

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Thursday, September 13, 2007  
Capitol Extension Auditorium  
State Capitol  
1100 Congress Avenue  
Austin, Texas

BOARD MEMBERS:

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

STAFF:

MICHAEL GERBER, Executive Director

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P R O C E E D I N G S

MS. ANDERSON: Good morning, and welcome to the September 13 meeting of the Texas Department of Housing and Community Affairs Governing Board. Our first order of business is to call the roll. Vice-Chairman Conine?

MR. CONINE: I am here.

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: Here.

MS. ANDERSON: Ms. Ray?

MS. RAY: Here.

MS. ANDERSON: Mr. Flores?

(No response.)

MS. ANDERSON: Mayor Salinas?

(No response.)

MS. ANDERSON: We will mark him present when he appears. So we do have a quorum.

As is our custom at the Department, we welcome public comment. And as witnesses, your option is to testify during the public comment period before we take up the agenda items, or at your preference, when the actual agenda item is called. We have a number of people that want to make public comment this morning, and so we will proceed with that.

Mayor Claybar?

MR. CLAYBAR: Thank you very much. I appreciate you taking me at this time. As you know, we had another storm, and I need to get back to Orange.

I am William Brown Claybar, Mayor of the City of Orange, and I am here to talk about two particular projects. But before I have my comments, I would like to have Mr. Marc Caldwell -- he is also signed up -- to give a little bit of prelude about one of the particular projects that I want to talk about, and then come back in to my comments.

MR. CALDWELL: Thank you, Mayor. Thank you, Madam Chairman and Board members. Real quick, Marc Caldwell with Del Mar Development. And we had an application in this round called Palm Garden Apartment Homes in Orange.

We have learned this last week that part of the reallocation and a lot of the good work that everybody has been doing for that region [electronic interference] developments these returning credits. And we were in need of staff and kind of find out a little bit about that. But we wanted to make sure that you all knew that that development is still very viable.

The land is still tied up. Salem [phonetic] Davis who is here, by his Texas Regional Planning

Commission, they are still committed to the \$450,000 in HOME funds to the development. And at this point, there is the \$450,000 in credits that are coming back could be utilized to build that 50-unit development.

That way, we would like for the Board to consider as a small forward commitment to be added to those amount of credits that would, of \$188,000 that would allow for an additional 26 units to be built with the Palm Garden Apartment Home development. I think really, a unique opportunity to leverage that view and set us to that amount of units.

And that 26 units would stand alone, it would take quite a few more credits than that. So just to recap briefly, the \$450,000 in credits that are coming back, we would like the Board to consider a small forward commitment of \$188,000 to be added to that, to go from 50 units that the Pineywoods Development was going to build, to get to 76 units. This is elderly housing.

And I will turn it over to the Mayor to talk about, as you all know, the need there. Especially with them having just lost this 50,000 units that had been allocated from the Rita allocation. So thank you.

MR. CLAYBAR: Thank you, Marc. Our needs have not gone away since the two years when Hurricane Rita

came. And this was a real blow to us, to lose these tax credits that Pineywoods just turned back in. And so we are asking that you reconsider the forward commitment for this Palm Garden complex. This is a seniors project.

It was a tough night last night in our area, if you were living in a substandard house, having to sustain 70-mile-an-hour winds. So that need has not gone away. And especially since these other tax credits have been turned back, the Texas Department of Housing and Community Affairs will never get as much leverage for tax credits as they will with this particular project.

The second area that I would like to talk about is Agenda 3D; the Orange Navy Homes. This is really a significant project for us. When Congressman Brady came through Orange after the hurricane, he brought Secretary Jackson. This was the area that we actually toured.

This area is really the one time shot that we see, that we will get a chance to really revitalize this area, this Orange Navy Homes. This is really a critical project for us also, and we will get a lot of bang for the buck with it. So the need has not gone away. And we would appreciate any concern that we can. Thank you very much. Any questions?

(No response.)

MR. CLAYBAR: Okay. Thank you.

MS. ANDERSON: Mayor Claybar, I am delighted to see you. We are all delighted to see you. You look great.

MR. CLAYBAR: Yes.

MS. ANDERSON: We are glad to see that you are on the mend.

MR. CLAYBAR: Good. A little setback three months ago.

MS. ANDERSON: Yes.

MR. CLAYBAR: Thank you.

MR. BOGANY: Madam Chair?

MS. ANDERSON: Yes.

MR. BOGANY: I would like to make a motion that we put the Mayor's request in regards to the tax credits that they turned back in on our agenda for next meeting.

MS. ANDERSON: I think we could do that.

MR. CONINE: Do we have a staff request regarding that? Do we have a wait-list policy on the Rita credits? I don't recall.

MS. BOSTON: That is a great question. And now the waiting lists for each cycle of allocation ends at December of each year.

MR. CONINE: Right.

MS. BOSTON: And so in this case, it would come back to Region 5, and this would be the next likely application. And we have already discussed that with them.

The policy that we have with you all is that we can go ahead and proceed with stuff like that, but we will bring it to you guys for ratification. The biggest concern with this one is that the amount is different enough that he is wanting to cover the difference.

MR. CONINE: Right. Okay. Stick it on the agenda for next time.

MS. BOSTON: Okay. Will do.

MS. ANDERSON: Thank you. Todd Gallagher? We will have to ask everybody to keep themselves under control this morning in terms of the length of testimony. Jim Brown?

MR. CONINE: This might get lengthy, here. Oh my gosh; look at this.

MR. BROWN: Good morning, Madam Chairman, members of the Board, executive staff. For the record, my name is Jim Brown. I am the Executive Director of the Texas Affiliation of Affordable Housing Providers, known around here as TAAHP.

The late Boyce House, who was an author and

humorist and two-time unsuccessful bidder for Lieutenant Governor, often remarked that only fools and newcomers attempt to forecast Texas weather. I think the first eight months of 2007 probably are somewhat indicative of the late Mr. House's philosophy about weather forecasting.

The recent rain patterns along the Texas Gulf Coast, South Texas, Austin, San Antonio and Dallas-Fort Worth area have created an economic impact on the leading industries in those areas.

Last week while driving down U.S. 281 towards the Mayor's home town, I noticed that the sunflower crop in the Alice area are dead. The grain and sorghum crops are dying. The cotton fields are turning brown, all because Mother Nature has provided more rainfall than the topography and the soil conditions can accommodate.

This is not unique to the agricultural industry, but to others, including the housing construction industry, and more specifically, low-income housing and tax credit projects funded out of the 2005 allocations, the weather this year in Texas has been unprecedented in recorded history. According to the National Weather Services, the first eight months of the year were the wettest on record in Texas, snapping a long drought run.

Statewide average rainfall was 27.11 inches, almost 11 inches above the norm of 16.21. The previous record was set in 1941 with 25.8 inches. August was probably the wettest month, especially across the southeast part of Texas, due to recent rainfalls of the tropical storm Erin. And September is only halfway finished, but now, with the unannounced entry of Humberto into the South Texas, the rainfall and the construction problem issues continue.

Topographical and soil conditions contribute largely to the existing problems: lack of drainage and water resistant soils. In addition to days lost due to rain, the sites are also experiencing additional lost days waiting for the sites to get dry enough to restart work; work stoppage because inspection officials refused to allow progress until the ground is dry enough to fulfill their duties as local construction code enforcers.

TAAHP members have experienced hundreds of thousands of dollars attempting to mitigate the impact of the waiting, and in some cases, with very limited success.

I ask the Board to please consider the rare situation that we have experienced, and allow these developments, the 2005 credits to be returned, and to be reissued as 2008 forward commitment credits, and also to gain a new

placement in service date for those projects.

We respectfully request that the Board please direct staff to consider this item, and place it on the October meeting agenda, so that it can be thoroughly vetted by the Board, and those individuals affected, specifically. Again, I want to thank you for the opportunity to speak before you today. We appreciate your consideration on the issue.

I am not here speaking for project or members specifically, but as an association director, I am speaking on behalf of a class of folks out here, who are attempting to do low-income housing tax construction projects. And that concludes my comments.

MS. ANDERSON: Questions?

MR. BROWN: Is that short enough?

MR. CONINE: That is fine. You're a great weatherman.

MR. BROWN: Do I get an A?

MR. CONINE: I'll see.

MS. ANDERSON: Thank you. The next witness is Cynthia Bast.

MS. BAST: Good morning. I am Cynthia Bast of Locke, Liddell and Sapp. And I am here to agree with Mr. Brown to again reiterate the request that we add an agenda

item in October to discuss this extraordinary rainfall in Texas and the relief that can potentially be given to those projects that are facing imminent placement in service dates.

Some of these projects have lost 60 to 90 days' worth of construction work and, as he indicated, spent hundreds of thousands of dollars buying limed-stabilized soil, buying water pumps, even tents to try to cover the site. Relief that is needed is extra time to place in service. And that can be granted in several ways.

Some of these areas have been declared a federal disaster area. And if that is the case, then Revenue Procedure 2007-54 may be able to provide assistance in that area.

But in some areas like Houston -- I am sure you have seen the rain [electronic interference], Mr. Bogany -- we don't have a federal declaration, so the only relief we are aware of for those areas is the return of the 2005 tax credits and the reissuance as 2008 credits, which would, of course, be neutral to the 2008 tax credit pool.

We know that this is an extraordinary remedy. And I would like to suggest that, if this remedy is pursued, that TDHCA imposes very specific parameters on

the kinds of projects that can obtain that relief and perhaps even ongoing monitoring to make sure that the projects are proceeding and placing in service timely.

This is a hard situation, and there are hard questions to be asked and answered. But the only way for that to happen is for you to place this on the October agenda so that all of the issues and the ramifications can be vetted. Thank you.

MR. CONINE: Ms. Bast.

MS. BAST: Yes, sir.

MR. CONINE: Have you had discussions with maybe some of your clients as to the underwriting issue related to turning loose of '05 commitments when the credit market price for the credits have come down substantially, and how that might affect underwriting on all those projects?

MS. BAST: I think that could present a difficult issue. I do believe at this point that most syndicators are willing to abide by their original commitments.

Given the choice between losing the tax credits entirely and being able to go forward, I think that that will work. I do think we have projects that will be facing a lot of credit adjusters for late delivery, and

this will have a financial ramification on many projects, even the ones that are placed in service this year.

MR. CONINE: Okay. Thanks.

MS. BAST: Thank you.

MS. ANDERSON: Thank you.

Granger McDonald.

MR. MCDONALD: Thank you all. I will keep my rant as short as possible. The first time, there is two items I would like to talk about.

The first is, in this past legislative session, we tried to expand the use of the bond program by permitting multiple properties in rural areas to be considered as one project for the allocation purposes. But the draft QAP for 2008 prohibits new construction bond deals in rural areas with more than 80 units. And that would put the multiple-scattered-site projects at risk.

We believe this is inconsistent about what was intended by the Legislature, and we think that the draft QAP should be changed to permit rural bond deals with more than 80 units, and we'll be providing more written comments about that in the QAP. I have also spoken with Jose Menendez, who was the author of the legislation, and he tells me that that is not or was not his intent, and will be following up with a letter to that effect as also.

The other item I would like to talk about or rant about is the amendment policy. And it is a good policy, but we need to clarify where we are going with it. And the Board has got to be the one to make those clarifications.

Right now, the timing is an issue. We would like more certainty about the amendment process. Most of us do not know how long it will be after an amendment is submitted before it will be on the Board agenda or be given administrative review. This guide needs to be posted with deadlines and times specific, so that people can know what they are expecting when they go into the amendment process.

Also, we need to talk more about how the amendment is requested after the fact. The current policy states that amendments must be requested in advance, or else penalties will be applied. It is perfectly appropriate.

But however, we need to understand, and the Board needs to understand, that before the hearing these obligations was first posted in 2006, the TDHCA staff told developers not to ask for amendments in advance. The developers were told to wait and handle these changes at cost certification. And so we are looking at deals from

'03, '04, and '05 that are now pursuing cost certification that are addressing amendments and being told that they could be penalized, when what we were doing was following those guidelines at the time.

Now, some of those amendments, I think, are being picked a little bit, and need to be decided with what is truly important and germane to the quality of the project. I personally have an 8609 that is being held up.

The general partnership was constituted of three corporations of three different individuals. One of the individuals got a divorce, so he has lost 50 percent of his stock in his corporation.

And we are being questioned now of whether we changed the ownership of the project. And I can't see how that is appropriate to the quality of the project, or why that would be subject to a penalty issue. That is something we need to talk about in the penalty question.

I think that penalties also need to be addressed. And there is two sets of penalties, the way that I see it, and those are related to construction, and those that are related to compliance. Mike Clark is going to talk later on an agenda item about the compliance side of it, and I support what he has to say.

On the construction side of things, we need to

think about what we need to do to keep people from enriching themselves by not following what they put in the original application. For example, if you put in an application where you said, I am going to build 20 units with two-bedroom, two-bath, and you build 20 units with two-bedroom, one-bath, you shouldn't have the benefit of saving the money on that bath.

And I would suggest that you have either the penalty structure as presented currently by the staff, or the option of saying, if that bathroom costs \$5,000 and I excluded 20 of them, then I should make \$100,000 contribution to the Housing Trust Fund, so that I am not enriched by my screw-up, but I suffer the same penalty from it.

And I think that should be something that should be pursued and thought about; about how penalties can either be in points or in removal from the program. Or you simply make financial remuneration for what you did that was wrong.

There is also the problem that occurs when people take over existing projects from other people. You have a lot of syndicators and lenders who are saying, well, if I go in and take over an application and I found out that there has been a problem with the way that the

developer that we had to remove, because he was a bad actor, then what do they get penalized for, for taking it over.

And you may have a situation where you have, where you leave someone in control of the property, he needs to be removed, simply because the syndicator is worried about being penalized or being removed from the program, or being able to service the State of Texas. I also know from personal experience that taking over a project that someone else did the application, that there is a very high likelihood that we are going to miss something.

And I don't think that what we want to do is to penalize the people that are trying to do the projects. But we just want to keep them from enriching themselves if they did something wrong. And I would like to ask the Board to review that a little more in the future. Thanks.

MS. ANDERSON: Thank you.

MR. GRANGER: That is my opinion; I could be wrong.

MS. ANDERSON: Robert DeLuca.

MR. DELUCA: Madam Chair, if I could -- MS.  
ANDERSON: Yes. You checked "during the public comment period," but that is fine. No worries. Robin Sisco.

MS. SISCO: Good morning. I am Robin Sisco, with Langford Community Management Services. We have been working with the HOME owner-occupied program for the past four years. I was a member of the HOME task force, as well as a member of the Benchmarks and Contract Term Subcommittee.

In the beginning of the task force process, many of us discussed our great hope that this would not be an exercise in futility. We worked hard for several months to bring forth practical proposals that would make the program work better and more realistically for homeowners, contract administrators, and those of us who manage these projects.

I have spoken with several members of the task force since the proposed HOME rules were disseminated. There is great concern out there, regarding several aspects of the proposed rules. In reading the rules, it is clear that the majority of the substantive recommendations made by the task force in the owner-occupied area have not been incorporated into these rules.

This is very discouraging, considering the amount of time and effort we all contributed. The frustration is intensified by the fact that many of us are already having serious difficulties meeting the benchmarks

of the 2006 contracts, due to previous changes to the program. The change from grants to loans, and the unrealistic timetables set for the 2006 projects made this program much more difficult to implement, and it appears that the proposed 2008 rules will not only fail to alleviate those difficulties, but will actually exacerbate them in many areas.

Of particular concern are the proposed limits to soft costs and administrative costs. These were not even presented as a topic of discussion to the task force.

I assure you, there would have been much discussion and recommendation concerning these limits, if the task force had been aware that these were in the works. There will be time during the public comment period to focus on our specific problems with the proposed rules, and I and other members of the task force will do that.

However, I felt it important to let the Board know up front that there are serious concerns regarding these rules on the part of members of the task force and on the part of the cities and contract administrators that I represent. I encourage you to consider very carefully the comments that come from those public hearings. Thank you.

MS. ANDERSON: Thank you.

MS. SISCO: I also have a letter here from Mirenda White-Harris. She was unable to be here to make public comment today, but she asked that I give it to you, and she asked that it be read into the record as public comment.

MS. ANDERSON: Okay. Thank you.

MS. SISCO: Thanks.

(Pause.)

MS. ANDERSON: Excuse me. This letter is, as Ms. Sisco indicated, from Mirenda White-Harris, who is with Kerbaut [phonetic] and Associates Consulting.

"Dear Madam Chairperson, Board members, over the recent years, HOME has experienced many challenging changes as a result of setting goals for improving program administration that would increase TDHCA's national ranking as measured by HUD guidelines.

"With this in mind, TDHCA developed the HOME task force to provide a reflection from Ground Zero on program mechanics, and provide pros and cons, as well as optional recommendations to the Executive Director on how to enhance program administration. As a volunteer on this task force, in holding to the idea that the information from this dialogue would be processed and received objectively, I am extremely concerned.

"My first priority as a member of this collective team is the homeowner and contract administrator welfare. It has become apparent that the Agency has a much different direction in mind than working collaboratively with rural cities to assist in providing safe, decent, affordable housing to extremely low income homeowners, as exemplified in the recent draft of the HOME rules.

"This section last for homeowners at 30 percent or less of AMFI to be eligible for zero-percent five-year deferred, forgivable loan. These homeowners are on extremely limited income and not able to afford additional debts, such as the five years of insurance and property tax increase, ultimately eliminating servicing, I believe, extremely low income homeowners.

"The thought obviously is that these homeowners at 30 to 50 are at a slightly better situation to afford an additional bill each month. But again, these homeowners are usually receiving disability, veterans benefits, Social Security, and or SSI. Since most are in their golden years, it is not feasible for these homeowners to become indebted for the proposed \$1,800 a month for ten years, and then hope to live out the next ten years to contract term.

"Furthermore, the 2006 contract subject to the deferred loan are being met with relentless challenges, ranging from obtaining eligible homeowners, to not being able to receive loan closing documents. One client had several homeowners request to see the loan documents, but these were unavailable for review. The client requested these from TDHCA and received a response on June 13, 2007, stating that as of this date, these documents have not been drafted, therefore we are unable to provide copies to you at this time.

"Noteworthy to mention, the issue of unattainable benchmarks. Benchmarks measures by which one can determine progress are very good for practice and should assist in contract administrators making sure that a contract is moving forward. Proposing additional paperwork to the effect of a contract amendment for such a function is time consuming and cumbersome for both Agency personnel and contract administrators.

"In conclusion, it is my sincere hope that the Board review the whole OCC program rules thoroughly before making any decision that could further impede the desired program administration. Sincerely, Mirenda White-Harris."

The next witness is Tres Davis.

MR. DAVIS: Good morning. My name is Tres

Davis. I am here today as a HOME task force member. When the proposed HOME rule changes appeared last week, I began receiving calls from a number of members from my subcommittee and from other subcommittees on the task force.

The consensus of all these calls is a great sense of frustration with the proposed rules. It appears that very little, if any of the task force recommendations related to the owner-occupied activity were incorporated into these proposals. Instead, the proposed changes make the program even more onerous by unnecessarily complicating existing processes, creating additional paperwork, and increasing costs for both the administrators and the homeowners, at the same time, reducing the available fees to pay for these expenses.

This is especially difficult to accept, given the amount of time and energy that people put into the task force in order to provide practical suggestions to the Board.

The slow progress seen in 2006 contracts is a direct result of the difficulties introduced by last year's rules changes. Altering the program further will only serve to aggravate the problem, rather than alleviate the struggles of implementation. This type of change is

not the proper direction for this program.

I realize there will be time during which specific comments regarding the proposed rules can be made. I just wanted to give you all a heads-up so that neither the Board nor staff is blindsided by the great deal of agitation that these proposals are causing in the communities that are attempting to implement the program as it currently stands.

And I also want to say that Robin, Mirenda and I -- I did not see what they were writing until today, because we obviously talked to them before, but the comments are very similar. So I think obviously, we are hearing the same things from our clients, and from the people we have talked to. And that is it. Thank you very much.

