

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

9:15 a.m.
Thursday,
June 12, 2003

Dallas Housing Authority
Boardroom (3rd Floor)
3939 N. Hampton
Dallas, Texas 75212

PRESENT:

TDHCA BOARD:

Michael Jones, Chairman
C. Kent Conine, Vice Chairman
Vidal Gonzalez
Elizabeth Anderson
Norberto Salinas
Shadrick Bogany

TDHCA STAFF:

Edwina Carrington, Executive Director
Tom Gouris, General Counsel
Brooke Boston
Eric Pike
Chris Wittmayer
Bill Dally
Delores Groneck

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P R O C E E D I N G S

MR. JONES: I call to order the meeting of the TxDot Housing Community Affairs Board for June the 12th, 2003, and the first order of business is to determine a quorum.

Mr. Conine?

MR. CONINE: Here.

MR. JONES: Ms. Anderson?

MS. ANDERSON: Here.

MR. JONES: Mr. Bogany?

MR. BOGANY: Here.

MR. JONES: Mr. Gonzalez?

MR. GONZALEZ: Here.

MR. JONES: Mayor Salinas?

MR. SALINAS: Here.

MR. JONES: Mr. Jones is here. We do have a quorum. Six members are present, and zero are absent.

Our next order of business is public comment, and a number of people have filled in witness affirmation forms. In accordance with our rules and regulations, you can speak now or at the time of the agenda item. If you'll just let me know that, I will handle that accordingly.

The first witness affirmation form I have is

from Betty Dunkerley. Yes, ma'am.

MS. DUNKERLEY: I really do appreciate your taking me first. I'm now a city council member at the City of Austin for the last year, and I have a council meeting at noon, so I came up here because we are so supportive of one of the projects that you all have helped fund in the Austin area, and that is the Pleasant Valley Courtyards development.

This is a really important development for the city. It is one of those wonderful -- wonderfully designed and wonderful projects that will serve people with incomes at or below 30 percent. It is very difficult, as you know, to get enough projects in that income range to fill the needs in any community and certainly in Austin.

And I wanted to be here as a representative of City Council to tell you how important this project is to us. The -- we're here because the site plan has been amended, and this amendment has the full council support.

In fact, we're probably -- one of the reasons that it got amended is that there were some environmental features on the land, and we were very, very much encouraging them to try to preserve those -- the trails and the open space.

They have a project that was more accepted, not

only by the City Council but by the neighborhoods. They -- we acted as a council and approved the zoning change on a 7-0 vote. We did it on an emergency basis in order to meet your deadlines. This exemplifies, I think, the type of planning effort that certainly we at the city hope to see in all of our projects, and I think you support too. It had a lot of neighborhood input.

In fact, I was invited to one of the neighborhood meetings by the neighborhood not related to this project, early on, and this happened to be on the agenda, and I saw all of the concerns that the neighborhood had about the project, and so I was very grateful to see that over the next four to five months, this partnership worked to meet those neighborhood concerns and the council's concerns, so that's really why they're here today is because they responded to the neighborhood and they responded to us, and you have before you now a much better project than, I think, you had originally.

No more money from the city, no more money from the board, but a larger site plan, less density, more environmental features, and something that will be -- make all of us very proud to have in our own backyards, so with that, I want to say again that I think this is a worthy

project. I hope you will give it very serious consideration.

I'm not really up on all the little regulatory issues that you all have to deal with, and I certainly appreciate those, but whatever change this is certainly affected the project in a very positive way, not a negative way, and I would hope that you would give it your careful consideration and that you would support this site plan.

I appreciate your letting me speak. If you have any questions, I'll be glad to answer them, but I can't imagine a better project any place, and I would certainly be happy to hang my hat and my name on it. Thank you. Any questions?

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

MS. DUNKERLEY: Thank you.

MR. JONES: We certainly appreciate it.

The next form I have is from Mr. Carlos Herrera.

MR. HERRERA: I'll speak to the item, sir.

MR. JONES: Thank you, and that would be 3D. Correct, sir?

Ms. Cynthia Bast?

MS. BAST: Speak at the agenda item.

MR. JONES: 3D. Correct?

MS. BAST: Yes, sir.

MR. JONES: Mr. Jeff Fulenchek?

MR. FULENCHEK: I'll speak at the agenda item,
please.

MR. JONES: Is that 3B?

MR. FULENCHEK: Yes, sir.

MR. JONES: Mr. David Kelley?

MR. KELLEY: I'll speak with the agenda item.

MR. JONES: 3B?

MR. KELLEY: Yes, sir.

MR. JONES: Mr. John Frost?

MR. FROST: I'll speak at the agenda item.

MR. JONES: Mr. Jerry Du Terroil?

MR. DU TERROIL: I'll speak at the agenda item.

MR. JONES: At the agenda item four. Correct,
sir?

MR. DU TERROIL: Correct.

MR. JONES: And those are all the witness
affirmation forms I have. Anybody else like to speak to
the Board?

(No response.)

MR. JONES: Hearing none, we will close the
time for public comment with the exception of those that

will speak at the agenda item.

At this time, with the Board's indulgence, I'm going to take the agenda a little bit out of order due to certain requests that have been made, and the first thing I'd like to do is to have the Board go into executive session, and in that regard, I presume we'll meet in this room, or is there another room?

MS. GRONECK: I couldn't find another room.

MR. JONES: Okay. So we'll have the executive session in this room. For purposes of those in the audience, I don't think this will take long. I think we're looking at ten minutes, maybe 15, so you can probably just stand out in the foyer, and we'll be right back with you.

With that, on this day, June the 12th, 2003, at a regular board meeting of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board of Directors adjourned into a , executive session as evidenced by the following: the Board of Directors begins its executive session today, June 12, 2003, at 9:24 a.m.

The subject matter of this executive session and deliberation will be litigated and anticipated litigation, threatened or pending under Section 551.071 and 55.103 Texas Government Code litigation exception

regarding cause number GN202219, Century Pacific Corporation versus Department of Housing, et al.

Consultation with attorney pursuant to 551.071 Texas Government Code regarding matter concerning a former department employee and Section 572.054 of Texas Government Code, personnel matters under Section 551.074 Texas Government Code, and any permitted discussion of any item listed on the board meeting agenda of even date, and with that, we will go into executive session.

(Off the record.)

MR. JONES: On this date, at the regular board meeting, the Board of Directors had a closed executive session. The Board of Directors has completed its executive session on June the 12th at approximately 9:42 a.m. The subject matter of the executive session was as follows: litigated and anticipated litigation including Century Specific Equity Corporation versus TDHCA, et al.

Consultation with attorney pursuant to Section 551.071 Texas Government Code regarding matter concerning former department employee and Section 572.054 in Texas Government Code, personnel matters under Section 551.071 of the Texas Government Code, and any permitted discussion of any item listed on the board meeting agenda of even date. With regard to all of those items, no action was

taken.

I hereby certify this agenda of an executive session of the Texas Department of Housing and Community Affairs as properly authorized, pursuant to Section 551.103 of the Texas Government Code posted at the Secretary of State's Office seven days prior to the meeting, pursuant to Section 551.044 of the Texas Government Code and that all members of the Board of Directors were present; there were no exceptions and that this is a true and correct copy -- true and correct record of the proceedings pursuant to the Texas Open Meetings Acts, Chapter 551, Texas Government Code as amended, signed by myself.

And with that, with the Board's permission, we will continue to take the agenda a bit out of order, and we will turn our attention to item 3D on the agenda which is the request for amended site plan for 02-073, Pleasant Valley Courtyards, Austin, Texas, under the 2002 qualified allocation plan, and with regard to that, we have several people requesting public comment, and the first is Mr. Carlos Herrera.

MR. HERRERA: I'm going to give my time to Ms. Bast.

MR. JONES: Okay. Yes. Ms. Bast, should we

let you bat clean-up? Would you rather the other speakers go before you?

MS. BAST: That's fine with me.

MR. JONES: I'm trying to find -- on 3D is there anybody -- yes, and there's -- no, that may be it. Is anybody else here for 3D? Oh, I thought there was. Excuse me; I'm sorry.

MS. BAST: No problem.

MR. CONINE: She's batting clean-up.

MR. JONES: She is.

MS. BAST: Now, if I can just bat a hundred, then we'll all be good.

MR. CONINE: Baseball players don't do that.

(Laughter.)

MR. JONES: Lawyers do. I love it when he tees me up.

MS. BAST: It's nice to have an anti-lawyer joke for a change.

Good morning, I'm Cynthia Bast of Locke, Liddell and Sapp. As you know, I have been assisting Pleasant Valley Courtyard Housing with regard to this request for a change in the site plan for the Pleasant Valley Courtyards Apartments in Austin.

Having appeared before this Board many times, I

hope you all recognize that I don't make it a practice to come back to this board to revisit an issue that has already been decided. However, this is a case where I do believe that there was a fundamental piece of information left out of the analysis when the Board considered this issue the first time.

Therefore, I feel compelled to bring this information to your attention; come back to you with the information in the letter that is included in your Board packet and request your indulgence to consider this matter in the light of this additional information.

Briefly recapping: the Pleasant Valley Courtyards was a recipient of tax credits in the 2002 application round. They have requested an amendment to their site plan that was presented in the original application. The QAP specifically allows an amendment and -- to an application -- and gives a process for that which is what we're doing here.

The site plan amendment doesn't change the number of affordable units. It doesn't change the incomes of the tenants being served. It doesn't request more tax credits. It's simply asking to use more acreage for the development of the project, due to some unique and sensitive environmental features that are on this site.

The revised plan, as you heard from Council Member Dunkerley, was developed through extensive negotiations and discussions with the City of Austin and the neighborhood. You've previously received letters of support for this revised plan from the impacted parties, the elected officials, including Mayor Garcia and Senator Barrientos.

When this revised site plan was first submitted, the staff deemed that this site plan amendment would be a material change which does require board approval, and as they have indicated in their recommendation memo, the QAP states that the Board should approve the amendment, unless it determines that the site plan amendment would have adversely affected the selection of the project back in 2002 when it was considered in the application round.

The recommendation memo that you all saw for the April Board meeting; the staff recommended that the site plan amendment be rejected, because the amendment would have materially adversely affected the selection of Pleasant Valley Courtyards for tax credits. Therefore, you all did take action to reject that site plan amendment.

Essentially what we're doing here is a little

bit of time travel. We're trying to go back in time with our revised site plan in our hand, as if it were in the original application, and say, Would this project still have received the tax credits in the 2002 round?

We contend that Pleasant Valley Courtyards would have been recommended for tax credits in 2002 even with the revised site plan, and that is because of, again, some information that I became aware of after the April Board meeting.

Briefly, back at the April Board meeting, when staff made their recommendation, they took the following sequence: They said first, because the site plan was amended, it was not the identical site. Therefore, the application should lose its 15 pre-application points, because the QAP says that you must maintain your identical site from pre-application through application.

Second, once we've taken away those 15 points, Pleasant Valley Courtyards would have been in a tie with Killeen Stone Ranch. There were insufficient credits in Region Seven to fund both deals; therefore, using the tie-breaker criteria, Killeen Stone Ranch would have received the allocation.

This analysis did omit one important factor, and that is that Killeen Stone Ranch was not recommended

by underwriting as a project that was financially feasible. That decision by underwriting was appealed to this Board, and this Board upheld that decision at the July 2002 Board meeting, and I think that that information is important enough to come to you today and ask you to focus on that when you're reconsidering these facts for Pleasant Valley Courtyards.

So with that information in hand, we think that the time travel sequence, if you will, looks just a little bit different. First, we do believe, as I indicated at the last Board meeting and as I indicated in my May 28th letter, that it shouldn't have lost its 15 points for amending the site in the first place.

That's based on Sections 2306 6704 of the Government Code which says that the importance of the pre-application process is to enable a preliminary assessment of how the applications are proposed for filing.

Maintaining the same site between pre-ap and ap is clearly very important for that preliminary assessment, but we contend that you do not have to maintain the same site after application and that we should not have lost the 15 points, if you were doing your time travel analysis. But even if the 15 points were taken away, there would be no tie with Killeen Stone Ranch.

