

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
BOARD MEETING

November 8, 2007
8:30 a.m.

Capitol Extension, E1.028
1500 North Congress Avenue
Austin, Texas

BOARD MEMBERS:

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

STAFF:

MICHAEL GERBER, Executive Director

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Item 1: Approval of the following items presented
in the Board materials:

General Administration:

- a) Minutes of the Board Meeting of August 23, 2007
- b) Minutes of the Board Meeting of September 13, 2007

Community Affairs:

- c) Presentation, Discussion, and Possible Approval of the Section 8 Payment Standards, Resolution No. 08-004

Financial Administration:

- d) Presentation, Discussion, and Possible Approval of the 4th Quarter Investment Report

Multifamily Finance:

- e) Presentation, Discussion, and Possible Issuance of Multifamily Mortgage Revenue Bonds and Housing Tax Credits with TDHCA as the Issuer:

07621 The Residences at Onion Creek,
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a bond Amount not to Exceed
\$15,000,000 and the Issuance of a
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- f) Presentation, Discussion, and Possible Action for the Inducement Resolution Declaring Intent to Issue Multifamily Housing Mortgage Revenue Bonds for Developments Throughout the State of

Texas and Authorizing the Filing of
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ADJOURN

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P R O C E E D I N G S

MS. ANDERSON: Good morning. I want to welcome everyone to the November 8, 2007 Governing Board meeting of the Texas Department of Housing and Community Affairs. And I first will call the roll.

Vice Chairman Conine?

MR. CONINE: I'm here.

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: Here.

MS. ANDERSON: Ms. Ray?

MS. RAY: Here.

MS. ANDERSON: Mr. Flores?

MR. FLORES: Here.

MS. ANDERSON: Mayor Salinas?

MR. SALINAS: Here.

MS. ANDERSON: We have six members present; we do have a quorum.

As is our custom, we take public comment. We welcome public comment. And we take that at your option, either during this initial public comment period before we address agenda items or, at your option, you may speak at the particular agenda item.

I do have some people that want to make public comment first thing this morning, and the first witness --

let me back up. We're going to start out with a three-minute time limit. And we'll see if that works for us today. And I appreciate you limiting your remarks. We have a lot of people -- a very full agenda today and a lot of items that people want to comment on.

So the first witness will be Scott Marks, and then Tony Sisk.

MR. MARKS: Good morning.

VOICES: Good morning.

MR. MARKS: I'm not much of a morning person, but I'll do my best this morning to address my comments briefly. I represent the Catellus Development Group. My name is Scott Marks, and I'm with the law firm Coats Rose. And Catellus, along with several other commenters, have made suggestions on the QAP which is before the board today, and I would like to tell you the importance of the Mueller Airport development here in Austin.

I'm sure that all of you know about the Mueller Airport. I always thought of it as a very small site, but it's actually or -- a very small airport. It's actually a 700-acre site. And the city has put a major effort into promoting affordable housing there in the redevelopment of the Mueller Airport, and Catellus was selected as the master developer.

And after a lot of public comment and a major planning effort, the city has decided to promote a very pedestrian-friendly development and affordable housing in kind of a new design, which is a fairly dense design. And, unfortunately, that is somewhat costly. And so the city has promoted affordability there, and we're hoping that the Texas Department of Housing and Community Affairs can be a partner in promoting affordability there.

And one aspect of the QAP is a major problem for the Mueller Airport development, and that is the cost per square foot, the cost limits. The cost limits that are in the QAP are very -- make it very difficult to promote that type of pedestrian-friendly environment with parking and parking garages or underground parking.

And I would just suggest to the board that that's a very important policy decision for this board. You don't want the tax credit program to go the direction of the public housing program, for example, which, through its very strict, rigid cost limits, produced housing that was stigmatized.

And so when there is a tax credit development at Mueller Airport -- and we hope that will happen in 2008 -- we don't want people to say, That's the tax credit project. It should blend in with the rest of the site.

And so our specific comment is to award points based on the construction costs that are included in eligible basis.

So if there is something like a parking garage that doesn't generate tax credits -- the City of Austin wants to invest millions of dollars in very nice parking -- why would the Department penalize the developer for building that type of development? It should only be -- your concern should be efficiently using the tax credits, maximizing the number of housing units that you get with your very limited amount of tax credits that the state has per year to allocate.

So that's our comment. And I appreciate you listening to me this morning.

MS. ANDERSON: Thank you.

Mr. Sisk?

And then the next witness is Barry Palmer.

MR. SISK: Good morning, Board. I'm Tony Sisk with Churchill Residential, Irving, Texas. And the purpose of my being here is to read a letter which I provided a copy of to the board this morning, and it was also sent directly from the City of Dallas to the executive director and board of directors yesterday.

And the letter is regarding advocacy for

permanent supportive housing for formerly homeless of Dallas, and a minor amendment to the QAP: "The City of Dallas city council has enacted and is currently working with city staff, non-profit groups, private developers and many others to develop a comprehensive plan to develop at least 1,000 units of permanent supportive housing, also known as SRO and special needs housing. A critical part of the implementation of this plan involves project financing with federal tax credit investors working through TDHCA.

"We are aware that multiple TDHCA staff members had attended some of the training with the Corporation for Supportive Housing, and we appreciate the interest of TDHCA in this important endeavor. The purpose of this letter is to further encourage the financing of new state-of-the-art buildings in addition to rehab of existing properties.

"SRO buildings contain very small efficiency units. Therefore, the cost of development per square foot is high compared to multifamily construction. In this regard, we urge you to consider adding the following phrase to the selection criteria in Paragraph 8 of the QAP.

"This section already allows similar treatment

of SRO permanent supportive housing construction costs at the \$85-a-square-foot level in the same sentence as, "Qualified elderly." However, the definition of cost per square foot for buildings containing enclosed corridors and elevators applies only to elderly buildings in the current wording.

"Since the SRO permanent supportive housing and special needs population base have similar issues, we respectfully ask that Selection Criterion Number 8 of the QAP be amended to read, "Serving elderly or special needs SRO tenants."

"We appreciate your consideration of this matter affecting critical public policy of Dallas, Texas, and the US," signed, "Mary Suhn, City Manager, City of Dallas."

And this is the original letter. Thank you very much.

MS. ANDERSON: Thank you.

Mr. Palmer?

And then the next witness is Mike Clark.

MR. PALMER: Good morning. My name is Barry Palmer; I'm with the law firm of Coats Rose. And I'm here to talk about an issue which I consider to be the biggest problem that we have in this year's QAP. It's an issue

that I came and spoke to you about many times this past year, and that's the adherence obligations language in the QAP, which effectively penalizes developers for even the slightest change in their project from what was originally listed in the application.

So we have seen numerous cases this year -- and we will no doubt see numerous cases next year -- where things change in what was developed versus what was in the application. And often times, these are minor changes. Often times, they are positive changes. But the QAP doesn't really differentiate. So even if somebody makes a change which is for the positive in the project, what we are seeing is staff come in and recommend that they be suspended from the program for two years.

And some of the -- we've got cases on the agenda later today where a developer builds a community building that is 300 square feet smaller than what was in the application. It has no material adverse impact on the project. There are other amenities that are provided that are much more positive than the difference of 300 square feet in a community building, but none of that is taken into account.

And, unfortunately, the language -- we've been hoping that reason would prevail on this issue and that

the language for next year's QAP would be revised so that we don't have a repeat of what we've been seeing this year, but that's not the case. The draft QAP for next year is essentially the same as this year with, you know, some minor changes that we do not think will be effective to resolve this problem.

The -- in your packet, you'll see that there were 16 organizations that wrote in on this issue and recommending that the QAP be changed for next year. And those -- none of those recommendations were followed. And so what I would like to propose that we do to address this issue is that we -- is that the board direct staff to include in the QAP, you know, three concepts that make sense on this issue.

Number One is that the change in the project has to have a material adverse impact on the project, not just be a change -- not a change for the better that you're going to penalize somebody for, but a change that has a material adverse impact on the project.

Number Two: That the staff should take into account offsetting positive amenities that have been provided by the developer. And, finally, we need to have some sense of proportionality of the fine or the penalty in relation to what was done. If somebody builds 300

square feet less in the community building, the penalty for that should not be being kicked out of the program for two years.

MS. ANDERSON: I need to ask you to finish up.

MR. PALMER: So I know that there are other speakers on this issue and there's a lot of concern in the development community about this issue, and we hope that the board will take action. Thank you.

MR. CONINE: Barry, did the language that the change that I read as a result of the public comment period on the QAP, where everything -- all the penalties were up to, you know, which created a range from zero to there, and giving the board the discretion -- did that not ease your concerns some relative to proportionality?

MR. PALMER: Well, I guess it give the board the discretion to impose a lower penalty, but what I expect we'll see -- you know, I don't -- I'm surprised that you all would want to be in that position. You're going to have the staff come in making these recommendations that somebody be penalized to an extent that they're effectively banned from the program for two years, and then it's going to be up to the board to decide whether to waive that or impose some lesser penalty. And then, you know, every developer is going to be in here --

MS. ANDERSON: Not if they build the thing the way the application reads.

MR. PALMER: Well, now -- but that's not realistic. You're trying to legislate perfection here. And you can't legislate perfection. You know, you're going to have people make mistakes. And this is a complicated program.

You can't legislate perfection. There are going to be differences. And the -- what we had -- what the development community had proposed is that there be some kind of, you know, monetary penalty that, you know, had some sting but wasn't ridiculously high. The penalty that is in the QAP is \$1,000 a day. And these differences are usually not found out until you do your cost certification.

With most of these things, the developer doesn't know that they've made a change that required TDHCA approval, because the changes were often times so minor no one would have thought that you had to go back to the TDHCA for approval for that. And so it's not found out for two or three years later.

MR. CONINE: Well, most of the changes I'm seeing aren't minor. They're totally different. And, you know, I think what we're trying to do is create an

atmosphere where when you realize you have to make a change -- and most developers -- if they're on top of their game, they understand, when a change needs to be made, the dividing line between when you need to come back here and when you don't.

