

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

PROGRAMS COMMITTEE

MEETING

9:57 a.m.  
Wednesday,  
December 14, 2005

Capitol Extension Room E1.036  
1100 Congress Avenue  
Austin, Texas

COMMITTEE MEMBERS:

KENT CONINE, Chairman  
BETH ANDERSON  
VIDAL GONZALEZ

STAFF PRESENT:

EDWINA CARRINGTON, Executive Director  
ERIC PIKE, Director, Single Family Finance  
Production  
KEVIN HAMBY, Legal Services  
TIM IRVINE, Executive Director, Manufactured  
Housing Division

ALSO PRESENT:

JEAN LANGENDORF, Texas Home of Your Own

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P R O C E E D I N G S

MR. CONINE: Okay. I'm going to call to order the Programs Committee meeting of the Texas Department for Housing and Community Affairs. It's Wednesday, December 14, starting at 9:57. First order of business is to call the role, which I'll do.

Ms. Anderson?

MS. ANDERSON: Here.

MR. CONINE: Mr. Conine. I'm here. Anybody else here? No. But we have a quorum. That's two. Next, we normally do public comment both before the staff presentations -- and either before or during.

I think today, from what I know of the program, it would probably be best to let everybody wait until after the staff has presented the issue of the day and then take public comment at that time. So I think that would help flow the meeting a little better.

So that's what we'll do, assuming we have no objections.

MS. ANDERSON: No.

MR. CONINE: All right. First item of business is the Discussion of Possible Rule Amendments and Program Guidelines of the 2006 Single Family HOME Funding Cycle.

Ms. Carrington.

MS. CARRINGTON: Thank you, Mr. Conine. At the

November board meeting, the Board approved the rules for the HOME program for 2006. Those rules that were approved at that board meeting cover the administration of both the single-family activities under the HOME program and also the multifamily activities under the HOME program.

But what we heard from the Board at that November meeting was that you all wanted an opportunity through the mechanism of the Programs Committee to take a look specifically at these HOME rules, as it relates to the administration of our single family program.

So what we have done for you today is bring this back to the Programs Committee for that discussion. And I'd like to outline the materials that you have for you. We've proposed for your consideration two rule changes that we would recommend related to the administration of our single family program.

And then we have also -- and those rule changes begin on -- actually on page 2 is the first one on past performance. The second one is contractor affidavit, which would be on page 3. And then there's also several program guideline changes that we would recommend that begin on page 3 of 10.

I might remind the Committee that at the November meeting, we did have one addition that was approved to the rule -- well, there were several additions

that were approved to the rule, but one in particular that had been concern of the Board.

And this is back on page 1 of 10. We added a new section, 53.53(k). And that section reads, "an applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the applicant's cash reserve obligation or made promises in connection therewith."

And this is a significant amendment to the 2005 HOME rules, and that was incorporated in the HOME rules in November. What staff has done is outline for you these rule changes -- these proposed program changes. We also had a roundtable with the industry on November 30 and had 30 or 40 -- about 40 -- people in attendance -- consultants, practitioners, some of the cities that participate in the program.

We provided this information for them at that meeting, so they had an opportunity to take a look at what we were considering proposing to the Programs Committee for their discussion. I see some of them in the audience today, and I'm sure they are going to provide public comment.

I want to acknowledge and thank the single-family staff. They have had some very good, I think,

creative thinking. As we look at how we administer our single family program, there are actually three methodologies that we are outlining for the Programs Committee this morning, that are options for the Board to talk about -- the committee to talk about on how we actually allocate these funds.

One of them is the competitive methodology, which is the methodology we use right now, but it would have some modifications. Another one is the lottery methodology, and the other one is a broader distribution methodology.

We've outlined that for you in your Board book.

And with that, I think what I would like to do is ask Eric Pike to come up, and at the committee's pleasure -- however you all want to walk through the information that we have provided for you today.

MR. CONINE: Mr. Pike.

MR. PIKE: Good morning.

MR. CONINE: Morning.

MR. PIKE: Eric Pike, Director of Single Family. If you all want me to, I can go into a little greater detail about some of the proposed changes and recommendations that we're making today. Basically, as Ms. Carrington said, we did have the approval of the rule amendment 53.53(k), which if you recall is similar to

language that the tax credit program uses.

So that was approved at the November meeting. This time around we're proposing two additional rules. One relates to past performance. It will be identified as Rule 53.62(g). Primarily what it does is it goes a step further in enabling us to put some teeth, if you will, into the monitoring system and review of our contractor performance.

Our contracts currently have a clause that says if there has been no activity within six months, we have the ability to terminate that contract. But we want to go a few steps further and put in some milestones for 12-month performance, 18-month performance and 24-month performance.

So that is something that we're doing. It's primarily being done to enable us to increase our expenditure ratio with HUD. As you all are aware, we have had issues in the past with trying to get our funds expended in a timely manner.

So this is one of the things that we're proposing to help us to achieve that. Also we're proposing a contractor affidavit. I'm not anticipating, if this is approved, that we would create an additional form, but that it would be something that would be included in the current certifications and stuff that the

contractors sign.

It would just have them attest that -- it would speak to conflicts of interest obviously, in that no improper monetary exchanges among contractors, consulting firms and administrators would be occurring basically. Also in addition to those two rule changes, we're looking at some program guideline changes.

The first one is our owner-occupied program, which is our most oversubscribed program. Currently the contract period is for 24 months. And once again in an effort to help us expedite this process and to help us with our expenditure ratio requirements with HUD, we're proposing that the contract term be shortened from 24 months to 18 months.

If you recall, typically our contractors or our administrators are constructing nine homes -- reconstructing nine homes or rehabilitating nine homes generally. And we feel that 18 months should be sufficient time.

But obviously we want to have the public's input on that issue as well. Another thing that we're proposing that I know the Board has expressed an interest in in the past, is going from a grant program on our occupied assistance to a loan program.

We looked at the numbers, and overwhelmingly

the majority of awards that we make go to serve families, households that are 50 percent AMFI and below -- obviously very low-income citizens of Texas.

So what we're proposing -- instead of a grant, we're proposing a five-year deferred forgivable loan which would give us some ability to be able to provide oversight on those contracts and to ensure that that house does remain with an eligible homebuyer for that five-year period of time.

Also for those over 51 percent of the area median family income and above, we're proposing a zero percent, 30-year repayable loan. Those are some things that we will need guidance on today, whether we adopt any new rules or what have you.

But we would like to have some guidance on that item specifically as to how you all would like us to proceed. Obviously on that item as well, the Agency is charged with meeting what used to be called Rider 3. Now it has been renumbered, due to the last legislative session, I believe, and it's called Rider 4.

Basically what that says is that the Department has a goal to award a minimum of \$30 million to households at 30 percent AMFI and below. So we feel that by making the loans deferred forgivable at least to 50 and below -- because Rider 3 does affect counties that go up to 50

percent AMFI and below -- that that would help the Department to continue to ensure to meet that requirement.

On the homebuyer assistance, last year we had what we call American Dream Downpayment Initiative, which is ADDI for short. It's a special initiative by President Bush. It was passed in '03, I believe. So the funds were made available for about a three-year period of time, so about \$5 million in ADDI funds.

So we didn't have a homebuyer assistance activity per se. We had ADDI last year. Under the ADDI rules, it allows for participating jurisdictions to offer \$10,000 or 6 percent for downpayment and closing cost assistance.

So that's what we did last year. Typically our homebuyer assistance activity has been undersubscribed in the past, but we had an overwhelming response last year. We got a number of applications, a lot of interest. It was a statewide competition, so when we did market and promote it a lot more than we had in the past.

So this year we don't have but about a little over \$1 million of American Dream money. So what we're proposing, so that we'll have the same level of funds, is to take some of our homebuyer assistance funds, combine it with our American Dream funds and have about the same amount of money.

So what we're proposing is that we continue to use the \$10,000 cap. If you recall in the past, there was a system approved that offered \$5,000, \$7,500 or \$10,000, depending upon the county in which the property was located. Is that \$100 for the Trust Fund?

MR. CONINE: Absolutely.

