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P R O C E E D I N G S

1  
2 MR. BETHEL: We'll start this meeting. This is  
3 a meeting of the Texas Department of Housing and Community  
4 Affairs board meeting, January 21, 1999 [sic]. I'll call  
5 the roll. Don Bethel, here.

6 Margie Bingham?

7 MS. BINGHAM: Here.

8 MR. BETHEL: Robert Brewer?

9 MR. BREWER: Here.

10 MR. BETHEL: Kent Conine?

11 MR. CONINE: Here.

12 MR. BETHEL: James Daross? He's absent.

13 Dr. Florita Griffin?

14 DR. GRIFFIN: Here.

15 MR. BETHEL: Michael Jones?

16 MR. JONES: Here.

17 MR. BETHEL: Lydia Saenz?

18 MS. SAENZ: Here.

19 MR. BETHEL: Marsha Williams, she is absent.

20 There are seven present. Two are absent. Okay.

21 All right. At this time we usually take public  
22 comment, but because the public comment -- all the public  
23 comment has to do with the QAP, and we've got a short  
24 executive session we need to do and the staff is still  
25 working on some amendments to the QAP, we're going to go

1 ahead and do our executive session at the first of the  
2 meeting, then we'll meet back in regular session and take  
3 the public comment and proceed with the agenda items as  
4 they are presented, so we're taking that one item out of  
5 order on the agenda.

6 So at this time we will go into executive  
7 session. Under litigation and anticipated litigation,  
8 potential or threatened, under Section 551.071 and  
9 551.103, Texas Government Code litigation section,  
10 personnel matters regarding duties and responsibilities in  
11 relationship to the budget under Section 551.074 of the  
12 Texas Government Code. Also consultation with the  
13 attorney pursuant to Section 551.071(2), Texas Government  
14 Code.

15 We will go into executive session. There will  
16 not be any action taken in the executive session. And we  
17 will meet back in here in open session shortly. Thank  
18 you.

19 (Whereupon, a short recess was taken.)

20 MR. BETHEL: We will reconvene back into open  
21 session. We finished the executive session at 2:43 p.m.  
22 and no action was taken. I will make this statement that  
23 TDHCA is not in violation of the Tax Code or IRS  
24 regulations or any other of the laws that prohibit  
25 discrimination against Section 8 applicants.

1           At this time, we're going to listen to public  
2 comment, and first let me -- we've got some people in the  
3 audience and let me recognize them.

4           Representative Harryette Ehrhardt, Johnnie  
5 Morales with Speaker Laney's office. We've got Michael  
6 Grimes with the Senator Chris Harris's office; Laura Reed  
7 with the Office of Senator Frank Madla; Donna Chatham of  
8 House Urban Affairs Committee; Tim Thetford with the  
9 office of Representative Ehrhardt; Nancy Walker with State  
10 Representative Elliot Naishtat; Cesar Rodriguez with State  
11 Representative Manny Najera; Jim Navarro, office of State  
12 Representative Joe Deshotel; Becky Armendariz with the  
13 Governor's Policy Office; Daniel Estrada with the LBB.

14           And then Sunset Review Commission Ginny McKay,  
15 John Hawkins, Jeremy Mazur, Lisa Mogil, and Michelle  
16 Furmanski. And so we're all glad to have all of you here.

17           We're going to have our witness affirmation,  
18 and we will -- try to limit your comments to three  
19 minutes. I've got six affirmation forms. If you'd come  
20 forward and state your name, as all proceedings of this  
21 meeting are recorded for public record.

22           My first one is Representative Harryette  
23 Ehrhardt.

24           REPRESENTATIVE EHRHARDT: Thank you.

25           Good afternoon. I'm Harryette Ehrhardt. I'm

1 the state representative from Dallas.

2 As you look at the department's recommendations  
3 for change in the QAP of the Low Income Housing Tax Credit  
4 Program, I hope that you will admit to yourselves that  
5 they do not constitute any real reform of this troubled  
6 program. You have had the opportunity to adopt good  
7 suggestions from a number of sources that are dedicated to  
8 providing affordable housing to Texas's low income working  
9 families.

10 Among them, executives from community-based  
11 non-profit housing organizations, experts from the for-  
12 profit affordable housing industry, advocates for low-  
13 income families, the Association of Community Development  
14 Corporations, a hard-working and concerned chair of the  
15 House Committee on Urban Affairs, and a legislator who has  
16 devoted many hours to the support and improvement of  
17 affordable housing programs.

18 If you adopt the department's recommendation  
19 without drastic changes, changes which will accommodate  
20 the suggestions of these who have testified before you  
21 during the hearing process, you will not have made any  
22 significant improvement in the qualified allocation plan  
23 or the use of the funds from the Low Income Housing Tax  
24 Credit Program, and I will be very disappointed.

25 A copy of that --

1 MR. BETHEL: Thank you, Representative  
2 Ehrhardt.

3 Dan Markson?

4 MR. MARKSON: Thank you. My name is Dan  
5 Markson. It's a pleasure to be here today.

6 I'm speaking to you as the chairman of the  
7 housing credit group of the Multifamily Council of  
8 National Homebuilders. We're an organization that  
9 consists of builders, developers, and national lenders and  
10 investors in this program.

11 I understand that one of the comments this  
12 morning -- and my heart's beating fast from hearing it --  
13 started off by saying I got one -- or he got one and I  
14 didn't, and if that's what it's all about here, we should  
15 all go home.

16 I'll tell you what I think it's all about, and  
17 I'm going to read to you from the October 7 letter that  
18 was written to you by the president of the National  
19 Homebuilders. I'm going to read to you two paragraphs.  
20 You have it in the record.

21 "The Texas QAP is hands down the very best in  
22 the nation in producing affordable housing for its  
23 citizens. In 1998 Texas DHCA allocated \$27,750,038 in  
24 credits and produced 5,273 LIHTC housing units serving  
25 people with 60 percent or less of median area income. In

1 addition, DHCA also produced an additional 747 units  
2 serving people with incomes of 60 to 100 percent of AMI.

3 "Texas outproduced California, which had  
4 43,688,000 in credits to allocate and produced 5,757 units  
5 and leveraged only 14 additional units. Texas, with 35  
6 percent fewer credits, produced 5 percent more units than  
7 California. Indeed, Texas produced the most housing of  
8 any state.

9 "The LIHTC cost per unit in Texas is even more  
10 astonishing. Here are the numbers. Every LIHTC unit  
11 produced by the Texas DHCA costs only 5,262 credits per  
12 unit. By comparison, California and Florida used 7,588  
13 and 6,089 of federal credits per unit. And to top even  
14 that, if you add the 747 housing units DHCA produced, the  
15 amount of credit per unit falls to an incredible \$4,609  
16 per unit.

17 In 1997, we went at Homebuilders to create a  
18 best practice statement. It was a combination of analysis  
19 of all the QAPs in the country to figure out a -- to  
20 create a statement that we could recommend to NCSHA, and  
21 we want to applaud your QAP for being the most closely  
22 resembling that best practices statement in the country. I  
23 want to point to just two areas.

24 One is the diversity of income that your QAP  
25 encourages. It has been proven in the past that



1 concentrations of low income in one area is not  
2 successful. Your 60-40 policy encourages that. And also,  
3 we want to thank you for sticking by the level playing  
4 field, which we were successful this year in having  
5 included in federal legislation under Chairman Rick Lazio  
6 and Congresswoman Nancy Johnson's bills.

And I thank you for your time.

8 MR. BETHEL: Thank you.

9 DR. GRIFFIN: Mr. Bethel?

10 MR. BETHEL: Yes.

11 DR. GRIFFIN: May I address one point Mr.  
12 Markson just made?

13 MR. BETHEL: Yes.

14 DR. GRIFFIN: Mr. Markson, what was your first  
15 -- the first statement you made, what was it?

16 MR. MARKSON: The first statement I made was I  
17 understood that this morning someone started off their  
18 testimony by saying, Why, yes. He got one and we didn't.

19 DR. GRIFFIN: Right. And I just want to --

20 MR. MARKSON: And I said and that's a shame --

21 DR. GRIFFIN: Right. And I want to thank you  
22 and say that it is a shame, and not only is it a shame,  
23 but it's also a shame when those same people who would say  
24 that make political contributions to state senators and  
25 state representatives, and they can be shown to be doing

1 it and then those people come up to represent their  
2 client. So I really appreciate you being fair in what  
3 you're saying.

4 MR. MARKSON: Thank you.

5 DR. GRIFFIN: Thank you for your time.

6 MR. BETHEL: Rey Ocañas.

7 MR. OCAÑAS: Good afternoon, Mr. Chairman,  
8 board members. My name is Rey Ocañas. I'm glad to be  
9 here again today. I'm the executive director of the Texas  
10 Association of CDCs and represent the many non-profits  
11 that work in housing and economic development throughout  
12 the state.

13 I understand that you have a copy of what I  
14 presented to the committee this morning along with some  
15 proposed revisions that I'm encouraging you to adopt  
16 today. And I'll go ahead and read some of my remarks just  
17 so that they'll go into the record of the board meeting as  
18 well.

19 I was personally part of the multiple efforts  
20 to provide public comment and input to the department  
21 regarding the Tax Credit Program and this 2000 QAP. I am  
22 disappointed at the department's disregard for the hard  
23 work many of us did in giving true workable improvements  
24 to the QAP, and I'm asking you to capture this opportunity  
25 you have today to make improvements.

