

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

Thursday, March 20, 2007
William P. Clements Building
300 W. 15th Street, Room 103
Austin, TX

BOARD MEMBERS:

ELIZABETH ANDERSON, Chair
SHADRICK BOGANY
C. KENT CONINE, Vice-Chair
SONNY FLORES
GLORIA RAY
NORBERTO SALINAS

STAFF:

MICHAEL GERBER, Executive Director

I N D E X

<u>AGENDA ITEM</u>	<u>PAGE</u>
Item 1 Consent Agenda	3
Item 2 Nomination of Board Members	7
Item 3 Update CDBG Disaster Recovery	9
Item 4 Appeal of Floresville senior housing	32
Item 6 Compliance Monitoring Rules	51
Item 7A Ratification of interpretation of QAP	56
Item 7B Housing Tax Credit amendments	59
Item 7C Discussion of Process for Reallocation of Tax Credits and extensions	116
Item 7D Request for Reallocation of Tax Credits	116
Item 7E Gardens of DeCordova	126
Item 7F Amelia Park, Fort Worth	133
Item 8A Villas of Mesquite Creek	84
Item 8B Multifamily Mortgage Revenue Bonds	86
Item 9 Single-Family Variable Rate Mortgage Revenue Bonds 2007	109
Executive Session	115
Executive Director's Report	134
Adjourn	135

P R O C E E D I N G S

MS. ANDERSON: Good morning. And welcome to the March 20 meeting of the Governing Board of the Texas Department of Housing and Community Affairs. First order of business is to call the roll.

Vice-Chairman Conine?

MR. CONINE: I'm here.

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: Here.

MS. ANDERSON: Ms. Ray?

MS. RAY: Here.

MS. ANDERSON: Mr. Flores?

MR. FLORES: Here.

MS. ANDERSON: Mayor Salinas?

MR. SALINAS: Here.

MS. ANDERSON: We have six members present; we do have a quorum. As is our custom, we take public comment, both at the beginning of the meeting or at the discretion of the witness at the agenda item. We have no public comment to be heard in this public comment section of the meeting, so we will hear from witnesses at the appropriate agenda item. Therefore, the first item of business is the consent agenda.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: We have a motion on the floor, and it has been seconded. Can I ask Mr. Hamby for a point of clarification on agenda item 1(f) on the shelter grants program?

MR. CONINE: Yes, you may.

MS. ANDERSON: Thank you.

MR. HAMBY: Kent's playing lawyer again, speaking for the lawyer. Kevin Hamby, General Counsel for Department.

Madam Chair and members, the Item 1(f), as you recall, we recently adopted. We are in the process of going through an extensive rule making for all divisions. And as part of the rulemaking process we passed rules regarding the emergency shelter grant programs.

And in that rule, we had -- there is a federal rule that requires that there be participation by formerly homeless or a currently homeless person in this particular -- when these are -- to a Board that these grants are made to. We had put in the rules that would require 75 percent attendance at those Board meetings.

And as we looked at that, as the award applications came in, the staff discovered that that would probably cause a significant amount of difficulty in

making the awards for a statewide distribution. And in reviewing our options, it became that the most clear option was to request that we rewrite that rule to make it conform to the federal law, exactly where it would just be material, or it would just be participation on the Board by homeless person or a formerly homeless person. And so that is what this does.

It also allows, since we do have several applicants, it allows the applications that were previously received to continue forward to the next round.

So people do not have to reapply. And it makes all of those applications eligible, and allows anyone who wants to apply, now that we have lowered that standard, if people have looked, and they didn't think they could meet that threshold requirement, they can now reapply.

And so we should have a more broader array of applications that we can fund across the state. And this was, we thought, the best way to do this, and to meet all the requirements of the Administrative Procedures Act, and make sure we had a broad distribution of funds. Any other questions?

MS. ANDERSON: Thank you for that clarification. And then, Mr. Gerber, on Agenda Item 1(d), would you clarify the order of events for this NOFA on

critical infrastructure?

MR. GERBER: Yes, Madam Chair. Madam Chair, Board members, the Department is proposing that Item 1(d), which is the infrastructure funding availability which is actually being coordinated by the Office of Rural and Community Affairs, be handled the same way we are handling the multifamily rental NOFA. And that would be that, as a correction to your Board book, that the Department would like to see approval of this as a draft NOFA.

We would then take it to a community meeting to be held in Beaumont next Tuesday, March 27, to be held at Southeast Texas Regional Planning Commission to get input from community leadership and from interested members of the public. We would then also be submitting this NOFA, along with the multifamily NOFA to HUD, to just address any additional issues that might need clarification, and then bring it back to the Board at the April board meeting. So our intent is to handle both of these on a parallel track, receive the public input, and then bring it back to you for final approval at that April meeting.

MS. ANDERSON: That just wasn't what -- I asked him to do that, because that was not exactly what the Board writeup said. Okay.

MR. FLORES: I have already had a long

conversation with Mr. Gerber regarding that subject matter.

MS. ANDERSON: Perfect.

MR. FLORES: So I am ready.

MS. ANDERSON: Are you okay. You are ready to vote?

MR. FLORES: Yes.

MS. ANDERSON: Okay. All in favor of the motion, please say aye.

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Agenda Item 2 is nomination and election of Board members as required by Section 2306.030.

MR. BOGANY: Ms. Chairman, I would like to nominate Kent Conine as Vice-Chair.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. BOGANY: Ms. Chairman, I would like to nominate Kevin Hamby as our treasurer -- secretary. I am sorry. We don't need a treasurer.

MR. HAMBY: Yes, you do.

MS. ANDERSON: Well actually, a treasurer is required by statute.

MR. BOGANY: Okay. Can we nominate him for a secretary/treasurer.

MS. ANDERSON: There is no prohibition against that? Counsel?

MR. CONINE: You just did.

MR. HAMBY: Legally, yes. You can do that.

MR. CONINE: I don't know if I trust him with the money.

MR. HAMBY: Fortunately, the treasurer duties are only as the Board assigns.

MR. CONINE: Oh, that makes me feel better.

MS. ANDERSON: So do we have a second.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Congratulations, Mr. Hamby and Vice-Chair Conine.

MR. CONINE: Thank you.

MS. ANDERSON: Item 3 is presentation, discussion and possible approval of CDBG items.

Mr. Gerber.

MR. GERBER: Madam Chair, I would like to ask if actually Charlie Stone could come forward.

MS. ANDERSON: Great.

MR. STONE: Good morning, Madam Chair and members. My name is Charlie Stone. I am the Executive Director of the Office of Rural and Community Affairs, and we have before you an item for the Deep East Texas Council of Governments to approve a budget amendment, basically moving some money from the project delivery costs into admin.

It is an acceptable expense, according to the

action plan. And so we are asking for the approval to transfer those dollars. We are actually moving money, the ending -- the current budget is \$11,741 in admin and 88,259 in planning, project delivery. And with the budget amendment, it will be \$64,253 in general administration and 35,747 in planning and project delivery.

MS. ANDERSON: And the change in the line items in your view, doesn't affect the effectiveness of project planning and delivery, because of --

MR. STONE: That is correct.

MS. ANDERSON: Okay.

MR. STONE: No change in beneficiaries, or anything like that.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. STONE: Thank you very much.

MS. ANDERSON: Thank you, Mr. Stone. Agenda Item 3(b) is an update on the CDBG grant related to disaster relief. Mr. Gerber.

MR. GERBER: Madam Chair and Board members, I wanted to take this opportunity, and I will probably ask Mr. Stone if he has any additional comments to make, but I wanted to update the Board on the progress that we are making on the Community Development Block Grant disaster program. This has been a very challenging program for our department and for ORCA to administer.

It is a lot of federal money that comes with lots of federal rules attached. And I just wanted to assure you all, as we work with the Councils of Government, there was recently an audit report, that our internal auditor, Mr. James prepared and submitted to this Board all of which are recommendations that we take seriously.

We have, because of concerns that we have had about capacity, and because of the concerns about the slowness in getting some of these funds out, we have felt that it is necessary to create a new division within the Department to deal with disaster recovery. In Louisiana and Mississippi, it is important enough that those states

actually created whole agencies to deal with disaster recovery, to deal with the half billion dollars that this state is responsible for.

It is as at least deserving of a deputy Executive Director for disaster recovery to be accompanied by about ten positions, which we can fund using a provision of Article Nine within our statute that allows us to, as long as those funds are coming from another source from the federal government, we are able to hire, as long as there is that dedicated funding stream to pay for those FTEs. I have asked Kelly Crawford, who is our Director, previously our Director of Portfolio, Management and Compliance to take on that role of Deputy Executive Director for disaster recovery.

She has been working with Jeff Molinari, who continues to serve as Program Coordinator in working with those COGs. Candye Anderson is in the field.

We are looking to bring additional staff on, in the next few days, from other parts of the Department, who have specific skill sets that could benefit the Councils of Government in getting these funds distributed. But we are encountering problems with a number of issues, including environmental clearance, program documentation, and home ownership and title issues.

On the non-housing side, I am speaking for Mr. Stone. I know that he is dealing with environmental clearance issues, Davis-Bacon issues, and cost reimbursement that have been denied by FEMA. And he might want to touch on additional challenges that he is encountering.

But I did want to make it clear that we are working aggressively to move these dollars as quickly as we can. The Department, on a staff level, wants to be out of this business within three years, meaning that we not only get the money distributed, but that we also actually see a tangible product on the ground, where a family has a safe, decent house to live in.

The second issue I wanted to just discuss is that dealing with the internal audit. We are working with our Councils of Government to address those specific audit issues, and make clear on our expectations to get those funds out quickly. As we move to administering the \$428.6 million, it has been approved by this Board to go hire a third party contractor.

We are working through the issues with HUD of what our program will look like for the housing assistance program for this second tranche of funds. It would be my intention to move forward if the COGs do not have the

ability to move those funds, and a contractor at some point down the road does prove more able to be able to move these dollars along.

We will look to work with the Councils of Government to see if there is a better way, perhaps to pull the two programs together, have one unified program to get these dollars out. It is in the shared interests of the Department, the State and the COGs to move these dollars as quickly as possible through whatever distribution means is appropriate and acceptable by both this Board and by the federal Department of Housing and Urban Development. So those are all discussions that we are actively having, and we'll continue to keep you apprised.

But I thought that given the audit findings, given the concerns about structure, and the fact that another big wave of money is coming, that it is important to talk about some of these issues, and respond to any questions you have. And before we do respond to any questions if it is appropriate, Charlie, I don't know if you want to add anything from your side.

MR. STONE: Thank you, Mike. Again, Charlie Stone, Executive Director of the Office of Rural and Community Affairs. We concur with Mike's evaluation. The

program is difficult to get the money out the door, and to ensure accountability. I want to make sure this Board understands that Mike and I are on the same wavelength on that matter.

But we are also going to hire an additional four staff, under Article Nine authorization to handle our portion of the grant funds. Two of those will be in the field to provide direct technical assistance on a day to day basis. And then we will have two in Austin for assistance and oversight.

So we will continue to work very closely with your agency and the staff at TDHCA. We will ensure that you get the money out correctly.

MS. ANDERSON: Could you help us understand the allusion Mike made to difficulty getting reimbursement, something around FEMA items?

MR. STONE: Yes. FEMA has just been difficult to deal with from a -- I am trying to be very nice. But difficult is a good word, I think. Especially because the money goes direct to the grantees, and they have had problems. And we have had problems determining from FEMA exactly why they disallowed some costs in East Texas versus authorizing costs in Louisiana and other states.

So it didn't make sense to us, and we have had

a difficult time trying to talk to the right people at FEMA to get the correct answers. And what we found out was that FEMA used a lot of temporary employees during the disaster. They made decisions, then they left town. And they are nowhere to be found, now. So we are having to ask other FEMA employees for their interpretation. So it has been difficult.

MS. ANDERSON: What other things on the infrastructure side cause a time schedule that drags out longer than we would like, because I remember we voted for generators. And I am not a construction person. It seems to me like you can just place an order for a generator. And you hire the guys that know how to install it. And I know it is not that simple.

MR. STONE: No. It is not that simple. And we are running into environmental factors, as Mike said, and Davis-Bacon wage rates. And so we just have to make sure everything is accounted for. And we have had some difficulty with getting proper documentation to prove up the draws that are being requested at the agency.

And so it is an accounting issue, more than anything else. And once we have made some headway in Jasper County, which seems to be our challenge area in the State of Texas; 1.2 million out there, and we released

approximately 500,000 of that recently. So we are making progress. And when we get through that one, the rest of them should fall in line pretty good.

MR. CONINE: Out of the 75 million of the first tranche, which I believe -- correct me if I am wrong -- 40-something were to housing related and 30-something to non-housing related. How much of that is gone out the window now?

MR. GERBER: \$226,400 on the housing side, \$418,000, I am told on the ORCA side. About \$600,000 on the ORCA side.

MR. CONINE: Was that including the 500 you just mentioned?

MR. STONE: Yes, sir.

MR. GERBER: Mostly administrative.

MR. STONE: The rest of it has been admin costs to the COGs.

MR. GERBER: It is unacceptable.

MR. FLORES: Out of a total of what?

MR. CONINE: 75 million.

MR. GERBER: 40 million on housing.

MR. FLORES: Madam Chair, may I ask a question of the Director?

MS. ANDERSON: Yes, sir.

MR. FLORES: Mike, you are talking about reorganizing the Department and so on, hiring some people. Are you doing that according to the Texas hiring rules?

MR. GERBER: Yes, sir. And we have the capacity to move folks within as well, who have specific skill sets. And obviously, it is great that we are partnered with the Office of Rural and Community Affairs, which has extensive CDBG experience. We have staff that has that experience, some of that experience as well.

Kelly Crawford, in her new role, has been able to within those hiring rules, we have been able to move her into that position of deputy executive director for disaster recovery. And we have brought other staff. But we will be hiring additional people.

MR. FLORES: Yes. But my question is, is the state hiring rules, where you have to advertise and so on, and post them, whatever -- have you done all that?

MR. GERBER: They are, and we are doing that. We have mostly moved resources within house, but we are looking to -- we are building a staffing plan. We don't want to overhire, because the funds come -- the funds -- we don't just get the ability to draw down all the funds right away; it is sort of a ramp-up.

And so we are working through staffing plan.

Our belief is that ultimately, we will have about ten people supporting Kelly, but right now we need probably five or six. And right now, she has a team, between Jennifer Molinari, here, Candye Anderson in the field; we have another person who works in PMC who is very fluent in both auditing and financial accounting and with CDBG, who probably is also going to be lending support. We have one or two other staffers as well, who have been tangentially involved with this process, who are soon going to be devoted full time to this.

