

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

9:45 a.m.  
Wednesday,  
November 14, 2001

Room E1.028  
Capitol Extension  
1400 Congress Avenue  
Austin, Texas

BOARD MEMBERS:

MICHAEL JONES, Chairman  
C. KENT CONINE, Vice Chairman  
BETH ANDERSON  
SHADRICK BOGANY  
NORBERTO SALINAS

STAFF PRESENT:

RUTH CEDILLO, Executive Director

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1  
2 MR. JONES: We'll call to order the board  
3 meeting of the Texas Department of Housing and Community  
4 Affairs for November 14, 2001, and the first item on the  
5 agenda is the call to order and roll call.

6 Beth Anderson?

7 MS. ANDERSON: Here.

8 MR. JONES: Shadrick Bogany?

9 MR. BOGANY: Here.

10 MR. JONES: Mr. Conine?

11 MR. CONINE: Here.

12 MR. JONES: Mr. Gonzalez? He's absent.

13 Mayor Salinas?

14 MAYOR SALINAS: Here.

15 MR. JONES: Michael Jones is here. So we have  
16 five members present, one absent, and I certify that we do  
17 have a quorum.

18 The next order of business is public comment  
19 and the board will solicit public comment. The way we  
20 proceed here is we allow public comment in two different  
21 ways, and it's up to the speaker to determine how they  
22 would like to make it. For those of you that would like  
23 to speak at the beginning of the meeting, you're welcome  
24 to do that. I know due to travel schedules there are many  
25 people that desire to do that and that is certainly

1 welcome. The other opportunity, if you would like to  
2 delay your comments until the agenda item you are speaking  
3 about, you have the opportunity to do that also.

4 I would like to say this, because there's been  
5 some confusion about this in the past, if during a debate  
6 a board member wants to ask questions of somebody who has  
7 made public comment, we certainly allow that and the board  
8 member does do that. However, once all public comment has  
9 been taken on a subject and the debate has begun amongst  
10 the board members, at that point in time public comment is  
11 closed. So the opportunity is to make public comment, but  
12 once the board begins debate, unless there are questions  
13 made to speakers, there is no longer any opportunity for  
14 public comment. I'm sure everybody can understand that,  
15 once the debate has occurred, just so everybody  
16 understands how we proceed.

17 With that, I do have a number of people who  
18 have submitted witness affirmation forms to speak, and the  
19 first one that I would ask if they would like to speak is  
20 State Representative Hodge. Would you like to speak now?

21 Thank you.

22 MS. HODGE: Good morning and thank you very  
23 much, Mr. Chairman and members of the board, for allowing  
24 me the opportunity to come before you to talk about two  
25 projects that are in my district that I wish to speak in

1 favor of and sort of give you clarifications on a couple  
2 of issues that happened in our public meetings in Dallas.

3 I want to speak on behalf of the Hillside  
4 Apartment project and say to you that as you probably know  
5 pretty well, having served on the Urban Affairs Committee  
6 for two sessions, I am strongly in favor of affordable  
7 housing throughout this state and I want to thank this  
8 committee for what you are doing to give us the  
9 opportunity to provide quality affordable housing in the  
10 state of Texas. The Hillside project in my district would  
11 provide exactly that: quality, quality affordable  
12 housing.

13 I've had the opportunity to review several  
14 projects in my district and outside my district that this  
15 particular company has done in Dallas. They do good,  
16 quality work; they continue to maintain and manage their  
17 properties. So I want you to know that I strongly support  
18 that project.

19 Let me go back to, if you will, the Hillside.  
20 When the community hearings were held in Dallas, we had  
21 great participation from the community and I was proud of  
22 it because it showed that those people were concerned with  
23 their community and wanted good, quality housing, if  
24 apartments at all. If you listen to the information, you  
25 will hear those people very upset, and why are they very

1 upset? Because what they are used to having in their  
2 neighborhoods are developers who will come in, build  
3 apartments, let them go bad, rundown, and then they sell  
4 them to someone else, and the apartments continue to be  
5 nothing but an eyesore in the neighborhood.

6 Then they rent them cheaply so then they're  
7 filled with drug users, crime folk and abusers. So they  
8 say no, we don't want apartments in our neighborhood. But  
9 what you will have an opportunity to show them with the  
10 approval of this project is that they can have good,  
11 quality, affordable houses that are apartments with decent  
12 people in their neighborhoods, and that is strongly needed  
13 in my district.

14 Then I want to talk to you a little bit about  
15 the Oak Hollow Apartment project. There was not much of a  
16 problem with the community on that issue, so I want to say  
17 to you there too it's a neighborhood that has lots of  
18 families, many children who would welcome the opportunity  
19 to live in a place that's decent, a place that provides  
20 tenant services for children on the property. So I again  
21 ask you in your deliberations and considerations, please  
22 think of people, as you've done in the past, who need  
23 quality affordable housing.

24 I have been able to see that these people are  
25 taking state dollars and doing exactly what it is we want

1 them to do. Had that not been the case, I guarantee you I  
2 would not be sitting here this morning before you asking  
3 your strong consideration to approve these two projects.  
4 Thank you very much. If you have any questions for me,  
5 I'll be happy to respond.

6 MR. JONES: Thank you so much. We appreciate  
7 you being here.

8 The next speaker is Mr. Garvin, John Garvin.

9 MR. GARVIN: Good morning. My name is John  
10 Garvin; I'm with the Texas Affiliation of Affordable  
11 Housing Providers. I'd like to start by thanking you for  
12 the opportunity to speak on the 2002 QA -- Qualified  
13 Allocation Plan, and secondly I'd really like to commend  
14 your staff. This year I found it an incredibly open  
15 process, very encouraging of public comment. I knew from  
16 my time at that agency that the Sunset recommendations are  
17 going to be very hard to put into the QAP; I really  
18 commend the staff for their diligence in doing that.

19 We held a QAP round table in October and we had  
20 about 30 to 35 members of all segments of the affordable  
21 housing industry. We submitted public comment based on  
22 everyone's thoughts there, and I'm really pleased to see  
23 the response to the public comment that did incorporate a  
24 lot of what we requested. We felt like we were heard; of  
25 course, we don't feel like we were heard completely.

1           There are just two small issues that we have  
2 left over that we would like reconsideration of. In our  
3 letter that we just submitted now, we asked that you  
4 somehow reserve the right as a board to waive penalties on  
5 extension. It is in SB 322 that you have to, based on  
6 scoring, penalize people who have asked for extensions in  
7 the prior year, and in some cases I'm sure you'll find,  
8 with the environmental conditions the way they are, that  
9 there will be justified reasons to waive a penalty on an  
10 extension.

11           The last issue we had was we had recommended a  
12 cap per unit for qualified census tracts and for those  
13 outside qualified census tracts, and the staff recommended  
14 half of our recommendation. We would like to also see the  
15 \$8,500 cap for qualified census tract developments put  
16 into the QAP. And that's all.

17           MR. JONES: Thank you, Mr. Garvin.

18           Mr. Brent Stewart?

19           MR. STEWART: Good morning. I'm Brent Stewart  
20 with Trammel Crow Residential. I'm here to ask for  
21 reconsideration of a provision in the QAP that has been an  
22 issue that has been discussed outside of the agency in the  
23 community as well as inside the agency, and it's one that  
24 continues to not really have a resolution. What I would  
25 ask is that the board discuss the issue and at least



1 potentially reconsider the issue.

2           It relates to the requirement that all townhome  
3 units or two-story units have a bedroom on the ground  
4 floor. This is Section 49.7(e)(3)(E) on page 57 of your  
5 board book.

6           We certainly agree that visit ability on units  
7 is imperative and agree that all units, all townhome or  
8 two-story units should have a bathroom on the ground  
9 floor, and in the design element of a townhome unit,  
10 that's something that can be done easily. We agree that  
11 more than 5 percent of the units in a development should  
12 contain bedrooms downstairs. There should probably also  
13 be a greater percentage of units with bedrooms downstairs  
14 than the percentage of the mobility-impaired community at  
15 large. There's a current mismatch out in the public in  
16 market rate units or other units where people have a hard  
17 time finding units that are fully accessible.

18           But the 100 percent requirement is not  
19 consistent with that percentage of the population that is  
20 mobility-impaired, and by requiring this bedroom  
21 downstairs, I know from our product standpoint, we find it  
22 very difficult to figure out how to design a good quality  
23 townhome type product that has a bedroom downstairs.  
24 First off, on one bedroom units, there's really nothing to  
25 put on a second story of a townhome unit, and secondly, on

1 a two-bedroom unit, when you have a footprint that is  
2 extremely large, it's very difficult to design an  
3 efficient, attractive townhome development.

4           The requirement for the bedroom downstairs is  
5 also not consistent with what would happen in a typical  
6 two- or three-story garden style walk-up property because  
7 the units on the second and third floor, unless served by  
8 an elevator, would have the same issues or the same  
9 accessibility issues that a two-story townhome unit would  
10 have if it had bedrooms upstairs.

11           There are other examples and justifications in  
12 the QAP where staff has done a great job of trying to  
13 match what the true need or true policy need is with the  
14 product that we're trying to develop under the QAP. The  
15 12-15 percent increase on the elderly set-aside is one  
16 example; the deeper targeting income is another example,  
17 and I feel that this issue should be treated the same way.  
18 So I would just ask that you discuss that and consider it  
19 and think about some level of units on a townhome  
20 development that do in fact have bedrooms downstairs but  
21 just not 100 percent of them.

22           MR. JONES: Thank you.

23           MR. CONINE: Mr. Stewart, before you leave.  
24 You didn't give us a written paper of your comments. Can  
25 you repeat again which section that was in the QAP?

1 MR. STEWART: The discussion of the section is  
2 on page 57 of your board book; the specific section in the  
3 QAP is 49.7(e)(3)(E).

4 MR. CONINE: Thank you.

5 MR. JONES: The next speaker is Ms. Searles.

6 MS. SEARLES: I would like to speak with the  
7 item.

8 MR. JONES: Okay, thank you.

9 Ms. Greebon?

10 MS. GREEBON (Translated by Jennifer McPhail):  
11 My name is Karen Greebon and I would just like to support  
12 affordable housing because a lot of people are going to  
13 get out of institutions and need a place to go. We also  
14 need accessible housing, because like that man said a  
15 while ago, you need more downstairs, more bedrooms and  
16 bathrooms. Thank you. Any questions?

17 MR. JONES: Thank you very much for being here.

18 Mr. Halla?

19 MR. HALLA: Members of the board, thank you so  
20 much for the opportunity to come before you. I'm coming  
21 before you on two reasons. One is Item 2(a), Life  
22 Rebuilders, whom I represent, a nonprofit is privileged to  
23 have Ennis Senior Estates on the waiting list -- it's  
24 TDHCA Number 1036 -- and in case the credits do become  
25 available, I just wanted the board to be aware of a couple

1 of issues that we think are pertinent to the possibility  
2 of this project being awarded tax credits if they become  
3 available.

4 One, it's the highest scoring application on  
5 the waiting list; it's the highest scoring nonprofit  
6 application of the approved applications. To our  
7 knowledge, there have been no senior tax credit  
8 allocations in Ellis County or the city of Ennis -- this  
9 area is just south of Dallas. There have been some family  
10 allocations but no senior allocations. We have tremendous  
11 community and city support for this project. Life  
12 Rebuilders currently owns this land; it's part of a  
13 planned unit development, affordable housing planned unit  
14 development totaling 168 acres of both multi-family and  
15 single family affordable dwellings.

16 The Federal Home Loan Bank board has issued an  
17 AHP grant for this community in the amount of \$500,000  
18 that is in place; that's not something to be obtained,  
19 that is in place at this point in time. I know from  
20 talking with a lot of the people at the Federal Home Loan  
21 Bank board, they want to become more involved in the LIHTC  
22 process; I think this would be an excellent way to show  
23 them that their funds can be utilized in the LIHTC housing  
24 developments.

25 Housing Assistance Council, which is a

1 nonprofit lender out of Washington, D.C., also was very  
2 favorable of this site, in conjunction with what we're  
3 doing with the city, and they provided the acquisition  
4 financing at a very low rate, also with a little bit of  
5 money to extend the off-site developments which is in  
6 keeping with the city's plan to incorporate two different  
7 water districts so that they'll have more service in this  
8 area.

9           The City of Ennis anticipates that the 287  
10 bypass will be within the foreseeable future in the center  
11 of their community very quickly.

12           We've got the single family residential ready  
13 to go. Right now we're getting ready to start our off-  
14 site development. This is not a piece of land where we  
15 just are hoping; this is a piece of land that Life  
16 Rebuilders is committed to. It's a piece of land that was  
17 carefully chosen with the help of the City of Ennis and  
18 where their future needs will be and where they would like  
19 to see their affordable housing.

20           We are one of the lowest -- I think there's  
21 only one lower -- on the tax credits per unit. This is a  
22 good use of the tax credit dollars; we're excited about  
23 that. We know that we're in Region 3 and that right now  
24 it appears that Region 3 is allocated to its fullest, but  
25 we're just making these comments so that if tax credits

1 become available, we might be more favorably considered.

2 As I mentioned, our financing is in place, the  
3 AHP grant is in place, we own the land; we could literally  
4 be closed on this transaction within I'm sure by the end  
5 of the year, we're that far along on it. We'd just as  
6 soon you gave us credits this year because if not, we'll  
7 be back again next year. We're committed to this  
8 community; we're committed to this particular development.

9 We honestly believe that when we are done with this  
10 community that you'll see an example that a lot of people  
11 will follow: a mixture of multi-family, a mixture of  
12 single family, commercial wherein we've got several of our  
13 social service providers wanting to lease space in the  
14 commercial area, so we're pretty excited about this.

15 Life Rebuilders is an experienced tax credit  
16 developer. Two of our communities are 100 percent  
17 occupied with waiting lists. We just finished 112 units  
18 that's a family community; we're putting the final touches  
19 on it and we're 100 percent leased and we're 90 percent  
20 occupied right now. So we know what we're doing. I think  
21 we can do another good development for Ennis Senior  
22 Estates, TDHCA item number 1036.

23 Mr. Chairman, that's all I've got on this  
24 particular subject. I did submit an affidavit for item  
25 2(e) and I could make those comments now or later,

1 whatever.

2 MR. JONES: That would be fine.

3 MR. HALLA: On 2(e), we're a nonprofit. Many  
4 of our comments have been submitted, and we're in favor of  
5 the majority of the comments that have been submitted in  
6 writing; we also submitted our comments in writing.

7 There are two issues that I want to bring  
8 before the board in that regard on the proposed QAP. One  
9 is the points that a nonprofit for-profit joint venture  
10 can get by a for-profit teaming up with a nonprofit.  
11 Those points are not available for a stand alone  
12 nonprofit. We have many of our colleagues in this room  
13 who we would love to joint venture with; they're busy,  
14 we're busy, they don't necessarily need us except for the  
15 points and we don't necessarily need them, and to have to  
16 bring in a for-profit company just to score those points  
17 and not be able to come in as an experienced nonprofit  
18 developer and be penalized -- I believe it's three  
19 points -- doesn't make a whole lot of sense to me.

20 The other comment I've got -- and I know that  
21 it's just going to have to be making you aware of the fact  
22 that they're requesting -- and I believe this came out of  
23 Sunset Bill 322 -- the home addresses of the nonprofit's  
24 board of directors. That is ridiculous; to me that's not  
25 necessary. The home addresses of a for-profit board of

1 directors would not be required and to require that the  
2 majority of the board be residents of the state of Texas  
3 in order to do a rural deal or their home addresses within  
4 90 miles of an urban deal doesn't make sense.

5 If we were to rely on just one area as an  
6 affordable housing developer and if that area gets over-  
7 saturated, what are we supposed to do: go out of  
8 business? We've got to look to other areas to keep our  
9 staff motivated and paid. We work with architects,  
10 engineers, and once you establish these relationships,  
11 that's when you start producing quality, safe, decent, and  
12 affordable housing.

13 I appreciate the time. I just knew that I  
14 would get called after the last gentleman spoke. That's  
15 the reason, ladies and gentlemen, that Life Rebuilders is  
16 in this business; we like to stay focused on the people we  
17 serve. Our last community, Grace Townhomes, was a bond  
18 deal. We did not have to provide handicapped/disabled  
19 units, but we did and we're very, very grateful that we  
20 took that challenge and went ahead and provided those  
21 units in a community like Ennis, Texas.

22 Thank you very much. If there's any questions,  
23 I'll be happy to answer them.

24 MR. CONINE: Do you have the reference section  
25 of the one you talked about on the home addresses of board



1 members?

2 MR. HALLA: Mr. Conine, I'm sorry, I don't.

3 MR. CONINE: I've got it written down anyway;  
4 that's okay.

5 MR. HALLA: I know that in the past our board  
6 of directors are even a little reluctant to give out their  
7 Social Security number, and that used to be required on  
8 the tax credit application, not that they're wanting to  
9 hide anything; it's just a lot of people don't like to  
10 give out personal information like that, depending on  
11 where it goes, who has access to it and what's it going to  
12 do, and now to have home addresses called for I think is  
13 not good.

14 MR. CONINE: We'll find it.

15 MR. HALLA: Thank you very much. Any other  
16 questions?

17 MR. JONES: Thank you, sir.

18 Mr. Wenson?

19 MR. WENSON: Good morning. My name is Bill  
20 Wenson; I'm here to speak on item number 3.

21 I find myself in a peculiar situation because  
22 as an affordable housing provider and advocate, I've never  
23 been in a position to talk against a project before. I  
24 find myself here today talking about a couple of projects  
25 in the negative light.

1           This is regarding item number 3, the two tax-  
2 exempt bond projects, and I didn't bring the name up with  
3 me. Hillside Apartments is one of them.

4           MR. JONES: Oak Hollow Apartments?

5           MR. WENSON: Yes, sir. I have a map that I'd  
6 like to distribute.

7           MR. JONES: Certainly.

8           MR. WENSON: My issue with the two projects is  
9 a concentration issue. The map that you've just been  
10 handed, there are three yellow circles. Those three  
11 yellow circles represent three tax credit projects that  
12 have been completed since 1996. The one labeled A is  
13 Villa of Sorrentos, the one labeled C is Oakwood Place,  
14 and the project labeled as B is Las Lomas.

15           The two red marks indicate the location of the  
16 two new proposed bond projects. They are adjacent to A and  
17 B; in fact, they are right in front of them and they  
18 literally will block the view from Loop 12 of the two  
19 existing tax credit projects.

20           Villas of Sorrentos, which was built as a new  
21 construction project in '96, has 245 units, it's a  
22 beautiful project, it's one of the finest tax credit  
23 projects I've ever seen built. They average occupancy  
24 anywhere from 90 to 95 percent. B, which is Las Lomas,  
25 which is further down Loop 12 -- and by the way, the

1 distance between these three projects is less than three  
2 miles, to give you a relationship; the distance between A  
3 and C is less than one mile -- Las Lomas is 230 units, its  
4 average occupancy is 80 to 85 percent. Oakwood place,  
5 which is C is 206 units -- I am an owner of that property  
6 that has 206 units and we average around 90 percent  
7 occupancy. That totals over 600 tax credit units in that  
8 particular area.

9 I recently spoke to Ken Bird who is one of the  
10 chief asset managers for HUD in Fort Worth. They just  
11 recently took back a project less than a mile from B --  
12 which is Las Lomas -- and he cited a lack of people to  
13 fill that property is why that foreclosed.

14 Also, directly across the street from C is  
15 another 200-unit property that is owned by a nonprofit  
16 that is an affordable housing development, not a tax  
17 credit project.

18 My concern is that the number of units that are  
19 proposed by these two projects -- in excess of 500 units,  
20 I think; I don't have a lot of information on these two  
21 projects, this just came to my attention a couple of days  
22 ago -- will almost double the number of tax credit units  
23 in this three-mile area. I am concerned that because  
24 there is not a lot of economic growth and population  
25 growth in this southeast area of Dallas, they would be

1 drawing from the existing affordable housing properties in  
2 order to fill them. There is a tendency for tenants to  
3 move to the newer properties. I think that would  
4 jeopardize many of the existing properties in the area.

5 I have also supplied a copy of a letter from  
6 Mark Temple who is a market analyst and familiar with that  
7 area, and it is his opinion that that's what will happen  
8 is that the existing properties will suffer because  
9 there's not a great amount of growth in that area.

10 If you look at a Dallas map, you can see just  
11 in general that that area is not a high-populated area.  
12 This is the south side of Dallas; these are the three  
13 properties that you're looking at, right here, one, two,  
14 three; the new projects are going to be here and here.  
15 All the red marks indicate -- I did this a few years ago;  
16 these are all tax credit properties; I did it for all of  
17 the city -- it shows you that where these are going  
18 there's just not a lot of population there like there is  
19 in a lot of the other areas.

20 Not only am I the owner of this one, I am also  
21 the limited partner of several of the projects off to the  
22 west, and so I'm very familiar with this market. So I  
23 would encourage you to really consider the concentration  
24 issue in approving these two projects. Thank you.

25 MR. JONES: Thank you, sir. The next speaker

1 is Mr. McMullen.

2 MR. McMULLEN: I'd like to speak on the agenda  
3 item.

4 MR. JONES: Thank you. The next speaker is Mr.  
5 Conley.

6 MR. CONLEY: I also would like to speak on the  
7 agenda item, please.

8 MR. JONES: Thank you, sir. The next speaker  
9 is Mr. Washburn.

10 MR. WASHBURN: Good morning. Mr. Chair and  
11 board members, thank you for giving me this opportunity to  
12 speak today. My name is Jim Washburn and I represent LCJ  
13 Management; we are developers, builders and managers of  
14 affordable housing in Texas, and I'm here to comment today  
15 on some of the responses that the department gave on the  
16 2002 QAP, specifically in regard to item number 49.7(g),  
17 the credit amount.

18 I want to really kind of make two statements  
19 about it. First, it really pertains to the addition of  
20 the \$6,500 per unit cost that was added into the QAP. In  
21 my opinion, I'm looking at the way the department is  
22 headed with us, and I think that, in my opinion, we're  
23 seeing that we want to start targeting lower income  
24 people, we want to try and start providing units for those  
25 people, and I think that by limiting our tax credits

1 \$6,500 per unit, we are jeopardizing the ability to do so  
2 in this way: if you're going to be offering those units,  
3 obviously you're going to be reducing the income that  
4 you're going to be producing off of those units; by  
5 lowering your income on your project, you're not going to  
6 have the same ability to carry the same debt that you  
7 might be if you're offering units at higher income levels;  
8 by not being able to carry enough debt, in most cases you  
9 might have to carry additional equity to offset that to  
10 maybe be able to reach those deep income people.

11 And I think that by limiting the development to  
12 \$6,500 per unit, you're kind of in a Catch 22 here: we  
13 want to be able to offer these units but we're going to be  
14 taking in less income, and in some cases, depending on  
15 where you're developing in the state of Texas, costs might  
16 be higher, materials might be higher, labor might be  
17 higher, you could possibly be limiting your ability to do  
18 so. I just think that we've got to look at that more  
19 closely if we're going to put that in there.

20 In addition to that, Mr. Garvin brought up  
21 earlier the fact that half of his recommendation was not  
22 put into the QAP regarding QCT tracts. My opinion or what  
23 we're going to be proposing is that we actually strike  
24 this altogether. He suggested that you add up to \$8,500  
25 per unit for QCT tracts. We have a specific development

1 in Dallas that we're looking at trying to do, it is in a  
2 qualified census tract, and if you start looking at the  
3 economics of it, if you're going to limit to \$6,500 per  
4 unit in a QCT tract, you really have to look at your cost  
5 per unit prior to your receiving the 30 percent bump. I  
6 mean, there is a reason that we get the 30 percent bump;  
7 it is because the cost of building in that certain area  
8 might be higher or the incomes in that particular area  
9 might be lower, so there was a reason for providing that  
10 bump.

11 But now if you're going to be limiting your tax  
12 credits per unit to \$6,500 and you're in a QCT tract, now  
13 you've got to start thinking, well, if I can't go over  
14 that \$6,500 per unit, then my costs have to be around  
15 \$5,000 per unit prior to the 30 percent bump or I'm going  
16 to be over the top. So we'd like to make an amendment to  
17 that particular section of the QAP to where we strike the  
18 \$6,500 per unit. I probably would not be in opposition if  
19 there was something added to it, like Mr. Garvin said, but  
20 I think it is an issue that does need to be looked at a  
21 little further. Thank you.