1 I don't disagree with Mr. Markson. I sit on  
2 the board with him for the Affiliation of Affordable  
3 Housing Providers. Hands down, Texas produces a great  
4 number of units and overall quality production. I'm not  
5 going to argue at all with that. I think that's a very  
6 true statement and I definitely applaud the department for  
7 doing a great job in making sure we have high production.  
This is more  
8 about fairness, good administration of the program, making  
9 sure that there is no appearance of impropriety, making  
10 sure that ethics are followed, making sure that there is  
11 fair and equal access for all applicants. That's what  
12 we're talking about today. There's no disputing that this  
13 is a great production program. This is why it's so  
14 important. It is the single largest production program we  
15 have in the state.

16 I'm asking you to take a look at this \$200  
17 million plus a year program and ask where in the QAP is a  
18 substance in terms of preservation? I understand we have  
19 a preservation policy that the department will be working  
20 on. I'm anxious to see that, provide help, input, my  
21 humble opinion, the opinion of our members, ask you where  
22 is the substance in terms of compliance? I present the  
23 revision that you have before you today in terms of  
24 compliance to define materially out of compliance that  
25 includes not just health and safety standard violations

1 but also the percentage of occupants that are low income  
2 exceeding gross rent limits, as well as violations of  
3 LURA.

4 I was not talking about IRS regulations, which  
5 is how I understand the staff may be addressing it now, in  
6 terms of deals that are on-line. That's not what I'm  
7 talking about. I'm talking about applicants. During the  
8 application process, how fair are we being in terms of  
9 waiving -- disregarding compliance issues, when it comes  
10 to applicants that have past compliance problems with  
11 properties that are tax credit properties?

12 That's exactly what this recommendation is  
13 about. It is not about deals that are on-line. I'm not  
14 going to get into that because I think the QAP does fairly  
15 address that. There are remediation issues that can be  
16 done and notification is appropriate. I'm talking about  
17 during the application process.

18 Second is the issue of CHDO applicants. Level  
19 the playing field for us. There's a 10 percent non-profit  
20 set-aside. We ask for an increase of 20 percent. It's  
21 probably not going to happen. It's probably not going to  
22 happen definitely this year, but if that's not going to  
23 happen let's give bonus points to CHDOs. These are  
24 mission-based non-profits. They have low-income tenants  
25 on their boards. They don't have cash to go out and apply

1 every time that there's a cycle to make sure they have a  
2 chance of getting credits. That's just not going to  
3 happen.

4 So don't hinder them from doing this; incent  
5 them to do this. Give them the five bonus points.

6 The third revision you have before you has to  
7 do with fair distribution of credits, capping the maximum  
8 that one applicant can get in a year to 1.2 million.  
9 There have been proposals about capping the amount per  
10 credit. With construction costs rising, I don't know how  
11 that would be best addressed. Other QAPs do that, but at  
12 least in terms of maximum amount given to one applicant or  
13 team that would be applying, let's look at a cap.

14 The last thing I want to suggest to you is this  
15 is the biggest program. It really is. So let's consider  
16 addressing -- and the very first page of the responses and  
17 the very first page of the QAP itself -- the ad hoc  
18 committee -- make your ad hoc committee a committee of the  
19 whole. I think in terms of the program it will be a great  
20 way for all of you to make sure the administration of the  
21 program is what you feel comfortable with.

22 It's a way to make sure that all of you in the  
23 different areas and representing different kinds of groups  
24 have your issues addressed at the committee level and not  
25 just during the board meeting, and I think it would really

1 give integrity of the process, whether or not those of us  
2 that are here think we see the program fairly administered  
3 or not. If all of you are voting at the committee level  
4 and all of you are looking at this hard every single time  
5 the issues come up, we cannot hold you any more  
6 accountable than to have every single one of you on that  
7 committee.

8 I don't know -- that can be written into the  
9 QAP. The department's response was it's a chairman's  
10 issue. I don't know which is best, but if it needs to be  
11 written into the QAP, write it into the QAP. If it's a  
12 chairman's issue, Mr. Chairman, we'll support you if you  
13 do that.

14 That's the bulk of my comments. Do you have  
15 any questions?

16 MR. BETHEL: Any questions?

17 (No response.)

18 MR. BETHEL: Thank you, sir.

19 MR. OCAÑAS: Thank you.

20 MR. BETHEL: Michael Dunn?

21 MR. DUNN: Thank you very much. My apologies  
22 to the Tax Credit Committee. Some of this might sound  
23 familiar.

24 My name is Mike Dunn. I'm from the Texas  
25 Association of CDCs with Reymundo Ocañas.

1           For me it is all about economy, the economy of  
2 Texas, 690 some-odd billion dollars gross state product  
3 being put in jeopardy because our work force doesn't have  
4 a place to live. The majority -- the best economic  
5 forecasts we have are saying that we're looking at folks -  
6 - the majority of Texans not earning more than \$15,000 30  
7 years down the line.

8           There's going to be a big need for housing and  
9 we can start stockpiling it by preservation, by putting it  
10 in the hands of people whose mission is affordable  
11 housing, keeping in affordable, and providing that service  
12 to the state. In that sense the non-profits and folks --  
13 other people who have in their mission keeping affordable  
14 housing affordable are this department's best friends and  
15 their most natural partners, which is they reason why a  
16 lot of folks will be approaching you today who are upset  
17 that perhaps they're being ignored, and I am one of those.

18           There have been a lot of groups come together  
19 over this issue; a lot of collaboration on different  
20 subjects I understand. I'm not going to sit up here and  
21 pretend that I know more than anybody else about the Tax  
22 Credit Program. I got my feet wet on this issue basically  
23 in August. It ain't rocket science; it's just hard to  
24 read. It will put you to sleep.

25           There is things that we can do to preserve

1 housing. There are steps that this department can take  
2 that we certainly would support. As far as the mandatory  
3 -- the compliance issue that was alluded to earlier, as I  
4 understand it we have no problem with the IRS portion of  
5 that if they're going to be doing something with tax  
6 credits because people are out of compliance.

7           That's their job and we applaud them for it,  
8 but we think the state should be allowed to look at the  
9 spectrum of non-compliance, quantify these things, put it  
10 up on the table and say -- there's going to be mistakes  
11 made everywhere and we need to recognize that, but at  
12 least see the spectrum of it. And if there's a  
13 statistical outlier that we need to basically say, Why is  
14 that happening only with this particular development or  
15 developer, that's something the state ought to welcome.  
16 It's called -- to borrow a phrase from Senator Gramm,  
17 Who's afraid of the sunshine?

18           There are things that we can do -- the Tax  
19 Credit Program is huge. No matter where it goes in the  
20 state, it's going to wind up being the largest -- if this  
21 program were sunsetted, the department were sunsetted,  
22 this line item veto would go to whatever committee,  
23 whatever department that's going -- that would be  
24 overseeing it, and it would still be the largest dispersal  
25 basically the state is responsible for.



1           So no matter where it goes, it's a huge housing  
2 program. So I desperately want the Texas Department of  
3 Housing and Community Affairs to exist. We need it. We'd  
4 love to see a committee of the whole oversee the Tax  
5 Credit Program; that is, it is a huge issue and one which  
6 we feel the entire committee should address.

7           Thank you very much for your patience with me.

8           MR. BETHEL: Thank you.

9           Mr. Walter Moreau.

10          MR. MOREAU: Hello. My name is Walter Moreau,  
11 the director of Central Texas Mutual Housing, and I very  
12 much appreciate the opportunity to speak today.

13          And I saved my comments from the committee  
14 meeting because I really do feel this is important. The  
15 QAP is the most important thing the full board takes up  
16 every year. I urge you to really take a huge amount of  
17 time to go through the public comments that have been put  
18 together. This documents governs, as Mike said, \$200  
19 million worth of funding for affordable housing.

20          I refuse to give up hope that a majority of  
21 this board wants to make real changes to the rules. You  
22 have here collected a lot of great suggestions from public  
23 comment. The staff has decided not to take any of these  
24 changes of these public comments seriously. These are all  
25 minor comments -- minor little tweaking and changing and

1 wording.

2           The board sets the rules, not staff. Please do  
3 not delegate your responsibility. Take the whole  
4 afternoon, whatever is left of it, however long it takes,  
5 go over the public comments, maybe take them one by one,  
6 meet next week again if you have to, if you can't settle  
7 it, discuss them, debate them, question them. It's  
8 critical. Work together, because together I think we'll  
9 come up with the best possible set of rules. It's a big  
10 job. They need to be clear and thoughtful governing  
11 policies so that you can hold staff accountable.

12           Specifically, I feel it's critical that you  
13 reduce the amount of discretion that allows the staff to  
14 basically justify funding whoever they want or turning  
15 down whoever they want and having a broad array of reasons  
16 to justify that decision. You can't hold them accountable  
17 after the fact for that.

18           I ask you to make the program more efficient.  
19 It's very lucrative, that's why it's popular. It can be  
20 made more efficient so that more families can be served  
21 each year.

22           By the way, it's much less expensive to build  
23 housing in Texas than California and Florida, so it ought  
24 to be a more productive program here than the other  
25 states.

1           Make changes to the QAP that promote better  
2           quality housing in the locations of the state where the  
3           needs are the greatest. That's a good policy decision  
4           that the board needs to adopt. Please do not send the  
5           governor a document to sign with minor little changes that  
6           do not present future favoritism in the program. If you  
7           pass minor changes, the staff will probably fund a similar  
8           set of developers that were successful.

