

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Thursday, October 14, 2004  
Waller Creek Office Building  
507 Sabine  
Room 437  
Austin, Texas 78701

10:45 a. m.

BOARD MEMBERS:

BETH ANDERSON, CHAIRMAN  
SHAD BOGANY  
NORBERTO SALINAS  
PATRICK GORDON

STAFF:

EDWINA CARRINGTON, EXECUTIVE DIRECTOR  
BROOKE BOSTON  
DAVID GAINES  
TOM GOURIS  
CHRIS WITTMAYER  
ERIC PIKE  
BILL DALLY

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P R O C E E D I N G S

MS. ANDERSON: Good morning. Call to order the October 14, 2004 Board Meeting of the Texas Department of Housing and Community Affairs.

I want to thank you all for coming this morning. I'll begin by calling the roll. I'm Beth Anderson. I'm here. Vice Chairman Conine?

(No response)

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: Here.

MS. ANDERSON: Mr. Gonzales?

(No response.)

MS. ANDERSON: Mr. Gordon?

MR. GORDON: Here.

MS. ANDERSON: Mayor Salinas?

MR. SALINAS: Here.

MS. ANDERSON: We have a quorum present this morning. As is our normal custom, the first item of business is to solicit public comment.

We do this at the beginning of our meeting or at the witness's option. The witness may testify when the agenda item is presented, after the presentation has been made by Department staff and motions made by the Board.

So we will begin the public comment period this

morning. The first witness affirmation form I have is from Mr. Jim Shearer.

If there are others of you that would like to make public comment today and you have not completed a witness affirmation form, they're available on the table here in the front.

MR. SHEARER: Good morning.

MS. ANDERSON: Good morning.

MR. SHEARER: Chairman Anderson, members of the Board, and Ms. Carrington, thank you again for the opportunity to speak with you today.

My name is Jim Shearer. I'm a principal with Capital Consultants, a 25-year old consulting company based here in Austin, Texas.

For the last eight years, our company has been directly involved with this agency with regards to affordable housing.

We've represented developers, both for-profit and nonprofit, local housing authorities, local governments, and financial communities.

My purpose today is to recommend some initial changes to the proposed 2005 QAP. Before I address the specifics, it's important to note that Capital Consultants and our housing clients are very active this year in the

QAP Working Group.

While the draft QAP contains some of our recommendations, we believe that several issues need to be reconsidered. We also plan to be responsive to, of course, to any additional changes that may occur in the closing of the public comment through the rest of the month.

We have 16 recommended changes to the proposed QAP. We believe these recommendations are intended in good faith to bring balance and fairness to the Tax Credit Program. We also feel that they are in total compliance with the Department's governing statutes.

Our priority recommendations are listed in detail in the handout I just gave Delores. I list them, just to put them into the record.

Our issues include:

- 1) Income levels of tenants;
- 2) Written level of the units;
- 3) Mixed income units;
- 4) Unit mix dictated by market forces;
- 5) Nonprofit set-asides;
- 6) Quantifiable community participation;
- 7) Affordable housing need scores;
- 8) Urban/exurban compliance period;

- 9) HUB;
- 10) Energy efficiency threshold requirements;
- 11) Notification requirements;
- 12) the fee increases;
- 13) Development size in rural areas; and,
- 14) the 504 language.

Our clients welcome an opportunity to meet with the Board members or staff to discuss any of these recommendations in depth.

It's our belief that these changes to the 2005 QAP will create a competitive Tax Credit Program that benefits all areas of Texas.

We urge you to give them every consideration. Thank you. I'd be happy to answer any questions or if we could have some help here.

MS. ANDERSON: Ms. Carrington, did the Board members get the detailed recommendations?

MR. SHEARER: I just gave them to Delores.

MS. ANDERSON: The letter in detail. Did you get multiple copies of that? Oh. Are they sitting up here?

MR. SHEARER: Yes.

MS. GRONECK: Yes. And I've given them --

MS. ANDERSON: About his remarks --

MS. GRONECK: -- these.

MR. SHEARER: I wouldn't be able to talk that long.

MS. ANDERSON: But they were all one and the same.

MS. GRONECK: I'm sorry.

MR. SHEARER: The buzzer would go off if I tried to talk that long.

MS. ANDERSON: I'm going to give the Board just a couple of minutes --

MR. SHEARER: Okay.

MS. ANDERSON: -- to look at the detail. And since I have seen this, I have a couple of questions.

MR. SHEARER: Okay.

MS. ANDERSON: In the nonprofit set-aside recommendation where, if I'm reading the recommendation right, you propose to allocate the nonprofit set-aside at a regional level rather than statewide.

MR. SHEARER: I believe that's right. I want to ask Mike Dunn, who filled out a witness form, to come up and help me with some of these --

MS. ANDERSON: He needs to fill out a witness affirmation form.

MR. SHEARER: Yes. He didn't -- you don't have

one?

MS. ANDERSON: Okay.

MR. SHEARER: Come up here and help me answer questions. Did you hear her question?

MR. DUNN: No, I did not hear.

MR. SHEARER: I can --

MS. ANDERSON: On the nonprofit set-aside issue, if I'm reading your recommendation correctly, it's that you want to allocate that on a region by region basis rather than statewide, just kind of off the top as has been our practice. Is that what you're asking?

MR. DUNN: That's correct. To have it done off -- basically, the regional set-aside done and then basically any as far as jockeying to put the set-aside down after they have been allocated regionally.

MS. ANDERSON: Well, we -- today we do it on a statewide basis and we take the highest scoring nonprofit deals, regardless of what region they're in. Okay? It's allocated off the top.

And if I'm reading this right, you want to allocate it -- you want to take 10 percent out of each region's bucket and award that to nonprofit applicants in that region. On a region-by-region basis instead of statewide.

MR. DUNN: That's fine.

MS. ANDERSON: Okay. Now, what would -- and I think that's an interesting proposal. I guess the question it raises for me is that if there's no nonprofit deal in a particular region -- there were no nonprofit applicants in Lubbock, let's say.

Okay? Then we still have to meet the nonprofit set-aside on a statewide basis. It has to be 10 percent of the total allocation.

What I think that would cause us to do is we would then have to go to the next highest scoring nonprofit deal, wherever it was, in whatever region, because we couldn't take it out of Lubbock because there were no nonprofit applicants, so we've got to go then and look for the next highest nonprofit scoring deal kind of wherever it is around the state and take that one.

And what that's going to mean is that for that particular region, you're going to have a fair amount of that region's allocation going to nonprofits. It's going to be well over 10 percent. Is that kind of how you understand what the logical outcome of that would be?

MR. DUNN: Yes. I don't know. But I do think that if you have the same sort of philosophy, if it were going to be hurting the developing community, whether it's

for profit or nonprofit in the various markets, if you have an opening in a region that doesn't have as many nonprofits, there are going to be people who are going to be filling those niches.

And if it's over 10 percent, then that -- I don't have any problem with that.

MS. ANDERSON: But we've got to go fund -- in other words, we're going to go pick up a second nonprofit deal in a region even though that nonprofit deal might not score as high as a for-profit deal in that region.

I mean, it has the potential to bump a for-profit deal without -- there's nothing in Lubbock. No nonprofits in Lubbock, so the next highest nonprofit score happens to be in the Dallas region. Okay?

So now we've got two nonprofit deals in the Dallas region and that means that well over 10 percent of the Dallas region's bucket of money is going to go to nonprofit. So I can just hear the Dallas developer applicants, you know, having an issue with that.

MR. SHEARER: Did you understand that?

MR. DUNN: No. I'd be happy to educate myself on what the ramifications of what you just said and everything we put together is based on client input, whether they were for-profit, nonprofit, urban, exurban,

or rural.

MS. ANDERSON: Right.

MR. DUNN: We've got clients from -- who have experience in all areas of the state. And trying to get their input on it. I'd be happy to take that back to them and get it back to you --

MS. ANDERSON: Okay. In other words, if we were going to do this --

MR. DUNN: I understand what you're saying.

MS. ANDERSON: -- we just wouldn't want a lot of noise about consequences of doing it. Right?

MR. DUNN: Right.

MS. ANDERSON: There are going to be some consequences if we have -- and it wouldn't happen unless we had a region that didn't have a strong nonprofit application.

MR. DUNN: And for us leveling the playing field means doing it between for-profit and nonprofits. Doing it -- making sure that the highest --

MS. ANDERSON: But that's -- highest scoring --

MR. DUNN: Highest scoring, highest merited developments have a good shot at getting --

MS. ANDERSON: Right.

MR. DUNN: -- an allocation.

MS. ANDERSON: And this --

MR. DUNN: And I don't think any of our guys have any problem with that whatsoever.

MS. ANDERSON: No. I mean this does that except for what's going to happen when we have to go pick a second deal in a region because one region didn't have a nonprofit applicant.

MR. DUNN: I think I understand what you've said.

MS. ANDERSON: All right. Let's see. I have another question about the rent levels of the units.

And this is the notion that -- and I believe that what is being proposed in the rent levels of the units, 100 percent of the units in the development restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent.

That's just required in Section 42 and so, the proposal here is that if someone adheres to that, then they're going to get 12 points.

So all applicants are going to get 12 points because that's a requirement of Section 42. Is that the policy outcome that you're recommending to the Board?

MR. DUNN: This --

MS. ANDERSON: It is essentially every

applicant is going to get 12 points.

MR. DUNN: I can tell you where this tent level of the units came from in terms of in conjunction with the income. Number 1 and number 2 are kind of a package deal, of course, and as far as the rent level --

MS. ANDERSON: They're very distinct items in 2306.

MR. DUNN: But in how they're scored together, I would say that in terms of what you're asking the development community to do, I think you have to read them together.

If you have a -- and the first concern I heard about the rent level of the units I proposed to the Department's QAP is the requiring 10 percent below the rent was going to hurt areas outside of the regions with MSAs over a million. Basically the large -- what we term the urban/exurban regions in terms of where they --

MS. ANDERSON: Right. Yes. I think we heard a number of comments and concern about that language.

MR. DUNN: So and that was going to hurt that and so in terms of putting it in context of our overall philosophy of trying to level the playing field, between making apples and apples comparisons between an urban deal and an urban deal, whether it's in a large MSA over a

million or another region -- urban deal or having in those urban/exurban regions, making apples to apples comparisons between exurban deals.

The overall philosophy of trying to even it out. If that's the --

MS. ANDERSON: If the outcome --

MR. DUNN: And what we'd be looking at if the top tier was 12 points and the next tier down would be the 10 points for the 95 percent of the units that were reserved.

MS. ANDERSON: On the Affordable Housing Needs Score, of course, that needs score and the methodology for that score is out for public comment now. You know, how they do the math and all that.

What are the specific concerns about the Housing Needs Score, not being a fair and affective formula?

MR. DUNN: I think concerns I've heard basically range that there are different -- there are levels of need in the state that aren't reflected in that Affordable Housing Needs Score, in terms of needs that a community might need.

Of any regular affordable housing needs that they're going to need, in terms of whether they're going

to use it as an economic driver.

Whether or not they're going to have housing for workforce.

Whether or not -- I've heard various concerns about whether or not the poorest needs in rural areas are accurately reflected in the Affordable Housing Needs Score.

Whether or not homeless people in rural areas -- and I'm just free flowing as much as I can things that have been told to me -- in terms of whether or not those people in those areas have been able to -- been accurately measured in areas.

There's very good metrics of housing needs in larger urban areas. There's, I believe, a perception, and is at least the perception, is that that's not the case in areas outside of the larger serving areas.

MS. ANDERSON: Anne, are you raising your hand? Oh. I'm sorry.

MR. DUNN: I'd be happy for anybody --

MS. ANDERSON: Well, I would really encourage you to ask your clients that have these concerns to be real specific with -- during this public comment period because the Housing Needs Score is part of QAP, but the way the Affordable Housing Needs Score is derived is its

own, you know, set of public comments.

MR. DUNN: Right.

MS. ANDERSON: And we need to get real specific. More specific than you've been about what kinds of quantifiable data are better used in rural areas, if you think there are some.

MR. DUNN: I mean, I can do the flip-side of that, too. In urban areas, if you have a -- if you're measuring all the various housing need in a large urban area or the amount of funding they receive towards, you know -- most of those formulas and federal flow-through funds that come through are already -- is my understanding -- is they're already put together based on needs formula.

MS. ANDERSON: Okay.

MR. DUNN: And so I think if you're going to have something that's going to come in and have a, I mean -- the argument can be made if somebody has an already demonstrated need in one area and they're getting a certain amount of funds, should that be held against them?

In a Needs formula, it's done by the state. So I mean, we can do -- there are valid arguments on any side of this thing and what I think the main problem with the

Affordable Housing Needs Score is that it's perhaps a little too subjective, in terms of -- people think of it as they're going to get shot down, even though they know they have a dire need in an area.

They've got market studies that show -- and contrary to many opinions that I've heard stated in meetings before, I think a lot of market analysts try to get it right.

And if they've got studies that show that there is a great amount of need in an area and they've got people who are -- believe that they can put something down and it will be a successful development, that it's going to serve the Program requirements -- serving affordable housing needs.

And put something down in an area but then an Affordable Housing Needs Score comes in, and basically they don't match up in any way, shape, or form.

MS. ANDERSON: But the purpose, Mr. Dunn, of the Affordable Housing Needs Score is to spread the housing out around a region.

So it's not intended to say that where you don't have a high affordable housing needs score there's no need. It's trying to say that we put -- that we try to disperse the housing because, on a relative basis, there

are parts of a region that might have a higher need than the other.

And that's what we do the math on, to come up with the Affordable Housing Needs Score and absolutely there may be and probably are ways to improve that methodology and the math.

And I think the staff needs to hear what those -- really needs to hear what those ideas are before the public comment period ends, because I am personally -- and I personally would like to hear what those are, because I would be very interested.

But the Affordable Housing Needs Score, in no way, is trying to say that that's the only place in the region where there's need. It's trying to say on a relative basis so that it can enable the disperse --

MR. DUNN: But practically speaking, would the effect of what you just said, what happens is that that housing doesn't get out to the places that have as much need as any other place in the state. And so I totally think --

MS. ANDERSON: Well, I see no evidence of that, sir. Thank you for your comments.

I'm very interested in what -- what we need to get real specific about what specific proposals you have

for strengthening the formula.

MR. DUNN: And I think our -- the way we have is to basically do away with the Affordable Housing Needs Score, which is basically our -- we think is the best thing that's going to strengthen the program.

MS. ANDERSON: Okay. Yes, Mr. Bogany.

MR. BOGANY: Couple of comments I have and I guess I'm looking for explanations.

In regards to number 4, it says unit mixed dictated by the market forces. Your recommendation allows developers to adjust the unit mix based upon market demands.

Can you explain what you're talking about? Are you saying that if I'm down in the Valley and I really need four bedrooms, to be able to put four bedrooms there versus putting one bedrooms? What are you saying?

MR. DUNN: I think what that came down to is that development community was feeling herded into doing single bedroom and doing things communities were asking for different products.

And basically the scoring set -- through the Department -- they felt they were being herded in one particular direction and the community was pulling them in another.

So that's basically where that one comes from.

I mean --

MR. BOGANY: Well, I guess, we got a lot of abundance of one bedrooms not being rented in areas?

MR. DUNN: Yes. I'd defer to the Department on that one.

MR. BOGANY: Okay. The other question I had -- could you explain -- sounds good, your recommendation on the urban/exurban. And I guess to ask staff if that's even possible.

But your recommendation -- can you explain it a little bit more on the urban/exurban and why you guys feel --

MR. DUNN: The concept behind the exurban, as it started, was a way because there was a, in some communities, there -- most notably, the large MSA -- but we've -- but some of the data we've looked at, it basically comes down to regions that have an MSA larger than a million, is roughly how it's breaking out.

In those areas, there ought to be a third allocation -- the exurban, in terms of allocating that money and helping disperse and we think a much more effective dispersion method, rather than doing the one mile because the one mile still had the one mile rule in

terms of the qualified census tracts having that 130 percent boost on your basis funds.

People are going to be targeting the QCT's. Having the one mile rule just makes it that much more difficult on the development community, who has to go into an already, I mean it's my understanding, going into a large -- going into an area and having to -- it's that much more difficult for them to put affordable housing on the ground, to find a suitable site, to do the things that are required.

And I think this is intended to try to alleviate and this is also -- and the one mile rule also came about because there was, I believe Senator West, had talked about communities that felt they had their fair share of housing and wanted a little breather period.

We think this is a better way to disperse the units and have them still serve the people of that region and people in the community.

MR. BOGANY: Okay. Last question. In regards to energy efficiency, you are suggesting replacing 14 SEER energy efficiency ratings score in all, with the 13 SEER HVAC units that had a radiant barrier option of another three points.

It's my understanding with radiant barrier that

it does work and it's a great concept, but if I'm building two-story units and it seems to me that it would benefit the second-story unit but it wouldn't benefit the person on the lower level.

So if they had a lesser series unit running, they're going to have higher energy bills than the person upstairs, who just happened to have the second-floor unit.

And I like the concept. I just don't see how it really works in the real world because the person upstairs is the one getting all the benefits.

MR. DUNN: And I'll be happy to get an answer for that.

MR. BOGANY: Okay. Thank you.

MS. ANDERSON: I have a follow-up question on urban/exurban.

Would you be open to an alternative or a restoration of the exurban points to try to give the exurban deals some additional preference? I know staff did sort of a retrospective look back and they can demonstrate in the data that those exurban points made a difference in something like 80 percent of it.

MR. DUNN: I was here for that and I think the figures they gave there were nine deals in Houston area out of 10 or something like that. And a large percentage

in the Metroplex.

