BEFORE THE

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

In the Matter of: )
) )
BOARD MEETING )
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Room 437
Waller Creek Office Building
507 Sabine
Austin, Texas

Friday,
January 21, 2000

The above-entitled matter came on for meeting, pursuant to notice, at 1:48 p.m.

BEFORE: DONALD R. BETHEL
Chairman

MEMBERS PRESENT:

DONALD R. BETHEL
MICHAEL JONES
MARGIE BINGHAM
C. KENT CONINE
FLORITA BELL GRIFFIN
LYDIA SAENZ
ROBERT BREWER
DAISY STINER
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MR. BETHEL: We'll start this meeting. This is a meeting of the Texas Department of Housing and Community Affairs board meeting, January 21, 1999 [sic]. I'll call the roll. Don Bethel, here.

Margie Bingham?

MS. BINGHAM: Here.

MR. BETHEL: Robert Brewer?

MR. BREWER: Here.

MR. BETHEL: Kent Conine?

MR. CONINE: Here.

MR. BETHEL: James Daross? He's absent.

Dr. Florita Griffin?

DR. GRIFFIN: Here.

MR. BETHEL: Michael Jones?

MR. JONES: Here.

MR. BETHEL: Lydia Saenz?

MS. SAENZ: Here.

MR. BETHEL: Marsha Williams, she is absent.

There are seven present. Two are absent. Okay.

All right. At this time we usually take public comment, but because the public comment -- all the public comment has to do with the QAP, and we've got a short executive session we need to do and the staff is still working on some amendments to the QAP, we're going to go
ahead and do our executive session at the first of the meeting, then we'll meet back in regular session and take the public comment and proceed with the agenda items as they are presented, so we're taking that one item out of order on the agenda.

So at this time we will go into executive session. Under litigation and anticipated litigation, potential or threatened, under Section 551.071 and 551.103, Texas Government Code litigation section, personnel matters regarding duties and responsibilities in relationship to the budget under Section 551.074 of the Texas Government Code. Also consultation with the attorney pursuant to Section 551.071(2), Texas Government Code.

We will go into executive session. There will not be any action taken in the executive session. And we will meet back in here in open session shortly. Thank you.

(Whereupon, a short recess was taken.)

MR. BETHEL: We will reconvene back into open session. We finished the executive session at 2:43 p.m. and no action was taken. I will make this statement that TDHCA is not in violation of the Tax Code or IRS regulations or any other of the laws that prohibit discrimination against Section 8 applicants.
At this time, we're going to listen to public comment, and first let me -- we've got some people in the audience and let me recognize them.

Representative Harryette Ehrhardt, Johnnie Morales with Speaker Laney's office. We've got Michael Grimes with the Senator Chris Harris's office; Laura Reed with the Office of Senator Frank Madla; Donna Chatham of House Urban Affairs Committee; Tim Thetford with the office of Representative Ehrhardt; Nancy Walker with State Representative Elliot Naishat; Cesar Rodriguez with State Representative Manny Najera; Jim Navarro, office of State Representative Joe Deshotel; Becky Armendariz with the Governor's Policy Office; Daniel Estrada with the LBB.

And then Sunset Review Commission Ginny McKay, John Hawkins, Jeremy Mazur, Lisa Mogil, and Michelle Furmanski. And so we're all glad to have all of you here.

We're going to have our witness affirmation, and we will -- try to limit your comments to three minutes. I've got six affirmation forms. If you'd come forward and state your name, as all proceedings of this meeting are recorded for public record.

My first one is Representative Harryette Ehrhardt.

REPRESENTATIVE EHRHARDT: Thank you.

Good afternoon. I'm Harryette Ehrhardt. I'm
the state representative from Dallas.

As you look at the department's recommendations for change in the QAP of the Low Income Housing Tax Credit Program, I hope that you will admit to yourselves that they do not constitute any real reform of this troubled program. You have had the opportunity to adopt good suggestions from a number of sources that are dedicated to providing affordable housing to Texas's low income working families.

Among them, executives from community-based non-profit housing organizations, experts from the for-profit affordable housing industry, advocates for low-income families, the Association of Community Development Corporations, a hard-working and concerned chair of the House Committee on Urban Affairs, and a legislator who has devoted many hours to the support and improvement of affordable housing programs.

If you adopt the department's recommendation without drastic changes, changes which will accommodate the suggestions of those who have testified before you during the hearing process, you will not have made any significant improvement in the qualified allocation plan or the use of the funds from the Low Income Housing Tax Credit Program, and I will be very disappointed.

A copy of that --
MR. BETHEL: Thank you, Representative Ehrhardt.

Dan Markson?

MR. MARKSON: Thank you. My name is Dan Markson. It's a pleasure to be here today.

I'm speaking to you as the chairman of the housing credit group of the Multifamily Council of National Homebuilders. We're an organization that consists of builders, developers, and national lenders and investors in this program.

I understand that one of the comments this morning -- and my heart's beating fast from hearing it -- started off by saying I got one -- or he got one and I didn't, and if that's what it's all about here, we should all go home.

I'll tell you what I think it's all about, and I'm going to read to you from the October 7 letter that was written to you by the president of the National Homebuilders. I'm going to read to you two paragraphs. You have it in the record.

"The Texas QAP is hands down the very best in the nation in producing affordable housing for its citizens. In 1998 Texas DHCA allocated $27,750,038 in credits and produced 5,273 LIHTC housing units serving people with 60 percent or less of median area income. In
addition, DHCA also produced an additional 747 units serving people with incomes of 60 to 100 percent of AMI.

"Texas outproduced California, which had 43,688,000 in credits to allocate and produced 5,757 units and leveraged only 14 additional units. Texas, with 35 percent fewer credits, produced 5 percent more units than California. Indeed, Texas produced the most housing of any state.

"The LIHTC cost per unit in Texas is even more astonishing. Here are the numbers. Every LIHTC unit produced by the Texas DHCA costs only 5,262 credits per unit. By comparison, California and Florida used 7,588 and 6,089 of federal credits per unit. And to top even that, if you add the 747 housing units DHCA produced, the amount of credit per unit falls to an incredible $4,609 per unit.

In 1997, we went at Homebuilders to create a best practice statement. It was a combination of analysis of all the QAPs in the country to figure out a -- to create a statement that we could recommend to NCSHA, and we want to applaud your QAP for being the most closely resembling that best practices statement in the country. I want to point to just two areas.

One is the diversity of income that your QAP encourages. It has been proven in the past that
concentrations of low income in one area is not successful. Your 60-40 policy encourages that. And also, we want to thank you for sticking by the level playing field, which we were successful this year in having included in federal legislation under Chairman Rick Lazio and Congresswoman Nancy Johnson's bills.

And I thank you for your time.

MR. BETHEL: Thank you.

DR. GRIFFIN: Mr. Bethel?

MR. BETHEL: Yes.

DR. GRIFFIN: May I address one point Mr. Markson just made?

MR. BETHEL: Yes.

DR. GRIFFIN: Mr. Markson, what was your first -- the first statement you made, what was it?

MR. MARKSON: The first statement I made was I understood that this morning someone started off their testimony by saying, Why, yes. He got one and we didn't.

DR. GRIFFIN: Right. And I just want to --

MR. MARKSON: And I said and that's a shame --

DR. GRIFFIN: Right. And I want to thank you and say that it is a shame, and not only is it a shame, but it's also a shame when those same people who would say that make political contributions to state senators and state representatives, and they can be shown to be doing
it and then those people come up to represent their
client. So I really appreciate you being fair in what
you're saying.

MR. MARKSON: Thank you.

DR. GRIFFIN: Thank you for your time.

MR. BETHEL: Rey Ocañas.

MR. OCAÑAS: Good afternoon, Mr. Chairman,
board members. My name is Rey Ocañas. I'm glad to be
here again today. I'm the executive director of the Texas
Association of CDCs and represent the many non-profits
that work in housing and economic development throughout
the state.