22 MR. JONES: Thank you, sir. The next speaker  
23 is Mr. Kahn.

24 SPEAKER: Mr. Kahn passed on that.

25 MR. JONES: The next speaker is Mr. Lynch.

1 MR. LYNCH: I'd like to wait till the agenda  
2 item comes up.

3 MR. JONES: The next speaker is Ms. Brown.

4 MS. BROWN: Is that Dora Brown?

5 MR. JONES: Yes, ma'am.

6 MS. BROWN: I'd like to wait also.

7 MR. JONES: The next speaker is Mr. Sherman.

8 MR. SHERMAN: I'd like to wait till 2(e) comes  
9 up, as well.

10 MR. JONES: Mr. Halla has already spoken. Is  
11 that correct?

12 MR. HALLA: Yes, thank you.

13 MR. JONES: Mr. Price?

14 MR. PRICE: I'd like to wait until item 2(a)  
15 comes up, please.

16 MR. JONES: Yes, sir. Mr. Sugrue.

17 MR. SUGRUE: I'm going to speak on the QAP but  
18 I'll go ahead and speak now. My name is Mike Sugrue; I'm  
19 with Simpson Housing Solutions; we are an equity provider  
20 for low income housing tax credits. I'm also representing  
21 today the Texas Affordable Housing Investors Coalition,  
22 which is made up of a number of the investors who invest  
23 in the low income housing tax credit properties in the  
24 state of Texas, and we do in excess of 80 percent of all  
25 of the units that are developed; we are the investors for



1 these units.

2 We're very proud of what we've been able to  
3 accomplish in past years, and we were very involved in the  
4 Senate Bill 322 and a number of comments. I'm a little  
5 surprised that some of the comments that have changed in  
6 the QAP which appear to be maybe 11th hour comments, but  
7 I'll speak more directly to them as we go through.

8 I have given you some proposed amendments that  
9 the Texas Affordable Housing Investors Coalition would  
10 recommend, and I'll talk to those specifically. Of  
11 course, there's the valuation factor, Section 49.7(c) --  
12 that's on page 52 of the 236 pages -- we would recommend  
13 an amendment that would include language to say: to  
14 ensure the allocation of credits are economically feasible  
15 consistent with Section 42 of the Internal Revenue Code of  
16 1986, et cetera, based on sound underwriting.

17 This language appears in Senate Bill 322 on  
18 numerous occasions, and we're very concerned from the  
19 investment community that these properties remain  
20 economically viable, and without this language, there is a  
21 potential possibility the board could be placed in a  
22 compromising position where they'd have to make a  
23 recommendation without the economic viability.

24 The second recommendation we have -- which  
25 appears to be the hottest button based on what's going on

1 out in the hallway today -- is Section 49.7(f)(7)(C), the  
2 Low Income Targeting, and that's on pages 73, -4, -5 and -  
3 6 of the 236 pages.

4 Here we'd like to make a recommendation for an  
5 amendment that says, "To qualify for the points for units  
6 set aside for tenants at or below 50, 40 and 30 percent of  
7 AMGI, an applicant must provide evidence of commitment of  
8 funds which specifies the amount of funds committed, terms  
9 of the commitment and number of units targeted at the AMG  
10 level." In a real quick compromise out in the hall a  
11 little while ago, we agree that no more than 50 percent of  
12 the developer fees shall be deferred in any event, either  
13 to provide lower targeting units and/or deferred developer  
14 fees for cost overrun and/or fees for permanent debt.

15 In the investment community, once we cross that  
16 50 percent deferred line, we get very squeamish on  
17 investing in these deals, and if rates go back up -- which  
18 we know they will; historically they do, and who knows  
19 when to predict that -- we must have a developer fee  
20 available to offset an increase in rate and a decrease in  
21 perm debt. Unless a rate gets locked early on, there are  
22 fees -- cost to do that, and of course we ask everyone to  
23 lock a rate while rates are down where they are.

24 To continue on with that amendment -- I'm sorry  
25 to interject that -- "If local HOME funds are used for

1 units set aside for units set aside for tenants at 50, 40  
2 and 30 percent AMGI, the applicant shall have proof of  
3 submittal of these local funds to receive the points;  
4 however, if a firm commitment for the local HOME funds is  
5 not received by the department prior to ten days preceding  
6 the LIHTC reservation announcements, the points should be  
7 deducted."

8 We realize this will be somewhat burdensome for  
9 staff; however, HOME funds and all the ancillary funds  
10 necessary to provide the lower targeting, they don't run  
11 necessarily in conjunction with the credit application  
12 period, so someone may be able to apply but they don't  
13 have the hammer to get the firm commitment before they  
14 make an application for credits, especially since we're  
15 doing pre-app in January. So we'd hope that there would  
16 be some consideration there.

17 My last section that I have is Section  
18 49.7(f)(4) unit size, and that's on page 63 -- I guess I'm  
19 going a little backwards here -- and we'd make a  
20 recommendation that the one-bedroom units be reduced to  
21 approximately 700 square feet and the one-bedroom elderly  
22 be reduced to as low as 550. Of course, they obviously  
23 can be larger. We believe that you can create a decent  
24 one-bedroom unit in those square footages. We also think  
25 that in the two-bedroom square footage, while there is a

1 900 square foot currently for non-elderly, that we would  
2 interject a 750 square foot minimum for elderly two-  
3 bedroom units.

4 I believe there are many elderly units that  
5 work as a two-bedroom, one-bath or 1-1/2-bath because of  
6 numerous reasons: the couple is still together, usually  
7 the husband snores like an old freight train and he's  
8 banished to the second bedroom and/or people would like a  
9 craft room, a sewing room, and there's many grandmothers  
10 who believe that their grandchild will come spend the  
11 night with them and they'd like to have a place for them,  
12 so two bedroom units have been very popular in senior  
13 housing in many issues.

14 MR. JONES: Snoring can go both ways.

15 (General laughter.)

16 MR. SUGRUE: Yes, it can. My wife will  
17 disagree with that even though I've threatened to record  
18 her.

19 And the last thing I have is a clarity issue  
20 about a development which is located in a city or county  
21 with a relatively low ratio of awarded credits in dollars  
22 to its population. It says, "Only the first sentence is  
23 quoted, however, Exhibit 201(f) needs to read in its  
24 entirety." So I guess that is a minor change in 201(f)  
25 and it seems that the language doesn't set forth the

1 variances of age for the old tax credit units that were  
2 issued nor the type, family/elderly.

3           We had spoken before about trying to have the  
4 concentration issue be of like product -- family to  
5 family, elderly to elderly. Because a product is down the  
6 street and it may be family, it doesn't mean that there's  
7 not necessity for elderly in that same community, and  
8 vice-versa. I understand that there's not sufficient data  
9 to track that. I'm surprised at that, but that being the  
10 case, I would suggest that we try to generate that data so  
11 that we do not preclude developing affordable housing as  
12 necessary.

13           That's the end of my comments. Thank you for  
14 listening to me, and I'd be happy to answer any questions  
15 if there are any.

16           MR. CONINE: Mr. Sugrue, on your second point  
17 there when you were talking about the commitment for local  
18 HOME funds being received by the department ten days  
19 prior, is that a case of the chicken or the egg? Is it  
20 one of those situations where the local municipality  
21 doesn't want to give up HOME funds if they don't have the  
22 tax credit deal, and of course we don't want to give up  
23 tax credits unless we know they've got the HOME funds?

24           MR. SUGRUE: More or less. The local community  
25 is going to wait to make sure that they're either on a

1 short list or they determine you have a great opportunity,  
2 but they're going to do it at their own pace in any event.

3 MR. CONINE: So in your experience, does that  
4 put an undue burden on the developer for him to have to  
5 have that commitment in hand ten days prior, even though  
6 it's virtually unknown whether or not he'll get the tax  
7 credit?

8 MR. SUGRUE: No. I think that gives the  
9 developer a hammer to say I have to know within ten days  
10 because he can make his application when he makes his  
11 application for credits or even when he makes his pre-app,  
12 but give him a hammer to go back to the issuing agency to  
13 say I have to know ten days ahead of time or I lose the  
14 opportunity for this which means this community loses the  
15 opportunity for the housing.

16 MR. CONINE: So the municipalities can do a  
17 subject to the HOME funds or whatever.

18 MR. SUGRUE: Something to that effect.

19 MR. CONINE: Okay, thank you.

20 MR. JONES: Thank you, sir. Mr. Howison?

21 SPEAKER: He'll be speaking later, please.

22 MR. JONES: Thank you. Ms. Patty Anderson?

23 MS. P. ANDERSON: Good morning again. My name  
24 is Patty Anderson; I am executive director for United  
25 Cerebral Palsy of Texas which is a nonprofit organization

1 serving individuals with disabilities across the state.  
2 We are also the lead organization for the Texas Home of  
3 Your Own Coalition and a recipient of HOME funds through  
4 TDHCA.

5 I wanted to offer some comments this morning on  
6 the Low Income Housing Tax Credit Qualified Allocation  
7 Plan, just two points. One is that we fully support the  
8 accessibility features that are recommended for townhome  
9 units that require that the ground level of a townhome, or  
10 other two-story dwelling units, to include one bathroom  
11 and one bedroom, and then of course they would meet the  
12 Fair Housing Standards.

13 We're very pleased to see many of the proposed  
14 changes in the QAP that have been based on the public  
15 testimony that's been taken. The recommendation by staff  
16 to remove the provision for special housing development  
17 will, we believe, help eliminate or reduce the development  
18 of segregated housing, so we fully support the staff's  
19 recommendation to remove that provision for special  
20 housing development, and we believe that will match the  
21 department's adopted policy to discourage the segregation  
22 of persons with special needs from the general population.

23 Staff is proposing that Section 8 grants from  
24 HUD be included in the point structure of Exhibit 208. We  
25 are in support of efforts to produce affordable and

1 accessible and integrated housing for people with  
2 disabilities. In Texas, the Section 8 projects have  
3 traditionally been segregated developments -- by that, I  
4 mean exclusively for people with disabilities -- and we  
5 are aware that there are a few scattered sites around the  
6 country, a few 811 projects that are scattered-site type  
7 developments around the country, and so we would also like  
8 to support the development of those types of projects, and  
9 that, of course, would be consistent with the department's  
10 intent to encourage integration.

11 So in closing, I want to again just thank the  
12 staff for their hours of hard work in putting this plan  
13 together and their receptiveness to many of the comments  
14 that they received through the public hearing process.  
15 Thank you.

16 MR. JONES: Thank you. Mr. Voelker?

17 MR. VOELKER: Good morning, Mr. Chairman and  
18 members of the board. The first thing I want to do is  
19 congratulate staff. They have an incredibly difficult  
20 task in trying to balance what the legislature is telling  
21 them that they need to do, that the legislature wants them  
22 to do, and the actual needs of the program and the way the  
23 program needs to work and the economics of our program.

24 Unfortunately, I think at this point we're  
25 almost behind the 8-ball because the legislature has kind



1 of told us what they want to see, and so we have to kind  
2 of react to that, and it would almost be more helpful if  
3 we had a little more input -- and we really need to -- in  
4 the development community and the investor community, have  
5 more input into the way the legislation gets drafted. So  
6 I think we've got some situations where the legislation is  
7 kind of pushing us to do some things that are very, very  
8 difficult to make work under the Section 42 Tax Credit  
9 Program.

10 I've given you my written comments, including,  
11 particularly for Mr. Conine's benefit, code references so  
12 that we can actually find them easily. Some of these  
13 issues have been talked about by other speakers; I'd also  
14 like to comment on them and hopefully give a little more  
15 background information on the way it actually works in  
16 practice and some of the issues that come up because of  
17 some of the changes that are being made in the QAP.

18 The first one is the Low Income Targeting  
19 Points which is in 49.7(f)(7)(C). The revised draft of  
20 the QAP contains a substantial change from what was  
21 proposed in the initial draft which was disseminated for  
22 public comment. The initial draft had a limitation on the  
23 number of units that you could do at 30 percent and 40  
24 percent of median area income.

25 Just by way of background, I'm very favorably

1 inclined to trying to skew units down to try and reach the  
2 very low income people in Texas. We've got a development  
3 we got approved this year in Fort Worth for tax credits  
4 that we're in fact doing; we have a nonprofit that's very  
5 substantial that owns 64 houses in a 16-plex spread out  
6 all over Fort Worth and Arlington, and they're going to  
7 sell some of their houses and provide the support for us  
8 to do those units at 30 percent of median area income.

9           That particular nonprofit does housing for  
10 previously homeless families and they provide all the  
11 social services and transition those families from  
12 homelessness ultimately back into the mainstream of the  
13 community.

14           So those units, we'll probably have 40 to 50  
15 units in that development that will be for people at 30  
16 percent of median area income, but we're just incredibly  
17 fortunate to have a nonprofit that can support that, so we  
18 have a source for doing that. It wasn't a requirement in  
19 this year's QAP; instead, it was just something we decided  
20 we wanted to do and I was actually approached by the  
21 nonprofit to try and find a way to do a development that  
22 would be totally mixed income, including help their  
23 families.

24           So I'm very sensitive to the needs of the very  
25 low income people in Texas and trying to find ways to

1 serve that population; however, it's incredibly difficult  
2 to try and have a development that has a large  
3 concentration of people at 30 percent and 40 percent of  
4 median area income, and I want to raise some of the issues  
5 that that raises.

6 First of all, you end up with a concentration  
7 in one development of very low income people and we all  
8 know that housing policy by HUD over the last 15 years or  
9 so has been trying to disseminate lower income people out  
10 into the community and not concentrate them in one  
11 particular area. It creates all kinds of social problems  
12 over time when you concentrate a large number of very low  
13 income people in one place.

14 One of those issues in particular raised by  
15 school districts when we try and locate affordable housing  
16 is they don't like having large concentrations of very low  
17 income kids in one elementary school because it creates  
18 issues for the school in trying to deal with children who  
19 have a lot of social needs that go with their home life,  
20 and then you try and put them in the school and have the  
21 school deal with those during the day.

22 The second is not-in-my-backyard factors which  
23 it's kind of strange for me as a developer to raise not-  
24 in-my-backyard as an issue, but it's something we face  
25 every day when we go and try to find sites, and then in

1 particular when you try and go get support -- which is now  
2 required -- from homeowners groups, support from  
3 politicians. When you say I'm going to do 40 percent of  
4 my project at 30 percent of area median income, the red  
5 lights are going to go off big time.

6 It's very difficult already to place affordable  
7 housing, but when you start to trying to deep rent skew  
8 and say we're going to have that significant a portion of  
9 the development at those income levels, it's going to  
10 create real issues with homeowners and politicians.

11 The third is marketability of units. If you  
12 end up with a mixed-income development -- which we're kind  
13 of encouraged to do also -- that has a significant portion  
14 of 30 percent units and then 50 percent units and 60  
15 percent units and market-rate units, it becomes very  
16 difficult because a lot of those 30 percent units are  
17 going to be people on Section 8 just by the nature of that  
18 requirement, and it becomes very difficult to try and  
19 market the market-rate units and the 60 percent units  
20 because people have a little tendency not to want to live  
21 around Section 8 tenants in particular and when there's a  
22 large concentration of them like that.

23 So we need to be real cautious in terms of the  
24 marketability, ultimately, of the whole project when we go  
25 placing a significant portion of people at 30 percent and

1 40 percent of median area income into the project.

2 Social services becomes an issue. The normal  
3 social services you do in connection with a tax credit  
4 deal may need to be greatly enhanced because of the social  
5 needs of people at those lower income levels. You might  
6 need to look at things like food pantries, assistance with  
7 utilities, et cetera, because of the income level you're  
8 dealing with.

9 The last one is not unimportant. It's the need  
10 to balance the major cities with the mid-size cities in  
11 the rural areas. It's going to be impossible, really, for  
12 a rural deal or a smaller city deal to score the points  
13 for being at 30 and 40 percent of area median income  
14 because their income levels, to start off, with are a lot  
15 lower, and now you're saying we've got the deep rent skew  
16 and they just can't make their numbers work. So what  
17 you're going to end up with is somewhat of a bias toward  
18 the large cities, particularly the higher income large  
19 cities, if we go this route.

20 These issues really need more extensive study.  
21 Unfortunately, that change came about as part of the  
22 revision which we haven't really had an opportunity to  
23 public comment on except now. I would encourage the board  
24 to go back to the path that was chosen in the initial  
25 draft of the QAP and that said let's start moving toward

1 having more units at 50 percent and 40 percent, or 30 and  
2 40 percent of median area income, but let's put a  
3 limitation on them now, and let's encourage staff to get  
4 together with the development community and investment  
5 community over the next year and try and come up with a  
6 proposal that would really make some sense for next year.

7 I've given you some proposed changes. One  
8 thing that needs to change is right now you score points  
9 for being at zero percent of 30 percent, or zero percent  
10 of 40 percent, or zero percent of 50 percent. It starts  
11 out at zero to nine, so everyone is going to score being  
12 at zero to nine which I don't think that's what was  
13 intended, so that needs to be dealt with, on particularly  
14 the 50 percent of AMGI level.

15 Then I'd change sub-part (2) to read: The  
16 development selecting to set aside 5 percent of the tax  
17 credit units for individuals or families at 40 percent  
18 would receive five points, and then if you set aside 5  
19 percent of your units at 30 percent of median area income,  
20 you'd receive seven points.

21 Another thing that needs to be clarified is  
22 right now it's not clear in those rules that you couldn't  
23 have the same unit score for 30 percent, 40 percent, and  
24 50 percent, and I think we need some idea what the factor  
25 is; otherwise, you might be able to have qualified units

1 to score in all those categories which I don't think was  
2 the intention.

3 And lastly -- Mike Sugrue raised this point --  
4 I think we ought to take a look at having a set funding  
5 source for the units that are set aside at those lower  
6 income levels.

7 Moving on, an issue that was raised by someone  
8 else was 49.7(g) which is a limitation on tax credit  
9 awards per unit, and I'd also like to kind of flesh out  
10 what the issues are there. The way it's phrased right now,  
11 there's no differentiation made between qualified census  
12 tract and non-qualified census tract, and there is a  
13 federal rule that basically says you're supposed to get 30  
14 percent more in tax credits for being a qualified census  
15 tract to encourage you to go into those areas.

16 The other aspect of it is that it doesn't  
17 differentiate between different types of developments,  
18 whether it's a rehab or a new construction, whether it's  
19 all one-bedroom units or all four-bedroom units -- which  
20 obviously there's a huge cost differential in doing  
21 that -- whether it's a senior facility with elevators and  
22 hallways or a family facility, and whether it's a high  
23 rise deal or a one-story deal in a rural area, or if it's  
24 townhomes versus apartments, small development versus  
25 large development, lots of amenities or no amenities.

1           And so I think the reason that the federal rule  
2 and what we've done in the past is we had staff doing  
3 underwriting, and the underwriting process and the caps on  
4 hard cost per square foot in essence accomplished the same  
5 goal as what we're trying to get to here, and I would  
6 encourage us to continue to let staff go through that  
7 process of underwriting deals and figuring out what the  
8 amount of tax credits are that are needed to make the  
9 project feasible versus trying to come up with a hard  
10 rule.

11           The third issue is definition of qualified  
12 nonprofit organization. We had an issue with our deal in  
13 Fort Worth this last year which was a joint venture with a  
14 nonprofit and they were the 51 percent general partner, so  
15 we could have applied in the nonprofit pool. That really  
16 forces us to go into kind of a fasting choice of do I want  
17 to go into a pool that may be a little less competitive --  
18 which sometimes the nonprofit pool is -- but be capped at  
19 only 10 percent of the tax credits, or do I want to go  
20 into the general pool and slug it out with the for-profit  
21 developers who tend to score better but I've got more  
22 credits to play with.

23           Other states don't do it that way. Oklahoma  
24 and Arizona are two states I've dealt with in the past;  
25 they do the nonprofit set-aside first because it's



1 supposed to be a minimum of 10 percent of the credits to  
2 nonprofits, then they take all the remaining applications  
3 and they shove them over into whatever pools they go into  
4 after that, and they can compete in those other pools if  
5 they didn't get awarded in the nonprofit set-aside.

6 That way you don't have a practical ceiling on  
7 the nonprofit deals and you allow them to compete heads up  
8 with the other deals in the other set-asides. I just  
9 think that would probably be a better practice, and the  
10 staff says that they can't administer that in their  
11 comments, but it's done in other states.

12 And the last one is accessibility features in  
13 townhome units. Some other people have talked about that;  
14 I'll try and be brief.

15 The proposed rule says you have to have a  
16 bedroom and a bathroom on the ground floor, and in our  
17 townhome deal that we're building in Fort Worth, we put a  
18 bathroom on the ground floor of all the units. The other  
19 thing we're doing is we are, by choice -- because it  
20 wasn't required with last year's rules or this year's  
21 rules -- we have chosen to put all of our -- we don't have  
22 any one-bedrooms, we've just got twos, threes and fours --  
23 the two-bedrooms are where the issues are and we're going  
24 to do 40 to 50 percent of our two-bedroom units as flats  
25 so that we have an up and down as we go through the

1 development. It's a very nice development style.

2 In that case, those two-bedroom flats, 40 to 50  
3 percent of them will be completely handicapped accessible  
4 with all the bedrooms and all the bathrooms and everything  
5 on the ground floor.

6 If you instead choose to say that you have to  
7 have one bedroom on the ground floor of every one- and  
8 two-bedroom unit, what's going to happen is that's almost  
9 an impossible style to build unless you just do total  
10 flats. It's very expensive to build, and I think what  
11 will happen is you will see no townhome developments being  
12 developed and so they then won't be available either to  
13 the low income community or to the handicapped accessible  
14 community.

15 So if I had to propose something -- and  
16 somebody else mentioned this, the three-story apartment  
17 units really only have one-third of the units on the  
18 ground floor -- what I would propose is, and I've kind of  
19 written the rule here, is that every unit type has to have  
20 at least one-third of the units of that unit type having a  
21 ground floor bedroom and a ground floor bathroom, and that  
22 way you've accomplished the same basic equation as you  
23 have in high rise apartments. We can still build that  
24 unit type, we can do the kind of up-and-down style that  
25 I'm talking about, and it works for everyone, and

1 hopefully that's a compromise that everyone could live  
2 with.

3           Those are all my comments. Oh, I have one  
4 other kind of technical change that I've listed on the  
5 bottom, and staff can take a look at that. There are some  
6 little technical things that need to be addressed in some  
7 of the rules as well. If you have any questions, I'll  
8 take those.

9           MR. CONINE: On your last comment about the  
10 townhome units on the third, third and third, what about  
11 the one-bedroom units specifically?

12           MR. VOELKER: We could do the same thing. We  
13 could put one-bedroom flats on the ends of the buildings;  
14 you could do a third of your one-bedrooms as flats and you  
15 just attach them on the ends of the threes and the fours.

16           MR. CONINE: But you're using up, obviously,  
17 more ground space when you do that.

18           MR. VOELKER: Sure you are.

19           MR. CONINE: And you say in your development  
20 you say you're doing two-bedroom flats, so you've got the  
21 up-and-down thing going on which even uses more ground  
22 space.

23           MR. VOELKER: Sure. We have lots of ground to  
24 play with.

25           MR. CONINE: Okay, thanks.

1 MR. JONES: Thank you, sir. Appreciate it.

2 The next speaker is Ms. Donna Lee.

3 MS. LEE: I'm waiting for the agenda item.

4 MR. JONES: Thank you. The next speaker is Mr.  
5 Sloan.

6 MR. SLOAN: Chairman Jones, a quick question  
7 first. I have a brief statement I'd like to make now and  
8 then come back and speak on the agenda item. Is that  
9 allowed?

10 MR. JONES: I tell you what, we've got so many  
11 speakers today.

12 MR. SLOAN: I'll postpone to agenda then.

13 MR. JONES: Okay, thank you, sir. Mr. Metz,  
14 Mr. Albert Metz?

15 MR. METZ (translated by Jennifer McPhail):  
16 Good morning. My name is Albert Metz. I'm with ADAPT of  
17 Texas, and I would like to say there needs to be more  
18 affordable integrated housing out there for people who are  
19 getting out of nursing homes and other institutions.  
20 Thank you.

21 MR. JONES: Thank you, sir. Ms. Jennifer  
22 McPhail?

23 MS. McPHAIL: I'm Jennifer McPhail and I'm also  
24 with ADAPT of Texas.

25 MR. JONES: I want to thank you for your help

1 today, too. Thank you very much.