We don't want to leave other areas of the Department uncovered. But obviously, with this additional tranche of money coming, it is going to be -- it is a huge exposure for the Department.

MR. CONINE: Let me follow up by Mike with some more questions, Mr. Stone. Of the two pots of money, neither of which has flown out the door because of whatever reason, which one of the two COGs is finding it more difficult to distribute?

MR. STONE: Which ones?

MR. CONINE: Housing, or non-housing?

MR. STONE: Well, we all have our particular set of problems, and it is documentation on our side. And Mike could address the housing side of it. But it is

primarily documentation to support the draws that are turned in.

MS. ANDERSON: So it is like that you mean the COGs can't -- or the counties are not coming up with the insurance reimbursement paperwork showing what was reimbursed, and proving that it was damaged during Rita? Is that kind of it?

MR. STONE: That is correct. And environmental checklist -- there has been some resistance to doing that. Everybody thinks those things have been waived, and they haven't been waived, and so they have to go through environmental checklist.

And there are just a lot of frustrated people in East Texas right now. They want the money, and they want it without doing the paperwork. And we are having to tell them that we can't do it that way.

MS. ANDERSON: Were the environmental reviews waived in Louisiana?

MR. STONE: I do not know.

MR. GERBER: I don't think so.

MR. STONE: I don't think they were.

MR. GERBER: I don't think they were.

MS. ANDERSON: Mr. Hamby is shaking his head.
Okay.

MR. CONINE: Well, you know, I guess my memory of the COGs --

MR. HAMBY: But I would add that it was in the Louisiana compensation program, which enabled a bunch of other things to be waived, because of the way they did it.

MR. CONINE: Yes. I think what we have determined is the magic word "compensation" is a whole different bucket of regulations as it pertains to HUD. In fact, it wasn't even -- it is not even an eligible use for CDBG money, until they dreamed it up. And they dreamed it up at least in order to avoid a lot of the issues that I think that we are finding; to put the rule book over to the side, because it became a compensation issue.

But stepping back for a minute, I remember the COGs, all of them here, you know, telling us that they had waiting lists a mile long; people that needed their houses fixed, and I am sure they do.

But it is a little disheartening to me to hear that only 200,000 or less than \$300,000 has gone out for housing related purposes. And I am wondering what we can do, as a Board or as an agency, to help facilitate that process, and see if we can get it moving out the door quicker. What, in your opinion, would help?

MR. GERBER: What would help is for HUD to not

interpret their rules so strictly. But they are doing that.

MR. CONINE: Okay.

MR. GERBER: We work very closely with HUD on this. And we constantly are in contact with them to make sure that we are making the right decisions. So it is everybody is watching everybody right now. It is just difficult.

MR. STONE: Mr. Conine, I would just add in terms of things to do, at some point, we might just have to suck it up and do it ourselves. And that might mean ultimately that it is not just ten people. It might mean that it is more.

MR. CONINE: Well, the thought that crossed my mind after we met up in Washington with HUD a couple of weeks back was, what would it take for us to amend our allocation plan on the 75 million to include the word compensation? I mean, would that process be a quicker process and provide greater relief in a more expedient manner than for us to suck it up and getting the people down there to go through the paperwork?

MR. STONE: Provided that we craft the amendment in a way that we have said the words in whatever magical way it needs us to say them. I worry that we --

because we worked hard with HUD on the action plan originally.

MR. CONINE: Right.

MR. STONE: And I think we can change it. The problem is that we also then trigger the public comment process again, which means another set of delays. But we certainly had these discussions with the second tranche of money.

MR. CONINE: Right.

MR. STONE: And we still haven't figured out what the magic language is. And we have asked if someone would like to tell us.

MR. CONINE: I know we have got another board meeting in another couple of weeks or three weeks or whatever it is. A very short period of time before our next board meeting. And I would hopefully ask Mike and the staff to look at -- we are having probably to amend our \$400 million plan. We might as well go ahead and amend the \$75 million plan at the same time, so that we can help facilitate getting this money out a little bit quicker. And you know, I am sure -- Mike won't say it, but I will say it. I think to some degree, HUD misdirected some of our efforts. When we were putting, when staff was putting the plan together, in that the

interpretation of -- what some HUD officials would agree would be the best plan didn't necessarily turn out to what the brass in Washington, D.C. thought would be the best plan. And I heard for myself various interpretations get decided, that were different from what Mike and staff had heard, putting the plan together. So he is not -- I know he is trying to fix that. But I think we got misdirected a little bit. And it would help if we can get back on track with HUD Washington. Not only to help facilitate the \$75 million in a more expeditious manner, but also our \$478 million tranche that is getting ready to come back to us. So maybe something can happen between now and our April board meeting, Madam Chair if we could take another hard look at it and determine if an amendment to the original plan would be a shorter time frame that what appears to be excessive paperwork in order to get the money out.

MS. ANDERSON: I certainly support anything to streamline and help our relationship with HUD. I would draw the line at what I think is a pretty important philosophical underpinning of our action plan, which was that we did want people to rebuild their houses in Texas. We didn't just want them to pay and then have a take the money and run scenario, which is a little -- which is how

I am interpreting you know, the way some other states have handled it. And we want to rebuild. And we want East Texans you know, to -- so that is just a caveat I would add to this, is that we need to try and see if there is a way to streamline and preserve the philosophical underpinning that was sort of the foundation of the plan.

I don't know that it is at risk by changing the language. But I just feel like I had to --

MR. CONINE: No, I agree with you. And I think there is a set of mechanics that we discussed with some folks in D.C., that would ensure that the homeowner, for instance, would get a piece of paper that said that it is worth 40 grand once the house is repaired and rebuilt. And then they could take that to the local bank, and borrow the money, and get the house, and get the work done. And somebody would certify the work done, they cash in the 40, and it is done. That process will alleviate a lot of our paperwork on our end. I am still concerned about the non-housing funds, though.

MS. ANDERSON: Yes.

MR. CONINE: And the ability for cities and counties to complete paperwork in order to get 30 million in this first tranche, and I forget how many million in the next tranche. But you would think they would be

scrambling pretty hard to get the paperwork filled in.

MR. STONE: And they are. They are working very hard to do that. I think you will see the floodgates begin to open on the non-housing very quickly. We are providing a lot of onsite technical assistance, and they know what they have to provide for us.

And it is just a matter of putting the documents together. And we are out helping them with that. So I think you will see it soon; fairly quickly.

MR. CONINE: Okay. Will we see it by our next board meeting, do you think?

MR. STONE: I think you will see some more by then. We'll have a report for you.

MS. ANDERSON: Yes. Can we just sort of establish as a practice, either as a report item or as an agenda item at you all's discretion. Let's sort of, like the United Way Fund that has got a thermometer, right, with a goal. And we show the progress on the thermometer.

MR. STONE: We would be happy to do that. We will do that for you.

MS. ANDERSON: Let's make sure we are showing that drawdown at the board meeting every month, in dollar terms.

MR. STONE: Yes, ma'am.

MS. ANDERSON: And the only other thing I would add to this discussion is that to Mr. Gerber's point that at some point we might be forced to just assume responsibility for this program. In planning for that sad event to happen, you know, let's -- I am sure the staff, but again, I feel I ought to get up on the record.

Let's monitor the admin expense draws. So we don't end up, we burn through all the admin out at the COG level, and now we have to figure out how we are going to expend admin dollars to get the rest of the money out.

MR. SALINAS: So how much money have you really spent out in East Texas and how much money do you have left? And do you think you are going to be able to spend it? You know, the way you are going, I don't think that we will be able to spend the money, unless you change the rules.

MR. GERBER: I think we are going to have to work through that, Mayor.

MR. SALINAS: We should have changed them 90 days ago. Remember? Because this was going to happen, and this is going to continue to happen.

MS. ANDERSON: A lot of our rules are so that we have a -- on the back end, so that we have clean audits, so that we don't have the kinds of headlines

alleging waste, fraud and abuse that other states have suffered. And I think that Mr. Conine's suggestion that we go back and look at the language and the action plan, and can we facilitate clearing some of the roadblocks. But I think there is calls on the money, for the full amount of the money.

MR. SALINAS: Do you have the applicants?

MR. STONE: Yes, sir.

MR. SALINAS: For the whole --

MR. STONE: For our infrastructure side, on the Rita funds, we do have all the contracts out. What we are waiting on is draws. So all the projects have been approved. Contracts have been signed. We are now waiting on the paperwork to go in for the draws to send the warrants out.

MR. GERBER: And on the housing side, I mean, I have seen for myself, thousands of files. You know, Texans who are eligible. We have gone through many of those files ourselves, as has Jennifer Molinari in our audience. But again, it is these hurdles that we have just outlined, that are --

MR. SALINAS: Ninety days.

MR. GERBER: I hope we are much further along in 90 days. It is very frustrating. And we will -- I

agree with the Chair. We will be coming back to you at each board meeting, rather than wait 90 days, bring it back to each board meeting.

And let me also add, one of the things that I am also concerned about, I am always concerned about audit issues. We talked about some of this stuff in this audit that Mr. Gaines prepared coming forward back in May.

I would like to ask that whether it is done in the Audit Committee for in the full board meeting, that we talk about these audit issues at the next board meeting. I think you are owed answers. And this is integral to our being able to deliver funds getting out. And so --

MR. CONINE: And I also say, Mayor, that I think we are kind of the last state to get into this game. Mississippi and Louisiana have already done this. So HUD has developed interpretations and procedures that are now overlaying on Texas that maybe weren't apparent 90 days ago.

MR. SALINAS: Or six months ago.

MR. CONINE: Or six months ago.

MR. SALINAS: It has been -- I wonder how those people feel, that we never got there with the money.

MR. CONINE: Right. But by the same token, we should also be able to benefit from the procedures and the

experiences that both Mississippi and Louisiana have gone through. And I think that is where we are now, in the dialogue with HUD staff.

And once the path becomes more clear to Mike and his staff, from the D.C. folks, then the amendments to both of our plans can be brought back to this Board to then to help facilitate that in a quicker fashion. I just think we are in that period of evolution now, relative to the word compensation, because it is a different CDBG eligible activity than anything mentioned in the statute.

And so they are making up the rules for compensation, kind of as they go. So, you know, that is at least what I got out of the meeting we had in D.C. a couple of weeks ago.

MR. GERBER: And may I add, it is hard when the entire staff you are dealing with it gives you a direction, changes, and you are specifically told by HUD brass not to be in touch with those staffers any longer, and that you are given a staffer or a group of staffers to work with that are pushing you very much in a different direction. And so it has been challenging. But again, we will come back to the Board in May.

MR. SALINAS: What about the elected officials? How are they treating you?

MR. GERBER: Well, I mean we certainly have access to them, and the elected officials in the region?

MR. SALINAS: Yes.

MR. GERBER: Very frustrated. Very frustrated, as we all are. Charlie and I have been worked over quite a few times by elected officials from that region, and rightfully so.

MR. SALINAS: The County Judge from Jefferson County, how is he treating you?

MR. GERBER: Judge Walker has been a pleasure to deal with. All of them are very kind and easy to deal with. The bottom line is that there is a pot of money to help our fellow Texans in need, and we need to get those dollars out.

MR. CONINE: We had a good meeting with Congressman Bailey, whose district encompasses a lot of the afflicted area. And he was getting the same phone calls that these guys are. And he was encouraged by the fact that we were there in Washington, D.C. meeting with him, telling him that we had our plan over at HUD, that we are trying to get through the issues, you know, some of the technical issues.

He offered to help on his side, you know if there is any other legislation that needed to be passed in

an emergency fashion, let him know. He would jump on board and make sure it happened.

And you know, the way the thing is evolving, we may need some sort of statutory fix before it is all said and done. So I would say, stay tuned, and let staff continue to do the good work they are doing with both HUD and elected officials, either at the local, county or national level, in that area.

MR. SALINAS: Are the local counties getting any funds themselves to spend?

MR. CONINE: Not other than what they have gotten from FEMA and other, this is the only money I know of.

MR. SALINAS: Okay.

MS. ANDERSON: Beacon that one up. Any other questions? I think we have given Charlie and Mike, I think I am sure I speak for the Board.

We appreciate all that you and your staffs are doing, and the tremendous difficulties that you labor under, and the pain that you have received, and some of the working over, and the frustration that we all deal with. And we appreciate this report this morning, and we'll look to reports, hopefully a brighter set of outcomes in these reports in all subsequent board

meetings.

MR. GERBER: Thank you.

MR. STONE: Thank you very much.

MR. GERBER: Madam Chair, can I just acknowledge Heather LeGrone, Mariah, who is there, and Jennifer as well. May they stand up? These people have worked morning, noon and night to try to get these funds out the door and crack the code to make that happen.

And they are really, what Charlie and I are able to accomplish is really, in no small part, owed to them. So I just want to acknowledge their efforts.

MS. ANDERSON: Thank you all. Okay. Agenda item 4 is a real estate analysis item concerning Floresville Senior Housing in Floresville, Texas.

Mr. Gerber.

MR. GERBER: Madam Chair and Board members, this is a presentation, discussion and possible action on a timely filed appeal regarding the underwriting and development under the HOME program development of Floresville Senior Housing in Floresville, Texas. The application was not recommended for the requested HOME funding due to the failure to meet the leveraging requirements of the NOFA or funding of only 90 percent of the total dollar costs by the TDHCA HOME program.

And secondly, the failure to meet the requirements of the HOME regulations regarding non-residential community facilities being part of a residential building. The staff appeal is submitted by the applicant on January 23, and denied by me.

The applicant submitted a board appeal on February 13, 2007, and the board appeal generally addresses the same issues addressed in the appeal to the Executive Director. Namely, one, a Board waiver of the NOFA leveraging requirement, two, revisions to the building's configuration to meet the requirements of the HOME regulations.

Three, disagreement with the rents used by the Department to underwrite the transaction and the resulting underwriting conditions of the financing structure of the loan. And lastly, the finding of a technical delinquency of a related transaction. Staff is recommending that the Board deny the appeal and the requested waiver.

MS. ANDERSON: I have public comment on this, so it is at the Board's pleasure whether you want a motion on the floor, or do you want to hear the comment first?

MR. CONINE: Let me hear the comment.

MS. ANDERSON: Okay. Mr. Jesse Perez.

MR. PEREZ: Madam Chair and Board, I am here

representing the City of Floresville. I am the Executive Director for the Floresville Economic Development Corporation. And one of the goals and missions that my group has is to construct affordable housing within Floresville.

One of the sectors of our population that we are needing more housing for, is the senior citizens of Floresville. And we believe that this project will allow us the opportunity to create more housing that is affordable for the seniors in Floresville. So we understand all the situations that you all have enumerated.