MS. ANDERSON: Thank you.

Jean Langendorf.

MS. LANGENDORF: Good morning. I am Jean Langendorf with United Cerebral Palsy of Texas. And I will try to be brief and point out to you. I do wear two hats. And my first hat is as an advocate.

And I want to let you know that I am here on behalf of United Cerebral Palsy Disability Policy Consortium, Advocacy, Incorporated, and DD Council --

Developmental Disabilities Council. And we would all like to say a big thank you to Brooke Boston and Michael Lyttle for working with the disability community on some of the proposed rules and changes to the trust fund, the PHA plan and many other items.

It was very productive. They listened. We were all very excited about moving forward together. Different than a year ago or so, and we are very happy for that. So I want to make sure that you all realize that the PHA plan, the additional vouchers for moving people out of nursing homes and institutions is very important. And we applaud their willingness to propose that in the plan. We are happy to see that.

Under Item 2C, the Housing Trust Fund annual funding plan, after ten years of many people advocating, there is actually the ability to do barrier removal, flat out do a ramp or to have programs that can address the need, particularly in the rural communities, where all an individual needs is really a ramp. We are so excited about that. We know it can work, and we are looking forward to what is going to become of that.

And the last on this item is Item 6B, the 504 accessibility requirements. These have been long in coming and worked on by a lot of people. We are real

excited about them. We hope they are something that through comment period, it is something that can be adopted with not too many changes. And we are very positive and very thankful for the work that has gone on by staff under this.

Now I will put my other hat on real quickly as United Cerebral Palsy of Texas, a contractor who has done a home ownership program for many years, the Home of Your Own. Under Item 2, we are listed to, recommended by staff through the competitive process to receive seven funding awards.

As an administrative request, we would ask that there be potential ability for us and others, who because of the process at the time, required separate applications for the same type of activities, that perhaps we can collapse these into one contract or as minimal number of contracts as possible. I think it would be beneficial to your side of the aisle, as definitely our auditors would tell you it would be beneficial.

We know we can track. We have done it for years, at least in the Home of Your Own program. We can tell you where everybody is, and who is getting assistance, and we will work with you on that. I would just hope that there can be some consideration just

administratively. I think it would be beneficial to all of us.

And then again, I did serve on the HOME task force. And in reviewing the items that are being proposed, there are some great things in there that we all worked on. I would like to echo the concern. We do rehab on ours, and there is now, in reviewing that, there is certain pricing for certain items, and there is nothing about accessibility that I can find. Maybe I overlooked it.

We would be happy to serve on task forces where you looked at the pricing of how you do an assessment for accessibility. It is not always the same as rehab.

So if we are going to get that detailed in the rules, I would very much like to participate, and I think many of the other HOME task force people would like to have input on some of those items. So I appreciate it. Thank you very much.

MS. ANDERSON: Thank you. Senator Carriker.

MR. CARRIKER: Good morning, Madam Chair, members of the Board and Executive Director Gerber. I am here this morning to testify or make comments in favor of the Housing Trust Fund allocation plan.

Before I do however, I would like to issue an

invitation to you. On October 9, as the Texas Association of Community Development Corporations does every year, we are holding a policy summit on the UT Thompson Center campus, which will deal with community development issues.

A number of the staff of the Agency have already signed up to come to that.

However, we would certainly like to extend our invitation personally to each of you to participate in that policy summit. We will be looking at policy issues that are very important to housing and community development.

Some of those issues will be such as dealing with post-foreclosure issues. We know, of course, that there are a great deal of foreclosures taking place. And we want to see how that is going to impact such things as the rental market and the housing and construction market in the future. We will also be delighted to have with us Sheila Crowley, who is the President of the National Low Income Housing Coalition, as our keynote speaker, who will be giving us an update on the National Housing Trust Fund proposal that is now before Congress, and could be very important for the State of Texas obviously.

So we would certainly like to invite all of you to attend that conference and be our get there. Your

presence would add a great deal to the financiers, community development personnel, intermediary organizations and others who will be present at that conference at the Thompson Conference Center.

Now I would like to make some brief comments on the Housing Trust Fund plan. We certainly are very delighted that the Legislature increased the funding for the Housing Trust Fund in this last legislative session. Despite that increase, it is still obviously only a relative drop in the bucket in regard to what is needed in the State of Texas.

So you have the job of dividing up that very small pie among a lot of very worthwhile goals and efforts and programs. You have done so, and we certainly agree with everything you have done in the allocation or the proposed, in the staff proposal for the allocation plan.

And although there are literally dozens of other areas that would be worthy and useful if they were allowed to be funded there, we realize that it simply doesn't stretch to all of those areas. There is one thing that we would suggest, however.

We know that, despite the fund being relatively small, that there will be portions of the funding that is not totally used for one reason or another, simply due to

the process of getting the money out the door. Sometimes they are not applications for all of the money.

What we would suggest to you is to make a -- create an area that would be eligible, an eligible fund area, and no allocation for that particular funding area, however would be eligible for funds which are returned or not utilized in other areas under the Housing Trust Fund.

This would be in the area of rural capacity building. The last time the Department funded capacity building for nonprofits in underserved areas, it resulted in a very significant return on investment.

A study that we are providing you and have provided you in the past shows that 1.6 million invested by the Agency in 40 organizations led the production of 1,100 units of affordable housing and leveraged an additional 11 million in development funding. We are requesting that capacity building funds be made available if those funds are returned and available under Housing Trust Fund to rural community development organizations, non-profits who can utilize those funds in rural areas which are the most underserved and the least likely to receive the funding that they need, simply because the capacity is not there with those rural nonprofits.

It is the nonprofits who are most likely to

serve the lowest income persons in our production survey which we are providing you. We found that some 80 percent of all of the produced housing units by nonprofits are affordable by persons at 50 percent and under of median income. It is the mission of the nonprofits to serve those lowest level persons. And those are obviously the hardest to serve.

We believe that a small investment in capacity building would spread resources in areas that now do not have effective access to those resources, and would serve populations that are not as well served as other populations in terms of their median income. This request would simply be again, that this be an eligible funding area for the Housing Trust Fund without a specific allocation to it, but it would be eligible for persons, groups to come in and apply for community development capacity building, if there is money left over unspent in that Housing Trust Fund.

I would be glad to address any questions you might have on this suggestion. Thanks very much.

MS. ANDERSON: Thank you. Todd Gallagher.  
Michael Clark.

MR. CLARK: Madam Chair, I intended to speak on the specific item instead.

MS. ANDERSON: Okay. That concludes the public comment period of the meeting. Todd Gallagher is not in the room. Right? Okay. So we will proceed with our agenda.

MR. CONINE: Madam Chair, move approval of the consent agenda.

MR. BOGANY: So moved.

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. The next item, Agenda Item 2, concerns various HOME Division items. 2A is award recommendations for the persons with disabilities awards. Mr. Gerber.

MR. GERBER: Madam Chair and Board members, in February of 2007, this Board approved and the Department released two NOFAs for \$2 million each for housing programs that were targeted to persons with disabilities. One NOFA was for tenant-based rental assistance and the other was for homebuyer assistance.

Additionally, approximately 1 million from each NOFA was made available to be awarded in a participating

jurisdiction. A total of 31 applications were received for both NOFAs. The applications were reviewed and processed, according to the state HOME rules, and the NOFA.

The award recommendations were prepared by the first ranking applicants in each NOFA separately, first by score, by service region and then by urban, exurban or rural area types. In area types where an insufficient number of applicants were received for an activity type, recommendations were being made to fund applicants in the same region type with the most eligible applications.

In regions where an insufficient number of applicants were received, recommendations were being made to fund applicants in other regions with the greatest demand for qualified applicants. The homebuyer targeted funds were undersubscribed by \$335,000. And as a result, this amount was transferred to the rental assistance targeted funds, and used to fund applicants in a manner that was just described to the amount allowed to be allocated to a participating jurisdiction.

The total amount of project funds available to serve households and PJs for persons with disabilities is \$2,071,040. A total of 750,000 was requested by as being recommended to applicants in the homebuyer set-aside for

use in a PJ. The remaining balance of \$1,321,040 for PJs was transferred to the TBRA set-aside, which is oversubscribed in both project funds, and funds available for PJs.

Staff recommendations for PJs were based first on compliance with the regional allocation formula and then, on highest application score, in the instances where more than one region had the same number of highest number of qualified applicants. I would like to note that in your writeup, it incorrectly notes that there were 28 applicants that are being recommended for awards. Actually, 27.

Staff is recommending the approval of the 2007 HOME single family persons with disabilities awards, and recommends approval of up to 6 percent in administrative funds as stated in the NOFA for all applicants, based on the amount of project dollars awarded.

MS. ANDERSON: I do have public comment on this item. John Meinkowsky.

MR. MEINKOWSKY: Madam Chair, John Meinkowsky with ARSL. Before I do, about TBRA, I want to echo the comments from Jean Langendorf, particularly in relation to the safe housing choice vouchers, I guess, for people with disabilities transitioning from institutions. That is

critically important. That is wonderful to have that small amount. In this case, it goes a long ways.

And also, related to the use of funding for architectural barrier removal in people's homes. We hear that so often. And mostly in rural areas. The Centers for Independent Living around the state, we are constantly hearing it from people in the home health industry, from the individuals themselves, from family members, from transportation providers, saying there is just so many people, mostly older people, who are essentially next to prisoners in their own home, because they can't get in and out of the house. It is a huge problem.

There is not much money going to that from other sources. So it is big, and we do appreciate you, Brooke and the other folks that help make that happen. It requires comment always, because it is a wonderful thing that you were able to do there.

Regarding the HOME TBRA application, ARSL is one of the applicants, and a current contract administrator. We are also one of the applicants listed as having a compliance issue. Our compliance issue is that our audit is late. We are negotiating something with the auditors now. It will be available in the next few days, by the end of this month.

We have great audits, as far as I can tell, without knowing the math. But we don't see that as an issue that you be too concerned about. Obviously, we will have that to you in the very near future. I appreciate your time.

MS. ANDERSON: I have a question for you, John. You know, you have a current TBRA contract. The contract was executed on August 1, and we are changing how we execute contracts, so that the contract period doesn't start until the last signature. That will help some.

But your revised end date on your current contract is October 31 of next year. And there is still a lot of funds remaining in that contract. And so we get this audit thing cleared up, so that our HOME staff is willing to issue you a new contract.

How do you get caught up on the old contract, instead of us -- what I don't want to do is issue a new contract to you when you still have 13 months to run on the old one, so that three years from now, the people on the Board are sitting here giving you another extension. How do we get sort of caught up?

MR. MEINKOWSKY: Doing TBRA particularly for this population, it is a stopgap funding measure. And so if we have funding for 20 people, we can enroll 20 people.

And then within that two years, 15 of those people are going to be gone. They have moved to another affordable housing. They have moved elsewhere.

I had, the first twelve I enrolled, five died. You know, we are talking about people who have been living in nursing homes for several years. Very serious health conditions. In many cases, way up there in age. I guess what we really have to do is cleverly over prescribe people and have 30 people enrolled, assuming that half of them will fade away in the next year.

It is hard to get people in the program that stay. Budget out the way you are going to do it.

MS. ANDERSON: Right.

MR. MEINKOWSKY: I don't know if I have a good solution other than to plan it that way, really. And if we have nobody leave the program, then we are going to run out of money six months before it is over with. So that is tough. I wish I had a better answer.

We can keep continuing that contract and spend the money we have. I don't know if that helps. We are enrolling people now. We have twelve months, and we are trying to bring people in, because we don't want the money to be allocated and not used.

MS. ANDERSON: So would it be your thought,

then, that this new contract that would be executed, you would be enrolling people under both contracts. You are running them in parallel.

MR. MEINKOWSKY: Oh, yes. We have people on waiting lists now. And you know, I was -- we have, what do we have. In our contract, we have like twelve people active. And they are going to be spending a sizeable chunk of this money on the people that are active now, before next end of October.

So we are not going to leave a whole lot of money unused at that point, unless we have several more of these people leave. You know, I think the thing we need to do to spend the money better is to have everybody we can get start faster. We enrolled people slowly when we started. But if we can do that, if we can get a full cost out, project the cost out, you know, if it takes twelve people or whatever we have now, if we can do that in the first three or four months, or six months, then we can probably do a better job of getting the money spent within the contract time. We just can't predict how many will leave. And we want them to.

I mean, that was the point, is that they transition to other affordable housing. But that is tough in this program. I don't have a great answer for you.

MS. ANDERSON: Okay. Well, you gave me some insight. I appreciate that. Thank you.

MR. MEINKOWSKY: Thank you.

MS. ANDERSON: That concludes the public comment on this item.

MR. CONINE: Move staff recommendation for the approval on item 2A.

MS. RAY: Second.

MR. BOGANY: Are these awards contingent upon any of the unresolved audit findings being questioned, in disallowing cost and performance issues prior to prior awards?

MR. GERBER: We would ask that they include it, staff recommends that they include it in the motion.

MR. CONINE: I will accept that as a friendly amendment.

MR. BOGANY: Yes. Thank you.

MS. ANDERSON: Discussion? Do you accept that also as the second?

MS. RAY: I accept it also.

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Agenda item 2B is possible policy regarding HOME assistance to properties where the construction occurred prior to loan process. Mr. Gerber.

MR. GERBER: Madam Chair and Board members, this agenda item is presented today to seek your direction on a policy for certain properties, requesting HOME assistance through construction occurred prior to when closing. In 2005, it was brought to the Department's attention that it is HUD's determination that when a manufactured housing unit is replaced with a house constructed onsite, the household assisted would be required to have a federal affordability period, and would be subject to recapture requirements.

This means that a loan closing is required prior to the start of construction to ensure an enforceable lien is in place. This process was unclear, and as a result, some homes have been started prior to all the proper paperwork to establish a lien being in place, and it cannot be placed in the records after the construction is begun.

We have corrected this problem, but we must

deal with the existing structures that are not consistent with Board policy and state law for filing liens. Staff is asking that the Board establish a policy for the existing households in this situation so that we can move forward by denying the request for funding, or creating the proper legal documents to resolve the issues as best we can.

In your write-up, staff provides two options. Option one allows the Department to continue to assist the households in this situation by creating a binding agreement on the property owner, but not creating a lien on the property itself. Staff recommends that this option be approved. I would also like to note that the Department has since provided very clear guidance on this issue to administrators, and the option being approved today would only provide relief to households in this situation because of actions taken before the guidance was provided.

MR. CONINE: Nobody wants to talk about it?

MS. ANDERSON: No, sir.

MR. BOGANY: I'll move.

MR. CONINE: Yes. I will second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Item 2C is the [inaudible] pay plan. Mr. Gerber.

MR. GERBER: Madam Chair and Board members, this item is the requested approval of the 2008 Housing Trust Fund report that is going to be provided to the Legislative Budget Board and the House and Senate: the House Appropriations Committee and the Senate Finance Committee respectively.

This plan provides for the programming of the trust fund dollars for the 2008 appropriation which totals \$5,844,397, an increase of 92 percent over the 2007 appropriation. And I know a lot of people in this room worked very hard on that. As described in the report, staff saw input from a variety of sources prior to generating this recommendation.

I would like to ask Brooke Boston to come forward and describe the four strategies for use of these additional funds. And while she is coming up, I would

like to particularly acknowledge Tim Thetford who is with Senate IGR who is here joining us today, and Senator Royce West, chair of that committee had a big hand in assisting us here, and we appreciate Tim, your help.

MS. BOSTON: Brooke Boston. As Mike noted, we have about \$5.8 million for the 2008 funding plan to allocate. There are several activities that we need to address, or steps that we had to go through before we could figure out exactly how to program this.

The first is that statute directs us to participate or have the Bootstrap Program, and it is \$3 million. And while it does indicate that the sources could be other sources, those other sources don't work very well. So for us, the Trust Fund is the only reasonable source for that activity. So 3 million of the funds will go to Bootstrap as required by statute.

Additionally, one of the considerations we had to evaluate as we went through this is, there are certain things in statute relating to how many of the funds go to nonprofits. The first 2.6 million of funds go to nonprofits, and then after that, 45 percent of the remaining funds also need to be made available to nonprofits. So as we have gone through and programmed the dollars, we have kept that in mind.

Additionally, one of the things that generally would be asked is, how does regional allocation fit into this. Because the Bootstrap Program is a set-aside that is backed out of this first, the balance left is less than \$3 million.

And based on the new statute, changes that just happened this session, if the amount of funds in the Trust Fund are less than 3 million after set-asides, they do not have to be regionally allocated. So in all of the cases, things that we are recommending for you for this plan, it does not have a regional allocation in place.

We also then got input from several different organizations. We talked to some of you all. We figured out internally where some of our needs were. And with that, we have recommended four activities.

The first is the Bootstrap Program, as I mentioned. I won't get into a whole lot of detail about that. Essentially it is the same program that we already have.

We, as you know, you all have approved a reservation program. If that continues to go well, this will roll into that reservation fund. If for some reason, I think we mentioned to you guys when you approved the reservation program, if we realize that after some

analysis that that is not going well, then we will defer back to our original model. So these will go out in one of the two ways, whichever we identify as being the most successful.

The second fund that we are recommending is a disaster recovery home ownership prepare program. As you all know, our CDBG funds for disaster recovery allow us to assist households. Unfortunately, there are some federal restrictions on how much we can give them. And so since this is a non-federal source, this would let us fill some gap.

The estimated gap that we are hearing from the Council of Governments is \$10,000 per household or less. And in most of these cases, the only thing that is keeping them at this point from getting that construction rolling, and, A, using our money and getting themselves into a home is that \$10,000 shortfall. So this fund would be used for that activity in particular.

It would be administered through the COGs since they are the ones already receiving the other funds that we have. And they would pair it up with the people who qualify and who are in need for that gap.

MR. GERBER: Can I just add to that, that on that particular case, we are also hearing from COGs that

the actual amount is far less than \$10,000 -- incidences of 2-, 3-, \$4,000 -- so the money should go further.

In addition to that, we hope that these additional state resources will leverage additional private resources that might come there. The state is investing in this, and we are going to work with our partners in South East Texas to that regard.

MS. BOSTON: The third activity is a rental production activity. However, instead of in the past, most of the HTF, to the extent that it was ever used for rental ended up kind of layering with tax credits. And this is specifically to do the opposite, so to speak.

We want to look at deals who don't have access to credit, generally probably because they may be too little, or they just aren't feasible for some reason. And layered on top of the fact that they would be non-credit deals, we are also looking at that the funds would need to be used for people at 50 percent of median or lower. Not the people traditionally served with just 60 percent of AMI.

Furthermore, if an applicant is able to target units at 30, we would consider the funds being used as a forgivable loan specifically to help subsidize those 30 percent units. As you all know, one of the areas that we

struggle with is getting the deep subsidy in our rental product. So the hope is to target that. And the maximum amount per applicant in that case would be \$250,000.

The last activity is a Super NOFA. We are using that term from HUD. It is a home ownership Super NOFA. And will allow for -- this is a million dollars, and will allow for three prime activities.

One would be zero interest loans to help homeowners rebuild from disasters other than Hurricane Rita. As we know, there is quite a lot of other disasters that have been going on in Texas.

The second activity would be zero interest gap financing or down payment assistance for first-time homebuyers. And then the third activity would be rehabilitation loans that would also be zero interest. And that would include the barrier removal that you heard some public comment on. In all cases, an administrator would apply, and the maximum per administrator is \$250,000.

We have also put some caps on each of the activities that we believe are reasonable caps that let them perform that activity. You may note that in your write-up that the rehab activity is capped at 30,000, and it is because we don't want them just to kind of go so

high as to roll into reconstruction. If people want to do reconstruction, our HOME program allows for that anyway.

So this was to try and target smaller rehab activities. And again, the beneficiaries in that case will all be people at 50 percent of AMI or lower. In all of these cases, these are repayable funds with the exception of places where I may have noted that something is a possible forgivable loan.