I think that would be definitely welcome but I think the main problem is still there in terms of what is exurban and what is urban.

And I think what we're trying to do is say if you were able to take in those regions -- the large urban regions within a MSA over a million -- map those out in a region, and in the way that we are looking at it, in order to not affect rural -- basically, if you have a rural, even though you'd be in a rural area, and if you had to be able to serve greater than the cap -- and I believe it's being considered at 96, you would be able to pull from exurban.

So basically a rural area would be able to benefit and get housing but that money not come out of the rural pot.

So you would be able to map an exurban by saying that everything out in only those regions with the MSA containing more than a million people. Basically say that the rest of region, potentially, is exurban.

But still have the rural set-asides in there as well, so are the rural component in there.

I think that those people that are in communities that we definitely consider exurban would

welcome points when trying to get these things done.

I, practically speaking, unless we change how we're looking at it in terms of all the other components of this, is it going to make a difference if we do that in the long run? I mean, what are we calling exurban? What are we calling something else?

And so when you're giving 10 points, I agree with those people who say we ought to be able to map it. And I've been trying to map it and trying to look at it and trying to see who it affects, who it doesn't affect, and my hat's off to the people, the Department. I understand that's not an easy task and they're a lot smarter than I am.

So this is just looking at stuff of just trying to figure out what can work for the development community?

What works for the aims and goals of this Department and ultimately the people who need the affordable housing.

So I would be happy to look at any and all of that. And I'm sure they would welcome the points, you know, as long as their deal was considered exurban.

MS. ANDERSON: That's what it comes down to.

MR. DUNN: That's what it comes down too.

MS. ANDERSON: Well put. Thank you very much.

Any other questions?

MR. SALINAS: When you say MSA a million, but you have a million and you have two MSA's --

MR. DUNN: If it's the way I've been looking at it, if there's one -- if it's a region containing an MSA with over a million people.

So I think what you're saying is if there's two MSA's that are close together that would equal that one million. I haven't mapped that out. I don't know what that looks like. But I'd be happy to.

MR. SALINAS: It's --

MR. DUNN: What? How close do they have to be?

MR. SALINAS: Very close.

MR. DUNN: Okay.

MR. SALINAS: I mean close.

MR. DUNN: I've got an idea.

MR. SALINAS: It's a million people with two MSA's.

MR. DUNN: Okay.

MR. SALINAS: And we refuse to have one. I mean --

MR. DUNN: I understand that.

MR. SALINAS: But in your question, you're saying that we had a million with one MSA, it wouldn't be allowed there.

It would have two MSA's in a million people

MR. DUNN: I'd be happy to see if I can put something on paper. Appreciate your patience.

MS. ANDERSON: Thank you. John Garvin.

MR. GARVIN: Good morning. My name is John Garvin. I'm with the Texas Affiliation of Affordable Housing Providers.

I gave you some comment a little while ago in written form. Thank you for the opportunity to comment. I would also like to thank staff for doing such a good job streamlining QAP. That's quite a feat.

Our comments have -- we know you can't take any actions on these today, but we just want to have you mull them over a little bit.

Our comments have gone from seven pages to three, so we feel like progress is being made. One item we would like for you to consider is where there are no neighborhood organizations, if possibly allowing up to six points for community or civic organization support to kind of give a little bit more parity to areas that aren't around MSA's or areas with neighborhood organizations.

The next one was on the income level of the tenants. We ask if you consider putting in one more option where you get 20 points if 60 percent of the units

are set aside for those below 50 percent median income. And we think this goes to greater income diversity among the tenant population.

And next one is defining local political subdivisions. We were just wanting clarification if councils of government, public housing authorities, or economic development corporation, and the such would be considered local political subdivisions. If so, would there be an identity of interest provision added?

Also, under this section with the commitment of development funding from political subdivisions, there are two options where you can get up to 18 points, but right now they are mutually exclusive. One is for like financial contributions via abatements. And the other one is for development-based vouchers based on the percentage of units.

We would like to see, say for example, you're getting -- I think I used 500 per unit in contribution and then you're getting 7 percent of the units funded by development-based vouchers, if you couldn't take 12 points from one and six points from the other, keeping the cap on 18, but allowing for greater leverage for folks who can get both.

The next one, which is probably our most

important one left over, is the 10 percent rent reduction -- the rent levels of the tenants. We, too, agree that this is going to be problematic when it comes to compliance. I've talked to several management companies and it's just a difficult thing to do.

It is also real prohibitive for rural areas that has lower rents anyway. We recommend you take it out. I went to the consolidated plan hearing and they asked for a suggestion; I didn't have one then.

But we suggest that maybe if you have to do this, do it only on the 60 percent units and then do it as just a 5 percent rent reduction. And that still gives on a \$600 rent, you're saving \$30 a month, which is the intent if you are trying to reduce the rent.

But most of all, we would love to see it completely gone and something easier, for one point for serving all 60 percent. Like Ms. Anderson said, not everyone would get it but it would still encompass some intent but I have a feeling that maybe a general counsel might not agree with me on that one.

Development location. We've mentioned this before. I know the code targets families with children but this clause of getting applications with areas with no greater than 10 percent poverty population, we think that

seniors should be included as that as well and maybe find another way to give family selection.

And the second to last, on the tie-breakers, we understand the need to do the Section 8 voucher as number 1, cooperating with PHAs. We'd also like to see maybe you use such factors as: 2) higher needs score; 3) census tract with out all other tax credit developments; and 4) that suggestion you all made about lowest amounts of credits as requested by net rentable square footage. And the justification is in that one.

And then lastly is we would like to see the reinstatement of exurban points, up to six points, using the same language you had in the '04 QAP.

We think that got a lot of good benefit and we think that with a QAP, not intentionally, it is a little bit slanted towards urban areas with the neighborhood points and all that. But this would be a little bit more balancing if you put the exurban points back in there.

And that's all.

MR. BOGANY: I have a question. Do you think that exurban should be a separate category?

MR. GARVIN: I couldn't hear too well before but I am very simple on this. I never saw the need for it.

I think you know what urban is, you know what rural is and anything in between is probably exurban/small city. And I've never seen the need for it from the beginning, even when it was talked about originally.

MR. BOGANY: well the thought was when we're -- the reason a lot of the outlying areas are not getting deals -- for example, Houston -- is because they can't compete with the market studies and things of that nature, inner city, for the demand and so you get a place like Texas City or better yet, Galveston, who hadn't gotten a program.

And if you put them in separate categories and just said it was exurban and they're competing in just exurban categories and having an allotment for that.

So my thought with your group, have you guys -- I know you've just asked for more points. So that tells me you must think it's important.

MR. GARVIN: We think you were successful last year in getting to those areas that otherwise wouldn't have gotten one. I think a lot of research needs to be done as to the need in exurban areas.

You're right. The MSAs have all the need, a huge portion of the needs, so they will always be more feasible.

MR. BOGANY: Second question I had in regards to the previous comments that we had -- I'd just like to get your opinion.

They mentioned about letting the developer determine what the mix group is going to be in their complex, where in the past we've dictated to you that we want one bedrooms and we're beginning to hear that in the Valley, the one bedroom is not as important as a two-bedroom, four-bedroom, and I'll tell you from my own experience, price on a one-bedroom in Houston, for \$50 more, I could get a two-bedroom.

MR. GARVIN: Right.

MR. BOGANY: And one-bedroom was priced so high that I didn't think -- what's your thoughts on that?

MR. GARVIN: Well, now that Mr. Conine isn't at this meeting, I'd love to discuss it.

(General laughter.)

MR. GARVIN: I've actually talked to your compliance division, who have done a very good report on vacancy levels by bedroom and you don't see any higher vacancy level disguised between ones and twos and threes, even. Fours, I think, or fives are only 20, so we really couldn't use that as a fight.

But I'm with you on that. There's a lot of

cases that I've talked to management companies again on this issue. They say one-bedrooms are good, but they also say that a lot of times, you'll have people doubling up and getting a roommate to get the \$50 more for two-bedrooms and reducing the rent.

So we think one-bedrooms are very leasable.

MR. BOGANY: Is that across the state? If I went to the valley or west Texas or more urban?

MR. GARVIN: I couldn't give you a good answer on regional by regional but one of the main reasons that some of my members had against so many one-bedroom is purely economic.

It costs the same to build a kitchen for a one-bedroom as a two-bedroom and you're not getting the two-bedroom rent, obviously, out of the one-bedroom. So it's more economic. I thought it was lease up at first.

MR. BOGANY: So that's why it's so high because I noticed a one-bedroom pricing for \$50-\$60 more, you can be in a two-bedroom unit. But that person can't get that two-bedroom unit unless they get a roommate to get that unit.

Okay. Thank you.

MR. GARVIN: Lastly, as a board member of the United Cerebral Palsy of Texas, again I'd like to see the

HOYO Program reinstated at \$1 million, with a half going to UCP Texas as the lead organization to support that partnership formed in '96 and the rest going to anyone else who would love to try to do the program.

MS. ANDERSON: I have one question for you. On the Affordable Housing Needs Score, to continue that discussion, you discussed the Affordable Housing Needs Score in the context of using it as a tie-breaker.

And I'd be interested in your thoughts on using it as a tie-breaker and not having it be a points item. To sort of be responsive to what Mr. Shearer and Mr. Dunn were talking about earlier.

MR. GARVIN: I'd want to give that more thought. Kind of review it and seeing what taking the points out would do. It's -- I don't want to speak out of -- I'll look into that.

MS. ANDERSON: Don't let me down on that. Okay? And I'd be interested in anybody's thoughts on that as sort of an alternative to use it as a tie-breaker.

MR. GARVIN: Yes. I'll talk to Jen Lindley and we'll get something together. Thank you.

MS. ANDERSON: Thank you. Darrell Jack.

MR. JACK: Thank you. My name is Darrell Jack, and my firm is Apartment Market Data.

We write a fair amount of market study reports that are turned in on both the 9 percent and the 4 percent round.

I would like to start by answering Mr. Bogany's question because we do database apartments around the state by their affordability level.

What we see is not any significant difference between the occupancy of one-bedrooms, two's, or three's in the affordable units around the state. I think the issue though is, especially in the valley, what are the other alternative housing that people who need three and four bedroom units have?

When you look at rental product, they're having to move into homes and for those homes to be affordable to them, they're largely of lesser condition or poor quality for those potential residents.

So I think there's valid arguments on both sides. The one-bedrooms do lease. The people that need three and four-bedroom units don't have other alternatives at other rental apartment projects.

I think that's what people are trying to address. As to my comments today, I want to start by first bringing to the Board's attention the 2005 QAP as it's proposed.

I found that it gives an unfair advantage to family projects in rural areas over senior projects. I recently ran the capture rate analysis on 12 projects and found that only 25 percent of those would even qualify for the maximum points under the new QAP.

Effectively what the QAP has done is given advantage to projects that have one, two's, and three bedrooms over those that might just have one or two. And frankly, the senior projects in a lot of rural communities, are not going to work for 2005.

I hope that staff will address that.

MS. ANDERSON: You're saying the driver of that is the unit mix requirement that requires us to have so many ones, twos, and threes?

MR. JACK: It's more the maximum points that an applicant can get based on a certain percentage of the units being at 30 percent AMI and the rest of the units being at 60 percent AMI.

I think in the past there's been a more blended of 60 percent/50 percent and sometimes going lower. But in this case, where I ran the numbers at just 60 percent AMI and 30 percent AMI, I'm finding that there is an unfair advantage to family projects in rural areas over senior projects.

Unfortunately, each year as these rules change, we end up with a lot of unintended consequences that we really don't know until someone sits down and runs real numbers through the scenario to find out how it works.

I just want to bring this one case to the Board and to the staff's attention.

MR. BOGANY: What's your suggestion?

MR. JACK: There's a lot of numbers that go back into it. I think that perhaps in rural areas for senior projects, we may have to restructure the maximum points allowable to where it's not, you know, 30 percent and 60 percent, but maybe it's a mix of 40 percent/50 percent/60 percent. Something that gives a better blend of unit types.

I'd be happy to work with staff to try and address that issue.

MS. ANDERSON: Okay. So this is not about unit mix, it's about the -- I'm trying to figure out which part of the QAP. It's about the income levels, it's that section?

MR. JACK: Right. It's about the point grab at 30 percent and 60 percent.

A family project is able to go after those points. A senior project, most likely, is not.

Second, I'd like to bring to your attention a few things out of the changes in the market study guidelines.

First of all, I talked to quite a few of my counterparts around the state that are writing market studies. The general consensus of those that I talked to is that we are not in favor of electronic format.

It goes to really two points. I think probably the number 1 is there's pride in ownership in these reports and to simply have the reports available on the web for anyone to look at is the opportunity for anyone to go out and hang a shingle, and call themselves a market analyst.

The second point really goes to the fact that neighborhoods are being more vocal and more outspoken against affordable housing. We seem to be the target of much of their fury, in that we are called more and more to, one, justify our conclusions, but two, neighborhoods are calling us wanting to engage us for market studies to counter the one that was written by another qualified market analyst.

We feel that those two things, along with so much of our data coming from a variety of sources, makes it, one, difficult for us to put into electronic format,

but, two, the pride of ownership is really something that we would hope would be addressed.

Some analysts, I understand, have said that they opt out of the program. That's the business. I hope that can be avoided.

Finally, the number two issue that's top on my list, is changing the population limits from 250,000 currently within the trade area, down to 100 unless we provide supporting data.

The problem with that is that there aren't any real clear-cut rules as to what qualified supporting data would be. And as hard as this Department tries within its underwriting staff, there are differences if a project gets one underwriter over another and things that they'll accept that another may not.

At least, if the population is going to go down, we need clear-cut guidelines on what is qualified.

Just looking at the reports that I did for 2004 in the urban areas, where we did use populations of 250,000, I would venture to say that probably 60 percent of my projects wouldn't have made it with the 100,000 population.

Simply, the Department and its rules have concentrated a large amount of housing within QCT's and

areas that really need the housing. I mean, there's no debate. Occupancies are high in all the existing projects and there's a need for additional housing, but it won't make.

Developments are going to have to go into other areas of town where maybe the need isn't as great.

And lastly, I'd like to comment, there's a call for three things. Some of these have been in the past guidelines and really have not been adhered to. I'd like to see them come out.

One is this statement about economic occupancy of comparable projects. Unless you have the projects rent roll, you cannot calculate an economic occupancy. There's no way to. Those rent rolls are not made available to us and frankly, other competing developers have no interest or obligation to provide that information to us.

The second one is the turnover rates for comparable properties. Again, there's no obligation for these people to supply that data to the industry. Most projects won't know their turnover rate. I did property management for more than 13 years. I can tell you I didn't know on a calculated basis.

Finally, the absorption rates of comparables and properties by class. If you talk to any developer

that's recently built a project, they're going to tell you they're a class A property. Frankly, the reason that we database projects by age and classify them by the decade that they were built, so that we don't have to get into those arguments over, is this project a class A or class B?

That's a very subjective thing that really has no guidelines as to property designation and we think it should be taken out of the market study guidelines.

MR. BOGANY: I have a question. Are you suggesting these three items, because you can't really qualify them, shouldn't be in there at all?

MR. JACK: Since you can't qualify them and the data is not available in the market, we have other sources like the IREM Annual Publication that gives us turnover rates. That's where most of the market studies go to for that.

MR. BOGANY: And what's wrong with doing that?

MR. JACK: IREM is great but what the guidelines call for are individual turnover rates of the comparable properties that we use in the analysis. That data is not available.

MR. BOGANY: Okay.

MR. JACK: Thank you.

MS. ANDERSON: Thank you very much. Alan Greenlee.

MR. GREENLEE: Good morning, everybody. My name is Alan Greenlee, and I work for One Economy Corporation, and I appreciate the opportunity to talk to you guys today about your draft Qualified Allocation Plan for next year.

Before I start, I'd like to take a second just to thank and thank the Board but compliment the staff of the Department for being courteous, competent, and professional.

As you'll learn here in a minute, I work with agencies across the country and I found the staff here over the course of the last 12 months to be particularly helpful. So I appreciate that.

My remarks today will be specifically targeted towards the provisions in the Allocation Plan that talk about internet access.

My company is called One Economy Corporation. We're a national organization headquartered in Washington, D.C. and I've flown out today from Los Angeles, California to talk about this issue.

We work -- we're a mission-driven organization and we work to maximize the power of technology. In this

particular case, we're talking about computers and the internets so that low income people can have access to information and resources that will help them join the economic mainstream.

One of the things we do in support of that mission is we organize and operate something called the Bring IT Home Campaign: bring I-T home.

It's a national campaign, co-chaired by Senator Bill Frist and Senator Tom Daschle, to work with the 50 state housing agencies to advocate for policies that encourage developers to include high-speed internet access at low cost in their units.

Sixteen states so far have joined the cause and have policies, like the ones that you're considering now, and we expect that probably 25 will have policies like this by the end of the year.

I should also mention that the Bring IT Home Campaign has support among this particular administration the Department of Commerce, the Deputy Secretary for Technology has written letters to all the Republican governors actually supporting our programs and encouraging them to develop policies.

In particular, I want to address the two specific instances in the QAP where you guys talk about

internet access. One is in the threshold criteria.

Last year, for 2004, as part of the threshold criteria, you included a provision that said internet units -- I'm sorry; I don't know exactly the language. It essentially said computers or internet access in units, which we thought was a terrific first step.

The weakness of that particular language is that developers can get threshold benefit, if you will, for doing nothing more than including telephone wire into their units, which they're doing already.