And we're trying to get people to come back here more often for informational purposes more than we are anything else, because heretofore, in the last ten to fifteen years, we haven't been. So we want to make sure that what we vote on is what gets delivered to the citizens of Texas. And in a lot of circumstances, people have been ignoring it, not caring about it, or whatever the case may be, and it'll shown up here three or four years later on cost certifications or 8609s, wanting forgiveness. And, you know, we're tired of it.

So I -- whatever process we need to create to create a communication dialogue between developers who are on top of their game -- and we've got some who aren't on top of their game that come in here late -- we've got to figure that out. And that's what you see us struggling with in the language of the QAP.

MR. PALMER: Well, we have proposed revised language that we felt would provide a balance between the board's concerns and the concerns of the development

community.

MS. ANDERSON: Well, that it locks the thing in so that the board doesn't have any flexibility to respond to poor proportionality would be this board member's view on the proposed language.

Mike, if I can, I ask you to stand down for just a minute so that we can hear from Representative Menendez.

REP. MENENDEZ: Good morning, Madam Chair.

Good morning, members of the Board.

MR. CONINE: Good morning.

REP. MENENDEZ: Thank you very much, Director Gerber.

Thank you for your indulgence this morning. And I apologize to the folks in the audience. First of all, I appreciate the opportunity to do this.

When I got up at about 4:30 this morning, I was thinking about the things that I wanted to go over this morning. I was thinking about the fact that I have so much to thank you all for and be appreciate of: The work that you've done recently, the work that we did together during the session. I think there was some great inclusiveness and leadership and a desire to build consensus and inclusiveness in the overall legislative

rulemaking and administrative process.

But this morning, I do come with some grave concerns over some possible unintended consequences of some proposed rule changes. And one of the first ones on the top of my list is reducing the senior project capture rate for urban areas from 75 percent to 50 percent, and I'll tell you the reason, why.

When I looked at the rule changes and I looked at and analyzed some of the data and I worked with some of the folks on my staff and others, based on the 2007 low-income tax credit allocations, there were 18 senior projects allocated, new construction, of which -- of these projects, only five of the sixteen in urban areas that had this capture rate rule would have complied with the new proposed 2008 rule. That represents 72 percent of the units that would have been unfeasible under this 2008 rule change, or 1,211 of the 1,684 units of housing for seniors.

My understanding is that the affordable senior vacancy -- occupancy rate sits around 95 percent currently. So I don't feel that we have overbuilt affordable seniors' housing in this state, and I feel that there's a huge need. And I can tell you as, as we all know now, they've identified the first Baby Boomer that's

going to collect their first Social Security check as of January 1, we're going to only see a greater and greater need for senior housing.

I'm not going to belabor that point. I just do feel that this is something that this rule -- because I don't understand, also. As -- I looked, and I asked the staff, Why should we -- why should this change be made today. And they said, Well, apparently, there was some concerns out of Houston or Harris County with some maybe potentially having been overbuilt. And I'm not sure if there is or there isn't. I haven't looked at that.

But I would like to see if you could put off this rule change. My concerns are the negative impacts it would have to the rest of the state.

And as I've thought about it, too, you know, I -- many times I've come before you and have talked about the feeling that some regions are underfunded, but we didn't change the formula to affect just that region for the whole state. So I think changing this capture rate will affect the whole state maybe for a localized problem.

Number Two on my list is the census tract boundaries and the concentration policies. I think the changes here increase the risk of increased NIMBYism and discrimination, as well as further restricting the

availability of housing. And it also takes away the local authority's control to sort of determine where the need is.

And I think that we have got to be very careful. And I know that this Board has been one of the leaders in the state in protecting against NIMBYism, and doing what's the right thing and trying to assess where the need is. In the times when I was fighting for more dollars in certain regions, I'd meet with your staff. And your staff said, Well, the formulas just say we're going where the market dictates the need.

So this concentration policy and the census tract boundaries they -- I don't understand, once again, the reason for the change. And so I'm concerned because last session, we had to fight off so many anti-affordable housing bills, NIMBYistic bills. And I'm concerned that this will only further push the envelope in the wrong direction.

The third point I'd like to talk quickly about is something that seems strange to me. On the prioritization on the scoring, I noticed that notary public services was higher than child-care programs in the scoring criteria. And when I accepted the amendment from Rep. Liebowitz to have notary public services, we did so

under the understanding that this was if -- during business hours that you would have someone on staff as a notary public, if available.

This was not meant to supercede child-care services. And I'm not sure why in the scoring that has come up. And I know that there have been numerous comments to that effect. I think having a notary public service on site is a great service especially for seniors.

They need to have stuff notarized, and they need to go somewhere where they can trust that they're not going to be taken advantage of. But it's -- in my opinion, it doesn't supercede our responsibility to the children who are going to be residing in these areas and the child-care services.

I don't think the Board -- I'm not sure. I can't speak for you, but my thoughts are, from the -- based on what you've done in the past, that that would not be a policy change that you would be interested in, as well.

I'd also briefly like to comment on the issue of legislative intent regarding the restriction of the 80 units on new construction in the rural areas. The legislation was intended to apply only to 9 Percent deals, and not 4 Percent bond allocation -- applications. I

think, once again, I'd like to see the market demand drive the number of units in these areas, and not go counter to the intent of the bond packaging program that resulted from the task force last interim led by the Vice Chairman, Mr. Conine.

And I think that your task force, Mr. Vice Chair, came up with some great work. And I think that -- if we did this restriction on these units, I think it would just go counter to market place, you know, demand.

And so I think that this Board and the staff has had a good influence on me in the past on, you know, some of the thoughts that I've had, I think, looking with blinders on, just in a parochial sense. And I'm hoping that we -- these rule changes in some cases seem to be driven out of concerns or needs or issues that are occurring in a part of the state, but, unfortunately, they're going to affect the whole state. And I'm very concerned that we're making rule changes that are going to adversely affect the rest of the state.

So I want to recognize again that -- the public comment process that the Department employed, but I think that if we could take a 30-day scrubbing period to ensure that any unintended loopholes or problems are corrected -- it's not an unprecedented thing. You did it last year.

Last time -- you've done it. I think that it would give you plenty of time still to get it to the governor for his signature.

And so I think what, unfortunately -- I understand, yesterday, there was a public comment period, but it -- not a public comment, but a --

MS. ANDERSON: Roundtable.

REP. MENENDEZ: A roundtable. But it seems like some of the feelings that came out of the roundtable were, "This is how you can work with the rules; this is how you can use the rules," and not so much, Tell us what you think about the rules. And having it 24 hours prior to adoption seems -- it just seems like it doesn't give the Board that much time to really --

MS. ANDERSON: Well, there -- you know, these have been open for comment since August --

REP. MENENDEZ: I understand. And I know that a lot of comments --

MS. ANDERSON: -- or September.

REP. MENENDEZ: I know that my comments are not unique and that a lot of these comments have been made --

MS. ANDERSON: Right.

REP. MENENDEZ: -- even at the last meeting that you had. And so I just want to continue to work with

the partnership, the inclusive relationship, that we had during last session. I think it has been great the way we've been able to bring the different stakeholders together, but I have a serious concern that some of these rules will disrupt or even harm affordable housing opportunities because of fear and ignorance and, in some cases, prejudice, and I'm not saying on your part, but I'm saying the way these rules could be implemented out in the field.

And lastly --

MS. ANDERSON: And that's really the census tract one that you're talking about?

REP. MENENDEZ: The census tract, yes. The concentration policy -- I think that's an issue. I think the -- I mean, you know, you used to use conventional boundaries. But then you went to this PMA. I think we need to reconsider the entire tract to explain why the remainder of the tract does not make an impact on the marketability of the project.

I think if we looked at -- census tract boundaries aren't what people think of, you know, where they live. Most of us don't even know what our census tract is. And so it really doesn't make a whole lot of sense when you're looking at trying to assess

marketability of a project. I think highways. I think school districts. I think, you know, different boundaries that are really knowledgeable to people that they -- where they live. It makes a little more sense that you might say, They might come from this area -- the people might.

If you do the census tract, it doesn't -- I think the other thing that it does -- some census tracts have up to 10,000 people, which -- the margins on feasibility could be thrown out of whack just by the particular census tract boundaries. And so I think the census tract is not the best way to go that way, and just I'd like to see that you might omit and reconsider this in '09 or reconsider the way you're doing it.

I just don't understand what's broken in some of these cases. I really don't see it.

Finally, Madam Chair and Board members, some of you may or may not know and -- I serve as a volunteer on the -- as a board of -- director for the LULAC National Housing Commission. And a lady from Houston from District 8, Mary Ramos -- she's the chair of the LULAC district housing committee. She asked me if I'd read a letter on behalf of them if you'd indulge me. It's a short letter. It's a couple of paragraphs.

"Dear Madam Chair Anderson and Board members.

Thank you for this opportunity to comment on the Draft 2008 real estate analysis rules and, specifically, on the proposed concentration policy and the proposed underwriting of future senior housing developments in Texas.

"First of all, the LULAC District 8 Housing Committee has only recently begun to focus on the statewide affordable housing policy and how it impacts the 28-countywide constituency of their district. There is a deep concern that the proposed concentration policy could appear to be discriminatory in practice in that many of the census tracts where construction of new affordable housing would be made much harder or prohibited by the new policy seems to coincide with the higher rent areas of Houston where affordable housing seems to be greatly needed.

"LULAC feels that this proposed housing policy will make it more difficult to find suitable property sites. And as the district is now in the process of organizing its own affordable housing development corporation, we would prefer if the state would please allow the market place to determine demand, rent levels and financial feasibility in these areas.

"Lastly, there's a concern about the proposal

of changing the capture rate for senior developments from 75 percent to 50 percent. One of the factors affecting the capture rate is how a specific property competes with local demand. With the new census only a few years away, it appears to be an irregular time to institute this policy using eight-year-old data to determine demand, and especially given what we do know about how rapidly our population is aging.