Killeen Stone Ranch was not recommended by underwriting as financially feasible. The Board upheld that decision. QAP says that's a final decision. In making its recommendations for tax credit commitments on July 29, the staff specifically said that deals must be considered financially feasible by underwriting to be on the list, so we contend that Killeen Stone Ranch would not have been recommended for a tax credit reservation.

Third, if you could even argue somehow that there was a legitimate tie between Killeen Stone Ranch, which was not recommended by underwriting, and Pleasant Valley Courtyards, which was recommended by underwriting, we still think that the way the tie-breaker criteria would have been implemented would have been problematic, because it would have compared an apple and an orange, an elderly deal and a family deal, a deal that's serving lower income tenants, and so, with that, we think that Pleasant Valley Courtyards, that there's support that Pleasant Valley Courtyards, perhaps under the tie-breaker criteria, would have been serving a greater number of lower income people and perhaps would have been the winner in the tie breaker.

So here we are with our conclusion is what's important for the Board in making its decision which is the revised site plan would not have materially adversely

affected the selection of Pleasant Valley Courtyards for tax credit commitment in 2002, and that is why we're here today, again, asking your consideration for this revised site plan.

We believe it's in the best interests of the project, the tenants, the community. We're trying to create a project that is consistent with the desires of the neighborhood, so under the QAP, we need your approval. And your approval is based on the question of whether you think the revised site plan, if presented in the original application, would have adversely affected the project's selection for tax credits.

We think there's strong support for the fact that Pleasant Valley Courtyards would have received that allocation of tax credits even with the revised site plan.

So we respectfully request your approval of the site plan amendment. Thanks very much.

MR. JONES: Thank you.

MR. CONINE: Whoa, whoa. Don't go too far. I'm going to give you a chance to bat a thousand. Did you I hear you say that, based on your reading of the QAP, that after the application -- between the pre-ap and the ap period, you can't change the site plan, but afterwards you -- the way you read the QAP is you can.

MS. BAST: The QAP allows for an amendment of applications after an allocation of tax credits. The QAP does not say anything about not being able to change your site.

MR. CONINE: So if I submit a project in Lufkin for the pre-ap and the ap, and I want to then change my site to Tyler, I can do that based the way the QAP -- the way you read the QAP.

MS. BAST: I think that would present different issues in the QAP -- you know, issues within the region, et cetera, but the QAP says that if there is an amendment to an application -- and first of all, tax credits are -- go to a particular project, not a particular site -- what we're doing is we're using the site.

We're using the 10.5 acres -- whatever it is, that was in the original application. We are using that site. We are simply expanding that site. That is the basis of our amendment.

The QAP says you can amend an application, and in fact it says, you know, here are the things that are considered material amendments, and material amendments have to go to the Board. And one of the things that can be considered a material amendment is a change in the site plan, so we're not changing our site. We're changing our

site plan to expand the acreage.

MR. CONINE: It just seems illogical to me to allow dramatic changes to the site plan after the application has been submitted.

It does not make a whole lot of sense to me, and I think what I hear you basing your opinion on is, because it doesn't say you can't do it, you must be able to do it, and I -- you know, from my own edification on our QAP and its various loopholes and holes and -- it seems to me an area we need to tighten up just a little bit.

MS. BAST: It very well may be, and there are areas -- we're aware of other projects in the past that have had -- for instance, the addition of acreage like a project that needed some additional land to get an easement, that kind of thing. This one is adding more acreage than a simple easement, but it -- you know, it is using the same basic land that was in the original application and simply expanding on that.

MR. CONINE: Do you recall, in the original application process, the applicant originally asked for the site plan to be reduced, do you not?

MS. BAST: The application -- actually they didn't ask for the site plan to be reduced. What happened

there was that they had certain land under contract and had a legitimate contract, and the seller of that land then told them that he had contracted to sell that land to a third party. And so because of that conflict with the seller where he'd essentially contracted his land twice, they lost 1.58 acres from their original site plan because of those actions of the seller.

MR. CONINE: Do you know if the applicant is prepared to close the construction loan that's needed to close on this project?

MS. BAST: It's my understanding that that is moving forward. I am not specifically engaged to be working on that project.

MR. CONINE: Are you aware the construction loan closing deadline is tomorrow?

MS. BAST: Absolutely.

MR. CONINE: And is it your opinion that the client is able to close the construction loan tomorrow based on what you know right now?

MS. BAST: I am told that they are.

MR. CONINE: Okay.

MR. JONES: Mr. Conine, I understand her argument about the QAP rules, and you just termed it a loophole. The other way you could term it is that that's

not a logical interpretation of the QAP too. It may be that there is no --

MR. CONINE: Well, now you're getting back to lawyering again.

MR. JONES: It may be that there is no such loophole, and that's just not a logical interpretation.

Any other questions?

Thank you ma'am. Appreciate it.

MS. BAST: Thank you.

MR. JONES: With regard to item 3D, we will now close time for public comment, and Ms. Carrington, could we have staff's recommendation?

MS. CARRINGTON: Yes, thank you, Mr. Chair. As has been indicated to the Board, the Board did consider this amendment to the site plan at the April 10th Board meeting, and at that Board meeting, staff's recommendation was that the amendment to the site plan be denied, and Board upheld that recommendation.

The staff's recommendation today is the same as it was in April, and that is that the amendment to the site plan be denied. I would like, if I could, to address three points that Ms. Bast did address, and number one: That is the staff feels very strongly that the pre-application points stay with the development basically

throughout the process, through not only the application stage but throughout the development of the housing, and we've articulated that on page 2 of the memo that's in the Board book.

We feel that retaining these points gives us the ability to basically hold developers' feet to the fire and build what they have said to us that they are going to build. The reason that -- the second point that I want to bring up, Ms. Bast mentioned the tie with Killeen Stone Ranch.

Killeen Stone Ranch was on the waiting list, was put on the waiting list by the Board in August, and so as we apply the tie-breaker criteria, since the Board had made a decision to move forward with Killeen Stone Ranch, then that's why we did use Killeen Stone Ranch in applying the tie-breaker criteria.

And the third, basically, on the tie-breaker criteria, understanding and agreeing certainly that one development was elderly, one development was family; however, we were very consistent through the whole process in applying the tie-breaker criteria and that was to serve a greater number of low-income families for fewer credits, so we were consistent in that application throughout our whole round last year.

So with those comments as a follow-up, I would like to say again that staff is recommending that this site -- this amendment of the site plan not be approved. I do want to make very clear that this does not rescind or retract the credits.

It is simply not approving an amendment of the site plan, and as has been mentioned, there is a deadline tomorrow for closing of the construction loan, and we do not have in-house at the department a request to extend that closing of the construction loan, so there is a deadline of 5 o'clock tomorrow afternoon to close the construction loan for this development to preserve its credits.

MR. SALINAS: Without the amendment.

MS. CARRINGTON: Either way.

MR. SALINAS: Either way.

MS. CARRINGTON: Either way. The construction loan must be closed by close of business tomorrow afternoon.

MR. BOGANY: Ms. Carrington?

MS. CARRINGTON: Yes, sir.

MR. BOGANY: I have a question. In the past, have we allowed for site plan -- have we -- and I guess maybe underwriting -- in the past, have we ever allowed

for -- this is the last two or three years -- for a site plan to change, even if it included an easement or where they presented something and add an easement there, and we needed to work around that easement or -- just have we ever allowed a site plan to be changed?

MS. CARRINGTON: Mr. Bogany, since I have been through one round of tax credits as executive director, may I look at my underwriting and tax credit staff and ask one of them to indicate their experience, since they have more history --

MR. BOGANY: Okay.

MS. CARRINGTON: -- of that than I do? So I don't know who's appropriate, either Brooke Boston or Tom Gouris.

MS. BOSTON: My name's Brooke Boston. The answer is yes, we have allowed site changes in the past. It generally is for an easement or a dedication with the city for possible park land.

The difference for us is that we never had pre-ap points in those years, and so there wasn't ever anything that precluded people from changing their site that tied them back to points and potentially having gotten an award, so it's this year, 2002, is kind of the precedent-setting year for how we're going to handle

possible site changes.

MR. BOGANY: So currently now, if we had a project that needed a change in an easement, that would cause them to lose points, would we put them in the same position that this project is in?

MS. BOSTON: I don't know -- just -- I think if it was an easement, then they're still doing everything on the exact same parcel but just a little less of it, and so --

MR. BOGANY: What's the reason for the site change, ma'am, I forgot. I --

MS. BOSTON: There are a lot of environmental factors on the site. There's a -- I want to say a creek bed running through there, and their original plan was to try to go around it, and as they've continued to find out more information about the environmental aspects and working with the city, that would be -- it would be a better development to do it on the larger parcel, and staff has agreed with that the whole time.

We've never disputed that. It makes for a nicer property to do it as proposed.

MR. BOGANY: Thank you.

MR. CONINE: Can I ask her a question?

MR. JONES: You sure can.

MR. CONINE: Brooke, did -- have you all ever -- have you all underwritten Killeen Stone Ranch since the Board put it on the waiting list in the August meeting?

MS. BOSTON: It was not re-underwritten, was it, Tom?

MR. CONINE: This whole discussion is a time line discussion here, and I'm trying to figure out where we are, where we've been.

MR. GOURIS: Tom Gouris, Director of Real Estate Analysis. Killeen Stone Ranch wasn't -- was not re-underwritten for last year's application after the Board acted. They have, however, made application again this year, and we're in the process of underwriting them as we speak.

MR. CONINE: Let me rephrase my question: When we put Killeen Stone Ranch on the waiting list in August, was it not subject to underwriting at that point in time?

MR. GOURIS: It had been underwritten. It wasn't subject to re-underwriting at that time.

MR. CONINE: Well, her contention was is that on the July 29th meeting it hadn't been underwritten, so how --

MR. GOURIS: No, it hadn't been recommended by

underwriting at that point, and they appealed, and the Board upheld the appeal in the July meeting, and so at the end of the July meeting, technically it was --

MR. CONINE: So it was underwritten but rejected by the staff at that point?

MR. GOURIS: Not recommended.

MR. CONINE: Well, okay. I used the wrong language, excuse me. But subsequent to that, we said, Okay.

MR. GOURIS: Subsequent to that, the Board said that they would like to see it get on the waiting list and added to the waiting list.

MS. BOSTON: That was at the August Board meeting.

MR. CONINE: All right. Which is only ten days after the July Board meeting, or so.

MR. JONES: Yes, ma'am.

MS. ANDERSON: What -- wasn't the issue, the underwriting issue, around they had built something else in the same area, and they claimed they could build it for less than what our metrics would tell us they could it build it for. Wasn't that the issue?

MR. CONINE: That was the Killeen.

MS. ANDERSON: Was that the issue?

MS. CARRINGTON: Yes.

MS. ANDERSON: Okay. I have a couple questions. Brooke, now, this site plan change -- we've talked about site plan changes that are about easements and stuff, but this site plan change is kind of an order of magnitude different than that, isn't it?

MS. BOSTON: Yes, they're proposing adding 15 acres.

MS. ANDERSON: To an original plan of how many?

MS. BOSTON: I want to say around ten.

MS. CARRINGTON: Twelve. Ten, twelve, something like that.

MS. ANDERSON: So more than a hundred percent increase in the site plan, and I want to -- one more question: Last year when you were in the evaluation process for the 2000 round, to your knowledge, did you or people in underwriting discuss with the developer -- did you have any concerns about the site plan at the time. Did you -- and if so, did you make the developer aware of those?

MR. GOURIS: I believe we did. We had serious concerns about them being able to get the proper zoning for the site as they had laid it out, and I think, throughout the process after -- even after they -- we

conditioned the report -- our report and our recommendation on -- you know, that zoning change.

They subsequently got a zoning change, but it was a -- it was slightly different than -- you know, what the site plan called for it to be zoned as. And based on that zoning plan -- that zoning changes where the current amendment request is; but throughout the time that they were in the process of getting that zoning change, we were -- had talked with them from time to time to try to understand and explain where we stood on the position -- on the situation.

MR. CONINE: My whole problem with this goes back further than Ms. Bast's letter goes back and that is how staff got it to the recommended list for the July meeting to begin with. How did staff miss the fact that the original ten or twelve acres was in the flood plain and couldn't have the number of units built on it that was originally site planned for this, is a question, I guess, I'll try to ask.