What we've done is we've worked with staff to develop some language that is very technical in nature, but essentially what it says is what we want you to do as a developer is to take another wire and lay it on top the phone wire, from the units back to one central location -- a phone room -- in the building, so that each of the units now can have a wire coming back to one location.

Attach those units to a switch. Bring in one high-speed internet access and share that internet access among the residents.

The benefit of that is that what you get is instead of individual residents paying \$29, \$39, \$59.95 a month for Internet access, we can provide high-speed Internet access to each of the units for as low as \$5 a

month.

The second provision you include in your QAP is an amenities points section that talks about delivering that Internet access to residents for free. So essentially, what we're talking about is if you build that infrastructure in based on the threshold criteria, then the developer on its own, on the project operating side, would provide Internet access to the units.

And essentially, they get that sort of cost benefit by having put that infrastructure in by then paying for one Internet access. So, for example, you can buy commercial DSL grade service for \$100 month. And that \$100 a month will serve about 50 units, so we're talking about that kind of economy of scale.

I'd like to just take a couple of minutes and address some of the issues that we've heard from the development community.

First of all, I should talk a little bit about some of the benefits and the reasoning around why we think Internet access is important. I don't think it's any secret to any of us that the Internet has sort of changed our lives.

We shop differently now than we ever did before. Government is now providing services over the

Internet. Kids who are in school have to have access to the Internet in order to be able to do their homework and things like that.

Seventy percent of the Fortune 500 companies in this country are advertising their positions now online. So I think, you know, you look back on this year, if you change the policy, and you'll say -- nobody today would say you would have to remind people to provide a phone in a house.

Internet access is going to be that kind of ubiquity and that kind of utility is going to be looked upon in the same way down the road.

With respect to the costs and benefits to developers with regards to this particular infrastructure, we think that the Internet access is actually a beneficial amenity. It gives it market appeal, reduces churn, provides for down the road the capacity to bring management efficiency.

So the capacity, for example, to do online repair requests or pay your rent online and that sort of stuff.

And then second of all, we think it's important to provide the access and to build it into the infrastructure at time of construction. I have some

information in my packet there.

One of the things we do is we provide free consulting service to affordable housing developers and we've worked with developers who are working on over 11,000 units across the country. And what I've done is I've pulled together some information on cost with respect to installing that infrastructure.

And what we've found is it costs about \$275 on average per unit to do the installation at time of construction, whereas you did it later on, if you weren't doing significant rehab, but instead you were going to do either a wireless application or wire the buildings on the outside, it's as much as three to five times as much.

So it's cost effective now. It's a cheap and easy way to deliver high-speed Internet access to residents.

And I think that's all I need to say. I'd be happy to answer any questions if you have them.

MS. ANDERSON: Any questions?

MR. BOGANY: What was the cost again per unit to put this in?

MR. GREENLEE: On average, it's about \$275.

MR. BOGANY: So it would cost the developer \$275 per unit to put this in.

MR. GREENLEE: That's right.

MR. BOGANY: Okay. What happens when we don't have a Internet service available in an area? Developer may be doing a rural community and they've been required to do this but they don't have access to internet.

MR. GREENLEE: There's a couple of answers, I think, to that question.

The first one is, I think, just because of the cost issue it makes sense to sort of include that infrastructure at the time of construction. The wire goes into the wall, it sits. It doesn't break. It's there and ready to go and so you get a cost benefit instead of coming in and doing it later.

The second issue has to do with access. The capacity to literally have access. We've found, just like the prices of computers have come down, that the distribution of high-speed service is increasing by a lot.

We can provide the agency some information by zip code about where places don't have service.

The point is that at least in the next five or ten years, internet access will be available. So for the useful life of that building, internet access will be available at some point. So we think that during that construction is a good idea.

What some states have done is that they've actually provided for a way around that, so you can as a developer, if you certify the high-speed internet access is not available in your area, you would just certify that in your application. You would get the exempt on that.

MR. BOGANY: What about -- we put it in there but what about computers? We're assuming that everybody has a computer in the process, so what happens when once you pay \$275 per unit to do it and the residents don't have a computer?

MR. GREENLEE: I know that you understand this but I just want to make sure that \$275 is just the one time cost right at the beginning.

Computers are still expensive, and they're hard to get but, for example, if you were part of the Dell blitz at the beginning of school, you can buy a brand new Dell computer for \$17 a month.

Computer prices ten years ago were \$2,400. Now they cost about \$500. We think the price points on computers are coming down.

In our experience in family housing, the computer is sort of like the encyclopedia was when we were kids. Parents intuitively understand that computers are important for their kids' education.

We just ran a program in East L.A., one of the poorest communities in the country, and we were helping Dell sell computers there for \$500. We worked with the community credit union to provide risk-tolerant loans.

But what we found was we sold 100 computers on a day at a local elementary school, and two-thirds of the people came literally with cash in hand and just bought the computers in cash.

MS. ANDERSON: Any questions? I have a question for you. Of the market rate multifamily units built in this country in the last 12 months, what percentage of those units have this kind of wiring and switch like you're talking about?

MR. GREENLEE: I don't know the answer to that question but what I do know is that we're seeing an increase in numbers.

MS. ANDERSON: But you don't have numbers?

MR. GREENLEE: I don't have the number.

MS. ANDERSON: Okay. And what is the ongoing monthly cost to the developer to subscribe to a service? Is it one switch per -- most of our units in urban areas have about 250 units in them, so can you address that for me?

MR. GREENLEE: Oh. Absolutely. The \$275

cost that I talked about --

MS. ANDERSON: I understand that's a one-time construction cost.

MR. GREENLEE: That's true. But it also pays for the switching equipment, everything. That's the whole nine yards on that.

MS. ANDERSON: I understand that.

MR. GREENLEE: Okay.

MS. ANDERSON: I'm talking about the service provider, ISP agreement.

MR. GREENLEE: The service provider. For a 250-unit building, you would probably need a fractional T-1. Service was about \$300 a month.

And then we also recommend about \$1 a unit a month as a maintenance fee and that goes into a specific account, literally, contracts with a tech support company who can service the network.

MS. ANDERSON: Okay. And so you are aware of tech support companies that will provide a maintenance agreement to 250 unit apartment complex for \$250 a month?

MR. GREENLEE: Absolutely.

MS. ANDERSON: Okay.

MR. BOGANY: And I guess the developer also -- just looking at their getting it for \$5 a unit and they

can basically maybe charge \$10 a unit and be another profit center for them, because they would have to go out and pay 49, 50, 29, \$30 a month, and they're still cheaper.

MR. GREENLEE: Right. The way the QAP is written now, you can get amenities points if you provide it for free, but if you chose not to do that, you can still deliver the service, pay for it, and actually create a revenue source on top of that and still deliver the service for less than market rate.

MS. ANDERSON: Any other questions? Thank you.

MR. GREENLEE: Thank you.

MS. ANDERSON: Craig Young.

MR. YOUNG: Good morning. My name is Craig Young. I'm with O'Conner & Associates. We're a market analyst and appraisal firm in Houston.

I want to thank you for the opportunity to participate in the process today.

I'm going to go over some things regarding the proposed market analysis rules and guidelines. The first item, the electronic delivery of the report that Mr. Jack alluded to earlier, while I do not have a problem providing the Department electronic delivery of the report or an electronic copy, I do concur with him that if that

report is posted to the web, that would create quite a bit of challenges for us for the reasons that he alluded to.

On page 16 of the Market Analysis Rules and Guidelines, there is some verbiage rather regarding the market analyst who recommend whether a project is feasible to build or not. I believe the statement is "a conclusion, a recommendation section should be included in the end of the report."

We don't have any issue with conclusion section, regarding demand of the property. The issue that I would like to see modified is the recommendation portion. There's many factors that go into whether or not a development is a good idea or not.

Demand is just one of the components. The guidelines, as they are written now, focus the market analyst on only determining what the demand is for the property and I would like to see the word "recommendation" removed or the same verbiage from last year rolled over to this year, unless the recommendation is only applicable to the demand part.

There's feasibility, there's other issues that come into play whether or not a development is a good idea or not, and I would like to be only focused on demand, if it's left in there.

On page 17, there's some verbiage regarding a map that's required in the market studies, which includes all the existing under-construction and proposed developments within the primary market area. I would like that to be clarified. The definition of proposed, whether or not that is all properties that have applications in at that time or only those properties that have been previously approved by the Department but not yet constructed.

On page 18, there's some verbiage, that Mr. Jack alluded to, regarding the physical occupancy compared to economic occupancy. The turnover rates and the providing of that information for each individual comparable property. And the absorption rate for those comparable properties.

I would like, if that is to stay in there, one option is to remove it, as Mr. Jack indicated. A second option, if it remains to be -- if it's going to be left in there, perhaps we could add the verbiage, "if available."

That way if for some reason, a manager was able to provide us that information, than we would use that. Otherwise, if it's not available, then we would use some of the other sources that were discussed earlier.

I do concur that in many cases, property

managers or owners of these properties will not give us the information. It's none of our business according to them. They look at this perhaps a property that will be developed in the area as competition and in most cases, they are not cooperative. Some cases they are.

So "if available" -- if we can insert that, that would hopefully skin that cat.

I believe I have one other item. On page 19 in these guidelines, it addresses a capture rate and as I'm sure you are aware of, the capture rate is kind of a litmus test on whether these properties are proceed in the process or not.

There's some new verbiage in this year's proposed guidelines that calls for the inclusion of the capture rate of any properties with priority, as defined in Section 49.9 of this title, over the subject that have made application to the TDHCA and have not been presented to the Board for decision.

The way that I interpret that is that anything, any property, any developer that's made an application for property, we're supposed to include those properties in the capture rate calculation.

That will cause, in my opinion, a tremendous amount of difficulty because of the amount of properties

that go into the application process. If it is decided that this verbiage stays in there, then we will need a contact from the Department, that we can call as a market analyst when we're doing the market study, that will tell us which properties are a priority.

It's very risky to put the responsibility on the market analyst to decide which properties are priority and which properties aren't.

So I would like to see that deleted altogether as Plan A. Plan B would be to have a contact at the Department that we can call or e-mail, and they can actually, in a written form, provide us which properties are a priority that we need to include in the capture rate and we would most likely put that correspondence in the addendum, the market study.

And I believe that is all I have, unless there's any questions.

MR. BOGANY: Currently, right now, you mentioned about the electronic marketing report being on internet. I know Mr. Jack mentioned it too. Are you saying --

I'm under the understanding that someone can call the Department, get a copy of that report now if an organization wanted to. Do they have access to that

report now?

MR. YOUNG: I believe they do, if they file the proper paperwork and go through the proper channels.

MS. CARRINGTON: Yes, they do.

MR. YOUNG: We've been living with that for quite a while but posting it to the internet is the issue that I have. Just taking all the reports --

We spent a lot of time over the years as market analysts and appraisers defining our craft, if you will, working with the Department trying to provide the best market study we can.

I know this is a very hot topic and I know our firm, as well as several other firms, many other firms do the same thing.

However, posting them to the internet, in my opinion, is a bad idea. Again, anyone can then use that as a template, and our work to provide a study that meets your guidelines and provides you the information you need -- it will be open season on market analysts.

MR. BOGANY: But if -- and I guess my thing is, if we make them jump through hoops, you're a little bit more okay with that.

MR. YOUNG: Well, I can't really do anything about that because that's been going on for quite some

time and as it should, I would imagine the Freedom of Information Act would apply for anything.

This actually does create a little bit of a grief factor for someone that they may or may not want to go through, other than blatantly putting the market studies on the website.

MR. BOGANY: Okay.

MR. YOUNG: Similar to the applications, electronic copies are the wave of the future and the reason I don't have a problem providing an electronic copy on the front end is because, theoretically, you can take our reports and scan them in, and have your own.

So we'll go ahead and do that as part of the providing of the study. We just don't want that to be put on the website in this manner.

And that's not in the -- I don't believe that's in here. I think that's kind of a rumor that's circulating. Perhaps it's true, perhaps it's not. But I wanted to bring it to your attention and voice my opinion on that.

MR. BOGANY: Thank you.

MS. ANDERSON: I'm sympathetic to the protection of your intellectual property and your methods, trade methods and so forth. Absolutely sensitive to that;

not wanting to facilitate somebody reverse-engineering, if I can use that phrase, your expertise and so forth that you've built up over the years.

I think the Department has to balance that against its responsibility. You're a constituent; the development is a constituent; the people who live in this housing are constituents, and so are the existing members of neighborhoods, so we have multiple people that we are trying to keep happy.

And some days we do a better job at that than others.

MR. YOUNG: I understand. It's a daunting task.

MS. ANDERSON: Any other questions? Thank you.

MR. YOUNG: Thank you very much.

MS. ANDERSON: Bob Voellker.

MR. VOELLKER: Good morning, Board members. Delores told me I only had one minute, so I have to talk like the FedEx guy.

There's three issues I want to talk about on the QAP. Some of them have already been brought up, and I thought I'd just throw my two cents' worth in.

I've also given comments to staff on several items having to do with the QAP.

I'll start with the easy ones and then I'll work to the harder and more controversial ones.

On the gentleman who just talked about internet access, I think it's a great idea for us to have high-speed internet access to all our residents. However, I don't know we necessarily want to have to have a wire for every possible application. The phone wire, a cable wire and an internet access wire, because we all know that you can go to your cable company and get all three of those in one package. So you don't really need three wires. I think that verbiage just needs to be changed to state that there needs to be access and availability of the following services: high-speed internet access service, phone service, and cable TV/satellite TV type service available.

And as long as we do that, we're still providing the access to people but we're not dictating the technology because, you know, you can go to Starbucks now and get high-speed internet access without ever plugging into anything. And that technology will continue to evolve and I'm not sure we want to set one standard.

Next issue. I've noticed that the current draft of the QAP has eliminated the points scoring for market rate units. And although, as a developer, I love that concept because I don't get tax credits on market

rate units, and I acknowledge the fact that there are still an incentive to do market rate units if you're going from 200 to 252 units because you can only do 200 tax credit units, but you can do 252 total units.

What that would incentivize the development community to do and what you will see with no points for market rate units, is you will see all of us limit our developments to 200 units because we all know that there's economic disincentive, in essence, for us to do market rate units, unless we're in very, very high income areas, where we can get really truly market rate rents.

My bottomline concern is I think what is going to happen, we all know our market rate units and tax credit developments are not truly market. A lot of times, particularly if we're in a lower income areas, but also because of the fact we're a mixed income development, we cannot charge true market rate rents because there's that aura that we get that we're a low income community.

What will happen is you will have, in essence, 20 percent less units developed under the program because you are not going to have the ability to generate units without giving out tax credits because there will be no incentive for us to score points to do that.

So my concern is that, in essence, you've not

only taken market rate units off the table, but you're also taking what, in essence, are lower income units, lower rent units off the table because of the fact that we can't really charge a significant premium above the 60 percent units for what we call our "market rate" units.

To state it another way, the market rate units, in essence, really are just nontax credit units. That's the way we look at them for the most part and the TDHCA and the state of Texas gets more affordable units by having a market rate component in the overall mix.

So I'd hate to see that happen. It hurts the development community from the standpoint that we are generating and developing 20 percent less units. It's also hurting --

MS. ANDERSON: Wouldn't -- maybe I'm missing something. Sorry to interrupt you but while you're on this, I want to --

So if everybody builds 200 units and not 252 units, then we use that many fewer tax credits on all those 200 unit deals, and then we redeploy those tax credits and fund more developments.

Are you saying that the cost per unit, the tax credit we're going to suck up, in those 200 units deals, are the same as we're going to allocate in the 250?

MR. VOELLKER: Exactly, because there's a cap at \$1.2 million and once you get to right around 200 units, you're hitting that cap.

Okay. I'm not talking about qualified census tracts. It's even lower than that because you get the extra 30 percent credits, but on a nonqualified census tract deal, you get to \$1.2 million you bit the cap.

If you tell us, we want you to score points. We want you to do 20 percent market rate units, without giving us any more credits, we're not going to do 240 units or actually 250 units to get back to that 200 tax credit units.

So what you're doing, you can generate 250 units of total development with 200 units' worth of tax credits.

MS. ANDERSON: Only for the developers that are in danger of hitting that cap.

MR. VOELLKER: Well, and even if you're under the cap, if I'm doing 20 percent market rate units, I'm doing --

Let's say I'm doing a 100 unit development and I'm doing 80 units as tax credit units. So I'm giving 20 percent mark up.

I'm only using 80 units worth of tax credits

but I'm giving you 100 units worth of total development. So anytime you take away the scoring and the incentive to do market rate units, you're going to end up with the developers focusing solely on tax credit units.

And to develop the same number of units, you'll use more credits to do that. So you'll have to analyze it but I think you'll find out that's where you get to and I think it's not a good result for the development community -- for the affordable housing community in the state of Texas overall.

The other thing is we now have scoring for 60 percent for doing 30 percent units and we no longer have the 40 percent and 50 percent unit mix in there.

And I am a big proponent of mixed income communities. Not only market rate and affordable, but also market rate and various levels of affordable.

We did a highly stratified deal in Fort Worth where we had 30 percent units, 40 percent units, 50 percent units, and 60 percent units and market rate units.

And anybody who walked in the door, we had a unit to rent to them.

You've got a real problem if all you've got are 60 percent units and 30 percent units, in that that whole middle band of income levels is not really served. The

people at 40 percent income can't affordable 60 percent rents.

It just doesn't work for them. They're going to pay significantly more than 30 percent of their overall income for rent. So I'd like to see us go back to having more of a stratified income level, rather than just saying we've got 60 percent units and 30 percent units.

It will allow us to serve a much broader community. Now to the most controversial one.