2 MS. McPHAIL: No problem. I wanted to talk to  
3 you a little bit about this stuff that you're going to do  
4 on the QAP. I want to let you know that ADAPT supports  
5 your efforts to provide accessible, affordable and  
6 integrated housing. And when I say affordable, I mean  
7 affordable to people not only at the 30 percent median  
8 family income, but I want you to realize, in case you've  
9 forgotten, that most folks with disabilities don't even  
10 make that much. We're at like 15 percent of the median  
11 family income, so when you hear people talking about how  
12 hard it is to provide for folks at 30 and 40, think about  
13 those of us with disabilities who are still struggling  
14 just to have a place to live, just to be in the community  
15 and hopefully some day get a decent education and a good  
16 job and be a part of the community.

17 Many people find that because of a lack of  
18 affordable, accessible housing that they either have to go  
19 into institutions or flutter about amongst family and  
20 friends, and that's no way to live. Having to always live  
21 day to day not knowing what your future is going to be  
22 like is very unsettling and it's inhumane and it's  
23 discriminatory to not make sure that all your programs  
24 include those of us with disabilities.

25 Again, integrated housing is essential. We

1 wanted to let you know that we support removing special  
2 housing development requirements; we agree with staff that  
3 that needs to be removed, in other words. Special usually  
4 means segregated. People don't usually think of it that  
5 way, but it means lesser, segregated, something that the  
6 rest of the community doesn't want. So think of it that  
7 way when you're looking at that provision.

8           What it has done for us is created housing that  
9 only disabled people are expected to live in -- I mean,  
10 elderly and young both. A lot of times people don't think  
11 of elderly folks as needing access but they do. You don't  
12 need a certain access amenity because you turned 65; you  
13 need that because you're disabled. So we support making  
14 sure that everyone is in the community and no one is  
15 segregated.

16           Also, I wanted to talk to you about the 811  
17 grants that you get from HUD. We would like to see that  
18 you only support scattered site or the projects that take  
19 tenant based rental assistance. What this does is ensure  
20 that you get a nice mix of folks coming into the project  
21 and it's not all a disability ghetto, in other words.  
22 Because what that does is it takes away from the  
23 community.

24           If we're going to start seeing that people with  
25 disabilities have the right to be in the community, then

1 we have to be seen as a valuable part of the community,  
2 and you can't be that unless you're somebody's neighbor  
3 and their friend and their co-worker and a fellow student.

4 If you're not those things, then you're not part of the  
5 community. So we need to make sure that that sort of  
6 philosophy gets into any kind of housing programs that you  
7 support.

8 And also, we'd like to support the  
9 recommendations made for the townhomes. We think it's  
10 very important to have access in the townhomes because  
11 those are very popular projects nowadays, and we would  
12 hate to see that people with disabilities face  
13 discrimination on that level too.

14 Speaking to what the gentleman had mentioned, I  
15 don't know very much about townhomes, to be honest with  
16 you, but I would remind you actually that three- and four-  
17 bedrooms that are affordable and accessible to people with  
18 disabilities are even more rare than the one- and two-  
19 bedrooms. So anything that you do, if it's on the first  
20 floor, be it a one- or two- or three- or even four-  
21 bedroom, we would like to see that there is some sort of  
22 access that meets the Fair Housing Standards in those  
23 townhomes because it's very important that people have  
24 choice.

25 We also have families; there are a lot of

1 people with disabilities who raise their own children, who  
2 have their own families, or become old and move in with  
3 their daughters and sons. As they're older, they become  
4 disabled and they need access too, and it's something that  
5 we've neglected in the past, and we need to start looking  
6 at townhomes as well as apartments and single family  
7 housing as something that people are going to want because  
8 we need variety as much as everyone else because we are  
9 such a diverse community. Not everyone is going to want  
10 and need the same things.

11 I do fine with a single one-bedroom apartment  
12 because right now I don't have anyone living with me, but  
13 eventually I hope to have a family and I would like to  
14 have a choice in what I can live in, and right now I don't  
15 have that luxury. There are people like my mother and  
16 father who are both disabled who eventually probably are  
17 going to need assistance from me or my younger sister. So  
18 what's that going to mean? Probably that one of them will  
19 be moving in with my sister or I, potentially, and right  
20 now we don't have a lot of choice.

21 My father actually did get sick recently, and  
22 we did look around for a two-bedroom place that was  
23 affordable to us, but there weren't very many choices.  
24 There were long waiting lists and so we sort of just  
25 decided to try his living on his own and seeing what



1 happened there. Now, eventually he may need to move in  
2 with me, but that will take time because there is such a  
3 huge demand because there are so few apartments that are  
4 affordable that are more than just one bedroom.

5 If it's hard for me in a large city, I know  
6 it's hard for other folks too. You know, it's like a  
7 needle in a haystack even more than your average single  
8 one-bedroom apartment. So we support the townhomes being  
9 accessible; we think it was a very progressive thing to  
10 do. I'm looking forward to it, actually, because a  
11 townhome sounds pretty good. Thank you.

12 MR. JONES: Thank you.

13 MS. McPHAIL: And also, I sort of spazzed this  
14 morning when I filled out my card, so let me leave with  
15 you our comments about your Low Income Housing State Plan,  
16 so that way you can have that. And we'll also be making  
17 written comments more formally, so you can expect that.  
18 Thanks very much.

19 MR. JONES: Thank you. We certainly appreciate  
20 you being here.

21 Next we have Ms. Susan Maxwell.

22 MS. MAXWELL: Hello, again, this morning. I'm  
23 Susan Maxwell from the Texas Council for Developmental  
24 Disabilities, and I wanted to reiterate our support of the  
25 QAP townhome qualifications that they have an accessible

1 bedroom-bathroom on the ground floor.

2 One point that hasn't been mentioned but a lot  
3 of people with disabilities require attendant care, either  
4 family, friends or hired attendant. Having another  
5 bedroom for them on the upstairs really helps a lot so  
6 that they can have that assistance they need.

7 Finally, I would like to express the concern  
8 about using Section 811 grants so that it results in an  
9 integrated housing setting for people and that it doesn't  
10 become segregated. And I don't want to beat any more dead  
11 horses here, so that's my comments. Thanks.

12 MR. JONES: Thank you. Appreciate it. Any  
13 questions?

14 Mr. Ricardo Calderon?

15 MR. CALDERON: Good morning. I'd like to speak  
16 at the time that the item is presented, item 2(d).

17 MR. JONES: Thank you, sir. Mr. John Hennesey?

18 (No response.)

19 MR. JONES: Mr. Walter Moreau?

20 Mr. Henneberger, I'm sorry, I just called you  
21 Mr. Hennesey, but that looks like a "Y."

22 MR. MOREAU: My name is Walter Moreau. I'm the  
23 director of Foundation Communities; we're a nonprofit  
24 affordable housing and family service provider here in  
25 Austin.

1           On the QAP, I wanted to make some general  
2 comments. I think the staff have done really an excellent  
3 job of implementing the Sunset Bill, finding compromises  
4 between different policy positions, overall developing a  
5 more transparent, a more fair, efficient allocation system  
6 that targets those in need, maintains quality, and  
7 preserves developer profitability.

8           I think everyone has agreed it's not perfect,  
9 there's lots more work to be done for the document next  
10 year, especially in terms of clarity and editing.

11           I really am excited and support the staff's  
12 decision to recommend a cap of \$6,500 in credits per tax  
13 credit unit. Currently it says per unit, and I think the  
14 staff's intention, the Texas Affiliation of Affordable  
15 Housing Providers meant to say "per tax credit unit" so  
16 that mixed-income projects didn't get more credits  
17 inadvertently.

18           I think that it's really a very simple, very  
19 clear change that doesn't prevent projects from any part  
20 of the state, doesn't prevent developers from doing  
21 economically feasible projects, and will result in at  
22 least a 10 percent production in the number of units  
23 around the state. There are deals that are very expensive  
24 that could obviously claim more credits, but the question  
25 then is do they really need those credits to work versus

1 other projects which could go forward with less money.

2           There's been a lot of discussion about the  
3 income targeting, some concern from the finance community  
4 that a developer doesn't go in and defer their entire  
5 developer fee. I think there's consensus that that should  
6 be somehow limited at 50 percent, and some other speakers  
7 have some language that they've drafted to submit and that  
8 makes sense to me.

9           I think that's it. I want to compliment the  
10 staff, and thank you for your consideration of the QAP  
11 today.

12           MR. JONES: Thanks. Appreciate you being here.  
13 Mr. Henneberger?

14           MR. HENNEBERGER: Mr. Chairman, members. My  
15 name is John Henneberger. I'm the co-director of the  
16 Texas Low Income Housing Information Service; we're a  
17 nonprofit organization which represents the interests of  
18 poor people in housing.

19           I, too, am supportive of the draft that the  
20 staff has presented to you today for the Qualified  
21 Allocation Plan. It does not represent everything that I  
22 would have liked to have seen in the document; I would  
23 have liked to have seen more points for lower income units  
24 and a variety of things, but I understand the process of  
25 compromise, and I understand the process of accepting the

1 economic realities of the funds which are available. And  
2 I believe the staff has proposed a very wise and very  
3 careful and very balanced approach which meets the  
4 statutory obligations the department is under under the  
5 Sunset Bill in terms of the Low Income Housing Tax Credit  
6 Program.

7 We've worked pretty intensively over the past  
8 week with members of the development community and  
9 nonprofits and advocates in an attempt to understand each  
10 other's points and perspectives on this issue. I've come  
11 more and more to appreciate how good of a job the staff  
12 has done in balancing those issues in this draft.

13 Mr. Sugrue mentioned to you earlier that among  
14 a number of us we have a joint recommendation to offer the  
15 board regarding the percentage of developer fees and the  
16 way the developer fees could be applied to achieving  
17 points in the lower income process, and I trust that this  
18 is -- if I may present this.

19 MR. JONES: Sure.

20 MR. HENNEBERGER: -- that this is the language  
21 which represents what Mr. Moreau, Mr. Sugrue, Mr. Bishop,  
22 a number of us have tried to work on which I believe that  
23 they believe is economically feasible and will ensure that  
24 the program will be able to operate successfully in the  
25 financial markets and yet which still recognizes the need

1 for the department to very strongly and affirmatively  
2 point in the direction of serving lower income people  
3 under the statute.

4 With that, thank you very much, and again,  
5 thank the staff so much for a remarkable balanced QAP.

6 MR. JONES: Thank you, sir. The next speaker  
7 is Mr. Rowan Smith.

8 MR. SMITH: I'm going to wait for the agenda  
9 item.

10 MR. JONES: Thank you, sir. The next speaker  
11 is Mr. James Fisher.

12 MR. FISHER: Agenda item.

13 MR. JONES: Thank you, sir. The next speaker  
14 is Mr. Brian Potashnik.

15 MR. POTASHNIK: Agenda item.

16 MR. JONES: Thank you, sir. The next speaker  
17 is Mr. Mike Dunn.

18 MR. DUNN: I'm afraid I walked in late. I  
19 could wait till the agenda item, too, unless you are on  
20 that right now.

21 MR. JONES: We're not. Thank you, sir.

22 At this time I think I've called everybody that  
23 submitted a witness affirmation form. Have I left anybody  
24 out? Yes, sir?

25 MR. SHERMAN: I had asked to speak at the

1 agenda item, but because of time constraints, could I use  
2 my time now?

3 MR. JONES: You certainly may, Mr. Sherman.

4 MR. SHERMAN: Mr. Chairman, members of the  
5 board, my name is Bob Sherman. I'm here to speak on the  
6 Qualified Allocation Plan.

7 I have a draft that I think has been presented  
8 to you on 49.7(f)(7)(C) Low Income Targeting Points. I'm  
9 asking that no more than 5 percent of the tax credit units  
10 should be set aside for those tenants earning less than 40  
11 percent of median -- and I'll kind of race through this --  
12 and no more than 5 percent set be aside for those at 30  
13 percent. And I say here to qualify for 5 percent at 30  
14 percent of AMI, the applicant must show additional  
15 supplementary funding.

16 I think after hearing some of the very touching  
17 comments here this morning, I would recommend that the  
18 agency perhaps serve even lower income levels that I've  
19 mentioned here, but give us the financial tools to do it  
20 by putting things like caps on the amount of tax credits.  
21 When there are several other checks and balances in the  
22 application, you're asking for additional low income units  
23 with caps that are, in my opinion, impossible to meet in  
24 some areas, and I think you'll hear some other arguments  
25 about that today.

1           The draft Qualified Allocation Plan stated  
2 similar restrictions on deep rent skewing. It's an  
3 economic thing; it really has nothing to do with how to  
4 provide the units. We'd like to provide them; we have to  
5 have the financial tools and the financial protection to  
6 provide them.

7           This was a last-minute change of pretty major  
8 proportions; as opposed to adjusting the QAP, it  
9 completely changed it after the public comment period  
10 ended. The first draft limited the amount of deep rent  
11 skewing, and that was a pertinent one. This is a last-  
12 minute change and I think it's too large a change.

13           What we're concerned about, as well, is that if  
14 a developer thinks he can finance a property with 40  
15 percent of the tenants at 40 percent of median and another  
16 40 percent at 30 percent, you're going to get into a  
17 situation where it's not viable, once again, economically.

18           Also, in the past mixed income has been presented by the  
19 agency as the way to take this program to integrate  
20 people, and we've seen even more of that this morning at  
21 both the lower end, the very, very low end, and the higher  
22 end.

23           And I think that's the way this QAP should be  
24 developed, where you're bringing all sectors and not  
25 loading it up with any particular sector, not the high



1 end, not the very, very low end, to integrate -- for want  
2 of better words -- the socioeconomics in this program.

3 We are concerned that public agencies, public  
4 housing agencies would be able to take advantage of such  
5 deep rent skewing because they have other subsidies at  
6 hand available to them anyway, and that would really put  
7 us, as private sector developers, in competition with the  
8 housing agencies. And I don't think that's what this  
9 program was designed to do. I think it's something that  
10 has to serve an area in between and some at the bottom and  
11 some at the top -- for want of better descriptions -- and  
12 that's what I've put here in terms of an amendment which I  
13 think should be slightly modified, as I said previously.

14 If you have any questions?

15 MR. JONES: Thank you, sir. Appreciate it.

16 MR. BROTHERS: Mr. Chairman, I also signed up  
17 to speak at the agenda item and I was wondering if I could  
18 speak now.

19 MR. JONES: That would be fine. Your name,  
20 sir?

21 MR. BROTHERS: My name is Doug Brothers.

22 MR. JONES: Thank you, Mr. Brothers.

23 MR. BROTHERS: Thank you, Mr. Chairman and  
24 members of the board. My name is Doug Brothers and I  
25 represent Ken Mitchell and his project, Grand Texas

1 Seniors. Mr. Mitchell had a family emergency yesterday;  
2 he wanted to speak to you directly but he couldn't be  
3 here, and so he asked me to speak on his behalf.

4 MR. JONES: Excuse me. For some reason I don't  
5 have your witness affirmation form. Does somebody have  
6 it? If you would, if you would just fill one out as soon  
7 as you get through.

8 MS. GRONECK: He had one; we'll find it.

9 MR. JONES: I'm sorry, I can't find it; I  
10 apologize.

11 MR. BROTHERS: Thank you, sir. I'm speaking  
12 here to urge approval on the merits under item 2(a) of the  
13 Low Income Housing Tax Credit Application Number 1007,  
14 Grand Texas Seniors community. It is the highest scoring  
15 project for which we understand allocations are available.

16 I also want to speak to a recent new concern, apparently  
17 raised by staff, having to do with the issue of  
18 stabilization or lack of stabilization of an adjacent  
19 project which apparently, in staff's eyes, resulted in a  
20 reduction in priority for this project by staff.

21 As stated in my letter to Mr. Walker, the  
22 adjacent project in question, Country Lane, is a bond  
23 project; therefore, the section of the QAP relied upon by  
24 staff, Section 50.7(g)(2) doesn't even apply to the  
25 analysis. That section addresses stabilization in Tax

1 Credit programs and the adjacent project in this case is a  
2 bond project to which only subsection (3) would apply.

3           Moreover, and I think even more importantly,  
4 the market study on which staff relies predicted full  
5 occupancy of Country Lane by May of '01; the prediction  
6 proved to be well founded; we have demonstrated 100  
7 percent occupancy on this Country Lane adjacent project,  
8 and in addition, a substantial waiting list. Therefore,  
9 that project is and has been stabilized even if the  
10 section relied on by staff applies.

11           For those reasons we urge approval, as a matter  
12 of high priority, on the merits and allocation at the  
13 earliest possible time of tax credits to the Grand Texas  
14 Seniors project.

15           MR. JONES: Thank you, sir.

16           MR. CONINE: I'm misunderstanding. You're  
17 saying it's 100 percent occupied and staff said it wasn't  
18 stabilized. Was there a timing issue here?

19           MR. BROTHERS: I'm not clear in the sense of  
20 what the basis of staff's suggestion was that it wasn't  
21 stabilized, and I don't know if that's what they're  
22 relying on, but it is 100 percent occupied, has been for  
23 some time, and has a waiting list at the current time.

24           MR. CONINE: Okay, thank you.

25           MR. BROTHERS: Thank you.

1 MR. JONES: Thank you, sir.

2 MR. LYNCH: Mr. Chairman, do you mind if I  
3 speak too?

4 MR. JONES: We will let you do it.

5 MR. LYNCH: I was going to speak at the agenda  
6 item.

7 MR. JONES: I understand that, and I will say  
8 this to everybody, sometimes I think for everybody's  
9 travel plans, if we do more at the first, it helps  
10 everybody. Feel free to, Mr. Lynch.

11 MR. LYNCH: Thank you. Chairman Jones and  
12 board members, first I'd like to say that I commend the  
13 board and the staff on the 2002 QAP which is the item that  
14 I wanted to speak on today that came up, especially  
15 considering Senate Bill 322, which had, in my opinion,  
16 maybe some paradoxes in it when you start talking about  
17 that you want quality and you want low income tenant  
18 targeting to 30 and 40 percent, people who make that  
19 amount of money, and the diversification and the size of  
20 units.

21 But with that, I really had -- if I can just  
22 pass these out. I had three specific issues that I'd like  
23 to talk about. And I would like to think that I'm going  
24 to sit here and I'm not going to try to tout myself or my  
25 developments; I really want to try to talk about tenants

1 and what it is in the state of Texas to have real  
2 diversification issues and be able to have quality, and  
3 this is my opinion.

4 I think that sometimes some amendments are  
5 offered because the developer or an advocacy group targets  
6 what they want, and it's for their own concerns and not  
7 necessarily considering tenants across the whole state of  
8 Texas. The issue that I probably want to bring up first  
9 is quality. I have two requests on that; it just had to  
10 do with specifications which I hadn't seen any of those,  
11 nobody has mentioned those, but one of them had to do with  
12 ceramic tile floors which got scratched off the thing for  
13 two points, and the staff's comments on that was that  
14 someone had said it's a liability for the elderly and that  
15 it wasn't a quality issue.

16 They also struck out things like crown molding.  
17 Crown molding I can understand; crown molding is what you  
18 would call a cosmetic item. I like it in my house but it  
19 doesn't necessarily make the quality of life better. But  
20 if you start considering things like ceramic tile floors  
21 where a developer or a builder is willing to take part of  
22 their fees or profits or whatever they do and install  
23 things like ceramic tile floors, I think they ought to be  
24 awarded points for that.

25 The issue that it's also a very quality of life

1 issue for the tenant. The tenant in that particular case,  
2 you could go put vinyl flooring in some of these units,  
3 something like a Crown Bay [phonetic]. For as much as 90  
4 cents a square foot, you could put ceramic tile floors in  
5 the kitchen and the dining and the wet areas. It's going  
6 to cost you \$2.50 or \$3.00 a foot. And the difference is  
7 if they drop a plate on something like vinyl flooring, it  
8 scars it, and then when they move out, what do you do?  
9 You say, well, you've created this problem so you're going  
10 to have to pay for the vinyl floor. You don't have that  
11 issue if you have ceramic tile floors; it's there for the  
12 duration, it's there for the life of that development.

13           There was another issue there where they gave  
14 the same amount of points -- and I would just ask you to  
15 consider this just from a practical standpoint -- they  
16 gave the same amount of points for Hardiplank siding as  
17 they do for masonry or stucco, and I think the goal of  
18 this department and of housing as a whole -- I grew up  
19 very poor, I know what it is to be very, very poor -- I  
20 don't think that you ought to be able to drive along and  
21 see a development and say, Hey, that's a low income  
22 housing development.

23           I think they ought to be able to live in a  
24 community and it be separate and nobody know whether or  
25 not it's low income; that ought to be the goal of every

1 person out here is to say, Hey, you know what, I want  
2 these people to feel as good as I feel; I don't want to  
3 build nothing that I wouldn't live in myself. And I  
4 wouldn't build, I'm telling you right now I would not  
5 build a development that was just straight siding all the  
6 way around it and square boxes and people drive along and  
7 say, Hey, that's a low income housing development.

8 I don't think that it's to the benefit of the  
9 people who live there. It classifies them, they feel  
10 that; the next thing you know they say we live in the  
11 projects, they don't live in the Pegasus or whatever the  
12 name of the development is going to be, they don't live in  
13 someplace that they call home, it's the "projects." And  
14 that shouldn't be the goal of this department to do that.  
15 I think there ought to be a differential in points awarded  
16 if they're going to do that, so my request is that you  
17 strike out siding, that you shouldn't get that. Masonry  
18 is masonry, and you can define masonry by any building  
19 standards, masonry is going to be stucco -- and usually  
20 you have to define that -- or it's going to be brick. And  
21 that was my opinion.

22 The last issue I wanted to talk on, and it's  
23 one with all this paradox that you have in trying to get  
24 quality and size and diversification and low income  
25 targeting, one thing in the QAP -- and we've talked about

1 things like targeting low income, but you know what, you  
2 have the option there. The QAP doesn't say you have to  
3 target it, so you have the option of either taking those  
4 points or not and trying to go for it. And there's people  
5 that want to change that; if I could, I'd write it a  
6 different way too, but that's not the deal.

7 The one thing that I think totally affects the  
8 ability to develop the same unit, I think whether you live  
9 in South Texas in Laredo or whether you live in Dallas,  
10 Texas or whether you live in Tyler or whether you live in  
11 Odessa or San Angelo, you ought to be able to live in the  
12 same kind of house, the quality ought to be the same. And  
13 for people that would say that we limit this number to  
14 \$6,500 a unit on a tax credit unit, I would challenge any  
15 developer that's done that to tell me that they built the  
16 same unit in San Angelo, Texas, in Dallas, Texas, in  
17 Tyler, Texas, in Austin and in San Antonio or Houston or  
18 Laredo. They haven't done it; you cannot do it; you can't  
19 build the same unit.

20 The QAP sets out a way to monitor that. In  
21 other words, we're coming here with these numbers that say  
22 \$6,500, but in fact, the QAP allows for the staff to  
23 underwrite these developments and make sure that these  
24 developments score. So if a unit scores and it's  
25 justified to have \$7,500 for that tax credit unit, let it



1 have the \$7,500.

2 Just for a specific unit, I know that in Tyler,  
3 Texas there's a development there that I was the  
4 contractor on that was built by Mary May and Dan Elkin,  
5 they were the developers; I built that development. That  
6 development got \$7,514 a unit in tax credits. That is the  
7 exact same unit that's built in Weatherford, Texas, that I  
8 built and I built it for \$6,500 a unit. On the  
9 development that they had, they ended up deferring 90  
10 percent of their developer fees; on the unit that I built  
11 in Dallas, I ended up receiving about 25 or 30, developing  
12 about 75 percent of it and deferring that much.

13 All I'm saying is that there's a difference in  
14 quality across the state. You've already got an issue  
15 there that covers that. In other words, when the staff  
16 underwrites it, they can say, Hey, it's either justified  
17 or it's not justified. And I would just ask you to really  
18 consider that. I mean, I know that there's a lot of  
19 things that have been thrown out here before you today,  
20 but in my opinion, that's the one thing in this issue, in  
21 this whole QAP that would say to me as a developer: Hey,  
22 you know what, I want you to build a little cheaper house  
23 over here for these folks than you do for somebody over  
24 here. And I think that's wrong.

25 I think anything in this QAP that would limit

1 our ability as developers to build the same quality  
2 development in South Texas as we would in Dallas, Texas is  
3 wrong and it's not fair to the tenants that are going to  
4 live in those units. I think every one of them deserve  
5 the pride and the quality of life and feel like that, Hey,  
6 you know what, this is my home. I said to you before,  
7 that little kid that came out the door and said, Hey, have  
8 you seen my brand new house?