9           Projects, in my opinion, will not be chosen  
10          with regard to those that are the highest merit, the best  
11          locations, in areas where they are addressing the greatest  
12          housing need, or that the credits are used as efficiently  
13          as possible.

14          Those are real issues that don't affect  
15          unsuccessful developers that don't win. Those are real  
16          issues that affect the working families of Texas that are  
17          served by the program.

18          Thank you very much for struggling with the  
19          QAP. It's not an easy issue to deal with, but I invite  
20          you to really go to work at it. Thank you.

21                 MR. BETHEL: Thank you.

22                 Mr. Jonas Schwartz.

23                 MR. SCHWARTZ: Good afternoon. I'm Jonas  
24          Schwartz and I serve as the policy analyst for United  
25          Cerebral Palsy of Texas, and I too appreciate the

1 opportunity to appear before you today. My comments also  
2 are in regards to the Qualified Allocation Plan and the  
3 proposed rules that you have before you.

4 We are disappointed in the department's  
5 response that Section 504 standards be used as a threshold  
6 for all tax credit projects. We would concur with the  
7 department's response that this issue has been discussed  
8 by department staff with advocacy groups but do not agree  
9 that what the department adopted in 1999 was adequate. We  
10 hope that the board will take another look at this to  
11 include the needs of people with disabilities.

12 Section 504 is in the plan, okay, but it's in  
13 there as an incentive for a developer to get extra points  
14 if they include accessibility requirements in their plans  
15 for the housing that they build. We have such a shortage  
16 of affordable accessible housing in this state it is not  
17 appropriate to tie accessibility requirements to a point  
18 system. It can be misused and it can be ignored.  
19 Accessibility requirements for people with disabilities  
20 should be a standard, not based on an incentive system.

21 We are requesting that the board revise the  
22 rules to better address the needs of people with  
23 disabilities. If no revisions are adopted by the board,  
24 this will be an issue for discussion with the Sunset  
25 Commission during this department's sunset review.

1 Thank you very much.

2 MR. BETHEL: Jonas, how do you suggest -- you  
3 said you suggest revising the section on 504 rules.

4 MR. SCHWARTZ: Well, right now, the way it  
5 reads in the plan, a developer who proposes to put in  
6 accessible units into what they're building -- they get  
7 extra points for that. I'm saying that those accessible  
8 units should not be based on extra points that a developer  
9 should get, but that that should be standard and the  
10 developer should put those accessible units in all of  
11 their properties, whether or not they get extra points.

12 MR. BETHEL: Are you saying all the units be  
13 accessible?

14 MR. SCHWARTZ: No. Not all the units. But  
15 there are certain percentages that Section 504 says -- for  
16 example, 5 percent or a minimum of at least one unit are  
17 accessible and useable, not merely adaptable, by people  
18 with disabilities. That those percentages that are laid  
19 out in Section 504 be standard, not be an opportunity for  
20 a developer to receive extra points for their projects.

21 MR. BETHEL: Okay.

22 MR. SCHWARTZ: I've got in my testimony the  
23 standards that you're asking about, and the percentages  
24 are in the testimony.

25 MR. BETHEL: Okay. Did you want to hand that

1 out?

2 MR. SCHWARTZ: Yes.

3 MR. BETHEL: Thank you very much.

4 All right. Is there any more -- I don't have  
5 any more witness affirmation forms.

6 (No response.)

7 MR. BETHEL: We'll close the public comment and  
8 go to the agenda items.

9 First item on the agenda is the approval of the  
10 minutes of the previous meeting, the board meeting of  
11 December 10, 1999. Are there any additions or corrections  
12 to these minutes?

13 (No response.)

14 MR. BETHEL: If not, I'll entertain a motion to  
15 approve.

16 MR. CONINE: Move for approval.

17 MR. JONES: Second.

18 MR. BETHEL: I have a motion by Mr. Conine  
19 seconded by Mr. Jones that we approve the minutes of the  
20 board meeting of December 10, 1999 as printed. All those  
21 in favor, say aye.

22 (A chorus of ayes.)

23 MR. BETHEL: Opposed, nay.

24 (No response.)

25 MR. BETHEL: Abstaining?

1 DR. GRIFFIN: I abstain.

2 MR. BETHEL: One abstention -- we've got two  
3 abstentions, Ms. Saenz and Dr. Griffin.

4 The second item on the agenda is the Finance  
5 Committee report and the first one of those is the  
6 resolution for proposed issuance of qualified 501(c)(3)  
7 multifamily housing mortgage revenue bonds. Mr. Brent --

8 MS. BINGHAM: I move for approval.

9 MR. BETHEL: Okay. We have a motion to  
10 approve.

11 MR. BREWER: I second.

12 MR. BETHEL: Seconded from Mr. Brewer. Motion  
13 by Mrs. Bingham. Is there any discussion?

14 MR. JONES: I think it would be -- I'll just  
15 raise this to the board's attention. Brent made a report  
16 and brought some issues to the light of the Finance  
17 Committee that I think the full board might need to hear -  
18 -

19 MR. BREWER: We were all here.

20 MR. JONES: Were they all there? Okay. Well,  
21 I don't want to waste anybody's time.

22 MS. BINGHAM: They were all here.

23 MR. JONES: Okay. As long as everybody's heard  
24 it. I just think it was an important issue, and if  
25 everybody's knowledgeable about it that's --

1 MS. BINGHAM: Mr. Conine, were you here?

2 MR. CONINE: Yes.

3 MS. BINGHAM: Everybody was here. I don't know  
4 where Mr. Bethel was running around. Maybe he --

5 MR. BETHEL: I was chairing that committee.

6 Okay. No more discussion? If -- all those in  
7 favor of the motion, say aye.

8 (A chorus of ayes.)

9 MR. BETHEL: Opposed, say nay.

10 (No response.)

11 MR. BETHEL: Motion carried.

12 Second item on the agenda was the inducement  
13 resolution for multifamily mortgage revenue bonds in an  
14 amount not to exceed \$6 million for acquisition,  
15 rehabilitation, and permanent financing by Hope Action  
16 Care. I might add that on your motion that you did -- we  
17 approved on the other one, we passed a resolution and that  
18 resolution was 00-02 for the record.

19 This is another 501(c)(3) bond issue for  
20 acquisition rehabilitation. The Finance Committee did  
21 recommend approval of this.

22 MS. BINGHAM: I move for approval, Mr.  
23 Chairman.

24 MR. JONES: I second the motion.

25 MR. BETHEL: We have a motion by Mrs. Bingham



1 seconded by Mr. Jones that we approve this resolution

2 002003 -- 00.03?

3 Is there any other discussion?

4 (No response.)

5 MR. BETHEL: All those in favor, say aye.

6 (A chorus of ayes.)

7 MR. BETHEL: Opposed, nay.

8 (No response.)

9 MR. BETHEL: Any abstaining?

10 (No response.)

11 MR. BETHEL: Motion carried.

12 Third item on the Finance Committee agenda was  
13 -- we recommended approval of transferring \$500,000 of the  
14 multifamily bond origination fees to the Housing Trust  
15 Fund. There was no opposition to that.

16 MR. BREWER: I make a motion for approval of  
17 the transfer of the multifamily bond origination fees of  
18 \$500,000 to the Housing Trust Fund.

19 MS. SAENZ: I second that.

20 MR. BETHEL: We have a motion by Mr. Brewer  
21 seconded by Ms. Saenz that we approve the transfer of  
22 \$500,000 to the Housing Trust Fund. Is there any other  
23 discussion?

24 (No response.)

25 MR. BETHEL: All those in favor, say aye.

1 (A chorus of ayes.)

2 MR. BETHEL: Opposed, nay.

3 (No response.)

4 MR. BETHEL: Motion carried. That does make  
5 \$1,500,000 that the agency has given to the Housing Trust  
6 Fund in the last two years, so we are -- that's more funds  
7 than it's had in a while.

8 The first quarter investment report was  
9 presented to the Finance Committee and they accepted the  
10 report. Do the other board members want to hear the  
11 report?

12 MR. CONINE: I heard it.

13 MR. BETHEL: Everybody heard it this morning?  
14 Well, it's not an action item. It's just a report item  
15 and we did accept that first quarter investment report.  
16 That was all that the Finance Committee had.

17 The third item on the agenda is the proposed  
18 final draft of the 2000 Qualified Allocation Plan for the  
19 Low Income Housing Tax Credit Program, and we're still  
20 working on some revisions right --

21 MS. BINGHAM: Let me go over --

22 MR. BETHEL: Ms. Bingham, do you want to go  
23 over what's --

24 MS. BINGHAM: Let me go over those --

25 MR. BETHEL: Okay.

1 MS. BINGHAM: -- just on the bond program. I  
2 think the full board was in the audience somewhere and  
3 fully engaged this morning, I believe, so you did hear  
4 some of the discussion.

5 The committee went -- we had our copies in  
6 advance so we had read the draft copy. There were several  
7 changes that were recommended. The Bond Review Board  
8 staff wanted to reduce the number of days from 60 days,  
9 and I think that was a compromise to 45 days for the  
10 submission of the bond projects to the -- all the  
11 documentation to the department prior to those items being  
12 submitted to the committee or the board for approval.

