr. Gerber signs the contracts. So there was a lot of input that I received there and the staff received, and included in our recommendations to the changes to the proposed rule. One of the biggest changes was the recommendation to do deferred forgivable loans instead of the repayable. So in my opinion, I think there was sufficient input.

MR. CONINE: But we've been handed ten changes.

MS. ANDERSON: This is probably worth taking the time to sort of just take them an issue at a time.

MR. CONINE: Well, from a timing standpoint, I didn't know whether we absolutely needed to pass these rules today, or whether we could maybe work on some of this in the next 30 days to come back.

My other concern, Madame Chair, is that I've been the recipient of several letters from state representatives as well --

MS. ANDERSON: I agree. Some of which were written before

the rules even went up for people to look at the final rules.

MR. CONINE: My ears tend to perk up when I get a letter like that. So are we in a time crunch here, or what, from administering the program in 2008?

MS. ARELLANO: All the NOFAs that were approved with the Consent Agenda were written and revised for these being adopted today.

MR. BOGANY: Madame Chair, is it possible for us to just -- Jeannie, you've got a copy of what we've got?

MS. ARELLANO: I can address these.

MS. ANDERSON: Yes, let's walk through them and see where we are.

MS. ARELLANO: I think I can be succinct enough to address these comments.

The first comment --

MR. CONINE: Which one are you on?

MS. ARELLANO: The one about the forgiveness for below 30 percent AMFI. It's 53.31(m).

MS. ANDERSON: Our heading is Owner-Occupied Housing Assistance Program.

MS. ARELLANO: It's page 53 of the action item. As far as that one goes, staff actually agrees with that comment. We missed that. We made changes to the proposed rule allowing for the income to go up to the 50 percent for the rural counties, so I think that's a simple fix that we can address there, if that's acceptable to the board.

MR. BOGANY: Does it have to be amended or you can just fix it?

MR. CONINE: We've got to do it here.

MS. ARELLANO: As long public comment from the board is being recorded.

MAYOR SALINAS: 53.31(m)?

MS. ARELLANO: Correct.

MS. ANDERSON: Go ahead. Soft cost limitations.

MS. ARELLANO: So 53.85(16), page 27 of the action item.

This item is in regards to the line item cap on the inspections. In our board action item, the recommendation is what we were trying to get at is we realized the costs have increased, however, we were trying to encourage the local contract administrators to go out and actually inspect these properties, especially since they now have to assume the role of contractor on these loans that we're doing in the OCC Program. So we highly encourage the contractors to have an efficiency in the cost for the contractor to go out -- the city, county, non-profit to go out and actually perform the inspections.

MS. ANDERSON: I mean, we're talking about 50 bucks here.

MR. CONINE: Per inspection.

MS. ANDERSON: Per inspection.

MAYOR SALINAS: What you're saying the staff has recommended the city and the county go inspect?

MS. ARELLANO: We recommend encouraging the cities and the counties to inspect. They have staff that in most cases can inspect, and

are encouraged to do so because they are the contractor.

MR. BOGANY: Jeannie, so you felt the \$50 more was too much money?

MS. ARELLANO: As it relates to the public comment today, it's an insignificant amount to change.

MR. CONINE: I've got no clue what market rate is on that stuff these days, especially if you're talking rural, which you typically are in these situations. I just don't know.

MS. ANDERSON: My sense would be if we're being asked to do that and it's 50 bucks, let's do it.

Then the next one is soft cost limitations on page 82 of the action item, and this is about the homeowners having to be present for the inspections.

MS. ARELLANO: Not being present but signing off on it, and our recommendation is that since it is the homeowner's house that's being demolished, that they be kept apprised of what construction activities are occurring on their property, and if they have moved out of town, we would recommend mailing the inspection form to them for them to sign off.

MR. CONINE: How about a fax copy?

MS. ARELLANO: That's acceptable also. I just don't know how many homeowners would be able to send fax copies.

MS. ANDERSON: Well, I mean, if they're out of town and they're low income and they're elderly and they're frail, would you sign something that said you had signed off on an inspection when you hadn't

seen your house because you're in Tulsa?

MR. BOGANY: Why couldn't we include a photograph? Have the contractor, once he demolishes, before and after, take a digital picture of whatever included in there and mail it to them and let them sign wherever they are.

MS. ARELLANO: That is what we're asking is photographs to be included.

MR. BOGANY: Okay.

MR. CONINE: I think the requirement of the physical presence is a little onerous. I mean, they make a good point here.

MS. ARELLANO: It's not physical, it's just the homeowner signing off on it.

MR. CONINE: I guess we want to make sure that there's ability to do a fax signature after looking at pictures, or by mail.

MS. ARELLANO: Well, we receive the documentation typically by fax, anyway, when the draw requests come in to pay out for the inspection or any other construction work.

MS. ANDERSON: But this is a new requirement to put the homeowner into that signature process, along with the inspector and contract administrator. They have not previously been in this signature process?

MS. ARELLANO: Correct.

MR. BOGANY: Why did you want to do it that way? Just for them to have some input of what was going on?

MS. ARELLANO: For the inspections.

MR. CONINE: If they're doing four during the progress of construction, I don't think it's a bad thing, somebody is rebuilding their house for them, to say yes, I've seen the work done. We're not asking them to agree to the work or the funding, we're just asking them to acknowledge that so much has been done. Right?

MS. ANDERSON: Well, this says verify quality and completeness of work to date, and if I'm a low income homeowner in Muskogee with my sister or my daughter, I think as a practical matter, people are going to be reluctant to sign documents.

MS. ARELLANO: Well, that's for the inspector to verify the quality and the work is complete.

MS. ANDERSON: Well, what is the homeowner attesting to, just I've got this document?

MS. ARELLANO: That they've received a copy of it.

MS. ANDERSON: Well, let's make sure that the documents are very clear that all they're attesting to is they received a copy of it.

MR. CONINE: I'm with that. So we got two out of three we're going to change there. Which one are we going to next?

MS. ANDERSON: We've got three out of three we're going to change -- no, we're not going to change the last one, we just clarified.

MS. RAY: It's still a change.

MR. CONINE: It's a slight change.

MS. ARELLANO: I don't know which order you received them.

MR. CONINE: Just rattle off whichever one you've got next.

MS. ARELLANO: 53.80(e), document supporting mortgage loans, page 75 of the action item. The public comment is requesting that we allow an as-is and an as-built, and that is something that we put into the rules as a recommended change when we originally went out with them. However, since that time, we went back to re-evaluate what the actual process was going to be to calculate this equity credit, we went back and looked at the transcripts from the board meeting and Mr. Conine's comments, to make sure we captured how that calculation was to occur.

MS. ANDERSON: Do you remember what you said?

MR. CONINE: No. I've slept since then.

(General laughter.)

MS. ARELLANO: And with that, we realized that we really need an as-complete appraisal, not an as-built, because there are changes that may occur during the construction period that could have an impact on the actual market value of the appraisal, especially if you're adding a \$5,000 line item, increasing the costs on it, and we wanted to ensure that the homeowner got the most credit for that, as was the intent with your comments.

MAYOR SALINAS: So which one do you want to change here?

MS. ARELLANO: Staff is recommending to not change to an as-built.

MR. CONINE: Well, as-built and as-complete are the same, are they not?

MS. ARELLANO: As-built is they're looking at plans and specs at the front-end of the appraisal so that it can be completed with an as-

is information and how it's going to be built; whereas, as-complete is after the construction is complete for the property.

MR. BOGANY: Jeannie, why couldn't an appraiser just go out and do the as-built and then go out and just do an inspection and make sure that everything is there? Would it draw out the process doing an as-completed? It seems like that slows the financing side down.

MS. ARELLANO: To modify this to include that we do need confirmation on the as-built, that it is completed as the as-built was done, we can make changes to it.

MS. ANDERSON: Would that be another inspection? That wouldn't be a third appraisal.

MS. ARELLANO: I think an appraiser would charge an update of 100 bucks to go out.

MR. BOGANY: I know on new homes -- and maybe Ken can tell you -- on new homes they come out and they appraise the property and the actual set of plans, and then after they get the set of plans, they appraise as you move forward, then he comes out just to verify that the house is complete. To me, that probably is a part of his deal because all he did is look at plans and come up with a value anyway, he never made a trip out there anyway.

MR. CONINE: Well, what she's trying to pick up are changes during the course of construction. If it goes up \$5,000 because he did better appliances or something, he's not going to have that in his initial number.

MR. BOGANY: Well, then, to me, the contractor should submit

that to the financing that we've had a change of order and would you please give this to the appraiser to review it to make sure they can even justify that value. And I think if you got a change, you might want to go to that appraiser before you do that change and say, Hey we've had a change, we've added an extra tub, so we need to make sure that this can cover this value from an appraisal side from the financing side. So I would think if I'm a contractor, I want to submit this to make sure that the house can hold that value. I'm just thinking about how things work in the real world.

MR. CONINE: We're getting real cumbersome here with the appraisal, and I don't want to get too cumbersome with the appraisal, yet I want to give the homeowner all due credit that they deserve.

MS. ARELLANO: Which was our intent, and again, we re-evaluated your comments and we wanted to make sure that we got the homeowner complete credit so that if there were improvements made to it that we would be able to adjust the loan amount.

MR. CONINE: I would think Mr. Bogany's suggestion would probably work in the practical world. Up front, if you get an as-is and as-built appraised value, with the requirement that the appraiser review any changes during the course of construction and modify his appraisal value if necessary.

MS. ARELLANO: Okay.

MAYOR SALINAS: I'm for everything that you want to change except one thing: that the homeowner signs on inspections, id not agree with that. I agree that the city or the county should do the inspections, get it over with, then head over to the house to the property owners. But if you let them

sign off on inspections, you're going to have a hard time and he might not even want to accept the key to a house until he wants what he wants to get. You know, we have run into that problem where people will not accept the house because we have given them that right.

MS. ANDERSON: I think in the discussion we were having a minute ago about how to do that, we need to clarify this rule so that it's only the inspector and the contract administrator signing off on the quality of the work, and the only thing we're asking the homeowner to do is just to acknowledge that they received a copy, not that they passed judgment on the quality of the construction or anything. That's not their role. All they have to do is acknowledge that they were given a copy.

MAYOR SALINAS: But a few minutes ago we were talking about them signing off on inspections also, and if you do that, then it's not going to work.

MS. ANDERSON: Right. That's why we're going to fix this rule to make it clear what it is we're asking the homeowners to sign to, and it's not to accept the inspection, it's just that they received a copy.

MS. ARELLANO: Can I just get some clarification? Should I make this change to the actual administrative requirements to where the administrator is required to send a copy to the homeowner and not necessarily have the homeowner sign that they received a copy?

MR. BOGANY: I thought that the homeowner had received a copy, I thought that's what we were saying the first time, that they had received a copy. Because they're not going to be able to judge the quality of

work or anything, just that they've received everything, and I would love some pictures to go along with it.

MS. ARELLANO: So the homeowner signs that they received a copy.

MR. CONINE: That's all, just acknowledging they got a copy.

MS. ARELLANO: Okay.

MR. CONINE: Now back to our appraisal process. Did we get clarified on that issue, where they don't have to go back and physically inspect at the tail-end, they can just do it via e-mail or fax so that we don't cumbersome-up the project and increase costs on the appraisal process? I don't think you're going to have big enough swings or increases in value during the course of construction anyway. These are low income folks that have a hard enough time as it is.

Are we clear as mud on that?

MS. ANDERSON: Are you clear on that, Jeannie? And I'm not seeing anybody in the audience shaking their head, we've got nods. Okay.

MS. ARELLANO: Page 22 of the action item regarding the reduction in administrative costs from 4 percent to 2 percent. The staff and I performed a pretty detailed analysis based on the line item caps associated with the OCC and HBA programs and what the total of the caps would come to, and incorporated within that was the soft costs that are involved for closing costs.

The federal requirements allow us to separate costs between

administrative and project costs which we refer to as soft costs, and it made more sense to move all of the closing costs instead of in administrative costs to the project soft costs side since they are actually associated with a project. So we increased the soft costs to 16 percent to absorb all of the total line item caps for all the costs associated with the project, including inspections and application intake, all of those items, and also included pretty conservative estimates for what closing costs are involved.

I also need to clarify that we did recently receive verification from HUD that HOME funds cannot be used to pay for homeowner's insurance, so that has created even more room under the cap for the other items to be paid for that are eligible. So staff does not recommend increasing the administrative back to 4 percent because we took the costs that were administrative and moved them over to soft costs which is why we increased that cap. And if you actually put some numbers to it, there's enough room, there's actually some left over in most cases

MR. CONINE: Staff did their homework on this one, I think; let it stay where it is.

MS. ANDERSON: Eligible match.

MS. ARELLANO: This is also something that we recently received a clarification from HUD on. Our consultant firm actually sent an e-mail to HUD asking this question. HUD forwarded the e-mail to headquarters in D.C. and received a response, and they agree with the state's position that any fees that are provided by a consultant or service provider cannot be eligible as a match for the HOME Program.

MS. ANDERSON: But I thought the witness was talking about donated services.

MS. ARELLANO: Donated services and fees for consultants or service providers are not an eligible form of match.

MR. BOGANY: Can I ask that witness to come up here? Because he just said he talked to HUD and they said you could do it.

MR. DAVIS: No, I'm sorry, I actually didn't talk to HUD. It was a letter that they provided to the task force from HUD that said that "During a recent monitoring visit, HUD indicated that TDHCA is not fully utilizing all eligible forms of match. Currently the TDHCA policy states developers, owners and contractors may not directly contribute match in any form. This interpretation has eliminated many eligible forms of match from being realized."

So that's where I got that from is actually what the department provided to us.

MS. ANDERSON: Have we looked at this OMB Circular, Jeannie? Have we looked at OMB Circular 887? I mean, I have some questions about how wise it is to accept donations from consultants and contractors as match because I think it opens the door to inducements to win contracts, and that's not a road I'm sure I want to go down.

MS. ARELLANO: The OMB Circular is not that specific to go down to the level of what match is allowable. The OMB Circular basically discusses cost reasonableness and correct estimation of the calculation of what that match would be which, again, was HUD's concern in their response

is match should typically be something that's a permanent contribution to that housing unit, and they were, again, very clear that they did not agree. They actually even asked staff what we thought was behind it, what reason.

MS. ANDERSON: So you have it in writing clearly from HUD that it's not allowable.

MS. ARELLANO: Yes.

MS. ANDERSON: Is there any more discussion on that one?

MS. RAY: Staff recommendation on that one.

MR. GERBER: Is that it, Jeannie?

MS. ARELLANO: I think there's two more: 53.72, contract terms, page 14.

MS. ANDERSON: Right.

MS. ARELLANO: The board writeup on page 76 and 77 actually addresses. I'm a little confused on the public comment because we did make adjustments for the six months prior to the contract that demolition, because of the time that it takes to get loans closed and to allow construction to be complete, we actually require the project set-ups and that demolition cannot occur less than six months before the end of the contract to make sure that we have enough time for the loan closing to occur and for them to finish that unit before the end of the contract term.

Again, staff feels that the 22 months that we've put into the rule is an adequate time frame. We took into consideration the amount of time that it takes to do your application intake, your environmental, and especially the fact that contracts are not effective until Mr. Gerber signs them, we pushed

that time out to give the administrators more time, full complete time to finish their contracts from beginning to end. So staff does not recommend any changes.

53.73, contract amendments. I believe the public comment is in regards to benchmarks being extended. I think that what the recommendation is is that since the HOME Program now has a performance specialist team that are actually provided the oversight and technical assistance to contract administrators and getting them to perform during their contract period, I think that the comment suggests that the HOME performance specialist that's assigned to that contract be able to extend any benchmark that's required to be met in the contract, as long as it's not extending the contract period. And if that's the case, if that's what the intent is of the public comment, that would be acceptable to staff.

MS. ANDERSON: So you think that that would lead to -- when we extend a benchmark, given what you know about how these things proceed, does that mean ultimately we're going to end up extending the contract too?

MS. ARELLANO: I think it would lead to extending the contract.

MR. BOGANY: Would you restate, Jeannie, again, that the public comment was -- you had made a comment earlier and I saw the person who made this shake her head, so I just want to make sure what you said earlier, if you felt that was the intent.

MS. ARELLANO: I think the intent is that the HOME staff, the

performance specialist that's assigned to the contract have the ability, instead of working with the actual administrator and recognizing what delays they may be experiencing and what they may actually have some efficiency on time on, I believe that the intent is for them to be able to approve the extension of that benchmark, as long as it's not causing an extension to the end of the contract term.

MR. BOGANY: And you're okay with that?

MS. ARELLANO: Yes.

MR. CONINE: Okay by me.

MR. BOGANY: Can I move to adopt the HOME rules, as stated, with the changes that Ms. Jeannie is going to make.

MS. ANDERSON: And you're clear on what changes, the board's will on the changes?

MS. ARELLANO: Yes.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Thank you to the witnesses and to Jeannie and the HOME staff for their hard work, and to the board

members for our good discussion on that this morning.

Agenda item 3(b) is discussion about accessibility, the proposed Accessibility Requirements rules.

MR. GERBER: Madame Chairman, board members, while it's been a long time coming, this item represents a request that was made by the board over a year ago to develop a rule on accessibility for department programs. The rule was drafted by a national expert in the field, Sara Lee Pratt, an attorney that we contracted with up in Washington, D.C. We've had considerable input into this rule from both persons with disabilities and from the development community. Although everyone didn't get what they wanted, we believe that it makes our requirements more easily understandable through sourcing material and examples.

So staff is recommending the adoption of this final rule for publication in the Texas Register.

MS. ANDERSON: I do have one person that would like to make public comment, Sarah Mills.

MS. MILLS: Good morning. My name is Sarah Mills, and I'm with Advocacy, Inc., and I'm here today to speak on behalf of Advocacy, United Cerebral Palsy of Texas, and the Texas Council for Developmental Disabilities.

What's been handed to you is we had an attorney named Brian East in our organization that has worked very hard on reviewing this chapter of the rules, and this is some final kind of comments based that he has made based on what was published in the board book Thursday. It looks

like it's a lot but it really is not that much. He just wanted to be very lengthy and started giving you the guys the history of the proposed rule, his original comment, staff's response, and then his comment back to that in some areas that he thinks could maybe be improved somewhat.

I just wanted to point out a couple of things because I don't have, of course, time to read this entire document. The first one is number 1 on your handout. The proposed rule that's stated, his comment was to improve the clarity, a little wordsmithing. Staff said they agreed to that and that the changes were made in the text where appropriate. However, upon Mr. East's review, he did not see that those changes were made.

The second one I just want to point out is number 8, and I did hand staff a copy of this too; Ms. Boston and Mr. Hamby have received copies of this. The proposed rule is 60.207, and basically, Mr. East provided an initial comment and the staff gave response. He follows up by stating that he does not object to the staff's interpretation, however, he just believes that the language of the final rule may not clearly conform to that interpretation and the wording is difficult to follow and may be repetitive. He then, after that, has provided another recommendation based on the staff's response.

Basically, I know that staff has worked very hard with this, I know you all are committed in making sure this is a great chapter for Accessibility Requirements, and what we're requesting is that it be tabled so that staff can review Mr. East's comments and maybe collaborate with him or talk with him about them, or then you all too can review what Mr. East has stated.