MR. PIKE: For those of you all that don't know, anytime a cell phone rings during one of our meetings, you have to put in \$100 for the Housing Trust Fund. Okay. So once again, we had a policy of \$5,000, \$7,500 and \$10,000.

It was based on the statewide median income for the State of Texas. What happened, most counties ended up qualifying for \$10,000 anyway. Those that ringed the major metropolitan areas, such as the Dallas/Fort Worth area and the Houston area -- some of those counties were eligible for \$5,000.

But pretty much, everybody else was for \$10,000. So we're proposing this year to mirror the American Dream Downpayment Initiative at \$10,000 across the board. We're also looking at the possibility of implementing a cost cap system.

We currently allow for 4 percent administrative costs on our contracts. Administrative costs are typically used to pay for salaries and wages and staff

overhead and travel and stuff like that. In addition on the owner-occupied activity, you have the ability to charge soft costs.

Soft costs are based on hard costs -- hard costs being sticks and bricks and things like that. Soft costs are your work writeups, building permits and things of that nature. So what we're proposing to do is that we would use a cap system to limit the value assigned for match.

So the soft costs would be capped, and that would in effect give us some type of cost reasonableness as it relates to match. And I'll be happy to expand on that if you need me to. We're also looking possibly capping hard costs -- the stick and brick costs.

That has been done in the past in the program a number of years back. So I'm sure some of the people here today can speak to you about the affects of it. And another thing I want to point out to you is that we are recommending that if we did use the cost cap, we would look at adjusting it yearly, based on maybe the Consumer Price Index, to adjust for inflation.

Right now what we're looking at is using 2004 costs that we have seen reimbursed through our Portfolio Management Compliance Division. We're also asking for the ability to seek a little bit of additional clarification

on administrative deficiencies or application deficiencies.

Currently that item is in the rules, but we want to be able to identify in the application guide what is an application deficiency, so that it gives the public better guidance on what we can seek clarification on, takes out some of the subjectivity of it.

Okay. Finally we're proposing three award methodologies. I would like to remind you that under any of the methodologies that we're proposing, they would be in accordance with the regional allocation formula. So the first one is the competitive methodology.

Basically that is the methodology that we have used in the past. We are proposing that as an option today -- obviously with some rule changes and program changes that we feel would make that methodology a better system of distribution.

We're also proposing a lottery methodology. Very simplistically, applicants would receive a minimum threshold -- they would be required to meet a minimum threshold score. Then they would be assigned a lottery number and basically would compete through a lottery system for the funds.

Then the third methodology is a broader distribution methodology. Basically this would also

require that a minimum threshold be met and that the funds would be distributed equitably, I guess, across a particular region. So what it would in effect do, would enable more communities to share in the wealth, if you would.

Obviously the contract amounts would be lessened or reduced. But that is the third methodology that we're proposing. I believe with that, it's a good overview of what we have today. I'll be happy to answer questions. Or if you all want to let the public speak.

MR. CONINE: Do you have any questions of Mr. Pike now? Or do you want to wait until --

MS. ANDERSON: I can wait until after public comment.

MR. CONINE: I had just one question before we let the public speak. Can you refresh our memories again on combining the HOME Program with the ADDI money? How many total dollars are we talking about dealing with the single family program in '05?

And how many do you think does it look like we're going to get in '06?

MR. PIKE: Okay. Just to give you -- last funding cycle -- well, the HOME Program gets about \$45 million from HUD. Some of those funds go for set-asides such as multifamily rental preservation and rental housing

development for the CHDO set-asides.

So when you back all those out, you have generally about \$25 million per single family. Then that is split up. Generally the owner-occupied gets about 16 of that; homebuyer assistance or ADDI gets about 5, and the other remaining 2 or \$3 million goes for TBRA.

Last cycle we had \$5.3 million available for American Dream, and we're proposing about that same level this year for homebuyer assistance.

MR. CONINE: How much are we actually getting from Washington?

MR. PIKE: We're getting a little over \$1 million in American Dream funds.

MR. CONINE: Funds. You say we got \$5 million last year. How did that happen?

MR. PIKE: The '03, '04 and '05 funds were all combined, and they released them to us. I think they weren't appropriated until a certain period of time, so they came to us all at once.

MR. CONINE: Okay. That answers that.

Any other questions?

MS. ANDERSON: Not right now.

MR. CONINE: All right. Why don't we go into some public comment. I have some witness affirmation forms here. If any of you want to speak and haven't

filled out a witness affirmation form, please do so and hand it to Penny, and we'll get you on. Sounds like we may have one or two others.

The first witness is Mark Taylor.

MR. TAYLOR: I'd like to defer my time to Gary Traylor.

MR. CONINE: Mr. Traylor. All right. Let me see if I can couple you guys up. All right. The next one I have is Mirenda White.

MS. WHITE: [inaudible]

MR. CONINE: Okay. How about Michael Hunter?

MR. HUNTER: Good morning.

MR. CONINE: Good morning.

MR. HUNTER: I'm Michael Hunter, and I'm president of Hunter Consultants. I'm here representing my company. I'm also representing a nonprofit corporation known as Affordable Housing of Parker County and the executive director for A.G. Swan, who couldn't be here this morning.

He did send a letter, though, that we want to give to you so that you have his comments in writing. He wanted me to briefly let you know what those comments were. Affordable Housing of Parker County is a CHDO, one of your better CHDOs I think in this state.

They are doing single-family and multifamily

construction. They're doing TBRA. They're basically into just about all of the single-family and multifamily pieces that you have, including tax credits. They have competed for several years and have been successful.

And they have successfully completed their projects on time and on budget. First they want to make a comment on the three award methodology options. They're in favor of the competitive. They think that's the most appropriate for the State of Texas.

The feeling is that if we're not getting the right distribution of funds throughout the state, then one of the things the Department could do, according to Affordable Housing of Parker County, is spend some time looking at those areas which are not receiving the funds and find ways of doing some capacity building for CHDOs and for nonprofit in those areas to make them more competitive and to get competitive with the rest of the state.

So they like the competitive basis much better than they like the lottery. They're a little unsure about the lottery, in terms of going to have to actually fill out an application, compete to get into it, just to be at the whim of a lottery number to see if they get funded or not.

And on the other, the last one, they refer to

it as the Soviet model. Everybody gets in, and everybody gets a piece of money. That just hasn't seemed to work anywhere. They're quite satisfied with the current way that they're doing it.

Now, they think some of the rules and everything could be tightened up. Some of the scores could be tightened up. But they are in favor of competitiveness. One thing -- I don't know if this is up for conversation or not, but he mentioned it, and he wanted me to mention it to you.

One of the things that's concerned them statewide -- they're in Region 3 primarily -- but statewide is that in the way that funds are allocated for single family -- let's say Region 1 has homebuyer assistance money and has owner-occupied money -- if they are not fully subscribed in housing assistance money, downpayment assistance, then that money is moved over to the owner-occupied in that region.

He's of the opinion that that for the statewide as a whole is not the appropriate thing to do, that it ought to go to the activity, rather than moving activities, and again we ought to look at trying to increase the activity level in that region, as opposed to just letting it drop.

So I did want to bring that to your attention.

On the caps -- he's got a couple of comments on the caps. One is that the way the caps have been done in the past, we've tried to cap costs in the past. It hasn't really worked.

The reason it hasn't worked primarily -- I think and he thinks -- is that the review period of trying to figure out when that cap should be moved is not quick enough to follow the market of what's happening on costs.

If you're talking about hard costs for example, you have a hurricane in Louisiana or in Florida, you have a flood in West Virginia, you have a blizzard in Chicago, an earthquake in San Francisco, the one thing you can guarantee will happen in Texas is you have semi-trucks lined up at Lowe's and Home Depot to pull everything out of their stores and to go to that area.

That's what they do. The other thing you can guarantee is costs are going to increase. Every time we see a hurricane, the costs in this region for materials increases 20 percent, pops back down, goes back up. If you're trying to spend money on a reasonable time frame, these peaks and valleys can really disrupt you as far as your costs are concerned, your hard costs.

Under soft costs, I think if you're looking at the homebuyer assistance where the soft costs generally are related to trying to get a loan to the table -- and if

you're in the real estate business, you know that if you look at a HUD 1, a settlement statement, there are costs on there which are considered soft costs under the federal program: appraisals, underwriting fees, surveys, that sort of thing -- they're all pretty much a basic cost.