MS. BOSTON: When they reduced their site parcel -- well, when they lost control of that smaller amount of acreage, and they were reinstated -- because we terminated them for a site change, and then we reinstated it, because we decided because it was only a reduction,

and they were still going to do it -- in their letter to us asking for the reinstatement, they clearly indicated that they were going to be able to do this on the exact parcel that they had applied on with the reduction in acreage.

We went back and forth with them about that at the time and have since, and they have continued to tell us that they'll be able to do it and --

MR. CONINE: So that was erroneous information. They can't do it.

MS. BOSTON: Well, and I --

MR. CONINE: That's what they're telling us now. Right?

MS. BOSTON: Well, actually, I think they wouldn't tell you that. I think they're saying their preference is to have the larger acreage is my understanding. They plan on still trying, whether you vote yes or no, and I don't want to put words in their mouth, but that's my understanding.

MR. JONES: It's your understanding is that they'll close tomorrow whether we go one way or the other.

MS. BOSTON: Yes.

MR. JONES: It doesn't matter.

MR. CONINE: Can we ask the applicant if that's

the case, since he's sitting in [indiscernible].

MR. JONES: You can ask the applicant anything you want to, Mr. Conine.

MR. CONINE: Mr. Herrera, is that the case?

MR. HERRERA: I'm totally prepared tomorrow to close --

MR. CONINE: But can you close either way, whether you have the old -- the new site plan or the old site plan?

MR. HERRERA: I believe that I can, yes, sir.

MR. JONES: Thank you, sir.

MR. SALINAS: Let me ask you a question.

MR. JONES: Certainly.

MR. SALINAS: Did they change the zoning -- remember when the city changed the whole zoning, the flood zone that they changed -- how did they change the flood zone?

MR. GOURIS: The flood plane issue, or the creek issue, was identified in our -- let me answer your question. No, the city didn't change the flood zone designation, because they don't have that authority. They changed the zoning -- the permittable use zoning for the site --

MR. SALINAS: But you still have a flood zone.

MR. GOURIS: The flood issue was identified in the original underwriting report. The problem with it is that that part of the city -- the flood zone map didn't cover that part of the city. We knew that a creek traversed the site and was in that area because of some other work we had done previously.

We identified that and -- identified that as a concern, but the environmental inspection and our review couldn't determine for sure whether it was in the -- you know, in a flood plane, per se, but we knew that there was a creek issue.

MR. SALINAS: So the city's willing to give them the permits to build?

MR. GOURIS: Under the revised --

MR. SALINAS: Under -- not on the old --

MR. GOURIS: I don't know on the old one, because they haven't indicated on that. On the revised plan, they were willing to go forward.

MR. SALINAS: I would understand they have to apply to FEMA to be able to go ahead and do away with the flood zone. I mean --

MR. GOURIS: That area wasn't mapped though, so FEMA is silent on the issue.

MR. SALINAS: Well, they're going to be silent

all the time, if you don't apply for -- to be removed from that area, and you have to find some kind of engineers to go ahead and so some drainage systems there.

MS. BOSTON: They aren't formally in the flood zone.

MR. SALINAS: They're not formally in the -- well that's what we need to know.

MS. BOSTON: Right.

MR. SALINAS: Are they or they're not.

MS. BOSTON: Because it was unmapped by FEMA, it's not considered the flood zone.

MR. SALINAS: Okay. Then that answers -- they're not. Okay.

MR. JONES: Further questions?

MR. SALINAS: Why are you rejecting this -- why are you really rejecting the recommendation to do the site change? I mean, why are you all not supporting the site plan -- I mean, to change the site plan.

MS. CARRINGTON: That would be for me to answer, Mayor.

MR. SALINAS: Okay.

MS. CARRINGTON: The reason that we are not recommending the change is because that it is a significant material change that would have lost the

applicant the 15 points in the pre-ap to application, and it is our contention that another development, had it gone into a tie-breaker situation, would have received the allocation rather than Pleasant Valley Courtyards.

MR. SALINAS: So you're going back to the original site plan, if he closed tomorrow?

MR. CONINE: But it wouldn't have, Ms. Carrington, on the July 29th meeting?

MS. CARRINGTON: That's correct.

MR. CONINE: That's their -- I think that's their contention --

MS. CARRINGTON: That is the contention.

MR. CONINE: -- what I'm hearing.

MS. CARRINGTON: That is the contention, and staff's contention is, since Killeen Stone Ranch was put back in the running in August, that running this time line out, doing this scenario was that there could have been this tie-breaker situation.

MR. JONES: Changing gears a little bit, I'd just like to make a comment about a particular argument that's been made by rules, and let me say first that I am always impressed by Ms. Bast's presentations to this Board; I do think she bats a thousand, and she makes excellent presentations and brings meaningful information

to us.

I do though want to express, just for the record, my categoric disagreement with her interpretation of the identical site requirement, that it be only intended to apply between the period of pre-application and final application. I don't think that's a logical interpretation of the rules.

I frankly, you know, think it's a continuation of what we've seen as a Board, in that everybody gets overly technical with regard to the QAP to the point that they become perverted sometimes by the technicalities that are provided to them instead of logic reigning. And to that regard, I would just like to make that part of the record, because this Board's going to have to be logical when it interprets these rules. And I hope anybody that looks at what we do will understand that, because if you don't allow logic to be part of this process, I think the State of Texas will be a loser. So I have to say that just for purposes of the record. With that --

MR. CONINE: Can we put a logic paragraph in the next QAP?

MR. JONES: I think we may need to, because boy, I tell you what, I mean, I read them, and I'm always amazed. It ain't in there --

MR. CONINE: Common sense and logic.

MR. JONES: Yes. Common sense sure doesn't seem to apply.

MR. CONINE: Right. A couple of judges are in that might be -- some of your profession, by the way, needs to hear that.

MR. JONES: Well, we're talking about professions; maybe that just tells me something about developers. I don't know. No, I didn't say that. I take it back; I recant.

MR. CONINE: I knew I shouldn't have worn a golf shirt today.

MS. ANDERSON: Mr. Chairman, I have a motion.

MR. JONES: Certainly.

MS. ANDERSON: I move to uphold the staff's recommendation to decline the site plan change request.

MR. JONES: We have a motion that's been made. Is there a second?

MR. SALINAS: I'll second.

MR. JONES: Motion's been made and seconded by the Mayor. Argument, discussion on the motion?

(No response.)

MR. JONES: Hearing none, are we ready to vote?

(No response.)

MR. JONES: I hear nothing further, so I assume we are ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, nay.

MR. CONINE: Nay.

MR. JONES: Motion carries.

I then would turn our attention, I believe -- oh, okay. I will turn my attention elsewhere.

First thing I need to do is to thank Ms. Ann Lott, the executive director of the Dallas Housing Authority, for their use of this particular boardroom.

Ms. Lott, we thank you so much.

MS. CARRINGTON: She's not here yet.

MR. JONES: She's not?

MS. CARRINGTON: She is coming though.

MR. JONES: She is coming?

I would also like to recognize some folks we have with us. Jennifer Wickman from Senator West's office. Thank you so much for being here. We have Dan Jones -- Don Jones, excuse me, from Ken Mercer's office. Good to see you. Thank you for being here, and Eric Ophelia from the House Committee on Urban Affairs. Eric, good to see you again. Thank you for being here.

With that, I would also like to turn our attention now to item -- on our agenda, I think it's -- Ms. Carrington --

MS. CARRINGTON: 4a 2.

MR. JONES: 4a 2. Thank you.

MR. CONINE: Man, you're jumping all over the place.

MR. JONES: I am. I'm doing what Ms. Carrington tells me to do today.

4a 2.

MS. CARRINGTON: And I'm doing what some Board members have asked me to do, so --

MR. JONES: I understand. If we don't get everything done that we're supposed to get done, you all let us know, and I believe, Mr. Du Terroil, you want to speak to item 4. Is that this item?

MR. DU TERROIL: That's correct.

MR. JONES: Is it this item?

MR. DU TERROIL: Yes.

MR. JONES: Okay. Please speak to us.

MR. DU TERROIL: Good morning. I am here to speak on behalf of ALT Affordable Housing Services, whose application for home funds was disqualified because it was delivered by the U.S. Postal Service on the Tuesday after

the Saturday delivery deadline.

We believe the disqualification decision by the executive director was an error for the following reasons:

Our application should be treated in the same manner as all applications received after the Saturday delivery deadline. Applications received on Monday were not disqualified, although applications received the next day were disqualified, yet the applications were after the Saturday delivery deadline.

Perhaps, and I can almost surmise this, the Department, recognizing that the delivery on Saturday would be impeded because the office would be closed, presumably did not disqualify Monday applications under the assumption that, but for the fact that the office was closed on Saturday, the delivery would have been made.

Well, if you're going to make that assumption for Monday deliveries, I think you can also make that same assumption for Tuesday deliveries, particularly in light of the fact that the Post Office, it's been my experience, does not necessarily make delivery the next business day after a failed attempt.

So the presumption that the Department apparently worked under was those applications that were received on Monday were there on Saturday but for the fact

that the office was closed, and we contend, if you work under that assumption, you should give the same benefit of the doubt to the Tuesday applications as well.

In short, some applications received after three calendar days were accepted, and some were not, and we contend this is not fair. All the applications should be treated alike. Either they are all qualified or they're all disqualified. We would like to see that they all be qualified.

Secondly, the three-calendar day we believe is unfair, because the applicant's ability to comply is in the hands of third parties whom they do not control. Even using a two-day United States Postal Express Mail, which we did in this instance, cannot be guaranteed by the Post Office.

Therefore, the postmarked deadline, which we did comply with, is truly the best deadline, because applicants do not have the ability -- or do have the ability to comply with that requirement. Moreover, the delivery deadline should be a sufficient length of time to account for normal delays in the postal service and to allow for those days when the Department is closed, such as Saturdays, Sundays, and official holidays.

We suggest a period of seven days, because

three days is simply unrealistic, and in this particular instance, six applications were disqualified because they were delivered on Tuesday and not Monday after the Saturday delivery deadline.

Thirdly, the staff at the Department had precedent to guide them in a similar circumstance almost two years ago. In that instance, the City of Pharr -- and you have correspondence to that effect in your file -- the application was initially disqualified because it was delivered after the delivery deadline.

However, upon reconsideration, in the words of the staff, In order to be fair and consistent with all applications, the Department accepted the application, because it was postmarked before the postmark deadline. We maintain that the Department handling this current matter should have been consistent with their previous resolution of a similar situation.

In closing, I would like to say that the goal of the Department should be to consider as many qualified applications as possible so that the best use of HOME funds can be realized. Granting our appeal, we believe, will further that goal and will allow for all applications to be reviewed in a fair and consistent manner. Thank you.

MR. JONES: Thank you, sir.

Ms. Carrington, staff recommendation on the appeals?

MS. CARRINGTON: Thank you, Mr. Chair.

These six -- these -- actually four appeals related to the deadline for the applications for our HOME program for this year; this was our, about, \$82 million that was available in the HOME funding because of two cycles going together, and the -- we had 379 applications for this \$82 million.

We had six out of the 379 applications that were late. Actually four of those six filed an appeal. The deadline for the applications actually was a two-pronged test. The first prong of the test was a postmark date, and that postmark date was April the 2nd, and then the second prong of the test was that the application had to be received in the Department's office three calendar days after the postmark date.

As has been said by the gentleman who just testified, that three calendar days was actually on a Saturday. And so what the Department did was allow applications that had -- that were received on Monday -- since Saturday and Sunday were not business days; the Department was not open. We did accept applications that

came in on Monday, which was April the 7th.

If you turn the page in your Board book, you will see the dates that these applications were actually received in our office -- April 8th, April 10th, April 8th, and April the 11th.

Because our rules stated -- both our application guideline -- our application and our application guidelines stated that the applications had to be received in our office three days after -- three calendar days after the postmark date, staff is recommending that these applications not be accepted in our office and not be considered for scoring to be considered in the round.

I will tell the Board, and I think the Board will be glad to hear this that this will be the last year that you all will hear appeals about a deadline.

What we will be doing next year in the HOME program is doing exactly what we do in the low-income housing tax credit program and what we do in the trust fund, and that is, in our office by 5 o'clock on a deadline date -- you know, no postmarks by, no received in our office by -- you know, it's in our office by 5 o'clock on a certain date, and we don't care how it gets there. And if it's not there on that date, then it will not be

considered.