9 I think that ought to be everyone of our goals,  
10 and that's my goal. I'm pretty impassioned about this, as  
11 you can tell, but I would ask you to really consider that.

12 MR. CONINE: Mr. Lynch, could I ask a question  
13 about the exterior masonry requirement? I'm a little  
14 confused on what you're asking us to do here, because in  
15 some instances, the Southwestern style, for instance, has  
16 100 percent stucco on the outside which is prevalent in  
17 probably southern Texas but also we want the capacity to  
18 have that architectural style anywhere in the state that  
19 the market demands it. One hundred percent cement board  
20 product, I can think of a New England style with green  
21 shutters on it and that sort of thing.

22 What are you asking us to do relative to the  
23 points on the exterior masonry? Are you wanting it to be  
24 75 percent brick for sure and then have 25 percent  
25 something else, or are you wanting the flexibility to have

1 Southwestern style units or New England style units?

2 MR. LYNCH: I think the point differential  
3 should simply be based on the amount of money and the  
4 quality that you build. And I understand what you're  
5 saying, Mr. Conine, that you have different styles, and  
6 you talked about the New England style -- it's not real  
7 popular in our state, but I understand that. The  
8 situation simply being this, that when you have that New  
9 England style, you have a lot of different architectural  
10 appeals that go with it that's not required. Generally  
11 you have real high pitched roofs, you have a lot of  
12 gingerbread style that kind of goes with that.

13 What we've done here -- and what happened was  
14 there were some comments that came in and the QAP was  
15 changed; initially it was two points for 75 percent  
16 masonry or stucco, and masonry was defined as brick or  
17 stucco which are comparable in price. Then what kind of  
18 got thrown into was all of a sudden cement board gets the  
19 two points too, and all I'm saying is that it shouldn't  
20 receive the two points because what it allows you to do is  
21 just go out there and build a square box with siding which  
22 is one-third the cost, if not less, of what masonry is.

23 MR. CONINE: Most cities that I'm familiar with  
24 are saying that the cement board equates to the masonry  
25 requirements in the cities that have their own sets of

1 rules and regulations. What you're saying is we need to  
2 make sure there's a differential in product there and not  
3 just allow 100 percent siding all over the building and  
4 calling it 75 percent masonry.

5 MR. LYNCH: That's exactly what I'm saying, Mr.  
6 Conine. And you know, my viewpoint is I think if you  
7 build those, I think people tend to drive by them and say,  
8 Hey, there's a low income housing project. And I think  
9 that we ought to try to build something that doesn't have  
10 that stigma on it.

11 MR. CONINE: Thank you.

12 MR. JONES: Mr. Donald Pace?

13 MR. PACE: Mr. Chairman, my name is Donald  
14 Pace. I represent Merit Housing; we're a developer out of  
15 Florida that's been building in Texas for the last two or  
16 three years, and we have a couple of concerns.

17 The first one is found on page 70 of 236, it's  
18 Exhibit 105-E. Your experience, they've changed from 100  
19 to 150 and in the rural from 36 to 75. I don't understand  
20 why you want to make a change. The difference between 100  
21 and 150, if you were going to make a change, you need to  
22 make a big change because most contractors have developed  
23 more than 100 units, more than 150 units, so I really  
24 don't see a need for the change.

25 The change in rural is huge, from 36 to 75.

1 We're doing most of our development in rural areas, and  
2 the rule is that 76 units is the most you can build there,  
3 but in most of the rural areas, you can't build 76 units,  
4 you're restricted to 35 or 40. So I think what they had  
5 before, the 100 and 36, is fine and should be left alone.

6 The other thing is -- talking about what Glenn  
7 just talked about -- the \$6,500 rule. You've already got  
8 things in place to check that, and unless you add the  
9 other 30 percent to it, then I don't think you're being  
10 fair to rural Texas especially because there's a lot of  
11 areas out there that it's not going to get built because  
12 of that.

13 You've got your cost per square foot that limit  
14 you to how many credits you get, and if you're in a QCT or  
15 DDA, you're out if you keep this rule in, \$6,500.  
16 Appreciate it.

17 MR. JONES: Thank you, sir. I think I've  
18 called all the witness affirmation forms.

19 With that, then we will move to our executive  
20 session, and let me say this, at this point the board will  
21 go into executive session; after the executive session,  
22 we'll take our lunch break and we will come back here. I  
23 would anticipate, the best guess I can give you as far as  
24 timing is one o'clock, give or take something. We'll  
25 probably be out of executive session and be back here

1 after our lunch break. So that's the best warning I can  
2 give you on the time.

3 With that, the board will go into executive  
4 session. On this date, November 14, 2001, at the regular  
5 board meeting of the Texas Department of Housing and  
6 Community Affairs held in Austin, Texas, the board of  
7 directors adjourned into a closed executive session, as  
8 evidenced by the following: The board of directors will  
9 begin its executive session today, November 14, at 11:33  
10 a.m.

11 The subject matter of this executive session  
12 deliberation is as follows: personnel matters; personnel  
13 matters on the executive director position and  
14 applications; litigation and anticipated litigation  
15 (potential or threatened under Section 551.071 and  
16 551.103, Texas Government Code Litigation Exception);  
17 consultation with the attorney pursuant to 551.071(2),  
18 Texas Government Code; consultation with attorneys  
19 concerning litigation on Cause Number GN102058, Kenneth H.  
20 Mitchell, the Grand Texas, Ltd., and One Buena Vista, Ltd.  
21 v. Texas Department of Housing and Community Affairs, in  
22 the 53rd District Court of Travis County; number 6,  
23 discussion of any item listed on the board meeting agenda  
24 of even date.

25 At this point in time, we will go into

1 executive session. Thank you.

2 (Whereupon, at 11:33 a.m., the meeting was  
3 recessed, to reconvene this same day, Wednesday, November  
4 14, 2001.)

A F T E R N O O N    S E S S I O N

(1:48 p.m.)

1  
2  
3            MR. JONES: I will now call the meeting back to  
4 order. The executive session of the board of the Texas  
5 Department of Housing and Community Affairs was completed  
6 on November 14, 2001 at 12:50 p.m. The subject matter of  
7 this executive session deliberation was as follows:  
8 personnel matters, action taken: none; personnel matters  
9 on the executive director position and applications,  
10 action taken: none; litigation and anticipated litigation  
11 (potential or threatened under Section 551.071 and  
12 551.103, Texas Government Code Litigation Exception),  
13 action taken: none; consultation with attorney pursuant to  
14 551.071(2), Texas Government Code, action taken: none;  
15 consultation with attorneys concerning litigation on Cause  
16 Number GN102058, Kenneth H. Mitchell, the Grand Texas,  
17 Ltd., and One Buena Vista, Ltd. v. Texas Department of  
18 Housing and Community Affairs, in the 53rd District Court  
19 of Travis County, action taken: none; discussion of any  
20 item listed on the board meeting agenda of even date,  
21 action taken: none.

22            I hereby certify that this agenda of an  
23 executive session of the Texas Department of Housing and  
24 Community Affairs was properly authorized pursuant to  
25 Section 551.103 of the Texas Government Code, posted at



1 the Secretary of State's Office seven days prior to the  
2 meeting, pursuant to Section 551.044 of the Texas  
3 Government Code, that all members of the board of  
4 directors were present with the exception of Mr. Gonzalez,  
5 and that this is a true and correct record of the  
6 proceedings pursuant to the Texas Open Meetings Act,  
7 Chapter 551, Texas Government Code, as amended. It will  
8 be signed by myself as chairman of the board.

9 I will next call the board back into open  
10 session. Mr. Bogany?

11 MR. BOGANY: Mr. Chairman, I'd like to make a  
12 motion. I move that the board accept the Plaintiff's  
13 offer and approve the settlement of this case as follows:  
14 this settlement is done due to uncertainties of  
15 litigation and does not amount to the admission of  
16 wrongdoing of any kind by the staff or the board. The  
17 board approves the application of Grand Texas, Ltd., Inc.,  
18 for the Grand Texan Seniors Community in McKinney, Texas  
19 in the amount of \$357,087.

20 The executive director and staff will take the  
21 necessary steps to carry out this action and settlement.  
22 The executive director is authorized to sign the  
23 settlement papers that will finalize this action. The  
24 board believes this action does not violate any provision  
25 of the QAP under the specific facts of this case.

1 MR. CONINE: Second.

2 MR. JONES: A motion has been made and  
3 seconded. Discussion? Hearing no discussion, are we  
4 ready to vote? All in favor of the motion, please say  
5 aye.

6 (A chorus of ayes.)

7 MR. JONES: All opposed to the motion, please  
8 say nay.

9 MAYOR SALINAS: Nay. I don't agree with it.

10 MR. JONES: The ayes have it, motion carries.

11 That will bring us then to the next item on our  
12 agenda. Excuse me, I skipped one, didn't I? The  
13 presentation, discussion and possible approval of the  
14 minutes of the board meeting of October 17, 2001.

15 MR. CONINE: Move for approval.

16 VOICE: Second.

17 MR. JONES: There's a motion made that it be  
18 approved; it has been seconded. Further discussion?  
19 Hearing none, I assume we're ready to vote. All in favor  
20 of the motion, please say aye.

21 (A chorus of ayes.)

22 MR. JONES: All opposed, nay.

23 (No response.)

24 MR. JONES: The ayes have it; the motion  
25 carries.

1           We'll then turn to item 2, the presentation,  
2 discussion and possible approval of Low Income Housing Tax  
3 Credit issues. I have three people that would like to  
4 speak on item 2 -- at least they just put down item 2 so  
5 I'm going to call them at the beginning of it. The first  
6 one is State Representative Price.

7           MR. PRICE: Thank you very much, Mr. Chairman.

8           Good afternoon, members of the board. My name is Al  
9 Price and I'm here on behalf of the Southeast Texas  
10 Community Development Corporation.

11           I'm here because we submitted an application  
12 for the Spindletop Estates; our application was submitted  
13 under the 2001 allocations and when we didn't get funding,  
14 we were placed on the waiting list. We subsequently  
15 received a letter informing us that the staff had  
16 recommended that we be funded at a lesser rate and we were  
17 placed on the agenda for September. We were removed at  
18 the meeting here in September and were placed on the  
19 October agenda, and we were removed once again, and now  
20 we're on the November agenda.

21           The original letter notifying us that we had  
22 been awarded, in our judgement, was the correct decision.

23           The later action came and it combined us the 2001  
24 allocations with the year 2000 allocations and we were  
25 moved down on the priority list, and it seems to us that

1 the rules really were changed after we had made our  
2 submission.

3 The 2000 allocation should not have been  
4 applicable for anything that we applied for, and my great  
5 concern is that the rules were changed after our  
6 submission and that we have been wrongfully denied, and I  
7 would like very much to see this corrected.

8 Mr. Bob Sherman, my partner, has something to  
9 say about this same thing, and I would ask that you please  
10 allow him.

11 MR. JONES: Mr. Sherman, have you already  
12 spoken?

13 MR. SHERMAN: Not on this subject, sir.

14 MR. JONES: Okay. I'm going to violate my own  
15 rule but if you would be brief. I mean, we have so many  
16 speakers that I really can't let people speak more than  
17 once.

18 MR. SHERMAN: Less than a minute.

19 MR. JONES: Okay, thank you, sir.

20 MR. PRICE: Thank you.

21 MR. JONES: You're welcome.

22 MR. SHERMAN: Mr. Chairman, ladies and  
23 gentlemen of the board, my name is Bob Sherman. The issue  
24 that Mr. Price brings up -- and I'm his consultant in this  
25 case -- is that we received a September 10 memorandum,

1 using logic taken from the 2001 and the 2002 forward  
2 commitments as logic for recommending our property in  
3 Beaumont, Spindletop Estates, 028. In October we were  
4 taken off the agenda, October 9. We received another  
5 memorandum which was puzzling to us because it referenced  
6 the year 2000 Allocation Plan and it said, in effect, that  
7 when you combine the 2000 and the 2001 allocations and  
8 consider the regional allocation formula, Spindletop  
9 Estate was then moved into the number three position.

10 My position is that the 2000 application,  
11 number one, there was no regional allocation formula in  
12 2000 so how can we quote it now; and number two, we  
13 applied under the 2001 rules, not under the 2000 rules --  
14 they had expired. To make a long story short -- and I  
15 promise to be brief -- I think the first logic, as often  
16 happens with any kind of logic, the first logic was  
17 correct, and I think Mr. Price's development should be  
18 recommended as it was reinstated in that September 10  
19 recommendation. Thank you.

20 MR. JONES: Thank you, sir.

21 MR. JONES: Mr. Fisher?

22 MR. FISHER: I'll wait until item 3, Mr.  
23 Chairman.

24 MR. JONES: Item 3, okay. Mr. Potashnik.

25 MR. POTASHNIK: Good afternoon, Board Chair,

1 ladies and gentlemen of the board. My name is Brian  
2 Potashnik; I am the president of Southwest Housing  
3 Development; we are the developer of the Hillside and Oak  
4 Hollow Apartments being considered today in items 2 and 3.

5 I would just like to point out that although we  
6 have heard from both very positive levels of support from  
7 State Representative Hodge -- who we're very fortunate to  
8 have as our state rep in Dallas, who has been a big  
9 supporter of affordable housing; support for both  
10 developments from the mayor of Dallas, the city councilmen  
11 from the district that we are doing the developments in;  
12 the local community development corp that is very active  
13 in the housing policy for the area in which we're doing  
14 the developments; the state senator and other concerned  
15 neighborhood groups who are actively involved in the  
16 process of us getting the neighborhood support necessary  
17 to move forward with these transactions.

18 I would like to address the concentration  
19 issue, what one of our other developers of affordable  
20 housing brought up as an issue. Although I'm surprised  
21 that another developer would come out with a NIMBY issue,  
22 if you will, with respect to housing development, I will  
23 address the issue that was brought up as it relates to  
24 concentration.

25 What Southwest Housing is doing in these

1 neighborhoods is putting in approximately \$30 million  
2 worth of economic development. Areas that have been  
3 depressed for a number of years that we will now see a  
4 much higher quality standard and a much better quality of  
5 life for the people living there.

6 There is no question, based on independent  
7 market studies and the staff review that has been made on  
8 both of these developments, that there is a very strong  
9 market for good, quality, affordable housing in these  
10 areas. Having said that, I will make myself available, as  
11 the developer of these two projects, to answer any  
12 questions the board may have with respect to approval of  
13 funding for these two developments. Thank you.

14 MR. JONES: Thank you, sir.

15 Those are the speakers I had on item 2(a) or  
16 the beginning of item 2. Ruth, would you like to present  
17 item 2(a) at this point? If we need to skip it and come  
18 back to it, we can do that too.

19 MS. CEDILLO: The department has presented a  
20 list of Low Income Housing Tax Credit applicants for 2001.

21 We were requested to prioritize the projects on the  
22 waiting list for the Low Income Housing Tax Credit  
23 Program, and the staff has underwritten the project and  
24 submitted a list to the board. We have approximately  
25 \$531,982 available and the staff developed the waiting

1 list using the regional allocation formula, development  
2 set-asides, development scores and underwriting  
3 recommendations in order to develop the priority list.

4 We have Mission Oaks as number one, Laredo  
5 Viejo Apartments, and Laredo Vista as number three;  
6 however, if one of the two were selected, it would cancel  
7 out the other, and Laredo Viejo is before Laredo Vista.  
8 And then we have Spindletop Estates, Park Meadows, Bexar  
9 Creek, Pueblo Montana, Winchester Lake, Burgundy Palms  
10 Apartments, Ennis Estates, and Grand Texas Seniors which  
11 has been settled through the board's decision to settle  
12 the case.

13 So this is the priority list for the 2001  
14 Qualified Allocation Plan, and in the settlement  
15 agreement, it would take \$357,087 to settle the case, and  
16 that would leave approximately the amount that would be  
17 required for Mission Oaks which is the first project on  
18 the list.

19 MAYOR SALINAS: So that means out of the  
20 \$531,900 you have to deduct what you just settled a few  
21 minutes ago?

22 MS. CEDILLO: Yes, sir.

23 MAYOR SALINAS: So we are short \$350-some-odd  
24 thousand on tax credits that some of the members here are  
25 not going to get today because of the settlement of the



1 lawsuit. Right?

2 MS. CEDILLO: Correct.

3 MAYOR SALINAS: Am I correct?

4 MS. CEDILLO: Yes, sir.

5 MAYOR SALINAS: So the only ones that are going  
6 to get any tax credits here today is going to be Mission  
7 Oaks?

8 MS. CEDILLO: Yes, sir.

9 MAYOR SALINAS: And who else?

10 MS. CEDILLO: Just Mission Oaks.

11 MR. CONINE: Mr. Chairman?

12 MR. JONES: Yes.

13 MR. CONINE: When this issue came up last  
14 month, I had asked for an expanded -- we got the regional  
15 allocation breakdown on what we had done but I had asked  
16 for what we had done in our set-asides, both rural,  
17 nonprofit and so forth, for that to be split out, and I  
18 don't see that in the information that I have here.

19 And Ms. Cedillo, I was wondering if you either  
20 have that information or maybe Charles might have it.

21 MS. CEDILLO: Charles could provide that  
22 information.

23 MR. NWANERI: Good afternoon. My name is  
24 Charles Nwaneri; I'm the acting manager for the Low Income  
25 Housing Tax Credit Program.

1 I do have a copy of our spreadsheet showing how  
2 the 2001 tax credit allocation was broken down between the  
3 set-asides. Excluding the \$531,982 that we're talking  
4 about today, what we had allocated so far represented  
5 64.25 percent for general set-aside, 13.98 percent for  
6 nonprofit, 7.38 percent for elderly, 12.17 percent for  
7 rural and prison set-aside, an additional 2.22 percent for  
8 Texas rural rental housing development, and those two  
9 combined together to give 14.39 percent for the rural set-  
10 aside.

11 MR. CONINE: Hang on, I missed something there.  
12 I thought you said rural was 20.17.

13 MR. NWANERI: The rural is set aside at 15  
14 percent, but 25 percent of that 15 percent goes to the  
15 Texas RRHD and those were the two figures. When I  
16 combined those two, we have a total of 14.39 percent for  
17 rural.

18 MR. CONINE: So we're, in essence, short on  
19 rural.

20 MR. NWANERI: We're slightly short on rural and  
21 much more short in the elderly set-aside.

22 MR. CONINE: And what was our target there?  
23 Refresh my memory.

24 MR. NWANERI: For rural, our target is 15  
25 percent, and for elderly, our target is 10 percent.

1 MR. CONINE: So if we had an elderly rural  
2 project, it would satisfy a little better in these  
3 categories -- forget the regional set-aside for just a  
4 minute -- just in the basic set-aside numbers, the best  
5 combination of all worlds would be an elderly rural  
6 project.

7 MR. NWANERI: That's correct.

8 MR. CONINE: And our nonprofit set-aside, our  
9 target was 10 and we're at roughly 14?

10 MR. NWANERI: Yes.

11 MR. CONINE: So that helps me answer that  
12 question, and I'll get back to the one that Ms. Cedillo  
13 pointed out, Mission Oaks. It's a rural project -- is  
14 that correct, but a rural family project?

15 MR. NWANERI: Yes.

16 MS. CEDILLO: And it's also an 8(b) which was  
17 under-funded.

18 MR. CONINE: That's all the questions I have  
19 for right now.

20 MR. JONES: Further discussion?

21 MS. CEDILLO: Do we need the exact figure on  
22 the amount that goes to Mission Oaks? Charles, correct me  
23 if I'm wrong. It's \$174,894.

24 MR. NWANERI: \$174,895; that's correct.

25 MR. CONINE: Excuse me, one more question. Do

1 the numbers you quoted me include the forward commitment?

2 MR. NWANERI: No, sir.

3 MR. CONINE: The chart I'm looking at in your  
4 memo has the forward commitments included in the ultimate  
5 allocations, the regional breakout. So in order to get  
6 apples to apples, I need to have the same numbers that  
7 you've just quoted as percentage targets in the set-aside,  
8 have the forwards in there.

9 MR. NWANERI: The forward commitment would be  
10 included in the numbers and the figures I gave you would  
11 be the forward commitment, the 2001 forward commitments,  
12 not the forward commitment we made this year for 2002.

13 MR. CONINE: Is that what I'm looking at in the  
14 chart that you have in your memo under the Forward  
15 Commitment column?

16 MR. NWANERI: In the Forward Commitment, yes,  
17 sir.

18 MR. CONINE: That's for '01, not '02? I  
19 believe those are for '02, if my memory serves correct.  
20 The reason we're including '02, my recollection is here,  
21 for the other board members is because those are under the  
22 same rules that '01 is under, so you can't really include  
23 '01 forwards because they're under the 2000 rules. I'm  
24 just making sure I clarify for everybody what I'm asking.

25 MR. NWANERI: If you give me just one minute.

1                   MAYOR SALINAS:  Would you all have any problems  
2 if we go ahead and make a motion to approve this Mission  
3 Oaks in Refugio, Texas?

4                   MR. CONINE:  Yes, I guess I would.

5                   MAYOR SALINAS:  And then you could figure out  
6 how much you have left.

7                   MR. CONINE:  Put it on the floor, that's fine.

8                   MAYOR SALINAS:  I move we go ahead and approve  
9 Mission Oaks.

10                  MR. BOGANY:  Second.

11                  MR. JONES:  The motion has been made and  
12 seconded; the motion is on the floor and we're discussing  
13 the motion.  Do we want to vote?

14                  MR. CONINE:  Well, I'd like to know the answer  
15 to my question.

16                  MAYOR SALINAS:  The thing is I'm trying to get  
17 this approved before we lose it, before he gives me  
18 something else.  You know what I mean, Mr. Conine?  Being  
19 as we're so short here, and 8(b) is in Refugio, and I  
20 don't know if they're here but I'm trying to make the  
21 motion to see if we can save that little project.  We  
22 tried to do it the last time, and now with the motion you  
23 made a few minutes ago about settling that case of \$300-  
24 some-odd thousand, it's not very much left, so I would  
25 like to get it over with and just take care of those folks

1 in Refugio.

2 I mean, we still have a little few tax credits  
3 left from 200-and-some-odd thousand, but I think staff has  
4 recommended, and I think Ms. Cedillo made it very clear  
5 that Mission Oaks out of Refugio would get it.

6 MR. NWANERI: The figure that we have shows  
7 that the forward commitment, the 2000 commitment to 2001  
8 as forward commitment, and those were the figures that I  
9 represented in the chart that you have.

10 MR. CONINE: So the chart under the Forward  
11 Commitment column is '01 forward commitments, not '02?

12 MR. NWANERI: '01, not '02.

13 MR. JONES: We have a motion on the floor and  
14 it's been seconded. Is there any further discussion?  
15 Hearing none, I assume we're ready to vote. All in favor  
16 of the motion, please say aye.

17 (A chorus of ayes.)

18 MR. JONES: All opposed to the motion, please  
19 say nay.

20 (No response.)

21 MR. JONES: The motion carries. I believe that  
22 completes our consideration of item 2(a), so we then move  
23 to item 2(b) on the agenda.

24 MR. NWANERI: These tax-exempt bonds have  
25 received some support earlier on today and some

1 opposition, but we have four of them on the agenda for  
2 your consideration today for issuance of determination  
3 notice. The first one is Hillside; this is a development  
4 in Dallas, Texas and TDHCA is the issuer of these bonds;  
5 it's a family development. Staff is recommending \$837,364  
6 which is the amount that is recommended by underwriting.  
7 This project would develop 236 units and the average  
8 square footage is about 1,033 with a debt coverage ratio  
9 of 1.07.

10 At the time of application, we received an  
11 approval from the city as this adds to their consolidation  
12 plan. Staff is recommending approval from the board for  
13 allocation of \$837,364.

14 MR. CONINE: Move approval for item 2(b)  
15 Hillside Apartments, number 1406.

16 MR. BOGANY: Second.

17 MR. JONES: We have a motion made and seconded.  
18 Any discussion? Hearing none, I assume we're ready to  
19 vote. All in favor of the motion, please say aye.

20 (A chorus of ayes.)

21 MR. JONES: Opposed, nay.

22 (No response.)