I understand that you have a copy of what I
presented to the committee this morning along with some
proposed revisions that I'm encouraging you to adopt
today. And I'll go ahead and read some of my remarks just
so that they'll go into the record of the board meeting as
well.

I was personally part of the multiple efforts
to provide public comment and input to the department
regarding the Tax Credit Program and this 2000 QAP. I am
disappointed at the department's disregard for the hard
work many of us did in giving true workable improvements
to the QAP, and I'm asking you to capture this opportunity
you have today to make improvements.
I don't disagree with Mr. Markson. I sit on the board with him for the Affiliation of Affordable Housing Providers. Hands down, Texas produces a great number of units and overall quality production. I'm not going to argue at all with that. I think that's a very true statement and I definitely applaud the department for doing a great job in making sure we have high production. This is more about fairness, good administration of the program, making sure that there is no appearance of impropriety, making sure that ethics are followed, making sure that there is fair and equal access for all applicants. That's what we're talking about today. There's no disputing that this is a great production program. This is why it's so important. It is the single largest production program we have in the state.

I'm asking you to take a look at this $200 million plus a year program and ask where in the QAP is a substance in terms of preservation? I understand we have a preservation policy that the department will be working on. I'm anxious to see that, provide help, input, my humble opinion, the opinion of our members, ask you where is the substance in terms of compliance? I present the revision that you have before you today in terms of compliance to define materially out of compliance that includes not just health and safety standard violations.
but also the percentage of occupants that are low income exceeding gross rent limits, as well as violations of LURA.

I was not talking about IRS regulations, which is how I understand the staff may be addressing it now, in terms of deals that are on-line. That's not what I'm talking about. I'm talking about applicants. During the application process, how fair are we being in terms of waiving -- disregarding compliance issues, when it comes to applicants that have past compliance problems with properties that are tax credit properties?

That's exactly what this recommendation is about. It is not about deals that are on-line. I'm not going to get into that because I think the QAP does fairly address that. There are remediation issues that can be done and notification is appropriate. I'm talking about during the application process.

Second is the issue of CHDO applicants. Level the playing field for us. There's a 10 percent non-profit set-aside. We ask for an increase of 20 percent. It's probably not going to happen. It's probably not going to happen definitely this year, but if that's not going to happen let's give bonus points to CHDOs. These are mission-based non-profits. They have low-income tenants on their boards. They don't have cash to go out and apply
every time that there's a cycle to make sure they have a chance of getting credits. That's just not going to happen.

So don't hinder them from doing this; incent them to do this. Give them the five bonus points.

The third revision you have before you has to do with fair distribution of credits, capping the maximum that one applicant can get in a year to 1.2 million. There have been proposals about capping the amount per credit. With construction costs rising, I don't know how that would be best addressed. Other QAPs do that, but at least in terms of maximum amount given to one applicant or team that would be applying, let's look at a cap.

The last thing I want to suggest to you is this is the biggest program. It really is. So let's consider addressing -- and the very first page of the responses and the very first page of the QAP itself -- the ad hoc committee -- make your ad hoc committee a committee of the whole. I think in terms of the program it will be a great way for all of you to make sure the administration of the program is what you feel comfortable with.

It's a way to make sure that all of you in the different areas and representing different kinds of groups have your issues addressed at the committee level and not just during the board meeting, and I think it would really
give integrity of the process, whether or not those of us that are here think we see the program fairly administered or not. If all of you are voting at the committee level and all of you are looking at this hard every single time the issues come up, we cannot hold you any more accountable than to have every single one of you on that committee.

I don't know -- that can be written into the QAP. The department's response was it's a chairman's issue. I don't know which is best, but if it needs to be written into the QAP, write it into the QAP. If it's a chairman's issue, Mr. Chairman, we'll support you if you do that.

That's the bulk of my comments. Do you have any questions?

MR. BETHEL: Any questions?

(No response.)

MR. BETHEL: Thank you, sir.

MR. OCAÑAS: Thank you.

MR. BETHEL: Michael Dunn?

MR. DUNN: Thank you very much. My apologies to the Tax Credit Committee. Some of this might sound familiar.

My name is Mike Dunn. I'm from the Texas Association of CDCs with Reymundo Ocañas.
For me it is all about economy, the economy of Texas, 690 some-odd billion dollars gross state product being put in jeopardy because our work force doesn't have a place to live. The majority -- the best economic forecasts we have are saying that we're looking at folks -- the majority of Texans not earning more than $15,000 30 years down the line.

There's going to be a big need for housing and we can start stockpiling it by preservation, by putting it in the hands of people whose mission is affordable housing, keeping in affordable, and providing that service to the state. In that sense the non-profits and folks -- other people who have in their mission keeping affordable housing affordable are this department's best friends and their most natural partners, which is they reason why a lot of folks will be approaching you today who are upset that perhaps they're being ignored, and I am one of those.

There have been a lot of groups come together over this issue; a lot of collaboration on different subjects I understand. I'm not going to sit up here and pretend that I know more than anybody else about the Tax Credit Program. I got my feet wet on this issue basically in August. It ain't rocket science; it's just hard to read. It will put you to sleep.

There is things that we can do to preserve
housing. There are steps that this department can take that we certainly would support. As far as the mandatory -- the compliance issue that was alluded to earlier, as I understand it we have no problem with the IRS portion of that if they're going to be doing something with tax credits because people are out of compliance.

That's their job and we applaud them for it, but we think the state should be allowed to look at the spectrum of non-compliance, quantify these things, put it up on the table and say -- there's going to be mistakes made everywhere and we need to recognize that, but at least see the spectrum of it. And if there's a statistical outlyer that we need to basically say, Why is that happening only with this particular development or developer, that's something the state ought to welcome. It's called -- to borrow a phrase from Senator Gramm, Who's afraid of the sunshine?

There are things that we can do -- the Tax Credit Program is huge. No matter where it goes in the state, it's going to wind up being the largest -- if this program were sunsetted, the department were sunsetted, this line item veto would go to whatever committee, whatever department that's going -- that would be overseeing it, and it would still be the largest dispersal basically the state is responsible for.
So no matter where it goes, it's a huge housing program. So I desperately want the Texas Department of Housing and Community Affairs to exist. We need it. We'd love to see a committee of the whole oversee the Tax Credit Program; that is, it is a huge issue and one which we feel the entire committee should address.

Thank you very much for your patience with me.

MR. BETHEL: Thank you.

Mr. Walter Moreau.

MR. MOREAU: Hello. My name is Walter Moreau, the director of Central Texas Mutual Housing, and I very much appreciate the opportunity to speak today.

And I saved my comments from the committee meeting because I really do feel this is important. The QAP is the most important thing the full board takes up every year. I urge you to really take a huge amount of time to go through the public comments that have been put together. This documents governs, as Mike said, $200 million worth of funding for affordable housing.

I refuse to give up hope that a majority of this board wants to make real changes to the rules. You have here collected a lot of great suggestions from public comment. The staff has decided not to take any of these changes of these public comments seriously. These are all minor comments -- minor little tweaking and changing and
wording.

The board sets the rules, not staff. Please do not delegate your responsibility. Take the whole afternoon, whatever is left of it, however long it takes, go over the public comments, maybe take them one by one, meet next week again if you have to, if you can't settle it, discuss them, debate them, question them. It's critical. Work together, because together I think we'll come up with the best possible set of rules. It's a big job. They need to be clear and thoughtful governing policies so that you can hold staff accountable.

Specifically, I feel it's critical that you reduce the amount of discretion that allows the staff to basically justify funding whoever they want or turning down whoever they want and having a broad array of reasons to justify that decision. You can't hold them accountable after the fact for that.

I ask you to make the program more efficient. It's very lucrative, that's why it's popular. It can be made more efficient so that more families can be served each year.