So I think the Department has made it difficult on itself by having these kinds of multiple tests that applicants have to meet. Be that as it may, that's what was very clear in our 2003 HOME applications, and staff is recommending that the four that granted the -- that requested appeals not be granted.

MR. SALINAS: Mr. Chairman, I'm going to plead with this Board that we use a little bit of common sense here, and that when you pay your taxes at the tax -- property taxes, you have a postdate, and the tax office will accept your money prior to your postage on your envelope.

IRS does the same thing, and I just plead to this Board that some of these areas that have been denied, and I blame the agencies for not doing the work properly and bringing these applications in time; I think we should change it next year to a deadline at 5 o'clock, but I think it's important for us today to go ahead and accept these applications, and let them be ranked by this data, and give these people, especially in the Rio Grande Valley the opportunity to be able to compete.

I know there's an agency in San Benito, and I've gotten calls from elected officials, not necessarily

from the agency, but I would plead for them to get an opportunity to apply being that the housing -- affordable housing is very, very needed in the valley, especially in south Texas, so we consider south Texas south of San Antonio, not San Antonio. So we would like for you all to understand how fast we're growing in that area.

And we're trying -- with this affordable home program, we're trying to get people from going to the Colonias and get people to get their first home, be able to assist them with the -- with them owning a nice home, not buying a mobile home; I'll be very honest with you, but this is a program that will go into Starr County and also Cameron County.

I would plead with this Board that we would have to use a little bit of common sense and accept this application from the postmark, and let them be ranked the way the other ones are. If they do not have a successful score, well fine, but I would like to ask this Board that we do it this time and do an exception not only for the valley but the other ones in San Antonio.

MR. JONES: I believe we had a motion on the floor that these appeals be granted. Is there a second?

MR. GONZALEZ: Second.

MR. CONINE: Is that what that was?

MR. JONES: I believe it was. So the motion's been made and seconded, Mr. Gonzalez seconded it.

MS. ANDERSON: Mr. Chairman.

MR. JONES: Yes, sir -- ma'am.

MS. ANDERSON: I have one comment to -- and I would have seconded this motion had not Mr. Gonzalez beat me to the draw -- that I would say to the gentleman from ALT and the other people who -- other three agencies who have appealed this decision -- you know, it's very strange that, you know, it's postmarked on time in Round Rock, and it takes, you know, a lot of time to get 15 miles down the road.

And it's my understanding that the consultant in Round Rock is also the -- has a history of submitting things that come in late, and so with this change -- wise change that the staff has adopted to require in-hand receipt and no more, you know, looking at a postmark -- you know, the consultants in this market -- in this industry that you turn to really, you know, deserve -- you deserve for them to give you your best efforts.

And I think you were poorly served in this case, and, you know, the consultant was 15 miles from our office, and all of this could have not -- you know, and

you wouldn't have to had to fly up here today and write this blizzard of letters, if the consultant had, you know, done their job, so I hope you will share with them, you know, the accountability for doing good work for you when you hire these kinds of supporting consultants.

MR. JONES: Further discussion?

MS. CARRINGTON: Yes. There were actually six applications that were disqualified because of late receipt in our office. Four out of the six appealed, so I would suggest, if the Board is granting acceptance of the four that appealed, that actually all six of them --

MR. SALINAS: I would like to get them -- all the six of them. I mean --

MS. CARRINGTON: -- be in --

MR. SALINAS: -- give everybody an opportunity to be able to apply.

MR. CONINE: Did they meet the same postmark criteria that they other four did?

MS. CARRINGTON: Yes, they did. They just did not appeal.

MR. GONZALEZ: And I second that.

MR. JONES: Mr. Wittmayer, can we do that?

MR. WITTMAYER: Yes.

MR. JONES: Thank you.

So the motion's been amended, I think, by both the maker of the motion in that regard and the person who seconded it. Further discussion of the motion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: The motion carries, and I'd like to say this. I think the Board has done the right thing, but I think the staff also did the right thing, so I understand, and I also appreciate the correction we're making to the situation.

MR. CONINE: They had no choice.

MR. JONES: They had no choice. This is no reflection on staff whatsoever.

With that, I think now we have taken care of all the instructions we have gotten. You want to take a five-minute break? Okay. Let's take a five-minute break.

(Whereupon, a short recess was taken.)

MR. JONES: We will call to order the meeting, and at this point in time, I think we've taken care of all of the concerns with regard to matters that we needed to

take up out of order, so I will return to the order of the agenda. And the next item we have is item one, presentation, discussion, and possible approval of the minutes of the Board meeting of May 15, 2003.

MR. CONINE: So moved.

MR. GONZALEZ: Second.

MR. JONES: Motion has been made and seconded.

Discussion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: Motion carries.

Item two. Mr. Conine.

MR. CONINE: We have the possible issuance of multi-family mortgage revenue bonds for Fountain Circle in Austin. Ms. Carrington?

MS. CARRINGTON: Thank you, Mr. Chairman. This is a private-activity bond and four percent credit transaction. The title is -- the name of the development is Fountain Circle Apartments located at Highway 290 East in Austin. It would be for the construction of 208 units.

The amount of the bond issue would be \$11,500,000, and what I would like to do is go through the underwriting report, talk about the public hearing transcript, and then come back to tab one, which is actually your outline or your write-up of the structure of the bond transaction.

And Elizabeth Rippey is going to go through some modifications of the structure that were made before -- actually after your Board book was prepared, so if we could go to tab three, which is the amount of the tax credit that is being recommended, and the amount of the tax credits are \$746,637.

At the bottom of tab three on the tax credit profile, you will see at the public hearing, which you have a transcript of, and it's behind tab number nine, at the public hearing, one in support, ten in opposition, one undecided. Letters and e-mails, zero on those. Basically, no comments from legislatures or local elected officials.

A comment from the City of Austin from the Director of Neighborhood Housing which this application is consistent with the consolidated plan for the City of Austin. If we go to the underwriting report on tab five, on page one of that underwriting report, staff is

recommending approval of a tax credit allocation not to exceed \$746,637.

Tab nine will show you, at the public hearing, the issues that were raised. The first was possible flood issues related to the site, extremely heavy weekend traffic due to a flea market that's right across the street in this area, comments about not wanting apartments, a soft rental market in the Austin area, opposition of tax credits being allocated to this development, and a concern about emergency services.

This development would be located in Travis County; it's not actually in the City of Austin. There is a response to each of those from a staff -- from staff. The application does meet all of our requirements as far as financial feasibility from the concentration capture rate, and staff is recommending both the issuance of the tax-exempt bonds and also the allocation of the four percent credits.

MS. RIPPY: Elizabeth Rippy with Vinson and Elkins representing the department of bond counsel. There are a couple of changes to the board write-up that are technical in nature but relate to the structure for the credit enhancement for the bonds.

The description is really of the old Fannie

Mae-type credit facility. They've revised their program.

This -- these are variable-rate. They're going to be initially offered as variable-rate debt. They are credit-enhanced by Fannie Mae. The credit facility on this transaction is actually a direct-pay credit facility. Fannie Mae will pay the bondholders directly and then be reimbursed by the borrower.

There's a -- it's slightly preferable to have Fannie Mae pay the bondholders directly. They're the triple A rated entity. They'll be doing that directly, and they also -- the department benefits from that, because they also credit enhance your administration fee.

Your ten-basis-point annual fee will be credit-enhanced which was not under the old Fannie Mae structure.

A couple of things in the write-up: it does state that the bonds will bear interest at a variable rate until maturity. That is not necessarily true. It's possible, but the documents contain options to convert the bonds to fixed-rate at future dates, so that's -- it's not necessarily true that they'll be variable throughout the period.

There are a couple of small discrepancies between the write-up and your resolution. The actual maturity date -- maximum maturity date for the bonds is

2036 rather than 2035. There are 23 buildings -- actually 21 buildings with rentable units and two that are common area buildings, and I think that's it. That's all I have.

MR. BOGANY: I have a question.

MR. JONES: Certainly.

MR. BOGANY: I'm looking at my map that has little triangles on it, and I know it meets the concentration levels set up by staff, but I am very curious to find out how many units are like this already in the area, and I would -- because I am concerned of lower concentration, and I'd like to know how many units, and I notice staff, in the public comment, had no common on soft-rental market in the Austin area, and just wanted to hear what they thought about that in comparing to these units and like to get some comments on that.

MS. CARRINGTON: Thank you, Mr. Bogany. I'll ask Tom Gouris to come up to address some of those questions. While Tom is coming up, the market study on page five of the underwriting analysis -- the submarket shows, at least in this part of Austin, a 92.1 percent occupancy rate, and that was according to the market study.

And Tom, are you in a position to address -- there is a -- of course we do have a map in

your book.

MR. GOURIS: And the map is something new. I hope that's helpful to you all. The -- just for way of understanding what the map means, the triangles -- well, in this case, never mind. We have a key that we're going to provide you, I think, for going forward. Typically, triangles are going to be local issuers. I think, in this case, the triangles don't represent that, and the flags were supposed to represent new roll tax credit transactions.

I think what happened in this case is that the triangles for older transfer transactions and bond transactions, but this would -- the triangles -- between the triangles and the flags, they represent all the tax credit developments that we've done -- tax credit and bond transactions that we've done in this whole region.

I don't have a specific number of units. I couldn't give you that off the top of my head. I do know that the market study -- it's up to a very favorable absorption rate for these units. This is a particular submarket in East Austin that has not had a significant number of transactions. Further south we have, and further north we have, but in this part of East Austin, we have not.

MR. CONINE: Can I ask a map question?

MR. GOURIS: Sure can.

MR. CONINE: I see the five-mile radius circle.
Is the dark black line -- what is that?

MR. GOURIS: That was the market analyst's market area, and we'll try to designate that on all the maps that you can see what the market analysts -- about the market area.

MS. ANDERSON: I have a follow-up question on that. The underwriting report characterizes this market area as an extremely large but borderline acceptable trade area. If -- do we, [under -- or do you have the authority or the discretion, under our rules, to look at -- you know, five-mile radius and see what the concentration would be if we used a more standard five-mile radius market area, and did we do that?

MR. GOURIS: We have the ability to consider that. In this case, I don't know that we'd have had the exact population and household demand from the five-mile versus what was proposed. We superimposed on this to show there's a slight difference, that there would certainly be -- there's certainly more area outside of the circle that isn't in the defined market area than the other way around.

The problem is that the area that's not in the five-mile circle that is in the market area is probably more heavily populated.

MS. ANDERSON: Would you say that sentence again?

MR. GOURIS: The area that's in the five-mile circle --

MS. ANDERSON: Right.

MR. GOURIS: -- probably has -- there's probably more area -- of the area that isn't in the market analyst's defined area; that area is bigger than the amount of area that's in the five -- that's in the market analyst's area that's not in the five-mile circle. It's sort of a wash, but --

MS. ANDERSON: Okay.

MR. GOURIS: I think it's probably as far as population goes, but as far as land area goes, I think it's the other way around, so I'd have to estimate that. The five-mile radius was inappropriate -- would provide an appropriate similar demand and one or two fewer developments.

MR. BOGANY: I have a question.

MR. JONES: Sure.

MR. BOGANY: The other concern, I don't know if

the developers here, but it -- you know, you had twelve people attending here, which is not a whole lot, but I guess it would be a good snapshot of the area -- is -- that you had ten opposed, and you only had one person you have waving a flag, and it just seems that these developers are not taking the time to bring people to these hearings or encourage people to come who would benefit from these projects.

And if I had to look at this, I'd say the neighborhood is -- I don't know how many people in that area, but, you know, reading the comments and things, some of them make sense, some of them are just pie-in-the-sky type negatives. But my feeling is that we had twelve people there, and ten said they didn't want it, and only one person spoke for it, and staff is still recommending this to us, and I just wonder why -- if you had neighborhood opposition, maybe not on the scale of what we've seen in the past, but you still -- you only had ten people who said that -- who were opposed to it.

MR. GOURIS: Ms. Carrington, if you'd like to address than better than I.

MR. JONES: No, she'd rather have you do it.
Just a joke --

MS. CARRINGTON: No, I would not. It is

certainly not Tom's place to answer that kind of question.

