

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

125 E. 11th Street  
Dewitt C. Greer Building  
Texas Department of Transportation  
Ric Williamson Hearing Room  
Austin, Texas

Thursday,  
January 20, 2011  
9:37 a.m.

MEMBERS:

C. KENT CONINE, Chair  
GLORIA RAY, Vice-Chair  
LESLIE BINGHAM ESCAREÑO, Member  
TOM GANN, Member  
LOWELL KEIG, Member  
JUAN MUNOZ, Member

STAFF :

MICHAEL GERBER, Executive Director

*ON THE RECORD REPORTING*  
(512) 450-0342

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- e) Presentation, Discussion and Possible Action to approve the submittal of an application to the U.S Department of Housing and Urban Development (HUD) for the Rural Innovation Fund Program
- f) Presentation, Discussion and Possible Action to approve the submittal of an application to Centers for Medicare and Medicaid Services (CMS) via the Department of Aging and Disability Services to request administrative funding to support the housing efforts of Texas' Money Follows the Person Demonstration Program

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HOME

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- k) Presentation, Discussion and Possible Action regarding the 2010 Single Family Owner-Occupied Housing Assistance, Homebuyer Assistance, and Tenant-Based Rental Assistance Programs award recommendations

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EXECUTIVE SESSION 162

1. The Board may go into Executive Session pursuant to Government Code, §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;
2. Pursuant to Texas Government Code to meet with the Internal Auditor to discuss issues related to fraud, waste or abuse;
3. Pursuant to Texas Gov't. Code, §551.071(1) to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:
  - a) The Inclusive Communities Project, Inc. v. Texas Department of Housing and Community Affairs, et al. filed in federal district court, Northern District of Texas
  - b) Claim of Gladys House filed with the

EEOC

- 4. Pursuant to Texas Gov't. Code, §551.071(2) for the purpose of seeking the advice of its attorney about a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Texas Gov't. Code, Chapter 551; or
- 5. Pursuant to Gov't. Code, §551.072 to deliberate the possible purchase, sale, exchange or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person.

OPEN SESSION

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ADJOURN

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P R O C E E D I N G S

MR. CONINE: Let's call the January meeting of the Board of Directors of the Texas Department of Housing and Community Affairs to order.  
Good morning, everybody.

AUDIENCE: Good morning.

MR. CONINE: I hope everybody had a great happy new year and is ready to forget about 2010 and start thinking positively about 2011 as we move forward in our endeavor to house the citizens of the State of Texas.

Let me call the roll right quick.

Leslie Bingham?

MS. BINGHAM: Here.

MR. CONINE: Kent Conine is here.

Tom Gann?

MR. GANN: Here.

MR. CONINE: Lowell Keig?

MR. KEIG: Here.

MR. CONINE: Juan Munoz, I bet is going to come. And Gloria Ray?

MS. RAY: Here.

MR. CONINE: We've got plenty to get started.

I would remind everyone about our public comment period. Anyone wishing to speak to the Board on any particular matter can sign a witness affirmation form and either speak now as we get into the public comment period or speak at the particular agenda item.

Do you want to start off the meeting today?

MR. GERBER: Yes, sir. Mr. Chairman and Board members, I am very excited to have the opportunity today to recognize the Community Action Network for their exceptional work in reaching 100 percent expenditure of the Community Service Block Grant funds that were specially appropriated through the American Recovery and Reinvestment Act, the stimulus bill.

These funds which totaled over \$48 million provided an important infusion of financial support to low income Texans during one of the most economically challenging times that our nation has seen. When we received these funds in 2009 we were given only about 14 months to spend them, and unlike regular CSBG funds which have a two-year time frame, these CSBG ARRA funds had to be expended by September 30 of 2010 or we would lose them back to Washington.

It was a daunting task but the Network stepped up to the challenge and they spent virtually every dollar, and we have some really important milestones as a result. More than 44,000 households were directly assisted with these funds; the households were comprised of almost 100,000 people in Texas; and this group helped almost 4,000 unemployed Texans to find a job; almost 12,000 people received training and skills and competencies to make them more competitive in this difficult job market; and the Community Action Network helped thousands more keep their jobs by helping them to find childcare or obtain reliable transportation; 22,000 Texans were able to further their education through a certificate program or obtained a GED. These are some extraordinary and impressive numbers.

Texas received the third largest CSBG ARRA award and the two higher states, New York and California, are returning more than a few million to the U.S. Treasury. Texas has less than \$30,000 in unspent federal funds. So considering the barriers and the short time line, we just think this is just an extraordinary accomplishment and we couldn't have done it without the folks in this room.

Raise your hand if you're with a community action agency. This is the group of folks that we owe a great debt of gratitude to.

(Applause.)

MR. GERBER: We are very proud to be in partnership with the Community Action Network. Many of the folks in this room are also stepping up on the Weatherization Assistance Program and on our Homeless Prevention Rapid Rehousing Program, and there's more work to come. But this is a group of folks who are doers, who are committed to helping low income Texans and have been real partners with the Department in helping us to fulfill our mission. So we're very proud of them.

And I'm also very proud of the staff, headed by Michael De Young who is the head of Community Affairs, and Stewart Campbell who is our manager in Community Services, and I'd like to ask Michael or Stewart if you'd like to say anything at the moment, or not, even better. Great job. But we're just so pleased.

We're going to take a group picture. Mr. Chairman, I don't know if you'd like to say a word or two, or we can call everybody up.

MR. CONINE: We again want to thank everyone who rolled

up their sleeves and went to work on getting these funds out and distributed to those who are the most needy. Without you we couldn't have done it, so thank you very much.

MR. GERBER: We'd like to invite all of you to come forward and take a picture with our Board now that all of our Board members are here or most of our Board members are here, and we'll send the pictures to you just as soon as we can. But thanks for making the trip to Austin and thank you for making sure that folks know the good work that you did and the good work that you're doing. It's important and again we couldn't deliver our services without your help, so thank you.

Come on forward and gather back here and we'll get a shot.

(Pause for photos.)

MR. CONINE: Okay. We're ready to move on to the public comment portion of our meeting. Mike Sugrue.

The Chair recognizes Dr. Munoz being here. How are you doing, Dr. Munoz?

MR. SUGRUE: Good morning, Mr. Chair, Board members. Nice coat, Ms. Ray. My name is Mike Sugrue, Stoneleigh Companies, and since we're always here asking for something, I thought I'd come here and thank you for something.

During our grand opening last month, Mr. Gann and his lovely wife Vicky drove over from Lufkin, and Robbye drove up from Austin to attend the opening, and I have to say that the local politicians were duly impressed that people from the agency would come up and see what's going on, and

everybody was very complimentary. Mr. Gann said a few words, some of which we wrote for him; he read them perfectly, we appreciate that.

But don't worry, I'll be back asking for something again, but I just wanted to say thanks for this.

MR. CONINE: You're welcome. Thank you. I'm glad they found Chandler. That in and of itself might have been a challenge.

MR. SUGRUE: It's 100 percent leased, 100 percent occupied.

MR. GERBER: Congratulations. That's great.

(Applause.)

MR. CONINE: All 36 units? I had to do that.

MR. GANN: That's a town in East Texas.

(General laughter.)

MR. CONINE: Craig Lintner. He's got a little extra time donated to him. Five minutes, please, sir.

MR. LINTNER: Good morning.

MR. CONINE: How are you?

MR. LINTNER: I'm good. Thank you. My name is Craig Lintner and I'm the vice president of development for Pedcor Investments. Pedcor is a large development company of affordable housing out of Indianapolis, Indiana, so I'm actually enjoying the warm weather down here even though I understand it's a little cool for this time of year.

MR. CONINE: Compared to Indianapolis this is probably warm.

MR. LINTNER: Very much so.

We currently build in twelve states and have a portfolio of over 15,000 units. The reason I came to Austin today was to share with you some of the extreme NIMBY-ism and potential Fair Housing issues that we're experiencing as we work on a project in the Houston ETJ out in Fort Bend County.

Virtually any publication that tracks growth across the country will site the Cinco Ranch/Katy/Fort Bend area as one of the highest and fastest growing areas in the entire country. However, there hasn't been a single new construction family tax credit deal completed out in that area in over ten years. We are on record right now with pre-application 11072 for the Landings at Westheimer Lakes. This is a small family deal of only 96 units on 6.7 acres which has a density of only 14 units per acre, so it's low density.

As you know, there are a number of notifications we are required to submit and we always like to meet with each person that we notify face to face, so we started that process back at the end of November, meeting with Senator Hegar's office. At the first part of December we were set up to meet with State Representative Zerwas's office which was just a couple of miles west of this site, and after we waited for more than two hours and he didn't show, we left our information there at his office, and as of now we've still been unable to meet with his office.

When I was scheduling the meeting with the Lamar School District superintendent I was put in touch with community representative Christie Wellman, who indicated straight off that they would oppose any tax credit project because number one, we don't pay any taxes. So I explained to

her that we do pay taxes, and she said, Well, our school attorney says you don't and I don't believe that you do. She asked if we'd be willing to meet with the demographer to go over what we were proposing. I said, Sure, that would be no problem.

So when Dr. Pat Guzman called me and after we went over the proposed unit mix, she indicated, quote, that the schools are against tax credit deals because they have a higher number of kids than market rate units, they change the composition of the school in a bad way, they have a lot of transient students, they bring down test scores and generally ruin the quality of life in the area. She also said that we don't pay taxes and they would vote against us for that reason as well, and again I explained to her that we do pay taxes.

Last week then I came to town and met with the school superintendent and Christie Wellman and they told me that they issue a letter of opposition to every project carte blanche, and they said they're tired of the state sending students their way without a way to pay for them.

Later that day I met with County Commissioner Meyers who had invited Mr. Wiley, president of the Greater Fort Bend Economic Development Council, and Mr. LaCour, the president of the Katy Area Economic Development Council. I was informed that this was the wrong spot for this type of development, that it didn't fit in the area of Fort Bend County, and that there was already a groundswell of opposition forming and it would be like a freight train coming straight at us. Mr. LaCour seemed proud that the last tax credit deal that was proposed in Katy had over 700 people show up in opposition. And after they discussed amongst themselves who the state

representative was for the area, they indicated that they were fairly confident that they could get State Representative Zerwas to vote against the project.

Interestingly enough, Mr. LaCour said that if we would change our minds and commit to either a senior deal or a market rate deal, he would back our project 100 percent. He even said that he would help us get a USDA loan if we would go to a market rate deal on this project.

Finally, just a couple of days ago -- and this actually is somewhat humorous -- we were working with a local company to install a sign as required for notification. We received an e-mail back that said, "Thank you for your call a few days ago requesting a quote to produce and install a Coming Soon sign for Pedcor's project at the corner of FM 723 and 1093. As a member of several community organizations in the Katy-Richmond area, we are personally opposed, as are almost all of our residents, to the idea of low income or moderate income properties coming into our market. In the last two to three years our community has successfully stopped the plans for several such entities as we do not feel that it offers a positive image to the future of our area. With this in mind, we will respectfully decline our earlier quote to you and Pedcor." So it's difficult to even get a sign built.

So just to wrap up here, the powers that be in Fort Bend County have effectively redlined the entire county against affordable housing, and if they truly have the ear of State Representative Zerwas, we're going to go from being a very high scoring project to basically it will kill the deal. But at this point we're planning to press on, we're going to continue to meet with people, and we'll probably come back to the next Board meeting and have



some more interesting stories to share. And I appreciate your time this morning.

MR. CONINE: Any questions of the witness?

DR. MUNOZ: Are those verbatim quotes?

MR. LINTNER: I'm sorry?

DR. MUNOZ: Those quotes, what you referred to as these comments from these various people, superintendent, those are verbatim?

MR. LINTNER: Yes.

DR. MUNOZ: Is that your transcribed notes or is that somehow recorded on a message or something?

MR. LINTNER: No. The only thing that I have that's in writing is I included in a packet that was handed out, the e-mail from the sign company, so it's just what I was told.

DR. MUNOZ: But the comments from the school officials and others?

MR. LINTNER: Those were notes that I took during the meeting.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Thank you for your testimony.

MR. LINTNER: Thank you for your time.

MR. CONINE: Noor Jooma.

MR. JOOMA: Good morning, Chair, Board members, Mr. Gerber. You will almost hear the success story just like you heard from Mike

Sugrue, however, I have one that was very eloquently articulated by the newspaper which I would like to present to TDHCA for their lobby.

MR. CONINE: Thank you. Mineral Wells.

MR. JOOMA: Yes, sir. And there were accolades from the city council which was forwarded to Mr. Gerber and the staff.

MR. CONINE: Great. Congratulations. Thank you very much. Appreciate you going to that effort. Appreciate that.

MR. GERBER: He's seen our office. He knows we need some help.

MR. CONINE: That concludes the witness affirmation forms I have for the initial public comment period, so we'll close that and move on to the consent agenda.

The Board members see the consent agenda there in front of them, and if there's anybody that wants to pull any item off the consent agenda, you're welcome to express that now.

MR. GERBER: Mr. Chairman, 1(b) has been pulled.

MR. CONINE: 1(b) as in boy?

MR. GERBER: 1(b) as in boy.

MR. IRVINE: Might I clarify are we pulling all of 1(b) or just Southmore Park?

MR. GERBER: I'm sorry. Did you just want to pull that?

MR. IRVINE: Just the one item.

MR. GERBER: Oh, I'm sorry. The others are fine?

MR. IRVINE: Please. Tim Irvine, for the record.

MR. GERBER: I'm sorry. Southmore Park Apartments.

MR. CONINE: Is that pulled for discussion or withdrawn?

MR. GERBER: I think that's withdrawn.

MR. IRVINE: Southmore Park is pulled from the agenda. It's requested that the remainder stay on the agenda.

MR. CONINE: It's withdrawn.

MR. IRVINE: Withdrawn.

MR. CONINE: Thank you. Trying to get the right word there.

Okay. Any other changes to the consent agenda?

Everybody understand that Southmore Park on item 1(b) has been deleted. If not, I'll entertain a motion for approval of the consent agenda.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move approval of the consent agenda.

MR. CONINE: Motion to approve item 1. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz, again as amended.

Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: The motion does carry.

Going to item 2, Mr. Gerber or Ms. Donoho, whoever wants to go first.

MR. GERBER: Ms. Donoho.

MR. CONINE: Good morning.

MS. DONOHO: Good morning.

MR. CONINE: How are you?

MS. DONOHO: Just fine.

MR. CONINE: Great.

MS. DONOHO: I'm Sandy Donoho. I'm the director of Internal Audit, and this is a report from the Audit Committee.

We met last night. We talked about the 2011 Audit Committee charter and Board Resolution #11-017 which you just approved on the consent agenda. Annual approval of these items is required by our audit standards. The content of those two items has not changed significantly since last year.

On your agenda also, I believe, Julia Petty from Deloitte & Touche is supposed to talk about the results of our annual statutorily required audits, however, Julia had an illness in her family and she's not able to be here today, so I'm going to walk you through the results of Deloitte's audits and hopefully answer any questions you have. David Cervantes and Bill Dally are here to help too.

The reason that we wanted to go ahead with this is I believe that we'd like to ask your approval and acceptance of the Deloitte reports for a bond issuance that's coming up soon. Julia is planning on coming to the

March Board meeting to cover these again because I think it's important for you to have some conversation with the external auditor anyway.

So the basic financial statements for 2010, Deloitte gave us an unqualified opinion. On the 2010 Revenue Bond Program audit there was also an unqualified opinion. For the 2010 unencumbered fund balances calculation, their audit results yielded no required transfer to the Housing Trust Fund so that's all good news.

On their 2010 report to management they had one issue, it was classified as a material weakness. During the final phases of the year-end closing procedure the Department inadvertently reverted to 2008 policy. What that meant was they classified loans on the balance sheet but recorded current year loan activity as deferred revenue instead of fund balance net assets. What this resulted in was an increase of \$37 million in loans and contracts receivable, a decrease of \$69 million in deferred revenues, and an increase in revenues and change in fund balance net assets of \$106 million.

Deloitte recommended that the Department implement review processes for timely review of year-end financial closing entries, incorporate reconciliations between loan servicing and accounting operations, and coordinate with other program-specific departments, like HOME and CDBG, to make sure that this doesn't happen again.

Are there any questions on the Deloitte reports? Staff recommends acceptance of the Deloitte reports.

MR. CONINE: Sounds like a good idea. Is there any questions? I'll entertain a motion.

MR. KEIG: So moved.

MR. GANN: Second.

MR. CONINE: Motion by Mr. Keig, second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MS. DONOHO: We also talked about two internal audit reports that are in the Board books, an internal audit of information/technology governance, and a report on Internal Audit's quality assurance and improvement program which is our self-assessment of the quality of our audits. We talked about ten external audits, reviews or monitoring visits that are either planned, underway or recently completed for this fiscal year. We discussed a Department of Energy onsite monitoring report of the Weatherization Assistance Program. And we talked about prior audit issues of which we are currently at 51.

Are there any questions on the Audit Committee meeting?

MR. CONINE: Boy, you're getting off scot free.

MS. DONOHO: I know.

MS. RAY: We handled it in Audit.

MR. CONINE: You handled it in Audit. Okay.

MS. DONOHO: Thank you.

MR. CONINE: Thank you, Ms. Donoho.

All right. Moving on to item 3. Ms. Boston.

MS. BOSTON: Brooke Boston.

Just wanted to give you a quick update on the Recovery Act status. This is in your report behind Tab 3. I wanted to add a couple of extra either new information or give a little bit more information.