13 We made -- also in the bond round, we made one  
14 change -- two changes as it relates to the bond program in  
15 terms of for-profit versus non-profit on the supportive  
16 services. This change has been added because in many  
17 instances the applicants had not provided for supportive  
18 services for the tenants and the board has added that over  
19 and over when applications come before the board for  
20 approval, so the staff just simply added it as a  
21 requirement under the QAP.

22 The change we made this morning was to provide  
23 for the supportive services to be provided, but not  
24 require what kind of organization provide it, whether it  
25 be a for-profit or non-profit. We just said you had to be

1 qualified to provide the services. And they had a five-  
2 year period that we said as long as you are qualified, it  
3 doesn't matter whether you -- for example, if you're an  
4 elderly project and you're a skilled nurse, you don't have  
5 to have been a skilled nurse for five years. You could --  
6 the staff just look at your qualifications and if you are  
7 qualified, you will be able to provide the services.

8 I think the most controversial item that we had  
9 and one that has been the subject of public comment and  
10 one that Ms. Saenz had particular concerns about was the  
11 compliance issue, and the committee requested that the  
12 staff rewrite the compliance issue to better comply with  
13 the spirit and wishes of the committee. So do we have  
14 that rewritten?

15 MR. NJIE: Yes, Madame Chair, we do.

16 Just for the record, my name is Cherno Njie,  
17 manager of the Tax Credit Program. Starting this  
18 presentation there is a memo prepared to cover some of the  
19 issues that were outlined earlier.

20 With respect to the issue of non-compliance,  
21 the proposal that was presented by Rey is not workable for  
22 the simple reason that it lumps certain kinds of non-  
23 compliance all together. There is no qualitative  
24 distinction between major health and safety violations and  
25 non-compliance issues that can be triggered by minor

1 administrative error regarding one unit.

2           So it talks about defining non-compliance as  
3 failure to maintain the percent of low-income occupancy,  
4 gross and exceed limits, violation of LURA agreements.  
5 Again, these are all instances of non-compliance that can  
6 be triggered by minor administrative errors. It does not  
7 fall in severity in our thinking in the same line as major  
8 violations of health and safety.

9           Because of that, we're ordering a revision to  
10 take that into account by stipulating that material out of  
11 compliance as defined for purposes of 49.4(f) means as to  
12 such member -- meaning a member of a development team --  
13 major violations of health safety standards as documented  
14 by the local administrative authority or violations of  
15 LURA agreement. And we will have to -- violations of the  
16 LURA agreement include various kinds of violations,  
17 including the ones that Rey had mentioned earlier.

18           And my proposal is to basically say that the  
19 staff recommendation stands as major violations of health  
20 and safety standards as documented by the local municipal  
21 authority, and just leave it at that. Other violations,  
22 we believe, are already handled in the QAP in various  
23 sections and it involves getting into a remediation plan  
24 for violations that are less severe than major health and  
25 safety violations.

1 MS. BINGHAM: But have you addressed the issue  
2 though that this can be -- this can trigger the non-award  
3 of a tax credit?

4 MR. NJIE: -- Do we believe --

5 MS. BINGHAM: The violation -- you added a  
6 violation of the LURA agreement?

7 MR. NJIE: No. I'm saying that only -- in  
8 other words, only Item 1, major violations of health-  
9 safety standards be defined as non-compliance. The other  
10 elements are currently handled in the current QAP.

11 MS. STINER: Chernobyl, have the one where we're  
12 talking about the outstanding violation.

13 MS. BINGHAM: We got that on the B. That would  
14 include your tenant --

15 MR. NJIE: All right. Strike B out.

16 MS. BINGHAM: No. We don't want to strike B  
17 out. That's what we want to add. We want B to stay in,  
18 because B would include --

19 MR. NJIE: Well, B would include other minor  
20 violations, like I've said. We do not rise to the same  
21 level as major health and safety violations.

22 MS. BINGHAM: But we can have the discretion --

23 MR. NJIE: That's correct.

24 MS. BINGHAM: -- to -- what we don't want to  
25 leave it -- where we have no discretion to turn you down

1 if you have -- you want us to have a discretion that even  
2 if they're minor and an applicant is applying for tax  
3 credits, if he's got some minor violations over and over  
4 then we want the ability to not approve his tax credit  
5 application.

6 MS. SAENZ: That's right.

7 MS. BINGHAM: That's where we're trying to go.

8 MR. CONINE: I'd like to get educated on the --

9 MS. STINER: Mr. Chair --

10 MR. CONINE: -- appeal process of the  
11 violations, because I can see how somebody leaving a form  
12 blank somewhere could be a violation, but if we understood  
13 the appeal process and how maybe our compliance department  
14 deals with that better than I do today, this very minute,  
15 then I can make a decision on that.

16 MS. BINGHAM: What's your concern, Mr. Conine?  
17 I missed it.

18 MR. CONINE: Well, I'm sure developers, if  
19 they're notified of a non-compliance in certain issues,  
20 have either a cure period, which is what most everything  
21 has or an appeal process. Maybe they don't agree with --

22 MS. BINGHAM: Okay.

23 MR. CONINE: And I just want to understand that  
24 process a little more before we decide on what gets a  
25 chance to shoot and what doesn't.

1 MS. BINGHAM: Okay. I see your concern.

2 MR. BETHEL: Do you want Cherno --

3 MS. STINER: No, sir. Cherno will -- where is  
4 Suzanne Phillips? Suzanne? And I think, Cherno, what we  
5 were saying under B is outstanding violations of LURA.  
6 Right? Suzanne will talk about what that process is and  
7 then what those people who choose not to enter into the  
8 plan she's about to describe will be outstanding LURA  
9 violations.

10 Suzanne, why don't you respond to Mr. Conine,  
11 and then I'll try to make my statement after you finish?

12 MS. PHILLIPS: Okay. I'm not sure that I  
13 understand your question completely.

14 MR. BETHEL: State your name.

15 MS. PHILLIPS: Oh. Suzanne Phillips, director  
16 of compliance.

17 The process of our doing compliance for a tax  
18 credit project is that we go on-site, we identify the  
19 findings, we write a letter to the owner listing those  
20 findings, and give them up to 90 days to cure them.

21 MR. CONINE: Frequency once a year, once every  
22 two years?

23 MS. PHILLIPS: Once every -- we go once every  
24 three years.

25 MR. CONINE: Once every three years?



1 MS. PHILLIPS: Once ever three years. There's  
2 also some desk reviews that we do of various reports that  
3 have to be submitted. There's an annual report that has  
4 to be submitted by each owner that has a project in  
5 service, but the lion's share of the work that we do with  
6 tax credits is on-site.

7 So after that 90-day compliance period, we  
8 issue a report of non-compliance to the IRS, and we list  
9 each violation by building. So if, for instance, an owner  
10 has 20 buildings and we find violations in five of those  
11 buildings, we would have to submit five 8823s to the IRS.

12 And within that 8823 there's up to 12 types of violation  
13 that could be reported on a single building.

14 MR. CONINE: Okay.

15 MS. PHILLIPS: An owner can fix one of those  
16 violations -- one of five violations and we would not  
17 report -- we would report that one violation as corrected,  
18 but he may still have four more outstanding.

19 MR. CONINE: Okay.

20 MS. PHILLIPS: The date that we would show as  
21 that 8823 being corrected would be the date of the last  
22 correction, so it would not be the -- we wouldn't show it  
23 being -- we wouldn't show the non-compliance as being  
24 corrected until all five items have been corrected.

25 You asked if there's an appeal process. The

1 owner submits the responses to us during the 90-day period  
2 and staff basically reviews their response to determine  
3 the adequacy of that response. And then to the extent  
4 that there's back and forth -- but generally there's not  
5 back and forth on that.

6 MR. CONINE: And there's no higher authority to  
7 go to?

8 MS. PHILLIPS: The higher authority would be  
9 the IRS.

10 MR. CONINE: Okay.

11 MS. PHILLIPS: Quite often, an owner will say  
12 that this -- will think that their actions are sufficient.  
13 We always submit the owner's letters with the 8823s so  
14 the IRS can overrule our finding, basically, and determine  
15 that that cure was sufficient.

16 MR. CONINE: If you were to take a wild guess  
17 on how many post 90-day violations we've got right now, is  
18 it huge, small?

19 MS. PHILLIPS: I couldn't even guess. We do  
20 have a data base that we've recently updated to make sure  
21 that we have all the corrections in that we have in our  
22 files, and that we would be able to report by project  
23 whether or not we have reported the non-compliances  
24 corrected. As far as a number goes, I really couldn't  
25 tell you. We've got 100,000 buildings in Texas that --

1 MR. CONINE: And in this tax credit allocation  
2 process, do you ever get a chance through the processes we  
3 currently have set up to address compliance issues with  
4 the application?

5 MS. PHILLIPS: Yes, sir. The allocation staff  
6 provides us a list of the development team members and we  
7 run those names through a data base and those names are  
8 basically tagged to a property. And we'll print out a  
9 listing of the non-compliance issues related to that  
10 property.

11 Up until this past month, our data base did not  
12 always have a correction date in them --

13 MR. CONINE: Uh-huh.

14 MS. PHILLIPS: -- as of today, it does.

15 MR. CONINE: Okay.

16 MS. PHILLIPS: So we basically have gone  
17 through every single file that we have to make sure that  
18 we're as current on the information as we can have, and  
19 then that information is turned over to the underwriting  
20 and allocation staff, who basically review the types of  
21 non-compliance and what those issues are.

