

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room E1.016  
Capital Extension Building  
1400 Congress Avenue  
Austin, Texas

Thursday  
January 17, 2002

The meeting convened, pursuant to notice, at  
10:30 a.m., Michael Jones, Chair, presiding.

MEMBERS PRESENT:

ELIZABETH ANDERSON  
SHADRICK BOGANY  
RUTH CEDILLO  
C. KENT CONINE  
VIDAL GONZALEZ  
NORBERTO SALINAS

ALSO PRESENT:

DAVID BURRELL  
DAVID GAINES  
DELORES GRONECK  
BYRON JOHNSON  
BETTY MARKS  
ROBERT ONION  
ANNE PADDOCK

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P R O C E E D I N G S

MR. JONES: I'd like to call to order the Board meeting for the Texas Department of Housing and Community Affairs for January 17, 2002. The first order of business is to call roll.

Beth Anderson?

MS. ANDERSON: Here.

MR. JONES: Shadrick Bogany?

MR. BOGANY: Here.

MR. JONES: Kent Conine?

MR. CONINE: Here.

MR. JONES: Vidal Gonzalez?

MR. GONZALEZ: Here.

MR. JONES: Norberto Salinas?

MR. SALINAS: Here.

MR. JONES: And Michael Jones is here. We have six members present and zero absent. I determine that we do in fact have a quorum.

If anybody would like to participate in the next portion of our meeting, which is public comment, they need to fill out a witness affirmation form and please give it to Delores right over here. The ones I have so far are --

Mr. Jack, would you like to speak now, or at

the time of a particular agenda item?

MR. JACK: I already spoke earlier.

MR. JONES: Okay. So you just -- you don't care to speak before the full Board?

MR. JACK: No.

MR. JONES: Thank you, sir.

Mr. Dunn -- Mr. Mike Dunn, would you like to speak now, or --

MR. DUNN: I'll be 30 seconds. If that --

MR. JONES: You -- it's your choice, sir.

MR. DUNN: Thank you, much.

MR. JONES: Thank you.

MR. DUNN: Mr. Chairman, Ms. Cedillo, thank you, much.

MR. JONES: Yes, sir.

MR. DUNN: Thank you for the opportunity to appear before you. I'll speak briefly on Agenda Item Numbers 3, 4 and 5. My name is Mike Dunn; I'm a policy analyst for the Texas Association of CDCs, Community Development Corporations. We are a membership organization representing CDCs around the State working on affordable housing and community economic development.

With regard to the public comment process, Agenda Item Number 3, tactic, again, thank you to the

Department and the Board and staff for their professionalism and recent work regarding the tax credit program. The nature of the issues before you dictates that the public should have many opportunities to present their views and, for input in the proposed policies about this process, we feel represent a fair and even-handed attempt to provide for that input.

We'd make one recommendation, that -- with regard to limited testimony. Where a witness is engaged in discussion or debate, we feel that there should be a fair attempt, if necessary, to provide equal time to other witnesses who may be able to offer the Board alternative viewpoints.

Regarding the ex parte communications, Agenda Item Number 4, we do regret that this addition is necessary. And we appreciate that the Department's staff is sensitive to the appearance of impropriety. And our only recommendation is that since the tax credit program is excepted from this policy in the rule, the exact QAP ex parte program rules be specifically pointed out.

I -- the QAP is a difficult document to go through. I know that it's Section 49.5(b)(9). After speaking to Brooke Boston and looking at it all, I've realized that it's -- basically, the same language is

used. However, I think an attempt should be made to link that to the tax credit program at least informally, because the only reason that ex parte was brought up during discussions on 322 was in regard to the tax credit program.

Finally, regarding the deobligation policy that's Agenda Item Number 5, I have nothing to add except that we feel the words "if applicable" should be removed from Number 5, because, if a NOFA is to be offered, we feel that the adequate public disclosure should always be provided in that instance.

Finally, Mr. Chairman, I do have one last presentation. This is our tactic -- the main goal of our research program is to find out what our CDCs around the State are providing in the way of housing and to basically quantify the experience of what CDCs are doing around the state and, also, in Houston and to show the legislature, the TDHCA and the rest of the State what these little, non-profit groups are doing.

And with that, I appreciate you all looking over that. If you have any questions, I'll be happy to take them.

MR. JONES: Thank you, sir.

MR. DUNN: Thank you.

MR. JONES: Questions?

(No response.)

MR. JONES: Mr. Scott Farley?

MR. FARLEY: I'll speak when the item comes up.

MR. JONES: Okay. And which item is that, sir?

MR. FARLEY: It's the Circle S Apartments, Item  
6(a).

MR. JONES: 6(a)? Thank you, sir. I  
appreciate it.

Mr. Randy Ziehe?

MR. ZIEHE: The same, Item 6(a).

MR. JONES: Thank you, sir.

Mr. Tim Merriweather?

MR. MERRIWEATHER: The same item.

MR. JONES: 6(a)?

MR. MERRIWEATHER: Yes, sir.

MR. JONES: Mr. Louis Ramirez?

MR. RAMIREZ: Item 6(b).

MR. JONES: Thank you, sir.

Mr. Richard Gutierrez?

MR. GUTIERREZ: Mr. Chairman, I'd like to wait  
for 6(b).

MR. JONES: Thank you, sir.

MR. GUTIERREZ: Yes, sir.

MR. JONES: Mr. Barry Halla?

MR. HALLA: Mr. Chairman, I'd like to wait for  
6(b).

MR. JONES: Thank you, sir.

Mr. Mike Fields?

MR. FIELDS: Item 6(b), please.

MR. JONES: Yes, sir.

MR. CONINE: Gee.

MR. JONES: Mr. Rowan Smith?

MR. SMITH: Mr. Chairman, I'll pass.

MR. JONES: Okay.

And, finally, Mr. Henry Flores?

MR. FLORES: Mr. Chairman, I'd like to address  
the Circle S, 6(a).

MR. JONES: 6(a)? Thank you, sir.

Now, those are the only witness affirmation  
forms I have. Are there any others that would like to  
speak?

(No response.)

MR. JONES: Anybody else that would like to  
make public comment to the Board?

(No response.)

MR. JONES: All right. Then I will call those  
who've asked to speak on a particular item at that time,

and these witness affirmation forms will be the ones that we will hear from as we go through our agenda.

With that, I will close the time for hearing for people concerning wanting to speak to the Board as part of public comment with the exception of those that we've called. And we'll turn to Item 1 on the agenda, which is the presentation, discussion and possible approval of the minutes of the Board meeting of December 12, 2001.

(Pause.)

MR. CONINE: I guess I'll move for approval --

MR. BOGANY: Second.

MR. CONINE: -- since I carried your water that day.

MR. JONES: Thank you, sir. I appreciate it, Mr. Chairman.

(Laughter.)

MR. JONES: We have a motion that has been made to approve, and we have a second.

MS. ANDERSON: Who seconded it?

MR. JONES: Mr. Bogany.

Any discussion?

(No response.)

MR. JONES: Hearing no discussion, I assume

we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

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

(No response.)

MR. JONES: Abstentions?

(No response.)

MR. JONES: Motion carries.

I will then turn to Item Number 2 of our agenda.

And since you're so good at carrying water for me, Mr. Conine, you're the man. Item 2.

MR. CONINE: I'd prefer you carry it. Thank you.

We, the Finance Committee, met this morning and have several recommendations for the Board to consider at this time, the first item being approval of the proposed issuance of multifamily mortgage revenue bonds for the Millstone Apartments in Houston, Texas, in an amount not to exceed \$12,500,000. And the Finance Committee recommends approval, and I'll make that motion.

MR. SALINAS: I second.

MR. JONES: The motion has been made and

seconded. Discussion?

MR. CONINE: I think, Mr. Chairman, Mr. Onion will be here from staff to answer any questions the Board may have. And is there a -- do we need a resolution number for the bonds? Or -- I don't see that in our packet here.

MR. ONION: It's 0202.

MR. CONINE: Okay. I'll amend my motion to pick up the resolution number.

VOICE: 0202.

MR. CONINE: Okay. 0202 for this particular issuance, assuming the seconder will agree.

MR. SALINAS: Yes.

MR. JONES: The second did agree.

(Pause.)

MR. JONES: Okay. Hearing no discussion and hearing no questions, I assume we're ready to vote on the motion. All in favor of the motion, please say aye.

(A chorus of ayes.)

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

(No response.)

MR. JONES: Motion carries.

Item 2(b)?

MR. CONINE: The second item is the approval and proposed issuance of multifamily mortgage revenue bonds for Sugar Creek Apartments in Houston, Texas, in an amount not to exceed \$11,950,000. And that would be Resolution Number 0203. And I'll make a motion that -- for the Finance committee that the Board recommends approval.

MR. JONES: Is there a second?

MR. SALINAS: Second.

MR. JONES: Seconded by the mayor. A motion has been made and seconded. Discussion? Questions?

(No response.)

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

(A chorus of ayes.)

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

(No response.)

MR. JONES: Motion carries.

Item 2(c)?

MR. CONINE: Item (c) is the proposed issuance of multifamily mortgage revenue bonds for the West Oaks/Finlay III Apartments in Houston, Texas, in an amount

not to exceed \$11,200,000. That would be -- 0204 would be the resolution number that we're making the motion on. And I make that motion.

MR. SALINAS: Second.

MR. JONES: The motion has been made, and seconded by the mayor. Discussion? Questions for Mr. Onion?

(No response.)

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

(A chorus of ayes.)

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

(No response.)

MR. JONES: The motion carries.

I believe 2(d) has been pulled. Is --

MR. CONINE: That's correct.

MR. JONES: -- that correct?

MR. CONINE: That's correct.

MR. JONES: We will then turn to 2(e).

MR. CONINE: And the only other thing we need to figure out, Mr. Chairman, is how those lottery balls keep ending up down in Houston; there's some magnetic

effect down there.

(Laughter.)

MR. CONINE: Anyway --

MR. JONES: That's not our business.

MR. CONINE: -- Item 2(e) is the approval to extend the limit on capital budget expenditures for the Weatherization Assistance Program and the conversion of EASY Audit II to EASY Audit III. I'm going to call on Ruth Cedillo, if I might, to give you the two-minute version.

MS. CEDILLO: Okay. On November 21, 2001, TDHCA submitted its bi-annual operating plan to the Legislative Budget Board, and these two items were included. However, they were not included in the appropriations request, and what we're requesting now is that we be allowed to exceed our capital budget item by \$150,000 in Fiscal Year 2002 for the weatherization program. And \$130,000 is required for 2003.

And this is for the EASY Audit project. And we also are requesting that we be allowed to exceed it by 190,000 for EASY Audit in Fiscal Year 2002 and 50,000 for 2003. That's it.

MR. CONINE: And just to get the thing on the floor, we -- the Finance Committee recommends approval of

Item (e).

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

MR. BOGANY: Second.

MR. JONES: A motion has been made and seconded. Questions for Ms. Cedillo?

Yes?

MS. ANDERSON: The application that is to be developed by CRN -- it was my understanding that that application will then be maintained by the IS department here at the Agency. Is that --

MS. CEDILLO: Correct.

MS. ANDERSON: All right. And I'd like to have -- I'd like to understand what the maintenance and the ongoing support requirements are for that application.

MS. CEDILLO: And I would like to call on Mr. Struss if he's around. Do we know?

MR. CONINE: He was here earlier. I saw him.

MS. CEDILLO: Yes, he was.

(Pause.)

MS. CEDILLO: Could we get back with you?

MS. ANDERSON: That would be fine.

MS. CEDILLO: I believe it would be just part of the maintenance of programs within the Agency, but I do

not have the information as to how much time will be required from that staff.

MS. ANDERSON: Do you know that -- the ongoing support costs of an application traditionally are a lot bigger than their energy development costs. So can -- as we are using DOE funds, as I understand it, for the development possible -- all they're doing is moving things from [indiscernible] to capital, are the ongoing costs of maintaining that application also fundable directly out of the DOE?

MS. CEDILLO: Administrative dollars. And that's exactly what we're using for this application.

MR. JONES: Is that a yes?

(Pause.)

MR. JONES: I mean I -- excuse me. I'm just trying to understand, Ruth. Did -- the answer to that question was yes?

MS. CEDILLO: Yes. We --

MR. JONES: Okay.

MS. CEDILLO: We can --

MS. ANDERSON: On an ongoing basis --

MS. CEDILLO: On an ongoing basis, we can fund it out of administrative dollars --

MS. ANDERSON: Okay.

MS. CEDILLO: -- yes.

MS. ANDERSON: Okay. Thank you.

MS. CEDILLO: Peggy, you can tell me if I'm incorrect.

(Pause.)

MS. CEDILLO: She's nodding. And it is correct that we can continue to fund it from administrative dollars. So --

MR. JONES: Further questions? Comments? Discussion?

(No response.)

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

(A chorus of ayes.)

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

(No response.)

MR. JONES: The motion carries.

MR. CONINE: That concludes my report, Mr. Chairman.

MR. JONES: Thank you, Mr. Conine.

We will move to Item 3, which is the presentation, discussion and possible approval of public

comment process. And I'd ask Ms. Cedillo to address that.

MS. CEDILLO: Our General Counsel, Betty Marks, will be handling that item.

MR. JONES: Thank you.

Ms. Marks?

MS. MARKS: Good morning, Mr. Chairman and Board members.

MR. JONES: Good morning.

MS. CEDILLO: Good morning.

MS. MARKS: This item is actually mandated by the changes made to the statute -- the enabling statute for the department by Senate Bill 322, which was passed and is effective September 1 of 2001. This is a rule.

And the statute actually -- it contemplates that the statute which actually amends the enabling statute to require that in Board meetings, Item -- Section 2306.032 of our enabling statute, Subparagraph (g), states that the Board shall adopt rules that give the public a reasonable amount of time for testimony at meetings. And the rule that you see in front of you is to be put in the Texas Register for -- as a proposed rule for public comment.

MR. JONES: Since I was -- I'd like to comment on this if I could --

MS. MARKS: Yes, sir.

MR. JONES: -- since I participated in the hearings concerning this before the legislature. The concern was that on prior occasions, there wasn't enough time, Number One, for speakers. And, Number Two, the desire was not only with regard to time but the timing of the speaker. And that was that the speaker be allowed to talk at the time of the agenda item.

Since I've been Chairman of the Board, I don't think we've ever imposed a time limit on a speaker, although I think it could be possible that we'll have to do so. I mean, you know, I'm not saying that the Board could ever promise that; I don't think we could. But we've tried to avoid that.