On the Weatherization Assistance Program we noted that we've begun the de-obligation proceedings starting this month, and I would say that those have been very fruitful so far. Most of them have ended up being very cooperative and some voluntary relinquishments which has been, I think, a positive step. I would also note that as of yesterday we've actually exceeded 25,000. Now we're at 25,322 units.

On the Homelessness Prevention and Rapid Rehousing Program, we also have some great news. The requirement for that program is that we get to 60 percent of expenditures by August of 2011. We just hit that mark this week. So we actually are almost eight months early on that program.

CSBG, as we talked about earlier, of course is done. And then TCAP, the Tax Credit Assistance Program, I wanted to mention an update from this is as of Tuesday we've actually had 58 loans closed, since January 1 we've closed 13 loans, and just last week alone they've drawn \$15 million. So we're definitely on track to hit our February 17 expenditure requirement of

75 percent.

MR. CONINE: How many loans left to close? It's always the one number that gets mixed up in all these numbers.

MS. BOSTON: One.

MR. CONINE: Just one.

MS. BOSTON: Just one.

MR. CONINE: We've got one slowpoke out there.

Environmental. Blame it on somebody else. Okay.

MS. BOSTON: And Exchange is still plowing ahead and doing great, continuing to draw a lot of money a week. So I think we're doing very well on our Recovery Act.

Any questions?

MR. CONINE: How are we doing on the timing of our draw processes in general, Exchange, TCAP, CDBG. Because that's a critical issue, I think, for the development community and it's a rather new issue for us, and I want to make sure our turnaround times are meeting the needs of the development community.

MR. GERBER: We've put a lot of energy into that. I think it's going pretty well, and I don't know if anyone in the public would have a comment.

MR. CONINE: I don't want them to comment quite yet.

MS. BOSTON: I think it's sufficiently rapid. I think actually if there were any program where they are a little slower it's more like Weatherization and that's because of the complexity of the way we review the



draws, some folks are on cost reimbursement. But I think on the multifamily activities, TCAP and Exchange, the draws are moving very rapidly.

MR. CONINE: And we're doing that on a monthly basis?

MS. BOSTON: As they come in.

MR. CONINE: As they come in, so it might be every two weeks.

MS. BOSTON: In terms of how frequently the developer can request the draw?

MR. CONINE: Yes.

MR. GOURIS: In TCAP we have a four-draw structure.

MR. CONINE: Right. Quarter, quarter, quarter, quarter.

MR. GOURIS: So as they finish a quarter of the transaction.

On Exchange they can continue to draw as they get one resolved, they can submit another one. We try to keep it monthly but some have been more frequent than that. But it's been moving very, very quickly. We've been moving, Exchange has averaged \$10- to \$20 million in a week and it's been pretty spectacular.

MR. CONINE: And we're getting them set up on our computer systems and everything.

MR. GOURIS: Everyone is set up, I think everyone but the one who hasn't closed has submitted a draw or attempted to submit a draw, so we're making progress.

MR. CONINE: Okay. Just curious. Thank you very much.

MS. BOSTON: Thank you.

MR. CONINE: Thank you, Brooke.

Okay. Item 4, Mr. Gerber.

MR. GERBER: Mr. Chairman, if we could, before we go to Appeals, if we could perhaps move on to item 6, which is Bond Finance.

MR. CONINE: Okay. We want to get the expensive guys out of the room first.

MR. GERBER: Exactly.

(General laughter.)

MR. CONINE: Okay. Moving on to item 6. Is Mr. Nelson here? They didn't know they were up.

MR. GERBER: In their absence why don't we move to number 7, which is Community Affairs. Michael, why don't you come on up. Number 7(a) is presentation, discussion and possible action to ratify and approve the award made by me to the Concho Valley Community Action Agency Comprehensive Energy Assistance Program for Tom Green County and the service area formerly served by the City of San Angelo.

MR. DE YOUNG: Michael De Young, Community Affairs Division director.

Mr. Chairman and members of the Board, back in July the City of San Angelo notified the Department that they no longer wished to administer the CEAP program in the San Angelo County area. The staff put out an RFP in, I believe, October and we received one application to provide the assistance, and it's an existing sub-recipient agency, Concho Valley Community Action Agency. They have gone through the compliance check,

they have no issues identified, and based on the application review, we're recommending that Concho Valley Community Action Agency be ratified as the agency to continue to provide CEAP assistance in Tom Green County.

MR. GERBER: So we'd ask for a motion to that effect, and the initial award would be for \$282,094 in CEAP funds.

MR. DE YOUNG: Correct. And that's based on a continuing resolution.

MR. CONINE: Thank you, Mr. De Young. Any questions?

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation to approve the Concho Valley Community Action Agency for the Comprehensive Energy Assistance Program for Tom Green County.

MR. CONINE: Do I hear a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: 7(b).

MR. DE YOUNG: Mr. Chairman and members of the Board, item 7(b) is a followup on a decision made at the November Board meeting to grant authority to the executive director to release a request for applications to provide CSBG services in the four counties formerly served by CAP, Inc., and those counties are Mitchell, Taylor, Shackelford and Stephens Counties, the area around Abilene.

We received four applications that were reviewed and scored using a standardized scoring instrument. West Texas Opportunities was selected to provide services in Mitchell and Rolling Plains Management Corporation was selected to provide the services in Taylor, Shackelford and Stephens Counties. Both are existing CSBG-eligible entities, and item 7(b) ratifies the decision of the executive director to award the CSBG contracts to those agencies and to provide CSBG services to the aforementioned counties.

MR. GERBER: So we'd ask for a motion to that effect.

DR. MUNOZ: So moved.

MR. CONINE: Move approval by Dr. Munoz. Is there a second?

MS. BINGHAM: Second.

MR. CONINE: Second by Ms. Bingham. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: The motion does carry.

MR. GERBER: 7(c).

MR. DE YOUNG: And Mr. Chairman and members of the Board, item 7(c) is the final adoption of the rules that revise three sections related to programs administered by the Community Affairs Division. Most importantly, these changes reflect the fact that the income eligibility for CSBG has reverted back from 200 percent to 125. This is a federal change that's mandated, and so we are recommending that change, and additional changes include updating the grievance process for clients as they are denied services by the sub-recipients and also updating the minimum requirements for community action boards as defined by the federal legislation, and then there are several conforming changes for CSBG and ESGP sub-recipients that are minor in nature.

The Board adopted the draft rules at the November 10 meeting and staff has incorporated the public comment into the recommended changes.

MR. CONINE: Okay. Any questions? Motion?

MR. KEIG: Move to approve.

MR. CONINE: Motion by Mr. Keig. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion does carry.

MR. DE YOUNG: Thank you.

MR. CONINE: Thank you. Appreciate it, Michael.

MR. GERBER: Mr. Chairman, if we could go on to number 8 which is Disaster Recovery and handle that real quickly. Sara Newsom, come on forward. Kevin Hamby, come on forward and we'll knock it out. It's an amendment for Cameron County and their contract.

MR. HAMBY: Correct. And I apologize. I thought Sara was going to be here; I think it's surprising that it came up so quickly. Kevin Hamby, senior counsel.

This is an amendment that's before you to add the additional Round 1 Ike funding for Cameron County to have them move forward with their disaster recovery issues.

MR. CONINE: They're reducing the number of households served. Is that correct?

MR. HAMBY: Yes.

MR. CONINE: Tell us a little bit.

MR. HAMBY: I'm just going to have to grab it real quick. I'm

sorry.

MR. GERBER: They're not doing as many rehabs but instead doing more full new construction.

MR. HAMBY: Correct. What they're doing is actually they had originally planned to do all rehabs and as they got into it they realized that almost all of them would be reconstruction, and so the cost went up, obviously, dramatically, and so that reduced the number of sub-recipients that they could serve at the same time. So that's the change to the particular contract is to allow them to go into reconstruction.

MR. CONINE: Okay.

MR. HAMBY: It's moving from a \$25,000 rehabilitation to a \$65,000 reconstruction, so that would obviously not allow them to do the same number they had anticipated at \$25,000.

MR. CONINE: Okay. Do I hear a motion? No public comment.

MS. BINGHAM: Move staff's recommendation.

MR. CONINE: Motion by Ms. Bingham to approve item 8. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion does carry.

MR. HAMBY: Thank you.

MR. CONINE: Thank you.

MR. GERBER: Mr. Chairman, we'll continue on and just move down to item 9, which is Compliance and Asset Oversight.

Patricia, do you want to come on forward and we'll do item 9(a). 9(a) is the adoption of a final order for the compliance rules.

MS. MURPHY: Patricia Murphy, chief of Compliance and Asset Oversight.

Item 9(a) is adoption of the final compliance monitoring rules. They were out for public comment. We did not receive a whole lot of comment, only two entities commented. The only significant change based on --

MR. CONINE: They're scared to death of you, that's why. (General laughter.)

MS. MURPHY: That's not it.

The only significant change based on public comment is to the definition of substantial construction. Staff agreed with the change and incorporated it into the rule and it's in your Board writeup and in the rule itself.

MR. GERBER: So we'd ask for a motion.

MR. CONINE: Just tell me what it is just for fun. What's the new one? Construction is kind of close to my heart.



MS. MURPHY: I know. So it's on page 2 of your Board writeup, so the big change is deleting "completion of foundation of the clubhouse" and in its place putting in "50 percent of all onsite wet utilities and the building slab and foundation form work started."

MR. CONINE: Okay.

MS. MURPHY: It deletes "all necessary utilities available to the property." The other thing is just a little technical change of "architectural record" instead of "inspecting architect."

And then for the rehab developments we were requiring a certification that there were no reasonably foreseeable issues that would delay the project. That's getting deleted, and instead they suggested that we request a certification that all project documents material and work items necessary to start and complete the project in the time allotted period have been adequately addressed as of the date of the certification, and certification that work is progressing on at least 20 percent of the units or buildings.

MR. CONINE: Wonder what that means.

MS. MURPHY: It was that 20 percent of the construction budget was expended because you can spend 20 percent of your construction budget on a lot of different, but that you're actually working on 20 percent of the units.

MR. CONINE: And you didn't have very many public comments?

MS. MURPHY: No, we did not.

MR. CONINE: All right. I believe you. Whatever you say, I

believe you.

MS. MURPHY: And we request approval.

MR. CONINE: Is there a motion to approve?

MR. GANN: I so move.

MR. CONINE: Mr. Gann. Is there a second?

MR. KEIG: Second.

MR. CONINE: Second by Mr. Keig. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MR. GERBER: Patricia, would you and Tim like to walk through 9(b).

MS. MURPHY: Sure. Item 9(b) is discussion of a possible policy that the Board would adopt to address significant amendments to land use restriction agreements. So we already have a pretty formal process in place for amenities and those types of amendments to an application or a land use restriction agreement. So this would be a policy to address really material changes in a project, changes including: the population served, so if you went from family to elderly, elderly to family, or if you went special needs back and forth; or if you reduce the number of units on your project; or if you

changed your income and rent structuring.

So we had a roundtable yesterday to discuss this type of policy that we're asking for Board input on what should this policy look like. It was well attended and we got a lot of really good feedback.

MR. CONINE: Well attended meaning how many?

MS. MURPHY: Thirty people -- I'm guessing about that.

Based on the discussion, everyone agreed that the process should include but not be limited to the criteria shown in your Board book and that the process should also include a delay in the right of first refusal. So if someone is going to request a delay in the right of first refusal, they would go through this process as well.

There was a lot of discussion about gathering public input, should developers be put to the expense and other challenges of a significant public input process. One suggestion was to have a different process for 4 percent and 9 percent transactions, however, staff does not believe the policy should distinguish between source of funding or type of funding, and we really stressed the importance of transparency and public notification.

There was also some significant discussion about how tenants that are living in a project that is requesting these type of amendments would be affected. There needs to be a uniform way to ensure that affected tenants do not have their tenancy terminated for other than good cause. The suggested solution is to adopt a relocation policy, and staff is working with the IRS and outside counsel to make sure that we are in compliance with federal requirements in this area.

There was a good deal of discussion about the issue of financial analysis. Staff clarified that regardless of what prompts the request for a change that transactions will be analyzed and reports made as to whether the proposed request is feasible after the change. There was a request that there be clear and consistent requirements for submission of what type of financial information do we need in order to analyze such a request.

There was also discussion about if you're an existing property and you're at like the end of your 15 years and you're going to re-syndicate and you're going to tear units down or buildings down and take property out of service, that that needs to be addressed in this policy and the suggestion is to add the lost years on to the end of the existing land use restriction agreement.

And there was discussion about the right of first refusal. For transactions subject to the right of first refusal it was suggested that re-syndication to a structure that would have met the nonprofit set-aside should count as having fulfilled its right of first refusal requirement. And it was also suggested that a straight restructuring without a change in ownership, the right of first refusal would be delayed and moved to the end of the amendment.

So we had a lot of good discussion. We do have three requests in that are of this magnitude of they're changing something, so we're requesting some guidance from the Board on what items do you think should fall under this type of policy, what steps do you think that it should go through, what would you want to know before you heard such a request.

MR. CONINE: Well, it seems like to me there's really two

buckets, so to speak: there's those changes that are either driven by economics, the developer, the syndicator, the participants in the project in and of itself; and in the other bucket would be the changes that are affected by outside governmental entities in some way, shape, form or fashion.

As a specific case -- and I know we have one or two of the three that we're talking about -- I know there's some condemnation issues that have arisen during the course of either the project being built or something where a governmental entity comes in and takes land away and forces a reduction in the number of units. To me those are more out of the control of the ownership entity and its financial partners, and so those sorts of decisions there ought to be a standard, in my mind, for those. And then there should be a standard for the first bucket that I talked about where it's just the market is not working for us or we want to change for whatever the reason might be.

And I think, to me, those are the two areas that we ought to take a look at and maybe have a different procedure for each one.

Any other comments from Board members?

We want to stay away from changes as much as possible and discourage changes, and I'm sure that's why you've got this laundry list of things and hoops they've got to jump through to do it to make it painful and laborious and so forth because obviously what they submitted for a project is what we want to end up with because that's what our decisions or staff's decisions were based upon. But if a governmental entity comes in and requires something out of the blue that was unanticipated, I think we ought to have a carve-out for those folks.

Any other discussion? Ms. Bingham.

MS. BINGHAM: Just a question. I can only remember dealing with a couple since I've been here. Is it unusual to have three right now kind of pending?

MR. GERBER: It's a little larger than usual.

MS. MURPHY: Yes, it's a little unusual. And in the past if people kind of called and inquired about it, the answer was no, you can't do it

MS. MURPHY: Right.

MR. CONINE: And I would hate to have a hard and fast rule saying that absolutely no way, we're not even going to consider it. If there's anything the last two years has proved is that times and circumstances do change, even the fiscal model that you anticipated getting blown away for some particular reason. And I think we ought to have an ear towards that, but again, if it's just a decision that they want more 60 percent units instead of 30 percent units, then I have a hard time with that sort of issue.

Does that give you some guidance that you're looking for? Anything else, any other questions that we may or may not be hitting upon?

MS. MURPHY: So we are suggesting that there be a public notification process, that there would be a public hearing for these types of changes.

MR. CONINE: That no one will show up for, probably, but that's okay, you never know. And that's going to be how far ahead of time before the meeting?

MS. MURPHY: Well, I think the three people that have

requests in would like some guidance on what to do so that we can come back in March with a final policy which they will have substantially conformed to and that they're requests can be heard and staff can move with making recommendations on the requests that we have. So we would, at this point, instruct these people that they should go ahead and host a public hearing about the proposed change.

MR. CONINE: So they could have the public hearing the day before the Board meeting just as long as they've had the public hearing. That's the way I read the second bullet here.

MS. MURPHY: Does that work?

MR. CONINE: I doubt if it does, but I'm just asking the question.

MS. MURPHY: Okay. So we should clarify it should be done --

MR. CONINE: X amount of days ahead of the Board meeting that it's going to be considered.

MS. MURPHY: Okay. Great. And that they're going to notify the existing tenants, their state representative, their state senator and the elected officials shown in this writeup, and that they're going to turn all that, any input back to the staff who is going to take into consideration and compile the results for you and let you know as part of the decision that you make.

MR. CONINE: So you're going to need some lead time for all that to happen.

MS. MURPHY: Okay. Good point. Are you good with that?

MR. CONINE: I'm good.

MS. MURPHY: All right. Great.

MR. CONINE: I'm okay with it. Are you guys okay with that?

Any other discussion?

(No response.)

MR. CONINE: Thank you. Put together a nice, wonderful change policy as we move forward and we'll consider it at the March Board meeting. Is that right?

Mr. Palmer, would you like to speak to the issue?

MR. PALMER: Yes. And I was at the workshop yesterday and we're definitely in favor of this policy, and where it's starting to come up is back 15 years ago there were a lot of projects that were done as rehab deals and now they've reached the end of their compliance period and they're in need of either a substantial rehab or in some cases they're obsolete and need to be torn down and rebuilt, but without some policy in place that deals with the extended use period, there are some barriers to getting that done. So this policy that the staff is recommending coming back with would allow projects that have gone through their initial compliance period and need to be re-syndicated to complete that.

MR. CONINE: Great. Let me have that witness affirmation form, if you would. Thank you.

All right. I think that takes care of item 9(b). Are you going to move back to item 6?

MR. GERBER: Moving back to item 6 which is Bond Finance,



and the first item up is the report of our financial advisor, Mr. Machak, Mr. Withrow, Mr. Nelson.

MR. MACHAK: We're all here. We have a team.

Good morning, everybody, Mr. Chairman, Executive Director, Board members.

MR. CONINE: Good morning.