So any questions on the plan? We will be turning this in to the Legislature, Senate Finance, and the group of general organizations and then we'll just essentially start rolling with getting the money out.

MR. BOGANY: What is the time frame on this?

MR. GERBER: You will bring NOFAs too?

MS. BOSTON: Excuse me.

MR. GERBER: You will be developing NOFAs?

MS. BOSTON: Yes. We will be bringing you back NOFAs. Thank you. Critical stuff.

MR. BOGANY: What is the time frame, Brooke, on getting this together?

MS. BOSTON: Actually, once you all approve it, with any revisions that you may make, we will probably get it delivered in the next week. And then we will probably have some of the NOFAs hopefully, maybe October, but no

later than November for some of these activities.

MR. BOGANY: So in about 45 days, this could be on the street.

MS. BOSTON: Uh-huh.

MS. ANDERSON: Well, clearly the support from the Legislature in the form of additional HTF funds was very welcome. And we have, I think, I will speak for myself, a fervent aspiration that we get this money on the street, and that the administrators and recipients of the money spend it.

So that when we go back to the Legislature, we are in a position to say we have demonstrated with our community partners that we can spend this money wisely and quickly. So please give us another upward increment in the amount of money in the Trust Fund.

MR. CONINE: So moved.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Agenda Item number 3, 3A, Mr. Gerber, do we have any appeals?

MR. GERBER: There are no appeals.

MS. ANDERSON: That is good.

MR. GERBER: We will go on to Item 3B, which is the disaster recovery status report. And I am going to ask Kelly Crawford, our Deputy Executive Director for Disaster Recovery to walk us through all the items in Item 3.

MS. CRAWFORD: Good morning. Kelly Crawford. I have to say that the Housing Trust Fund money is just a blessing, and I think it is really going to help us move these funds much quicker and really serve those folks out in South East Texas that really need this assistance. Since the last Board meeting, we have been working on many things that we believe are going to help the COGs get homes on the ground. Excuse me.

And we have been developing activity logs, project management instruments for them as well as us, that we believe will get a better handle on what applicants they have. The level of eligibility that has been established, and then what has to occur to get those homes completed. And it has helped us home in on the gap

financing needs, and the fact that the balance is typically 2- to \$3,000. That is going to get a lot of these homes moved.

We have also been looking at a plan of action to bring the administrative expenditures in line with the budget of project delivery. And we have done a regression analysis on some expenditures to try and show trends that are going to help us look for areas that are in or out of line with expenditures. And we have developed a benchmark for what we believe is going to push these homes to the place where they need to be.

And the biggest area that we see that needs to take place is complete eligibility determination of applicants. The COGs have a lot of applicants. They have levels of eligibility. They have determined income eligibility, but there are so many other aspects to eligibility.

And we are working through that process where by the end of the year, we are expecting all COGs to have 100 percent of the applicants that they are going to serve be deemed completely eligible. And with that in mind, and the fact that we have the gap financing in place, we believe that that is going to push this into the next phase, which will be actually the delivery phase of the

project.

We are also going to begin providing progress.

A lot of stick-builts are being awarded. They have been bid. They are being awarded to construction firms at this time. So we are going to begin tracking the progress of the phase of those stick-builts. And those will begin to come to you each month, starting with next month.

With that being said, that is the general progress that we are moving towards over the next three months. Since the last Board meeting, Deep East Texas Council of Government has qualified an additional 21 applicants, and installed an additional housing unit. Their number of assisted households is two at this point.

MR. BOGANY: Kelly. Can I ask you a question?

MS. CRAWFORD: Yes, sir.

MR. BOGANY: With the progress that we are making, I know that we are slowly each month, it seems like we are adding one or two. How many houses, or people did we have in the pipeline that I can predict that 30 days from now, we will have 25. Where are we in the pipeline on getting this out?

And the other question I had, I know we are doing a lot of stick building in this area, and I know that labor is tough in those areas. Why don't we see more

system house building, where you know, they come out and system build, and they put the house together that will take a hurricane wind in a lot of cases. Why are we not seeing more of that what you can put up in six weeks, versus the stick building which may take some time?

MR. CONINE: [inaudible].

MS. CRAWFORD: I don't think that is a solution that the COGs have looked at as something that they felt was the solution they wanted in the areas.

MR. BOGANY: Okay. So it is --

MS. CRAWFORD: Their solutions are manufactured housing typically for folks who were, and there were a lot of manufactured homes that were destroyed and damaged in the hurricane. And so those are the choice for a lot of folks out there.

And then some of the areas are required. I mean, there are some building code requirements for stick-built. But I don't believe they have looked at what you are discussing as a solution.

MR. BOGANY: Okay. And the only reason, because you have got to put them up four feet, so it helps them in flood, it helps all the way across the board. And you can put them up in six weeks. And you have got a house that is probably better built than a stick-built

house.

But I am just -- and I guess, the applicant determines which way they want to go. And to me, to go buy manufactured housing that depreciates so quickly. It looks like if we switch to stick-built, we may have something that is saleable that has really great value long term.

MS. CRAWFORD: Something in between manufactured home and stick-built.

MR. BOGANY: Right. Which is, to me, would be the system built. I am just throwing this out, because I know it is available out there.

I know Mississippi is doing it. I know parts of Louisiana, and I know in the coast of Mississippi they have only, they only allow system built to even come back there, because it does take the hurricane winds. So I am just throwing that out.

MR. CONINE: But in a lot of cases, I think you have got some local ordinances related to inspections and codes that may prevent you from doing that. And I don't know whether those municipalities are waiving some of those now or not. But that would be an individual city-by-city issue.

MR. BOGANY: Okay.

MS. CRAWFORD: But these manufactured homes are wind zone -- proper wind zoned for the area.

MR. BOGANY: All right.

MR. CONINE: So Kelly, in answer to Mr. Bogany's question about the pipeline, which I think was kind of his question, I am looking at a chart that says project activity. And it says number certified eligible, and I go down, and I see 423. Is that not -- are those folks completely eligible?

MS. CRAWFORD: That is what we are finding out is not necessarily the case. And that is what I am trying to bring to you today.

MR. CONINE: I was getting ready to say, why wouldn't that be the answer to his question, would it be 423, or have we got to bust and --

MS. CRAWFORD: They have determined. I think that some of the folks have used eligibility a little bit more loosely than we would have, as far as what is really ready to go right now. Because you have to have -- we have ownership issues that people on this list probably have been deemed eligible, but you have to have ownership of the land and the property.

And a lot of folks are on land that the family owns. That multiple members of the family owns. And so

we are hitting a lot of stumps, as the Commissioner put it. They don't completely stop you, but they sure slow you down.

MR. CONINE: Well, shouldn't those be back over in the column of number of applications, if they are not, quote, completely certified eligible?

MS. CRAWFORD: Yes. And this is a discovery that, I can't say it is across the Board, but it is a discovery we made in the last week, that the word eligibility for some of the COGs isn't what we thought it was. And the more we are digging to try and help resolve the issues, the more we are understanding some things that we are trying to correct.

MR. CONINE: Maybe we need another new column. Yes. That says, the house is eligible, but there is other issues or something. I don't know. But would you work with the COGs and make sure that this report next month, if it says -- in my mind, if it says certified eligible, they need to be ready to go.

MS. CRAWFORD: I agree.

MAYOR SALINAS: So how much money have we spent in East Texas until today?

MS. CRAWFORD: Well, we have spent --

MR. CONINE: A million bucks.

MS. CRAWFORD: Right. For housing. And we have spent several -- I am sorry, I can't --

MR. GERBER: The bulk has been admin.

MS. CRAWFORD: Right. The bulk is admin.

MAYOR SALINAS: CDBG was what, 500 million?

MR. CONINE: No, this one. We are just talking about the 40 million.

MS. CRAWFORD: This is 40 million for housing for the first round. And then there was --

MAYOR SALINAS: So how many houses have we built in East Texas altogether since this storm came to be?

MS. ANDERSON: Thirteen.

MS. CRAWFORD: Thirteen.

MAYOR SALINAS: Is that all?

MS. CRAWFORD: Yes, sir. Now there have been multiple homes that have been awarded for bid. They have gone out for bid and constructions, have started on some of them, and should very shortly start. Those are the stick-builts. Those are the ones that will begin to report on the phases of that.

Manufactured home, it is awarded and it gets put on the ground very quickly. Stick builts are going to take, depending on the weather out there, 30, 45, 90 days.

MAYOR SALINAS: So actually, the people that are really making money is the COGs. They are using what, 20 percent of what we send them?

MS. CRAWFORD: Yes, sir.

MAYOR SALINAS: Twenty percent.

MS. CRAWFORD: It is the beginning of the program that no one understand how to use. And so it has taken some ramp up. But to your point, that is what we have been working on and what Ms. Anderson asked us to do, and that is, get the project expenditures in line with the admin. It is time to do that, and you will see that.

MAYOR SALINAS: So actually, we haven't done very much over there, and the only people that have been making a little bit of money are the COGs. Probably on some jobs in their offices. Because people are really not getting any help at all.

MS. CRAWFORD: It is on its way. It is underway.

MAYOR SALINAS: But this happened what, in 2005.

MS. CRAWFORD: Yes, sir.

MAYOR SALINAS: 2005, 2006, 2007.

MR. CONINE: No. We didn't even get the money until the beginning of this year.

MAYOR SALINAS: We got the money at the beginning of this year.

MR. CONINE: Correct.

MS. CRAWFORD: The contracts with the COGs were in effect a year ago.

MAYOR SALINAS: I would be interested to find out how much really you spend on the people and then on administration.

MR. CONINE: Well, and to the COG's credit, if they have done all the work necessary to get 423 of them almost ready to go, then most of the money will blow out the back end with very little administrative expenditures.

So you have to keep all that in perspective. And Mayor, they are jumping through so many federal hoops that have strings attached to this money, that you can't even imagine.

MAYOR SALINAS: I know.

MR. CONINE: They have ownership issues. I mean, I have some sympathy for what they are going through. If you talk to your friends in Louisiana, they are going through worse issues than we are here in Texas.

MS. CRAWFORD: Okay.

MS. ANDERSON: Any other questions on this agenda item? There is no action required. This is just

our monthly update.

(No response.)

MS. ANDERSON: Then let's go to the ORCA item, the next item.

MR. GERBER: Ms. Lagrone, would you like to come forward?

MS. ANDERSON: Thank you, Kelly. See you again in a minute.

MR. GERBER: Heather Lagrone from ORCA is here to brief us.

MS. LAGRONE: Good morning. I am Heather Lagrone from ORCA.

MR. CONINE: We got you again, instead of Charlie. All right.

MS. LAGRONE: I am back again. Yes, sir.

MR. CONINE: Twice in a row. Maybe he will read the transcript.

MS. LAGRONE: I will let him know your preference.

MR. CONINE: That will get a phone call.

MS. LAGRONE: Okay. The report that you have in front of you is going to update you about both Round 1 and Round 2. The report was due the day after I spoke to you last meeting.

So your report shows that we spent \$4.7 million under the non-housing funds. As of this morning, that number was 5.1 million. We have about \$400,000 in draws that are under request right now for review. So that number is going to continue to increase.

Also attached to your report, I hope that you have received a table that I put together that kind of shows you the communities and who is drawing, whether they are drawing program dollars or just project delivery dollars. You also see where they spend in relation to completion of their environmental, which is the first piece of what they all have to do to get these dollars underway.

We have continued with our meetings and we are going out and visiting every single community again, and reminding them that their contracts are now a year in. August 31 for the majority of these contracts was the year anniversary. They are two-year contracts, and we are informing them if they are going to continue to be two-year contracts, then they need to get moving on those contracts, and get those dollars out the door.

We have been out providing technical assistance. We have got all of our staff in place. We spent a lot of time in South East Texas over the last

month just helping the communities get their dollars ready to spend or spent.

Under the second round of money, the 428 of which we are spending 42 million, we did receive the 26 applications that total \$73 million. Those are currently under staff review so that we can make recommendations to you as to who we recommend to be awarded under that.

As you can imagine, with so many applications for so many dollars, when we have only got \$22 million to compete, it is quite competitive. So we are going through them.

Our legal staff is reviewing the MOU between our agency and your agency so that we can execute that document. Once that document is executed, we will enter into an agreement with Memorial Hermann and Baptist Hospital for the 6 million that you approved. Memorial Hermann Hospital has ordered their CAT scan. So apparently you have to order those; you can't buy them off the shelf. So they are building it as we speak.

We are also working with the two other set-asides, Hardin County and Bridge City, in relation to their budgets, to help figure out where their budgets are going to eventually end up being. With that, that is the update that I have for you. If there is any questions

that you all have?

MS. ANDERSON: I have a question. Oh, go ahead, Mr. Bogany.

MR. BOGANY: You go ahead.

MS. ANDERSON: My question is, reviewing these 26 applications, do you think we are going to get to see those in October?

MS. LAGRONE: It is going to be really tight for us to get them here in October.

MS. ANDERSON: When was the deadline?

MS. LAGRONE: They were due to us August 10.

MS. ANDERSON: Okay.

MS. LAGRONE: And our board write-up would be due to you, or due to your staff on the 24<sup>th</sup> of this month. And I am not sure that we will make that deadline.

MR. BOGANY: What is holding you back?

MS. LAGRONE: They are large applications. They are very complex. Generally, they are asking for multiple activities.

And we are just going through the process. Part of our scoring looked at, if they made damage reports and things, that we are now going back and confirming to make sure that the damage reports that they are providing to us are actual correct numbers.

MR. BOGANY: Is there any way to move things a lot faster from your side? Is it -- you know, I am looking at your activity report and there are a lot of total beneficiaries. And I am just wondering.

And I see that a lot of the cities are making some movement. But is it any one particular theme that is keeping us from moving forward?

MS. LAGRONE: Well, under the first, well, under both rounds. But under the first round particularly, none of the federal regs were waived in relation to that environmental and that procurement. And it has just taken the time to get to this place where we are starting to procure.

You have to complete your environmental assessment. And you have to prove that there is no significant impact on your environment before you can actually even procure to buy the generators or rehab or contractors to pick up debris.

MR. BOGANY: Mike, I have a question for you. Why can't we get HUD to see and understand what is going on here, and get some of these rules waived to make this work smoother? I know they have been down here to look at it.

MR. GERBER: They have been down to look at it,

and I think Heather and Kelly might want to add to it. I think my perception is, they feel like they have waived what they can waive.

MR. CONINE: Federal statutes.

MR. GERBER: Other federal laws are holding them.

MR. CONINE: It literally takes an act of Congress to do it, because they are labeled CDBG money.

MR. BOGANY: Okay. Thank you very much.

MR. GERBER: And Heather, if I can just interject. The staff deadline on the 24<sup>th</sup> sure can be waived. I mean, we had a obligation to post our Board book seven days ahead of time. And up until the night before, if we can, don't let our deadline pressure you all. If we can get those awards to the Board in October, that would be great.

MS. LAGRONE: We will work towards that, then. Thank you.

MR. CONINE: Heather, would you do me a favor on next month's report, please. Unfortunately, we are having another tropical storm/hurricane down there as we speak today. And I would like a couple of feel-good stories, if you might, on items that have already been expended. I know we did generators, public shelters, and

so forth.

The cities or counties that can come back and say, you know, because we did X, it helped us today, tomorrow, whenever. I would just like to hear some of those.

MS. LAGRONE: Okay. We can do that.

MR. CONINE: Thank you.

MS. ANDERSON: Great. Thank you. Thanks, Heather. The next agenda item is the CDBG disaster recovery multifamily rental applications. Mr. Gerber.

MR. GERBER: Sure. Mr. Conine, in that spirit, today, we are going to hopefully move some money. This is, as you know, the partial action plan for Round 2 as approved by the Governing Board and approved by HUD. It requires us to use 82.8 million in the form of a grant or a loan to the owners of affordable rental properties that were damaged by Hurricane Rita. On April 12, 2007, the Board approved the CDBG multifamily rental NOFA for \$82,867,166 for the CDBG disaster recovery fund for the rental housing stock restoration program. The applications were due on July 26. The Department received nine applications for a total of \$130 million. Since the initial submission, one application withdrew and one was terminated.

The seven remaining active applications total \$109.4 million. All seven of the active applications have been reviewed by the disaster recovery and multifamily staff for CDBGs threshold and selection criteria. PMC and financial services have also reviewed the applications for material noncompliance, and no issues were identified.

Additionally, the Real Estate Analysis Division also performed a review of all seven of the active applications. No appeals have been filed in time for this Board meeting. So there is a outstanding possibility that there may be underwriting appeals that will be heard by the Board at the October Board meeting. Pursuant to the award recommendations and tie-breaker methodologies that are outlined in the CDBG rental NOFA, staff is recommending five of the seven active applications for a total award of \$81,147,333 in CDBG disaster recovery rental.

MR. CONINE: Now we are moving some money.

MR. GERBER: The recommendations are presented in your Board book. And there is one item that I wanted to mention, and that involves Orange Navy Homes, which is recommended for funding. They have outstanding historic preservation issues, and a condition of their approval would be that they seek removal and are removed from the

various historic preservation lists, both at the state and federal level in the next year, which is a tall order. We are giving them a year, because of the goal is to move these funds. So that is the condition placed on that particular property. But with that exception, we are recommending, and other conditions on the underwriting report, we are recommending the approval of these five properties.

MR. CONINE: Madam Chair, I move approval.

MR. BOGANY: Second.

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

MR. REYNA: Good morning. My name is Robert Reyna. I am the Executive Director of the Beaumont Housing Authority. And I came this morning wanting to thank you for all of your hard work, and to thank especially Mr. Gerber and TDHCA staff. They have done a yeoman's job of reviewing these applications working with local housing authorities and COGs in the South East Texas region.

I was in Beaumont when Hurricane Rita hit. I left for about eight hours, and turned around and came right back. I have been working since then with the South East Texas Regional Planning Commission on bringing these

funds, and getting more funding from Congress, from HUD to this region.

We are excited to learn that we are being nominated for one of the awards. But it concerns us that only five are able to make this. We wish it were more.

Commissioner Bogany asked the question about HUD regulations and waiving the rules. We share that concern. We got some of the rules waived for our local housing authorities under the disaster, the hurricane disaster designation.

But I think we are getting at a point right now where HUD is saying, you know, you have had so much time to meet these requirements and waive the rules. So now, come December 31, all bets are off.

That being said, we knew that there was a limited amount of funding for this allocation. We also knew that there were tax credit allocations that were supposed to be set aside. We applied simultaneously for a 9 percent tax credit allocation for this year, at the same time as the CDBG application, because we knew that in '05 and '06 you guys had made forward allocations of funding.

And we knew that the chances were very slim that there would be funds in 2007 for our 9 percent tax credit application. Nonetheless, taking the best option

possible, we submitted both applications. It is our understanding, I believe last month the Board approved a recommendation for our 9 percent tax credit application. The amount yet has not been determined.

We are here today with a recommendation for our CDBG application. We know the amount. We have received a letter from TDHCA staff telling us the amount. We have not received a final allocation amount on the 9 percent tax credit yet.

So that being said, we are not trying to double dip here. It is not allowed under the competition rules.

We have followed the rules. We did everything that was asked of us on both tax credit application and the CDBG application.

If we need to make a decision today, I am here to tell you, if the Board approves our CDBG application, we would immediately withdraw our tax credit application and implore the Board to consider sending that back down to Region 5. There are so many worthy applications and needs down there, and we understand that.

But we are not here to try to double dip. But we are not thrilled to be called by the Mayor's office, or the City Manager's office, saying, why are we being asked to oppose this award. So we are here today to give the

Board our clear direction that if you approve this action, we will immediately withdraw our tax credit application.

MS. ANDERSON: Thank you. Thank you, sir. Any questions? Mr. Bill Fisher? Just for questions? Thanks. Mr. Akbari? Ike? Yes.

MR. AKBARI: Good morning. My name is Ike Akbari. I am the developer from Port Arthur. Obviously, I have been in Port Arthur for almost 30 years, and I have been involved in affordable housing all this time. First of all, I wanted to thank you for, thank the staff for the wonderful job they did. Ms. Jen Joyce and her staff has been wonderful.

