

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room 437  
Waller Creek Office Building  
507 Sabine Street  
Austin, Texas

10:00 a.m.  
Friday,  
January 28, 2000

BOARD MEMBERS:

DONALD R. BETHEL, Chair  
DR. FLORITA BELL GRIFFIN  
MARGIE BINGHAM  
JAMES DAROSS  
ROBERT BREWER  
MICHAEL JONES  
C. KENT CONINE  
LYDIA SAENZ  
MARSHA WILLIAMS

STAFF:

DAISY STINER, Executive Director  
DELORES GRONECK, Administrative Assistant

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P R O C E E D I N G S

1  
2 MR. BETHEL: We'll call this meeting to order.  
3 This is a meeting of the Texas Department of Housing and  
4 Community Affairs Board.

5 I'll do the roll call. Don Bethel, here.

6 Michael Jones?

7 MR. JONES: Here.

8 MR. BETHEL: Margie Bingham?

9 MS. BINGHAM: Here.

10 MR. BETHEL: Robert Brewer?

11 MR. BREWER: Here.

12 MR. BETHEL: Kent Conine?

13 MR. CONINE: Here.

14 MR. BETHEL: James Daross?

15 MR. DAROSS: Here.

16 MR. BETHEL: Dr. Florita Griffin?

17 DR. GRIFFIN: Here.

18 MR. BETHEL: Lydia Saenz?

19 MS. SAENZ: Here.

20 MR. BETHEL: Marsha Williams?

21 MS. WILLIAMS: Here.

22 MR. BETHEL: All the members are present, and  
23 we do have a quorum.

24 We have one item on the agenda today, and we'd  
25 ask that if any of you would like to speak before this

1 board, you'd come forward and fill out a witness  
2 affirmation form, because the proceedings of this meeting  
3 are recorded for public record.

4 Right now I just have four that's wishing to  
5 speak. Are there any others? If you do want to speak,  
6 well, fill out the form and hand it to Penny, and she'll  
7 hand it to us.

8 At this time, then, we'll do our public  
9 comment, and I have Jonas Schwartz.

10 MR. SCHWARTZ: Good morning. My name is Jonas  
11 Schwartz, and I'm --

12 MR. BETHEL: Excuse me just a minute. We're  
13 going to try to limit the comments to around three  
14 minutes.

15 MR. SCHWARTZ: I'll be brief.

16 Good morning. My name is Jonas Schwartz and I  
17 am the policy analyst for United Cerebral Palsy of Texas.

18 I really appreciate the opportunity to come and speak  
19 before you this morning. My issue this morning, of  
20 course, is the Qualified Allocation Plan for the Tax  
21 Credit Program.

22 And as I said last week in my comments, we  
23 request that the board improve the tax credit application  
24 process by including the needs of people with  
25 disabilities. Specifically, we request that you use

1 Section 504 standards as a threshold for projects built  
2 with tax credit dollars.

3 We understand, based on what staff reported  
4 last week, that developers are taking advantage of the  
5 extra points by using Section 504 and making units  
6 accessible, and that is a positive thing, because it does  
7 increase the amount of the accessible housing stock around  
8 our state. However, it's not good public policy to use a  
9 minority group as an area to receive extra points. And  
10 that's my issue.

11 So I'm asking the board to revise the policy to  
12 make Section 504 the threshold for tax credit properties.

13 And let me clarify any misunderstanding from what I said  
14 last week. I'm not asking that all units in a particular  
15 project be made accessible. 504 has very specific  
16 guidelines about how many units in a given property need  
17 to be made accessible, either for individuals with  
18 physical disabilities or individuals with hearing and  
19 visual impairments. And I'm just asking that the 504  
20 standard be used when looking at the accessible units.

21 Thank you very much.

22 MR. BETHEL: Thank you, Jonas.

23 Stephanie Thomas.

24 MS. THOMAS: Thank you very much. I also am  
25 here to testify in support of making the standards from

1 Section 504 apply to the Tax Credit Program.

2 Using Section 504 standards as a requirement  
3 sends a message that the Texas Department of Housing and  
4 Community Affairs is serious about access and serious  
5 about serving people with disabilities in its programs.

6 Tax credit projects, it's my understanding, are  
7 one of your biggest areas of development, and it's going  
8 to, therefore, have one of the biggest impacts across the  
9 state. And so requiring fully accessible units, there  
10 will be more units available across the state, which is  
11 something that we very badly need.

12 Requiring Section 504 standards for the Tax  
13 Credit Programs creates greater uniformity and standards  
14 between the different programs that you fund. It's a  
15 requirement for HOME and CDBG and some of those other  
16 programs. This will make it where it's more of a uniform  
17 requirement, and packages that have more than one funding  
18 source in the development package, it will strengthen the  
19 importance of doing that.

20 A year ago when we spoke with the staff about  
21 this, they were adamant that the best that they would do  
22 is to make 504 a point incentive, as you have done. And  
23 that is definitely better than nothing, but we don't think  
24 that it's gone far enough. They were worried that it was  
25 too burdensome, but as Jonas testified, it's our

1 understanding that all the developers that got money this  
2 year opted for doing Section 504 standards on their  
3 projects. And if it's too burdensome for the Tax Credit  
4 Program, why isn't it too burdensome for HOME and CDBG and  
5 the other programs for which it already is a requirement?

6 We feel like that this year only shows that  
7 it's very possible to do it and it should be done. And  
8 though lately there is a chilling of support for  
9 disability, and we shouldn't leave it to the whims and  
10 desires of developers from a year-to-year basis whether or  
11 not they're going to bother to provide accessible units or  
12 not.

13 Our population is aging, there are more people  
14 with disabilities living out in the community and being  
15 participants in our society, and there is more and more of  
16 a need for accessible units. And we need to be planning  
17 for the future, when this is going to be even more true  
18 than it is today. By making it a standard, we'll be doing  
19 that, so I encourage you to do that. Thank you very much.

20 MR. BETHEL: Thank you.

21 Dick Kilday.

22 MR. KILDAY: You can tell I do a lot of public  
23 speaking. Thank you, Mr. Bethel and board.

24 Just a very quick minute to say thanks to you  
25 all for the spirit in which you receive our comments each

1 year and suggestions on the QAP and other changes of the  
2 rules. And each year we've made -- I'm Dick Kilday, and I  
3 represent Kilday Realty Corp. -- excuse me -- and Texas  
4 Association of Affordable Housing Providers. And again,  
5 the spirit in which you've made these changes each year,  
6 we appreciate that very much. You made some this year.

7 We've made recommendations the last couple of  
8 years, and you've adopted some of those, in particular  
9 some of the date changes for the construction start and  
10 construction loan closing, and also for elderly age  
11 limits, coinciding those with the HUD limits, and we think  
12 those are excellent changes, and we appreciate that very  
13 much.

14 And we just look forward to this year and  
15 future years. We think you're doing a good job. Thank  
16 you very much.

17 MR. BETHEL: Thank you.

18 Chris Richardson.

19 MR. RICHARDSON: Good morning, Mr. Chairman and  
20 board. My name is Chris Richardson. I do have a handout  
21 that I will pass to you which reiterates some of the  
22 points we made last week regarding the QAP and some of the  
23 things that we had opinions on.

24 Much of the discussion last week had to do with  
25 compliance, so I wanted to bring that up this morning and

1 just reiterate that one of the big items and the big  
2 hammer that state and federal government have over the Tax  
3 Credit Program is the compliance issue, and we certainly  
4 believe that anyone blatantly out of compliance either  
5 needs to be made to comply or to be put out of the tax  
6 credit business.

7 We also feel that properties that have a small  
8 compliance item, such as a person a few dollars over  
9 income because they had a part-time job that they were  
10 trying to better themselves with that they didn't report  
11 to management that came out in an audit, should not be any  
12 type of monetary penalty on the project. The project is  
13 required to go back and make corrections and right that  
14 wrong.

15 You know, it's unfortunate that we're kind of  
16 in a Catch-22: Our job is to provide housing to try to  
17 enable low-income Texans to better their situation through  
18 better housing, education, and the services that we  
19 provide, and we don't need to take the position that we  
20 discourage them to go out and increase their earning  
21 power. So I think the threat of the IRS audit, the IRS  
22 recapture for blatant noncompliance is enough. And I  
23 think the staff did a good job on that for that reason.

24 I've passed out specifics. The other main  
25 issue is -- there's various issues regarding housing and

1 some of the things that were suggested, although they come  
2 from the heart, I think they fall short, just like some of  
3 the other things that we've done this year, especially in  
4 light of today's financial markets that are changing, that  
5 make these harder to underwrite. We've got things that  
6 we're trying to target the lower income and suggested set-  
7 asides for various things that are very tough. And we  
8 hear things about we need more housing in the Valley, we  
9 need more housing in rural Texas, but to target the  
10 \$24,000 suggestion that 60 percent of an area and falls  
11 outside the metropolitan areas will only put units in  
12 metropolitan areas, unless we have a supplement to help  
13 those projects in our underwriting so they can be  
14 sustained and be viable projects from now on, and the  
15 state doesn't have to come back and supplement those  
16 projects in the future.

17           Several of the issues, a 30 percent AMGI, the  
18 way it was suggested, falls in that same category, along  
19 with several of the others. The 50 percent set-aside as  
20 being a priority for the bond round and the change in the  
21 financial market since those came on stream is going to be  
22 devastating to those programs. They're not going to  
23 underwrite like the people thought. They were very thin  
24 at the time, and in today's market they won't make it.

25           And that's my comments for the day. Any

1 questions?

2 MR. BETHEL: Rey Ocañas.

3 MR. OCAÑAS: Good morning. Thank you for the  
4 opportunity to appear before you today again. I guess you  
5 probably see me as a familiar face now; it's Rey Ocañas  
6 with the State Association of CDCs, and I have very brief  
7 remarks today.

8 I'm just coming to thank you. Thank you for  
9 listening to the many voices that asked you to take a long  
10 look at the QAP and the Tax Credit Program, the State's  
11 largest housing program. Thank you for engaging  
12 yourselves in a sincere discussion about this QAP and  
13 important revisions to it.

14 I've just come today to ask you to consider  
15 taking up the issues that I brought up last week, four  
16 very simple issues: expanding the material of the audit  
17 compliance definition; giving CHDOs an extra five points  
18 for their applications; capping the maximum allocation  
19 amount that can be given to any one applicant; and making  
20 the Tax Credit Committee a committee of the whole.

21 As you consider these important issues, you  
22 should know that there are many other areas of importance  
23 that you may not have time to consider today including  
24 regional distribution of the credits, increasing the  
25 nonprofit set-aside, and preservation. I urge you to have

1 discussions about these issues throughout the year and not  
2 just at the end of the year when we discuss the 2001 QAP.

3 Thanks go to Daisy and her staff for enduring  
4 this time extension and having to respond so quickly to  
5 information requests and suggestions. Thank you very  
6 much.

7 MR. BETHEL: Thank you.

8 Are there any others wishing to speak?

9 MS. DENTON: One more, but I'll be brief.

10 MR. BETHEL: Please state your name for the  
11 record.

12 MS. DENTON: My name is Ann Denton. I'm the  
13 Director of the Austin office of The Enterprise  
14 Foundation, and I just wanted to come and add my voice to  
15 the choir asking you to consider making compliance with  
16 federal accessibility laws, Fair Housing Act, and others a  
17 threshold requirement in the QAP. I think we don't want  
18 to give the appearance under any conditions, that  
19 compliance with federal law is optional. And that's all I  
20 need to say, I think.

21 MR. BETHEL: Thank you.

22 MS. DENTON: Thank you.

23 MR. BETHEL: Is there anyone else?

24 (No response.)