MR. MACHAK: We have an update to the market. As you may have heard, there's a lot going on, there's still a lot of volatility. What we're seeing specifically in our municipal market is that rates have gone up for about the last nine weeks. Buyers have taken their money out of long term bond funds, have been putting it into short term funds and into the stock market. Reasons are there's a lot of credit concerns out there, some of them real, some of them I think a lot of analyst discussions and considerations.

But what we've seen are issuers that would have long term bonds with a four and let's say a quarter percent high grade are now looking at bonds with a 5 percent or in the high 4s. Just to let you what investors are looking at too, now that we've reached some of the 5 percent levels, they're now looking at maybe going all the way up to 6 percent. There was a California 6 percent issue that did trade last week for lesser credits. That may be where they're heading.

The good news is Texas credit is still spectacular, triple A rated by two of the agencies and double A plus by the other. Our sales tax was up in December. I think that was about a 9 percent increase year over year, so the news is good there.

But what we can expect in the municipal market is probably further increases in yields, and what we're looking at, though, luckily is that we have on our bond issue locked in our long end with the NIBP program so we have low rates there, and yet our short term yields have not risen to where we still not expect to have competitive mortgage rates.

We have a lot of material in the book and we can go through some of that. Barton, did you want to say something about the national housing market? Have you got some information there?

MR. WITHROW: Sure. This is on page 4 of the presentation. I apologize for the size of the graphs, they're more just to illustrate the points, but I guess the general message on the national housing market is that it's going to be a slow recovery, it could take many years potentially. While it appears to have hit a bottom, hopefully it won't be a false bottom, but our research area is consistently telling us that this is not, as they say, 1983 when things bounced back 60 percent versus the previous year. And there's a number of reasons for that, some of the graphs illustrate it, but there is a whole lot of vacancies out there.

Concurrently, mortgage rates have risen rapidly and that's unlike 1983 when there was a 300 basis point drop during that period. We have something that's pretty prevalent that is the negative equity that so many households are experiencing, over 20 percent of households are in some form of negative equity.

And an interesting statistic is that little graph on the right of page 4 is the demographic shift. This is something that I personally have

been monitoring, but basically the Baby Boom generation which are now hitting 65 at 10,000 a day are tagged generally as net sellers of homes whereas the demographics of the 25- to 34-year-olds are net buyers. And the graph there kind of illustrates starting in 2012 the inversion that's occurring with the net sellers, and this will probably bode particularly bad for larger, more expensive homes which won't necessarily be the purview of TDHCA but something to keep an eye on since that sort of thing does roll downhill some extent.

On page 5, just more pictures of evidence that it's probably going to be a slow recovery. The first one there basically shows a huge drop in housing starts. The one to the right of that shows there's too much supply with high inventory. The one in the lower left shows there's low demand, very low demand. And finally, you've got high delinquencies.

However, on page 6, not all the news is bad. There are some positive signs. The two graphs on the left kind of illustrate that homes are more affordable now. Pricing concurrent with the foreclosures and pulling back of buyers of the houses are starting to fall making it more affordable, in particular that it's getting close to parity with renting at this point.

And the good news is for multifamily, that the fundamentals there look very, very good. During the second half of 2010 there was a record apartment absorption. Unlike some eras there has not been an overbuilding and so there's a demand for new construction. The demographics that work not in the favor for single family homes works well in the favor of multifamily.

And the graph I put there at the lower right is one of my favorite ones, it's the number of young adults living at home. Arguably there is, from them and the parents, high demand for them to move out.

MR. CONINE: I'm ready to move back in myself.

MR. WITHROW: And that is at a record high right now, so three cheers for parents with adult children living at home. But nevertheless, these people have to somewhere and the natural step for them is to first go into an apartment.

And then the home ownership rate again is dropping. We're estimating a potential 5 million future home renters coming up here, apartment renters and so forth.

Just briefly kind of looking at the general housing from an HFA standpoint is that all state housing agencies right now are experiencing challenges, to say the least. Many are experiencing much worse than you all are, but generally the general trends are you're looking at low profitability, especially in single family. A lot of it has to do with costs going up, and the runoff in prepayments, foreclosures and so forth, and the pipeline not being replaced so the fees and so forth and spreads that would otherwise come from that are being delayed.

And then some other factors there is that down payment assistance is by far the number one driver, even though your own experience, as Tim will tell you, is that even though you're offering two different rate loans, the overwhelming demand for it is with down payment assistance, that's the key. It's debatable as to how much, what will cause it and where that trades

off. And what's happened with a lot of state agencies is they've dipped into the well for the last coming on three years now and there's not much money left for that DPA, so even if you provide a competitive loan rate state agencies are starting to try to look at alternative means for that.

And then just finally on that is that, as Gary said, TDHCA you were able to lock in a very good low rate pretty close to the bottom of low rates at the beginning of December. That is good for the whole year, that's worth 60 percent of the bonds, more than 60 percent of the economics, so that will help stabilize your loan rates in the future.

MR. MACHAK: That low rate is a good hedge, and just moving on to page 8 and 9, just some other bullets with regards to the Texas housing market. Although we remain better, the states of Nevada, California and Florida being the worst, we're probably at the top if not at the top. But there are some foreclosures. I think the business-friendly policies of the State of Texas does well. You can use that in comparison of what's happened recently in Illinois, what they've decided to do to close their budget in terms of raising taxes.

MR. CONINE: Gary, is that foreclosure number of 1.8 percent that you've got in the presentation, is that for the state overall or just our portfolio?

MR. MACHAK: That's the state overall.

MR. CONINE: Okay.

MR. MACHAK: All of those are for the total, the total state overall.

In terms of TDHCA, the finances are still very strong. Almost 13,000 of loans and assets well above of your liabilities, and we have been reducing the amount of swaps outstanding, even though they have been performing well and have saved you money over time. Our liquidity is locked in at a great rate and our multifamily developments are performing well. We were able to, as you know, restructure one for some cash to the issuer.

Challenges going forward. What happens after this year when NIBP may go away, what happens on that long end? One of the other reasons that the long end of the municipal curve has gone up is because there was a program instituted called the Build America Bonds. That has now gone away. What that did was allow a lot of issuers to utilize taxable bonds with a federal subsidy. They were able to basically attract different buyers in the market, and now with that program gone, they are going to have to utilize and have more supply on the long end of the curve in the municipal market and be competing with issues like yours possibly next year when we don't have the NIBP on the long end.

Again, really the main thing for the municipal market and going forward is the credit. There are some other issuers that are going to be out in the market at the same time as far as the forward calendar, and we're looking at the second week in February, Washington, Delaware, New Mexico, Oklahoma, Montana, possibly Tennessee. The good news is we're going to be out there with about \$60 million; all of those issuers are in the \$30- to \$40 million range, so we're not seeing a lot of the large issues that we have in the past.

Issuers like Pennsylvania, if they ever came to market, they're looking at \$80 million. In the past they would typically come with \$150 million.

Ohio later in March, is looking at \$100 million. Typically when they were in the market in the past two years ago, three years ago, it would be a \$300 million issue. So that's the difference. Good news is low supply, and bad news is slightly higher rates.

If there aren't any questions with regards to that, then I'd be happy to turn it over to Tim who I think is going to talk a little bit about TDHCA's programs.

MR. CONINE: Good morning, Tim.

MR. NELSON: Good morning, Mr. Chairman, members of the Board.

Well, a somewhat lot of gloom and doom that we've gotten from the financial advisor, and that is largely accurate, but I did want to make sure that we point out to the Board that in spite of all these headwinds that we've been very busy this past year. We released last January a \$30 million MCC program, just released last month a \$45 million MCC program that gives us the ability to do over \$200 million in related mortgage loans. In 2010 we issued mortgage certificates for over 700 loans, in May we released this Program 77, our NIBP program. Since that time we've committed over \$150 million in mortgages and actually have the approval for our 2011-A transaction to actually bond out some of that.

So again, the market is very tough but I think we've had a near record year this past year and I think that's in large part due to the fact that

some of the things that Gary pointed out, that the Texas market relative to the rest of the country is doing much better, and we didn't suffer a lot of the reductions in real estate values and negative equity issues.

Again, we do participate in larger markets and certainly when it comes to needing to sell our bonds and some of the other things that we're looking at, we still have to deal with FHA, Fannie and Freddie like everybody else does, and those are coming out with changes in their underwriting criteria, so we certainly impacted by some of this stuff, but like I said, I think relatively speaking I think we've been doing very well and we expect to have another good year this year.

So I wanted to kind of put that all in perspective, and of course, if anyone has got any questions I'd be more than happy to address those.

MR. CONINE: Tim, is there anything else we can do that would broaden the outreach for MCC certificates? Because in this compressed yield market spread that seems to me to be the best tool we have to get folks qualified and so forth. Can you comment on that?

MR. NELSON: Well, I think you can always do more, of course, but that's something that we're constantly examining, how to do more outreach. We had a meeting yesterday where we were constantly revisiting the lenders that are doing the most volume in Texas and cross-referencing those numbers against the people who are approved in both our MCC program and the bond program and making sure that we have the lenders that are doing volume out there participating in our programs. So again, I think there's always more that we can do, but I can tell you that we're out there



doing everything I think that we can. And again, I think we have the most successful MCC program in the country. We, of course, want to make it more successful though.

MR. CONINE: Would you mind for the next Board meeting just kind of giving us a recap on detail on the MCC education side, what we do. Do we need to allocate more resources to making not the mortgage companies aware that the product is there but the general public. Because I can't tell you how many times that I come into contact with a young couple that's getting ready to buy their first house and I ask them if they either checked with our programs or checked with our MCC program. Of course, 99 percent of the world doesn't know what an MCC certificate is, but when I explain it to them, their eyes kind of perk up a little bit and hopefully they go seek that opportunity, and in some cases they have.

But generally speaking, if we can think of an effective way, and I know advertising takes tons of money, I'm not asking for radio and TV and all that kind of stuff, but if there is an effective way that we can better send that message to the citizens of Texas that are buying their first home, that is just such a tremendous program and I just can't believe that stuff isn't gobbled up so fast that it just disappears in a hurry. So I'd like to get your perspective on that.

MR. NELSON: Yes. I think I can tell you right now that we are looking at some different approaches. You're right, our traditional approach has been to market to Realtors, lenders, sort of the people that a mortgagor or potential mortgagor would end up interacting with. We're now

looking at potentially doing some partnerships with bankrate.com where potentially we could have something up there that specifically targeted our products so that if somebody when they get to that point. The internet is becoming so much more important, I think as everyone is aware, and it also is much more cost-effective. As you pointed out, we've got a big state, lot of big markets, so to do television/radio.

MR. CONINE: To me it's website and Twitter and all the stuff that I know nothing about.

MR. NELSON: We're also looking at Twitter and Facebook and those as well, so we'll be more than happy to go into that in more detail.

MR. CONINE: Yes. Let's just have a report back to the Board next month if you could. Thank you.

MR. NELSON: Thank you.

MR. GERBER: Tim, do you want to cover item 6(b)?

MR. NELSON: Well, 6(b), and I'll try to make this very brief, it may seem like you've approved this item a number of times, and in fact you have. We had approval from the Board in March of last year to move forward on our transaction. At that point in time we thought it was going to be a 2010 transaction. The Board gave us further approval at the last Board meeting on a 2011-A transaction not to exceed \$150 million bond deal that would convert not to exceed \$90 million of our NIBP money as well as authorize us to go out and sell not to exceed \$60 million worth of market bonds out into this horrible market that Gary was reviewing with us.

And what we're looking for here, what we really needed was

just approval to put all the mortgages that we've originated which in the Board writeup we've got a breakout of all the interest rates and the dollar amounts that we've been offering since May of this year, and so we're really looking for reauthorization of what you guys have, frankly, already authorized us to do and to authorize us to go ahead and include all of these mortgages that we have released in commitment lots 1 through 8. And we also have in the resolution an approval of the latest list of lenders who would be able to participate in our program.

Like I said, with that, staff asks for approval and I'd be more than happy to address any questions.

MR. CONINE: How much are we going to -- Gary mentioned \$60 million a minute ago but that's combined with the long term.

MR. NELSON: Again, this would be not to exceed \$150 million, that would be \$60 million of market, we would convert up to \$90 million of our NIBP, the \$300 million deal that we closed last December. And as I said, right now we have \$150 million of loans committed, we have \$80 million of those actually purchased, \$70 million actually pooled and in our warehouse facility. So again, our transaction I guess could be anywhere from, I would say, \$100- to \$150 million.

We just need to sit down with our underwriters which we're actually going to have a meeting after this meeting to get into more detail on that. So that's sort of be determined or we're hoping to go to market early part of next month, and then we would close this in March, and at that point in time start working on our 2011-B deal.

MR. CONINE: Be about time for rates to drop about that time again.

MR. NELSON: That would be our good luck.

MR. CONINE: Any other questions of Mr. Nelson.

MR. GERBER: I think we'd just ask for a motion to approve.

MR. NELSON: Right.

MR. CONINE: For Resolution 11-019. Is that correct? Do I hear a motion?

MR. GERBER: Tim, that was the resolution that was approved before, wasn't it?

MR. CONINE: It's the one that's in our packet here.

MR. NELSON: Yes, 11-019.

MR. GERBER: We're sending 009. Sorry.

MR. CONINE: Don't confuse me. I'm confused enough as it is.

Do I hear a motion?

MS. BINGHAM: Move to so resolve.

MR. CONINE: Ms. Bingham makes a motion to approve item 6(b). Do I hear a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion

signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Thank you, Tim. Appreciate that. Gary and Barton, thank you very much.

For the Board's knowledge, I ask Gary to do that pretty much on an annual basis just so you guys can get a flavor for what's going on in the bond market. They'll also probably follow up with some individual contact to each Board member again to just familiarize you to the next step, if you will, with what's going on, and I'd appreciate each one of you taking the time to visit with these guys and making sure you're up to speed in total.

Again, thank you for coming down and making a presentation.

We're going to take a ten-minute break.

(Whereupon, a brief recess was taken.)

MR. CONINE: Again, just to let everybody know, I don't know how quick we're going to make it through the agenda but if we get lucky and get it done before lunch, we are going to have an executive session at lunch that will probably take at least an hour and a half, based on what I know. So again, just to let you know what our thoughts and plans are accordingly.

Moving to item 4, Mr. Gerber.

MR. GERBER: Mr. Chairman, item 4(a) is a presentation, discussion and possible action on several Multifamily Program appeals. I'm going to ask Robbye Meyer which member of her team is going to present

those: Tim, Robbye, and Raquel.

MR. IRVINE: If I might before we get started, Mr. Chair and members of the Board and Mike, I'd like to give you sort of a preparatory remark or two about the appeals and waivers that you will be hearing here in a few minutes.

First of all, appeals, obviously, are relating to issues that have occurred under existing QAPs and waivers relate to matters that are sought under the current QAP, and QAPs are rules and staff has basically no flexibility to waive, alter or vary rules. But we do work pretty intensively with our applicants which is a big challenge -- we've got 240 applicants in the current round -- and there have been a huge number of issues that the Board never sees that are worked out with staff, and I just want to underscore that we are not trying to be hard bound bureaucrats, we're really trying to help people along and help them get the deals done.

But I think that you need to understand that rules are rules and that means that they apply to everyone uniformly, and you and you alone have the discretion to waive the application of rules but only in limited situations where there is good cause shown and you make a specific finding of good cause. And there may be rules with which you take exception or you just kind of go ooh and wince, I don't like the way that that applies, it's kind of stringent and kind of stings. When you find those kinds of instances, just the fact that someone has appealed it or asked for a waiver is not good cause in and of itself.

If you come across issues that you want the staff to consider

readdressing in future QAPs, absolutely feel free to direct us, and we are really trying to move to a QAP that is, frankly, more business-friendly, more flexible but still protects the public interests and carries out our statutory duties.

So with those remarks said, I just want to underscore that these issues that are before you, staff, despite working with these people, has not yet found the basis for there to be documented good cause and that's why where we're not recommending approval, that's why we're making that recommendation.

Thank you.

MR. KEIG: How is good cause defined?

MR. IRVINE: Good cause is actually not defined, but what it means in my mind is that there is some significant policy reasons specific to that transaction. In other words, continuing to apply the rule in that particular instance would somehow or another work an unreasonable hardship on someone. For example, the issue that the Chairman raised this morning about situations involving condemnations or eminent domain would simply be unfair to hold somebody accountable for things that are completely beyond their control like that.

I think there are perhaps extraordinary situations where a deal might have some technical problems but it just has compelling and intrinsic and unique value to the citizens of Texas or the area affected, and in those situations I can see perhaps considering that that might be good cause, but bear in mind that there is a deep list of other qualified applicants that are also

bringing forth unique attributes.

MR. CONINE: The ripple effect takes place.

MR. IRVINE: The ripple effect, exactly.

MR. GERBER: Tim, how many applications have we received?

MR. IRVINE: 240 in the current round.

MR. GERBER: Which is a fair number more than we've received in past years.

MR. IRVINE: That's a lot.

MR. CONINE: Is it three to one or more than three to one?

MR. GERBER: We usually fund 60 in a given year?

MR. CONINE: No, no. Dollar amounts wise. Three or four to one?

MS. MEYER: Well, considering the forwards that were already committed, we have about \$36 million that's available, so we've got well overcommitted.

MR. CONINE: Okay. Great.

Any other questions from the Board before we begin?

MS. BINGHAM: Just a question then about the process.

Should the Board decide to approve a waiver or an appeal, the motion should be made to include a statement of good cause?

MR. IRVINE: Yes, Ms. Bingham. A statement of the specific finding of good cause would be in order. And also to the extent that you want to confer with counsel, it is posted and if somebody is uncomfortable with



moving forward without moving into executive session with counsel, that can always be done.

MS. BINGHAM: Thank you.