Staff attended the public hearing. Brooke did attend this public hearing along with some of her other staff, and we certainly take the comments of the public very seriously, and if you look at some of the opposition issues, one was possible flood issues.

We have verified that this property is not within the hundred-year flood plain. There were traffic concerns, because on Sunday out 290, there's a big flea market that evidently, according to the public transcript, brings about a million people a year. I had no idea it was that large, but anyway -- so that's an issue that we say, Yes, okay, they're going to have a lot of traffic on that road on Sunday afternoon.

Is that a reason for staff to not recommend the transaction? Well, we don't believe so. Do not want apartments, we know that there are some people who are opposed to having any kind of multi-family, so I think what staff has had to do is look at the substance of the comments and come back to the Board with confidence and say, It meets our inclusive capture rate percentage that the Board has adopted, that the market study indicates there's a need.

Certainly there are other parts of Austin that

staff would not recommend a transaction to you, and as a matter of fact, we have not recommended in other parts of Austin, because indeed we do believe that the market is overbuilt and is exceedingly soft, so because of those reasons, Mr. Bogany, we believe that this is a good transaction for the Department to be involved in.

MR. BOGANY: Thank you.

MR. CONINE: Mr. Chairman, I move for approval of the Fountain Circle project and the bond issuance not to -- I guess not to exceed \$11,500,000. Is that still the correct amount?

MS. RIPPY: Yes.

MR. CONINE: And the determination notice for tax credits of \$746,637, it's in our book, resolution 03-46, as amended by the items Ms. Rippy brought before us. I so move.

MR. GONZALEZ: Second the motion.

MR. JONES: Motion has been made and seconded. I believe it was Mr. Gonzalez -- it was probably almost a tie there, but we'll go with him. Further discussion of the motion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: Motion carries.

MS. CARRINGTON: And Mr. Chairman, I'll ask Bill Dally, who's our Chief of Agency Administration. Bill will be presenting items B1 and C1 and 2.

MR. DALLY: Good morning, Mr. Chairman, Board members, Ms. Carrington. Under tab 2C-2, we have the investment policy. That's been brought before you every single year. That is something that the Board will use for the Public Funds Investment Act, and it's a requirement that we bring this policy, review it, and highlight any changes and that you adopt those amended changes.

There are very few. Before I brought this to you for your review this year, I had it reviewed internally. I accepted some comments from Byron on this particular policy. It went to our financial adviser, Rauscher, and I believe those -- Ms. Rippey looked over some of this language with Vinson and Elkins, and so it's been a consensus of their review is what we're bringing to you today.

If you'll look on page one under that second

section called scope, we've made a wording change there. We've struck "financial" and put "investment assets." That just kind of more properly narrows the policy to investments. Then the second paragraph in that section is a brand-new section, and let me read that, and then I'll describe what that is.

"This investment policy does not apply to hedges, which include but are not limited to interest-rate swaps, caps, floors, futures, contracts, forward contracts, et cetera, that satisfy the eligibility requirements of a qualified hedge as assigned by Section 1.148 of the Internal Revenue Code."

What this is doing is acknowledging that in our new deal that was described by Byron and our underwriters, that we may have an interest-rate swap in this next deal if the market permits, but what this is doing is excluding that type of qualified hedge out of this policy. It is not an investment for purposes of Public Funds Investment Act.

It's something that is a qualified hedge that we would go into that's related to that financial transaction, but not an investment itself. Then going down -- are there any questions on that particular -- that's the major change in this policy. Any questions?

Then I just added a word -- just some wordsmithing in that prudence paragraph. If you'll just skip to page three, I've had a title change due to the reorganization, so I was -- Department no longer has a position titled chief financial officer, so we -- my new title is Chief of Agency Administration, so it's just making that notation and change.

Then if you'll skip to page eight under the section titled collateralization, again there was just some wordsmithing among the group that that better that got together, described our policy on that -- 101 percent on collateralization. And that would be the end of my presentation on that.

If there are any questions -- the other thing -- I just -- in brief overview, this policy does describe some of the Board training that's required. I know some of you have looked at that videotape. It's a requirement on investments. It also describes the training that Byron and I have to have.

It describes some of the audits that need to be done on this, the quarterly investment reports, and then some of the conflict of interest language, that there is a resolution at the end of this for you to adopt.

Questions?

MR. CONINE: Mr. Chairman, I move we adopt the investment policy and resolution number 03-45.

MR. BOGANY: Second.

MR. JONES: Motion has been made and seconded. Mr. Bogany. Is there any discussion?

(No response.)

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

(A chorus of ayes.)

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

(No response.)

JONES: Motion carries.

MR. DALLY: The next item is an update on the inspection fee billings that are related to the tax credit properties, and you had a final report wrap-up, I think, back in March from David Gaines from Internal Audit. And in that report he described that that function initially was in the tax credit area.

It has been transferred and is now part of my division, that we keep up with the -- doing the billings.

As inspections come in and we receive invoices, then we turn around and bill the developers for those inspections to be reimbursed for the cost.

What I wanted to highlight here is that all of those things -- we had to do an initial study from that -- of the material that we got from the tax credit area. We identified all of the ones that we needed to make additional billings. All those billings have gone out. We also had -- there were some credits that we needed to issue.

Those have been done, and in that instance there were a few that had subsequent other projects and billings, and so where we could, we applied a credit, and that's been done. And then, finally, just to let you know, in this current application round -- 9 percent round -- we have submitted to the program staff, particularly compliance and Brooke's group, that list that we have that have outstanding inspections due to the Department.

And this isn't in the report, but let me add some information here. In the application for 9 percent round this year, there are 19 applications that we identified that have fees outstanding, representing 14 developers, for a total of \$50,510. This is as of yesterday.

MR. CONINE: What's the rest of the outstanding balance on those who don't have applications in this time?

MR. DALLY: The total balance --

MR. CONINE: Seventy-nine. Is that what --

MS. CARRINGTON: Seventy-three.

MR. CONINE: Is that the 79,000 number that's in the report?

MR. DALLY: That's for the old billings that are still outstanding. The current balance, which includes some of the billings inspections that have been done since 8/31, in this year would be 115,000.

MR. CONINE: 115 --

MR. DALLY: 564.

MR. CONINE: And of that, 50,500 have got deals in the pipeline or -- yes.

MR. DALLY: That is correct.

MR. CONINE: Okay. And our staff's following up on those, hopefully?

MR. DALLY: Yes. That -- they're identified in the forum. I think there are some -- maybe some rule questions about some of these application -- some of the inspections are for old 2000 -- 2002. There was a QAP and a set of rules, so that's being looked at. And I think -- and correct me if I'm wrong, but I think the requirements in some of the old QAPS was that before an 8609 or commitment letters were issued, the inspections had to be

brought forward. But I don't think there's any language that before they're considered in a round of applications that --

Brooke, you want to come up and --

MS. BOSTON: Brooke Boston again. We did add to the 2003 QAP a requirement in our ineligibility section that states, The applicant and development owner, the general contractor or any affiliate of the applicant; the development owner or the general contractor that is active in the ownership or control of one or more other tax credit properties in the state of Texas has failed to pay in full any fees billed by the Department after the due date has passed.

For us, because it's written that way, it's retroactive, so it would include the fees that people have outstanding on other deals. Our thought, though -- we obviously don't want to kick 19 deals out for ineligibility.

Our thought is to add it as a condition in the Board write-up for you all, and it would be a condition of the commitment, and they would need to pay that outstanding fee at the same time they pay their commitment fee, if they get an award. And if the check doesn't come in, then we wouldn't process it and proceed, and then the

credits could go to someone else on the waiting list.

MS. ANDERSON: I have a question for Brooke.

MR. JONES: Please.

MS. ANDERSON: The -- if I understand you correctly then, we're creating an incentive for the developer to pay outstanding fees to this Department, but only if they are going to receive an award, and so it -- let's say of these 19 deals that, you know, ten of them don't get an award -- you know, how do we collect the money then?

I mean, they're still -- they still are debtors to the people of Texas and to this Department. I mean, I want to understand why you don't want to rule them ineligible when the QAP allows you to do so, and then let them appeal that to the ED with a check in the appeal letter.

MR. JONES: Could you reinterpret that answer for me? Do it one more time?

MS. ANDERSON: Backbone, Brooke.

MS. BOSTON: Hey, now. I mean, I think we just -- because it was such a large number, we're inclined not to terminate 19 people, but --

MS. ANDERSON: All the more reason.

MS. BOSTON: Okay, then.

MS. ANDERSON: We will certainly revisit it.

MS. BOSTON: Yes, ma'am.

MS. ANDERSON: Great.

MR. CONINE: Yes, I would echo Ms. Anderson's comments, a little more temperately maybe, but --

MR. JONES: I'm on Beth's side. I just want to go on the record.

MR. CONINE: I'd say this is the two-week warning -- you know, a lot of people have two-minute warnings in support. This is a two-week warning. Those 19 developers, as well as the balance of the \$115,000 worth, need to get their money in before our next Board meeting.

MR. BOGANY: Do we need to put that in a motion?

MS. CARRINGTON: I think we heard it loud and clear, but if you all would like to put it in a motion, we would probably like to have it in the record also.

MR. BOGANY: I would move that the 19 deals that we've got, that every developer would have their money, within two weeks, turned into this Department, or their deals go out of the window.

MR. CONINE: Is that the name of the motion, Mr. Chairman?

MR. JONES: Why don't we just put, they become disqualified according to the QAP rules. Is that all right?

MR. BOGANY: That's fine.

MS. ANDERSON: Second.

MR. BOGANY: I'll accept that as a friendly amendment.

MR. JONES: Okay. Great. We have a motion on the floor. It's been made and seconded; it was seconded by Beth. Further discussion of the motion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: Motion carries.

MR. DALLY: The next item is an update on the fiscal year 2003 budget which is the budget that concludes at August of this year. We've had a number of changes from the budget that we did back in September. We had a reorganization, and then we had a seven percent cut, so I wanted to bring you up to date on that policy.

The adjusted budget number -- the original number in September was 20,572,094. That's been reduced to 19,964,421, and then there's a second page that shows you current expenditures, and we made it break out. We had the ones through February which was prior to reorganization. We then have in a third column two months worth, March and April. That's after reorganization.

And then we have an estimate using those March and April as a trend line, and this is not a perfect projection, but it's -- we're using that to then project, based on this trend line, that we would spend -- have an expenditure total of 18,165,041 this year, leaving us with some budget balance, and the thing I want to highlight about this budget balance is that that is a very good thing, because what it will mean is that will be cash that we have in our balance in the bank at the end of this year to carry us in case some of our -- if the market drops off, and we don't get as many of the appropriated receipts or some of our housing fees, we will at least have a balance from this prior year to carry forward into next year.

And our budget is much more dependent on the housing community and the health of that and how people come in and participate in our programs. And if the

market gets soft or if that goes soft, then we would have to -- while -- even while I bring you an \$18,000,000 budget, you know, for the next year, it's contingent on collection of about 60 percent of it coming from our housing fees, so that fund balance, it sort of helps shore up, you know, what may happen contingent-wise in the future year.

We're currently -- because of the reorganization, we -- going to talk about -- we're preparing some measuring reports to go out to directors and stuff. We had to do a re-sort, and that's going out probably the end of this week, and we're also preparing for next year's budget, which we'll be bringing to you in July and August of this coming year.

It will have to -- we're currently doing analysis on how that's going to fit in the coming year, but I do know it will be smaller, so it's going to be a smaller budget as we go into '04. Any questions or comments?

MS. CARRINGTON: I would like to publicly acknowledge Bill and David Cervantes and David Aldrich, who are the keys in our chief financial area.

As Bill has said, we got a budget approved last year, and then we were working on a reorg budget, and we

get the seven percent missile come across in late January, and they have worked long and hard to not only present us a budget that is reflective of the reorganization and the way the Department operates now but also to achieve our seven percent savings. And as you all know, staff -- the way we went about achieving that was looking at some savings we knew we were going to have, but we did such things as freeze out-of-state travel.

We restricted our in-state travel. We have not had any merits. We have not had raises. We have not had capital purchases.