By the way, it's much less expensive to build housing in Texas than California and Florida, so it ought to be a more productive program here than the other states.
Make changes to the QAP that promote better quality housing in the locations of the state where the needs are the greatest. That's a good policy decision that the board needs to adopt. Please do not send the governor a document to sign with minor little changes that do not present future favoritism in the program. If you pass minor changes, the staff will probably fund a similar set of developers that were successful.

Projects, in my opinion, will not be chosen with regard to those that are the highest merit, the best locations, in areas where they are addressing the greatest housing need, or that the credits are used as efficiently as possible.

Those are real issues that don't affect unsuccessful developers that don't win. Those are real issues that affect the working families of Texas that are served by the program.

Thank you very much for struggling with the QAP. It's not an easy issue to deal with, but I invite you to really go to work at it. Thank you.

MR. BETHEL: Thank you.

Mr. Jonas Schwartz.

MR. SCHWARTZ: Good afternoon. I'm Jonas Schwartz and I serve as the policy analyst for United Cerebral Palsy of Texas, and I too appreciate the
opportunity to appear before you today. My comments also are in regards to the Qualified Allocation Plan and the proposed rules that you have before you.

We are disappointed in the department's response that Section 504 standards be used as a threshold for all tax credit projects. We would concur with the department's response that this issue has been discussed by department staff with advocacy groups but do not agree that what the department adopted in 1999 was adequate. We hope that the board will take another look at this to include the needs of people with disabilities.

Section 504 is in the plan, okay, but it's in there as an incentive for a developer to get extra points if they include accessibility requirements in their plans for the housing that they build. We have such a shortage of affordable accessible housing in this state it is not appropriate to tie accessibility requirements to a point system. It can be misused and it can be ignored. Accessibility requirements for people with disabilities should be a standard, not based on an incentive system.

We are requesting that the board revise the rules to better address the needs of people with disabilities. If no revisions are adopted by the board, this will be an issue for discussion with the Sunset Commission during this department's sunset review.
Thank you very much.

MR. BETHEL: Jonas, how do you suggest -- you said you suggest revising the section on 504 rules.

MR. SCHWARTZ: Well, right now, the way it reads in the plan, a developer who proposes to put in accessible units into what they're building -- they get extra points for that. I'm saying that those accessible units should not be based on extra points that a developer should get, but that that should be standard and the developer should put those accessible units in all of their properties, whether or not they get extra points.

MR. BETHEL: Are you saying all the units be accessible?

MR. SCHWARTZ: No. Not all the units. But there are certain percentages that Section 504 says -- for example, 5 percent or a minimum of at least one unit are accessible and useable, not merely adaptable, by people with disabilities. That those percentages that are laid out in Section 504 be standard, not be an opportunity for a developer to receive extra points for their projects.

MR. BETHEL: Okay.

MR. SCHWARTZ: I've got in my testimony the standards that you're asking about, and the percentages are in the testimony.

MR. BETHEL: Okay. Did you want to hand that
MR. SCHWARTZ: Yes.

MR. BETHEL: Thank you very much.

All right. Is there any more -- I don't have any more witness affirmation forms.

(No response.)

MR. BETHEL: We'll close the public comment and go to the agenda items.

First item on the agenda is the approval of the minutes of the previous meeting, the board meeting of December 10, 1999. Are there any additions or corrections to these minutes?

(No response.)

MR. BETHEL: If not, I'll entertain a motion to approve.

MR. CONINE: Move for approval.

MR. JONES: Second.

MR. BETHEL: I have a motion by Mr. Conine seconded by Mr. Jones that we approve the minutes of the board meeting of December 10, 1999 as printed. All those in favor, say aye.

(A chorus of ayes.)

MR. BETHEL: Opposed, nay.

(No response.)

MR. BETHEL: Abstaining?
DR. GRIFFIN: I abstain.

MR. BETHEL: One abstention -- we've got two abstentions, Ms. Saenz and Dr. Griffin.

The second item on the agenda is the Finance Committee report and the first one of those is the resolution for proposed issuance of qualified 501(c)(3) multifamily housing mortgage revenue bonds. Mr. Brent --

MS. BINGHAM: I move for approval.

MR. BETHEL: Okay. We have a motion to approve.

MR. BREWER: I second.

MR. BETHEL: Seconded from Mr. Brewer. Motion by Mrs. Bingham. Is there any discussion?

MR. JONES: I think it would be -- I'll just raise this to the board's attention. Brent made a report and brought some issues to the light of the Finance Committee that I think the full board might need to hear --

MR. BREWER: We were all here.

MR. JONES: Were they all there? Okay. Well, I don't want to waste anybody's time.

MS. BINGHAM: They were all here.

MR. JONES: Okay. As long as everybody's heard it. I just think it was an important issue, and if everybody's knowledgeable about it that's --
MS. BINGHAM: Mr. Conine, were you here?

MR. CONINE: Yes.

MS. BINGHAM: Everybody was here. I don't know where Mr. Bethel was running around. Maybe he --

MR. BETHEL: I was chairing that committee.

Okay. No more discussion? If -- all those in favor of the motion, say aye.

(A chorus of ayes.)

MR. BETHEL: Opposed, say nay.

(No response.)

MR. BETHEL: Motion carried.

Second item on the agenda was the inducement resolution for multifamily mortgage revenue bonds in an amount not to exceed $6 million for acquisition, rehabilitation, and permanent financing by Hope Action Care. I might add that on your motion that you did -- we approved on the other one, we passed a resolution and that resolution was 00-02 for the record.

This is another 501(c)(3) bond issue for acquisition rehabilitation. The Finance Committee did recommend approval of this.

MS. BINGHAM: I move for approval, Mr. Chairman.

MR. JONES: I second the motion.

MR. BETHEL: We have a motion by Mrs. Bingham
seconded by Mr. Jones that we approve this resolution
002003 -- 00.03?

Is there any other discussion?
(No response.)

MR. BETHEL: All those in favor, say aye.
(A chorus of ayes.)

MR. BETHEL: Opposed, nay.
(No response.)

MR. BETHEL: Any abstaining?
(No response.)

MR. BETHEL: Motion carried.

Third item on the Finance Committee agenda was
-- we recommended approval of transferring $500,000 of the
multifamily bond origination fees to the Housing Trust
Fund. There was no opposition to that.

MR. BREWER: I make a motion for approval of
the transfer of the multifamily bond origination fees of
$500,000 to the Housing Trust Fund.

MS. SAENZ: I second that.

MR. BETHEL: We have a motion by Mr. Brewer
seconded by Ms. Saenz that we approve the transfer of
$500,000 to the Housing Trust Fund. Is there any other
discussion?
(No response.)

MR. BETHEL: All those in favor, say aye.
(A chorus of ayes.)

MR. BETHEL: Opposed, nay.

(No response.)

MR. BETHEL: Motion carried. That does make $1,500,000 that the agency has given to the Housing Trust Fund in the last two years, so we are -- that's more funds than it's had in a while.

The first quarter investment report was presented to the Finance Committee and they accepted the report. Do the other board members want to hear the report?

MR. CONINE: I heard it.

MR. BETHEL: Everybody heard it this morning? Well, it's not an action item. It's just a report item and we did accept that first quarter investment report. That was all that the Finance Committee had.

The third item on the agenda is the proposed final draft of the 2000 Qualified Allocation Plan for the Low Income Housing Tax Credit Program, and we're still working on some revisions right --

MS. BINGHAM: Let me go over --

MR. BETHEL: Ms. Bingham, do you want to go over what's --

MS. BINGHAM: Let me go over those --

MR. BETHEL: Okay.
MS. BINGHAM: -- just on the bond program. I think the full board was in the audience somewhere and fully engaged this morning, I believe, so you did hear some of the discussion.