And then, secondly, we've always given people the option to speak at the time of the agenda item if they chose to do so. In fact, I believe we generally let them speak after the presentation by staff, which was another concern that is not addressed, as I understand it, by Senate Bill 322 but was brought up at the hearings.

So I think, as a matter of course, the way we've operated has been in accordance with this.

And, Ms. Marks, I think you'd probably agree on that.

MS. MARKS: Yes.

MR. JONES: The other thing that I would say is I do think this is important, and I do think we can comply with the statute and still be allowed to do it, and that is: Once debate starts between Board members, I think it's important that that be after the public comment process.

Just because I don't think the public comment envisions that the public will participate in the debate between Board members, I just think they should be able to be heard prior to that happening. And I think that this rule takes that into consideration --

MS. MARKS: Yes.

MR. JONES: -- and that that's something that we as a Board would want to preserve.

MS. MARKS: Exactly.

MR. JONES: But that's -- for the new Board members, that's the history of how we're getting to where we are.

MR. CONINE: Ms. Marks, do you interpret what he just said to be in compliance with this policy the way it's written?

MS. MARKS: Yes, I do. I believe that it was stated that public comment could be made after the motion

by the Board members. And there has been some confusion about that, because, generally, seated as a Board, you would normally have a motion, meaning that you were going to either approve a particular action, and so it's after staff comment or after staff presentation.

And so the confusing part was whether or not the Board then makes a motion and then public comment. And it sounds -- you know, that would sound like the public was intending to be involved in the discussion that is appropriate for the Board members.

And I believe Mr. Jones' interpretation is correct, that it anticipates that the motion can be made but that you can cut off public comment when it's Board discussion as to determine whether or not to carry the motion.

MR. JONES: I -- and in answer to your question, I just -- I was part -- I testified at the hearings when we discussed this. And I think it was clear the intent of the legislature --

MS. MARKS: Yes.

MR. JONES: As I understood it, their concern was that after staff made its presentation, we ought to then allow somebody to talk from the public. And we have clearly been doing that. Not only -- we did that before

they passed this legislation. We did that immediately after that hearing, and that is the way it has been. And I think that's great.

I also don't think there was anything that was said -- in fact, we're kind of operating exactly the way I saw them operate, and that was: They heard public comment, and then they debated things. And if you don't have that, I think it would get -- it would be impossible to conduct an orderly meeting. And so I think we are very much complying not only with the letter of the law but the spirit of the law as I understand it to be.

MS. MARKS: I agree.

MR. SALINAS: Wouldn't it be better to -- I think that we shouldn't allow anybody to speak when they come [inaudible] and it is on our agenda. And I think [inaudible] our staff. And I don't [inaudible] anybody can speak. But I think -- the way I feel is they should speak on or behalf of anything that's on the agenda and [inaudible] on future agenda items.

But I do believe that they should not speak on or behalf of anything on the agenda that day. So you all need to look at that law, because that's the way we seem to do it all the time.

MS. MARKS: What is allowed, Mr. Salinas, if

you -- Mayor Salinas, if you -- what we're putting in the rule is that members of the public may raise a subject that has not been included in the notice for the meeting.

However, any discussion of the subject by the Board must be limited --

MR. SALINAS: I understand.

MS. MARKS: -- to a proposal to place the subject on the agenda for a future meeting. So they -- you're right. You can't take any action on something that's not on your agenda.

MR. SALINAS: Oh, no. We should not [sic] discuss anything that's on the agenda for that day.

MS. MARKS: That's right.

MR. SALINAS: That's the way I feel. I don't know about what the law says. It would make it very confusing for the staff and Board members to be able to debate that issue. And I don't know what it would change now if we do allow everybody to come in and speak on an item that's on the agenda and debate it.

MR. JONES: You -- Mayor, I understand your point. And I see where you're coming from. I will say this. The way our legislation is written, we must. I don't know how we could comply with our legislation. So that has kind of been taken out of our hands.

And, clearly, the intent, as I understood it from the questions that were asked me in front of the Sunset, would be that they definitely want that to be allowed, and they definitely want that to be part of the process. Those are higher authorities.

MR. CONINE: Move for approval, Mr. Chairman, of the public comment process policy in our book under Item 3 of our agenda.

MR. GONZALEZ: I second it.

MR. JONES: We have a motion that has been made and seconded. Further discussion?

MS. MARKS: May I --

MR. JONES: Sure.

MS. MARKS: -- speak?

MR. JONES: Yes, you may.

MS. MARKS: Actually, the way the motion was worded -- if I could respectfully request that --

MR. JONES: Sure.

MS. MARKS: This is a proposed rule, rather than a policy. So it would be filed in the Texas Register, and it would be open for public comment. The earliest that you can adopt it is 30 days after it's proposed and then public comment is accepted by the Department. And then we go ahead and file in the register

that it has been adopted.

MR. CONINE: I'll amend my motion, Mr. Chairman, to make sure we can take this rule and circulate it appropriately.

MR. GONZALEZ: I second the amended motion.

MR. JONES: Further discussion?

Thank you for keeping me straight.

MS. MARKS: Okay.

(Pause.)

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

(A chorus of ayes.)

MR. JONES: All opposed, Nay.

(No response.)

MR. JONES: Motion carries.

Item 5, Ruth?

MR. CONINE: Item 4.

MR. JONES: Excuse me. Item 4. Excuse me.

MR. CONINE: Unless --

MR. JONES: Unless --

MR. CONINE: Unless Four has been pulled.

MR. JONES: Yes. Item --

MS. CEDILLO: Let's see. We have the ex parte communication rule. This --

MR. JONES: Item 4, Ruth.

MS. CEDILLO: This is another proposed rule also based on Senate Bill 322. And the proposed rule indicates that from the date that an application is submitted to the Department until the date all appeals concerning applications submitted in the same application cycle have been resolved by the Board, neither a member of the Board nor a member of the Executive Award and Review Advisory Committee may communicate concerning the application with the applicant or a related party, any person who is active in the construction, rehabilitation, ownership or control of the project proposed in the application, including the general partner or contractor or principal or affiliate of a general contractor or employed as a lobbyist by the applicant or related party.

It is not a violation of Subsection (a) for an applicant or any person specified in Subsection (a) to communicate with members of the Board or of the Executive Award and Review Advisory Committee in the course of presenting testimony at the Board meeting or public hearing held by the Department.

And what -- we'd like to indicate that this subsection does not apply to the low-income housing tax credit program. Rules governing ex parte communication

for the low-income housing tax credit program are covered by Section 49 and Section 50 of the -- of this title as promulgated for the year in which the tax credit is allocated.

The last sentence in the proposed rule, we indicate that this section does not apply by its terms to applications submitted by the community affairs and multifamily finance divisions. And with regard to the community affairs, division, the approval of those projects do not go to the Board for approval.

And on the multifamily finance divisions, the determination was made based on the fact that the director of that division is not making the awards of multifamily bonds; that is done by the bond review board. And the director of that division, we are proposing, would participate in the executive award and review advisory committee. However, that director would participate in discussions -- however, would not vote on any of the items presented to the committee.

And if you have any other questions, Ms. Anne Paddock, who's Deputy General Counsel, is the one who prepared --

MR. CONINE: I'm going to --

MS. CEDILLO: -- the proposal.

MR. CONINE: I've got a few questions, Ms. Paddock. If you could, come enlighten me just a little bit.

MS. PADDOCK: All right.

MR. CONINE: Prior to -- let me ask a prior-to-Senate-Bill-322 question. Prior to 322, we imposed ex parte rules on ourselves through the tax credit program, I believe. Were there any -- are there any other ex parte rules in effect prior to Rule 322 outside the tax credit program?

MS. PADDOCK: No.

MR. CONINE: Nothing?

MS. PADDOCK: Huh-huh.

MS. MARKS: Yes. Actually, in the tax -- in the QAP ex parte, there was a -- I'm sorry. Betty Marks, General Counsel. And I have represented and specifically worked with -- more with the tax credit program than Ms. Paddock has.

Basically, the -- in -- I believe it was -- in the 2000 QAP, we put into the QAP a specific provision which has run -- it's not the same provision as now required by 322. I can give you some distinctions, and I can tell you exactly --

MR. CONINE: No. I --

MS. MARKS: -- what it -- okay.

MR. CONINE: I guess my question -- I knew we had it on the --

MS. MARKS: Yes.

MR. CONINE: -- you know, over the tax credit program. Was there any other Department policy created by this Board to create ex parte --

MS. MARKS: No.

MR. CONINE: -- communications anywhere else?

MS. MARKS: No.

MR. CONINE: Okay. So now, here comes Senate Bill 322.

MS. MARKS: Right.

MR. CONINE: What's -- tell me in layman's terms what they're asking us to do --

MS. MARKS: First of all, to make it --

MR. CONINE: -- or requiring, I guess.

MS. MARKS: First of all, to make it applicable to all programs.

MR. CONINE: To all programs? And --

MS. MARKS: And --

MR. CONINE: Except for the tax credit program, or inclusive of the tax credit program?

MS. MARKS: Well, it's meant to be inclusive of

the tax credit program, but let me tell you how this worked. Since we already had something in place and since Senate Bill 322 was effective September 1, 2001 --

MR. CONINE: Right.

MS. MARKS: -- oddly enough, as you know, we were in a position where we had already allocated the credits, on July 31 of 2001, and so there were only applications and waiting lists, and so forth. And those are all determined under the basis and the rules as set out in 2001. In other words, you couldn't be an applicant for a 2001 credit and be governed by a law that is not in effect yet.

So what happened is: In the transition, as you'll notice, in the 2002 QAP, what we did and the reason they're not part of this rule is because -- the change occurred in the actual QAP and rules, which is Section 50 in last year and Section 49 this year of the Department's rules. And so what you'll see is that, in 2002, these new rules and the changes, the differences in what the legislature passed and what we had had as an ex parte rule in tax credits, is adopted, if you will -- was adopted with the adoption of the 2002 QAP.

MR. CONINE: Okay. So Senate Bill 322 is asking -- requiring us basically to do something --

MS. MARKS: To do --

MR. CONINE: -- over the rest of the programs, and the part that's applicable under the QAP stays in the QAP, basically?

MS. MARKS: Yes.

MR. CONINE: And that's where the rule --

MS. MARKS: Yes. But there are some other differences in terms of the ex parte violations that apply specifically to the QAP or -- to the tax credit program and not to the other programs. And that is that a violation of the ex parte rule will be a disqualification of an applicant.

MR. CONINE: All right. I -- just to go on record publicly, I think, I was against the ex parte rules when they passed the first go-round --

MS. MARKS: Yes.

MR. CONINE: -- and still don't think it's a good thing. There have been certain circumstances that -- in the process of conducting Board meetings where we have been made aware of certain circumstances on a particular project that -- through the Board process that, you know, quite frankly, I would have liked to have heard earlier in the process. Whether it came from staff or whether it came from outside members, I don't really care.

I like as much input as I can get personally to try to make a decision before I have to make a decision on whatever the project may be. So I am uncomfortable at best with leaving all the communications -- and this actually limits some staff communications --

MS. MARKS: Yes, it does.

MR. CONINE: -- with some of the applicants, which I even further disagree with.

MS. MARKS: Yes, sir.

MR. CONINE: So I've got a real problem, I guess, with understanding what's in front of me right here today without some more, further input. And, you know, I won't make a motion right now, but you can let some more discussion take place --

MR. JONES: Sure.

MR. CONINE: -- and I'll have a motion later on.

MR. JONES: Thank you.

(Pause.)

MR. CONINE: I guess I'll make the motion.

MR. JONES: Comments? Questions?

MR. SALINAS: I'll second.

MS. ANDERSON: I have a question.

MR. JONES: Yes, ma'am.

MS. ANDERSON: From your participation in the hearings, was the issue that Mr. Conine just addressed -- was that ever -- did anybody have the courage to raise that in the hearings, you know, to -- or was it not raised; and therefore the legislature sort of took a very black-and-white position that said no communications, period?

MR. JONES: That's directed to me, isn't it?

MS. ANDERSON: Yes.

MR. JONES: Okay. The answer to that question has to be I don't know now because I don't remember well enough. I --

Anne, would you like to address it?

MS. PADDOCK: Oh, I think Ruth has something to say about that.

MS. CEDILLO: One of the things that -- there was a lot of discussion with regard to ex parte communication. It was the legislature that took the position that the Department comply with the requirements of Senate Bill 322. And as far as discussions, I think there were some discussions with regard primarily on the multifamily program.

MS. PADDOCK: Well, actually, we did raise concerns with the way it was drafted in the statute. And

what this rule does is try to limit some of the looseness with which the statute was drafted, at least either -- prohibiting communications as to the applications that were filed, which is something the bill didn't do.

And we felt that we could take out the community affairs and multifamily bond programs, because the community affairs programs aren't ruled on by the Board at all and, for the bond programs, the final approval is not made by this Board but is made by the bond review board. However, during the session, we weren't able to get anything changed.

So this is the law. And we're doing in the rule what we can to make it workable.

MR. SALINAS: Can I --

MR. JONES: Yes, sir, Mayor.

MR. SALINAS: There's nowhere else to go. I mean the law --

MS. PADDOCK: Well, this was --

MR. SALINAS: The statute is there.

MR. JONES: Yes.

MR. SALINAS: I mean you can't change it in the Board meeting.

MS. PADDOCK: Yes. I can't help but mention that this was one of the issues that we had requested an

AG opinion on; they asked us to withdraw, and so we did.

MR. JONES: Yes.

In answer back to your question, I would say I -- the only reason I say I don't know is, you know, there was so much that happened, I can't recall specifically. And I sure don't want to quote anybody.

I really appreciate Mr. Conine's comments. And for the newer Board members, you know, Mr. Conine and I have been on opposite sides of this issue, but, having said that, I think he makes really good points. I think he -- you know, there's really a concern there.

Now, on the opposite side of the fence, particularly when the Board acted with regard to the tax credit program when we did the limited policy that we had there, it -- you know, the opposite point of view, which I know he was very sympathetic with, at the time was that we were trying to bring the light of day to that program due to intense criticisms. And it was an attempt to do that.

I know no Board member felt more strongly about the fact that that program needed the light of day than Mr. Conine. So it's not that I'm holding him as being against that; he was for that. He was one of the leaders for that. He just thought there were too many problems with this, for the concerns he just expressed, that we

didn't need to go that far.

I would say the legislature -- it was clear they wanted light of day to our programs so much that they were forcing it on our hand all along. But the concerns he raises are very valid: It makes us much harder for us to work.