Thank you for your time.

MS. ANDERSON: Thank you.

MR. CONINE: Comments from general counsel?

MR. GERBER: Mr. Hamby.

MR. HAMBY: Kevin Hamby, general counsel.

Members of the board, we appreciate Mr. East's comments.

As a matter of fact, the original comments that came in, as we explained, were on the originally proposed rules before they got published, and we tried to make sure that everything was corrected and all the comments were brought forward. I think we just disagree with Mr. East on some of these comments, and we've had Sarah spend, actually, considerable time reviewing the comments.

The number 1, we obviously just failed to do it. We were copying his comments from the old rules over to the new rules and we failed to do that. We'll just make that correction.

What we have presented to the board is what you've requested: to know what is required under the Accessibility guidelines in 504. We know that not everybody is going to agree with those, but we would not recommend that you table this any longer. If there are some issues that come up, these rules can be amended at any time if you find there's some conflict that just doesn't work, but this does represent about a year's worth of work, and meeting with both the disability community and with the development community. So we believe that the time is ready, we should go ahead and move forward.

MR. CONINE: Are you saying that we should go ahead and incorporate number 1, the change in number 1?

MR. HAMBY: Yes, sir, we already agreed to that. If it didn't make it in -- and I was trying to do it real quick while I was also listening to the HOME rules, and I couldn't see if it was, but where it's just a comma question, we will make that change throughout.

MAYOR SALINAS: That's on rule number 1

MR. HAMBY: It's actually on 60.201(c) but it's the comment we agreed to that, and if we didn't make it, it was an administrative error. And the rest of them we didn't agree to.

MR. CONINE: And what I'm also hearing is that the development community vetted this fairly well in the July meeting. Is that correct?

MR. HAMBY: Yes, sir. We actually asked staff to set up a meeting with the development community and we had a fairly strong discussion and we represented those into the rules as published prior, and we also asked Sarah to come up and make sure that everything that the development community requested was accurate. And that's what we did, we took both the disability community's original comments on the proposed draft rules before we actually published them and the development community's comments before we actually published the draft, and put them out and incorporated them with Sarah's review, and that's how we came up with the original draft rules.

So I'm not sure anybody is particularly happy but I think

everybody had the opportunity to input and we incorporated as many of those as Sarah felt were within the guidelines that the board directed her to do.

MR. CONINE: Madame Chair, I move approval of the final rule on Accessibility Requirements, with the change incorporated in item number 1 of Advocacy, Inc.'s comments to us.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

Agenda item number 4 are some items for the HOME Program.

Mr. Gerber.

MR. GERBER: Yes, ma'am. The first one is the City of Lewisville. Lewisville has requested a third amendment to extend their contract for six months. In November of 2006, the board approved a nine-month extension and reduction in the number of assisted units from eight to six. Then in June of 2007, this board approved a three-month extension due to excessive rain experienced to allow the City time to complete the contract's sixth and final activity.

The department now has received a request from the

administrator to extend the contract again to March 31, 2008. The City has experienced some extenuating circumstances, that are detailed in the writeup, in attempting to complete this final house. And it should be noted that the household has been displaced for about seven months, so should you all choose to provide an additional extension, staff has some recommendations for accountability just to ensure that this work gets done by March 31 that are included in your board book.

MR. BOGANY: What's the extenuating circumstances?

MR. GERBER: Jeannie, do you want to touch on Lewisville?

MS. ARELLANO: Jeannie Arellano, director of the HOME Division. What was the question?

MR. GERBER: Extenuating circumstances in Lewisville.

MS. ARELLANO: Their letter is included in the board writeup and it detailed that there were some delays earlier this year when they came before you all to get the three-month extension related to the soil testing that was done, and then when it was going through the design approval process, there was some delays, there was a mistake made at that point. And they actually were able to rush the design review through, and plans were not submitted for the permit application until August 27, so they got them to rush that through.

But the biggest delay was not being able to perform the soil testing because of the extensive rain in the area during that time.

MS. ANDERSON: We have Mr. Jamey Kirby, who asked to speak on this item.

MR. KIRBY: Thank you. Jamey Kirby. I'm the grants coordinator for the City of Lewisville.

We appreciate staff's guidance and the board's patience with this project. We have completed five of the six homes. The final home, in addition to the rain, the real underlying problem was a communication problem between the general contractor and the architect where he had given us a schedule to begin that he could pull his permit -- this was about the time of our last extension -- and the client scheduled her move time and we scheduled demolition and proceeded before the general contractor made us aware that the soil samples still had not been taken.

Since that time, though, as Ms. Arellano mentioned, the building permit has been drawn and construction has begun, and as of yesterday, the framing was begun.

MR. CONINE: Madame Chair, I move staff recommendation on this which has several items in it.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. HAMBY: I just have to clarify that you're granting the extension.

MR. CONINE: We accept the April 30, 2008 date.

MR. HAMBY: Great. Thank you.

MR. GERBER: The next item is Midland Community Development Corporation which is requesting an amendment to extend their contract for six months. In May 2005, the board approved a restructuring of a number of CHDO set-aside awards, including Midland, and in doing so, extended the contract end date to September 30, 2007 and increased the project budget.

Some of the purposes of these modifications were to allow additional project funds and time to incorporate acquisition and/or construction costs to ensure that the contractor could remain CHDO-eligible. The number of households served were reduced since increased funds were required on a per-unit basis to ensure both acquisition and/or construction costs and down payment assistance funds were provided with CHDO HOME funds.

In May of 2007, and in an effort to expend additional CHDO HOME funds, the department approved a second amendment to increase the project budget from \$375,000 to \$425,000, and modify the performance requirements to increase the number of households served from five to six. In August of 2007, Midland CDC submitted a request for an extension to this contract and a request for an additional \$1.13 million in project funds due to a growing pipeline of households to be assisted with this funding.

Although this request was denied by the department, due

primarily to the size of the request and an open CHDO NOFA, Midland CDC has had a very active pipeline of applicants that are pre-approved for financing from first lien lenders and have housing units that they've completed construction on or are actively underway. To avoid delays in assisting some of the households, with the time required for application submission and department evaluation, Midland submitted a request to the department to extend the contract period through March 28 of 2008 and to provide assistance to nine additional homebuyers.

So the writeup you see in front of you includes a detailed pipeline report that was submitted by Midland, and it's important to note that the HOME funds being used for this contract are from the federally required CHDO set-aside, and the department has experienced some challenges in meeting the CHDO requirements, and if the board chooses to approve this request, a significant amount of CHDO funds would be committed and benefit the department's ability to meet or exceed this federal CHDO set-aside requirement.

But this request, of course, can't be approved administratively, so we ask for your consideration.

MR. BOGANY: So moved with the staff recommendations.

MS. RAY: Second.

MS. ANDERSON: You're proposing to approve the extensions?

MR. BOGANY: Right, with their recommendations.

MS. ANDERSON: Mr. Diaz, do you care to testify then?

MR. DIAZ: If we're going through, I'm fine.

MS. ANDERSON: We have a motion on the floor, it's been seconded. Is there any discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next item is Edinburg Housing Opportunity Corporation, which is requesting an amendment to extend the end date of their contract for four months to January 31, 2008.

On May 2, 2006, the department granted the first extension for a period of two years through September 30, 2007. The administrator has experienced delays due to uncertainty regarding the types of activities that are required under the contract. To date, the administrator has completed 15 activities.

The department has received a request to extend this contract until January 31, 2008 to provide assistance to eight households that are also participating in the Texas Bootstrap Loan Program. Construction on all eight homes is 100 percent complete and eight households have been pre-approved by a first lien lender in conjunction with the Bootstrap Program.

It's important to note that the HOME funds being used for this

contract are also from the CHDO set-aside, and also, during a staff review of the activities assisted to date by Edinburg, it was discovered that one of the HOME activities exceeds the applicable 50 percent AMFI but was determined to, in fact, be below the 80 percent AMFI. This household did not receive assistance from Bootstrap and it's important to note that.

So should the board choose to provide an additional extension, staff has included, again, recommendations in your board book, and we ask for your consideration.

MAYOR SALINAS: This is to approve the extension up to February?

MR. GERBER: To January 31, 2008.

MS. ANDERSON: It says February 29. Is next year a leap year?

MAYOR SALINAS: I move to go ahead and approve the recommendation from the staff.

MR. BOGANY: Second.

MS. ANDERSON: Meaning approving the extension.

MR. BOGANY: With the recommendations.

MS. ANDERSON: Making sure we're clear. Any discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

Item 4(b) is with regard to a possible modification to the form of a loan for HOME Homebuyer Assistance.

MR. GERBER: Madame Chair and board members, with this item staff is recommending that the loans for existing HOME Homebuyer Assistance Program contract that have not yet been executed be structured consistent with federal requirements and the HOME rule that's proposed that you just approved.

Originally, this item was posted for loans specific to the NOFAs that were released for persons with disabilities, but to be consistent with the federal guidelines and the new rule, the item has been modified to cover all loans that meet the criteria. The modification will be to the form of the loan from repayable loans to a zero percent deferred forgivable loan, with a term based on the federal affordability requirements, as defined in the Code of Federal Regulations, regardless of the household's AMFI.

MR. BOGANY: So moved.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: So all in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

We are going to take a brief break and then come back, and we have a special agenda item at that point.

(Whereupon, a brief recess was taken.)

MS. ANDERSON: The next item of business is not on the agenda, but I feel confident that no one will object to what we're going to do. We are going to take some time now and honor Shad Bogany, who has given more than six years of his commitment, energy, expertise, and support to the department and to the cause of affordable housing in Texas, and so this will be his last board meeting as a member of the TDHCA Board, but we know it's not the end of his commitment and involvement in affordable housing.

And so I would like to ask, Mr. Gerber, if you would start, and then there may be some comments that our board members would like to make.

MR. GERBER: Sure. Thank you, Madame Chair. I can't even begin to tell you all just how much Shad has meant to our board and to affordable housing in Texas, and for me, coming in as a fairly new executive director, he's just been a great professional mentor and friend. He's brought a very real, special perspective to us as a Houstonian, as a Realtor, as we all know, and is really a very passionate advocate of affordable housing in our state.

During his six years on our board, Shad took a very active role and spent a great deal of his own personal time committed to the business of this department and it just shows at every board meeting. And as you all well

know, you could bet that if a tax credit application is being submitted in Houston and it was on the board agenda, Shad was likely to drive by that and scout it out for himself. So I'm really going to miss those personal market studies of yours, and some folks in the room might miss them as well.

Few folks in the industry have a greater knowledge of real estate than Shad and that is something that is very much going to be missed for all of us on staff, and of course, you realize with your departure, it's Mr. Flores who is left to defend Houston's no-zoning from the mayor.

(General laughter.)

MR. GERBER: So I just want to say, on behalf of all the staff, we have a couple of things we wanted to acknowledge you with. First is a certificate of recognition and appreciation of your service. To Shad Bogany, in recognition and gratitude of your six years of service as a member of the TDHCA Governing Board and for your commitment and tireless efforts on behalf of low income Texans. I'll pass that along to you.

MR. BOGANY: Thank you very much.

(Applause.)

MR. GERBER: And the chair of our Oversight Committee, Senator Eddie Lucio, Jr., of Brownsville, was gracious enough to have a flag flown over the Capitol in your honor, and that's the certificate for it, and the flag is here.

MR. BOGANY: Thank you.

(Applause.)

MR. GERBER: We're just very much going to miss you, and

God bless.

MR. BOGANY: Thank you, thank you very much.

MR. FLORES: Shad, it's going to be kind of strange not having you right here next to me. You've been a mentor and my educator here. You've also been my driver when we go places, and I think I might miss the driving more than anything else.

But I do want to tell you that you've been a great asset to me personally. You've been my mentor, as I said, and I'm going to miss you very much. This may be your last meeting, last time we see you here, but it's certainly not the end of our friendship. I have great confidence in you and your abilities and your knowledge of this industry that you've been helping me so much with.

Good luck to you and thank you so much for your service.

MR. BOGANY: Thank you very much.

MR. CONINE: I'll echo those sentiments, Mr. Bogany. I've certainly enjoyed our relationship and getting to know you since you came on the board back in 2001, I believe, along with Ms. Anderson. We've had some great opportunities not only to affect the lives of those we're all here to serve -- and that's the low income and moderate income citizens of Texas -- but also I've had a chance to go to national meetings with you and meet other people who know of Shad Bogany and his work with the Realtors Association, not only at the Houston level but also nationally as well, and your reputation is absolutely sterling, as it is with your work here on the TDHCA Board.

And your passion for the affordable housing industry, your

concerns about concentration issues that you've expressed over time, the fact that you communicate with the people in Houston through a radio show on a weekly basis is really a testament to where your heart is, and I think it's in the right place, and we're going to miss that here. Appreciate all the service that you've given, and we're going to miss you.

MR. BOGANY: Thank you.

MS. RAY: Madame Chair, to who has become my friend, Mr. Shad Bogany, it was through his leadership in sharing the Interim Audit Committee, in that capacity I've learned a lot from Shad. I've only been on this board for a year -- I can't believe it's been a whole year, the time went by very, very, very fast -- but I learned a lot from Shad. Because of his extensive knowledge in real estate, he brought a lot to the board, and through leadership and sharing the internal audit, he has been the one that has kind of saved us from ourselves, if you will, by taking a critical and hard look at the processes that we use to run the business, serve the citizens of the state of Texas.

I just want to thank you for your friendship, I want to thank you for your mentorship, I want to thank you for your leadership, most importantly. And I look forward to continuing our friendship across the years, and if you're ever in San Antonio -- and when you come to my house, I'll feed you too.

(General laughter.)

MS. RAY: Thank you so much for your leadership, most importantly.

MR. BOGANY: Thank you.

MAYOR SALINAS: Shad, I'm going to miss you, so I hope that we can continue seeing each other as we do business throughout the state, private business, and seeing through your realty experience. We've been here together, I think, six years, six and a half years, but I've learned a lot from you and I've learned something about Houston, and hopefully, one of these days we'll go ahead and get something fixed over there in Houston.

(General laughter.)

MAYOR SALINAS: But I'm real sad to see that you are going to be leaving today. I hope you can continue coming to the Valley whenever you can and look us up, and you have a friend in Mission, Texas. And I hope I can still be mayor.

MR. BOGANY: Thank you.

MS. ANDERSON: I just want to echo what my colleagues have said, and really something Mike said: you are Mr. Passionate about this, and when you exhibit your passion, you do show your greatness as a leader, and you have been able to convince me on a number of issues that when you lead with your heart and with passion, you've just been very, very effective.

And as Ms. Ray said, I appreciate your leadership at the Audit Committee, I appreciate your expertise about realty and about how really in a practical way how first-time homebuyers go about looking for a home and choosing a home. I think that's been very helpful to Eric Pike and others at the department. And you have this ability to balance developer interests and the community needs with the department rules that we've put in place to try to create a predictable consistent way of operating.

You've had a huge role in helping to restore the confidence of the development community and the citizens of Texas in TDHCA. The time that you've been on the board and with the principled stance you've taken, you really should be very, very proud of helping to restore the integrity in which the department is viewed.

And I trust and I bet that you will find other ways to serve affordable housing, both in Houston and across the state of Texas, and more broadly speaking of the real estate industry in general. So it's been my privilege to serve with you.

MR. BOGANY: Thank you, Beth.

MS. ANDERSON: We have a couple of other things for you. We have a proclamation from Governor Perry that I'd like to read to you all.

"The State of Texas Governor.

"To all whom these presence shall come greetings, know ye that this certificate is presented in recognition of the excellence of Shadrick Bogany. Thank you for your service to the Texas Department of Housing and Community Affairs. Having served as a member of the board from 2001 to 2007, over the years, your history of service and community involvement demonstrates your commitment to your fellow Texans. Your dedication and distinction highlight the best of the Lone Star State.

"On this special occasion, First Lady Anita Perry joins me in sending best wishes for the future."

Signed, Rick Perry, Governor of Texas.

MR. BOGANY: Thank you.

(Applause.)

MS. ANDERSON: And then the board got together and got you a little something else.

MR. BOGANY: I'll be very, very brief, because I want to get this meeting going, and I know you do too. I want to thank the governor for allowing me to serve you guys, and I've enjoyed the last six years. Sometimes I come home pulling what little hair I have -- I had more in the beginning -- pulling my hair out, but I really want to thank everyone for your support. I really want to thank staff for educating me, coming to Houston. They gave me the spiel and then I ask them would you repeat that again. And so I really want to thank staff, Mike, Edwina when she was here, all of you guys coming in, educating me.

And I came here with a single-family attitude, hated apartments, hated multifamily, didn't like it, I was all about single family, and you guys out in the audience turned that around for me. You made me realize that there's another world other than the world that I've been living in, and I really appreciate the governor allowing me to serve you guys and help, and I just thank you very much. And I hope we continue the relationships, and any way that I can help.

I was kidding somebody the other day when he called and said, Shad, I hate that you're going off the board. And I said, But you're back there doing your hand like this.

(General laughter.)

MR. BOGANY: But I really do appreciate working with you

guys and it's just been a real good plan. And staff, you guys are the best, and I think Mr. Munoz is going to really enjoy working with you guys. You are really truly a good staff.

And Mike, thanks a lot. When you came in, I asked you one day did you feel like you dropped into a frying pan.

And you have done a great job in leadership, Beth. Your leadership has been great, it's been outstanding, and you've really made a difference.

And just working with all of you guys. I sat on Kent's side and Kent learned because every time I had a question, I would ask Kent, and so I see Ms. Ray took my place over there.

And sitting next to the mayor. Mayor, over the years, you know, you've kidded me about zoning but when I went to Mission when we had the board meeting, I really understood what a statesman you are for the Valley and how people really respect you. Coming to that meeting I looked around and saw all these people here just for the mayor. So I really do appreciate that.

And Sonny, I'm going to miss those drives. Sonny and I, it's like driving Mr. Sonny. You know, we're in the car, and if you ever saw the Sonic commercial where the guy is talking back and forth with the Sonic burger, that's Sonny and I sitting in the car, discussing everything possible under the sun -- some things were very mindless.

But guys, thank you very much, and Beth and Mike, I really do appreciate it. And I think I saw Edwina, thanks for your leadership when you

were here. And I just really appreciate all you guys, and thank you for allowing me to serve you. It's been my pleasure.

(Applause.)

MS. ANDERSON: We're honored today to have a special member of the development community in Houston, and I would like her to say a few words. Joy.

MS. HORAK-BROWN: It's a great gift for me to be here, Shad Bogany, to personally express appreciation for what you have done, and I'd like to think of this as Exhibit A, as to what you've accomplished in your tenure at TDHCA. Not only did you come in single family, I know you weren't multifamily, and I bet you weren't SRO when you got here. And in 2003 when I began to work with the department, it was a struggle. SRO housing is hard to site, it's hard to develop, it's hard to fund, it's hard to operate, and the people who live there have had hard lives.