25 MR. BETHEL: There being no one else, then

1 we'll close the public comment, and the only item we have  
2 on our agenda today is to approve the final draft for the  
3 Year 2000 Qualified Allocation Plan and the rules for the  
4 Low Income Housing Tax Credit Program. And I'll turn the  
5 podium over to Ms. Bingham.

6 MS. BINGHAM: Thank you, Mr. Chairman.

7 For those of you who received your copy of the  
8 staff's draft plan last week, the committee did go over it  
9 and there were a few changes made as a result of some of  
10 the public comment, as well as suggestions from committee  
11 members.

12 On page 4 of the plan that you have -- of the  
13 document the staff submitted to you, as a result of a  
14 comment received from the director of the Bond Review  
15 Board, there was a change made to the section that deals  
16 with the time frame that applicants would have to submit  
17 their plans to the agency. In the middle of that page, it  
18 has 60 days after a meeting between the staff and the Bond  
19 Review Board director; that was reduced from 60 days to 45  
20 days.

21 On page 7 of the QAP, Chernov, you made one  
22 correction. You may want to go over that correction  
23 before I go over the rest of mine.

24 MR. NJIE: Yes.

25 MS. BINGHAM: If not, I'll go through mine and

1 we can come back to yours.

2 I'll go to page 16 -- on page 17, we talked  
3 about the experience of service providers where it was a  
4 minimum of five years, I think we changed that to just  
5 having documented experience in providing the supportive  
6 services.

7 On page 20, as it relates to tax-exempt bond  
8 projects, we also made a change that dealt with the  
9 provision of supportive services that had to be provided  
10 by a nonprofit entity. We changed that to services that  
11 could be provided by a qualified entity, not necessarily  
12 made it for-profit or nonprofit.

13 The last change we made -- or that we talked  
14 about making, we didn't really make it -- we talked about  
15 the compliance issue and amending the rules on compliance.

16 I think Mr. Jones has been working with the staff on that  
17 item. Would you like to go over that?

18 MR. JONES: I'd be happy to.

19 At Ms. Stiner's direction -- is Suzanne here?

20 MS. STINER: Yes, Ms. Phillips is here,  
21 Suzanne.

22 MR. JONES: Great. I did have the privilege to  
23 meet over the telephone with a number of members of the  
24 staff with regard to the material noncompliance issue, and  
25 a proposal was presented to me that I hope everyone was

1 faxed. I believe it was.

2 And, Suzanne, if yo would, you might walk us  
3 all through it, because it is -- a negative about it is it  
4 is very complicated, but a positive about it is it tries  
5 to, I think, take into consideration a number of factors  
6 and deal with a number of things with regard to this  
7 issue. So it might be most helpful if we let Suzanne do  
8 that, if that's okay with you, Ms. Stiner.

9 MS. STINER: That's fine.

10 MR. JONES: And Mr. Bethel.

11 MR. BETHEL: That's fine.

12 MR. JONES: And Ms. Bingham.

13 MS. STINER: Ms. Phillips.

14 MR. NJIE: Let me, if I may, just address the  
15 issue that Ms. Bingham mentioned before I hand it over to  
16 Suzanne. For the record, my name is Cherno Njie. I'm  
17 Manager of the Tax Credit Program.

18 The other change we mentioned was on page 8,  
19 and it related to the availability of the submission log.

20 DR. GRIFFIN: Excuse me, Mr. Njie. Could you  
21 speak up? The people in the rear can't hear you.

22 MR. NJIE: It related to the availability of  
23 the submission log, and the ten business days was amended  
24 to 15 business days.

25 MS. PHILLIPS: Good morning. I'm Suzanne

1 Phillips, the Director of the Compliance Division.

2 We've been talking to Mr. Jones throughout the  
3 week, trying to come up with a definition of material  
4 noncompliance. It's very difficult, if not impossible, to  
5 try to define material noncompliance in a single sentence,  
6 because generally it's not a single incident, but it's a  
7 set of issues or a series of events.

8 Staff has been working really hard for the past  
9 year on developing some department-wide risk assessment  
10 models, and the product that Mr. Jones has is an offshoot  
11 of that.

12 The team that specifically worked on this was a  
13 team that was comprised of Brent Stewart, who represents  
14 the lending side of the Department; Chernov, as the  
15 allocation manager; Sara Newsom, who is the manager  
16 specifically charged with monitoring Tax Credit projects;  
17 and Tom Gouris, who is the underwriting manager.

18 When we started this process, we had several  
19 basic premises that we wanted to work with: first, that  
20 an owner with multiple properties, there would be no bias  
21 there; and second, that we could take into account a  
22 housing sponsor's compliance history, because we wanted to  
23 be sure that even if there were some corrected  
24 noncompliance, that they wouldn't be viewed the same as an  
25 owner who had had no violations at all; and finally, that

1 we wanted to take some minor infractions into account, as  
2 well as the major infractions, however, those minor  
3 infractions and corrected noncompliance would carry a  
4 lesser weight than that of a major infraction.

5 As we go through this, we might do a tag team,  
6 because there were different people who focused on  
7 different areas. Brent Stewart was basically our scribe  
8 and kept everything centered.

9 We also took to task, and we realized that when  
10 we changed one section where it talked about material  
11 noncompliance, it effectively changed a couple of areas in  
12 the QAP, so you'll see in what we've presented that there  
13 are three different areas that have been affected:  
14 49.2(49), 49.4(f), and also 49.6(a)(6) which is Exhibit  
15 106.

16 And if you don't mind, I'll turn it over to  
17 Brent and let Brent walk through the different -- Sara? --  
18 and let Sara walk through the different sections.

19 MS. NEWSOM: Actually, I would walk through  
20 them --

21 MR. BETHEL: Sara, would you state your name,  
22 please?

23 MS. NEWSOM: I'm sorry. Sara Newsom. I'm the  
24 Housing Program Compliance Manager.

25 I can walk you through -- the methodology and

1 scoring is what I can actually walk you through better,  
2 unless you want to discuss the wording for the QAP.

3 MS. BINGHAM: Who needs to go through it  
4 totally? I've read it. Does anybody need it to be walked  
5 through?

6 MR. JONES: I can tell you, Brent, do you want  
7 to just kind of summarize the thoughts, because I thought  
8 you did a real good job. I would like the thoughts of  
9 staff to be expressed, as they were to me, to the full  
10 board -- it's just the philosophies behind this. And,  
11 Brent, you and I and Suzanne have done that, and if you  
12 could do that for us quickly, I think that might be  
13 helpful to the board.

14 MR. STEWART: Certainly. Brent Stewart,  
15 Director of Multifamily Finance.

16 First of all, you'll see that there is a new  
17 definition being added to Section 49.2, called Material  
18 Noncompliance. And basically we've defined noncompliance  
19 on a property-level basis. Any property that carries a  
20 compliance score equal to or exceeding 30 points will be  
21 classified as being in material noncompliance. The  
22 scoring system is what Sara referred to with regards to  
23 the methodology and the table of points that we're  
24 proposing being added to the Application and Submission  
25 Procedures Manual.

1           Section 49.4(f) is being deleted, in essence,  
2 and the bulk of what you have in front of you is a  
3 replacement for Section 49.4(f).

4           Section (f)(1) of 49 are three conditions that  
5 would make an application ineligible that involve being  
6 barred, suspended or terminated from any state or federal  
7 program; being convicted of or under indictment for any  
8 kind of federal crime involving fraud, bribery, threat, or  
9 misrepresentations of material facts, et cetera; and c) is  
10 subject to any enforcement action under any state or  
11 federal securities law or under enforcement proceeding  
12 with any governmental entity.

13           And those are items that probably Betty Marks,  
14 our general counsel, can discuss a little bit more in  
15 depth if you need that, but those are items that are  
16 currently in other areas of the QAP, and we're just  
17 consolidating them here into this section.

18           Section (f)(2) lays out five other scenarios  
19 which would disqualify an application. The first of those  
20 is any material representation made in the specific tax  
21 credit application, or any other application or item  
22 submitted to the Department under any other program.

23           Paragraph (b) relates to if an applicant,  
24 person, general partner, general contractor, or their  
25 respective principals or affiliates active in ownership or

1 control at other Low Income Housing Tax Credit property  
2 who received an allocation in, in this case, the 1999  
3 round, but didn't close on the construction loan, those  
4 persons would be automatically disqualified from the  
5 subsequent year, in this case the 2000 round.

6 Paragraph (c) --

7 MR. JONES: Except for reasons beyond the  
8 control of the applicant.

9 MR. STEWART: Except for reasons beyond the  
10 control of that applicant, affiliate, person, yes, sir.

11 Paragraph (c) relates to those same entities  
12 where they had a Tax Credit property and failed to place  
13 those units in service, or had a property where the units  
14 were in service and they were removed from service, for  
15 which credits were allocated for those particular units,  
16 and that can occur either in a carry-over allocation or in  
17 an 8609 allocation.

18 We've left in an ability for the Department to  
19 consider the facts and circumstances on a case-by-case  
20 basis associated with those incidents, and one of the key  
21 factors that we discussed was whether or not the credits  
22 were returned timely enough for the Department to reissue  
23 them, so we specifically stated that in Paragraph (c).

24 Paragraph (d) is the operative paragraph as it  
25 relates to the 30-point scoring system. It just basically

1 defines that if any applicant or person, general partner,  
2 general contractor, or their respective principals or  
3 affiliates are active in the ownership or management of  
4 any property that is defined by the Department to be in  
5 material noncompliance, and that determination is made on  
6 the closing date of the application acceptance period, or  
7 in the case of tax-exempt bond projects, on the date of  
8 filing Volume 1 with the Department, the final sentence of  
9 that paragraph allows for representation as made by the  
10 developer, on Exhibit 106, to be taken into account;  
11 however, the records of the Department will be controlling  
12 in those decisions.

13 Paragraph (e) relates to basically those same  
14 types of factors in Paragraph (d), but not specific to the  
15 Department's Tax Credit Program, but any program, any  
16 affordable housing property either inside or outside the  
17 state of Texas where we will be able to get information  
18 on. We're expecting that most of that information will be  
19 provided on Exhibit 106.

20 Due to the varying differences amongst other  
21 states' housing agencies with regards to how much  
22 information they share, how much they will confirm the  
23 information provided on the 106, we will probably most  
24 likely have to rely on what is provided on Exhibit 106.

25 But to the extent that that can be conferred or

1 the state agency who is monitoring that program can tell  
2 us that that information is correct or not, then we'll use  
3 that information as well, and we will try to make an  
4 attempt to evaluate those situations based on the same  
5 material noncompliance definition and scores that we've  
6 laid out here.

7 To be consistent with all of that, Section  
8 49.6(a)(6) needs to be revised. Most of that language is  
9 language that is already there, but the additions include,  
10 in paragraph (a), taking into account the definition of  
11 persons to capture information that we need on Exhibit  
12 106.

13 Paragraph (b) is essentially in regards to  
14 providing articles of incorporation and other types of  
15 documents that we'd need to evaluate who actually, in  
16 effect, are the principals in these transactions.

17 Paragraph (c) was essentially revised. There  
18 was a concept that we had previously discussed that was  
19 generically called a remediation plan. This proposal  
20 eliminates a remediation plan concept, and what we've  
21 provided for in paragraph (c) is that should there be a  
22 noncompliance situation in another state or through  
23 somebody else's program and the developer has some sort of  
24 documentation from that entity that tells how they're  
25 going to get that property back in compliance, that we

1 could accept that and use that in our determination.

2 Paragraph 49.6(c)(4)(a)(iii) on the whole is  
3 deleted in its entirety, because all those concepts are  
4 incorporated into 49.4(f); and 49.6(e) labeled as Past  
5 Performance is also deleted in its entirety.