We really tightened our belt as the leadership told us and asked us to do, and we are achieving our seven percent savings without having to lay off any staff at the Texas Department of Housing and Community Affairs. And I think that is extremely significant in this day and time when we hear of the PUC and other state agencies that are having to substantially reduce their staff, so I want to acknowledge my directors who, after they sort of got over grumbling about it, you know, tightened their belts and said, We can do this and certainly have moved forward, I think, with a very positive attitude.

With the recognition of what's going on in the state as far as the economy is concerned and what's going

on in state government, and, you know, when we read articles about 10,000 or so state employees going to be losing their jobs over the next several months, I mean, we consider ourselves at the Department really very fortunate to be in the position that I think that we're in right now, and that is to the credit of my senior staff and directors who have made this happen.

MS. ANDERSON: Hear, hear.

MR. CONINE: Ms. Carrington, I believe that's very modest of your capable leadership and abilities, and I think publicly we ought to say thank you to you as well.

The reorganization; I know that's had a direct effect on the bottom line, and this is one of those catch 22 situations, I think, where you're not sure you want to brag on it, because some of our state legislatures might -- legislators and others might want to reach over and grab that money for other certain -- other things. But I think you're to be commended, and the whole Department should be commended on job well done to this point, and keep it going.

MR. DALLY: I'd like to add a thanks to all the directors, because we do build this budget and manage this budget as a group. It's not just my group puts it down on paper and brings it to the Board and stuff, but we manage

it as a whole, and Ms. Carrington's leadership and all the directors have helped with that regards -- it wasn't an easy year.

MR. JONES: Thank you.

MR. DALLY: Thank you.

MR. JONES: Thank you very much. Any comments?

I believe that brings us to item 3a on the agenda, Ms. Carrington.

MS. CARRINGTON: 3a. Thank you, Mr. Chairman, This is the issuance of a determination notice to a tax-exempt bond transaction with a local bond issuer, and the local issuer on this transaction is the Tarrant County Housing Finance Corporation.

The name of the development is Alameda Village in Fort Worth, and it is 192 units, and what we are recommending in the way of a tax credit allocation amount is \$503,256, and what you do have in your Board book is the -- you have the tax credit program recommendation of the 503,256 for the 192 units.

We also have, and we include this in all of our presentations now, the compliance information related to each of the developers, and I wanted to point this out, because so many times we're in such a hurry with our Board meetings that we sort of slide by this. But we do send

out, as a developer applies for funds within the agency, the track record -- the compliance history of that developer does go to all of the various divisions of the Department, portfolio management compliance, multi-family finance, single-family, community affairs, office of Colonia initiatives, real-estate analysis, and loan administration.

So we look throughout the agency for experienced track record for that developer in other programs within our department, and the reason we of course do that is because we want to make sure, as we move forward with funding developers on applications, that we are doing that with groups of developers who are compliant in agency programs and in all agency programs.

MR. CONINE: Move for approval.

MR. BOGANY: Second.

MR. JONES: Motion has been made and seconded.

Further discussion?

(No response.)

MR. JONES: Hearing none, I assume we're ready to vote. No sliding at this Board meeting. All in favor of the motion, would you please say aye?

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: Motion carries.

We'll then turn our attention to 3B. There are two people that would like to speak to us.

Mr. David Kelley.

MR. KELLEY: Mr. Chairman, if you'd like, we're here to answer any questions the Board may have --

MR. JONES: Thank you. If we have questions, we'll let you know.

Mr. Jeff Fulenchek.

MR. FULENCHEK: Same thing for me.

MR. JONES: Same thing.

MR. FULENCHEK: If you have questions --

MR. JONES: Okay. Good. I think that's everybody that would like to speak to 3B. Is there -- okay. None. Nobody else would like to speak. I have a motion I believe --

MR. BOGANY: I move that we approve the extension of the deadline on construction loan closings for these allocations listed below.

MR. JONES: Thank you. There's a motion on the floor. Is there a second?

MS. ANDERSON: Second.

MR. JONES: Motion's been made and seconded.

Further discussion?

MR. CONINE: Can I request that we set aside Gateway Village for a little discussion, or do you want to discuss it -- I guess I can discuss it now.

MR. JONES: That would be fine. If the Chair could, I would like to make -- I did get a call yesterday with regard to the San Antonio development, and there was a citizen from San Antonio that requested I inform the Board that the city of San Antonio was very much in favor of -- the citizens of the city of San Antonio were very much in favor of this particular development as well as this extension, so I would like to comment that to the Board, and with that --

MS. CARRINGTON: And may I note that that is the Rufugio Street Apartments, 02086.

MR. JONES: Yes. Thank you. And with that, Mr. Conine's questions with regard to Gateway Village Seniors.

MR. CONINE: Yes. We've got Brooke, I guess, or somebody on this one. This one -- I notice that, as a condition to the award of the tax credits, that the ownership -- the applicant changed the ownership structure to admit a member with Section 42 experience as a condition of closing. Has that occurred yet, and do we

know who?

MS. BOSTON: It's my understanding that that has occurred, and we are currently processing their partnership change. Any GP change comes through the agency and this occurs some of the time, and I do not know who the person is. I'm sorry.

MR. CONINE: I guess my concern is, as it appeared to me to be an area that could be somewhat contentious, in that if the substitution of the Section 42 experience happened to be in an individual or a firm who had previously been awarded in the year '02 tax credit projects, that there could be an inadvertent way to exceed our minimums and maximums.

Are you checking that, or is that -- is there some failproof system within the process to make sure that doesn't happen?

MS. BOSTON: Well, I would never want to go so far as to say it's fail proof, but we definitely have checks in place for that.

Every GP change that takes place comes through us, even if it's just a change with its affiliate, and then we go down -- and there's a checklist; they have to turn in a series of documents, and one of the things that they have to do is sign a document saying -- it's

essentially an affidavit saying that they -- by taking this on, they did not violate any caps that were in place for the year that they got an award.

We do try and confirm that. Obviously, it's kind of hard to go back and reconstruct that for different points in time, which is why we added the affidavit.

MR. CONINE: Okay. That was all the questions I had on that.

MR. JONES: We have a motion on the floor that's been made and seconded. It's been made and seconded. Further discussion?

(No response.)

MR. JONES: This motion is with regard to all of the extensions under item 3B. I assume we're ready to vote, hearing no further discussion. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: Motion carries.

Item 3C, I believe.

MS. CARRINGTON: This item is one particular transaction --

MR. JONES: Excuse me. I need to get public

comment here. Mr. John Frost, I believe. Yes.

MR. FROST: Do I need to go up here?

MR. JONES: Please, if you don't mind, sir.

Thank you.

MR. FROST: My name is John Frost. I represent Meridian Commercial, which is the general contractor on this project.

Mr. Chairperson, we received our permits and contracts on contract from the owners of the property on the 30th of January, and during the site work and utility work, we had approximately 22 rain days similar to what we had last night here, and it slowed us down.

Currently we have all the rough framing and are working on the MEPS. We feel that we've got the job back in sequence, and we anticipate completion right around the 1st of November, and just hope that this extension will be approved, and we can go forward with this. And I understand that you have a letter on file and that the fees have been paid.

MR. JONES: Thank you, sir.

MR. FROST: That's all I have to say.

MR. JONES: Congratulations.

MR. FROST: I didn't want to be one of those sanctioned ones.

MR. JONES: Any question? I think there's a question. Mr. Conine -- and then Mr. Bogany has a motion.

MR. CONINE: Other than the weather, this project, you know, as you probably are aware, has received substantial extensions, and this is an '01 commitment, I think, and here we are in '03. Other than the weather, is there anything that you're aware of currently that would inhibit this job from finishing on an orderly basis?

MR. FROST: Not to my knowledge, sir, and I will be visiting -- I have a draw [phonetic] meeting this month later on, and I'm visiting with the city officials of Austin to make sure there are no recent caveats in the inspection and the certificate of occupancy to hinder us there.

MR. CONINE: How many buildings do you have in this project?

MR. FROST: It's a very small project, eight buildings plus equivalents.

MR. CONINE: And you're in the framing stage now?

MR. FROST: Framing is substantially completed, and we're drying in, and electricians and HVAC and plumbers are manning the job properly.

MS. CARRINGTON: It's a total of 43 units, and

Mr. Conine, as you are picking up on, it is an '01 allocation, and they must be in service -- they must be placed in service by December 31 of this year.

MR. CONINE: What we're doing here is extending a current deadline from April 1, which has already gone by, to June 12th, which is today. Is that correct?

MS. CARRINGTON: Yes, sir.

MR. CONINE: And --

MS. CARRINGTON: And they are in -- they have closed their construction loan, and they are in the framing stage.

MR. CONINE: Okay. So it's just the -- we're just getting them brought up to speed --

MS. CARRINGTON: Or -- I'm sorry, not their construction loan. They have commenced substantial construction. They meet our definition of --

MR. CONINE: Okay.

MS. CARRINGTON: Yes.

MR. CONINE: All right. That's all the questions I have.

MS. ANDERSON: I have a question, and it's probably just because I don't understand the definition of commencement of substantial construction, but, you know, we approved up until April 1, and then the text goes on to

say that they commenced framing on May 21 meaning -- I didn't -- I don't think we were brought an extension between those two dates, so can somebody help me understand what's happening.

MS. CARRINGTON: They did submit a request in May. Now, admittedly, they had missed the April 1 deadline, and they submitted a request to us sometime, I guess, in late April or early May, but it was too late to be on the May Board meeting, and as I read this myself, I thought, Well, okay, they just went forward on faith here.

MS. ANDERSON: Yes because -- so they went ahead and commenced spending money and all this stuff without knowing -- I don't understand --

MR. CONINE: That's the way builders are, Ms. Anderson. I hate to tell you that. That's the way builders are. Once we get the goal in sight, we just go right on ahead. I -- my -- I think the definition -- correct me if I'm wrong, is 50 percent of the slabs down as substantial construction commencement, or is -- or am I thinking about something else?

MS. BOSTON: It is now in '03, but in -- for the 2001 QAP, I don't think that was the definition.

MR. CONINE: What is the definition in '01, just out of curiosity?

MS. BOSTON: It's gray.

MS. CARRINGTON: It's gray.

MR. WITTMAYER: Undefined.

MS. CARRINGTON: Undefined, yes. That's why it's defined in '03. We needed to have something concrete. Oops, excuse me. It slipped out.

MS. ANDERSON: Can I ask --

MR. JONES: I liked it.

MS. ANDERSON: -- one other question for my education? Are there any other requests for extension of deadlines other than the commitment to be in service by the end of the year that -- or other gates that would be open to this developer and this project? I mean, is this --

MR. CONINE: Has he met them all? Is there any more?

MS. CARRINGTON: Next is placed in service, so there is no other milestone that they have to meet other than placed in service.

MS. ANDERSON: And if they don't get it placed in service, what happens?

MR. CONINE: Bad things.

MS. BOSTON: Really it would be at the discretion of the Board at that point, because -- was the

example of one that didn't place in service and --

MS. ANDERSON: Okay. Thank you.

MS. CARRINGTON: And that was the first time we've ever had that kind of situation before.

MS. ANDERSON: Okay, that's good.

MR. JONES: Mr. Bogany, I think you had a motion.

MR. BOGANY: I'd like to move that we approve their extension.

MR. GONZALEZ: Second.

MR. JONES: The motion's been made and seconded. Further discussion, questions?

(No response.)

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

(A chorus of ayes.)

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

(No response.)

MR. JONES: Motion carries.

We will then turn, I believe, next to item four. Mr. Bogany?

MR. BOGANY: Presentation and discussion and possible approval of the programmatic items, HOME program

and the housing trust fund, and I'm going to turn this over to -- and I think we've already taken care of the A2, and so I'm going to turn the remaining over to Ms. Carrington.

MS. CARRINGTON: Thank you, Mr. Bogany.

4A-1 -- no, I'm sorry. Those are repeals.

4A --

MR. CONINE: One.

MS. CARRINGTON: Okay. All right. I'm just at the wrong tab. Okay. 4A-1. Take a deep breath.

As a result of some research staff did a couple of months ago at the request of Mr. Conine, what we did was take a much more detailed look at how we are -- not how we are funding home-buyer assistance with the HOME program, but the income limits that we are using to determine how much a family would be eligible for, and what we're talking about here is the portion of the HOME program that we use to fund, basically, down payment assistance.