"Please allow for this very important market segment to be fully served, and keep the capture rate for these developments at 75 percent. Thank you for your attention to duty and for your consideration of these matters. LULAC looks forward to working with both the Board and its staff on these very important issues. Sincerely, Mary L. Ramos, Chair of the LULAC District 8 Housing Committee."

Thank you very much. And at this time, if you have any questions --

(Pause.)

MS. ANDERSON: Thank you very much for being here.

REP. MENENDEZ: Thank you.

MS. ANDERSON: Mr. Clark?

And then the next witness is Dan Markson.

MR. CLARK: Thank you for putting me behind Barry and Jose. I'm going to try to -- you have written comments from us, and I'm going to try to summarize this in the interest of saving time here.

My name is Mike Clark, and I'm here today as the president of the Texas Affiliation of Housing Providers, TAAHP, as most of us know it, to provide comments relative to the QAP you're considering today. I appreciate the opportunity to speak with you and to present.

And I want to say, first off, I want to make it clear that we understand there has been a process here. I would compliment the staff, compliment Mike and the Board.

I think there has been a phenomenal exchange back and forth over these issues. And, frankly, when we started this process and we had a three-page letter of comments to the initial draft of the QAP, that shows substantial progress, period.

And now we're down to just a couple of items where we have issues, but we're not prepared, I think, to go as far as Jose did, but there are things that are still issues for us. And I'm going to recap those very quickly.

They're there in writing if you want a little more detail on them, but they're still a couple of things we think

need attention.

Obviously, the penalties section is important to us. And I think the key point there -- I would endorse Barry's comments -- is that we encourage that, if you do implement this, the next step be a written policy from the Board as to how you will carry out the rather large discretionary position you now have of how to implement and monitor this process.

And there in my comments and, frankly, in a letter -- we've written a separate letter on this topic that is attached for you, too -- there are some specific things we'd like to see addressed in that particular policy. I would echo Barry's comments, that things happen, sometimes good, sometimes bad. But in this business, things happen, and we have to find a way to be able to appreciate Vice Chairman Conine's comments relative to the direction. And we certainly endorse that, but we'd like to see it a little bit more clarified, I think, is our point here.

Secondly, we continue to strongly oppose and be concerned about the change in the senior capture rate. There -- we recognize that sometimes there are applications that are trumped up based on the fact that it's easier to do a seniors' deal, easier to get land,

easier to get neighborhood approvals and easier to get support, but the reality is that as of this year, I am now eligible to live in seniors' housing. And so from my perspective, I know there are more of us every day. I know we lease up our seniors deals as they come into our portfolio in pretty fast time. And so I'd hate to see us do anything that eliminates those opportunities from the market.

We're concerned -- we continue to be concerned -- and I won't go into detail -- about the census tract and concentration issues. Our impression, too, is that has something to do with the particular geography, I think, in terms of issues in Houston, but the reality is in a lot of the state, those are not issues. And I think we need to be limiting development on them.

And then, lastly, we have issues with the idea of unit limitation that I think you've heard about before.

The reality is we know that there are very few rural areas that could even support 80 units, much less support a bigger project. But our feeling is that by arbitrarily setting a limit, we put ourselves in a position where we can eliminate properties that may work in a particular area. And it would be nice not to have that in that position.

If the market analyst, the developer and the local governmental jurisdiction are confident that a project larger than 80 units will succeed, then we'd like to see it proceed. Frankly, these are the issues we're down to.

And beyond that, we fully endorse the QAP as it's presented. We, again, are very pleased with the process. I think that it has been nice being part of it and being heard. A lot of the things we suggested got implemented in one fashion or another. So we're not -- we're here, I think, identifying those places where we still have issues, but, on the whole, we're very pleased with the process.

MS. ANDERSON: Thank you.

MR. CLARK: So that's it.

MS. ANDERSON: Thank you very much.

Mr. Markson?

And then Ryan Keathley.

MR. MARKSON: Madam Chairperson, our intent was to speak under the agenda item, but we may have just checked the wrong box. So if you prefer we do that, we'll be glad to.

MS. ANDERSON: It's up to you.

MR. MARKSON: We can go ahead now. It might be

better.

Thank you very much. We appreciate your consideration. Joining me are pastor Charles Taylor and my partner, David Heller. We're here representing Commons of Grace.

First I want to thank you very much for reading the deluge of information that I have sent to you, including photographs. I want you all to know that this is the most serious issue that NRP has faced here and we are taking it with all consideration of that nature.

I have here some photographs -- I want to make this very brief -- for your consideration. The photographs show what the property looked like a month ago and what the property looked like yesterday. If I may hand these to you and pass them around?

(Pause.)

MR. HAMBY: While we're doing that, can I get the people who came up here identify themselves for the record, please?

MR. CLARK: Yes.

REVEREND TAYLOR: I'm Charles Taylor.

MR. HELLER: David Heller, principal of the NRP Group.

MR. SCOTT: Al Scott, principal of the NRP

Group.

MR. HAMBY: Thank you.

MR. CLARK: Thank you.

When we asked that this be put on the agenda, we thought that we were going to have to ask you for an extension. At this time, we do not believe we will need to, but we would request that you place it on the agenda for December. We think we're going to make it. We've been blessed with some really good weather. We've had crews running days and night. It looks like an ant hill out there. And we have three superintendents who are doing great.

So we hope we don't have to ask you anything, but we know it's a serious issue, and we want you all to be aware of how hard we're working not to have to ask you anything.

MS. ANDERSON: Questions?

(Pause.)

MR. CLARK: Thank you very much.

MS. ANDERSON: Thank you for being here.

Mr. Keathley?

MR. KEATHLEY: Hi there. My name's Ryan Keathley; I am with Catellus Development Group. Catellus is the master developer of the Robert Mueller Municipal

Airport redevelopment effort. So I wanted to visit with you guys briefly really about the development. I want to expose you guys a little bit to it, and, hopefully, it becomes an item of interest to you all in this year's or -- next year's QAP and in the following years'.

The development itself has a very ambitious effort of affordable housing. Just to familiarize you all with it, we're talking about two-and-a-half miles from here, a 700-acre redevelopment of the old Austin city's municipal airport.

The city, through a 25-year effort literally before the airport's alternative site was ever chosen for it, has put together or begun planning, I guess, an ambitious plan of redevelopment for the airport. With that, there's many, many community goals that the city has envisioned, and that -- really, Catellus as being awarded the master developer feels like they've become the stewards of those visions and plans for the city and for the surrounding neighborhoods.

So I probably will comment generally more so on anything than -- you know, we've visited with you all throughout the process of public comment. We've made our comments. You guys have heard them. So we appreciate you having that dialogue with us.

And the reality is that what we're attempting to accomplish at Mueller and the affordable housing goals that we're attempting to accomplish, you know, are largely unsuccessful unless we have, I guess, a slight difference of interpretation of how these types of developments can come together.

Specifically, what the -- I mean let me just give you some general benchmarks about the development and its goals. It's, again, 700 acres, 4,600 residential units ultimately in the development. 25 percent of them are deemed to be affordable by the City of Austin. So we're talking about for sale/for rent product.

We're talking about affordable homes, meaning 80 percent of people's incomes, literally 600 feet, half a block, from homes that are 6- or \$700,000. So it's a very ambitious effort to integrate affordable housing in a very careful way and a very responsible way and, you know, essentially avoid and reverse things that have happened on east Austin for many, many years.

And so with that, you know, I want to just again comment briefly that we don't score well in the program as it's set up and the point system as it's set up. And, you know, specifically, we're -- let me hand you this -- give you this handout. We're not even in a census

tract at the moment. It's a brand-new redevelopment.

The exurban factor? You know, we're really neither urban nor suburban. We're talking about an area that's urban in nature but really has a suburban landscape at the moment. Representative Menendez talked about, you know, the --

MS. ANDERSON: I need to ask you to wind up.

MR. KEATHLEY: Thank you.

He talked about the qualified census tract and some of the concerns there. The other component, I think, that's going to be challenging for us to meet is really the overall cost and the investment of the types of developments that we foresee. An example would be that, you know, we are hoping to have -- the density requires us to have structure parking. You know, clearly, this kind of an effort, this kind of development, is -- does not score well relative to the construction cost thresholds that the program has.

So, again, I just want to introduce you to Mueller. I want to make you aware of it and make you kind of put it and rattle it around in the back of your head as we work through issues and seek developers that will help us implement affordable housing in the next years to come. So thank you for your time.

MR. FLORES: Mr. Keathley, before you leave, if you have any written information on the development, would you mail it to me? Just send it to Mike Gerber, and he can pass it on to me. I'm familiar, barely familiar, with what's going on, but that is quite different than anything else. And I think it's to your benefit to keep, you know, educating us all. And any kind of written information, I think, would be helpful here.

MR. KEATHLEY: Well, we have --

MR. FLORES: You can just pass it on to me. I don't know about my colleagues and if they want one, but I certainly do.

MR. KEATHLEY: Well, I'm -- if anyone would acknowledge this, we would love to visit with you about it specifically one on one and certainly mail you any information that we can. And I think you would understand in time that the goals of it and, frankly, some of the metrics that are involved with the programs that are in place really fly in the face of each other. And that's neither here nor there, but that's something that we want to work through that we're becoming exposed to and that we want to encourage you all to understand and embrace as we do have developments that come through the competitive tax process. So --

MR. GERBER: If you send the information, I'll make sure that all the Board members who are interested get it.

MR. KEATHLEY: Thank you.

MR. GERBER: Thank you.

MR. FLORES: Thank you.

MS. ANDERSON: Thank you.

That concludes the public comment for the initial portion of the meeting, so we are ready to proceed with the agenda. Item 1 is the consent agenda.

MR. CONINE: Move approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

2.a.

MR. GERBER: Madam Chair, Item 2.a. is the presentation, discussion and possible approval of a policy for Housing Tax Credit amendments.

This policy was first presented to the Board in September of this year. The Board instructed staff to gather public comment on the policy. The policy was published for 30 days, and comment was received.