DR. MUNOZ: Tim, I have a question. You know, I think it would be helpful to provide some very broad language, some guidelines as to how, in your mind and other staff's mind, this notion of good cause is constructed, is conceptualized, so there's some uniformity of at least consideration.

MR. IRVINE: Thank you for that direction. We will in the drafting to the next QAP try to articulate in more detail what it is, and we'll share with the Board.

DR. MUNOZ: Those that are developing these appeals might also benefit from the ability to very explicitly articulate how their position constitutes good cause consistent with this general conceptualization.

MR. IRVINE: Thank you.

MR. CONINE: Thank you.

Ms. Meyer, proceed.

MS. MEYER: Chairman Conine, Board. My name is Robbye Meyer. I'm the director of Multifamily.

The first application we have for an appeal is the Washington Hotel Lofts. It was a 2008 application, had a placement in service date of December 2010. After the allocation in 2008, it also applied for the Tax Credit Assistance Program in 2009. It was also a historic credit application.

Due to delays in financing as well as obtaining the historic

approvals for the development, the owner didn't have sufficient time to place in service by that December 31, 2010 deadline. The owner provided notice to the Department in November of 2010 that they were going to return their credit allocation.

While some of the issues surrounding the application were economic, once the decision was made to pursue the TCAP funding the successful moving forward to closing and funding was within the owner's control. Therefore, the penalty for returning the credit allocation should apply.

Staff recommends that the penalty points pursuant to the QAP be assessed for this application, and that's for any of its 2011 applications in this coming round.

MR. CONINE: I have a witness affirmation form, Bill Scantland, and has time from Cynthia Bast. Bill.

MR. SCANTLAND: Thank you, Mr. Chairman, members of the Board. I'm Bill Scantland, vice president of Landmark Asset Services of Winston-Salem, North Carolina, the applicant behind Washington Hotel Lofts. I appear before you today to request that our appeal to waive the penalty related to the reduction of the final application scores of the upcoming round be granted.

Landmark's mission since 1993 has been to develop multifamily housing and mixed use projects from adaptive reuse of historically significant structures to new construction. We are one of only a few developers pursuing historic rehabilitation work here in Texas. Over the last 17 years we've placed into service or have under contract in excess of 80 affordable multifamily

developments in nine states and we currently manage over 3,000 affordable multifamily units. Prior to the Washington Hotel Lofts project we have never failed to place into service a development for which we were awarded LIHTAC credits, including those using Exchange funding more recently.

Our work includes three adaptive reuse historic rehabilitation projects in partnership with TDHCA. Those include Beaumont Downtown Lofts in Beaumont, Moore Grocery Lofts in Tyler and more recently, the Historic Lofts of Waco High in Waco. Moore Grocery Lofts won the 2009 Best Adaptive Reuse Award from the Texas Main Street Program. Waco High has just received national recognition with the Audrey Nelson Community Development Achievement Award that was presented by the National Community Development Association. All three of these developments were leased up in under 60 days.

I bring this information to your attention in order to emphasize that Landmark is not a stranger to the affordable housing arena but rather we are a long term, experienced player and we are a committed partner to the communities that we serve.

In your Board book you have a detailed explanation of the history associated with the Washington Hotel Lofts project. In summary, this was a 2008 LIHTAC and involved the adaptive reuse of a former six-story hotel in downtown Greenville built in 1926. We intended to pursue historic designation in order to utilize history tax credits as additional funding. Due to the economic deterioration that we are all familiar with and which was occurring during that time, we struggled to find appropriate financing partners.

With the passage of the American Recovery and Reinvestment Act in early 2009, we were able to put together a financing package with Bank of America which utilized gap financing from the Tax Credit Assistance Program. We chose to go this route instead of returning the tax credits which we could have done under the Exchange Program because we were trying to honor the intent of the use of Exchange funding which was to limit it to developments that could not otherwise achieve financing.

We submitted our application for TCAP funding in July and proceeded with both historical and environmental review activities, but it was not until January of 2010, six months later, that the TCAP written agreement was received. NPS approvals were received in the first quarter of 2010 and the state board review for the National Register listing occurred in May which was the first available meeting.

I want to emphasize that the dates and the timing of the regulatory review process and obtaining the TCAP agreement were beyond our control and severely impacted our ability to move forward with Bank of America, as they required these financing options to be committed prior to injecting any funds into the deal, as is the environment with all lenders recently.

Rehabilitation of a structure of this type requires at least 12 months and utilization of TCAP funding did not relieve the LIHTAC placed-in-service deadline of December 2010. Therefore, in the second quarter of 2010 we began a series of discussions with TDHCA in order to explore alternate funding solutions and a way to extend the deadline that

included trying to return the 2008 credits for a 2010 exchange, but all of this was to no avail. A last possible solution was to utilize funding that would have been available through the Extender Act which was being considered in Congress in the fourth quarter of 2010. Once that died and with no relief for the placed-in-service deadline, we had no choice but to return the credits in November. In summary, most timing circumstances were completely out of our control.

Our company came to Texas several years ago because because the community development agenda here lines up with our goals and our values. In addition, there are abundant opportunities to provide creative, adaptive reuse of affordable housing developments. We have already submitted pre-applications for the 2011 round, including one for Texarkana where we have unanimous local support for the adaptive reuse development of the historic Grimm Hotel in downtown Texarkana, but all of our applications will be uncompetitive if they're saddled with a 20 percent reduction in points.

We're capable of delivering projects that would benefit the citizens of Texas with excellent affordable housing, however, none will be possible unless our request for a waiver of the imposed penalty is granted.

Thank you for your consideration.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you.

I'll entertain a motion.

DR. MUNOZ: In your letter, Robbye, I don't see you

responding or addressing this claim of the regulatory process having a certain timetable beyond their control. How would you respond to that?

MS. MEYER: The letter of the return of credits?

DR. MUNOZ: Yes.

MS. MEYER: The return of credits was just letting them know what the penalty would be if they returned the credits, so we didn't address the timetable.

DR. MUNOZ: So the reasons why that had to be done are sort of outside consideration. If they're returned, then the penalty is assessed.

MS. MEYER: Correct, according to the rules. Staff is following the rules, and it's very clear, I can read the rule to you. But it states if an applicant returns credits after carryover, then a penalty is assessed to any concurrent round, and it's a 20 percent reduction in their final score in either the current round if they had done it in the earlier round last year if they had applications, or it will be in the concurrent round the following year. And they have submitted the application for Hotel Lofts again for 2011 so it would apply to the same application, Washington Hotel Lofts, in 2011 and any other applications that they submit.

DR. MUNOZ: The reduction of points?

MS. MEYER: Yes, sir.

MR. CONINE: Did the Historical Commission -- you know, a lot of times we have trouble with USDA on some rural deals and them getting things brought to the top -- did the 106 designation/determination, did they delay in that process, were they slow, were they normal? We haven't had

much interaction with the Historical Commission. What are your thoughts there?

MS. MEYER: Bill will have to answer.

MR. SCANTLAND: We went forward with the 106 reviews, and as I mentioned in my comments, the environmental reviews approximately July of 2009 and that was at which time we had applied for the TCAP funding. We did not move ahead prior to that for the reason that we did not have financing in place to know that it would be a viable deal. But once we were able to apply for the TCAP and that started moving forward, we took the action to move forward with the environmental reviews and the historic work.

MR. CONINE: From the time line in the package it looked like it took them a year, basically, to get back to you.

MR. SCANTLAND: It is a long process. There's a detail in your handout there called Exhibit A that outlines the steps related specifically to the historical process. But yes. And part of the situation specifically with the nomination for National Register is that that agency has cut back on its review schedules and there are only three meetings a year.

DR. MUNOZ: You made the first possible meeting?

MR. SCANTLAND: The first possible meeting, once we had our application in place, that it could have been reviewed at was not until the early part of 2010. It's a reduced schedule; agencies are cutting back.

MR. CONINE: Any other questions of anybody? I'll entertain a motion whenever someone is ready.

MS. BINGHAM: Mr. Chair, I think we all empathize with the

obstacles and trying to make all the pieces fit. I'm struggling to be able to articulate good cause, so at this point I would move staff's recommendation to deny the appeal.

MR. CONINE: Motion to deny the appeal. Is there a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion, questions?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

DR. MUNOZ: Opposed.

MR. CONINE: The motion carries.

MR. GERBER: The next item is Champion Homes at Marina Landing. That's been withdrawn, so we'll move to Cypress Creek at Fayridge. Robbye.

MS. MEYER: The next three that we have were on the Board agenda in December and you approved extensions for each one of these, and at the Chairman's request we moved the waiver of the penalty points to the January meeting, so we're going to take up the penalties for those today.

And the first one is Cypress Creek at Fayridge. It was a 2010 application and they missed the date of carryover which was November 2. We notified them that they missed the date. On November 3 they turned in



their carryover package. According to the rules there is a five point penalty on their 2011 applications. They are requesting a waiver or at least a reduction of those penalty points to one point.

Staff is recommending that -- well, we can't find good cause for waiving the penalty points and staff is recommending the full penalty points be assessed.

MR. CONINE: Stuart Shaw.

MR. SHAW: Good morning. I'm Stuart Shaw with Bonner Carrington here in Austin, Texas. I've handed out a little handout that just illustrates what I'm going to speak about, Chairman Conine, and I'll be brief.

We have a lot of deadlines and we meet them. We have a lot of requirements and we meet them. We just missed this one and it's my fault. I did it, and I'm sorry.

If we take this five point penalty it will put us out of business for a year. As an alternative to the points and actually to the penalty, the five point penalty, I'm proposing -- and I liked Mr. Irvine's comments and Dr. Munoz's question about that or clarification -- to give you good cause I'm proposing to do the following.

If you'll look at this, I'm proposing to take our current 2010 allocation we're about to close this spring for Cypress Creek at Fayridge, and instead of the 34 or -5 points taken in aggregate in our application, to offer additional amenities that would increase that to 43 points. And those additional amenities are on each of these pages pretty clearly marked in green, the horizontal, and so you'll see that we're proposing some additional

amenities to try to offset, just in lieu of this penalty.

In addition to that, if we do receive an allocation in 2011, we're proposing a similar addition of points that we don't have to have to score but actually offering additional amenities on the site for the residents that would be residents of these communities.

So if that's clear, and I'm trying to make it simple and clear, that's really my proposal in lieu of penalize us so that we can stay in business in this allocation round, and we're proposing additional amenities not only for the current Cypress Creek at Fayridge but also for next year if we are awarded an allocation.

MR. CONINE: Both clear and creative, shall I say.

MR. SHAW: Thank you very much. You know, we really are trying.

MR. CONINE: Questions of the witness?

DR. MUNOZ: It was due on the 2nd, you got it to them the morning of the 3rd?

MR. SHAW: Yes, sir.

MR. CONINE: I have another speaker, Mr. Barry Palmer.

MR. PALMER: Barry Palmer with Coats Rose.

I just want to reinforce a couple of the points Stuart made. This is just a one-day extension of carryover, it was due on the 2nd, it was filed on the 3rd. So a five point penalty is really very harsh, but as Mr. Irvine said, you've got to find good cause. And so what we have suggested here is a whole package of additional amenities for not only the project that's already

been funded in the 2010 round but also for any projects in the 2011 round. So these additional amenities would benefit the residents that we're serving much more than imposing a penalty on some developer. So I think that's the good cause that you can find in this instance.

MR. CONINE: A quick question. In the list of goodies here, are the ones that are extras highlighted in green? Is that what it is?

MR. SHAW: Yes, sir.

MR. CONINE: Okay. Any other questions of the witness?

Can I ask staff for future QAP considerations is what Mr. Shaw has proposed here something that staff can get comfortable with in the future as to potential relief from being in the doghouse one day or two days, whatever it is?

MS. MEYER: That would be the Board's decision. I mean, we can certainly put that in the future rules.

I would like to say on these type dates and on carryover and 10 percent tests -- and we have one of those to take up here in just a minute -- these dates are really important because we have deadlines that we have to review, and if credits do come back we have a short time line by the end of the year to reallocate those credits. So if somebody doesn't turn in their carryover, then we have a little bitty window for somebody else to meet carryover by the end of the year.

So I understand and I sympathize with somebody, and yes, it is just one day, but we are dealing with a deadline that is there, we're dealing with an experienced developer, and the deadline is there.

MR. CONINE: But again, the creativity side, from my viewpoint, is now I've got some goodies for the residents that I didn't have before.

MS. MEYER: I definitely understand that, and that's a plus.

MR. CONINE: To me that's worth having a discussion about, anyway.

MS. MEYER: You're right.

MR. CONINE: Any further comments from the Board? Dr. Munoz.

DR. MUNOZ: The thing that I'm compelled by -- and I appreciate the importance of deadlines and the kind of pressure that when one overlooks the deadline, either intentionally or innocently and the pressure that it puts on staff -- but as I see these offered amenities, including 30-year roof, I think about the appreciable positive effect for those residents for 30 years beyond the momentary inconvenience. And whether it's there at five o'clock p.m. or eight o'clock the next day, if it were a few days -- and maybe that has to be revisited, maybe within a certain period of time there's a possibility of some consideration and beyond that there isn't because beyond that then it creates a significant backlog for staff.

But as I look at the offering of these additional amenities that would be enjoyed by these residents for years, I find that not just creative but I find it compelling. So I'm prepared to make a motion, if no one else has comments.

MR. CONINE: Go right ahead, sir.

DR. MUNOZ: I move that we grant the waiver, and the compelling interest, the good cause is in the long term interest of the residents of these properties that would enjoy long after that assessment, long after the pressure on staff to reassess this proposal would enjoy the benefits of these amenities. I believe that that constitutes good cause.

MR. CONINE: Do I hear a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Can I ask for a friendly amendment?

DR. MUNOZ: Yes.

MR. CONINE: I need to ask the developer first. In the proposed goody list I see microwaves listed here.

MR. SHAW: Yes, sir.

MR. CONINE: And if you just throw them in the unit they tend to disappear, but if you install them in the unit they don't disappear. And so would it be too much of an imposition upon you to ask if you can make sure those microwaves are installed permanently as opposed to just sitting on a counter somewhere? You need to get in front of the microphone if you could.

MR. SHAW: No, sir, it would not be too much. And just for the record, we would never do that. These are going to be installed.

MR. CONINE: I wanted to make sure we were clear on the subject matter.

MR. SHAW: Yes, sir, sure. With the vent above the stove so they would be permanent forever.

MR. CONINE: Okay. For the record, that is what he's agreed to do.

I've got a second. Is there any more discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

MR. GANN: No.

MR. CONINE: The motion carries.

MS. MEYER: The next one is Oak Creek Townhomes. It's also a 2010 application that submitted their carryover documentation after the deadline. It was 20 minutes after the five o'clock deadline. They were attempting to get their carryover documentation in, it was coming over our FTP server, and they're requesting a waiver of the five-point penalty.

Staff is recommending the Board waive this penalty because the applicant was attempting to submit their application, and we do find that is good cause that they were attempting to process their application to us.

MR. CONINE: Dennis Hoover.

MR. HOOVER: Good morning. I'm Dennis Hoover and this is in regard to number 10143, Oak Creek Townhomes, which is in Marble Falls, Texas which is Martin Mayfield's housing authority that he has demolished his old HUD units there and this is going to be the replacement.

We had successfully transmitted four other carryovers that day

on our USDA deals, and I haven't done this myself but apparently you log onto the system, plug in a TDHCA number and a password, it lets you log in and you transmit your document. Well, Kim in our office started about 4:45 trying to log on and the system just would not let her log on. I don't know how the thing works, if it was just a multitude of people doing it all at the same time but it wasn't until about 5:15 that she was able to log on.

And so we're asking for the waiver of the penalty and for the \$2,500 fee to be returned.

MR. CONINE: Any questions of the witness? The staff recommendation is for what now? Repeat the staff recommendation, I guess would be the best.

MS. MEYER: The staff recommendation is to waive the penalty.

MR. CONINE: But keep the money?

MS. MEYER: Yes. We always keep the money.

(General laughter.)

MR. CONINE: He added the money to it right over here, so I just want to make sure what staff's recommendation is.

MS. MEYER: He added the money; we didn't add the money. We don't add the money.

MR. GERBER: We're recommending the waiver, but since he started at 4:45, we think keeping the money is fair.

MR. CONINE: Any further questions? Otherwise, I'll entertain a motion.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: I move staff's recommendation to waive the penalty but retain the fees.

MR. CONINE: Motion by Ms. Ray. Do I hear a second?

MR. KEIG: Second.

MR. CONINE: Second by Lowell Keig. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: The motion carries.

MS. MEYER: The next one is a 2009 application, Taylor Farms. This one deals with the 10 percent test, not with carryover. The applicant submitted their 10 percent test after the December 1, 2010 deadline. This was also an extension on the December Board meeting. The extension was approved but now they're requesting the penalties -- it has the same penalties, the five point reduction in any 2011 applications.

The applicant hasn't given a compelling reason as to why the penalty should be waived, and so staff is not aware of any good cause of why it should be waived. Staff is recommending that the Board enforce the five



point penalty on any 2011 applications.

MR. CONINE: Brandon Bolin.

MR. CONINE: Mr. Chairman, I'd like Mr. Littlejohn to precede my presentation.

MR. CONINE: George Littlejohn gets to go first.

MR. LITTLEJOHN: Chairman Conine, members of the Board, Mr. Gerber. My name is George Littlejohn. I'm a CPA with Novogradac & Company. We're an accounting firm that was retained by Mr. Bolin in 2009 to assist him with the carryover and the 10 percent test.