But they're also just a closing cost. And if you added up all those closing costs, you're way over that 10 percent or 12 percent margin that you would be anyway.

So one of the things that he says -- and I'd agree -- is that we ought to just consider those just closing costs and go on with our business with the market dictated, and then periodically look at the market and see if you can affect the market in providing a lower cost activity or a lower cost alternative.

If in fact the homebuyer counseling is expensive -- and it is -- the last bid that we put out homebuyer counseling in Region 3, we were expecting a bid back of \$75 a family. It came back at \$300, just the homebuyer counseling at eight hours.

If you put it in as a market rate cost into the closing costs, just do your deal, then the money you're putting in of \$10,000 is just going to affect the deal. You don't have to worry about it. So it's something you should consider.

The other thing is that you're starting a new

activity this year, I gather, which is really sort of a subdivision development type of activity, combined with homebuyer assistance -- there's some thought about doing that.

I would suggest to you that if you're looking at soft costs, you have a 10 percent or 12 percent cap, that you ought to consider that the 12 percent cap, because there's really no difference between that and doing reconstruction.

You're out there constructing houses in a subdivision development. At the back end you're going to tag in to homebuyer assistance. It really should be at 12 percent rather than at 10 percent. And that's basically it. I'll give a copy of this. You all can have it.

The last thing he did want to say is this. He's in the process of doing some development right now. He has invited various staff members up to view it. In fact we have a few coming tomorrow and the next day, along with your consultant from ICF who's going to be there.

He would also like to personally invite the Board and the Executive Director of the Department to come up and look at what we're doing. He's put together a model to do single-family and multifamily development, rural Texas, that appears to be very workable.

It's in the process of being constructed right

now. And you can see it onsite and walk it and find out about it. And I think it's something that could be taken as a model and replicated all across the state and be very effective.

So he's inviting you all to come up and take a look. He's only about 18 miles west of Fort Worth. So it's very convenient. We would really appreciate seeing you up there. If you would like to do that, we'd be glad to set something up. Thank you very much.

MR. CONINE: Thank you, Mr. Hunter.

Any questions?

MS. ANDERSON: No.

MR. CONINE: Thank you very much.

Phil Patchett?

MR. PATCHETT: Good morning. I'm Phil Patchett, city manager with the City of Trinity over there in East Texas. I have some written comments from the City of Lake Tawakoni, to hand these to you all and ask you all to read them.

MR. CONINE: Hand it to Penny, and she'll get it to us. Thank you.

MR. PATCHETT: I'm here because I have quite a passion for this program, because I've seen what it's done and what it's meant for the City of Trinity. It has gone far beyond the -- we were funded the last go-round,

completed our houses about six months ago.

It's gone much further than the nine people that have actually had their houses built. We have been able to clean up entire neighborhoods. And it all started with the HOME grants. The people have pride in their neighborhood.

The people that we used to have to go through the condemnation process on some houses are now asking us to please tear these houses down. I just want to commend the staff, the committee and everybody. On that part it's been a tremendous uplifting for the City of Trinity.

Now let me get to the comments, some made by Eric earlier. My concerns are the program performance standards. This is just going to be a brief synopsis, because I'll be sending written comments and going into more detail at a later date.

Proposed HOME Rule Section 53.62(g) needs clarification so that program participants may better understand TDHCA's expectations. I'd like to drop down to the term lapsed contract being reduced from 24 months to 18 months.

I have a major concern with this issue. A primary reason for the delayed implementation of the owner-occupied assistance program is the method of fund disbursement. First the '02/'03 program year, double funding

resulted in an explosion of work that caught the grant management industry with little time to boost capacity and no additional implementation time.

Second, a substantial amount of deobligated funds were disbursed during this same time period for owner-occupied program contact. You'll excuse me for reading my comments. I don't want to miss something that I feel is pertinent.

These simultaneous large funding disbursements should not form the basis for future policy. The backlog of work has affected the '04/'05 implementation as well, but to a decreasing degree. Overreacting to this unique confluence of events by placing unreasonable and excessive demands on funded applicants penalizes them for circumstances beyond their control.

The homeowner-occupied contract period should be left at 24 months, in my opinion. In addition to increase in the overall implementation delay, deobligating a large number of partially implemented contracts would create a negative political situation at both local and state levels.

Another concern I have is how the environmental clearance is defined. Additional clarification is needed to determine what level environmental clearance the Agency is describing. There are two levels of environmental

clearance contract covering the Administrator's target area and a project site-specific for each assisted housing unit.

Completed of a contract environmental clearance is a reasonable standard that can be completed within the first six months of the contract period. A project environmental clearance deals with each of the units proposed for assistance being completed.

This complicated task is virtually impossible to complete within the first six months of a contract. The lengthy environmental review process must be implemented with a significant notification waiting periods, document creation and final Agency review period.

This can take two months or more, even when all goes well, and significantly longer if any issues are raised. I have a recommendation for environmental clearance concern. Completing all of these tasks for the project environmental clearance within the initial six months is not practical or feasible.

A six-month standard related to environmental clearance should be clarified -- specifically state that the contract environmental clearance must be completed. That's all I have. I'd like again to thank you so much, because the program has meant so much for our community. Thank you.

MR. CONINE: Thank you. Appreciate your being here.

Clyde Smith?

MR. SMITH: Good morning. My name is Clyde Smith. I'm the Director of Planning and Economic Development for the City of Emory, Texas, also in East Texas. Emory is the county seat of Rains County over by Lake Worth and Lake Tawakoni for those who may not know.

We have just finished our first HOME grant. We're happy, and we're proud. A lot of things went well in our eight homes. We considered it a success on a number of different levels. Anywhere I go I have to put on my ADC cap for a minute, and say, you know, those guys that came in to build those houses and demolition in the area, they ate at our restaurants; they bought gas at our stores.

A big city, it doesn't matter. But in a city of 1,000 it makes a big difference. Every dollar does count. From that point of view it was a success. Secondly, it allowed the city to replace eight of the worst habitats in the city.

We don't have big zoning. We have zoning, but we don't have big staffs to enforce it. So it's very difficult for us when it comes to condemnation. It's difficult for us to condemnation for a number of reasons.

We're a very small city. We're 1,000 people.

Either I or the mayor or somebody on the city staff knows everybody in town. These people who qualified for these eight homes I can speak directly to, weren't looking for a handout. We went to them. They're very proud people.

We publicized this. The paper there did a good job. At first everybody looked at us like we're crazy. We're going to build a home -- tear down a home, build a home, and we did. These eight homes weren't just located on one block.

It's kind of like the man who spoke before. They were scattered over several neighborhoods in our city. And every one of those neighborhoods we upgraded. By having the worst home out and the best home in that little area built, you can see the residual effect all up and down the street. It's a matter of pride.

It's also had a big impact, as you know, on the eight households. The program and multilevel governmental coordination in these programs allow these underprivileged citizens a home to live out their life in. And it's a safe home, and it's an efficient home.

These people, as you know, are very fixed-income types. As energy costs -- as a hurricane comes in, their check doesn't go up. So this energy efficiency on

these new homes, they're important to us and important to them.

But most importantly -- I'm going to get to why I'm here today very soon -- in my opinion it gave hope not only to the recipients that got these houses, but those other underprivileged who saw it could be done, who felt like their situation's no longer hopeless.

They've seen with their own eyes what their neighbors got, and they're still cynical. The neighbors are still thinking, well, what's going to happen next? I've got this nice house that's too good to be true or whatever.

Like other towns, especially in rural, again we're personal. When you get down to cities our size we're personal with our people. I'm sure that every rural city that's had one of these could sit here and give you a home-by-home account.

Maybe two real quick -- one of the houses we replaced was affectionately called in our area the Pepto-Bismol house for obvious reasons. It was pink. It was a grandmother on a very fixed income, very proud woman, kept it as nice as it could be kept.

It was in bad need for paint years ago. Somebody says, I'll paint it. Somebody else says, Well, if you want this free paint, I've got it. And it stayed

that way for probably 15 years. On that one being replaced, the neighbors appreciated it -- to the elderly couple that literally broke down and cried when they got their key.