But I am here to represent the City of Floresville and my board of directors on the Floresville Economic Development Corporation. And also, I have met with the County Commissioners in Wilson County, and they support our project.

So we are asking the Board and all the members to please reconsider the action before you, and ask for your support, and vote favorably that this project moves forward. Thank you for your time and consideration.

MS. ANDERSON: Thank you, sir. Question?

(No response.)

MS. ANDERSON: Ms. Sharon Boester?

MS. BOESTER: Good morning to all of you. I am Sharon Boester. I am the Executive Director of -- well, the Floresville Housing Authority, but three small tiny housing authorities within Wilson County. Just, I am going to refer to my notes.

In Wilson County, the year 2000 Census indicated that we had approximately 208 seniors in the rental housing market in Floresville. Of those 208 senior households, 82 percent have incomes below the \$20,000 level. So they would not be able to afford some of the higher rents within Floresville.

In addition, there is a serious lack of housing opportunities for seniors, particularly within the Floresville area. Strangely enough, in Stockdale, we have 30 public housing units of which 24 are designated for the elderly. There is no such thing in Floresville, with the larger population.

So at any rate, there is a professional market study done by BWB, indicated that there is only three vacancies in market rate rental units for one and two bedroom units. And the market study also indicated that there were 128 government subsidized units in the market area, with no vacancies. And with waiting lists.

To our knowledge, the senior complex has not

drawn any opposition. So we understand that the TDHCA HOME senior apartments have been approved and built in Lockhart, in Kennedy, in Luling. And they all have similar rents and incomes as Wilson County.

So we would appreciate your support in making this apartment complex available for the seniors in Floresville, Texas. Thank you.

MS. ANDERSON: Thank you. Mr. Mike Harms.

MR. HARMS: Mike Harms. I am the Executive Director of the Center for Housing and Economic Opportunities. And we are the CHDO in the transaction, and our partner is the Floresville Economic Development Corporation. I would just address by the issues in the appeal as quickly as I can, I timed my remarks as I did the presentation, and it will take about 4 ½ minutes. Item one, this is really the major issue. The 10 percent requirement.

When we read the 2006 CHDO rental NOFA, we read the requirement for the 10 percent of the total development cost in the form of loans or grants from other private sources. We were under the impression that these applied to gap financing HOME tax credit deals, because the majority of the NOFA talked about points and competitive scores, and the March 1, tax credit deadline,

and so forth.

We submitted our application after the tax credits were awarded in July, in the open cycle, in August. We received a standard deficiency letter, which was mostly minor corrections and clarifications to documents. However, we were informed that we had to provide the 10 percent financing. In response to the deficiency notice, we asked for a partial waiver of the 10 percent.

We also at that time, requested of staff, after we had cleared the threshold review, but prior to underwriting, that we go ahead and take this issue to the Board, so we could get it resolved, one way or the other.

Staff responded that we had to wait to go through underwriting to bring it to the Board. So here we are today, to ask for your approval.

During the appeal and review process, the Floresville Economic Development Corporation donated the land to the transaction. It has been appraised recently at \$69,000 per professional appraisal, at \$69,000. So we are putting in some resources into the deal.

If we go out and borrow the additional \$130,000 from a banker, or another lending institution, say at a ten year note at 7 percent, that is about a \$1,500 a month

repayment. That does not -- that leaves a small repayment to TDHCA. Then of course, when that note expires, you all would get the full repayment.

In addition, we are concerned because we do these all the time, that TDHCA might be in a higher risk position, because you may be in a second lien position for a million eight. We understand from staff that the 10 percent requirement was to reduce risk for these charter HOME rental projects, due to the thinking that the private sector would provide title loan oversight. In our experience, TDHCA provides much more oversight.

We get an annual review in our Loomin and Kennedy complexes. We submit quarterly reports, electronically. It is a very thorough review when TDHCA comes out. In my experience, as long as you make the payment to the bank, you don't see them coming and inspecting your properties.

Be that as it may, if this issue would cause our application to be denied, we are prepared to raise the additional 130,000. If the Board grants us a conditional approval of this loan, we believe we can have a private loan commitment in no more than 45 days.

Item two, and I am glad to answer questions at each item, or at the end. Thank you, Mr. Conine. Rents;

we believe our market study analyst has clarified this issue with the addendum in your packet. It is on page 3 of that BWB market, the four page market clarification addendum.

And if you would turn to page 3, in the upper right hand column you will see that there is, in the 80 percent category as Ms. Boester indicated, there are 49 seniors at the 80 percent median income, in the Wilson County primary market area. By HOME rules, we can only rent to three 80 percent median income in the initial rent up. So none of the 50 or 60 percent median income seniors could afford the rents that the Department has projected, which is \$432 and \$490 for a one bedroom and \$600 for a two bedroom.

Our rents, that we are requesting are \$300 to \$475 across that income spectrum, which we know that we can get, because we just rented up in Luling in about 90 days which is a very similar market. Our mission is to serve those that need the housing the most. We do not believe that we can achieve the rents noted by the Department.

In order to resolve this issue, the underwriting staff suggested that if we self-restricted the rents, it could be resolved that way, rather than

coming to the Board. We agreed in writing to do that. We are still here at the Board. We look forward to meeting with underwriting and coming to an agreement on achievable rents and a corresponding loan structure based upon those agreed upon rents.

Item 3 is our architects submitted during that whole review process an amended site plan, connecting the units to the building. And you will see in your packet that is now a one structure with the community building in the middle, and two one bedrooms apartment units on each end. And those are the units for the disabled, so they will be closed to the community building.

Quite frankly, it was just in our preliminary design, it was just, the architect didn't connect up the units. We have done that in all our other complexes, by the way. The community building and the units are hooked up.

Item 4, and this is just, they had mentioned in the underwriting report, and I don't want to just to leave it there, that we were delinquent at some point in our Kennedy senior housing. And I just want to categorically state, we have never been delinquent with that, as you will recall, the Board in November granted us a six month extension.

We only used one month of that extension. We started making payments in January. And so I don't see how that we were ever delinquent in that process. I just wanted to get that point on the record. It is not a real issue.

So in conclusion, we would respectfully request an approval of this loan, based on our outside grant of the value of the land, at \$69,000. And we would request that this loan be approved at our originally proposed achievable rents, which are between \$300 and \$450. And a corresponding mutually agreeable loan structure based on those rents. So I would be glad to answer questions.

Just one other comment. Since I left the Department in '96, I have been doing these across the state, in East Texas and all over South Texas. And all of the deals were 100 percent HOME funds, non-profit CHDO deals. And not one of them, to my knowledge has been delinquent or in any way in default.

The risk, all of them are -- not all of them, but all but one are repayable loans. They are all making their loan payments. So I don't see the risk in having a 95 percent deal in effect. Thank you. Questions?

MS. ANDERSON: Thank you. That is the end of the public comment, yes.

MR. CONINE: Can we get an opinion, or at least a statement from Mr. Gouris?

MS. ANDERSON: Sure. Thank you, Mr. Harms.

MR. HARMS: Sorry, Tom.

MR. CONINE: I don't know whether I want an opinion or not, but --

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis. As far as -- I won't give you an opinion, but a statement. A former underwriter used to say, this deal came in with four flat tires. And I think that would be a statement that would be appropriate for this transaction. It is just a very difficult --

MS. ANDERSON: Do you think some additional time and the effort, and the expense that the Department would need to go to, to re-underwrite this at agreed rents and you know, with a site plan which the applicant says now, makes it legal, and makes that a HOME eligible expense. You know, I am not inclined to -- I don't want you to do my job, and I don't want to do your job.

So I am not inclined to re-underwrite a deal in the middle of a board meeting. You think some additional time would help you and this applicant get to an underwritten deal that can work?

MR. GOURIS: I think additional time and

information could -- you can make just about any deal work if you work at it long enough. And I think that this is a deal that could either be reevaluated now. You all could tell us what rents you want us to set it at. Or they will tell us what rents they want to set it at.

I also think though, that to be fair, that you know, the application cycle is open and available to all applicants. And this is really something --

MS. ANDERSON: Mr. Harms, we are through with public comment, sir. Thank you.

MR. GOURIS: The transaction that perhaps wasn't ripe, wasn't ready to go when they made application. And to have to, like you say, underwrite it during the board meeting or after the underwriting part is actually completed, to have to renegotiate a bunch of things doesn't seem fair to the process, and to the other folks that might be looking for these funds.

MR. BOGANY: Tom, what do you believe is the biggest obstacle here in making this deal work? You said it came with four flat tires. Well, now he has got air in one tire.

He has got his NOFA 10 percent. And now he has brought the buildings together. So we have got two tires filled with air. So now what is the issue? Is it the

rents? Or is it something else? What is the biggest obstacle to achieve?

MR. GOURIS: Well, let me be clear on the 10 percent issue; he hasn't filled that tire. What he is proposing to do at this point is, if required to meet the 10 percent, if he can't get a waiver from you all on that, and it is something you all theoretically could waive, because it is your rule, your NOFA requirement.

If he doesn't get that waiver, then what he would do is not get grant proceeds or other contributions from a local area to participate in this deal. But he would go out and get a loan, which mostly likely would require that they would be in first lien, and we would be in second.

We wouldn't want to recommend that to the Department for the same reasons that Mr. Harms mentioned; that is, we would have you know, a large second lien, next to a very small first lien from a lender. And we would be in jeopardy of losing through foreclosure our rights to that property if the first lien forecloses.

So it is not a strategy we would want to pursue. The 10 percent test, one of the reasons that it was applied, was to gather local support for otherwise a very worthy transaction.

MS. ANDERSON: Can I ask a question. Would something like a contract from the housing authority committing to -- you know, I don't know if you would call it a half contract. I guess it is not a half contract, because it is not project based. But I mean, could that be used as eligible, you know toward the 10 percent, if the housing authority would commit to X number of units over X period of time?

MR. GOURIS: Are you talking about voucher units?

MS. ANDERSON: Right. Or whatever. I mean, the head of the Housing Authority just stood up here. And none of us dispute that there is a need for this housing. That is not what this discussion is about.

It is about the financial viability of the transaction. So I mean, is there something the Housing Authority could commit that would apply, that would count as --

MR. GOURIS: I don't know what resources they have available to them. In theory, if they had --

MS. ANDERSON: Vouchers?

MR. GOURIS: If they had monetary resources up front, the cleanest way would be to contribute whatever the difference of \$160,000, whatever, to the transaction.

Another alternative would be if they could commit some of their vouchers. This is a very small community, and it probably doesn't have enough capacity to commit enough vouchers to support this.

MS. ANDERSON: But again, that might be something, that if we took some time and let those parties work that out.

MR. GOURIS: Sure.

MS. ANDERSON: Because that is sort of not for us to say.

MR. BOGANY: Tom, it is so -- the \$69,000 that the land is worth, that would not be enough for the NOFA?

MR. GOURIS: That is correct.

MR. BOGANY: 10 percent.

MR. GOURIS: That is correct.

MR. BOGANY: 10 percent?

MR. GOURIS: That is correct.

MS. ANDERSON: The loan is at 1.9. So the 10 percent would be 190,000.

MR. BOGANY: Okay.

MS. ANDERSON: I mean, they are essentially asking us to fund the whole deal.

MR. SALINAS: And have a second lien, which is not --

MR. CONINE: Why? Would the 10 percent contribution from the local bank have to be in first position?

MR. GOURIS: It wouldn't, and we would want to attempt to not have it in first position. I am not sure anyone in their right mind would put a second lien on --

MR. CONINE: But that is not our problem.

MR. GOURIS: Correct. Yes, sir.

MR. CONINE: I mean, the way I see it, is that if the project is going to move forward, we want our money to be in first base position.

MR. GOURIS: Yes, sir.

MR. CONINE: Subject to the contribution and/or loan to be in second position. Thereby, putting a little more pressure on Mr. Harms, but at least we have protected the Department's position.

MS. ANDERSON: And there is no way to use the fact that there is no deferred developer fee in this deal. So is there anyway to use developer fee to -- I mean, when we see our for profit deals, they have deferred developer fee in them, usually. And there is no deferral developer fee here.

MR. GOURIS: Well, I mean, there are some underlying concerns about this deal that probably didn't

rise to the surface because of the four main issues that rose to the surface. And one of them is, with regard to you know, there is not a lot of cushion in developer fee in this transaction in the first place to defer. That is a problem for small developers and non-profit developers.

The transaction that we refer to in this deal, the Kennedy transaction had a similar circumstance where the general contractor you know, walked the job. And Mike and his folks came back in and got it built, and got it done. But did so at a higher cost than what was originally you know, anticipated.

And that is the kind of thing that happens when there is not a significant amount of developer fee to cushion the transaction. So it is an underlying kind of cloud of concern out there, that really wasn't one of the key concerns, but is one for these kinds of transactions, generally.

MR. CONINE: And his proposal to use lower rents then, essentially pushes the repayment back to us. Is that correct?

MR. GOURIS: That is exactly right. In fact, it makes it even more of a grant than a loan, which is another underlying concern that is kind of in the gray area, because our staff's belief is that the Department is

moving more toward repayable transactions as much as possible. And you know, given that direction, moving the opposite direction in requiring this transaction to see those lower rents, would mean that there would be more of a grant or a deferred forgivable chunk of our loan.

MS. ANDERSON: And I would rather then call it that, so we all know on the front end what we are getting into, instead of having a loan go bad on us. You know, that again, I am asking for more time.

Well, you know it would get us, would get the Board better clarity so we know what the deal is that we are about. We know what we are proposing to do, because I think we all believe that this -- or, I believe that this housing is needed.

And it is very difficult to build this kind of housing in areas where the incomes are so low. But I just don't want to get into one deal one way, and you know, I have read the history on the payments on the Kennedy deal, and it clearly did not lease up, didn't have the cash flow. You know, Mr. Harms is to be commended for getting the thing finished.

But these things are very thin deals. And I just hate to think that we are going in under one set of circumstances. You know, that is why I don't like to

underwrite things in the middle of a board meeting.

MR. CONINE: Madam Chairman, I move that we table this to our April board meeting and let's see if underwriting staff can get together with the developer and come to some mutually beneficial arrangement. My inclination is maybe to look at a partial waiver of the 10 percent.

I am not necessarily hard and fast on the 10 percent, especially in an area that is -- in an area where we are serving very low income folks, and not a wealthy part of the state. If you are looking for some underwriting guideline that might reflect some of the Board members' philosophy.

I would tend to be a little looser there than I would be on the rent side, because depending on where some of the competitors, some of these others, Kennedy, and some of these others. Luling, I think was mentioned, and some of the other projects, it would be interesting to see, if we need to determine if you thought that he could get higher rents.