A year ago, and really for about the past five years, I have raised the question of whether or not the scoring points for HUB's is legally defensible. And I submitted a pretty long brief to you all last year on this issue and I am resubmitting that brief.

I think you all know the University of Texas Law School lost a significant case on that issue that went before the 5th Circuit Court of Appeals, where they gave a said number of points to minorities.

And then University of Michigan, both law school and undergraduates, ended up with a case before the U.S. Supreme Court, where that issue was also recently addressed.

And the U.S. Supreme Court said you cannot just give points to minorities. You can consider diversity in

the grander context of the various things that people can do to create diversity in your program, but you can't just say you're a minority or you're a woman, you therefore get points.

So I would hate to see in some point in time somebody come forth and actually challenge TDHCA's recommendations and the approved lists based on the fact that they decided that this US Supreme Court and this 5th Circuit of Appeals has said that this is defensible.

So I just lay that out for you all's discussion and consideration as you go forward.

Questions?

MS. ANDERSON: Questions? I'd like for you to remain up here while I ask the staff a question.

Isn't the reason that we got rid of the 40s and 50s on an income level? Wasn't that for compliance simplification and a number of the members of the development community were asking for that streamlining?

MS. BOSTON: And it was actually a recommendation of the Working Group and other than tweaking to make the language more clear, we pretty much went with the Working Group's recommendation.

It was to simplify both the application process because in the past, we had that grid and it was like two

pages long on how to do low income targeting and there was a lot of criticism for that.

It's hard even from the staff review prospective and then definitely from a compliance prospective. So across-the-board simplification.

MS. ANDERSON: Okay. Thank you. But I hear your point of view on that. I don't think I have a question about that.

MR. VOELLKER: Okay.

MS. ANDERSON: Any other questions? Thank you very much.

MR. VOELLKER: Thank you.

MS. ANDERSON: On this income level, I do have a request of all of you and we have one more person who's going to make public comment, but I want to thank you all for making public comment about the QAP this morning and almost everyone who stood up, whether it was Jim Shearer, John Garvin or now Bob and others, I think even Darrell Jack mentioned it, talked about this income levels of the tenants which is one of the key top nine items in the scoring.

Maybe this isn't possible but it would be really would be nice if you all could get around one table and give us a consolidated recommendation. It's difficult

as a Board member, who doesn't deal with these issues every day, and I'm sure it's difficult for staff to try to harmonize the input and I think our staff tries to listen to your input. I know they do.

Very hard for us to harmonize four distinct sets of recommendations and so, anything you all can do between now and October 25 to kind of get on the same page on this would, I think, create a situation where we could all have a win-win and likelier going to be able give people what they think is best if we can get a harmonized set of recommendations.

I appreciate your indulgence hearing that request.

John Wright, please.

MR. WRIGHT: My name is John Wright, and I did not intend to comment during this period until something I heard a minute ago, which was like an epiphany.

I was wondering, in the 2005 QAP, where we got all this technical language about cat 5E wire and networked back to a central location and it became obvious where that came from. I would like to offer these comments.

We recently, on a project that I was consulting with, attempted to do this and the cost was \$100,000 for

150 units.

Secondly, you put the owner into the internet business. That's not the owner's business. You have to put a server in and what would it cost to maintain this? What would it cost to hook people up and take people off?

You get into the whole billing operation also.

This is a wolf in sheep's clothing. And additionally, I think in the old QAP, we said where the outlets ought to be. And that's been dropped from this new one and I think that was much more helpful that the data outlet be located in the dining room and the bedrooms, but the telephone outlet be located -- those kinds of things are much more conducive to the quality of life and the usability of these units and these systems.

Also, there's the possibility of putting computers at the office for those people who can't afford it otherwise. How you would hook up internet service for somebody else into this thing that they bought from a third party would also have to be considered.

I'm just not aware of the industry being to that point where this is a simple thing. Thank you for listening.

MS. ANDERSON: Questions?

MR. BOGANY: Yes. I have a question, not so

much for public speaker here, but I'd like Mr. Greenlee to address the issue of the cost of what he just said on a project he was doing and how in one economy, maybe they have a way to do this in a much cheaper cost.

I'd just like to see what Mr. Greenlee --

MR. WRIGHT: And let's say this is in the QAP, it asks for rehabilitated units to be rewired.

In order to do this, it means tearing up walls and all that nature. Getting into abatements, there's a lot of other issues.

MS. ANDERSON: Mr. Greenlee, you can have a minute or so to address that. Thank you. Unless you choose not to.

MR. GREENLEE: Based on the information that's provided, I would really enjoy discussing how they spent \$100,000.

MS. ANDERSON: We're not going to have a debate among our witnesses. That's not the --

MR. BOGANY: My point is that is your group providing lower cost to get this done, the One Economy Group, that you've given us this proposal? Is that what their goal is to do is provide a lower cost than what this developer may have went out on regular market to try to do?

MR. GREENLEE: What we have done is to help facilitate the work, we have provided actually free consulting services to developers so that they can understand how to do this work at a cost significantly less than what we're talking about.

MR. BOGANY: Okay. Thank you.

MR. GREENLEE: Yes. And I should say that my company, quite frankly, probably doesn't have the capacity to handle the kind of business that would be generated from this policy but there are definitely local -- the people who wired this office, for example, the office of the Department, have the capacity to do that exact same business in the affordable housing industry.

They just don't operate in the same worlds. We just need to introduce those two industries. Thank you.

MS. ANDERSON: Thank you. Mr. Sisk?

MR. SISK: Good morning. I'm Tony Sisk, Churchill Residential in Dallas. And I appreciate your letting me speak during the public comment.

We're opening a new senior property in the Dallas area, and I need to get back for something, and I was signed up to speak for an agenda item on the Inducement Resolutions for the new Private Activity Bonds.

And I understand that the three applications

that we put in as developer on number 15, 16, and 17, did not receive staff approval for inducement because we did not send in the notification to the county and city clerk until a few days late.

However, I wanted to point out on those applications that we did in fact on all three applications receive the letters back prior to the filing of those applications on a timely basis, stating in all six cases in city and county that they have no neighborhood organizations on record with the city or the county level.

And we provided a copy of that in those three applications filed on a timely basis. So the reason I wanted to speak is to say we would appreciate that those applications be induced at this meeting.

We would be happy to go to the back of the bus, so to speak, and have a number behind all the others that did file on a timely basis. We're asking that we could be induced and be put at the back of the list, if possible.

MS. ANDERSON: Questions? Thank you. Mr. Ocanas.

MR. OCANAS: Now that it's afternoon, good afternoon. My name is Reymundo Ocanas, executive director of the Texas Association of CDCs.

Just making a brief comment. We submitted

written comment and testimony at the public hearings on the Housing Trust Fund rules, HOME, and the other programs.

Just wanted to reiterate our request to have the Department staff consider reinstating, in the program rules, one of the eligible uses of the Trust Fund, being the Predevelopment Loan Program.

It's in your strategic plan but somehow is not directly written into the program rules. Just wanted to make sure that gets looked at. And I think we all believe that the language was in there previously -- be 2003 and before -- but somehow in 2004 it might have been changed.

So we will make sure that we provide staff the adequate information on where it was before and how to structure it to put it back in. And that's it.

MS. ANDERSON: Questions? That concludes public comment. I thank you all for making those comments.

We have several guests with us, or at least we did when we started out this morning. I really do appreciate all the public comment and the dialogue back and forth this morning. It was a good session.

We have -- I don't know if he's still here -- Mike Gerber. We knew he was going to have to leave. Mike

Gerber is the new Housing Policy Lead for Governor Perry's office and he was here briefly this morning. He is coming back to Texas from successful time with HUD in Washington and the Bush administration. And I know everyone in the Department looks forward to working with Mike.

Jason Smith, from the Urban Affairs Committee, has also been here this morning and he's still with us.

Jerry Romero, my counterpart who chairs the TSAHC Board. I don't know if Jerry's still here.

And Scott Sims, of course, from the Speaker's office. So we appreciate you all being here today.

We will go to the next agenda item, which is presentation, discussion, and possible approval of the minutes of the Board meetings of both August 19 and September 9, 2004.

MR. BOGANY: So move.

MR. SALINAS: Second.

MS. ANDERSON: We have a motion and a second and before we vote, I just want to say there were a couple of small typos that I'll give Delores directly.

Assuming we're ready to vote, all in favor, say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. The next item is presentation, discussion, and possible approval of Housing Tax Credit items, and I'll turn that over to Ms. Carrington.

MS. CARRINGTON: Two tax-exempt finance bond developments for the Board's consideration with other issuers. The first one is TownParc at Bastrop, located in Bastrop, Texas.

It's new construction. It's family. The issuer on this transaction would be the Capital Area Housing Finance Corporation. The Department is requesting or recommending tax credit allocation in the amount of \$411,039.

This is a priority 2 development, which means that 30 percent of the units are capped -- rents are capped at 60 percent of AMFI. This is a development that has some of the demand actually from household growth in the area.

Bastrop is an area that is experiencing quite a bit of growth. It would be 144 units and staff is recommending the allocation of tax credits for this transaction.

MR. BOGANY: So move.

MR. GORDON: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Oppose, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The second tax-exempt bond finance development for the Board's consideration is the Villas at Costa Biscaya.

It's located in San Antonio. San Antonio Housing Finance Corporation is the issuer on this transaction.

We are recommending an allocation of credits of \$862,911. This is also a priority 2 transaction.

One condition that is somewhat different than what you all typically see and this one is receipt, review, and acceptance of a commitment from the related party contractor to defer fees as necessary to fill what we believe may be a potential gap in the permanent financing.

This is also a transaction that's located in an area that is experiencing some growth and some of the

demand on this one is also coming from increased households in the area.

Staff is recommending the allocation credits on this transaction.

MR. BOGANY: So move.

MR. GORDON: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item for the Board's consideration are proposed housing tax credits amendments and there are eight of these amendments for the Board's consideration.

The first one is an allocation in 2002. Paris Retirement Village and it's located in Paris, Texas. It's new construction. It's elderly and what they are requesting is to make a change in the number of bedrooms from 8 one-bedrooms to 7 one-bedrooms and one two bed-room and staff is recommending that this change in the unit mix be approved.

MR. SALINAS: So move.

MR. BOGANY: Second.

MS. ANDERSON: Discussion? I just have one question.

All of these indicated that our real estate analysis was pending at the time the Board book was put together. I am assuming that if there's any dissonance between real estate analysis and the original recommendation, that we'll hear about it.

MS. CARRINGTON: We will so note that. Yes.

MS. ANDERSON: Okay. Thank you. And it's a little hard for me to tell on some of these which deal, but I don't think I have any public comment on this particular one.

If you are here to speak about Paris Retirement Village -- okay, no.

Hearing no discussion, I assume we're ready to vote. All in favor, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next tax credit amendment for the Board's consideration is Sterling Spring Villas

Apartments. This is a 2003 tax credit application -- tax credit award.

And they are requesting four changes to the Department. Staff's recommendation down at the bottom is to approve three of the changes that they are requesting and to deny #4.

The changes they are requesting is to: 1) change from gas to electric heating and water heating; 2) upgrade from vinyl flooring to ceramic tile; 3) upgrade from fiberglass tub/shower enclosure to ceramic tile; and 4) install a microwave oven in lieu of a range oven in the club house kitchen.

Staff is recommending the changes in 1, 2, and 3. Staff is not recommending that a microwave oven be included in the clubhouse as opposed to a range oven.

And our rationale for that is that we know that how the clubhouses are used for various kinds of activities and believe that a microwave would not necessarily serve the needs of the tenants.

So our recommendation is to approve 1, 2, and 3 and deny 4.

MR. BOGANY: So move.

MR. GORDON: Second.

MS. ANDERSON: We have public comment on this

area. Ms. Bast? And if you would go ahead and address both developments in your comments. Thank you.

MS. BAST: Good afternoon. I'm Cynthia Bast of Locke, Liddell, & Sapp and we are representing L H Development with respect to its request for amendments for both Sterling Springs Villas and Park Meadows Villas.

Each amendment request presents four items. Each amendment request is identical, so with your permission and with Ms. Anderson's permission, I will handle the two properties together.

Our client agrees with staff's recommendation on three of the amendment items requested, so I will not address those. And I will simply address the fourth amendment item, which is the requirement for a range oven in the clubhouse kitchen.

And to help you focus on this request, I have provided you with this handout.

The first page of the handout contains a page called the Activity Overview from the application. As you will note down below on the onsite amenities section, there's a blank for commercial kitchen and a blank for residential kitchen.

Our client checked the box for residential kitchen.

We go to the second page of the handout. This is the text from the 2003 QAP, regarding threshold criteria for amenities. It requires the applicant to submit a development certification form as to the amenities to be provided. But please note that this threshold section of the QAP does not mention clubhouse kitchens at all. In fact, the list is on the second page.

The next piece in the handout contains the development's certification form that was required under the threshold criteria in the QAP. Again, if you will please note, there is no reference to clubhouse kitchens.

This was not part of the threshold criteria required to be met by our client.

Finally, I have provided the text from the 2003 QAP regarding selection criteria for amenities. Again, turning to the second page, there's no reference to clubhouse kitchens. No points were given to our client with regard to the clubhouse kitchen.

So returning to the Activity Overview in the front of the handout, our client checked the residential kitchen box because they did plan on having a kitchen in the clubhouse.

Originally, they planned for that kitchen to include a refrigerator, a dishwasher, a microwave, a sink,

and a range oven. These items were included in the construction budget that was submitted in the Tax Credit application. However, we have since learned that due to city code requirements, the installation of a range oven will cost between \$12,000 and \$15,000.

Upon learning of that increased cost, our client asked TDHCA whether the range oven could be omitted.

Honestly, I'm not sure if this issue even rises to the level of materiality that requires Board approval because whether or not a range oven is required in the clubhouse kitchen is not part of the threshold criteria. It is not part of the selection criteria.

Our client simply checked a box on the Activities Overview page of the application, saying that it would provide a residential kitchen.

The Department did not provide us with a definition of residential kitchen at that time. There's not such a definition in the QAP.

So given that this is not a threshold or selection criteria matter, we do respectfully request that you permit the owner to omit the range oven from the clubhouse kitchen.

The kitchen will still have a microwave, plenty

of plugs to plug in crock pots and toaster ovens and other things like that, which should be sufficient for clubhouse use.

And we appreciate your consideration.

MS. ANDERSON: How many units does this development have.

MS. CARRINGTON: It has 114, 120 total.

MS. ANDERSON: Questions?

MR. SALINAS: \$15,000 for a stove?

MS. BAST: Yes, sir, because of the specific additional code requirements that have to be met for the installation of that stove.

MR. SALINAS: And because of the amount of apartments?

MS. BAST: No. It's just one range oven in the clubhouse.

MR. SALINAS: I know but the amount of people that are going to be --

MS. BAST: The city code requirements are --

MR. SALINAS: Population would have a lot to do with that. I think what our staff is saying is if you're going to have that much population, you cannot take care of it with a microwave. You need a stove. Right?

MS. ANDERSON: Any other questions for Ms.

Bast?

MR. GORDON: I have a question for staff.

MS. CARRINGTON: I see Mr. Gouris and Ms. Boston sort of looking at one another, so -- we see who got the short straw.

MR. GORDON: How was it approved originally with a stove?

MS. BOSTON: She's correct in saying that because it wasn't for threshold or points, I mean, other than checking the box, it wasn't ever for approval, so --

MR. GORDON: So it wasn't a criteria for getting awarded then. Other than checking a box. Okay. That's my only question.

MS. ANDERSON: We have a motion on the floor.

MR. BOGANY: I withdraw my motion.

MR. GORDON: And I withdraw my second.

MR. SALINAS: What's the motion?

MS. ANDERSON: To approve staff's recommendation and now that's been withdrawn.

MR. SALINAS: Why did they withdraw? They want a microwave?

MR. GORDON: From my view, it wasn't a criteria for approving and it's very expensive on the owner.

MR. BOGANY: And I would agree. That's why I

can't see putting that sort of cost on an owner.

VOICE: I'm all ears.

MR. BOGANY: I would like to make a motion that we approve them for all four criterias that they were wanting to do and that's what my motion would be.

MR. GORDON: And I would second that motion.

MS. ANDERSON: Discussion?

MR. SALINAS: Well, who is the -- city code is saying that they have to have a stove?

MS. BOSTON: No.

MR. SALINAS: Who is saying what?

MS. BOSTON: City code is not requiring them to have a stove. The issue is if they do have a stove, city code requires that it be this commercial grade stove, which is very expensive.

And so they're asking to be able to not have a stove at all because if they do do it, it's going to be expensive, but if they don't --

MR. SALINAS: Would you agree with them that they do not need a stove?

MS. BOSTON: I'd agree that it wasn't part of the threshold or selection.

MR. SALINAS: Okay. Well, you would agree that we don't need a stove.

MS. CARRINGTON: Staff's recommendation was to deny the request to not have a stove oven in the clubhouse. Now that was staff's recommendation. But certainly, Board, you all can overturn staff's recommendation.

MR. SALINAS: Well, isn't that what the motion is?

MR. BOGANY: My motion is to approve all four points. And the reason I think we should approve all four points is that if the stove was part of the requirement to get this contract, then I would have a problem with it.

But because no points were given to it, it was just something that the developer was wanting to do, I can see just going straight with the four and not having to allow him to have to put a stove there because that was something extra that he was doing and didn't realize, based on this municipality, that he was going to have to do all the things that he was doing.

So my thoughts would be that we vote for this motion of approving all four things.

MS. ANDERSON: We do have a second.  
Discussion? Hearing none, I assume we're ready to vote.  
All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: And if I may, that is the recommendation applies to both Sterling Springs Villas Apartments and also Park Meadows Villas Apartments?