22 MR. CONINE: Okay. Thank you.

23 MR. BETHEL: All right. Now then -- thanks.  
24 Now then, Daisy was going to comment on something.

25 MS. STINER: I think if I stop right here and

1 let the member -- you were pursuing a thought on this --  
2 I'll just defer to Mr. Conine.

3 MR. CONINE: Well, I guess the thought that  
4 jumps out at me is we're only running through them once  
5 every three years and they have 90 days to respond to  
6 whatever the allegations might be, then I think we should  
7 certainly be able to strengthen the kick out clause in the  
8 QAP from what it is today. That's just my first general  
9 thought, because every three years if -- let's say we have  
10 developers coming in on a repetitive basis, they've gotten  
11 a couple of years running where they may have compliance  
12 issues out there and have been awarded tax credit projects  
13 on new projects, yet we just don't know about it because  
14 we haven't gotten to them it.

15 But if we get to them once every three years  
16 and we find compliance issues the first time and maybe  
17 even the second three-year period -- the program's now old  
18 enough to have a second and third review on some of these  
19 folks -- and they still are maintaining compliance issue  
20 problems and not resolving them in the 90-day period, then  
21 it's incumbent upon me -- I think we ought to -- enough's  
22 enough.

23 So I would just throw out to the board -- I'll  
24 think about some language in a minute, but it's just my  
25 thoughts.

1 MS. BINGHAM: You don't have much time.

2 So basically what we are saying, Mr. Njie, is  
3 that the language that's there now is not good enough. We  
4 need -- we have material out of compliance restricted to  
5 major health and safety items, and we want that expanded.

6 MR. NJIE: If you include the second element,  
7 the violations of the LURA agreement --

8 MS. BINGHAM: Then that would take them in?

9 MR. NJIE: That would take them in but you also  
10 have to look at the second page, where -- it's part of the  
11 overall review because unless you make some distinctions  
12 depending on the level of violation --

13 MS. BINGHAM: I concur with that. It's just  
14 that we don't want to say that we can't even look at the  
15 LURA agreement issue. Now, we can look at them and  
16 determine whether they're material or immaterial, but we  
17 do want to look at them. So if you leave B in, we'll be  
18 okay.

19 MR. CONINE: And I guess what I'm suggesting is  
20 if they have -- I think we ought to add in here the 90-day  
21 period here. I don't want to catch somebody in that 90-  
22 day period because it's unfair to kick them out for  
23 material compliance, I guess.

24 MS. STINER: Mr. Chair --

25 MS. BINGHAM: So in other words, if we're

1 evaluating credits in 30 days and they haven't had the 90  
2 days -- that's what you're saying?

3 MR. CONINE: I'm saying you don't kick them  
4 out; you leave them in.

5 MS. BINGHAM: Okay.

6 MR. CONINE: They still have some time to cure  
7 it, and I don't think we should kick them out. But if  
8 it's a year old, Madame Chairman -- a year after the 90-  
9 day period and they still haven't cured --

10 MS. BINGHAM: Right.

11 MR. CONINE: -- they ought to be kicked out.

12 MS. BINGHAM: So, Chernobyl, if we got Number B --  
13 we got B -- and we talk about material compliance that has  
14 not been resolved within the 90-day time frame that was  
15 given --

16 MR. NJIE: We can just say outstanding  
17 violations of the LURA agreement.

18 MS. BINGHAM: Okay. That's what Daisy had put  
19 in originally, outstanding --

20 MR. CONINE: I want to make sure the folks know  
21 the 90 days. I don't want to catch anybody in that chance  
22 to cure period.

23 MS. BINGHAM: Mr. Njie, can we give you  
24 instructions? We've got outstanding violations of the  
25 LURA agreement that have not been corrected within the

1 normal 90-day period or something like that?

2 MR. NJIE: We would amend that LURA agreement -  
3 -

4 MS. PHILLIPS: Not all of the tax credit  
5 projects have LURAs. The early years, the projects didn't  
6 have a -- so the '97, '98, and '99 --

7 MR. BETHEL: When did it start again? I'm  
8 sorry.

9 MS. PHILLIPS: '91.

10 MR. NJIE: We would amend it by saying  
11 outstanding violations of LURA agreement or program rules.

12 MR. JONES: Or program rules?

13 MR. NJIE: Yes. That would cover the ones for  
14 which LURA was not part.

15 MR. BETHEL: So is that B?

16 MR. NJIE: That would be B. Yes.

17 MR. JONES: Then it's the paragraph that  
18 follows on the next page -- what about it? Does that stay  
19 in?

20 MR. NJIE: Yes. That will allow us to make a  
21 distinction between the kinds of non-compliance issues.

22 MS. STINER: Right.

23 MR. BETHEL: Okay.

24 MR. CONINE: Could I ask a quick question while  
25 I've got a time here, Suzanne? Is maintaining less than

1 the percentage of the low-income occupancy a violation of  
2 the LURA agreement?

3 MS. PHILLIPS: Yes, sir.

4 MR. CONINE: Is gross rents exceeding the limit  
5 a violation of the LURA agreement?

6 MS. PHILLIPS: Yes, sir.

7 MR. JONES: I think I'm missing something,  
8 because when I read the second paragraph, it doesn't do  
9 what Mr. -- on the next page what I think Mr. Hance  
10 [phonetic] was suggesting, because if I understood Mr.  
11 Hance's comment, it was that we were --

12 MS. BINGHAM: Mr. who?

13 MR. JONES: -- going to give them a 90-day  
14 period in which to cure it and if they didn't cure it  
15 within the 90-day period, it would be materially out of  
16 compliance to the extent that they couldn't be considered  
17 in this year's rounds of tax credit applications.

18 Now, I read this as not that way. Instead this  
19 just says the department has the discretion to work  
20 something out. Am I missing something?

21 MR. BETHEL: That's why you're a lawyer.

22 MR. NJIE: Paragraph -- your reading is  
23 correct, and the flexibility in having that is to allow  
24 you to look at the level or the type of violation. As  
25 I've mentioned, a violation involving a unit -- one unit



1 in a 200-unit property that has rent exceeding the limits  
2 would be classified as materially out of compliance.

3 MR. CONINE: But with all deference, if he's  
4 got 90 days to fix it and he hasn't fixed it, I don't buy  
5 that.

6 MR. JONES: And that would be my question. It  
7 seems to me -- I'm not trying to exclude somebody that's a  
8 minor deal, but don't you cure the minor deals in 90 days  
9 and shouldn't they be in compliance?

10 MR. NJIE: Well, let's talk about the  
11 reporting, whether -- what notification process we had in  
12 place --

13 MS. PHILLIPS: To answer the question about the  
14 one unit, there may be situations where -- let's say for  
15 instance an owner moved someone in and didn't collect all  
16 the income information that he should have. That lease  
17 might -- well, if the owner didn't protect himself and his  
18 lease, he may have to wait until that tenant moves out.  
19 It just depends on the level of -- how material --

20 MR. CONINE: But you know, they get into this  
21 program knowing it's not an easy deal. It's a paper-  
22 shuffling deal, number one.

23 MS. PHILLIPS: Right.

24 MR. CONINE: We want active participants in the  
25 management of the projects. We don't want absentee

1 owners. We don't want to blame it on a management company  
2 for not doing this thing, and if they do and they try to  
3 come back to the well, maybe they will pay more attention  
4 to their existing stock. I just think it's a good thing -  
5 - with the demand we've got it's a good thing to -- and I  
6 know I'm harping on some of my brethren out there -- but I  
7 think it's a good thing to make sure it's -- given the 90  
8 days and given the fact that there may be somebody in a  
9 12-month lease that they can't do anything about, there  
10 are other ways to satisfy that individual, and I bet they  
11 can be creative enough, given the fact they may not be  
12 able to take that next project through.

13 MS. PHILLIPS: I think what I was just trying  
14 to say and probably didn't say it very well is that there  
15 probably are some processes that we could use internally  
16 administratively to separate the hang nails from the real  
17 thing.

18 MR. CONINE: Right.

19 MS. BINGHAM: Well, that's up to you, but we  
20 want to --

21 MS. PHILLIPS: Right.

22 MS. BINGHAM: -- we are trying to get to the  
23 fact that we are not limiting our concerns on compliance  
24 to just violations of health and safety.

25 Mr. Jones, have you read that second paragraph?

1 Do we need to make any other -- to legally get where we  
2 need to be?

3 MR. JONES: Well, I do, Madame Chairman. It's  
4 one of these things that's pretty hard to do so quickly,  
5 since we've never seen this paragraph before this moment,  
6 but -- give me a chance. We'll work on it.

7 MS. BINGHAM: Thank you. While you're working  
8 on that, do we have any other comments or questions?

9 MR. BETHEL: What about Mr. Schwartz's comments  
10 on the disability unit --

11 MS. SAENZ: I think we should address what  
12 Jonas Schwartz just told us on tying that in to bonus  
13 points.

14 MS. BINGHAM: What are we talking about now?  
15 Which point are we talking about?

16 MR. BETHEL: Section 504.

17 DR. GRIFFIN: When we discussed that last year,  
18 what was the outcome of that?

19 MS. BINGHAM: Cherno, do you want to go over  
20 the 504 situation?

21 MR. BETHEL: Cherno --

22 MS. BINGHAM: Cherno, Mr. Jones is going to  
23 take care of that other sentence. Why don't you work on -  
24 - there are some issues with the 504 that we discussed  
25 last year, so we need to go back over those. There was a

1 reason we didn't change it --

2 MR. BETHEL: Yes.

3 MR. NJIE: Well, in handling this last year, we  
4 looked at basically two options: to provide developers  
5 with an option to construct the units to be accessible at  
6 the time of construction or to provide them with the  
7 opportunity to adapt the units as needed, depending on the  
8 market, depending on the type of disability. We were not  
9 assuming that everybody would be physically handicapped.  
10 We took into account other sorts of disability that would  
11 not require the same kind of amenity as somebody who was  
12 wheelchair bound.