Not because the incomes in the county were of a certain level, but the actual marketability of the projects that are in the proximity, or you know, at least close to the same income levels per county, and the same

sort of project that we are developing. It looks like we are developing a similar product that has been done in the past.

You need to get comfortable with what you really think you can get. Not what the numbers of the country incomes tell you you can get. And given the time between now and the April board meeting, I bet Mr. Gouris can get a little more comfortable with it, than what he is today.

MR. GOURIS: Okay.

MS. ANDERSON: We have a motion.

MR. GOURIS: Might I comment on that? Or should you like, on the comparability of -- the market rents we used actually were the rents that the market analyst established as the comparable market rent. The comment that Mr. Harms made, that the market analysis addressed those issues, really came in the last page of the supplemental piece of information that he provided, which says that typically, a tax credit development establishes rent at 10 percent below the market rent.

That doesn't really -- I mean, I can't really underwrite to that. That is kind of a rule of thumb kind of thing. What it suggests to me is that at the market level, there is a -- at the rents that are typically

targeted by our HOME program, that there is a sufficient number of units available, because the market rent is below that.

And therefore, I guess what I am looking for is direction from you all to say, yes we do want them to restrict to the lower limits. So that we are actually achieving those lower rent levels that Mr. Harms has indicated he wants to achieve, or give me directions --

MS. ANDERSON: Which would then drive the HOME funds to be more of a grant.

MR. GOURIS: Exactly.

MR. CONINE: Why don't you give me an A or B scenario when you come back next month?

MR. GOURIS: Okay.

MR. CONINE: Okay?

MR. GOURIS: Uh-huh.

MS. ANDERSON: All in favor of the motion, please say aye.

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Thank you.

MR. GOURIS: Thank you.

MR. HARMS: Thank you very much.

MS. ANDERSON: Agenda Item 5 has been pulled. Agenda Item 6 is with regard to compliance monitoring rules. Mr. Gerber.

MR. GERBER: I would like to ask Patricia Murphy to come forward. She and our General Counsel, Kevin Hamby will jointly address this item.

MS. MURPHY: I am Patricia Murphy, manager of Compliance Monitoring Division. Agenda item 6 before you is the approval of the final Compliance Monitoring rules. Some of the notable changes to the rules are draft material non-compliant.

One particular change to the compliance monitoring rules allow that if a development has no uncorrected issues of non-compliance, if they supply all of the corrective action materials during the corrective action period, we will, regardless of their scoring, not consider the developments to be in material non-compliance. This was one change we made.

Another significant change is that if an applicant transferred ownership of a development over three years ago, that we will not take the score for development into consideration when reviewing their application for funding or transfer of a development. One other significant change to the Compliance Monitoring

rules is through the utility allowances.

The IRS released their 8823 audit guide in January of 2007, and made some significant changes to utility allowances, and pretty much directed the state to allow a lot of flexibility. And so the Compliance Monitoring rules in Section 60.17 reflect those changes. If you all have any questions, I would be more than happy to answer them for you.

MR. HAMBY: I just want to add a couple of real quick comments on this. As you recall, Board members, this issue came up in the November board meeting during the routine processing of all of our rules.

At that particular meeting, we had a development that had raised some issues that the Board requested us to go back out and have further discussions on, to not hold people who have no control over a property in material by compliance. And these rules address the Board members' concerns on those.

They did go to public comment. We received very little comment on them. And they have addressed the issues that you requested us to look at in November. And that is the rules that are back up to you now, that we seek to go out for final approval, in which case they would be adopted, and would be the rules that we use going

forward.

MR. BOGANY: So moved.

MR. FLORES: Discussion, please.

MS. ANDERSON: Okay. So we have a motion.

MR. FLORES: I'll second the motion, but --

MS. ANDERSON: Thank you, Mr. Flores. And now, Mr. Flores?

MR. FLORES: Kevin, there is a debarment item that is underlined on page 8. Is that new, you highlight it. What is the purpose of that debarment clause?

MR. HAMBY: One of the rules that we will be coming back with you at actually, I believe, our April board meeting, assuming the timing works out, is the new asset management enforcement rules. And one of the requests that the Board made to us is to find a way to, if you will, take bad actors out of the program.

And so the debarment is a brand new process that, assuming the rules that are out for public comment right now get approved by the Board, there is a debarment process that we will go through. That the Board will then, once presented to staff, make a recommendation about whether or not a continuing player could, a person who had continuing bad prior acts would be debarred from having, being anywhere in the application or contracting process

with the Department for a period of time forward, based on what the actions were.

So it is a new concept, and again, you saw those draft rules, actually in November. And then at the December meeting as well. And they have been out for public comment now, or they are out for public comment now. We expect to bring you the final rules for approval based on that public comment at the April meeting.

MR. CONINE: I think Patricia said there were very little, or you said there was very little public comment on this. Were TAAHP and some of the other development community members at these public meetings, or not? Do you remember? Have they chimed in on some of this?

MS. MURPHY: These rules went out for public comment with all of the other rules. And I am sure TAAHP and those organizations were present, and they did not comment. I have also met with the Texas Apartment Association on these rules, and have received little comment from them.

MR. CONINE: Okay. Thank you.

MR. HAMBY: I don't believe we had public hearings per se, on the second round, with the adjusted rules that we put in from November to today.

MS. MURPHY: Right.

MR. HAMBY: But they were obviously aware of the other rules being published, and so they had the opportunity to comment. And I don't believe we have any comment.

MR. CONINE: Okay. Thank you.

MS. RAY: Madam Chair, there is no public comment to that?

MS. ANDERSON: No, ma'am.

MS. ANDERSON: Any other questions? We have a motion on the floor, and it has been second.

(No response.)

MS. ANDERSON: All in favor of the motion, please say aye.

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Agenda item 7(A) is presentation, discussion and possible ratification of an interpretation of the QAP. Mr. Gerber?

MR. GERBER: Madam Chair and Board members, Item 7(A) is a possible ratification of an interpretation of the application of 499C of the 2007 QAP and rules, regarding adherence to obligations and the handling of

penalty points for amendments. During the drafting of the 2007 QAP, staff recommended and the Board approved language that was intended to discourage applicants from building something other or less than what was proposed at the time of application.

And when that did not occur, provide the Board with an alternative to not issuing IRS form 8609, which allows the development to receive the tax credits. The Board wants to encourage applicants to request permission in advance of making changes to a development. An apparent ambiguity in the language is created an inconsistency between our staff and the applicant community thought the section should be interpreted.

As presented in the Board materials, the Department's General Counsel opinion is that 499C of the QAP should be read as not requiring or even authorizing penalty points when an amendment is requested in advance, and approved by the Board. For amendments that are not currently considered by the Board, and therefore not considered material by the Board, the penalty points would also not apply.

For purposes of the application of this interpretation, the term in advance would mean, prior to the event or action taken that required an amendment. The

penalty points would apply, unless the Board waived the rule to those applicants who did not provide the necessary evidence for any points received by the required deadline, unless the deadline under the QAP could be extended by request, and the applicant had received approval for an extended deadline from the Board in advance.

If any conflicts exist in different outcomes or penalties to be assessed within the QAP or other TDHCA rules, the Board should review that matter, on a case-by-case basis, and provide a decision that would be subject to 10 TAC 1.8. Staff recommends that the Board ratify the legal determination by the General Counsel. And of course, Mr. Ken Hamby is happy to respond to questions about that interpretation.

MR. CONINE: Any public comment?

MS. ANDERSON: No.

MR. CONINE: I hate let Kevin slip by so easy, but I will move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Madam Chair, can I note that at the last board meeting, there were members of the public who expressed concern at that? I just want to thank all of them for the cooperative way they worked with us to address this issue, and in giving us their insights.

MS. ANDERSON: They are never shy about doing that.

MR. GERBER: No. They are not. They are very constructive.

MS. ANDERSON: And that constructive relationship takes us in this industry a long way. Yes. Thank you, Mr. Gerber. Agenda Item 7B is presentation, discussion and possible action on Housing Tax Credit amendments. Mr. Gerber.

MR. GERBER: The first item is Spanish Creek Townhomes. The applicant is requesting approval to increase the land area of the development. The applicant proposes adding land to the land described in the purchase contract that was submitted in their application.

The proposal would increase the development's

land area from approximately 8.4492 acres to approximately 8.590 acres, a net change in both land area and density of less than two percent. The applicant stated that the change must be made because the cycle would otherwise not accommodate an existing service road on the development site.

The REA provision states that no change in the amount of the award is recommended. Staff is recommending approval of the request. The change would not materially alter the development in a negative manner, and it would not adversely affect the selection of the application.

MR. BOGANY: So moved.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: The second item, Madam Chair and Board members is Fairway Crossing, which is a forward

commitment. And this is a request to transfer ownership of the allocation and amend the application.

To refresh the Board, this is an application that the Board forward committed 2006 credit to in 2005, and subsequently forward committed 2007 credits in 2006, due to a federal investigation potentially involving the general partner of the applicant. The Southwest Housing Development Company, which was that general partner is now requesting permission to transfer the allocation to organizations owned and controlled by Granger McDonald, Mark Walcott and Steve Ford.

The application received twelve points for the Community Development Block Grant funds from the City of Dallas, however the City of Dallas has withdrawn the commitment to the development. The application would not have been competitive in the 2005 competitive application cycle without those twelve points.

2306.6713 of the Texas Government Code as stated and expanded by 49.17 of the QAP, which states that transfers will not be approved prior to the issuance of Forms 8609, unless the development owner can provide evidence that a hardship is creating the need for the transfer, such as a potential bankruptcy or removal by a partner, et cetera. The QAP also states that if the

viable operation of the development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the application.

The proposed new owners council believes that this portion of the QAP gives the Board the authority to allow the ownership transfer and amendments, because the rehabilitation of the development is in jeopardy, and because the current owner is unable to complete the development. The proposed new owner requests the following; first, to allow a change in the supportive services program.

Two, to reduce the number of market rate units from 13 to five. Three, to allow the original resolution from the City of Dallas in reference to the two times per capita rule still be valid. And lastly, that the proposed new owner not be penalized in the future for any additional amendments to the application.

And in the event the new owner is unable to complete the transfer with the parties involved, our Real Estate Division is stating that no change in the amount of the award is recommended. Staff is recommending approval of the request to allow the rehabilitation of the development, so long as future amendments are requested in advance of actually making any changes, as is consistent

with the opinion that you all just ratified under Item 7A.

And no penalty assessment is recommended for the new owner, because again, the amendments requested are in advance of the changes being instituted.

MR. BOGANY: So moved.

MS. RAY: Second.

MS. ANDERSON: Discussion?

MR. CONINE: I have a question. Can we get some clarity on why the City of Dallas has decided not to participate in their -- what was it. A HOME fund grant, or CDBG?

MS. ANDERSON: CDBG. I think that my understanding is just, they needed to redeploy those funds. They didn't know when the thing was going to be built.

MR. MCDONALD: The money has already been spent.

MR. HAMBY: Get a witness affirmation form.

MR. MCDONALD: They already spent the money.

MR. HAMBY: Identify yourself.

MR. MCDONALD: Granger McDonald.

(Crosstalk.)

MR. CONINE: Are they willing to do anything else? The issue that gives me a little bit of concern is

that you lost twelve points when the application project lost twelve points by them withdrawing, and therefore, even though we granted it, a couple of forwards.

And it is an extremely unusual circumstance, it still is in effect, leapfrogging some of the other folks that might be out there. And I just wondering, I just wonder where the City of Dallas really is, related to this project.

MR. MCDONALD: Had the original applicant been allowed by this Board to timely go on with the project, and not be given the forward with the stipulation, the City of Dallas would have funded as originally requested when the twelve points were granted. But since there was underlying reasons, that program expired on the City of Dallas, and those funds were expended somewhere else.

MR. CONINE: So it is my fault. Is that what you are saying?

MR. MCDONALD: Yes, sir.

MS. RAY: That is pretty much what he said.

MR. CONINE: Okay. On number four, where we are being requested that the proposed new owner not be penalized in the future for any additional amendments, I don't -- that is not a blanket acceptance of any future amendments, is it?

MR. MCDONALD: They way we understand it is, as long as we make those amendments and request in advance, as Mr. Hamby's opinion is, states. No, sir. It would not. But it is not a blanket --

MR. CONINE: But the owner won't be penalized.

MR. MCDONALD: Correct.

MR. CONINE: We don't have to accept the amendments.

MR. MCDONALD: That is also correct.

MR. CONINE: Okay. In other words, if you decide to build a bunch of four bedrooms over there, we don't have to accept it.

MR. MCDONALD: No, sir.

MR. CONINE: Okay. I just wanted to make that clear, because the way I read it, it kind of says that we were --

MS. ANDERSON: It is on the penalties, not the nature of the amendments themselves. But it is confusing.

MR. MCDONALD: Our biggest concern is failure to be able to close upon the half of the sunup.

MR. CONINE: Correct. And so you might have to adjust something. Okay. Well, I just wanted to make that clear, that we weren't granting a blanket acceptance to any future amendments on the project itself.

MS. ANDERSON: Any other discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Madam Chair, Lakeridge Apartments, these memos were first presented to the Board at the December 9, 2006 board meeting. The Board tabled the discussion, because there was confusion concerning the two bedroom, two bath accessible units. The owner requests approval of the four changes between the development proposal and the development as built.

First, vinyl tile was used in the entries, kitchens and bathrooms, instead of ceramic tile. Two, two units for tenants with special needs, units with special accessibility features were built with one bathroom instead of two as proposed. Three, the 335 parking spaces were proposed, but only 256 were built.

And four, the application indicated that the area to be developed is 27 acres, but later it was

actually 16 acres. I am sorry. But later, it was amended to be 16 acres, but the development was ultimately built on 14.2 acres.

An explanation of the difference as follows, and the substitute amenities, let me discuss those. To compensate for the change from ceramic tile, alternative use of the space proposed for two bathrooms, alternative use of the space proposed for two bathrooms, decrease in the number of parking spaces, and reduction in acreage, the owner notes several improvements to the original development proposal. The development contains 3,388 square feet, or 2.4 percent more rentable area than originally proposed.

There is a second controlled access gate for exits only, in addition to the one controlled access gate that was originally proposed. There is a large central open area that was not originally proposed that can be used for field sports, such as football and soccer. A sand volleyball court, and soccer that were not represented in the application will be added to the development.

Additionally, the owner notes that 5,670 square feet have been devoted to a daycare building. Although not includable in eligible basis, and not included in the

threshold or scoring items, they will provide residents of the development with preferential service, discounted rates that will not exceed the rates allowable by Childcare Management Services of Texas.