The committee went -- we had our copies in advance so we had read the draft copy. There were several changes that were recommended. The Bond Review Board staff wanted to reduce the number of days from 60 days, and I think that was a compromise to 45 days for the submission of the bond projects to the -- all the documentation to the department prior to those items being submitted to the committee or the board for approval.

We made -- also in the bond round, we made one change -- two changes as it relates to the bond program in terms of for-profit versus non-profit on the supportive services. This change has been added because in many instances the applicants had not provided for supportive services for the tenants and the board has added that over and over when applications come before the board for approval, so the staff just simply added it as a requirement under the QAP.

The change we made this morning was to provide for the supportive services to be provided, but not require what kind of organization provide it, whether it be a for-profit or non-profit. We just said you had to be
qualified to provide the services. And they had a five-year period that we said as long as you are qualified, it doesn't matter whether you -- for example, if you're an elderly project and you're a skilled nurse, you don't have to have been a skilled nurse for five years. You could -- the staff just look at your qualifications and if you are qualified, you will be able to provide the services.

I think the most controversial item that we had and one that has been the subject of public comment and one that Ms. Saenz had particular concerns about was the compliance issue, and the committee requested that the staff rewrite the compliance issue to better comply with the spirit and wishes of the committee. So do we have that rewritten?

MR. NJIE: Yes, Madame Chair, we do.

Just for the record, my name is Cherno Njie, manager of the Tax Credit Program. Starting this presentation there is a memo prepared to cover some of the issues that were outlined earlier.

With respect to the issue of non-compliance, the proposal that was presented by Rey is not workable for the simple reason that it lumps certain kinds of non-compliance all together. There is no qualitative distinction between major health and safety violations and non-compliance issues that can be triggered by minor
administrative error regarding one unit.

So it talks about defining non-compliance as failure to maintain the percent of low-income occupancy, gross and exceed limits, violation of LURA agreements.

Again, these are all instances of non-compliance that can be triggered by minor administrative errors. It does not fall in severity in our thinking in the same line as major violations of health and safety.

Because of that, we're ordering a revision to take that into account by stipulating that material out of compliance as defined for purposes of 49.4(f) means as to such member -- meaning a member of a development team -- major violations of health safety standards as documented by the local administrative authority or violations of LURA agreement. And we will have to -- violations of the LURA agreement include various kinds of violations, including the ones that Rey had mentioned earlier.

And my proposal is to basically say that the staff recommendation stands as major violations of health and safety standards as documented by the local municipal authority, and just leave it at that. Other violations, we believe, are already handled in the QAP in various sections and it involves getting into a remediation plan for violations that are less severe than major health and safety violations.
MS. BINGHAM: But have you addressed the issue though that this can be -- this can trigger the non-award of a tax credit?

MR. NJIE: -- Do we believe --

MS. BINGHAM: The violation -- you added a violation of the LURA agreement?

MR. NJIE: No. I'm saying that only -- in other words, only Item 1, major violations of health-safety standards be defined as non-compliance. The other elements are currently handled in the current QAP.

MS. STINER: Cherno, have the one where we're talking about the outstanding violation.

MS. BINGHAM: We got that on the B. That would include your tenant --

MR. NJIE: All right. Strike B out.

MS. BINGHAM: No. We don't want to strike B out. That's what we want to add. We want B to stay in, because B would include --

MR. NJIE: Well, B would include other minor violations, like I've said. We do not rise to the same level as major health and safety violations.

MS. BINGHAM: But we can have the discretion --

MR. NJIE: That's correct.

MS. BINGHAM: -- to -- what we don't want to leave it -- where we have no discretion to turn you down
if you have -- you want us to have a discretion that even
if they're minor and an applicant is applying for tax
credits, if he's got some minor violations over and over
then we want the ability to not approve his tax credit
application.

    MS. SAENZ:  That's right.

    MS. BINGHAM:  That's where we're trying to go.

    MR. CONINE:  I'd like to get educated on the --

    MS. STINER:  Mr. Chair --

    MR. CONINE:  -- appeal process of the
violations, because I can see how somebody leaving a form
blank somewhere could be a violation, but if we understood
the appeal process and how maybe our compliance department
deals with that better than I do today, this very minute,
then I can make a decision on that.

    MS. BINGHAM:  What's your concern, Mr. Conine?
I missed it.

    MR. CONINE:  Well, I'm sure developers, if
they're notified of a non-compliance in certain issues,
have either a cure period, which is what most everything
has or an appeal process. Maybe they don't agree with --

    MS. BINGHAM:  Okay.

    MR. CONINE:  And I just want to understand that
process a little more before we decide on what gets a
chance to shoot and what doesn't.
MS. BINGHAM: Okay. I see your concern.

MR. BETHEL: Do you want Cherno --

MS. STINER: No, sir. Cherno will -- where is Suzanne Phillips? Suzanne? And I think, Cherno, what we were saying under B is outstanding violations of LURA. Right? Suzanne will talk about what that process is and then what those people who choose not to enter into the plan she's about to describe will be outstanding LURA violations.

Suzanne, why don't you respond to Mr. Conine, and then I'll try to make my statement after you finish?

MS. PHILLIPS: Okay. I'm not sure that I understand your question completely.

MR. BETHEL: State your name.

MS. PHILLIPS: Oh. Suzanne Phillips, director of compliance.

The process of our doing compliance for a tax credit project is that we go on-site, we identify the findings, we write a letter to the owner listing those findings, and give them up to 90 days to cure them.

MR. CONINE: Frequency once a year, once every two years?

MS. PHILLIPS: Once every -- we go once every three years.

MR. CONINE: Once every three years?
MS. PHILLIPS: Once ever three years. There's also some desk reviews that we do of various reports that have to be submitted. There's an annual report that has to be submitted by each owner that has a project in service, but the lion's share of the work that we do with tax credits is on-site.

So after that 90-day compliance period, we issue a report of non-compliance to the IRS, and we list each violation by building. So if, for instance, an owner has 20 buildings and we find violations in five of those buildings, we would have to submit five 8823s to the IRS. And within that 8823 there's up to 12 types of violation that could be reported on a single building.

MR. CONINE: Okay.

MS. PHILLIPS: An owner can fix one of those violations -- one of five violations and we would not report -- we would report that one violation as corrected, but he may still have four more outstanding.

MR. CONINE: Okay.

MS. PHILLIPS: The date that we would show as that 8823 being corrected would the date of the last correction, so it would not be the -- we wouldn't show it being -- we wouldn't show the non-compliance as being corrected until all five items have been corrected.

You asked if there's an appeal process. The
owner submits the responses to us during the 90-day period and staff basically reviews their response to determine the adequacy of that response. And then to the extent that there's back and forth -- but generally there's not back and forth on that.

MR. CONINE: And there's no higher authority to go to?

MS. PHILLIPS: The higher authority would be the IRS.

MR. CONINE: Okay.

MS. PHILLIPS: Quite often, an owner will say that this -- will think that their actions are sufficient. We always submit the owner's letters with the 8823s so the IRS can overrule our finding, basically, and determine that that cure was sufficient.

MR. CONINE: If you were to take a wild guess on how many post 90-day violations we've got right now, is it huge, small?

MS. PHILLIPS: I couldn't even guess. We do have a data base that we've recently updated to make sure that we have all the corrections in that we have in our files, and that we would be able to report by project whether or not we have reported the non-compliances corrected. As far as a number goes, I really couldn't tell you. We've got 100,000 buildings in Texas that --
MR. CONINE: And in this tax credit allocation process, do you ever get a chance through the processes we currently have set up to address compliance issues with the application?

MS. PHILLIPS: Yes, sir. The allocation staff provides us a list of the development team members and we run those names through a data base and those names are basically tagged to a property. And we'll print out a listing of the non-compliance issues related to that property.

Up until this past month, our data base did not always have a correction date in them --

MR. CONINE: Uh-huh.

MS. PHILLIPS: -- as of today, it does.

MR. CONINE: Okay.