6 And I think I'll let Sara run through the  
7 methodology and the table of points.

8 MR. JONES: Sara, I would just comment before  
9 you speak that that may be pretty self-explanatory.

10 MS. BINGHAM: Yes. I would think it is.

11 MR. JONES: I would say that I recommend this  
12 from the point of view that, number one, I think it's a  
13 good attempt at coming up with something that will balance  
14 objectivity and subjectivity; number two, I like the idea  
15 of the fact that if we have lost tax credits in the past  
16 due to the applicant's conduct, that that is a problem.

17 The other thing I like about it is it makes a  
18 stab at dealing with major violations in one way, but also  
19 a history or a pattern of small violations it tries to  
20 deal with. But it also has a time period limit there, so  
21 I don't think it's too much of a burden on somebody that's  
22 been in the business for a long time.

23 So that's what makes me recommend it to the  
24 board. In fact, I would make a motion that we include  
25 this as an amendment to the QAP rules, as presented, Mr.

1 Chairman.

2 MS. BINGHAM: I second it.

3 MR. BETHEL: Okay. We have a motion by Mr.  
4 Jones, seconded by Ms. Bingham, that we amend the QAP to  
5 include the information that was just presented, and we do  
6 have a recommendation. Is that not right?

7 MR. JONES: That's correct, Mr. Chairman.

8 MR. BETHEL: Is there any discussion? All in  
9 favor, say aye.

10 (A chorus of ayes.)

11 MR. BETHEL: All opposed, say nay.

12 (No response.)

13 MR. BETHEL: Okay. Motion carried.

14 MR. BETHEL: Njie, can you come back forward to  
15 go over any other issues that you've gotten from board  
16 members that you want to clarify at this time.

17 MR. NJIE: I have a memo that is addressed to  
18 Daisy regarding certain clarifications in the Qualified  
19 Allocation Plan. On page 5 of your document, it relates  
20 to material deficiencies in the evaluation of the tax  
21 credit projects. We have amended that definition, that  
22 entire section, by adding examples of what would  
23 constitute a deficiency, administrative in nature, or a  
24 conflict in the information submitted.

25 So the highlighted portion of that document, as

1 I read it, it will be: "The Department may request  
2 corrections of deficiencies which are either  
3 administrative in nature or are caused by the need for  
4 clarification of information submitted at the time of  
5 application."

6 The examples we give are: "Such deficiencies  
7 include, but are not limited to, incorrect calculation of  
8 the project's unit mix; gross and net rentable areas; or  
9 the submission of exhibits that contain incomplete or  
10 conflicting information."

11 I think that gives some indication of what we  
12 will consider administrative clarification for purposes of  
13 getting back to an applicant saying: The information you  
14 submitted is incomplete, we need to have it clarified.

15 On item 2, again discussed in your document,  
16 page 12 of 25, we have provided the definition of project  
17 feasibility. Under the Tax Credit Program, the Department  
18 is required to conduct a feasibility test pursuant to  
19 Internal Revenue Code.

20 The definition I have, I will read for the  
21 benefit of the public. It will state: "A determination  
22 by the Department, pursuant to the Internal Revenue Code,  
23 that the amount of credits recommended for allocation to a  
24 project is necessary for the financial feasibility of the  
25 project and its long-term viability as a qualified low-

1 income housing property.

2 "In making this determination, the Department  
3 will take into account: 1) the project's total  
4 development cost; 2) actual or projected operating  
5 expenses and reserves for replacement; 3) project sources  
6 of financing; 4) proceeds from the syndication of the tax  
7 credits; 5) project's debt-coverage ratio and break-even  
8 occupancy; and number 6) the project's overall conformance  
9 with Department's underwriting guidelines as stated in the  
10 Application Submission Procedures Manual."

11 The third clarification, again on page 13 of  
12 25, relates to the discretionary items pertaining to the  
13 project's impact on the Low Income Housing Tax Credit  
14 Program's goals and objectives. Section 42 requires that  
15 the Department notifies the local CEO -- in this case, the  
16 mayor or the county judge, of any community in which a Tax  
17 Credit development is proposed -- and get input about the  
18 project's impact on that neighborhood or the local area.  
19 The State Legislature has also mandated that all state  
20 representatives and senators be informed of proposed Tax  
21 Credit projects within their district.

22 This discretionary item allows the Department  
23 to evaluate public input and make a recommendation to deny  
24 credit based on compelling public testimony that the  
25 project is not consistent with local needs. On the other

1 hand, the Department may also utilize this if there is a  
2 significant commitment of local funding, for example,  
3 HOPSIT [phonetic] financing.

4 So the suggested revision we have for that  
5 criterion will read as follows: "Project's impact on the  
6 Low Income Housing Tax Credit Program's goals and  
7 objectives, including, but not limited to, the project's  
8 inconsistency with local needs or its impact as part of a  
9 revitalization or preservation fund."

10 MR. BETHEL: Okay.

11 MS. BINGHAM: Mr. Jones, I think you had some  
12 other items.

13 MR. JONES: I did, and I don't mean to dominate  
14 this. I had indicated that I had a couple of other  
15 concerns at our last board meeting, and I left one out  
16 when I was giving the answer.

17 One of the suggestions that we've heard -- and  
18 I'd probably address this to Ms. Bingham and Ms. Stiner  
19 and the staff -- has been about applying maximum  
20 allocations. And that concept -- you know, what do you  
21 think about that concept? It's been raised, I know, in  
22 public comment; it's been raised in some of the materials  
23 I've seen. How would that work? Is it doable? Would it  
24 be helpful?

25 MS. STINER: And that is maximum what?

1 MR. JONES: Maximum allocations.

2 MS. STINER: We have a maximum allocation  
3 criteria in the QAP currently existing for any -- I  
4 suspect this has to do with any one developer, any one  
5 applicant?

6 MR. JONES: Yes. And it would be lowering the  
7 maximum allocations on --

8 MS. BINGHAM: Oh, you know mean the 2.4  
9 million.

10 MR. BREWER: Oh, the maximum dollars?

11 MS. STINER: Yes.

12 MR. JONES: We weren't doing it on a per-unit  
13 or per-tenant basis, so you could have more allocations to  
14 different people. That issue has been raised, and I was  
15 just wondering.

16 MS. BINGHAM: It's 2.4 million today.

17 MR. NJIE: The current limitation is 1.2 per  
18 project and 2.4 per developer. In practice, we've  
19 actually allocated just 1.2 or less than that per  
20 developer. In the last two years I can't recall of an  
21 instance where one developer has gotten more than, or  
22 close than the \$2.4 million projected.

23 I understand the concept of lowering the  
24 allocation amount. What we've tried to balance is to  
25 ensure that you don't lower the balance to the extent that

1 you don't have the size economies you need to do a good  
2 project. You can spread the credits around by limiting,  
3 say, \$700,000 per allocation. That would mean that, in  
4 theory, more people would get an allocation, but the  
5 particular structure of each deal will be constrained by  
6 the developer's inability to leverage to get additional  
7 units on the ground to make the deal work.

8 So we're trying to balance, on the one hand,  
9 root economies of scale, and putting into place, also, the  
10 need that you can get more than 10 percent of the state's  
11 allocation. In fact, it has been 1.2 or less than that  
12 per applicant.

13 MR. JONES: What if we lowered it further? It  
14 seems to me like it's supply and demand here; we've got  
15 more demand than we do supply. If we lowered that  
16 allocation figure, would that help to balance that? I  
17 mean, is there some indication that we probably can lower  
18 it?

19 It would seem to me like clearly right now the  
20 projects are doable, you know, because there are more  
21 projects than we can do. The question is could we lower  
22 that, or consider lowering that, and still have doable  
23 projects.

24 MR. NJIE: If you look at the recommendation  
25 list, actually only a handful of projects are at the level

1 of a million and above, maybe five, maybe less than ten,  
2 this particular allocation round. So the net gain, in my  
3 opinion, will not be significant in terms of getting  
4 additional units.

5 The other thing that we're seeing more, that  
6 is, people are applying for less credits, and they're  
7 doing that because they're building mixed-income  
8 properties and requesting less credits of the Department.

9 MS. BINGHAM: I think there are two answers  
10 here. The \$1.2 million per property, we have two items  
11 that we deal with. We have a maximum of 250 units per  
12 development is a maximum. If you lowered the \$1.2 million  
13 too significantly and they don't request the mixed-income  
14 points, then the -- I think most of our deals generally  
15 fall around 900,000 to one million when you're up against  
16 the 250 units, and with costs increasing to reduce the 1.2  
17 probably would be adverse, would be a problem.

18 Now, your other point on whether that same  
19 developer could get another project for 1.2, that's the  
20 2.4. But to reduce the 1.2 probably would be adverse; it  
21 would create a problem.

22 MR. CONINE: Yes. I would like to echo that  
23 sentiment. I think we need to maintain the ability for  
24 efficiency in larger projects when the need arises, when  
25 the need is obviously there.

1 I guess my question -- I'd like to address the  
2 2.4 issue, I guess, and see what is the average? Is the  
3 average number 700,000, 600,000, roughly? Just take a  
4 stab at it.

5 MR. NJIE: Probably 600,000.

6 MR. CONINE: Okay. So if were to lower the 2.4  
7 down into the 1.5 to 1.8 range, in theory, an average size  
8 deal, they could still get three deals through, in theory,  
9 or they could get one big deal and maybe a smaller deal  
10 through. I would have some sympathy for that, I think.

11 We're not providing another unit of low income  
12 housing, we're again just spreading it out amongst the  
13 people that can participate. And as Mr. Jones said, our  
14 demand seems to be plenty of capacity to be there. So I  
15 don't know what the right number is, Madam Chairman,  
16 but --

17 MS. BINGHAM: Well, when I've seen deals, I've  
18 seen a developer who may have been practicing in both the  
19 rural area and in the urban area would have a deal right  
20 under the 1.2 maximum in the urban area and would have a  
21 deal in the 6- to \$700,000 in the rural area, or less,  
22 which meant that 1.8 million is reasonable that they could  
23 use. And if they used the mixed-income points, they  
24 probably could definitely survive it.

25 MR. JONES: Well, I don't have a suggested

1 recommendation on it. I guess I just raised the issue. I  
2 mean, it's something that, at first blush, makes sense  
3 from the standpoint of the supply-and-demand issue.

4 MS. BINGHAM: I have not seen, in the last two  
5 years, anybody get 2.4 million, so I don't have a  
6 problem --

7 MR. CONINE: That just makes the case for  
8 lowering it.

9 MS. BINGHAM: Yes. I don't have a problem with  
10 lowering it.

11 MR. CONINE: Cherno, do you see any  
12 departmental problems with, say, a 1.8 number?

13 MR. NJIE: No.

14 MR. CONINE: Any departmental problems with a  
15 1.5 number?

16 MR. NJIE: Let me look at an average.

17 MS. STINER: I would jump in here. I think  
18 we're -- let me just jump in, if you would, please.

19 MR. CONINE: Great.

20 MS. STINER: As we talk about this arbitrarily,  
21 we could talk anecdotally and historically about what's  
22 happening, but the lower you squeeze that number, I think  
23 you constrain the staff's ability to stand here and tell  
24 you now average what has happened. 1.8, you know, if that  
25 is 603-three, that's fine; 1.5 is probably squeezing it if

1 we don't account for increases in construction costs. We  
2 certainly haven't considered the rate environment right  
3 now of knowing what the market is going to do in terms of  
4 debt and that sort of thing.

5 So I would think that 1.8 is my confidence  
6 level right now; the 1.5 probably gives us another kind of  
7 problem to consider.