At the September meeting, staff clarified -- and again wants to emphasize -- that this policy is intended only to clarify which types of amendments will require Board action and which types can be handled administratively. It does not cover more substantive policy issues that warrant inclusion in the QAP.

The majority of comment received concerning the administration of penalties associated with the amendments --

MR. CONINE: Say that again.

MS. ANDERSON: Yes. Back up.

MR. CONINE: What did you just say?

MS. ANDERSON: Say that again.

MR. GERBER: I'm sorry. At the September Board meeting, the staff clarified -- and again wants to emphasize -- that this policy is intended only to clarify which types of amendments will require Board action and which types will be handled administratively. It does not cover more substantive policy issues that warrant inclusion in the QAP.

MR. CONINE: Okay. Thank you.

MR. GERBER: Okay.

The majority of comment that was received concerned the administration of penalties associated with amendments, which is covered in the QAP, not this policy.

We have included the summary of those comments in the QAP action item later on in this agenda.

One comment requested clarification of when notification of the need for amendment would be provided.

Staff has added this clarification. Another comment suggested the establishment of an effective date of non-conformance, which staff also provided. Staff also believes that the other comments received are consistent with the policy as drafted, and we're recommending the Board's approval of this policy as presented.

MR. CONINE: Do we have any public comment?

MS. ANDERSON: No, we do not.

MR. CONINE: Mike, I'm interested in the cure period provisions that -- we've heard some testimony mainly about the QAP. But as it pertains to this, are there any cure periods embedded in here that I haven't seen yet?

MR. GERBER: Ms. Meyer, why don't you come forward?

MS. MEYER: Part of the request -- and it was one of the requests that we had written comment on -- was to have like a notification period so they would have the opportunity to correct. And give them that opportunity now, but we just don't do it officially. So we agreed to that, and we put it in the policy. It's black-lined in -- on the first page of your policy. And I'm sorry. It's Robbye Meyer, director of multifamily.

MR. FLORES: Would you repeat that? I couldn't hear.

MS. MEYER: On the first page of the policy -- we did receive a comment that asked for a notification period so that they would have a period to correct the deficiency that we found. And we agreed to that, and we actually have a notification process there that -- we would notify them, and they would have a time to cure.

MR. FLORES: And how long is that?

MS. MEYER: Thirty days.

MR. CONINE: But it doesn't say that.

MR. FLORES: I don't see it. That's why I'm asking.

MR. CONINE: The first paragraph under Paragraph 2 says the owner will have an opportunity to correct, explain and submit an amendment request if

necessary, but it doesn't say there's an automatic 30-day cure period.

MS. MEYER: That -- we can add a date of -- whether that's 30 days or 60 days. You're right. We didn't put that in there.

MR. FLORES: I'd like to have something like that put in. Is there a problem with that, Boston -- Brooke Boston?

MS. BOSTON: Well, I just want to be clear. I mean what that means is that if, for instance, we identify something -- let's say a cost cert. -- and they knew about it a year-and-a-half prior, you're still giving them time to, quote, "Cure that," even though they should have told us about it a year-and-a-half before.

So I just want to be clear that if you -- if we add in something like a 30-day cure period or any length of a cure period, I mean, essentially, in my opinion, you're kind of absolving anything they've done prior to that cure period, which -- it's totally up to you all. I just want to be sure that you understand that that --

MR. FLORES: How are we absolving?

MS. BOSTON: Because you're letting them fix anything they've done for a period of time from when we tell them we've noticed it or from when they tell us that

they've noticed it. And I'm not saying that's right or wrong.

I just want to be sure that, you know -- because in the past what we've been saying is if you did something without asking our permission first -- i. e., you did it last -- in 2005 and you don't tell us about it until 2006 -- you all have had a policy that that triggers penalties. What you're saying now is it wouldn't necessarily trigger penalties unless we give them a 30-day cure period and they still don't fix it.

MR. FLORES: So you're saying this is a second chance?

MS. BOSTON: It definitely -- I think it would be considered --

MS. ANDERSON: Well, isn't that sort of what we do now -- what we've done in practice this year when we've said we want substitute amenities, for example? I mean if they're willing to go put in 100 dishwashers and 100 disposals and 100 microwaves, you know, we might choose to accept that and not assess a penalty.

MS. BOSTON: Definitely. And we -- between the policy and the QAP right now, my interpretation --

And, Robbye, correct me if I'm wrong.

-- of what would happen is if either we notice

something or the applicant tells us about something and they are proposing at that time a replacement feature that we believe is commensurate, that would generally be perceived as administrative, even if it's after the fact.

MS. MEYER: Right.

MS. BOSTON: And we would, therefore, approve it at Mike's level, and no penalties would accrue. So those wouldn't come here, anyway.

MS. MEYER: Right.

MR. CONINE: But we'd be notified under this policy. Right?

MS. BOSTON: Correct.

MR. CONINE: On a quarterly basis, I think.

MS. BOSTON: We'd be --

MR. CONINE: If I remember right.

MS. BOSTON: You're correct.

MR. CONINE: Okay. Well, I -- my concern is -- I'm sure staff is extremely sensitive to making sure the i's are dotted and t's are crossed, a lot more today than they were five years ago or three years ago. And I just want the -- if we're going to -- I mean I'm more concerned about staff finding stuff and having the developer time to appropriately respond or to come up with a cure before it gets put on a Board agenda that penalties are going to get

assessed --

MS. ANDERSON: Right.

MR. CONINE: Because that has all kinds of negative consequences. If nothing, just the emotional side of that is driving people batty and drives this Board member batty in certain cases.

So, you know, I would prefer to see specific 30-day cure language in here even if it has been a year-and-a-half, Brooke, because -- it's still us finding something on them -- chances are more than not that they weren't aware of it, that the application might have said something that didn't actually get done.

In a lot of -- in some cases, less than half, you've probably got some guys trying to slip something through and we found it. But still, I think there's a due process here that needs to be observed.

MS. BOSTON: Okay.

MR. FLORES: Put that in the form of a motion -- and I'll vote a second -- that we amend that.

MR. CONINE: That's a motion.

MS. ANDERSON: Ms. Boston --

MR. FLORES: I hope somebody can figure out how to frame that.

MS. BOSTON: One of the things -- we were a

little torn as we were crafting part of this, because one of the things we don't want to see happen is where there's full reliance that TDHCA will catch things just at cost cert. and people won't tell us in advance, because they know they have the cure period.

MR. CONINE: Right.

MS. BOSTON: And so I think it would be unfortunate if the first time anybody ever told us about amendments -- everybody's going to wait the whole time through their whole development process, wait until the end, expect us to catch it at cost cert., which may drag out their cost cert. process, and then --

MR. CONINE: I think the penalty --

MS. BOSTON: -- they'll literally have 30 days.

MR. CONINE: The penalty provision being strengthened as we are here is going to dissuade people from doing it, I would think.

MS. ANDERSON: And I think, based on some of the public comment we heard earlier, they would welcome the opportunity to work a cure and provide the amenities and not have to come with all their sterling legal help and everything in front of the Board if these are things that could be addressed at the staff level to create the substitute amenities.

MR. CONINE: Right. Absolutely.

MS. ANDERSON: And we'd rather not see them, to Vice Chairman Conine's point.

So do you all need time to draft language to add that? We can go ahead and take action.

So I believe there's a motion on the floor --

MR. FLORES: And I second.

MS. ANDERSON: -- from Mr. Conine to approve this policy with the amendment for the explicit 30-day cure period language.

MS. RAY: And I second that motion.

MS. ANDERSON: Discussion -- any other discussion?

MR. SALINAS: Well, I just don't think I agree with that. I think they have enough time and if they're building some apartments and they're working with the staff, I mean another 30 days is not really going to help them any there. But that's my feeling.

It says right -- it says clearly that they have the opportunity to correct and explain and submit any amendments requested by the time they get to the point that they need to -- that they are caught by the staff. This 30 days would just give them an additional 30 days, if caught. If caught doing something wrong, they'll get

an additional 30 days, won't have any problems.

MS. ANDERSON: Well, perhaps without 30 days in here, they'd have longer than 30 days because --

MR. SALINAS: Well, they've had a --

MS. ANDERSON: -- we don't say how long they'd get.

MR. SALINAS: They've had a year-and-a-half already.

MS. ANDERSON: Right.

MR. SALINAS: We're going to give them another 30 days? Fine. I don't agree with it.

MS. ANDERSON: Any other comments, discussion?

MR. FLORES: Call for a vote.

(Pause.)

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 --

MR. SALINAS: No.

MS. ANDERSON: Thank you. I'm sorry, Mr. Mayor. Thank you.

And the motion carries.

Agenda Item 2.b. is possible issuance of determination notices for Housing Tax Credits associated with mortgage revenue bond transactions with other issuers.

Mr. Gerber?

MR. GERBER: The first is River Falls Apartments in Amarillo. This is a tax-exempt bond application requesting 4 percent tax credits. The Panhandle Regional Housing Finance Corporation is the issuer. This is a Priority 1(c) application proposing 288 acquisition and rehab units targeting the general population.

We've received one letter, from Amarillo Mayor Debra McCartt, and no letters of opposition. The applicants requested \$505,347 in Housing Tax Credit, and staff recommends approval of tax credits in that amount.

MR. BOGANY: So move.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

2.c. is --

MR. GERBER: One more, Canterbury Apartments.

MS. ANDERSON: Oh. We didn't do that, did we?

MR. GRAHAM: I'm sorry.

MS. ANDERSON: I'm sorry.

MR. GERBER: Canterbury Apartments is also a tax-exempt bond application requesting 4 percent tax credits, also issued by Panhandle Regional Housing Finance Corporation. This is a Priority 1(c) application proposing 95 acquisition and rehab units targeting a general population in the Amarillo, Texas, area.

The Department received one letter of support, from Mayor Debra McCartt, and no letters of opposition. Applicant's requesting \$207,022 in Housing Tax Credits. Staff is recommending approval of \$184,290 in tax credits.