MS. PHILLIPS: So we basically have gone through every single file that we have to make sure that we're as current on the information as we can have, and then that information is turned over to the underwriting and allocation staff, who basically review the types of non-compliance and what those issues are.

MR. CONINE: Okay. Thank you.

MR. BETHEL: All right. Now then -- thanks.

Now then, Daisy was going to comment on something.

MS. STINER: I think if I stop right here and
let the member -- you were pursuing a thought on this --
I'll just defer to Mr. Conine.

MR. CONINE: Well, I guess the thought that
jumps out at me is we're only running through them once
every three years and they have 90 days to respond to
whatever the allegations might be, then I think we should
certainly be able to strengthen the kick out clause in the
QAP from what it is today. That's just my first general
thought, because every three years if -- let's say we have
developers coming in on a repetitive basis, they've gotten
a couple of years running where they may have compliance
issues out there and have been awarded tax credit projects
on new projects, yet we just don't know about it because
we haven't gotten to them it.

But if we get to them once every three years
and we find compliance issues the first time and maybe
even the second three-year period -- the program's now old
enough to have a second and third review on some of these
folks -- and they still are maintaining compliance issue
problems and not resolving them in the 90-day period, then
it's incumbent upon me -- I think we ought to -- enough's
enough.

So I would just throw out to the board -- I'll
think about some language in a minute, but it's just my
thoughts.
MS. BINGHAM: You don't have much time.

So basically what we are saying, Mr. Njie, is that the language that's there now is not good enough. We need -- we have material out of compliance restricted to major health and safety items, and we want that expanded.

MR. NJIE: If you include the second element, the violations of the LURA agreement --

MS. BINGHAM: Then that would take them in?

MR. NJIE: That would take them in but you also have to look at the second page, where -- it's part of the overall review because unless you make some distinctions depending on the level of violation --

MS. BINGHAM: I concur with that. It's just that we don't want to say that we can't even look at the LURA agreement issue. Now, we can look at them and determine whether they're material or immaterial, but we do want to look at them. So if you leave B in, we'll be okay.

MR. CONINE: And I guess what I'm suggesting is if they have -- I think we ought to add in here the 90-day period here. I don't want to catch somebody in that 90-day period because it's unfair to kick them out for material compliance, I guess.

MS. STINER: Mr. Chair --

MS. BINGHAM: So in other words, if we're
evaluating credits in 30 days and they haven't had the 90
days -- that's what you're saying?

MR. CONINE: I'm saying you don't kick them
out; you leave them in.

MS. BINGHAM: Okay.

MR. CONINE: They still have some time to cure
it, and I don't think we should kick them out. But if
it's a year old, Madame Chairman -- a year after the 90-
day period and they still haven't cured --

MS. BINGHAM: Right.

MR. CONINE: -- they ought to be kicked out.

MS. BINGHAM: So, Cherno, if we got Number B --
we got B -- and we talk about material compliance that has
not been resolved within the 90-day time frame that was
given --

MR. NJIE: We can just say outstanding
violations of the LURA agreement.

MS. BINGHAM: Okay. That's what Daisy had put
in originally, outstanding --

MR. CONINE: I want to make sure the folks know
the 90 days. I don't want to catch anybody in that chance
to cure period.

MS. BINGHAM: Mr. Njie, can we give you
instructions? We've got outstanding violations of the
LURA agreement that have not been corrected within the
normal 90-day period or something like that?

    MR. NJIE: We would amend that LURA agreement -

    MS. PHILLIPS: Not all of the tax credit
projects have LURAs. The early years, the projects didn't
have a -- so the '97, '98, and '99 --

    MR. BETHEL: When did it start again? I'm
sorry.

    MS. PHILLIPS: '91.

    MR. NJIE: We would amend it by saying
outstanding violations of LURA agreement or program rules.

    MR. JONES: Or program rules?

    MR. NJIE: Yes. That would cover the ones for
which LURA was not part.

    MR. BETHEL: So is that B?

    MR. NJIE: That would be B. Yes.

    MR. JONES: Then it's the paragraph that
follows on the next page -- what about it? Does that stay
in?

    MR. NJIE: Yes. That will allow us to make a
distinction between the kinds of non-compliance issues.

    MS. STINER: Right.

    MR. BETHEL: Okay.

    MR. CONINE: Could I ask a quick question while
I've got a time here, Suzanne? Is maintaining less than
the percentage of the low-income occupancy a violation of
the LURA agreement?

MS. PHILLIPS: Yes, sir.

MR. CONINE: Is gross rents exceeding the limit
a violation of the LURA agreement?

MS. PHILLIPS: Yes, sir.

MR. JONES: I think I'm missing something,
because when I read the second paragraph, it doesn't do
what Mr. -- on the next page what I think Mr. Hance
[phonetic] was suggesting, because if I understood Mr.
Hance's comment, it was that we were --

MS. BINGHAM: Mr. who?

MR. JONES: -- going to give them a 90-day
period in which to cure it and if they didn't cure it
within the 90-day period, it would be materially out of
compliance to the extent that they couldn't be considered
in this year's rounds of tax credit applications.

Now, I read this as not that way. Instead this
just says the department has the discretion to work
something out. Am I missing something?

MR. BETHEL: That's why you're a lawyer.

MR. NJIE: Paragraph -- your reading is
correct, and the flexibility in having that is to allow
you to look at the level or the type of violation. As
I've mentioned, a violation involving a unit -- one unit
in a 200-unit property that has rent exceeding the limits would be classified as materially out of compliance.

MR. CONINE: But with all deference, if he's got 90 days to fix it and he hasn't fixed it, I don't buy that.

MR. JONES: And that would be my question. It seems to me -- I'm not trying to exclude somebody that's a minor deal, but don't you cure the minor deals in 90 days and shouldn't they be in compliance?

MR. NJIE: Well, let's talk about the reporting, whether -- what notification process we had in place --

MS. PHILLIPS: To answer the question about the one unit, there may be situations where -- let's say for instance an owner moved someone in and didn't collect all the income information that he should have. That lease might -- well, if the owner didn't protect himself and his lease, he may have to wait until that tenant moves out. It just depends on the level of -- how material --

MR. CONINE: But you know, they get into this program knowing it's not an easy deal. It's a paper-shuffling deal, number one.

MS. PHILLIPS: Right.

MR. CONINE: We want active participants in the management of the projects. We don't want absentee
owners. We don't want to blame it on a management company for not doing this thing, and if they do and they try to come back to the well, maybe they will pay more attention to their existing stock. I just think it's a good thing -- with the demand we've got it's a good thing to -- and I know I'm harping on some of my brethren out there -- but I think it's a good thing to make sure it's -- given the 90 days and given the fact that there may be somebody in a 12-month lease that they can't do anything about, there are other ways to satisfy that individual, and I bet they can be creative enough, given the fact they may not be able to take that next project through.

MS. PHILLIPS: I think what I was just trying to say and probably didn't say it very well is that there probably are some processes that we could use internally administratively to separate the hang nails from the real thing.

MR. CONINE: Right.

MS. BINGHAM: Well, that's up to you, but we want to --

MS. PHILLIPS: Right.

MS. BINGHAM: -- we are trying to get to the fact that we are not limiting our concerns on compliance to just violations of health and safety.

Mr. Jones, have you read that second paragraph?
Do we need to make any other -- to legally get where we need to be?

MR. JONES: Well, I do, Madame Chairman. It's one of these things that's pretty hard to do so quickly, since we've never seen this paragraph before this moment, but -- give me a chance. We'll work on it.

MS. BINGHAM: Thank you. While you're working on that, do we have any other comments or questions?

MR. BETHEL: What about Mr. Schwartz's comments on the disability unit --

MS. SAENZ: I think we should address what Jonas Schwartz just told us on tying that in to bonus points.

MS. BINGHAM: What are we talking about now? Which point are we talking about?