MR. BOGANY: Yes.

MS. ANDERSON: We just voted on one because the motion -- okay.

I asked her to testify to both of them but the motion was only on one. So on Park Meadows, it's the same set of facts, except it's not in Midland County, it's in Lubbock County.

MR. BOGANY: And I would like to make a motion that we approve all four points for that project also.

MR. GORDON: Second.

MS. ANDERSON: Okay. Discussion? I have a question for staff.

Can you verify that we have the same city code writers in both those counties? So we've got a \$15,000 stove in Lubbock, too?

MR. GOURIS: Second team. I'm Tom Gouris, director of Real Estate Analysis.

We haven't finished the reevaluation of Park

Meadows and Sedona as in underwriting, and what we're looking for approval of is to go ahead and approve it subject to the reunderwriting.

And one of the things we will look at is to make sure that the code does say the same thing.

MS. ANDERSON: Okay. All right. Would you accept that his request that the motion is subject to the re-underwriting on this one and we'll get to the next one when we get to the next one.

MR. BOGANY: yes.

MR. GORDON: Yes.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. So the next one's Sedona?

MS. CARRINGTON: Yes. Sedona Springs, which is a 2004 Tax Credit allocation. They have three requests on this allocation.

Staff is recommending the approval of all three requests. They are: 1) changing the gas to electric

heating and water heating; 2) upgrade from vinyl flooring to ceramic tile; and 3) upgrade all two-bedroom/one bath units to be two-bedroom/two bath units.

And staff is recommending the approval of these amendments.

MR. BOGANY: Recommend approval.

MR. GORDON: Second.

MS. ANDERSON: If I'm right in the number here, we have public comment on this item? Bert Magill?

MR. SALINAS: They're recommending two bedrooms?

MS. ANDERSON: Two baths.

MR. MAGILL: Thank you, Madam Chair. I have a handout as well for you.

Here's one item. That's the other.

I'm Bert Magill and I'm principal of two different developments in Odessa. I've totally 250 units.

I have also presented a letter from Variant Builders, who was an applicant in Region 12 this year -- in San Angelo, and I also put together an application in Odessa.

What I'm here about today, it's really kind of awkward for me because I really don't like to talk against anything for the City of Odessa or the developers.

But it's kind of a unique situation in when we're talking about this particular application, it was able to submit a unique utility allowance for this area. And mainly, the benefit of that is the utility allowance is in the City of Odessa, imposed by the Odessa Housing Authority, are extremely high if you look at your exhibit that I handed out.

We're talking one bedroom with gas of \$150 a unit and if it's all electric, it's \$202. The applicant on this particular Sedona Springs was able to submit evidence that his submitted utility allowances were justified. And that gave that application a very large competitive edge because all the other applicants were using the utility allowances published by the Odessa Housing Authority, which I have been using on my two developments in their initial lease-ups.

And so where I'm coming from here is that now they're going back and I don't know what justification they did with regards to any change in utility allowances for an all electric versus partially gas, but I am saying that they had a very high competitive edge because of their homemade utility allowances.

And if they were using the published Housing Authority Utility Allowance, I would not have any

objection to going one way or the other. But this was a competitive situation and I think they were competitive in what their application said and they should stick with what they did because there's a significant cost to providing gas to the construction cost.

And electrical is a lot cheaper and it's also probably more expensive to the tenants. And also, Bern Builders, in their letter, suggested that there was something in regards to their joint venture partner and also the fact that they have project based vouchers and they're not using the published utility allowances from the Housing Authority.

I'll be more than happy to work with Sedona Springs and their principals to work with, which I have been trying for years to work with the Housing authority, to try to get their utility allowances more in line with what we see across the state.

But this is a very large variance and so I think an additional change to converting it to all electric is not justified.

MS. ANDERSON: Questions?

MR. SALINAS: Would you say it's a lot safer?

MR. MAGILL: The electric versus gas?

MR. SALINAS: Yes.

MR. MAGILL: Both of my properties that are out there are gas for water heating and for air heating and I haven't had any casualties thus far.

MR. BOGANY: I have a question. And I'm just trying to understand. The staff is recommending that they can make these changes and you're saying that they shouldn't make these changes. They should stick with their original planned.

MR. MAGILL: Yes.

MR. BOGANY: Okay.

MS. ANDERSON: Ms. Carrington, do we have the report back from underwriting yet on this deal?

MS. CARRINGTON: The underwriting report has not been finalized on Sedona Springs.

MS. ANDERSON: Then I would offer the thought that perhaps we don't have the information we need to make a decision today. We do have one more person who would like to make public comment on this. Are there any other -- we want to hear the public.

MR. SALINAS: Okay.

MS. ANDERSON: Are there any other questions for this witness?

MR. MAGILL: Thank you for your time.

MS. ANDERSON: Ms. Hance.

MS. HANCE: Good afternoon. My name is Aubrea Hance. I work on behalf of the developer of Sedona Springs Village.

And we have requested a change to all electric because of the fact that in our upstairs units the engineering is such that we are having to use an aqua-therm gas heating unit, which, from my understanding, I don't know much about HVAC equipment, is not as good as far as providing the heating that also requires extensive repair for future use.

When we submitted our underwriting report, we did use an alternative method of calculating the utility allowance as permitted in the underwriting guidelines. Underwriting approved that and the reason we did this was because the housing utility allowance given by the Housing Authority in Odessa is based on a lot of older units and is not in line with the type of new construction and energy saving devices that we now provide.

And I would just offer that defense. Thank you.

MR. BOGANY: I guess, Tom, is it true that with them making the changes would not have any effect on the scoring of his application, or is that the case at all? Or would it have had an effect, and did they get an

undue -- they came in one way and switched on the other side.

Would that affect their application.

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis.

I don't believe it has an effect on their score at all.

MR. BOGANY: Is that why staff recommended it because it had no effect?

MR. GOURIS: It had no score effect. We haven't finished the underwriting on it, as I mentioned earlier, and part of the reason we haven't finished the underwriting is because they're trying to come back with new alternative utility numbers.

We did accept their alternative utility numbers originally and it is true that we would accept alternative utility numbers. It's very rare but we do allow it if they're well documented and, in this case, they were.

MR. GORDON: Will you use those numbers even with the electricity then?

MR. GOURIS: That's what they're updating right now. They're getting us new numbers to support the current electric utility bounds for that area.

MR. GORDON: So the utility allowance could

change based upon this change?

MR. GOURIS: Yes.

MR. GORDON: Okay. Then I think we need to table it.

MS. ANDERSON: Is that a motion?

MR. GORDON: It will be a motion. I think we have to withdraw the other one.

MR. BOGANY: I withdraw my motion.

MR. GORDON: I withdraw my second. And with that, I have a motion that we table the Sedona Springs until we get this utility --

MR. SALINAS: Get all the information. Second.

MS. ANDERSON: Discussion? All in favor of the motion?

(A chorus of ayes.)

MS. ANDERSON: Opposed?

(No response.)

MS. ANDERSON: Motion carries. That is tabled.

MS. CARRINGTON: Next item for your consideration is the Kingsland Trails Apartments. This was a 2003 forward commitment for credits in 2004 and the situation with this particular development, it's located in Kingsland, in Llano; it's rural, new construction, a family development.

Between 2003 and 2004, in 2003 the development was located in what's called a difficult-to-develop area, a DDA. In 2004, it was no longer in the DDA. The result of changing from being in a DDA to not being in a DDA is that the development lost the 30 percent boost in credits that is allowed if a development is located in a difficult to development area.

The original proposal from this developer did have 16 market rate units and then they also had 11 units that were targeted at 30 percent of AMFI, which was financially feasible for them to be able to do if they were going to get the boost in the credits.

They no longer are going to be able to get the boost in the credits, so what they are proposing is that 100 percent of the units would be at 60 percent of area median family income.

The proposal actually creates an increase in the total number of low income households because at one point, you were going to have 16 market-rate units. Now, all 76 units in this particular development will all be tax credit units and will all be rent restricted.

And staff is recommending that this amendment be approved. It was truly one that was out of the control of the developer.

MR. BOGANY: So move.

MR. GORDON: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. CARRINGTON: The next item for the Board's consideration is Pleasant Hill Apartments located in Austin.

We will take them one at a time. There are three transactions, however, that have the same set of facts.

The Pleasant Hill Apartments is a 2004 tax credit allocation. It is located here in Austin. It is an at-risk transaction. That means that it is a rehabilitation of an existing older property and they are requesting two items for amendments.

The first is to approve the insulated windows as opposed to storm windows. And staff is recommending that that amendment be approved.

The second item that they are requesting is

that the 504 requirements for the 5 percent modifications for mobility impaired and 2 percent for the vision and hearing impaired not be applicable to this particular development. And staff is recommending that the Board not approve that request and indeed that the 5 percent and the 2 percent remain as requirements for this particular transaction.

In our 2004 Qualified Allocation Plan, we do say in the current QAP that governs this allocation, we state in that QAP that both new construction and rehabilitation will follow the 504 accessibility requirements.

The Debarment believes it's good policy on both new construction and rehabilitation to have the accessibility requirements of 504 and we are recommending that the first part of the amendment request be approved, which is changing from storm windows to insulated, but on the second part of the request, is to require the 5 percent and the 2 percent for 504.

MR. BOGANY: So move.

MR. SALINAS: Second.

MS. ANDERSON: We have several people who want to make public comment on this. John Wright.

MR. WRIGHT: I think Cynthia was going to speak

first if that's okay.

MS. ANDERSON: Yes, sir.

MS. BAST: Good afternoon again. Again, my name is Cynthia Bast of Locke, Liddell, & Sapp.

We represent AIMCO with respect to its rehabilitation and ownership of the Pleasant Hill Apartments and the Tamarac Pines Apartments and the Whitefield Place Apartments.

AIMCO is the largest owner of affordable housing in this country and is a strong advocate of continued preservation.

We have requested the QAP clarification for amendment on two points for each property and generally, we are accepting staff recommendations, with respect to some of those requests.

So, again, I will not address those items unless you have specific questions and instead, would like to address the one item that impacts all three properties, which is the clarification for compliance with Section 504.

This is not as easy as a range oven, guys. Okay. Staff has recommended that these properties have 5 percent of their units be accessible for people with mobility impairments and 2 percent of their units be

accessible for people with vision and hearing impairment.

At the outset, let me say that each of the properties already has accessible units. They already have accessibility for mobility impairment. Between 5 and 10 percent of the units in each property were designed to be accessible and are currently accessible.

And providing accessibility for tenants with respect to hearing and vision impairment in 2 percent of the units is not a problem either.

So the owner is not trying to avoid accessibility. The question really has to do with the application of Section 504 in a variety of technical areas.

As I'm sure you know, your enabling statute, Section 2306, does state that a tax credit property must comply with the accessibility standards required by Section 504.

Section 504 regulations distinguish between new construction and alterations of properties. Alteration properties are further distinguished between substantial alteration and other alteration.

Substantial alteration properties are those that are required to meet the same accessibility standards as new construction. So you've got new construction and

substantial alteration in one pot. Then you have other alteration properties that are defined as those that are not spending 75 percent or more of the replacement cost of the property on the alteration.

Those properties are not required to meet the new construction standards, except to the extent feasible.

The federal government, in its wonderful wisdom, has given us two definitions of alteration. We have the uniform federal accessibility standards, which defines alteration as requiring change in ingress or egress or structure and that definition does not really contemplate the kind of rehabilitation that's being proposed for these properties.

Then we have a definition of alternation in 24 CFR, Part 8, Subpart B, which is drafted similarly but perhaps more broadly. But even if these properties were determined to be doing alteration within that definition, they still don't meet that 75 percent test.

So I believe they would be considered other alterations and therefore not required to meet the new construction accessibility standards, except to the extent feasible.

Either way, looking at the strict language of Section 504, these properties should not be required to

meet the new construction accessibility standards. Looking strictly at the language of 2306, the tax credit property is required to meet the accessibility standards required by Section 504.

But for these properties, we don't think that accessibility should be required by 504.

We believe we understand what you're trying to do. We all agree that accessibility is an important thing in our communities. The problem lies in the fact that there are numerous technical issues invoked by 504 and that 504 was not really intended to apply to rehabilitation properties of this sort.

So when you try to apply a law in a way that is sort of outside its scope, you can have unintended consequences.

I am by no means an expert on Section 504 Accessibility and I don't want to present myself as such.

I simply want you to know that these properties do have accessible units, albeit accessibility that was built under previous accessibility standards.

Those units will remain with the property. The rehabilitation of these properties was designed to comply with Section 504 without triggering the Section 504 new construction design standards for the units.

Of course, the common areas will comply with all applicable accessibility laws.

So I'm trying to bring to your attention that there are technical issues with the Department's requirements and recommendations that do need to be considered and taken under advisement.

And for those technical issues, I will give my time to John Wright and Frank Pollacio, who are both architects and understand some of these things better than I can present them.

MR. GORDON: One question, Cynthia.

MS. BAST: Question?

MR. GORDON: Staff has said that the QAP says that the rehabilitation is covered, but you have to comply with 504. Is that in the QAP?

MS. BAST: There is language in the QAP that does say, I believe, and I'm looking for my exact quote, that it says that you do have to comply with the accessibility requirements of 504.

So I think, Mr. Gordon, you're getting into that word of requirements and if 504 on its face would not require, then what does that mean for these rehabilitation/preservation deals?

The next sentence, I believe, and again I'm

sorry I don't have the exact quote in front of me, but I believe the next sentence says this includes that 5 percent for mobility impairment and 2 percent for hearing and vision impairment.

And I would take that sentence to be a modifier of the first sentence or a clarifier of the first sentence to show how that was intended to go together.

MR. GORDON: Right. So the issue is does the QAP expand beyond 504.

MS. BAST: Right. And we believe that the 2306 says to meet the requirements for 504.

MS. ANDERSON: Other questions?

MR. GORDON: I have a question for our counsel.

MS. BAST: Thank you.

MR. GORDON: Thank you.

MR. WITTMAYER: Chris Wittmayer, Department of General Counsel.

The QAP, which applies in this case, the 2004 QAP states that this requirement includes for all developments and uses the language all developments and you have to have the 5 percent units and the 2 percent units and we specifically stated this requirement applies to all developments, including new construction and rehabilitation.

MR. GORDON: Do you think that sentence -- my question is what is the intent? Is the intent to try to expand beyond 504?

MR. WITTMAYER: Well, I understand this provision in the QAP to mean that the Department has made a policy that says it's not asking too much for 5 percent of the units to be accessible for the mobility impaired and 2 percent for hearing and sight impaired.

MR. GORDON: Right. I'm certainly in favor of accessibility. I guess my concern is when you get into rehab work, you can have your developing 5 units or 75 and how do you -- where do you draw the line on this 5 percent or 2 percent? I think that's what MS. Bast is raising as well.

MR. WITTMAYER: Regardless of issue of cost and as I read the language, the policy is that if we allocate credits, we want to see at least 5 percent and the 2 percent units.

MR. GORDON: Okay.

MS. ANDERSON: Mr. Wright, please.

MR. WRIGHT: Hi. I'm John Wright. I see it a little different, of course.

What we're talking about are properties that are a part of the set-aside for preservation, and as such,

the rehabilitation of those projects.

In the 2002, 2003, 2004, and the proposed in 2005, it does contain a statement that these developments will comply with the accessibility standards that are required under Section 504. Rehabilitation Act of 1973. 29 USC Section 794.

And it is specified under 24 CFR Part 8, Subpart C, sorry to bother you. And then the statement is this includes -- "this" being a pronoun -- for 504, includes that all developments a minimum of 5 percent of the total dwelling units or at least one unit, whichever is greater, shall be made accessible for individuals with mobility impairments.

This requirement is codified in Section 822, new construction, and Section 823, alterations to existing housing.

The TDHCA staff holds that Section 823 alterations to existing housing addresses preservation and rehabilitation of housing facilities. I contend it does not.

It addresses substantial alterations, of which if the cost is 75 percent or more of the replacement cost of the completed facility, and would cause the provision of 822 new construction to apply. And other alterations,

it does not mention the word rehabilitation.

Additionally, there is no definition of rehabilitation development in the Uniform Federal Accessibility Standards or in the 2002, 2003, 2004 and the proposed 2005 QAP.

If you looked in the Uniform Federal Accessibility Standard, which is a document that is supposed to take into all of these accounts, under the definition of alteration, "as applied to a building or structure, means a change or rearrangement in the structural parts or elements, or in the means of egress, or in the moving from one location or position to another."

It does not include normal maintenance, repair, re-roofing, interior decoration, or changes to the mechanical and electrical systems.

I propose that there are three kinds of tax credit developments. There's new construction. There's alteration and there's preservation developments that only rehabilitate.

I offer that a rehabilitation is best defined as a development in which the scope of work is limited to normal maintenance, repair, re-roofing, interior decoration, or changes to the mechanical and electrical

system, and the cost of which does not exceed 75 percent of the replacement cost when completed.

Thus defined, the rehabilitation can meet the requirements of Section 504, Rehabilitation Act of 1973, Section 822 and 823, without having to provide a minimum of 5 percent of the total dwelling units or at least one unit, whichever is greater, for individuals with mobility impairment.

It should be noted also that governing statute bill 2306 only requires you to comply with Section 504. If it is the intention of TDHCA to establish requirements, in addition to Section 504, by applying the requirements of Section 822, New Construction, to developments that do not otherwise have to meet such requirement, it has not been clearly defined.

Additionally, if this is indeed the intention of TDHCA, it will be requiring structural alterations, not otherwise required to developments, which will then trigger all of the requirements of 822, New Construction, and render many rehabilitation developments financially infeasible and even preclude some properties from being rehabilitated.