We call it home-buyer assistance, but it's down payment assistance, and in years past, and Eric Pike, who is our director of multi -- director of single-family, has provided for you a history of our funding of home-buyer assistance over the years. And basically what we

have right now is a system that allows for home-buyer assistance in the amount of \$5,000, \$7,500, or \$10,000, depending on a set amount that was established by the Board several years ago, a \$40,000 figure, a between a 30 and 40,000, and a less than 30,000.

And what we discovered in this year's home-buyer assistance application was that if we stayed with the static 40,000, 30- and 40,000, or 30,000 income limits for families in those counties, that none of our families would be eligible to receive the maximum \$10,000.

So it basically would penalize the lowest-income families if we stayed with this set -- these set amounts. So what we are proposing to the Board today is that we would establish a system that would -- that says if 80 percent of the AMFI for a family of four in a county is greater than a hundred percent of the state area median income, which is about \$52,000, that that family would be eligible for \$5,000.

If it was 80 percent, or between 80 and 100 percent, which is numbers of 41,6 to 51,1, then the family would be eligible for \$7,500 worth of assistance, and if it's less than 80 percent of the state median, which is 41,680, than the maximum assistance would be \$10,000.

So basically what this does is by indexing it,

it allows for these figures to change on an annual basis based on changes in the HUD median incomes, and it allows for the greatest amount of assistance in the areas where the incomes are the lowest, and staff is recommending this change.

MR. JONES: What's the Board's pleasure?

MR. BOGANY: Move that we approve.

MR. JONES: We have a motion that the staff's recommendation --

MR. CONINE: Second.

MR. JONES: -- be approved, and it's been seconded. Further discussion?

MS. ANDERSON: I have a question.

MR. JONES: Yes, certainly.

MS. ANDERSON: I'm curious if staff has calculated or forecast or, you know, the reduction in the number of people that will be served, because we're making larger assistance payments in 217 of the 254 counties.

MS. CARRINGTON: We have discussed it. We recognize that there will be an impact. This year -- we didn't do a round of HOME funds last year, so in '01 we did have some counties that were eligible for the maximum 10,000.

We have applications, I guess, that have

applied this year that are assuming the 10,000, because I don't think they had figured out that basically there wasn't going to be an area that qualified for 10,000, so I think what's going to happen is that there will be not as many home-buyer assistance awards made as a result of this change. And staff has certainly talked about that, but we have not calculated what the impact might be.

MR. BOGANY: I have a question.

MR. JONES: Yes, certainly.

MR. BOGANY: To Eric. Eric, if somebody was -- and you gave a family of four, and I guess you use that as your example. Am I correct?

MR. PIKE: Yes, sir. Ed Pike, Director of Single Family. That is correct.

MR. BOGANY: Okay. Then I guess my next question would be, could you just kind of give me an -- I'm trying to put this in realistic terms of what people would qualify for. So just say any county that you may know the number, if somebody was a single person, less than 80 percent, what would be their median income they would need to get that \$10,000 down payment assistance?

MR. PIKE: Let's take Starr County, for instance. Starr County is one of our poorest counties in the state of Texas, and right now a family of four making

less than 80 percent of the area median income, which is \$32,950, would qualify for the \$10,000, so if it's a family of one, their -- would not be able to exceed \$23,050.

MR. BOGANY: Okay. Let's take a larger county. Let's just take my home county of Fort Bend. What would it be there? I notice it's got family of four of 7,500.

MR. PIKE: Fort Bend would be \$7,500 for anyone in that county qualifying under the program. Let me see here. Fort Bend is part of the Houston MSA, I'm presuming. A family of four is 47,7. A family of one would be 33,4.

MR. BOGANY: 33,4.

MR. PIKE: So they would qualify for the \$7,500 under the --

MR. BOGANY: Okay. Now, if we approve this, will we have -- will it affect the bond program 59 that's out there now, or would this be for next year?

MR. PIKE: No. The bond program operates a little differently. At one point in time, it did operate or mirror this program. It was very confusing for our lenders to have to look at HUD Section 8 income limits and adjust for family size.

That's not terminology that they're used to

dealing with. And so under the bond program, what we did is we went to a simpler method of distributing the down payment, and if you are at 60 percent of the area median family income, regardless of family size, you qualify for the assistance --

MR. BOGANY: Okay.

MR. PIKE: -- so they'd only have to look at a one-pronged test, if you will. Sixty percent or below, bang, you get the money --

MR. BOGANY: Okay.

MR. PIKE: -- and under HOME it's more complicated, because you're dealing with HUD dollars.

MR. BOGANY: All right. And it's just a point of education for myself; so if somebody lived in Starr County, who would they go to to get this down payment assistance?

MR. PIKE: The -- under this -- under the HOME program, it would be an applicant such as the one that had been disqualified but has been reinstated today. Starr County was one of the six. They're not one of the four that appealed, but they're one of the six --

MR. BOGANY: Six. Okay.

MR. PIKE: -- so they are an applicant this year under the 2002-2003 HOME award program. And so if

they're awarded funds, then an individual approaches that county, and the county has an administrator, and they do the application intake and administer the program.

MR. BOGANY: So once we pick these people -- these agencies who can distribute this money, they will follow these guidelines that we're approving today.

MR. PIKE: That's correct.

MR. BOGANY: Okay.

MR. JONES: Ms. Anderson.

MS. ANDERSON: As I -- I probably don't even need to request this, but I would just ask that in -- that, should the Board approve this policy, that the single-family operation sort of monitor the impact of these changes that may be approved today, so that, you know, we can have -- you know, so that we can understand, you know, pretty accurately the impact of this policy change.

MR. PIKE: Typically, the home-buyer assistance program has been undersubscribed. We don't have a tremendous demand for it. Under the HOME program, I believe, this year, in my write-up, I believe that I indicated we got maybe a million or so more dollars in requests than we actually had available, and -- but we

certainly will monitor it --

MS. ANDERSON: Right. Just how many awards at different --

MR. PIKE: -- and try to give you an update at some point in the future.

MS. ANDERSON: -- because it looks to me like we could be serving up to 25 percent fewer entities, and so it may be undersubscribed, but that amount's still like over 300 families, so for those 300 families that might not -- there might not be money, because we're giving it in larger chunks -- I just want us to watch it so we can --

MR. PIKE. Sure. Certainly.

MS. ANDERSON: -- understand the impact of what we've done, should we approve the motion that's on the floor.

MR. PIKE: Absolutely.

MR. CONINE: Help me again with -- I'm going to follow some of Mr. Bogany's questioning. So a person -- a single mom in Fort Bend County can qualify for \$10,000 worth of assistance making --

MR. PIKE: 7,500.

MR. CONINE: 7,500, making \$23,000 or less. Is that what I heard you say?

MR. PIKE: 33,4.

MR. CONINE: 33,4, but a single mom out in Starr County can qualify for 10,000 --

MR. PIKE: Correct.

MR. CONINE: -- but she's got to be making 23,000 or less, and I guess my question would be, why would we want to create a policy where single moms in the -- and I'm not picking on Houston, you just happened to use an example -- that make between the 22 or 23 and the 33; why would we want to use that down payment assistance for those, when you would think almost the reverse you would want to happen.

You would want the income levels to be higher in counties where lower median incomes occur versus higher in higher median income counties. Why -- help me out with that.

MR. PIKE: Well, I'll be real honest with you.

This started out basically as a simple change, and all we're trying to do is mirror the policy that the Board had set in place several years ago. And the thought, I believe, at that time, was to try to put larger amounts of dollars into the rural and underserved areas, and there certainly is some research and consideration that could be done to examine the policy as a whole, but basically we

were just trying to get it updated for our current applicants, because as -- currently, we're not -- no one's going to be able to be eligible for the \$10,000.

When the applications were submitted to the program, the new HUD income limits had not come out, so every applicant applied requesting, you know, 7,500 or 10 based on the old guidelines.

When you had requested that we do the research, we found that no one would qualify for that 10, so all we're trying to do is -- so that we don't have to come back to you all each year and increase the limits, we just were trying to index it, but you've got a point, certainly, that, you know, that -- it may not be the perfect policy but --

MS. CARRINGTON: But it's our recommendation.

MR. PIKE: -- but it's our recommendation.

MS. CARRINGTON: For this round of funding.

MR. CONINE: Sounds like it needs some more work and study, just to me, on the --

MS. ANDERSON: When are we required to make these HUD home -- down payment assistance awards, or when are they scheduled to be made?

MR. PIKE: I'll be bringing them to you for recommendation at the June 25 Board meeting.

MS. ANDERSON: I'm wondering if -- you know, what the thought would be about allowing this change so that those awards could be made on time, particularly since we didn't have money in the pipeline last year, because we're doing a double round of HOME funding this year, with the caveat that after we use them now, that we -- despite your comment about not wanting to have to come back to the Board every year, that we then do take some more time and look at the implications of this and -- so that this proposed policy change would only be for this current round.

I don't know if that fixes the problem --

MR. JONES: Let me ask this. We do have a motion on the floor. Correct?

(No audible response.)

MR. JONES: I'm right. We have a motion that's on the floor and seconded. I guess that's an amendment to the motion --

MS. ANDERSON: Yes. That's what I'm --

MR. JONES: -- would it not be?

MS. ANDERSON: That's how I'm offering it, sort of --

MR. JONES: Okay. Yes. Mr. Bogany, I believe you made the motion.

MR. BOGANY: Yes, sir.

MR. JONES: Would you accept the amendment?

MR. BOGANY: I need to understand it better.

MR. JONES: Okay. I'll let you all talk.

MS. ANDERSON: My amendment, Mr. Bogany, would be to make these policy changes that you've moved be adopted effective only for this round of funding that is scheduled to be made yet this month --

MR. BOGANY: I agree.

MS. ANDERSON: -- and then ask that we go back to the drawing boards -- sort of like approving a temporary policy just so we can get these awards done, because we didn't do HOME last year, so we're a year behind.

MR. BOGANY: I can accept that amendment.

MR. JONES: And the second -- was it you that seconded it, Beth? Excuse me? Do you accept the amendment?

MR. CONINE: Oh, yes.

MR. JONES: Okay. Then Mr. Conine accepts the amendment. I'm sorry to wake you up. We try not to do that.

MS. ANDERSON: He had a long drive.

MR. JONES: Sure. Yes. Okay. Discussion of

the motion as amended.

MR. BOGANY: And I would assume that the reason in the -- say Fort Bend, the person would get the same amount of money as if somebody in Starr County with a higher income, would be that the cost of doing business in Fort Bend would probably be higher considering the fees, the prices of the homes, and things of that nature.

And I think when you take the \$7,500 down payment -- doesn't have as big an impact if the average price of a home in Fort Bend -- median price of a home in Fort Bend is 115 or 120, where in Starr County, you would -- I don't know, but I would assume it's 70, \$80,000.

MR. PIKE: \$10,000 goes much further in Starr County than it does in Fort Bend, obviously. We're certainly aware of that, and we can reexamine it and bring it -- something back to you guys at a later date.

MR. BOGANY: Yes. Even the point of having the \$33,000 income or even to take a Starr County 23, if somebody's got a car note in that, they're basically not going to be able to qualify for a house, and so that \$7,500 or 10,000 would be a big boost to help that person get into a home.

MR. PIKE: And just so you know, right now, as

the policy is today in Fort Bend, they're only getting -- or they're only qualifying for \$5,000, so we felt that we are adding some additional benefit to them by at least going up to 7,500.

MR. BOGANY: Okay.

MR. JONES: We have a motion on the floor. It's been made and seconded and amended. Are we ready to vote?

(No response.)

MR. JONES: Hearing no further discussion, I assume we are. All in favor of the motion, please say aye.

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: Motion carries.

MR. CONINE: Under protest.

MR. JONES: Under protest.

MS. CARRINGTON: Mr. Conine, you started it.

MR. CONINE: And I'm going to finish it.

MR. JONES: Just not today.

MS. CARRINGTON: Staff welcomes the opportunity, though, to really spend some time looking at this for the next -- for next year's round of funding.

MR. JONES: And my money's on him.

MS. ANDERSON: Yes, and I think, you know, that the comment about the underlying policy that was made several years ago, you know, that we ought to -- that ought to be in the scope of the revisitation.