They have done many hours of work in a very short period. And I thought Mr. Reyna's decision today, and of course, as you know, I am for all the applications listed in the CDBG list. I think they are all wonderful projects; I think they all deserve to be nominated for funding. There is -- actually I have a couple of concerns.

It is not -- like I said, I support all these projects; only I have just a few concerns I want to share with the Board. I want to see what [electronic interference] decision to help in all these projects instead of just only one or two or five.

Number one, as Mr. Reyna suggested, if the Board decided to give the CDBG funds to this project, I hope they would also decide to give the tax credits to the next project in line, which was one of the projects actually listed right here, in this, Sunlight Manor. And number two, my request is that two project under 7902 and 7903 and also 7908, the project that we have applied for CDBG funds.

Some of these projects had originally, for example, Gulf Breeze has only 152 units, and the request is to replace with 234 units, additional units of about 82 units. And Brittany Place, the same thing. They have damages on 104 units, and requested for 196.

If this, if only the funds go to the units that are damaged or destroyed, there is enough money to fund all the projects. And that is what I have. And if there is any question, I would be more than glad to answer.

MS. ANDERSON: Thank you. Mr. John Robinson. The next witness will be Chris Akbari.

MR. ROBINSON: Good evening. My name is John Robinson from the Sunlight Baptist Church. And the project was constructed from the ground up. And we have received some light damage, but now we would like to be funded to try to get them back in shape as they normally

were. If the Board would allow us to do that, the privilege to do so, and fund us. Thank you very much.

MR. CONINE: Thank you.

MS. ANDERSON: Thank you, sir. Any questions? Thank you. Mr. Chris Akbari?

MR. AKBARI: Hello. I am Chris Akbari. And I am here to support Sunlight Manor, 07-906. And I just wanted to say first that I really appreciate everything Mr. Gerber and the whole staff did to get this money to this point, to get these applications processed. And I just wanted to take the time to say thank you. I don't really have any statement. I know you guys have had an opportunity to look through the books and you know how we feel. So thank you.

MS. ANDERSON: I just ask that you work really hard on that historic preservation designation. This is proposed to give you twelve months. And that is big. We are tying up a lot of money waiting to see if you can get that done.

MR. AKBARI: Yes, ma'am.

MS. ANDERSON: And it is important to Orange to preserve that neighborhood. But you are going to have to do some heavy lifting there.

MR. AKBARI: Okay, thank you.

MS. ANDERSON: Thank you, sir. Reverend Curtis Johnson.

MR. JOHNSON: Hello. I am Curtis Johnson. I am the pastor of the Sunlight Missionary Baptist Church. I have succeeded the late Reverend G. W. Daniels, who was the founder of the Sunlight Apartments. He had a vision for low income housing to help poor people to be able to live in better conditions.

I believe if memory serves right, the manor, Sunlight Manor was built in 1971, perhaps '72. And he had a passion for people, period. And he really cared about those who are not able to live in affordable houses. So he had that vision, Sunlight Manor stands as a monument to Dr. Daniels.

We had some residents that were on their way to Austin, but because of another bad storm in Beaumont, they were not able to be here today. I have several members from that church that live in those apartments. They are older members; they have been there 30 years. This is their life. This is all they know.

And I just hope and pray that you all will consider giving them the funding that is necessary. We have learned the funding from the CDBG was established for existing projects. And as I said, I am here out of

concern for the residents, as well as some members that are members of the church.

And as I said, this was Dr. Daniels' passion. He cared about humanity. We would like to see as much help as much funds as can be available to Sunlight Manor.

Thank you for hearing me today. Thank you so much.

MS. ANDERSON: Thank you, sir. Mr. Barry Palmer.

MR. PALMER: My name is Barry Palmer with the Coats Rose law firm. And I am here today to ask the Board to consider funding all seven of the CDBG projects that are on your list. All of these projects scored the same number of points, and so the determination was made by a tie-breaker on which ones to fund. All of these are good projects.

The problem is, that no cap was established on how much money to be allocated to each project, and no cap was established on how many units to build. Which is virtually unheard of in the housing programs that we participate in. We have caps in the tax credit program. We have caps in the bond program. We have caps in the Housing Trust Fund.

And so for us to have \$82 million come from the government as grant money and only go to five projects, I

believe is not the wisest use of our resources. And we could cap.

The reason that some of these projects are asking for so much money, \$24 million for example on one project, that was 104 units at the time that the storm hit. But there was no cap on the number of units, so instead of doing 104 units, they are building back 196. And then another project that was 152 units is asking for 22 million to build back 234 units.

But in the RFP, it provided that the Board could partially fund projects. You don't have to fund \$24 million to one project. You could reduce the funding only fund back the amount to build back the number of units that were there at the time of the storm, and that would allow all seven projects to get funded.

\$24 million of grant money is 30 percent of the money that we are getting from the federal government. To allocate that much to one developer is unprecedented in TDHCA's programs. Even in Louisiana, when they got their CDBG money, they put a cap on how much went to any one developer or any one project.

So I would ask the Board to use its discretion to impose a cap. Even if you did a \$15 million cap on the project, that would get all these projects funded. And

that there is not a need to allocate 24 and \$22 million to the projects so they can build back a bunch of new units in addition to repairing.

This money was originally intended to repair, restore and replace units that were damaged by Katrina. It was not envisioned as a new construction program. But that is what is happening here on a couple of these projects where they are building back a lot more units than were there at the time of the storm.

MS. ANDERSON: Any questions?

MR. CONINE: It would have been great to say that when the NOFA went out, Mr. Palmer.

MR. PALMER: I did. I did say than when the NOFA went out. And the problem was, staff was from the perspective, staff always thought this program was going to be undersubscribed. And so we made recommendations to limit the number of units. We made recommendations to limit the number of dollars.

We also made recommendations to give points for leveraging, but staff did not want to do that because they thought the program was going to be undersubscribed, and were concerned that the money wouldn't be utilized. We could have done all of these deals, leveraging them with 4 percent bond money, and there would have been enough money

to do all these plus other deals.

But instead, we discourage leveraging. If you will look in the sources and uses on these deals, 80 to 90 percent of the project is being funded by CDBG grant.

MS. ANDERSON: Any other questions?

MR. BOGANY: I have a question for staff.

MS. ANDERSON: Yes. Thank you, Mr. Palmer.

May we hear the last person who would like to publicly comment. Mr. Swati? Oh, I am sorry. Pardon me.

MS. SWATI: Good morning. I represent the Port Arthur Housing Authority as a board member.

MS. ANDERSON: Your name.

MS. SWATI: Board member Farhana Swati, Port Arthur Housing Authority. Respective members, the Port Arthur Housing Authority feels very strongly that CDBG funding be awarded to existing -- reconstruction of existing units affected by Hurricane Rita.

The residents of Carver Terrace Townhomes and Brittany Plaza I and II are living in substandard conditions. So if CDBG funding can only be awarded to two projects in Port Arthur, we recommend and request that those two projects be Carver Terrace Townhomes and Brittany Plaza I and II. That is all. If there is any questions.

MS. ANDERSON: Thank you. Mr. Bogany, you have a question for staff?

MR. BOGANY: Yes. I just had a question for staff in regards to Coats and Rose, Mr. Barry Palmer's comments on how we put this together, and did we have any input that it was not the right thing to do.

MS. JOYCE: Was there any specific part of his comment, or just in general.

MR. BOGANY: Well, Mr. Conine asked him a question of why it would be great to have this information when we put out the NOFA and got these deals back. Now my question is, did we have that input, and what is your thoughts on some of the comments he made.

MS. JOYCE: Sure. Jen Joyce from the Disaster Recovery Division. A couple of thoughts on that. One, the comment that they had recommended points for leveraging. And we actually did add into the NOFA, there are points for leveraging there.

However there was a flaw in the scoring mechanics in terms of what was recommended for the language and everybody got the points. The points were intended in that regard to be kind of easy to get to make sure that we were -- we had a high threshold for deals, but at the same time, but it was easy to score the

minimum.

Let's see, in terms of -- the other reason for not necessarily encouraging more of the leveraging is that we had concern that there wasn't enough left in the bond ceiling for multifamily developments. We didn't see that as being a possibility. There was also not -- we didn't see any adequate sources of leveraging that we could definitely anticipate getting. Therefore, we were concerned about how that was going to work out.

So and through public comment, we ended up incorporating into the NOFA more incentives to actually award more CDBG funds. The other benefit added to that is that it is a lot less technical in requirements for the long term. And that is only a five-year affordability period. If you were to layer on other deals, other funding sources, then it would increase the 30 and the federal and the state statute would require that.

MS. ANDERSON: Jen, would you explain to the Board what the tiebreaker that was published in the NOFA is?

MS. JOYCE: Sure. The tiebreaker in the NOFA, I hope I say this correctly, it was the total of the unoccupied units, the previously unoccupied units on the existing development, as well as the substandard units

that are being replaced by the development. So actually in terms of what made or broke the deal is how many units they indeed were replacing that were substandard or unoccupied at the time or currently.

MR. CONINE: I think I remember at least some of the conversation too. When you get into fixing up stuff that was damaged by storm, you don't know what you are going to get into. And so I think a lot of the caps and a lot of the restrictions that we would normally have on normal programs, we wanted to have as much flexibility for the guys as possible within this particular program.

And quite frankly, I am glad we are getting the money out the door. I wish it could be more to help more people, but that is always the case, particularly with our program.

MAYOR SALINAS: Let me ask a question. What about this reconstruction of more units than they had?

MS. JOYCE: Yes, sir. It is an interesting concept, actually. When you look at the data, and I am sorry I don't have the exact number. But the number of units that are being built by these awards are 800 and 13.

The total number of units that were actually submitted to us for an application, even including the terminated and withdrawn was just over 1,200. Far more units than that

were actually demolished and destroyed in the hurricane. So the need is there. The idea of doing 158 units or doing 234 units is not only the existing development that previously was there, but also replacing some of those units that didn't get the chance or the opportunity to apply or that might not have met that minimum criteria. So we are replacing units and still not meeting the needs of the area in terms of multifamily rental needs, but it is getting closer. And we wanted to be sure the developments had that opportunity.

MAYOR SALINAS: So the extra, they had 158 units that went up to 234?

MS. JOYCE: I thought it was actually 195. But it was something less than 234. And actually, the minimum criteria for qualifying is that you were building at least the number of units that were existing at the time or more.

MAYOR SALINAS: Or more?

MS. JOYCE: Because we did want to encourage more units if possible to fund.

MAYOR SALINAS: So we are still funding the extra out of 150 to the 234.

MS. JOYCE: Yes, sir.

MAYOR SALINAS: CDBG pays for the whole

enchilada.

MS. JOYCE: Yes, sir. They do pay for all of them, and all of the ones before you, with the exception of Point North, because they had an exemption of HOPE 6 funds, all of them are replacing or rehabbing at least or more the number of units that were affected by the storm. And all of them are 100 percent affordable.

MAYOR SALINAS: Okay. So what happens to the other two that didn't get funded?

MS. JOYCE: I can have tax credit staff make a comment on that.

MS. ANDERSON: Mr. Mayor, if Mr. Reyna returns the credits, like he says he is going to, then staff goes through its normal process. And there is at least one of these deals that is not being awarded today that is potentially in line to receive to turn back into a tax credit deal.

MAYOR SALINAS: Okay.

MS. ANDERSON: But the staff will have to work through those issues. So it is kind of all hypothetical until the credits come. Until we make sure Mr. Reyna knows the credit amount so that he can then return the credits if that is his intent, as he indicated. And then it is sort of a waterfall effect. Right.

MAYOR SALINAS: Well, he made that commitment here.

MS. JOYCE: And if I could also just add that it would require probably a HUD action plan amendment if we were to award more than the minimum. I am not saying that it is impossible, if it is at the Board's discretion.

MR. CONINE: Call the question.

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MS. JOYCE: If anyone else, just thank you so much. The Multifamily staff, the PMC staff, the Real Estate Analysis staff, all of whom are not under the Disaster Recovery Division, but went above and beyond to help get all this out.

MR. CONINE: Good job.

MS. ANDERSON: Good job.

(Applause.)

MS. ANDERSON: This is not like looking at a tax credit app, either from a multifamily or an underwriting perspective. And so they -- it was a

learning experience for everybody.

Just to give you all a little warning. We are going to break at 11:30 for lunch in executive session so we will continue until then. And the next item is a request for amendments to the CDBG contracts. Mr. Gerber.

MR. GERBER: Madam Chair and Board members, this item is an amendment request from South East Texas Regional Planning Commission. They are requesting to transfer 5 million from their emergency repair budget category to their reconstruction budget category. SETRPC subcontracted the City of Beaumont requesting a transfer, to transfer a total of \$2,745,000 from their emergency repair budget category and \$1 million from their single family rental budget category to add 1.245 million to their rehabilitation and create a \$2.5 million reconstruction budget category.

Another SETRPC subcontractor, the City of Port Arthur, is requesting a transfer to transfer a total of \$3.49 million from their emergency repair budget category to add 1.465 million to their rehabilitation category and to create a 2.025 million reconstruction budget category.

These changes were requested because almost two years have passed since the day of the storm, and during that time, emergency repairs are less needed and we are

dealing with substantially fuller rehabilitations of properties, which in many of the emergency repairs have just been met in large part by the faith-based community and by many others out there.

Each of these requests can be substantiated by the types of requests for assistance that have been submitted by the applicants throughout the three-county region. The number of proposed beneficiaries will be reduced from 2,200 to 830, which is very significant.

And I confess I have frankly very mixed feelings about this request, Federal money that has been available. We talked about this today already. It has been available for quite some time to help with those emergency repair needs which would have been ideal. Instead, the faith-based community stepped up to help those victims. And we are now dealing with the more admittedly complicated and challenging work of rehabilitation which we very much are glad to be getting into.

But a lot of folks continue to go without help, and it is just a need to just move much more aggressively, much more quickly. And I know Commissioner Dubose and Shawn Davis from SETRPC are here to talk about that. But it is just one that just sort of again, sort of sticks,

that there were people that we could have helped, that because of the passage of time, we didn't have that opportunity to be there for them. And as all of us who are housers, we care about that deeply. Kelly, I don't know if you want to add anything to that. But we will make a request for that amendment.

MS. ANDERSON: And would you refresh my memory on the first 70-plus million? The Secretary of HUD's admonition to us that at least some percentage had to be used for housing, so we would not be running afoul on the original division between housing and non-housing by putting money into housing.

MR. GERBER: That is correct. We would not be.

MS. ANDERSON: I do have public comment on this. Mr. Davis.

MR. DAVIS: Good morning and thank you. Shawn Davis. I am the brand new Executive Director of the South East Texas Regional Planning Commission. I just wanted to take a moment this morning to first of all, as I said, I am brand new on the job. But I have been involved in this since the storm. I worked for a local state representative, and I have been familiar with the issues from the outset.

And I am also familiar with the fact that we

have received -- we have had a great partnership with TDHCA, incredible communication. Just my second week on the job, but we have talked daily. We give daily updates of our activities, what is going on with the Commission and our progress. We have been meeting face-to-face weekly. We will meet again next week on our process and procedures. So I just wanted to say thanks to Mr. Gerber and of course Kelly and her crew for providing that guidance to us. And it is -- I am confident it is going to pay benefits.

I did want to say now, with the storm coming in last night, we will probably have to reschedule. But today we have scheduled 15 bid awards. Two of those are rehab; 13 for reconstruction of stick-built homes.

Next week -- Thursday of next week, we have 15 more homes going out for bid. At this point, we have got 13 manufactured housing units on the grounds, 17 total, but 13 out of CDBG. And I wanted to make a quick comment on how incredibly important the gap funding is, and how much I appreciate TDHCA's efforts in that regard, out of the Trust Fund. We have eleven homes sitting in the queue right now, ready to go, completely eligible, with the exception of the gap fund. So we are very excited to get our hands around that, and our teeth in that first part of

next week to get this issue resolved, and try to get that.

We do believe that we have private partners in South East Texas who would be willing to participate with us. And we look at this as an incredible tool, and we really appreciate your consideration of that. Again, I just wanted to introduce myself, and thank you very much for your efforts on behalf of our neighbors and families. Any questions for me? Hopefully, no hard ones until next time.

MS. ANDERSON: Just pedal hard. I know you are.

MR. DAVIS: You have our commitment on that. Thank you very much.

MS. ANDERSON: Thank you. Mr. Dubose.

MR. DUBOSE: Good morning. I am John Dubose. And thank you for taking me before lunch. I need to get back. My wife has called twice to say the air conditioner doesn't work because the power is out.

MR. CONINE: You need to find one of those emergency generators down there.

MR. DUBOSE: Actually, my son-in-law and son were fighting over the one that was working, so we will see how that turns out. I would like to reiterate some of what Shawn has said, and answer a few questions here

perhaps.

Certainly, the gap funding is a major issue. And we really are anxious to get, as he says, get our hands around that and get some of that done. This eleven units that we are talking about that could go, right now, and go to work on, \$30,000 will turn those loose. So that is the kind of help we really need.

Now we are not through working locals for this as well. We have had faith-based meetings, and that has not turned out too well for us. But you know, we are not through with this. We are going to raise some local money too.

In response to the Mayor's comments, the Regional Planning Commissions are not making money on this, sir. It has taken us a long time to get to where we are. And quite frankly, it is just not that simple. It appears that it is.

But what is happening to us is we have these people who have so many obstacles. Gap funding might be one; title, another; ownership issues before and after the storm. All of these have become difficult hurdles to get over. So with TDHCA staff help, we have come a long way.

And the last time I appeared before you, I said that we are moving, finally we are moving. And we still

are moving. We are moving slowly. We need to pedal harder and we are willing to do that. There are a number of hoops that we must jump through and TDHCA and their staff have helped us greatly in getting through those.

The communication lines are open, and we are willing to work with you. And as TDHCA staff has indicated and has done so with us. I need to say before I forget, because I promised Mayor Claybar that I would, that we support the Orange Navy housing project, and we support the Palm Garden Apartment project as well.

I would like to invite you folks to have a Board meeting in Beaumont. Not today, because there is no power, but we would love to have you come down there.

And as far as the modular question that Mr. Bogany raised, Port Arthur is looking at that. Some of our issues though, surrounding what your comments are, a lot of these are not reconstructs, but renovations, repairs. And it is cheaper to do that than it is to come in with a modular.

So we are trying to make an expeditious use of these funds. And we thank you for your time.

MS. ANDERSON: Thank you, sir.

MR. CONINE: Move approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. Let's finish up this agenda item on disaster recovery before we break for lunch. So we are on 3F, which is requests for amendments to CDBG contracts administered by ORCA.

MR. GERBER: Heather Lagrone with ORCA will walk us through them.

MS. LAGRONE: Again, I am Heather Lagrone with the Office of Rural Community Affairs. We have recommended some communities who are asking for amendments for various reasons. I can go by them line by line if you would like, or if you have particular questions, I can address them at your preference.

MR. BOGANY: Just take them all.

MS. ANDERSON: I think we can. Yes. I do have, if I can just ask you to stay close. Mr. Fitzgibbons, do you want to testify?

MR. FITZGIBBONS: Yes, I would.

MS. ANDERSON: Okay.

MR. FITZGIBBONS: Madam Chair and Board members, Mr. Gerber. We have been working very closely with -- Steve Fitzgibbons. I am the City Manager of the City of Port Arthur, Texas. We have been working very closely with ORCA and with Heather. And we have an amendment before you. And it was told to us that it had been pulled off the consent agenda. So I would be here to try to answer any questions. I think, some indication I had, was there was some concern about payment for using our own landfill, as opposed to paying to use someone else's landfill. And if that a question, I can certainly address it. And if it isn't, I can just try to address any questions that you might have.

MS. ANDERSON: Does the Board have any questions?

(No response.)

MS. ANDERSON: Thank you. Thanks for your testimony. What is the Board's pleasure? That is the end of the public comment.