MR. BOGANY: So move.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

2.c. is discussion and possible reallocation of 2007 Housing Tax Credits and possible allocation of 2008 Housing Tax Credits.

Mr. Gerber?

MR. GERBER: At the October Board meeting, the Board tabled the decision for allocation of available credits to Villas on Raiford due to a possible pending appeal. Subsequently, the appeal was withdraw because the issue was resolved with staff. Staff's now presenting a revised recommendation that the remaining 2007 tax credits that were available, in the amount of \$465,532, be used for Villas of Raiford and recommends a forward commitment in an amount not to exceed \$734,468 from the 2008 credit ceiling to allow the application to be fully funded.

Staff's also requesting the Board's approval to use any returned credits received through December 31 of 2007, to be utilized to reduce the forward commitment amount. Your Board book also reflects the staff recommendation related to Casa Alton, in Region 11. Staff's withdrawing that recommendation at this time because Casa Alton has outstanding issues that will

warrant an appeal taking place prior to any board action on a credit allocation. So the only action being requested today is for Villas on Raiford.

MR. BOGANY: So move.

MR. FLORES: Second.

MS. RAY: Second.

MS. ANDERSON: Discussion?

MR. CONINE: Mike, the fact that Villas on Raiford is not getting the credits that Casa Alton gave up is because they're in different regions. Is that correct?

MR. GERBER: Yes, sir.

MR. CONINE: And was the Villas on Raiford on -- it was already on the forward list, or not?

MR. GERBER: No. It wasn't on the forward list.

MS. BOSTON: It's possible that if the appeal for Casa Alton doesn't work out and that that's not granted -- we don't know that the next one on the list would be able to move forward in that region. And if that's the case, we then would roll those credits to Villas at Raiford.

MR. CONINE: Okay.

MS. BOSTON: We just don't --

MS. ANDERSON: So there's just --

MS. BOSTON: It hasn't all fallen out yet.

MS. ANDERSON: There's just one more deal behind Casa Alton in that region?

MS. BOSTON: In Amarillo, yes.

MS. ANDERSON: Okay.

MR. CONINE: But currently, Villas is not in the money as it sits right now?

MS. BOSTON: They're next. And so it --

MR. CONINE: No. I know. I mean I -- maybe I'm confusing it with something else, but I thought we had already granted a partial '07 and a forward '08, but you're telling me we didn't?

MS. BOSTON: No. This was one that -- it was --

MR. CONINE: I thought we were restructuring the dollar amounts only on this. But we're actually granting an award on this?

MS. BOSTON: Right.

MR. CONINE: Okay. All right. And then so in December, we'll figure out what's going to happen with the 738-. Thank you.

Madam Chair?

MS. ANDERSON: Any other discussion, questions?

(Pause.)

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.

2.d. is discussion and possible action for Housing Trust Fund Capacity Building Program appeal for Ability Resources.

Mr. Gerber?

MR. GERBER: This item, Board members, relates to an appeal for a Housing Trust Fund capacity building grant to Ability Resources, Incorporated. In May of this [sic] year, the Board extended this grant through January 31 of 2007 and allowed the applicant to claim expenses through that date. The Board also agreed that the remainder of the grant, \$7,056, should be returned to the Department.

As of this time, only \$1,756 have been repaid to the Department; additionally, the applicant's responsibility to show evidence of all expenses has not been completed by this applicant. The applicant received a total grant amount of \$30,000; they've only shown evidence to support eligible costs of \$22,943, which

leaves a remaining balance of \$7,056.45.

The applicant states that he paid a consultant \$5,270 for office rent, office supplies and telephone and facsimile lines, but he has not submitted the evidence of these expenses. So staff is recommending a denial of the appeal, and requiring the applicant to return the remaining amount of \$5,270.

MR. CONINE: Any public comment?

MR. FLORES: Is anyone here from the other side?

MS. ANDERSON: No, sir.

MR. FLORES: Okay. I move to -- the staff recommendation.

MR. CONINE: I'll second it.

MS. ANDERSON: Discussion?

(Pause.)

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.

2.e.?

MR. GERBER: The next item, Madam Chair, is

dealing with Commons of Grace. This action relates to a request from the applicant to return their existing credit allocation and receive 2008 credits as a means of providing them with an extension of more time to complete construction. Commons of Grace was awarded tax credits under the 2004 --

MS. ANDERSON: But wait. I thought we just heard that they --

MR. GERBER: We just --

MR. CONINE: Move to table it to the December meeting, please.

MS. ANDERSON: Second? Do we have a second?

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

2.f. is action on Housing Tax Credit amendments.

MR. GERBER: The first item is Fountains at

Tidwell. The original proposed development included a baseball field, soccer field, covered basketball court, open basketball court, walking trail, picnic area and parking for the facility, all part of a planned youth sports program. The owner is requesting to release 5.5 acres that was proposed to hold this facility, because the provider of the program has backed out of the deal, and the programs will not be provided. Staff is recommending denial of this amendment.

MS. ANDERSON: We've got witnesses jumping the gun here today and eager to speak to the Board.

MR. GERBER: Yes.

MS. ANDERSON: I do have public comment on this item, as is evident. And I'll ask you all to introduce yourselves for the record. Thank you.

REV. MATTHEWS: My name is Pastor Isaac Matthews.

MR. KAHN: Barry Kahn.

(Pause.)

MR. CONINE: Is somebody going to talk?

REV. MATTHEWS: Yes.

MR. CONINE: Good.

MR. SALINAS: Good.

(General laughter.)

MS. ANDERSON: Let's get rolling.

REV. MATTHEWS: Madam Chair, and to the Board, I'd like to provide just a little background on this request for this amendment. My name is Pastor Isaac Matthews, and my wife and I are the general partners of three tax credit developments in the Acres Homes area of Houston. On behalf of the Fountains at Tidwell, we are submitting an amendment to release a 5-acre tract of land from the 2003 LURA.

I have lived in the Acres Homes area for 35 years, and my wife, Vera, has lived there for 50 years. We have raised our families, volunteered and worked in this community. This area of our development is underserved as compared to the other areas in Houston; in fact, it was the last area where the city of Houston put in water and sewer. Many of these houses are still on blocks and beams. In order to encourage development in the area, the city has designated Acres Homes as a city-sponsored revitalization zone.

My wife and I, school teachers in the area, formed a venture with the Hettig Kahn group to provide development, construction and management service for the first of our now three successful developments. We were successful with receiving a tax credit allocation from the

Department for a 132-unit development called Tidwell Estates. The community was overwhelmed with joy when it was completed and immediately encouraged me to do another development.

We then acquired a 22-acre tract, needing only 14 acres of that for 188-units called Fountains at Tidwell. However, we wanted to do more required for another tax credit application. We had dreams of partnering with TSU to provide athletic activities to be operated coaches at our facility, but a lack of funding would not allow TSU to proceed.

On the main 14 acres of the tract that includes 188 units, we designed a sizable social service building for tutoring and other educational activities; we completed the first development with building mainly three-bedroom units, with a few three- and four-bedroom units, trying to appeal to all sizes and areas of families. We have a variety of vans to transport students between the two developments for social services, depending on the students' and residents' ages and needs.

Our goal in adding to and providing a great environment for our residents is to service the entire community at large. With the strong demand for larger units at both developments and requests from the community

for houses for those who are wanting a single-family environment but only could not afford it, the Enclave, a 40-single-family-four-bedroom housing development was built.

The city council overwhelmingly supported the single-family concept which satisfied the need of larger families for larger units. It is now 100-percent leased.

The community is ecstatic and requesting more single-family housing, and the requested released tract would certainly help fulfill this need.

I wish to point out that during the period the Fountains development was proposed and completed, the Sylvester Turner Park was proposed and built with support from the entire community, including myself. So when the funding of the Fountain Athletic Facility -- please note this was not required by the QAP -- did not occur, the residents were then transported to this park by our social service group and enjoyed many of the same or more benefits. The use of the park continues today.

I have always been a community-oriented person and am now engaged continuously with working with and making Acres Homes a better place for all. The Tidwell Estates, Fountains at Tidwell, the two tracts of Enclave Homes and Sylvester Turner Park are all nearby one

another, as you will note on the map that has been passed out. Thank you for your assistance in this matter. I hope you will grant our request. Thank you.

MS. ANDERSON: Thank you.

MR. KAHN: Good morning to all. We put together a package for you that includes a letter from Representative Sylvester Turner, who has been very active in this area and very much behind all of Pastor Matthews' activities. There's a map that shows you the relationship of the three developments he was talking about, as well as the relationship, you know, to the park, which absolves some of necessity of what we originally intended.

We also have a site plan of what was in the application, as well as a survey, including the land that we're requesting to be released, showing where a number of these amenities are. And then we have pictures of some of the additional amenities we put in other than what was required or even put in the additional application.

We know the Department has been very sensitive with people not doing what they're supposed to be doing or putting in the application. In this case, we feel we've gone overboard with alternative amenities. And that's the purpose of the pictures.

We aren't trying to get out of anything, but

the whole intent was what's best for this community. Pastor Matthews has worked very closely with the community leaders. The Department has spent, you know, huge resources trying to get communities much more involved, rather than less involved. And in this case, again, this is all response from the community.

As he noted the development could have been limited to 14 of the 22 acres, but he wanted to do more. At that time, the Department didn't have penalties in place. So dreaming to do more than what the QAP required was not a sin.

The 8-acre site separated by a drainage bayou could have easily been excluded from the land for the application and, the way today's environment is, would have. I mean, you know, there's no point in pushing for something extra, you know, with the Department's penalties now in place, but this was a 2001 application and 2003 LURA. All these rules and all these adherences to penalties -- they didn't exist.

As he noted, he pursued a program with TSU when funding was then available for student coaches to operate the facilities as part of a sports program as part of their educational process. He wanted to incorporate the athletic field for after-school activities for all their

students, operated under these, you know, school student teachers.

Unfortunately, by the time the development was finished, the TSU funding had ceased to exist. And the baseball diamond and soccer field were not put in place -- which, again, weren't required for threshold, weren't required for points, and was something just -- he had put in the application as trying to do something extra. And we rarely see that any more.