We could all talk about this. But what I'm here today for is to ask you to keep that hope alive in small, rural communities. The staffs are small. They wear 18 hats, or whatever we've got to do to do it. We're typically staffed to a level to meet the basic deal.

Unless you have -- and we do in Emory feel -- a very progressive council and mayor. There's really not anybody looking at grants. There's not time. We're dealing with water, trash and streets and dead animals or whatever, all the time.

We don't have the on-staff engineers, and we don't have the grant writers and grant departments and all that others may have. But the best thing that you can do for us is ensure that there exists a balance in the selection process.

That balance needs to take into affect not only the fairness issues -- certainly -- but the hope issue. Of the three considerations that have been mentioned here, I kind of join with the Soviet thought, but I won't go into that on the third.

I suspect nearly every rural community could

prove a need for homes that could be helped by this grant program. So why doesn't everybody apply? If there's a need out there and funding available, why isn't everyone applying?

I just gave you my take on it. As I understand the current competitive approach, applicants are -- we're in East Texas, but we're not necessarily mentally deficient. We can look at what's been done. The scoring sheets are reasonably objective and I believe fair.

You can pretty well place yourself with a little work and stand back and kind of look at it and see what the chances are. Then you look at what got funded last time, and you kind of, Okay, now I'm trying to balance my resources.

Unfortunately, if you feel like you're coming up a little short, you're probably not going to apply, because you have other things you can do. There's nobody pushing. So that's what happens. Three reasons basically we do that.

Number one is resources. For this grant we just finished and built the homes on, the mayor, myself, the city secretary, municipal court, anybody else we could drag off the street -- we actually went street by street, house by house, finding applicants.

There were plenty out there. But we have to

find an applicant who will apply. So we don't have resources. If we think it's not going to be -- not a sure thing. We can't do that, unless we're just going to divide all the money up.

The morale impact -- and I want to talk about this just a little bit, because we went to these homes. These are poor. They're disabled people, but they still have their pride. And you go to their homes, and you ask them to share their most personal information -- I mean, there were things that are very personal -- with strangers.

Then the applicant's morale is even further damaged, especially if it's not successful, by the sheer recognition that the very best they could do in their lives is now being deigned to be needing to be demolished and replaced and thrown out.

Regardless of how we try to frame it. I've worked in East Texas all my life. I've heard it other places, too. When you go to the door -- especially of that generation -- and you say, I'm from the government, and I'm here to help you -- there's a significant amount of skepticism. It's hard. It's really difficult.

So if the competitive, predicted score isn't almost a sure thing, [indiscernible] the process. This doesn't mean that we don't have the need, a need that

could rightfully be served in the HOME Program. But it means we choose to pass, because we feel it is basically wrong to raise the hopes of these poor people, especially when realistically hope doesn't exist.

So I'm here today advocating not getting rid of competitive scoring -- absolutely not -- but only implementing hope into the new system for those that meet the minimum qualifications. It seems from our perspective that a modified random system that puts hope in every application that meets the minimum qualifications, hope is the best alternative. I thank you for your time.

MR. CONINE: Questions, Ms. Anderson.

MS. ANDERSON: Thank you for being here, and thank you for making these comments because you really brought to life, I think, in a very tangible way the lives that we are helping with this program. And I enjoyed your presentation.

Right at the end you talked about a modified random system. So are you endorsing the lottery system?

MR. SMITH: I'm endorsing a weighted lottery. I think all the things you all handle in your competitive scoring should be on the competitive scoring. But I think if a city just can't come up with the extra amount of match, perhaps, so they're not going to make it.

We reasonably know -- we have an idea when we

have a chance and when we don't. It'd be nice if we did have that, and we met -- we were just four or five points off. Certainly the ones that have the most need, that score the highest should have more opportunity in that random -- it's not just one on one.

It's they get ten balls, and we get two. I don't know how -- I'm sure the state can work out a lottery system.

MR. CONINE: They've got a couple they run now, I think.

MR. SMITH: I had my tongue way over here in my cheek when I said that. But certainly they can. And we can weight it, and we should weigh it. I think it'd be a mistake to throw out what has worked. But maybe -- again listen to rural America, listen to the little guy.

We are one-on-one with these people. Each one of them matters just as much, no matter where they live. If we can have a hope we'll go, and we'll apply.

MS. ANDERSON: Thank you.

MR. CONINE: Thank you, Mr. Smith.

Jamie Welch.

MS. WELCH: Good morning.

MR. CONINE: Good morning.

MS. WELCH: I'm Jamie Welch, and I'm the Assistant City Secretary for the City of DeLeon. I'm

really new in the program. I've only been with the city for a year, so I'm trying to get involved and learn all the ins and outs with the program.

There are a few issues that really concern me. We're currently in the beginning stages of a contract and have gone out and qualified our homeowners and have been through that process. It was kind of an eye-opening experience.

I am from a bigger city. So moving to DeLeon was kind of admittedly a shock and the rural situations and things that go on. But today I'd like to speak about the proposed performance scoring criteria. If you don't mind, I'm going to read my notes.

There are several concerns regarding the percentages used in the proposed scoring criteria for the level of performance. There's a general agreement that past performance should be used as a scoring criteria. The use of 100 percent is not always appropriate for measuring committed and expended funds, since many HOME contracts are unable to fully utilize their award.

It appears that administrators with completed programs that had non-zero balances would be penalized under this scoring methodology, because they did not expend 100 percent of their original grant award. While in our case we know that we are going to build five

houses.

And we think we're going to come in pretty close. We also have a few that can maybe be refurbished if we do have extra funds. But certainly if we don't have enough funds to do that project, it's not going to be 100 percent expended.

And that makes me nervous that points are going to be taken away from that in our scoring on such a tight -- in what I understand is the scoring. For awards prior to 2002 the expenditure threshold should be 100 percent of the final amount of funding that was committed or obligated, rather than 100 percent of the original contract amount.

An even better threshold would be a programmatic closure. Similarly 100 percent of the funds obligated, committed for 2002/2003 programs should be expended. Again the concern is that 100 percent expenditure should be based on the final amount committed or obligated rather than original contract award.

For the 2004 program issue it's a lot more complicated. Really I'd like to look at that and submit my comments in writing later on that. Like I said, once again I'm still trying to make sure that I'm interpreting everything.

We would also like to provide in writing our

comments on the deferred forgivable loans, the award methodologies and the potential change from the current 24 months to 18 month, and the way it could penalize a city, in my opinion, that's currently in the contract for the next cycle.

We're obviously -- if we're in a 24-month cycle and we change to 18 months, we're going to be penalized. That pretty much puts us out for the next cycle, guaranteed, if I interpret that -- I may not have interpreted it. Thank you very much for your time.

MR. CONINE: Thank you.

Any questions?

(No response.)

MR. CONINE: Thank you.

Abigail Ortega.

MS. ORTEGA: Good morning.

MR. CONINE: Good morning.

MS. ORTEGA: I'm Abby Ortega. I'm from Hudspeth County. I've been here since the implementation workshop. I've learned quite a bit from the program. It's a great program. I have seen it before working for the County. I have seen the houses built. It's a wonderful thing; it's a wonderful program.

I saw Mr. Conine yesterday at the airport. I've seen that. I thought he was one of my hunters out

there. I saw him today. I said, Oh, that's who it was. But I'm here to speak on caps for allowable costs. I know there's lots of changes going on that are trying to change.

I just wanted to say that the costs -- it's kind of difficult to put a cap on costs, being that -- the different size of cities in Texas. Statewide it's just so different. Our county is such a small county. It's way out there.

It's going to cost more to take materials out there -- hard costs -- as it is to maybe somewhere close to Dallas. Even El Paso, it's going to be different. I just wanted to say that maybe an overall percentage cap is the most reasonable approach to capping these costs.

Maybe tying them to the Consumer Price Index as proposed by staff is my recommendation. Also on match, I think we should allow the consultants and contractors to donate services. We are very limited in funds. Our communities are very low income. Any help helps, and I wanted to support that.

On the past performance and scoring we've heard several suggestions. The one that really -- also on the forgivable or repayable loans, I hope that you reconsider this and keep it as a grant. Out there if they hear the word, loan -- and I understand you are trying to do the

best for the program -- but the word "loan" -- it will kind of close doors for everybody, and they probably won't consider even applying.