MS. RAY: Madam Chairman.

MR. CONINE: Chairperson.

MS. RAY: Chairperson.

MR. CONINE: Whatever.

MS. RAY: Ms. Anderson, I move staff's recommendation.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(Chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries. We will stand in recess for lunch, and the Board has an executive session. So we think we will start at 12:30. Okay. Approximately 12:30. You know, you can't always hold us to that. And I will read the required into the record.

On this day, September 13, 2007 in the regular meeting of the Governing Board of the Texas Department of Housing and Community Affairs held in Austin, Texas, the Board adjourned into a closed executive session as evidenced by the following.

The Board will begin its executive session today, September 13, 2007, at 11:35 a.m. The subject

matter of this executive session and deliberation is as follows. The Board may go into executive session and close this meeting to the public on any agenda item if appropriate, and authorized by Open Meetings Act, Texas Government Code Chapter 551.

The Board may go into executive session pursuant to Texas Government Code section, Chapter 551.074 for the purposes of discussing personnel matters, including to deliberate the appointment, employment, evaluation or reassignment of duties, discipline or dismissal of a public officer or employee. Consultation with attorney pursuant to Section 551.071(A) Texas Government Code with respect to pending litigation styled Dever v. TDHCA, filed in federal court. With respect to pending litigation styled Brandal v. TDHCA filed in state court in Potter County.

With respect to pending litigation styled Ballard v. TDHCA filed in federal court. With respect to contract negotiations with selected vendor on HAP Disaster Recovery RFP. With respect to implementation of legal issues of Senate Bill 1908. With respect to any other pending litigation filed since the last Board meeting.

(Whereupon, Board went into Executive Session.)

MS. ANDERSON: We will come back to order.

First before we proceed, let me just read my little mandatory blurb here.

The Board has completed its executive session of the Texas Department of Housing and Community Affairs on September 13, 2007 at 12:35 p.m.

I hereby certify that this agenda of an executive session of the Governing Board of the Texas Department of Housing and Community Affairs was properly authorized pursuant to 551.103 of the Texas Government Code. The agenda was posted at the Secretary of State's office seven days prior to the meeting pursuant to Section 551.044 of the Texas Government Code, that all members of the Board were present with the exception of Sonny Flores. And that this is a true and correct record of the proceedings pursuant to the Texas Open Meetings Act, Chapter 551, Texas Government Code.

MR. CONINE: Madam Chair, we had testimony earlier this morning about all things, above all things, Texas weather for this year. And I think, I am not sure we gave staff the proper instruction on what we wanted done with that particular issue, about the '05 credits placed in service in '07.

It would just from this Board person's view, it seems like that issue needs a lot of thought and a lot of

staff analysts before the Board has a chance to delve into that issue, if we choose to do so. And I would make a recommendation, and if I can get the rest of my Board members' consensus that we ask staff to take a hard look at it, and come back to us in October for some sort of discussion that we can have.

But the window needs to be fairly short. If we are going to do something, and I am not saying that we are. The window is going to have to be fairly short to get to our November meeting. I don't even know what day that is scheduled for. But to get to our November meeting before the December placed in service date issue.

So very complicated. I know you didn't need something else to do. But again, this is an extraordinary item. I think we ought to take a hard look at it.

MS. ANDERSON: And with some potential recommendations so the Board could perhaps set some direction that would guide any subsequent activity in November.

MAYOR SALINAS: I agree with Mr. Conine.

MS. RAY: I agree.

MS. ANDERSON: Great. You all will do. Thank you. Okay. We are ready, Mr. Gerber, for Agenda Item 4, which is the possible approval of the Housing Trust Fund

funds for foreclosure prevention plan.

MR. GERBER: And Madam Chair and Board members, at Mr. Conine's suggestion, you directed the staff to develop a foreclosure prevention plan, utilizing \$100,000 in Housing Trust Fund funds for mortgage loans for the TDHCA single family mortgage revenue bond portfolio. Since then, staff has met with the program's master servicer, Countrywide, to develop three options that would allow intervention to assist families.

Regardless of the options selected, staff is recommending the Board adopt specific distress criteria that should include two years of successful loan history, a change of life events, such as medical, or temporary, or financial hardship due to loss of a job. And the high possibility for future success of payback. The first option would allow for direct financial assistance to families that are 90 to 120 days past due that meet the noted distress criteria and to communicate and respond to early intervention strategies that are offered by the lender.

The second option would utilize the services of a HUD-approved third-party consumer counseling service to more successfully target borrowers that can identify distress criteria. And under this option, the borrowers

that are 60 to 90 days past due would be counseled on how to get back on track and stay on course long term.

For tracking purposes, a dedicated loan preservation hot line would be established exclusively for TDHCA borrowers. Counselors would be responsible for preparing a statement of hardship and sharing it with Countrywide, as well as preparing a viable workout structure for the borrower.

Option three, and we will recommend is really a hybrid of those first two. We provide the counseling noted in Option Two, but it also offers some limited financial assistance or rescue funds in addition to the counseling services.

Any rescue funds provided to the borrower would be provided as an unsecured note due on sale or payoff of the first lien mortgage loan. So with that recommendation, we welcome your thoughts on it.

MS. ANDERSON: I do have public comment on this item. The first witness is Steven Barbier.

MR. BARBIER: Good afternoon, Madam Chair, Board members and Executive Director Gerber. My name is Steve Barbier. I am with Neighborhood Works America. Neighborhood Works America, formerly known as Neighborhood Reinvestment Corporation is a national public nonprofit,

chartered by Congress to assist with housing and community development issues.

We do this through a series of training, technical assistance, and operating and capital grants to 245 community-based nonprofits across the country, twelve of which are located here in Texas. With me this morning is my colleague, or this afternoon, is Sven Thomason with our San Antonio office.

We noticed this item on the agenda, and based on our successful history of working together on homebuyer education, we wanted to express our interest in working together on the foreclosure issue. Through the Texas Statewide Homebuyer Education Program, acronym TSHEP, we have assisted in graduating over 400 individuals in homebuyer education.

In addition, TSHEP with Neighborhood Works America just completed another very successful training series this summer, which included homebuyer education certification, housing counseling certification, and foreclosure prevention and predatory lending courses. Neighborhood Works America has a 14-year history with a programmatic focus on home ownership. Nationally, we have assisted over 150,000 families and individuals to become homeowners.

We have educated over and counseled over a half million people in the home-buying process. We are very concerned about the country's foreclosure crisis, as it stands to erode significant strides we have all made in creating home ownership opportunities for low and moderate income families.

Three years ago, we formed the Neighborhood Works Center for Foreclosure Solutions. Some foreclosure facts; 50 percent of all homebuyers in distress never respond to the lender or servicers outreach. Foreclosures costs everyone; lender, servicers, family, neighborhood, community and municipality.

Concentrations and clusters of foreclosures are particularly problematic, even for stable homeowners and communities. Low and moderate income neighborhoods are disproportionately affected by foreclosures and high cost sub-prime lending. Early delinquency intervention poses the best chance for a successful solution.

Neighborhood Works has pulled together a scalable and efficient program. Number one, our innovative partnership with the Home Ownership Preservation Foundation, which is a 24-hour, seven-day-a-week, on-demand counseling hotline has on the back end five HUD approved housing counseling agencies available to

do counseling in English and Spanish.

Secondly, we have research facility which takes a look at researching local conditions because we found that the foreclosure issues is very regionally -- shows variance regionally. Third, we support local and regional task forces and coalitions, including working with state FHAs.

And fourth, we have a borrower outreach program, which in cooperation with the National Ad Council, we launched a three-year consumer awareness campaign. This is made up of three TV spots, two in Spanish; 11 radio spots, print and web outreach. The ads are distributed to over 30,000 media outlets across the country, and are beginning to play.

Texas is a critical state for us because of the number of foreclosures, and the high incidence of higher-cost subprime loans. Neighborhood Works America has a national infrastructure that can help leverage your investment in the foreclosure prevention issue. Neighborhood Works America is currently working to assess local counseling capacity, because the combination of the national hotline in conjunction with local counseling capacity increases the effectiveness of foreclosure intervention counseling.

Although we are willing to work with you at any level, we would encourage you to at some point, if not during this particular agenda item, in the future, look beyond your own portfolio into some of the foreclosure issues that exist in Texas. And regardless, we are very interested in working with you. We have a national model.

We would like to help you in any way we can. With that, any questions?

MS. ANDERSON: Thank you.

MR. BOGANY: I would ask a question.

MS. ANDERSON: Yes. Mr. Bogany.

MR. BOGANY: I just wanted to ask you, with Neighborhood Works, have you guys made any inroads with the Texas Association of Realtors to see if they can also work with you, because typically, realtors are probably the first point of contact when people a lot of times get behind, I guess, because of the trust factor. We are in the neighborhood. They will call us first.

But I can tell you that in some of the rural communities, they have no way of knowing who to call at all. And I think it would really help if you guys could partner or create a dialogue with the Texas Association of Realtors, that they would know about your programs, especially in some of these rural remote areas that may

really need some help. And I would like to see you guys at least make that partnership.

MR. BARBIER: Thank you. That is a great suggestion. We have been working with the national level, the National Association of Realtors. And I agree with you, that would be a great --

MR. BOGANY: I mean, you can get to it quicker if you go to the Texas Association, trust me. And you will get more done there, and because it is a big need, we just did this affordable housing program and stuff, and counseling. And so many consumers really don't know where to go.

And so I am encouraging you. As an Agency, I would like to see our Agency try to create a partnership with you too. Even on our website, being able to have a link to your website. But I really would like to see you take it to the realtors at Texas Association of Realtors.

MR. BARBIER: That is great. I appreciate that. You know, the word needs to get out through as many avenues as possible, because 50 percent of the people don't respond to the lender or servicers call. And the whole thrust of the Ad Council campaign is to get people to pick up the phone and reach out.

MR. BOGANY: Okay. Thank you.

MR. CONINE: I agree with Mr. Bogany. You know, if I was in financial straits, the realtors would be the first person I would call. They have got all the money.

MR. BOGANY: It is well worth it, though.

MS. ANDERSON: Thank you. Mr. Tim Almquist?

MR. ALMQUIST: I don't have any comment. I am just available.

MS. ANDERSON: Okay, thank you. Mr. Jerry Durham.

MR. DURHAM: I am available for questions.

MS. ANDERSON: Thank you to our partners from Countrywide for being here today. Thank you. That is the end of the public comment.

MR. BOGANY: I have a couple of questions, Madam Chair to, I guess, staff, or Countrywide. You know, looking at the numbers of how many people that are delinquent, I think it was 1,600, I don't see where \$100,000 does anything even touch, even come close to touching that.

MR. CONINE: Should we call the realtor?

MR. BOGANY: 1,600 borrowers are delinquent based on the numbers in the Board book. And even if we were to help each one of them, we still don't have

anywhere close to being helping those. And I am concerned. I like the option three, Mr. Pipe [phonetic].

I think that is a good option.

One of the things I was concerned about is on two levels. Knowing of those 1,600 borrowers, what made them behind? Was it behind because of the escrow taxes. You know, I have been a big person about when these people buy new homes, they need to escrow taxes on improved value.

And I know, being a realtor myself, that is probably one of the number one issues, more than job, more than any of that. Typically, that throws them behind. And then I noticed that we wanted two years of consecutive payments. Well, if I am behind, I guess I need a clarification of that. Because if I am behind, then I am never going to have two years.

And if I had a tax situation, especially with a new home, and considering that new home builders are using our money just as great as resale. If I get behind on my taxes, then I get hit with a job layoff. And the other thought from Countrywide, typically you know we are using your money to pay these taxes.

But is there any way possible that if we get some of our bond people to be able to get a two-year

payout which makes it a little bit easier than the 12-month history to get back on their feet. And I am just a little concerned about the two-year history of being on time. Because if I am behind, then I am -- and then if I am up and down and my job is doing this, it is going to make it a little harder.

MR. DURHAM: Sure. Thank you, Madam Chair. Jerry Durham with Countrywide Home Loans. I am the Vice-President for Home Retention. He asked several good questions there. You know. I will try to address all of them.

The first one is the two-year period. I think the concern is, is when you are using a rescue fund, that you see some habit of responsibility. There are two issues that keep a borrower from paying. Either the ability to pay or the willingness to pay.

And I think that what you are trying to establish is that the willingness is there. There is some responsibility on behalf of the borrower. With the first year, with the new home, I think that is probably the primary target that you are talking about, with the taxes and the escrow, typically what would happen is if we had a borrower that is in that situation, and their delinquency has been caused by a shortage in the escrow, immediately,

we are going to give them one year to pay that out.

If it is still a hardship, we will go to two years, and then in extreme cases, let's say that there is a big shortfall, we might even stretch that out over five with no penalty to the borrower, because we realize that not only are they having to pay that back amount, but we are having to impound on a go forward basis for the next year as well.

So you know, while that may be the case in some circumstances, we have got programs already in place for them to overcome that, if that is the only shortfall, because keep in mind, if they have been making their regular payment, and then this comes up, they have got usually several months of history.

But I think the whole reason for staying two years, is, you want to see that this was something where they have a been a victim of circumstance, there has been a hardship. This isn't where they went out and bought a new car and got overextended.

MR. BOGANY: Okay. Well, I guess the two-year period -- and I understand the ability or want to pay. I just think the two-year period, in a real-world scenario, may be a little tough. Maybe 18 months, twelve months of being on time. I just think it is a little tough.

MR. CONINE: Haven't we already targeted 1600 that have met the two-year requirement?

MR. BOGANY: 1600 that were -- that have been delinquent on their payments.

MS. ANDERSON: They don't meet any criteria.

MR. CONINE: They haven't looked at the criteria yet?

MS. ANDERSON: No. They haven't cleared them against the criteria.

MR. BOGANY: We haven't put the 1600 up against the criteria, have we? Okay.

MR. CONINE: No.

MR. BOGANY: Okay. So we don't know.

MR. DURHAM: Right. And keep in mind that when you are looking at your total criteria with delinquency, that the ones that are 30 days, usually a good portion of those are going to cure before 60.

MR. BOGANY: Okay.

MR. DURHAM: So probably half of that on a go forward would be the ones that we would target as being delinquent.

MS. ANDERSON: Could we ask -- might we suggest, as you, assuming we approve this plan and you move forward, that you look at an alternative. I mean,

look at the 24 months and perhaps look at an 18 month and just see -- perhaps see what the difference would be against this group of 1,608 borrowers.

And the more you loosen the criteria, then in fact, the less far that money is going to stretch. And I think we also you know, when we see how this gets off the ground and works, we might want to see is there any way we have got any other trust funds that we could put in to supplement the initial 100,000 if we go through with it.

MAYOR SALINAS: May I ask, do you have any problems with those houses where they have been appraised 20 percent of a year. I think one of the biggest problems is the appraisal districts, where they appraise the house every year, 20 percent more.

One of the biggest problems we have with this issue is that, we have got to help maybe the Governor cap that appraisal to 5 percent every year; no more than that.

Right now, they can do whatever they want to. And if you are losing houses, it is because people set their payments to what the house was worth that year, and then the second year, it has got a 20 percent value more from the district. And it appraised 20 percent.

If you let those people do what they are doing right now, you are never going to be able to have it. You

are always going to have more than 1,600 people on the repossession list.

MR. DURHAM: I think the point that you are making is that you run into affordability factors for a number of reasons. It could be taxes. It could be insurance. It could be upkeep on the homes.

One that we haven't experienced as much in Texas, but we have seen in other states is the rising cost of utilities. So you always have different factors that can make a home unaffordable for a borrower.

MAYOR SALINAS: No. What I am seeing here in our area is the value of the house that goes up every year.

MS. RAY: It causes a tax problem.

MAYOR SALINAS: It is an appraisal tax problem that we have. We have got to fix it here in Texas where we can cap it to 5 percent, no more.

MR. BOGANY: And see, my thought with the Mayor is that the job economy -- we are increasing jobs. We don't have a decrease in jobs. And that is something unusual when the economy slows down. We are still having jobs. And I have sold enough houses; I see people going into new homes without improved value. They have never bought a house.

I will go along with the Mayor. If for some reason we don't even remind these people to file homestead exemptions. And they roll, and the taxing authority is able to jump up as much as they can get by with, because these people have never bought houses. They don't really know.

And so from my standpoint, of somebody where the tire meets the road, I see it more of a tax issue than jobs. I am sure there are some job issues out there. And that is easy to blame it on. But I see the tax issues being a real big one.

MR. CONINE: Well, let's create some clarity here. There is a 10 percent cap, statutorily, in Texas.

MR. DURHAM: No, I understand.

MAYOR SALINAS: Ten percent.

MR. CONINE: Ten percent.

MAYOR SALINAS: Well, we have got to bring it down until it is five.

MR. CONINE: Well, I am with you, man. I am with you.

MS. ANDERSON: This is not germane.

MR. CONINE: The Texas Municipal League might not be with you and others. But we have a 10 percent cap today, and you don't see as much of that in the affordable

first-time homebuyer space as you do in the upper-end space. Granted, it may happen.

But a guy buying a 75- to \$150,000 generally doesn't get a whole lot of appreciable value stacked on top of that very often, especially if it is an existing house.

So you know, I understand taxes may be a problem. I don't know that in this particular strata that it is the problem that you are saying it is. But there is a 10 percent cap statutorily that is there right now, anyway.

MAYOR SALINAS: Well, we need to check on that.

MS. ANDERSON: It is beyond the reach -- it is also beyond the reach of this --

MAYOR SALINAS: But I just don't think that because there are some homes that have gone up 20 and 30 percent in our district. I don't know where. I haven't seen that cap, to be honest with you.

MR. CONINE: It is there.

MR. BOGANY: It is there.

MAYOR SALINAS: Not in that South Texas, because some of that appraisal on some homes have gone up 20 and 30 percent.

MR. CONINE: The appraisals can, but the actual

bill can't go up more than 10 percent.

MAYOR SALINAS: They work it out where they can do whatever they want to. You know, I don't agree with any of the appraisal districts and what they do to Nuevo Texas.

MR. CONINE: Let's go get them.

MR. DURHAM: I think irregardless, whether it is an increase in taxes, whether it is an increase in insurance, no matter what the factor, when you have got issues that make the home unaffordable to the borrower, we need to figure out how we address that. And one of the first questions that our counselors will ask a borrower -- when they are looking at their accounts and they are looking at their escrow, they will ask them, have you homesteaded your property?

We look for any type of income that can help that borrower. The other thing that we will do through the housing counseling is when a borrower is working with the housing counselor, they will work through their entire financial picture. When they talk to Countrywide, we talk to them about their home loan.

When they are talking to a housing counselor, they are going to talk to them about their medical bills, about their home loan, about their car loans. It's what I

call a holistic approach, because we need to look at all of the factors that are making that home unaffordable to them. We don't think that you should be putting rescue funds in for a borrower who's changed their -- where their purchasing habits and where their borrower habits aren't conducive to home ownership.

You know, at that point, we need to look at modifying borrower behavior, not putting in a rescue fund.

If you don't fix the hole in the bottom of that bucket, it doesn't make sense to pour money in. And so that is why we think that the housing counseling is an important component of that.

And for some borrowers, it may be that the housing counseling brings them to a decision that they are maybe not at a right spot for home ownership, or maybe they own -- they have too much home. It may be that their circumstance has changed, whether it be death, divorce, loss of income.

So at that point, you try to counsel them into, you know, the best possible scenario and start looking at exit strategies in a worst case.

MR. CONINE: I would just like to say I applaud Countrywide for stepping up and helping us out in this effort, because I think it is very important. And I

think, you know -- not to give the entire speech over again, but it's generally a liquidity problem with first-time homebuyers, that they don't have a whole lot of savings in their accounts, and when something happens as catastrophic as a job loss or medical or whatever, if a one time shot will fix them up, then I think this is money well spent.

And I look forward to hearing back some of your reports from your efforts.