8 MS. BINGHAM: I agree.

9 MR. CONINE: Great. I'll make a motion we  
10 change the 2.4 million cap to 1.8 million in the QAP.

11 MR. BREWER: I second that.

12 MR. BETHEL: And that's for two deals. Right?

13 MR. CONINE: No. We're not restricting the  
14 number of deals.

15 MR. BETHEL: It's still 1.2 for one deal.

16 MS. BINGHAM: But 1.8 maximum for one  
17 developer.

18 MR. CONINE: That's correct.

19 MS. STINER: Mr. Chair and Madam Chair, we're  
20 in the board meeting now. Let us make sure that we are  
21 responding to this procedurally, so Betty, you help us,  
22 but Chernob, you tell us what part of the QAP we're  
23 actually amending so that we can get that on the record,  
24 please.

25 DR. GRIFFIN: I have a question. Is it 1.2 per

1 deal still?

2 MR. CONINE: Yes.

3 DR. GRIFFIN: Okay.

4 MR. BETHEL: So then the only change would be  
5 1.2 per deal or 1.8 per one developer.

6 MS. STINER: The change -- yes, that's the  
7 change. So we would actually be amending the provision of  
8 the QAP currently that says that the maximum amount of tax  
9 credit allocation to any one applicant is 2.4, we're  
10 amendment that to 1.8. That's the only change we're  
11 making.

12 MR. CONINE: Then I'm going to amend my motion  
13 to add the section of the QAP that Cherno is getting ready  
14 to read.

15 MR. NJIE: It's going to be on 49.6(f), and we  
16 will amend that 2.4 per applicant to 1.8.

17 MR. BREWER: And I second that with that  
18 amendment.

19 MR. BETHEL: What page is that on?

20 MR. NJIE: That isn't the actual proposed.

21 MR. BETHEL: I've got one copy --

22 MS. STINER: I gave him Betty's copy.

23 MR. BETHEL: -- so the executive director can  
24 look at that too.

25 DR. GRIFFIN: It's not on page 18 of 25 on the

1 bottom?

2 MS. STINER: Yes. It's at the bottom of 18,  
3 49.6(f).

4 MS. BINGHAM: Now, Mr. Chairman, it's your job;  
5 you can call for a vote on that amendment.

6 MR. BREWER: Yes. You've got to call for a  
7 vote, Mr. Chair. We're ready.

8 MR. BETHEL: All right. It's 49.6(f). That's  
9 your motion, to amend 49.6(f) to change the figures from  
10 2.4 million to 1.8 million. It's a motion made by Mr.  
11 Conine, and seconded by Mr. Brewer. All those in favor,  
12 say aye.

13 (A chorus of ayes.)

14 MR. BETHEL: Opposed, nay.

15 (No response.)

16 MR. BETHEL: Motion carried.

17 Ms. Bingham.

18 MR. CONINE: I've got a couple of other things  
19 in my list, if I can chime in here.

20 MS. BINGHAM: Okay.

21 MR. CONINE: I guess we've talked about a  
22 concern about the cost, if you will, of making an  
23 application and getting rejected, and there's been some  
24 conversation about having a pre-application or two-step  
25 application process. And it seems as if, after

1 discussions with staff, we are mandated, if you will, by  
2 four dates on the calendar that have been legislated to  
3 us, either from the federal level or from the state level,  
4 which based on our timeline for this QAP, I think we're  
5 jammed up against and pretty hard to do.

6 But I asked Chernov to take a stab, if you will,  
7 at a two-step timeline, which we've included here at your  
8 table. It's a preliminary study of timing requirements  
9 for a pre-app process. And it still hits the July 30  
10 target date that we're mandated to hit and the other  
11 target dates, but it does move up the opportunity for  
12 staff to review a preliminary application and to do some  
13 screening, and that's yet to be decided what type of that  
14 screening is going to be, but at least we have a timeline  
15 here that we know we can achieve.

16 I don't think it's anything, after discussions  
17 with Chernov, we need to put into this particular QAP, but  
18 it's something I would like for the board to be aware of  
19 that's a thought process. And for the people in the  
20 audience who participate in the program, obviously they  
21 would need to tee up a project much earlier than they  
22 would under normal circumstances if we were just  
23 continuing as we go along.

24 And I think this would be beneficial, not only  
25 to the people who are making the application and lowering

1 the front-end cost for making that application and find  
2 out if they make it to the next level, but it would  
3 probably also take a lot of underwriting work off the  
4 Department when a project, for whatever reason, might be  
5 obvious to our staff or to the committee that that project  
6 is not going to succeed in getting the credits.

7 So I just put that out for the board's  
8 contemplation. I don't think there's anything date-  
9 wise -- is that right, Chernoz? There's nothing we need to  
10 do in here?

11 MR. NJIE: That's correct. The timeline is  
12 basically designed to prompt us to take into account when  
13 we need to submit and do certain things in order to make a  
14 pre-application.

15 MS. BINGHAM: Do you have a copy of that?

16 MR. CONINE: You should have one in front of  
17 you. Did you pass one out to everybody?

18 MR. NJIE: Yes.

19 MR. CONINE: It's this one right here. Of  
20 course, we've had a lot of paper thrown at us here this  
21 morning.

22 MR. BETHEL: It may be on the floor.

23 MR. NJIE: Presently we have submit the draft  
24 QAP in November and go through the publication in the  
25 Texas Register, the public hearings, and come back to the

1 board in January for ratification.

2 We would accelerate that process by making the  
3 original draft available in August, and that will then  
4 trigger the necessary administrative requirements we have  
5 to fulfill.

6 Under the scenario that I have outlined, we  
7 will have a pre-application process in place -- and again,  
8 the full details of what that would entail in terms of the  
9 submission of documentation is yet to be worked out -- but  
10 it will certainly include site analysis to see which sites  
11 we deem viable so that we can communicate that to  
12 developers strongly enough to hopefully discourage or save  
13 them the problem of submitting applications that do not  
14 have a chance of being allocated credits. And so the  
15 details have to be worked out, but the timeline, I think,  
16 is doable.

17 MR. CONINE: Mr. Chairman, I don't think  
18 there's any action needed to be taken here, but I'd like  
19 to request that we get this on the agenda for a future  
20 board meeting, sometime within the next three months  
21 probably, so that the board and staff can adequately  
22 analyze this and make sure that the development community  
23 has enough time to respond to it.

24 MR. BETHEL: Okay.

25 MR. CONINE: Can I keep going?

1 MR. BETHEL: Yes.

2 MR. CONINE: Issue number two, there's been  
3 some public comment on the regional dispersion issue that  
4 we evidently are mandated by state law to have next year,  
5 and I wanted to try to create some language, I guess, that  
6 would make the board cognizant of the fact that we need to  
7 consider that in our deliberation on the ultimate approval  
8 of any of the projects that take place.

9 I've asked Cherno to come up with another  
10 amendment to 49.4(h) of the QAP. Has this been passed out  
11 to everyone?

12 MR. NJIE: Yes.

13 MR. BETHEL: It's on the second page, I think.

14 MS. BINGHAM: Oh, on the second page.

15 MR. CONINE: Okay. What it does, it just makes  
16 a statement in the QAP saying: "In making a determination  
17 to allocate credits, the Department and the board may also  
18 take into account the fact that tax-exempt bond projects  
19 are generally not financially feasible outside of major  
20 metropolitan areas of the state."

21 You know, again, it doesn't require us to put  
22 credits in a strict regional dispersion issue for this  
23 particular year, but what it does is it brings into our  
24 cognizance and our psyche, if you will, the fact that the  
25 4 percent credits generally do work better in the major

1 metropolitan areas. And if we can and if we deem  
2 appropriate to take the 9 percent credit out to the rural  
3 areas, then we would at least state that in the QAP.

4 MS. BINGHAM: I would have some objection -- I  
5 mean, I don't have a problem with this statement in the  
6 current QAP, but the tax credits are awarded per capita,  
7 on the population. That means that Dallas and Houston is  
8 where the people are and that's where the bulk of the  
9 housing needs are, so to take the -- unless Houston can go  
10 to Washington and get their own tax credits, I would have  
11 a problem with having something that's based on population  
12 and deny it to that population.

13 MR. CONINE: And the other thing, Ms. Bingham,  
14 is I don't want to get stuck in a regional dispersion plan  
15 that forces us to put a project in maybe a location or a  
16 rural area that doesn't want it, for whatever reason, and  
17 I don't think we want to bind ourselves to that. I was  
18 just trying to come up with a generic statement here that  
19 I don't think hurts any of us and --

20 MS. BINGHAM: Well, I don't think it will hurt  
21 us, but when you say outside of the major metropolitan  
22 areas of the state, fortunately or unfortunately, major  
23 metropolitan areas are where the people live and they need  
24 to be housed.

25 MR. CONINE: That's true, and they have the

1 higher median incomes, which make the 4 percent credit  
2 work.

3 MS. BINGHAM: And unlike the CDBG and HOME  
4 funds, the cities do not get their own -- Dallas and  
5 Houston don't get their own tax credits. So the tax  
6 credits are for the population of Texas; that's why it's  
7 based on a per-capita basis.

8 MR. CONINE: I understand.

9 So anyway, Mr. Chairman, I'd move that we amend  
10 the QAP to put this sentence in there.

11 MR. JONES: I'd second the motion, Mr.  
12 Chairman.

13 Could I also, just while we're dealing with  
14 this regional issue, if I understand Cherno correctly, of  
15 course we have Senate Bill 1112 going into effect  
16 September 1 in the year 2001, which will give us a more  
17 definite formula for regional disbursement -- not for this  
18 coming year, but for the following year. True?

19 MS. BINGHAM: And, Mr. Jones, the reason the  
20 distribution would not affect the metropolitan areas, I  
21 mean, Houston and Dallas are regions among themselves, so  
22 that's why I guess I'm a little perplexed by outside --  
23 why do we need this statement about outside the major  
24 metropolitan areas, because Houston and Dallas are regions  
25 to themselves. So even on a regional distribution plan,

1 you have those regions covered.

2 So I don't know where this is leading, other  
3 than maybe let's start doing tax credits in all rural  
4 Texas and leaving out the metropolitan areas.

5 MR. CONINE: That's not my intent.

6 MS. BINGHAM: Okay.

7 MS. STINER: I'll respond to Mr. Jones'  
8 question. That's correct. The regional allocation  
9 provisions of the Senate bill become effective 9/1/2000,  
10 which means for those programs, including tax credits, the  
11 HOME Program, the Housing Trust Fund, a formula that was  
12 currently developed would have to be utilized in terms of  
13 allocating those funds in all programs.

14 I would add, for your edification, that the  
15 State Low Income Housing Plan that was distributed and  
16 made public on the 24th -- and which will have, I think,  
17 eight hearings around the state of Texas -- has published  
18 the beginnings of that process. We're inviting the public  
19 to take a look at it, to look at the variables and the  
20 criteria that the staff is proposing to utilize, as well  
21 as inviting the public to comment on other components of  
22 that formula that may be utilized. But until that formula  
23 is developed for all programs, we thought it was best to  
24 make sure that we have a consistent formula that can be  
25 used across the board, rather than moving into a formula

1 this year for just the LIHTC. But it definitely does  
2 become effective and it is certainly something we're  
3 complying with.

4 Again, I encourage the public to participate in  
5 the public hearings for the State Low Income Housing Plan.

6 Those copies are available now; it's on the internet at  
7 our website, but definitely the hard copy is available by  
8 calling the Housing Resource Center of the Office of  
9 Strategic Planning, so that the public can begin to start  
10 looking at that and getting your input on what that looks  
11 like.