23 MR. JONES: Motion carries.

24 MR. NWANERI: On the second one in Dallas, this  
25 is the Oak Hollow development. This one is also producing

1 153 units. The recommended amount here is \$588,062; it  
2 has been underwritten; again, TDHCA is the issuer. We  
3 also received an approval from the city by signature to  
4 the consistency with local consolidated plan on this  
5 development.

6 We're also recommending an approval from the  
7 board for issuance of determination notice in the amount  
8 of \$588,062 to the Oak Hollow development.

9 MS. ANDERSON: So moved.

10 MAYOR SALINAS: Second.

11 MR. JONES: There's a motion made and seconded.

12 Any discussion on the motion? Hearing none, I assume  
13 we're ready to vote. All in favor of the motion, please  
14 say aye.

15 (A chorus of ayes.)

16 MR. JONES: All opposed, nay.

17 (No response.)

18 MR. JONES: The motion carries.

19 MR. NWANERI: The third one is the Buena Vista  
20 Seniors community. This application was received in the  
21 regular round in 2001 and it was not awarded credits, so  
22 it was submitted under the 4 percent credit, and the  
23 issuer is North Central Texas Housing Finance Corporation.  
24 It's an elderly development in Cleburne, Texas, and  
25 underwriting has recommended an amount of \$750,851.



1 Program staff is recommending \$739,295 which is the amount  
2 that the applicant has requested. And this development  
3 will produce 230 units and it received approval from the  
4 city in the rural consolidation plan and staff is  
5 recommending approval to the Buena Vista Seniors  
6 community.

7 MR. CONINE: Move approval.

8 MR. JONES: We have a motion. Is there a  
9 second?

10 MR. BOGANY: Second.

11 MR. JONES: The motion has been made and  
12 seconded. Any discussion on the motion? Hearing none, I  
13 assume we're ready to vote. All in favor of the motion,  
14 please say aye.

15 (A chorus of ayes.)

16 MR. JONES: All opposed, nay.

17 (No response.)

18 MR. JONES: Motion carries.

19 MR. NWANERI: And finally the Riverside Meadows  
20 here in Austin. This development is proposing to develop  
21 240 units and it went favorably at the DCI of 1.10. We  
22 received approval from the city in a rural consolidation  
23 plan, and the recommended amount for this is \$790,031, and  
24 the issuer is Austin Housing Finance Corporation. It is a  
25 family development and staff is recommending approval of

1 this development.

2 MS. ANDERSON: So moved.

3 MR. JONES: We have a motion.

4 MR. CONINE: I'll second.

5 MR. JONES: We have a motion and a second.

6 Further discussion? Hearing none, I assume we're ready to  
7 vote. All in favor of the motion, please say aye.

8 (A chorus of ayes.)

9 MR. JONES: All opposed, nay.

10 (No response.)

11 MR. JONES: Motion carries. Item 2(c).

12 MR. NWANERI: The last board meeting you gave  
13 me a break by approving all these in total. I don't know  
14 if you want to help me out today or if you want me to go  
15 through them one at a time, for the interest of time.

16 (General laughter.)

17 MR. CONINE: Just give us a two-minute version  
18 on why we're extending deadlines.

19 MR. NWANERI: If you decide to approve these in  
20 total, I would want to make a comment on the development  
21 in Eagle Pass.

22 MR. CONINE: Wait a minute. Are we on 2(c)?

23 MR. JONES: Yes, we're on 2(c). I think the  
24 question was why do they need an extension.

25 MR. NWANERI: Eban Village development has

1 received an extension before. This one, they're asking  
2 now is to extend the placement in service from October  
3 2001 to December 28, 2001, so it's a couple of months'  
4 extension. From the letter we have here, the developer  
5 says in the letter they need a little extra time to  
6 complete placing all the units in service. Most of the  
7 units, as they said here, have been placed in service, but  
8 they felt they needed a little extra time.

9 MR. CONINE: Move approval.

10 MS. ANDERSON: Second.

11 MR. JONES: Are we moving for both of them or  
12 just one of them?

13 MR. CONINE: One of them.

14 MR. JONES: We have a motion with regard to  
15 Eban Village Apartments, Phase 11 in Dallas, Texas; it's  
16 been seconded. Further discussion on the motion? Hearing  
17 none, I assume we're ready to vote. All in favor of the  
18 motion, please say aye.

19 (A chorus of ayes.)

20 MR. JONES: All opposed, nay.

21 (No response.)

22 MR. JONES: Motion carries.

23 MR. NWANERI: On the Roseland Townhomes, it's  
24 also an extension for placement in service. They have  
25 already received a temporary certificate of occupancy on

1 this and they need, again, just a little extra time of 30  
2 days to complete all their units and place them in  
3 service.

4 MR. CONINE: Move approval.

5 MR. BOGANY: Second.

6 MR. JONES: A motion has been made and  
7 seconded. Further discussion? Hearing none, I assume  
8 we're ready to vote. All in favor of the motion, please  
9 say aye.

10 (A chorus of ayes.)

11 MR. JONES: All opposed, nay.

12 (No response.)

13 MR. JONES: Motion carries, which will bring us  
14 to item 2(d) of the agenda. Mr. Howison, would you like  
15 to speak?

16 MR. HOWISON: I'm part of an organized sort of  
17 presentation, if that's possible. The names on there are  
18 Sloan and Brown.

19 MR. JONES: I've got them. Sloan, Brown,  
20 Howison, come on down. I would make a comment that it's  
21 late in the day.

22 MR. HOWISON: We're going to try and be very  
23 brief. We will not repeat, I hope.

24 MR. JONES: Could you just tell us your names?

25 MR. SLOAN: My name is Lee Sloan.

1 MR. HOWISON: My name is Jack Howison.

2 MS. LEE: Donna Lee.

3 MS. BROWN: Dora Brown.

4 MS. SEARLES: And Anna Searles.

5 MR. JONES: Thank you. And you're speaking on  
6 which project?

7 MR. SLOAN: We're speaking with regard to item  
8 2(d), TDHCA Number 00062, King Fisher Creek.

9 MR. JONES: Thank you.

10 MR. SLOAN: I'd like to start off with some  
11 introductory comments. Chairman Jones, board members of  
12 TDHCA, my name is Lee Sloan; I'm the president of the  
13 Kensington Park Homeowners Association here in Austin.

14 We're here today to voice serious concern about  
15 the King Fisher Creek project, number 00062, item 2(d) on  
16 your agenda. These are concerns that touch on matters of  
17 misrepresentation of facts, manipulation of the system,  
18 and failure to comply with specific requirements of the  
19 application process.

20 We're joined in this with individuals and  
21 neighbors in the neighborhood, with local neighborhood  
22 associations, with SCAN which is the Southeast Corner  
23 Alliance of Neighborhoods which covers all of the  
24 southeast Austin 78744 area, and also with the City of  
25 Austin Planning Commission and the Austin City Council,

1 all in opposition to this project.

2           There are a number of speakers here who will  
3 address specific issues, but for the record I'd like to  
4 state the following: We support well thought-out  
5 affordable housing but 00062 is not one of them; this is  
6 an ill-conceived project on an ill-advised site. We  
7 strongly urge you to reject their application for  
8 extension.

9           And now on to the specific issues, there are  
10 five of these that we would like to touch on. First is we  
11 have questions about the competitive nature of the  
12 application; second, there are concerns on the credit  
13 commitment requirements; Phase 1 environmental  
14 assessments; questions about safety; and finally,  
15 questions on the track record of the developer-manager in  
16 construction and managing of other LIHTC projects.

17           The first speaker will be Donna Lee.

18           MS. LEE: Chairman Jones and board members,  
19 good afternoon. My name is Donna Lee and I am the  
20 president of SCAN, the Southeast Corner Alliance of  
21 Neighborhoods, representing the 78744 zip code area here  
22 in Austin.

23           The original site location on the application  
24 filed with TDHCA for this project was incorrect. This may  
25 have misled staff in their assessment since the incorrect

1 site was relatively flat and had no significant  
2 environmental features, unlike the actual site. I can't  
3 help but wonder if the developer is playing a shell game  
4 or attempting a bait and switch.

5 The incorrect site plan depicted a low-density  
6 development evenly spread over the site which was noted  
7 favorably by staff review. Since then we can document at  
8 least four different site plans, ranging from seven one-  
9 and two-story buildings to two three-story buildings.  
10 These are not minor changes; they constitute significant  
11 deviations from the original site plan, both as to layout  
12 and type of structure; however, to the best of our  
13 knowledge, there has been no amended site plan submitted  
14 to TDHCA.

15 Additionally, the Phase 1 environmental site  
16 assessment has not been carried out for a portion of the  
17 proposed site.

18 Since the LIHTC Program is a competitive  
19 program, the submission of incomplete or incorrect  
20 documentation raises a basic and fundamental issue of  
21 fairness. Incorrect information provided by an applicant,  
22 whether intentional or accidental, gives that applicant an  
23 unfair advantage which undermines the process, and I  
24 believe could allow an unscrupulous developer to corrupt  
25 the system and place projects that do not benefit the

1 targeted community and fail to further the goals of TDHCA.

2 For these reasons alone, we are opposed to an  
3 extension of this time. Thank you.

4 MR. SLOAN: I would like to speak to the credit  
5 commitment requirements and have a handout of the credit  
6 commitment document.

7 In reading the credit commitment document,  
8 there were several troubling items that I'd like to bring  
9 to your attention. First, let me point out that the King  
10 Fisher site consists of two tracts of land. First, we'd  
11 question the timeliness of the purchase of the second  
12 tract of land. It was purchased, according to a letter  
13 that we have, to help meet the 10 percent carryover  
14 requirements. This purchase occurred in December of 2000,  
15 yet if you'll note on page 2 of this document I've handed  
16 you up, there's a requirement that all documents relating  
17 to the 10 percent test including all expenditures must be  
18 submitted and made before October 13, 2000.

19 It appears to us that this purchase and  
20 notification to you was two months in arrears, yet we find  
21 no record in the file that there was an extension granted  
22 for this. We question that.

23 The second point is much more troubling. It  
24 turns out that there's 100-year flood plain, as defined by  
25 the City of Austin, on the King Fisher site. If you will



1 turn to page 3, under Article (g), Exhibit A, there is a  
2 commitment notice. It states that the following specific  
3 conditions have to be met, and if you look at condition  
4 (g)(ii) it states that there must be a certification that  
5 the site is entirely clear of the 100-year flood plain.  
6 According to City of Austin flood plain maps, it is not

7 In fact, both the 3.00 acre tract and the 1.5  
8 acre tract on the back, both have 100-year flood plain.  
9 This is clearly indicated on the site plan that was  
10 recently filed with the City of Austin of which we have a  
11 copy here if you would like to look at it. There is flood  
12 plains on two different places on this property.

13 We think this is a clear violation of the TDHCA  
14 commitment notice and we think it should be grounds for  
15 termination of this project in and of itself.

16 Thank you. Now Jack is going to speak.

17 MR. HOWISON: Thank you, Mr. Chairman and  
18 board, for allowing us to be here today. I am Jack  
19 Howison. My family and I are 27-year residents in the  
20 area. We would like for you to deny this extension; there  
21 are better developers and better projects or properties  
22 available for your type of work. We're working with these  
23 folks on larger developments in our area; we have a lot of  
24 undeveloped land, and we have a 13-year experience of  
25 working with developers, both commercial and in apartment

1 complexes, and so we have some experience in seeing  
2 differences between the way people communicate and  
3 approach their projects.

4 For example, on this project the original Phase  
5 1 environmental site assessment was done on the wrong  
6 piece of property -- the original one. The next Phase 1  
7 environmental site assessment submitted to you was done on  
8 what we refer to as the 3-acre portion of this tract;  
9 later the applicant purchased an additional 1-1/2-acre  
10 site which as of yesterday had not had an environmental  
11 site assessment submitted to you. That piece of property  
12 was purchased last year in the year 2000. If these people  
13 were operating in a timely manner, they would have brought  
14 that site assessment to you, we feel.

15 One of our neighbors could not be here today  
16 but I'm going to pass on his concerns, Tomas's concerns  
17 about safety in our area. We're rural in nature; this  
18 property fronts a two-lane rural road which has no  
19 shoulders; it's crossed at the entrance to this property  
20 by a creek; it's essentially a landlocked property;  
21 there's one entrance shown on the site development and the  
22 rest of the property is surrounded by private land.

23 Listening today to your mobility-impaired  
24 individuals, I realize that not only the children but  
25 other people would be affected by the landlocked nature of

1 this site. There are no sidewalks in the area, there are  
2 no schools available to walk to, no shopping, no medical,  
3 no parks.

4 As a taxpayer and informed citizen, I would ask  
5 that you cut these guys loose and apply your resources to  
6 a more suitable site with more organized developers.

7 Thank you.

8 MS. BROWN: I'm Dora Brown and I'd like to  
9 start with some show-and-tell. I'm going to speak on the  
10 past history on the part of the developer and the  
11 management of a few other projects.

12 When the developer met with the neighborhood,  
13 he urged us last spring to go look at projects that they  
14 had completed. One was Douglas Landing in Austin and the  
15 other was Springfield Villas in Lockhart. Well, I took  
16 him up on the offer, and last spring I visited both sites.

17 I went to Douglas Landing twice and to the project in  
18 Lockhart once.

19 As you can see from the pictures, it's a pretty  
20 uninviting place, but I wanted to be fair and see if these  
21 problems had been corrected in the last few months, so I  
22 went yesterday again to Douglas Landing which is very  
23 close to our neighborhood and found that there had not  
24 been improvement. As you'll see in the pictures, there's  
25 a sofa by the dumpster; it was there for a very long time.

1 That sofa was eventually removed, but gee, another one  
2 has replaced it.

3 The mattress in the picture that you'll see is  
4 no longer there, but there's another one hanging out of  
5 the dumpster. On all of my visits, the dumpsters were  
6 overloaded, there was trash piled up beside them, loose  
7 trash everywhere. On at least one of the occasions, the  
8 creek that runs behind the property was clogged with  
9 trash. It's just very badly maintained.

10 The construction is also very bad. This  
11 project in Douglas Landing at the time of the pictures was  
12 barely a year old; siding was falling off. Well, I went  
13 to check yesterday and someone made a halfhearted attempt  
14 to nail that siding back in place; still it's buckled and  
15 there are new places where it's buckling.

16 The burned-out hulk of the car that you'll see  
17 has been removed but there are cars up on jacks, cars that  
18 apparently don't run, their hoods are up -- maybe they're  
19 being repaired, we don't know. And I also discovered a  
20 new problem: the asphalt streets were of such poor  
21 quality that there's now a giant series of potholes across  
22 one of the streets, making it a little difficult to get  
23 through.

24 One of the things that these developers  
25 promised us was crack management, and obviously this

1 management has not been top notch. In fact, one of the  
2 crack management team recently was charged with  
3 embezzlement from a project. When we read about it in the  
4 paper, we just knew it had to be Douglas Landing, and sure  
5 enough, that night on TV there's a reporter standing by  
6 the Douglas Landing site. So perhaps the crack management  
7 team was too busy embezzling funds to see that the trash  
8 was picked up regularly.

9           It's just a sad, sad tale. Over \$700 (sic) of  
10 taxpayers' money went into Douglas Landing, according to  
11 the commitment letter and what we have is, frankly, a slum  
12 of the future. This is not the type of management team or  
13 the quality of construction or the quality of life that  
14 will enhance the neighborhood, that will benefit tenants,  
15 and that will help preserve the environment.

16           We again want to make clear that we do not  
17 oppose low income or affordable housing. We've appeared  
18 before the planning commission and the city council in  
19 Austin in support of two such projects because they are  
20 well built, well thought out. They have amenities like  
21 pools and security fences, space between the buildings for  
22 green space, all of which are lacking at Douglas Landing  
23 and would be lacking in King Fisher Creek.

24           So I appreciate your time and attention and  
25 hope that you will spare the neighborhood from this very,

1 very ill-conceived project.

2 MS. SEARLES: Thank you. I'm the last person  
3 here. I'm the neighbor immediately adjacent; I own the  
4 property on the east side of this proposed development.  
5 And yes, of course I'm biased. I don't want a big  
6 construction project right across the boundary, but that's  
7 not my only concern. I come as an Austin citizen today  
8 for the environment.

9 There isn't time but this is the kind of land  
10 we're talking about that developers are moving in from all  
11 angles to get their bit of the pie, and this particular  
12 group have been extremely pushy. Here we are, the  
13 neighborhood, we don't want them. And it's not that we  
14 wouldn't want anything, it's just that they don't have  
15 whatever it would take to be sensitive (a) to the  
16 environment and the ecosystem which is very delicate in  
17 that region, and according to Lee Leffingwell, when he  
18 walked over it -- he's the chairman of the environmental  
19 board -- he said I had no idea this was here, and he kept  
20 repeating it: I just had no idea this place was here.  
21 And I imagine it's probably a bit like Barton Creek and  
22 that whole region was when people discovered it first.

23 It's in southeast Austin and nobody really  
24 knows about it, and it's very precious. and if I could,  
25 I'd take you all there and show you. But anyone who does

1 something there needs to be able to walk gently on the  
2 land and be sensitive to the environment and to the  
3 neighborhood, and it shouldn't bring us all out in force  
4 to say: Please don't let these people build this here.  
5 They want to go three stories high; that would be a  
6 nightmare for me -- I mean, it just will be a nightmare.  
7 That's my personal nightmare but that's not the nightmare  
8 of the ecosystem which is the head waters of McKinney  
9 Falls. Thank you.

10 MR. JONES: Thank you. The next speaker we  
11 have on item 2(d) is Mr. Calderon.

12 MR. CALDERON: Good afternoon, Chairman Jones  
13 and members of the board. My name is Ricardo Calderon; I  
14 am the general counsel for the Eagle Pass Housing  
15 Assistance Corporation, and we are here today requesting  
16 an extension of the commencement of the substantial  
17 construction deadline of our 60 units 00163, Las Quintas  
18 Apartments.

19 We have closed the construction loan and we  
20 have commenced construction on this project but we will  
21 not be able to satisfy the November 15 deadline of  
22 substantial construction which requires that we request 60  
23 days extension.

24 We were initially working with Texas Housing  
25 Finance Corporation with Ms. Edwina Carrington, and about

1 a month ago we released Texas Housing Finance Corporation  
2 from their equity commitment on this project and accepted  
3 Related Capital out of New York because of the fact that  
4 Related Capital was able to provide the construction as  
5 well as the equity and debt financing that the project  
6 required, so that it can be completed.

7           Although Texas Housing Finance had provided  
8 some commencement funds, they do not provide any debt  
9 financing and so we were required to release Texas Housing  
10 Finance Corporation, and we are now working with Related  
11 Capital which is a large national syndicator of tax credit  
12 projects throughout the United States, and we're working  
13 on closing the permanent financing of that transaction,  
14 but we will require a 60-day extension until January 15 so  
15 that we can be in substantial construction compliance.

16           MR. JONES: Thank you, sir.

17           MR. CALDERON: Thank you very much.

18           MR. JONES: Mr. McMullen?

19           MR. McMULLEN: I also have with me Mr. Carl  
20 Conley. He's not going to make a presentation in his own  
21 right but he's going to be a resource.

22           Mr. Chairman and ladies and gentlemen of the  
23 board, I appreciate your seeing me today. I'm here  
24 basically in rebuttal to the neighborhood association on  
25 King Fisher Creek. I also would like to apologize. I



1 tried to jump on this hand grenade before it went off but  
2 I didn't quite make it.

3           This neighborhood association did not object in  
4 the year 2000 when the time in the process was available  
5 for them to object. I went to most of the hearings; we  
6 had nothing but support, there was no objection, and also  
7 the meetings were properly noticed and so forth, so we  
8 followed the procedure and now we're about a half million  
9 dollars into the project and now there's an objection. So  
10 it seems to me that the time frame to object would have  
11 been at that time; the project has been funded and  
12 approved.

13           Essentially what happened, we had applied and  
14 were accepted and we are accepted right now under the City  
15 of Austin's Smart Growth Program. That is the City of  
16 Austin's centerpiece affordable housing program. We went  
17 through their entire application process and we were  
18 approved.

19           Part of their process was that we had to go  
20 visit with all the neighborhood associations, so we did  
21 that. We went and met with the Kensington Association and  
22 the things that they had problems with at the meeting were  
23 crime, traffic, the tenant profile, and the environment.  
24 Initially they were going to get back to us, were going to  
25 do some deed restrictions and things, so they could ensure

1 that it was well managed and properly done.

2 They did not like the site plan layout, and let  
3 me back up a little bit on the site plan layout.

4 Initially when we submitted our application in 2000, we  
5 had roughly a 3-acre site; we could have fit all 35 units  
6 on that site. When we entered the Smart Growth process  
7 with the City of Austin, we worked with Stuart Hirsch for  
8 several months, he recommended that we -- because we were  
9 able to acquire the back parcel for \$35,000, it would make  
10 it a better project, nicer, we went ahead and did that.

11 To do that, that meant a rezone of the back  
12 parcel, so we had asked for the neighborhood association.

13 No, no, we don't want your product. And we got shot down  
14 on the rezoning by the city council, although we are  
15 approved in the Smart Growth program which we wouldn't  
16 have been accepted if the city didn't want the project,  
17 the best we can tell, they just didn't want the buildings  
18 laid out too far back on the acre and a half because it  
19 goes back towards a stream and there was severe opposition  
20 at that point which came up for the first time. It wasn't  
21 there last year when this project was before you for  
22 consideration.

23 Secondly, the Phase 1 issue, that Phase 1 was  
24 corrected and approved by the department before the  
25 credits were awarded. We're well over our 10 percent

1 test, so the \$35,000 site cost had nothing to do with  
2 that, and that was submitted and approved back from the  
3 department by letter -- which I have with me --  
4 authorizing that purchase. So we have the approval from  
5 the department.

6 So to address the neighborhood's concerns,  
7 essentially on the public record before the planning  
8 commission and the city council, it was all the  
9 environment: we don't want you close to the stream,  
10 concerns of that nature. We reconfigured the project and  
11 moved back from the stream, and that's where we are right  
12 now. And then August 28 we got an approval letter back  
13 from the department to make that reconfiguration, so we've  
14 done that, and all this has been approved.

15 We started working with the department back  
16 when the opposition first became known and so we've been  
17 following the proper procedure. We've closed our  
18 construction loan and we're ready to go. I guess we're at  
19 your mercy today; we'd appreciate you helping us.

20 MAYOR SALINAS: Do you have a city permit, a  
21 building permit?

22 MR. McMULLEN: We'll have in about two weeks.

23 MAYOR SALINAS: You'll have it in about two  
24 weeks.

25 MR. McMULLEN: Yes, sir. We've got a permitted

1 use which we don't need any rezonings or anything of that  
2 nature.

3 MAYOR SALINAS: But you don't have the building  
4 permit.

5 MR. McMULLEN: No, sir, and the reason we don't  
6 have a permit is we reconfigured the project to address  
7 these concerns, the environmental concerns that they had.

8 MAYOR SALINAS: So I think we could approve the  
9 extension but they need to get a city permit.

10 MR. McMULLEN: Yes, sir.

11 MAYOR SALINAS: I mean, the fight is not here,  
12 the fight is over there at city hall.

13 MR. McMULLEN: That's the whole reason we're  
14 here before you for an extension. We closed our loan on  
15 time. We did everything that we were supposed to do, but  
16 we had to reconfigure it to meet the environmental  
17 concerns expressed by the neighborhood. I think the real  
18 issue is they probably just don't -- my feeling is that  
19 they don't want the affordable housing, and they're not  
20 right next to us, they're across the street and catty-  
21 cornered, We don't abut them; we abut one property owner  
22 who owns a house on one side and the other side is  
23 industrial.

24 MAYOR SALINAS: See, we don't deal with zoning  
25 here; you all need to go to zoning and the city council.

1 I don't see how we could deny the extension here. We'll  
2 probably get another one of the few we have gotten before.

3 I think we need to approve the extension and you'll take  
4 your arguments to city hall.

5 MR. JONES: Mr. Bogany?

6 MR. BOGANY: You know, what I see initially I  
7 thought it was the affordable housing, but what I saw that  
8 they were complaining about was sorry management, and  
9 that's not been addressed in your issues. You're  
10 addressing everything else but you've yet to say -- and  
11 that could have been a bad day they got those pictures, it  
12 happens. But what are doing about the management?  
13 Because to any affordable housing, any of these low  
14 income, this is all about management.

15 MR. McMULLEN: I agree.

16 MR. BOGANY: It's all about management, and you  
17 can let it run down and then you'll be back here asking  
18 for more credits. It's about management, and what are you  
19 guys doing to address the management issue, because that's  
20 what I heard them say.