And I think sometimes they didn't realize, you know, that the very constituents like some from the prior policy that they wanted to make sure we heard from they were making things a lot harder for. And I don't know that they ever really realized that, but -- and I'm not criticizing the legislature. I'm just saying it's another issue there. But like the mayor says, it is the law.

MS. CEDILLO: Mr. Jones, as we have met with the Sunset Commission with regard to this proposed rule, in the next few months, we will be giving them some of our concerns with all of the sunset legislation; they have requested that. So we will be meeting and trying to fine-tune some of the things that are in the Senate Bill 322.

MR. CONINE: Mr. Chairman, I'd like to make the motion that we table this item for this meeting and get -- I would like a little more input into the details of this particular policy.

And I'd like to be able to consult not only

with our General Counsel but with, also, members of the legislature that are either on the Sunset Commission or have an extreme interest in what this Department does so I can get a little bit better understanding of, A, what they -- the intent of what they would like us to do and, B, to see how much wiggle room we can create within 322 and still comply with the law and have a policy on the books which I know they want us to have.

So I would, again, make a motion to table this until the next meeting.

MR. JONES: We have a motion to table it.

MS. ANDERSON: I second the motion.

MR. JONES: The motion has been seconded. We will then turn our discussion to the motion.

MS. ANDERSON: Mr. Chairman --

MR. JONES: Yes?

MS. ANDERSON: -- may I?

MR. JONES: Excuse me. I'm sorry.

MS. ANDERSON: Yes. It seems to me like taking what's essentially 30 days, you know, until the next Board meeting and having the opportunity to get some input from the various constituencies would be -- there's -- only good should come from that. So I think that's a reasonable -- I think that's why this is a very reasonable

motion.

MR. JONES: I would agree with that comment.

MR. SALINAS: What is it that you want to change to that?

MR. CONINE: Well, Mr. Mayor, I don't know yet. I need to go -- you know, I read that it says here.

MR. SALINAS: You don't like it?

MR. CONINE: And I -- again, I'll state for the record that I like as much input as I can get for whichever project's coming before this particular board. And whether I get that input from staff or whether I get that input from other sources outside of staff, it's important to me to get the input, and this limits my ability to do so.

And I'm -- what I'm trying to is make sure this limits my ability as small as possible. And I just don't have enough -- I've read the policy, and I kind of understand it. And there's -- it covers something, but it doesn't cover other things. And I personally just need a little more time to digest what this particular policy's laying out in front of us.

MS. MARKS: May --

MR. JONES: Ms. Marks?

MS. MARKS: May I clarify something?

MR. JONES: Sure.

MS. MARKS: Again, it -- I think it would probably be just because -- we've had a lot of questions from a lot of the applicants, as -- many of whom are sitting in the audience. And so they are very concerned, as well, in terms of who they can communicate with, and so forth. And so, daily, we have to interpret what is now the statute.

This is a proposed rule. And what Ms. Paddock was trying to say is that we went as far as interpreting what we felt comfortable with in terms of what the statute didn't add -- didn't put. So what I'm saying is the statute is still there, and it began being effective September 1. So this is just the State Agency's interpretation, and, as she pointed out, we made some advances to fill in the blanks in terms of what the statute said.

MR. JONES: Sure.

MS. MARKS: But the statute is very clear, I mean, that an ex parte rule existed as of September 1, 2001. So I just wanted to bear in mind for those in the audience, especially those who are going to be caught with this and are going to feel like, you know, the Department has to enforce this because it's part of our statute.

So --

MS. PADDOCK: Yes. I mean the statute actually is more detrimental to the process than the proposed rule.

We have tried to have some other room so there can be more discussion, you know, but we're very limited by what the statute says. I don't know. I'm happy to have someone else look at this. I don't think we can go any further than we've gone based on the programs we've got and what the statute says.

MR. CONINE: Well, we, I think -- my understanding is the ex parte rule is in effect currently.

And I have no problem with that. It's just that once you amplify that in a rule, then you've narrowed -- you've at least laid out an explanation of what Senate Bill 322 says.

And I just want -- I don't think one more month of trying to understand it better at least in my own mind and be able -- now that I've read this, and be able to go seek outside discussions with other folks relative to this issue -- I just need the 30 days to get that done. We'll still operate under the current senate bill as it exists.

MR. JONES: Okay. I think that's very wise from the standpoint of -- if our Board's going to speak on it, I would hope that it would be well-reasoned. And I

would really encourage the new Board members to look at this issue very closely because you all come with a freshness to this that the older ones don't have.

MR. SALINAS: We just need to make sure that we follow that statute until we make other changes.

MS. MARKS: Yes. The statute's much broader. This rule is attempting to narrow the statute to give us some guidance internally, for example, like on multifamily and community affairs. It's an attempt to go beyond the statute and create a rule that we could work with that would make it easier for us to deal with the ex parte statute.

MR. SALINAS: Do we have any kind of newsletter going out to any other participants that may need to know about this? A newsletter to the --

MR. JONES: Ruth?

MS. CEDILLO: We do publish a newsletter. And we also publish -- all of the information that goes in your Board book is published on our web site. So everybody has access to the information --

MR. SALINAS: On the statute?

MS. CEDILLO: -- that we're discussing.

MR. SALINAS: Do they have --

MS. CEDILLO: Yes, sir.

MR. SALINAS: -- any information on the statute?

MS. CEDILLO: Yes, sir.

MR. SALINAS: Okay. Good.

MS. MARKS: Yes. If you go to our web site, you can actually link directly to the governing statute, which is 2306 of the Texas Government Code.

MR. JONES: We have a motion on the floor. Then any further discussion of it? Any further questions, comments?

(No response.)

MR. JONES: Hearing none, I assume we're ready to vote on the motion that's on the floor, which is the motion to table. All in favor of the motion, please say aye.

(A chorus of ayes.)

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

(No response.)

MR. JONES: The motion carries. Thank you, very much.

We will turn to Item Number 5 on the agenda.

Ruth?

MS. CEDILLO: On October 13, 2000, the

governing board of the Department approved the current deobligation policy that is used by the Department for reallocating deobligated funds. After the adoption of the deobligation policy, the Board also adopted the appeals policy.

And what we're proposing to do with the amendments that we've presented to you is prioritize and, in Number 4, put successful appeals before disaster relief, special needs, colonias and other projects' uses as determined by the Executive Director of the Board, including the next year's funding cycle for each respective program.

And you'll see there are some changes in Number 5 to provide adequate public disclosure, if applicable, if the funds are to be offered by a NOFA. And those are the -- and we deleted the original Number 4.

Any questions?

(Pause.)

MR. BOGANY: So move.

MR. SALINAS: I second.

MR. JONES: We have a motion and a second. Any questions, comments or discussion on either the motion or the policy?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, Nay.

(No response.)

MR. JONES: The motion carries.

We will turn to Item 6(a) on the agenda. We have public speakers on this item.

If we could, Ruth, would it be all right to make -- let staff make the recommendation and then hear from the speakers?

MS. CEDILLO: Sure.

MR. JONES: Thank you.

MS. CEDILLO: David Burrell will be making the presentation.

MR. BURRELL: Good morning, Mr. Chairman and members of the Board and Ms. Cedillo. I'm David Burrell, Director of the Housing Programs.

The first item that we have under Number 6 will be the request for tax credits for the Millstone Apartments in Houston. Some of these you all have already reviewed this morning through the Finance Committee and the report of the Finance Committee to the full Board. They are -- we are providing the tax-exempt bond financing

through the Department, and they also are requesting tax credits.

Under Millstone Apartments, which is to be located in Houston, the issuer is TDHCA for the bonds. It is a 248-unit project whereby it will be 100 percent tax credits. The source of the financing will be 12-million-five in tax-exempt private activity bonds, 200,000 in taxable bonds and then the tax credit amount that has been requested.

The applicant requested 641,990, and we are recommending credits of 600,679. Under this one, the syndication rate is 80 cents on the dollar, and we are recommending approval; however, the Board should be aware that if you should approve, they have the potential that a significant portion of the administration oversight fees during the first year might have to be deferred in order for the applicant to meet the 1.10 debt coverage ratio.

Do you all have any questions?

MR. BOGANY: Is that normal?

MR. BURRELL: It's fairly normal. It would be just during the first year, while they're getting started.

MR. JONES: If you would, why don't you present all of the items under 6(a)? And then I can let the public comment occur --

MR. BURRELL: Sure.

MR. JONES: -- after that.

MR. BURRELL: Okay.

The next item that we have will be the Sugar Creek Apartments in Houston. The issuer -- the bond issuer on this one will also be TDHCA. The applicant is requesting 614,945, and we are recommending an allocation of 576,601. This will be a 240-unit complex which will be 100 percent tax credit units.

On this one, the syndicator is -- will be Boston Capital. And they will be paying a net syndication rate of 80.25 cents.

Next we have on -- Stone Hearst. That one was pulled.

Next we have Circle S, which was brought before the Board last month and tabled so that we could obtain additional information to help determine the value of the land that was tied to this project.

Since going back and obtaining additional information from the developers, we have increased the recommended tax credits from 321,000 to 436,575; however, our underwriting division, in doing the re-evaluation, has also recommended that the taxable bonds be reduced from 2.2 million to 1.6 million. I think there might be some

discussion later on this one.

MR. SALINAS: And what are you recommending?

MR. BURRELL: (Perusing document.)

MR. SALINAS: What's your recommendation from the staff?

MR. BURRELL: Our executive award and review committee has recommended that we go with the same recommendation of the underwriting division.

MR. SALINAS: Which is 1.6 --

MR. BURRELL: To provide the 436,575 in credits, conditioned upon the reduction of the taxable bonds --

MR. SALINAS: That's your recommendation?

MR. BURRELL: -- to one-million-six.

MR. JONES: Okay.

MR. BURRELL: Okay.

MR. JONES: And then the other one is West Oak Apartments?

MR. BURRELL: Yes, sir.

Okay. The last one will be West Oaks, which will be located in Houston. This will be a total of 168 units which will be 100 percent tax credit units. On this one, the bond financing will also be provided by TDHCA in the amount of 10,150,000 and the tax credits would be

463,812 if you all approve what we're recommending; the applicant had actually requested 438,701.

The net syndication rate on this particular project is 83 cents. And on this one, there is also the possibility that some administration, compliance and asset oversight fees might need to be deferred during the first year.

MR. BOGANY: Why is that?

MR. BURRELL: So that they can meet the 1.10 debt coverage ratio requirement that we have. Basically, we'd just be deferring some of their payments so they can meet that debt coverage ratio.

MR. BOGANY: Is that why you gave more credits than they requested?

MR. BURRELL: No. Primarily, the reason for the additional credits would have been the applicable rate.

MR. BOGANY: Okay.

MR. BURRELL: Do you all have any questions or comments?

MR. JONES: Let me -- at this time, why don't I call for the people that would like to make public comment?

Mr. Flores?

MR. FLORES: Mr. Chairman and members of the Board, thank you for the opportunity. I'm carrying with me an artist's rendering of what we hope will be the Circle S Apartments here in Austin, Texas.

(Pause.)

MR. FLORES: And, again, good morning. For the record, my name is Henry Flores. And I represent One SDI, Limited, the developer for Circle S Apartments.

As you may recall, Nicole Flores, the developer for this transaction, appealed the staff's recommendation in the December meeting and the Board was kind enough to refer this back to the staff for additional consideration.

However, the discussions with staff have been extraordinarily acrimonious and unproductive.

They requested a package of information. This is the package of information. Nothing in this package was taken into consideration in the final decision-making process. The increase in the credits from 321,000 to the proposed 436,000 is merely the result of staff identifying an error that they made and correcting that error. Again, nothing has changed from their philosophic perspective.

My presentation today is based on turning to the final arbitrator on this issue and coming to you for the ultimate intervention. It's -- my presentation has

four parts: I'd like to very briefly introduce the development team, I'd like to describe the transaction, detail the issues of contention and then provide you with what I hope is a reasonable compromise.

But first, frankly, I have to wonder why we're even having this conversation. And I say that because what this applicant is requesting is an allocation of 4-percent tax credits -- not the 9-percent tax credit program that's extremely controversial and extremely competitive, but 4-percent tax credits.

As a point of clarity, any transaction in the United States or in Texas that is used -- that uses a private activity cap to develop a housing project qualifies for an allocation of 4-percent tax credits. This is an allocation that's an additional resource to the State of Texas that is not available to Texas unless you're developing housing using a private activity cap.

When that law was originally enacted, it was hoped that that would encourage states to use more private activity cap for housing. That was the original premise.

That's why the 4-percent tax credits are available: To encourage states to use these types of bond activities to do housing. All projects qualify if you meet the minimum threshold requirements.

The -- this next year, if the State issues \$335 million worth of bonds and every single project that utilizes bond finance applies for the maximum amount of tax credits and the maximum amount of tax credits is approved for every single project, the federal government will fund the maximum dollars; it's an unlimited resource.

Whenever you cut that transaction, it has no public purpose. And I don't even understand exactly why you're doing that.

The -- there's a cost certification process. When a project of this type is finished, we have to have an independent CPA certify the costs. And so, therefore, the possibility of abuse is essentially eliminated. Now, we use an accounting firm, Reznick, Fedder and Silverman, out of Bethesda, Maryland, a nationally recognized firm that does primarily tax credits; there are controls in place to ensure the public trust.

Earlier today, I spoke with Barbara Thompson. And Barbara is the Executive Director of the National Council of State Housing Agencies, the organization that's the professional association for HFCs. She verified my thoughts that this type of review is extraordinarily unusual; most states don't do this review. They are -- they do -- they follow what's commonly known in the market

place as the Florida model.

In the State of Florida, when you submit a request for tax credits for a bond-financed transaction, they review that matter -- they're required by law to review that matter, but they review that matter by looking at the development team, the financial capacity of the development team and, Has that team been debarred.

They look at the eligibility of the transaction: Is that property -- does that property have the appropriate set-asides; Does it have a land use restriction agreement in place; Are they providing the appropriate resident services. And then, lastly, they look market impaction: Is that property being placed in an area of the community that has high levels of poverty.

If those three tests are met, then the State of Florida gives them a letter of commitment -- not an actual allocation but a letter of commitment for those tax credits. That developer then goes and does that transaction, gets a third-party cost certification and comes back and is awarded the exact correct amount of tax credits.

It's not rocket science, and there's no guess work in that transaction; they know exactly what they're doing because the numbers have been verified by a third

source. What we're doing here is trying to estimate the costs -- the value of the credits in a vacuum, without all the facts and figures presented for your consideration.