MR. BETHEL: Section 504.

DR. GRIFFIN: When we discussed that last year, what was the outcome of that?

MS. BINGHAM: Cherno, do you want to go over the 504 situation?

MR. BETHEL: Cherno --

MS. BINGHAM: Cherno, Mr. Jones is going to take care of that other sentence. Why don't you work on -- there are some issues with the 504 that we discussed last year, so we need to go back over those. There was a
reason we didn't change it --

MR. BETHEL: Yes.

MR. NJIE: Well, in handling this last year, we looked at basically two options: to provide developers with an option to construct the units to be accessible at the time of construction or to provide them with the opportunity to adapt the units as needed, depending on the market, depending on the type of disability. We were not assuming that everybody would be physically handicapped. We took into account other sorts of disability that would not require the same kind of amenity as somebody who was wheelchair bound.

And so the developer basically has the option to elect to operate under the 504 rules whereby every unit at the time of construction will be made ready according to the Uniform Federal Accessibility Standards or to operate under the ANSI rules and make the units adaptable so as the leasing period starts, they will then sign an agreement with the tenant and adapt the units accordingly.

We thought that that flexibility addressed the concerns of the advocacy groups as well as the needs of the developer.

MR. BETHEL: All right. And then they would -- they could be adaptable -- didn't we do something that -- wasn't there some dialog about some communities may not
have any renters with disabilities and if they were made -
-
MS. BINGHAM: We allowed a waiting period. Right?

MR. NJIE: That's correct. The -- we allowed them to submit a copy of the marketing plan and we also indicated that the marketing plan should have some substance so that we can look at who they are targeting. So this is submitted at the front end so that we can take a look at developers who are saying we are going to adapt units. Who are the people they are contacting in their marketing plan and what sort of information is being put out there.

For those who are electing to just build the units to spec for people who are physically handicapped, they can do that at the time of construction, and then the onus will be on them to go ahead and get tenants who will fit that particular disability.

DR. GRIFFIN: Right. And then we gave them a specific period of time and if they could not find the tenants then they could rent it out to someone else. However, they had to keep a waiting list established, if I remember, and the next available unit that came open would have to be rented. Right?

MR. NJIE: That's correct. That is --
MS. SAENZ: Mr. Chairman?

MR. BETHEL: Yes?

MS. SAENZ: But I think what he's trying to say is that he doesn't want bonus points to be attached to this.

MR. NJIE: Well, there is no federal law to build the units according to 504 standards.

MS. SAENZ: Okay.

MR. NJIE: So everybody who is building right now has to adhere to certain basic fair housing rules, regardless of whether you participate in the Tax Credit Program or not.

MS. BINGHAM: So the bonus is for doing it based on more restrictive --

MR. NJIE: That's correct.

MS. BINGHAM: That's what that's for. That's not just to make it minimum --

MR. NJIE: That's correct. The 7 percent that you can adapt -- or the 10 percent are not covered under any fair housing, so those are incentives that the department --

MS. BINGHAM: So we're not giving bonus points for meeting the law. This is for over and above?

MS. SAENZ: For over and above.

MR. BETHEL: Cherno, you may not know right
off, did we have any applications that didn't -- this last
time that did not claim the bonus points?

MR. NJIE: No.

MR. BETHEL: Every one of them did?

MR. NJIE: All applicants claimed these points,
either the 504 standard or the ANSI standard. I don't
think you would be competitive without them, because --

MR. BETHEL: So then if we did not use the
bonus points, then they would not have to --

MR. NJIE: That's correct. Then they would
have to revert to what fair housing says, and fair housing
doesn't stipulate that you build them to 504 standards at
the time of construction.

MS. BINGHAM: So that's an incentive to go
beyond the law?

MR. BETHEL: And Jonas is saying that we should
make a rule saying that they would --

MS. BINGHAM: We should go above the law and
make something a requirement that isn't a law, as opposed
to force you to do it anyway.

MR. BETHEL: Okay. But every applicant in last
year's round --

MR. NJIE: Every applicant elected one or the
other.

MS. BINGHAM: Mr. Jones -- where --
MR. CONINE: I think he went to consult with his lawyers.

(General laughter.)

MR. BREWER: He's getting $300 an hour.

MR. BETHEL: Let's take a five-minute break.

(Whereupon, a short recess was taken.)

MR. BETHEL: Okay. We're back into open session, and there was some terminology that was being worked on. We used 20 minutes. It cost us $200 with Mr. Jones doing it. He is a $600 an hour attorney from Tyler.

MR. JONES: It's pretty bad when somebody from La Mesa gives you a promotion.

MR. BETHEL: All right.

MR. JONES: I would like to report back. I can write this revision that the board has discussed, but I also think it's only fair to tell the board that as I've written the revision, staff has told me that if we do it as we are proposing to do it, as I understood the direction of the board to me, as your scrivener, that if we do it that way there won't be any developer other than perhaps a developer who's never done one of these projects that can comply with this rule.

So I'm not -- just because I wrote it down doesn't mean I recommend it. In fact, I want to discuss it further.
MS. BINGHAM: Okay --

MR. JONES: But to me the issue is that we're saying -- we're trying to define materially out of compliance and it's obvious that everybody agrees that major violations of health and safety standards as documented by a local or municipal authority is in fact materially out of compliance, boom, we can't consider you in the future.

The second thing we said is that if you violate your LURA agreements or program rules, that we don't want to give you additional QAPs and we want to tell our staff as they're going over these things that we don't want our staff presenting those to us.

Now, our staff has responded, and the first thing I hear from them is, Well, what if it's a little bitty deal? Can't we forgive that? And in fact, they have written it where I think they would have their discretion to do that, but my concern is that they would have so much discretion to do that that it's really like we haven't defined the material non-compliance with regard to rule violations.

Now, what I wrote was this, which goes to Section 49.4(f)(4), which is active in ownership or management of any other low income housing tax credit property or any property pursuant to an affordable housing
program administered by a local, state, or federal
authority that is or was materially out of compliance with
rules or regulations of the appropriate regulatory
authority. So they would be materially out of compliance;
they could not be considered.

But then it says, the way I changed it, the
department may recommend an application whose development
team member is working to remedy the condition of being
materially out of compliance within the applicable time
limits allowed for curing such violations provided by the
appropriate LURAs, agreements, statutes, laws, or
regulations violated. So therefore, if we know that they
are not in compliance with their LURAs or other agreements
or regulations, they then would be given the opportunity
within the time limits prescribed by law for curing those
violations.

If they did so they could be considered. If
they did not then they couldn't be considered, which is
what I thought the board wanted to do as I heard the
discretion.

Now, our staff -- and I think our staff needs
to respond as they responded to me, to the board -- has
said, Look. If you do that, board, no developers are
going to be able to -- that have done any projects in the
past are going to be able to be considered. That's what I
heard the staff telling me.

   Am I right? I don't want to quote you wrong, because you need to speak to the board.

   MS. PHILLIPS: If I look at the violations that we have in the past, there are some of the owners who have gone beyond their 90-day correction. I wouldn't say that all of them have done that, no, but there are some that have gone beyond their 90 days. We do have some of the projects who have not responded at all, and I agree that those are not developers that would -- that we would be best served giving them credits again.

   I think that provision would provide a definite boost to our ability to get cures within the compliance period.

   MR. JONES: And this, to me, is a policy issue, because if you retain all the discretion that you currently have, if you do that, let's face it. We're putting the staff in a bad position, because if the staff says some things are little and some things are big, every time you do that the person you say big to says, Well, they just got it in for me, and a person who says Well -- when you say little to a person, they're going to say, Great, we're happy with you.

   But it gives the impression that it's not a fair ball game, and so if we could write it somewhere
fairly objectively, I think that benefits the program. On the flip side of it, I'm sensitive to your criticism that if we've written it in such a way that we've excluded a bunch of great developers that can't be part of the program anymore, then that's a mistake and we shouldn't do it.