21 MR. McMULLEN: As the speaker stated, several  
22 of the things were corrected, and I think it's very easy  
23 to assert deficiencies. I mean, we're in compliance with  
24 the department's regulations, we don't have any 8823s on  
25 those issues. And secondly, I'm being painted, and that's

1 okay, I'm not the managing partner of that project; I'm a  
2 junior general partner. I am one of the managing general  
3 partners on this project and it's going to be a different  
4 management company.

5 We did take steps, once I saw their pictures  
6 back in April, yes, we passed that on to the syndicator  
7 and we passed that on to the managing partner to get that  
8 addressed, and they have taken action to do that.

9 MR. BOGANY: Thank you.

10 MAYOR SALINAS: I just don't want another  
11 lawsuit here. This past board has approved this project,  
12 they're asking for an extension, we don't control zoning,  
13 we don't control any of that. I think what we need to do  
14 is give them the extension, then let city hall decide.  
15 Very simple. If not, they can turn around and sue this  
16 board. I mean, we just settled one a few minutes ago.

17 MR. JONES: Have you finished your  
18 presentation?

19 MR. McMULLEN: I just can't overstate the fact  
20 that I've worked with the staff for several months on  
21 every one of these issues, and every turn I've requested  
22 the approvals that I needed to reconfigure and I've gotten  
23 every one of them by working with the staff. I mean, I  
24 was very up front, we've got these issues, and I think  
25 we've done everything the right way with the department,

1 and we're just asking for your generosity.

2 MR. CONINE: Let me just ask a couple of  
3 questions right quick. You have closed the construction  
4 loan on this project?

5 MR. McMULLEN: Yes, sir.

6 MR. CONINE: But you haven't started the  
7 project because the building permit hasn't been obtained.

8 MR. McMULLEN: That's correct.

9 MR. CONINE: Are you in the city limits of  
10 Austin or are you in the ETJ of Austin?

11 MR. McMULLEN: City limits.

12 MR. CONINE: You are in the city limits. And  
13 you're requesting an extension till April 15, or staff is  
14 recommending an extension till April 15. I don't know how  
15 you can humanly develop and build 35 units in the dead of  
16 winter and early spring and not be back in front of us  
17 before April.

18 MR. McMULLEN: Well, your requirement is to go  
19 vertical which would be to have the foundation poured, and  
20 it's only three buildings. It's a 35-unit project, it's  
21 very small. And again, we wouldn't be here if we had not  
22 reconfigured the project to try to address their concerns.

23 MR. CONINE: And my understanding is you're  
24 back on the original three acres even though you bought  
25 the acre and a half?

1 MR. McMULLEN: We put the buildings back on the  
2 original three acres and we have the office back on the  
3 back acre and a half. I'm not required to build the  
4 office because I only have to have two amenities, but I'm  
5 going to do it because I said I would do it, and credits,  
6 I guess, were awarded.

7 MR. CONINE: But the city denied zoning on the  
8 acre and a half for multi-family but it had commercial  
9 zoning or something and the office would apply?

10 MR. McMULLEN: Yes, sir.

11 MR. CONINE: That's all the questions I have of  
12 him; I've got a few for staff.

13 MR. JONES: Thank you, sir.

14 We will then turn to item 2(d) on the agenda  
15 and will Charles be handling that again?

16 MS. CEDILLO: Yes, sir.

17 MR. JONES: So I will let the board members ask  
18 staff any questions they have concerning staff  
19 recommendations. If that's okay with board members, why  
20 don't we go straight to questions since we have the  
21 recommendation already.

22 MR. CONINE: Well, do you want to go through  
23 project by project in the order that's shown here?

24 MR. JONES: Any way the board wants to do that.

25 MR. CONINE: That's probably the best way.



1 MR. JONES: Fine. Why don't we take Windfern  
2 II Townhomes first. Any questions of staff?

3 MR. BOGANY: I move that we give them the  
4 extension.

5 MS. ANDERSON: Second.

6 MR. JONES: There's a motion made and seconded.  
7 Any discussion of the motion? Hearing no discussion, I  
8 assume we're ready to vote. All in favor of the motion,  
9 please say aye.

10 (A chorus of ayes.)

11 MR. JONES: All opposed, nay.

12 (No response.)

13 MR. JONES: Motion carries.

14 That will bring us to the King Fisher  
15 Apartments, Austin, Texas.

16 MR. CONINE: Mr. Chairman. Charles, I guess  
17 I'd like for you to address the issues of some of the  
18 neighborhood in response to the determination notice and  
19 some of the deadlines, the October 13, 2000 deadline that  
20 was missed in the carryover allocation -- allegedly  
21 missed. Would you let us know what happened on that?

22 MR. NWANERI: Actually, our record did not show  
23 that they missed the October -- or the carryover deadline.  
24 We show in here in the memo that we gave you that there  
25 was no prior extension.

1 MR. CONINE: Right. Well, the document that  
2 the homeowners furnished us -- which was obviously one of  
3 our documents -- calls for the carryover allocation to be  
4 made on October 13, and are you telling us that that was  
5 met by October 13 based on the other expenditures that he  
6 had made, or was it met in December when he purchased the  
7 1-1/2 acres, or did he purchase the 1-1/2 acres in  
8 December?

9 MR. NWANERI: The extra 1-1/2 acres was not  
10 purchased as a requirement by the department, it was  
11 something that they did to enhance the quality of the  
12 development, and I think that was one of the reasons the  
13 environmental site assessment has not been required on it  
14 because there was no requirement on the part of the  
15 department for the owner to go out and buy this extra 1.5  
16 acres of land and it was not a condition of our  
17 underwriting report either.

18 MR. CONINE: Did he meet his carryover  
19 allocation by October 13?

20 MR. NWANERI: Yes. They did not seek an  
21 extension.

22 MR. CONINE: So the testimony we heard earlier  
23 that the land purchase in December to meet the carryover  
24 allocation was erroneous. You don't agree with that, in  
25 other words.

1 MR. NWANERI: Well, that's my understanding,  
2 because the carryover that I have here did not show that  
3 they received any extension, and this is the carryover  
4 document, and according to this here -- I can hardly read  
5 the date, but anyway, we signed this carryover on --  
6 anyway, I am going to go with the information that there  
7 was no prior extension request on this property.

8 MR. CONINE: That doesn't answer my question.  
9 Did they meet the carryover allocation requirement on  
10 October 13 at five o'clock is what the commitment letter  
11 said they had to do?

12 MR. NWANERI: I have to apologize. The blue  
13 print on this cover here can tell me exactly when this  
14 came in and it seems like when we were bringing this -- we  
15 might not miss the carryover, but this thing was received  
16 on December 19, 2000, so clearly there was an error in  
17 saying that they would have met the carryover requirement.

18 They would have to have had an extension in order for  
19 these dates to be the date for the carryover.

20 MR. CONINE: Mr. Chairman, can I ask the  
21 developer if he would agree with that interpretation?

22 MR. JONES: If you have a question, go ahead.

23 MR. McMULLEN: No. What happened was we did  
24 make our carryover of October 13, filing what we were  
25 supposed to file -- I've got a stamped-in document

1 received -- and then what happened was when we came back  
2 in December to buy the extra land, I asked if -- I guess I  
3 talked to Mr. Nwaneri and there was another gentleman, but  
4 anyway, I amended the form. We were way over our  
5 carryover, we had 12 or 13 percent, and I amended the form  
6 in December which they didn't accept, they came back and  
7 said that you didn't need it for your carryover. It was  
8 only \$35,000; we were way over our carryover.

9 MR. CONINE: But it's your testimony you met  
10 that at the time on October 13?

11 MR. McMULLEN: Absolutely, and I've got it  
12 stamped in that the carryover was submitted on that day; I  
13 personally brought it in.

14 MR. CONINE: Can staff subsequently -- not  
15 right now, but subsequently provide the board with that  
16 information?

17 MR. NWANERI: Yes.

18 MR. CONINE: The second question I want to  
19 address is the 100-year flood plain on the survey. Again,  
20 one of the commitment letters said that the updated survey  
21 was to certify that it was entirely clear of the 100-year  
22 flood plain, and then the neighborhood group testified  
23 that wasn't the case, and what is staff's opinion on that?

24 MR. NWANERI: Our response here that we  
25 received from the applicant indicates that the developer,

1 it says, permanent loan commitment meeting they stated was  
2 submitted in confirmation there is no land in the flood  
3 plain. This is the information we received from the  
4 applicant at the time of carryover that no portion of the  
5 land, the three acres at the time, was included in the  
6 flood plain.

7 MR. CONINE: As on the application?

8 MR. NWANERI: As was in the application.

9 MR. CONINE: And have you found out any  
10 subsequent information since then to determine that it  
11 actually is on the site?

12 MR. NWANERI: Well, they revised their site  
13 plan. As the people who are opposing this earlier  
14 mentioned today, the initial site plan was erroneous and  
15 they revised it, and the revised plan did not show that it  
16 was in the flood plain.

17 MR. CONINE: Mr. Chairman, I'm troubled by all  
18 this conversation. As you know, I sat on the Audit  
19 Committee until recently, and one of the audit plans is to  
20 look at our Tax Credit Program and see from whence we  
21 decided --

22 MR. JONES: Excuse me.

23 MAYOR SALINAS: You know, I come back again  
24 saying that we're not in the zoning business, you know.  
25 We made a commitment, Ken.

1 MR. CONINE: But Mr. Mayor, we made a  
2 commitment based on a project with certain ramifications  
3 and designs and what's happened here is the project  
4 doesn't even come close to the original submission.

5 MAYOR SALINAS: I agree with you, and I would  
6 think that would be part of the planning and zoning of the  
7 City of Austin.

8 MR. CONINE: No. I'm questioning the authority  
9 of staff to make changes to something that the board has  
10 done, that's what I'm questioning.

11 MAYOR SALINAS: Oh, okay. What I just don't  
12 want is for the developer to turn around tomorrow and file  
13 a lawsuit in district court against us.

14 MR. CONINE: And I don't want that to happen  
15 either.

16 MAYOR SALINAS: I want to make sure that that  
17 doesn't happen because there is a commitment here from  
18 this board. Now, whether staff is at fault or not, I  
19 think if those people want to stop this project, they need  
20 to go -- and if he's in a 100-year plain, they're not  
21 going to give him a city permit, I guarantee that. Our  
22 city would never do it and planning and zoning has not  
23 voted in favor of a permit. I mean, that's where the  
24 fight has got to be taken to: planning and zoning and the  
25 city council in Austin. It's not our duty; our duty was

1 we made a commitment already, and I just would hate for a  
2 developer to come back at us.

3 Now, I think Ms. Cedillo needs to get together  
4 with whoever has this project and find out what's  
5 happening here.

6 MR. CONINE: Let me see if I can craft a motion  
7 that might make some sense here.

8 MR. JONES: Okay, that would be fine. Could  
9 the chair -- because I know there's a lot of concern in  
10 the audience about how we conduct a meeting -- if a board  
11 member has an inquiry to make of anybody that's spoken,  
12 they certainly are welcome to do that, but at this time on  
13 this issue public comment has closed except to respond to  
14 board members' questions. So once the debate starts, as I  
15 tried to explain earlier today, that's how we've  
16 proceeded.

17 We've allowed everybody to give us public  
18 comment and give us any information they wanted to. At  
19 this point the board is in debate. If a board member, as  
20 Mr. Conine just asked a member of the public to supply  
21 information, the chair will certainly allow that, but  
22 other than that, the opportunity for public comment on  
23 this particular issue is closed. Excuse me. I just  
24 wanted to make that clear for the audience so they'd know  
25 how I was reacting to all the questions that are going on.

1           Would you allow Mr. Bogany to make a comment  
2 before you craft a motion?

3           MR. CONINE:    Sure.

4           MR. BOGANY:   I'd like to ask the developer is  
5 this property in the 100-year flood plain.  And I realize  
6 that flood plain maps have changed from a year ago today,  
7 but are you in a 100-year flood plain?

8           MR. McMULLEN:  No, sir.  We were required to  
9 respond to that question by the carryover date, October  
10 13, and that was what was on our letter, and this came in  
11 with our carryover in this letter right here, and it  
12 answers the question.  "The limits of the 100-year flood  
13 plain, as designated by the FEMA panel" -- blah-blah-  
14 blah -- "do not encroach on the subject tract; 2) there  
15 are no current City of Austin flood plain maps for this  
16 tributary on Williamson Creek."

17          MR. JONES:    Mr. Conine?

18          MR. CONINE:   I'd like to make a motion to  
19 approve this extension request, subject to:  building  
20 permit received by the developer by the City of Austin;  
21 staff review of the documentation verifying that critical  
22 dates and carryover allocations and so forth have been met  
23 per the original board-approved project; and thirdly,  
24 independent evaluations that the conceived project as it  
25 currently stands can be finished by the existing April 15



1 date.

2 MAYOR SALINAS: I'll second the motion.

3 MR. JONES: And if I could, I would just like  
4 to make a comment to staff on behalf of the board. As you  
5 know, as we've gone through the audit process,  
6 particularly with regard to the Low Income Housing Tax  
7 Credits, one of the issues that's been raised here today  
8 is an issue that comes before us repeatedly, and that is  
9 can you audit the way we handle these matters and make  
10 sure the project we approved are those that are actually  
11 being built and on the ground.

12 And I think this raises all kinds of issues in  
13 that regard, and I would just like to have the staff focus  
14 on that issue. I think this motion requires you to do  
15 that, but I'd also just like to make sure we focus on the  
16 issue in a broader way.

17 MR. NWANERI: Also, if you don't mind, before  
18 you make your approval, I want to indicate to you because  
19 of the substitution of carryover documents from October to  
20 the one when he had to meet when he submitted additional  
21 information, that actually was what was creating the  
22 confusion, and this information just came late yesterday  
23 afternoon and we just had enough time to grab it over  
24 here. So I appreciate the opportunity that you're giving  
25 us to go back and find some detailed information on it.

1           But the information we furnished you in our  
2 writeup that there was no prior extension is still  
3 correct, that they met the October 13, 2000 deadline to  
4 meet their carryover; that was still correct.

5           MR. CONINE: In my motion I just wanted to make  
6 sure that not only just the carryover allocation was met  
7 but all the other conditions were met at the times they  
8 were supposed to have been met.

9           MR. NWANERI: And that was correct. We would  
10 never have given them carryover documentation without  
11 those conditions being met.

12           MR. JONES: We have a motion that's been made  
13 and seconded. Further discussion by the board? Hearing  
14 none, I assume we're ready to vote. All in favor of the  
15 motion, please say aye.

16           (A chorus of ayes.)

17           MR. JONES: All opposed to the motion, please  
18 say nay.

19           (No response.)

20           MR. JONES: Motion carries, which brings us to  
21 the Las Brisas Apartments in Del Rio, Texas.

22           MR. BOGANY: I move that we give them their  
23 extension.

24           MR. JONES: We have a motion that the extension  
25 be approved. Is there a second?

1                   MAYOR SALINAS:    Second.

2                   MR. JONES:    The motion has been made and  
3 seconded.    Further discussion?   Hearing none, I assume  
4 we're ready to vote.   All in favor of the motion, please  
5 say aye.

6                   (A chorus of ayes.)

7                   MR. JONES:    All opposed to the motion, please  
8 say nay.

9                   (No response.)

10                  MR. JONES:    The ayes have it.   We will then  
11 turn our attention to the Cameron Village Apartments in  
12 Alice, Texas.

13                  MR. BOGANY:   I move that we give them their  
14 extension.

15                  MAYOR SALINAS:   Second.

16                  MR. JONES:    We have a motion made and seconded.  
17 Further discussion on the motion?   Hearing none, I assume  
18 we're ready to vote.   All in favor of the motion, please  
19 say aye.

20                  (A chorus of ayes.)

21                  MR. JONES:    All opposed, nay.

22                  (No response.)

23                  MR. JONES:    The ayes have it, motion carries.  
24 The Talmadge at Park Central Apartments,  
25 Amarillo.

1 MR. BOGANY: I move that we give them their  
2 extension.

3 MAYOR SALINAS: Second.

4 MR. JONES: We have a motion made and seconded.  
5 Further discussion? Hearing none, I assume we're ready to  
6 vote. All in favor of the motion, please say aye.

7 (A chorus of ayes.)

8 MR. JONES: All opposed to the motion, please  
9 say nay.

10 (No response.)

11 MR. JONES: Motion carries. The Las Quintas  
12 Apartments, Eagle Pass, Texas.

13 MR. BOGANY: I move that we give them their  
14 extension.

15 MAYOR SALINAS: Second.

16 MR. JONES: The motion has been made and  
17 seconded. Further discussion on the motion? Hearing  
18 none, I assume we're ready to vote. All in favor of the  
19 motion, please say aye.

20 (A chorus of ayes.)

21 MR. JONES: All opposed, nay.

22 (No response.)

23 MR. JONES: Motion carries. We will then turn  
24 to item 2(e). Ruth?

25 MS. CEDILLO: We have Charles and Brooke Boston

1 who are going to handle the QAP.

2 MR. BURRELL: Good afternoon, Mr. Chairman,  
3 members of the board, Ms. Cedillo. We're here this  
4 afternoon to request the approval of our Qualified  
5 Allocation Plan and Rules, and we're also requesting,  
6 along with the approval, that we be given the opportunity  
7 to make any technical changes that would be necessary for  
8 the Texas Register.

9 Under the statute that we're governed under, we  
10 have to have the Qualified Allocation Plan and Rules  
11 approved today, with any necessary amendments, and over to  
12 the governor by five o'clock tomorrow afternoon. Then  
13 when the governor receives the Qualified Allocation Plan,  
14 he will have until December 1 to approve the Qualified  
15 Allocation Plan, reject it or approve it with any  
16 amendments which he would like to make.

17 In the process of developing this qualified  
18 allocation plan that we have, we started by having  
19 roundtable discussions back in July, going on into August.

20 We held those roundtable discussions with lenders,  
21 syndicators, housing advocates, developers, appraisers,  
22 and market analysts. We also held eleven public hearings  
23 in our eleven service regions during the month of October.

24 And we also have met several times with individuals that  
25 we knew were interested or groups that we knew would be

1 interested in the Qualified Allocation Plan.

2 Also, after receiving our comments -- where we  
3 actually closed the comment period the first week of  
4 November -- we did an evaluation and came up with a list  
5 of recommendations that we presented to our in-house  
6 executive award and review committee, and the  
7 recommendations that we had have been approved by our  
8 executive award and review committee. So what we're doing  
9 now is asking that you approve the Qualified Allocation  
10 Plan as we presented to you back in September, along with  
11 any amendments that we proposed in our memorandum that you  
12 have.

13 I have here with me Brooke Boston; she's our  
14 QAP specialist; she's primarily worked on the QAP for the  
15 last several months and trying to get it all put together,  
16 and Charles Nwaneri in our Tax Credit Program.

17 MR. JONES: Thank you. We have some speakers  
18 on this point. Why don't we take a break for a minute or  
19 two.

20 (Whereupon, a brief recess was taken.)

21 MR. JONES: Mr. Kahn, we'll take your testimony  
22 now.

23 MR. KAHN: My name is Barry Kahn, Mr. Chairman,  
24 members of the board, Ms. Cedillo. I would also like to  
25 compliment the staff on trying to work with everybody to

1 the maximum extent possible.

2 One of the issues that I'd like to bring up and  
3 touch on and support a prior recommendation has to do with  
4 the deep skewing of units, and staff started off making  
5 one proposal, they were receptive to the industry; TAPS  
6 made certain proposals, others have made certain  
7 proposals.

8 The proposal as it now is would permit a  
9 developer to defer his entire developer fee --  
10 notwithstanding staff at one time having objected to  
11 this -- to defer his entire developer fee in order to deep  
12 skew units. As you heard from Mr. Sugrue, this would not  
13 be smart because a lot of syndicators would not then buy  
14 the credits, and that would serve no purpose. Mr.  
15 Henneberger and a few of the other advocates are very much  
16 for getting as many deep-skewed units as possible.

17 Mr. Sugrue's language has been passed by them;  
18 Mr. Henneberger then made an amendment to it, again to  
19 satisfy some of the industry's concerns, and as a  
20 developer, I would like to endorse Mr. Sugrue's amendment  
21 as amended by Mr. Henneberger. And I truly hope that the  
22 board will confer with staff and get their conference on  
23 this. It happens to be a very important issue because we  
24 don't want deals which get credits and then don't get  
25 bought.

1           Secondly, I'd like to address the point  
2 reduction issues. The way it works is if you apply for  
3 an extension -- which has to be ten days ahead of time,  
4 and you may still be able to meet the due date, you are  
5 penalized two points against the future rounds. Well,  
6 it's not like with the IRS on April 15 you either file  
7 your return or you file your extension. Anything can  
8 happen in that ten-day window if you have certain things  
9 happening, particularly in an accountant's office, if  
10 there's a land sale yet to occur and something happens to  
11 a land seller, so if somebody does apply for an extension,  
12 they shouldn't be penalized if they meet the due date.

13           But more importantly, everybody should get  
14 certain extensions. The IRS permits six months for  
15 carryover, the department has 2-1/2 months. And maybe as  
16 a way of simplifying everything, we should move the due  
17 date back for carryover to November 15 or December 1  
18 rather than October 15. If somebody gets a credit  
19 allocation at the end of July, August 30 a land seller  
20 passes away; it can't get through probate on time. It's  
21 not the fault of the developer or the applicant that he  
22 needs an extension, yet he's penalized the subsequent  
23 year.

24           The alternative is either for the first  
25 extension -- as staff proposed, there would be no penalty



1 points, or in the case of carryover, at least, you have a  
2 longer period of time to meet carryover.

3           Something I suggested to staff is the due date  
4 of January 4 for the pre-application process puts a big  
5 burden on families. Plus, part of the pre-application  
6 process is getting letters from community groups and  
7 political organizations. Political groups and community  
8 organizations often aren't available during the latter  
9 part of December, so in order to meet this date does  
10 present a burden. Plus, those of us with families and who  
11 want to try to travel during the holidays are now kept  
12 from doing so.

13           If the date is moved back one week, and the  
14 suggestion is that the staff would then post the results  
15 one week later than is now recommended in the application  
16 process, there probably wouldn't be any harm to anybody  
17 and a lot of kids would be a lot happier with their  
18 parents who are involved in this process, and it would  
19 also make it a lot easier for people having to get letters  
20 for the pre-application from political and civic  
21 organizations.

22           There happen to be a couple of typos I'd like  
23 to address. One is going to back to deep skewing of  
24 units. It shows 0 to 9 percent getting points. That  
25 needs to be changed to at least 1 to 9 percent or up to 9

1 percent in each of those three categories. And in the  
2 other place, with respect to four-bedroom units in Exhibit  
3 206, item (i), there was a recommendation made that four-  
4 bedroom units are excluded from having to meet the market-  
5 rate requirement with market studies, and instead, they  
6 put the exception in the wrong sentence, so it needs to be  
7 moved to the prior sentence from the sentence it is in.

8 Thank you.

9 MR. JONES: Thank you, sir. The next speaker  
10 is Mr. Dunn.

11 MR. DUNN: Chairman Jones, Ms. Cedillo, members  
12 of the board, appreciate your patience this afternoon.  
13 I'll be very brief. My name is Mike Dunn; I'm with the  
14 Texas Association of CDCs, community development  
15 corporations. I'm sitting in for Ray Ocanes who sends his  
16 regards and regrets; he cannot make it today.

17 Two quick points. First that we want to thank  
18 the department and the Tax Credit staff for the procedure  
19 during the public comment process. It was user-friendly,  
20 staff responses were professional and specific to  
21 programmatic issues. Thank you. And leaving policy  
22 issues up to you, we feel that's very appropriate, given  
23 the magnitude of the program.

24 Attached is a copy of the letter that we  
25 submitted back on October 29 concerning our

1 recommendations for the QAP. We wanted to specifically  
2 ask you to consider point number 2 about the qualified  
3 nonprofits applying independently for the tax credits, to  
4 be able to receive bonus points for that so that we could  
5 build the capacity of medium-level capacity groups, CDCs  
6 out there that are doing it on their own and could use  
7 some help.

8 That concludes my comments. Thank you.

9 MR. JONES: Thank you, sir. Mr. Rowan Smith?

10 MR. SMITH: Board and chairman, my name is  
11 Rowan Smith, I'm from Houston, Texas, and I have a couple  
12 of quick comments to make to the 2002 QAP.