On three of the eight acres, in addition to the basketball court and parking lot included in the original application, a playground, a walking trail, a covered pavilion, covered basketball court, a covered bus depot for children to be picked up and a putting green were also constructed. Again, pictures are in your packet. All these will remain even if the amendment is granted.

He then worked with First Tee, a national non-profit, over the course of the next two years to do a pitch-and-chip. And instead, they chose a different location, again, for their funding needs.

As you noted, the Sylvester Turner Park was then built. Pastor Matthews runs the social service program at these properties. He buses kids to this park. So in effect, they're getting the benefit of having the

baseball diamond, soccer field, and whatever. And, you know, all this will continue. We're not trying to get out of any of the extras that we have provided.

Unfortunately, the 5-acre field remains, and, even though fenced, people sometimes take down the fence and use it as a dumping ground. You know, it doesn't serve anybody any purpose.

And again, we wish to point out the amenities weren't required, the penalty provisions were non-existent at the time of this application or at the time that the 8609s were issued. It has been inspected on numerous occasions by the Department; nobody has ever brought up any type of faults with this development. It has a 98 REAC score and always passes inspections with flying colors, but --

MS. ANDERSON: I need to ask you to wind up.

MR. KAHN: Yes.

But, as he informed you, what the community wants is more of the single-family houses that we have developed. They leased up 100 percent overnight.

MR. CONINE: For sale, or for rent?

MR. KAHN: For rental. It's under the tax credit program.

MR. CONINE: Okay.

MR. KAHN: And, you know, we've tried to get community input, you know, into this. This is what the community wants. This is what the city council when they approved --

MS. ANDERSON: I need to ask you to wind up, please.

MR. KAHN: Anyhow, in this instance, we requested the acreage fee removed. And then staff has brought up the issue of penalties. The providing of the additional playground, walking trail and covered pavilion over the basketball court, and on and on, we feel are more than sufficient to suffice for any shortage of amenities.

And we request that the LURA allow for this five acres to be released.

And in fact, one thing we left out of the application for the amendment was there's in fact two LURAs, one with the Housing Trust Fund. And we requested that this land be freed up in that LURA, too. Thank you.

MR. BOGANY: I have a question.

MS. ANDERSON: Yes, Mr. Bogany.

MR. BOGANY: What do you plan on doing with the land once you get it released?

MR. KAHN: We plan on probably doing another tax credit application for additional single-family houses

for rental, which is what the community's requesting.

MR. CONINE: Why would you need it released?

MR. KAHN: Because right now, it's under the LURA of another project. And --

MR. CONINE: But the condition of the new project could be subject to a simultaneous release upon acceptance of the new 9 Percent credits of the old.

MR. KAHN: Well, that could be done. You know, that would be satisfactory. I mean we aren't trying to get it released to do something else other than what our game plan is. So I mean --

MR. CONINE: That's the way I would do it. I mean it makes it a whole lot more palatable for the Department, I'm sure, to know that all it takes is -- upon a 9 Percent award, one LURA goes away and a new one gets put on.

MR. KAHN: Well, the request can be granted subject to the fact that, you know, it's substitute housing that's put in place.

MR. CONINE: And --

MR. KAHN: We wouldn't have any problem with that at all.

MR. BOGANY: And you're okay with that?

MR. KAHN: Oh, yes.

MR. BOGANY: With doing it that --

MR. KAHN: Yes. I mean that's what our goal is. We just didn't want to confuse it when we had -- you know, with any title issues and cloud the future application.

REV. MATTHEWS: The intent is to build other single-family houses, which the community has requested.

MR. KAHN: And I have a rendering here of what the houses would look like if anybody wants to see it. I'm sorry. I should have probably brought more and included it in the packet.

MR. CONINE: If there are no other questions, Madam Chair, I'll make a motion that we grant the removal of this LURA and the HOME --

Is it a HOME award?

MR. KAHN: Housing Trust Fund.

MR. CONINE: -- Housing Trust Fund award LURA only if 9 Percent credits are awarded on the project on the five acres in the future.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

REV. MATTHEWS: Thank you.

MR. CONINE: My motion also would waive any penalties that may be floating around.

MR. KAHN: We appreciate that.

MS. ANDERSON: Hearing no objections, so accepted.

MR. GERBER: Madam Chair and Board members, the next item is Maplewood Crossing. Subsequent to the publication of the Board materials, the owner presented substitutes of full perimeter fencing with an access gate, a covered porch surrounding the community building and a service coordinator's office in the community building in place of 30-year shingles and a 5-percent reduction in the community building.

The owner states that they were not able to provide 30-year shingles on all of the buildings, due to the lack of availability due to the hurricanes. Some of the buildings do have 30-year shingles, and some were completed with 20-year shingles. The owner had to reduce the size of the community building because of a city

requirement that required an increase in parking and green space.

The owner is requesting a waiver of the penalty points if the substitutes are deemed to be equivalent. And staff agrees that the substitutes are equivalent. However, the request is being made after the fact. So the assessment of penalties is recommended in this case.

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

MR. SCOTT: Madam Chair, Board, my name is Thomas Scott; I'm the developer. This is a 100-unit project in League City. We did in fact install 20-year shingles, and we did have a shortage in the size of the clubhouse; however, the overall project is larger than the original square footage by 100 feet. And the reasons for the two issues are that we could not get shingles at the time we were needing them, due to the complete shortage of shingles right after Katrina and Rita.

And the story behind the shortfall in the clubhouse is really a function of a city not working with us on affordable housing and trying to find ways to kill the deal. And we ended up with 70-some-odd extra parking spaces, and we ended up with green space requirements, all the function of a calculation that we ended up shrinking

the clubhouse by about nine inches on the perimeter. All of the rooms that were in the original design are there. All of the amenities that were originally designed are there.

It is imperceptible what this difference is. Again, on the total 100,000-square-foot project, we're talking a variance of 100 square feet larger; the units are slightly larger, and the clubhouse is slightly smaller. And we also put in a perimeter access gate with or -- a perimeter fencing and access gates, which is above and beyond. And I think all of our amenities are at or greater than the original plans. I ask your approval of the amendment.

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: I have a question for you.

MR. SCOTT: Please.

MR. BOGANY: You did not run your plans through the city originally when you -- and they said your plans were okayed, and then, all of a sudden, you started building and they started saying you've got to do this and that?

MR. SCOTT: No, sir. When we submitted the plans for the 9 Percent deal, we did not submit the plan for building permits.

MR. BOGANY: Okay.

MR. SCOTT: About two years -- it took us over five months to get the building permits, but we did not submit the building permits until after we were awarded the credits.

MR. BOGANY: Okay. Did you go back to the Department and talk to them about the roofing shingles and that, Hey, I can't find any, and now we're going to have to substitute something? Or --

MR. SCOTT: No, sir. At the time, this was 2004/early 2005. And we did not do that.

MR. BOGANY: Oh.

MR. SCOTT: I'm sorry. The end of 2005.

MR. BOGANY: Okay.

MR. SCOTT: I took a -- we took what we could get. And at the moment, I was thrilled to get what we got. And --

MR. BOGANY: Okay.

MR. SCOTT: I apologize to the Board for making a substitution, but I don't think we had a choice.

MR. BOGANY: Okay.

MS. ANDERSON: Mr. Deluca, do you have comment?

Mr. Deluca: Just two. I'm Bob Deluca. I work with Tom Scott and have worked on this property all the

way through.

One point I want to emphasize here is that the request as presented to the Board indicated the substitutes were not acceptable. We have had subsequent discussions with staff indicating that the perimeter fence would be an acceptable substitute for the singles. I hope that's clear.

I live with this project through and through. Katrina and Rita hit. The costs of construction went through the roof; the availability of materials went through the roof. We're getting a small, \$7,000, additional 2000 allocation. We were very fortunate in holding the costs in line and have a very successful project.

I took a look at some other recent approvals of elderly projects in the area, and the size on a square-foot basis per unit is much, much less than the size of the community center that we have. We're at 5,700 feet, which is substantially on a pre-unit basis larger than the ones that are being approved today.

I could go through all the amenities we have. I won't bore you with that. But also, Tom Scott -- and I've been with him now for five or six years -- has been in the tax credit business since 1993, has completed --

Twenty?

MR. SCOTT: 3,500 units, about 20 projects.

Mr. Deluca: But there has never been any exception, any issue or any problem that I'm aware of or you're aware of.

MS. ANDERSON: Mr. Conine?

MR. CONINE: Madam Chair, this is a no-harm/no-foul deal for me. I'm going to move that we grant the request, with no penalties.

MR. BOGANY: I can second that, but I have a question for staff.

MS. ANDERSON: Okay.

MR. SALINAS: I also have a question for staff.

So --

MS. ANDERSON: Okay. Well, wait.

So, Mr. Palmer, do you have any other public -- I mean any other comment on this before we engage our staff in questions?

MR. PALMER: Just to point out that, as Mr. Conine has said, there's no harm here. These actions were taken in 2005 right after the hurricanes. There was a need to make a decision right then to use substitute materials. That was before 2006, when this Board first adopted the rule on adherence to obligations. So this

rule that we're talking about now wasn't even in effect when this project was being built and these decisions were being made.

MS. ANDERSON: Thank you.

If I can ask you all to, vacate the table so that we can have staff come up here.

MR. SCOTT: Thank you for your time.

MS. ANDERSON: It'll be a little crowded with everybody up there. Thank you.

To whom would you like to -- do you want to talk to Robbye?

MR. BOGANY: Robbye would be fine.

Robbye, I noticed staff recommended denying the request and has not proposed accepting the substitute features. And he comes right back and says you said the perimeter fence would be a substitute. So I'm just wondering why. Did anything change since that time?

MS. MEYER: Subsequent to the posting of the Board materials, they sent additional information.

MR. BOGANY: Oh. So in your opinion, is -- you're okay with that?