We really have the need for this program out there in our communities. We have -- just an example -- a lady out there, this could make the difference. If she was to be able to apply for the loan, this would make a difference in her house.

She might be able to get help for herself, for her health. Because the conditions of her home, she might not -- people won't go out there -- you know, the conditions. If you would see the condition that these homes are in -- really need complete reconstruction.

Maybe that would be able to have their grandchildren come back into the homes. It's a difference in the life of a person. And I want you to consider that, keeping it as a grant. Also I support the competitive lottery. Those are my comments.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Thank you, Ms. Ortega. Careful who you run into at the airports now.

MS. ORTEGA: Yes, sir.

MR. CONINE: Mary Kay Thomas.

MS. THOMAS: Good morning.

MR. CONINE: Good morning.

MS. THOMAS: I'm Mary Kay Thomas with Amazing Grants, and I've been a consultant for 18 years. I wanted to talk more -- you have many issues in front of you, more issues, I think, on your plate than you could deal with in one possible meeting or speak to all of these.

I am from Big Sandy, Texas, so again another East Texas person. Big Sandy will play in the 1-A football championship Saturday. Now, we do not have a lot of money. I'm serious about this. I have an envelope. Pilgrims donated half of the chickens we need for the tailgate party.

I've got an envelope, and I'll take money from anyone. I'm serious about this. We have to have money to get to Abilene and to get back. This town is 73 percent low income.

MR. CONINE: Who are they playing?

MS. THOMAS: They're playing Stratford in the panhandle. Hope no one's here from there. Just speaking as a consultant working in the state of Texas with small towns, I'll leave other issues aside. I want to look at small towns that have never been funded.

Big Sandy has applied every year since 1993. We have received zero dollars. Sometimes in the HOME program it's kind of like being a 5'6" basketball player.

There was one in the NBA. With the rules that are governing the HOME program, the 25 percent match in a lot of ways can eliminate a small city, especially if you have a score on the AA10 that also holds you back.

There are cities in Texas that have large staffs, that have people who can do the inspection. They have staffs that can do demolition. I worked for a city like that, and I loved applying for \$500,000 for that city, because they will normally get it every other year.

But let's talk about cities who've never had any money, not just the Big Sandy that I have, but all over the state -- that there has to be a way also. This is government money. This is our money coming back, but small cities cannot afford this grant.

Small cities -- if you look at the services they can provide right now, the budget of Big Sandy will not cover the expenses. We're overdrawn at the bank, if anybody wants to help on that. But that chicken issue is really the first thing I want to cover.

But I keep dropping the number of houses we apply for so that the match -- I try to stay at 12.5. Well, last year you started giving points for small cities. Big Sandy is 1,200. Again it's 73 percent low/moderate.

We have four different sets of public housing.

That means a lot of small cities around us don't have public housing. And we also help them. So we do everything we can. But I cannot compete. I cannot make this city competitive under these rules.

What I would suggest is one time do double funding. I don't see what the problem is. I heard one of the reasons not to do double funding is, commitments made may not be good by the city for two years, because the next council coming in may not want whatever was promoted that they would do.

Well, normally HOME applications are due in April, and councils are elected in May. So if we applied this year and again next year in April, you are applying before you change council anyway. So whatever commitments are made are made before the council is changed.

You could take a shot one time double funding, cut it down to \$275,000. Five houses is a nice amount to do. Where you would only do one, that's terrible, because you're setting up a whole program just to do one. Five is a nice amount.

You could do it one time, do two. The other thing I would suggest is in each region, look. You've got a list of cities that have never been funded. You also have a list of cities that are funded a whole bunch. That's because they have 25 percent match and a good score

under AA10.

So there has to be a way that you also let these small cities all over the state get a little bit of this money, do five houses every once in a while. I'm saying since 1993 this city cannot be funded. And it won't be funded again this time, because what we can do for our match is tear down the houses ourselves.

The group that will tear down this house is a Christian group, and they'll only put a certain value on that. So I will not have overinflated cost on anything. So do something just to help some of these small cities. Now, you give two points for disabilities.

I think we should always have disability at the top of the list always. I think it ought to be like the rule, but not where you give two points for it. Why can't it be written in that persons with disabilities are helped first, because when I heard the definition -- in one city, I knew if we did eight houses I probably had maybe four that I could serve that were disabled, but maybe we didn't have any other people coming in that would be disabled.

But after hearing the definition you can drive a truck through it. So yes, I want those two points, too.

And the definition almost allows you to put anyone down as disabled. Let's serve them first. Let's take it out of scoring, but says it is mandatory to serve them first.

What would be wrong with that? Just don't make it points. If in each region you could at least each round, give one city who's never been funded funding, it would help. You still have enough match to cover that city with the other cities.

But they can't play this game. It was wrong on the federal level. That's where it ought to go back to. That's the rule that should be changed on the federal level, that this 25 percent match on a program for people of low, low income.

I saw the State of Texas change their mind when we were trying to play with the rule before what's now Rider 4, when before we had Rider 3 the poorest communities, the poorest counties had the lowest income rates.

So you could serve only the poorer, poorer, poor people, that if they were receiving any government subsidy they couldn't make that. State of Texas changed their mind on that. They saw the error. It wasn't that they didn't want to serve low-income people. They'd made it impossible to serve.

And something can be done in this program, that at least once give it a shot, find some of these cities that have never received anything. Thank you very much. And I will take your money for the chickens.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Ms. Thomas, make sure -- I'm a sucker for a football game, especially at the state championship. And you might encourage the best player on the team to consider Texas Tech, especially if they're a senior. Thank you.

D.C. Dunham?

MS. DUNHAM: Good morning. I'm D.C. Dunham with Bay City Community Development Corporation and representing City of Bay City. I'd just like to touch on one point. I agree that you have a lot of issues in front of you, and several that I'd like to send in writing later.

But today I'd just like to touch on one, which is about your forgivable loans. I think that they should be -- forgivable or repayable, they should remain as grants. I feel like we're taking quite a few steps backwards, when the Department previously had forgivable loans, and it was changed to grants.

There obviously was a reason then. And I think you'll find that you'll have the same reason today, that the amount of management and administration to monitor these loans and these families would be extremely cumbersome and complex.

I think that the amount of staff time in policing these things would more than outweigh any abuse that may happen, if at all, because the folks that I know that we've served are just elated with their houses. And as some of the other folks spoke about, we're not quite as competitive as some, but we're having to really put pressure on them and push to demolish their homes if they don't improve them and that sort of thing.

We haven't been competitive in the owner-occupied here recently, but we have had one a couple of years back. But they are low, very low, extremely low families. And many are elder. There's a possibility of funding them, and they die.

Then you've got the whole family to deal with. I just think that you're asking for a paperwork nightmare. To monitor this for 30 years, I don't think is in the Agency's best interest. That's all I have to say. Thank you.

MR. CONINE: Thank you.

Barry Halla?

MR. HALLA: Good morning, Mr. Conine, Ms. Anderson, Ms. Carrington. My name is Barry Halla. I'm with Life Rebuilders.

Mr. Gonzalez, Good morning.

MR. GONZALEZ: Good morning.

MR. HALLA: I'm glad you're here. I'm going to be real brief. I had an opportunity to be at the roundtable. I thought Eric and his staff did an outstanding job. I think the thing that will make the HOME Program successful again this next year is Eric and his staff, in my opinion, have a can-do attitude.

They can identify the problems, but they also come up with solutions, which is what we need to hear. It's discouraging when we constantly get the problems but no solutions. I'm here in strong support of the single-family subdivision development portion of the '06 NOFA that is supposed to be coming out.

Just quickly, we do HTC deals, and we also do subdivisions. We try to do subdivisions. What stops us from doing more workforce housing for people who can qualify for their own piece of the American pie basically goes back to the housing of the RTC days.

Most banks will loan a developer somewhere between 60 percent -- two-thirds and 80 percent of the cost to develop a lot. If we have that gap covered up front, you can create a lot of for-sale, affordable housing for our workforce people.