13 One, the first one, I pointed this out to  
14 Brooke Boston a little while ago and she wanted me to  
15 bring it before you as a possible change that needs to be  
16 made. Under Section 2306.6710(g) of the Sunset Bill, in  
17 regards to very low income units -- which if you look at  
18 the QAP, they have the points for 50, 40 and 30 percent of  
19 the units -- I was involved in the writing of this  
20 language during the Sunset Bill process. The commitment  
21 of development funding by local political subdivision that  
22 enables additional units for individuals and families of  
23 very low income, those are points that are to be given for  
24 that.

25 As it stands now in the QAP, the 30 percent

1 units which are considered very low income units are not  
2 tied to a commitment from a local jurisdiction in order to  
3 get those points for that. So in order to comply with the  
4 Sunset Bill, there needs to be a revision to that with  
5 some language put in there that would tie it to funding of  
6 the local jurisdiction.

7 Another point that I made during this process  
8 that they didn't put in the Sunset Bill, but I want to  
9 make it clear to the board and get it on record, is this:  
10 you've heard a lot of comment today about the lower  
11 skewing would cause deferred developer's fees. One of the  
12 things developers may try to do is to get a commitment  
13 from a local jurisdiction, say of \$200,000, yet they only  
14 put one very low income unit in the project.

15 Well, if you look at the cost per unit of the  
16 total development cost, it may only cost about \$50,000 to  
17 build another unit, yet they're getting \$200,000 of grant.

18 So that could be used to offset deferred developer's fees  
19 and that is not the intent of the Sunset Bill.

20 So I think when they revise this language  
21 putting in the language for the commitment from the  
22 political jurisdiction, they might want to consider  
23 putting some kind of language in there that ties the  
24 commitment to providing a development cost per unit for  
25 the project so the full amount of the funds would be

1 divided up by the number of units that it would go to  
2 build in the very low income category. So those two  
3 things I wanted to make a point of.

4 The second issue, I just want to make this  
5 aware. There's been some concern about the penalties for  
6 the extensions, and in the bill itself it says, "Imposing  
7 Penalties. There will be points given for imposing  
8 penalties on applicants or affiliates who have requested  
9 extensions of department deadlines relating to development  
10 supported by housing tax credit allocations made in the  
11 application round preceding the current round."

12 So that is something that is law and I think  
13 the staff has basically done a pretty good job with that;  
14 however, I think the points should be increased to like  
15 five points per extension fee in order to reward  
16 developers who have a track record of completing projects  
17 on time and in an efficient manner getting housing built  
18 quickly, which is the desire of the board that I  
19 understand from the several meetings that you have had  
20 over the past year or so.

21 When this language was put in the bill, we were  
22 trying to figure out some way to reward developers that  
23 successfully completed projects and there was really no  
24 way to do that, so the only way to do it was to penalize  
25 those who continually get projects every year but have a

1 history of not completing them. So I'm recommending, and  
2 I recommended to staff in writing, that those points be  
3 increased.

4 Other than that, that's the only issues that I  
5 have. Thank you.

6 MR. JONES: Thank you, sir. Appreciate it.

7 MR. JONES: That would then end public comment  
8 on this issue, I believe. Oh, I have another one. Yes,  
9 ma'am.

10 MS. McIVER: Diana McIver, and I actually have  
11 a couple of issues on the QAP that I would like to  
12 address. First off, though, I would like to thank you all  
13 for moving Mission Oaks in Refugio off the waiting list.  
14 I'm the developer of that project, and I do appreciate  
15 that.

16 I do want to commend the staff. I think the  
17 staff has done a very, very good job on bringing together  
18 the development community, both for-profit and nonprofit,  
19 and the investor community in putting together a very,  
20 very good Qualified Allocation Plan. I think we all agree  
21 we don't have a perfect plan; I don't think we could ever  
22 have a perfect plan, but I think we have a very good plan.

23 I have two issues that I want to address. One  
24 is I think it's just very simply a technical oversight,  
25 and if I had picked it out the first time I read the QAP,

1 it would have been in my written comments, but if you  
2 refer to Section 49.9 on market study requirements,  
3 basically there's language in there that says the  
4 department intends to limit the approval of funds to new  
5 multi-family projects where the capture rate is in excess  
6 of 100 percent for rural areas and in excess of 25 percent  
7 for urban areas.

8 I think the wording is incorrect, because when  
9 I started to apply mathematics to it, basically the  
10 definition of the capture rate is that it's the number of  
11 proposed units divided by the total number of income-  
12 eligible targeted market units in your market study. So  
13 if your market study said that there were 100 individuals  
14 or 100 households in your community that were eligible to  
15 reside in there and that were eligible renter-targeted  
16 households, and suppose it was a rural area and you were  
17 proposing 50 units, then the definition of that is that  
18 your capture rate would be 50 percent.

19 Now, if you apply that just to the rural set-  
20 aside and go to that next test that the department is only  
21 going to fund projects with capture rates in excess of 100  
22 percent, that would mean that I would have to apply for  
23 101 units if my market study said the need was for 100.  
24 So I think that it meant to say not in excess of but  
25 something like less than. So I think that's a technical

1 correction that the staff needs to just simply look at.

2 I tested it on a couple of people and  
3 mathematically I think I'm correct in that. I'm not a  
4 market study analyst, so I'll defer if I'm wrong on this.

5 The second issue I wanted to address is  
6 basically I was the person who recommended that there be  
7 points given for nonprofit sponsors who had allocations of  
8 HUD 202 and 811 funds, and I did it for this reason, and I  
9 think it's important that it be clarified. Essentially,  
10 last year in December, the Congress finally agreed for  
11 nonprofit 202 and 811 sponsors to be able to combine their  
12 projects with other sources of funding, including the Low  
13 Income Housing Tax Credit Program, to produce larger  
14 developments and serve more people.

15 Prior to that we had been doing 202 projects  
16 adjacent to tax credit projects but not as part of one  
17 facility. Their reasoning that it could have not been  
18 done prior to that was simply dealing with that they could  
19 only make a 202 award to a single-asset nonprofit  
20 corporation. What they amended it to say is that they  
21 could now make a 202 or an 811 award to a single-asset  
22 nonprofit corporation that is the sole general partner of  
23 a limited partnership. That is how they're allowing that  
24 in.

25 They further said that the 202 loan/grant --



1 it's actually a grant, 202 capital advance -- would not be  
2 deducted from eligible basis, that it would not be  
3 considered a federal grant for the purposes of combining  
4 it with tax credits. Now, how you can say a federal grant  
5 isn't a federal grant, I don't know, but that's what they  
6 did in the law.

7           So what HUD has done because of that is when  
8 applications were filed for 202 and 811 awards this past  
9 May, HUD actually had 811 and 202 sponsors check a box if  
10 they thought they might want to combine these funds with  
11 tax credits, and my understanding is -- and the 202 awards  
12 came out about two weeks ago -- that only eight sponsors  
13 actually checked that box, so we're not talking about a  
14 large universe of people who even want to tackle combining  
15 these two programs.

16           But essentially, when HUD did their notice of  
17 funding for 202 and 811, they made some very, very  
18 distinct requirements on those nonprofits that I think are  
19 very important for this board to know about. One is on  
20 the 811s they made it very, very clear that an 811 sponsor  
21 could not increase, could not have in a certain area more  
22 people with disabilities than would be allowed by the 811  
23 program. Currently the 811 program says that you will not  
24 receive funds for more than 16 persons with disabilities  
25 at a single location.

1           So to translate that to what they would be  
2 saying as far as combining that with tax credits, if an  
3 811 nonprofit had an award of 811 funding for ten units,  
4 then they would be allowed to get another six units of tax  
5 credits that serve disabilities but they very definitely  
6 could create a multi-family tax credit property of 70  
7 units as long as no more than 16 of those serve people  
8 with disabilities.

9           So that was how HUD was tying it into their  
10 integrated housing approach, and I think there were some  
11 concerns voiced this morning about large complexes full of  
12 persons with disabilities, but very definitely no one  
13 using an 811 in conjunction with a tax credit project  
14 could have more than 16 persons with disabilities at that  
15 single location. So I think that probably adds a  
16 clarification point there.

17           As far as the 202, it was also very, very clear  
18 that if you received a 202 allocation for 50 units and you  
19 went in to get tax credits, you had to increase the volume  
20 of units. 202 cannot be used like HOME funds simply to  
21 make a project more feasible; it absolutely has to expand  
22 the number of units. So if you were proposing a 202 of 50  
23 units, then you'd have to do tax credit units of 30, 40,  
24 50 units as well. You simply can't go in, come to the  
25 state, get tax credit funding just to make your 202

1 project easier.

2 So basically I think those were the  
3 clarification points on that. I propose that we have  
4 points for those sponsors because, one, it's very, very  
5 few allocations in the state of Texas -- 202s, generally  
6 we get five or six projects funded a year in the state of  
7 Texas -- and so I believe that a sponsor with that kind of  
8 valuable commodity should get points similar to what they  
9 get with a HOPE 6 allocation. And that ends my comments.

10 Thank you.

11 MR. JONES: Thank you, ma'am. Appreciate it.  
12 And I have another one that we've received. Rosa  
13 Villarreal.

14 SPEAKER: She left.

15 MR. JONES: She left, she gave up. I  
16 understand.

17 Then I think that does conclude all the witness  
18 affirmation forms I have. We will then conclude public  
19 comment on that issue which is 2(e) and turn it over to  
20 the board.

21 MR. CONINE: Mr. Chairman, can we get Brooke to  
22 come up here and let's just see if we can plow through  
23 some of these issues?

24 MR. JONES: I think that would be wonderful.

25 MR. CONINE: We've heard some outstanding

1 testimony today and I don't know how best to go about  
2 doing this. I've got a long list of notes here.

3 MR. JONES: I'd make a suggestion. We've had a  
4 lot of things brought up. There may be some board members  
5 that want to make amendments and additions to those  
6 recommended by staff already in their memorandum. What if  
7 we make a list of those you want and we might see if that  
8 whole list could go through as a motion. You don't like  
9 that?

10 MR. BOGANY: No. I like that. I've got my own  
11 comments.

12 MR. JONES: Mr. Conine doesn't like that; let's  
13 forget it.

14 MR. CONINE: I think staff has some amendments  
15 to their own recommendations that are in our books.

16 MR. JONES: Okay. Well, you're ahead of me  
17 then.

18 MR. CONINE: Maybe we could start there and  
19 then move forward.

20 MR. JONES: Good deal. All right, I like it.

21 MS. BOSTON: Really, the only thing that staff  
22 feels that we would just 100 percent make a recommendation  
23 for different from what's already in the memorandum is the  
24 comment that was made regarding the zero percent on the  
25 low income targeting, basically awarding points for people

1 who've done nothing. That was just a staff error, and I  
2 would definitely ask that you make that change in your  
3 other changes.

4 The bulk of the other comments made I think are  
5 more contentious issues that we felt we made a very  
6 concerted effort to find compromise on and we had our  
7 advisory award review committee go over, so staff in most  
8 instances continues to stick with our memorandum.  
9 However, if there's suggested changes that you have that  
10 you'd like to get our input on a new compromise or  
11 something, I'd be happy to.

12 MR. JONES: Let me just make sure I understand  
13 how we proceed here. Obviously, she has one suggestion.  
14 Do we want to just take them one at a time, do we want to  
15 let each board member address a number of issues, how do  
16 we want to do it?

17 MR. CONINE: What we probably ought to do is  
18 get a motion on the floor getting the document on the  
19 floor and then make amendments to it one at a time.

20 MR. JONES: That would be fine. Would you like  
21 to make that motion?

22 MR. CONINE: Move for approval that we approve  
23 the staff redirected QAP for 2002.

24 MR. JONES: Is there a second to that?

25 MR. BOGANY: Second.

1 MR. JONES: It's been made and seconded. Why  
2 don't we start with Mr. Bogany and just go around the  
3 table.

4 MR. CONINE: That's great.

5 MR. JONES: Why don't you make your amendments  
6 to the motion.

7 MR. BOGANY: One of the amendments that I  
8 wanted to put is that I would be totally against making  
9 townhomes 100 percent with one bedroom down, and the  
10 reason for that is because if the builders don't build  
11 them because it's too difficult to do, then we have no  
12 townhomes for anybody, and so it kind of defeats the  
13 purpose of it.

14 I'd like to see us make a percentage of it, you  
15 know, 20 percent, 10 or 15, whatever staff thinks is  
16 appropriate, I can relate with them.

17 The other issues, I do think they should all  
18 have half baths downstairs and I think that's something  
19 that should be on any townhouse is a half bath downstairs,  
20 but requiring 100 percent of them to have one bath down I  
21 think defeats the purpose of what we're trying to do. And  
22 my other comments I'll keep to myself in regard to that.

23 The second issue is having to do with the  
24 penalties if you miss your deadline. I actually don't  
25 have a problem with the deadline penalty, but if a

1 developer files for an extension and still meets his  
2 target dates and never uses the extension, I don't think  
3 they should be penalized the following year because they  
4 filed an extension. I think they've got a lot of money  
5 riding on these projects and if they don't meet the  
6 deadline, then penalize all that you want to penalize the  
7 next year, but if they file the extension for safety  
8 reasons to make sure and they hit those target deadlines  
9 that they're supposed to hit, then don't penalize them the  
10 following year for that amount, and I'd like to see  
11 something like that in there. And that's it.

12 MR. JONES: Now, we do have to do this today.  
13 Right? Because we've got to get it to the governor on  
14 Friday.

15 MS. BOSTON: Tomorrow.

16 MR. JONES: Can you work on language to satisfy  
17 his comments as we all speak? Thank you.

18 (Pause.)

19 MR. JONES: Oh, you already did. I like that.

20 MR. CONINE: Do you want to respond to that  
21 because I'd like to hear your comments?

22 MS. BOSTON: Sure. The one-bedroom, one-  
23 bathroom downstairs issue, you know, there's really good  
24 merits on both sides of that argument, and I concur that  
25 we probably don't want to lose that whole design by nature

1 of creating a standard that basically by creating it, no  
2 one is going to do it. It seems like the public comment  
3 this morning supports having a proportion of it, as you're  
4 suggesting. I think one of the concepts this morning was  
5 one-third of each unit type which I think would be a very  
6 good compromise on that.

7           Regarding the penalties, I think it's totally  
8 logical that if someone doesn't actually follow through on  
9 being late that they shouldn't lose points for that. It  
10 would be easy to add a sentence.

11           MR. BOGANY: Well, the 30 percent I think is a  
12 little high still; I think 20 would probably be a little  
13 bit better. I just don't want the developers to stop  
14 doing it and then everybody loses, and my thoughts are  
15 that if you're handicapped and you've got a bedroom down,  
16 how are you going to get upstairs and look at your kids or  
17 your family, how are you going to get up to the second  
18 floor and do that. It's like you would want to be in a  
19 one-story so you would have access to your whole home --  
20 me personally, I would think that. But I'm sure some  
21 families that are together, so instead of a third, I would  
22 like to see maybe 20 percent.

23           MS. BOSTON: And you're saying 20 percent the  
24 whole unit would be one level, or you're saying 20 percent  
25 one bedroom, one bath down?



1 MR. BOGANY: One bedroom, one bath down, and  
2 then all of them would have a half bath down, because then  
3 if you get somebody handicapped coming to visit, how do  
4 you get them upstairs to use the restroom.

5 MR. CONINE: Brent, you had some other  
6 percentage relationship that you relayed this morning, I  
7 thought, that might be a little different than that.  
8 Could you refresh my memory what you recommended in your  
9 testimony?

10 MR. STEWART: I did not suggest a percentage.

11 MR. CONINE: You didn't? Because I wrote the  
12 word "percentage" down here. What did you recommend?

13 MR. STEWART: Quite frankly, anything less than  
14 100 percent.

15 (General laughter.)

16 MR. CONINE: I'd go along with Shad's  
17 recommendation then.

18 MR. JONES: Good deal.

19 MR. CONINE: Are you done?

20 MR. BOGANY: Yes, sir.

21 MR. CONINE: I'll take a stab at it. I think  
22 the \$6,500 per unit tax credit number, I would move to  
23 eliminate that; I think it takes away from the flexibility  
24 of being able to provide units in a lot of different  
25 special circumstances, and it's just not the right way to

1 do it. I think we have other checks and balances within  
2 the system to take care of that, so I'd like to see that  
3 go away.

4 We had an excellent presentation by, I think,  
5 Mr. Voelker on -- let me see if I can find his comments  
6 right here. He was referring to the way the language was  
7 written originally and it came out differently and  
8 suggesting that we put a group together to talk about it  
9 over this next year to see if we can get any deeper than  
10 currently it's written. I guess I would ask staff's  
11 opinion to go back to the original language and then add  
12 the I guess negotiated-out-in-the-hall language about no  
13 more than 50 percent of the developer fee be deferred to  
14 hit those targeted numbers. Could you comment on that?

15 MR. NWANERI: We have received comments on  
16 this, either in writing or people approaching us and  
17 discussing it. Initially staff has proposed even awarding  
18 points for deferring fewer amount of developer fee, and  
19 comments that we received made staff go back and remove  
20 that condition. And also, along with that initial staff  
21 proposal to award points to developer fees, we were also  
22 looking at 30 percent, 40 percent and 50 percent incomes,  
23 but obviously the information we received from the public  
24 was to the point that we were awarding people to defer  
25 their developer fees and that's an incentive actually that

1 we shouldn't be doing it. We went back and removed it.

2 Now, I think we can meet them halfway now that  
3 we changed the language saying no more than 50 percent of  
4 the developer fee, and initially where we said you had to  
5 have at least additional subsidy before you can even do 30  
6 percent income, we are willing to meet them halfway rather  
7 than our original plan. On the memo that I gave you I  
8 think the two groups that were discussing this really  
9 extensively have come up with the language in there that  
10 seemed to be a compromise from what we had earlier, and I  
11 think if it's okay with you, we would be willing to go  
12 with no more than 50 percent of the deferred developer  
13 fees.

14 MR. CONINE: Okay, so we're cool on that issue.

15 MS. BOSTON: Although, actually I guess I'm not  
16 exactly positive of what language you're talking about, os  
17 if you have the memo that he's referring to and that's  
18 what you're going to agree to, if you can just read it  
19 into the record for me so that I'm make sure I'm putting  
20 the right thing into the document later.

21 MR. CONINE: Is Mr. Voelker still around?  
22 We'll have to work on that here in a minute.

23 MR. KAHN: Mr. Conine, I've got the language  
24 that was proposed.

25 MR. CONINE: Okay. If you'd like to help us

1 with that. You're going to give it to Brooke? Okay,  
2 great.

3 The zero percent, I think we need to come up on  
4 that, and I would prefer a staff recommendation, whether  
5 it's one, two, five, whatever, I'd like to hear your  
6 input.

7 MR. NWANERI: Actually, when we discussed this,  
8 we were saying up to 9 percent, and now that it's coming  
9 up, we can even leave 9 percent there but maybe say 1 to 9  
10 percent, just to show that we're not awarding people  
11 anything on zero.

12 MR. JONES: Is there a floor by which before we  
13 award something we want to see them touch? I just want to  
14 make sure 1 percent isn't any more meaningless than zero.

15 MR. CONINE: So we're going to say one to nine,  
16 is that what we're going to do? Is that agreeable with  
17 everybody so far? We'll try it out this year and see how  
18 it works.

19 Mr. Lynch had some comments on some of the  
20 physical characteristics of the projects themselves,  
21 ceramic tile floors in the entry, kitchen and bathroom for  
22 two points. Can you comment on that, please? I guess we  
23 were taking that out of this year's QAP.

24 MR. NWANERI: The reason we were really  
25 alluding to taking it out from what we had before was many

1 people, many developers on the other side complained that  
2 that was the reason why cost per unit was going up anyway.

3 They think that an average tenant would live comfortably  
4 without having those crown moldings and things of that  
5 extensive nature, and that was why we removed it from the  
6 original. I know Mr. Lynch has a good suggestion for  
7 quality but we're trying to make it to where we have  
8 quality on one hand but also something that is affordable.

9 But if they're willing to do that level of quality at an  
10 affordable price, I think it would be good to add it back  
11 on.

12 MR. CONINE: I guess I would side with him or  
13 his viewpoint. I understand running up the cost, it also  
14 runs up the credits which also runs up the cost per unit  
15 or the credit per unit, but I think it's a long-term  
16 maintenance issue and amenity issue, so I'd like to side  
17 with him on that one and put that back in.

18 On the exterior masonry, hopefully staff heard  
19 my comments earlier relative to 100 percent stucco on a  
20 Mediterranean or Spanish look, and I think we need to  
21 provide for that, but on the other hand, I would agree  
22 with him that 100 percent cement board siding probably  
23 isn't what we would like to see. So I think we need to  
24 craft some language that takes care of that issue, either  
25 brick or stucco on 75 or 80 percent of the project with

1 the other 25 percent or 20 percent being something else  
2 there, but still have the flexibility to allow for, I  
3 think, 100 percent stucco because we need that sort of  
4 product out there.

5 MR. BOGANY: I have a question for Mr. Conine  
6 in regards to the stucco deal. I actually don't see  
7 anything wrong with using the Hardiplank. First of all,  
8 when you do use Hardiplank, you get more square footage in  
9 a property than you do on an all-brick unit, and I can  
10 take you and show you all-brick units that look like  
11 projects to me and they're all brick all the way. The  
12 stucco issue, the problem I've got with stucco is the mold  
13 issue, and until we get that done, and I know if it's done  
14 right, then you don't have a mold issue problem. Maybe  
15 what we ought to do is state, if we're going to do stucco,  
16 what the requirement is going to be to have that stucco on  
17 that particular piece of property so it does not have a  
18 mold issue.

19 MR. CONINE: To answer your comments there, I  
20 think it occurs in mainly the Ephis product which is that  
21 really thin layer of stuff over Styrofoam. If you do the  
22 normal Las stucco, you don't have those sort of mold or  
23 moisture concerns, and you can get the same square  
24 footage, generally speaking, that you can on an Cementos  
25 board product. Maybe we eliminate the Ephis as a stucco

1 because I don't think we want that anyway in an affordable  
2 housing project, so I would agree with you on that.

3 MS. ANDERSON: Could I just ask a question, Mr.  
4 Conine?

5 MR. CONINE: Sure.

6 MS. ANDERSON: You're not proposing that you  
7 can't use cementos siding but that you just don't get the  
8 points for it that you do when you use 75 percent masonry.  
9 I mean, isn't that the way the QAP is written, Brooke?

10 MS. BOSTON: Right. Right now you can design  
11 it that way but if we take this out, you wouldn't be  
12 eligible for three points, you'd only be eligible for the  
13 points if you did it 75 percent brick or stucco.

14 MS. ANDERSON: Okay.

15 MR. CONINE: Cities right now are preventing a  
16 lot of that to begin with.

17 MR. BOSTON: Just to make sure I didn't miss  
18 anything, did you say you did want ceramic tile back in?

19 MR. CONINE: Yes.

20 MS. BOSTON: Okay, that's what I thought.

21 MR. CONINE: We had some testimony regarding  
22 some of the local HOME funds actually being committed to,  
23 and I think I had a dialogue on some chicken-and-egg  
24 situation. What are your feelings regarding that, the  
25 actual commitment of HOME dollars?

1 MS. BOSTON: Our answer was based more on an  
2 administrative nature which is particularly with the  
3 emphasis on trying to rank things purely by score and send  
4 it to underwriting. If we don't know for sure that they  
5 have that to get the points, and let's say it falls  
6 through at the last minute, that could totally impact what  
7 we sent to underwriting and what recommendations would be  
8 made because it is a substantial number of points.

9 So our sentiment then, and I still continue to  
10 agree, is that we need to know if they have it, and I  
11 regret that in some cities it is a chicken-and-egg.

12 MR. CONINE: Does it put an undue  
13 administrative burden on you to require that they have it  
14 ten days prior to the tax credits being awarded, as was  
15 suggested in some of the testimony?

16 MS. BOSTON: Well, ten days definitely, because  
17 according to Senate Bill 322, we're obligated to post to  
18 the website 30 days before that June meeting what our  
19 recommendations are going to be, so at a minimum, we would  
20 have to know then so that we could post the  
21 recommendations that we actually would be recommending,  
22 and if we're going to recommend something other than  
23 what -- for instance, if the funding fell through, our  
24 recommendation would obviously be different.