Mr. Bolin, being a newer developer -- this was his first tax credit deal in Texas -- surrounded himself with accountants, consultants, attorneys, a good professional team. IN this case it all fell through the cracks and the deadline was missed. However, lest you think that the project wasn't being focused upon, the compelling reason and the good cause was all of the efforts made to get to closing in November.

This was a deal that had syndication proceeds, also had a 221(d)(3) FHA-insured HUD mortgage, along with TDHCA TCAP funding. Trying to get TDHCA and HUD to work together, it took a while, but closing occurred on November 10. Mr. Gouris was involved, TDHCA was involved. TDHCA was at the closing table where the land was paid for, the costs were incurred and the 10 percent test was met.

Absolutely the administrative deadline was not met and it was not put in the exact format, but there was never any risk to the taxpayers, there was never any risk of the credits being lost or not being reallocated, and

in fact, even though it was not in exactly the right format, TDHCA had support within the Department that the 10 percent test had been met because it was a party to the transaction at the closing table.

The developer, this was his first deal, he's moved it forward, he's got another deal in the pipeline, and this is a very punitive five points and it would effectively, as you heard, put him out of business in 2011. This is a fact substance over form. The 10 percent test was met, TDHCA had the documentation but it wasn't exactly the administrative format that it should have been in, so we ask for the waiver of the points.

MR. CONINE: And Mr. Littlejohn, when was the format met, what date was the format met?

MR. LITTLEJOHN: I believe it was the 9th -- it may have been the 9th or 10th.

MR. CONINE: 9th or 10th of December?

MR. LITTLEJOHN: As soon as we realized the format, I think we turned it around in 24 or 36 hours. It was immediately.

MR. CONINE: Okay. Thank you.

Mr. Bolin.

MR. BOLIN: Good morning. Brandon Bolin.

I don't have much to add to what Mr. Littlejohn has said, but as he mentioned, this was a 2009 transaction. We engaged Novogradac in October of 2009 to provide the carryover package and to also do the 10 percent test. They met carryover timely.

The deal was substantially delayed because of the TCAP funds

that were associated with the transaction, along with obtaining HUD financing, 221(d)(4) mortgage. We were not able to close the deal until November 10, 2010. At the closing we had a dry closing with TDHCA for the TCAP funds. TDHCA was very involved in the closing process, they had a copy of the closing statement, we had channeled all the relevant data from the title company to TDHCA, so they were fully aware that the deal had closed on the 10th of November and that the 10 percent test had, in fact, been met. It's a \$22.8 million dollar deal and at the closing table \$6 million was disbursed, so well over the 10 percent threshold.

I was initially informed by my consultants that the deadline had been met. That was, in fact, in error. As soon as we found out that the administrative paperwork had not been submitted by December 1, Mr. Littlejohn jumped on it immediately and got the administrative packet pulled together and submitted over to TDHCA as quickly as possible.

So based on the foregoing relying on my consultants, who I engaged a year prior to put the carryover and 10 percent together, and then also being subsequently informed that it had been submitted, and then thirdly, TDHCA knowing in fact that the 10 percent test had been met as of November because of the TCAP funds that were disbursed to the deal, and then also fourthly because of the substantial delay in getting HUD financing on the project given the unprecedented volume that HUD has received this year due to the frozen capital markets, I would respectfully request a waiver of the five point penalty. I think we've met the test that Mr. Irvine has put before you of good cause.

I'll entertain any questions, and thank you for your time.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you. I'll entertain a motion.

MR. KEIG: I move a penalty of two points.

MR. CONINE: Okay. There's a motion by Mr. Keig to reduce the five down to two points on the penalty. Do I hear a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further discussion of the motion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(A chorus of nays.)

MR. CONINE: Motion fails. Is there any further motion?

MR. GANN: I move staff's recommendation.

MS. MEYER: Motion for staff's recommendation by Mr. Gann.

Is there a second?

MS. BINGHAM: Second.

MR. CONINE: There's a second by Ms. Bingham. Any discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

MR. KEIG: Opposed to that.

MR. CONINE: Motion carries.

Next one.

MS. MEYER: The last appeal has been withdrawn.

MR. CONINE: Okay.

MR. GERBER: I don't believe there are any other appeals under item 4, so we'll move on to item 5. Is that correct, Tom?

Item 5 are Multifamily Division appeals under the Housing Tax Credit Program, and I'll ask Raquel Morales, our Tax Credit administrator to come forward and walk us through those. Raquel.

MR. CONINE: Good morning.

MS. MORALES: Good morning.

MR. CONINE: How are you?

MS. MORALES: Good. Thanks.

My name is Raquel Morales, Housing Tax Program administrator.

As Tim mentioned earlier this morning, the Department did receive 240 pre-application submissions for the 2011 competitive cycle. Of those, 24 included a request for a waiver or additional consideration of one or more of the Department's 2011 rules. Staff was able to research and resolve

the issues with the applicants for 17 of those requests and the seven that you will hear today remain for the Board's discretion.

MR. CONINE: Do you mind going over those that we are or aren't going to hear based on the agenda so I can mark it up right quick?

MS. MORALES: Yes, sir. La Hacienda has been withdrawn; Enclave on S. Main Apartments has been withdrawn; and then the last three for Noor Jooma, Multi-Family Mission Ministries, and Megan Children's Development have all been withdrawn.

MR. CONINE: Thank you very much.

MS. MORALES: The first request is for Alexander Place Apartments located in Baytown, Texas.

The applicant is requesting that the Board classify the proposed development as a reconstruction activity for purposes of securing points for the application, as well as for obtaining local city approval for the development.

The key to this request is that the applicant is proposing to demolish a total of 58 existing public housing units located on one site and building 36 new units on a different site located approximately five miles away. They have further indicated that they intend to develop an additional 22 units on a third site in an otherwise unrelated transaction.

The definition of reconstruction is the demolition of one or more residential buildings in an existing residential development and the reconstruction of an equal number of units or less on the development site. Given that the proposed development will not include reconstruction on the development site where the existing units are, staff believes this

pre-application is more appropriately classified as new construction.

The existing 58-unit public housing community is located next to the ExxonMobil Refinery. The Baytown Housing Authority has entered into an agreement with ExxonMobil whereby it will purchase the existing community, demolish all 58 units and then use that land as part of its greenbelt around its complex. The housing authority, with the anticipated \$2.3 million in proceeds from that sale will implement a two-phased mixed housing plan, including the 36 units proposed for Alexander Place which is the 2011 pre-app, as well as a separate 22-unit development to be located on property that's already owned by the housing authority.

It also appears that the applicant's request may be an effort to mitigate concerns from the City of Baytown with respect to characterization of the development as new tax credit units in the city. The city imposed a moratorium on the development of additional tax credit units in Baytown that was effective as of February of 2008.

It's important to note that the proposed development planned for Alexander Place is not considered ineligible by staff for purposes of participating in this round. What is at issue is the classification of the proposed activity. Staff also does not believe that the proper characterization of the development as new construction by the Department does not limit the ability of the developer to characterize it as no net new units within the city.

Given the facts presented, staff does not believe the proposal presented for Alexander Place Apartments qualifies as reconstruction and recommends the Board deny the applicant's request.

MR. CONINE: Could you repeat what you said about the City of Baytown in 2008 again?

MS. MORALES: Yes, sir. Along with the request included in the pre-application for Alexander Place, there is a resolution that was passed by the City of Baytown in February of 2008, and it's a moratorium, they didn't want any additional low income tax credit units built in that area.

MR. CONINE: Thank you very much.

I have a couple of witness affirmation forms. Donna Rickenbacker. Good morning.

MS. RICKENBACKER: Good morning. Donna Rickenbacker with Marque Real Estate Consultants. I have the first good cause waiver this morning. I am here on behalf of the Baytown Housing Authority seeking a waiver and clarification of a construction type that will allow the housing authority to apply for tax credits this year as reconstruction.

The Baytown Housing Authority currently owns and operates Acacia Courts Apartments. It's a 58-unit public housing apartment community built in '55. HUD granted the housing authority permission to replace all 58 of the obsolete units and dispose of the Acacia Courts Apartments site. This application is seeking tax credits to reconstruct 36 of those existing units on a development site located at 2401 Alexander. It's also in Baytown, Texas.

The housing authority is not replacing any of the 58 units on the Acacia Court site and sought disposition approval from HUD because of concerns about the health and safety of the tenants at Acacia Courts due to its proximity to the ExxonMobil Refinery and Chemical Plant. And I think you all



have a Google map that shows you its proximity to the plant.

The housing authority's decision to relocate the units was made for all the right reasons that this site is considered ineligible under the 2011 QAP which disallows developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants and refinery blast zones.

Staff has taken the position that since the 38 units are not being replaced on the existing residential development site, a proposed development should be considered new construction of new units. However, the housing authority is not proposing to construct new units as has been suggested which implies an addition of units to the affordable housing inventory. To the contrary, this application is seeking tax credits to reconstruct and replace 36 of the original 58 units.

The proposed construction is keeping with the definition of reconstruction in the QAP and should not be called or characterized as something other than what it is simply because the housing authority cannot reconstruct the units on an ineligible site.

To complicate the matter further, the City of Baytown does have a moratorium against any further new construction, but they have agreed to allow the housing authority to move forward with their disposition plan as long as they replace on a one-for-one basis which is what the housing authority is intending to do. This application is seeking tax credits for the replacement of 36 of those units.

Obviously, with the City of Baytown wanting the replacement done of replacement units, this is somewhat putting at risk their approval and

our ability to get the two times resolution that we need to move forward through application.

So we're respectfully requesting the Board's approval of our waiver to apply for the credits as reconstruction in recognition of the housing activity being proposed and in keeping with the requirements of the City of Baytown. Thank you.

MR. CONINE: Questions of the witness?

(No response.)

MR. CONINE: Thank you.

MR. KEIG: I have a question.

MR. CONINE: Okay, sure.

MR. KEIG: Why are we going from 58 down to 36?

MS. RICKENBACKER: The housing authority -- and I think Michael Bowen can speak to this better than I can -- I think the agreement with the city was they did want to split it up so they're going to be putting 36 units on this site that we're going through applications seeking tax credits on, and the balance of the units are going to be replaced on a site that Baytown Housing Authority owns, and they'll move forward with that separately outside of this tax credit application and outside of receipt of an award of tax credits.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: Michael Bowen.

MR. BOWEN: Good morning. My name is Michael Bowen. I'm with Center Point Regional Housing Development, Dallas, Texas. We are

the development partner with the housing authority on the Alexander Place redevelopment. I would first thank the Board for considering our request at this time and I'd like to present some additional information to complement Donna's request previously.

To answer the first question, as part of our discussions with the City of Baytown, one of their main concerns was deconcentration and they did not seek to see a high concentration of poverty in one area. So in order to address that specific concern we agreed to use two sites in order to deconcentrate public housing in multiple locations throughout the City of Baytown.

Also I just wanted to reiterate the importance of replacing the property. As Donna noted earlier, the property is located adjacent to a major oil refinery. It's also a very old and obsolete property, and so we see this as an opportunity to not only place residents in a more suitable location but to also promote development in another part of town that needs it in a major way.

The site does have environmental conditions. In addition to Baytown we also have to follow HUD requirements, and in fact, HUD has what's called site and neighborhood standards which determine which particular sites are appropriate for a public housing development and the current site would not meet that standard, so we seek this new site in order to get site and neighborhood standards approval.

So with those factors in mind, we do request the Board's approval of our request. And I'm available to answer any questions that follow.

MR. CONINE: Questions of the witness?

(No response.)

MR. CONINE: Thank you very much. Appreciate it. That's all I have on this particular item.

MR. KEIG: So move staff's recommendation.

MR. CONINE: Motion to deny the appeal. Do I hear a second?

MR. GANN: Second.

MR. CONINE: Second by Mr. Gann. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MS. MORALES: The next three requests actually deal specifically with waivers of the bedroom percentage requirements as specified in 49.4(c)(8) of the 2011 QAP.

The first in this group will be for E2 Flats, which is proposed to be located in Dallas, Texas. E2 Flats is a proposed adaptive reuse of an existing 1958 office building.

At the time the pre-app was submitted for E2 Flats, the applicant disclosed two separate requests for waivers, one being for the

minimum size of the units and the other for the required bedroom percentage requirements. However, subsequent to publication of the Board book, the applicant notified staff that it withdrew the request for the waiver for the minimum unit sizes indicating that they were able to meet those requirements after all.

Therefore, the only issue before you today is for the bedroom percentage requirements. The key to this request for waiver is that the applicant is proposing a unit mix that will consist of 82 percent of its total units as efficiency and one-bedroom units. This exceeds the Department's current limitation of not more than 30 percent of the total units as efficiency or one-bedroom. The applicant indicates that the multifamily projects in downtown Dallas have previously not met projections primarily because unit mixes have been geared towards large and spacious two- and three-bedroom units. However, the Applicant provided no specific examples of existing tax credit multifamily projects to support this statement, nor did the applicant provide documentation to support that this market cannot support two- and three-bedroom units.

Staff's writeup for the Board identified one tax credit development in the area that was awarded during the 2006 competitive cycle that included a proposed adaptive reuse of an existing office building such as the proposal set forth for E2 Flats. However, the staff writeup incorrectly suggests that the 2006 development met standard restrictions when, in fact, it was proposed as both adaptive reuse and supportive housing, so therefore, they did not have to meet the bedroom percentage limitations set forth in the

QAP because it was supportive housing. Nonetheless, the proposal for E2 Flats does not indicate that this development will provide supportive housing for prospective tenants which would exempt the development from meeting those requirements.

The applicant has not provided any documentation to support the potential claim that a reconfiguration within the existing structure, in order to meet the Department's bedroom percentage requirements, was not possible, and it has not provided a substantive reason that the development, ostensibly a general use development, would have to be so dominantly configured as one-bedroom units rather than a more balanced mix as set forth in the QAP.

Therefore, staff recommends the Board deny the waiver.

MR. CONINE: I have a couple of witness affirmation forms with additional time allotted to both. Carole Twitmyer and Bill Newsome, whichever order you'd like to go in.

MS. TWITMYER: Good morning, Board. Thank you very much for hearing our request. My name is Carole Twitmyer. I'm with Merriman Associates/Architects; I'm the architect for the project. I did bring some visual aids.

MR. CONINE: That's always helpful for those of us that are challenged.

MS. TWITMYER: As you heard, it's a 1958 building. It's a very narrow building. The board that Sara is now showing you there. There's a couple of structural and code issues I'd like to speak towards that

will speak towards the unit mix issue. One is that the site itself fills the entire property line, it is a downtown building, it is a 50 by 200 foot property line, the building is just shy of that. That plate then ends up being roughly a little more than 9800 square feet total on the plate, however, because one side of that building is on a party line and no windows are allowed on that, as well as it being a structural sheer wall, no windows can be punched into that side, we have windows on only three sides of the building. That does mean that all of our units in our livable space have to occupy those windows that are only on those three sides.

The hallway, because of the location of the stairs in this existing building for life safety issues, that hallway is as long as it can be in terms of distance travel for life safety, and we get short on the one end there. What happens is that the unit at the end ends up being greater than the optimum size that you have decided you need. We're running very close to, in those end units, the maximum distance you're allowed to be from the farthest point of the unit to the exit door, et cetera, et cetera.

So when you do look at the overall configuration of what is leaseable area, we have about 6900 leaseable square feet that's for living area. That ends up being about a 70 percent efficiency rate. When you do a new construction apartment building, efficiency rate meaning leaseable to non-leaseable area is typically in the 80 to 85 percent, so again, we have less area that we can use for units.

This structure is a very small bay structure, 25 foot centerline to centerline on the columns. It is a concrete structure meaning that the slab is

very thick because it was originally built to handle record storage, and then the beams themselves are quite deep. It is twelve foot floor to floor, so to get the plumbing and the ducting and all of those kinds of engineering issues around those column bays is quite a challenge and it does impinge the usability of that unit. If we only have a ten foot ceiling height and then we have to drop another two feet or two and a half feet in some cases to get all that plumbing and ducting around, it ends up interfering with the quality of that unit or the quality of the livable space.

It is an old office building, glass all around which is a great quality for this building, however, it does mean that we then have to job walls to meet on mullions in the middle of glass. So there are a number of issues just because of the existing conditions that make the units either larger or smaller than your standards in order to meet that mix.

I think I have covered all of the architectural issues.

MR. CONINE: I have one question for you. Hang on one second with the map; hold it back up again, please. If you had two-bedroom units as opposed to all the ones and efficiencies, would that not shorten the hall corridor?

MS. TWITMYER: Well, again, within the unit you can only be 75 feet away from your front door at the farthest point, so you can make the unit only a certain depth before you run into that life safety issue. And I'm thinking on your far right we show the maximum depth of that two-bedroom unit, we're showing a two-bedroom at the end. We do have two two-bedrooms, one on each end.



MR. CONINE: Right. I see it.

MS. TWITMYER: And then the ones on the front are all the one-bedrooms.

MR. CONINE: Okay. Thank you.

Next is Bill Newsome.

MR. NEWSOME: Mr. Chairman and Board members, Bill Newsome. I'm the developer of the project.

I would just like to supplement one thing Carole said. Her firm, Merriman Associates, has done numerous residential conversions of office buildings in downtown Dallas. They're arguably as experienced of a firm as there is in the downtown Dallas market and we've gone through various renditions with them on this project, and the limitation is the building is so shallow that the only logical place to really get two-bedroom units is on the two ends of the building.

I would just like to make a couple of overview comments about the project on background, and then I'll talk specifically about the waiver.

This is a very exciting project. This building is at the corner of Elm and Ervay, it's in the heart of downtown Dallas, figuratively it's at Main and Main. A very visible building. When you come into downtown from the east, you certainly can't miss this building, as you saw from the pictures, and it's wonderful in that it's got three sides of street frontage.