I have -- I chair at the Federal Home Loan Bank. And I have had on a continuing basis individuals, non-profits, come to me looking for soft money to try to complete transactions that are bond-financed with 4-percent tax credits, where the 4-percent tax credits have been cut to the point where that property cannot close.

I know, specifically, in the last few months, I have been contacted by developers from a Brownsville non-profit and from a Harlingen non-profit who are desperately searching for local resources to make up for the over-\$1-million tax credit cut they received from this agency. So now they are competing for valuable, scarce local resources to try to fill that gap instead of using this unlimited federal resource. It makes no policy sense.

If you cut a transaction -- earlier today, you've -- every recommendation except one had significant cuts in the tax credits. When you cut those transactions, when you cut those tax credits, they don't go any place else in Texas.

If I -- we don't use them for -- on this project, Circle S, they're not going to be used anywhere

else in Texas. They stay in Washington, D. C. And if you cut a transaction to an extreme, they have to complete for local resources that, frankly, could be better used in other ways.

It makes no policy sense. And I would respectfully request that this Board review its allocation policies for 4-percent tax credits and review its underwriting policies to ensure that Texas is being well served by this Department.

Nonetheless, there is a process in place that mandates how we apply for these credits, and we have tried to follow that process. And, again, as I mentioned briefly, I have never in my 25 years of professional service ever witnessed the kind of behavior that I witnessed on this transaction.

This is a public meeting; I don't think it's appropriate to discuss the specifics of that behavior in this public meeting, but I do intend when the ex parte rules expire on this transaction to discuss it with Ms. Cedillo and the eventual successor for the Executive Director's slot because, again, Texas is not being served well by your staff.

I mentioned earlier that my presentation had four parts: Introduction of the development team, a

description of the transaction, a discussion of the issues of contention and a reasonable compromise. Now the development team.

The owner, developer, contractor and management company for this development will be Pacern Development. And Mr. Kirk Kehoe is in the audience representing Pacern Development.

Pacern was established in the mid-twenties by a gentleman named Romeo Pacern. Mr. Pacern is now deceased; his son runs the business, and it's still a family-owned business. Ron Pacern -- they domicile their business in Rhode Island. Three grandsons run outlying offices in Florida, Arizona and California. They are a huge corporation.

The April issue of Professional Builder stated -- listed the housing giants. Pacern Development is shown as one of those housing giants. Last year, they had \$393 million in total revenues from their operations.

That's how large they are. They are -- these are big boys. They're extraordinarily capable.

They have been developing multifamily real estate since the '40s. Initially, they were just single-family home builders. Every apartment complex they have ever built since the beginning they still own. Therefore

they're fixated on quality. Because they're long-term owners, they don't flip these properties.

If you're building to flip, if you're a home builder, for example, you do reasonable quality, but you don't have expectations that you're going to own it for 50 years. These guys own their stuff for 50 years, so they put a lot of investment at the front end. And I think, again, that the artist's rendering gives you a sense of the quality of the product that's going to be done there.

They'll use a local developer, Nicole Flores, whom you've met, who operates Madhouse Development Services. Nicole has over the last four years done over \$100 million of development -- a very skilled professional, the best developer that I know -- both subsidized and unsubsidized.

Prior to her experience in the private sector, she was in the public sector. She was the director of Housing for Homeless Mentally Ill for this county and, before that, for Nueces County down by Corpus Christi.

So you have a very experienced, very effective, very professional development team. Let me discuss briefly the transaction.

Randy Ziehe, who is also here, has various real estate interests, including what's commonly known in the

business as dirt work, land development. He acquired six individual, unplatted, single-family-zoned lots, converted those by going through the very, very onerous process here in Austin and went from six single-family lots to one single multifamily-zoned lot.

Margaret Shaw from the City of Austin indicates that to the best of her knowledge, in the last three years, no one has ever successfully converted single-family land to multifamily. Multifamily is gold in Austin.

That's the transaction. When he completed that, he applied for and was successful in receiving an allocation of bond authority. He has decided to sell that transaction. We have gone to the Travis County HFC, the issuer of the bonds, and gotten them to approve it. We have gone to the AG's office and gotten them to approve it.

Even though, as typical, the AG requires that Mr. Ziehe be on the bank at another transaction, also -- he's a small, limited partner -- the majority of the benefits, the preponderance of the benefits, go to Pacern. Pacern is the managing general partner; it is their deal. But there is an identity of interest, an identity of interest that has been declared from the very beginning.

The issues of contention, and we come to the meat of the matter. We originally applied for \$484,000 in credits. Initially, we received -- the recommendation was for 321,000. As I indicated earlier, that recommendation has been modified to 436-, but not because of the material we provided; only because they detected errors in their calculation and a few minor adjustments for us.

There are three issues of contention: The value of the land at transfer, the direct construction cost and the financing structure, even though, frankly, if we are being debated about the value of the land, the direct construction cost and the financing structure, that is the transaction. So we are essentially arguing about everything with your staff.

The value of the land. Again, Mr. Ziehe took these six individual lots and converted them to a multifamily lot. Multifamily land in Austin, again, is like gold. The transfer is occurring at \$1.2 million. The partnership, One SDI Limited, controlled by Pacern, is willing to pay \$1.2 million. The land appraised by a third-party appraiser at 1.3-.

\$1.2 million for 200 lots is \$6,000 a unit. In Austin, that's a very, very reasonable cost per unit for development of multifamily.

The underwriter has restricted the value of this transaction to \$600,000 for the land, indicating to us that the only thing we're allowed by this transaction is the original purchase price plus carrying costs. That's all. Nothing else is being allowed. He indicates this -- that he must maintain that position because he has to maintain consistency with the QAP and because of historical precedent that had been established in the past.

We don't believe that's correct. And when asked to provide us a citation, he indicated that Exhibit 108 of the 2001 QAP applies. We have read that multiple times, and I tell you it does not say that. Rather, it reads, "Applicants affiliated with the seller" -- therefore an identity of interest -- "must provide all of the documentation described in Subparagraphs (a) through (c) of this paragraph."

(a) is, "An appraisal which complies with the uniform standards of" -- yada yada yada -- Number 2, "a valuation of the county tax appraisal district," and, Number 3, "a clear identification of the relationship between the seller and the applicant." Fine.

When there's an identity of interest, you have to do those things. But the value is established not by

the original purchase price plus carrying costs but by the appraisal. Why would you require an appraisal if you weren't going to use the appraisal? Why would we go through the expense? Why would you go through the review?

It's ludicrous, the position that staff has taken.

What if I had bought this land -- what if my dad bought this land 40 years ago and, now, he has passed away and I've acquired the land and I've inherited the land and I'm going to use it for a multifamily?

Are you telling me you're going to go back to my original acquisition price of 30 or 40 years ago and then use that as my basis? Of course not. That makes no sense at all. You would go through the appraisal process to be sure that the public trust is being maintained, but you would allow the market to establish the value of the land -- not some arbitrary and capricious underwriter.

The second issue of contention: Direct construction cost. Our direct construction cost has been reduced by \$500,000. I don't even understand why. Again, keep in mind that when you reduce my construction cost, you reduce my basis. You reduce my basis, and you reduce my ability to access this unlimited federal resource. Therefore I have to do other things.

I have to cut. I have to do value engineering,

which in the market place means you've got to go cut corners. I've got to take out ceiling fans or microwaves or have less play-lots or have less features on the exterior, because I can't reduce my costs of roofing and plumbing and wiring and foundations; those are fixed.

So I've got to play with all the things that add creature comforts to the quality of life. Why would you reduce the quality of construction on an affordable housing project? Why would you reduce the quality of the living environment that's going to be established for these properties if I'm willing to borrow that money?

If One SDI is willing to expend more money to build better quality, why would you reduce that? To reduce or relax on an unlimited federal resource? I do not understand the logic there. I do, however, understand why they're wrong.

We are building a three-story, elderly, elevatored, limestone-and-hardy-plank-exteriored building that would be built to green-build standards in Austin: Extraordinarily expensive standards. And we have provided, again, significant documentation that explains how those costs are incurred. We even got a letter from our architect that, again, qualifies our construction.

This Agency, like most underwriters -- I do

professional underwriting as a side-business -- used the industry standard, "Marshall and Swift Cost Index." It values your construction, but your Agency is using that incorrectly. The index, to start with, has five categories, and you qualify the property in terms of standards when you start; it's either poor, fair, average, good or very good.

Our numbers are based on good; we build good product. That is good product. This Agency is valuing this property on average. We've argued with them. We've provided them with a letter from our architect that said it was good quality. We called Marshall and Swift in California and confirmed that we should be a good quality. None of that was taken into consideration.

When you look at the manual, there are six pictures that illustrate average quality. And those six pictures are all two-story product. There are six pictures that illustrate good quality; those are all three-story product. We're a three-story product. How much more compelling can you be?

We lost the argument, and we concede losing the argument because, in the QAP is a stipulation that every property done in this program has to be average quality. Therefore they have to do average quality. We understand

the QAP, and the QAP restricts us to that.

But that's just a false premise. They take -- they try to take average, and they try to adjust up or down depending on everything you do. But you can't. You can't possibly make all the necessary adjustments to get the construction -- to get to the right construction number.

They're \$500,000 less than we are. And I'm telling you we're pricing in the market place now and we're worried we can't even meet our prices; they may be more than even we thought. So I know that they're wrong, because we're out in the market proving that they're wrong.

Nonetheless, there's nothing that can be done about the matter because of the QAP; we concede that. We respectfully request that you review this matter again when you do a QAP because Marshall and Swift will tell you, as they've told us, that in order to use their index properly, you have to first categorize the property. And they've told us that any three-story product and most new construction should be good.

So, again, it's a false premise. And it's being -- and the document is being used erroneously.

I made mention of the fact that they did

identify some errors. This is one of the places they identified errors. They realized that they left out \$220,000 of legitimate costs when they made their calculation.

They included that in their underwriting study, and they said they corrected it. But if you look at their numbers and you look at their original underwriting report and the new underwriting report, they didn't adjust \$220,000; they only did \$160,000. So even when they found an error, they couldn't correct the error properly.

The final item of contention: Financing structure -- and, frankly, the one that was most disconcerting. We explained to the underwriter that the blended interest rate he was using of 6.94 for both the taxable and tax-exempt rate did not reflect our signed commitment letter from our lender. We are using Charter MAC as our lender and Wachovia Securities, previously First Union, as our equity provider.

Instead of using the 7.25 rate on the tax-exempt debt and the 9.25 debt rate on the taxable debt, they chose to use 6.94. We told them that's not right, that's not the right rate, that really our rate was right.

We were told that we were stupid -- stupid -- for using a financing structure that was so expensive.

I've got to tell you we're not stupid. Pacern has had decades of experience and decades of success; they're not stupid. What this underwriter fails to understand because of his limited knowledge about the private sector is that there's more than one way to finance taxes and debt.

6.94 is a perfectly acceptable rate if you're doing a rated transaction. If I spend 200,000 or \$250,000 for Moody's or Standard and Poor's, I can get a rating that will lower my rate to 6.94, but I've spent a quarter-of-a-million dollars, and I've spent 120 to 180 days getting that rating. We're doing a private placement, which, obviously, the underwriters don't have any sense of.

And we're doing a private placement because we're doing it with Pacern, who's a huge developer. And there are only a couple of people doing private placements -- Charter MAC, Muni MAE and a few very limited resources -- and they only do it for the big boys. Well, we've got a big boy. We're doing a private placement that saves me six months and that -- my blended interest rate is 7.55.

So yes, I'm not at 6.94; I'm at 7.55, but, if you do a present-day value analysis of that, it's cheaper

to use my financing than his. He's wrong again.

And not only do I have a cheaper rate of finance but I also save six months. And, again, I can do that only because the partner we represent is an extraordinarily large corporation with an extraordinary success record. And what I illustrate there is that the underwriters don't have a sense of how market economics work.

The financing structure section of the underwriting report is so replete with errors that I won't take the time to go through them all, but they number over 22 mistakes. The bottom line is that when you look at gross income, the underwriter projects on a side-by-side comparison 1,819,000; we project 1,812,000, only a \$600,000 difference, a de minimis difference.

The effective gross income they estimate at 1,704,000 we estimate as 1,699,000: Again, a de minimis difference of less than \$6,000. On expenses, we disagree a little bit; they have about \$65,000 less than we do, but we have about \$30,000 more for taxes. I think they're wrong.

But all that being said, the most important, incredible detail is that when you conclude the analysis, they show \$922,608 of net income where we show \$923,064 of

income, basically the same amount of net income. And yet, when you run through the calculations, somehow, where our underwriters feel that we can borrow 2.2-, this underwriter has reduced our debt to 1.6-.

Frankly, we think it is a thinly veiled attempt to sabotage this transaction, because he was forced to increase the equity, so he's now trying to cut the debt to put us in the same situation. And, again, that kind of behavior is abhorrent and inappropriate for a public official.

This reduction of \$500,000 of debt is unnecessary. I've got Wachovia Securities, one of the -- what used to be the seventh-biggest bank. I believe it's the fifth-biggest bank now. I've got Charter MAC that's owned by Related Capital, again, one of the biggest institutions in the country.

They are telling me that they'll lend us \$2.2 million -- they who have the risk, they who have hundreds of hundreds of years of underwriting experience, they who have been all over the project. How can you, who have no risk and have no involvement in the transaction from that perspective, restrict my debt?

How can you have the same net income and come up with \$500,000 less debt when we're underwriting exactly

the same? I've been underwriting for years. I don't have any understanding of how he went through his calculations, so, again, I must surmise that it's just an attempt to sabotage this transaction.

All that being said, I would like to offer what I consider a reasonable compromise so we can get done with this transaction and, again, with the caveat that we do intend to speak to Ms. Cedillo and to the new Executive Director about the conduct of this Agency.

But we've got to close this deal by the end of January. We cannot enter into a long, extended debate about the tax credit amount, and we can't postpone this for a month. So we're willing to accept the staff's recommendation of \$436,000 worth of tax credits; however, we cannot accept the conditions. The reduction to the debt essentially kills the deal, and there is no rationale -- economic rationale or policy rationale -- behind that recommendation.

I'd like to very quickly discuss the five conditions that were originally included. The first condition is that we provide an executed agreement with a qualified service provider. Absolutely, no doubt about it. We will do that, and we can include that as a condition. We have executed agreements on all of our

properties all over the country.