25 MR. CONINE: Would it make sense to make the



1 assumption on the 30 days ahead of time that they're going  
2 to get it and then inform the board at the board meeting  
3 that day: yes, they got it, or no, they don't have it?

4 MS. BOSTON: And then if they didn't, you would  
5 just direct us to go down the list and underwrite more  
6 deals.

7 MR. CONINE: Well, you wouldn't have the time  
8 at that point, would you?

9 MR. JONES: Yes, I think that would be a little  
10 problematic to Senate Bill 322.

11 MS. BOSTON: I mean, the concept of it we  
12 totally support, and I understand where they're coming  
13 from. If there weren't an issue of how we processed and  
14 making sure that we went strictly by score and that  
15 everything had to be underwritten in a certain order, I  
16 don't have a problem with it.

17 MR. CONINE: Let me ask you this, would it make  
18 sense to in the QAP make sure that your recommendation  
19 would be subject to those HOME funds -- I guess maybe they  
20 already all are -- if they're subject to and then they  
21 don't get it, then the tax credits fall out and they come  
22 back to us and we go to somebody else. Does that make  
23 sense?

24 MS. BOSTON: Right.

25 MR. NWANERI: If this development is among the

1 ones selected or approved, that's something that could be  
2 an underwriting condition that they meet at carryover.  
3 However, we're also suggesting -- earlier when we were  
4 discussing this in the office -- that they can start  
5 working with these local groups that are providing funding  
6 a little bit earlier. Maybe they also on their own can  
7 make the assumption that they're going to get the credit  
8 and go on and give them the funding so we have it earlier  
9 in order to work with our deadlines as far as moving  
10 forward to underwriting.

11 MR. CONINE: I think we better just leave it  
12 alone then, based on what you guys are telling us. If we  
13 can encourage and all that and make it subject to, but I  
14 think we want to make sure they get those dollars.

15 Unit size was addressed and specifically a  
16 differential between elderly one-bedrooms and two-bedrooms  
17 as opposed to others. I think I would agree with the  
18 recommendation that on one bedroom we've got 750 feet for  
19 non-elderly, 550 feet for an elderly one-bedroom unit and  
20 then 900 for a two-bedroom that's non-elderly and 750 for  
21 a two-bedroom that is elderly. Do you guys agree with  
22 those assumptions or have different opinions?

23 MS. BOSTON: Could you repeat them back?

24 MR. CONINE: 750 and 550 on the one-bedroom and  
25 900 and 750 on the two-bedroom. Do we not have three-

1 bedroom? I'm sure we've got three-bedroom minimums in  
2 there somewhere and fours.

3 MS. BOSTON: We don't tend to get three- and  
4 four-bedroom elderly

5 MR. CONINE: But for regular stuff, don't we  
6 get three- and four-bedroom? Do we have minimums in there  
7 for that?

8 MS. BOSTON: Yes, 1,000 is a three-bedroom and  
9 1,100 is for a four-bedroom.

10 MR. CONINE: Okay, we'll just stick with that.

11 MS. BOSTON: And there didn't seem to be much  
12 comment suggesting that those change.

13 MR. CONINE: I'd like to see us make the change  
14 and differentiate the elderly.

15 Sorry, folks, I'm working through this as fast  
16 as I can. Ms. McIver's testimony a minute ago about the  
17 202 and 811 getting additional points. What are your  
18 feelings on that issue?

19 MS. BOSTON: The memorandum to you had included  
20 giving points for that and I think she was just trying to  
21 kind of rebut some of the comments earlier this morning  
22 that were pointing out some of the reasons why we might  
23 not want to do it.

24 MR. CONINE: So we've already done it?

25 MS. BOSTON: Yes, right now it's in there.

1 MR. CONINE: And the market study capture rate  
2 issue she brought up?

3 MS. BOSTON: That was a good catch, and I may  
4 actually want to defer to Tom Gerst on this because that's  
5 kind of his forte to be able to discuss it and make sure  
6 that we don't have an error in there.

7 MR. GERST: Tom Gerst, director of  
8 Underwriting. Actually, it's not an error, it's the same  
9 language we use in the concentration policy, and what it  
10 says is that we will reserve the right not to allocate  
11 credits in an area which exceeds 100 percent or 75  
12 percent, so you have to read the whole paragraph to get  
13 the meaning of what was written there. If you take it out  
14 of context, it looks like it's in error but it's not.

15 MR. CONINE: It's okay?

16 MR. GERST: It's okay the way it is.

17 MR. CONINE: Mr. Smith's comment on the very  
18 low income issue, and Senate Bill 322 related to tied to  
19 the local funds. Can you help me there?

20 MS. BOSTON: Definitely he had an excellent  
21 point. In our original draft, we had made sure that we'd  
22 captured that, and then when we were going back and trying  
23 to accommodate all the public comment, basically I just  
24 didn't realize that we had missed that the second time  
25 around. I do feel like by using the language that was

1 proposed by Mr. Voelker, that seems to have group  
2 consensus, we are saying that you have to have subsidy, so  
3 that should resolve it.

4 MR. CONINE: Okay. We had some testimony about  
5 going from 100 to 150 on the contractor's experience in  
6 urban areas and then 36 to 75 on rural areas. Can you  
7 help me with that?

8 MS. BOSTON: We had originally proposed having  
9 two exhibits: one continued to be threshold minimal  
10 experience and then we also added points for experience  
11 going above and beyond. We got a lot of comments just  
12 indicating they thought it was confusing and why would we  
13 have different standards in threshold and selection. In  
14 one we were talking about the general contractor but in  
15 selection we were only talking about the GP.

16 To kind of make it easier, we deferred back to  
17 only doing threshold, but when we did, because so many  
18 people seemed to always make it, we thought we could raise  
19 the bar a little bit just to keep the quality high, but  
20 going back is also fine.

21 MR. CONINE: I thought his comments regarding  
22 the rural, percentagewise, a larger jump, were amenable.  
23 I don't have necessarily a problem with the 100 to 150,  
24 but if it's no big deal going back to the original, I  
25 think we'll just keep it like it was and maybe put it on a

1 watch list for next year and we can take a look at it.

2 I think that takes care of the items I wrote  
3 down, Mr. Chairman.

4 MR. JONES: Keep thinking and we'll go to Ms.  
5 Anderson.

6 MS. ANDERSON: Brooke, there was a person that  
7 talked this morning about the not-for-profit that the  
8 board members were required to give their home addresses.  
9 Can you comment on that issue for me, please?

10 MS. BOSTON: Yes. Unfortunately, that's a very  
11 explicit requirement in Senate Bill 322, so as long as  
12 it's in there, we have to ask for it. That's that.

13 MS. ANDERSON: Okay. So it's in the statutory  
14 language.

15 MS. BOSTON: Yes, ma'am.

16 MS. ANDERSON: Then the comment that the  
17 gentleman made right after that about being a State of  
18 Texas resident within 90 miles, I guess, of the property  
19 for a rural deal, is that in there for the same reason?

20 MS. BOSTON: It's in the bill.

21 MS. ANDERSON: Okay, I must have missed that  
22 part of the conversation. And then the issue about the  
23 points that would be awarded in a joint venture between a  
24 for-profit and not-for-profit and those points are not  
25 available to just a not-for-profit acting on its own, can

1 you help me understand that issue?

2 MS. BOSTON: Sure. The idea behind those  
3 points when we generated them for the first time was that  
4 we wanted to help in terms of capacity building for  
5 smaller nonprofits who weren't able to do one of these on  
6 their own, and while I understand that like a full-fledged  
7 nonprofit who has a lot of experience would like to be  
8 eligible for those points, it kind of defeats the idea  
9 behind it. If we want to structure them in a way for a  
10 different reason, that's a different issue.

11 MS. ANDERSON: So you're trying to give the  
12 small nonprofits sort of leg up by letting them team with  
13 a for-profit.

14 In the criteria to award the points, is there a  
15 size threshold? How do you define a small nonprofit in  
16 that term?

17 MS. BOSTON: We don't, so you could have --

18 MS. ANDERSON: A big nonprofit.

19 MS. BOSTON: Right, could do it.

20 MR. BOGANY: I have a question about that and I  
21 didn't say anything about it in my end, but I think this  
22 is a good reason to have a profit and nonprofit  
23 partnership, whether large or small, and the reason I feel  
24 that way is because of the experience, also the expertise.  
25 And I can tell you we have 108 CDCs in the city of

1 Houston and only five of them are probably being  
2 productive, and if you've got that partnership with  
3 somebody who does it all day, that's their living, they're  
4 going to give them advice and things of that nature to  
5 help make these projects successful.

6 It seems to have been my experience with  
7 nonprofits, when they're spending government money, they  
8 take all sorts of risks and all sorts of chances that if  
9 they were in the real world, they may not take. And it  
10 scares me, knowing my experience with nonprofits, I don't  
11 care how big they are, when they try to skirt using  
12 expertise, and a lot of them don't have people with  
13 expertise on their board or on their staff, and I like  
14 that being a catchall in that situation or having that  
15 private enterprise there to give them some guidance.

16 MR. CONINE: I agree with Mr. Bogany.

17 MS. ANDERSON: I think that's it. Thanks.

18 MR. JONES: My question, I think Mr. Conine  
19 already took care of this, but with regard to Mr. Sugrue's  
20 proposed amendment with the proposed amendment by Mr.  
21 Henneberger, we already included that in Mr. Conine's  
22 comments. Correct?

23 MS. BOSTON: If you'd like, maybe I should read  
24 it in to make sure that everyone is in agreement that  
25 we're talking about the same thing because I've seen



1 probably five of these floating around this morning.

2 MR. JONES: Okay.

3 MS. BOSTON: And we're talking about the low  
4 income targeting. Correct?

5 MR. JONES: Right.

6 MS. BOSTON: The way I'm understanding it is we  
7 would keep all the original language at the top which --  
8 do you want me to read all that in or just add in the new  
9 additions?

10 MR. JONES: Whichever way you think is best.

11 MS. BOSTON: Okay. The way the whole exhibit  
12 would read is, "Low Income Targeting Points. Applications  
13 are eligible to receive points under Clause 1, 2 and 3 of  
14 this paragraph. For purposes of calculating percentages  
15 of units, all figures should be rounded down to the  
16 nearest whole number. To qualify for these points, the  
17 rents for the rent-restricted units must not be higher  
18 than the allowable tax credit rents at the rent-restricted  
19 AMFI level.

20 "For Section 8 residents or other rental-  
21 assistance tenants, the tenant-paid rent plus the utility  
22 allowances compared to the rent limit to determine  
23 compliance. The development owner, upon making selections  
24 for this exhibit, will set aside units at the rent-  
25 restricted levels of AMFI and will maintain the percentage

1 of such units continuously over the compliance and  
2 extended use period as specified in the LURA.

3 "For the purposes of the subparagraph,  
4 maintaining the promised percentage of units at the  
5 selected levels of AMFI, if at recertification the  
6 tenant's household income exceeded the specified limit,  
7 then the unit remains as a unit restricted at the  
8 specified level of AMFI until the next available unit of  
9 comparable or smaller size is designated to replace this  
10 unit. Once the unit exceeding the specified AMFI level is  
11 replaced, then the rent for the previously qualified unit  
12 at the specified level of AMFI may be increased over the  
13 LIHTC requirements.

14 "Rent increases, if any, should comply with  
15 lease provisions and local tenant-landlord laws.

16 "To qualify for points for units set aside for  
17 tenants at or below 50 percent, 40 percent, and 30 percent  
18 of AMFI, an applicant must provide evidence of a  
19 commitment of funds which specifies the amount of funds  
20 committed, terms of the commitment, and the number of  
21 units targeted at the AMFI level.

22 "Notwithstanding anything to the contrary  
23 contained here, development owners may not elect to set  
24 aside 30 percent, 40 percent, and 50 percent units for  
25 points hereunder to the extent that the deferred

1 developer's fee, as determined by staff at underwriting,  
2 exceeds 50 percent of the entire developer fee.

3 "If local HOME funds are to be used for units  
4 set aside for tenants at 50 percent, 40 percent, and 30  
5 percent AMFI, the applicant should have proof of submittal  
6 for these local funds to receive the points. However, if  
7 a firm commitment for local HOME funds is not received by  
8 the department prior to ten days preceding the LIHTC  
9 reservation announcements, the points shall be deducted."

10 Which was your comment about the make subject  
11 to.

12 MR. JONES: I love that notwithstanding  
13 anything to the contrary contained herein; I love that  
14 clause.

15 MR. CONINE: They teach you that in law school.

16 MR. JONES: It makes me feel so comfortable  
17 some lawyer wrote that.

18 (General laughter.)

19 MR. CONINE: Can I ask an additional question,  
20 because Mr. Smith -- and Tom, you may be able to help me  
21 with this -- Mr. Smith brought up the example of getting  
22 \$200,000 grant from a local municipality but only  
23 providing one unit and the disparity associated with that.

24 Should we tie something in there that would help get more  
25 of those units tied in on a per-cost basis or some sort of

1 income and expense evaluation.

2 MR. GERST: If our goal is to get deeper  
3 skewing rents -- and we can provide any incentive to do  
4 that -- I'm not sure how it would matter if they're going  
5 to get \$200,000 that goes for one 30-percent unit plus  
6 subsidizing the rest of the project affordabilitywise.  
7 We'll make sure in underwriting that there's not more  
8 subsidy in total needed than necessary, and so I'm not  
9 sure that there's an easy way to tie that subsidy.

10 We've done that with the Housing Trust Fund,  
11 though, in the past, so what we said there is, I think, up  
12 to \$70,000 in Housing Trust Fund subsidy for a 30-percent  
13 unit and then I think we had a different number for the  
14 50-percent unit. I don't recall what that number is off  
15 the top of my head.

16 MR. CONINE: Well, maybe instead of any sort of  
17 prohibition to prevent the \$200- for one unit example,  
18 maybe we can provide an incentive or points to get more of  
19 those on a per-unit basis and pick \$50-, \$70,000, whatever  
20 number you want to pick. Does that make sense?

21 MR. GERST: I think that there will be enough  
22 incentive in the deep skewing that we have to already  
23 incentivize it. In order to meet that, they're going to  
24 need to get funds

25 MR. CONINE: Okay.

1 MS. BOSTON: If I may, on that last sentence, I  
2 think if where I had said prior to ten days preceding the  
3 reservation announcement, if we were to make that 30 days,  
4 that would probably be more satisfactory.

5 MR. CONINE: Okay.

6 MS. BOSTON: And then likewise, somebody  
7 brought up the double counting issue where you don't want  
8 to let the same unit that's hitting 50 be counted as also  
9 serving 30. We could easily add a sentence that says, No  
10 unit may be counted twice in determining point  
11 eligibility.

12 MR. CONINE: Perfect.

13 MR. JONES: That's a good idea.

14 MR. BOGANY: Mr. Jones, I move that we approve  
15 the QAP for 2002 with the addendums and let staff work out  
16 all the numbers and all the sentencing.

17 MR. JONES: There was a motion on the table  
18 before that. Do you withdraw your motion, Mr. Conine?

19 MR. CONINE: Yes. He's adding the amendments  
20 to it so, yes, I'll withdraw my motion.

21 MR. JONES: So Mr. Conine's motion is  
22 withdrawn; we have a new motion on the table by Mr.  
23 Bogany. Mr. Conine, would you second it?

24 MR. CONINE: I'll second it.

25 MR. JONES: Further discussion? Do you

1 understand what we're doing?

2 MS. BOSTON: Do you want me to go back and  
3 touch on all the things that I've heard?

4 MR. JONES: We can do that. What does the  
5 board think?

6 MR. CONINE: There's a lot of people who have  
7 spent a lot of time here today and a lot of input and I'd  
8 just like to ask those who are in the audience if we  
9 missed anything, because it's easy for us to miss  
10 something that may have been important.

11 MR. JONES: Sure, yes.

12 MR. CONINE: Just one sentence, tell me what it  
13 is.

14 SPEAKER: It was Mr. Sugrue's recommendation on  
15 the evaluation Section 42.7(c) to add "to ensure the  
16 allocation of credits are economically feasible,  
17 consistent with Section 42 of the Internal Revenue Code of  
18 1986 and based upon sound underwriting."

19 MR. JONES: Would you comment on that, Tom.

20 MR. GERST: I think that was covered in what  
21 Brooke read. It said, "as determined by staff  
22 underwriting." It didn't specify Section 42 but that's  
23 what we use.

24 MR. CONINE: Is there anything?

25 MR. HALLA: Barry Halla with Life Rebuilders.

1 I understand your comment regarding the for-profit and  
2 nonprofit joint ventures but don't understand penalizing a  
3 nonprofit that has gone through the capacity building and  
4 is able to stand on its own as a development entity and  
5 has that expertise and can prove the expertise and has the  
6 capability of doing a development without a for-profit,  
7 why they then would possibly lose out on the allocation  
8 because they could not score the three points. I  
9 understand what you're after but it penalizes those that  
10 have already gone through the growing pains, if you will.

11 MR. CONINE: And I think we understand what  
12 you're after and I think Brooke addressed that issue in  
13 our discussion.

14 Anything else?

15 MR. SMITH: I want to make one point here  
16 before you vote on this, just want to make this clear.

17 MR. CONINE: Make it quick.

18 MR. SMITH: This language that they're talking  
19 about for the skewing of the points, is it my  
20 understanding that the 50, 40 and 30, in order to get  
21 those points you've got to get funding from within the  
22 jurisdiction?

23 MS. BOSTON: That's the way it reads now, yes.

24 MR. SMITH: Now let me tell you what that does.  
25 That tells a developer even though he can make a project

1 work to include 50 percent median income like we've done  
2 in the past QAPs without subsidy from a city, that he's  
3 got to go and get subsidy from the city in order to  
4 provide 50, 40, and 30 percent of median incomes. That is  
5 not what I think the board wants to see. If a project can  
6 support 50 and 40 percent median incomes without getting  
7 subsidy from the city, then they should still get the  
8 points without that subsidy.

9 MR. CONINE: Tom, any comments on that issue?  
10 Brooke?

11 MS. BOSTON: Yes. Actually, unfortunately,  
12 Rowan, by what you pointed out to us earlier, it does say  
13 very low income, and very low income is 50 percent.

14 MR. SMITH: I thought very low income, to my  
15 understanding, 30 percent.

16 MS. BOSTON: Thirty percent is extremely low.  
17 Kind of what you pointed out, it's kind of more of a  
18 catch.

19 MR. SMITH: You could have a situation here  
20 where a lot of projects are going to be coming in next  
21 year where developers are not going to have any at 50, 40,  
22 and 30.

23 MR. CONINE: Do you have a problem with that  
24 being an option as opposed to a mandate if they can make  
25 it work without it?



1 MS. BOSTON: No, not at all.

2 MR. NWANERI: I don't oppose his idea, the only  
3 thing is if it's going to work without a 30 percent or 40  
4 percent or 50 percent, why go get extra just to get the  
5 point, and by the time you go get the extra subsidy, then  
6 you're limiting the amount of credit that would be  
7 available to the project anyway because we're going to be  
8 funding just the gap that is between the financing and  
9 what else is needed to complete the development. So I  
10 don't think that would be in the interest of the developer  
11 to go get additional subsidy just to get the point because  
12 on the other hand you cut yourself short on the amount of  
13 credit that you have available.

14 MR. SMITH: Well, you're going to have a  
15 situation next year where you're going to have a lot of  
16 projects coming in at 60 percent of median income and  
17 there will not be any housing built for 50 percent median  
18 income tenants which you've been doing all along. You  
19 need to look at this.

20 MS. BOSTON: Do you think, Rowan, that if you  
21 had it where the assistance was only required for the 30  
22 percent?

23 MR. SMITH: That's what I think, or you can  
24 have it both ways. In other words, you can get points for  
25 either/or but you get a little extra point if you have

1 extra money or extra points if you have financing.

2 MR. JONES: Mr. Henneberger, what do you think  
3 of that suggestion?

4 MR. HENNEBERGER: I agree with Rowan. I think  
5 the law says you need additional subsidy if you go to 30;  
6 40, 50, if you can do it, do it, good, but the 30 ought to  
7 require the additional subsidy.

8 MR. CONINE: Let's give some credit for 30  
9 then.

10 MR. SMITH: So in other words, you're saying  
11 that the 30 percent would have to have the subsidy.

12 MR. CONINE: Yes.

13 MR. SMITH: But the other 50 and 40 would not.

14 MR. CONINE: It wouldn't be mandatory.

15 MR. SMITH: That will work.

16 MR. JONES: We had a motion on the floor and a  
17 second. Mr. Conine has been asking some questions.

18 MR. CONINE: I'm done. Let's vote.

19 MR. JONES: We're ready to vote. Ms. Anderson,  
20 are you ready to vote?

21 MS. ANDERSON: Yes, sir.

22 MR. JONES: I know Mr. Bogany is ready to vote.  
23 All in favor of the motion, please say aye.

24 (A chorus of ayes.)

25 MR. JONES: All opposed, please say nay.

1 (No response.)

2 MR. JONES: There was no nay vote, all the  
3 votes were aye, the motion carries.

4 MR. BOGANY: For the sake of being able to get  
5 anything over to the governor's office on time, I was  
6 going to see if maybe Brooke could read back the language  
7 that we have on each one of the items that you have  
8 discussed.

9 MS. BOSTON: It's short.

10 MR. BOGANY: It won't take very long.

11 MR. JONES: That is up to the board. The  
12 chairman will not make that decision.

13 MR. CONINE: Let me suggest that staff takes so  
14 much leeway in certain situations anyway, we trust you on  
15 this.

16 (General laughter.)

17 MR. JONES: We now will move to item 3 on the  
18 agenda and I just want to congratulate you. You did a  
19 great job.

20 (Applause.)

21 MR. JONES: I'd like to say this, I've listened  
22 very carefully and the one thing I haven't heard today is  
23 somebody saying our staff wasn't trying real hard to make  
24 Senate Bill 322 work. I haven't heard anybody take you on  
25 on that point and I think that's really an accomplishment,

1 and I congratulate you for it.

2 We're on item 3.

3 MR. CONINE: Move for approval.

4 MR. JONES: Item 3 we have a motion and the  
5 chair will entertain the motion this way: That items 3(a)  
6 and 3(b) be approved. Is there any objection to the chair  
7 taking the motion in that fashion? Hearing no objection,  
8 that's the way I take the motion. Is there a second to  
9 the motion?

10 MR. BOGANY: Second.

11 MR. JONES: There's a second to the motion.  
12 Further discussion on the motion? Hearing none, I assume  
13 we're ready to vote. All in favor of the motion, please  
14 say aye.

15 (A chorus of ayes.)

16 MR. JONES: All opposed, nay.

17 (No response.)

18 MR. JONES: The motion carries.

19 I will then turn to item 4 which is Mr. Bogany,  
20 the report from the Programs Committee.

21 MR. BOGANY: The Programs Committee recommends  
22 approval on items (a) and (b).

23 MR. JONES: I will take that in the form of a  
24 motion. Is there a second?

25 MS. ANDERSON: Second.

1 MR. JONES: The motion has been made and  
2 seconded. Is there any discussion? Hearing no  
3 discussion, I assume we're ready to vote. All in favor of  
4 the motion, please say aye.

5 (A chorus of ayes.)

6 MR. JONES: All opposed, please say nay.

7 (No response.)

8 MR. JONES: The motion carries.

9 At this time it's time for the executive  
10 director's report. Would you mind doing that in writing  
11 to the board members, in view of the time constraints and  
12 travel plans?

13 MS. CEDILLO: That would be fine.

14 MR. JONES: Thank you so much.

15 MS. CEDILLO: In fact, the staff has a written  
16 presentation on the Bond Program.

17 MR. JONES: At this time the chair would  
18 entertain a motion to adjourn.

19 MS. ANDERSON: So moved.

20 MR. JONES: The motion has been made we  
21 adjourn.

22 MR. BOGANY: Second.

23 MR. JONES: It's been seconded. All in favor  
24 of the motion, please say aye.

25 (A chorus of ayes.)

1 MR. JONES: We're adjourned.

2 (Whereupon, at 4:22 p.m., the meeting was

3 concluded.)

C E R T I F I C A T E

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MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: November 14, 2001

I do hereby certify that the foregoing pages,  
numbers 1 through 175, inclusive, are the true, accurate,  
and complete transcript prepared from the verbal recording  
made by electronic recording by Sunny Peer before the  
Texas Department of Housing and Community Affairs.

\_\_\_\_\_  
(Transcriber) 11/26/01  
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