13 And so the developer basically has the option  
14 to elect to operate under the 504 rules whereby every unit  
15 at the time of construction will be made ready according  
16 to the Uniform Federal Accessibility Standards or to  
17 operate under the ANSI rules and make the units adaptable  
18 so as the leasing period starts, they will then sign an  
19 agreement with the tenant and adapt the units accordingly.  
20 We thought that that flexibility addressed the concerns  
21 of the advocacy groups as well as the needs of the  
22 developer.

23 MR. BETHEL: All right. And then they would --  
24 they could be adaptable -- didn't we do something that --  
25 wasn't there some dialog about some communities may not

1 have any renters with disabilities and if they were made -  
2 -

3 MS. BINGHAM: We allowed a waiting period.  
4 Right?

5 MR. NJIE: That's correct. The -- we allowed  
6 them to submit a copy of the marketing plan and we also  
7 indicated that the marketing plan should have some  
8 substance so that we can look at who they are targeting.  
9 So this is submitted at the front end so that we can take  
10 a look at developers who are saying we are going to adapt  
11 units. Who are the people they are contacting in their  
12 marketing plan and what sort of information is being put  
13 out there.

14 For those who are electing to just build the  
15 units to spec for people who are physically handicapped,  
16 they can do that at the time of construction, and then the  
17 onus will be on them to go ahead and get tenants who will  
18 fit that particular disability.

19 DR. GRIFFIN: Right. And then we gave them a  
20 specific period of time and if they could not find the  
21 tenants then they could rent it out to someone else.  
22 However, they had to keep a waiting list established, if I  
23 remember, and the next available unit that came open would  
24 have to be rented. Right?

25 MR. NJIE: That's correct. That is --

1 MS. SAENZ: Mr. Chairman?

2 MR. BETHEL: Yes?

3 MS. SAENZ: But I think what he's trying to say  
4 is that he doesn't want bonus points to be attached to  
5 this.

6 MR. NJIE: Well, there is no federal law to  
7 build the units according to 504 standards.

8 MS. SAENZ: Okay.

9 MR. NJIE: So everybody who is building right  
10 now has to adhere to certain basic fair housing rules,  
11 regardless of whether you participate in the Tax Credit  
12 Program or not.

13 MS. BINGHAM: So the bonus is for doing it  
14 based on more restrictive --

15 MR. NJIE: That's correct.

16 MS. BINGHAM: That's what that's for. That's  
17 not just to make it minimum --

18 MR. NJIE: That's correct. The 7 percent that  
19 you can adapt -- or the 10 percent are not covered under  
20 any fair housing, so those are incentives that the  
21 department --

22 MS. BINGHAM: So we're not giving bonus points  
23 for meeting the law. This is for over and above?

24 MS. SAENZ: For over and above.

25 MR. BETHEL: Cherno, you may not know right

1 off, did we have any applications that didn't -- this last  
2 time that did not claim the bonus points?

3 MR. NJIE: No.

4 MR. BETHEL: Every one of them did?

5 MR. NJIE: All applicants claimed these points,  
6 either the 504 standard or the ANSI standard. I don't  
7 think you would be competitive without them, because --

8 MR. BETHEL: So then if we did not use the  
9 bonus points, then they would not have to --

10 MR. NJIE: That's correct. Then they would  
11 have to revert to what fair housing says, and fair housing  
12 doesn't stipulate that you build them to 504 standards at  
13 the time of construction.

14 MS. BINGHAM: So that's an incentive to go  
15 beyond the law?

16 MR. BETHEL: And Jonas is saying that we should  
17 make a rule saying that they would --

18 MS. BINGHAM: We should go above the law and  
19 make something a requirement that isn't a law, as opposed  
20 to force you to do it anyway.

21 MR. BETHEL: Okay. But every applicant in last  
22 year's round --

23 MR. NJIE: Every applicant elected one or the  
24 other.

25 MS. BINGHAM: Mr. Jones -- where --

1 MR. CONINE: I think he went to consult with  
2 his lawyers.

3 (General laughter.)

4 MR. BREWER: He's getting \$300 an hour.

5 MR. BETHEL: Let's take a five-minute break.

6 (Whereupon, a short recess was taken.)

7 MR. BETHEL: Okay. We're back into open  
8 session, and there was some terminology that was being  
9 worked on. We used 20 minutes. It cost us \$200 with Mr.  
10 Jones doing it. He is a \$600 an hour attorney from Tyler.

11 MR. JONES: It's pretty bad when somebody from  
12 La Mesa gives you a promotion.

13 MR. BETHEL: All right.

14 MR. JONES: I would like to report back. I can  
15 write this revision that the board has discussed, but I  
16 also think it's only fair to tell the board that as I've  
17 written the revision, staff has told me that if we do it  
18 as we are proposing to do it, as I understood the  
19 direction of the board to me, as your scrivener, that if  
20 we do it that way there won't be any developer other than  
21 perhaps a developer who's never done one of these projects  
22 that can comply with this rule.

23 So I'm not -- just because I wrote it down  
24 doesn't mean I recommend it. In fact, I want to discuss  
25 it further.



1 MS. BINGHAM: Okay --

2 MR. JONES: But to me the issue is that we're  
3 saying -- we're trying to define materially out of  
4 compliance and it's obvious that everybody agrees that  
5 major violations of health and safety standards as  
6 documented by a local or municipal authority is in fact  
7 materially out of compliance, boom, we can't consider you  
8 in the future.

9 The second thing we said is that if you violate  
10 your LURA agreements or program rules, that we don't want  
11 to give you additional QAPs and we want to tell our staff  
12 as they're going over these things that we don't want our  
13 staff presenting those to us.

14 Now, our staff has responded, and the first  
15 thing I hear from them is, Well, what if it's a little  
16 bitty deal? Can't we forgive that? And in fact, they  
17 have written it where I think they would have their  
18 discretion to do that, but my concern is that they would  
19 have so much discretion to do that that it's really like  
20 we haven't defined the material non-compliance with regard  
21 to rule violations.

22 Now, what I wrote was this, which goes to  
23 Section 49.4(f)(4), which is active in ownership or  
24 management of any other low income housing tax credit  
25 property or any property pursuant to an affordable housing

1 program administered by a local, state, or federal  
2 authority that is or was materially out of compliance with  
3 rules or regulations of the appropriate regulatory  
4 authority. So they would be materially out of compliance;  
5 they could not be considered.

6 But then it says, the way I changed it, the  
7 department may recommend an application whose development  
8 team member is working to remedy the condition of being  
9 materially out of compliance within the applicable time  
10 limits allowed for curing such violations provided by the  
11 appropriate LURAs, agreements, statutes, laws, or  
12 regulations violated. So therefore, if we know that they  
13 are not in compliance with their LURAs or other agreements  
14 or regulations, they then would be given the opportunity  
15 within the time limits prescribed by law for curing those  
16 violations.

17 If they did so they could be considered. If  
18 they did not then they couldn't be considered, which is  
19 what I thought the board wanted to do as I heard the  
20 discretion.

21 Now, our staff -- and I think our staff needs  
22 to respond as they responded to me, to the board -- has  
23 said, Look. If you do that, board, no developers are  
24 going to be able to -- that have done any projects in the  
25 past are going to be able to be considered. That's what I

1 heard the staff telling me.

2 Am I right? I don't want to quote you wrong,  
3 because you need to speak to the board.

4 MS. PHILLIPS: If I look at the violations that  
5 we have in the past, there are some of the owners who have  
6 gone beyond their 90-day correction. I wouldn't say that  
7 all of them have done that, no, but there are some that  
8 have gone beyond their 90 days. We do have some of the  
9 projects who have not responded at all, and I agree that  
10 those are not developers that would -- that we would be  
11 best served giving them credits again.

12 I think that provision would provide a definite  
13 boost to our ability to get cures within the compliance  
14 period.

15 MR. JONES: And this, to me, is a policy issue,  
16 because if you retain all the discretion that you  
17 currently have, if you do that, let's face it. We're  
18 putting the staff in a bad position, because if the staff  
19 says some things are little and some things are big, every  
20 time you do that the person you say big to says, Well,  
21 they just got it in for me, and a person who says Well --  
22 when you say little to a person, they're going to say,  
23 Great, we're happy with you.

24 But it gives the impression that it's not a  
25 fair ball game, and so if we could write it somewhere

1 fairly objectively, I think that benefits the program. On  
2 the flip side of it, I'm sensitive to your criticism that  
3 if we've written it in such a way that we've excluded a  
4 bunch of great developers that can't be part of the  
5 program anymore, then that's a mistake and we shouldn't do  
6 it.