And one of my greatest challenges was for the department to understand that we need equity investments, we can't carry debt because the only way you can pay debt is with high rents and our tenants can't afford that. And as I was working through this process, struggle by struggle, I would begin to hear about these personal market studies that Michael Gerber mentioned. I would hear from the neighbors that someone had been by looking at the site and talking to the people on the ground. I would hear that there was a community meeting and someone from TDHCA had been there. It was making me real nervous.

And then I thought, wait a second, Joy, you have your ducks in

a row, this could be a good thing -- at least I hoped I had my ducks in a row -- because what we needed was concern for the poorest among us on the TDHCA board, and we were going to require a vote that took some courage to bet on a really small organization that had done good work and that needed desperately to grow to fill a dire need.

Well, we've doubled our housing units now, we have an absolutely gorgeous project on the Canal Street Apartments thanks to the vote of this board. You had me on your radio show, you sit on that show, all you NIMBYs out there, you come and look at this project, it will change your mind.

I though, oh, that's wishful thinking. But you know, you were right. We're being invited into neighborhoods now, we have our first ever tax credit allocation. This would not have happened without your personal market studies. If the person in Houston had not been behind us, I don't think we would be at all where we are today. It took a whole village to help us. I hope we've made you proud and that we'll continue to make you proud.

I told you just a few minutes ago the only good thing about you leaving this board, for me, is I can call you anytime I want to and I can ask you for advice which I never could do otherwise. Thank you very much for what you've done to help me personally, to help New Hope Housing, and to help the City of Houston. Thank you very much.

MR. BOGANY: Thank you.

(Applause.)

MS. ANDERSON: And that blue box isn't a Christmas present, so you don't have to wait till Christmas to open that.

(Pause while Mr. Bogany opened gift.)

MR. BOGANY: Thank you very much, thank you, board.

(Applause.)

MR. BOGANY: And my name is on it. Thank you guys, I appreciate it, and when I have my candy in this bowl, I'll always think of you guys. Thanks a lot, and I do appreciate it.

You know, when you're selling real estate, you deal with an immediate client, you're trying to help them change their lifestyle or help their lifestyle or help them, and most of my clients are first-time homebuyers. But one of the things that I've really appreciated -- which I'm going to miss -- is being able to make a difference to people I would never meet, never see, never know, and know that you made a difference in their lives, with changing their housing thoughts, where they are, from living in just deplorable conditions to having home ownership. So I'm going to miss that end of it, but on the flip side of it, I'm going to enjoy selling more houses now.

(General laughter and applause.)

MS. ANDERSON: And we're going to miss you, Shad.

Just to kind of give you a little time line for the rest of the day, we're going to go through at least the Disaster Recovery item, then about noon we're going to have a brief Executive Session, and then the board has a lunch in honor of Shad, so I'm thinking we're going to probably maybe come back about 1:15, is kind of what I'm thinking, from that and proceed with our agenda. And I know a number of you all have had an opportunity to meet our new board member, and he is here with us today. Dr. Juan Munoz from

Lubbock will join the board and will be at the January 31 board meeting, and he's already at work in an orientation process, so I urge each of you all to introduce yourself to him.

And we look forward to working with you, sir, and I know the staff and the members of the affordable housing community will make you feel as welcome as they've made all of us.

MR. GERBER: We sent him the board book as his staff Christmas present.

MS. ANDERSON: And he still came today?

(General laughter.)

MS. ANDERSON: Welcome.

Now we're ready to proceed with the items under agenda item number 5, which concern the Disaster Recovery Division's work. Mr. Gerber.

MR. GERBER: Madame Chair and board members. Item 5(a) is the regular update from the Disaster Recovery Division and I'm going to present today, since Kelly Crawford is continuing with our team that's doing some great work out in the field to help our partners meet their requirements of getting at least 75 percent of the households qualified as eligible by today, and also with the goal of by the end of the year having 100 percent of the eligible individuals fully qualified. Let me give you an update COG by COG.

The Deep East Texas Council of Governments is making good progress with a lot of TDHCA support. At the last board meeting, we reported that nine applicants had been certified as eligible; as of today, that number has grown to 83. And so we're off to a very excellent start. Thirty-six more files

have been documented and brought to the point of eligibility. There's a couple of issues related to environmental documentation that have been submitted to the department. We'll have those wrapped up in the next couple of days. So we think we have made a huge increase at DETCOG to get to that magic number of 132 households to be served with that disaster assistance.

I'm going to hold off on Houston-Galveston Area Council because Chuck is here to talk about their work.

At Southeast Texas Regional Planning Commission, they are doing also a very fine job, they've got 94 percent of their households qualified, 120 out of 127 that they're going to serve. They're really putting a lot of emphasis now on the City of Beaumont and the City of Port Arthur. Beaumont has 73 percent of theirs certified as eligible, 40 out of the 55 families that they're going to serve. They're in the process of preparing and submitting 20 homes now out for bid.

City of Port Arthur now has 100 percent certified eligible applicants. They have contracted to serve 46 households, we think they may be able to serve a couple more, so there may be additional families that are coming online. They have only put seven out for bid and they have another bid packet that's underway. So the real focus now for both Southeast Texas Regional Planning Commission and City of Beaumont, City of Port Arthur -- which are their sub-grantees -- is to really get those bid packets moving.

Our effort at DETCOG is centered around finishing up the eligibility requirements and moving those 83, soon to be 132, into bid packets,

and we're very grateful to the team at Houston-Galveston Area Council because they have, obviously, a very strong construction contractor network that they have offered to help in getting those bid packets out and to attract, hopefully, a broader range of folks to provide those services.

The Housing Trust Fund contracts have been executed with each of the COGs, so the million dollars that you all have approved out of the Housing Trust Fund for gap financing is now available to the COGs, and so we expect that those dollars are going to be very quickly drawn down on during the course of this major construction period in winter and spring with, again, ramp-up of all these contracts late July, late August.

And Chuck, if you would come forward and brief us on the Houston-Galveston Area Council and the very strong work that they're doing there.

MR. WEMPLE: Good morning, Madame Chair, board members, Mr. Gerber. I'm Chuck Wemple with the Houston-Galveston Area Council here to report on our progress today.

I brought a little two-page handout with me this morning that we prepared yesterday. I wanted to give you the most fresh numbers we could. Actually, they've changed a little bit even since last night.

We have 96 applicants now certified eligible; that puts us at our 75 percent benchmark. We have actually 17 manufactured homes on the ground, number 18 will be tomorrow, 19 Saturday, and number 20 on Christmas Eve, if all goes well. So moving forward very quickly with all of that.

We have 19 stick-built home bid packets out, and now with the

execution of the contracts for the Housing Trust Fund and a couple of other minor things that we've smoothed out, we should probably be releasing about 40 additional bid packets by the time we come back to see you in January. We also hope to have construction started on the stick-built homes by January as well.

Eighty-five of the 95 certified eligible applicants have a finance gap. We have some local funds we've pulled together, about \$50,000 locally. We've helped about seven people so far with that, and now with the contracts executed for the Housing Trust Fund, we'll be rolling forward and definitely will use up the allocation that we've been granted under that. Thank you for that.

Our goals for the next meeting will be to get us at 100 percent certified eligible -- I'll talk to you a little bit about the details on that in a second -- getting the remainder of those modular homes installed, and then getting those bid packets back and everything secured and in place.

I've provided a couple of charts and graphs for you on the handout as well. We wanted to start providing kind of blow-by-blow summaries for you, showing where we're at on the percent eligible and how many have been served and how many are remaining. We have a month remaining column on there, it's kind of our ticking clock. This report sits in the cubicles of all the people on our team so we can see that time is moving quickly on this and we only have a limited amount of time to get our work done.

We've also provided a category-by-category budget summary

breakdown on how much has been drawn to date and how much is remaining in the budget. As of yesterday, we've submitted about \$362,000 in draw requests for construction and you'll see more of those rolling in as well.

There's a small graph at the bottom of the page that shows our progress. I apologize for the crowding on the lower line there. That's the housing units delivered, again, actually 17 as of this morning. And our certified eligible continues to climb. Our target for 100 percent is 127 and right now we're at right about 97 so we have about 30 left to go on that.

The second page is a pie chart of our applicant pool. I'd like to walk you through this very quickly, if I could. The category to the right is certified eligible; those are the ones that are all the way there. We have 97 in that category. And if you work your way around, you'll see that we've actually declared about 39 of our 260 ineligible for a variety of reasons: either we haven't been able to prove that they actually had Hurricane Rita damage; there may be some ownership issues, especially out in the remote rural areas, it's very difficult to document ownership of the land and the home; some of them are income reasons; and then we've actually turned over to HUD Office of Inspector General as potential fraud cases, as well. So just to let you know we're very diligent on taking care of these dollars.

We have some ownership issues. A number of our folks have become what we call inactive. It's just been very difficult shaking out some of the documentation that we need to get folks to be responsive. So that's slowing this remaining 25 percent down a little bit.

We do have 45 that we're currently reviewing and we need to

get about 30 more, so out of our existing applicant pool, it's become a little more difficult to meet that number. We're going back out into the communities. We're a little different than the other areas that were affected. Our office is in Houston and our affected areas are out in the rural counties, so we actually go out to the city halls and community centers, we advertise all over the place that we're going to be out there to help people fill out their applications, and we're going to do another series of those meetings in the first part of January. So we have to have 100 percent right about the middle of January, but it's going to take us a couple more weeks to get that final 30.

That's about where we're at with everything. I'd be more than happy to take any questions or any comments that you have.

MAYOR SALINAS: How many houses have you really actually built?

MR. WEMPLE: We have delivered 17.

MAYOR SALINAS: Seventeen homes.

MR. WEMPLE: Seventeen homes, yes.

MAYOR SALINAS: And how much money were you granted?

MR. WEMPLE: We had about \$6.6 million set aside for housing.

MAYOR SALINAS: Who else is getting money in East Texas, Jefferson County?

MR. GERBER: Southeast Texas Regional Planning Commission is getting money for the area around Beaumont-Port Arthur, Jefferson, Hardin and Orange counties. And then there's a nine-county

area --

MAYOR SALINAS: But it's too slow. Something is wrong here, you know, and I don't want to be part of something that is not working, and I really want to say what I feel. It's embarrassing for the state and it's embarrassing for this board that we pass this on to the development councils and those people really don't know what they're doing.

MS. ANDERSON: Mr. Mayor --

MAYOR SALINAS: Let me get through with what I'm going to say and I'm going to shut up. But I'm going to tell you one thing, when the county judge from Jefferson County came here, we should have dealt with the county judges and we should have dealt with the city people, people that really deal with local people.

We were on CNN last night, you were on CNN last night, and out of \$500 million that they sent the state -- which I know probably we haven't gotten it -- we have only spent \$1.1 million, according to them, and 20 percent of that was given to the development council as operating fees.

But something has got to give, something is going to have to give here, because actually these people are going to build how many homes with the dollars they have.

MR. WEMPLE: HGAC has 111 left -- 110 left to build.

MR. GERBER: And Mayor, I understand your frustration.

MAYOR SALINAS: I really think your staff needs to talk to the people that are in the field. The city mayors, city commissioners, county judges, they need to get involved and process these applications as fast as

they can.

MS. ANDERSON: I do think we had a slow start, I think everybody agrees with that, I think that the staff -- since Kelly has been the deputy director of Disaster Recovery, we've established benchmarks. Mr. Mayor, now you let me finish.

MAYOR SALINAS: Okay, but let me answer when you get through, because we really haven't done a thing, all we've done is spend money on staff.

MS. ANDERSON: I think with the COGs we have processes in place. The progress is on an accelerated path to approval, and I want to thank you for being part of the accelerated path to approval. And the news media, we're sure wanting that woman to come back to Southeast Texas because there's going to be a lot of good stories to tell in the news media, and it's about high time that we got some good stories out of the media.

Clearly, this was new for everybody but we're on the right path, and we appreciate the COG's help.

MR. WEMPLE: If I could make one quick comment. Just for clarification, Mayor, we do work with the mayors and the county commissioners and the county judges in our region on this project.

MAYOR SALINAS: Then why is the progress so small? You know, you're talking about a big hit from Rita on the east coast and you have only built 17 homes.

MR. WEMPLE: That's correct.

MAYOR SALINAS: When did Rita hit the coast?

MR. WEMPLE: Over two years ago.

MAYOR SALINAS: Over two years ago and we've only built 17 homes.

MR. WEMPLE: We have moved substantially to get people to where we can get approval from TDHCA to start building those homes, and now that we have the approval, we're moving very quickly to get them built.

MAYOR SALINAS: So not it's the fault of the board.

MR. WEMPLE: I'm not assigning fault to anybody, I'm just trying to explain.

MAYOR SALINAS: Well, I just don't think it's fair for those people that the government tells them that they're going to get half a billion dollars to repair the East Texas coast, and we haven't done but only 17 homes along the east coast. I just don't know how we would react if it would happen in my neighborhood. But I just hope that this teaches a lesson that development councils are not people that know the areas. I'm on the development council in the Valley. We don't deal with none of this, we let county judges take care of the rural areas and build homes. I'm very disgusted with what is happening here, and everybody is. You say you have 100 homes that are going to be here in the next --

MR. WEMPLE: Next seven months.

MAYOR SALINAS: Next seven months. You know how long it's going to take you seven months to build 100 homes.

MR. WEMPLE: Yes. Basically we believe we have to start construction on our last home no later than the first part of April; otherwise, we

won't be able to get done in time.

MAYOR SALINAS: So when do you think you'll spend the whole bunch of money that we are going to get from the federal government, half a billion?

MR. GERBER: Well, the first money, the \$40 million for housing that we received, came to us a year and a half ago. All of those contracts with the COGs will expire in late July or late August, depending on the COG, so that \$40 million will be expended, and that's why we're working with the COGs to be very aggressive in qualifying all these folks. It's taken a long time to figure out who's qualified, and if you qualify the wrong people, you wind up having to pay it back and not just from out of any source, you have to pay it back out of the CDBG funds that are intended for rural Texas that are administered by ORCA. So we've got to be very careful about who we fund, but we figured we finally cracked the code, we know who is going to be eligible for these funds, and we're now able to begin the building process.

It's been too slow and we're going to do it differently on the second pot of money, but we only got that second pot of money seven months ago. We've hired the third-party contractor.

MS. ANDERSON: We had to competitively bid it.

MR. GERBER: We competitively bid it. We've been going through a contract negotiation because it's a quarter of a billion dollar contract, and we're working through that and we want to make sure that the state is protected because there have been other contracts of that size that have gone south, and I don't think anyone wants that on this board's watch

or my watch.

MAYOR SALINAS: Let me ask you another question, Mike.

MR. GERBER: Sure.

MAYOR SALINAS: Have you done anything about the bridges and roads in East Texas?

MR. GERBER: The money for infrastructure is out there, and Heather Lagrone from ORCA is here, and she'll talk about the progress they're making.

MAYOR SALINAS: Can somebody give us a report?

MS. ANDERSON: That will be agenda item 5(b) after lunch.

MAYOR SALINAS: Okay.

MR. GERBER: Mayor, I'll just mention one other big overarching thing. We chose a more difficult and miserable path. Every dollar that we spend has to actually go into the construction of a house or replacement of a manufactured home or repair of a house. In these other states, they're able to move money more quickly because they're just cutting checks but they're not rebuilding the tax base, and that was a conscious decision of local officials telling the governor we want to rebuild our tax base, and the governor's action plan reflected that. To be sure, there's lots of problems, but it is a harder path and we walked into it with eyes wide open.

MAYOR SALINAS: Well, I'm not happy with it.

MS. ANDERSON: Anything else?

MR. WEMPLE: That's all I have.

MS. ANDERSON: Any other questions for Chuck?

(No response.)

MS. ANDERSON: Thank you.

MR. FLORES: Madame Chair, may I say something to the mayor?

Mayor, I'm from the area that got hit and I'm glad a guy from the Valley is just as concerned as I was. I was the one raising cane about this some months ago. But I got convinced that it's a fiduciary responsibility that scares the devil out of me if we give the money out too freely. There was a governor in another state that did that and he suffered some terrible consequences and the news stories that came out were much worse about that state than they are about ours. We're a little bit slow, I'm not happy, I'm frustrated as you are, but I'm glad, Chuck, you and your group are kind of leading the way. Maybe we can get everybody pointed in the right path.

It's a learning experience and I hate the slowness of it, but I know you and I are responsible for that money, and thank you for your fiduciary responsibility.

MR. WEMPLE: Thank you.

MS. ANDERSON: Thank you very much.

As I mentioned a little while ago, the board is going to have a brief Executive Session and then a lunch honoring Shad, and we will reconvene approximately 1:15, assuming our executive session runs on time.

MR. GERBER: On behalf of the board, on this day, December 20, 2007, at a regular meeting of the Governing Board of the Texas Department of Housing and Community Affairs, held in Austin, Texas, the

board adjourned into a closed Executive Session, as evidenced by the following: a) opening announcement by the presiding officer that the board would begin its executive session today, December 20, 2007 at twelve o' clock.

The subject matter of this executive session deliberation is as follows:

a) the board may go into Executive Session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551

b) the board may go into Executive Session Pursuant to Texas Government Code §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 §551.071(a), Texas Government Code:

1. With Respect to pending litigation styled Brandal v. TDHCA Filed in State Court in Potter County.

2. With regard to contract negotiations with selected vendor on HAT Disaster Recovery RFP.

3. With respect to any other pending litigation filed since the last board meeting.

We' ll stop there.

(Whereupon, at 12:00 p.m., the meeting was recessed, to reconvene this same day, Thursday, December 20, 2007, following conclusion

of the executive session and lunch break.)

AFTERNOON SESSION

MR. GERBER: On behalf of the chair, the Board has completed its executive session of the Texas Department of Housing and Community Affairs on December 20, 2007 at 1:22.

And the next item we were going to go, Madame Chair and board members, is item 5(b) which is a discussion of the infrastructure funds being administered by ORCA, and Heather Lagrone is here from ORCA to describe those.

MR. LAGRONE: Good afternoon. I'm Heather Lagrone with the Office of Rural Community Affairs. Charlie wasn't able to be here today so he asked me to come and visit with you about our status and our action plan amendment that we're asking for.

As of your report, ORCA had spent about \$6.2 million on non-housing activities under the Round 1 money. Today, about three weeks later, that's about \$7 million, with another half a million or so that we'll be able to move very quickly based on the amendments that you approved in your Consent Agenda.

We had talked with you at the last meeting about NRCS and some issues that we were having related to matching those NRCS dollars. We, on December 6, went and met with the NRCS folks at USDA. They are completely onboard with prioritizing our projects. They're moving our projects to the front of their work schedules and have told us that every project will be completed within the contract time frames.

The second week in January we're going to be visiting with the

Corps of Engineers to talk with them about permitting, particularly for some of the roads and bridges that we have going on, to hopefully get the same result with them.

Under the Round 2 money, the Critical Infrastructure Program, all of the money has been awarded. We have contracts with Memorial Herman, Hardin County. Bridge City has received their contract and are signing it now. The five competitive awardees, we met with them on the first part of December and we talked with them about capacity and things like that, related to both the community and their consultants. They provided us some information related to that, and then we came back and we are changing our boilerplate contract to include some time frames and timeliness and liquidated damages type language to make sure that they are able to succeed on that. We're going to require that they meet with us on a quarterly basis and we're going to make sure that that happens.