Also because of the infinite possibility of existing plans, the unique constructural techniques that

exist out there on the variations in building code from city to city, it will also require TDHCA to perform development by development, unit type by unit type, reviews of these projects.

And I suggest it will also then create an infinite parade of people coming in having to ask for amendments from the Board.

When I get the reports from PCAs, they mention that because of when these are built and we don't exceed the 75, that we don't fall under the requirements to provide those units.

I'll also contend that ACURAN, which is a group that has been hired to review plans, in their review also states that since you don't meet the 75 percent test that you don't have to provide these units.

MS. ANDERSON: I need to ask you to go ahead and finish up.

MR. WRIGHT: Yes, ma'am. That's about it. Okay.

MS. ANDERSON: Are there questions for Mr. Wright? Mr. Frank Pollacio. Now, I haven't imposed a time limit today. I don't know if that's a good thing or a bad thing. Let's keep it moving.

We are not planning to take a lunch break today

because we think we can get through this expeditiously.  
Thank you, sir, for being here.

MR. POLLACIO: That's quite ambitious. This is a difficult topic, and I understand that even in discussion, there's a number of issues that relate to specific definitions and the definitions, of course, have meaning after that.

I'm going to try to stick to a script that I wrote and I'll add embellishments as we go along.

Thank you for the opportunity to talk to you today.

The topic I would like to talk to you about is the consistency with the QAP and the applications to the rules and laws and codes that are referenced specifically within the 504.

As you know, the nondiscrimination requirements contained within the Rehabilitation Act of 1973 became more focused after the Sunset Review, Senate Bill 322 and 2306.

The language first surfaced around 2001 and then was reflected in the 2002 QAP. The language has appeared in all of the QAP's since that time and is consistent within the 2004 QAP, since the sections, as previously read in the type 3A Document Certification

certifications is consistent with the original document, as issued in 2004.

We agree with John Wright's comments and his comments directed to the definitions of rehabilitation, alteration, and repair, and the distinct differences between these items.

Clearly, from the redevelopment position of the aging stock of housing facilities, the authors of the 504 and the Fair Housing Act understood that the inducement of a consistent language and definition for both documents would be the only fair and equitable way to administrate older property that would become subject to and in need of repairs to maintain their current affordable housing status and their current viability.

It is with that definition that the imposition of additional requirements is not fair and is not consistent with the original authorship of the federal documents that we are citing.

As a design architect and professional, we are required to review building codes, guidelines, design standards, and from these, we are required to prescribe solutions, accommodations both in text and in drawing format.

From this process, we review and look it and we

look through a consistency within our own trade, within our own professions that follows a consistent line of thought.

Let me describe this consistency for you in a recent project that I have been involved with as the design architect. This project was above the bar, so to speak, and it did require the removal of all the walls within the facility. From that point, the underwriters understood that there was a complete replacement. We told people within the local cities understood that there was a complete replacement.

The reviewers that TDHCA has hired for their individual reviews understood complete replacement would trigger -- would activate her applications under new construction for the 504. And it wouldn't require the alterations or the implications for the 5 percent, 2 percent, etc.

To be consistent, we are now talking of something that is as if you were below the bar. We are talking about a repair. We are talking about removing carpet and restoring a preservation of the unit.

The language that is consistent in the 504 and consistent with the city code officials, consistent with the plan reviewers, such as ARCON and the underwriter, is

that the first comment is if you do not move the walls and you are only doing repair, you are left alone.

We go to the City of San Antonio. We talked with City of San Antonio, their first comment is don't move the walls. We can put you under what we call a miscellaneous permit and you're free to go on with construction.

Don't change the UL assemblies. Don't modify it and you will fall under a category that is clear for the intent of repair.

Our proposed QAP contains several problems and conflicts which some language is a broad-brush coverage of certain items and the Board and the staff have continued to look for design professionals, such as John Wright, who is well respected among staff, to help, add, and clarify some of these definitions.

We find that not only through John and myself as architects, we find this language consistent for building code officials through the underwriters who have written loans through the paid personnel that TDHCA has hired to review this separately and independently that the first page says don't move the walls. Only do repairs. You do not have to go to the full extent of these modifications.

While it would be appropriate to conclude this talk and defer and request that TDHCA refer to specific content language contained in the QAP, contained in the 504, that says, we are in compliance by only facilitating repair.

I would want to make one additional point that Cynthia has made earlier. And it again brings up a more clouded issue about the intent of what TDHCA is asking for.

The properties that we have, and this particular property that is on the item for discussion is Pleasant Hills, currently has 8 percent of the units designated and designed for handicapped accessibility.

These units have, currently, the sinks, the lavatories, the toilets, the wider doors all in place right now that meet this criteria.

The criteria of this building was built in 1978. The only available design standard at that time for accessibility was actually the ANSI guidelines. UCF did not come into existence until 1980.

Are we really talking about a difference in semantic of language and intent?

MS. ANDERSON: I need to ask you to wrap up.

MR. POLLACIO: Okay. The difference, of

course, between ANSI and UCF would literally mean that we would have to move a wall as little as four inches. When we move a wall as little as four inches we trigger a cascade effect that we leave the repair intention and we move into a complete alteration that also triggers new construction.

And we ask that, and I know this is a difficult item to fully grasp. I think at one level, I think we talked about having you take this under advisement and review it, but the simple synopsis of what we're looking for is that the language of 504 remain intact for the intent of repair, for the consistent review and repair of preservation projects, with the consistent repair of the affordable aging housing stock.

Thank you.

MS. ANDERSON: Thank you sir. Paul Patierno.

MR. PATIERNO: I withhold my comments.

MS. ANDERSON: Derik Hart.

MR. HART: I withhold my comments.

MS. ANDERSON: Thank you. Questions to staff?

MR. GORDON: I have a question for Mr.

Wittmayer.

MR. WITTMAYER: Yes, sir.

MR. GORDON: The points that have been made

today about this sentence is whether or not we go beyond 504 in the QAP are probably pretty good because they're saying that if we go beyond, then how do you interpret it?

And this sentence seems to focus on the second sentence. It starts with "this includes that all development" and I guess the concern is it is probably not totally clear, in my view, that whether or not we intended to go beyond 504 or not.

And my concern is if we go beyond the 504 requirements, then how do you interpret that? Do you think that's a fair thought process in this?

MR. WITTMAYER: I think it's a fair thought process. Yes.

I would point out there is even further technical aspect to this. There's two definitions of alteration. There is one in the UFAS and there's a second one in the 24 CFR Part 8, which states that alteration means any change in a facility or its permanent fixtures or equipment.

It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts, and extraordinary repairs.

It does not include normal maintenance or

repairs, re-roofing, interior decoration, or changes to mechanical systems.

This is a highly complicated area and certainly there are degrees of accessibility. I wonder if rather than making kind of a blanket determination about if we're going to require the 5 and 2 percent and what standards we might put into this.

One option would be, as a gentleman suggested, maybe we should take this under advisement and take a look at the specific facts. That would be one option.

MR. GORDON: Right. And I think the points you're making right now is -- you're getting into some really complicated areas that I don't know if we want that kind of stuff in the QAP.

But I think it is something that is probably wise to look at before we make a decision because I think if we do make a decision on this, it's going to impact one way or the other a lot of other people other than this one project.

MS. ANDERSON: Absolutely. And we're in an environment where by some of our other policy actions were encouraging rehabilitation in this state.

And then we have this section of the QAP that appears to overreach Section 504. You know, we don't

learn about -- and it's been in there for three years. We don't learn about some of these things until somebody comes to us with an appeal or an amendment kind of situation.

And I can tell you, as this Board member, I never would have agreed to the language had I understood that the implication of it was to overreach Section 504.

If the Board determines that we want to take this under advisement, then we've got 30 days because it's got to be addressed in the 2005 QAP and we heard public comment from Mr. Shearer and Mr. Dunn about that this morning, where they are asking that the QAP accurately reflect the T's and C's of Section 504.

So I'm certainly no lawyer, but it looks to me like the consequence of the QAP language was to exceed the standards of 504, and I do not support that as a policy decision.

And I would not have supported it had I been smart enough to figure out in the 2002, 2003, or 2004 QAP that was what I was doing.

And so I am very concerned that we have a motion on the floor that's going to endorse that because --

MR. SALINAS: Well, the reason we have a motion

on the floor is because staff has recommended it.

MS. ANDERSON: Right. I know.

MR. SALINAS: It's very difficult for us when they can't get together.

And I can understand the builder moving the wall four inches and that makes it very hard for us -- for people to not to get together before they come to this meeting and then --

MS. ANDERSON: Staff sometimes has to make their recommendations cause they are following the letter of the law of the QAP.

MR. SALINAS: Now, I'm going to ask a question. Have they already done the repairs? In all honesty, have they done anything?

MS. ANDERSON: This deal was just awarded in July.

MR. SALINAS: Maybe they have done some repairs without the changes of --

MS. ANDERSON: Can staff answer that question quickly. Let's keep this moving, please.

The answer is no, Mayor, because the deal was just awarded in July. The credits were just awarded on July 30.

MR. SALINAS: Nothing has been done yet?

MR. POLLACIA: For this project that is under consideration, no.

MR. SALINAS: For the other projects?

MR. POLLACIA: For the other projects, yes, that are not under this consideration at this point.

MR. SALINAS: Okay.

MS. ANDERSON: So we have a practice of typically making the motions before we hear all the public comment and maybe we ought to sort of revise our Board meeting process and not make motions until after we hear public comment in the future.

And we can certainly give that a try and that would avoid this have motions -- we're getting really good at withdrawing motions today.

MR. BOGANY: I didn't say I was going to withdraw it.

MR. SALINAS: Who made the motion?

MR. BOGANY: I made the motion, and my attitude about this is that you were awarded a project. You should have read it. You read it. You got the project, and now you're going back in trying to alter it.

And if you had a problem with it in the beginning, you should have brought it in in the beginning when you knew what you wanted to do. You should have

called staff and said, "Hey. We're planning on just doing this. We've got a question about 504."

I have a problem about the aftermath. Being able to get into a project, then awarded a project, and then come back in and want to change.

Staff, did they get points based on this 5 percent and 2 percent?

MS. BOSTON: No, it's a threshold requirement.

MR. BOGANY: Okay. It's just a threshold requirement.

MS. ANDERSON: They're just asking for additional credits if we make them live up to the full -- no?

MS. BOSTON: I don't think they're asking for additional credits.

MR. GORDON: I think they're asking for clarification.

MS. ANDERSON: Well, this says in your Board book, that you all put together for us, that recommendations that credits remain at the same level as originally allocated.

So where did that come from? Let's everybody sit down, please.

MS. BOSTON: The same level as originally

allocated. So they're not requesting more.

MS. ANDERSON: But we're through with public comment on this topic. I'm sorry.

MS. BOSTON: It says they're requesting the same as originally allocated, which means they're not requesting more.

MS. ANDERSON: It says that's your recommendation, Brooke.

MS. BOSTON: Right.

MS. ANDERSON: So all the applicant was requesting is clarification on whether or not they have to comply with Section 504 requirements for new construction?

MS. BOSTON: That's my understanding.

MS. ANDERSON: Let's understand what the motion before the Board. What it really is.

MS. CARRINGTON: It is my understanding that what they were requesting was a waiver of the Section 504 requirement -- not being required to do the 5 percent and the 2 percent.

MR. SALINAS: On the repairs?

MS. CARRINGTON: Yes, sir.

MR. SALINAS: But they already have more than 5 percent and 2 percent on the rest of the apartments. Right?

MS. CARRINGTON: I heard that in testimony earlier. Yes.

MR. SALINAS: Because I heard it and if they are already meeting the 5 and 2, I don't see a problem. No?

MR. GORDON: Well, I think --

MR. BOGANY: I don't see a problem if they've already met the 5 and 2 now.

MR. SALINAS: That's what I heard. I don't know who said that. I heard it from somebody.

MS. ANDERSON: Mr. Wright or -- I'm not asking for your testimony, guys. A Board member has to ask you a question and -- okay.

MR. SALINAS: But I heard that.

MS. ANDERSON: But it's one of them that said the 8 percent number.

MR. SALINAS: That they were meeting over the 5 and the median 8 and the 2 and I think that meets that 504.

I think that's what they're trying to tell us.

MR. GORDON: I think what they're saying is they don't have to comply with the 504 because they don't hit the 75 percent threshold.

MR. SALINAS: Because they already have it.

Right?

MR. GORDON: I think they don't hit the 75. They're not subject to -- they comply with the 504 rules, as 504 is written, and they don't have to comply with them because they don't hit the 75 percent rehabilitation threshold.

They still have access or whatever they have. Technically, they are complying with 504, which is in our QAP.

MR. BOGANY: That's what I heard.

MS. ANDERSON: Ms. Boston, would you like to help us here?

MS. BOSTON: Well, I think the question you asked, Were they asking for more credits or not?

In their original request, they were not. They were just asking that they not be required to have to do the additional 5 and 2. That basically they would just do 504.

MS. ANDERSON: Okay.

MS. BOSTON: We have gotten a supplemental letter since then that outlines for us what the costs would be.

In the letter it actually states that there is additional cost, but the owner intends to bear whatever

costs are necessary to comply with TDHCA rules.

So we wouldn't give them any increase in credits and we can't.

MR. SALINAS: Can we consider that?

MS. ANDERSON: We have a motion on the floor. Sir?

MR. BOGANY: I'd like to find out are they meeting that 8 percent that is required.

MS. ANDERSON: Would one witness come up and address this 8 percent question that we think we heard? No. Witness.

MR. SALINAS: I think that --

MS. BAST: Hopefully, I can clarify this. These three properties do currently have accessible units -- mobility accessible units. However, they were designed under previous standards.

So if you say that we have to use 504 standards for these units, which we believe, as was previously testified to, were outside of the 504 requirements.

If you say you have to use 504 standards for these units, then that gets into Mr. Pollacio's testimony about the fact that we would have to move walls four inches.

When you move walls, you get into abatement and

all sorts of other things and that's the problem that we have.

We're not trying to confuse you by saying we already have accessible units. What we're trying to say there is we're not trying to avoid accessibility.

What we're trying to do is get the Department to clarify what it means to comply with the requirements of 504 for purposes of this kind of rehabilitation.

Mr. Bogany, in response to your earlier concern, the owner really thought that we were complying with the requirements of 504. That's why this is being brought up now because they signed a certification that they thought they were complying with the requirements of 504 and the requirements of 504, we believe say you don't have to meet the new construction standards.

Does that answer --

MR. GORDON: So you are saying a certification that you qualify under -- you're satisfying the 504 as it's drafted.

MS. BAST: Correct.

MR. GORDON: Okay.

MR. SALINAS: That's what I heard.

MS. BAST: I'm asking the Department not impose something above and beyond 504.

MR. GORDON: Right. Exactly.

MR. SALINAS: Exactly. That's right.

MS. ANDERSON: Any other questions of MS. Bast or anybody else?

MR. GORDON: So what's the motion? Is there --

MS. ANDERSON: We have a motion on the floor to support the staff's recommendation and it has been seconded, I think, by the Mayor. Right? You seconded Mr. Bogany's motion?

MR. SALINAS: Yes.

MS. ANDERSON: Any more discussion? Hearing none --

MR. GORDON: Yes. I have discussion. I really think that on the second point on, we really ought to think about the second item, because if we approve this motion, then we are saying that we go beyond 504 and I think we really need to be careful because we're not telling them how far they have to go or what they have to do.

As it's been testified today, and if our policy is to go beyond 504, then I think we need to be very clear how much they have to do it. And I'll be in favor of that but let's be fair and be clear about it. So --

MR. BOGANY: I withdraw my motion.

MR. SALINAS: I agree. I withdraw my motion. I think I'm very clear about what they said. As long as they meet the 504.

MR. GORDON: They are satisfying the 504, I think in this case. And I think that's in our underlying statute, under 2306, they have to satisfy 504. And I'm in favor of if we come up with guidelines going beyond that, but let's be very clear.

MS. ANDERSON: We have no motion on the floor at this moment.

MR. GORDON: So I have a motion that we approve item 1, the first item, which would be the insulated windows, storm windows and a motion that we hold off anything on item 2 until next meeting.

MS. ANDERSON: I have an amendment to that. That we also -- I have amendment to your motion that says we go ahead and grant their request based on their stipulation that they comply with Section 504 and that we not expect them to exceed compliance with 504, so that we don't support staff's recommendation on item 2.

Is that clear to anybody?

(General laughter.)

MR. SALINAS: Is that okay with you? The amendment?

MR. GORDON: I need to make sure I understand.

MS. ANDERSON: I'm saying go ahead and take it and go ahead and indicate that they comply with Section 504. That's what the federal -- please put your hand down, Suzanne.

They comply with -- my position is we ought to decline staff's recommendation and requirement on item 2 that they have to have 5 percent and 2 percent. What they have to do is comply with Section 504. And that's my amendment, but it doesn't have a second though

MR. BOGANY: I second.

MR. GORDON: I mean, that's fine with me. We're not going to go beyond 504 then.

MR. SALINAS: As long we don't go beyond 504 and they meet that 504, staff should be in place there.

MR. GORDON: Okay. That's fine with me.

MR. SALINAS: I'll second the motion then.

MS. ANDERSON: Okay. So we have to vote on the amendment first. Everybody understand the amendment and are ready to vote.

All in favor of the amendment, say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The amendment carries. Now, is there discussion on the main motion? Hearing none, I assume we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. We were not and still not, at this late hour, planning to take a lunch break. We're going to take like a ten-minute break. Okay? Comfort break.