MS. BINGHAM: But what's your final recommendation?

MS. PHILLIPS: -- I don't know -- think that we would be excluding a lot of great developers.

MR. JONES: Okay. Great.

MS. PHILLIPS: And I think the only alternative that we have other than generally going along with what you've said is to actually look at all the different types of non-compliance and put a value to them, and that becomes -- it can be done. It can absolutely be done where you look at a project rather than individual instances, but -- we can basically handle it whichever way the board desires.

MR. CONINE: Is there a developer in the room who would like to speak -- brave enough to come speak to that particular issue? Let me --

(No response.)

MR. CONINE: It doesn't appear anyone wants to cut their own throat.
(General laughter.)

MR. CONINE: Is there -- again, I'm asking about the process the staff goes through -- is there maybe a --

MR. BETHEL: There's Rey.

MR. CONINE: Sure. You bet. It affects non-profits just like for-profits.

MR. OCAÑAS: That's right. Rey Ocañas again with the Texas Association of CDCs.

I think, Mr. Jones, if we could amend what you were saying, I think the original intent was if you're outstanding, like Mr. Conine was saying, if you've got an outstanding violation, it doesn't mean that -- you may or may not have gone beyond the 90 days. It's okay if you went beyond the 90 days. If it's now corrected, why should you have a problem with it.

If we're having problems correcting them within 90 days, that's an issue for the compliance division. If there are a significant number of developers that are not correcting there or sending violations, I certainly am going to be interested in finding out more about that, but if we're saying that at the time of the application they still have outstanding violations, like Ms. Bingham was saying, outstanding, whether or not they took 90 days to fix them, if at the time that application -- still have
outstanding violations, then you should take a position and say, No more.

MR. CONINE: No. I think what we're -- we don't want to catch anybody in the 90-day -- if she goes out the week before the application is submitted and has 12 violations, I think the guy ought to have 90 days -- he ought to be able to go through that process. But if it's -- and you're only there once every three years. We've established that. But I'm just curious to whether there's guys sitting there in the other room with a bunch of over 90-day violations on their record and having that -- I guess that being swept under the carpet for all these years because it's never been an issue at this table until now.

MR. OCAÑAS: I'd like -- we as non-profits and as an association that's pushing for this, I'd like to know that too, and if we need to make corrections with our members, certainly we'd like to know.

MR. JONES: It's easy to change that because you just put, the department may recommend an application -- you just change that sentence to go the department may recommend an application whose development team member is working to remedy a current condition of being materially out of compliance --

MS. BINGHAM: Thank you. I knew you were worth
$300 an hour.

MS. PHILLIPS: I know this is unusual, but could I ask a question?

MR. BETHEL: You bet.

MS. PHILLIPS: In the board's mind, if someone has a material violation two years ago that they corrected, say they had -- it was 100 percent property and they had 20 ineligible units but they corrected it --

MS. BINGHAM: If they corrected it we shouldn't be interested in it now.

MR. BETHEL: Right.

MS. PHILLIPS: Okay.

MS. BINGHAM: We're not interested in that now.

MR. CONINE: It's an uncorrected over 90 violation I'm interested in.

MR. JONES: Okay. Well then, in light -- then change B to read uncorrected violations of the LURA agreement or rules, and just say is and not is or was with regard to being materially out of compliance. That you are --

MR. CONINE: Let me hear the rest of the board. Is that -- is uncorrected okay, and let them go on through if it's two years ago they went over 90 days but then they fixed it, and it was a year ago --

MS. BINGHAM: It shouldn't be an issue today --
MR. CONINE: Okay.

MS. BINGHAM: -- in my mind.

MR. BETHEL: So what was the language?

MR. CONINE: We opened the door a little wider, didn't we?

MR. JONES: Okay. Then that meant that 42.249. materially out of compliance would read, "For the purposes of Section 49.4(f), material out of compliance means as to such member, a, major violations of health and safety standards as documented by the local municipal authority, or, b, uncorrected violations of the LURA agreement or program rules."

And then Section 49.4(f)(4), where we take up would read, "Active in the ownership or management of any other low income housing tax credit property or any property pursuant to the affordable housing program administered by a local, state, or federal entity that is materially out of compliance with the rules or regulations of the appropriate regulatory authority.

The department may recommend an application whose development team member is working to remedy a current condition of being materially out of compliance within the applicable time limits allowed for curing such violations provided by the appropriate LURAs, agreements, statutes, laws, or regulations violated.
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MS. BINGHAM: Thank you. That's wonderful, Mr. Jones.

MR. OCAÑAS: Mr. Chairman, thank you for letting me speak again. I guess only issue --

MS. BINGHAM: We did let you speak again? Did you recognize him?

MR. BETHEL: I recognized him.

MR. OCAÑAS: Yes. Thank you, Mr. Chairman.

Mr. Jones, I guess if you remove the was, our only question -- policy question to ask about is what about a pattern or history of past non-compliance? If you've had somebody that has corrected them but they had 40 things they had to correct, or 40 different properties they had to correct --

MS. BINGHAM: I don't think you want to get into --

MR. OCAÑAS: I don't know if you want to today, but I think that is a question that you want to address at some point is let the staff do some sort of qualitative analysis of at what point are you going to say, They corrected it every time but every single property they've had has non-compliance issues.

MR. BETHEL: Right.

MR. OCAÑAS: Thank you.

MR. BETHEL: Thank you.
MS. BINGHAM: Can we move on with our other issues?

MR. BETHEL: Yes.

MS. BINGHAM: We answered the question on 504?

MR. BETHEL: Yes. I think so.

MS. PHILLIPS: I have one more thing. We have a segment of our projects that we reviewed from '92 to mid-97, early '98. Most of those -- the IRS required us to submit the violations. What we did administratively is submit the violations along with the owner's responses. The department did not make a determination whether those findings were corrected or not, so we have those years where we have the findings and the owner's responses but not a determination of corrected action.

The Service changed our reporting processes in '98 or '99 where we were actually making the determinations, so from that point forward we have all of those. So for those pre-98 projects, we will have to make those determinations retroactively.

MS. BINGHAM: But you --

MS. STINER: Let me ask a question. You don't have the documentation to make -- we don't have the auspices to --

MS. PHILLIPS: Right.

MS. STINER: -- make those kinds --

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MS. BINGHAM: If you don't have the
documentation you can't determine that they're out of
compliance.

MS. PHILLIPS: And what I want to be sure is
that the language that you've talked about -- the remedial
plans is broad enough that we can get those projects --
those pre-89 projects cleared off our records.

MS. BINGHAM: I think we could.

MS. PHILLIPS: Does that --

MS. BINGHAM: If you lack documentation.

MR. JONES: Mr. Chair, one of my concerns about
writing something like this as we're doing is the staff's
not having the time to take it out, look at it, think
about it and see how this applies to our program. And I
have other issues that I also want to raise, but I just --
I know it's getting late in the day and I don't want to be
the one that slows the board down, but this may be
something we have to meet more than once about.

MR. CONINE: I tend to concur with that after
listening to a lot of the comments made today. We've got
two board members that are absent that ought to be
participating in what arguably has been described as the
most important thing we do ever.

I would concur with Mr. Jones's thought and
would, I guess, put it up for discussion -- maybe we'll
table this until next Friday -- have a chance to interact with some of the people in the audience, discuss some of our thoughts, analyze staff recommendations even more than we have to this point, although I've read Cherno's responses and department's responses. I really feel like it would be in all of our best interests maybe to think about doing that.

MR. BETHEL: If -- Delores, can we post a meeting for Friday?

MS. GRONECK: If I can get it in -- it will take me two minutes if it's okay --

MR. BETHEL: It's up to the board. It's the board pleasure.

MR. CONINE: I move to table, Mr. Chairman, until next Friday.

MS. SAENZ: I second that.