It's an important building to the city. We've worked extensively with staff on trying to push this project forward. They're very supportive of putting this building back in service. Have worked with Karl Zavitkovsky, Carl

Students, and Jerry Killingsworth, the director of housing. Jerry sent me an e-mail about a year ago, copying Mr. Zavitkovsky and Mr. Students, and I'll read just briefly from that: "We really want to see that building redeveloped."

It's an adaptive reuse. The building has been shuttered for 15-plus years and we believe that this plan will put it back in service at its highest and best use. It's historic, it's a mid-century construction, and we believe the probability of getting the Parks Service designation is very high.

We believe the project will address the market, that the mix of these units, targeting an affordable customer who is in the workforce and in this location, we believe is addressing the market that is there. And it's a mixed use project; there is approximately 4,000 square feet of retail at street level.

Relative to the waiver, our analysis of the market is that the projects that are performing at the highest level have a higher percentage of one-bedroom units. We've used ALN data, we've worked with Holliday Fenoglio, and Butler Burger is our consultant who will do the market study for a HUD application, and all of them are supportive of that.

I would point to you in the handout our project is we've got 34 two-bedroom units out of 153 and so that is 22 percent two-bedroom or greater. The second page of the handout breaks a good sample of downtown projects into two categories: ones with 25 percent or higher two-bedrooms and that occupancy is 86 percent and that's off fresh ALN data as of January; the second category is projects, which would include our proposed, that are less than 25 percent two-bedrooms or greater, and that occupancy is 91

percent. So there's a 5 percent difference and we believe that to be significant.

We also believe that if you were to grant us the waiver it is not precedent-setting. The third page in your handout is a comparison with the Atmos building which a waiver was granted. I couldn't find the documentation supporting why that was granted, but it would seem that the logic is the same that we're pointing to, that this is where the market is, and with today's economic conditions that the one-bedrooms are where the highest demand is.

DR. MUNOZ: A waiver was granted to Atmos for what, specifically the same?

MR. NEWSOME: It's my understanding a waiver was granted for the unit mix.

DR. MUNOZ: To have a higher percentage?

MR. NEWSOME: Yes. It's my understanding.

DR. MUNOZ: It's your understanding based on what? You said you couldn't find the record, the documentation, so what's that based on, sort of anecdotal?

MR. NEWSOME: Based on information from our consultant, and that project is going forward with public representation of that mix of units which is 87 percent ones or efficiencies.

DR. MUNOZ: Tom, you're going to look into it? All right.

MR. NEWSOME: In summary, this building, as I said, is an adaptive reuse. We're addressing where we believe the market is with efficiently laid out one-bedroom units. We don't believe it's precedent-setting.

And this building is a very unique building; because of its shape and location we believe that it's ideally suited for conversion to residential. There are constraints on the building as Ms. Twitmyer referenced in that logically the only place to get those two-bedrooms to really work and really be leaseable is at the ends of the building.

We believe this to be a very exciting opportunity to put this building back in service and appreciate your consideration on this waiver.

MR. CONINE: One quick question. On your chart where you compare yourself to Atmos, you're showing zero efficiency units yet I keep hearing efficiency units in your project. Out of the 119 one-bedrooms how many of those are technical efficiencies?

MR. NEWSOME: Zero. It's 119 one-bedrooms. I was categorizing one-bedrooms and efficiencies together as a category, but our 119 are all one-bedroom units.

MR. CONINE: With a bedroom with a door on it and all that kind of wonderful stuff.

MR. NEWSOME: Yes, sir.

MR. CONINE: And what's the square footage of those units, are they different?

MS. TWITMYER: All the one-bedroom meet the minimum 650, several of them are more than that.

MR. NEWSOME: It goes up from 650.

MR. CONINE: Right. Got it.

Okay. Ms. Morales, I've got a quick question for you.

MS. MORALES: Yes, sir.

MR. CONINE: There's a carve-out in the QAP I think you mentioned in your testimony for adaptive reuse projects such as this for bedroom mixes and so forth if certain other assumptions are met. Can you restate what you said there so I make sure I understand what you said?

MS. MORALES: Sure. There is an exemption to the percentage requirements if it is supportive housing or single room occupancy.

MR. CONINE: Those are the only two conditions?

MS. MORALES: Right. I believe so.

MR. GANN: Mr. Chairman, if you remember right, we just had a presentation of this earlier saying that a larger number of adult children are staying at home. This may be part of the market that's really out there. We might need to address that in the future.

MR. CONINE: All right. Any other questions of any of the witnesses? If not, I'll entertain a motion.

DR. MUNOZ: Mr. Chairman.

MR. CONINE: Dr. Munoz.

DR. MUNOZ: The only concern that I have or pause that I have is this sort of suggestion that there was a decision to extend this waiver courtesy to a comparable development.

MR. GOURIS: I have some information about that that might help.

The Atmos Lofts was a similar transaction in that it was adaptive reuse but it was a much bigger transaction, it had multiple phases

and it was going to have other multifamily within it and it was more of a mixed use development. This is a one-building development, and so the circumstances were a little bit different. I believe when we looked at that last year that administratively staff granted that, it wasn't really a waiver, it was more of an understanding that it was part of a bigger project that was going to have the other unit mix information in there. That's my understanding.

Sarah may be able to speak more to that because she was involved with that transaction as well.

MS. ANDRE: I actually was not involved in the Atmos Lofts transaction.

MR. GOURIS: I'm sorry.

MR. CONINE: You'd better introduce yourself first.

MS. ANDRE: Sure. Sarah Andre. I am a consultant representing this project today.

Atmos, we were unable to find anything in the Board record about a waiver, but if you look at the Atmos project, it does have a unit mix that does not conform to the QAP. I believe Atmos has multiple buildings, some of which are not affordable. They applied for tax credits on the affordable portion, so they may have larger bedrooms in other buildings but they aren't tax credit units.

MR. GOURIS: That's correct.

MR. CONINE: And I recall that as well. They just came for a piece of it but there was other market rate units that spread the one- and two-bedrooms out.

Any other questions?

(No response.)

MR. CONINE: I'll entertain a motion.

MS. BINGHAM: Miss Merry Sunshine today. I really do love the project and maybe it's something in the future we can look at again. I thought we had somebody that came and talked to us -- it may have been somebody from this development -- a couple of meetings ago about downtown areas and some demand for the one-bedroom units. But at this time I think the QAP is pretty clear, so I would move staff's recommendation not to approve the waiver.

MR. CONINE: Motion to deny the appeal. Is there a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MS. MORALES: The next request in this group is for Preston Lofts to be located in downtown Houston. It is a proposed adaptive reuse of an existing historic five-story warehouse that will be converted into affordable housing, specifically for tenants involved in artistic and literary activities.

The key to this request for waiver is that the applicant is proposing a unit mix that will consist of 98 percent of its total units as one-bedroom units which exceeds the current limitation of not more than 30 percent. The applicant did not provide justification that the market area does not or will not support more two-bedroom units or that the engineering of the proposed development will not allow reconfiguration within the existing structure in order to meet the Department's requirements.

The applicant also requested a waiver for the method of determining the cost per square foot in order for this application to qualify for ten points under 49.9(a)(8) of the 2011 QAP. The basis for this request is the high common area associated with the design of the development. A drawing or a plan of the common area was not provided to staff within the pre-application but only referred to it as circulation and exhibitor space which is typical for a building with interior corridors. Such common area is not considered unit space or unit-like space, so it would not be included in the net rentable area for purposes of testing this selection item. Including this corridor space at this point in the process could have much wider implications as this has been a longstanding method of calculation and should be addressed or considered in a future QAP.

Staff recommends the Board deny the waiver for both requests.

MR. CONINE: I have Donna Rickenbacker, again with additional time, as well Pres Kavacoff. I think I mispronounced that.

Go ahead, Donna.

MS. RICKENBACKER: I don't have multiple copies of this site



plan but I have one.

MR. CONINE: Thank you.

MS. RICKENBACKER: Donna Rickenbacker with Marque Consultants. I'm here on behalf of HRI Properties who's seeking the Board's approval of waivers that will allow it to proceed into application in connection with a proposed adaptive use conversion in downtown Houston.

The applicant is proposing to convert a historic vacant warehouse building into affordable housing for tenants involved in artistic activities. As you all are aware, that's an allowable preference under Section 42 of the Code. HRI seeks waivers from this Board that will grant competitive treatment to a housing type and affordable tenancy that is effectively not permitted in the QAP. HRI is proposing artist loft style affordable housing. The current plan is to construct 50 one-bedroom units and one two-bedroom unit which is not allowed under Section 49.4 of the QAP which limits the maximum number of one-bedroom sizes to 30 percent.

Artist lofts, by design, consist of larger work area space and are typically more attractive to single individuals and young couples. Therefore, the design of loft units being proposed and the percentage of bedroom sizes are configured to accommodate the proposed tenant population and the market to be served. Additionally, the size of the vacant warehouse and the historic preservation requirements of the building drove additional design changes that are not conducive to multiple bedroom units.

Staff identified a tax credit development that they represent as similar to Preston Lofts and was able to meet the maximum bedroom size

percentages. Staff selected a perfect example to illustrate the difficulties in moving forward this year with Preston Lofts and the reason for requesting the waivers. The project identified was Travis Street Apartments. Travis Street is a proposed 192-unit new construction activity on undeveloped land. Preston Lofts, on the other hand, is an adaptive reuse conversion of an existing vacant warehouse. Ninety-eight percent of the total units at Travis Street are efficiency units.

These next few comments does speak to Atmos, I think it's the apartment complex they were referring to. Last year an efficiency unit was not defined in the QAP and was not a type of unit included in the maximum allowable percentage of bedroom sizes, so a developer could effectively pro forma all efficiency units and maximize smaller one-bedroom sizes without penalty. This year the QAP restricts the number of efficiency units to a maximum of 30 percent and defines an efficiency unit as a unit without separately enclosed bedroom, limiting the flexibility of a developer to design smaller one-bedroom units as is planned for Preston Lofts. So Preston Lofts can't compete this year under the same rules that applied to Travis Street.

The real comparison between Travis Street and Preston Lofts is the similarity in the tenancy being proposed and the associated design and cost. These similarities support our waiver request and argument to the Board to grant Preston the same treatment as an SRO type development.

Travis Street proposed single room occupancy development to provide supportive housing for veterans. Preston, on the other hand, is an adaptive reuse conversion into loft style housing for tenants with artistic

creativity. Typically SROs and artist loft preference housing house one or two persons in individual rooms with large common area space. Travis Street, as an SRO, was able to build to \$95 per adjusted net rentable area. From a cost perspective, affordable artist loft and SRO are very similar. Artist lofts carry an additional cost burden associated with designing kitchens and bathroom facilities which are not traditionally part of SRO developments.

There's no real box in our QAP to check for this type of tenancy and the housing activity being proposed for Preston, and it's especially problematic when you recognize that affordable artist tenancy is traditionally served through adaptive reuse conversions of older buildings in downtown areas.

We are therefore requesting approval of our waivers to adjust the percentage of eligible bedroom size and to grant to Preston Lofts the same treatment as an SRO in the QAP given the similarities in the design, the tenancy and the cost burden associated with these types of developments.

Also, I wanted to lastly point out to the Board that Novogradac recognized HRI in their 2010 developments of distinction. Their historic renovations and adaptive reuse conversions serve as a model for communities in this country. I'm really hoping with these waivers to bring them into Texas this year, and I respect your consideration.

MR. CONINE: Questions of the witness?

(No response.)

MR. CONINE: Okay, Pres. I apologize for butchering your last name.

MR. KAVACOFF: It's Kavacoff.

MR. CONINE: Kavacoff. Okay.

MR. KAVACOFF: Chairman Conine, members of the Board, thank you for allowing me to speak.

Let me be sort of general. We're not really an affordable housing developer, we do an awful lot of it, but what we are is a city revitalization developer. We use the widgets of residential, market rate, mixed use, affordable, retail, hotel to make vibrant, sustainable neighborhoods, and they never work conventionally so we always do them in public-private partnership.

We feel that city revitalization, we could use the affordable housing tax credits to create artist housing because it has such a vibrant impact on downtown revitalization. There was some question in Treasury that that wasn't an appropriate class and they weren't going to recognize it, so we went to Congress and persuaded them that if they could combine the affordable housing program with city revitalization by allowing artist housing, that would be a win-win in many different spheres, and they agreed and so they legislatively allow artists to be an appropriate category.

So what we've done is we want to work in Texas, we've done a number of projects here but not affordable housing. We went to Houston and picked the Preston Lofts there in the Edu neighborhood which has a lot of opportunity for revitalization, and we thought if we did all artist housing there then that would be a good start. And from what I've learned from your consultants and your technicians, there's a couple of showstoppers getting

that project done. One, which you've been discussing for the last 15 or 20 minutes, is room size. Families don't come to pioneer areas of town, they don't do that. Artists are usually looking for a one-bedroom or an efficiency. And so to meet the market we can't live with your requirements.

And I will say that if you look at the future, the family size which used to be 70 percent, the nuclear family, mother, father, children, is going to be 30 percent and it's going to be 70 percent the other way around. So if you look at sort of fairly providing rules to meet the United States market so heavily emphasizing larger bedroom size may not be the best approach. That's your call.

So we are asking that you allow us to do lots of one-bedrooms. We can do efficiencies. If this is important within the technicality of your QAP that we fit better if we call them efficiencies where there's not that limitation, we believe that artists will live with an open bedroom situation and we can actually make that work. There is some loss of income going from one bedroom to efficiency but we can live with that too. So if that was the solution to that issue, then we could go there.

The other is cost. These old historic warehouses, you've got to build every gross square foot. It's not your Brownfield walkup buildings that are usually 70 percent efficient. And in artist housing we've got to provide space for their exhibitry, and so holding us to a net square footage requirement rather than a gross square footage requirement for determining building cost just is impossible to achieve. And as I understand it, if you lose those ten points it's not really worth pursuing it. And so we're looking for your

guidance there.

But you've got to meet the Secretary of Interior's building standards. You're usually dealing with multi-stories rather than two stories and you're dealing with land costs and building costs that are higher than they are in a suburban Brownfield.

And so at the end of the day, I came to the last meeting and I felt encouraged that you were looking for a way for the win-win, to try to get city revitalization using tax credits, so I'm back again, and will come again. If we haven't dotted all the I's and crossed all the T's, we're glad to continue to work with staff to find a solution.

But specifically we request you consider the bedroom size waiver, we will do efficiencies if that's what fits -- it's not a first choice but we can make it work -- and that you deduct the historic tax credits which you don't pay for out of your program from the cost and you allow us to work on gross. And so those are, I think, our three essential hurdles to being able to proceed with what I think will be a good thing for your state and your communities.

Thank you. Any questions, I'd be glad to answer them.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much.

That's it on this particular project in the form of witness affirmations. I'll entertain a motion.

MR. KEIG: I move to deny the waiver request.

MR. CONINE: Motion to deny by Mr. Keig. Is there a

second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Next.

MS. MORALES: The next waiver request is for The Works at Pleasant Valley. The applicant is proposing a 36-unit new construction development targeted towards young adults exiting foster care, young single parents exiting abuse or abandonment, and homeless individuals or families in a transitional and/or supportive housing model.

This one is a little bit different than the first two that we heard regarding the waiver request for the bedroom percentage requirements in that it has been identified in the pre-application as a supportive housing development so it would get the waiver for that. But I think it's unclear to staff, because I think they may be confusing single room occupancy and supportive housing in their proposal. They do have half of their units will be efficiency or one-bedroom units, but they also have some two-bedroom and four-bedroom units that I think they're going to operate as single room occupancy, and so that is the real issue here.

From what I understand, given that there are four-bedroom units separate and distinguishable rooms within the four-bedroom unit, they will operate each of those units as a single room occupancy which, you know, according to the applicant they believe that falls within the definition but that is, according to staff, and extreme reading of what a single room occupancy is.

The applicant provided no extenuating circumstances or reasons why the development is not able to or hasn't provided enough explanation of what they're intending to do, if it is single room occupancy, especially the two- and the four-bedroom units. So staff recommends that the Board deny the waiver.

MR. CONINE: Okay. I've got three witness affirmation forms.  
Susan McDowell.

MS. McDOWELL: Good morning. We appreciate the opportunity to be before you today. I'm Susan McDowell. I'm executive director of LifeWorks which is an Austin-based youth and family service organization that has ties back to this community from since 1910. We've been around for a long time.

I am here today accompanied by our chief operating officer, Mitch Weynand, and one of our board members, David Wieland, who will speak after me. Our goals are to describe what we're really trying to achieve in this project to put some context to our request for a waiver, and clarify -- because I don't think it was clear at first -- that this is a supportive housing project. So I will talk a little bit about LifeWorks and the project and then hand it over to Mitch to talk specifically about the waiver.



Like I said, LifeWorks is a youth and family service organization here in Austin, Texas. Our mission is to transition youth and families from crisis to safety and success. We serve 10,000 families every year across nine service sites with 170 staff members and a budget of roughly \$10.2 million. Our services span a whole comprehensive continuum for youth and families in crisis, including counseling, housing and homeless services, and education and youth development.

Our housing and homeless services target the most hard to serve youth and young adults, including homeless and street-dependent youth, teenage parents and youth who are exiting the foster care system. Last week the National Alliance to End Homelessness published a report which identified this population, youth aging out of care, as the population most at risk of homelessness, with each standing a one in six chance on any given year of experiencing homelessness.

Our services which combine housing with intense support services, education and workforce development is effective in cutting off a pipeline to homelessness. Our housing services that exist include: street outreach, emergency shelter, transitional living, supportive housing, a maternity group home, and most recently a permanent supportive housing model that is actually funded by TDHCA funds that you made available to cities like Austin to address homeless issues.