(Whereupon, a brief recess was taken.)

MS. CARRINGTON: The next item for the Board's consideration is Whitefield Place Apartments. This is the next item in your Board book and the facts on this development are the same as the Pleasant Hill Apartments.

They are making the same two requests. Staff recommendation is the same as it was on Pleasant Hill Apartments.

MR. BOGANY: So move.

MR. SALINAS: Gordon would have to --

MR. BOGANY: Can we make the same recommendation that we applied for the others?

MR. GORDON: Yes. On the item 2, the 5 percent

and 2 percent? Yes. I think they would be the same motion on that.

MR. SALINAS: We're taking Whitefield --

MS. CARRINGTON: Yes, sir. Whitefield Place Apartments in San Antonio. Same facts as Pleasant Hill Apartments.

MR. BOGANY: So do we have to bring up a motion? Can we just use the same motion?

MR. GORDON: I think the motion is that we go on staff's recommendation on #1 and on #2 we do not follow staff's recommendation and we find that they don't have to comply with the 5 percent and the 2 percent because they've satisfied 504.

MR. SALINAS: Second.

MS. ANDERSON: Discussion? I assume we're ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The last one for the Board's consideration, Tamarac Pines Apartments in the Woodlands.

Again, the same set of circumstances with the

two items that they are requesting amendments on, as the previous two -- as Pleasant Hill and Whitefield Place.

MR. GORDON: Okay. We have a motion that we go along with staff's recommendation on 1 and do not follow staff recommendation on 2, as far as the 5 percent and 2 percent because this project qualifies under 504.

MR. BOGANY: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: Next item for the Board's consideration is issuing a commitment notice for a rural rescue transaction.

The Board approved the policy in May of '04 and we finally have an application that has worked its way through the process.

You will remember this is a process that the Board approved to be able to work with US Rural Development in properties that are experiencing either foreclosure or loan acceleration, so this is our first

one. It's 56 units. It is Mountview Apartments, and it is located in Alpine, Texas. And this is a recommendation of the staff that it be awarded \$62,316 in tax credits.

To remind the Board, this will come out of the 2005 allocation of tax credits. This particular development is located in Region 13, and it will also come out of the USDA portion of that region.

And staff is recommending the allocation of \$62,313, 2005 forward commitment.

MR. SALINAS: I move for approval.

MR. BOGANY: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item, 2d, is the interagency contract between TDHCA and the Office of Rural Community Affairs regarding the joint administration of any set-aside for rural areas in the Housing Tax Credit Program.

This is required by the Department's statute

2306. This is a document that you all have approved for two years prior. The current contract, or the current MOU, did expire on August 31 of this year.

I think the most substantive change on this MOU is that instead of being a one-year MOU, staff is recommending that this contract shall commence on September 1, 2004 and shall terminate on August 31, 2007.

And staff is recommending the approval of this memorandum of understanding with the Office of Rural Community Affairs.

MR. BOGANY: So move.

MR. SALINAS: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: Item 2e, Outside Counsel Contracts for our Tax Credit Counsel.

Outside Counsel Contracts are subject to approval of the Attorney General's office and the AG's office does require that outside counsel services be

advertised at least every two years through a request for proposal.

For at least the last four years, and maybe longer than that, the Department has had contract with Hawkins, Delafield, & Wood, a law firm in Washington, D.C. with the principal that we have used being Tony Freedman -- Anthony Freedman, who has been involved in the Tax Credit Program since the beginning.

We did issue an RFP. We had three proposals. We had a proposal from Hawkins, Delafield, & Wood. We had a proposal from Kutak Rock and we also had a proposal from a firm, Cantey & Hanger LLP.

Staff is recommending that we engage two law firms, Hawkins, Delafield, & Wood and Kutak Rock as tax counsel for the Department. And these would be under one-year contracts with options for the executive director to renew one or both for one year.

And our thought about this is that we would like to develop a relationship and work with another law firm. We have been happy with the work that Hawkins, Delafield, & Wood has done for us and the idea is that some requests for information, some opinions would go to one firm. Others would go to Kutak Rock.

Kutak does represent six or eight other state

housing finance agencies in the country, in both their bond work and their tax credit work. And we were interested in forming a relationship with them.

So we are asking for approval of the execution of two contracts for tax credit counsel. It would not be twice the money. It's still under the same amount of money that we have budgeted for professional services.

We would just be splitting those services between these two law firms.

MR. BOGANY: So move.

MR. GORDON: Second.

MS. ANDERSON: Discussion?

MR. SALINAS: Do you have the hourly rate on both? It's quite a difference.

MS. CARRINGTON: Yes, sir. We do have the hourly rates, actually, in your materials for each of the firms that proposed for the principal.

MR. SALINAS: 440 and 295, you get one.

MS. CARRINGTON: The Hawkins, with Tony Freedman, yes. I think the rate that they proposed is 440 and the discounted rate for Kutak for their primary person was \$295.

So, yes, sir. Indeed there is a difference.

MR. SALINAS: There's a big difference. If

that's okay with our legal counsel, the difference in hours --

My understanding is why would you want to pay someone \$440 when you have another firm charging you \$295. Somebody tell me why the difference.

MR. WITTMAYER: We pay twice the hourly rate and they get the work done in half the time.

MR. SALINAS: But that's not the most advantageous for -- so we maybe should only use one firm. Right?

MR. GORDON: If it was me, I would -- different firms have different expertise and abilities to handle matters.

MR. SALINAS: Okay. Then somebody needs to tell me that.

MS. CARRINGTON: Yes, sir. And I think that is indeed the case, Mayor, that depending on what the question was and depending on what kind of legal advice we would need, would we go to a law firm in Washington, D.C. that's been involved in the program since the beginning? Would we go to Kutak that has a lot of experience with state housing finance agencies?

MR. SALINAS: Okay. As long as everybody knows we asked the question of the differences there. We just

didn't let it go by.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item for the Board's consideration is tab 3a, and this is the discussion on the approval of the multifamily bond program inducement resolutions for the 2005 Private Activity Volume Cap.

Behind tab 3a, we have provided you the number of applications we received. We received a total of 26 applications. Two of those have been withdrawn.

We have four tabs with information behind each of those tabs. The first is an overview of the 2005 Private Activity Bond Program.

Tab 2 is a summary of the applications so that you can see who the developer is, where they would be located, and how much they are requesting in bond authority.

Tab 3 is the inducement resolution and that inducement resolution also includes a detail of each of

the developments.

And then tab 4 is a prequalification analysis worksheet.

The deadline to apply to TDHCA for 2005 Reservation of Private Activity Bonds was August 31 of this year.

The state of Texas actually receives \$1.7 billion in volume cap authority. You will remember that in our legislation last year, we are required to score and rank the transactions. And we have scored and ranked these transactions.

These are the ones that we are recommending that will be submitted to the Bond Review Board and that lottery is a little bit later this year. It's actually on November the 4th, as opposed to being held in October.

And we have provided for you, beginning on page 4 of 5, there are eight applications that the staff is not recommending for inducement, so eight out of the 24, total of 26 applications but two of them being withdrawn --

Eight of the applications the staff -- are not being recommended for inducement because the first four missed the deadline to mail the notification to the city and county clerks. That deadline was August 9, and they did not mail that notification by August 9. That is true

for Willow Creek Apartments, Evergreen at Pecan Hollow, Evergreen at Rowlett, and Evergreen at Murphy.

So those four are all in the same category. The next four the staff is not recommending. These four applicants were sent two deficiency notices by staff and had an opportunity to cure these deficiency notices.

They were not cured. So staff is not recommending an inducement on these four, so eight that we're not recommending inducements on.

I will provide information and I will tell the Board that there's a possibility that you all will see -- should you choose not to induce the eight that the staff is not recommending because of the deficiencies or because of missing the deadline, these developments will have an opportunity to actually apply back to the Department and under a separate resolution, could go into 2005.

They would not go into the lottery in 2005 but they would do something called, a term that we have developed around here, called sitting at the bottom of the waiting list.

So they wouldn't go into the lottery that will happen with the Bond Review Board on November 4, but these eight applications will have an opportunity to come back to the Department to reapply for 2005 volume cap.

So as you consider and deliberate on this, we will need you to be very specific in your motion and in your recommendation of which ones you are including for inducement and which ones you are not recommending for inducement.

MR. BOGANY: I have a question.

MS. CARRINGTON: Yes, sir.

MR. BOGANY: So if we made a motion with staff recommendation, is that not enough, or do we need to go down to each one?

MR. SALINAS: Which ones are the ones that you are recommending?

MS. CARRINGTON: If you made a motion that was consistent with staff's recommendation, that would be sufficient.

MR. SALINAS: So which ones would be the ones that the staff is recommending out of the 26?

MS. CARRINGTON: Well, there's actually 24 that we are recommending because two were withdrawn.

MR. SALINAS: Which ones are the ones that are withdrawn?

MR. GORDON: Friendship Place.

MS. CARRINGTON: That is behind --

MS. ANDERSON: It's on page 2 of the addendum.

MS. CARRINGTON: Tab 2. And the two that are withdrawn, Friendship Place, which is located in Fredericksburg in Gillespie County and the second one that was withdrawn was Arbor Bend Villas in Fort Worth in Tarrant County.

So those two are withdrawn.

MR. BOGANY: I'd like to make a recommendation we approve staff's recommendation on those that they recommended.

MR. GORDON: Second.

MS. ANDERSON: So just to clarify, the motion is to approve the inducement resolution as presented by staff, excluding Willow Creek, Evergreen at Pecan Hollow, Evergreen at Rowlett, Evergreen at Murphy, Meadow Oaks Estates, Woodland Park Estate, Rosemont at Frisco, and Malloy Meadows.

MR. BOGANY: Yes.

MS. ANDERSON: Do we have a second?

MR. SALINAS: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. And it just occurred to me, Mr. Mark Bower?

MR. BOWER: Yes, ma'am?

MS. ANDERSON: I didn't give you the opportunity to speak, and that is my fault. Would you like to come up here? Please. I apologize. I should have. That is my mistake and I got ahead of my headlights.

MR. BOWER: My name is Mark Bower. I'm with Senosa Developers, representing Willow Creek.

Just wanted to -- I know that we missed this technical August 9 deadline. We're new developing here in Texas and just missed it and really have no excuse for that.

But what we did, knowing the intent of it, we immediately called the city and county clerks and got a verbal response but basically they don't handle this issue anyhow.

The intent was to find out neighborhood organization issues, so they don't even deal with that. They sent us to the Mayor's office in Houston. This is a Harris County project.

They sent us to the Mayor's office in houston.

They directed us on how to get a hold of the neighborhood organizations and we immediately got that list and sent them the notifications -- the process to start that.

We did miss that deadline. We have tried to comply with the spirit of it. Our attorney is Coach Rose, one of our attorneys with Coach Rose has told us that they have letters of support on the way.

I wasn't able to get them by today but are from Senator John Whitmire and Congressman Shiela Jackson Lee supporting our projects and saying that they are needed in their areas and they are in full support and I hope to get that to staff or however the process is as soon as I get them here. Hopefully by tomorrow.

Just asking the same thing the other guy asked. The Board considering inducing us and putting us at the bottom of the list or however you do it so we can get the project in.

MS. ANDERSON: I want to welcome you to the Housing Tax Credit, the Private Activity Bond Program in Texas. Welcome.

MR. BOWER: Thank you.

MS. ANDERSON: And I do apologize for not hearing this comment before this motion was made.

And we did hear the comment from the gentleman

earlier about his three developments that have the same issue about they missed the deadline.

As Ms. Carrington explained, they can come in under another resolution that would be at the bottom of the waiting list, but because I didn't -- we didn't hear Mr. Bower before we had that motion and voted on it, I want to ask the Board members if you want to revisit that motion.

Hearing nothing, I guess not. But I hope you will apply with these seven other developments who may choose to apply to be on the bottom of the waiting list.

MR. BOWER: Certainly will.

MS. ANDERSON: Thank you. I think we're ready for 3d now.

MS. CARRINGTON: I would like to read into the record, I did not read in the resolution number and that resolution number for 3a was Resolution 0480.

3b -- this is for 13 applications the Department has received for 2004 private activity volume cap authority that is basically left over authority at the Bond Review board.

On August 15, all of the subceilings collapsed, so that there are no priorities within the various subceilings, i.e. no single-family, no student loans, no

multifamily.

It all becomes one large pot of money, and then it goes by lottery number. Basically what has happened over at the Bond Review Board this year is that there are many issuers who have not been able to use their bond cap authority.

So that bond cap authority has come back to the bond review board and so what we did was put a notice on our website that said the Department would accept applications for remaining authority in 2004. And those applications were due to the Department on September 23.

And we are presenting for you today 13 applications that, again as we said, basically will sit at the bottom of the waiting list in case there is sufficient -- or there's any authority that comes up at the Bond Review Board.

As of August 15th, there was about \$500 million. However, there was a student loan application I think -- was it student loans, Robbye, that took up about \$73 million. So there certainly is no guarantee that just because we go over there, that any of these developments will receive an allocation.

But if we're not waiting, then certainly we won't receive an allocation.

So actually there were 13 that were applied to the Department and there is one of the 13, Sphinx at Chenault, did not meet the notification threshold and is not being recommended for inducement at this time.

So there's actually 12 of the 13 that is being recommended for inducement.

MR. BOGANY: I move that we comply with staff's recommendation and resolution 04-81.

MR. GORDON: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: Next action item for the Board is consideration on master servicer for our Single Family Mortgage Revenue Bond Program.

The Department did an RFP in August of 2004. We received three proposals for review and consideration.

Those proposals were received from City Mortgage, Inc., Countrywide Home Loans, Inc., and US Bank Home Mortgage.

Based upon staff's review and the criteria, we

are recommending that Countrywide Home Loans be selected as master servicer for our single family programs for a period of two years.

This is for our Single Family Bond Program and we are recommending Countrywide because of their favorable pricing of the service release premium, their upfront service premium, along with their expertise in servicing and administering mortgage revenue bond programs.

And especially one of the other keys for Countrywide is that they have 85 retail branches around the state. And that of course is a large benefit to us as they are lenders in our Single Family Mortgage Revenue Bond Program.

So we are asking that the Board approve this two-year contract with Countrywide Home Loans, Inc.

MR. BOGANY: So move.

MR. SALINAS: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The next item for the Board's consideration is a report and it is the Fourth Quarter Investment Report and that would be Bill Dally who is our Chief of Agency Administration.

MR. DALLY: Good afternoon, Board members. I'm going to cut to a very brief report.

We've got \$1.35 billion in this portfolio. We had five new multifamily issues in the 4th quarter for about \$64 million.

The portfolio is 50 percent mortgage bank securities, 34 percent guaranteed investment contracts and investment agreements, 10 percent repurchase agreements, and 6 percent others.

The one main number I would like to bring the Board's attention for focus is we have \$51,601,000 in purchases of mortgage-backed securities. That is a ramp up in our purchase of loans out of this program. And it is more than we had in our previous two quarters.

So our efforts to buy down rates and get our money moving is doing well. And the other thing I would point out to you is the market value increased by \$11.7 million this particular quarter and I'm done. Take questions.

MR. BOGANY: I'd like to make a motion that we

approve the investment report.

MR. GORDON: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries. Thank you, Mr. Dally.

MR. DALLY: Thank you.

MS. CARRINGTON: Item 6 for the Board's consideration, there are four appeals related to the award of HOME funds that the Department made in July of this year.

And the first one for your consideration is an appeal from Fortura Communities. And they are requesting an additional 25 points related to the scoring on their application.

They had applied for homebuyer assistance, HBA, and as a requirement of the homebuyer assistance, they were required to provide evidence of eligible match, for a percentage up to 25 percent of the requested project funds.

And after reviewing their application, there is no letter of commitment from international bank shares, which was supplied behind one of the tabs. Staff did not -- it's staff's recommendation that these additional 25 points not be awarded.

They had actually appealed 75 points, and there were 50 points that staff did award, but these additional 25 points staff believes should not be awarded because they did not meet the requirements of the program match and the supporting documentation that was also required to meet this match.

So staff is recommending that the Board deny the award of 25 additional points for the Fortura Communities application.

MR. BOGANY: So move.

MR. GORDON: Second.

MS. ANDERSON: We have one person to give public comment on this. Ms. Phyllis Vernon.

MS. VERNON: Good afternoon. I'm Phyllis Vernon, economic development coordinator with Fortura Communities in Uvalde.

We represent five counties in our service area, which are Dimmitt, LaSalle, Maverick, Uvalde, and Zavala Counties.

One of the things I wanted to talk with you about just a little bit today in the narrative of the application, it says IBC was referred to as the International Bank Shares.

The letter that we received from the principals of IBC Bank -- International Bank Shares is the holding company for IBC. It is kind of a small technicality and I included, and you have it in your information, that all the international banks of commerce are held under International Bank Shares.

And at that particular time, I was instructed I should just use International Bank of Commerce versus International Bank Shares. And I would certainly hate for the very, very low income families of Maverick County in the colonia areas, to be penalized because of a very small technicality like that.

In the letter that IBC Bank wrote, they stated that they would provide 60 percent of the first lien permanent financing, and in the letter to the executive officer of Fortura Communities, she included the amount of what was the 40 percent that we were committing with our empowerment zone funds that we would be receiving.

I am requesting that we don't penalize the families of Maverick County because of maybe a little bit

of clarification in language or a technicality.

MR. BOGANY: Ms. Carrington, I have a question. I'm hearing a technicality. Is it -- what was the real issue? It looks like they've got the financing.

MS. CARRINGTON: I'd like to ask the Single Family staff to come up and address this, because there were a couple of tabs in the application that required exhibits, and the tab that required the exhibit, I understand, was not there and did not meet the requirements. So Eric Pike, director of Single Family.