Under the Round 2 money, Newton County was here, Mayor, and I particularly talked to you about Judge Daugherty had talked to you about his bridges and the school buses weren't able to go across those bridges. We did send some staff out, at your request. Newton County showed us two particular roads with bridges on them at a cost of about \$3 million that are particularly being impacted for the school bus routes. So that's the value that they provided to us when we went out.

MAYOR SALINAS: Are they going to get it?

MS. LAGRONE: They did not score well enough. They were number six on the list and we ran out of money halfway through funding

number five on the list. That was the competitive process, the \$22.2 million that we awarded competitively, and Jasper County received half of their request and Newton County was number six on the list.

MAYOR SALINAS: So they didn't get any money.

MR. LAGRONE: They did not receive any money in that competitive round.

MR. CONINE: They'll be eligible to get it on the next go-round probably. Right?

MR. LAGRONE: There's not any more money available in the Critical Infrastructure Program.

MR. GERBER: They may be eligible to apply under CDBG in the regular CDBG process.

MR. LAGRONE: Right, they can apply under our regular CD program. We'll take those applications usually in September, so September-October of next year we'll take those applications. In their region, the maximum they can apply for is \$350,000, though.

And I think while you were at lunch you were also handed out the status report that we have committed to provide to you. That status report breaks, by COG region, every single community that we're working with and the status of each of those individual contracts. You'll see a lot of movement, particularly with these status reports that they're providing to us now. You can see that we are getting some dates now that we will be following up on when they reach those dates, and don't happen to make them for some reason, we will follow up on that.

Also, when you approved the amendments in your Consent Agenda, you allowed us to downsize some projects that were not happening because HMGP dollars were not available, and we also moved some money to the front of projects to do engineering and architectural work versus construction for HMGP dollars that weren't moving quickly.

MS. ANDERSON: So are we still hung up with FEMA over the HMGP stuff?

MR. LAGRONE: We aren't. What we have done is we have changed the projects so that we can move forward with our dollars either as a portion of the project, a phased down version, or moved our money to the front end so that we're not waiting on FEMA to being to spend our money. The communities are still pursuing those dollars and they are still trying to receive those dollars. There's a letter that's been drafted to FEMA that is circulating and it will go out under both Mike's and Charlie's signatures, asking FEMA to prioritize and help us do anything that they can.

MS. ANDERSON: Mike, you know, Senator Cornyn offered to help, and have we enlisted his help in this campaign with FEMA?

MR. GERBER: We have made his office aware of it and there's some statutory things that would have to happen, not necessarily just on this issue but on some other fronts as well that we've talked to them about maybe trying to seek some legislative remedies for some things to help move some funds along, helping FEMA and HUD to waive some requirements.

MS. ANDERSON: And we also talked about the fact that Jack Colley in the Governor's Division of Emergency Management works with

FEMA, and I don't understand what his connection is, but he's doing some HMGP stuff too. I mean, I don't know if we can learn anything from him or if we just have an intractable federal statutory roadblock.

MR. LAGRONE: From my understanding, DEM is the liaison to FEMA for the State of Texas, so any communications that we have start with DEM and they forward that on. And the same thing is happening with our communities: as our communities need things from FEMA, they go to DEM acts as the liaison to try to get that done. So they are kind of our middle man or they are our advocate with FEMA.

MS. ANDERSON: Okay.

MR. LAGRONE: Unless you have more questions, that would be the conclusion of my report, or we can talk about particular communities, if you'd like.

MS. ANDERSON: Well, I just continue to be concerned that even when you take out the non-FEMA, when we're looking at your table here, there are a number of communities that it's not a FEMA project and they're not drawing funds.

MR. LAGRONE: A lot of those communities, if you'll look at your status report, have ordered their generators, but based on our policies, we don't pay them until they actually receive those generators and are invoiced for them.

MS. ANDERSON: So I can compare these two.

MR. LAGRONE: Hopefully you will see that the generators have been ordered and we're waiting for an April delivery date or something

like that, and so there are activities occurring, we just don't pay until the product is delivered.

MS. ANDERSON: Okay, thanks. That's helpful.

MR. GERBER: Heather, on line 5(c) where we're talking about the set-asides, do you want to briefly touch on that?

MR. LAGRONE: Sure. Under 5(c) we are asking approval to ask HUD for an amendment to the action plan for the second round of disaster funding. Under the Restoration of Critical Infrastructure Program, there were three set-asides: Hardin County, Bridge City and Memorial Herman Hospital in Orange. Hardin County's action plan writeup reads that they are doing debris work only. Hardin County has always said that they wanted to make repairs to a particular bridge on Woodway Boulevard. When they requested and received the set-aside, it was their understanding they would be able to do it. This action plan change will allow them to do that. Right now, the way it reads, they can only do debris work, so I'm asking to amend the action plan to allow them to do the bridge that they had requested.

MS. ANDERSON: Do you have written correspondence from them that predates the submission of the original action plan that refers to the Woodway Boulevard bridge?

MR. LAGRONE: I don't. ORCA was not involved in that piece of the action plan at all. I'm not exactly sure how the set-asides were accomplished, and that was pre-ORCA involvement.

MS. ANDERSON: I have public comment on this item, if the board is ready for that. Mr. Ken Pelt.

MR. PELT: Madame Chair, board, thank you for your consideration of this item. As Heather has explained, this Woodway bridge item has been in our --

MR. HAMBY: Could you identify yourself for the record.

MR. PELT: I'm Ken Pelt, commissioner, Hardin County.

In the \$10 million that was set aside for Hardin County, the raising of the Woodway bridge has been a part of our plan that we have submitted since we started, we had it under the drainage part. And so we would appreciate asking for an amendment to HUD in order to accomplish this because this is very important to drainage on the Pine Island Bayou System, and also this bridge that is experiencing tremendous flooding since Hurricane Rita, serves 107 people that are cut off in times of heavy rains now. Luckily for those people, we've been in a drought in that area.

But I'd be glad to answer questions that you might have.

MS. RAY: Madame Chair?

MS. ANDERSON: Yes, ma'am.

MS. RAY: I move the ORCA recommendation for the amendment.

MR. FLORES: Second the motion.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. PELT: Thank you very much on part of Hardin County.

MR. GERBER: Item 5(d) has been pulled and will be resubmitted at the January 31, 2008 meeting.

Madame Chair, board members, we'd like to ask also that we hold off on item 6(a) and first go to 7(a), which are the Housing Tax Credit Amendments, and then we'll come back to 6(a), because one of those items has an impact on 6(a).

The first item we're going to be dealing with in item 7(a), the Presentation, Discussion and Possible Action on Housing Tax Credit Amendments is Victory Apartments. This first request is for a bond 4 percent Housing Tax Credit development that was approved in 2000. The owner is requesting to change the income targeting from the original board approval. The bond covenants require 100 percent of the units to be restricted to rents at 50 percent of the area median income and target incomes of 60 percent of area median income. The original approval included one-third of the units targeting rents at 15 percent of the area median income, one-third of the units targeting rents at 30 percent, and one-third of the units targeting rents at 40 percent.

The owner states the original intent was to restrict the rents at these levels but to have tenants' income qualify at 60 percent. The owner is requesting that 37 units target 30 percent, 37 units target 40 percent, and that

26 units target 50 percent. The owner and the lenders are concerned with the financial feasibility of the development with the current rent restrictions.

Staff is recommending a denial of that request.

MS. ANDERSON: I have public comment on this item. Mr. Barry Palmer and Chetana Chaphekar.

MS. CHAPHEKAR: I'm Chetana Chaphekar. I am representing the owner, on behalf of the Victory Development Corporation, who is the general partner in this deal.

This project that was proposed was never intended to be restricted to 40 percent income rent restriction. This is 100 percent public housing project and as a public housing project when we say give a range of income, the rent of every tenant is then determined by the income they earn. Even though there is a flat amount that a tax credit rent would be decided at 50 percent. If we get that range of 40 to 60 tenants and we will then calculate it, if the tenant has a 40 percent income level, they will actually pay their rent at 40 percent, even though they are in that 40 to 60 bracket. So for the income projection, when these income projections were submitted, we used the median of each range as the possible income projection.

We have just now passed a letter that was dated August 2, 2002, and if you look on page 3, it was clearly stated under item 8 that this proposed income is a rental policy and not a restrictive covenant. There are other additions that are in this letter that clearly state that the intention was to have the units at 60 percent income, the rental schedule was at 60 percent. The only place where we used the 15, 30 and 40 percent was the median

income projection for the property.

In addition, this being public housing it's subsidized by HUD's operating funding. HUD is currently funding us at about 83.6 percent. And additionally, the changes in the regulations on asset management, that funding for this particular property has been [indiscernible] at 2-1/2 percent. At the same time, the property expense has gone up close to 20 percent over what the projection for the similar period was. If this rent gets restricted at zero to 40, the property will be financially unfeasible.

Additionally, the amendment that is proposed today was developed in collaboration with the TDHCA underwriting staff. We have been negotiating and working out these details, and as late as December 4, we were informed that as a result of the analysis performed by the underwriting, the proposed rental rate structure is recommended.

If you ever look at the property's rent, most of the tenants are paying around \$120 to \$240 in rent. The property is actually is not making any money. We are subsidizing the property over and above what HUD is allowing us to subsidize. And if this rental restriction is further imposed, it will be impossible to run the property financially.

MS. ANDERSON: Thank you.

MR. PALMER: Barry Palmer, Coates Rose. We represent the Houston Housing Authority.

This development is 100 units that was replacement housing for Allen Parkway Village, developed in the historic Fourth Ward, with 4 percent bonds, it was not a 9 percent deal, did not compete competitively.

And when they applied for the tax credits on the bond allocation, they signed up for 60 percent AMI restrictions, but they included in the application a rent schedule that showed what they anticipated what the rent levels would be because being public housing, we can't just set the rents at 60 percent rents. We take our public housing tenants and they pay 30 percent of their income as rent, whatever they happen to make. They make 10 percent of AMI, they may make 40 percent of AMI, and they pay 30 percent of that as rent.

So we showed on the rent schedule historically what we had received in our portfolio and what we anticipated here, and that was taken by the department as imposing additional restrictions on the property that was never intended by the housing authority.

Now we're at a point, with HUD cutting back operating subsidy, that we can't operate this property with it all at zero to 40 percent AMI, and so we're not asking to take any of these units to market, we're wanting to keep it 100 percent public housing but have the ability to income tier and have some tenants at 40 and 50 percent AMI so that they pay a higher rent that can help offset the tenants who are paying rents of \$100, and without that, this project is financial infeasible.

One other thing, though, on the issue of if this amendment is approved, on penalties, we would hope that there would not be any penalties imposed on this deal. This was a bond transaction that was built in 2001 and 2002, years before the adherence to obligations policy was adopted in 2006. At the time that this project was built, the policy in the department was to ask for amendments at the time you did your cost certification, so to impose

penalties on this project retroactively would be exceedingly unfair.

MR. BOGANY: I have a question for staff.

MS. ANDERSON: Thank you all for your testimony.

MR. BOGANY: Mr. Gouris, after hearing the testimony, what's your thoughts on this, what we heard and what we were presented?

MR. GOURIS: Tom Gouris, director, Real Estate Analysis.

If the project was looking solely to the income restrictions and the rents associated with income restrictions, I think they're correct, the project would not be feasible at the lower original income levels. The structure of the transaction is that there is an operating subsidy associated with the transaction, and therefore, the operating subsidy is really what's going to move. If the tenants that they serve have to be at the 15 percent income level, then they would have to provide more subsidy to keep the project operating than they would if they were at the 30 percent level.

We did spend some time with them and, after the fact, recognized that they had originally put in rental information that suggested the median or the middle of where they thought the range was going to be. At the time we originally underwrote the transaction, however, we were pretty clear that it was going to be 15, 30 and 40.

So it's a long answer to the question, but if the project was looking strictly at the rents without any operating subsidy, it's clear that a project with this many 15 percent, 30 percent and 40 percent units would not be feasible. But that's not what we're looking at exclusively, we're looking at this operating subsidy to fill that, and there's going to be some operating

subsidy even with the restrictions that they're requesting now which would give them a broader range of income-eligible tenants to work with at 30s, 40s and 50s.

MR. BOGANY: So if we approve this amendment in their favor, how does that stack up with what your thoughts are, and does it have any long-term effect on other projects, or are there more like this project out there?

MR. GOURIS: No. I think we learned some things from this project, for one. There are more and more public housing authority transactions being done today and we have a better understanding of how they're done. I don't think that the action that you take today has an impact, from my perspective, of financial feasibility. It does from their perspective because of the amount of the operating subsidy that they'd have to contribute, and it's a fair amount of difference.

MR. FLORES: Tom, he mentioned that the rules changed and we were applying some new rules retroactively. Do you want to comment on that?

MR. GOURIS: I'm not sure that there was ever a rule that said don't bring us any of your amendments until it cost certifies. I think there was a general opinion, general feeling, general consensus that the fewer times you have to bring something back to the department, the better off you are, and you gather those up at an appropriate time, and the bigger and the maybe messier the issue is, maybe the longer you might want to wait to bring that forward.

MR. CONINE: We're flushing the inventory out pretty quick

here.

If we deny this request, won't the bond be in default at that point?

MR. GOURIS: I don't know their internal structure and how much they've set aside as far as the operating subsidy goes.

MR. CONINE: You didn't get into that with them when they came in and talked to you about this?

MR. GOURIS: I believe they would have to supply more operating subsidy. I don't know their internal financials to know if they have the capacity to do that. They've said they have it; I haven't done any independent investigation.

MR. CONINE: Nobody feeds these things over time, you know that.

MR. GOURIS: I know that, yes, sir.

MR. CONINE: And if we grant this request, are we still in any violation of any covenants on the bonds?

MR. GOURIS: I don't believe so.

MS. MEYER: Robbye Meyer, director of Multifamily Finance.

One thing that the board does need to take into consideration, back then under bond covenants it was 100 percent of the units had to be at 50 percent restricted rents but they could use 60 percent incomes. What they're proposing is that all of their units would be 50 percent, however, they have ten tenants within the property right now that are over that level, so they're also requesting that they have a grandfather for those tenants, and as

they move, then they would move those back down to the 50 percent level. That's in your writeup but I just wanted to make sure the board understood that.

MR. BOGANY: Madame Chair, I'd like to move that we approve the amendment.

MR. CONINE: I'll second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. RAY: Madame Chairman?

MS. ANDERSON: Yes, ma'am.

MS. RAY: I'd also like to move that no penalty be assessed to this project.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: Madame Chair and board members, the second item is Preston Trace. The owner is requesting approval to eliminate the participation of an Historically Underutilized Business in the ownership structure. The original approval was subject to the participation of the HUB, however it appears that the HUB never participated in the development once the board approved the application.

Staff is recommending that the board deny the request.

MS. ANDERSON: This is Preston Trace, 04105. I don't have any public comment that I'm aware of.

MR. CONINE: Where's Dan?

MS. ANDERSON: I don't know.

MR. FLORES: Do we have any comment from the staff other than what's on the writeup?

MS. ANDERSON: Did you expect him to be here today, the developer?

MS. MEYER: I would expect them to be here, yes. They know the amendment is on the agenda.

MR. CONINE: I move to table to the next meeting.

MS. RAY: Second.

MR. GOURIS: This is an '04 carryover. This is an '04 transaction with '07 [indiscernible], so we need to have a decision to issue the

8609.

MR. BOGANY: I have a question for Tom. So Tom, if we go with staff's recommendation, what impact does this have on the developer and how does that all play out?

MR. GOURIS: They would have to find a HUB to replace.

MS. MEYER: They would have to have a HUB to replace, and I would recommend that you give them a time limit to do that, like they have to have the HUB replaced by the first quarter of '08.

MR. BOGANY: When you talked to the developer, what were their thoughts about this -- and they knew it was coming before us but what were their thoughts, they could find another HUB to replace the one?

MS. MEYER: Well, part of their request would be, as some applicants have done in the past, is to substitute in a non-profit for that HUB. They do have the housing authority that's in this transaction now, but because of the HUB situation that the deal was approved under, staff's recommendation was to keep the HUB requirement.

MR. BOGANY: So if we accept staff's recommendation but give them an opportunity to do it, how does that affect the December 31? I mean, if we give them they've got to have it done in two weeks or three weeks, how does that affect?

MS. ANDERSON: You wouldn't find a HUB that fast.

MR. GOURIS: I might have another solution as well. There are several items of deficiency that they're still working on getting to us in order to issue the 8609s. It's one of four transactions we anticipate having to

potentially set up some sort of an escrow account to account for those things that they can't complete before the end of the year so that we assure that they get them done so we can still issue the 8609s. It's possible that we could add this as one of the items that they need to get addressed before the escrow account were released.

MR. CONINE: Which would be what: replacement of the HUB?

MR. GOURIS: Yes, with a HUB.

MR. BOGANY: Because they've got some other deficiencies, too, they've got to complete.

MS. MEYER: In order to have the 8609s issued.

MS. ANDERSON: And do I read this right, that they initially requested the substitutions, you're waiting for them to document that the substitutions are actually at the development, but they made the initial substitution request prior to December 1 of '06 but did not finalize the request until September of '07, nine months later?

MS. MEYER: That's correct. That's kind of typical. We have several amendments pending for several months; it's not unheard of.

MR. GOURIS: They want to get the process started but they haven't completed it yet.

MS. ANDERSON: Well, that's particularly troublesome because in this case if they put the initial request in before our new penalties went into effect.

MR. BOGANY: I have one question.

MS. ANDERSON: Yes, Shad.

MR. BOGANY: Those other four deficiencies, are they about of the same equalness as being able to be done, like trying to find a HUB to go in there, are those deficiencies that are going to be tougher, are they easy deficiencies?

MS. MEYER: They're amenities and it's like they left out dishwashers or disposals that they've already agreed to replace, they just haven't replaced them yet or we don't have verification that they have.

MR. CONINE: So the way you solve that is an escrow account to do that.

MS. MEYER: Correct.

MR. GOURIS: It's hopefully a very rare issue.

MR. BOGANY: I'd like to move that we include this along with the deficiencies that you've already stated and give them an opportunity to whatever time frame they've got to do these other deficiencies and solidify that they've moved forward on those items.

MR. CONINE: Second.

MR. FLORES: Could we state a time rather than just leave it open?

MR. CONINE: December 31, wasn't it?

MR. FLORES: They can't do that.

MS. MEYER: But they can set up the escrow account in order to satisfy that.

MR. CONINE: Ninety days?

MR. GERBER: Would 90 days cover it, Tom?

MR. GOURIS: Our goal would be to get the escrow account set up by December 31, but then for them to get these things resolved, I don't know how long it would take to get a HUB, but I would even thing 90 days would be a short period of time.

MS. ANDERSON: They should have not asked for the points when they made the application then.

MR. BOGANY: I don't mind accepting that.

MS. ANDERSON: Ninety days. Everybody understand what we're voting on?

MR. CONINE: I think so.

MS. ANDERSON: All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next item is Churchill at Commerce Apartments. This amendment was presented at the August board meeting and was postponed to allow staff to research the ability of the -- I'm sorry, go ahead.