As an example, let's take a 100-lot subdivision. The cost to acquire that land and to develop a lot -- and I'm not too far off here -- is probably

\$20,000 per lot. So that's a \$2 million development program.

The banks will line up right now for Life Rebuilders. We can borrow up to 80 percent of that figure. It's the gap; it's the \$400,000 that we can't cover, or quite often we can't cover. Our numbers indicate that with that gap covered up front, that all over that \$400,000 can be returned back to the program and keep rolling through.

It's like priming the pump. If we can get it started, we can keep going. In the particular subdivision that we're trying to do our numbers show us that 450 houses could be built, most of those for workforce people, plus or minus.

We don't want to walk [indiscernible], so there's got to be a way that, if a person qualifies then that's a certain criteria. And if they don't qualify for the program, then it's a loan that has to be repaid. I'm in strong support of that.

I think that -- my experience to date has been the marketplace out there can adapt pretty quickly. Most banks, most lending institutions have different programs, where a zero down for a person that qualified for the mortgage can get into a house.

Most lenders will allow the builder to put the

downpayment, buyer closing costs assistance money that they can into the mortgage, so that that can be part of the borrowed funds. Again if we had that pump primed at the front end.

In the example that I give, it would take \$400,000. That would initiate initially a 100-lot subdivision. And then with rolling those funds, our numbers show us that we can go through 450 lots and repay the entire \$400,000, not keep a nickel of the state's money.

I'd like to answer any questions. Subdivision development funds is what we need. Downpayment, buyer closing costs assistance money is great to have, but most lenders will help our borrowers with those funds.

MR. CONINE: Any questions?

(No response.)

MR. CONINE: Thank you, Mr. Halla. Appreciate it.

MR. HALLA: Thank you.

MR. CONINE: Gary Traylor.

MR. TRAYLOR: Good morning, Madam Chair, Mr. Conine, Ms. Carrington. Thank you very much for the opportunity to make a few comments regarding the 2006 HOME Program. Couple of things that I want to start with -- first of all, I thought that the comments that were made

here by Mary Kay Thomas were very articulate and, I think, put into very easy-to-understand language some of the problems that smaller communities have to participate in the HOME Program.

I would just like to thank her and echo what she said to you here this morning. I thought those were excellent comments.

MR. CONINE: She was pretty articulate. She fleeced me for some chicken money.

MR. TRAYLOR: That's right. And I'm sure she'll get mine before I leave today. One thing I'd like to say to you is that I greatly appreciate the adoption of the new rules that included Paragraph K that was referred to that prevents interested parties from making match contributions to HOME applicants.

Greatly appreciate that, and I think that is a very good move that the Department made. And I think it was something that was very necessary to help to restore public confidence in the way that these funds are distributed. And I thank you for that.

Also the comments offered by Mr. Pike about requiring contractor affidavits to reveal potential conflicts of interest, so that everyone is made aware of those. I think that's also a very excellent suggestion, or an excellent new requirement.

The reduction in the contract term that was proposed from 24 to 18 months is something that was stated as being needed in order to increase the expenditure ratio that you have that HUD calculates on a continual basis and measures the state's performance against.

I would like to offer just another perspective on that. I think that the Agency currently is spending an awful lot of its resources, an awful lot of its staff, an awful lot of its time and an awful lot of the time of the perspective applicants from throughout the state, preparing HOME applications and conducting these annual competitions.

I really would like to reinforce and repeat what Ms. Thomas referred to. She referred to double funding. The other state agency here in Texas that receives and distributes HUD money, the Community Development Block Grant Program administered by ORCA, also has this timely expenditure issue, and a number of years ago reached the conclusion that they would be better off to have these competitions every other year, rather than annually.

That has helped them to increase their expenditure rate with HUD, because it actually ensures that as soon as the second-year funds become available from HUD, they then can be distributed immediately to the

previously ranked, unfunded applicants, who can spend those monies and do so without a delay.

So I really want to ask you all to thoughtfully consider the possibility of doing something like that. I think it really has merit. I think it would also help the Department to maybe better budget its internal resources, just by possibly being able to assign people that are currently having to oversee these annual competitions, possibly putting them into service in other divisions of the Department, overseeing the compliance aspect of the HOME Program.

So I'd just like to offer that as a suggestion.

I recall a comment that Mr. Clyde Smith made here earlier this morning, mentioning that there are an awful lot of cities who choose not to apply for HOME funds. I think in the 2005 competition, TDHCA received about 150 applications for assistance under the owner-occupied program.

That's pretty noteworthy, considering that there are 1,100 cities in the State of Texas or thereabouts that are eligible to apply. Mr. Smith suggested that the reason that these cities are choosing not to apply is because they are not competitive, that they are unable to score in the competitive range.

Although I don't disagree with that, I would

like to point out something else that has not been said. And that is that there were an awful lot of cities who did apply in 2005 who were not funded. In fact, the Department funded a little fewer than half of the communities that did apply.

So I think that is very significant. I would also mention that -- and I cannot quote this statistic to you exactly. I don't have the numbers with me. But I believe that many of the 2005 applicants who were not funded were requesting HOME funds in amounts that were less than the maximum \$500,000.

That maximum \$500,000 award proved to be what was generally successful in the 2005 competition. So I'd like to point out that there are an awful lot of cities who applied in 2005 that were not funded and that were requesting less than the maximum amount of grant fund.

And I would also just mention again that an awful lot of the communities who applied in 2005 who were not successful under the selection process used for 2005, were committing substantial amounts of hard-dollar match.

I know that there certainly are continuing disputes about the value assigned to match in the 2005 competition.

And I won't speak to those directly. But I do think that on the list of communities that have complete applications that are currently on file with the

Department in 2005, many of those were committing substantial amounts of hard-dollar match that would be applied to the construction of additional housing for extremely low-income people in communities that are not receiving grants under the 2005 allocation.

Now, after listening to the various different proposals on how to distribute money for 2006 -- the continued use of a competitive selection process, the possible use of a lottery -- whether that's weighted or unweighted, I still don't quite understand how that would be done -- and then the third method of broader distribution -- I would say to you that I cannot support any of those three proposals.

And I think that each of them have some particular disadvantages to various groups here in Texas.

One thing I would say, though, is I think that there has to be a better system than a lottery.

Despite the fact that I have had some fairly strident disagreement with the Department about the 2005 competition, I believe that the citizens of the state deserve to see these funds allocated on a rational basis, in a competition that is responsibly conducted.

And I have every faith that this Department can do that and will do that. So I just don't think we ought to throw up our hands and say, Gee, we can't agree how to

do this. So let's throw all the balls in the air, and whoever's luckiest gets the money.

That just doesn't seem to be quite the way to do it. I would also like not to just stand here and offer criticism, but maybe to make a suggestions that might be the better part of wisdom, given events of the recent past and I think, the sincere statements that have been made by the Department to try to improve this distribution system.

I would propose or ask that you consider possibly considering 2006 to be a transition period. I would ask that you consider using your 2006 funds to fund the communities that were not funded in 2005, that you currently have completed applications in your file.

I would submit to you that I think that would go a long way to helping to restore public confidence in the HOME Program, to help fund some of the communities that have been perennial applicants, but who have not been successful in receiving HOME funds.

And I think it would also provide some additional time for thoughtful and responsible input from the public to help the Department in coming up with a new system for 2007. And once again I just want to strongly encourage you to consider going forward with, possibly at that time, a system that's based on a biannual funding cycle.

I think that would provide a lot more money for you to be distributing. I think it would provide a better opportunity for marginally-positioned applicants to be successful for HOME funds. But I'm just kind of looking at my notes. I think that's about all that I have.

Most of this is just impromptu. I would like the opportunity to submit some written comments to you about that. But I greatly appreciate the opportunity to make these comments.

MR. CONINE: Please do. I encourage you to submit written comments rather quickly.

MR. TRAYLOR: Thank you very much.

MR. CONINE: Thank you.

We're going to take a three-minute break and be right back.

(Whereupon, a short recess was taken.)

MR. CONINE: Okay. Let me ask a question first, because we obviously are under some time constraint. We've had a lot of good public dialogue, I think. And first off, I want to thank everyone for coming with that testimony.

That's critical to us to help determine what we can do to help improve the HOME funding cycle in the single family arena. Again, thank everyone for making the trip up.