MR. PIKE: Good afternoon. I am Eric Pike with Single Family. I will attempt to answer your question.

My understanding is that the letter that they're speaking in reference to was submitted in the application as a participating lender letter and not under the actual match tab.

And also there's -- as stated in the writeup, the letter that was submitted for match did not indicate a particular rate that the bank was willing to offer for the loans that it was going to be making under this program.

And so consequently the savings of a lower interest rate could not be identified.

MR. GORDON: Was the letter submitted? No?

MR. PIKE: There was a letter submitted from

IBC, but it did not identify a dollar amount or an interest rate. It's in your packet.

MS. ANDERSON: It's just this April 16 letter?

MR. PIKE: Correct.

MR. GORDON: So there really wasn't an issue about the name of the bank or anything like that.

MR. PIKE: I think what Phyllis is referring to is there was a letter from the International Bank Shares, but once again, the letter was submitted under the section that identified them as a participating lender.

MS. ANDERSON: So we don't really, in this letter, a commitment for an interest rate.

MR. PIKE: Correct.

MS. ANDERSON: We have a support letter.

MR. PIKE: It's a support letter is how I would term it.

MR. SALINAS: But they don't have a support amount of money for the --

MR. PIKE: In order to determine match under the HOME Program, we have to have some level of commitment dollar amount.

If you're going to offer a below market interest rate mortgage loan, then there has to be the ability to calculate what those savings will be that that

lender is willing to offer and ours would be included as match.

MR. SALINAS: Does she understand that?

MR. PIKE: We met with Phyllis. I'm sorry, Phyllis. I don't know your last name.

MS. VERNON: Vernon.

MR. PIKE: Vernon. She did come up and meet with us about her application and as MS. Carrington had stated, we went through it with her and we did identify some points that we were able to award to them.

But because we felt that we were in error on those but the issue that she's speaking to specifically today, we did go through it with her and we feel like we're trying to enforce the rules of the program and obviously be consistent and use the same consistency that we use with all of our other applicants.

MR. SALINAS: Without the 25 points, she would not be in the running for the award?

MR. PIKE: That's correct.

MR. SALINAS: How can she get back in?

MR. PIKE: Well, another suggestion -- there would be no recourse for her for the 2004 HOME funding cycle unless the Board decides to approve this appeal.

What we suggested to her, in our meeting with

her, was that we are going to have available some funds later this year through the American Dream Down Payment Initiative and we're going to have approximately \$6 million available.

And what I had tried to do with any applicant who didn't compete successfully, is to encourage them to reapply when we have those funds available.

Once again, the American Dream Down Payment Initiative is for homebuyer's assistance and that was my suggestion and we would certainly be willing to work with them and to provide the technical assistance that they may need to complete a viable and fundable application.

MR. SALINAS: I would think that we would need to help those five counties. Whatever you can do after this, I know that it's impossible to give her the 25 points.

MR. PIKE: Yes, sir. Our homebuyer assistance program is one of our more under-subscribed programs in the HOME program and so my thought is there should be sufficient funds available to fund most of the applications that we received in this last round and were not able to do so, if the applicants will resubmit an application.

MR. SALINAS: Okay.

MS. ANDERSON: There's a motion on the floor to uphold staff's recommendation to deny the appeal. It's been seconded.

MR. BOGANY: Yes.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MS. CARRINGTON: The second appeal for the Board's consideration is an appeal from Zavala County, also in the HOME Program.

The activity that they were applying for was Owner-Occupied. This is rehabilitation of structures that are owned by families or individuals.

We had 191 applications in this category for their HOME applications. We actually funded 62 of them, so you can see that this was a very oversubscribed activity. I think Owner-Occupied is probably the most oversubscribed in any activity we do in the HOME Program.

And the issue here is that all of the applicants are required to submit three letters from local

contractors that indicate that they would be willing to do the work on the particular homes in the areas.

And what we require is that the contractor's letters have letterhead on them, with an address on that because our program requirements require that they either be located in the service area where the HOME funds are going to be used or if there is not a contractor in the service area, then a certification that there's not a contractor in the service area.

So perhaps a little bit technical. There were 15 points that were available on this item. So we were looking for three letters from local contractors that met all of the various requirements.

In the case of Zavala County, they actually submitted four letters to us from contractors. Two of those letters met the requirements, so they received ten points for those two letters.

They are asking for the additional five points to be awarded back to them and staff because the other two contractor letters did not have any letterhead, did not have an address, did not have a certification that they would be serving homes within this service area, then staff is not recommending that this additional five points be awarded.

MR. SALINAS: Is anybody here from Zavala County?

MS. ANDERSON: Yes. Judge Luna?

MR. LUNA: Yes, ma'am. Good afternoon. My name is Joe Luna. I am the county judge of Zavala County.

This is our consultant, Mr. Ken Coigent, and ladies and gentlemen, we have 14 colonias in Zavala County.

We are appealing because we feel that the, if not the intent, the spirit of the rule was complied with.

The contractors wrote the letters in the commissioner's courtroom. He did not have his letterhead because he was not at his office in Batesville.

I know the man. I know that he is from Zavala County. What he did state in the letter and this is where I say that he complied, if not with the intent, but the spirit of the rule, and that is he stated in his letter when he wrote it there, that he is located in Zavala.

He is a local contractor. And so because he added those words local contractor, meaning that he is from Zavala county, locally, we feel that he complied with the intent of the rule. And so we ask and we pray that you award the five points.

We were ranked second. Had we gotten the five

points, we would have been ranked second out of the 162 people in the regions of those applicants that applied. And without those points, we didn't make the cut.

So we ask that we are awarded those five points to be able to serve those people in those colonias.

MR. SALINAS: Is that because of a letterhead?

MS. CARRINGTON: Yes, sir. And staff was consistent in that interpretation.

MS. ANDERSON: Do you have a comment?

MR. LUNA: No. That's it.

MS. ANDERSON: You might just sit in front just in case somebody has a question.

Mr. Pike, do you have a letter?

MR. PIKE: Yes.

MS. ANDERSON: And Mr. Pike, I have a question. Did I hear you correctly? The OCC was undersubscribed?

MR. PIKE: No ma'am. The homebuyer's assistance activity, which is HBA, is typically undersubscribed.

MS. ANDERSON: Owner-occupied we used our full allocation.

MR. PIKE: Absolutely. Owner-occupied is overwhelmingly our most oversubscribed program.

If my memory serves me correctly, about 78

percent of our funds for this last funding cycle did go to owner-occupied.

I also wanted to mention the letter that I believe that's in question, Mr. Carrera provided it and once again, it did not include an address and in order to determine if the contractor was located in the service region, nor was it on letterhead.

MS. ANDERSON: And those were requirements in the NOFA?

MR. PIKE: Yes, ma'am.

MS. ANDERSON: Okay.

MR. PIKE: It's in the application guide and in the score sheets.

What it does is it -- the intention is that it --we try to encourage local participation with any uniform state service region and by having a letter on letterhead with an address, it enables us to determine if that contractor is local. Otherwise, we have no way of knowing if they're from the far reaches of the other part of the state.

MR. SALINAS: I'm going to make one statement. I think the county judge, you're the county judge from Zavala?

MR. LUNA: Yes.

MR. SALINAS: Will you attest that man is a contractor in Zavala county?

MR. LUNA: Absolutely.

MR. SALINAS: You know people voted for you there in Zavala County, and so you should be telling the truth. So I will take his word on that man being a contractor in the local Zavala County and for us not to give him five points simply because of the letterhead, especially in a county that represents those colonias areas.

And if they're interested in helping and trying to get people to own their homes, I just cannot possibly see that we're not going to allow them five points simply because of letterhead.

And I know there are requirements, but for the county judge to take his time to come here and spend the day with us and just to defend his county and tell us that contractor is a legitimate contractor -- I would understand not giving him the five points if nobody had showed up, but I'm sure that by him showing up here that means that there is interests and needs in that county.

MR. GORDON: Mayor, I would say, looking at the letter, it does say that the contractor is a local contractor and does work in Zavala County. And the letter

says that.

MR. SALINAS: Yes.

MS. ANDERSON: My difficulty with this is that I think that it's sort of a technical issue and this Board has to apply common sense, but a lot of the things we have are technical issues.

We have application guidelines and when we are oversubscribed in a program and we have more applicants who met all the guidelines than we have money, then I have a difficult time after the awards are made and the money has been allocated to see how we go back and make an exception, and I appreciate the judge being here, because we had more applicants who met all of the guidelines than we could even fund.

So now to reach down and fund someone who didn't meet all the guidelines, I think, is fundamentally unfair to all the rest of the people who met all the guidelines but didn't get funded because we didn't have enough money.

MR. SALINAS: I thought you said you had 78 percent?

MR. PIKE: Yes, sir. Approximately 78 percent of our funds did go to the owner-occupied activity.

MS. Carrington, you might want to mention the

number of applications.

MS. CARRINGTON: Yes. 191 applications in this activity and we had sufficient funds to fund 62. So it was very oversubscribed and we did have 62 applications who did meet all of our requirements.

MR. SALINAS: And those have already been funded?

MS. CARRINGTON: Yes, sir, in July.

MR. BOGANY: In July. So if we went with this, does that mean one of the 62 will drop out? Or would this just be --

MS. CARRINGTON: No, sir. The source of funding would be from deobligated funds.

MR. SALINAS: That would be --

MR. BOGANY: People who didn't use their funds.

MS. ANDERSON: In prior years.

MR. SALINAS: Can we do that?

MS. CARRINGTON: One of the purposes of deobligated funds is to satisfy appeals. So, yes. It is an eligible activity under the deobligation policy.

MR. BOGANY: My thoughts are that I agree with Beth. We need to keep with the spirit of what we're trying to do but I also what our mission of this Department is which is to provide housing.

And you're in an area that really needs it and I'm keeping in my mind, we just had the other five counties that didn't meet that criteria. So that's money that didn't go to that general area and I would like to see us go ahead and go with that letter.

What if he just wrote his company's name on top of that blank letterhead? I mean, he could have just wrote his name. That's my letterhead; that's just how I do it.

And I would like to see us go ahead and award them the five points. Even though I do agree with Beth and that's why I was wondering if we were kicking somebody else out for this and I think I would go along with Beth's thoughts on that.

But I wouldn't want to kick anybody out.

MS. ANDERSON: We need a motion.

MR. SALINAS: I would like to move that we go ahead and award him the appeal and give him the five points.

MR. BOGANY: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no?

No.

Motion carries.

MS. CARRINGTON: The next item for your consideration is a similar set of circumstances. This is the city of Lorenzo. The activity they were applying for was owner-occupied. Same activity as the previous.

Again, we were very oversubscribed. 191 applications; we funded 62 of them. They did receive ten out of 15 points for local contractor letters.

There was one local contractor letter that did not satisfy the requirements. There was no address and they did not state that they were headquartered in the region.

And for that reason, staff is not recommending that the additional five points be awarded to the City of Lorenzo.

MS. ANDERSON: I have public comment on this if you would like to hear that before there's a motion. Mr. Bounds.

MR. BOUNDS: It's okay; I'm going to turn my public comment to Tres Davis.

MR. DAVIS: My name is Tres Davis. I'm vice president of Grant Works. We're the consulting company

that wrote the grant for the city.

And we did it for both Lorenzo and Ralls, so this will apply to both of them. And I'll be real quick because I know we're all ready to get out of here.

And what both cities submitted were three contractor letters. All of them were on letterhead. One of the contractor's does not have their address on their letterhead, but if you'll look at the front page of what I just handed you, this is what was provided by the Department and it clearly states to receive the points, letters must be on the contractor letterhead or include the contractor full name and address.

So the fact that those letters were on letterhead did actually suffice what the state was asking for and I think to be consistent, the rule should be applied the way it was written and not changed after the fact for convenience of staff.

I understand that it is difficult to know where the contractor is located if it's not included in their letterhead but that wasn't one of the requirements of the program.

And just for my own edification, I went in and put the contractor's name, followed by Texas, in a Google search. It took .6 seconds and it came up that they were

headquartered in Lubbock. So it wasn't difficult to find that was where they were located.

And so it did meet the technical requirement and with the five points, both of these cities, Lorenzo and Ralls, would have been funded.

MS. ANDERSON: In what county is Lorenzo?

MR. DAVIS: Crosby.

MS. ANDERSON: Which is the largest major metropolitan city is Lubbock? The Mayor is asking --we really need to move this meeting because we're about to lose a quorum.

Where is Lorenzo? What part of the state is it in?

MR. DAVIS: Panhandle.

MS. ANDERSON: Okay. Thank you.

MR. DAVIS: And the contractor is located in Lubbock which is in the same service region.

MS. ANDERSON: Questions of Mr. Davis?

MR. BOGANY: I'd like to move that we grant them their appeal.

MR. SALINAS: Second.

MS. ANDERSON: Mr. Bounds.

MR. BOUNDS: I just have some photos of some of our residents and reiterate that we, since you have passed

the motion, thank you very much.

I want to show you these if you just have a second to look at these. These individuals are in very much need of housing and this will help them very much in us being able to provide that. Thank you very much. Do you have any questions? The largest city in Crosby County is Ralls. We're 20 miles east of Lubbock.

MS. ANDERSON: Which is the next one we're going to hear. So there are two right next door to each other.

We have a motion on the floor to award the \$469,000 or whatever it is. Is there discussion on that motion? I have one. Is there discussion?

I just have one thing I feel like I have to say. I think we're on a very slippery slope granting these appeals when this was already oversubscribed. If we approve this, we've now given away \$1 million in deobligated home funds.

There's not an unlimited amount of these funds and I think the precedence that is being set here is ill-advised. Is there any other discussion?

MR. GORDON: Yes. Let's go ahead and discuss this. I'm reading the requirements here and it says to be considered for scoring, the letters must be on the

contractor's letterhead or include the contractor's full name and address.

MS. ANDERSON: Well, we've got a piece of letterhead that doesn't give us any indication -- technically, that's right. And we heard the witness say that but as a practical common sense matter, the staff has no clue where this contractor is from because it's not on the letterhead. We'll just vote and see what happens.

Are we ready to vote? All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no?

No.

Motion carries.

MS. CARRINGTON: The last one, the City of Falls, same set of circumstances.

MS. ANDERSON: I have Kelly Wing.

MR. WING: Appreciate your time. In opposition to what you said, Ms. Anderson, is that if you have to go by what is written, to me there is no interpretation of what was written.

It is basically written out this way and that's the way you have to do it. And so that's the difference between involved -- and I do appreciate your time and I do

know that HOME program for small towns, especially with Texas, is very important because we sell homes in Ralls between 20 and \$35 a square foot.

How can you get any type of building program going at all? I do appreciate your time. Thank you.

MS. ANDERSON: Questions?

MR. BOGANY: Move that we accept the appeal.

MR. SALINAS: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no?

No.

Motion carries.

Mr. Bogany, the next item is the audit report.

MR. BOGANY: Oh. I'm sorry. David, can you come and give us a 30-second brief audit report on the audit committee?

MR. GAINES: I'd just like to focus your attention on the annual audit plan that needs Board approval.

The committee discussed the plan this morning. A large portion of the plan relates to internal audit

facilitating its RP36 Executive Order Initiative regarding risk assessment, and that's the only action item we have.

We have the Board item in some other areas but I won't go into detail.

MR. BOGANY: I'd like to make a move that we approve the audit plan for 2005.

MR. SALINAS: Second.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GAINES: Thank you.

MR. BOGANY: I'd also like to take the time and thank David and the staff for RP36. You guys are doing a great job. I've heard that the Governor's going to use what you put together and use it for other state agencies and I just think for the time frame you were able to turn that around, we really do appreciate it. Thank you.

MR. GAINES: Thank you.

MR. GORDON: I'll second that.

MS. ANDERSON: At this point on the agenda, we

have executive session scheduled. The difficulty -- and it's a personal problem -- I have to leave to go to the airport in about seven minutes, do we want to go ahead and call an executive session?

MR. WITTMAYER: [inaudible].

MR. GORDON: Do we have other options that we can call it later or do we --

MR. WITTMAYER: We can do it next month.

MR. GORDON: It's up to you. We need --

MS. ANDERSON: Maybe I can --

MR. SALINAS: Let's go ahead and do it.

MS. ANDERSON: Okay. On this day, October 14, 2004, in regular meeting of the governing board of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board adjourned into a closed executive session, as evidenced by the following: the Board will begin its executive session today, October 14, 2004 at 2:25 p.m.

Subject matter of this executive session and deliberation is follow consultation with attorney, pursuant to 551.071 Texas Government Code concerning proposed 2005 Housing Tax Credit program, QAP, and rules, consultation with attorney pursuant to 551.071 Texas government code concerning pending or contemplated

litigation.

(Whereupon, at 2:25 p.m., the Board went into executive session.)

MS. ANDERSON: Agenda of an executive session of governing board of the TDHCA was properly authorized. The agenda was posted. Secretary of State's Office, seven days prior to meeting.

All members of the Board were present, with the exception of Kent Conine and Vidal Gonzales. And action taken, none. This is a true and correct record of the proceedings pursuant to the Texas Open Meetings Act.

Do I have a motion for adjournment?

MR. BOGANY: So move.

MR. GORDON: Second.

MR. SALINAS: Second.

MS. ANDERSON: Hearing no objection, we stand adjourned.

(Whereupon, at 2:37 p.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA board  
LOCATION: Austin, Texas  
DATE: October 14, 2004

I do hereby certify that the foregoing pages, numbers 1 through 175, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

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(Transcriber) 10/22/2004  
(Date)

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