MR. HAMBY: Because of the way these are structured, board members, we either need to make an affirmative statement that you're not going assessing penalties or take a penalty vote, because the way the staff recommendation is, it's to assess penalties. And so we need to either include

that in your motion that there are no penalties associated with it, or as Ms. Ray did, do a subsequent motion on penalties.

MR. FLORES: Could we say no penalties at this time and leave ourselves the option if they don't comply?

MS. ANDERSON: If they don't get a HUB in 90 days.

MR. HAMBY: You could certainly table the penalty discussion -- or actually postpone till a later date the penalty discussion, pending the outcome.

MR. BOGANY: I'm okay with that, it's just that if you say you're going to have a HUB, you should have a HUB.

MS. ANDERSON: Right, and that's been one of your tenets and guiding principles.

MR. FLORES: So Madame Chair, can it be clear that it's added to the motion, what he just said?

MS. ANDERSON: We're going to revisit -- do we need another vote?

MS. RAY: Madame Chair, I move that we revisit the penalty assessment at the time of the 90-day expiration of the previous motion.

MR. FLORES: Second.

MR. GOURIS: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next item is Churchill at Commerce Apartments. This amendment was presented at the August board meeting and was postponed to allow staff to research the ability of the board to assess lesser penalties than what is stated in the QAP. Subsequent to that meeting, the owner proposed additional amenities for the initial omissions, and these include additional community building space, a soccer field, playground, microwave ovens.

Staff believes that the additional amenities are acceptable substitutes and recommends approval of the amendments, but we recommend that it be done with the assessment of appropriate penalties.

MS. ANDERSON: Brad Forslund and Barry Palmer.

MR. FORSLUND: Good afternoon. Brad Forslund, Churchill Residential.

As Mr. Gerber has stated, there's really two issues. One is a shortfall of square footage on the clubhouse. This originally relates to redesigning the clubhouse to make it more energy efficient. The square footage came out of hallways and an entry area; we did not omit any amenities in the clubhouse. The second item relates to the redesign of the site plan where we went from a combination of all two-story buildings to a combination of two-story and one-story buildings. The reason for going to the one-story buildings was we thought was an improvement also just to diversify the

product.

As Mr. Gerber has said, in terms of substitutions for the clubhouse, we provided a playground, microwave ovens in the all the units, a soccer field, Energy Star appliances, and then upgrades with the insulation. That cost us \$45,000, well in excess of the \$30,000 it would have cost us to build that 374 square feet in the clubhouse. To go to the one-story buildings, that cost us \$164,000.

So in light of that, we are asking the board to affirm staff's recommendation for the substitute of amenities and waive penalties. I'd also like to say that through the process we offered to make a payment of \$30,000 into the Housing Trust Fund in lieu of any other penalties, and we're still willing to do that.

MR. CONINE: Move approval of staff recommendation, along with the \$30,000 to the Trust Fund. That's better than -- how many phone calls would that be, 3,000 phone calls? And no penalty.

MR. BOGANY: Second.

MR. HAMBY: We don't actually have that ability. They can make a contribution to the State of Texas but they can't make it to the Housing Trust Fund because we don't appropriate funds.

MR. CONINE: You take all the fun out of it.

(General laughter.)

MS. ANDERSON: So financial penalties come into the department in what kind of a revenue stream?

MR. HAMBY: They go into the General Revenue of the State

of Texas. They don't come directly to us, they would go into the GR system.

MR. CONINE: I eliminate the 30 grand to the Trust Fund but I have a long memory, so we'll check the Trust Fund to see what donations have been made.

MR. BOGANY: So did we get that you're going to make that donation to the Trust Fund?

MR. FORSLUND: That's what I heard.

MR. CONINE: And no penalties.

MR. FORSLUND: But you want us to make \$30,000 to the State?

MR. CONINE: No, to the Trust Fund.

MS. RAY: That's not part of the motion.

MR. BOGANY: That's not part of the motion, but we're going to look.

(General laughter.)

MS. ANDERSON: All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: Tropical Gardens at Boca Chica. The owner has requested several amendments to the original application that were detailed in the materials that you've been provided.

Staff is recommending that the board approve the amendment

request and require the owner to provide the department with a budget for the amenities that have not yet been completed on this development. Staff recommends the assessment of appropriate penalties because the amendments are being requested after the implementation.

MS. ANDERSON: Mr. Bill Fisher.

MR. FISHER: I'm Bill Fisher, Odyssey Residential.

Everything in the application has been provided. The only thing that is not installed is the perimeter fence and gating which we were only given clearance by the City of Brownsville to do here in the last few weeks. We provided the department with evidence of all the other amenities in the application. I believe there's a little sidewalk that has to be run to the community garden which will be done by the end of the year. And we provided a fully executed contract to install the gates and the perimeter fencing, but that work will not be completed until January, and that's in the contract. We have been cleared by construction inspection on Tropical Gardens for any deficiencies.

So that the board understands the amendment, we have one additional two-bedroom/two-bath, and one less one-bedroom/one-bath. We had eight buildings, we have eight buildings; we had one entryway, we have two entryways now which, I believe, they considered that to be a change in the site plan. And so those are the changes in Tropical Gardens at Boca Chica.

Sufficient documentation was received to clear these as PMC inspection deficiency issues. Am I missing something?

MR. GOURIS: Yes. They asked to ensure that the Energy

Star issues were resolved.

MR. FISHER: They were; we provided Energy Star information.

MR. GOURIS: And the accessibility route.

MR. FISHER: Well, that's what I said, there's a little sidewalk that has to go to the community garden.

MR. GOURIS: The Energy Star issue has to do with the Energy Star equivalency, and from what I understand, they weren't able to confirm that you have the refrigerators that are Energy Star equivalent because you used a smaller refrigerator that uses less.

MR. FISHER: There's a group that comes out and inspects your property and then you provide proof of evidence of your response to it. Sufficient documentation was received to clear these as PMS inspection deficiency issues. We provided the same size refrigerators. The Energy Star equivalency just has to do with the amount of energy that the refrigerator uses, and we provided evidence of what a Frigidaire of the same size which has an Energy Star rating as versus the Whirlpool model that we did install at the time, and the energy used for the Whirlpool is actually a few kilowatt hours less annually than that.

MS. ANDERSON: What's in dispute here? Are we in dispute over what this letter says?

MR. FISHER: Yes, that seems to be.

MS. ANDERSON: Where is somebody from PMC?

MS. MURPHY: Patricia Murphy, director of Portfolio

Management and Compliance, and I apologize, I don't know. I'm very sorry.

MR. CONINE: Is this something that can be done with an escrow arrangement at the end of the year sort of situation?

MS. MEYER: Yes.

MR. CONINE: It smells like that to me, anyway, especially when he said there was some little sidewalk or something that has to be finished in January or whatever.

MS. ANDERSON: And fencing.

MR. CONINE: So isn't that kind of a way to get done with this.

MR. GOURIS: That would be perfect.

MR. CONINE: So I move that we approve the staff recommendation --

MR. FISHER: If I can, Mr. Conine, on escrows, when staff is mentioning escrows, they're referring to enormous sums of money, they're not referring to some penalty amount. They're referring to \$130,000 fence with a \$140,000 escrow, and in the past we've resolved items simply by providing a fully binding contract with a third party we're obligated to to install the item. So what I had suggested to Mr. Gerber at one of the breaks was if you want to hold our 8609s in escrow, if you want to issue the '07 credits and then just not issue the original '04 ones because we do have more time on that, that's fine, we'll give whatever assurance we need that they'll be completed. But putting up cash money here at Christmas time for escrows for items that literally are outside of our control is something that we were not prepared to do.

MS. ANDERSON: Okay, thank you, and we're finished with public comment on this item, so I'd ask you to sit back down in the audience so that we can continue to work this with staff. We don't debate between the staff and a witness here. Mr. Fisher, would you please be seated in the audience.

MS. MEYER: What staff is requesting is that a budget be submitted to staff to cover the items and that's what they would have to escrow. If they don't supply that budget that's sufficient, then Mr. Fisher is right, we did say a \$250,000 escrow and just leave it at that if that's what they want to do. But if they submit a budget that's sufficient to cover the items, then that would be sufficient for us, but they've got to do that in order for us to know what they're going to do, and then they would escrow that amount, and I don't believe that we can hold the 8609s in escrow past the 31st.

MR. CONINE: Do we take letters of credit?

MR. GOURIS: We've only done an escrow arrangement once before in the history that I know of, and it's an extraordinary circumstance. I think the decision at that time was in order to expedite the issuance of the 8609s, we would do it. It was something that that applicant had offered to us at that time and we felt like that gave us some assurance that we could get to it. We don't have as much capacity to evaluate letters of credit and things like that from the perspective of how --

MR. CONINE: No, but if you had a letter of credit from AIG Sun America, the syndicator, for whatever the amount was, I think you'd probably take it, wouldn't you?

MR. GOURIS: We have not done that before, sir.

MR. CONINE: That wasn't my question, Mr. Gouris.

MR. GOURIS: It's not my decision.

MR. HAMBY: Well, obviously that's the board's decision, Mr. Conine. If you wanted us to take a letter of credit, we would take a letter of credit.

MR. CONINE: I think that would be something that I would suggest to be a middle ground. I'm not too sure cash escrows, in defense of the development industry, are all that fun to deal with, but I do know that the syndicator and limited partner on these transactions has the wherewithal to produce letters of credit to satisfy the department's concern that that fence is ultimately going to be put in, and I think that's makes a myriad of sense.

MR. HAMBY: The escrow accounts that we're talking about being set up are set up with the developer's bank, wherever, with us as a beneficiary of it, and so whatever the bank is comfortable with, I think we would be comfortable with as well. Whoever it is, the syndicator or whoever, we would be comfortable that they knew that there was an obligation to us.

MR. CONINE: Okay. And the fence is in no dispute, the fence needs to go in. Right? It was part of the original plans and so forth, it's not an issue.

Now, what are we going to do about the Energy Star stuff? Are you going to go back and research and figure this thing out?

MS. MURPHY: Yes.

MR. CONINE: It doesn't sound like to me we're too far off,

anyway. If he just substituted a Whirlpool for a Frigidaire and it's just different model numbers, I'm sure we can get there.

MS. MEYER: What we've been able to verify is the Energy Star rating actually goes into more things than just the energy efficiency, there's more things that go into that rating, although the efficiency of the refrigerators or appliances that they've installed meet that efficiency rating, it doesn't actually hit the Energy Star rating. There's a big difference.

MR. BOGANY: Has he purchased the refrigerators already?

MR. CONINE: They're already in, yes.

MS. MEYER: They're already in. They just haven't met that requirement, and we've gone to great lengths to try to verify what that rating is, and we have verified that efficiency-wise it does meet that criteria, however, for the full Energy Star equivalency, that seems to be the issue at hand.

MR. CONINE: I'm now rereading the staff recommendation here, and the staff recommendation says approve request requiring the owner to provide a budget for the perimeter fencing and an access gate, and evidence of an Energy Star equivalency rating. That's not an escrow agreement, the way I read that.

MR. FLORES: The budget is just an estimate, I read it the same way. And if indeed, what you're saying is what you want done, you need to substitute the wording between "access gate" and "and" and a letter of credit from an acceptable source.

MS. ANDERSON: We've got to have more than a budget to issue 8609s.

MR. FLORES: But a letter of credit would solve the whole problem. Why don't we make that motion and just add to it an acceptable letter of credit equal to the budget amount.

MR. HAMBY: Mr. Flores, might I suggest we talk in terms of a sufficient guarantee, because there may be some people who don't want to do a letter of credit for other issues.

MR. CONINE: There's a range of things we could take.

MR. HAMBY: Just a sufficient guarantee that the funds are available to complete the project.

MR. FLORES: Take the words "letter of credit" out and make it "sufficient guarantee"?

MR. HAMBY: Yes.

MR. FLORES: Well, I so move, Madame Chair.

MR. CONINE: Second.

MS. ANDERSON: We have a motion on the floor, it's been seconded. Any discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

What about the penalty assessment discussion?

MR. FLORES: I move for no penalty.

MR. CONINE: I'll second it.

MR. GOURIS: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next item is Providence at Edinburg. This amendment request was presented at the November board meeting. The board instructed staff to review what the developer stated he would provide and to evaluate the financial feasibility of the development. Staff reviewed the testimony of the developer, who stated to the board that he would provide or has provided the following amenities: a gazebo, community garden, transportation services at no cost to the tenants, barbecue grills and tables, gaming tables with chairs, a public phone, lawn bowling or shuffleboard court, a service coordinator, ice makers in the refrigerators, cover all parking spaces, and Energy Star or equivalently rated appliances.

Staff has confirmed that the presence of the gazebo, community garden, transportation vehicle, one barbecue grill, chairs in the community building, and office space for a service coordinator. The owner has stated that they will provide the remaining amenities.

Staff recommends the owner provide a budget for the amenities not yet confirmed and escrow the amounts stated in the budget until the remaining amenities are complete and documentation is provided to the department. Staff recommends assessment of the appropriate penalties for the general partner, any special limited partner, and the co-developer in this case.

MS. ANDERSON: I've got a lot of people yielding time to Mr. Bill Fisher. That's nine minutes.

MR. FISHER: I won't use it all.

MS. ANDERSON: That would be smart.

MR. FISHER: Bill Fisher, Odyssey Residential.

Where we left off at the last board meeting, we were to determine financial feasibility and what additional amenities the board would like to see offered as an addition to what we discussed at the previous meeting, and I provided Mr. Gerber, in December, a grid sheet showing the amenity packages are in place and what additional amenities would be available to be added to this property under the circumstances. Remember, this is 100 unit, seven-story senior tower on a 1.3 acre site.

There was no room available for a full size swimming pool so we offered adding a covered pavilion to the barbecue area which is a feasible alternative, some fitness equipment, if that was within the board's pleasure, although that doesn't really fit for our particular resident profile, and a library, and those would be the three other possible additions to the property.

Now, regarding the items promised, you know, we're not

promising items, we're submitting to the staff in our responses for construction paid for purchase orders, we're providing fully executed contracts with national companies that obligate us to pay them for them to install by a deadline these amenities. So as we talk about surety, et cetera, this isn't a developer promise. For example, on this one for the additional carports, National Carports has a fully executed contract for \$33,000 to add 52 carports by a deadline. Just like there was on Tropical Gardens, there's a national fence company who has to fabricate the gates, has a binding contract with our company to install the amenity by a set date.

So again, as you consider a surety, we're not coming with an open promise, we are submitting to the staff, as I said, either paid purchase orders, orders on account, or fully executed contracts for the amenities to be put in place.

So as I understood it, we were determining financial feasibility today, whether the board wanted us to add additional amenities or we were to come today with a list of other possibilities and those are the other three possibilities. And that's it, unless you have questions.

MS. ANDERSON: Ms. Trevino.

MS. TREVINO: Good afternoon. I'm Stella Trevino from the Edinburg Housing Authority and I'm just here to tell you that we're well satisfied with the towers and the rehab job that was done, and our residents are very happy and we're happy, so I hope that you find it in your hearts to approve what else we have to do. And we had a member of your staff and the mayor on the visit, and I'm sure the mayor was satisfied, weren't you?

MAYOR SALINAS: Yes.

MS. TREVINO: It's a beautiful place and we're very happy with it, so we would like your consideration. Thank you.

MS. ANDERSON: Thank you. Just a minute, Mr. Mayor, we're in the middle of public comment. John Shackelford.

MR. SHACKELFORD: Thank you, Madame Chair. John Shackelford of Shackelford Knuckles and Kinley [phonetic], representing the developer, and just here to speak briefly as to the penalty issue, and we'd ask your consideration that not rehashing what we spoke about last month but just on the facts of this particular situation that you all give consideration to leniency and not the imposition of any type of penalties that would have such an adverse effect on this particular developer doing business with the state in the future. Thank you.

MS. ANDERSON: Thank you. Mr. Palmer.

MR. PALMER: Barry Palmer, Coates Rose. We represent the Edinburg Housing Authority on this transaction, and the Edinburg Housing Authority hired a developer to develop this property. We understand that there are some mistakes that have been made, some inconsistencies in the file about rehab or new construction. It was always the housing authority's intent and desire that this would be a rehab property, they never intended or represented or authorized anything other than that. And I would hope that if any penalties are assessed, that you would not assess penalties against the housing authority in this situation. Thank you.

MS. ANDERSON: Thank you all.

MR. CONINE: Can I ask Tom a question?

MS. ANDERSON: Absolutely.

MR. CONINE: Did you look at eh current financial feasibility just like it was a fresh deal, and what's your opinion?

MR. GOURIS: Yes, sir. You actually instructed us to look only at the operating income based on the revised structure, and we did that, and it is financially feasible. We did not look at the costing issues.

MR. CONINE: Including the current debt amount and the tax credit equity that's in the project and everything?

MR. GOURIS: Including the operating costs and the debt service that was required. We did not do a cost analysis or determine of the source and uses matched up because that was not part of what we were asked to do and we still don't have as solid of information on that as we would need to be able to do that.

MR. CONINE: Is that because they're still under a construction loan, or have they graduated to the permanent phase yet?

MR. GOURIS: It's because of a lot of issues, most of which have to do with having a completed appraisal that meets our requirements and some other items, and the fact that there are still some items that are pending to be completed.

MR. CONINE: And what are those items, just so I'll have a good idea.

MR. GOURIS: The carports are probably the biggest item, there are also ice makers, there are some accessibility items that need to be

addressed that were mentioned that he was going to address. But the carports are probably the largest item. They had originally pledged 100, there are only 60-some parking spaces on the property, so they probably can only do about 60. His latest proposal was 56, I believe, and at a cost of about \$33,000 which we are still discussing with him because we haven't seen a bid for that. We've seen his number but not a bid from the vendor. And from our data, that would seem to be quite low.

MR. CONINE: And in order to do 8609s by the end of the year -- which is, I'm sure, what we're up against here -- I smell another escrow situation.

MR. GOURIS: Yes.

MR. CONINE: Or what was the word?

MS. ANDERSON: Sufficient guarantee.

MR. CONINE: Whatever it is.

MR. BOGANY: Tom, I have a question for you, and since this has come up twice, it's, in my opinion, a very minute point. We probably need to get away from the word "Energy Star" because if you're not using Energy Star appliances -- and it is a difference, if you go line by line, Energy Star is more efficient and one may use the same kilowatts -- so maybe we shouldn't use the word "Energy Star" and maybe use the word "green" or whatever. But I've just got a feeling that Energy Star equivalent, as Robbye said earlier, they're really not equivalent to that, so maybe we ought to take that out of it.

MR. GOURIS: We're doing research on the subject but my

understanding is that there is a way to determine true Energy Star equivalency through a formula that you send to a consultant in Washington, D.C. or something like that.

MR. BOGANY: That may be too complicated.

MR. GOURIS: That may be too complicated. I'm not sure that "green" gives us any more clarity, though.

MS. ANDERSON: Anything would qualify as green today.

MR. BOGANY: Then it should be Energy Star. If you say Energy Star, I think it should be that way.