The second is a restriction of the debt -- the taxable debt from 2.2- to 1.6-. Again, there's no economic rationale. There's no policy rationale. The people at risk, the people who really matter, are willing to lend us 2.2-. This Agency should not restrict that amount. Again, it's a veiled attempt to sabotage the deal.

Another one limits the total debt, the taxable plus the tax-exempt, to the sum total of those two. Again, it's an attempt to minimize the ability of this transaction to actually be successful.

The third or -- the next is a request for a letter of credit relative to the permanent financing. Well, again, this is the underwriter not understanding the business. You don't require a letter of credit for private placement -- don't have one, don't need one. You shouldn't need one, either.

And then, lastly, there is an issue -- they're asking for receipt, review and acceptance of a revised project schedule reflecting the portion of site work costs which are demolition. We are -- there are still some structures on this building, a couple of -- I mean on this site -- a couple of lean-to hay structures -- probably

30,000 or 35,000 to demolish. We know the business. We understand that's not eligible basis.

And the final cost certification that we prepare will show that as a non-basis item. We do not want to have to deal with the staff any more on this issue. We do not want them to have any control on this issue. We -- it's clear that this is another attempt to hamstring this transaction.

The Pacern Development Company is the fourth-largest low-rise apartment builder in the United States, surpassed only by Trammell Crow, A.G. Spanos and JPI. The developer -- the local developer has done over \$100 million worth of transactions, both on the public side and the private side.

I currently am in hiatus from the business; I am not actively involved, but, frankly, the brains of the family are still on the transaction. I am currently in the public sector and am enjoying my time there, but I can assure you that the developers for this transaction know what they're doing and that we have given great thought to this transaction.

Pacern is active in many parts of the State, but not in Austin. And they want to be in Austin. And this transaction is important to Austin. I serve as the

Chairman of the Austin Housing Authority, and I can tell you we have almost 2,000 families on our waiting list. For this Agency to do anything that would minimize housing in Austin would be a detriment to poor people in Austin and all over the State.

So, again, in summary, we are requesting that the \$436,000 recommended by the staff be endorsed by this Board, but without the restrictions that have been associated with the transaction except for the one that is clearly appropriate. And that is the one where we give you an executed agreement to provide social services. We understand that's our responsibility.

We also again respectively request that this Board and the new Executive Director review the policies on how they're -- on how you allocate 4-percent tax credits.

This was -- affordable housing is an extraordinarily difficult business. To get through the Travis County HFC, to get through the NIMBYs, to get through the city and to get through the AG's office is burden enough. To have to fight with you all is inappropriate and unnecessary.

There are ways that other states have ensured the public trust and minimized and facilitated in an

effort to ensure quality production and that families around their states are appropriately served. I think that this State can do it, also.

Many of you know that years ago, I served as the executive director of this Agency under, first, Governor Richards and then was the only democrat reappointed by Governor Bush. It is still the very best job I've ever had. And I've enjoyed this presentation. It's kind of giving me chills. It's good to be back and see old friends. Again, I ask for your consideration and will be happy to field any questions that may exist.

MR. JONES: Thank you, sir.

MR. SALINAS: Why do you say that the staff is trying to sabotage your application? Who are these people?

MR. FLORES: Mr. Salinas, in a public meeting, I think that those things are probably better left unsaid.

I would -- I, obviously, will answer any question asked of me, but I'd prefer to deal with either Ms. Cedillo or with the new Executive Director to discuss personnel matters because personnel matters are the bailiwick of the Executive Director.

But we've been screamed at. We've been belittled. As I said, we have been called stupid for

accepting the rates of financing that we accepted -- again, because they clearly did not understand how the business works.

MR. SALINAS: You really think so, that it's that bad?

MR. FLORES: Yes, sir. Those are -- their -- with the screaming -- we were -- I won't -- twice, we had to ask him on the phone to stop screaming. The person would stop screaming and apologize. The third time he was screaming, he realized he was screaming and apologized for himself.

MR. SALINAS: Do we --

MR. FLORES: That same person --

MR. SALINAS: Do we have any kind of liability on the loan that he might be asking for for that \$2.2 million? Do we have any kind of liability?

MR. JONES: Ms. Cedillo, will you respond to that?

MS. CEDILLO: Are you asking me?

MR. SALINAS: Yes.

MS. CEDILLO: I would defer to General Counsel on that as far as liability on the 2.2 million.

MR. SALINAS: Do we? No?

MS. MARKS: If they're suggesting that you

would use their taxable -- their basis to reduce their taxable bonds, we don't have any control over that or liability.

MR. FLORES: That -- the liability is entirely the development team's. Even the Travis County HFC, which has agreed to the 2.2- -- using their own separate underwriting, they have agreed to the 2.2-. Even they have no liability, because they are a conduit issuer. The liability is our liability.

MR. SALINAS: Okay. I would think so, yes. The appraisal on your property --

MR. JONES: Just to make sure I understand the answer to your question, Mayor --

MR. SALINAS: Yes, sir.

MR. JONES: The answer to his question -- to the mayor's question was no. Right?

MS. MARKS: The answer to the mayor's question is no.

MR. JONES: Thank you.

MR. SALINAS: Okay.

How about your appraisal? Do you have a county appraisal?

MR. FLORES: There was an independent, third-party appraisal of the land.

MR. SALINAS: 1.3-?

MR. FLORES: 1.3-. It's being sold for 1.2-.  
And again, that's only \$6,000 per unit. The Agency  
approved a project for almost the exact same cost one  
block down the street within the last four months.

MR. SALINAS: And they gave you an appraisal of  
600,000?

MR. FLORES: They -- the appraisal was \$5,667  
per unit. We're asking for \$6,000 per unit -- so,  
essentially, the same amount approved down the street by  
this Agency, adopted by this Board. We're at 7400  
Congress. They're at 7200 Congress.

MR. SALINAS: Have they helped you --

MR. FLORES: It doesn't make sense.

MR. SALINAS: Have you -- have they helped you  
try to get that 4-percent tax credit from --

MR. FLORES: Sir, you all have some exceptional  
staff here in Ms. Cedillo and Mr. Burrell and others.  
Unfortunately, the ex parte rules keep us from  
communicating with those folks.

I certainly agree with your comments. It has  
been disconcerting not to be able to talk to professional  
people about the issues because of the restrictions that  
exist.

That -- I truly believe that if I had been able to discuss this matter with Ms. Cedillo or with Mr. Burrell or a combination of those folks, we wouldn't be sitting here today. But the ex parte rules restrict our ability to do that and result in these kinds of conversations, which I consider awkward.

MR. CONINE: Mr. Chairman, as to process here -- I know Mr. Flores is doing public comment currently -- I'd like to hear from staff relating to this particular issue. And I'd also like to take a break. So I don't know how you're going to --

(Laughter.)

MR. JONES: Well, here's what I would suggest. Why don't we do this? Why don't we go ahead and take our lunch break now, because it is time to take a break? The Chair would suggest that we all come back in an hour if the Board would agree with that.

MS. ANDERSON: All right. I know we have one Board member that has a constraint on the back end of the day. So, I think, no more than an hour.

MR. JONES: Okay.

What I would like to do here is -- okay.  
12:30? 12:30 would be great.

MS. ANDERSON: Yes.

MR. JONES: We will take a break then until 12:30.

Now, this is how we'll proceed if it's okay with the Board members. I would suggest that we go ahead and close public comment. There are three more people that would like to speak.

Mr. Flores has been -- I'd make no comment about the quality of his comments. I'll just say this: He has been very eloquent and, I think, been very thorough. So I would encourage the other speakers to remember that.

(Laughter.)

MR. JONES: Why don't we hear from those speakers?

MR. CONINE: Mr. Chairman, I -- can I reserve the right to ask Mr. Flores to come back --

MR. JONES: Yes.

MR. CONINE: -- after the staff presentation?

MR. JONES: Yes. And that's -- what I was going to suggest is that we let the other speakers make their public comments, we then allow the staff to fill us in on their views, and then, if you have any questions for anybody, we will then allow it, whether it be of staff, Mr. Flores or any other speakers.

MR. CONINE: Okay.

MR. FLORES: Mr. Chairman, every -- all the other speakers on our behalf will defer to me.

MR. JONES: Okay. Thank you, sir.

MR. FLORES: Yes, sir. Thank you.

MR. JONES: Thank you.

We will be back at 12:30.

(Whereupon, at 11:50 a.m., this meeting was recessed, to reconvene at 12:30 p.m. this same day, Thursday, January 17, 2002.)

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

(12:38 p.m.)

MR. JONES: I will call the meeting back to order.

With the Board's permission, I would like to take up discussion on the West Oak Apartments due to the fact that we need to get to the bond review board, I believe, by two o'clock today with regard to that particular item. So if we could review Item 6(a) and, in particular, the West Oak Apartments, we would appreciate it.

MS. CEDILLO: David Burrell is going to handle that.

MR. JONES: Did you make that recommendation, David?

(Pause.)

MR. JONES: I believe -- didn't he already recommend that to us, though?

MR. BURRELL: Yes.

MR. JONES: I think it has already been --

MS. CEDILLO: Did you --

MR. JONES: I think the --

MS. CEDILLO: Have you got it all?

MR. JONES: Yes. I think it has already been

recommended to us by the staff. And the Chair would entertain a motion to approve it. If anybody --

MR. CONINE: I move for approval of the West Oak Apartments in Houston.

MR. GONZALEZ: Second.

MR. JONES: Okay.

The motion has been made and seconded. Any questions for David or any further discussion on that particular item?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, Nay?

(No response.)

MR. JONES: The motion carries. Thank you.

Now, back to our prior discussion, Mr. Flores indicated that Mr. Farley, Mr. Ziehe and Mr. Merriweather would waive their comments and consolidate them into Mr. Flores' comments. So we thank each of you, very much, for doing that. And I believe staff wanted to respond.

Is that correct, Ruth?

MS. CEDILLO: They will respond to any questions that you might have.

MR. JONES: Okay.

So I would then turn it over to the Board members to ask questions either of Mr. Flores or staff as you care to.

MR. BOGANY: My question is: After hearing Mr. Flores, Mr. Burrell, what is staff's side of the story? And what rules were you following to come up with your recommendation?

MR. BURRELL: That would be best explained by our underwriting division, Mr. Guirrez [phonetic]. We're not sure where he is. He's -- he went to make some notes.

MR. SALINAS: [inaudible]?

MS. CEDILLO: They were underwriting issues.

MR. BURRELL: Yes. They were underwriting issues that we had, and they were sent back through our underwriting division.

MR. JONES: But, certainly, you understand his position. I think that would be the question.

MR. BURRELL: Yes, sir, I do. Primarily, he felt that he could make some adjustments in the tax credits from the 321,000 to 436- because of the --

MR. BOGANY: Errors?

MR. BURRELL: -- errors. But then he also felt that he had to reduce the taxable bonds from 2-million-2

down to 1,640,000 so that it would meet the 1.10 debt coverage ratio.

MR. BOGANY: Okay.

MR. BURRELL: That was basically his position.

MR. BOGANY: What was the reason behind the land cost? The land was valued in the appraisal at 1.1- or 1.2- --

MR. BURRELL: 1.3-.

MR. BOGANY: 1.3?

MR. BURRELL: Yes.

MR. BOGANY: But we were only given 650,000 and some change in carrying costs. Why did we go and look at -- go to that point versus going with the appraisal?

MR. BURRELL: Basically, it had been interpreted by our underwriting from the QAP that he would -- he was to use the cost approach. And that would include the cost of the land plus any third-party expenses which could be verified along with any holding costs such as the time that it took, say, during that 12- or 13-month period when there was some interest cost involved.

MR. BOGANY: Okay.

MR. BURRELL: And that's why --

MR. BOGANY: Was there any particular reason that he couldn't have used the appraisal value in this

project?

MR. BURRELL: It was his interpretation that he had to take the lower, more conservative approach because it was a related party transaction.

MR. BOGANY: All right. So we need to get him to find out why he took -- get him here so we can find out why he took that --

MR. BURRELL: Yes.

MR. BOGANY: -- approach.

MR. SALINAS: [inaudible]?

MR. BURRELL: I'm sorry? I couldn't hear you.

MR. SALINAS: What is your recommendation on this whole issue? I mean it's a terrible injustice to have 1.3 million in the appraisal and then not to be able to use that appraisal and then just use 600,000. What is -- there has got to be an answer to that question that, if we're not going to be any -- we don't have any liability at all, why would we not let the lender take the risk instead of us not -- having anything to do with it.

So do you have any --

MR. BURRELL: Well --

MR. SALINAS: -- problems with what Mr. Flores is asking for --

MR. BURRELL: With using the appraisal?

Basically, it would be a matter of changing our policy.

MR. SALINAS: Okay. What does the policy --

MR. BURRELL: At this current time --

MR. SALINAS: What does the policy say?

MR. BURRELL: At the current time -- as it has been interpreted for the last three years was that the lower would have to be used, which would have been the cost -- the original cost of the land plus any third-party expenses that would be incurred. We --

MR. JONES: Would you like Tom to answer that question?

MR. BURRELL: I can go ahead and finish it.

MR. JONES: Okay.

MR. BURRELL: We have over the last three years told the developers in different workshops that that was the way that it would be done and that that was our policy. And therefore the Executive Award and Review Committee felt that we had to continue following the policy, although it is within the purview of the Board to direct us to change our policy.

MR. SALINAS: Well, what does the county appraisal district say?

MR. BURRELL: They appraised it at a lower value, around -- a little over 400,000.

MR. GUIRREZ: Actually, they had reduced the appraisal, based on the work of the developer, to obtain a lower appraisal or -- a lower assessed value because of the -- their acquisition cost. So they got it down to their \$435,000 acquisition cost. It was appraised a little bit higher than that in the previous year.

MR. BOGANY: Chairman Jones?

MR. JONES: Yes?

MR. BOGANY: I'd like for him to explain to us why you use the value of the property that was paid for in the carrying cost and what rules you followed to do -- to come up with that versus using that appraisal.

MR. GUIRREZ: Okay. The speaker indicated that the rules that we apply for this process, which -- talks about identity of interests or transfers of acquisitions.

And it requires that three things be obtained: An appraisal, an assessed value -- percentage of assessed value and indication of all the related parties, along with -- and the part the speaker left out was -- along with the original acquisition costs plus any holding costs which -- we include any development costs that a third party enter into that holding cost portion.