REA is recommending first no change in the credit amount, with the condition that the owner amend the current reported LURA to restrict all 23.4 acres of the site, and with the additional condition that should the owner apply to the Department for funding of the second phase of the development, that no acquisition costs be allowed. Secondly, we are also recommending that the owner request a release of 9.2 acres for development at some future point, without the use of TDHCA funds, then the release price should be the prorated value of \$202,777.

Or lastly, three, a reduction in the tax credit award of \$8,734 annually. Staff again, is recommending that the Board approve these four requests, with one of the three options that have been recommended by REA.

The changes would not have adversely affected the selection of the application. No penalty assessment is recommended, because these requests were made prior to the December 1, 2006 effective date of the penalty language in the QAP.

MS. ANDERSON: The applicant is here to testify, if the Board would like to hear that. Mr. Moore?

MR. MOORE: Good morning. I am here actually to answer any questions that anybody might have about this request.

MR. HAMBY: Could you identify yourself for the record, please.

MR. MOORE: What is that?

MR. HAMBY: Could you identify yourself for the record, please.

MR. MOORE: Oh, I am Jerry Moore.

MS. ANDERSON: Mr. Moore, I have a question. Real Estate Analysis has offered the Board three options here for handling the land situation. Do you have a preference among those three?

MR. MOORE: Actually, as it was explained to me, there is really -- there are not three options. The first two are in and of themselves, the same. There are really two options. And what we would like to do, is this project was submitted as two phases. And that was the reason there was the confusion with the number of parking spaces, et cetera, and also with the land, the land that was submitted.

It was submitted and the plans shown in the

original application, that it was a two phase project. And what we would like to do, because of the success of Phase One, would be to proceed with Phase Two. And if you can, as is stated in Option One and Two.

Now, what I think I am going to need is some assurance that the land that is recorded and the LURA for Phase One would be released to go into the Phase Two project, since it would be a different partnership. I am going to need that land transferred, when Phase Two is submitted from the Phase One to the Phase Two project. But it would be a tax credit application and it would use Department funds.

MS. ANDERSON: Okay. Any other questions for the witness?

(No response.)

MS. ANDERSON: Thank you, sir. Can I just -- thank you.

MR. MOORE: Is there -- and I ask that question of the Department as far as changing the LURA --

MS. ANDERSON: If you would, what I am going to do after you leave the podium, is I am going to ask staff to come up and reflect on that request.

MR. MOORE: Okay.

MS. ANDERSON: Thank you.

MR. MOORE: Thank you.

MS. ANDERSON: Mr. Gerber, with your support, I would like to have Ms. Foster or Mr. Gouris, somebody come talk about what the applicant just proposed, in terms of the land transfer.

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis. That is, in fact, what we were trying to get to. That the LURA would be on the Phase Two land, because Phase One is funding the acquisition of that. The LURA would stay on there until such time as you came back with Project two, was for Phase Two.

That was going to be funded from us, that would have a no cost to transfer the ownership of land, so there would be an excess profit to this first phase. That is sort of the issue that we are trying to get to.

The issue would be, for them, they would have to re-plat the property, which they would do anyway. And then ask for a release from us. And I don't have an issue with getting with that -- with having that release be recommended.

MR. CONINE: So has the Underwriting Department convinced the Legal Department we can do one or two, here?

MR. GOURIS: That is the question.

MR. CONINE: That is a different question.

MR. GOURIS: That is a different question.

Yes, sir.

MR. HAMBY: Kevin Hamby again, General Counsel.

There are some concerns, obviously because whenever we put the LURA in place, we put it in place for what the property is. If it were re-platted, the difficulty comes in, in the quote unquote guarantee.

Any of us could be gone at that time, depending on when it comes up. And we would have to work to figure out how we could do that, and still have the LURA in place, because conditional LURAs are a little trickier. So we --

MR. CONINE: Can you embed a release provision in the original LURA?

MR. HAMBY: I don't know. I would have to look at that. It is certainly something we could consider.

MR. CONINE: Well, that is why we have got you here instead of machines. You know.

MR. HAMBY: Some of the LURA restrictions of course, also, whenever we sign off on tax credits, that is what we are signing off.

MR. GERBER: This is a tax credit deal? I am sorry.

MS. ANDERSON: Yes. It is a tax credit deal.

MR. HAMBY: Yes. I mean, there are conditions that go with the property. And we have the 8609s and the LURAs in place. And so, there are just a couple of hurdles to jump through. And I am sorry. I didn't know this question was coming up, else I would have researched it better.

MS. ANDERSON: Are you clear on what Mr. Conine's intent and what the Board's intent will be, you know --

MR. HAMBY: To have the release. And I am just trying to get my mind around how we do that and give him the guarantee, quote unquote, that he has requested that he could have the second part --

MR. CONINE: I have the utmost confidence in General Counsel after having come off spring break that he will get to and look at these problems.

MR. HAMBY: That is probably why General Counsel is not prepared. He was on spring break. But no, we will look at that issue. And fortunately, we have better real estate minds in the Department than mine to work on that issue.

MR. CONINE: Move for approval subject to General Counsel getting the LURA worked out on one and two.

MR. SALINAS: Second.

MS. ANDERSON: The Mayor has seconded the motion. Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Madam Chair and Board members, Hamilton Manor Apartments. The owner is requesting the Board's approval for a change in the rent level of a one bedroom unit. The owner states that the reason for the request is to accommodate a particularly elderly tenant. The tenant has lived in the subject development for approximately seven years, approximately five years prior to the tax-credit-funded rehabilitation of the development.

The development was operated under USDA's rural development restrictions before the tax credit allocation and remains rent-restricted under those rules. The tenant qualifies for a unit under USDA rural development

restrictions and will qualify at 60 percent of area median gross income level of the tax credit rents.

However, all units in the development are restricted at the 50 percent income level, and the tenant is over that level. Because the tenant strongly desires to remain in his unit, the owner asked permission to change the restrictions of the one affected unit, raising the tenant qualification required to the 60 percent level.

The owner asks that the Board waive any penalties that might otherwise be associated with this request. If the Board does not waive the penalties, the owner asks that he be allowed to withdraw the request.

REA states that the requested change would not affect the feasibility of the development but, could under certain circumstances, affect the compliance status of the development. Staff recommends denying the request, because the QAP prohibits reducing the number of units restricted to any level of income, unless the owner can show that without the reduction, the development would be financially unfeasible.

Should the Board approve the request, language will be added to the land use restriction agreement, stating that once the tenant vacates, then the unit will then revert back to a 50 percent income unit level. No

penalty assessment is recommended, because the request again, was made prior to the effective date of the penalty language in the QAP.

MS. ANDERSON: Thank you. The applicant is here to make testimony. Mr. Williams.

MR. WILLIAMS: Good morning, ladies and gentlemen of the Board. I can't quite talk as fast as Mr. Gerber, so please bear with me.

MR. HAMBY: Would you identify yourself for the record, again.

MR. WILLIAMS: Louis Williams. And I am from Nacogdoches, Texas. I am the general partner of Hamilton Charger Properties that owns Hamilton Manor Apartments. And this was a 2005 tax credit property that we purchased in April of 2006 and finished the acquisition rehab in December. And we are in the process of going through cost certification on it.

With all that being said, let me just bring up the reason why we are trying to do this. We found out that the tenant is a fellow named Bill Bundren. He had lived there for approximately seven years. And he does make a little bit too much, at the 50 percent level, and he receives quite a bit of rental assistance from USDA, because he has got some major medical problems.

We tried to relocate Mr. Bundren, once we took possession of the property, but we couldn't find any place that would accommodate him, because of his handicap. So we -- his apartment -- we went ahead and rehabbed it to meet his needs, because we could not find anyplace in Hamilton, Texas, to put him in.

So, guys, I know that the staff has recommended against this, and I know this is a very trivial matter, considering, when you're looking at some of the other things that come before you all. But I need your help on this, because Mr. Bundren -- there is no place else to put him.

MS. ANDERSON: Questions?

(No response.)

MS. ANDERSON: Thank you very much.

MR. WILLIAMS: Thank you all.

MS. ANDERSON: I have a question, Mr. Gerber. In trying to accommodate this gentleman who is in this unit without permanently making that a 60 percent -- I don't want to permanently make that unit a 60 percent unit.

So I sort of have a technical question about whether, in order to do that, we would want to uphold the appeal, or can we without acting on the amendment, can we

change the language in the LURA to accommodate this tenant? I am trying to get to a narrow solution for this tenant without changing the nature of the unit.

MR. CONINE: It says here on my board writeup that once the tenant vacates -- the LURA would say that once the tenant vacates, then the unit would revert back to a 50 percent income unit. And somebody --

MS. ANDERSON: Is Mr. Hamby paying attention at all?

MR. CONINE: Staff, somebody at staff decided we could do that.

MR. FLORES: And we've done that before, Madam Chairman, in other cases.

MS. ANDERSON: Normally we have -- this one, we don't have a LURA in place yet. We don't -- I mean --

MR. CONINE: Why would it need to be in the LURA? Why can't we just do a standard LURA with an exception?

MR. HAMBY: And, again, I have not looked at this. Kevin Hamby, General Counsel. I have not looked at this LURA, and I apologize. Well, there is no LURA, I guess; it doesn't exist.

MS. ANDERSON: There isn't a LURA yet.

MR. HAMBY: My understanding is this is 100

percent 50-percent property. And so in order to put the LURA in place under the agreements, the LURA specified the number of units that will be in 50 percent, and they have to file, they have to file it -- the building-by-building percentages of what the rents will be.

It is a very difficult concept. I would probably talk more in terms of, under the Chairman's discussion at looking at compliance-monitoring questions, and whether or not this one person would be out of compliance, and what that would do. It is a difficult process to -- it is a 100 percent 50-percent building.

MR. CONINE: He has been on spring break.

MS. ANDERSON: Right. Okay. Well, I can see we're not going to get anywhere with him today. But the Board clearly can waive sections of the QAP, can waive any kind of compliance rule for a good cause. And so should the -- you know.

So we will see what the motion is. But I am just trying to get to a narrow solution that accommodates this elderly tenant without setting any more of a precedent than that.

MR. CONINE: How about if I make a motion that we grant the applicant's appeal, but that the resolution of the appeal -- in other words, whether it be a waiver of

the QAP, whether it be a waiver of compliance rules, whether it be drafted in a LURA -- we can leave that up to General Counsel's discretion at this point, unless it gets to be so cumbersome that he can't figure out a way and he has to bring it back before the Board at the next month's meeting. But that would be my motion.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Okay.

MR. GERBER: Copperwood Apartments. The owner is requesting that the Board approve the use of a water system with two central boilers to provide hot water instead of individual water heaters, and requests approval for the development to contain steel tubs with tile surrounds, instead of fiberglass tub showers in the units.

Although a review of the application found that specifications and amenities exhibits contained checkmarks

in the boxes for each of the foregoing two features, further we found that the property condition assessment proposed to continue to use a central boiler system. The property condition assessment was consistent with specifications and amenities exhibit for the tub showers.

However, the PCA estimated that fiberglass tubs and showers would be used to replace 50 percent of the existing steel tubs with tile surrounds, while the owner reported that only 60 tubs were actually replaced, 336 bathrooms. REA is stating that the change would not materially affect the underwriting and no change in the amount of the award is recommended.

Staff is recommending approving the request, and no penalty assessment is recommended, because the request does not involve changes from the original proposal.

MR. BOGANY: So moved.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Langwick Senior Residences in Houston. The owner is requesting the Board's approval to convert the development from six two story residential buildings to three story residential buildings.

The development as now proposed would have 124 open parking spaces and 30 garages, compared to a total of 116 parking spaces, all open in the original plan. Tenants would be charged rent for the garages.

In addition to the changes above, the owner requests approval to donate three acres of the original site to the City to be used as public parkland. The original site was approximately 14.5 acres. The final site after the donation would be approximately 11.5 acres.

Reduction in land area would increase the density of the development from 8.8 units per acre to 11.1 units per acre. An increase of approximately 26 percent.

REA states that the change would not materially affect the underwriting, and no change in the amount of the award is recommended. Staff is recommending approval of the request with no penalty assessed.

MR. BOGANY: I have one question. Do these

units have elevators?

MR. GERBER: Tom?

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis. That is one thing we check for very aggressively. Let me make sure that I can show you where that is in this underwriting report. If you look at the back of -- yes, they do.

If you look at the back section, the underwriting section of information, the second spreadsheet page, with all the numbers, there is a little box that says direct construction cost estimate. And down about ten lines is a slot for elevators. And there will be two, as proposed by the applicant.

MR. BOGANY: Okay. Thank you. So moved.

MR. SALINAS: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Pegasus Villas in Dallas. The owner is requesting the Board's approval for the following.

First, an acknowledgment and acceptance of the applicant's original intent, to indicate that the building would have a secured entry as the feature represented by checking the box for monitored unit security, in the specifications and amenities sections of the application.

The single resident residential building that comprises the development has two entry doors that are monitored by management staff during the day, that are only accessible via key code after management hours.

The building also has a security feature that was not proposed in the application, a full perimeter security fence with controlled gate access. Second, the applicant is requesting that a community garden walk trail, which is described in the specifications and amenities section of the application be replaced by the substitute feature of an observation deck on the roof.

Thirdly, the applicant is requesting that the Board accept the development as built with 316 parking spaces, instead of 350, as described in the application. The reduction is approximately 9.7 percent of the number of spaces originally proposed, and leaves the elderly

development with a parking ratio that is more than two spaces per unit.

The parking was reduced to allow islands to exist around twelve large oak trees. The feature substituting for the parking spaces. The final number of parking spaces exceeds city code.

REA is also stating that the changes would not materially affect the underwriting and that no change in the amount of the reward is recommended. Staff is recommending approval of the request, and again, no penalty assessments, because it was submitted prior to the December 1 effective date of the penalty language in the QAP.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. With the

Board's indulgence, I want to move a couple of agenda items out of order. I want to proceed now to Agenda Items 8 and 9, and then we will come back to the remainder of Agenda Item 7.

Agenda Item 8A is a possible issuance of mortgage revenue bonds and Housing Tax Credits for a deal where TDHCA is the issuer. Mr. Gerber.

MR. GERBER: Madam Chair and Board members, Item 8A is an application requesting the issuance of tax exempt bonds and a 4 percent housing tax credit determination for the Villas of Mesquite Creek. This is a Priority Three bond transaction, and proposes the new construction of 252 units, targeting the general population, to be located in Mesquite, Texas.

The bonds will be publicly offered through Citigroup Global Markets. The applicant is requesting 15 million in tax exempt bonds, 2.21 million in taxable bonds, and \$715,386 in housing tax credits. There was no one in attendance at the public hearing conducted by the Department on January 11, 2007.