So what we want to do now is we want to take this up a step further. We have submitted a pre-application for The Works at Pleasant Valley which is a 36-unit supportive housing project focused on this

population. It will be located in East Austin, just a few miles from here, on LifeWorks East Austin campus which will also include a new 32,000 square foot youth and family resource center that will provide a whole array of wraparound support services including: a center for youth who are transitioning out of care, co-location with several of our partners including Capital Idea that does workforce training -- I'm sorry.

MS. RAY: Just continue to wrap it up, please.

MS. McDOWELL: Okay. We financed the resource center. What we have here is a three-legged stool with affordable housing, it is adjacent to Austin Community College's Eastview Campus which is a hub of workforce training, and the resource center. This model does not exist anywhere and will draw national attention.

Our goal is to cut off a pipeline towards homelessness and also establish a model that can be replicated in any community in Texas and any community in the United States.

So now, if there are no questions, I'll hand it over to Mitch to talk specifically about the waiver and the population.

MR. KEIG: Ms. McDowell, did you sit down and have a face-to-face meeting with TDHCA staff at their offices about this?

MS. McDOWELL: No, we have not.

MR. KEIG: Did you offer to do so?

MS. McDOWELL: I don't believe so. Mitch?

MR. WEYNAND: We have spoken with the staff on the phone several times.

MR. CONINE: Excuse me. Mitch, you will need to identify yourself before you address the Board.

MR. WEYNAND: Mitch Weynand. I'm the chief operating officer for LifeWorks.

We have spoken on the phone with them several times but we have not had a face-to-face meeting.

DR. MUNOZ: Have you spoken to them on the phone explaining the four-bedrooms and how they would be used as single occupancy?

MR. WEYNAND: Yes, we have. And we understand that your definition of single room occupancy our four-bedroom units don't comply with that. They're four-bedroom units, a ground floor common area, two floors of bedrooms and bathrooms, but they're distinct bedrooms so they don't meet your definition of single room occupancy but our intention is to operate that way in that we will lease a bedroom to a client and they'll share the common space with other people.

DR. MUNOZ: Did you explain that to staff just the way you did now?

MR. WEYNAND: I think we have.

DR. MUNOZ: But you heard earlier where they said there's some confusion.

MR. WEYNAND: Yes, sir, I understand that. I don't know that we've been able to get them to understand that or if I've not explained it clearly to them.

MR. CONINE: Go ahead, Lowell.

MR. KEIG: I don't know what the time lines are for this development, but if we were table this for you to spend more time to work out some of these issues with staff, how would that strike you?

MR. WEYNAND: Well, we're trying to get an application in. This is the pre-application and we're trying to be an eligible project and submit it in the next application process, so any delays would put us out of this 2011 round. So that's why we're here today to try to get you to grant this waiver so that we can proceed with an application.

MR. CONINE: Why don't we go ahead and let them finish their testimony and then we can have a general discussion at the end.

MS. RAY: I think so.

MR. CONINE: Did she finish?

MS. RAY: Yes.

MR. CONINE: Okay. Mitch, go ahead.

MR. WEYNAND: Specifically, the waiver that we're requesting is that your requirements in the QAP requires that no more than 30 percent of the units be one-bedrooms or efficiencies. Our particular model has 18 one-bedrooms and efficiencies which gives us 50 percent of the units would be at that level. Additionally, we have the four-bedroom units. We have four four-bedroom units. Your QAP requirement is that no more than 5 percent be four-bedroom units and with this model, 4 of the 36 would be 12 percent would be four-bedroom units.

So we're asking for a waiver of those two requirements so that

we can build this model of housing that will address a public need here in Austin. As you know, we are experiencing an incredible shortage of affordable housing in Austin. There's a city marketing report that shows that there are over 30,000 units of housing needed for this population, folks under \$20,000 income per year.

The model will be a supportive housing model. What we're trying to do is lower the MFI service level to 30 percent so that folks even at that level, even in a restricted rent model can at best afford smaller units. We're talking about kids leaving foster care at the age of 18 with nothing more, basically, than their clothing, young folks who have been on the street who in some cases weren't fortunate enough to get into foster care because they've avoided that system and they've been homeless kids on the street that we've worked with for years and have helped through our transitional living programs who are ready for that next step of a permanent place to live.

DR. MUNOZ: Excuse me. Let me ask you, repeat those two things that you're asking a waiver for.

MR. WEYNAND: Requesting a waiver from the requirement that 30 percent of the units or less to be one-bedroom or efficiency, and that no more than 5 percent of the units be two-, three- or four-bedroom units. That's our specific request.

We think we have a compelling case with a unique population that we're attempting to address, attempting to build a resource for. We've got lots of resources going into this project with our resource center and our other partners in the community, and we think that's a compelling case.

We appreciate your time and your attention, and we look forward to working with you to create a solution to the problem of youth homelessness and foster care youth entering the chronic homeless population. Thank you.

MR. CONINE: Thank you.

David Wieland.

MR. WIELAND: Members of the Board, my name is David Wieland. Thank you for having me here today. I am a board member with LifeWorks.

I have built both 9 percent and 4 percent deals through TDHCA allocated funds and through an affiliated company. It was a number of years ago. I since have joined LifeWorks and am very focused on serving this population, these youths between 18 and 24 years old, essentially, who are most at risk.

And I'm just here to talk briefly about this specific project, combining the concept of a resource center, 31,000 square feet of resources dedicated specifically towards this population, with Austin Community College which is directly adjacent to this property, with an affordable housing component. When you think about those three pieces, education, services and housing, those are the three legs of the three-legged stool that kind of get talked about with affordable housing. You guys have been doing this a lot longer than I have to know that it's talked about a lot but you don't see many opportunities to really implement that.

And I'm so excited about this particular project because it has

the potential to truly be groundbreaking and set an incredible model for how affordable housing should work within that three-legged stool. And I think if I have my way that this will make a big splash nationally because I think it really helps a lot of developers to think outside of the, quote-unquote, box -- to use an overused term.

So with that, I hope you'll just consider our proposal and our waiver. Thank you.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: That completes the witnesses on this particular agenda item. Any further discussion and/or a motion?

MS. BINGHAM: I have a couple of questions.

MR. CONINE: Sure.

MS. BINGHAM: Can you remind me so is this considered supportive use or not?

MS. MORALES: It is described as supportive housing, so because of that description the bedroom requirements, as far as the percentages, would have a waiver -- or an exemption -- I'm sorry -- but they provided more information within the pre-application about the four-bedroom units specifically and it's not clear what they're doing with those, if each of the bedrooms within the four-bedroom units is going to be a unit, if they're going to operate those as single room occupancy. So it's just really unclear what they're trying to do with that.

MR. CONINE: I'm sure they're sharing a kitchen and a common area facility for television and so forth.

MR. GOURIS: I think we brought this forward not because they needed -- the waiver they were seeking, that they explicitly said they're seeking isn't required to be waived, it's exempted, the unit mix stuff is exempted. We brought it forward because they had some other information in there and we were concerned that they were also asking us to waive the definition of four-bedroom unit and some other things that now we have some concerns about. So that's why we brought it forward.

DR. MUNOZ: Well, given what they've explained, do you still have that concern that they're seeking a re-definition?

MR. GOURIS: Yes. Actually and more so because we thought we heard that they said that some of the units were going to be two-level units, and that would pose some accessibility issues that haven't been addressed. So we're actually more concerned now than we were, if that's possible.

MR. GERBER: We've spent a fair amount of time trying to work through the SRO rule because I think the Board has made clear its desire to try to do more of that kind of work, and they really are special communities when we can get one across the finish line.

Part of me wishes we'd had some of this input at the time we were doing the QAP because I think our understanding of your model and sort of what you envision would have been helpful to us, and so I would encourage you to be part of that as we work through the next year's.



MR. GOURIS: But I don't think there's anything preventing them from moving forward with a supportive housing model as long as it's 100 percent supportive housing, that they do whatever unit mix they need to do. Then we will need to address the four-bedroom as an SRO or as single units, we'll have to come back and address that at some future point. But if that's not what they're asking for a waiver of today, then there's really need, frankly, to act to grant a waiver.

DR. MUNOZ: And they're not asking for that. Right?

MR. GOURIS: I don't believe. That's not what I heard them say.

DR. MUNOZ: So do we even need to take action on this then?

MR. WEYNAND: We fully understand your definition of single room occupancy, and maybe it's semantics. We think of it as single room occupancy because we're going to lease somebody one bedroom in a four-bedroom unit and that's how we'll operate it. But we understand your definition and according to your definition it does not meet a single room occupancy model.

MS. RAY: Mr. Chairman.

MR. CONINE: Ms. Ray.

MS. RAY: Based on discussion whether we need a motion on this particular action or not, this question on the SRO is going to come up again, and tagging on to what Mr. Keig said earlier, if this moves forward and it sounds like it can move forward because it is supportive housing, I think the opportunity exists that the developer and the staff needs to get back together

and spend some time addressing this particular issue because it's going to rear up and bite us again if we don't.

So I think I'd like to see this supportive housing issue move forward. It is a demographic that we need to address more in our communities but we really need to iron out for future QAPs as well as how this fits under this QAP, Mr. Chairman.

MR. GOURIS: And if I might just address the timing that was asked about earlier. And we apologize for not having more information about this. This is early in the stage, and actually the pre-applications were due on Friday and we had to post an agenda the following Wednesday, and so we were trying to see what we got, see what waivers were requested. That's why you had a bunch on there that got pulled off because we worked through those. Some we were able to get more comfort level, this one we weren't, and that's why we left it on here.

DR. MUNOZ: Tom, I'd like to underscore what Ms. Ray is saying. There seems to be some ambiguity and some distance that might be reconciled. And my feeling, just intuitively, is I want to be very highly supportive of this kind of project, given the immense rarity of this kind of proposal. I mean, you talk about foster youth entering chronically and habitually at risk for homelessness. I mean, that's just a horrible proposition.

MS. RAY: Yes, it is.

DR. MUNOZ: And so we can't afford for the lack of time and the due diligence to possibly abandon a project of this import. So I certainly think that there seems to be some common ground that might be reached

before we address this, and I would certainly encourage the staff and the developers to speak before this body renders some kind of permanent decision.

MR. CONINE: My understanding is that we don't meet again until after the deadline of application, and there's a considerable expense to applications these days, so now I'm confused on whether we need to take action or not.

MR. GOURIS: But again, the waiver they're seeking, that they've stated they're seeking, they're entitled to.

DR. MUNOZ: They're entitled to.

MR. GOURIS: That's an exception that's already in the rule, so we wouldn't have brought that to your attention. Had we understood all they were seeking, they're doing 100 percent supportive housing and they're just seeking a waiver of the bedroom mix, that is already provided for in the rule so we would have not brought that to your attention.

MR. CONINE: So there is no action needed.

MR. WIELAND: Well, actually, can I step forward?

MR. CONINE: Sure.

MR. WIELAND: This question of the SRO is exceptionally confusing. What we're talking about here, we're looking at something that hasn't been done traditionally, as far as I know, in affordable housing, and that is kind of a collegiate model where you come in and you rent by the bedroom. One of our board members is also a senior executive at ACC. So when you look at that it seems to make a whole lot of sense.

We will be effectively renting these four-bedroom units by the room, so do we need a waiver here? What I'm trying to do is figure out how we move forward. We're a charitable organization and to forward and to spend \$40,000 on an application that's ultimately going to be denied presents a huge challenge for us and one that I can't support in front of the board today when we make the decision whether we go forward or not.

I hear the Board say that they're very supportive of the project, and I appreciate that, I think it's wonderful, and I wish I could tell you better whether we need that waiver or not, but it seems to me that the vagueness of what an SRO is is what really is presenting the problem for us.

MR. CONINE: Mr. Gouris.

MR. GOURIS: And I also have now a concern about its proximity -- they've mentioned several times its proximity to the ACC campus and they're looking at a student housing model, there's some issues there. We need to sit down with them and talk through it. I don't think that this Board can act on a waiver of all of those things and say we're kind of giving a blessing on all of these things that we don't even know what all of them are yet. And so I think we need to sit down with them and then they're going to need to make a decision on here are the stopping points that we're going to have to bring back to the Board for some kind of consideration. If you guys want to pursue this knowing that that's what you're going to need to do, go forward with an application. If you can't do that, then don't go forward with the application.

We'll meet with them. We won't be able to do it tomorrow but

we'll be able to do it early next week and we can hopefully find out what all these points are and they can make a business decision at that point.

MR. CONINE: Right. And I think I hear what you're saying in that this is new construction, this isn't adaptive reuse or any of that kind of stuff, so to create a new construction facility that goes outside the box, I think as you said earlier, especially at this point in the process puts us, as a Board, in a very difficult position. And I'm not real comfortable with that, not having staff fully understand all the dynamics of what happens in a four-bedroom renting it one bedroom at a time collegiate model, as has been expressed.

On the other hand, I'm very supportive of the targeted group of housing and I think the entirety of the Board may be, and it does beg the question that the executive director posed of where were you in September and October when the QAP was being discussed and designed -- which was only a few months ago, it wasn't all that long ago. And for all of the people that have come in and essentially tried to put a round peg in a square hole for this particular application round, we need to try to live within the structure of what we've got, and we have multiple opportunities to redesign the structure of what we've got. So understand that you're putting us in a very precarious position at the present time.

MR. WIELAND: And I very much respect that and I would say this, I think what Tom mentioned, us sitting down with staff and making an informed decision is the best thing at this point because we don't know exactly what we're asking for.

And to speak to another point, we were seeking general

obligation bond funding from the City of Austin, and for a couple of different reasons that didn't work out, although the city has indicated, both at the city council level and at the rental assistance level, that they're very supportive of this project and would be able to augment any sort of credit we received with additional funds. So we didn't find that out, frankly, until the beginning of December right before the pre-app was due, so that's why we weren't involved. Neither here nor there.

We will sit down with members of staff and talk to them about this project, try to work through it, address their concerns and make an informed decision as to whether we can go forward and spend those dollars to move towards application.

MR. CONINE: Absolutely. Appreciate your indulgence.

MR. WIELAND: Thank you all very much.

MR. GERBER: Could I make one other comment, because you mentioned the city but they're not putting part of that \$55 million affordable housing set-aside that they have towards this project. I guess the question I would have is we had another supportive services housing development here in Austin that went down pretty spectacularly a couple of years ago. This is really important stuff, and I guess I would ask on the front-end do you guys have the city support and the neighborhood support. A big part of what we do is making sure that this is really an asset to a community, and it sounds like it can be. I just want to make sure that those due diligence steps are being done.

MR. WIELAND: They absolutely are.

MR. GERBER: We'll talk about that when we have a chance to visit. Look forward to working with you.

MR. WIELAND: Sure. Thank you.

MR. CONINE: Thank you very much.

Ms. Morales, next.

MS. MORALES: Yes, sir. The next and final three requests deal specifically with waivers of experience certification requirements as stated in the 2011 QAP. The Board approved as one of the changes in the 2011 QAP that applicants seeking to participate and apply for tax credits this year document previous experience with the Housing Tax Credit Program. The following waiver requests deal specifically with the lack of the tax credit specific requirements of the rule.

The first comes from the applicant for Brae Estates. An application for this development was submitted during the 2010 competitive round but did not score high enough to receive an award at that time.

The applicant is proposing a 68-unit, single family, new construction development in Fort Worth, Texas. The applicant provided documentation that was used to qualify for an experience certificate during the 2010 competitive round as a basis for their request for a waiver.

Staff reviewed the documentation that revealed that the applicant documented previous experience in the development and construction of 58 single family homes dating back to 1993 and 1995. With this information the applicant was able to document experience in developing at least 80 percent as many units as is being proposed in their 2011

application, however, it does not demonstrate that the applicant has successfully completed a tax credit development. Additionally, the experience documented by the applicant is more than 15 years old with no recent experience provided to date.

No good cause to support a waiver has been offered, therefore, staff recommends the Board deny the waiver.

MR. CONINE: One witness affirmation form, Kim Schlieker.

MS. SCHLIEKER: Good afternoon. I'm Kim McCaslin Schlieker. I'm the applicant for Brae Estates, application 11162.

In 1992 my company, MR Development, began building homes and developing land for single family subdivisions in Mansfield, Texas. Since our inception, MR Development has developed over 3500 lots for single family homes in Arlington, Fort Worth, Mansfield, Grand Prairie, McKinney, Little Elm and Royse City.

The proposed Brae Estates development is 68 single family homes to be located in Fort Worth for families earning 50 percent or less AMI in a neighborhood targeted by the city for reinvestment. The property will offer a unique opportunity for eventual home ownership for residents who rarely find an opportunity to live in a community with tenant services outside of a multifamily apartment complex. The proposed census tract has not received a previous tax credit award and there hasn't been any single family investment in over 30 years.

We have support from the neighborhood organization and elected officials, evidenced by the letters provided in our 2010 application for



the same property. I received a 2010 experience certificate last year based on my previous market rate home building and development experience. However, the 2011 QAP has been modified to exclude market rate developers from participating in the tax credit program without participating with an existing tax credit developer.

As I understand it, the QAP has limited the issuance of experience certificates to only those with past tax credit development experience and in same type construction as proposed in the application. As such, my 2010 experience certificate is no longer valid, and based on the new rules and regulations of the QAP, I no longer qualify.

Although I do not have tax credit experience, I do have 19 years of market rate experience in developing single family neighborhoods. I've hired Anderson Capital to assist me through the tax credit process and believe that we have a team that is more than capable of delivering a tax credit property while staying in compliance with TDHCA. In addition, the requirement of having to provide same type construction with tax credit experience is problematic as the vast majority of tax credit developers have multifamily experience.