7 MS. BINGHAM: But what's your final  
8 recommendation?

9 MS. PHILLIPS: -- I don't know -- think that we  
10 would be excluding a lot of great developers.

11 MR. JONES: Okay. Great.

12 MS. PHILLIPS: And I think the only alternative  
13 that we have other than generally going along with what  
14 you've said is to actually look at all the different types  
15 of non-compliance and put a value to them, and that  
16 becomes -- it can be done. It can absolutely be done  
17 where you look at a project rather than individual  
18 instances, but -- we can basically handle it whichever way  
19 the board desires.

20 MR. CONINE: Is there a developer in the room  
21 who would like to speak -- brave enough to come speak to  
22 that particular issue? Let me --

23 (No response.)

24 MR. CONINE: It doesn't appear anyone wants to  
25 cut their own throat.

1 (General laughter.)

2 MR. CONINE: Is there -- again, I'm asking  
3 about the process the staff goes through -- is there maybe  
4 a --

5 MR. BETHEL: There's Rey.

6 MR. CONINE: Sure. You bet. It affects non-  
7 profits just like for-profits.

8 MR. OCAÑAS: That's right. Rey Ocañas again  
9 with the Texas Association of CDCs.

10 I think, Mr. Jones, if we could amend what you  
11 were saying, I think the original intent was if you're  
12 outstanding, like Mr. Conine was saying, if you've got an  
13 outstanding violation, it doesn't mean that -- you may or  
14 may not have gone beyond the 90 days. It's okay if you  
15 went beyond the 90 days. If it's now corrected, why  
16 should you have a problem with it.

17 If we're having problems correcting them within  
18 90 days, that's an issue for the compliance division. If  
19 there are a significant number of developers that are not  
20 correcting there or sending violations, I certainly am  
21 going to be interested in finding out more about that, but  
22 if we're saying that at the time of the application they  
23 still have outstanding violations, like Ms. Bingham was  
24 saying, outstanding, whether or not they took 90 days to  
25 fix them, if at the time that application -- still have

1 outstanding violations, then you should take a position  
2 and say, No more.

3 MR. CONINE: No. I think what we're -- we  
4 don't want to catch anybody in the 90-day -- if she goes  
5 out the week before the application is submitted and has  
6 12 violations, I think the guy ought to have 90 days -- he  
7 ought to be able to go through that process. But if it's  
8 -- and you're only there once every three years. We've  
9 established that. But I'm just curious to whether there's  
10 guys sitting there in the other room with a bunch of over  
11 90-day violations on their record and having that -- I  
12 guess that being swept under the carpet for all these  
13 years because it's never been an issue at this table until  
14 now.

15 MR. OCAÑAS: I'd like -- we as non-profits and  
16 as an association that's pushing for this, I'd like to  
17 know that too, and if we need to make corrections with our  
18 members, certainly we'd like to know.

19 MR. JONES: It's easy to change that because  
20 you just put, the department may recommend an application  
21 -- you just change that sentence to go the department may  
22 recommend an application whose development team member is  
23 working to remedy a current condition of being materially  
24 out of compliance --

25 MS. BINGHAM: Thank you. I knew you were worth

1 \$300 an hour.

2 MS. PHILLIPS: I know this is unusual, but  
3 could I ask a question?

4 MR. BETHEL: You bet.

5 MS. PHILLIPS: In the board's mind, if someone  
6 has a material violation two years ago that they  
7 corrected, say they had -- it was 100 percent property and  
8 they had 20 ineligible units but they corrected it --

9 MS. BINGHAM: If they corrected it we shouldn't  
10 be interested in it now.

11 MR. BETHEL: Right.

12 MS. PHILLIPS: Okay.

13 MS. BINGHAM: We're not interested in that now.

14 MR. CONINE: It's an uncorrected over 90  
15 violation I'm interested in.

16 MR. JONES: Okay. Well then, in light -- then  
17 change B to read uncorrected violations of the LURA  
18 agreement or rules, and just say is and not is or was with  
19 regard to being materially out of compliance. That you  
20 are --

21 MR. CONINE: Let me hear the rest of the board.

22 Is that -- is uncorrected okay, and let them go on  
23 through if it's two years ago they went over 90 days but  
24 then they fixed it, and it was a year ago --

25 MS. BINGHAM: It shouldn't be an issue today --

1 MR. CONINE: Okay.

2 MS. BINGHAM: -- in my mind.

3 MR. BETHEL: So what was the language?

4 MR. CONINE: We opened the door a little wider,  
5 didn't we?

6 MR. JONES: Okay. Then that meant that 42.249.  
7 materially out of compliance would read, "For the purposes  
8 of Section 49.4(f), material out of compliance means as to  
9 such member, a, major violations of health and safety  
10 standards as documented by the local municipal authority,  
11 or, b, uncorrected violations of the LURA agreement or  
12 program rules."

13 And then Section 49.4(f)(4), where we take up  
14 would read, "Active in the ownership or management of any  
15 other low income housing tax credit property or any  
16 property pursuant to the affordable housing program  
17 administered by a local, state, or federal entity that is  
18 materially out of compliance with the rules or regulations  
19 of the appropriate regulatory authority.

20 The department may recommend an application  
21 whose development team member is working to remedy a  
22 current condition of being materially out of compliance  
23 within the applicable time limits allowed for curing such  
24 violations provided by the appropriate LURAs, agreements,  
25 statutes, laws, or regulations violated.



1 MS. BINGHAM: Thank you. That's wonderful, Mr.  
2 Jones.

3 MR. OCAÑAS: Mr. Chairman, thank you for  
4 letting me speak again. I guess only issue --

5 MS. BINGHAM: We did let you speak again? Did  
6 you recognize him?

7 MR. BETHEL: I recognized him.

8 MR. OCAÑAS: Yes. Thank you, Mr. Chairman.

9 Mr. Jones, I guess if you remove the was, our  
10 only question -- policy question to ask about is what  
11 about a pattern or history of past non-compliance? If  
12 you've had somebody that has corrected them but they had  
13 40 things they had to correct, or 40 different properties  
14 they had to correct --

15 MS. BINGHAM: I don't think you want to get  
16 into --

17 MR. OCAÑAS: I don't know if you want to today,  
18 but I think that is a question that you want to address at  
19 some point is let the staff do some sort of qualitative  
20 analysis of at what point are you going to say, They  
21 corrected it every time but every single property they've  
22 had has non-compliance issues.

23 MR. BETHEL: Right.

24 MR. OCAÑAS: Thank you.

25 MR. BETHEL: Thank you.

1 MS. BINGHAM: Can we move on with our other  
2 issues?

3 MR. BETHEL: Yes.

4 MS. BINGHAM: We answered the question on 504?

5 MR. BETHEL: Yes. I think so.

6 MS. PHILLIPS: I have one more thing. We have  
7 a segment of our projects that we reviewed from '92 to  
8 mid-97, early '98. Most of those -- the IRS required us  
9 to submit the violations. What we did administratively is  
10 submit the violations along with the owner's responses.  
11 The department did not make a determination whether those  
12 findings were corrected or not, so we have those years  
13 where we have the findings and the owner's responses but  
14 not a determination of corrected action.

15 The Service changed our reporting processes in  
16 '98 or '99 where we were actually making the  
17 determinations, so from that point forward we have all of  
18 those. So for those pre-98 projects, we will have to make  
19 those determinations retroactively.

20 MS. BINGHAM: But you --

21 MS. STINER: Let me ask a question. You don't  
22 have the documentation to make -- we don't have the  
23 auspices to --

24 MS. PHILLIPS: Right.

25 MS. STINER: -- make those kinds --

1 MS. BINGHAM: If you don't have the  
2 documentation you can't determine that they're out of  
3 compliance.

4 MS. PHILLIPS: And what I want to be suer is  
5 that the language that you've talked about -- the remedial  
6 plans is broad enough that we can get those projects --  
7 those pre-89 projects cleared off our records.

8 MS. BINGHAM: I think we could.

9 MS. PHILLIPS: Does that --

10 MS. BINGHAM: If you lack documentation.

11 MR. JONES: Mr. Chair, one of my concerns about  
12 writing something like this as we're doing is the staff's  
13 not having the time to take it out, look at it, think  
14 about it and see how this applies to our program. And I  
15 have other issues that I also want to raise, but I just --  
16 I know it's getting late in the day and I don't want to be  
17 the one that slows the board down, but this may be  
18 something we have to meet more than once about.

19 MR. CONINE: I tend to concur with that after  
20 listening to a lot of the comments made today. We've got  
21 two board members that are absent that ought to be  
22 participating in what arguably has been described as the  
23 most important thing we do ever.

24 I would concur with Mr. Jones's thought and  
25 would, I guess, put it up for discussion -- maybe we'll

1 table this until next Friday -- have a chance to interact  
2 with some of the people in the audience, discuss some of  
3 our thoughts, analyze staff recommendations even more than  
4 we have to this point, although I've read Chernov's  
5 responses and department's responses. I really feel like  
6 it would be in all of our best interests maybe to think  
7 about doing that.

8 MR. BETHEL: If -- Delores, can we post a  
9 meeting for Friday?

10 MS. GRONECK: If I can get it in -- it will  
11 take me two minutes if it's okay --

12 MR. BETHEL: It's up to the board. It's the  
13 board pleasure.

14 MR. CONINE: I move to table, Mr. Chairman,  
15 until next Friday.

16 MS. SAENZ: I second that.

17 MR. BETHEL: We have a motion to table --

18 DR. GRIFFIN: You don't know that those two  
19 people can be here next Friday unless you've already  
20 called them on the phone to see that they will be willing  
21 to do this anyway. Do you know they're going to be here?