MR. DURHAM: Sure. And I think one other thing, too, is when you talk about life-changing events, if someone that makes \$40,000 a year saves 10 percent of their income -- one, it's very difficult for them to save that 10 percent, compared to someone with much higher income, but when you talk about life-changing events, having to go buy four new tires can become a life-changing event. If it's not something that's expected, it can really put them in a detrimental situation, where, you know, I may fuss about it, and I go buy them, and I go on, and I keep up with my other obligations, but with lower to moderate income, life-changing events can be a very different thing from the upper income levels.

MR. CONINE: Right.

MS. ANDERSON: Great. What's the Board's

pleasure?

MR. CONINE: Move approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

Thank you, gentlemen.

Agenda Item number 5, concerning Internal Audit Division items.

Welcome our new director of Internal Audit to the podium.

MR. BOGANY: Thank you, Sandy. How are you?

MS. DONAHOE: Fine.

MR. BOGANY: We had a quiet Audit Committee meeting. I want to thank a couple of board members who sat in on it. But we had a -- got a lot of good information, and I'm going to turn this over to Ms. Donahoe.

MS. DONAHOE: Thank you. Madam Chair, members, Mr. Gerber, I'm Sandy Donahoe, as you know, the new director of Internal Audit. I've been on the job for about three weeks, and I'm gaining an understanding of the agency, the processes, getting to know the staff, and I'm happy to report that the Internal Audit Division is now fully staffed. We have a new auditor who joined us, Sandra Hoffman. We'll bring her around afterwards to introduce her to the folks who haven't met her.

On the agenda items, the first item is the discussion of the HUD consolidated review for Section 8. The HUD reviewed for Section 8 program and had two findings and an overall assessment of standard performer.

The first finding was that they felt like there should be an improvement in the process for determining income and deductions; the second one was that the department doesn't always use HUD's income verification system and the Texas State Wage database to determine all income.

Also, they did a CEMAP review, which reflects whether the voucher -- the housing choice voucher program helps families afford decent affordable property at the correct cost, and the department received an overall assessment of standard performer.

They also noted some positive comments as well about staff using different sources for income verification and sending staff to assist in issuing vouchers and also tracking the success of vouchers.

On the next item, the discussion of State Auditor's Office Classification Review, the classification audit that the State Auditor's Office recently did looked at the compliance with the State's plan for classifying employee positions.

In other words, they were looking at whether the department identifies correctly the job titles and salary groups for the type and level of work for the employees at the agency.

They looked at 250 positions and found that eight were misclassified. I understand that those have now been corrected.

On the status of prior audit issues, we have a report -- we have 31 prior audit issues. Of those, 14 have been reported as implemented by management but have not been verified. There are also 17 that are still pending. Seven of those are manufactured housing and have been reported to their board, and you have a copy of that report in your materials.

We're gaining an understanding of the number of

issues in that database, and the number may change, just so you know; just trying to get a good handle on what needs to be addressed.

On the status of internal and external audits, we completed the report on the three phases of Low-Income Housing Tax Credit program, which was preapplication and notification. We gave it to management yesterday for responses. We should be releasing that report the end of this month or the first of October.

We're currently planning for phase 2 of the Low-Income Housing Tax Credit program, which is scoring thresholds and awards. We're hoping to complete this audit in November instead of December, so that the results can be used during the current award cycle.

Also, we're developing our internal audit work plan. We'll be looking for input from management and the board on possible projects before we submit a plan. We're hoping to have a draft plan in November.

On external audits, State Auditor's Office is currently looking at the disaster recovery program. We expect their report to be released in late October. Also Deloitte and Touche are out looking at the department's annual financial audits, and those reports should be due in November or December, depending upon the report.

Are there any questions?

MR. BOGANY: We have one issue, Sandy. It's not a question to you, but we didn't get an opportunity to vote on the minutes because we didn't have a quorum, and I needed to check with Mr. Hamby. Do we need to vote on those minutes, Mr. Hamby, now that we have a quorum with Ms. Ray here?

MR. HAMBY: Kevin Hamby, General Counsel. Actually, you can't, because we didn't post it on the agenda, because it's an Audit Committee item.

MR. BOGANY: Okay.

MR. HAMBY: So it can't be approved at this meeting.

MR. BOGANY: Okay. Great.

MS. ANDERSON: Thank you very much, Ms. Donahoe. Now -- we now proceed to Agenda Item Number 6, Legal Division items.

Mr. Gerber.

MR. GERBER: Madam Chairman, board members, this agenda item -- the first is the proposed draft HOME rule, which reflects staff's recommendations for revisions to the rule for the board's consideration. This draft rule ensures compliance with all statutory requirements, including recent changes to Chapter 2306 of the Government

Code, and addresses public input in part in some of the issues presented by the HOME task force.

The rules have been designed to revise necessary policy and administrative changes to further enhance the HOME program's operation and to make the rules more comprehensive and hopefully more user friendly.

While the entire look of the rule has changed, some of the key changes include, first, the formalizing of program requirements and processes such as those involving the application limitations and procedures, the award process, and the documents necessary for supporting mortgage loans.

The second change is a policy recommendation to acknowledge the differences in communities and provide difference levels of assistance based on family size and structure assistance for the Owner-Occupied and Homebuyer Assistance program activities based on income levels, to encourage administrators to target the lowest levels of income consistent with legislative intent.

The third is a policy recommendation to adjust the amount of awards and contract terms. The fourth is clarifying and placing in rules contract administration and performance review requirements and, fifth, there's an adjustment to soft-cost caps and limitation on how soft

costs may be charged.

The staff is recommending board's approval of the HOME rules, and we'll take public comment during our public hearings which begin next week.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

MR. ANDERSON: Hearing none, I assume we're ready to vote.

All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Next item is possible approval to publish draft rules on accessibility requirements.

MR. GERBER: Madam Chairman, and board members, this item represents a comprehensive policy for accessibility standards that, to the extent possible, provides clear direction on the minimum requirements that TDHCA expects to be followed in any development.

Staff hired outside counsel, Sarah Pratt, who's a recognized expert in the field, and established the

minimum federal requirements for accessibility, and we asked her to draft, source, and provide examples, based on federal and state requirements. This draft represents that work.

Staff met with the development community and with the disability advisory work group to discuss the rules as the minimum required standards. While there are changes that each group might like to make, the consensus was that this did represent that minimum standard.

We're recommending approval of this rule so we can take it out for public comment.

MR. BOGANY: So moved.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote.

All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: All opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Item 6C is the -- concerns selection of outside counsel for disclosure counsel.

Mr. Gerber.

MR. GERBER: Madam Chairman, board members, this item was postponed from last month's agenda so that staff could review concerns that were raised by the board.

The proposal that you have before you represents a change from last month, in that staff has recommended that two disclosure counsel firms be appointed.

Staff is recommending that McCall Parkhurst, which has done a fine job for the department over many years, be selected for single-family transactions. We're also asking that Andrews & Kurth be selected for multifamily transactions. This will provide the consistency necessary for our current single-family transactions, but it will also provide some new and fresh approaches that were identified by Andrews & Kurth in their RFP response for our multifamily programs.

This approach was contemplated and is allowable in the RFP. The RFP will be reissued again next year, and these will all be one-year contracts. Staff's recommending the approval of both firms.

MR. RAY: So moved.

MR. CONINE: Second.

MR. BOGANY: I have one question.

MR. GERBER: Yes, sir.

MR. BOGANY: So are we going to go on the basis of splitting them up, or next year it may be one, or how are we going to do that?

MR. GERBER: We're going to try this for one year, and we'll see how it goes.

MR. BOGANY: And see how it goes.

MR. GERBER: Uh-huh.

MR. BOGANY: Okay.

MS. ANDERSON: Any other questions?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote.

All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

6D, then, is -- needs no action.

MR. GERBER: That's right. And for Item 7A, Creek View and Park Ridge have both been withdrawn by the applicant, so we move to 6B [sic].

MS. ANDERSON: Do we expect we might see those again under a new reservation or --

MR. GERBER: Possibly. We've -- up to the very last minutes we've been working on various aspects of this transaction, and, Tom, I don't know if you have any insight you want to offer.

MR. GOURIS: [inaudible]

MS. ANDERSON: Okay.

MR. GERBER: The first item in 7B, Madam Chairman, board members, is Regency Park Apartments. This is a tax-exempt bond applicant that's requesting a 4 percent housing tax credit determination. This Priority 2 application proposes the new construction of 252 units targeting general population in Houston. The bonds will be issued to Houston Housing Finance Corporation in the amount -- the applicant's requesting \$1,189,095 in housing tax credits, and that's what staff is recommending.

There were no letters in either support or opposition.

MR. BOGANY: So moved.

MR. CONINE: Second.

MS. ANDERSON: There's no public comment. I have a question for Mr. Gouris.

Good afternoon, Mr. Gouris. My question concerns page 6 of the 9 of the underwriting report, on the market study, where it notes that the market analyst

excluded an affordable development that's actually -- I believe has the same ownership as the proposed development that ends up being just on the opposite side of the street, at the boundary of the PMA as the market analyst drew it.

Does -- what are your -- does that cause you concern about the demand for the -- I mean, what -- if that was in the PMA, would it affect the capture rate?

MR. GOURIS: Tom Gouris, Real Estate Analysis. Yes, if it was in the PMA, it would affect the capture rate, and we wouldn't be able to get there.

That they chose to exclude it is fair within our rules. What they did was they used the zip codes designations as the boundary, and that works as a legitimate method of determining the boundary for this current year.

And so what they did was reasonable. I gain a considerable amount of comfort with it, given the fact that it's the same developer and it's a risk that they're taking to undermine their own transaction, and the lenders and folks are all aware of that.

MS. ANDERSON: Okay. Thank you for that clarification.

We have a motion on the floor, and it's been

seconded.

MR. CONINE: Are we voting for all of them or just one of them?

MR. BOGANY: My motion was for that one.

MR. CONINE: Just for the one. Okay. One at a time. Did I second?

MS. ANDERSON: Somebody did. I think you did.

MR. CONINE: Okay.

MS. ANDERSON: So hearing no further discussion, I assume we're ready to vote.

All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

MR. GERBER: Madam Chairman, board members, Lakeside Apartments has been withdrawn, so we move to Runnymede Apartments here in Austin.

This is another 4 percent housing tax credit determination. This is a Priority 2 application and proposes the acquisition and rehab of 252 units targeting general population here in Austin.

Bonds will be issued through the Austin Housing Finance Corporation. We've received one letter of

opposition from a local member of the community, citing oversaturation and concerns about crime. The applicant's requesting \$488,042 in housing tax credits, and staff is recommending approval of tax credits in that amount.

MR. BOGANY: Second.

MR. CONINE: Second -- you seconded before you moved, man. I'll move.

MR. BOGANY: I second.

MR. CONINE: Good.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote.

All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: All opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

While we're on this item, I'm aware that the first two deals that were withdrawn I believe had HOME -- economic development from the HOME economic development NOFA. Can somebody explain to me and to the rest of the board how long that NOFA stays open? You know, are we -- would we expect additional applicants, or could the

current applicants -- people that have applied that just withdrew -- how long are those funds good for them?

MR. GERBER: We're hopeful for additional applicants. How long is it, Jeannie?

VOICE: I want to say it's October 31; I can look up the date.

MR. GERBER: We've had no other applicants to date.

MS. ANDERSON: Well, you all might be thinking about -- if that's going to turn into a pumpkin on the 31st, you might be thinking about what you would propose to the board. Would we want to extend the deadline of the NOFA? I'm sure there's a range of -- are we just going to kill it and move the money somewhere else? But we probably ought -- it would be good to -- you know, even if we could have that discussion in October, if the deadline's coming up, rather than have that money just kind of out in limbo, if I can ask you all to look at that for October.

MS. ANDERSON: And now we're on -- where are we?

MR. GERBER: We're on 7C.

MS. ANDERSON: We're on 7C.

MR. GERBER: This is a housing tax credit

appeal, and Audrey Martin, our --

MS. MARTIN: HTC Program Administrator. Thank you, Mr. Gerber.

Madam Chairman and board members, I'm Aubrey Martin, Competitive HTC Program administrator.

MS. ANDERSON: I think maybe what we want to do -- if you can just hold that thought for a minute -- is we have some board materials that no one on this board has read the first word of, and so I think if the board would like a few minutes to read through these materials, rather than trying to read things for the first time while you talk, that would be good.

So we'll just sort of take a few moments of silence to let the board go -- and we're going to take these -- is there more than one, or is this all one appeal?

MR. GERBER: Just the one.

MS. ANDERSON: Okay. So let's just take a few minutes to read these.

(Pause.)

MS. ANDERSON: I ask, at the board's pleasure, are we ready for the staff presentation?

MR. RAY: Is there any public comment?

MS. ANDERSON: We will have public comment.

We'll let the staff sort of just make their presentation, and before we have a motion, we'll have the public comment.

Thank you, Ms. Martin. Proceed.

MS. MARTIN: Thank you, Madam Chair. Again, Audrey Martin, Competitive HTC Program administrator.

Today we do have one appeal under item 7C. This appeal was not received in time to be a part of your board book but was timely file under our appeal policy, which is the reason that you all have a separate packet from your board book.

This information has also been made available to the audience. The same handouts that you all have were outside the board meeting room, on the sign-in tables, both before the meeting and during the meeting.

Application number 07275, Mansions at Briarcreek, proposed to be located in Bryan, received an award of tax credits during the July 30 board meeting. Since that time, staff has rescinded the commitment notice, and the applicant is appealing that rescission.

The commitment notice was rescinded because the applicant failed to meet a condition of the commitment notice related to points awarded under Section 49.9(I)(5) of the 2007 QAP, which is local political subdivision

funding.

The commitment notice required that the applicant provide evidence of a commitment of local funding which has been approved by the governing body of the local political subdivision. The applicant did not submit this required commitment.

Pursuant to the QAP, if the loss of local political subdivision funding points would cause the application to be noncompetitive, the tax credits must be rescinded and reallocated.

The applicant failed to meet a condition of the commitment notice, resulting in a point loss which would have caused the application to be noncompetitive; therefore, pursuant to the QAP, the tax credits were rescinded.

Staff recommends that the board deny the appeal.

MS. ANDERSON: Thank you.

We do have a couple of people that wish to make public comment, and the applicant and several others have yielded time to these two witnesses.

The first witness is Jon Polley.

MR. BURCHFIELD: Very quickly I wanted to introduce both Jon and --

MS. ANDERSON: Would you identify yourself.

MR. BURCHFIELD: I am Rob Burchfield, the proposed developer. I wanted to make two comments. Don't be too harsh on those brokers. If we didn't keep our brokers' licenses, we couldn't afford to do LIH, and if you want to get rid of all of the tax authorities in the state of Texas, I'd suggest you run for governor.

Both these gentlemen -- this is a technical issue way beyond the area that I would wish to deal with, but I'm glad to introduce both these gentlemen to deal with why we did what we did and why we think we've both met the spirit and the letter of what we were supposed to do.

So, gentlemen, thank you -- and ma'am.

MS. ANDERSON: Thank you, sir.

MR. POLLEY: I'm Jonathan Polley, appearing on behalf of the Mansions at Briarcreek. And as Mr. Burchfield mentioned, we do believe that we met the requirements of the rules and that there is a distinction in the rules regarding the applications between the requirements for commitments of funds and requirements for in-kind contributions from local political subdivisions.

And we believe the meeting minutes of the TIRZ Number 19 board of directors, which approved the plan for

the TIRZ whereby the in-kind contributions were going to be made that affected this project meet those requirements.

The TIRZ, we believe, is a local political subdivision, as the rules define that. Under the rules, a local political subdivision is either a county or a city in Texas, or a government instrumentality. A government instrumentality is a body that's created under statutory authority and has the power to conduct business on behalf of the local political subdivision that creates it.

The TIRZ, we believe, meets those two requirements. It's created under statute and has the power to conduct business within the TIRZ on behalf of the City of Bryan.

The meeting minutes that were provided to the board approved the plan within the TIRZ whereby in-kind contributions were going to be made which provide the local support for this application. And as a result, we believe that these 18 points should have been awarded to the application, which would have resulted in the commitment not being rescinded.

MAYOR SALINAS: I think --

MS. ANDERSON: Whoa, whoa. Mr. Mayor, let's make sure they're finished with public comment first and

then you can ask a question, but we try not to have witnesses and the board members debate each other.

Would you all like to proceed.

MR. POLLEY: Yes, I would, please.

In the alternative, we believe the requirements regarding the commitment of a local political subdivision apply to funding commitments, not to in-kind contributions, and the language of those rules specifically says -- this is Subsection 10 of 49.995 that was cited: "If not already provided at the time the executing commitment notice is required to be submitted, the applicant must provide evidence of a commitment approved by the governing body of the local political subdivision for the sufficient local funding. If the funding commitment from the local political subdivision has not been received by the date of the department's commitment notice to be submitted, then application will be re-evaluated without those points being awarded.

And we would contend, in the alternative, that this provision applies just to funding commitments, not to in-kind contributions to these projects.

MS. ANDERSON: Does that conclude your testimony?

MR. POLLEY: Yes, it does.

MS. ANDERSON: Did anybody on the board have a question for the witnesses?

MAYOR SALINAS: Well, my question is that a political subdivision, do you know people that get elected by their citizens, that's what I call political subdivisions. The TIRZ is a group of people that get appointed by the city council to be on the TIRZ and have terms, and that's what the difference between a TIRZ and a city political subdivision. Those people that serve on the TIRZ do not get elected by the people, they get appointed by the mayor and the city council.

I just don't see how you can call it a political subdivision. I'm the mayor of a city and I have a TIRZ, and those guys get appointed by us every two years. We can reappoint them or we cannot reappoint them.

MR. POLLEY: May I respond?

MS. ANDERSON: Yes.

MR. POLLEY: Generally speaking in general parlance I would, I believe, agree with you, but according to the QAP rules, a local political subdivision is a city, county, or government instrumentality. A government instrumentality -- and I'm reading from the rules -- is a legal entity such as a housing authority of a city or county, housing finance corporation, or a municipal

utility which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

And we believe that a TIRZ meets this definition, and therefore, is a local political subdivision under the QAP rules.

MS. ANDERSON: Okay, thank you.

Do you have questions of the witnesses or of staff, or what's your pleasure?

MR. CONINE: I just have, I guess, some generic questions.

MS. ANDERSON: Of the witnesses?

MR. CONINE: Of the witness, I guess.

Under the normal multifamily standards of the City of Bryan, Texas, would Nash Boulevard have been required to be built for a standard apartment complex?

MR. POLLEY: That question I believe I need to ask one of our other witnesses to answer.

MR. LEE BURCHFIELD: I might be able to shed some light. I'm Lee Burchfield of Feniksas Real Estate Group, consultant for the application.

Because of the site location of where the apartment complex is, it needs a road extension. It's

part of a subdivision improvement, it's an infill subdivision as a part of the City of Bryan. So in this situation, it would need a road extension.

MR. CONINE: But normally the statutes require your half of the road in front of the property, not the whole road, and I can't tell by looking at this.

MR. LEE BURCHFIELD: The road is entirely on our property.

MR. CONINE: Entirely on your property. Okay. Parking improvements waiver, normally, again, the City of Bryan would have multifamily standards as to the parking. This looks like a waiver to that parking which means the folks aren't getting a place to park.

MR. LEE BURCHFIELD: This is a senior housing development so typically there are less cars per household than in a standard multifamily development, so we're able to get a waiver on those parking requirements. The figure is based on the cost of construction associated with that parking which would provide, obviously, an economic benefit to the development.

MR. CONINE: Trail system, again, something that probably wouldn't be required under a normal scenario?

MR. LEE BURCHFIELD: Typically, not, but it is

an added amenity provided by the city through the TIRZ.

MR. CONINE: Storm water runoff mitigation?

MR. LEE BURCHFIELD: Yes, that would be.

MR. CONINE: Now, I read in the letter here it says that there doing it regionally instead of on-site. Is that correct?

MR. LEE BURCHFIELD: That's correct, so you have the benefit of not actually having to pay for the land associated and the costs for that.