Letters of support have been received from Mayor Mike Anderson, Commissioner Ken Mayfield, who does not represent the proposed development's district, Family Cathedral of Praise, and one individual in the community.

Letters of opposition have been received from Mesquite ISD assistant superintendent Michael Coffey and State Senator Robert Deuell.

Due to the election in January and the change of elected officials, Department staff called Representative Latham's office, to inform him of the development, however, we have received neither support nor opposition from the Representative. Staff is recommending approval of \$15 million in tax exempt bonds, 2.21 million in taxable bonds, and \$715,386 in housing tax credits.

MR. CONINE: Move approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Agenda Item 8B is discussion of an inducement resolution for multifamily housing mortgage revenue bonds. Mr. Gerber.

MR. GERBER: Madam Chair and Board members.

This is a request again for issuance of tax exempt bonds. Inducement resolution 07-007. And please note that the resolution, Kevin, is that the correct resolution number? Okay.

MR. CONINE: Double O, seven.

MR. GERBER: Double O, seven. Includes three applications that were received on or before February 12, 2007. The applications will reserve approximately \$45 million in 2007 state volume cap.

Upon Board approval to proceed, the application will be submitted to the Texas Bond Review Board for placement on the 2007 waiting list. The Board has previously approved 18 applications for the 2007 program year. It should be noted that approval of the inducement resolution does not assure that the development will ultimately receive approval for the issuance of private activity bonds.

First, is The Residences at Onion Creek. It is a proposed new construction development to be located at approximately the north side of East Slaughter Lane, a half mile east of I-35, here in Travis County. The Department has received no letters of support or opposition.

MS. ANDERSON: Are we going to take these

individually, do you think?

MR. GERBER: Yes, ma'am.

MR. CONINE: Move approval of Onion Creek.

MS. ANDERSON: I have public comment on this from the applicant, unless they wish to pass.

MR. BOGANY: Second.

VOICE: Pass.

MS. ANDERSON: Thank you. There is a motion on the floor, it has been seconded. All in favor of the motion, please say aye.

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: The second item, Madam Chair, is the residences at Old Denton Road.

MR. CONINE: Wait a minute. We did something wrong.

MR. GERBER: Sorry.

MR. HAMBY: I am having to get our bond counsel, because I believe that these are all under one resolution.

MR. CONINE: I would say we can act on them independently, and then act on the overall at the end.

How would that be.

MR. HAMBY: You are looking at approving the resolution. And that is what this agenda item is directly related for. And that is why, I don't know if Elizabeth is here.

MR. CONINE: No, she is not.

MR. HAMBY: Okay.

MR. CONINE: I saw her at the airport, leaving.

MR. HAMBY: Can they move this. This is one resolution. So we would have to redraft the resolution, wouldn't we? Because all three items are --

MR. CONINE: Well, you are assuming that we are not going to approve them all.

MR. HAMBY: I am not. I am just trying to make sure. If you don't approve them, then we have an issue with the resolutions.

MR. CONINE: Okay. Well, let's finish.

MR. GERBER: The Residences at Old Denton Road are proposed new construction development to be located at 8101 Old Denton Road in Fort Worth. The Department has received one letter of support from Summerfield's Neighborhood Association and 317 letters of opposition from the community, as well as a petition in opposition with 58 signatures.

Located behind the presentation in your board materials are letters of opposition from State Representative Vic Truett, City Council member Daniel Scarth, and City Council member, Salvador Espino, who does not represent the proposed development's district. There is also letters from the Manor Hill Homeowners Association, and the North Fort Worth Alliance.

Also included is an outline provided by the developer identifying the effort that they have made with the community and elected officials. Staff is recommending the approval of Old Denton Road's inducement. However, before that application is brought back before the Board for final approval of the bonds and housing tax credits, we are recommending that the applicant document specific efforts 45 days out to the Department staff of their efforts to meet and collaborate with the opposed parties, and their efforts to address the opposed parties concerns.

MS. ANDERSON: Okay. I have public comment on this item. Mr. Allgeier.

MR. ALLGEIER: Can I defer mine until after the neighborhood association has spoken?

MS. ANDERSON: Well, then let's let Mr. Sherman go first.

MR. ALLGEIER: Well, he is yielding his time to me.

MR. SHERMAN: I yield my time.

MS. ANDERSON: Jennifer Pinault.

MS. PINAULT: Okay.

MR. CONINE: Go ahead and introduce yourself.

MS. PINAULT: Good morning. My name is Jennifer Pinault. And I live in the Summerfield Community. Good morning, Madam President and Board members.

My name is Jennifer Pinault, and I am representing the people opposing the Residence of Old Denton Highway. That will include about 370 letters of opposition, including Councilman Scarth, Espino and Truett, who is also giving you the information.

We oppose the projects for the following reasons; we have overcrowded schools, insufficient infrastructure, minimal public transportation, inadequate staffing of police, and the location is not consistent with the City's comprehensive plan of development. Keller ISD is one of the fastest growing school districts in Texas. Keller has 32 campuses, serving more than 28,000 students, and is expected to rise to more than over 40,000 during the next decade, with a rise of 1,600 to 2,000 new

students each year.

Keller ISD has just not been able to build enough schools to keep up with the growing community. For example, the school board meeting in January, enrollment was at 28,052, which included 81 new students being added at the beginning of the second semester.

According to the figures posted by the Danter Company, the Residence at Old Denton Highway would add approximately 178 new students into an already crowded school district.

A presentation by Bob Thornton, a demographic consultant for Keller, has estimated that in the 2008-2009, when the children of the Residence of Old Denton Highway would enter the school system, four of the five schools in the area would be at or above functional capacity. Functional capacity is when the fire marshal will shut the building down due to safety reasons. This will also far exceed the maximum capacity of the building.

For example, right now at Heritage, which these children -- elementary-age children would attend, is right now at its max capacity of 680 students. Next year, Heritage is expected to hit max capacity of 750, and of course, raising over 830 students in '08 and '09. And in the stuff I gave you, that is the plan by Mr. Thornton,

and it does show you when the schools would hit the maximum capacity, and they are highlighted for you.

The location of the potential project will also impact the local area in a very negative way. The roads of Old Denton and Thompson are, at the very best, bad.

As the pictures show, they are two-lane blacktop, filled with potholes, and at times very scary when passing other vehicles, as there is no shoulder to give a car more room. In the morning rush, it is not uncommon to have to wait some time before you turn from Thompson to Old Denton Highway with the traffic.

That is greatly increased when there is a backup on I-35, as drivers have discovered this hidden secret. This was discussed in a meeting with the developer. Even though the spouse didn't live in the immediate area -- they live about ten miles away -- she has found the secret and used that road that night and at other times.

You might wonder why the roads are so bad. This is due to very poor planning on the part of Fort Worth, allowing the lowest impact fees for developers on road repair. There is a new development in Woodland Springs, for example, that is in the final phases of building.

The developer has already paid the impact fee, but the improvement of the road has not even begun, and it will be some time before starting, according to the Fort Worth alliance. This is also stated in a neighborhood community, in the homeowners association website. On June of '05, the road work was to begin.

Sal Espino, Councilman, said that a bond was passed in '04, but construction would not take place until '07 or '08 time frame, thus severely lagging behind the increase in housing. Both projects include 129 requests from 18 Tarrant counties under current plans and bond projection construction is to start in 2007, and continue for the next six to nine years.

The idea of affordable housing is to help them find available workforce, helping the individual to hopefully live the American dream of home ownership. And that is something that I believe that the company will enrich in their residents. According to the representative of New Rock, they even encourage those residents.

However, there is a lack of available job opportunities in the area. Retail is very sparse in the area. There are no help-wanted signs. And there is no retail within walking distance of the project. The

nearest retail is over two miles.

Also there is very minimal public transportation in the area. When I say minimal, that is being generous. There is one bus, the Summerfield Express, that runs Monday through Friday. It picks up at 7:00 a.m. and returns at approximately 5:45. This does not -- is not convenient for part-time workers on a standard shift work and for those not fortunate to have holidays and weekends off.

The nearest bus station is also approximately one mile from the proposed complex. The single parent running to the bus would not have the safe routes, since once again, the poor road conditions of Old Denton Highway and Thompson, with no sidewalks, no shoulders to walk on, and the pure amount of traffic on the roads.

Needless to say, there is also no daycare facility within three miles of the project, for babies, or before-school care for older children so the parent could go to work and not have to worry about their kid.

With our area doubling in size in the last three to five years, from about 24,000 to 53,000, the Fort Worth Police Department has not been able to keep up with the increase. The Police Department has added two small substations in strip malls, even though, with these

substations, the manpower of the department is at least ten officers short.

Response time is in the neighborhood of ten to 20 minutes, if they are able to come at all. According to a neighbor in Arcadia Park, Chris Evans, he said a neighbor girl was approached one day by a man in a van. She was able to run away to tell an adult, who in turn called police, but unfortunately they never showed.

The beat of an officer is very large, and with the new construction, is becoming very populated. That was also in one of the handouts that I showed you.

The officer that is in the North Fort Worth Alliance, Officer Allen Speed, is responsible for Beat C-14, which runs north and south about five miles. However, most of his days are spent in the far southern section, around the restaurants and movie theaters, thus leaving the northern half uncovered. According to the gentleman I spoke at the substation, the department is working on creating five districts in the department instead of four; however, the additional staff is just not available.

Officer Allen Speed is also highly encouraging residents to get involved with the Citizens on Patrol, because there is only a maximum of 80 officers in the city

on patrol. A bond is already set for the May election, and it does not include monies for additional officers. It includes new jails, new courthouse, new facilities for juveniles, and medical examiners.

The comprehensive plan of the city guide for development and the City Council guidebook is for making decisions about capital improvement plans, future land use development and rezoning. With the City of Fort Worth, Keller, and the Fort Worth Alliance, the City has started to rezone some undeveloped areas to require larger plot sizes.

The City is also attempting to work with owners of multifamily-zoned lots to rezone the parcels to lower density or other uses more compatible with future land plans. The process may include other land uses such as land swamps or green areas.

For example, North Fort Worth Alliance was able to meet with D.R. Horton. They were expecting to make high-density townhomes. With the fact and the ones we are presenting to you today, D.R. Horton did change to low-density housing.

Within a mile of the proposed project, there is also being built a market-driven multifamily infrastructure. They are planning a thousand-unit complex

in the next five to eight years. Because the builder is market driven, he will only be building 280 units, thus allowing the students to be absorbed into the already crowded schoolhouses.

This will also be studying of a 13.9 per acre standard rate and will be able to accommodate various incomes within the department of townhomes. We feel that the Residence of Old Denton Highway is opportunity driven, because if not built now, in a year or so, with the Hillwood development, there would be no additional need.

Even though the developer has been very gracious and easy to talk to, along with our understanding of the need for affordable housing for people in tough situations, we the petitioners and residents of Summerfield strongly urge you to deny the preapplication.

We have submitted a petition of 58 signatures, 317 letters of opposition, as well as letters from State Representative Vicky Truett, Councilman Danny Scarth and Sal Espino.

We understand there is one letter, a proposed -- for the project, from Mr. Lance Griggs. And we would like that stricken from the -- taken out of consideration for two major reasons. First, we feel that he is not impartial to this, because he was on the

committee that zoned the land. And he never told nor asked the residents for feedback on the proposal.

We found out through other communities and organization. Mr. Griggs does say he is the president of Summerfield Homeowners Association, but it is a voluntary, not mandatory association.

We ask that you deny the petition for reasons of overpopulated schools, insufficient infrastructure of roadways, inadequate staffing of police, minimum public transportation, and lastly, the location isn't consistent with City of Fort Worth's comprehensive plan. I appreciate your time and consideration on behalf of myself and the residents of opposition.

MS. ANDERSON: Questions.

MR. CONINE: Ms. Pinault, your testimony almost sounded like an indictment of the City of Fort Worth and the Keller School District, as opposed to multifamily housing, affordable housing for the workforce in and around the Fort Worth area.

How do you reconcile that with the fact the land is already zoned for multifamily housing and assuming -- let's forget about the affordability issue for just a minute. If a guy just wanted to go through and build apartments, he has got the zoning to be able to do

that currently.

MS. PINAULT: Correct.

MR. CONINE: So here, we have a chance to make them affordable, so that policemen, firemen, teachers and the like can live in that community.

MS. PINAULT: Correct.

MR. CONINE: As opposed to, you know, the fact the schools are crowded and the police don't respond and so forth. It seems like you should be down at Fort Worth City Hall making your testimony.

MS. PINAULT: Fort Worth is trying to work with the different developers in changing. They unfortunately have very poor planning on their part, and now they are trying to go back and correct that.

MR. CONINE: Do you think they would agree with that?

MS. PINAULT: Oh, yes.

MR. CONINE: Really. Even though the land is already zoned for multifamily at whatever density it is zoned for.

MS. PINAULT: Yes. And Fort Worth has gone to some of the multifamily developers and asked them if they could change what they have done so that they are able to absorb all the students in the areas.

MS. ANDERSON: And so an example of that was the Hillwood development that started out being about 1,000 units in the first phase, and now it is just going to be 280?

MS. PINAULT: Yes.

MS. ANDERSON: How close is that to the subject site?

MS. PINAULT: One mile or less.

MS. ANDERSON: Okay. Thank you. Thank you very much. Ms. Black.

MS. BLACK: I probably should have come up with her. We are neighbors. We live in the same area. I just wanted to re-emphasize her points about --

MR. HAMBY: Please identify yourself for the record.

MS. BLACK: Oh, I am Lisa Black. Resident in the Summerfield Edition, right next to that road that we passed the picture around. I just wanted to emphasize the lack of infrastructure in that area.

The roads are very small, and very overcrowded in that particular road. It doesn't seem like an ideal place to put multifamily. And Danny Scarth actually said that those, he is the City Councilman. He actually said those lands were zoned quite some time ago, and they were

trying to get them rezoned, because -- anyway, for lower density.

So the fact of the matter is that I think the Fort Worth Alliance. We are here, representing them. They were supposed to be here today, but they were not able to come. So but he told us that we could speak on their behalf, and they are opposed to this, because they are trying to get more time for the infrastructure to build up.

And I don't think it would be an understatement to say that the residences in North Fort Worth are really frustrated with the lack of road, I mean, road and schools keeping up with the growth. And we need some more time to build the roads nicer, to make the community nicer, because our school district is getting overcrowded.

The bonds, we just had a bond. So we won't be up for bonds for three years. We are trying to buy some time for our community and for the value of our schools and our homes and our community. We don't want it to -- anyway.

MS. ANDERSON: Thank you. I have one question. Your comment about the road you know, not being sufficient to handle apartments. Is the road sufficient to handle 280 market-rate units being built by Hillwood?