12 MS. BINGHAM: Mr. Conine, also in terms of  
13 looking at the tax-exempt bond projects --

14 MR. CONINE: Uh-huh.

15 MS. BINGHAM: -- as you saw in this current  
16 round with the new legislation, what probably should be  
17 looked at is that the tax-exempt bond projects have to be  
18 at 50 percent median income on the first round. The only  
19 way you get to 60 percent is that the 50 percent falls  
20 out. Well, the 50 percents are not going to work anywhere  
21 but in Houston, Dallas, and maybe in Austin.

22 So that's probably where the nightmare occurred  
23 is when the legislation was passed that put all of those  
24 at 50 percent, which meant that they automatically are  
25 going to go to Houston, Dallas, and Austin. That's where

1 the correction needs to be, not so much in our QAP but in  
2 the state law.

3 MR. CONINE: Knowing the legislature, that's  
4 probably when it occurred, in the middle of the night.

5 (General laughter.)

6 MR. BREWER: But if this is a concern, can't  
7 the agency go to the legislative body with a letter  
8 stating our concern and see if they would address that?

9 MR. CONINE: Yes. Next session, I think we  
10 ought to jump right on it.

11 MS. BINGHAM: Because they're already falling  
12 out.

13 MR. JONES: My question on the geographical  
14 issue was just kind of one -- and it's not so much toward  
15 the QAP, but just how we handle the next year as we go  
16 through this transitional process.

17 Would this be something that as this formula is  
18 developed, Ms. Stiner, when we are proposed the one this  
19 year, when we are given the information on geographical  
20 basis, as we always are, that we could get the staff to  
21 give us some comparison of how what we're doing this year  
22 is going to compare to the formula that's being developed?

23 Would that make sense?

24 MS. STINER: Oh, sure, and that summary is  
25 available in its summary form in the State Low Income

1 Housing Plan this time around. And that's something we  
2 can track to this formula to see how well we think it's  
3 going to be applied across the board. But that's  
4 certainly something that we can track; we do it now, so we  
5 can have certain conclusions drawn -- well, not  
6 conclusions drawn -- we can show you where those funding  
7 resources have been utilized on a regional basis.

8 MS. BINGHAM: But, Mr. Conine, I do understand  
9 where you're coming from with that item.

10 MR. CONINE: Thank you.

11 MR. JONES: That would just be my suggestion,  
12 particularly in this transitional year, because I think  
13 to try to go read in a definition doesn't make a lot of  
14 sense, in light of what's going on. But if we could that,  
15 it would give us some input. Thank you.

16 MS. STINER: Certainly. That's the criteria  
17 we're currently looking at as a basis to begin the new  
18 formula is what we're currently using, and so that's why  
19 it's presented in the State Low Income Housing Plan, as  
20 well as an invitation to the public to submit additional  
21 criteria that can be considered.

22 MR. CONINE: Motion on the floor.

23 MR. BETHEL: Okay. We have a motion on the  
24 floor and a second. We have a motion by Mr. Conine and  
25 seconded by Mr. Jones that we amend 49.4(h) of the QAP to

1 include language as follows: "In making a determination  
2 to allocate credits, the Department and the board may also  
3 take into account the fact that tax-exempt bond projects  
4 are generally not financially feasible outside of the  
5 major metropolitan areas of the state."

6 Is there any more discussion?

7 (No response.)

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

9 (A chorus of ayes.)

10 MR. BETHEL: All opposed, say nay.

11 (No response.)

12 MR. BETHEL: Okay. That will be amended.

13 MR. CONINE: Another issue that's come up in  
14 the course of our dialog, we had talked, Cherno, about the  
15 issue of underwriting and whether some projects, as they  
16 go through the application system, do not get underwritten  
17 and you have a chart and a scoring system and all that  
18 kind of stuff. And we had talked about those who were  
19 notified that they were not going to be underwritten, that  
20 that list be provided back to the Tax Credit Committee for  
21 their review, and if they see something on there or know  
22 of something on there that they would like it  
23 underwritten, they would have the ability to do that at  
24 that time.

25 Is there any language that you've come up with

1 that we need to put in the QAP to see if we can make that  
2 happen?

3 MR. NJIE: We have addressed -- let me find the  
4 page. On page 8 of 25 -- we received public comment  
5 relating to the Department's recommendation process, and  
6 on item 3 there, what we are proposing to do is after all  
7 the applications have been ranked and the Department is  
8 making a recommendation to the committee, currently we  
9 send out recommendations to the committee for projects the  
10 Department is recommending. We're proposing to include in  
11 that listing also all projects that are not being  
12 recommended, all projects that have been underwritten, not  
13 recommended -- projects that have not been underwritten  
14 into that general information. So you will get everything  
15 the Department has in terms of recommended projects or  
16 not-recommended projects.

17 MR. CONINE: That's a little different issue.  
18 I was talking about after the application and the decision  
19 to make on underwriting them or not underwriting them,  
20 before we go to full -- I don't want to underwrite them in  
21 the last two days left to go in the round, I guess I'm  
22 trying to back that up to a particular point that it makes  
23 sense to catch the next Tax Credit Committee meeting and  
24 let the Tax Credit Committee look at those.

25 MR. NJIE: Certainly. That will require an

1 amendment of the QAP to indicate that.

2 MS. STINER: Excuse me. Let me just jump in,  
3 because I'm not following this discussion. Are we saying  
4 that you want a date certain when all underwritings cease  
5 from the staff?

6 MR. CONINE: No. What I was trying to do --  
7 I've heard criticism of the Department, for whatever  
8 reason, about the methodology on whether we underwrite an  
9 application or not, and there's a million different  
10 reasons why not to, and I think we all agreed with that.  
11 It just becomes another step of communication from the  
12 Department to the committee so that they can make sure  
13 that they are fully aware of them, and give the committee  
14 a chance to disagree with staff, quite frankly, if there  
15 is a reason for disagreement.

16 MS. STINER: So built into our normal SOP of  
17 informing the committee what we are recommending, we need  
18 to also build into that process communication to the ad  
19 hoc committee what we are not underwriting?

20 MR. CONINE: Yes. He said there was a form  
21 that he uses for that, anyway. I'm just trying to get  
22 that information to the committee.

23 MR. NJIE: Yes. When we recommend a project to  
24 be underwritten or not to be underwritten, there is a  
25 transmittal form that comes from my office to Ms. Stiner's

1 office to be signed. In other words, the executive  
2 director concurs with the staff decision to either  
3 underwrite or not to underwrite an application.

4 I guess where you're coming from is you also  
5 want the committee or the board in that loop regarding  
6 what is denied underwriting.

7 MR. CONINE: You know, rightly or wrongly, the  
8 committee is getting blamed for something not getting  
9 underwriting. I think the committee ought to have the  
10 final authority on whether one does or doesn't, having all  
11 the information from staff that's available.

12 MS. STINER: I would offer, sir, if that's what  
13 this board desires, that they are copied on the internal  
14 memoranda that goes from staff to the executive director  
15 relative to what's being underwritten, but the  
16 underwriting is only one part of the recommendations for  
17 the allocation process.

18 MR. CONINE: That's right.

19 MS. STINER: So what this does is involve the  
20 committee or board much earlier in that process and builds  
21 in another delay -- well, it builds in a time concern of  
22 getting your comments back to the staff so we can proceed  
23 on in time to make a recommendation for an allocation.

24 But in terms of copying the board members on  
25 that internal memo, that certainly doesn't present a

1 problem, but that's not the end of it, I would suspect.  
2 We have to also build into the allocation process enough  
3 time to get your comments back to see if you want to  
4 disapprove what's being recommended to underwriting or  
5 recommend something else.

6 I just want to make sure we all understand what  
7 we are amending and what the resulting process or  
8 procedure will look like.

9 MR. NJIE: The current process, we send  
10 projects to be underwritten on a daily basis sometimes,  
11 and projects not to be underwritten on a daily basis. I  
12 guess what you're proposing is a date-specific time when,  
13 to the extent that staff has made its determination not to  
14 underwrite a project, to give those to the committee or  
15 the board for consideration.

16 MR. CONINE: To the committee is where I was  
17 headed with it, because I'd want to make sure that there's  
18 just that last step in communication there. Quite  
19 frankly, it transfers some of the responsibility back to  
20 the committee and takes it away from -- it doesn't take it  
21 from the Department, it just adds to the responsibility,  
22 and it enables the board to answer constituent questions.

23 If we have a particular constituent that has a  
24 direct question, we either have got to go through hoops,  
25 or we've seen it and we know.

1 MS. BINGHAM: As a board member, I think that  
2 this process is much more troubling than any other. Like  
3 the Housing Trust Fund applications, we hardly hear about  
4 them. To have a board or a committee finding out that Mr.  
5 Kilday's project, for whatever reason, is not even going  
6 to underwrite and we've got to get in the middle of that  
7 dispute is getting into day to day.

8 Underwriting is the day-to-day function of  
9 lower -- not lower, lower level staff, but it's even below  
10 Ms. Stiner's level, so for us to get involved day to day  
11 on who got underwritten and why not, it's just a little  
12 bit troubling to me.

13 MR. BREWER: It seems awful cumbersome to me.  
14 I mean, that's, for me, is what the staff is to do, and  
15 there's appeal processes if someone feels that they've got  
16 a problem with their application and things. And it just  
17 kind of bothers me that I don't want to micro-manage that  
18 written process myself.

19 MR. NJIE: Let me just state that of the 200  
20 applications submitted, about 105 were underwritten and  
21 about 50 were allocated credits, so we're underwriting far  
22 more than we could possibly allocate credits to.

23 And obviously this is an issue the board or the  
24 committee will decide, but I think if you talk to the  
25 underwriters, I would bet you the last thing they want to

1 see is more underwriting. I think that has been the  
2 record: We're underwriting far more projects than we  
3 could possibly allocate credits to.

4 MR. CONINE: Well, maybe then just a  
5 communication link would be the answer. Can you send us  
6 the reports that you generate?

7 MR. NJIE: Sure. We can provide a report of  
8 all the activities that -- where we are in terms of the  
9 process. I think we've also made that a requirement that  
10 we put some information on our website for the general  
11 public, so we can incorporate additional reports for the  
12 board.

13 MS. STINER: Let me just be clear that we're  
14 responding to a specific request. This will go to the  
15 board; we're not going to put it on the website, and we're  
16 not going to --

17 MR. NJIE: That's correct.

18 MR. CONINE: Yes. Don't do that.

19 (General laughter.)

20 MR. DAROSS: I would like to see a report on  
21 what's going to underwriting and why, not so that we can  
22 give our thumbs up or thumbs down on it, because that  
23 would be micro-managing, but when the rest of the us on  
24 the board get to the July board meeting and we've got this  
25 ton of material, for me it's really hard to absorb

1 everything that we've got to absorb in order to make a  
2 reasonable decision on it. So if we get the information a  
3 couple of months ahead of time, I think that would be  
4 helpful to me.

5 MS. STINER: Okay. Here we go again. Well,  
6 you're not going to get it a couple of months; we're  
7 underwriting within less than a month. We will provide  
8 that information to the board members when the  
9 recommendation is made what goes to underwriting, but it  
10 won't be two months. I mean, we underwrite along that  
11 whole continuum. We underwrite, because of sheer  
12 capacity, up until we mail your board books out a week or  
13 so before, but we will commit to send you all that, but it  
14 doesn't just stop at a date certain where you're going to  
15 get this stuff to consider for months.

16 MR. DAROSS: Well, that's what I understood,  
17 was that it is an ongoing process that happens over a  
18 period of time, and it would be easier for me to absorb it  
19 over a period of time than it would to do it in one week  
20 before the board meeting.