I believe this new provision of the QAP prohibits anyone new from entering the tax credit development business and unfairly penalizes those that are proposing a single family development. As such, I respectfully to be granted an experience certificate and proceed to final application.

Thank you.

MR. CONINE: Thank you.

Any questions of the witness?

(No response.)

MR. CONINE: I will admit to the Board that I was kind of surprised when I read through this because that got past me on the QAP and I have deepest sympathies for this particular case, and I intend to take a hard look at the experience qualifications at this next go-round.

But that being said, any other questions?

MS. BINGHAM: I guess the question that would follow would be do we recall was there discussion at any of the roundtables during the most recent revision over that, or do you think it escaped everyone?

MS. MORALES: There was a lot of discussion; not much discussion on this particular item of the QAP, and we didn't receive very much feedback or comment during the public comment period.

MR. GERBER: I think all this has been reflective of just a good faith effort by the agency and by stakeholders in these roundtables, and we had many of them and public hearings. There's always risk attendant with this, but to try to mitigate that risk.

I'm sort of sympathetic as well to the Chairman's point. I mean, you've got somebody who has produced an awful lot of multifamily units. At the same time, the Tax Credit Program has a lot of its own wrinkles and they are very hard deals to do just because you have to work through this IRS process, and so it's a tough decision. And I think it is an area that as we look to next year's QAP we need to revamp in some ways.

MR. CONINE: The reason you didn't get much blowback at

those roundtables is because nobody outside the club was sitting there. Okay? And I just have a hard time not wanting to invite the development community to the table when it comes to tax credit deals. So I'm just saying that's one person's opinion sitting here.

MR. GANN: Mr. Chairman, I need to comment because I have 33 projects under my belt and I wouldn't qualify.

MR. CONINE: I understand.

Do I hear a motion?

MS. RAY: Mr. Chairman, the only concern that I have on this particular experience aspect, and I can certainly understand the position of it appears that we're eliminating new players into the process, but my concern is that the experience that has been identified is 15 years old, even in the single family and outside the tax credit arena. That's the only reason I have a little bit of a problem with this particular case.

MS. MORALES: And staff did ask for more recent experience to take a look at but we didn't get anything by the time the Board book had to be published.

MS. RAY: And it looks like the developer wants to come forward and address my concerns.

MS. SCHLIEKER: Yes. Thank you, Ms. Ray.

The experience certificate I was able to put my hands on was from the City of Mansfield, and the reason that is is because the QAP and what the staff was asking for is a certificate of occupancy. We don't get certificates of occupancy in single family residential, what we get is green tags,

and it is not like they have a database available to pull from. I could pull building permits but it's not like they have a database full of that from previous years.

We do a fair number of developing for major production builders too, like David Weekley, D.R. Horton, Choice Homes. We do a fair number of that as well. So what's applicable to multifamily in this regard is not applicable to single family in this regard.

MR. CONINE: And I would say she's correct.

MS. RAY: Thank you.

MR. CONINE: Based on my experience. And the problem for me is she qualified last year and didn't this year based on a new wrinkle.

Any motions? Any more discussion?

DR. MUNOZ: I'll make a motion.

MR. CONINE: Dr. Munoz.

DR. MUNOZ: That's amazing, Tom, 30-plus projects and you wouldn't qualify.

I move that we grant the waiver in this case.

MR. CONINE: Is there a second?

MS. RAY: Second.

MR. CONINE: Ms. Ray, thank you. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries. Next.

MS. MORALES: The second request in this group comes from the applicant for Merrill Square. The applicant is proposing 144-unit multifamily reconstruction development targeting the general population in Duncanville, Texas.

While the applicant's disclosure statement indicates successful completion of hundreds of multifamily units using conventional and FHA financing, the applicant provided no documentation to support this claim, even when requested by staff prior to publication of the Board book.

More specifically, the applicant is requesting a waiver of the tax credit specific experience requirement, making no claim to having such experience or good cause to support the waiver.

Staff recommends the Board deny the waiver.

MR. CONINE: Okay. This is Merrill Square. Is that right?

MS. MORALES: Yes.

MR. CONINE: Okay. I have one witness affirmation form, Terry Anderson. No? Wrong one. Okay. Mark off that one. Let me make sure. Okay. I've got no witness affirmation forms on this deal.

DR. MUNOZ: Move staff recommendation.

MR. CONINE: Motion to approve staff recommendation. Do I hear a second?

MS. RAY: Second.

MR. CONINE: Second by Ms. Ray. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor signify by saying aye.

(A chorus of ayes.)

MR. CONINE: All opposed.

(No response.)

MR. CONINE: Motion carries.

MS. MORALES: The last and final waiver request comes from the applicant for Magnolia Gardens. The applicant is proposing an 80-unit single family new construction development targeting the general population in Brazoria, Texas.

The applicant's disclosure statement also indicates successful completion of hundreds of single family and multifamily housing over the past 30 years but provided no documentation to support the claim. We did request for that prior to publication of the Board book and did not receive any.

The applicant is requesting a waiver of the tax credit specific experience requirement, making no claim to having such experience and offering no good cause to support a waiver.

Staff recommends the Board deny the waiver.

MR. CONINE: Did you have a question?

DR. MUNOZ: I do.

MR. CONINE: Okay.

DR. MUNOZ: Explain to me the process of your asking for

evidence. I mean, do you send a letter, do you make a phone call?

MS. MORALES: I made a phone call and I followed up with an e-mail, because given the time frame between when we got pre-application --

DR. MUNOZ: They just don't respond. You don't even get something saying I'm out of town, you'll get something tomorrow.

MS. MORALES: Correct. And I did talk to the consultant as well just to make sure I contacted everybody I knew that was associated and I don't believe that the consultant was able to get anything prior to publication of the Board book for us to review and look at.

DR. MUNOZ: The way you present it just strikes me as kind of a willful disregard. There's one thing to say I'm working on it, it's another thing to not even try to contact you, and that's what you're indicating.

MS. MORALES: I made contact. I e-mailed and made a phone call to the owner, and I can't remember if it was for this one, I did get a response back that they wanted to push it back. I did have contact with the consultant and the consultant was also working on getting that information that I requested, but it didn't make it to us in time.

DR. MUNOZ: Did it ever make it to you?

MS. MORALES: No. I still haven't gotten anything.

MR. CONINE: As I recall, we only had like three days before the Board book had to be posted, so these were what I'd call extenuating circumstances from a timing standpoint.

We have four witness affirmation forms for this particular project. Only three of you can speak, so you can make up your mind who

wants to go and who doesn't.

MR. BUTCHER: Chairman, Board members, James Butcher for Magnolia Capital. If it's okay, I'm going to let Ms. Anderson answer the specific guideline rules.

But Doctor, on your question about us responding, when we heard back from Ms. Anderson that you guys needed occupancy permits -- and Joe will testify to that -- we spent literally three people three days trying to figure out if we can get occupancy permits to approve. And we've come with the same conclusion today that what we're able to prove are building permits and green tags of jobs we did. But we put tremendous resources to filling the requirements.

And I don't know if it's appropriate, but Joe, as he speaks, has books with all his experience and our collective experience to prove that, and although we e-mailed it yesterday, we thought it would be more appropriate to bring it today because we were driving here from Houston. So I hope that's okay.

Real quick, I'll keep this really short. We have a beautiful opportunity in the City of Brazoria, 80 homes, freestanding homes, really a development that's aligned with you guys' goals. And I'd like to hit what I understand those goals are: we have a census tract that has never had any other tax credit development; we have less than 10 percent poverty; we have an exemplary elementary school attendance zone; and we have full support of the city and full support of the HOA and aligned communities.

We're asking to build true single family, low income homes in



what claims to be the first city in Texas. Don't know if that's true but that's what it says on the sign as you go in. It's a really, really neat place, it's really rural out there. It's the City of Brazoria within Brazoria County.

We're asking you today to please allow us to build those homes and to look at our experience and we're asking you to grant the waiver for an acceptance of our experience. And with that, I'd like to turn it over.

DR. MUNOZ: Just a minute before you sit down. So you said you did e-mail evidence of experience.

MR. BUTCHER: Yes, Doctor, I did, but that was to Ms. Anderson, because at this point our communication has been through her, sir. So I don't want to mislead in any way.

DR. MUNOZ: You see my question, though.

MR. BUTCHER: Yes, sir, I do.

DR. MUNOZ: I see you represent this significant investment of human capital to sort of acquire this, and then I hear staff saying we never even heard back from them. There seems to be a little bit of distance between those two sort of efforts.

MR. BUTCHER: I tend to concur that there seems to be some communication challenges, and in the future I don't know if I'm allowed to go directly, but I'm going to ask staff, if this is approved, that I'm included in all e-mails and communications.

And if I can, can I turn it over?

DR. MUNOZ: Yes, of course.

MR. BUTCHER: Thank you, sir.

MR. RAITANO: My name is Joe Raitano, Ashbury Builders. I want to speak today on my experience as a builder on this project.

We were trying to get together mechanic's liens, permits, whatever we could to prove our past builds over the past 15 years, and what we have for this project, it's 36-plus builds for a rural area, Brazoria being a rural area.

My experience is, of course, being in the building business as a single residential homebuilder for 15 years. I am now the vice president of the Galveston Area Builders Association and have been on the board for the last five years as an active member. I have extensive experience in development, construction, design in the construction field since I entered the workforce in '83. The ability to build these single homes from 1500 to 1800 square foot would be basically a breeze from what I'm coming to. My experience is 1200 to 6000 square foot custom homes.

I did want to make a suggestion that I think on item 6 when you were talking about the first time homebuyers needed to be aware of the money you'll have allotted for them, the builders associations in Texas is a good place to do that, and we'll make sure that we'll spend the money for them.

That's all I have. I'm open for questions if you need me.

MR. CONINE: Any questions of the witness?

MR. RAITANO: And again, I do apologize for getting this to you in a hard copy form. We tried diligently to get that to you as an e-mail and just didn't do it. Thank you.

MR. CONINE: I can personally attest that those homebuilder associations are infectious. You better watch out.

MR. RAITANO: Yes, they are. We have good golf tournaments, though.

(General laughter.)

MR. CONINE: Terri Anderson.

MS. ANDERSON: Yes, sir. Chairman Conine and Board, happy new year to all of you.

I did not speak on item 4(a) but wanted to commend staff on their willingness to work with me. We did actually have resolution to one of the items that were withdrawn, so it's a prime example of being able to work well with staff and them taking an extra effort to do that. So I didn't speak then, but thank you all very much. I do appreciate that.

As it relates to this particular transaction, the response that we received, as Raquel mentioned earlier, we had, I guess, about 24 hours to respond. Mr. Butcher did respond to the initial e-mail and the request for additional information to say that his son was home for Afghanistan for R&R and asked whether or not that information could be provided later, and the response was no, I really need it now to include it in the Board book.

And I did speak with Mr. Robinson and he did work diligently to try and get that information. It was e-mailed to me late last night. Again, we were coming here today and presenting it in hard format. I realize the best opportunity to actually get the information in to TDHCA's hands would clearly either be at this Board meeting or subsequent to that.

So the information has been submitted. It was not able to be submitted within the first 48 hours, effectively, that it was requested in, and it's here for you today.

My greater reason in speaking this afternoon is not to any specific developer's experience because I think their experience speaks for itself, but offering a single family rental opportunity in a community that offers tenant services to families in an exemplary area, effectively, I believe is a high opportunity situation for the state and for the residents of Texas and for the ability to actually provide affordable housing in a relatively unusual environment.

So from that perspective, I believe it's important to include developers who have single family experience without the tax credit experience because over the past 15 years I'm sure there is only a handful of housing tax credit developers who have already completed single family units, and that would be the only one that would actually qualify under this year's QAP.

I did identify one developer but to suggest that maybe a market rate developer would have to come in and work with this particular one developer -- and I'm sure that developer has already submitted applications and has probably already exceeded their cap, et cetera -- there is an extraordinarily limited opportunity to find a qualified single family developer who has single family and delivery of 8609s to meet the particular threshold for single family development this year.

So thank you all so much.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much.

MS. ANDERSON: Thank you.

MS. MORALES: I kind of just want to clarify a couple of things because I know it's been stated here before in their testimony that gathering a certificate of occupancy, they weren't able to get that information. A certificate of occupancy is just one of like a list of seven or eight items that they could have provided to us if they wanted to document their experience. So I just want to be sure the Board understands that they could have submitted a G-704, they could have submitted a number of other documents to show that it wasn't that we were specifically requiring a certificate of occupancy.

MR. CONINE: A G-704 doesn't exist in the single family world either.

MS. MORALES: Right. I understand. It's just not the only thing we asked for or that we would accept.

MS. RAY: I understand that even with all of this experience that appears to be obvious here, the fact that he does not have tax credit experience, even though he's been in the homebuilding business for a number of years, because of that little glitch that went into the QAP, he still wouldn't be qualified.

MS. MORALES: Right. And staff hasn't evaluated the information they passed out to you, but that is correct. Given whatever

information they submitted, the lack of the tax credit experience, that change they can't meet.

MR. CONINE: And my position is going to be the same as the first case we heard. That one slipped by me, wish it hadn't, but it did.

MS. RAY: Mr. Chairman, I believe as long as we're consistent in our approach to that, I think we'd be on safe footing. Given the information and discussion, I move to approve the appeal.

MR. CONINE: Motion made by Ms. Ray. Is there a second?

DR. MUNOZ: Second.

MR. CONINE: Second by Dr. Munoz. Any further discussion?

(No response.)

MR. CONINE: Seeing none, all those in favor of the motion signify by saying aye.

(A chorus of ayes.)

MS. RAY: Mr. Chairman, I'd like to address staff.

MR. CONINE: We didn't finish.

MS. RAY: I'm sorry.

MR. CONINE: All those opposed.

(No response.)

MR. CONINE: Motion carries. Now you can go.

(General laughter.)

MS. RAY: Given the discussion -- and hindsight is always 20-20 and we think we're being very thorough whenever we look at this

voluminous QAP -- I would highly recommend that the staff revisit this particular aspect of the QAP for subsequent years so that it does not give the appearance that we're excluding new players into the business.

MS. MORALES: Yes, ma'am.

MR. CONINE: And I'd like to go on the record on the unit percentage and all that. I'm especially sensitive to trying to take an old building and fix it up, especially in the downtown areas of our municipalities. I think there's a carve-out there in my mind and we've obviously got two or three folks that think the same way when it comes to market approaches for downtown areas. It seems logical to me that they should have more one-bedrooms and possibly efficiencies as opposed to two- and three-bedrooms.

So I'd like for staff to take a hard look at that as we move forward in next year's QAP. I think there's a case to be made for it. But I do appreciate where we've come from in the past on that and we need to try to provide some more flexibility as we move forward into the future.

Any other comments from the Board at this point in time?

Mr. Gerber, I think that takes care of most of our agenda items.

MR. GERBER: I think that's right. There's several report items. There's a report in item 5(b) on amendments and extensions that is merely for your review, it's just a quarterly report that we're going to provide to you.

Item 5(c) is an update on Exchange Program awards, and I'm pleased to tell you that all 89 Exchange Program awardees have submitted

what they needed to in order to meet the 30 percent test by the December 15 deadline, so that's a critical threshold for us. And to date, \$285 million has been drawn, representing almost 50 percent of the total Exchange funds available to the state. So we're moving that program along quickly.

There are other standard report items at the back of your Board book, including an update on CDBG Disaster Recovery, and we'd commend that to you and if you have questions, let us know.

MR. CONINE: We're going to adjourn into executive session, and for the Board's info we're going to go back to our building down the street. Is it still raining, or does anybody know? Is it raining outside, dry? We're going to go back down there anyway, and more than likely come back and just adjourn officially this particular meeting, for the crowd's sake.

So let's go into executive session.

MR. GERBER: On this day, January 20, 2011, at a 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:

A) An opening announcement by the presiding officer's designee that the Board would begin its executive session today, January 20, 2011, at 1:15 p.m.

B) That the subject matter of this executive session deliberation is as follows:

1. The Board may go into Executive Session pursuant to Government Code, §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;

2. Pursuant to Texas Government Code to meet with the Internal Auditor to discuss issues related to fraud, waste or abuse;

3. Pursuant to Tex Government Code to seek the advice of its attorney about pending or contemplated litigation or a settlement offer, including:

a) The Inclusive Communities Project v. TDHCA, filed in federal district court;

b) Caroline Miller, et al., v. State of Texas, filed in district court for Travis County; or

c) The claim of Gladys House filed with the Equal Employment Opportunity Commission.

4. Pursuant to the Texas Government Code for the purpose of seeking the advice of its attorney about a matter on which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with this Texas Government Code chapter; or

5. Pursuant to Texas Government Code to deliberate the possible purchase, sale, exchange or lease of real estate because it would have a material detrimental effect on the Department's ability to negotiate with a third person.

(Whereupon, at 1:15 p.m., the meeting was recessed, to

reconvene this same day, Thursday, January 20, 2011, following conclusion of the executive session.)

MR. GERBER: We have concluded the executive session of the TDHCA Government Board on January 20, 2011 at 2:25 p.m.

MR. CONINE: There being no other business to come before the meeting, we stand adjourned. Thank you.

(Whereupon, at 2:33 p.m., the meeting was concluded.)

CERTIFICATE

MEETING OF: TDHCA Board of Directors

LOCATION: Austin, Texas

DATE: January 20, 2011

I do hereby certify that the foregoing pages, numbers 1 through 139, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing & Community Affairs.

01/25/2011  
(Transcriber) (Date)

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