22 MR. BETHEL: I haven't called --

23 DR. GRIFFIN: I'm just saying, you don't know  
24 they're going to be here, so how can you even pick next  
25 Friday? How can you pick a date if you're wanting those

1 two here just arbitrarily?

2 MR. BETHEL: Well, we can't -- we've got to do  
3 it before the 31st, so it's not arbitrarily, and next  
4 Friday is seven days. We can't post it before six days.  
5 We've got to do seven days. So it would have to be  
6 Friday, Saturday, Sunday, or Monday, I guess.

7 MS. BINGHAM: Could I hear from -- Mr. Jones,  
8 what are the other issues you have so I can determine  
9 whether I want to be here next Friday? Maybe I don't need  
10 to be here.

11 MR. JONES: The issues that I have -- the next  
12 issue that I have is the dispersement of credits on a  
13 regional basis, and I would direct --

14 MR. BETHEL: We've got a motion on the table.

15 MR. JONES: Okay. Excuse me.

16 MR. BETHEL: And so to table it until next  
17 Friday. And we can go ahead --

18 MR. CONINE: Mr. Chairman, I'll withdraw my  
19 motion to table to allow some discussion on whether people  
20 can show up next Friday or not.

21 MR. BETHEL: Okay. Can you show up Friday?

22 MS. BINGHAM: I'll have to check my schedule.

23 MR. BETHEL: Okay.

24 DR. GRIFFIN: I'm out of the state next Friday.

25 MR. BETHEL: Okay. To have a quorum -- I'm not

1 sure about Mr. Daross or Mrs. Williams. I haven't talked  
2 them.

3 MR. CONINE: Then I'll recast my motion to  
4 table to the next available board meeting.

5 MS. SAENZ: I second.

6 MR. BETHEL: Okay. We have a motion and a  
7 second. All those in favor of tabling, say aye.

8 (A chorus of ayes.)

9 MR. BETHEL: Opposed, say nay.

10 (No response.)

11 MR. BETHEL: All right. Then we'll table and  
12 we'll set the next board meeting -- do you want to meet in  
13 the morning or afternoon?

14 VOICES: Morning.

15 MR. BETHEL: All right. Do you have something  
16 to say, Dr.? Would you say it for the record?

17 DR. GRIFFIN: I wasn't talking to you, Mr.  
18 Chairman.

19 MR. BETHEL: Okay. Thank you.

20 DR. GRIFFIN: You will know though when I do.  
21 I promise you will.

22 MR. BETHEL: Okay. All right. What about ten  
23 o'clock Friday the 28th? Okay. We will table this until  
24 then.

25 All right.

1 DR. GRIFFIN: Do we want to talk about anything  
2 else before we adjourn, Mr. Chairman?

3 MS. BINGHAM: I have a question. Mr. Jones,  
4 you had two -- you talked about a regional basis and  
5 something else?

6 MR. JONES: Yes. The regional basis --

7 MR. BETHEL: -- so that Ms. Bingham can be --

8 MR. JONES: The first one is with regard to  
9 page 11 of 25 of Cherno's comments, in which he says that  
10 he predicts the fact that regional basis will be more  
11 clearly defined in September 1, year 2001. And then the  
12 last sentence is, This formula will -- that there will be  
13 though a regulation provided for a formula in the year  
14 2000, and until that formula is finalized the criteria for  
15 using this discretionary item will be more clearly defined  
16 in the QAP. And I just wanted directions on where that  
17 was and how that was done.

18 MR. NJIE: On the next page, page 12, on Item  
19 3b -- what it stipulates in the QAP is just that regional  
20 geographic distribution of multifamily projects -- what we  
21 have done is to elaborate on what that exactly -- what  
22 that entails exactly by enumerating one to four what that  
23 will entail, looking at the number of tax credits in all  
24 the affordable housing projects within a city and county  
25 and the number of units attributable to such projects, the

1 population of a city or county in relation to the number  
2 of existing tax credit projects and affordable housing  
3 units created, the city and county population and  
4 employment growth trends, and finally rental housing  
5 affordability.

6 MR. JONES: And my question would be how does  
7 that work? How is that applied and how does that, as a  
8 practical matter, work through the other?

9 The other issue that I would like to see the  
10 board address is the issue of whether or not with regard  
11 to tax credit there needs to be more involvement. I know  
12 we've had a criticism of the board in the past that the  
13 board has not been involved as much as it should be with  
14 regard to this. We get a big book and the next day we  
15 approve it, and that's the other issue I wanted to raise  
16 and discuss about the QAP.

17 MS. STINER: May I just add one thing, Mr.  
18 Jones?

19 MR. JONES: Yes.

20 MS. STINER: Will you at least say for the  
21 record that you got your books before one day this year?

22 MR. JONES: Yes. And I was not implying that,  
23 but that criticism has been made in the past --

24 MS. STINER: It says out there and people --

25 MR. JONES: I know, and I did not mean to imply



1 that. I'm sorry. I apologize, Ms. Stiner.

2 MR. BETHEL: And we also -- we got the staff's  
3 response --

4 MS. BINGHAM: If you didn't get your book one  
5 day, then you say it's still out there, what's the issue  
6 then if you didn't get your book one --

7 MR. JONES: I think the issue is the one raised  
8 --

9 MS. STINER: What page is that on?

10 MR. JONES: Is that there's not -- that would  
11 be on page 3 of 25 -- that there's not sufficient  
12 oversight provided by the board of the program.

13 MS. STINER: Under the Tax Credit Committee?

14 MR. JONES: Yes.

15 MS. STINER: Okay.

16 MS. BINGHAM: When you say there's not  
17 sufficient oversight, let me -- the full board is  
18 discussing this project, just like we do on finance items,  
19 any committee items that are brought to the full board, so  
20 I'm at a loss that there's not sufficient oversight on the  
21 tax credit. In fact, the Tax Credit Committee meetings  
22 are the very few meetings that all the board members sit  
23 in on, like you were all in the room this morning.

24 So I don't -- I haven't seen the board shirk  
25 its responsibility.

1 MR. JONES: And I'm not suggesting they have,  
2 but that's -- again, you were asking the areas of my  
3 concern that I wanted to discuss --

4 MS. BINGHAM: Okay.

5 MR. JONES: Those are those areas.

6 MS. SAENZ: I feel the same way. Mr. Chairman,  
7 may I speak?

8 MR. BETHEL: Yes.

9 MS. SAENZ: I feel the same way Mike does. I  
10 think, given the magnitude of this Tax Credit Committee, I  
11 think we need more help. I really do.

12 MR. BETHEL: Okay. Do you want -- do we have  
13 any more discussion about this?

14 (No response.)

15 MR. BETHEL: Do you have any report items?

16 MS. STINER: Oh, boy. Yes, sir.

17 To announce before the committee and for the  
18 public -- this is on our website -- the public comment  
19 period begins on the State of Texas Low Income Housing  
20 Plan on the 24th, and there will be public hearings around  
21 the state of Texas, in Lubbock, Dallas, Lufkin, Austin,  
22 Houston, Harlingen, San Antonio, and El Paso. This is  
23 available, as I said, over the Internet at our website,  
24 the announcement of this, or you can pick it up from staff  
25 here by calling the Office of Strategic Planning.

1 I did want to say that the department came  
2 through Y2K without a hitch. That was a challenge to us  
3 in Ft. Worth, so that was very good. We have a letter  
4 here from Lt. Governor Rick Perry to Mr. Alex Maldonado,  
5 who is our IS director who served on the Y2K committee and  
6 also served as remediation coordinator for our department.

7 And just briefly, it says, "On behalf of the  
8 people of Texas, congratulations and thank you for a job  
9 well done. Together with your colleagues you played a key  
10 role in implementing Texas's very successful Y2K  
11 preparedness program. The word is out that Texas is home  
12 to the best and brightest men and women working in  
13 technology in government and I am deeply proud and  
14 appreciative of your cooperation in this recent effort.

15 "I know we must remain watchful over the next  
16 few months for any unforeseen problems, but I am confident  
17 that with your continued collaboration, Texas is in the  
18 very best of hands." Signed, Lt. Governor Rick Perry.

19 And so our Y2K committee continues to be a  
20 committee at least for the next few months, through March,  
21 but relative to reporting, all of those issues that we had  
22 talked to you about, we went through those quite well and  
23 had no problems.

24 I think that is all we had to report. I will  
25 save any other information -- you got a copy of my

1 executive director's report where we brief you on several  
2 issues that are going on administratively, but, Mr. Chair,  
3 I think that's it.

4 MR. BETHEL: Okay. Thank you, Daisy.

5 Is there anything else?

6 (No response.)

7 MR. BETHEL: Then we do stand adjourned and  
8 we'll be meeting next Friday.

9 (Whereupon, at 4:35 p.m., the meeting was  
10 concluded.)

C E R T I F I C A T E

1  
2  
3 MEETING OF: Board Meeting  
4 Texas Department of Housing and Community  
5 Affairs

6 LOCATION: Austin, Texas

7 DATE: January 21, 2000

8 I do hereby certify that the foregoing pages,  
9 numbers 1 through 69, inclusive, are the true, accurate,  
10 and complete transcript prepared from the verbal recording  
11 made by electronic recording by Penny Bynum before the  
12 Texas Department of Housing and Community Affairs.

(Transcriber) 01/27/00  
(Date)

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