21 MR. NJIE: Yes. We can provide intermittent  
22 reports relating to that.

23 MR. BETHEL: Anything else?

24 MS. SAENZ: Mr. Chairman, you know we have been  
25 discussing deficiencies and all these things. One thing

1 comes to mind that bothers me, the staff needs to notify.

2 Do you have a time period to notify people that are  
3 deficient?

4 MR. NJIE: The deficiencies, as I've indicated,  
5 we will notify you of administrative deficiencies and give  
6 you five business days to correct them. That is part of  
7 the proposed QAP amendments.

8 MS. SAENZ: But how prompt do you do this? I  
9 mean, how quickly do you notify about deficiencies, the  
10 staff, the people that are deficient?

11 MR. NJIE: As soon as we review the  
12 applications.

13 MS. SAENZ: Is there any time frame to let the  
14 applicants know, as far as staff is concerned? You know,  
15 remember when we had that public hearing that someone was  
16 very concerned about not having been notified for six  
17 months or something?

18 MS. STINER: The 8609s? Yes, we've addressed  
19 that in this. Pardon me, Mr. Chair.

20 MR. BETHEL: Yes.

21 MS. STINER: As I recall, that particular  
22 comment was related to the timing for receiving an 8609  
23 from the agency, and we did respond to that in the QAP.  
24 Do you want to read what that response is? We have come  
25 up with a time frame by which the staff will respond to a

1 developer in the cost-certification process.

2 MR. NJIE: Page 21, and that relates to the  
3 issuance of 8609s, which are the final IRS allocating  
4 forms that we provide to the applicants. What we're  
5 proposing to do is to put a time frame where 30 days will  
6 be -- we will notify you within 30 days of submission of  
7 that document for any deficiencies to be corrected, and  
8 there is a 90-day period, if you specified or corrected  
9 all those deficiencies, we will issue the 8609 within that  
10 90-day period.

11 MS. SAENZ: That's fine.

12 MR. JONES: Mr. Chairman, just a couple of more  
13 things. I would say that we certainly have heard and  
14 considered the accessibility issue. I just don't feel  
15 comfortable changing the QAPs based upon the information  
16 we have in front of us at that point, so I would just kind  
17 of move off of that. And I know many board members have  
18 considered that and thought about that.

19 MR. CONINE: Can I add to that while we're on  
20 that subject? I think I would invite those who are  
21 interested in the subject to help educate me a little more  
22 than I am today. If we've obviously demonstrated we don't  
23 have a problem with everybody adhering 504, I'd like to  
24 know a little more about the cost implications side of the  
25 issue, even though everybody is still doing it. And I

1 think that's fine for this year, and we can have that  
2 dialog as we go down the road this year and talk about it  
3 in next year's QAP.

4 MR. NJIE: Yes, let me clarify that. I don't  
5 think my testimony was that everybody is doing 504; it was  
6 that everybody was doing one or the other.

7 MR. BETHEL: Either/or.

8 MR. NJIE: That's correct. And this has been  
9 an issue that keeps coming up year after year. The  
10 requirement under the Fair Housing Act is that for  
11 projects built after 1991, all first-floor units must be  
12 adaptable. And you have to meet that, regardless of  
13 whether you're participating in the Tax Credit Program or  
14 not.

15 The additional requirement the Department made  
16 was that you have to have a 90-day marketability period  
17 during which time those units will be held vacant while  
18 you market to tenants who are eligible, and adapt those  
19 units accordingly.

20 That is not a requirement of the Fair Housing  
21 Act; that is an imposition of the QAP. For developers who  
22 wish to elect to fall under 504, they can put 5 percent of  
23 their units, build them to be accessible at the time of  
24 construction for people who are physically disabled, and  
25 an additional 2 percent for people who have hearing

1 impairment. So those are the two options we have right  
2 now, and some developers are electing to fall under 504  
3 because they don't want to go through this 90-day  
4 marketability period. Some are electing to fall under the  
5 Fair Housing Act and go ahead and market those units based  
6 on the tenant profile in the market area.

7 MR. DAROSS: There was a comment made earlier  
8 today, though, that there is a requirement of compliance  
9 with Section 504 in other programs. I can't recall if it  
10 was Housing Trust Fund or HOME or what it was.

11 MR. BREWER: It was both.

12 MR. NJIE: Yes. For HUD-assisted programs,  
13 that is correct, they have to fall under that 504  
14 definition. The Tax Credit Program does not fall under  
15 that.

16 MR. DAROSS: Well, just because it doesn't  
17 specifically fall under it under the enabling legislation  
18 doesn't mean it's something we shouldn't consider. I  
19 mean, is there a reason not to do that for this program  
20 when we are doing it for other programs, other than the  
21 fact that it's not specifically required?

22 MR. NJIE: The 504 assumes that 5 percent of  
23 your units will be built to spec for people who are  
24 physically disabled. And the ANSI standard that we have  
25 in the QAP provides you with an option of looking at

1 people who have other kinds of impairments. Somebody who  
2 is blind, somebody who has a hearing impairment needs  
3 other kinds of assistive devices as opposed to somebody  
4 who is wheelchair-bound.

5 That is why we thought that we'd provide that  
6 option. People who want to work under 504 still can elect  
7 that; it is an election rather than a mandate.

8 MR. DAROSS: Well, I know that, but that  
9 doesn't answer why. I mean, why isn't it a mandate in  
10 this when it is a mandate in other programs we do.

11 MR. NJIE: The reason is it's inflexible.

12 MS. STINER: I don't know that that's -- it's a  
13 requirement because HUD has put it in HUD programs; it's  
14 not a requirement in IRS, because IRS hasn't put it in  
15 there. It certainly doesn't preclude this body from  
16 making whatever decisions you want to make, but the short  
17 answer of it is: It is in the other programs because it's  
18 a HUD requirement; it's not in this because it's not  
19 required by the IRS. But again, that doesn't preclude  
20 this body from making other considerations, but that's why  
21 it's in the other programs, because it's required by the  
22 law.

23 MS. BINGHAM: I find HUD programs to be more of  
24 a burden than an asset.

25 MR. BETHEL: So if you did HOME and Tax

1 Credits -- we're still doing that, aren't we?

2 MS. STINER: We're doing Housing Trust Fund and  
3 HOME.

4 MR. BETHEL: Oh, okay.

5 MR. BREWER: And CDBG. Right?

6 MS. STINER: It's a HUD requirement, and we're  
7 complying with the law in all the programs that we just  
8 named. In this one -- not to repeat what Chernow has just  
9 said the last five minutes -- we have the ANSI standards  
10 as well as the 504 options under the Tax Credit Program.

11 Again, I'm just giving you facts; it's up to  
12 this body to make a determination of how you want to  
13 handle it.

14 MR. DAROSS: Well, I'm going to move that we  
15 amend 49.6(c)(6)(b) to provide that the Section 504  
16 standards be the threshold standard. I still have not  
17 heard a reason why we don't do that other than the fact  
18 that we're not required to.

19 DR. GRIFFIN: But, Judge, the reason that I'm  
20 hearing why we don't do it is that we're giving the  
21 developers a bigger option, because there are people -- if  
22 you go with 504 standards and you make bathrooms  
23 wheelchair accessible, et cetera, and then you get a blind  
24 person in there, they don't have to have wider bathrooms.  
25 So we're actually discriminating against people who have

1 other impairments, other than the physical ones, if we  
2 just go with 504. That's what I think. Am I wrong? If  
3 we just go with 504, then ANSI -- am I not right about  
4 ANSI and the --

5 MR. NJIE: 504 provides for 5 percent of your  
6 units to be built to be accessible for tenants who are  
7 physically disabled and 2 percent for those who have  
8 hearing impairment.

9 DR. GRIFFIN: So what does ANSI do?

10 MR. NJIE: ANSI -- it requires that all of your  
11 first-floor units be adaptable. In other words, put in  
12 all the blocks so that you can adapt them for persons who  
13 may be physically disabled or who have other kinds of  
14 disabilities.

15 ANSI doesn't preclude you from making the units  
16 adaptable for people who are physically disabled, you just  
17 don't do it at the time that you build a project.

18 MS. BINGHAM: Yes, a little flexibility.

19 MR. NJIE: That's correct.

20 DR. GRIFFIN: So the 504 units would just sit  
21 there so that when people with those kind of handicaps  
22 come, they'd be ready.

23 MR. NJIE: That's right.

24 DR. GRIFFIN: No, it wouldn't?

25 MR. NJIE: Well, you can technically rent it to

1 people who want the unit. Sure.

2 DR. GRIFFIN: Like a hotel, like they rent  
3 hotel rooms that are handicap accessible.

4 MR. NJIE: Sure.

5 DR. GRIFFIN: Okay.

6 MR. CONINE: I'm still not quite there on my  
7 educational curve yet, Mr. Daross. I'd like a little more  
8 education and a little more knowledge before we, I guess,  
9 cast that particular requirement all over the development  
10 community, both profit and nonprofit.

11 I think Mr. Schwartz has made an admirable  
12 presentation, and I just want that community to understand  
13 and know that at least I'm willing to listen and learn and  
14 see if we can fix it during the course of this year.

15 MR. DAROSS: Is the concern that making that as  
16 a requirement is going to automatically raise the cost of  
17 each unit?

18 MR. CONINE: And we don't know how much that  
19 is, and I think there's also some demographic factors that  
20 I'm also concerned about. I want to see some statistics  
21 about the current disabled population; I want to talk  
22 about what it takes to do a visually-impaired unit as  
23 opposed to a handicap-accessible unit. It's just stuff I  
24 can't get boned up on in the next five minutes.

25 MR. DAROSS: Those might be reasons for not

1 doing it. So far the only reason I've heard is because  
2 we're not required to.

3 MR. BREWER: Right. Well, the problem I've  
4 got, too, is, you know, with what we're talking about too,  
5 you're going to need it sooner or later. And I'm here to  
6 tell you that when you do it later, it costs you a lot  
7 more than in the beginning, because I've been through  
8 that, and the expense can really be great.

9 I'm wondering if there's anybody on the public  
10 side that might be able to address this, or give some  
11 reasons, that would be willing to do that.

12 MR. BETHEL: We've got a motion on the table.  
13 Do we have a second?

14 DR. GRIFFIN: I'll second the motion.

15 MR. BETHEL: Okay. We've got a motion and a  
16 second, and we're going to -- I got a note that it's time  
17 for a break. Do we want to go through the discussion or  
18 do we want to take a five-minute break?

19 MR. BREWER: We're not going to take a vote on  
20 who made that suggestion.

21 (General laughter.)

22 MS. STINER: What's the motion? I'm sorry.

23 MR. BETHEL: The motion, I guess, was to  
24 include 504 as a threshold standard, so that would be  
25 taking points -- doing away with the points. Is that

1 right?

2 MR. DAROSS: Right.

3 MR. NJIE: That's correct.

4 MS. STINER: There are a couple of other  
5 implications, but we could fix that too.

6 MR. BETHEL: Okay. Let's take a break. We're  
7 going to take a five-minute break.

8 (Whereupon, a brief recess was taken.)

9 MR. BETHEL: We're going to go back into open  
10 session, and the motion on the floor was to put the 504  
11 language as a threshold -- I mean, put 504 as a threshold,  
12 and take the point system away, instead of giving the  
13 points for the ANSI and the 504. Now, then, the table is  
14 open for discussion.