MS. MEYER: They are acceptable. This is kind of a good poster child for both the policy and the QAP. And we'll discuss the adherence to obligations thing here

in just a minute, and I'll explain how --

MR. BOGANY: Okay.

MS. MEYER: -- this is a good example of their concerns.

MR. BOGANY: All right. Thanks a lot.

MR. SALINAS: On the shingles --

MR. FLORES: Robbye, don't go away.

MR. SALINAS: On the shingles -- what were your requirements on the shingles, 30 years?

MS. MEYER: They were 30 years. That's what they had put in their application.

MR. SALINAS: And they couldn't find any 30-year shingles?

MS. MEYER: On, not for all the buildings. They ran out of 30-year shingles, so they put 20-year shingles on the other buildings.

MR. SALINAS: And then they come down and put 20-year. What are the -- kind of shingles are they using?

MS. MEYER: They're using -- they used 30-year shingles on some of the buildings that they could get 30-year shingles for. And then they had 20-year shingles on the rest of the buildings, because that's all they could get at the time.

MR. SALINAS: Did they ever call you and ask

you to give them permission to use the 20-year shingles?

MS. MEYER: Not at the time that they did that. They're doing that now.

MR. SALINAS: How did you find out they had -- weren't?

MS. MEYER: They requested their amendment to the Department.

MR. SALINAS: After they put the shingles on?

MS. MEYER: That's correct.

MR. GERBER: That's why we're recommending the penalty.

MR. SALINAS: That's why you recommended against it, because they didn't come to you. We have 30-year shingles in the valley -- I mean a lot of them. I mean that's all we have. And I've never seen the 30 [sic].

MS. ANDERSON: This was in Galveston, you know, kind of in the Rita -- affected by the Rita construction materials.

MR. SALINAS: Well, we're in the valley next to Mexico. It's a little farther down south.

(Pause.)

MS. ANDERSON: Okay. So we have a motion on the floor. And then --

MR. FLORES: May I ask a question, Madam Chair?

MS. ANDERSON: Yes, Mr. Flores.

MR. FLORES: Thank you.

The penalties -- you don't mention them. You just say, Appropriate penalties. What is that about?

MS. MEYER: The Board has the discretion. In the adherence to --

MR. FLORES: And what is that discretion?

MS. MEYER: In the adherence to obligations you have, you can penalize them up to ten points in the next two consecutive rounds. You can prohibit them from using the bond program for 12 months. And -- well, in the future, you can charge penalties for -- monetary penalties.

MR. FLORES: Okay. The -- were you notified -- were the staff notified about the changes caused by the code and the different requirements of the city of League City?

MS. MEYER: No, sir. Not until we received the amendment.

MR. FLORES: Were you notified of any changes at all?

MS. MEYER: We --

MR. FLORES: Did this developer notify us of

any changes at any time during the process of building this project?

MS. MEYER: Not until they requested the amendment.

MR. FLORES: Oh. Okay. Thank you.

MS. ANDERSON: Further discussion?

(Pause.)

MS. ANDERSON: And, Ms. Meyer, just one last clarification. At the time that they were making these changes in their construction process, there was no adherence to obligations language in the QAP that would have required them to notify us. Is that correct?

MS. MEYER: No. There was an adherence to obligations, but it was not the penalty section that has been --

MS. ANDERSON: Right.

MS. MEYER: -- associated --

MS. ANDERSON: So that the section was there, and they should have notified us, but there was no --

MS. MEYER: It went into effect December 1 of 2006.

MS. ANDERSON: Okay. Thank you.

Any other discussion?

MS. RAY: One clarification.

MS. ANDERSON: Yes, ma'am.

MS. RAY: Just one more clarification. Say it one more time. That -- the remedies that are represented by the developer now meet the staff's --

MS. MEYER: Staff feels that they are equivalent --

MS. ANDERSON: Substitutes?

MS. MEYER: -- to substitute.

MS. RAY: Okay. I just want to make sure that we all understand that.

MS. ANDERSON: Any other questions or discussion?

(Pause.)

MS. ANDERSON: Are we ready to vote?

MS. RAY: Yes.

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

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

MALE VOICE: Aye.

MS. ANDERSON: The motion carries.

MR. GERBER: The next item is Samuel's Place. The owner has requested approval to change the rent targeting of 30 percent units originally proposed from the

development of 12 units to four units. The owner, as well as the lender and syndicator, state that the development is not financially feasible with the 12 units restricted but would be feasible with four units.

Real estate analysis issued a revised report, which states that the development could still be feasible with eight units serving 30 percent. Staff recommends the reduction to eight units as recommended by REA. And in this case, no penalty assessment is recommended, because the request is being made in advance of the change being instituted.

MS. ANDERSON: I have public comment on this item. You may come up serially. Or there are four chairs up here, gentlemen.

MR. KELLY: Actually, we'd like come up en masse --

MS. ANDERSON: Okay.

MR. KELLY: -- if that's acceptable.

MS. ANDERSON: Sure. Would you maybe start out and introduce your -- everybody for the record?

MR. KELLY: Absolutely.

Madam Chair, members of the Board, thank you for the opportunity to address you today. My name is David Kelly; I'm with Carleton Residential Properties, the

developer.

MR. ADAMS: Good morning. I'm Mark Adams; I'm with Apollo Equity Partners, the tax syndicator on the property.

MR. GUAJARDO: Ramon Guajardo. And I represent the Fort Worth Housing Authority.

MR. FULENCHELZ: And Jeff Fulenchelz. I'm with Carleton Residential, the developer.

MR. KELLY: Moving very quickly, we would like to ask -- request respectfully a change in income targeting for the Samuels development. We've worked diligently with staff, and I'd like to thank them for first their accessibility, obviously, their professionalism and, also, their fairness in reviewing this request.

What happened in this transaction, quite frankly, is that we got caught in a change in underwriting. The transaction is a joint venture between Carleton Development and the Fort Worth Housing Authority.

In the past, we have found that lenders are willing to underwrite 30-percent units from a housing authority at Section 8 rents. This has been our case, and we have actually successfully arranged this type of financing numerous times in the past.

One clarification. We had arranged to put financing in place with JPMorgan Chase to provide financing for the transaction; they had said they were willing to underwrite the 30 percent AMI incomes at the Section 8 rents. And when we got into the transaction and negotiated it, we had appraisals done and other actions taken. They, quite frankly, changed their minds and changed the underwriting.

We also found that this condition was broadly found in the market place at that point in time and realized at that point that we would require an amendment and approached the state to start working with staff toward that end. We also recognized that there was a requirement to complete the construction of the transaction; toward that end, the sponsorship group personally raised the funds to continue the transaction.

So while we were waiting to make this amendment, despite the fact that JPMorgan Chase backed away from their commitment and we needed this change to arrange other financing, we continued to build the transaction diligently. Quite simply, what is at point is that 12 units are at 30 percent AMI income. We anticipated all of those units being underwritten at Section 8 rents, which we have now found is not feasible.

In order to make the transaction feasible, we believe that eight units would need to be reset to 60 percent AMI rents; at that point, lenders would be willing to provide the financing. Staff, looking at the same information, felt that only four units would need to be set at 60 percent AMI rents.

The fundamental concern is not one of cost but, rather, one of providing the largest number of units affordable, and whether or not the transaction is feasible. Toward that end, when we reached an impasse, staff graciously said, The right thing to do is to present your case to the Board and let them make the determination as to what the right approach should be at that point in time.

Therefore, I have brought with me today Ramon Guajardo, who is with the Fort Worth Housing Authority, and he can speak to some of the issues that we would like to do to mitigate staff's concerns about providing the largest amount of affordable units. And I've also brought Mark Adams with our equity syndicator to speak to the matter of why we would need eight units transferred to 60 percent AMI to make the deal feasible.

With that, I'd like to turn over the mic to Mr. Guajardo with the Fort Worth Housing Authority.

MR. GUAJARDO: Thank you.

Board members, before you, you have pictures of the complex as seen as of yesterday. We expect that the construction will be complete by mid-December, well in time over deadline.

Samuels Place is a very small, unique development. It's 36 units in the shadows of downtown Fort Worth. It's located in one of the oldest neighborhoods of Fort Worth.

Downtown Fort Worth in the past decade or so has experienced a tremendous amount of residential development; unfortunately, it's mostly high end. It is very difficult for economic reasons to develop affordable housing in the downtown area of Fort Worth, and for reasons that I'm sure you understand, primarily the cost of land.

This development is supported very much by the Fort Worth city council, Downtown Fort Worth, Inc., which is an entity that's made up of property owners downtown, and the Fort Worth Chamber of Commerce, because it is the first affordable housing development that has occurred in the proximity of downtown in the past 15 years.

The design, as you can tell, is very compatible with the historic homes of this neighborhood. It has been

endorsed by the historical preservation group, Historic Fort Worth, because of its design.

And one of the concerns the staff has indicated -- and we concur -- is the request that we have before you of moving 12 affordable units to only 12 30 percent units would decrease the amount of units available to the very low-income. We at the housing authority concur with that concern. Therefore, the housing authority is committed to provide 12 site-based vouchers at this location.

The housing authority currently administers 4,700 vouchers across the city. The average income for those households holding those vouchers is \$10,800 for the whole household, which is well below the 30 percent threshold. We believe with our commitment of the 12 site-based vouchers, we will continue to serve the population that was intended from the very beginning, but, with the amendment that we have requested being approved, we're able then to finance the complex as required.

MR. ADAMS: Good morning, Board. My name is Mark Adams; I'm with Apollo Equity Partners, and I'm here this morning basically to indicate to you that, as the underwriting stands right --

MS. RAY: We can't hear you.

MR. ADAMS: As the underwriting stands right now, the economics of the project don't work. We are unable to show that the full developer fee is repaid during the compliance period, which is one of the tax regulations. Furthermore, based on the current underwriting of the project, even if the entire fee was deferred on this project, there would still not be enough proceeds in the project for the project to meet its minimum debt service coverage requirements.