And that -- the language in the QAP says if any such relationship exists, complete disclosure and

documentation of related parties' original acquisition and holding costs since acquisition to justify the proposed sales price must also be provided. We take the language that says, "Justify the proposed sales price," to heart and suggest that that's where we get the basis for using cost.

MR. BOGANY: Is that because he owns the property himself?

MR. GUIRREZ: That's correct.

MR. BURRELL: And so if this was a third-party transaction, you would go with the appraisal?

MR. GUIRREZ: Well, there would be no need for an appraisal because there would be a --

MR. CONINE: A contract for sale?

MR. GUIRREZ: Yes, a direct sale, an unrelated buyer and seller.

MR. BOGANY: Okay. But because the developer does own the property himself and he's developing it himself, you have to go by these rules here?

MR. GUIRREZ: Correct.

MR. BOGANY: Okay.

MR. CONINE: I mean, all of us -- I think the genesis of some of the reasoning behind what these particular rules in the QAP -- we can all remember the

late '80s, when developers were buying land and marking it up and having borrowed money and putting it into their pockets.

And I think when you have an identity of interest, such as this particular case had, the idea is to use the cost basis so that the difference between the cost and whatever the appraised value is doesn't go into one of the partners' pockets out of borrowed dollars. I mean, that's just -- it's a common banking practice today in those issues to use lower of cost or appraised value.

And I -- that to me is the genesis of why the rules are written as they're written when you have an identity of interest. That's -- and it's -- the key is the identity of interest situation.

MR. GUIRREZ: Right.

MR. JONES: Well -- but that same provision says that you look at cost data and you also look at appraisal, too. I mean that same provision says that.

MR. GUIRREZ: Well, the provision doesn't say that the appraised value has to justify the sales price. It's, I guess, implied. But the provision talks about the holding costs and the acquisition costs to justify the sales price, giving it more weight as being the determining factor.

Now, we haven't had this situation, but I think we'd require an appraisal to ensure that the holding costs that are claimed and proposedly documented don't so much exceed the value of the property and that we're getting -- you know, paying for a bad deal. That's what I think I -- as I understand it, that's why -- if there's a need for an appraisal, that's what the need would --

MR. CONINE: Yes. If the situation was flipped and if you had higher costs than the appraised value, you certainly wouldn't want to fund the higher costs because you're in essence overfunding. So it can go in reverse.

MR. GUIRREZ: Right.

MR. CONINE: We've seen circumstances when it has gone in reverse. But it's the identity of interest that's causing the problem, you know, from an underwriting perspective here.

MR. GUIRREZ: Right.

MR. JONES: What about the point that was made at the very first about the fact that as a policy matter, this is -- you know, this money is either going to come to Texas or it's not and if we undo this deal, it doesn't come to Texas?

MR. GUIRREZ: This -- the money won't go to this transaction in Texas, but the money is associated

with the tax-exempt bonds, and the tax-exempt bonds will be recycled in the upcoming -- in this year's tax-exempt bond cycle. And therefore those tax credits that are associated with that can be utilized again. They won't go, per se, for this project if this project doesn't get done, but they could be reused -- they will be reused.

MR. JONES: So as a policy matter, you disagree with his statement that we should encourage deals such as this?

MR. GUIRREZ: I -- as a policy matter, I disagree with his statement, because I think our objective is to make sure that we don't provide more funds than are necessary and -- but provide enough funds to make it feasible. And that's the, you know, underlying theme of all of our -- one of the underlying themes of all of our underwriting for 9 percent or for 4 percent, where ever -- for HOME funds.

You know, we're trying to make sure that the project is feasible and viable but not so rich, if you would, to -- as to start to give concerns, too, that we're overfunding projects.

MS. ANDERSON: Mr. --

MR. JONES: I --

MS. ANDERSON: Can I ask a follow-up --

MR. JONES: Sure.

MS. ANDERSON: -- to that?

MR. JONES: Yes.

MS. ANDERSON: And you take that position even though in this case, they're talking about private placement financing and not -- there's -- I mean with the HOME funds, that's HUD money, you know. But in this case, we're talking about a privately financed deal.

MR. GUIRREZ: Yes. And really, we're speaking to the credit amount.

MS. ANDERSON: Okay.

MR. GUIRREZ: We have in our rules that we provide enough credits to fill the gap or the amount of credits that the project is eligible for or the amount of credits that are requested, whichever of those three methods are the least. And in this case, if we took the project on face, we wouldn't see that the project was feasible from an economic standpoint, so we had to reduce the taxable amount; in doing so, that freed up some gaps, so it allowed us to provide more credits.

If the bonds are reduced, we can provide more credits. If the bonds aren't reduced, then the gap would say they need less credits. And so we're really only focusing on the credits here. It's just that as a matter

of how the whole financing project or -- package sticks together, we need to be aware of what the other pieces are so we make sure that we don't provide more than what the gap would need, the need would be.

MR. CONINE: Talk to us about the reduction in costs when you went to the hard costs, the Marshall and Swift issue.

MR. GUIRREZ: Do you mean the difference between our costs and their costs?

MR. CONINE: Yes.

MR. GUIRREZ: Well, you know, that is an area that's -- always has a lot of debate over it. But the QAP provides that we use the average quality cost from Marshall and Swift. In past years, back maybe four or five years ago, there was an occasion for us to look at higher quality cost because the methodology we used with Marshall and Swift wasn't as detailed.

Today, we take into account things like 9-foot ceilings, like elevator spaces, like -- things that we weren't taking into account in the past. We take them into account today so that we can use one standard for everyone and use that as, you know, a fair arbiter where someone can't say their costs are good versus average. I mean, there's a big difference between those two.

What we did -- when we reviewed our analysis of this, we found that we did make one error originally and that was in the adjustment for slab work. And it should have been adjusted by a third instead of 100 percent. Anyway, that caused about a \$200,000 difference.

Once you take out the adjusters on that, it was reduced a little bit beyond that. I think I calculated that the change in elevation was like \$211,000, but it was less than the full amount of the adjustment because of the local cost multipliers.

MR. CONINE: What was the -- how does the cost per square foot work out in this particular scenario?

MR. GUIRREZ: Under the --

MR. CONINE: In hard costs -- now I'm just talking about hard costs.

MR. GUIRREZ: We -- something we've added and will have on our reports going forward -- if you look at it -- our spread sheet toward the bottom, there's a recap of hard construction costs.

MR. CONINE: Okay.

MR. GUIRREZ: And that's a line item that's going to include all the site work costs, the direct construction costs, the contractor fees and contractor contingency. And that number from the developer's budget

would come to 58.97 per square foot, almost \$59 per square foot, whereas, based on our budget, including all the things that we could possibly see to include, we came to 55.51 per square foot. And --

MR. CONINE: Now, isn't it true that when you go through these Marshall and Swift, bottom-line, there is an uptick for elderly units, because the elderly units typically cost a little bit more? You've got grab-bars and panic buttons and --

MR. GUIRREZ: Right. And --

MR. CONINE: -- all the rest.

MR. GUIRREZ: I'm glad you pointed that out because until the speaker mentioned that and he said it was an elderly project with elevators, we didn't have that information. We didn't know that.

We -- during the break, we had the tax credit staff go back and look at the application. And the application clearly says that it's a family project. And when you look at the cost budget, the breakdown, there's a line item for elevators, but in his budget -- there's no amount in that budget for elevators. So --

MR. CONINE: So -- wait a minute. Your assumption was it was a family project --

MR. GUIRREZ: Yes, sir.

MR. CONINE: -- but he was going to put elevators in it?

MR. GUIRREZ: Yes, sir. And it would -- there would be about a 3- to 5- percent adjustment that would be necessary if it in fact is an elderly project.

MR. FLORES: Mr. Chairman, may I interject?

MR. JONES: Yes.

MR. FLORES: I had made an error in my presentation. That -- it is not an elderly. So the -- you know, that should not be factored into the construction cost.

MR. CONINE: So it's not an elderly project?

MR. FLORES: No, sir. I misspoke. My --

MR. CONINE: Okay.

MR. FLORES: My senior associate advised me that I had misspoken.

MR. CONINE: Okay.

MR. JONES: Thank you.

MR. CONINE: So now we're back to the \$55 a foot versus the 58- or 59?

MR. FLORES: And the direct construction cost is only \$44. It depends on how you define hard costs. But if it's just construction, it's only \$44 a square foot.

MR. CONINE: Well, I consider site work construction. And I consider landscaping construction. And I consider overhead and all that kind of stuff construction. I'm just --

MR. GUIRREZ: And --

MR. CONINE: -- trying to get a basis because I happened to do a few of these myself -- not as many as Pacern, but a few of them myself.

Can you visit with us a little bit about the financing structure and the capable debt based upon the NOI that Mr. Flores -- obviously, you both are pretty much in sync with the NOI. And so walk me through the debt transaction piece just one more time and how you -- there's obviously a maximum debt based on a blended rate of taxable and non-taxable. And get me -- walk me through that right quick.

MR. GUIRREZ: Do you want me to explain the error that we made, also, in the original --

MR. CONINE: I'd appreciate it --

MR. GUIRREZ: Yes.

MR. CONINE: -- yes. If you made one, sure.

MR. GUIRREZ: It -- when we looked at the project originally, we calculated a blended rate of 6.9- something -- 6.91, I think. And that appeared to be a

reasonable blended rate from a big-picture perspective. I didn't go -- when I reviewed the documentation, I didn't go back and look at the quoted rates, which are obvious to me -- and it should be obvious to anyone that the two quoted rates are both that. So the blended rate should be above the --

MR. CONINE: From the lender in his package?

MR. GUIRREZ: Yes.

MR. CONINE: Is that the quoted rate you're talking about?

MR. GUIRREZ: Yes.

MR. CONINE: Okay.

MR. GUIRREZ: So that -- the actual quoted or -- the actual blended rate should be 7.55. And I think that we're consistent with the applicant's assumption that that's what it is. That's a fairly high rate. The reason why it's a high rate is two-fold at least, probably three-fold.

One reason for it to be so high is because there's a high percentage of taxable bonds on this transaction, about 20 percent, \$2.2 million over the -- compared to the 9.3 in tax-exempt bonds. That -- and because the taxable rate is significantly higher than the tax-exempt rate, that raises the blended rate

considerably.

The other reason why the rate is higher is because it's a 40-year amortization. And the longer the amortization there -- in this market, the longer the amortization, the higher the rate. And so there -- so it was a higher rate than what we would typically see in a conventional -- you know, separate deals, different transactions.

But it seemed reasonable to us -- to me when I looked at it that the 6.9 was the right rate. So when we calculated it last time, we used that as our blended rate to figure out what the amortization would be. And we came up with a lower debt service amount that was significantly less than what the applicant had indicated. Now I think we're in agreement that the debt service amount is in the --

MR. CONINE: Well, the NOI was 920- or 930-, or whatever it was.

MR. GUIRREZ: The NOI that we came up with was 962-.

MR. CONINE: Okay.

MR. GUIRREZ: The NOI from their budget was a million-27.

MR. CONINE: If you can agree on the two

numbers, you can get to the promised land, I think.

MR. GUIRREZ: Right.

MR. CONINE: If you can agree on the NOI and you agree on whatever the rate of -- the interest rate --

MR. GUIRREZ: And --

MR. CONINE: -- along with the constant that has to go with the amortization, whether it's 30 or 40 years, then you -- it's easy to get to what the overall debt should be.

MR. GUIRREZ: Right. Mr. Flores suggested that we did agree on the NOI. And if we do at 962-, then I don't think there's a problem or concern. I don't think we really do. I think he -- his budget indicated a much higher NOI of a million-27. Or at least, that's -- when we calculated it, that's what it came up to be, because the debt service is at -- is around 923-.

MR. CONINE: All right.

MR. GUIRREZ: And so if you take the 923- divided by 1.1, which is our debt coverage ratio --

MR. CONINE: Right.

MR. GUIRREZ: -- you can see that the NOI is --

MR. CONINE: It supports about 11 million in debt -- or 10.9, or something like that --

MR. GUIRREZ: Right.

MR. CONINE: -- based on my quick calculations.

MR. GUIRREZ: Right. It supports the debt that we proposed.

MR. CONINE: So is -- the issue then is the amount of taxable versus non-taxable of that 10-million-nine, let's say, whatever it is, that can get you to a blended rate of 7.55?

MR. GUIRREZ: Yes -- well, it --

MR. CONINE: I mean that has already been committed by a lender. Correct?

MR. GUIRREZ: Right, though I've got to caveat that by saying that we haven't received a revised commitment. The original commitment indicated that we were the issuer and had some other technical -- minor technical mistakes in it that we want to see corrected, which is why we had that as a condition in our report. But assuming everything else stays the same, then yes, the --

MR. CONINE: You all are in the same ball park there.

MR. GUIRREZ: We're in the --

MR. CONINE: You all are not that far apart, I don't think.

MR. GUIRREZ: Well, we're -- we are in the

taxable piece. If the -- if they're okay with our NOI number, then we're in the same ball park. And that's what was suggested earlier. If they're not okay with our NOI --

MR. CONINE: Is the condition on this approval using your NOI number but still using his blended rate?

MR. GUIRREZ: Yes.

MR. CONINE: Okay. If those two remain constant, then the fall-out -- then the taxable and non-taxable should fall directly out from that formula, should it not?

MR. GUIRREZ: Right.

MR. CONINE: Because -- and what do you think those two numbers are?

MR. GUIRREZ: I think that you would want to maximize your tax-exempt, so you'd keep that at 9.3, and you'd reduce your taxables to 1.64.

MR. CONINE: Now, how can you change that mix, Mr. Flores, and end up with a 7.55 blended rate?

MR. FLORES: Well, I should first state for the record that we don't agree with what he just stated. The -- he indicated that their net income was 962- and our net income was a million-27. And that's not correct. The net income -- from the same transaction, we had the same

gross income and the same expenses: 923,000 and \$922,000 --.

Using 7.55, using 7.55, using 40-year financing -- all identical factors, I do not understand -- and do not understand the report -- how we could reach different debt levels when we have exactly the same factors.

MR. CONINE: Well, I'm showing the applicant has 1,027,000 in my package. Now, how you're getting the 922- for your side, I don't know.

MR. FLORES: Yes. I don't know, sir. All I can do is -- and I'll quote directly from the underwriting report that is, again, replete with errors.

But the underwriting report says that, The applicant's original debt service in the amount of 923- is more consistent with the underwriter's revised figure of 922-.

MR. CONINE: Well, you're talking debt service amount. I'm talking NOI.

MR. FLORES: But I mean what I'm saying is --

MR. CONINE: And it's two different things.