MS. BLACK: They actually will not be on that road. They will be on the freeway. They can take the access road around. That road is -- Thompson and Old Denton is -- they will actually be on 35, from what I understand, so they can just take the access road, which seems a more likely place for apartments to me. That corner is just a very small road, with no shoulder. You can't walk on the shoulder without --

MS. ANDERSON: Now, if you were living in an apartment, would you rather be right on the freeway or back from the freeway?

MS. BLACK: I would not want to be in a place where I couldn't hardly get my car out, because the roads are so small, you know. I don't know.

MS. ANDERSON: Okay.

MR. SALINAS: County road.

MS. ANDERSON: Right. Thank you.

Mr. Allgeier.

MR. ALLGEIER: My name is Dan Allgeier, and I am with New Rock Development. First of all, on the map in your package, our property is a little bit mislocated. We are actually on the southeast corner of Thompson and Old Denton, less the hard corner, which is about a 200 by 200 tract that is zoned retail.

It is not significant, other than the fact that it should be very clear that, one, we are not located in the boundaries of the North Fort Worth Alliance; two, we are not located in the boundaries of the Neighborhood Association that wrote the opposition letter that you have in your current package; Manor Hill. That is important, because we are closer to town.

North Denton merges with Riverside at Summerfield which is just south of us. Actually, there is a 33-acre tract. We are buying 17 acres of that tract. And Summerfield is on the south side of that, and Riverside from there south is a pretty decent road. That -- I think that is important.

School capacity, we go back and forth on school capacity. I think there are some political issues here. But basically we are within walking distance, on sidewalks, to every level of school. Keller is one of those school districts that has four levels of school. And we are in walking distance to all of them, including Fossil Ridge High School, not that any high-school kid would ever walk to school.

We are building 80 units less than the zoning allows. I think there has been another instance where there is a property a little further up the road that

got -- the neighborhood association withdrew. And I am under the impression that they have plans in to build a conventional project on that to full zoning capacity. We are zoned for slightly over 300 units; we are building 224.

Within a mile we have schools, library, police station, fire station, YMCA. Staffing -- we have heard comments on the staffing. I don't know the staffing. That is Fort Worth's issue.

There is a bus stop within a half mile. Yes, it is an express to downtown, but for Fort Worth, that is pretty good for a bus stop that far out. North Fort Worth Alliance has a very significant issue with the infrastructure in the area. It is pretty spotty development from there north all the way to Alliance Airport.

And frankly, I do have some issues. We are not in the North Fort Worth Alliance. We are south of that. If you look south of our site, it is solid city all the way to 820. It is like where I live in Plano. The traffic is terrible, and we have got all the roads. I mean, you know, what can you say. We live in a growing area. The roads are a problem.

We do have jobs. Alliance Airport is north of

us. There is retail, Perot; Millwood development is building an urban center next to us with urban center rents, dollar-plus rents. I will be surprised if they have any kids in that property, frankly. I can't say that; I don't know, but it is going to be a mixed-use development: retail and housing.

There have been improvements on the east -- northeast, west roads in the area. Tarrant Parkway is improved. Heritage Trace is improved. Western Center is decent. Perot built interchange is on 35 on a couple of those. I can't afford to build an interchange. I am not Ross Perot. I don't have my own helicopter.

We will be required to escrow a significant amount of money with the City of Fort Worth. And we discussed in a meeting the other night the fact that Fort Worth escrows this money and holds it so they can build the projects. I am only going to build a section of Old Denton down to Riverside, and I have got a really good road going south. I would love to use my money to do that, if Fort Worth will let me, and I am willing to go talk to them about that.

We are communicating, obviously, with the neighborhoods. We had a meeting the other night. These ladies were at that meeting. Everybody was very gracious.

And we are communicating with them.

We have already agreed to put up an eight-foot fence along the common property line. And we have discussed dumpster locations. And if you like, I will answer any questions.

MR. BOGANY: I have got a couple of questions. Are you planning on sidewalks?

MR. ALLGEIER: Yes.

MR. BOGANY: In the development?

MR. ALLGEIER: We will build sidewalks around the perimeter. In addition, we have made an arrangement with the property owner that owns a retail site south of us, that when we build sidewalk, that would have to be fronting on Old Denton. The reason we are doing that is it gives us a continuous sidewalk, which was Representative Truett's concern -- one of her concerns, to the middle and the intermediate schools.

MR. BOGANY: Okay. Second question. The one neighborhood that did agree, or believe that you were good, how close are they to this project?

MR. ALLGEIER: They adjoin us on the east. Those homes back up to us on the east.

MS. ANDERSON: Is that the letter that was signed by that Mr. Griggs that was mentioned?

MR. ALLGEIER: Right. We met with them. Fort Worth has a map on the web. These are your neighborhood associations. Okay. This is the closest one. We need to meet with them. He is listed as the representative. We met with him. We presented our plans. A couple of days later, he gave us the letter.

MS. ANDERSON: Okay. Well, you are going to get another chance to talk to a wider group of people at the TEFRA hearing, aren't you?

MR. ALLGEIER: I believe. You think?

MS. ANDERSON: And maybe before the TEFRA hearing.

MR. ALLGEIER: Well, we have actually met with them quite often.

MS. ANDERSON: Okay. Next question is, was there -- I see the e-mail traffic with the ED. But put aside the jurisdictional issues for just a minute for me.

There was an e-mail from Lorelee Phillips Hogg, with the North Fort Worth Alliance, requesting a meeting on May 2. Mr. Sherman said we weren't quite ready. Our planning is not quite finished.

MR. CONINE: May 2?

MS. ANDERSON: March 2. Then on March 5, Mr. Sherman wrote Monday morning -- that was Friday afternoon.

On Monday morning, he wrote to her and said, you know, call me to schedule a meeting. Did you ever have a meeting with the North Fort Worth Alliance?

MR. ALLGEIER: We did. We had it last Thursday night. And their representative was Loralee, and she attended. And Mark Grass also attended that meeting.

MS. ANDERSON: Okay.

MR. ALLGEIER: And they voiced -- they are not here, but they voiced the same concerns that the ladies have voiced.

MS. ANDERSON: Okay. Well, we need to sort out where the cognizant neighborhood association position is, so that the information is posted for this Board book and given to this Board correctly reflects, you know, should we vote to induce this. We would want that cleared up.

MR. ALLGEIER: I would just point out that the site is zoned for 305 units.

MS. ANDERSON: Mr. Sherman, you -- Mr. Sherman, please be seated. Thank you.

Any other questions for the applicant?

(No response.)

MR. ALLGEIER: Thank you.

MS. ANDERSON: Thank you.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: The next item, Madam Chair, is Lakeside Apartments in Texas City. It is proposed new construction development to be located near Mainland, Medical Plaza, and Palmer Highway in Texas City. The Department has received no letters of support or opposition.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Item 9 is presentation, discussion and possible approval of single-family variable rate mortgage revenue bonds 2007 series. A program, see --

MR. GERBER: Madam Chair, do we need to vote on the whole resolution?

MR. CONINE: Yes.

MR. HAMBY: You never actually approved the resolution which was -- what was on the agenda for the resolution.

MS. ANDERSON: May I have a motion to approve?

MR. CONINE: Motion to approve the resolution 007 -- is that what that was?

MR. BOGANY: Second.

MS. ANDERSON: Thank you. All in favor of the motion, please say aye.

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Madam Chair, Item 9, of course, which I am very excited about, would provide the necessary

approval to authorize issuance of single-family variable rate mortgage revenue bonds 2007 Series A for mortgages which would be securitized. They would be marketed to very low, low and moderate income residents of the State of Texas.

We have determined that there continues to be strong demand in the marketplace for these bonds. And our advisors believe that the proposed transaction will be beneficial to the market. And we'll continue with the standing book, would be our Texas First Time Homebuyer Program.

Staff is recommending approval of Resolution 07-005, authorizing issuance of single-family variable rate mortgage revenue bonds 2007 Series A as outlined in the resolution. Matt Pogor, our Director of Bond Finance is here to answer any questions you might have. And I saw Gary Machak, our financial advisor is also here to answer any questions about this transaction.

MR. CONINE: Move staff's recommendation.

MR. BOGANY: Second.

MS. ANDERSON: Discussion? I have one question for Matt, please. And my question is -- oh, wait a minute. I think it got answered.

MR. CONINE: You don't have a question.

MS. ANDERSON: I don't have a question.

MR. BOGANY: I do, though.

MS. ANDERSON: I don't have a question. Yes, Mr. Bogany?

MR. BOGANY: Could you explain to me the difference between the fixed-rated bond and the hedge-variable bond, so that I can kind of understand the difference there?

MR. SHERMAN: The fixed-rated bond, if we were to go to market right now with the fixed rate bond, we would not be at full spread. And we would not have any subsidy. And that is really what we are looking for, is to get some subsidy for ongoing programs in the next year or so. With the variable rate, we are able to capture that subsidy and have some funds available to buy down our rate in the future.

MR. BOGANY: Okay. Now, the 515 and the 615, that I see here, this is really not the rate. This is sort of where it is today if you could, and you won't be able, until you are able to go to market, to determine what the true rate is going to be.

MR. SHERMAN: Yes. Once it gets to market, it will be a lot closer, because we have to go to the Bond Review Board earlier than one would normally expect,

because they don't have a board meeting in April. So that is why we are here early. So it is kind of an early look at the rate. We are looking at a 515 right now that is about 60 basis points below the given market. And we will fix that at the time of pricing.

MR. BOGANY: Okay. Last question. Do we have to set aside so much for 60 percent of median income with these funds?

MR. SHERMAN: Yes. Thirty percent of our structure needs to be set aside for 60 percent AMFI or below.

MR. BOGANY: Okay. Thank you.

MS. ANDERSON: Questions? I think a motion is --

MS. RAY: Yes.

MS. ANDERSON: Thank you. Hearing no discussion, I will assume we are ready to vote. All in favor of the motion, please say aye.

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. At this point, we are going to take what I am guessing will be a break until about noon, and the Board will have an

executive session during that time. And then we will come back and complete, I think there are four agenda items plus the report items on the agenda. So we will stand in recess. And I will now read what I have to read.

MR. CONINE: Are we going to eat?

MS. ANDERSON: We are going to decide that when we get into executive session. We can do it either way.

MR. HAMBY: Madam Chairman.

MS. ANDERSON: Yes, sir.

MR. HAMBY: Before you read the litany that you have to read.

MS. ANDERSON: Yes.

MR. HAMBY: I had been remiss. We have a new deputy General Counsel that I have failed to introduce, and this is his first meeting. And it is Mr. Jeff Pender, who comes to us from the PUC. And Jeff is the reason I got to go to spring training this year. So I just want to make sure that you all are aware of him, because in my absence, Jeff will be the person working with you.

MS. ANDERSON: Right. Welcome.

MR. CONINE: Welcome aboard.

MS. ANDERSON: Welcome. Congratulations.
Okay. On this day, March 20, 2007, at the 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, March 20, 2007 at 10:50 a.m. The subject matter of this executive session and deliberation is as follows. A, the Board may go into executive session and close this meeting to the public on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code Chapter 551.

Item B, Consultation pursuant to Section 551.074 Texas Government Code with respect to an offer regarding a land transaction related to 6.5 acres of undeveloped land in Tyler, Texas. Item C, the Board may go into executive session pursuant to Texas Government Code Section 551.074 for the purposes of discussing personnel matters, including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee.

Item D, consultation with attorney pursuant to Section 551.071 of Texas Government Code. One, with respect to pending litigation styled TP Seniors II, Limited versus TDHCA, filed in state court, Travis County, Texas; number two, with respect to pending litigation

styled Deaver versus TDHCA filed in federal court.

Number three, with respect to pending litigation styled Ballard versus TDHCA filed in federal court. Number four with respect to any other pending litigation filed since the last board meeting. Number E, consultation with attorney pursuant to Section 551.071(b), Texas Government Code. Number five with respect to attorney client communications regarding pending legal issues, potential contract ramifications related to mortgage lending contracts with National Mortgage Corporations.

(Whereupon, the Board met in executive session.)

MS. ANDERSON: We will come back to order. Thank you. The Board has completed its executive session of the Texas Department of Housing and Community Affairs, on March 20, 2007 at 12:30 p.m. I hereby certify that this agenda of an executive session of the Governing Board of the Texas Department of Housing and Community Affairs was properly authorized pursuant to 551.103 of the Texas Government Code.

The agenda was posted to the Secretary of State's office seven days prior to the meeting, pursuant to 551.044 of the Texas Government Code, and that all

members of the Board were present. And that this is a true and correct record of the proceedings pursuant to the Texas Open Meetings Act, Chapter 551, Texas Government Code.

We are now going back to where we were, in our agenda, which is Agenda Item 7C. The Board, seeing no discussion on that item, we will proceed with Item 7D, presentation, discussion and possible action of request for reallocation of housing tax credits. Mr. Gerber?

MR. GERBER: Madam Chair and Board members, Item 7D is a presentation, discussion and possible action of request for reallocation of tax credits. Stephen Wasserman with the Wasserman Group is the applicant for the applicant for the Normangee Apartments, which is 05-225. Lytle Apartments, 05-226, City Oak Apartments 05-228, and Kerrville Housing 05-231.

All four of these applications received awards of housing tax credits in the 2005 competitive housing tax credit cycle. The applicant is federally required to place the buildings in service by December 31, 2007.

According to Mr. Wasserman, he will not be able to place the buildings in service by the required deadline, due to serious delays caused by the U.S. Department of Agriculture rural development who is a

permanent lender to these development. According to USDA-RD, Mr. Wasserman has not submitted key documents and sufficient information for USDA-RD to complete their review and a determination of the applications.

Staff believes this request to reallocate credits is an effort to circumvent our requirements, and that there is really no cause to reallocate. And we strongly recommend that the Board deny the request.

MS. ANDERSON: I have public comment on this item. Mr. Wasserman.

MR. WASSERMAN: Madam Chair, Board members, first I want to apologize for my casual attire. This is a lesson in don't check bags.

MR. HAMBY: Mr. Wasserman, would you put your name in the record.

MR. WASSERMAN: Yes. My name is Steve Wasserman. And again, I want to apologize for my attire.

So that was the first lesson of this. Don't check your bags at the airline, because it is back in Atlanta.

I want to say that this is a very, for me, and I have been in this business 32 years, this is a very unusual request, because we always do what we say what we are going to do. And I think when we go through some of the facts here, I hope you will see that we have at least

put our money where our mouth is.

Just as a brief recap, these are our four properties. RD-515 properties, approximately 25 years old; very much in need of rehab, and very much in the USDA national's bull's-eye of preservation.