MR. BETHEL: We have a motion to table --

DR. GRIFFIN: You don't know that those two people can be here next Friday unless you've already called them on the phone to see that they will be willing to do this anyway. Do you know they're going to be here?

MR. BETHEL: I haven't called --

DR. GRIFFIN: I'm just saying, you don't know they're going to be here, so how can you even pick next Friday? How can you pick a date if you're wanting those
two here just arbitrarily?

MR. BETHEL: Well, we can't -- we've got to do it before the 31st, so it's not arbitrarily, and next Friday is seven days. We can't post it before six days. We've got to do seven days. So it would have to be Friday, Saturday, Sunday, or Monday, I guess.

MS. BINGHAM: Could I hear from -- Mr. Jones, what are the other issues you have so I can determine whether I want to be here next Friday? Maybe I don't need to be here.

MR. JONES: The issues that I have -- the next issue that I have is the dispersement of credits on a regional basis, and I would direct --

MR. BETHEL: We've got a motion on the table.

MR. JONES: Okay. Excuse me.

MR. BETHEL: And so to table it until next Friday. And we can go ahead --

MR. CONINE: Mr. Chairman, I'll withdraw my motion to table to allow some discussion on whether people can show up next Friday or not.

MR. BETHEL: Okay. Can you show up Friday?

MS. BINGHAM: I'll have to check my schedule.

MR. BETHEL: Okay.

DR. GRIFFIN: I'm out of the state next Friday.

MR. BETHEL: Okay. To have a quorum -- I'm not
sure about Mr. Daross or Mrs. Williams. I haven't talked them.

MR. CONINE: Then I'll recast my motion to table to the next available board meeting.

MS. SAENZ: I second.

MR. BETHEL: Okay. We have a motion and a second. All those in favor of tabling, say aye.

(A chorus of ayes.)

MR. BETHEL: Opposed, say nay.

(No response.)

MR. BETHEL: All right. Then we'll table and we'll set the next board meeting -- do you want to meet in the morning or afternoon?

VOICES: Morning.

MR. BETHEL: All right. Do you have something to say, Dr.? Would you say it for the record?

DR. GRIFFIN: I wasn't talking to you, Mr. Chairman.

MR. BETHEL: Okay. Thank you.

DR. GRIFFIN: You will know though when I do. I promise you will.

MR. BETHEL: Okay. All right. What about ten o'clock Friday the 28th? Okay. We will table this until then.

All right.
DR. GRIFFIN: Do we want to talk about anything else before we adjourn, Mr. Chairman?

MS. BINGHAM: I have a question. Mr. Jones, you had two -- you talked about a regional basis and something else?

MR. JONES: Yes. The regional basis --

MR. BETHEL: -- so that Ms. Bingham can be --

MR. JONES: The first one is with regard to page 11 of 25 of Cherno's comments, in which he says that he predicts the fact that regional basis will be more clearly defined in September 1, year 2001. And then the last sentence is, This formula will -- that there will be though a regulation provided for a formula in the year 2000, and until that formula is finalized the criteria for using this discretionary item will be more clearly defined in the QAP. And I just wanted directions on where that was and how that was done.

MR. NJIE: On the next page, page 12, on Item 3b -- what it stipulates in the QAP is just that regional geographic distribution of multifamily projects -- what we have done is to elaborate on what that exactly -- what that entails exactly by enumerating one to four what that will entail, looking at the number of tax credits in all the affordable housing projects within a city and county and the number of units attributable to such projects, the
population of a city or county in relation to the number of existing tax credit projects and affordable housing units created, the city and county population and employment growth trends, and finally rental housing affordability.

MR. JONES: And my question would be how does that work? How is that applied and how does that, as a practical matter, work through the other?

The other issue that I would like to see the board address is the issue of whether or not with regard to tax credit there needs to be more involvement. I know we've had a criticism of the board in the past that the board has not been involved as much as it should be with regard to this. We get a big book and the next day we approve it, and that's the other issue I wanted to raise and discuss about the QAP.

MS. STINER: May I just add one thing, Mr. Jones?

MR. JONES: Yes.

MS. STINER: Will you at least say for the record that you got your books before one day this year?

MR. JONES: Yes. And I was not implying that, but that criticism has been made in the past --

MS. STINER: It says out there and people --

MR. JONES: I know, and I did not mean to imply
that. I'm sorry. I apologize, Ms. Stiner.

MR. BETHEL: And we also -- we got the staff's response --

MS. BINGHAM: If you didn't get your book one day, then you say it's still out there, what's the issue then if you didn't get your book one --

MR. JONES: I think the issue is the one raised --

MS. STINER: What page is that on?

MR. JONES: Is that there's not -- that would be on page 3 of 25 -- that there's not sufficient oversight provided by the board of the program.

MS. STINER: Under the Tax Credit Committee?

MR. JONES: Yes.

MS. STINER: Okay.

MS. BINGHAM: When you say there's not sufficient oversight, let me -- the full board is discussing this project, just like we do on finance items, any committee items that are brought to the full board, so I'm at a loss that there's not sufficient oversight on the tax credit. In fact, the Tax Credit Committee meetings are the very few meetings that all the board members sit in on, like you were all in the room this morning.

So I don't -- I haven't seen the board shirk its responsibility.
MR. JONES: And I'm not suggesting they have, but that's -- again, you were asking the areas of my concern that I wanted to discuss --

MS. BINGHAM: Okay.

MR. JONES: Those are those areas.

MS. SAENZ: I feel the same way. Mr. Chairman, may I speak?

MR. BETHEL: Yes.

MS. SAENZ: I feel the same way Mike does. I think, given the magnitude of this Tax Credit Committee, I think we need more help. I really do.

MR. BETHEL: Okay. Do you want -- do we have any more discussion about this?

(No response.)

MR. BETHEL: Do you have any report items?

MS. STINER: Oh, boy. Yes, sir.

To announce before the committee and for the public -- this is on our website -- the public comment period begins on the State of Texas Low Income Housing Plan on the 24th, and there will be public hearings around the state of Texas, in Lubbock, Dallas, Lufkin, Austin, Houston, Harlingen, San Antonio, and El Paso. This is available, as I said, over the Internet at our website, the announcement of this, or you can pick it up from staff here by calling the Office of Strategic Planning.
I did want to say that the department came through Y2K without a hitch. That was a challenge to us in Ft. Worth, so that was very good. We have a letter here from Lt. Governor Rick Perry to Mr. Alex Maldonado, who is our IS director who served on the Y2K committee and also served as remediation coordinator for our department.

And just briefly, it says, "On behalf of the people of Texas, congratulations and thank you for a job well done. Together with your colleagues you played a key role in implementing Texas's very successful Y2K preparedness program. The word is out that Texas is home to the best and brightest men and women working in technology in government and I am deeply proud and appreciative of your cooperation in this recent effort.

"I know we must remain watchful over the next few months for any unforeseen problems, but I am confident that with your continued collaboration, Texas is in the very best of hands." Signed, Lt. Governor Rick Perry.

And so our Y2K committee continues to be a committee at least for the next few months, through March, but relative to reporting, all of those issues that we had talked to you about, we went through those quite well and had no problems.

I think that is all we had to report. I will save any other information -- you got a copy of my
executive director's report where we brief you on several
issues that are going on administratively, but, Mr. Chair,
I think that's it.

MR. BETHEL: Okay. Thank you, Daisy.

Is there anything else?

(No response.)

MR. BETHEL: Then we do stand adjourned and
we'll be meeting next Friday.

(Whereupon, at 4:35 p.m., the meeting was
concluded.)
CERTIFICATE

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

LOCATION:      Austin, Texas

DATE:      January 21, 2000

I do hereby certify that the foregoing pages, numbers 1 through 69, 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.

01/27/00
(Transcriber)    (Date)

On the Record Reporting, Inc.
3307 Northland, Suite 315
Austin, Texas 78731