MR. FLORES: -- we get to the -- we take the NOI and get the debt service. And we're saying we have exactly the same amount available for debt service.

MR. CONINE: Well, no. What I think you're comparing is his NOI number and your debt service number. That's what it sounds like to me you just did.

MR. FLORES: No, sir. It says here clearly that they're both available for debt service. And they're almost identical amounts.

MR. CONINE: Can you help me, Tom?

MR. GUIRREZ: Yes. I think what that statement says is that the debt service amounts are nearly identical amounts. The NOI is significantly different, which is what I'm saying. They're proposing an NOI that would support that amount of debt service. We're saying the NOI --

MR. CONINE: So there's where the --

MR. GUIRREZ: -- is much less than that.

MR. CONINE: There's where the problem is?

MR. GUIRREZ: That's right.

MR. CONINE: Okay.

MR. GUIRREZ: And we're saying the NOI is much less than that.

MR. CONINE: All right.

MR. GUIRREZ: And that's where the problem is. And, again --

MR. CONINE: And then what significant -- what

are the significant differences in the NOI amounts, expenses? On the expense side, is that where it happens?

MR. GUIRREZ: Yes, on the expense side. It's all on the expense side.

MR. CONINE: All on the expense side. And --

MR. GUIRREZ: We're at 3,700 per unit, and they're at 35-.

MR. CONINE: And you're within pennies on the rental income, but it's all on the expense side?

MR. GUIRREZ: Right.

MR. CONINE: What is your expense side per unit? Can you calculate that for me real quick?

MR. GUIRREZ: It's 3,712.

MR. CONINE: And what is his expense side per unit?

MR. GUIRREZ: 3,356.

MR. CONINE: I'll quit talking for awhile.

MR. GUIRREZ: And we --

MR. JONES: Can I ask you this: What --

MR. GUIRREZ: Yes, sir.

MR. JONES: We're kind of bottom-lining this. They made a suggestion as to a reasonable compromise.

What -- do you agree to that, or not agree with that?

MR. GUIRREZ: I would -- you know, the Board,

of course, can choose to do anything within its authority --

MR. JONES: Sure. I'm not asking you -- I'm asking you your recommendation.

MR. GUIRREZ: No. Our recommendation, you know, stands as it was written.

MR. JONES: Okay. And what's wrong with their suggestion?

MR. GUIRREZ: That we would be providing funds for -- we would be providing an excess developer's fee, for one.

MR. JONES: Okay. Thank you.

MS. ANDERSON: I have a question.

MR. JONES: Yes.

MS. ANDERSON: Mr. Flores, you made a comment toward the end of your remarks about, you know, why we can't let this thing drag out and that it has to close by January 31. Could you help me understand why you made that statement?

MR. FLORES: It's a private activity bond allocation. And I may have to defer that to one of my partners. But in order for us to meet the time deadlines established for the transaction, we have to close the transaction prior to the end of the month -- by February

2, actually. I'm sorry. But, essentially, before your next meeting.

And again, in terms of the debt which, obviously, is the only point of contention now because -- I understand your perspective on land. You know, again, I'm not sure how we can reconcile it when you have land in the family and all that kind of stuff.

But with all of those things taken aside because, again, we're willing to accept the staff's recommendation on the amount of credit, why the Agency would want to restrict debt when the debt's being provided by a third party, when there's no liability and you're not the issuer, and people from Wachovia and from Charter MAC have underwritten this transaction and said they'll lend us \$2.2 million and the owner and developer of this property is willing to accept that kind of debt burden --

MR. CONINE: Well, I think my answer would be -- is that the debt that someone else is willing to put on here is not consistent with the underwriting. There's a difference in underwriting in the NOI. And the last thing this Agency would want is a tax credit project back.

MR. FLORES: Absolutely, yes, sir.

MR. CONINE: And that's why we go through the effort of underwriting these things. We -- not only do we

pride ourselves on the fact that we do it all the time so we're probably as good or better than most in the country and, in fact, this Agency has gotten numerous awards and citations for the most efficient use of tax credits, but -- if you disagree on the NOI amount, I think that's a major contention.

Now, you know, to alleviate the situation, I think -- the two pieces that I think are consistent here if we take our underwritten NOI number and our blended rate or -- our overall rate of 7.55, which -- I think that's what you want --

MR. FLORES: That's correct.

MR. CONINE: -- then my hunch is that -- I don't care what piece of it is taxable or untaxable as long as you end up at those two places.

MR. FLORES: And your point's well taken. And, again --

MR. CONINE: And I -- is there a way he can go back to his private issuer and get them to manipulate the debt to where they end up at those two places? And --

MR. GUIRREZ: It --

MR. CONINE: We would still be happy, would we not?

MR. GUIRREZ: We would. Actually, it would be

to their advantage and to the project's advantage to take it from the taxable side because that's at a higher rate.

So actually, the blended rate would drop a little bit. But it still would -- I mean, it would be okay because if we take --

MR. CONINE: So -- okay. So you just gave me an avenue, I think. If we can put in here as a condition that the underwritten debt be couched off of an NOI of whatever the number is and, at any rate below 7.55 blended rate, he can have as much taxable or untaxable as he wants, you end up with the same debt service number either way on the total piece of debt against the NOI that we're concerned about?

MR. GUIRREZ: Sure.

MR. CONINE: And he can restructure his taxable and untaxable to whatever he can get done between now and the end of the month.

MR. GUIRREZ: Okay.

MR. CONINE: Does that make sense?

MR. GUIRREZ: Sure. I mean I don't see why you would --

MR. CONINE: So --

MR. GUIRREZ: Yes.

MR. CONINE: -- state your NOI number again,

just for the record, so we'll know what it is.

MR. GUIRREZ: Okay. Our NOI number is 962,643.

MR. CONINE: All right. So --

MR. GUIRREZ: 110- of that would be the debt service.

MR. CONINE: Can you now put into your words and not mine a recommendation for a condition that that NOI coupled with a blended rate of 7.55 percent or less -- you know, because he can get -- if he can get less, then he's going to get more debt. Okay?

MR. GUIRREZ: Effectively, we'd just limit the debt service to not more than 875,130. And if we just --

MR. CONINE: Well, there you go.

MR. GUIRREZ: If we just limit the debt service to that --

MR. CONINE: Okay.

MR. GUIRREZ: -- you know --

MR. CONINE: That's the 110- coverage. Right?

MR. GUIRREZ: Right. Everything else will fall into place.

MR. CONINE: That's -- I'm comfortable with that.

MR. JONES: We do -- I don't want to hurry anybody. Does any of the Board members have any more

questions? Any Board member, any more questions?

(No response.)

MR. JONES: All right. I would at this time with the Board's approval then move on to the debate of the Board on this issue and thank everybody much for their presentations.

MR. FLORES: Yes, sir. Thank you.

MR. JONES: And do we have a motion on this?

MR. CONINE: Oh, you would, wouldn't you?

MR. FLORES: Mr. Chairman, could I have one closing comment? Or is it --

MR. JONES: Sure, if you'll be brief.

MR. FLORES: I -- again, if our debt is reduced by that amount, this transaction will not occur. And there was a comment made by Mr. -- by the underwriter that that transaction would be done next year. It may well be done next year, but it won't be done in Austin. And it won't be done now, during these desperate times for housing, but -- if the debt is reduced by that extreme.

And the problem is that his numbers are wrong.

His -- 3,356 is what it costs to operate per unit here, not \$3,700. And by using his debt numbers instead of our debt numbers, then we end up with an NOI that's too low. But, again, thank you, very much, for your consideration.

MR. JONES: Thank you. Thank you for being here.

The Chair would recommend that we take up the Circle S Apartments in Austin first.

MR. CONINE: That's the one we're doing.

MR. JONES: That's right.

MR. CONINE: That's the one we're talking about.

MR. JONES: That's exactly the one we're talking about.

Are there any motions?

MR. CONINE: Shoot, I was fine until he just said what he said there at the end.

MR. JONES: Yes.

MS. CEDILLO: Yes. I --

MR. SALINAS: I don't know what the problem is, but it seems to me that this problem should have been taken care of two days ago or maybe yesterday. This -- you know, this is why it is recommended that we should not discuss anything on the agenda besides what we have as business here. But if we're going to discuss our agenda and take care of business, we might as well not have staff and just do it here ourselves.

I agree with Mr. Flores. That --

If you don't do it this year, you're going to go away maybe somewhere else in another state. I just don't know why they can't get along. There is a problem here. We don't get a direct recommendation for our info. here. We don't get any recommendation from Mr. Burrell. I mean we're here, in limbo.

I can understand the amount of jobs that these people are going to be losing here if we don't do this project. We're not going to be indebted for this commitment of \$2 million. It's probably a private investor that wants to do this deal. And I just don't know why we can't work with these people here and why we are trying so hard to stop this project.

MR. BOGANY: Mr. Chairman?

MR. JONES: Yes, sir?

MR. BOGANY: My thought is in trying to find a way to make this work, but I agree with Mr. Conine here that, after the last statement, if it's not what I -- what we need, then it's not going to work. And I think staff did nothing but follow the rules that are before them and didn't create any rules. And I think going in and changing rules for this project sets a precedent in the future.

And I think staff -- all they did was follow

the rules. Now, the -- changing these rules may not affect this project, but it may help a project later on down the line which might be better, because there are some holes in these rules that I see based on what I've heard today.

But I would truly back staff in this because he followed the rules. He didn't create the rules; he just went down the line and said, This is the rules, and this is where it needs to be.

I do have a concern on why the cost of living or the 37- or 33- difference in -- and I've heard that before from someone that -- where we get our numbers from and where the private sector gets their numbers from are different. And it seems as though they ought to be on the same level instead of going in one database and someone's in another database.

And they should be -- I don't know if we can save Circle S with it. But I probably would highly recommend us follow the staff and then later correct these holes so we don't have this issue again. And I do believe that the private sector and the staff should be pulling from the same database so the numbers of the 33- and the 37- should be the same. They really should be the same; they shouldn't be different numbers.

And that -- we need to find a way to start using the same database. And that way, he knows already.

And like I said with Mr. Conine, I was kind of rolling that we should try to make this thing work. But if it can't work at that lower database -- I mean a lower loan base, then we've got to follow what staff says to do. They followed the rules. They didn't do anything unusual; they just followed the rules.

MR. CONINE: Let me make a motion if I might, Mr. Chairman.

MR. JONES: Please do.

MR. CONINE: I recommend we approve the Circle S Apartments under the following conditions to the commitment: That we leave Condition 1 in there; We leave Condition -- we eliminate Condition 2 -- I don't really care about that; We amend Condition 3 to say the following, "Receipt, review and acceptance of a revised commitment for permanent financing indicating the correct bond issuer terms and amount to be consistent with the underwriter's assumptions," and then, right here, strike the rest of that and put, "Underwriter's assumptions of a debt service amount equal to" --

Give me the number again.

MR. GUIRREZ: 875,130.

MR. CONINE: 835,000?

MR. GUIRREZ: 875 --

MR. CONINE: 875,000 --

MR. GUIRREZ: -- 130.

MR. CONINE: -- "\$875,130," and strike the rest of that Number 3. And then leave Number 4 in, and strike Number 5, because we don't care as long as he has -- and I will say -- well, I'm making a motion, so I won't say it.

MR. JONES: Okay.

MR. CONINE: Strike Number 5. So we've got One, Three/revised and Four as the conditions to closing.

MR. SALINAS: I'll second that motion.

MR. JONES: The motion has been made and seconded. Discussion on the motion?

MR. CONINE: What I think this does is give the developer a debt service amount and the flexibility to either restructure the non-rated private -- non-rated bonds that he's contemplating going out with or, if he gets -- you know, if they can, somehow or another get rated.

We know rated bonds have a lesser interest rate attached to them; no matter what the taxable or non-taxable blend, it will drive his debt up to the point where he can probably get there and be able to cover the

gap that way. But it gives him that flexibility to do either or.

MR. JONES: Do we --

MR. CONINE: And I hope it salvages the project for you.

MR. JONES: It will.

MR. FLORES: And we appreciate the conscientious review. That's all we asked for.

MR. JONES: Any further discussion of the motion?

(No response.)

MR. JONES: We have a motion that has been made and seconded. Hearing no further discussion, I assume we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, Nay?

(No response.)

MR. JONES: The motion carries.

The Chair would then entertain a motion concerning the Millstone Apartments in Houston.

MR. BOGANY: So moved.

MR. JONES: I have a motion that that be approved.

MR. SALINAS: Second.

MR. JONES: It has been seconded. Further discussion on the motion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, Nay?

(No response.)

MR. JONES: The motion carries.

The Chair would then entertain a motion concerning the Sugar Creek Apartments in Houston.

MR. BOGANY: So moved.

MR. JONES: We have a motion that they be approved as recommended by staff. Is there a second?

MS. ANDERSON: I second it.

MR. JONES: It's seconded --

MR. CONINE: A good looking project, by the way.

MR. JONES: It's seconded by Ms. Anderson. We have a motion that has been made and seconded. Any discussion, comments, questions?

(No response.)

MR. JONES: Hearing none, I assume we're ready

to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, Nay?

(No response.)

MR. JONES: The motion carries.

At this point in time, we'll turn to Item 6(b) on the agenda. We have four speakers who would like to speak with regard to Item 6(b).

We already have staff's recommendation on 6(b), do we not, Mr. Burrell?

MR. BURRELL: Yes.

MR. JONES: Okay.

MR. SALINAS: What is the recommendation?

MR. JONES: Mr. Burrell, would you please state the recommendation of staff?

MR. BURRELL: Staff is recommending that we approve the change in ownership structure and, also, to give the extension on Laguna Heights.

MR. SALINAS: I move for the recommendation. Let's get that out of the way.

MR. JONES: We have a motion made that we accept the recommendation of staff. Is there a second?

MR. BOGANY: Second.

MR. JONES: Okay.

The speakers we have on this topic: Mr. Ramirez, Mr. Gutierrez, Mr. Halla and Mr. Fields. And I believe you're all speaking in favor of the motion that was just made. Is that correct?

MR. FIELDS: That's correct. Mr. Chairman, do we need to speak --

MR. CONINE: No. You really --

MR. FIELDS: Do we have to?

MR. JONES: You do not have to.

MR. FIELDS: In the interest of time, we'll waive our time on the agenda.

MR. JONES: Thank you, sir. We appreciate it.

THE REPORTER: Excuse me. What is your name?

MR. FIELDS: Mike Fields, representing Lone Star.

THE REPORTER: Thank you.