MR. GOURIS: I think there are some products that would otherwise meet an equivalency rate, they just haven't gone through the Energy Star process. Our understanding is that the difference here is that the product that they're providing uses less energy than the Energy Star equivalent but is a smaller unit, and therefore, is less efficient, and that's sort of the bottom line on it. So when we had them run the Energy Star equivalency check, they weren't able to get there because it's a smaller refrigerator. That's my understanding.

MR. CONINE: Are we talking 17 cubic feet down to 15?

MR. GOURIS: Something like that. I don't exactly the numbers, but that's my understanding.

MR. CONINE: Well, we just had testimony that the residents are all okay -- obviously from a prejudiced source.

MR. GOURIS: And the mayor and I visited the site and the residents we spoke with seemed to be happy and the property seems to be in

good stead. The kitchens were small and a larger refrigerator would not have fit the way the kitchen was designed. If they had changed the cabinetry or what-have-you at a different cost, then they may have been able to fit a bigger refrigerator.

MR. CONINE: But they didn't boo and hiss at you as you walked through.

MR. GOURIS: They did not.

MR. CONINE: Okay.

MR. FLORES: Tom and Robbye. Mr. Conine asked the question about the substitute amenities and whether they were equal. If I understood it correctly, you said they were not. You didn't say those words, but I'm trying to get down to the nub of it. Are they or are they not equivalent, are they a fair trade, dollar for dollar?

MS. MEYER: We really haven't been able to verify it dollar for dollar because we don't have a budget to be able to do that. What we did was took Mr. Conine's request of staff and everything that Mr. Fisher told the board that he would do at the last board meeting, that's what we put in your writeup to say he had to do. When Mr. Gouris was at the property, he verified the items that Mr. Fisher stated that he would do, we checked all the ones off that we possibly could, and then the items remaining is what we're telling the board that we need a budget for those items that are still outstanding.

MR. FLORES: Just so you know for the future, this comes up all the time, and what I'm looking for -- and I'm sure the majority of us on this side of the table -- is it an equal or fair trade. It's not the same trade but

you're trading dollar for dollar on each one, and that's what I'm looking for, and I can't do it if the developer and you can't agree on the numbers.

MR. GOURIS: And there are at least two elements that make it a fair trade: there's the dollar for dollar and there's the points issue because there are points associated with it, and the points may be equal but the dollars may be very different.

MR. FLORES: I'm trying to keep it just dollar for dollar. Talking about penalties and points is something else. But we can't figure out we've got a fair trade going on here is what it amounts to.

MS. MEYER: And staff tries very diligently to give you what those equivalencies are. In this instance, because of the confusion -- and I'll just leave it at that -- on this particular application when it was awarded, it's kind of hard to say everything is equivalent at this point. We were asked to go back and look at what the developer said that he would supply at the last board meeting, that's what staff did; we looked at the feasibility, that's what staff did; and that's what we brought back to you this time. I don't know so much that you can go back at this time and say everything that was represented to begin with has been equivalently substituted.

That's not what you want to hear but --

MR. FLORES: I understand that, but I don't know what one swimming pool is equal to or one carport. Give it to me in dollars and I can figure it out.

MAYOR SALINAS: Let me say a few words about this Towers. One of the things that I saw wrong was that when he did the application, he

told the board that it was going to be a new project, new building. I was very confused because I knew that the City of Edinburg and the housing authority were not going to be in agreement with tearing the building down, so all he did to this Towers was the rehab, and we were told that it was going to be a brand new building.

Well, we went through it, it's done well, they did a good job on the building, and it looks real nice. I don't know if not approving or not giving him the tax credits is going to help the people that live there. See, the only ones that would lose here if we do not give him the tax credits are going to be the people living there because they're going to have to move out, they're going to have to completely move out, and they've been there for a long time.

Now, I don't know whose fault it was that the new building did not get built and the old building stayed there, but of course, the city was not going to allow those Towers to be knocked down. I think somebody lied to this board, somebody lied to the staff that they were going to apply and get a new building for the housing authority, and it didn't happen that way. Now, that's the bottom line, that's the truth.

Now, the people are there living in the Towers, and they did a good job of rebuilding the Towers, so I don't know what's going to happen, but I would recommend to approve the tax credits and assess some penalties to the builder of some sort, because the only ones that I'm interested in are the people that live there and they've been there for a long time.

Now, there's no mistakes about what happened, it's very clear it was supposed to be a new building and then he didn't do a new

building, he just went in there and rehabbed the Towers. It's all over now, people are living there now, it's a nice building, but he did not do what he said he was going to do.

Now it's up to this board but I think if we really want to help the elderly that are staying there, we need to approve the tax credits to the developer and if you want to assess some penalties on the builder, that's fine.

MR. CONINE: I move we approve the request of all the changes and no more additional amenities, I think only what he's agreed to do to this point, he needs to provide us a budget and provide us sufficient financial guaranty that it will be done by the end of the year so we can get the 8609s issued. That's my motion.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

MR. FLORES: No.

MS. ANDERSON: Motion carries.

MR. CONINE: And then on the penalty assessment, I move we dock one point off next year for both the housing authority and Mr. Fisher's entity, whatever it is.

MS. RAY: Second.

MS. ANDERSON: Discussion?

MR. FLORES: Would you separate that motion between the authority and the other one?

MR. CONINE: Sure. I'll take the housing authority first.

MR. HAMBY: If I can make a clarification, are you saying that you want to reduce -- the way the rule reads currently, it's a two-year cycle, but you want to reduce it to one year?

MR. CONINE: One year.

MR. HAMBY: Okay.

MS. ANDERSON: So this is one point for one year for the housing authority. Is there a second?

MS. RAY: Second.

MS. ANDERSON: Discussion?

MR. FLORES: Mr. Conine, I don't see how the housing authority is to blame on this thing. It seems like to me the developer is the one that caused the problem.

MR. CONINE: You know, aiding and abetting and accomplice is kind of where I come in on this. There should have been enough oversight over the developer that they hired to make sure that the application they signed, to begin with, said new construction, and even though they intended reconstruction or redevelopment, as I understand it, so they didn't even get off on the right foot.

MR. FLORES: Well, I think you're punishing the wrong party, and in fact, I don't think you're punishing the other party harsh enough, so

maybe you ought to reconsider that. But I ask you to vote against it and at least let the housing authority off the hook on this.

MS. ANDERSON: Mr. Mayor?

MAYOR SALINAS: I agree the housing authority should not be punished. Ms. Trevino is 85 years old and while she was doing this whole application, she always knew it was a rehab, she never knew what she was signing, she only knew she was going to rehab the Towers. I think Mr. Fisher should take --

MS. ANDERSON: We're having a motion about the housing authority right this second; we'll have that chance.

MAYOR SALINAS: But I don't think the housing authority should take the hickey on it, I think the builder should take the two points.

MS. ANDERSON: Any other discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed?

MR. FLORES: Aye. (sic)

MAYOR SALINAS: Aye. (sic)

MS. ANDERSON: The motion carries. The chair votes aye.

MR. CONINE: And the second motion was a point against Mr. Fisher for next year, one year only.

MS. RAY: Second.

MS. ANDERSON: Thank you, Ms. Ray. Discussion?

MR. BOGANY: I think -- not that it matters --

MR. CONINE: Till the end of the day it matters.

MR. BOGANY: But you know, I think Mr. Fisher is a great developer, but I do think that it's significant enough being told it was a new project and a rehab, I think if you're going to go with the points, I think it ought to be for two years as we have stated in the QAP. I just think it was a major mess-up, and we've given plenty of opportunity, he doesn't want to put up money in escrow, he's okay with the surety, doesn't want to do this, doesn't want to do that, and I just feel that it was a great enough situation that at least a two-year period, and I would like to see it at a two-year period versus the one year.

MS. ANDERSON: Would you put that in the form of an amendment to Mr. Conine's motion?

MS. ANDERSON: I'd like to amend Mr. Conine's motion with a two-year period.

MS. ANDERSON: Is there a second on that amendment?

MAYOR SALINAS: Second.

MS. ANDERSON: Let's vote on the amendment. All in favor of the amendment, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

MR. CONINE: No.

MS. RAY: No.

MS. ANDERSON: The amendment carries. Now we are back to the main motion, so we're at one point for two years. Any discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

MR. CONINE: No.

MS. RAY: No.

MS. ANDERSON: The motion carries.

You can see that we don't like to be in this position, so build things the way you apply for them because it is no fun to sit here, I'm losing my Christmas spirit. I mean, it is no fun to sit up here five days before Christmas and have to see this litany of stuff, and some things are little things, this one wasn't such a little thing. So we've now had adherence to obligations since December 1 of 2006, and so long after I'm gone and Mr. Bogany is gone, maybe the ones left behind won't have to do this.

MR. CONINE: I appreciate you doing the dirty work.

(General laughter.)

MS. ANDERSON: The next one is Freeport Oaks. Right?

MR. GERBER: We'll take Freeport Oaks and TownePark Fredericksburg II together. They are for the same amendment request with the same developer. The owner is requesting the elimination of the HUB general partners and providing a commitment to seek out and contract with

HUBs in the development process and operations.

Staff recommends that the board deny the request and require the HUB to be replaced with another HUB. If the board approves the elimination of the HUB, staff recommends the assessment of appropriate penalties because the request is after the loss of the HUB.

MS. ANDERSON: Mr. and Mrs. Kildaz, we have all the Kildaz. So it's the same issue, same HUB withdrawal on both of them. Is that right?

MR. GERBER: This one and TownePark at Fredericksburg.

MR. CONINE: Okay.

MS. ANDERSON: Yes, go ahead.

MRS. KILDAZ: Thank you, Ms. Anderson and Mr. Gerber, for giving me the opportunity to speak to you all today, and the rest of the board. My name is Dianne Kildaz and I am president of Kildaz Realty Corp.

Kildaz Realty Corp. has been a HUB when it first came into being in 1999. That HUB has been renewed twice. The third time we put in an application to extend that HUB certificate, it was denied, and that was denied in June of this year. The reason for the denial was that I don't spend full time at our corporate office. We disagree with this finding. I am the majority owner, I am the guarantor, and I'm involved in all of the business decisions for the company.

In 2001, Les Kildaz joined our firm. Before that it was just Dick Kildaz, my husband, and I. At that time we had to move offices and enlarge our office from a two-person office to a three-person office. That was in 2001. We again expanded in 2002 when we brought in an office assistant. Because

of the limited amount of space in our office, we did develop at that time a home office and I work out of that office now and find that it is a very efficient way to do business, and because of all the technological advances over the years, this has become standard procedure in a lot of companies.

I also do work at the main office a considerable amount of time, and I do assist in all of the business that goes on at the office which includes banking. But anyway, I do do quite a bit of business there. Dick and I both have really benefitted from this home office, and I do ask you to favorably consider the amendment request that we have before you. Thank you.

MS. ANDERSON: Thank you.

MR. KILDAZ: I'm Les Kildaz with Kildaz Realty Corp. Ms. Anderson, Mr. Gerber, board, I appreciate the time that we can discuss this with you.

The HUB that was not renewed, Kildaz Realty Corp., operates the same as it has since 1999 when it was formed. Mom's responsibilities are the same, they haven't changed at all. The only thing that has changed is where she does most of her business now.

We are working with the Texas Building and Procurement Commission urging them to be more flexible in their policy regarding the HUB requirements. That is an ongoing discussion we're having with them. But in the meantime, in this situation we are requesting that the 2008 HUB rules, that that scoring item be able to replace the 2004 HUB scoring item.

The staff has worked very hard on this and I think the writeup on this is very good. The 2008 rules for the HUB scoring item require a HUB

plan which we have submitted. It requires us to endeavor to include HUBs in the development process. On both these developments, we have done that. One development had seven HUBs involved throughout the construction of the development. These are just finishing up leasing, both of them. One included seven HUBs, one included eight HUBs. And that documentation has been given to the staff.

Also, if this HUB wasn't even involved in these developments, as the writeup says, both would have been allocated the credits anyway. So based on that, we request that the board approves -- well, I think in the staff's writeup on this, my understanding is their hands are tied somewhat from the legality of the 2004 rules that they cannot approve this amendment administratively. That's why it is in front of the board for your approval today. We request approval of you being able to use the 2008 rules to replace that.

Now, in the event that the board does not look favorable on that amendment, we request time, 90 days possibly, to work with the Procurement Commission to renew the Kildaz Realty Corp. HUB or to find a replacement HUB for both of these developments and allow the 8609s to be awarded before the end of the year and preserve those credits. We also ask that in this situation that the penalties not be assessed. We don't really feel like we've done anything wrong in this development, and we would ask your leniency and favorable on that. Thank you very much.

MR. BOGANY: I have a question for staff. What is the points that you get for having a HUB?

MS. MEYER: In 2004 it was three points.

MR. BOGANY: It was three points. And if I understand correctly, the HUB was not renewed because of the change of Mrs. Kildaz's status.

MS. MEYER: That is our understanding. Renewal came up in May of this year.

MR. BOGANY: Okay, thank you.

MR. FLORES: Madame Chair, if I may?

MS. ANDERSON: Yes.

MR. FLORES: Robbye, what is the effect of a 90-day delay for this project?

MS. MEYER: There's no effect. If the board wishes for us to issue the 8609s. This is an '04 with '07 credits so we need to issue the 8609s. I don't think they have any other outstanding items.

MR. GOURIS: They do not.

MS. MEYER: This is the only outstanding item they have, so a 90-day delay would give them the opportunity to either replace the HUB with another HUB or to have Mrs. Kildaz reinstated.

MR. BOGANY: How does that work if they can't find another HUB?

MR. HAMBY: Actually, probably what it would end up being, Mr. Bogany, is that you probably hold the penalty points pending, because there's obviously no monetary adjustments, so you'd hold the penalty points pending their replacement of the HUB or a satisfactory resolution and then revisit the penalty points on a date in the future.

MR. BOGANY: Unfortunately, I'm not going to be here in the future.

MR. HAMBY: I mean you in the sense of the board.

MR. BOGANY: My thought here -- and you guys know how I feel about HUBs, I think we need them, I think it's important -- and my thought process is that we should give them a 90-day opportunity to replace that HUB. If they do not get that HUB replacement in 90 days, I think the penalty, as far as I'm concerned, should be three points for the next two years, just as what they got when they said they were going to have a HUB. But I do believe if they get the 90-day HUB, I think you guys have always participated in HUBs, you've got a track record of that, I don't think it's going to be any problem finding it. But if you can't do it in 90 days, I think it should be a penalty because you got points for it, and I think it sets a precedent for the future when we see this again.

MR. CONINE: I'll second that if that was a motion.

MR. BOGANY: That was a motion.

MS. ANDERSON: Is there discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. CONINE: That was for both deals, I presume?

MR. BOGANY: I'm sorry. For both deals.

MR. GERBER: The next one is Rosemont at Hidden Creek.

This amendment request concerns the unit mix of the development. The number of one-bedroom units was increased from 52 to 64 and the number of two-bedroom units decreased from 112 to 100. The number of parking spaces was decreased from 525 to 388. In lieu of these omissions, the owner requests to provide a furnished fitness center, a furnished library, and provide refrigerators with ice makers in all units.

Staff recommends that the board approve the request with the assessment of appropriate penalties for the implementation of the amendments prior to approval.

MS. ANDERSON: I have Lee Anderson.

MR. ANDERSON: My name is Lee Anderson. I'm with HSI; we're the general partner of Hidden Creek.

There's obviously a lot going on with Southwest Housing as of the last couple of years. I came onboard in January of '06 and certainly the last couple of years have been difficult. I'm here to make a couple of general comments just about the history of the relationship and where we are now.

As it relates to the change in unit mix, has the staff been given any information on this?

MR. CONINE: We have a writeup.

MS. ANDERSON: You mean the board?

MR. ANDERSON: Yes.

MS. ANDERSON: We have the published board materials.

MR. ANDERSON: Okay. What I would like to do is keep this as brief as I can because I'm sure that none of you want to get into the history that's gone on the last couple of years. It's been a difficult process for us, so what I would like to do is try to just keep this brief and see if you would, in the penalty phase, not assess a penalty against our organization. I know that there was a gentleman here this morning that was an attorney that made some general comments about this issue. So I'll leave my comments at that.

MS. ANDERSON: I have a really dumb question. What is HSI? Is it the non-profit that's providing supportive services, or was this a deal that had non-profit points and was awarded in the non-profit set-aside?

MS. MEYER: They're the owner.

MS. ANDERSON: And it was a non-profit that was controlled by Bryan Perthashnik. Correct?

MS. MEYER: This is a bond transaction, this is not a 9 percent, so there's not a non-profit set-aside.

MS. ANDERSON: I was confused because it said July.

MR. CONINE: Move staff recommendation to accept the amendment.

MAYOR SALINAS: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. CONINE: Is there any point equivalency? There's not, is there?

MS. ANDERSON: It's a bond deal.

MR. CONINE: I move no penalties.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next item is Samuels Place. This amendment was presented to the board in November. The board tabled the decision to allow staff to research industry assumptions and report back to the board of their findings. The owner requested approval to change the rent targeting. The development originally committed in its application to have twelve units restricted for use by tenants qualifying at 30 percent of AMGI. The owner now proposes to restrict only four units at 30 percent rents with the

remaining eight of the original twelve units being restricted rents at 60 percent.

Staff maintains the recommendation of eight units of the twelve units be restricted. No penalties recommended because the request is being made in advance of implementation.

Tom, do you want to add anything to this one?

MR. GOURIS: Just that we did do the evaluation, we spoke with the syndicator and did some pretty extensive discussions. It turns out that their expectations and our expectations are very similar as far as what we think the NOI is and what the capacity for the project is. We believe that the debt amount should be less than what they're proposing that they can service, and that with that, there would be a deferred developer fee that we feel would still be within the department's guidelines for retainment, even if we went to a 2 to 3 percent growth rate that we talked about last time. So using a smaller debt amount would still get us there.

The syndicator's contention is that they're just not comfortable doing that and it's just our standards versus our standards with regard to what their comfort level is.

MR. CONINE: So with your enormous stature and power, you couldn't squeeze that syndicator out of four more units?

MR. GOURIS: No, sir.

MS. ANDERSON: We have public comment on this. Mr. Prentice Gary and Mr. Jeff Fulenchek.

MR. GARY: Madame Chair and board members, my name is Prentice Gary, Carlton Residential Properties. We have performed for the Fort

Worth Housing Authority who is the owner of Samuels Place, we performed as developer, as general contractor, and in this rare case we have performed as construction lender.

As you mentioned, the original request was taking the 30 percent units from twelve down to four, came to the board, the staff recommended eight, then staff had discussions with Apollo, who is the syndicator about differences in underwriting. And thanks to the staff, we were also talking to Apollo about what would be acceptable to them and actually got them from four up to six and thought we were really making progress toward eight, except for the low income housing tax market going from a sellers market to a buyers market, and they started backtracking.

Bottom line is we'd like the board to consider six. With all due respect, however, after having said all of that, we need a decision today, given the fact that we have a loan refunding from Bank of America that we hope to close before year end, as well as the fact that the syndicator informs us that they're about to lose their investor, and while we know it's a negotiating ploy, year end is a very natural threshold for getting funds filled and we don't want to take the risk of losing our investor.