MR. JONES: I believe that brings us to 4B.

MR. BOGANY: Housing trust fund, and I'm going to turn it over to Ms. Carrington.

MR. JONES: Thank you, sir.

MS. CARRINGTON: Thank you, Mr. Bogany.

These are the recommendations of staff for funding capacity-building awards. We actually take our housing trust fund money and program it into three different activities with capacity-building being one of those activities.

The Department issued a NOFA in March of this year, and the amount that was available for capacity-building under that NOFA was \$567,729, and we received 17 applications in response to the NOFA on the deadline of April 23, 2003, which was a physical deadline. It had to be in our office by 5 o'clock on that day, and there are 14 of the highest-scoring applications that staff is recommending for the full \$567,729.

Basically the maximum amount on each of these

on the capacity-building is about \$43,600, and what we do is award money to various non-profit organizations to look at hiring staff and salaries locate -- associated with a particular project or to do -- to begin to do the preliminary work for housing development, so it basically is a year's worth of funding.

The non-profits hire staff, and the requirements that we have put on here -- because we basically do a one-time fund to them -- we are requiring that the non-profit send their staff person to at least two trainings or two workshops that have been put on by TDHCA, and then they also must submit a final report to us which verifies what the individual has done for the organization for that year in developing their capacity to be able to develop affordable housing.

And since the money has already been funded, basically what we do is, if they don't do what they had agreed to do in the contract, is they will not be eligible for funding in a subsequent cycle, and so you do have the 14 recommendations and a brief description of what each one of the groups is going to do, and at the last part of this, you do see the three applications that the Department is not recommending.

MR. BOGANY: I have a question.

MR. JONES: Certainly.

MR. BOGANY: Based on the -- on account -- went through and read what each organization is proposing these people do, is it any accountability that these organizations are hiring people who can actually help them to do what they're trying to do, and these are not people being on staff that have no experience?

Are we too overbearing or too overreaching if we require that these people who are being hired for this have a resume that can really help these organizations versus somebody's daughter or somebody's brother-in-law that have no experience in making these projects work?

MS. CARRINGTON: Brooke, would you -- one of the ways that we want to ensure that that staff person is able to deliver is by putting in the requirement that they do attend TDHCA trainings. But I understand what you're saying, Mr. Bogany, and when they're initially hired, what kind of experience and expertise do they have?

Brooke, would you address how and if we're looking at that.

MS. BOSTON: We did ask that if they knew who they were going to try and hire that they turn in the resumes, and I think on most of these they did turn in a resume already to bear out the experience. We do require

for them -- for that first payment, it's not as soon as the contract is executed. The first payment is as soon as we've seen that they've hired the person.

We could definitely add to that review before it's disbursed. Our staff approval -- you know, they could have to turn in the backup documentation of the resume and experience at that point as well. We can definitely add that in.

MR. BOGANY: I just want to make sure that the person that's being hired can deliver what you set out in the beginning to say this is one of our criteria, and I know some of these are rural communities. I don't mind him hiring his brother-in-law to do it as long as his brother-in-law is qualified for the project.

MS. CARRINGTON: And I think that's a very good suggestion, Mr. Bogany, and we will include that in the requirements that they submit to us before we execute a contract with them.

MR. BOGANY: Okay.

MS. ANDERSON: I have a question.

MR. JONES: Yes, Ms. Anderson.

MS. ANDERSON: You might stay there. One of the proposed awardees, the Economic Justice Foundation -- and this one caught my attention because it is not a

single-time award. It is, in fact, looking like a renewal award to me.

I mean, it looks to me like they had -- they got an award last year, and they're asking for funds to continue to pay for an affordable housing project manager.

What is the staff's, sort of, policy or procedure around looking at renewal -- you know, versus one-time awards?

MS. BOSTON: It was to allow people to do it for up to two years and no longer, and so that -- we actually had that in our NOFA -- and so in this case, they were eligible, because it's only their second year.

MS. ANDERSON: Okay. And are any of these other applicants, to your knowledge, past applicants -- I mean, how much of a revolving thing do we have here where someone gets it for a year or two, then goes away for a year, and then comes back. Is that -- am I concerned about nothing there?

MS. BOSTON: I don't know.

MS. CARRINGTON: I know certainly that United Cerebral Palsy of Texas has received awards in the past.

MS. ANDERSON: Under the capacity building --

MS. CARRINGTON: Yes.

MS. BOSTON: Yes. I would definitely hedge my bets that at least half of this list, if not more, has

gotten them in the past, and it may be that it was just last year, or it may be that it goes back in history. I could definitely research it and report to you in the next meeting.

MS. ANDERSON: I just think that'd be interesting information for us to have.

MR. CONINE: Maybe in the last five years.

MS. ANDERSON: Yes, but I think --

MS. BOSTON: And just for clarification, these don't have to be voted today. I mean, if you want that information before you make a decision -- I mean --

MS. ANDERSON: I'd like -- I think that'd be great.

MR. JONES: Is there any objection to that among the Board members? I presume then we'll put it on the agenda for the next Board meeting.

MS. CARRINGTON: Long agenda.

MS. ANDERSON: Well, I mean, I want to understand if we're building capacity or if we've got a small number of grantees who understand this program, understand how to write the applications, and we've got an evergreen situation going on.

MR. JONES: I understand.

MR. BOGANY: That they're going where they

don't have to come back and ask for money, because the person's project is working, and they're making money off that project.

MR. JONES: Unless there's an objection from a Board member, then the Chair will remove this from our agenda and put it on our next agenda. Are there -- is there anybody that objects to that? Okay. That's what we'll do then.

Moving on, we will go to item five of our agenda, if you don't mind, Ms. Carrington, which is our last action item. And it's the presentation, discussion, and possible approval of terms of proposed settlement, including extension to close construction loans and to commence substantial construction in the Century Pacific versus TDHCA, et al., lawsuit.

Is there a need for further discussion, or does somebody care to make a motion?

MR. BOGANY: I move that we include the extension of close and construction loan for Century Pacific.

MR. JONES: Okay. We have a motion --

MR. CONINE: Second.

MR. JONES: Motion's been made and seconded.
Further discussion of the motion?

(No response.)

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

(A chorus of ayes.)

MR. JONES: All opposed, nay.

(No response.)

MR. JONES: Motion carries.

It is now five minutes to 12:00, Ms. Carrington, and I think the only thing remaining on our agenda, as always, is the report from the executive director, and I just want to say that we are very proud of you.

MS. CARRINGTON: Thank you, Mr. Chair. I will have us out by noon. How's that sound?

The first item is the legislative activity, memorandum number 24. These are memos that the Board has been receiving on a regular basis from our deputy general council related to pieces of legislation that directly impact TDHCA.

Unless you have any particular questions on those, I will move on to the next item, which is TDHCA's legislation. It was Senate Bill 264, which was sponsored by Senator Lucio. The bill did pass in the very last days

of the session. It does continue the Department for eight years to 2011. It makes a number of changes to the way the Department does business.

Those changes are outlined for you in, also, a memorandum from our deputy general counsel, and I would probably like a little bit of direction from the Board as to how you all would like, maybe at a future Board meeting, the specific changes to our legislation. I think -- you know, I'd like to spend some time outlining them for the Board.

If you all will remember, with Senate Bill 322, we did quite a detailed and complex matrix and chart that identified the particular section of the legislation and what the mandate was, what it was requiring us to do, and we also put a time line on that chart.

This legislation certainly is not as many pages as Senate Bill 322 was, but there are indeed some substantial changes and some substantial requirements of the Department, so if the Board has some thoughts about how you all would like to have that presented to you, I perhaps would like to have them.

MR. JONES: Excuse me. Go ahead, Ms. Anderson.

MS. ANDERSON: Go ahead.

MR. JONES: I would just like to say, I was

very impressed with the way the staff handled it last time. We'd like to congratulate you all on your dealings with Senate Bill 322 which was really a challenge, because it was so comprehensive, and I would say you've done such a good job, do it again. I mean, whatever you did last time really worked, and I hate to see us change from it.

MS. CARRINGTON: Okay.

MS. ANDERSON: I mean, I'd like to see us have, like, sort of like a roundtable working session like we've done before with the QAP, so that we can explore, you know, and maybe provide some thoughts to staff on -- as we consider how to implement these provisions.

MS. CARRINGTON: Okay.

MR. CONINE: And I would, I guess, a couple of things -- I'd like to see a couple of things. One, I'd like to see the governor sign the bill first; that would help. And secondly, I think, let's get past the tax credit meetings before we have those discussions, so maybe the August agenda or the September agenda would be worthy of those, not any time until then.

MS. CARRINGTON: Okay.

MS. ANDERSON: Right.

MS. CARRINGTON: We will do that. We've included, for your information, the full text of Senate

Bill 264, so that is in the material you have, along with, I think about a six page, seven page summary that Ann Paddock [phonetic] prepared, not only TDHCA's legislation which is Senate Bill 264, but also TSAHC's legislation which is Senate Bill 284, which was also sponsored by Senator Lucio, and then the last item on your agenda -- you know, in our last Board meeting, we had a joint meeting with the Executive Committee of the Office of Rural Community Affairs, ORCA, so the last item that we have included for you is item number three in the Executive Director's report.

There was some follow-up information that the ORCA Executive Committee had asked for, and staff did follow up with the ORCA Executive Committee. We wanted to share that information with you all.

They had asked for three particular things, and Brooke had actually gone over some of the scoring criteria at the meeting, but we hadn't -- it wasn't prepared in time to be part of your packet, so what we have for you is a chart that basically shows how rural transactions fare compared to metro transactions -- you know, where the points come in. If you're a metro transaction where you're pretty much able to get your points, and if it's in a rural area, you know how sometimes they don't point out

as well, and Mr. Conine, really that was sort of a follow-up to your comment at an earlier Board meeting, since the rural transactions seemed to score lower.

You know, are they poorer quality transactions, or are there certain elements that, just by being a rural transaction, they're not going to be eligible for those points? And I think certainly as staff took a look at that, you know, what we find is that some of the metro -- some of the rural areas aren't going for some of the points they could go for, but then there's others such as QCTs and economically distressed areas that they're just not going to be eligible for and aren't doing necessarily three- and four-bedroom units, which give extra points also, so I think from a staff perspective, we certainly believe that it's not necessarily a lower quality of housing that's being development -- developed, it's just different elements, different types of points they're eligible for --

MR. CONINE: You didn't mean to say four-bedroom units, did you?

MS. CARRINGTON: Yes, sir, I did, because we had given points for some of those --

MR. CONINE: Oh, in previous years --

MS. CARRINGTON: -- in the past, yes, sir.

MR. CONINE: -- not this year. Okay.

MS. CARRINGTON: Yes, sir, in the past.

MR. CONINE: I understand.

MS. CARRINGTON: One of the other questions the ORCA Board was very concerned about was how many owners did we have outside the state of Texas, and we found that 117 active applications, only 10 proposed owners are located outside the state of Texas, and so this was 8.5 percent of the applications.

They had also asked a question about applications in the Colonias, and we said out of 117 active applications, seven are located in a Colonia or economically distressed area and which constituted six percent of our applications. So the full report that went to the ORCA Executive Committee is included as your all's packet, and also, there's a list of every rural transaction that has received an allocation since 1987, so we wanted them to know that we were doing housing in the rural areas, and with that -- two minutes after, Mr. Jones.

MR. JONES: Thank you; I appreciate it. I would like to congratulate Ms. Carrington and her whole staff on the legislative session. You're still here. Thank you.

MS. CARRINGTON: Yes, sir, I am.

MR. JONES: Thank you very much.

MS. CARRINGTON: Thank you.

MR. JONES: Good job. Well done. Great efforts. You don't know how glad. With that, anything else? So a motion to adjourn.

MR. GONZALEZ: So move.

MR. BOGANY: Second.

MR. JONES: Motion's been made and seconded.
All in favor, say aye.

(A chorus of ayes.)

MR. JONES: We're adjourned.

C E R T I F I C A T E

MEETING OF: Texas Department of Housing and Community
Affairs Board Meeting

LOCATION: Austin, Texas

DATE: June 12, 2003

I do hereby certify that the foregoing pages, numbers 1 through 115, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

(Transcriber) 06/20/03
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