We received 9 percent credit awards, for which we are extremely grateful in, 2005. And we started to act on that, after the awards were in place. Prior to that, we did meet with USDA; told them our intention, asked them what they wanted us to do, and how it would be best to work with them. And they said, wait until you get the credits or don't get the credits.

We actually submitted eight credit applications that year. And unbeknownst to us, we probably would have received more than the four, but we competed against ourselves. So our intentions were to rehab these properties. It is all my company does, is 515 USDA rehab.

So in addition to the tax credit awards, on these properties, we received one HP grant from a federal HOME loan bank. And of course, it is on hold. As of the 10 percent test date, I had invested \$1.22 million in these four properties, direct costs. That is not counting my overhead, my people, my time, and, certainly, my reputation.

We have assembled a team, including an owner, a non-profit owner that has 27 years of experience in this business, has probably done ten USDA RD-515 deals; an architect with 38 years of experience exclusively doing HUD and USDA work; and a contractor with about 20 years of experience. None of them have experienced the kind of interesting scenarios that we have experienced on these properties.

And I am here to appeal. The appeal is really to allow us to continue to move forward and try to get these done. We are so committed -- as you can tell by our investments, we are extremely committed. And I think when I tell you some of the circumstances that we faced, I hope you will at least see our point.

First of all, when we started this process, the handbook 3560 was in draft form; it was not finalized yet.

And so there were two -- there were a number of documents that the USDA was doing that set forth the requirements for a transfer. One of them was an unnumbered letter, and the others were ANs.

And there were some other secret things that they didn't tell us about, but there weren't any hard-and-fast checklist that we could work off of. As of two days ago, or three days ago, we received a memorandum from the

State Director that they have now exactly put those into a checklist of 57 items, which is great.

Had we known that in the beginning, we would have been fine. And in fact, we have actually completed those items. In the time since we started this, we are on our third RD director.

The first RD director put in about a year. The second put in a number of months. And we are in the third RD director now, so there has been no continuity at all from the USDA level.

And we are in our second what they call housing specialist, which is kind of the analyst who does this. She just came in about two months ago and has been off for the last two weeks for a darn good reason: Her husband just came back from Afghanistan. But they knew we were having this meeting, and they just didn't try to accommodate us. Some other things that have happened, and there are so many that I don't want to take too much of your time.

But I would like to just highlight a few things and really refute their statement that we haven't provided them with what they need. And I have some very specific examples.

A number of months into the process, the

appraisals that were done for TDHCA and market studies by a national firm that you all accept, two of them were thrown out. It is a company called Novagradic. And it is really because the appraiser didn't like the guy. The state appraiser didn't like the guy from Novagradic, so she disbarred him.

Now, they do appraisals all over the country. They did them for you. So we had to go out and get new appraisals. Okay. So that was a delay. And we had to actually go with one of her only three hand-picked appraisers. So we did that.

Then the next buzzsaw that we ran into was an architect who set demands that we, to this day, have not been able to figure out exactly what they are. And if I can, I would like to give you an example.

I have a list of comments that she made on this set of plans which she reviewed. One of the comments were -- and these are notes from the architect. On the cover sheet: remove the indication that documents may be reviewed at the Wasserman Group. Well, there is no comment on here. The architect removed it from the prior set.

His comments, I made the change myself. I can't understand what she is looking at. They wanted us

to not bring the units into full compliance with handicapped accessibility. We fought that battle, and we won it.

They fought us on the elevators. One of the projects is a senior project. And we agreed to put in elevators. They fought us on that. We prevailed on that, at least. But the architect has been a particular problem and frustration for us.

We are folks who have been in this business, and especially for the architect who I have had to just beg not to quit the job. But I think the point of all of us now is, we are just determined to try to get this done.

We feel real close; we feel the items that they think are missing are very minor.

Another example is in 2005 we were notified that the manager -- the existing manager, a gentleman who you all know, because he does tax credit properties -- was unqualified to manage, and we should find a new manager. Last month, we received a letter from the new State Director, State RD director, saying he apologized; it was a mistake.

Well, that was after we had to run around calling everybody we could find who wanted to manage a 20-unit project in a little town in Texas, which is not an

easy thing to do.

Our CNAs -- we have a statement, the property needs assessment. We have a statement in our file from the USDA, saying that the CNAs were conditionally accepted. The last letter says they were rejected. We don't know what she is looking at.

They made a comment in one of their letters about that the jobs must be competitively bid. We not only competitively bid them, we sent them the tear sheets, the log reports of everybody. We sent them the invoices from the newspaper, so they could see who did it.

And we only got one response, and that was not, yes, it is accepted or not. It was just okay; we got it.

We didn't get on any other projects. So the communication level has been very difficult.

And to highlight all of that, is, when the first RD director was there, and prior to telling us she was retiring, we requested a conference call to see if we could get the architect, their architect, their appraiser, all the critical people on the phone to try to resolve this. And by the way, I have made probably five or seven trips to Temple to meet with them, as has the architect and other folks.

Although the response from the RD director at

that time, unbeknownst to me, he was retiring, so really, why did he care, was, no, I don't think we can do that. So they set up a scenario where we would submit documents to the local levels.

They would go up to the state level for comments. Sixty days later we would get a comment back from the lower level of the state -- I am sorry -- the county office. And when we would ask the local office what they meant, they would say, I don't know; I didn't write the letter.

So this is what we have gone through for a year and a half. And we think we have narrowed it down to a couple or few things, and just when we think we do, they change hands again. So we are not blaming them; all we are trying to do is get to a point where we can communicate enough with them so that we can solve what really are very small problems.

And my suitcase that is now probably back at my house had books of files that are all the communications that we have had with them. And as late as last Friday, when I asked the State Director if he would at least make a statement that they would like to have these projects preserved, two of which need roofs already.

On one of them, the senior project, the grant

has already been given to replace refrigerators, doors, anything inefficient energy wise. His response was, he just didn't think he could do that. So it kind of puts us in a very strange and awkward position.

We know the Board has authority to do that. You did it last month. You have done it before. We hate to ask it. We have no choice. We have so much invested in these projects, and we really want to do them.

We actually had six more projects that we submitted in the '06 round and withdrew the applications because of what is going on now. We thought we would be through with this. I will respectfully ask your help.

MS. ANDERSON: Questions?

(No response.)

MS. ANDERSON: Thank you.

MR. WASSERMAN: Thank you.

MR. CONINE: Is there a staff report on this at all?

MS. ANDERSON: Let staff approach the podium.

Thank you, Mr. Wasserman.

MS. MEYER: Yes, sir.

MR. CONINE: Do we have -- is there any other '05 tax credit RD515 deals closed?

MS. MEYER: Closed? I can't answer.

MR. CONINE: Start of construction.

MS. MEYER: Robbye Meyer, Director of Multifamily.

MR. GERBER: Tom, why don't you come forward as well.

MR. CONINE: You mean I have got to listen to him again?

MR. GERBER: Yes. It is a two-fer.

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis. Yes, there have been other RD deals that have closed, both '05 and '06 deals that are moving forward as well.

MR. CONINE: '05s? I am primarily interested in '05, because that matches up with what we have here. We have heard complaints that the RD office has had issues, lets say, but there are other '05 rural deals that got done.

MR. GOURIS: Yes.

MR. CONINE: Okay. Madam Chair, I move that we accept that we accept the staff's recommendation to deny this request.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Agenda item 7E is presentation and possible discussion on a housing tax credit determination notice for the Gardens of DeCordova.

Mr. Gerber.

MR. GERBER: Madam Chair and Board members, Item 7E is a tax-exempt bond application that is requesting a re-issuance of a previously approved Housing Tax Credit determination. The Gardens of DeCordova was originally approved for a determination of a 4 percent housing tax credits in the amount of \$282,258 and HOME CHDO rental development funds in the amount of \$1,494,376.

At the October 12, 2006 board meeting you utilized in conjunction with bond authority from Northwest Central Texas Housing Finance Corporation. The applicant was not able to close under the original reservation. At the February 1, 2007, board meeting, the applicant requested a waiver of the requirement of Section

49.12(f)(1) of the 2007 QAP, which says that in the event that the bonds are not closed prior to the reservation expiration date, the new docket number issued by the Bond Review Board must be issued in the same program year as the original docket number in order to have the determination notice reinstated.

The Board approved the waiver to allow the previous approved 2006 application to be used for the 2007 application with the applicant signing a certification that states there are no changes to the application and the application meets the requirements of the 2007 QAP, and will comply with the 2007 QAP. The applicant has signed the required certification.

In addition, the certification requires the application to be presented to the Board for reinstatement, if there was public opposition to the development at the time of the original approval, or subsequent to that approval. The applicant has received a new docket number from the Bond Review Board, but the new reservation expiration date is July 8, 2007.

The proposed new construction will consist of 76 total units targeting the elderly population. It will be located in Granbury. The Department has not received any new public comment on this development since the Board

approved it at the October 12 board meeting; however, the original application did have opposition, which included a letter of support, which included a letter -- I am sorry.

There was a letter of opposition from a local citizen and a resolution in opposition from the City Council of the City of DeCordova. There were nine letters of opposition from local citizens and an opposition petition with 367 signatures. There was a letter of support from the Hood County Commissioner, Leonard Heathington.

The following concerns were cited in the letters that were received in opposition: the increase in traffic, no public transportation in the area; current infrastructure services being inadequate for this type of development, and insufficient medical services nearby.

Staff is recommending the re-issuance of the housing tax credit determination in the amount of \$660,812.

MR. BOGANY: So moved.

MR. CONINE: Second.

MS. ANDERSON: Okay. We have a motion on the floor. It has been seconded. I have a couple of questions of Mr. Gerber.

The underwriting report from October, the HOME

award has been made on this? -- because there is tax credits, 4 percent tax credits, bonds. What is your -- we are really here to --

MR. GERBER: Can I get staff to come on up. Let's come up to the front row.

MR. CONINE: Flip a coin. Somebody flip a coin.

MS. BOSTON: The award did include -- in October of 2006, did include 1.1 million in HOME funds.

MS. ANDERSON: Okay.

MS. BOSTON: CHDO funds.

MS. ANDERSON: Okay. The next question, which only came to mind because it was -- because we had this issue in another deal today that was a CHDO deal.

On page 2 of the underwriting report, it talks about 2,460-square-foot community building with a community room, library, laundry facilities, office space, kitchen and restrooms.

What was the issue on the community building earlier today, because it didn't have units, or it wasn't connected to a building with units in it. How is this different?

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis. The difference is that using the HOME

funds to fund the community building, it can't be -- it is an ineligible activity if the building is not connected to residential units. In this case, because there is tax credits and other sources of funds, they can do it without HOME funds.

MS. ANDERSON: Okay. That makes sense.

Mr. Opiela.

MR. OPIELA: Eric Opiela here. I am only here to answer questions if you have them. This -- if you remember the resolution you passed in February, since this application had a letter of opposition back when it was originally considered, we have to come back to see if there is going to be any more community opposition. And as far as I know, there isn't any here today, and we haven't received any further letters of opposition since the original applications was approved by this Board back in October 12. And that is why we are here again today, based on that resolution.

And if you have any other questions, I would be happy to answer them.

MS. ANDERSON: Are you aware of anything that the developer has done since, because, you know, you had to get the new docket number and stuff too. It is very unusual to oppose a senior deal, period. Okay. And this

is a senior deal that had all this opposition to it.

Are you aware of anything that the developer of the CHDO has done to try to mitigate that opposition, so that when you break ground, everybody is happy about it?

MR. OPIELA: Sure. The opposition was from a homeowners association, DeCordova Bend Estates, which is a gated community that is just adjacent to this development.

And they had incorporated as a city back in 2000 to prevent annexation from the City of Granbury.

Since then we have tried to work with the local city. We have actually engaged the County Commissioner who has been very supportive of us. And a number of the -- that we were actually working with him, to try to get municipal utility service through annexation with the MUD, and we will continue to do our best to work with the community.

I think this is a situation where you have a homeowners association with a lot of misperceptions in regards to tax credit properties. They are concerned that their homeowner values will decrease. And that, from what I have heard, has been the root of their opposition.

There are adequate roads. Some of the issues that they brought up, as Mr. Gerber mentioned, were adequate roads. The Commissioner has ensured us that

there are adequate roads. There is a major road that is servicing the project.

The issue regarding medical services, there is medical services nearby in Granbury. You know, we believe we have worked to try and address all of the issues and whatever legitimate issues there were in terms of opposition. And we will continue to try to work with the community as best we can.

MS. ANDERSON: Thank you. Other questions?

(No response.)

MS. ANDERSON: Thank you.

MR. OPIELA: Thank you.

MS. ANDERSON: Hearing no further discussion, I assume we are ready to vote. All in favor of the motion, please say aye.

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Item 7F.

MR. HAMBY: Madam Chair, I just need to make a clarification. I am sorry. I believe that Mr. Gerber heard an amount of \$660,000. It is actually 281-: 281,258; I just want to make sure that we had the right

amounts so that the record reflects that.

MS. ANDERSON: Thank you.

7F is a possible issuance of determination notice for housing tax credits for Amelia Park in Fort Worth.

MR. GERBER: Madam Chair and Board members, this last issue is a Priority Two application proposing the new construction of 196 units targeting the elderly to be located in Fort Worth. Bonds will be issued through the Tarrant County Housing Finance Corporation.

The Department has not received any letters of support or opposition. The applicant is requesting \$738,472 in housing tax credits. Staff is recommending the approval of housing tax credits in the amount of \$738,472. And that is the correct number.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. That is the end of the action items. We have an Executive Director report.

Mr. Gerber.

MR. GERBER: Madam Chair, the only item that I would refer to, you will see in the back, was to the outreach activities that the Department has been engaged in. Also, as you know, the Department had an RFP out for management services for properties that are coming back into the Department's portfolio, where they are being inadequately serviced. And we have approved three managements first that have that capacity, based on our set of scoring criteria that were developed.

And we will work through and quickly we will suit the Department's needs. We believe that there are maybe as many as eleven properties that are potentially going to fall in the category of needing those services, so we think that the three that we have will deal with and manage those properties, should that become necessary. And more information on that is in here, available to you.

That is all I have.

MS. ANDERSON: that is all you have?

MR. GERBER: That is all I have.

MS. ANDERSON: Anybody have anything else?

(No response.)

MS. ANDERSON: Then with no business to come before the Board, we stand in adjournment until the April meeting, April 12. Thank you. We are back to our normal day, which is the second Thursday.

(Whereupon, at 12:50 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: March 20, 2007

I do hereby certify that the foregoing pages, numbers 1 through 142, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Sunny L. Peer before the Texas Department of Housing and Community Affairs.

(Transcriber) 03/26/2007
(Date)

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