So whether you go with eight or whether you go with six, we respectfully request that you make a final decision today. Thank you.

MS. ANDERSON: Jeff.

MR. FULENCHEK: Jeff Fulenchek with Carlton. I'm really just here if you have technical questions about the structure of the deal.

MR. CONINE: Move staff recommendation of eight, no penalty.

MS. ANDERSON: Second. Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GARY: Thank you for your consideration and thank you for your six years on the board.

MR. BOGANY: Thank you very much.

MR. GERBER: The next item is Pecan Village. The owner requested approval to substitute covered parking for dishwashers. The owner said that he did not want to install dishwashers in the rehabilitated units because the already limited counter space would be further reduced.

Staff recommends the board deny the request because the dishwashers were a threshold requirement. The owner will have 30 days to install the dishwashers before assessment of penalties would be recommended. If the board approves the amendment, staff recommends the assessment of penalties because the request is, again, after implementation.

MR. CONINE: Did you skip one?

MR. GERBER: Oh, I'm sorry. Mesa Vista got pulled. I apologize. Mesa Vista got pulled, I moved to Pecan Village.

MS. ANDERSON: So now we're on Pecan Village?

MR. CONINE: What happened to Mesa Vista?

MR. GERBER: It got pulled.

MS. ANDERSON: So is it going to get its 8609s?

MR. GOURIS: It's an '05 transaction.

MR. GERBER: Do you want to hear it again?

MS. ANDERSON: You already did it?

MR. GERBER: I did. The owner didn't want to install the dishwashers in the rehabilitated units.

MS. ANDERSON: I apologize.

MR. GERBER: That's okay. Our recommendation is the owner would have 30 days to install the dishwashers before an assessment of penalties would be recommended.

MS. ANDERSON: Okay. Mr. Fieser.

MR. FIESER: Thank you. Jim Fieser, GP and developer.

The issue here is that these are very small units, they're 528 feet. The kitchen area is 20 square feet, there's seven linear feet of cabinet space under the cabinets, and when we took a look at putting the dishwashers in, we saw what the effect was going to be, that basically would be left two feet of under cabinet space if we install the dishwashers. And we'll install them, but I thought something better would work is the covered parking and the costs are pretty much the same. There are 63 parking spaces, so the cost is about the same as putting the dishwashers in.

So basically, I'll do what you guys want us to do, we'll either put the dishwashers in or substitute covered parking. So that was the reason.

MS. ANDERSON: It's a USDA deal.

MR. FIESER: No, it's a HUD deal. It's a three-story senior citizen project.

MR. CONINE: Are you talking about full-size dishwashers?

MR. FIESER: Yes, they're two feet.

MR. CONINE: You know, they make those little bitty ones now.

MR. FIESER: Yes, they do, but we get into a cost situation. They're about 450 bucks just for the small dishwashers.

MR. CONINE: I'm thinking of my grandma who would like a dishwasher, she doesn't give a darn about a carport, her car looks terrible already.

If it's not an RD deal, then I hate not to have a dishwasher, and we're talking 63 units?

MR. FIESER: Well, there's 82 units, there's 63 parking places.

MR. CONINE: Is the only threshold item the dishwashers?

MR. FIESER: Yes.

MS. RAY: May I ask a question?

MS. ANDERSON: Sure.

MS. RAY: You know, a dishwasher doesn't necessarily have to take up the counter space. Can't you put the counter on top of the dishwasher and you don't have any loss of counter?

MR. FIESER: Well, you don't lose the counter space, you lose the cabinet space. The water heater is in the kitchen, it's under the cabinets,

so when you open the cabinets, there's not much space.

MR. CONINE: Is the property full?

MR. FIESER: Yes, 100 percent occupied, as a matter of fact.

MR. BOGANY: Have the residents told you what they wanted?

MR. FIESER: They have not told us what they want. These are some very, very poor folks. This is a HAP contract property. But we put the disposals in and we've not gotten any negatives as it relates to that, and I'm not sure that they would use them, frankly, but we'll certainly put them in.

MR. FLORES: What's the cost of the covered parking?

MR. FIESER: It's pretty close to equal. We figure that we can put the dishwashers in roughly between \$350 and \$400 a unit, and we think that the covered parking would be roughly \$600 per unit, so it's about \$36,000 either way -- which is actually out of pocket, as well, because it was never in the scope of work. This was one of those obligation certification issues.

MR. CONINE: This is an '05?

MR. FIESER: This is an '05 deal.

MR. CONINE: You know, Madame Chair, I know what's getting ready to happen to him. He goes in there and starts ripping out cabinets and these old people are going to gripe and moan because they're getting a dishwasher and losing the cabinet space because they're used to what they have now. So he may have more of a mutiny on his hands when he goes in to do the dishwashers as opposed to not. Now, on the other side, like I said, I don't think carports are going to mean much to them.

MR. FIESER: It's not, but I don't know what else to trade off because we have everything else. I couldn't think of anything else to substitute. We have kind of a pavilion covered area, we have the barbecue pits for them, and we basically have provided everything. It's a fabulous looking project, by the way, if you ever get a chance to go by. It's a great project.

So I'm kind of stuck, I was stuck as well.

MR. CONINE: Why don't we let the tenants decide? Is that all right with you?

MR. FIESER: Sure, absolutely.

MR. CONINE: Take a vote and see what comes out a winner.

MR. FLORES: Go ahead and frame the motion.

MR. CONINE: I knew you were going to do that. I move that we approve the request that would include a canvassing of the current residents as to whether they'd want a dishwasher or a carport, with the understanding they're just going to get one or the other, because you don't want to do half and half.

MR. BOGANY: What's the time frame on this?

MR. CONINE: Thirty days is too quick, in my mind, 90 days is plenty.

MR. GOURIS: And it's there's an issue with issuing the 8609s, it's an '05 transaction.

MR. CONINE: You had 30 days in your staff report and I don't think I could put in 82 dishwashers in 30 days, retrofit. So 90 days would be

fine, I'm sure, with him. That's my motion.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. CONINE: No penalty assessment.

MR. FIESER: Thank you. Merry Christmas. Shad, really appreciate your work.

MR. BOGANY: Thank you very much.

MR. GERBER: Madame Chair and board members, the next item is Olive Grove Manor. This amendment was placed in the board materials in error. According to the department's amendment policy approved in November, a reduction in parking spaces is allowed as long as the development still meets local code, and it should have been approved administratively. This amendment is requested in advance of the completion and should not have penalties assessed with it.

MS. ANDERSON: Which deal are we talking about?

MR. GERBER: Olive Grove Manor. It should have been dealt with administratively.

MS. ANDERSON: Okay.

MR. GERBER: The next item is Oxford Place. The owner's counsel requested approval to change the site plan, the unit plans and building plans. The development was originally proposed to contain 268,000 square feet of net rentable area and 13,000-plus square feet of common area. Upon completion, the development was certified to contain 278,000-plus square feet of net rentable area and 12,000-plus square feet of common area.

The net rentable area increased by 10,050 square feet, or 3.7 percent, and the common area decreased by 1,065 square feet, or 7.9 percent. The owner's counsel explained that the 1,058 of the 1,065 square feet of common area that was eliminated resulted from combining two laundry rooms totaling 1,576 square feet into a single facility of 518 square feet.

The owner's counsel requested Energy Star appliances in all units be substituted for the self-cleaning ovens represented in the application.

Staff recommends the board approve the request with the assessment of appropriate penalties because the amenities were requested after implementation.

MR. CONINE: Move approval of the amendment with no penalty.

MR. BOGANY: Second.

MS. ANDERSON: Do you waive your right to testify? Would one of you come up?

MR. LITTLEJOHN: I am George Littlejohn, a partner with Novagradic and Company. We represent the owner, we did the cost cert.

Because the amendment had to be placed in the board book and TDHCA's Real Estate Analysis had to finalize their underwriting report, I think two or three days before they notified the project that they thought there was an equity gap issue. We were not able to resolve that before the item had to be printed, and in talking with Mr. Gouris and Ms. Morales, we were concerned that if you approve this amendment based on the underwriting report, it would automatically implicitly deny them credits.

So we've provided some new materials showing that there are additional costs and that they should get all of their credits, and we would just ask that the credit amount in the underwriting report, we be allowed to continue to work with Real Estate Analysis between now and the end of the year to resolve the credit amount.

MR. CONINE: Are you okay with that, Tom?

MR. GOURIS: That's okay with us, yes, sir.

MR. CONINE: I will accept that as a friendly amendment to my motion.

MR. BOGANY: Second.

MS. ANDERSON: All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The last is Samaritan House. The owner is requesting the threshold requirements of dishwashers and disposals be

waived for the 60 SRO units in this development. According to the owner, these items were never contemplated for the SRO units and the original plans support that statement. The SRO units are supported by partially furnished rooms, full meal service, and on-site laundry services. Tenants in the SRO units do not really have the opportunity of in-room food preparation. The current QAP does not require dishwashers and disposals for SRO units.

Staff recommends the board deny the request because the amenities were threshold requirements, however, in 2004. Appropriate penalties should be assessed if the board approves the request of the waiver of threshold.

MS. ANDERSON: I have Bob Deluca and Steve Dutton to speak to this.

MR. DUTTON: Thank you, Madame Chair and the board. I am Steve Dutton. I am executive director of Tarrant County Samaritan Housing which is the non-profit service provider. I'm also president of Hemphill Samaritan G.P., the general partner in this project. We've partnered with Coach Realty of Houston as co-developers and with Carlton Construction and Carlton Residential as our HUB and as our general contractor.

I'm very proud of the development and I've passed out a brochure that shows the apartments and the amenities that are all within the 66 apartments we created.

A little bit of background. Samaritan House originally started 15 years ago in another location, and we moved to the medical district and acquired a building -- I'm looking at the star of Texas -- very similar to the

configuration of that star except that it has a sixth wing. It's a starred configuration. We acquired that facility in 2000 and we remodeled the 60 rooms in that facility, 52 into SRO and eight into administrative offices. We officed there until last year when we completed construction on our new apartment buildings, three buildings, creating a campus environment for the persons living at Samaritan House to look forward to, frankly.

These are persons living with HIV and AIDS. The original SRO is a residential hospice licensed by the State of Texas as a special care facility. We provide services 24-7. Our rooms are small but the rooms are intended for one individual, 18 or over, male or female, to live and to be able to recover from this disease.

We took what had been a nursing home and converted what had half baths into full bathrooms and showers, we provide a microwave and a small refrigerator for snacking. We ask them not to cook in their rooms because not only would it not be allowable under code for the City of Fort Worth for that building, it wouldn't be practical to have individual cooking units in each room. We have a central commercial kitchen in the facility, we provide all their meals, three meals a day, seven days a week. And as I said, we have nursing staff 24-7.

The reason we built the apartments -- and we approached Coach Realty and then Carlton about doing this -- is that as AIDS victims are able to live longer and recover from the disease with medication, the natural next step is to allow them to reunite with their families and their children. So the apartments was a vision that we had for many years that we were able,

thanks to your help and the tax credit award of 2004, to in fact accomplish. We opened the 66 units that were filled in less than three months, but we've been able to provide now a means of persons who are homeless on the streets that have AIDS to move into an SRO facility, recover from the illness sufficiently to look forward to a better life, and then provide a beautiful apartment for them to reunite their families and to move into.

So we're a little bit dismayed over the fact that in the eleventh hour, waiting for 8609s for our 2004 and 2007 credits, to have this issue come up, but we respectfully ask you to waive the requirement of the dishwashers for the SROs, approve the 8609s by the end of the year, please, and no penalty be assessed. It was never intended that we were going to put these amenities in the SRO rooms.

Thank you.

MR. FLORES: I'm a little lost. What was it that it was missing or our staff believes is missing?

MR. DUTTON: We understand from staff that the only issue is the dishwashers in the SRO.

MS. RAY: In the SROs only.

MR. DUTTON: In the SROs only, right. The apartments have every amenity listed. The SROs the full effect of the amenities in the building, just not in the individual units because, again, it wouldn't be practical.

MR. FLORES: I'll let staff answer my question in a minute but let me finish with you. The SROs don't have dishwashers, they don't have kitchens, but the reason for that is you serve a meal every day.

MR. DUTTON: Full meal service, right, in the central facility. It's like a group home, if you will. All the residents receive their meals in one kitchen. The individual units do have a microwave and a refrigerator which is, has always been our understanding, the requirement of an SRO and it is HUD approved. We built it under HUD guidelines.

MR. FLORES: Okay, now staff.

MS. ANDERSON: Can we maybe have the other public testimony from Mr. Deluca, and then we'll ask the witnesses to be seated and then we'll talk to staff.

MR. FLORES: I'm sorry.

MR. DELUCA: I'm Bob Deluca with Coach Realty Services. We acted as co-developer of Samaritan House, along with Carlton and Samaritan themselves.

I'll just make a few comments. With respect to this project, we built as represented in the application. We didn't do anything different. There is some confusion as to whether or not every amenity should have been within the SRO unit, and I think that's what we're really here to talk about.

I would also note, and I think probably you're aware, that every year after this all these requirements have been waived for SROs. In the 2004 QAP there are eight threshold items for an SRO unit. The only item which we do not have is the dishwasher, and as Mr. Dutton pointed out, we have all those facilities nearby. We have full laundry service for every resident that lives there.

I would just close by saying Coach Realty has done probably

close to 25 projects and there's none we're more proud of than this one. This is a tremendous use of the Tax Credit Program. It's been welcomed by the community and we're very thrilled to have been a part of it.

Thank you.

MS. ANDERSON: Thank you, and we have some questions for staff now, if you all would go ahead and be seated. It just helps us not to have a debate between witnesses and staff.

MS. DUTTON: We understand. Again, we appreciate your help in allowing us to build this. This was a dream that Samaritan House and we fulfilled. Thank you. Merry Christmas.

MS. ANDERSON: Thank you.

MR. FLORES: Madame Chair, I was just trying to find out, there was some conversation with three of our staff members and they were disagreeing with something and I was trying to give them a moment to respond. Speak, if you wish, Tom, Robbye, whoever.

MS. MEYER: I believe your question to me was what's missing, and it's the dishwashers and disposals in the SRO units.

MR. FLORES: And that's all we have a problem with from our side?

MS. MEYER: Obviously not, because we have our general counsel here.

MS. ANDERSON: And is there a little sink? There's a microwave and a refrigerator in the SRO units so that someone could make popcorn. Okay.

MR. HAMBY: I actually have a bigger problem. We're a little concerned. I don't think we knew at this time that it was a special use facility, and we probably need some time to do research on it because this would make these projects not available for the general public in violation of the Fair Housing laws, if they are specifically targeted to one group and individual people. What we don't know, at least I did not know until I heard the gentleman talking -- that's why I called the people from PMC to see if they knew -- the 8823 audit guide makes it very clear that you have to be available for the general public, and so if we are modifying this based on the population they're serving, it could be very likely that we may have to go back and say that they're out of compliance because you have to have tax credit properties available for the general public.

However, because there are some exceptions for medical reasons, the audit guide says in addition to any residential unit that is part of a hospital, nursing home, sanatorium, life care facility, retirement home, other than housing, dormitory trailer park or intermediate care facilities for the mentally and physically disabled is not for use by the general public. We don't know of that means that it's an exemption or if that is by definition saying that these are not for use by the general public.

And that's kind of our concern at this point is if we issued a waiver of a threshold item based on the population they serve and then a year from now we say you can't serve that population. I don't have an answer for you.

MR. FLORES: Could we give you 30 days?

MR. HAMBY: It's fixable later on unless you grant a waiver now and then they issue the 8609s and you have no mechanism for doing it, we would just find them not in compliance.

MR. CONINE: Well, we've got penalties associated with that.

MR. BOGANY: Can we ask them that question?

MR. CONINE: Let me say something first. I think there's been two mistakes here. One, I don't think we should have had dishwashers as threshold items in SRO units in the 2004 QAP. The second one was the application process, staff didn't catch it as it came through because it was on his plans, as testified, that the dishwasher wasn't there, so they didn't catch it when it came through in the application process.

MR. GOURIS: I think there was a communication failure. We recognize that it wasn't there in our underwriting but we didn't recognize it needed to be a threshold item.

MR. CONINE: But it went through the tax credit process and got the award.

MR. GOURIS: That's correct.

MR. CONINE: So something happened within the staff that there was a faux pas. Forget the blame right now. So if there wasn't supposed to be dishwashers in there to begin with, at least from my perspective, I don't have a problem granting the waiver.

MR. FLORES: I don't either. But we have a bigger problem with that, sounds like counsel needs about 30 days to come back and fix it.

MR. CONINE: He can solve that problem later, though. If he's

just now uncovered something, it really doesn't have anything to do with the 8609s right now.

MR. FLORES: It has a lot to do with it. The item can come back here to us in 30 or 60 days, whatever counsel needs on it, but we can separate the problem out.

MS. ANDERSON: Do you have something to say about this, Ms. Murphy?

MS. MURPHY: Patricia Murphy, director of Portfolio Management and Compliance.

The IRS released the 8823 audit guide in January of 2007 and this was sort of a big deal to the industry, this clarification of Treasury Regulation 1.42-9, that properties not only have to comply with the Fair Housing Act but must be available to the general public. And this property, in particular, while it may meet the definition of the Fair Housing Act, it is questionable if persons with HIV are the general public. So during a compliance review, we certainly would raise this topic.

The IRS has made it very clear that the only criteria should be income eligibility and student eligibility and there shouldn't be these additional requirements.

MR. CONINE: How about Elderly, how do you get by with elderly?

MR. HAMBY: It's specifically provided in statute that the elderly are exempt, 55 years of age and older.

Again, Mr. Conine, the only reason I bring it up at this point,

you're right, the compliance issue is a separate issue unless you're granting the waiver based on the population they're serving and what they're doing.

MR. CONINE: No, I'm basing it on what I think an SRO is, the physical characteristics.

MR. HAMBY: And that's fine. We just wanted to make sure that there may be a problem down the road but that's the basis.

MR. BOGANY: I have one question. I'd like to ask the person can anybody rent this place? I mean, that seems to be what the issue is.

MR. DUTTON: Again, I'm Steve Dutton. I'm the executive director of Samaritan House. And I think I may have given Robbye false information that led to all of this brouhaha. She asked me if the SRO -- I think she said the project is 100 percent AIDS, and I said that the apartments are 85 percent restricted, but this is strictly by our program, to somebody in the family with AIDS and their families. The families don't have AIDS. Fifteen percent are open to anyone with any chronic illness or special need.

The SROs, as I told her, are 100 percent restricted but they're actually not. The eight that we rebuilt or that we modified into residential SROs are not. They are by our program. We have a preference to HIV/AIDS because of the other funding programs we have, HOPWA and Ryan White, et cetera. It just makes it easier. The need in our community is so great that we are the only provider of any housing for persons living with AIDS. And so the bottom line is it would be criminal for me to say that we will start moving people in that don't have AIDS merely to satisfy some requirement that maybe has arisen since 2007. The reality is that we restrict the SRO to

persons living with HIV and AIDS of all ages.

MS. ANDERSON: Well, that will be between compliance and the IRS, and that is not today's issue. But thank you for clarifying that.

MR. CONINE: My motion is we grant the amendment request.