15 Chernob, did you have something you wanted --

16 MR. NJIE: No.

17 MR. BETHEL: There's some implications maybe on  
18 the developing side, or is there? We were asking, what --  
19 that --

20 MR. CONINE: I think there's some confusion,  
21 anyway, about what 504 really does, at least, again, on my  
22 part, which is what I've said on this subject all morning.  
23 And we still all have to deal with the first-floor units  
24 being accessible, no matter where you are, and no one is  
25 taking the risk today of developing multifamily projects

1 anywhere without doing that.

2 The Justice Department has been running around  
3 for the last two or three years, anyway, with bounty  
4 hunters, chasing developers who haven't followed those  
5 rules. The word's out, and we understand that we need to  
6 maintain that first-floor accessibility issue.

7 It's the other things that probably aren't  
8 written on Jonas' memo that I personally would like to  
9 explore and understand better than I do, and that's why I  
10 still have a concern.

11 MS. BINGHAM: Mr. Chairman, do we have a  
12 problem with a speaker from the development community that  
13 may want to speak on the impact? Yes, there's two of  
14 them.

15 MR. BETHEL: You can fill out a witness  
16 affirmation form here in just a minute.

17 MR. LEE: Thank you. Good morning, Mr.  
18 Chairman, board. My name is Bill Lee. I'm president of  
19 Covenant Communities. We're the developers of the  
20 Hamilton Hotel project in Laredo.

21 One implication of making 504 a threshold  
22 requirement for all projects is that you would have a huge  
23 impact on historic properties, because it's not new  
24 construction, you don't have a clean slate, you've got to  
25 work through a lot of units. We are making the required

1 number of units adaptable accessible units in the  
2 Hamilton, but for us to have to do that for 165 units as a  
3 threshold requirement, it conceivably could have made -- I  
4 don't know the exact implications, but it would have been  
5 significant. So, I mean, that came to mind based on our  
6 experience. So that's just one thing you need to  
7 consider.

8 And I think it goes with Mr. Conine's comment.

9 It's a pretty wide-ranging subject, but in terms of  
10 historic properties and other historic properties we've  
11 looked at -- which are key to downtown redevelopment in  
12 many cases -- it would have a significant financial impact  
13 on those projects.

14 MR. JOHNSON: I'm Sox Johnson of the Rural  
15 Rental Housing Association.

16 I think you've been on the right course here by  
17 keeping some flexibility in it; to me, it's the key thing  
18 to do. Keep in mind, these laws were passed at different  
19 times for different purposes. The 502 dealt with  
20 public -- any public-type facility having some  
21 requirements on it. 504 is pretty much the same thing,  
22 and it got incorporated on more of the government programs  
23 like HUDs and Farmers Home and others. And one of the big  
24 distinctions and problems we've had with them is it seems  
25 if you say it's a 504 issue, it's always the owner's

1 responsibility whether or not everybody is agreeing on  
2 reasonable accommodation.

3           And reasonable accommodation is the key of what  
4 you're trying to achieve with both 502 and 504: What is  
5 reasonably needed for this person to be able to utilize  
6 this facility. And so once that is agreed upon, then you  
7 can get into the issue of who pays.

8           I think it's good that you recognize all these,  
9 but keep in mind, all these different laws were done at  
10 different times and laws were written by lawyers for  
11 lawyers. So about the only way you can resolve these  
12 things is to get into litigation. And there's no clear  
13 guidance --

14           MR. DAROSS: Is that bad?

15           (General laughter.)

16           MS. BINGHAM: Yes, he's saying it's bad, Judge.

17           MR. JOHNSON: I'm saying that it is because  
18 there's no simple way. Look at all the attempts of  
19 different guidance books that are out. Homebuilders have  
20 put them out, different agencies have different  
21 interpretations of how we're going to implement and use  
22 these things, and they're all over the board, because we  
23 keep having to read what is the legal precedent on how you  
24 handle this kind of a deal.

25           Common sense is what we try to appeal to our

1 people in our training: Use reasonable accommodations;  
2 owners should go ahead and pay for those little things  
3 that need to be done; you need to have your 5 percent  
4 prepared. But keep in mind, you don't want to get too  
5 many, because there's a downside to steering too many and  
6 fixing too many of them for a wheelchair handicap, because  
7 that's not the only kind of handicap and other people  
8 don't always like those high commodes and all those things  
9 that go into it for home living.

10 So I would urge you to keep everything as  
11 flexible as you could, recognize -- I'd urge everybody to  
12 try to apply the standards, as they understand them, to  
13 both 502 and 504 on these projects. But there are too  
14 many guidelines; there's not a consistent guidebook that  
15 you can read. A lot of them will say you need an 18-inch  
16 towel bar over a commode; the other one will say you need  
17 a 24-inch.

18 So that you've got all those subtle differences  
19 in it, and that's because, again, there hasn't been a  
20 total agreement on what is going to be the guides, how are  
21 we going to carry out the provisions of this.

22 So I feel for the people that like the 504, but  
23 most instances I've seen, it comes down to who pays for it  
24 if you've got to make a revision to modify something, and  
25 it gets pretty strong that the owner/developer is going to

1 pay the total cost to make that revision if it's a 504.  
2 If it's 502, that appears to be more negotiable. I think  
3 it should be negotiable in determining what is reasonable  
4 accommodation and how it can reasonably be afforded to be  
5 done.

6 MR. BETHEL: Thank you.

7 Anyone else?

8 (No response.)

9 MR. BETHEL: Is there any other discussion?

10 MR. DAROSS: Well, I'm generally in favor of  
11 government keeping its nose out of people's individual  
12 businesses, but it seems to me we've already put our nose  
13 into the business of the developers under Housing Trust  
14 Fund and HOME Funds, and we've got those requirements  
15 there, and we still seem to be getting projects built  
16 under both of those programs.

17 Let's say we've got this 504, and you have a 5  
18 percent and a 2 percent requirement. So let's just be  
19 simplistic about it and say that increases the cost of the  
20 project by 7 percent. Well, what's the net result of  
21 that? Does that mean that we build 7 percent fewer units?

22 I just don't understand how it works and why it can work  
23 in some programs and not in this one.

24 MR. BETHEL: Any more discussion? Then we're  
25 ready for the vote?

1 MR. BREWER: Don, some fellow just took a  
2 witness affirmation form. Did he want to speak at this  
3 time?

4 MR. ALFARO: Yes, I'll go ahead and do that.  
5 My name is Orlando Alfaro. I'm with JR Hudson Housing  
6 [phonetic] Capital Tax Credit Syndicator, and prior to  
7 this, I was regional manager for Home Savings of America,  
8 which was a savings and loan and now it's known as  
9 Washington Mutual.

10 A point very interesting has been raised about  
11 the 504 being part of the threshold criteria. It is my  
12 humble opinion that this would not work and it would  
13 definitely affect the program for the following reason:

14 HUD does have special programs geared  
15 especially for financing these type of projects, and this  
16 type of financing not necessarily translates to the  
17 financing that is going to be available for tax credits,  
18 number one.

19 Number two, if you make it part of the  
20 threshold criteria, it's definitely going to kick in on  
21 the break-even point, 90 days occupied for three months  
22 and 90 percent occupancy consecutively, and that's when  
23 the construction rolls into a permanent, and that is also  
24 going to affect the 8609s.

25 So definitely it's going to be a Catch-22

1 situation, unfortunately. Thank you very much.

2 MR. BETHEL: You'll need to fill out that form.

3 Any other discussion?

4 (No response.)

5 MR. BETHEL: Okay. We have a motion then, and

6 we'll call for the vote. All those in favor of the

7 motion, say aye.

8 (Ayes: James Daross, Robert Brewer, Dr.

9 Florita Bell Griffin, Michael Jones)

10 MR. BETHEL: All opposed, say nay.

11 (Nays: Lydia Saenz, Marsha Williams, Kent

12 Conine, Margie Bingham)

13 MR. BETHEL: All that are for, raise your hand.

14 (Show of hands.)

15 MR. BETHEL: All that are against, raise your

16 hand.

17 (Show of hands.)

18 MR. BETHEL: Okay. The Chair is going to vote

19 with those opposed, so it will be five-four.

20 Okay. Next issue.

21 MR. JONES: And I don't want to jump in there.

22 I just have one more issue, and this addresses one of the

23 things I brought up last time, and that is the criticism

24 that the board has had about our involvement in the

25 program. And in thinking about that, it would be my

1 suggestion and my motion that we amend Section 50.21 of  
2 the 1999 QAP to read as follows:

3 "That the ad hoc Tax Credit Committee - that  
4 committee be comprised of all members of the board of the  
5 Department charged with direct oversight of the Low Income  
6 Housing Tax Credit Program, also referred to as the  
7 committee - the board shall meet as a committee of the  
8 whole to administer the program."

9 And I think this would address some of Judge  
10 Daross' concerns, too, about the board being involved at  
11 such a late date, and in this coming year let the board  
12 act as a committee of the whole to be involved throughout  
13 the process and see how that works. That would be my  
14 motion.

15 MR. BREWER: Well, I think that's a chairman's  
16 responsibility. He appoints the committees, and if he  
17 wants to do that, you know, that would certainly be his  
18 prerogative. But this is a very important committee, as  
19 is Programs and the rest of them, and I have a little  
20 heartburn with doing that in that I looked through that  
21 Government Code and the chairman appoints the committees.

22 It doesn't even say in the code what committees he's  
23 supposed to have, so it's at his pleasure as to how we can  
24 run the board and to be able to help the agencies.

25 And then there is nothing -- although it said

1 in this excerpt that was given to us by Chernow that the  
2 average committee has three, but there's nothing in the  
3 code that says how many. I run a company, as you all  
4 probably do, and have a volunteer board and the chairman  
5 sets the committees at the first of each year and the  
6 people serve on them, and the number is determined by what  
7 he needs to do.

8 And I don't have any problem with the chair  
9 appointing any committees at all. But as a board member,  
10 I don't think it's my responsibility to direct or to say  
11 the composition of any committee. I think that I serve at  
12 the pleasure of the Governor and I serve at the pleasure  
13 of the chair, and whatever the chair tells me to do on  
14 serving on committees or numbers, I respect his decision  
15 and I would follow that.

16 DR. GRIFFIN: And I tend to agree with you, Mr.  
17 Brewer, to a certain extent. Basically, the policy that  
18 had been set up to now was that committees were chosen  
19 every two years. And the Chairman made a decision last  
20 year that he was choosing the committees and they were  
21 technically supposed to serve for a two-year period, as I  
22 informed the Governor's Office, to expire in 2001.

23 It is totally up to the chairman to make the  
24 decision as to whether or not the full board will serve as  
25 the Tax Credit Committee, and if that is his decision,

1 that is fine with me. However, if that is his decision,  
2 then I recommend that all of the committees that have  
3 foresight over any funds of this agency be sunset  
4 immediately and that everything come to the full board.

5 And here I have some sheets that I'd like to  
6 give out which tells why I feel this way. The Tax Credit  
7 Committee is not the only one that has had allegations  
8 alleged against it, but the Tax Credit Committee is the  
9 only one that hasn't had anything proven that it has done  
10 wrong.

11 But I have evidence here that the Finance  
12 Committee and the Programs Committee -- which includes  
13 board members like Mr. Conine, Mr. Jones, and Mr.  
14 Bethel -- have done some things that can be proven wrong.

15 So let's just go on and get it on the table, you know, if  
16 we're going to talk about committees.

17 And I have copies for those of you in the  
18 audience who want one. And let's discuss it from there.

19 MR. BETHEL: I don't know that that's what's up  
20 for discussion.

21 DR. GRIFFIN: Well, I'm just making my comment,  
22 and then you can decide, based on all the information  
23 being on the table instead of midnight phone calls.