MR. CONINE: Land I would question, but it's just a matter of me versus you.

Okay, that's all the questions I have for them.

MAYOR SALINAS: Did you record that subdivision with the city?

MR. LEE BURCHFIELD: I'm sorry, I don't understand the question.

MAYOR SALINAS: Well, when you're building a development, you still have to go to the city for a recording map.

MR. LEE BURCHFIELD: You follow a plat and everything is permitted to the map.

MAYOR SALINAS: Why couldn't you go to the city and get the same thing you got from the TIRZ?

MR. LEE BURCHFIELD: That was their mechanism

was the TIRZ.

MAYOR SALINAS: I don't think it is, but that's what you believe.

MS. ANDERSON: Thank you all for your testimony.

MR. JOHNSON: May I have one comment, Madame Chairman?

There is precedent in effect for the department seeing an entity such as a TIRZ as a governmental entity that would be recognized by the department for purposes such as this. There's a list on your website of a number of different types of instrumentalities which include housing authorities which are political subdivisions, like cities, created by cities or counties; housing finance corporations or economic development corporations which are created by cities or counties and have the authority to issue bonds and finance projects independently, as you know.

Also, there are other types of entities such as CDCs which do not have the authority to issue their own debt that are an instrumentality that is created by a city or non-profit corporation that have very similar powers to TIRZ but do not have the power to issue debt and take action. They have essentially the same powers as TIRZ as

far as operating a program to benefit the area that they serve.

So we would submit that you do have a precedent in your own actions and the approvals that you've given to similar entities that would lend credence to allowing a TIRZ to be an entity that should receive the type of recognition that we're asking you to do today.

MAYOR SALINAS: I think you can go ahead and set indebtedness to the TIRZ and then it goes back to the city council for approval. I'm telling you this because that's what we do in our city. You know, you can go ahead and do debt but that debt comes back to the city for approval of what you're doing.

MR. JOHNSON: Yes.

MAYOR SALINAS: It's the same TIRZ that I'm talking about, those board members can go in the next political year because of the appointment of the city council and the mayor. They're not there forever and they don't run for office at all.

What I'm telling you is that you can go ahead and do some debt service but it also has to come to the city council for the approval of the debt. That's what we've done. Anything besides that, I don't see that you can do.

MR. JOHNSON: Mr. Mayor, yes, I agree with you and that is exactly right, and that is exactly the same power that CDCs have. CDCs cannot issue debt, the municipality must issue the debt for the projects in the CDC. So based on --

MS. ANDERSON: I don't want to be rude but I think you offered your testimony and we have some questions of staff. If we have more questions for you, we may have more questions for you too, so don't go away, stay tuned.

MR. JOHNSON: Thank you.

MR. CONINE: Ms. Martin, has staff made a determination on whether the TIRZ is a political subdivision or not? It should not have gotten this far if that's the case; it should have been dealt with a long time ago.

MS. MARTIN: We haven't, and the reason that is is that when an application comes in, they have three options to provide evidence of funding that's sufficient for points at that time, and then we have this stage of commitment at the commitment notice stage where a full commitment is required. But at the application stage, we accept as little as an intent to apply, a certification of intent to apply which is what we received in this case,

and that certification of intent to apply was for funding from the City of Bryan. So we saw City of Bryan, that's clearly a local political subdivision, and that was acceptable for staff's test.

MS. ANDERSON: What does the QAP actually say about the form of the notification back to the department after the awards are made -- what does the QAP say the form ought to be, because it seems to me what we've got is TIRZ minutes? What does the QAP say?

MS. MARTIN: We say a commitment of funding approved by the governing body of the local political subdivision.

MS. ANDERSON: A commitment of funding.

MS. MARTIN: Right.

MS. ANDERSON: And how does that typically manifest itself in the kind of correspondence you get back?

MS. MARTIN: I mean, typically it's a funding commitment. It's very clear that it's from a city or a governmental instrumentality that has been proven up through the application process, and it's not very different than what you might see with a syndicator.

MS. ANDERSON: You didn't receive anything from this applicant between July 31 when we made the awards and

whatever the deadline was to receive the proving up?

MS. MARTIN: That's correct.

MS. ANDERSON: Nothing?

MS. MARTIN: Nothing. What they are contending is that evidence we had previously -- which is all the evidence that's in your packet, the minutes and the TIRZ plan -- should have counted.

MS. ANDERSON: So that is really the issue.

MS. MARTIN: Staff's determination was that the evidence provided that we did have prior to the commitment notice was not sufficient. That's why we still have a condition in the commitment notice asking for a commitment.

MS. ANDERSON: So it was in the commitment notice letter that went out about the 10th of August, or something, that they had to prove this up for us.

MS. MARTIN: Yes, that's correct.

MR. CONINE: Was this project the subject of a challenge? I seem to recall.

MS. MARTIN: This was not.

MS. ANDERSON: We have one head nodding in the audience that it was.

MR. CONINE: Well, I don't know if it's pertinent, but I thought we had dealt with this issue

before on this project -- unless my memory is failing -- and if you went back and either looked at the challenge or at the minutes of the meeting, it would probably talk about the fact that it was going to be the City of Bryan writing a check versus in-kind, but I may be totally off on this.

MS. MARTIN: This application was in the '06 round as well, so that may be what you're remembering. I don't believe we had a challenge on this application, but I can double check.

MR. CONINE: Maybe I'm thinking '06. Okay.

Could I ask one question of Tom right quick, and then I'll be done -- well, two questions. Did the commensurate cost, the total cost of this project look like it had a million-five reduction in it, based on your underwriting, and under the expense category of this project, when you underwrote the expense, did you also include -- I'm sure there's a payment to the TIRZ over 30 years as additional property tax, did that creep into the underwriting?

MR. GOURIS: Tom Gouris, director of Real Estate Analysis.

When we underwrote this, we included the improvements that were going to be funded with the TIRZ as

part of the cost of the transaction as off-sites. We also included the TIRZ as a funding source in our final analysis. We did not, however, include a tax or any repayment of these funds to the TIRZ from the project.

MR. CONINE: Okay.

MAYOR SALINAS: Let me ask a question. Is a TIRZ in Bryan only commercial and residential or just commercial?

MR. GOURIS: I don't know that. Do you?

MS. MARTIN: I'm not certain, I would have to double check. I think it's both.

MAYOR SALINAS: I think the problem that you have here is that the TIRZ is only commercial -- it's both? So you took the whole deal and left the city nothing. So maybe that's the fight that the city doesn't have anything left.

But I'll just stick to what I said: it is not a political subdivision, it's just appointees of the mayor and the city council.

MS. ANDERSON: Ms. Martin, let me ask you -- and I understand that the letter that went out from us on about the 10th of August for the commitment notice had the condition that they had to submit evidence.

MS. MARTIN: Yes, ma'am.

MS. ANDERSON: Which they did not. This material that they had given you prior to that, why was it deemed insufficient for your purposes, or do you always, with every applicant that gets an award, condition it based on that no matter how solid the evidence you had before that time?

MS. MARTIN: We don't send that particular condition to everyone. We do an audit prior to sending the commitment notice to see who still had a commitment outstanding. So the only people that get it are the ones we --

MS. ANDERSON: So some applicants in this round had met your test for having submitted the ironclad.

MS. MARTIN: That's correct. Some did it with the application.

MS. ANDERSON: Okay, but this one had not.

MS. MARTIN: Right. Part of the issue, maybe something to mention, is that even the minutes we did receive weren't certified in any way. We didn't feel we could rely on them in any way. Not only was it not in the form of a commitment notice, but they aren't certified minutes even.

MR. CONINE: Did they get a deficiency letter from you in the intervening time, or not?

MS. MARTIN: The deficiency process does not apply to the commitment notice. At that point we expect to get sufficient documentation so that we could have the opportunity to fund other applicants, someone who can meet the conditions.

MAYOR SALINAS: Reading these minutes, the mayor is on the meeting here, and I don't believe there should be any elected officials on the TIRZ board. Is the mayor on the TIRZ board?

MS. MARTIN: I'm not sure.

MR. BURCHFIELD: Yes, sir.

MAYOR SALINAS: He's on the TIRZ board?

MR. BURCHFIELD: Yes, sir.

MAYOR SALINAS: So then what was his problem going to the city council and getting it okayed.

MR. BURCHFIELD: That's not the way they do it.

MAYOR SALINAS: Well, that's the way it's supposed to be done because

MS. ANDERSON: WE can't have that, Mr. Burchfield. I know it's tempting. He's just not on the record up here testifying.

MAYOR SALINAS: Well, the thing is that it's not a political subdivision. If it was, we wouldn't have one, and they're not on the ballot every two years or

every four years, they're appointees by the city council and the mayor, and I just don't think the mayor should be on that TIRZ board.

MS. ANDERSON: Well, and the first order issue is that they received a letter from us in early August saying they had to provide a commitment notice and they didn't do it.

MAYOR SALINAS: Because maybe the city does not want this project.

MR. CONINE: Mr. Gouris.

MR. GOURIS: Just as kind of an added insight, the underwriting process also included a requirement as a condition that they provide a firm commitment from the city with regard to that.

MR. CONINE: From the city or the TIRZ?

MR. GOURIS: The condition is from the city, but they didn't appeal that condition, they didn't respond to that condition.

MR. CONINE: Madame Chair, I move we approve staff's recommendation to deny the appeal.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're

ready to vote. All in favor of the motion, please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

The next item is 7(d) which is proposed Right of First Refusal policy.

MR. GERBER: Madame Chair, with the board's indulgence, we'd like to hold that off until next month.

MS. ANDERSON: Oh, I'm sorry.

MR. GERBER: That's okay.

MS. ANDERSON: We've been waiting for a long time, Mr. Gerber.

MR. GERBER: Yes, ma'am. It will be on the agenda next month.

And moving to item 7(e), this is a policy to clarify the approval process for Housing Tax Credit amendments. This policy considers the handling of Tax Credit amendments based on previous board actions and requests, as well as 2306, the Qualified Allocation Plan rules, and previous input from the public. This policy is designed to clarify which Housing Tax Credit amendments will be presented to the board and which amendments may be

processed administratively. This policy does not change or conflict with the 2008 Draft QAP, and as such, does not address penalty points or penalty fees which are both addressed in the Draft QAP.

We would be happy to respond to your questions about this one.

MR. BOGANY: So moved.

MR. CONINE: I'll second it, but I have a question. We're not circulating these for comment, this is it. Right?

MR. GERBER: Yes, sir.

MR. CONINE: I'd like to have a little feedback, actually.

MS. ANDERSON: Why don't we pull it and ask staff to solicit feedback from stakeholders and bring it back next month, and then people that have comment on it ought to come prepared to the next board meeting to speak to it.

MS. BOSTON: If I could just ask. Staff has to start writing everything for the next meeting in about a week, so if we could maybe discuss November so that we have time to actually hold some meetings.

MR. CONINE: I don't have a problem with that. I'd just like to get some feedback. I think this is a

very important thing.

SPEAKER FROM AUDIENCE: Madame Chair, I signed up to speak on this item.

MS. ANDERSON: Oh, I'm very sorry. You did, as did somebody else -- as did several people. I'm very sorry. Thank you.

Now, because you all know that we're going to defer this and seek input, I would just encourage you to keep your comments relatively lean. Mr. Palmer, you're up.

MR. PALMER: My name is Barry Palmer with the Coats Rose Law Firm, and I am in support of the draft policy that staff has recommended.

My only concern is that it does not address the most serious issue that I see that we have in the QAP right now which is the adherence to obligations section and the penalties that are currently in the QAP in that we are seeing many cases where developers inadvertently have done something different than what was in their tax credit application, whether they in some cases have to do with parking spaces or fewer parking garage spaces, or in some cases the community building turns out to be a little smaller than what was in the original application.

And I would encourage the board to establish

some guidelines for a penalty that is less severe than what is currently in the QAP which calls for essentially a two-year ban from the 9 percent program and a one-year ban from the 4 percent program. It's in the form of penalty points, but the net effect is if anybody gets those penalty points, they're not going to be competitive for two years in the 9 percent program.

I know you had asked your general counsel to look at the issue of whether you can enforce lesser penalties, and I believe that he has responded in the positive. And I would ask the board to consider providing some guidelines to staff on the imposition of penalties so they don't come to the board recommending banning somebody from the program for two years over a very small change in their application.

I would propose that we have monetary penalties and something in the range of \$25,000 for the first offense or \$50,000 for a second offense, and then only have the penalty points kick in for a subsequent offense.

Now, earlier this morning, you heard Granger McDonald testify, and I would certainly support his suggestion as an alternative where you have a penalty imposed of what the amenity that wasn't provided would have cost if there weren't additional amenities provided.

If they were 300 square feet short in their community building, if the cost of that is \$100 a foot, that they get assessed a \$30,000 fine.

I mean, something like that is reasonable and it wouldn't put you in the position that you currently are where the penalties are just so incredibly severe that nobody wants to impose them, and to the board's credit, they haven't because it's just not right to impose that kind of a penalty for a mistake. You know, if you're in this program long enough, you're going to make a mistake, and you shouldn't get kicked out of the program for two years over an inadvertent mistake.

Now, in the next year's QAP -- just one last point -- in next year's QAP, the staff has put in a monetary penalty but the one they are recommending I don't think works because it's \$1,000 a day. And what typically happens on these deals is the developer doesn't know, oftentimes, that he's made this mistake until three years later when there's a cost certification, and so you're talking about a million dollars by the time they find out that there's a difference in what they built from their application.

So I would encourage the board to consider a monetary penalty like Mr. McDonald suggested earlier

today. Thank you.

MS. ANDERSON: I would, for one, certainly welcome written comments with specific recommendations around that rule from you during the public comment period, specific recommendations. That makes it both easier for staff and us to deal with. So I would encourage you to pen something.

MR. BOGANY: Madame Chair, in this encouraging Mr. Palmer, I would like to see that it's stopped. If you say you're going to do something, do it. So sometimes it's easy to write a check and say I'm sorry, and what I want to see is that if you put together a program, you're all experienced developers, you should stick to what you've got.

And I think what Mr. McDonald said earlier, I totally agree, but sometimes it doesn't excuse you from continuing to keep doing the same thing.

MS. ANDERSON: It's not intended to be a slap on the wrist, or in fact, license to just build whatever you happen to build, and \$1,000 a day, if that creates the incentive to make people pay attention to what they said they were going to build, you know -- I mean, I think the staff is trying to respond to some of the board's frustration over seeing just an endless litany of these

things.

We have an incentive to want to keep more developers in this program, not less, because more qualified developers in the program, competition is good, it makes the quality of the product go up, so I don't think we're trying to put anybody through the death penalty. As my university was the only university in America ever to receive the football death penalty because they never would do that to a public institution.

So we really need -- and I say this to everybody in the room -- constructive, but these things have to have teeth, it's not intended to be like the \$100 check Mr. Fisher wrote to the Housing Trust Fund, it's not intended to be a symbolic gesture, it's intended to have teeth. And I think that's what the board has tried to ask staff to work through and come up with, but clearly we need all the best heads in the state working on this while we're in the public comment period to get the best possible outcome.

MR. PALMER: We will definitely provide written comment on that, but again, my concern on the \$1,000 a day is it's just too much teeth and you're going to be back in the same position next year where there's a million dollar fine against somebody for a very small inadvertent

mistake.

Thank you.

MS. ANDERSON: Mr. DeLuca.

MR. DeLUCA: My name is Bob DeLuca and I'm the director of development for Coach Realty Services in Houston, Texas. We've completed, over the years, approximately two dozen successful tax credit projects. And by the way, my son is a graduate of that same school and was there that first year.

I spend my time, day-in, day-out, attempting to get these properties home from the dance, all the way from the application to 8609, and I've worked extensively with staff on many of these issues over the past several months in particular. And I must say I have no problem whatsoever with a severe, fatal if necessary, penalty to a developer who does not do what he says he will do and what he had planned to do.

The problems, however, with that are the application of that penalty and how do you really know early on in the project exactly the way it's going to end up, there are things that do change, and I think Granger has mentioned that and other ones have.

My suggestion, perhaps, is that as I read the proposed application procedure, it says that any deviation

is an issue requiring approval, any deviation. Well, what does that mean? If we had to put up a retaining wall because of drainage we encounter, move a dumpster, put out a light switch, paint color, any deviation is just way, way too harsh. I realize there are specifications but that can be interpreted pretty specifically.

And as I further interpret the proposed procedure, it says that the staff can only resolve an issue by using a substitute, otherwise, if there's no substitute, it's automatically referred to the board. There's no way, as I read this particular procedure, that anything other than a substitute can be used.

The problem I have in thinking this through -- and I may be confused -- is that there's excellent language about what is material and what is negative, but that does not seem left up to staff. If staff had the ability to make a determination as to a material deviation and a negative deviation, then I don't think we'd have a lot of these problems. It seems to me that if they're going to be banning a developer from a program based, again, on these 300 square foot negative variations in the community centers, that's a pretty harsh penalty for the infraction -- if there is an infraction. If there is a material and negative mistake or problem, absolutely lower

the boom.

We, as I mentioned, have been in the Tax Credit program for a number of years. Tom Scott is who I work for, you all probably know Tom. It's very easy to get discouraged these days in this business. These issues are only one part of it, as I'm sure you're aware. The syndicators and lenders, everyone wants to cut you back. It's in everyone's incentive, the developer gets paid last, and frankly, if the developer gets paid last, the project is probably going to be better because it will have less debt or less equity and have a better chance to work.

So we have a tough job, and we appreciate staff's approach to it and your approach. We just hope that we're not making a very difficult task even more difficult. So thank you.

MS. ANDERSON: Mr. DeLuca, I would ask that you, in this period of time that we've said we're going to have you all work with staff, that you provide some very specific recommendations and language, more specific than the general comments that you've made that no doubt have a lot of merit but that doesn't give staff much to go on. So will you make that commitment to me?

MR. DeLUCA: I'd be pleased to.

MS. ANDERSON: Okay, great. Thank you very much.

Ms. Boston.

MS. BOSTON: And I just want to clarify that this policy was meant essentially to be a policy for the board and the executive director to have some agreement on what's not material and what can be approved by Mr. Gerber. Meaty stuff, in my opinion, like penalties is in the QAP and should remain in the QAP, and so I would ask that for all these folks who are going to make comments on this, that they also need to submit those same comments so that we can make sure that we provide them to the board as it relates to the QAP revisions.

MS. ANDERSON: Absolutely, right.

So with all that in mind, if there's going to be more time to work through this with staff, we still have four witnesses on this item. Mr. McDonald.

MR. McDONALD: I've been quoted enough. Thank you.

MS. ANDERSON: Thank you, sir. Rick Deyoe.

MR. DEYOE: I'll reduce my to writing.

MS. ANDERSON: Okay, thank you. We'll look forward to that. Appreciate it.

Michael Clark. You've been sitting here all

day.

MR. CLARK: We'll do the same

MS. ANDERSON: Okay, perfect. And Mr. Crozier.

MR. CROZIER: Wild mustangs could not get me to come to that microphone.

(General laughter.)

MS. ANDERSON: We've given you some time, we are interested in your comments about this subject item which is what amendments could be processed administratively. I mean, the board is interested in having things that can be handled administratively, our meetings are always longer and longer, but as Brook said, when you're thinking about things that are in the QAP around point and monetary penalties, if we can have your written comment about that also, we'd be very grateful

And I believe it is the better part of valor to take about a ten-minute break and we will reconvene at 2:20.

(Whereupon, a brief recess was taken.)

MS. ANDERSON: The next agenda item, 7F, is Housing Tax Credit Amendments. Mr. Gerber.

MR. GERBER: The first amendment, Churchill at Commerce Apartment Community has been withdrawn by the applicant for this meeting, so we'll move on to the next,

which is The Homes of Parker Commons. This second amendment request is fairly complex and is requested by the syndicator of the tax credits due to the mutual removal of the original general partner.