Ms. Carrington, could you give me an idea on the timing standpoint? I've heard a lot of things here today -- and I'm sure Ms. Anderson has as well -- that caused me to think about a lot of different possibilities. I think, as one of the testimonies indicated, there's a lot in front of us here that I need probably a little more time to do it justice.

Are we under some kind of time deadline to take action as a Board today? Or can we massage this a little more, get some of the written comments that some testimony has indicated they will turn in? And would be able to, I guess, complete the Committee's work next month, or not?

MS. CARRINGTON: Your question really has several sections, Mr. Conine. Right now the Department does have a set of rules in place for the administration of the HOME Program for 2006. Any changes or amendments that the Board might recommend to be made to those rules would be required to go out for a 30-day comment period.

And for them to be implemented and operational for our 2006 HOME Program, those rules would have to come back to the Board on February 9, which is our regularly scheduled date for the February Board meeting, because we will be opening the applications in March, April -- March for the 2006 program.

So we are on a very short time frame for any

amendments or changes that the Board might want to make in the rules.

MR. CONINE: Do we have 30 days between our January and February Board meetings?

MS. CARRINGTON: No. The January Board meeting is the 18th, I believe.

MR. CONINE: And even though our current -- here comes our general counsel to set us straight.

MR. HAMBY: Well, actually, Mr. Conine -- Kevin Hamby, general counsel. One of the issues is of course we have a seven-day posting requirement. So anything the Board would be considering in February has to be posted basically at the end of January. So you're shortening that time even more.

MR. CONINE: Right. I understand. And the March application submittal is one that we have in current policy. Is that correct? You know where I'm heading with this. Somebody shorten the --

MR. PIKE: Okay. We're not set in stone obviously with a March application cycle. But we must get our funds awarded by August 31 in order to meet our performance requirements. Historically the tax credit program fills the entire agenda for the July Board meeting.

So typically HOME awards are made in August.

There is a little room in there. We know, based on this meeting today, if something were to have come out of it and we get a set of rules approved in February, that we were going to have a little condensed cycle.

Something to consider, I suppose, if there are any rule changes that you wanted to propose today, they would go to the Texas Register on the 19th. They're published on December 30. So we have to have them out for 30 days. That's January 30.

We'll compile that comment and get it up on the web by the February 2 for the meeting on the 9th. Okay. So anything that would be in the rules would have public comment between now basically and January 30. I would suggest that if there are program changes or other things that you wanted to see, perhaps they could be done, but done outside of the rules.

And we would have between today and the January meeting and possibly even the February meeting to consider some of the comments today and look at any changes. It's just that we wouldn't be able to get it into the rules, in other words.

MR. CONINE: Okay. I think that helps me answer the question. I still am of the opinion that we need to be thoughtful and deliberative about what we're doing here. And I'm not sure I can do it in the time

frame we have allotted for this meeting, nor am I sure I could do it even this afternoon at today's Board meeting.

I understand the complexities of time compression and the August 31 date. But in my view of the world is I want to get it right or as right as possible. This is a situation where it could change something over here, something else over here pops up.

And it's a little complicated to get your arms around all in one time.

Ms. Anderson, I don't want to dominate the conversation. But do you have some feelings on the subject?

MS. ANDERSON: I agree that haste makes waste. We don't want to be in the business of being unduly hasty. I also think we're trying if possible to make some set of rule changes to address staff's feelings about how it more effectively administer this program.

If that can be done in the time frame, then I'd rather be done for 2006 rather than wait under year. So we're all sort of caught in the middle here.

MR. CONINE: Okay. Ms. Carrington, do you have comments on waiting, or at least massaging and working between now and January, as opposed to today?

MS. CARRINGTON: We will work to do whatever the Committee and the Board's pleasure is. We will work

to make it work.

MR. CONINE: Right answer.

MS. CARRINGTON: I wonder if there is -- one option would be to, if there's anything we heard today about -- where there seems to be consensus, where we might not need more time to weigh all the options, we might look to potentially this afternoon and have the Board entertain proposing some narrower set of this body of work that we seem to have some consensus on, and then defer the more issues that have differences of opinion about them.

We might ask the staff to just look at that to see if there's some things, some part of this that there seems to be broad agreement, at least in the audience today, to go ahead and post those things and sort of strip it down.

If we could ask them to do that so that we could perhaps hear their thoughts on that this afternoon.

MR. CONINE: Okay. The other possibility that comes to my mind is have a second Board meeting in February that would meet the 30-day and seven-day timetable, so that we could get a jumpstart on April. Let's visit about that between meetings, and we'll figure out what we need to do.

Let's move on to item 2, Discussion of the Departments Section 504 Policies and Procedures.

Ms. Carrington.

MS. CARRINGTON: Thank you, Mr. Chairman. At the request of the Board several months ago, the Department -- actually it's probably been over a year ago -- the Department internally has been looking at our Section 504 policy utilized in our Program.

And while the Board's directive said just require compliance with Section 504, what we have determined in really looking at this, is that it's kind of an easier statement -- easier said than done, because we have the state language related to 504, which is very specific and very narrow.

We also have the 504 language in the federal statute which is very general and actually doesn't provide us a lot of guidance. There's also Subpart C of the federal regulations, which implement Section 504. But then HUD also has some guidance that they have provided for interpretation of 504, that actually we believe is sort of contrary to what the rule is.

So the 504 issue for us with new construction in our multifamily and our tax credit developments has not been very troublesome. That one has been fairly easy for us to implement. It has been for the rehabilitation on substantial alterations and other alterations that has been much more difficult, I think, for the Agency and also

for the public.

You all may remember in the round of tax credit applications last summer we heard several people from the public, who were doing application rehabs, discuss our implementation and our interpretation of 504. So we have had internally multiple discussions.

We've had a 504 committee that has been a real cross-section of a variety of people in the Agency from the multifamily section, from the compliance area, from Tim Irvine from the manufactured housing area, and from our legal staff and from real estate analysis.

And to say that internally as an Agency we have not all been on the same page, would be putting it mildly.

There have been very, very spirited discussions in those 504 meetings. So what I want to say to the Committee today and then the Board a little bit later, is this is for discussion only today.

If the Board so directs, what we would propose to do would be bring back a 504 policy that would come to the Board most likely in February, and then would be used actually for our 2007 allocation of tax credits. We are not looking to implement this for 2006, but implementation for 2007.

We do have both Kimbal Thompson and Tim Irvine in the audience today, who are really the Department's

experts on 504. And if you all have any questions you would like to ask or maybe issues in the implementation of this or in our discussions that have been particularly thorny for us, these are our guys.

Mr. Conine, I would love to hear from Mr. Irvine sort of a summary of the key issues and sort of policy --.

MR. IRVINE: Thank you, Ms. Anderson, Mr. Chairman, members, Ms. Carrington.

First of all, 504 is Section 504 of the 1973 Rehabilitation Act. And it's very general. It basically says the people should not be denied access to or the benefits of programs that are funded with federal financial assistance.

When you're dealing with programs like HOME, that are funded by HUD with clearly federal financial assistance, it's really easy. You take your direction from HUD. And HUD's fleshed this out with a ton of lore, good Q&A, wonderful stuff.

But in 2306 the requirements of 504 and Subpart C of the federal regulations that implement 504 were specifically made applicable to two programs that are funded with non-federal assistance, namely the tax credit program and the Housing Trust Fund program.

When the Board said, just require compliance

with 504, you've got to read between the lines a little bit. What we understood that to mean was, don't be burdening developers with unnecessary requirements, no matter how well-intentioned, because there isn't a bottomless pit of money that we can access to fund affordable housing programs.

And you've got to make affordable housing dollars count. So if you're imposing a meaningless requirement on somebody, you're doing a disservice not just to the developer and the businessperson, but really to the community that benefits from affordable housing.

So what we said about developing was a policy that would marry the interests of developers with the interests of the disability community and accessibility advocacy groups and so forth, and say, all right, let's look at what really gets the job done.

To do that we propose taking a very narrow reading of the state statutes, saying that we were constricted and constrained to use only 504 and Subpart C; in other words, if we could frankly disregard the HUD interpretive lore on this matter.