MR. BOGANY: Second.

MR. CONINE: With no penalty.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: The next item, Madame Chair, is 7(b), which is a Presentation, Discussion and Possible Action for Housing Tax Credit Appeals. There's only one, Casa Alton. Costa Clemente has been taken off.

This is a 2007 9 percent tax credit application in Rural Region 11 and it's proposed for the city of Alton. Casa Alton was not originally recommended for an award of tax credits during the July 31 board meeting but was subsequently recommended for an award following the termination of another application in Rural Region 11.

During the November board meeting, staff recommended Casa Alton for an award of tax credits and the board accepted the staff's

recommendation. Since that time, however, the application has been terminated by staff because the applicant failed to meet a threshold requirement of the QAP, and the QAP is explicit that a failure to meet this particular requirement results in termination.

All applications in the 2007 application round were required to submit a Phase 1 environmental site assessment, or ESA, report for the development site by April 2, 2007. The applicant for Casa Alton did meet this deadline initially, however, after the November board meeting and during the underwriting evaluation, the applicant notified department staff that the applicant was changing the location of the development site from what was originally proposed at the application's submission. The applicant moved the development site within a larger tract of land that was already under site control, however, the new site is not a part of the land for which the ESA report was performed. Because the applicant changed the development site after April 2 and because the revised site was not included in the original ESA, the applicant did not meet the requirement to submit an ESA for the development site by April 2.

In addition, because ESA submission deadlines have passed, there was no way for the applicant to rectify the situation through the administrative deficiency process. The applicant did not meet the requirement, and as required by the QAP, the application was terminated by me. Staff is recommending that we uphold that termination.

MS. ANDERSON: Monica Poss.

MS. POSS: I'm Monica Poss and I work with the National

Farm Workers Service Center, the developer and GP of the proposed Casa Alton in the Rio Grande Valley.

A few weeks ago, around the time of the last board meeting, staff called us and said that Los Ebanos had had their credits rescinded because the USDA denied that project, the Section 538 financing that was put in the set-aside, and we were the next project up in the set-aside. Staff also said that they were having a problem awarding the credits to us, even though we were next in line, because our site was in a flood zone. So even though they could give us the credits, they were afraid that we wouldn't get the USDA funding and that staff would not be able to award the credits to anybody by the end of the year and the State of Texas would lose the credits.

So we tossed around some ideas with staff and realized that we had 20 acres under contract. Our project was on 9-1/2 of these acres. So we proposed moving the site around a little bit within the same 20 acres that we had had under site control all along but to get the project completely out of the flood zone. And staff said they thought that would solve the problem, we all did. So we submitted those changes.

What we failed to realize is that that created a problem with the original Phase 1 ESA because even though our proposal for the Phase 1 ESA that we submitted back in April was for 20 acres, the actual ESA was only done for the 9-1/2 acres that the site was originally on. So staff warned us that they had to terminate our application. So we went out and had a new Phase 1 ESA done, knowing that the termination was coming. Nothing new resulted except some household trash dumped on part of the land.

So we are requesting that the board accept the new Phase 1 ESA, there are no other problems with it, and reverse the termination of the application.

MS. ANDERSON: Thank you for your testimony.

MR. CONINE: Does staff agree with that analysis?

MS. ANDERSON: Do you have questions of the witness?

MAYOR SALINAS: Well, maybe, yes. First of all, they were at the right spot to begin with, all they needed to do was to have an engineer get it out of the flood zone. Because there is a drain ditch there, all they needed to do is build the storm drain into the ditch. I don't know why they didn't do that; they would have been out of the flood zone. That whole area has good adequate drainage. I should know, I was the county commissioner for that area. So when I saw that they had kicked them out because of the drainage problem, that's not the case.

Now, you have pockets of flood zones but there is a way that you can get them out of the flood zone by providing storm drainage into the ditch. You could probably fix that whole problem if they would have had a good engineer to help them and they would have been underway with their project. I know that because there is adequate drainage there and that piece of property never floods.

MS. ANDERSON: Do you have questions for the witness?

MAYOR SALINAS: Well, the only question I have is for you all to consider her because they lost the project simply because they just did not have a good engineer.

MS. ANDERSON: Wait. Would you please be seated. Are you all kind of getting the picture about this and why we do it this way? Thank you.

Now do you have questions for staff, or do you want to respond to the mayor's comment?

MS. MARTIN: Audrey Martin, Competitive HTC Program Administrator. I just wanted to clarify, they weren't terminated for the flood plain issue, they were terminated for not having the ESA by the deadline. Technically that's the reason for the termination.

MAYOR SALINAS: how many days were they late?

MS. MARTIN: Eight months. They changed their development site in November and the deadline was April 2. So it's not something you can retroactively correct.

MAYOR SALINAS: Well, they didn't have to change their plan, that's what I'm saying. They were in the right spot in the nine acres. It would have been good for them to stay where they were. All they needed to do was have an engineer work the plans out so they could have storm sewer.

MS. ANDERSON: Mr. Conine.

MR. CONINE: Audrey, have you reviewed the second Phase 1 environmental assessment?

MS. MARTIN: I have not.

MR. CONINE: Has anybody reviewed it?

MR. GOURIS: Yes, we have.

MR. CONINE: Is it okay?

MR. GOURIS: Yes.

MR. CONINE: I move we grant the appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: As I mentioned, Costa Clemente, the second appeal, has been withdrawn.

So now we go back to 6(a) because you have reinstated Casa Alton and they have an underwriting appeal that has to be addressed. Again, this is a 9 percent tax credit cycle potential award. You just granted the termination appeal on this application, and now that they're reinstated, the appeal was submitted timely, however, after the board book was posted. The appeal addresses one issue of the underwriting report which is the timing of the condition requirement that the applicant provide documentation that USDA has received a full application for the proposed USDA RD Section 538 financing.

While 538 financing issues are not specifically addressed in the QAP, TDHCA staff has worked with USDA staff and Lancaster Pollard, the

lender, to reapply a time line that would allow the department to recommend awards with confidence that USDA processing would be able to be completed in time to meet the close of construction. All 538 finance transactions for the past year have been conditioned upon the acknowledgment of receipt by USDA of the complete application package.

This transaction is somewhat unusual in that it has come up as a result of termination of another transaction and therefore was not being considered for funding until November. Moreover, the termination of the subject has further caused the applicant to face delays in providing all required information to the lender in this case.

The applicant and Lancaster Pollard have requested an extension of the deadline to provide a full application to USDA to January 28, 2008. Staff is recommending that the request be denied because the condition was not satisfied by the required deadline.

And Tom, do you want to add a little bit to that?

MR. GOURIS: No.

MR. CONINE: Does granting a January 28 deadline put the underwriting staff at a disadvantage?

MR. GOURIS: It does not. It's just the consistency that we apply.

MR. CONINE: I understand.

MR. GOURIS: We also wouldn't be able to reallocate these credits to another deal from the '07 round which is really the decision here. It's whether this transaction has a chance to get that issue addressed or the

next transaction.

MR. CONINE: I move we grant the 30-day extension.

MR. BOGANY: Second.

MS. ANDERSON: I have some questions here because I'm not understanding exactly how this would work. So now are we just doing an underwriting appeal, we're not issuing credits?

MR. CONINE: We've already issued credits.

MS. ANDERSON: No. We reinstated the application that had been terminated.

MR. GOURIS: And that would be the next transaction, and they're now appealing the underwriting report which was recently completed because of timing issues, and they're appealing one issue on the underwriting report.

MS. ANDERSON: They're appealing one condition which is that they get the USDA report by January 31.

MR. GOURIS: Correct.

MS. ANDERSON: Okay.

MR. CONINE: It's a domino thing.

MR. GOURIS: I would also note that the amount of the recommended credit which is in 6(a) -- it's the underwriting report -- is a little bit less than what they had originally requested. They're not appealing that at this time and would not have an ability to appeal that later, and have sort of accepted that issue but are appealing this timing issue with the lender.

MS. ANDERSON: Anybody else have any questions?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: Robbye, why don't you walk us through 7(d).

MS. MEYER: This is the award for Casa Alton, now that you've granted their appeal. At the November board meeting, based on the availability of the 2007 credit ceiling, staff presented to the board two eligible applications: one was the Villas at Rayford and the other one was Casa Alton. We had an appeal pending on Casa Alton at that time, so the board voted on the Villas at Rayford with a split award out of 2007 and 2008.

I would like to update your board materials on the numbers. They have changed slightly because we've had some returned credits.

MS. ANDERSON: Good.

MS. MEYER: The actual amount that the board has allocated to present day is \$48,140,680 in allocation. That leaves a remaining balance of \$945,137. With the award of Casa Alton -- that's the board's choice -- and that would be \$691,232, and that is staff's recommendation. The remaining balance of \$254,105 would go to reduce the balance of the '08 credits that the board awarded at the November meeting to the Villas at Rayford.

MR. CONINE: Move approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: Moving on to item 8(a), Presentation, Discussion and Possible Issuance of Determination Notices for Housing Tax Credits Associated with Mortgage Revenue Bond Transactions.

The first item is Jason Avenue Residential. This is a tax-exempt bond application requesting 4 percent tax credits. Panhandle Regional Housing Finance Corporation is the issuer. A priority 2 application proposing 252 new construction units, targeting an inter-generational population.

There's been no letters of support or opposition. The applicant is requesting \$1,168,935 in housing tax credits, and staff is recommending the approval of \$1,100,819 in tax credits.

MR. CONINE: Move approval.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next item, Encinal Apartments in San Antonio has been pulled, so we'll move on to Wyndham Park Apartments which is a tax-exempt bond application requesting 4 percent tax credits. Southeast Texas Housing Finance Corporation is the issuer. It's a Priority 3 application proposing 184 new construction units, targeting the general population.

The department has not received any letters of support, however, a letter of opposition was received from David Terkell, director of the Harris County Community and Economic Development Department. That letter stated that the proposed development is within one mile of a senior tax credit property under construction and has not stabilized, and therefore, exceeds the threshold concentration requirement outlined in their policy.

Staff notes that the proposed development is located within the city limits of Baytown, and therefore, is not necessarily required to provide evidence of consistency with the consolidated plan of Harris County. Additionally, the applicant submitted the required resolution from the city council of Baytown supporting the proposed development that's to be located

within one mile of another senior tax credit property currently under construction.

The applicant is requesting \$740,829 in housing tax credits and staff is recommending the approval of credits in that amount.

MR. BOGANY: So moved.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next item is Park Shadows Apartments in Beaumont. This is a 4 percent tax credit tax-exempt bond application. Jefferson County Housing Finance Corporation is the issuer. It's a Priority 3 application proposing 150 acquisition rehab units, targeting the general population.

The department has received one letter of support from County Judge Ronald Walker and no letters of opposition. The applicant is requesting \$546,051 in housing tax credits, however, staff is not recommending the transaction due to a violation of the 60-day requirement as stated in the 2007 QAP.

MS. ANDERSON: I don't remember you all not recommending them. I know that if there's a 60-day requirement, that we have to vote to waive that, but I don't ever remember you not recommending things solely because of the violation of the 60-day rule.

MR. GOURIS: Historically, we've done both. About maybe a year or a year and a half ago, based on advice from general counsel, it was suggested that we needed to not recommend approval of something that we can't waive, and so for the last year and a half or so, we've been not recommending these to the extent that they come in this late.

MS. RAY: Then Madame Chairman, what I just understood him to say that it is within the power of the board to waive that 60-day rule. Is that correct?

MS. ANDERSON: Yes.

MR. BOGANY: So moved.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

MR. GERBER: This is both for waiver of the rule as well as approval of the development?

MR. HAMBY: Your motion is that the amount the applicant requested is what you're approving?

MS. ANDERSON: Or whatever the underwriting said.

MR. GOURIS: We did provide an alternative if the board were to waive the rule, and for Park Shadows the alternative was \$506,614 versus the amount that was requested which was \$546-.

MR. BOGANY: I'd like to move that we take staff's recommendation of tax credits.

MR. GOURIS: Again, that number is \$506,614.

MS. ANDERSON: Any discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: The next development is Seville Row Apartments. This is a tax-exempt bond application requesting 4 percent credits in Beaumont. Jefferson County Housing Finance Corporation is the issuer. This is a Priority 3 application proposing 90 acquisition rehab units, targeting the elderly.

The department has not received any letters of support or opposition but the applicant is requesting \$312,404 in housing tax credits. Here again, we're not recommending this transaction due to a violation of the 60-day rule, however, were we to make recommendation on the amount of credits, that would be, Tom?

MR. GOURIS: \$308,379.

MR. BOGANY: Move that we waive the 60-day requirement and accept staff's recommendation of tax credits of \$308,379.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

While we're on this item, earlier we just approved the Baytown deal that Mr. Terkell had written about, there's some other developments pending, as I understand it that Mr. Terkell has written letters to the department about, and if there's anything that we can do to help get to a meeting of the minds with him, because as much as I applaud Houston and Harris County for developing a concentration policy -- because they don't have zoning, they don't have some of the tools most of the rest of the state has; the mile rule in Harris County is like five miles and our rule is only one mile -- and I don't know if Robbye can go down there, but I'd like us to try to have discussions about this earlier as we're first beginning to look at these than have a tidal wave and be here nine months from now and just be in a standoff with Harris County.

MR. GERBER: We can talk to Mr. Terkell. And Tom?

MR. GOURIS: If I might, if you'll recall when you approved the underwriting rules, we added a new concentration policy that emulates the

rules in that area, and so we're hopeful that we'll have less disagreement going forward. These fell under the old rules. But going forward, we hope to address that, but we'll talk with him also.

MS. ANDERSON: Okay, thank you.

MR. GERBER: That concludes the agenda. There's a couple of report items. I'm going to ask Jeannie Arellano to walk up and report on the second item. But you have in your book a report on our Outreach Activities. The third item that you have in your book is a status on Chaparral Townhomes. That was a instance where the board asked staff to bring an amendment for Chaparral Townhomes back to this meeting, however, the syndicator is currently negotiating with a HUB or a non-profit and they should have the issue resolved in time for presentation at the January board meeting, so expect that to come on your agenda at that meeting.

The second item that Jeannie is going to brief you on in just a second is in response to a request from Mr. Conine at the last board meeting. We've provided written material to you on the current fund balance and staff's recommendation for the programming of the uncommitted and de-obligated balances in HOME. Jeannie, why don't you touch on that real quick.

MS. ARELLANO: Jeannie Arellano, director of the HOME Division.

The report item that you have in front of you includes basically a recap of how we calculate internally our fund balance report. We take into consideration what the beginning balance on this is what we have in the HUD

IDIS system as far as funds that are not committed yet to an actual state recipient or that we do not have a written agreement in place with. And we've refined this report some to identify also uncommitted versus de-obligated funds, and it's also separated by CHDO and non-CHDO funds.

The total amount that we have uncommitted in IDIS at this time on the top of the report is \$73 million. The report then goes through identifying funds that we have set aside for different NOFAs or state or federal mandates that we have to have set aside for those funds. And then the second half of the report identifies what we already have committed out in a NOFA right now that we're accepting applications for funding. So ultimately we have \$11.2 million available to actually commit and reprogram into new NOFAs or to commit to awardees.

On page 3 of the report item, we've clarified that we do have \$6.8 million set aside for Disaster Relief. We are starting to receive some interest and applications from a lot of that heavy rain that had occurred earlier this year and we'll be, I hope, bringing some recommendations for funding for that amount of money in the future.

And we presented two NOFAs today to be published: one for \$6 million for Homebuyer Assistance and then the Tenant-Based Rental Assistance for \$3 million. That leaves a balance of \$5,298,000, and staff has proposed recommending a pilot program for Homebuyer Assistance, also making sure that we go out with our NOFA for contract for deed. A lot of those contracts are at their end already, and there's been lots of interest in getting some more money out in contract for deed. We've also refined how to carry

out the program.

And then lastly, a Single Family Development NOFA that we plan to get some more technical assistance from HUD in working out the programmatic requirements for it, so we hope to bring a NOFA in July for Single Family Development for \$2.5 million.

MR. GERBER: Obviously a lot here. We welcome your thoughts on this here in anticipation of what's coming.

MS. ANDERSON: I think typically when we have a funding plan, like the Housing Trust Fund funding plan, you bring us 14 ideas, we pick six of them, and that's not what we're doing here now; we've got it as a report item. So I would ask that this come back on the January 31 agenda, appropriately, as a proposed funding plan and I recommend that you think through whether there are any other options that you want to put in front of the board that might be other things the board would want to consider, breaking some of these buckets of money up different ways, as we've done in the past.

MAYOR SALINAS: You're still looking at contract for deeds?

MS. ARELLANO: Correct. We plan to have a NOFA in January or February for contract for deed conversion.

MAYOR SALINAS: When are we going to stop doing that?

MS. ARELLANO: Staff has identified there's still an interest and a need for it.

MAYOR SALINAS: First of all, I think the county judges and those people should enforce the law as far as it's against the law to have contract for deeds, and they're still doing it and we're still paying them to

reconvert them.

MR. HAMBY: And that is the law, Mayor, but we also have in our appropriations act we have a number of conversions that we're expecting to target.

MAYOR SALINAS: But if you stop conversion, they'll stop somehow.

MR. HAMBY: This is the cleanup of the past ones. The new ones going forward, since they did change the law, have stopped but we're looking at the ones that have been existing prior to and trying to correct it.

MAYOR SALINAS: Where is your major concentration of contract for deeds?

MR. HAMBY: Actually, we've not been able to do a lot of them because of the way the rules were written previously, and so we've had it budgeted but we have not had a lot of success doing it. We've slightly changed the rules to make it more like the OCC process, and so we're hoping to get through the old one that have existed prior to the launching, and that is our goal, and we would like to be out of the contract for deed business as soon as we can and hopefully we can convince the legislature to let us out of the contract for deed business.

MAYOR SALINAS: Well, he sooner you contact the district attorneys in every county, you need to give them out their names and see if they can bring them into court and have a fine. It's against the law to do contract for deeds.

MR. HAMBY: And most of these were done before the law

changed, and that's most of the ones that we're working with were before the law changed.

MAYOR SALINAS: That was about eight years ago.

MS. ARELLANO: And there is a programmatic limitation on how it is.

MAYOR SALINAS: Let them continue doing that.

MR. HAMBY: I hate it.

MAYOR SALINAS: Well, very simple, we had what was his name, Judge Something that served on this board.

MS. ANDERSON: Jim Deross.

MAYOR SALINAS: And he's got a bunch of contract for deeds in El Paso.

MR. GERBER: We will bring that item forward at the January 31 meeting which will be held here in Austin, and those are all the report items. And again, on behalf of a very grateful staff, we really wish Mr. Bogany all the best, and thank you, again, for your service.

MS. ANDERSON: Thank you so much, Shad.

MR. BOGANY: Thank you.

MR. BOGANY: Motion to adjourn.

MS. ANDERSON: I declare us adjourned until the new year.
Merry Christmas.

(Whereupon, at 3:45 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: December 20, 2007

I do hereby certify that the foregoing pages, numbers 1 through 183, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Stacey Harris before the Texas Department of Housing & Community Affairs.

(Transcriber) 12/27/2007
(Date)

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