24 MR. BREWER: Mr. Chair, I would like to say,  
25 though, that the purpose of what I brought up is, after I

1 looked into the Government Code, that I wanted to reaffirm  
2 my position that I'm here to serve at the pleasure of the  
3 Chairman on any committee, and that whatever committee or  
4 the makeup that you decide, that's my responsibility as a  
5 board member.

6 MS. BINGHAM: I have one comment. I would  
7 think that this morning is certainly -- the full board has  
8 been discussing the tax credit issue for over two hours  
9 now, so I don't -- I've never had the impression that the  
10 current setup would disallow the full board from being  
11 involved.

12 I think it's a very delicate and cute way that  
13 the proposal was presented was to reconstitute the  
14 committee into the full board; I think the unpleasant --  
15 and I'm going to sleep well tonight regardless if I didn't  
16 vote those -- but I think the more definite thing that you  
17 are doing, you are not reconstituting the committee to be  
18 the full board. Your motive and your desire is to  
19 eliminate a committee perhaps because you have some  
20 concerns about its members. So I think we need to lay  
21 that on the table and be very up front about what we're  
22 trying to do.

23 MR. BETHEL: Okay. Is this an allegation from  
24 you, Dr. Griffin?

25 DR. GRIFFIN: This is a statement of fact, Mr.

1 Bethel, and the Ethics Committee has been consulted, and  
2 they say that the next course of action should be to take  
3 it to the District Attorney's Office, those that have that  
4 note on it.

5 MR. BETHEL: Well, is this complaint --

6 DR. GRIFFIN: These are facts.

7 MR. BETHEL: You said that the Ethics Committee  
8 advised that complaints of this nature should be forwarded  
9 directly, so if you have a complaint against me, Dr.  
10 Griffin, you need to forward it.

11 DR. GRIFFIN: Mr. Bethel, don't you worry about  
12 it.

13 MR. BETHEL: Okay. Thank you.

14 MR. BREWER: Mr. Chairman, I would just like to  
15 ask Mr. Jones, you know, he's made a good point and he's  
16 put it on the table, and you know, if he wants to take a  
17 vote on that, that's fine. My only point that I want to  
18 make, really, is that on any of these committees, it's at  
19 your pleasure, and I'd like to hear some discussion from  
20 the other board members if they feel this is a board  
21 responsibility or the chairman's, because I'm willing to  
22 serve on any committee that you've appointed me to and I'm  
23 ready to do that.

24 Mr. Jones, do you have anything in regard to  
25 that?

1 MR. JONES: I've made a motion, and I think it  
2 dies for lack of a second, if there's not a second to it.

3 MS. SAENZ: I second that.

4 MR. BREWER: Well, I'd like to hear somebody  
5 else comment, though, I mean, on the committees, because  
6 this is very important. How you feel on the committees is  
7 that -- I mean, it's written into the Government Code that  
8 the chairman appoints the committees. I mean, I don't  
9 know what else to do.

10 MR. CONINE: You're right, it is written in the  
11 Government Code that the chairman does appoint the  
12 committees, but what we're dealing with here is the QAP.  
13 And I think the motion on the floor, if my understanding  
14 was correct, was to change the word "committee" to  
15 "board," basically, and go from that point forward, and  
16 insert the board into all the responsibilities of the  
17 committee, within the QAP.

18 I, for one, have yielded to the committee's  
19 recommendations time and time again over the two years  
20 I've served because that's what they're charged with their  
21 responsibility of dealing with, and you've got to trust  
22 those who are charged with that responsibility.

23 But quite frankly, I'm also kind of getting  
24 kind of tired of getting blamed for something I don't  
25 think that I have materially participated in. And by

1 switching the full board to have oversight over the  
2 program that, arguably, is the largest one we've got,  
3 gives me a chance to materially participate, and whether I  
4 choose to do so at that point or not is my decision, but  
5 at least it would give me -- in this QAP, changing that  
6 verbiage has nothing to do with the way this Department is  
7 structured per Government Code or not.

8 MR. BETHEL: Is there any other discussion?

9 MR. DAROSS: I've learned, over the last --  
10 let's see, it will be 33 years next month that I've been  
11 married to my wife -- that her intuition is pretty good  
12 and I ought to listen to her. And I was talking to her  
13 last weekend about some of the things that were going on  
14 with the agency and some of the allegations that are being  
15 made in the press, and the fact that -- the same concerns  
16 that I expressed earlier, that I don't feel like I've  
17 really got a good handle on what goes on in that committee  
18 and with the staff until we get up to the July board  
19 meeting, and her response was, Well, you ought to just  
20 make it a committee of the whole. So I'm in favor of  
21 that.

22 I'm not crazy about the idea of doing it,  
23 because I know it means a lot more work for me personally,  
24 but when I took an oath to be a member of this board, I  
25 took an oath to do the best job I could for the State of

1 Texas, and I think I can better fulfill that by being more  
2 involved, and if it takes being a member of the committee  
3 to be more involved, then I'll do it.

4 MS. SAENZ: Mr. Chairman, I have been serving  
5 on this board since I came on; you appointed me -- I mean,  
6 to the committee, and I do feel that we need more board  
7 members participating in this committee. The magnitude of  
8 this committee is very, very vast, and we need -- I am not  
9 saying that the committee is not doing its job. I think  
10 that we need help, and I agree with Mr. Jones about making  
11 this committee the board as a whole.

12 MR. BREWER: I still have an exception to that  
13 because that's the power of the chairman. He can put more  
14 members, and if he wants every one of us to serve on that  
15 committee, again, I will serve on that committee, but I  
16 just don't know if it's an appropriate thing.

17 What do you think, Marsha, I mean, when you're  
18 talking about the composition, I mean --

19 MS. WILLIAMS: I think the ultimate  
20 responsibility does lie with the board, and I have to  
21 really echo what James Daross said, except that it wasn't  
22 someone's intuition; it's basically how I feel.

23 MR. BETHEL: Okay.

24 MR. BREWER: But if we make that  
25 recommendation, it's still up to the chairman, because he

1 is the appointing authority. Correct? Is it or isn't it?

2 I'd like to hear legal's counsel, what her opinion is.

3 MS. MARKS: Betty Marks, General Counsel. I  
4 think what Mr. Brewer wanted was just the section of the  
5 Code, and it is -- I'll find it. The enabling statute  
6 basically makes it at the board chair's discretion to name  
7 committees, and I'll read that section if you want me to.

8 It's 2306.056 of the Government Code: "The  
9 presiding officer may appoint a committee composed of  
10 board members to carry out the board duties. The board  
11 may consider a recommendation of a committee in making a  
12 decision under this chapter."

13 Is that what you're referring to?

14 MR. DAROSS: Well, that raises a question in my  
15 mind from reading the statute which says that the chair  
16 shall appoint all committee members. If we vote to change  
17 the QAP to say that all the board members shall be the  
18 committee, is that a violation of the enabling statute,  
19 because essentially it's taking away the power of the  
20 chair to appoint the members of the committee.

21 MR. JONES: That was my motion. See, I don't  
22 see a problem with that. I think the chair can clearly  
23 appoint everybody and let the board, you know, act as a  
24 committee on the whole with regard to that issue. I don't  
25 think it violates the statute, but that's just my opinion.

1 MS. WILLIAMS: I thought the statute read that  
2 the chair may, rather than shall.

3 MR. JONES: Obviously, the board as a whole has  
4 the authority to act on all these issues, and we're just  
5 saying that with regard to this one committee, the board  
6 would work as a committee of the whole.

7 MR. BETHEL: Was that a motion then?

8 MR. JONES: I made a motion.

9 MR. BETHEL: We didn't have a second then?

10 MS. SAENZ: I seconded.

11 MR. BETHEL: Is there any more discussion?

12 (No response.)

13 MR. BETHEL: All those in favor of the motion,  
14 say aye.

15 (Ayes: James Daross, Michael Jones, C. Kent  
16 Conine, Lydia Saenz, Marsha Williams)

17 MR. BETHEL: All opposed, say nay.

18 (Nays: Dr. Florita Bell Griffin, Robert  
19 Brewer, Margie Bingham)

20 MR. BETHEL: All those opposed, raise their  
21 hand -- I mean all those who are for, raise your hand,  
22 please.

23 (Show of hands.)

24 MR. BETHEL: All opposed, raise your hand.

25 (Show of hands.)

1 MR. BETHEL: It passes five to three.

2 Anything else? Any other recommendations?

3 DR. GRIFFIN: Yes, sir. I recommend that we  
4 sunset the rest of the TDHCA committees and let the full  
5 board serve in the committee capacity for all funds that  
6 are being disbursed through this agency to ensure that we  
7 don't have conflicts of interest such as those that we've  
8 been made aware of.

9 MR. BETHEL: Is that a motion?

10 DR. GRIFFIN: It is.

11 MS. BINGHAM: Second it.

12 MR. BETHEL: I have a motion and a second. Any  
13 more discussion?

14 MR. CONINE: Since this wasn't on the agenda  
15 that was posted, are we violating some statute?

16 MR. BETHEL: May be, I don't know.

17 MS. BINGHAM: Probably so.

18 MR. BETHEL: I think this doesn't have to do  
19 with the QAP, so I think your point is well taken. We can  
20 put it on the agenda for the next meeting.

21 Is there any other thing to come before the  
22 board? Ms. Stiner, do you have anything?

23 MS. STINER: No, sir.

24 MR. BETHEL: Okay. Then there being nothing  
25 further, we'll stand adjourned.

1 MS. BINGHAM: You haven't voted on the full  
2 QAP, and you have another item.

3 MR. BETHEL: Okay Wait. Okay, we haven't  
4 voted on the QAP.

5 MS. BINGHAM: Yes. You have two other items.

6 MR. BETHEL: Okay. I was asking -- okay.

7 MS. BINGHAM: On those clarification items that  
8 you requested needs to be added. I'll make that motion.

9 MR. BETHEL: There were some clarifications  
10 that Cherno, language clarifications he mentioned earlier  
11 about material deficiencies and project feasibility and  
12 project's impact on low income housing and on the goals  
13 and objectives. We have a motion from Ms. Bingham that we  
14 incorporate that in the QAP. Do I hear a second?

15 MR. CONINE: Second.

16 MR. BETHEL: We have a second by Mr. Conine.  
17 All those in favor, say aye.

18 (A chorus of ayes.)

19 MR. BETHEL: All those opposed, say nay.

20 (No response.)

21 MR. BETHEL: Motion carried.

22 Now then we need a motion to adopt the QAP  
23 as --

24 MS. BINGHAM: You voted on all the amendments,  
25 but you didn't vote on the original.

1 MR. BETHEL: -- yes, the QAP, as amended. So  
2 do I hear a motion?

3 MS. BINGHAM: I made the motion.

4 MR. BETHEL: Ms. Bingham made the motion to  
5 adopt the QAP, as amended.

6 MR. BREWER: Second.

7 MR. BETHEL: Seconded by Mr. Brewer. All those  
8 in favor, say aye.

9 (A chorus of ayes.)

10 MR. BETHEL: All those opposed, say nay.

11 (No response.)

12 MR. BETHEL: Motion carried.

13 Is there anything else then?

14 (No response.)

15 MR. BETHEL: We will stand adjourned now.

16 (Whereupon, at 12:25 p.m., the meeting was  
17 concluded.)

C E R T I F I C A T E

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MEETING OF: Board of the Texas Department of  
Housing and Community Affairs

LOCATION: Austin, Texas

DATE: January 28, 2000

I do hereby certify that the foregoing pages,  
numbers 1 through 84, inclusive, are the true, accurate,  
and complete transcript prepared from the verbal recording  
made by electronic recording by Penny Bynum before the  
Texas Department of Housing and Community Affairs.

02/03/2000  
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(Transcriber) (Date)

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