I'll give a classic example. The HUD interpretive lore outside of the rules says that if you have another alteration, something that didn't rise to the dignity of a substantial alteration and require full

compliance, and it was more than just routine maintenance, cosmetic, reroofing and mechanical -- in other words, it was in that middle ground where something significant was being done -- and you didn't have 5 percent of your units fully accessible from the outset, you have to make those units accessible to the extent feasible.

The law says that to the extent feasible really means that if something requires undue administrative and financial burdens, you don't have to do it.

Well, the HUD interpretive lore would indicate that if you were in that situation where you didn't have 5 percent fully accessible, and you decided you needed to change the doorknobs in upstairs unit 203, because that is an element that has an accessibility attribute under the Uniform Federal Accessibility Standards, UFAS, you had to change out every doorknob in that development and provide an accessible doorknob.

Or if you changed out a cabinet in one of the units, that you had to change out every cabinet in the unit and meet UFAS compliance. And HUD recognizes that this will result in a lot of accessible elements being provided without necessarily providing fully accessible units.

They frankly admit, it's a financial hammer. It's something there to drive the development industry to

provide fully accessible 5 percent at the outset. In conferring with Legal Services, we believe that it's appropriate to take all of the HUD lore together as a group, and that will in time result in this unusual result.

But we understand the need for consistency. If that's the view, then that's the view. We think that the only way that you can really make that work, is that if you come up with some front-end planning where accessibility issues are fully vetted, analyzed.

REA would need to look at them; multifamily would need to look at them; everybody would need to look at them. Then as the developers are going through the process of making their plans -- you know, this is a certification-driven system.

This isn't something where the state is going to be expending a lot of dollars and resources, checking on what's going on. It's something where we really have to rely in good faith on the development community. So we're working to develop a set of forms that can be used to certify 504 compliance and to identify those issues where a developer asserts that they are entitled to an exemption because something would be presenting an undue financial and administrative burden.

We believe it needs to address obviously common

areas, common elements, external roots. It needs to address the internal roots within the units, which is probably the most problematic aspect of a rehab. And it needs to address specific elements.

We do believe that something that the development community has suggested with regard to elements makes a lot of sense. And that is, rather than installing for example a UFAS-compliant, adjustable element, if the developer stands ready, willing and able, and their financial plans and projections provide for it, if they want to just say, all right, if somebody needs a fully accessible counter, we'll just take out the non-accessible counter and replace it with an accessible counter.

As long as they can meet that on the time frame, where a person with disabilities is not being prejudiced or treated differently, we think that's appropriate. And if it enhances their business operation, we like it.

We think that the process of going through these analyses to make determinations that things are financially and administratively burdensome is not our process to analyze; it's the developer's process to analyze.

We are developing forms that will require them

to submit appropriate supporting documentation for their certification. And we are recommending preliminarily that there be a process where it's done really on an exception basis.

If we take exception to what the developer has provided, we would recommend to the executive director that the certification not be accepted. And this of course would be a matter subject to appeal to the Board. You've got to have due process.

That's pretty much the framework that we're looking at right now. I really want to say that staff is zealous about this. They are dedicated to it. They are very concerned that all aspects of the community be equally, fairly and fully served, and that this not be seen as some sort of effort to pander to the development community at the expense of the disabled community.

In that regard we really have put a lot of attention into the affirmative marketing aspect of this. We think that probably affirmative marketing of this and development of these plans with input from the disability community is the only way to make this successful and workable. Be glad to answer any questions.

MS. ANDERSON: I have one question. Have you had a roundtable with our Disability Advisory Committee on this and/or the development community on this?

MR. IRVINE: When we prepared an interim draft policy, we did post a public notice. We did invite members of the development community, the disability community and others to come and participate. We had a really good session.

We had some real significant concerns that were raised. But generally I think we found that there was receptivity. I think that probably there was a fundamental misunderstanding by some members of the development community that somehow or other they had a pass on issues in internal root.

You don't have a pass on anything. If you're not going to address an element, you need to show why you're not addressing it and how come under one of the exceptions. Yes. We've had that. We continue to have ongoing dialogue with all parties.

MR. CONINE: Tim, thanks for your comments. My daddy always told me growing up, that when I had an old used car, that no matter how much I did to it, I could never make a new car out of it. That comes to mind when we're talking about the acquisition and rehab of the housing stock all across the State of Texas.

We, in the '70s and '80s, developed a gazillion apartments out there that are prime candidates to be converted to affordable housing stock. This Department

has had an effort over the last couple of years to attract those sort of projects into the affordable housing community.

We either develop new and/nor rehab 10- to 12,000 units annually in the state. And if you convert the 5 percent ratio to the disability community, that's 600-plus units a year. I would like some information on the occupancy of those 5 percent set-aside units, and to see how well we're actually matching up with the disability community over the last ten years or -- pick a time frame -- five years, that's fine with me.

Because I have some -- although I'm supportive of staff exuberance in this area, I have some deep concerns about trying to make a new car out of an old car.

Coupled with the overhang, if you will, of not only HUD, but the Justice Department floating around everywhere making separate determinations of what's right and what's wrong under the statute -- and of course then you mentioned 2306 providing some of those to the Housing Trust Fund -- I really want to make sure we're on target with what is reasonable and doable taking the 70s and 80s vintage stock out there and converting it into affordable housing stock, considering not only the design and implementation of the way those were just done back then, but topography is an issue.

This thing compounds itself greatly. If we're going to take another step towards the certification that we deem -- that we're getting from the development community and we're putting forth a new list of criteria, I want it to be fully fleshed out with both the development and the disabled community before it comes back here.

Appreciate the work that we've done so far. Again would appreciate some sort of response next time we talk about this on the occupancy levels of those 5 percent units that are out there in the stock already.

MR. IRVINE: Will do.

MS. CARRINGTON: Mr. Conine, if I might, I'd like to ask for a clarification from Mr. Irvine.

MR. CONINE: Sure.

MS. CARRINGTON: On this particular proposed policy that it's in the book for discussion only, we haven't had a specific roundtable on this.

MR. IRVINE: No.

MS. CARRINGTON: We had a roundtable back last summer -- at least one I remember, maybe more than one -- on the Department's implementation of 504. So I do not want to leave the impression that on what you were looking at today, that there has been a specific roundtable on this, but it has been the ongoing discussion for a year,

year and a half.

I wanted to clarify that for the record.

MR. CONINE: I appreciate the Department's inclusiveness of having those roundtables. I know we'll have them in the future on this particular issue. I'm sure there are several that will speak up and express their opinions. The Board looks forward to getting that input.

MR. IRVINE: Thank you.

MR. CONINE: I do have one witness affirmation form here, Jean Langendorf.

Jean? I saw you jumping up and down over there.

MS. LANGENDORF: I just wanted to -- and Edwina did clarify -- we have not met as a disability advisory group on this. And we have asked the Department to come to a group of disability organizations to talk about this. We're very concerned.

And we're really concerned about trying -- I think you put it really well -- trying to turn something that was built way back into something, and try to say it's successful, when we know it's not going to be, unless you level it. We're real aware of those things. So we really do want to work with the Department on this.

And we'd prefer you don't even have it at the

Board meeting this afternoon, and have it for a later date, once we have an opportunity to talk to the Department.

MR. CONINE: I would also encourage, if I might add, a dialogue with city staffs and city leaders at the Municipal League, whatever the case may be, because that group is fully supportive of the Department's effort to go in and fix up old doggy apartments in whatever end of town and get them brought to speed, put them in affordable housing.

At least I've found city officials to be very receptive. They should be included, I think, in the roundtables and dialogues as well.

MS. LANGENDORF: I think that would be really good, now that some of the -- they're out there a lot more inspecting things as far as accessibility goes. That really has changed in the last ten years.

MR. CONINE: Yes, it has. Thank you for your testimony.

Any questions?

(No response.)

MR. CONINE: Okay. That's all I had on my agenda. We will stand adjourned. Thanks.

(Whereupon, at 11:45 a.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Programs Committee

LOCATION: Austin, Texas

DATE: December 14, 2005

I do hereby certify that the foregoing pages, numbers 1 through 74, 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 & Community Affairs.

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(Transcriber) 12/21/2005  
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