This application was awarded tax credits in 1998 from the 1999 ceiling as a forward commitment. Subsequent to the award, the department required that a more experienced developer be added to the organizational structure for Sphinx Development. In response, the applicant added M. Myers Development to the organization in 1999. In 2004, the general partner, including both M. Myers Development and Sphinx Development Corporation, were removed by the syndicator and was replaced with an affiliate of the syndicator.

According to the current owners counsel, several changes were made during the development process to the site and to the buildings. These changes included, first, a change in the unit mix and the number of units. This change appears to have been approved by the department management at the time. However, the approval did not specify the number of bathrooms in the unit mix, only the bedrooms. Twenty-six of the completed two-bedroom units have only one bathroom instead of two.

The second change is a reduction in the net

rentable area. Although the number of units increased, which was approved by department management in 1999, the overall net rental area decreased by approximately 32,000 feet.

The third change is that many significant amenities were omitted. The development was completed with the omission of major amenities such as a daycare facility, a garage and covered parking, playground, volleyball court; energy-saving devices were omitted, microwave ovens, public telephone.

The owner is not proposing substitutes for these amenities because, according to the owner, they already supplemented the development with \$2.8 million, which was more than was originally proposed. As of the publication of the board materials, the owner has not provided terribly specific documentation for the uses of that additional \$2.8 million.

I'd like to note that one item in the write-up indicated that there has been a reduction in the number of units serving persons with 50 percent of AMFI, and that is actually not being requested. The applicant is following the law for the correct number of AMFI units.

Staff believes these changes and the omissions have affected the development and recommend that the board

deny the amendment request and require the owner to provide equivalent substitutes for the loss of amenities to be presented to the board for approval. The syndicator had a responsibility to ensure that the development was built as proposed.

You'll also note in your write-up that staff is also recommending that the penalties under 49.9(c) relating to amendments be assessed on the original general partner, comprised of Sphinx Development and M. Myers Development, for having developed the property so significantly inconsistent with their application.

We'd be glad to respond to questions.

MS. ANDERSON: I have several people that would like to make public comment. Mr. Lee Stevens.

MR. STEVENS: Madame Chairperson, Mr. Vice Chairman, board members, and Mr. Gerber. My name is Lee Stevens. I'm vice president of acquisitions with AIG Sun America.

I'm here to advocate for the acceptance of the amended application as well as the substitution for any additional amenities or penalties of any form, given the advance of over \$2.8 million to cover construction cost overruns on The Homes of Parker Commons.

By way of introduction, AIG has invested in

over 139 projects in the state of Texas, acquiring over \$946 million in federal income tax credits. That equates to 23,000 families and seniors served in dozens of communities throughout the state. We love the state of Texas; we're building another thousand units with our developer partners, and will continue to compete for investments.

The Homes of Parker Commons is an excellent example of two things: one, how the TDHCA and developers and local communities can come together to build a project to serve as the stimulus to redevelop an underserved area -- in this instance, the near south downtown Fort Worth area -- with The Homes of Parker Commons project. This is a historic renovation of the old Fort Worth High School and Hogg Elementary School, originally constructed in 1911.

You have a packet that's been circulated that provides both the before photos, about a dozen photos before the development began, and then after one of the yellow sheets, photos evidencing a beautiful project that created 192 units, including 168 units of affordable housing.

The project is loved by residents, by the Fort Worth South Neighborhood non-profit organization, by Mayor

Moncrief and the city council of Fort Worth, as well as Representative Lon Burnam, all who submitted current support letters in support of the project and they were previously submitted to the staff.

Unfortunately, The Homes of Parker Commons is also an excellent example of the substantial development and financial risks, that developers, as well as investors, take on in developing low income housing tax credits. As I mentioned before, this is an old building; it was dilapidated, and the developer made a strong effort to be able to assess the structure, as well as other conditions of the property, but unfortunately there were substantial complexities as well as substantial cost overruns that ultimately were borne by the partnership, to the tune of over \$2.8 million.

The last document in your package is a six bullet point item from our counsel that shares the most significant categories in which the cost overrun emanated from. Specifically, the Historic Commission required that all the windows be replaced with new wood windows that were historically accurate in nature. This required custom design, custom construction; they were substantially more costly than anticipated, and obviously an improvement beyond what the application entailed.

Also, the City of Fort Worth required that there be metal framing instead of wood framing. This is a substantial structural improvement beyond what any information in the application indicated. The hazardous materials abatement was much more costly than initially estimated. You can continue down the bullet points on that page: concrete structural damage, the complete redesign of the interior spaces and mechanical and electrical and plumbing, as well as the exterior brick repair.

Any tax credit development is very complex and very costly and presents challenges to a developer, but in the instance of historic renovation, you really don't know -- as much as high-quality engineers and cost estimators may try, you don't know until you actually begin to peel back the layers, if you will, of the building. In this instance, again, we're asking that the \$2.8 million that was advanced to cover construction cost overruns substitute, if you will, for any kind of amenities or anything of that nature. The project is a gorgeous project. It's 97 percent occupied, as I mentioned; it enjoys very strong support throughout the community, and if you have any questions, I'll be happy to answer them.

Our counsel, Cynthia Bast, is prepared to address some technical issues with respect to the low income housing tax credit application, as well as the ultimate project that was prepared.

MS. BAST: Thank you. Cynthia Bast of Locke, Liddell & Sapp.

So we just spent some time talking about amendments and penalties and holding developers and applicants accountable, following the rules, and developing what you should develop, and this is a case that presents some of the interesting questions about which you have heard some public testimony.

One of the things that I hope you will understand as you're approaching this case is that this project was done in a very different era of this department. This was a 1999 forward commitment. Back then you didn't even have Section 6712 in your governing statute about material amendments when these changes were made. Back then the application form was different. There were threshold and selection criteria, of course, and exhibits to support that, including an architect's certificate that would show the amenities being provided, but then there was also this place where you could check a box of certain things that would be provided, and it

wasn't necessarily tied to the threshold or selection exhibit.

So it was a very different application process, and frankly, back then it was a very different process for approving amendments. It was the era where you could send in a letter to the Tax Credit Division and someone working there would sign his name in the margin of the letter and put "Approved." The process was very different when these changes were made.

So with that context, the things that I hope you'll take away from my remarks are that, first of all, with regard to the amenities that were omitted, the amenities weren't required to meet threshold or selection criteria for this application. In some cases, some of the amenities were a checked box, but they then were not necessarily carried through the application to the architect's certificate or other places.

Furthermore, when the then developer, M. Myers Development, did actually approach the department about changing the site plan and including additional units and wrote a letter to the department, that letter not only recited a different unit mix but also said there will be no room for the typical family amenities on this site. Now, did he say there will not be a daycare center? No.

But he did provide some level of notice that there would be no room for typical family amenities, and the truth is there's not -- it is physically impossible to install some of the amenities that are being recited as omitted.

So the list looks long, it looks extensive, but I hope that you will consider it within the context of these remarks and within the context of Mr. Stevens' remarks and the pictures showing a project from 1999 that is revitalizing and making a difference in its community with very, very happy tenants who are willing to write letters to this department and say, I love where I live. And I hope that you will take that into consideration. Thank you.

MS. ANDERSON: Is the comment that you made, Ms. Bast, about a letter sent years ago saying that the amenities for a family development -- is that in the packet we got?

MS. BAST: Yes, ma'am, it is.

MS. ANDERSON: The August 21 letter? Where does it make the comment in here that theoretically put the department on notice about family amenities.

MS. BAST: It's on the second page in the first full paragraph. "The limitations of the site and the resultant parking requirements resulted in a site that was

covered with buildings and parking lots. There is no room for the needed amenities of family living."

MS. ANDERSON: Okay.

MR. CONINE: Mr. Stevens, I have a couple of questions. Could you give us an idea of what the original budget was and where the new cost figures have come in? And I guess those are the first two.

MR. STEVENS: Sure. The original tax credit application showed a total development cost budget of \$17.24 million. The cost certification total development cost came in at just over \$20 million: \$20.21 million. In terms of the specific detail, it was very challenging to be able to extricate from accounting records specifically what the particular costs were, but in terms of discussions with internal staff, these six issues that we identified in the bullet points were the primary sources of the construction cost overrun.

MR. CONINE: And as I understand, the 8609s have not been issued, so technically where are we legally with the credits here on this deal?

MR. STEVENS: I believe we claimed credits for two or three years but suspended claiming credits pending getting this issue resolved.

MS. BAST: So they would be allowed to go back

and amend prior years to catch up.

MR. BOGANY: I have a question. What was the cost of the hazardous materials abatement? That seems like something that you would have known up front and that should have been included in your costs. Same question on exterior brick repair: That seems like something you would have known up front in the beginning because of what the project looked like.

MR. STEVENS: I don't know. I think the issue is, not having included a cost estimate, the estimate is simply much lower than what the actual costs ended up being.

MR. BOGANY: So what did these items cost?

MR. STEVENS: Again, ultimately, our accounting records indicated a figure a little over \$2.8 million in terms of what the partnership advanced to finish the project, and that's roughly consistent with documents that you have in terms of the tax credit application and the budget that was provided, as well as the cost certification.

MS. ANDERSON: The budget in the underwriting report, at application the construction cost was almost 17.8- and then it comes in at cost cert at 20.4-.

MR. BOGANY: And did the staff okay you passing

all these items up?

MR. STEVENS: I'll defer to counsel.

MR. BOGANY: The question is that with cost overruns, you didn't do any of the things you said you were going to do -- did the staff okay that at that particular time. You have something in writing from staff saying we're okay with you bypassing these items because of the cost overruns? Or did you just make the decision as the developer that, I'm going to bypass these items because I'm sticking extra money in?

MS. BAST: Again, Mr. Bogany, I think there was communication with staff on one level about the change in the additional units and some of the family amenities, but that was, again, discussed very broadly. Did they go back and say, We're not going to put in a volleyball court? No. But again, that was at a time in this program and with a different staff where when things like that were done, particularly if they didn't impact points or threshold criteria; people were told, oh, just wait to handle it at cost certification, or if it doesn't impact points or threshold, it's okay.

And so since that developer is not around anymore, we don't know what conversations he might have had with staff at that time about any additional changes

other than what's in the record of his letter to the department.

MR. CONINE: When was the Myers group admitted into the partnership?

MS. ANDERSON: Would you state your names for the record?

MR. SHACKELFORD: John Shackelford, Shackelford and McKinley, here on behalf of the original developer, Sphinx Development Corporation.

MR. OJI: Jay Oji on behalf of Sphinx Development Corporation.

MR. CONINE: Go ahead and give us a presentation, if you want. I may have jump-started whatever you were going to say.

MR. SHACKELFORD: I've handed out to the board members a memorandum that looks thick, but it's only three pages, and essentially it recites what happened, the connection with the application and the allocation. There was a condition that Mr. Oji and Sphinx Development bring in a more experienced developer at that particular time. He did not have the requisite experience the department was looking for, so he negotiated with Mr. Myers to come in to provide the experience.

Mr. Myers, in consideration for partnering on

this particular project, essentially told Mr. Oji, I'm going to call the shots and I'll make the decisions, and the initial general partner was withdrawn; Mr. Myers put in a new general partner in which Mr. Oji had only a 49 percent interest. Mr. Myers's entity had a 51 percent interest. He wrote the regulations in a way that he was sole manager, he had the sole authority, anything requiring member consent -- of which Sphinx Development was a member but only at 49 percent ownership -- took this majority interest which was Mr. Myers's entity. So in effect, at the time -- and I can recall it -- in connection with this I told Jay, I can give you an affidavit because I remember advising Mr. Oji at the time: When you sign this deal up with Mr. Myers, you've got no say, no control, no authority at all once that's done.

And so at that point in time, Mr. Myers essentially assumed all the management responsibilities for the overseeing and development of the project.

MR. BOGANY: Is Mr. Myers still developing with us?

MR. SHACKELFORD: I think he has been out of the program for the last couple of years.

MR. CONINE: And when was that partnership removed as general partner and whatever the new one is put

in?

MR. STEVENS: It was in May of 2003.

MR. SHACKELFORD: Mr. Oji was removed as the initial GP entity I think in 1999. And so we're here on behalf of Sphinx Development to ask that the penalties not be assessed against Sphinx Development Corporation. I understand you don't want people that don't do what they say, but in this particular instance, we feel like it would be the death knell to Sphinx Development to impose these kind of penalties in connection with him when he was at that time not as experienced as he is now, required to go seek assistance of another developer -- that's not his case anymore -- and it would effectively put him out of the program for a couple of years.

MR. CONINE: But didn't Mr. Oji put together the original application?

MR. SHACKELFORD: He did the original application.

MR. CONINE: So Mr. Myers inherited an original application that either was administered faulty or was put together faulty, one of the two.

MR. OJI: It wasn't put together faulty.

(General laughter.)

MR. CONINE: I would expect you to say nothing

less.

MR. BOGANY: This is the poster child of what we were talking about earlier. This is by far, in my opinion, the worst one I've seen. I have no other comments.

MR. CONINE: Yes, and I feel the same way, Mr. Bogany, and because we were handed so much information in the last five minutes here, I don't think now is the time to delve into the project. And let me ask you this, other than normal financial urgencies, is there any other issue that I'm not familiar with right now that would preclude us from wanting to put this off for a month and gather some more facts and read through the information? It's a pretty complicated case, in my mind. And also, we might fall on a creative solution different than what's in front of us here.

MR. STEVENS: Well, naturally we're attempting to realize our investment in the \$11 million in tax credits, but having said that, we'd certainly be willing to work with staff. I would just tell you that the challenge in historic preservation deals are much more complex than in new construction and even acquisition rehab.

And I acknowledge your comments in reference to

a poster child, but this is a very, very challenging development that ultimately yielded more units in housing than initially contemplated, and really jump-started redevelopment in near south downtown Fort Worth. And so it's a poster child for just the kind of project that can make a dramatic impact in a community that's loved by residents and politicians and others in the community.

MR. BOGANY: Well, one of the concerns I've got is that, looking at tax credits over the last couple of years, we've had a lot of people do historical projects that are on the list that received tax credits, so my concern now is that none of them are going to meet their criteria and they're going to come back to us and say, we couldn't do this or we couldn't do that because of historical.

And so, you know, getting clear rules of historical and understanding, to me, like you would do that as a developer, really understand what you're going to need before you even put your application in.

MR. OJI: I'm sorry; it really doesn't work like that, honestly. This Homes of Parker Commons, in all frankness, was a very complicated project to do. The initial application called for one single L-shaped new construction building. The application called for saving

only one building, which was the Parker High School building, but in the process of going through the historical preservation and all that, the Historical Society forced the developer to preserve additional buildings, which was the Hogg Building, that wasn't contemplated.

Now, one of the buildings was in the Federal Registry, the other wasn't, and while you get points for the building that was in the Federal Registry, you couldn't get points for the other one. Now, all of a sudden, if you're going to preserve additional building, then you don't have enough room on the site to do your initially proposed new construction, so all of a sudden you're constricted by the site to do all the things that you're supposed to do on the site. And even when you complete the whole historic preservation, you still have to go to Washington for the EPA to approve the historical preservation so you can syndicate the historic credits.

And I know for a fact that that was impossible because the building had stayed vacant for so many years.

Even the brick you were talking about -- couldn't find the brick, they had to manufacture the brick. The brick cost twice the price than ordinary brick just to brick the Parker building. You couldn't use wood as your skeleton

for the building; you had to go use metal. That affected the sheetrock to be used.

So it's going to be complicated; I don't care who does it, so it's not as simple as it sounds. The bottom line is I didn't have experience to do a project this complicated with my very first project to be awarded, and the board and the staff recommended that I get an experienced developer as part of my condition number G, and I talked to Marvin Myers, who had a construction company, had experience, had done other housing. He came onboard, but part of the reason why he came onboard was he owns a construction company and he has a lot of wealth to offer guarantee to Sun America at that point.

At that point we signed an agreement whereby I didn't know what has happened from then on; I was out of the deal completely. Frankly, I've been paid zero on this deal, I've lost money on it. So my point here is it's a great project, a great product, but I shouldn't be penalized for something I did not have any control over.

Since this project, I've made some applications, I've gotten credits awarded, and I've gotten 8609s completed, and I don't think anybody on the staff will complain that Sphinx has not met our complete obligations.

MR. CONINE: Madame Chair, I'd like to move to table this item to the next board meeting.

MS. RAY: Second the motion.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: If I can just ask that staff to support board members' questions and whatever so that we can get resolution on this next month. They'll tell you what their specific questions are after they read through the material. Thank you.

Item 7(g), which is Housing Tax Credit Extension. Mr. Gerber.

MR. GERBER: Board members, this is an extension of the time to submit documents for the commencement of substantial construction. The department has received the documentation now. The deadline extension would be from December 1 of 2006 to August 15, 2007, and again, we have received that documentation, and staff is comfortable recommending approval of the extension.

MR. CONINE: So moved.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(No response.)

MS. ANDERSON: Hearing none, I assume we're ready to vote. All in favor, say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.,

(No response.)

MS. ANDERSON: Motion carries.

Mr. Gerber, the executive director's report.

MR. GERBER: There are a listing, Madame Chair and board members, of our outreach activity. There's also provided for you the monthly report on HOME amendments and their status and their consistency with our monthly progress reports. And also, just by way of heads up, next Thursday, the 20th, we will be closing the bond transaction for the \$160 million for Program 70 and our First Time Homebuyer Program and we will launch a series of events and activities to make the public aware of the availability of those First Time Homebuyer funds.

MS. ANDERSON: Could you revise and extend those remarks slightly to tell us what happened in the pricing last week?

MR. GERBER: Sure. Thanks to the hard work of

our head of Bond Finance, Mat Pogor, and Gary Macak, our financial advisor, and Bill Dally, who was also in New York, we intended to hit the market on Thursday of last week for pricing but we found through the market on Wednesday that there as a real opportunity there to move forward and so we were able to sell all of our bonds at a rate that would enable us to have some very attractive rates for this program. We're going to be offering an unassisted rate of 5.75 and the assisted with 5 percent down payment with 6.5. So those will be very attractive rates, and we're looking forward to these dollars moving quickly.

MR. CONINE: Congratulations to the team.

(Applause.)

MR. GERBER: And that's all I've got.

MS. ANDERSON: The HUB item.

MR. GERBER: I do not discuss that; it's just provided for your information.

MS. ANDERSON: And I just noticed in the HOME amendments, and I made comment about this in the board meeting earlier today, but there's proposed award to Arcill when they still have a lot of money on the existing contract, and so I'm concerned about how that gets structured so we're not just stacking more money on top of

and they don't start spending that until 18 months from now. So I'm counting on HOME staff to work through that.

And then I also would be interested in the next board meeting in the HOME amendment report, there's an item on the City of Lewisville, and they have an OCC contract that the ending date is supposed to be 9/30/07 and the write-up says the one activity is 5 percent complete, so I sure hope they didn't demolish that thing after June 20 within the 90-day window, but I'd like to have a little bit. If that's going to turn into a pumpkin between this board meeting and the next, I'd like to know where we really are, because that looks to me like maybe they demolished that thing at one minute to midnight.

MR. GOURIS: I'm sorry, and I appreciate Kevin reminding me. As you know, we've been searching for a new PMC director, and we have an announcement to make in that regard. Patricia Murphy is our new PMC director taking on that responsibility, and she's brought tremendous talent to the job in her role as director of Portfolio Compliance for many years. She is truly nationally recognized, and I'm amazed at the conferences she participates in and the high regard that a number of federal officials hold her in with respect the operations of our program. And so she has taken on that challenge and we welcome her and wish

her well in these new responsibilities.

(Applause.)

MS. ANDERSON: Seeing no further business, we stand adjourned until the October meeting. Thank you.

(Whereupon, at 2:55 p.m., the meeting was concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board  
LOCATION: Austin, Texas  
DATE: September 13, 2007

I do hereby certify that the foregoing pages, numbers 1 through 191, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Stacey Harris before the Texas Department of Housing & Community Affairs.

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(Transcriber) 09/19/2007  
(Date)

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