MR. RAMIREZ: My name's Louis Ramirez. And on another subject, I'll take about 30 seconds.

Thank you, Ms. Cedillo and the Board, for giving us funds for disaster relief in Hondo. Thank you.

MS. CEDILLO: Thank you.

MR. JONES: Thank you, sirs. We appreciate it.

We have a motion that has been made, and it's on the floor and it has been seconded. Further discussion

on the motion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed to the motion, Nay?

(No response.)

MR. JONES: The motion carries.

Item 6(c). Ruth, Mr. Burrell, do you want to make the recommendation of staff?

MR. BURRELL: Yes. The staff recommends that the Board ratify the 2001 carryover allocation changes that were approved by the Executive Director. And on Item Number 01143, Laredo Vista in Laredo, we're asking for ratification of the item where we put Laredo Vista on our waiting list. We moved it and gave it a commitment of 295,000 of tax credits because Laredo Viejo could not make that carryover.

MR. JONES: Do we have a motion to approve the staff's recommendation?

MR. BOGANY: So moved.

MR. JONES: We have a motion for approval.

Second?

MR. GONZALEZ: Second.

MR. JONES: That was by -- Mr. Bogany made it.  
Is there a second?

MR. GONZALEZ: Second.

MR. JONES: A second. Any questions or  
comments or discussions concerning the motion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, say nay.

(No response.)

MR. JONES: The motion carries.

We will then turn to the report from the Audit  
Committee.

Mr. Gonzalez?

MR. GONZALEZ: We had our meeting earlier. If  
David Gaines is around, we'll ask him to come up. But,  
basically, Deloitte & Touche gave us a clean audit. And  
we went over the reports. And we'll let David kind of  
brief us on all of the information.

MR. GAINES: I'm sorry, Chairman. You're  
wanting basically --

MR. GONZALEZ: If you would, just go over the  
different items --

MR. GAINES: Okay.

MR. GONZALEZ: -- including the clean audit that we received from Deloitte & Touche.

MR. GAINES: The external auditors earlier today presented the results of their audit, and they had clean opinions on the financial statements. They went through basically a set of generic language designed to differentiate the Department's responsibilities from the auditors' responsibilities.

Nothing unusual or out of the ordinary, and no differences with management, and no exceptional items or even un-boilerplate items to report in that respect regarding the external auditors.

MR. GONZALEZ: Okay.

MR. GAINES: Was it just the external audit briefing you wanted?

MR. GONZALEZ: No. If you would, just go ahead and go over the whole --

MR. GAINES: Okay.

Let's see the next item on the agenda, and let me kind of get orientated here. Where are we at?

MR. GONZALEZ: The single-family loans and their prior audit issues.

MR. GAINES: Okay.

The second item on the agenda was an overview or the results of a single-family audit. And it was an audit of the controls over family -- single-family loans' controls designed to protect the Department's interests.

Basically, the results of the audit were that controls were generally adequate over those loans with the exception of homebuyer assistance program loans administered by the HOME Program. The primary issues relating to that were a proper accounting of those loans and the documentation of those loans.

Lesser issues where there were just opportunities for improvement included opportunities over the reconciliation processes between accounting and loan administration and the need to establish formal policies and procedures relating to advanced collection efforts and the write-off of delinquent loans.

MR. CONINE: Is management okay with those recommendations?

MR. GAINES: Management was generally receptive to all recommendations and indicated that they would move forward with that.

MR. CONINE: Great.

MS. CEDILLO: And are already moving forward on some of those.

MR. CONINE: Great.

MR. GAINES: And in fact are already moving forward.

MR. BOGANY: I'd like to move that we accept the audit report if there's not any more --

MR. JONES: Okay.

Do we even accept them? What do we do with the audit reports, just hear them? Or --

MR. GAINES: These are report items.

MR. JONES: I don't even think we can vote on them --

MR. GAINES: Okay.

MR. JONES: -- because it's not on the agenda as an action item.

MR. GAINES: That's correct.

The next item we had was the status of prior audit issues, and I basically described the nature of the report that we provide to the Committee and to the Board; it's basically a tracking of prior audit issues for tracking purposes and reporting purposes. There were several issues that we discussed and went into detail on, but I'll be glad to do that again if you'd like me to.

Basically, for those particular issues, the related concerns were expressed. And management has

acknowledged the issues relating to those concerns.

MR. CONINE: Well, are we having any -- let me just ask an overall question about that. Are we having any difficulty keeping our time frames that we had set up in the Audit Committee to getting some of those off the prior issues list?

MR. GAINES: There are some that are slowly or -- they're not coming off as quickly as we had originally targeted. The last round, there was 30 issues. I believe -- let's see. Nineteen of those had been implemented, nine were in the process of being implemented, one had been delayed and, one, no action intended. On the last two, there's explanations for those, and they're both reasonable.

The list is getting much shorter. We do have two outstanding audits: One that has been released that I didn't present in full to the Committee because management hadn't had an opportunity to formally respond to that yet, and then the State Auditor's single audit report that was conducted by KPMG. That will be released shortly, and it will have some audit issues on that, also. So we dwindle them down, and then they get headed back up.

MR. CONINE: I guess I'd encourage the internal audit division to have a little sympathy relative to the

fact that we haven't had an Executive Director since October 12, or whenever. And Ruth has done her best.

And if there's any slow-down in the process in getting some of that done because that position hadn't been filled yet, I wanted to make sure you weren't, you know, keeping a mandate on time lines that maybe had been previously expressed to you and --

MR. GAINES: Well, I mandate very little.

MR. CONINE: -- make sure there's some flexibility there.

MR. GAINES: Yes. All I do is report what management gives me as their target dates. And I make recommendations, and I don't have the authority to really insist on this or that. So --

MR. CONINE: Okay.

MR. GAINES: And, by the way, I'm being very summarized and went into much greater detail during the Committee.

So, Chairman of the Committee, if you'd like me to go into greater detail on any particular issue or --

MR. GONZALEZ: Not unless some Board member wants --

MR. GAINES: -- if you have any questions --

MR. GONZALEZ: -- you to or has any questions

or further information, I think that's fine.

MR. GAINES: Okay.

The next item on the agenda was a summary of internal/external audits. And I touched upon briefly the status of those.

On a recent program-specific Section 8 audit that was recently completed, most of the issues there were the same issues as on a similar audit a year prior which mandated this audit. So most of those have been resolved as implemented. I touched base on that the single audit is fixing to be released and we'll report the results of that at that time.

And then HUD has recently released a HOME monitoring report that I provided some of the more significant issues of to the Department. I didn't go into detail, because management hadn't had or -- I did go into detail, but -- there was much more to the report, but I touched on the highlights. Management hadn't responded to that.

And basically, the issues I touched upon were issues that significantly impact the demand for the HOME resources: Going back and redoing some of the activities that we've previously done or maybe didn't do as well on as we believed we should have done. So those additional

demands on those resources is a real issue that the Department's going to have to be dealing with going back, as well as moving forward with our current responsibilities.

MS. CEDILLO: Mr. Conine, one of the other things that we indicated was that we believe that we need to have further discussions with the Department of Housing and Urban Development, because the methods that were used in conducting this review were not -- we don't believe were practical because -- information was requested. We gave them thousands of copies.

The monitor indicated that she needed certain information. It was provided. Then she wrote findings with regard to other information that could have been provided or we could have taken the monitor across town to where the subrecipient was. And this was based on one subrecipient, I might add, and it was a major -- we had major funding for that subrecipient.

But we believe that we need to discuss the method that was used with officials at HUD. And we do have an appointment to meet with them next week.

MR. CONINE: Here?

MS. CEDILLO: No. In Fort Worth.

MR. CONINE: Fort Worth?

MS. CEDILLO: Yes, sir.

MR. GAINES: As that report's finalized, I'll bring back additional details to the Board and the Committee in that respect. The remaining projects related to the internal audit projects. And the first one, being the single-family --

MR. CONINE: Wait before you go any further.

MR. GAINES: Yes, sir.

MR. CONINE: Could I ask -- Ms. Cedillo, if you would, give me a copy of some of the -- either the dialogue or the information that you're sharing with that HUD office. And if I can be of some help, I'll be glad to do so.

MS. CEDILLO: Yes, sir.

MR. GAINES: The remaining items on the status of audits are internal audit projects, the first one being the single-family lien project which we discussed in detail and released recently. And I believe each of the Board members should have received a copy of that in the mail.

And then I touched briefly upon the remaining projects. The anticipated completion dates need to be revisited on that.

In fact, the entire audit plan needs to be

revisited, in that we -- the plan was developed under the assumption that we were going to be hiring one more professional employee and that position has been reallocated to the Office of Rural and Community Affairs.

And with the other demands upon the Department's resources, we've lost that position.

So in that sense, I'll be revisiting the audit plan and coming back to the Committee and to the Board for approval of an amended plan.

MR. GONZALEZ: Very good.

MR. JONES: Thank you all for your report. We appreciate it, David.

MR. GAINES: Thank you.

MR. JONES: Thank you, very much.

We now will turn to the Executive Director's report.

Ruth?

MS. CEDILLO: We have Byron Johnson, who is going to give us the report on our bond structures.

MR. JOHNSON: Hello. Good afternoon. I'm Byron Johnson, Director of Bond Finance. I am going to be very brief. This is --

MR. CONINE: Amen.

MR. JOHNSON: -- somewhat anti-climactic.

We did a bond deal last October. We had about \$60 million in [indiscernible] proceeds. The interest rates on the mortgage loans were 5.95 percent with four points of assistance and 5.45 percent unassisted. Of the \$60 million we issued, as of this morning, 18 million was unreserved or uncommitted.

So it has been a very good program. Salomon Smith Barney was the senior manager. Gary Macheck was the financial advisor, Elizabeth Rippe was the bond counsel, and Alan Rainer, disclosure counsel. And I would like to thank them for helping us with the successful program. And Eric Pike did a lot of work in terms of working with the lenders to get them interested in this program and our other existing programs.

So we look forward to completing this program, I would say, within 30 days or so. And we'll be moving on to our programs for this calendar year.

And rather than go through it page by page, it's the same story we were telling all of last year about negative arbitrage and how we tried to work around it. And if you have any questions, I'll be glad to answer them.

MR. JONES: Thank you.

Any questions?

MR. CONINE: Is the financial advisor causing any problems you can't get around?

MR. JOHNSON: Well, you know, we -- when he calls it a problem, I call the bond counsel. And we quickly work it out. So --

MR. CONINE: Okay. Good. I just wanted to make sure.

MR. JOHNSON: But he has been on his good behavior. So --

MR. JONES: Oh, really?

(Laughter.)

MR. JONES: Any questions, discussion?

(No response.)

MR. JONES: Thank you, very much.

MR. JOHNSON: Thank you.

MR. JONES: We appreciate it.

Anything else, Ruth?

MS. CEDILLO: No, sir.

MR. JONES: Okay. Thank you so much.

I believe that moves us in our agenda to our executive session.

On this day, January 17, 2002, at a regular Board meeting of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board of

directors adjourned into a closed executive session as evidenced by the following:

The Board of Directors began its executive session today, January 17, 2002, at 1:32 p.m. The subject matter of this executive session deliberation is as follows: Personnel matters; 2, litigation and anticipated litigation, potential or threatened, under Section 551.071 and 551.103, Texas Government Code litigation exception; Number 3, Consultation with attorney pursuant to Section 551.071(2), Texas Government Code; Number 4, discussion of any item presented -- listed on the Board meeting agenda of even date.

And with that said, we'll go into executive session.

Are we going to go stay in this room, or are we going to go in that other room?

MS. GRONECK: It's wherever you want. If you want to stay in here, I can turn the speakers down.

MR. JONES: Stay in here. Turn the speakers down and stay in here.

And I'd like to thank everybody. I'd like to recognize -- is Brian Owens here from the Lieutenant Governor's office?

MS. GRONECK: Oh, he just left.

MR. JONES: Okay. And how about Ed Robertson?

MS. GRONECK: He walked out.

MR. JONES: Okay. Well, thank them for coming.

MS. GRONECK: Ed came earlier.

MR. JONES: Good deal.

(Whereupon, the Board met in executive session.)

MR. JONES: I now call back to order the public portion of the Board meeting.

The Board of Directors has completed its executive session -- of the Texas Department of Housing and Community Affairs -- on January 17 at 2:50 [sic] p.m.

The subject matter of this executive deliberation was as follows: Personnel matters; litigation and anticipated litigation, potential or threatened under Section 551.071 and 551.103, Texas Government Code litigation exception; Consultation with attorney pursuant to Section 551.071(2), Texas Government Code, and; discussion of any item listed on the Board meeting agenda of even date.

I hereby certify that this agenda of the executive session of the Texas Department of Housing and Community Affairs was properly authorized, pursuant to Section 551.103 of the Texas Government Code, posted at the Secretary of State's office seven days prior to the

meeting, pursuant to Section 551.044 of the Texas Government Code and that all members of the Board of Directors were present with the exception of none and that this is a true and correct record of the proceedings pursuant to the Texas Open Meetings Act, Chapter 551, Texas Government Code as amended, and signed by myself.

MR. CONINE: And it was so boring.

MR. JONES: I know.

And with that --

MS. CEDILLO: May I make a comment?

MR. JONES: Yes, Ruth. Please do.

MS. CEDILLO: With regard to our discussion on inspections, Mr. Conine, I did want to point out that we are going to contract out for inspections on the multifamily projects. And we do contract out for the low-income housing tax credit program, the Section 8 program. We're contracting out those inspections. And with the new contract on the multifamily bond program, we can add to that.

Because of the FTE issues that we have, we believe that it may be something that we can do through contracting, even though we'll have to monitor those contracts and maybe do some random checks to make sure that those inspectors are following the requirements of

the Agency. So I didn't want you to think that no inspections are taking place, but what we would like to do is expand that area because of the limitation on the FTEs.

And it doesn't -- and the contract does not count toward our FTE count. So that's one advantage.

MR. CONINE: Good.

MS. CEDILLO: Thank you.

MR. JONES: Thank you, Ruth.

The Chair would entertain a motion to adjourn.

MR. GONZALEZ: So moved.

MR. BOGANY: Second.

MR. JONES: All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: We're adjourned.

(Whereupon, at 1:54 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board of Trustees

LOCATION: Austin, Texas

DATE: January 17, 2002

I do hereby certify that the foregoing pages, numbers 1 through 138, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Sunny L. Peer before the Texas Department of Housing and Community Affairs.

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(Transcriber) 1/23/2002  
(Date)

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