MR. KELLY: With that, hopefully, we have addressed what we think were the two major concerns of staff when we discussed the project with them: First, the issue of why there's a differential in feasibility, and, second, How do we address the issue of removing or reducing the number of 30 percent AMI families that would be served by the transaction.

The feasibility issue is one of payment of the developer fee during the compliance period. The affordability issue we will try to resolve by placing site-based vouchers on the transaction, which would allow the very low-income to still live in this area.

At that, we'd like to wrap up our comments. And we're available to answer any questions that the Board or staff may have.

MS. ANDERSON: Mr. Bogany?

MR. BOGANY: You know, I sit and listen. Great pictures, but I don't really understand why this is not feasible and how two or three units are going to make that big a difference on the feasibility. You housing authorities -- I'm sure you've got 30 percent median people that can take those units.

I'm kind of confused on why it's not working. And I guess from a financial side, I just don't understand how three or four units make a difference.

MR. FULENCHELZ: Mr. Bogany, it's sort of -- it's not really a financial issue. It's more of an underwriting issue for the banks and the syndicators. There was a time when you could do a HAP contract for 15 years. And if we could have -- and the IRS laws and the HUD laws allowed for you to pay up to 60 percent rents even though you had 30 percent families in there.

The laws -- and Mr. Guajardo can expand on this. Apparently, the laws have changed to where you have a shorter allowable HAP contract. So it's a shorter period than the permanent loan on the project. So there's a concern as -- you know, in the congress. It's an appropriations issue of, Will they appropriate every year these vouchers. And also, in five years -- you know,

there's no way the housing authority can say right now that that contract will automatically be extended to the whole period of the 18 years of the permanent loan.

MR. BOGANY: Okay.

MS. ANDERSON: Other questions for these witnesses?

(Pause.)

MS. ANDERSON: Thank you, gentlemen.

MR. KELLY: Thank you.

MR. CONINE: Staff?

MS. ANDERSON: Mr. Gouris?

MR. CONINE: Come on up, Tom. This is one of your kind of beauties.

(General laughter.)

MR. GOURIS: I think I can do this. Tom Gouris, director of real estate analysis.

MR. CONINE: They're requesting a reduction, as I understand it, from twelve to four in order to meet the underwriting standards of their permanent lender. Is that correct?

MR. GOURIS: That's what I understand, yes, sir.

MR. CONINE: Does -- are the -- this may not be a question for you, but is the point system affected on

this project at all, because we're still -- they're still provider over the max of 30 percent units?

MS. ANDERSON: Over the minimum.

MR. CONINE: Or minimum.

MR. GOURIS: They had to supply four units to make the points.

MR. CONINE: Okay. When you underwrote this thing back at inception, did you underwrite them at 30 percent rents, or did you underwrite them the 12 units?

MR. GOURIS: 30 percent rents. And they had indicated 30 percent rents, as well.

MR. CONINE: So why doesn't it work today, I guess, is my -- is the weird question.

MR. GOURIS: it's a common practice, as I understand it, for developments to indicate that they'll be doing 30 percent units but then ultimately get some sort of HAP unit or Section 8 to cover those 30 percent units. And they can do that.

MR. CONINE: Right.

MR. GOURIS: In this case --

MR. CONINE: But if you're underwriting -- if the Department's underwriting only took into account 30 percent income --

MR. GOURIS: Right.

MR. CONINE: -- cash coming in the door, as opposed to 60, it's still -- to me, the thing's just still underwritten. There's something that's not working here.

MR. GOURIS: And that's correct. We have a basic disagreement about what the property will run at and, you know, what our comfort level with our underwriting would allow us to do, versus what the lender's willing to do.

A couple of other points of interest. The costs have gone up, and the loan amount has gone up. So the terms and things have changed considerably. And so we're dealing with a different lender than the lender that provided the initial commitment for this property. Initial commitment for the property was a much lower debt amount.

And so that's part of the reason why we do see the need to reduce the number of units, but we don't, based on our analysis, which is consistent with, you know, what we originally did, you know, in the same trending and same issues, suggest that they can do more than the four minimum, but not the twelve that they originally pledged, based on a new financing structure.

MS. ANDERSON: I have a question maybe for -- I think it's for Robbye. Well, I'm not sure who it's for.

It's for one of you all.

But they talk -- the propose this, a dozen -- in addition to the four 30 percent units, they're now proposing a commitment of the twelve site-based vouchers that would serve people at those income levels. Was that in their original application, or is that something that they're now, you know, proposing here today? I mean so that's -- would be considered from an affordability -- creating affordable units would be over and beyond what was in the HAP?

MS. MEYER: That I don't know.

MR. GOURIS: Well, we didn't underwrite it as such, because, had we underwritten it as such, with that kind of commitment, we would have underwritten those units at the 60 percent rent --

MS. ANDERSON: Okay.

MR. GOURIS: -- because that's -- or the payment standard that they have, if it's different.

MR. CONINE: How much longer do they have left on the construction financing before they have to convert to a permanent?

MR. GOURIS: I don't know.

MR. KELLY: An infinite amount of time [inaudible].

MR. CONINE: Come back up to the microphone, David. Let me ask you a couple of questions.

MR. KELLY: Yes, sir.

MR. CONINE: Rather than reducing the commitment from twelve to four now, what would be wrong with going ahead and getting the project -- finish construction and get it leased up to the twelve Section 8 tenants, proving the income to the lender, as opposed to guessing what might happen into the future, and letting them reevaluate their underwriting at that point?

MR. KELLY: Typically, that's how things were done in the past, Commissioner Conine. The problem is all of the lenders have taken a much more stringent underwriting stance. And so their fundamental concern is that the Section 8 vouchers may not be renewed on a year-to-year basis.

And so even though we could put in Section 8 residents that would pay 60 percent AMI, supporting the higher debt now, if congress were not to obligate the Section 8 vouchers, at that point, the income would have to fall back to the 30 percent AMI level. And the belief is that that income would be insufficient to support the debt level. And so they would size the debt down to a 30 percent level even though we're achieving 60 percent,

because there's no 18-year commitment from congress for the Section 8 vouchers.

MR. BOGANY: It sounds like you need to find a new lender.

MR. KELLY: Fundamentally, it would have been an easier transaction had we found the lender before JPMorgan Chase said they were willing to provide the financing. And so, Commissioner Bogany, we got stuck in a situation where we were negotiating back and forth with Chase, time was running short against completing the transaction, and the deal got worse and worse until finally the decision was made by the sponsor entity to start the transaction so we could complete the project with the hope that an amendment could be made so we could find a lender, given that the financing regimen had changed.

MR. BOGANY: Okay.

MR. CONINE: Were you the recipient of another dose of credits on the cost increase on this project?

MR. KELLY: Yes, sir.

MR. CONINE: And that didn't drive the debt back down enough to get there?

Tom, did you factor that into your underwriting?

MR. GOURIS: We did. But that -- I mean -- yes. That --

MR. CONINE: Wasn't enough?

MR. GOURIS: -- wasn't enough. We included that in our analysis.

MS. ANDERSON: And what he says about the current lending conditions with the banks not lending on these -- on the Section 8, is that your experience, Tom, that that's an accurate statement?

MR. GOURIS: It's true. But again, our underwriting doesn't include the Section 8 rents at all. It doesn't -- it's not relying on those. It's relying on 30 percent rents as proposed, and that's who we've underwritten it, how we underwrote it originally.

MR. CONINE: And you say he can do eight at 30 percent; he's saying he can do four at 30 percent?

MR. GOURIS: That's correct.

MR. CONINE: David?

MR. KELLY: If I may?

MR. CONINE: Sure.

MR. KELLY: I don't think we disagree -- Tom and I. I think the fundamental disagreement is, quite frankly, why we have our syndicator here. The flex piece is basically deferral of the developer fee.

And so we could defer developer fee, and Tom's numbers would work. Our syndicator is saying that there is not enough cash flow over the period of time to, One, support the debt service. He's concerned about the coverage ratio. But more importantly, he's concerned about the cash flow being sufficient to pay back all of the deferred developer fee during the compliance period.

And so it's an issue of how the property will operate, as Tom said previously, and whether there would be sufficient cash flow to pay back all of the deferred developer fee.

MR. CONINE: It's an issue of what increase you put on the revenue side and expense side.

MR. KELLY: That's exactly right.

MR. CONINE: What are you putting on yours right now for the ten-year period?

MS. ANDERSON: Three and four.

MR. GOURIS: Three and four.

MR. CONINE: Three and four?

MR. KELLY: Yes.

MR. CONINE: And you guys are down to a two and three probably?

(Pause.)

MR. CONINE: This is a fun place to be.

(General laughter.)

MR. CONINE: I don't know what to do.

MR. BOGANY: David, I have a question.

MR. KELLY: Yes, sir.

MR. BOGANY: So --

MR. CONINE: I'm torn on this one.

MR. BOGANY: And I guess maybe this is a question for your syndicator.

So we go with staff recommendation. Bottom line, it is what it is. What happens at this point?

MR. ADAMS: As far as the syndication standpoint?

MR. BOGANY: Uh-huh.

MR. ADAMS: Based on, you know, industry underwriting, our industry is really stuck on two/three. And Apollo would not be able to get comfortable with a three/four underwriting. And as I indicated earlier, we can't show that the developer fee would get paid off under the trending that we're using.

MS. ANDERSON: Were you trying to say something?

MR. GOURIS: Well, we didn't run those numbers. I think it's important to point out that the purpose -- one of the purposes for our underwriting is to mimic what

we think the industry is going to do, what the lender and syndicator are going to do, as far as what's reasonable and what's not. And, you know, we hear lots of times that we're too conservative. And here's a case where maybe we're not being conservative enough compared to what the lender and syndicator are doing.

It has implications for a policy and for our underwriting rules, for sure. But the reality is, I mean, our analysis at the front end and throughout the process is supposed to help give that first look at what we think the industry's -- what the other players are going to do, in addition to protecting the state's interests in the transaction. And so to the extent that they're saying they won't be able to do it, that sort of says that our underwriting maybe wasn't conservative enough.

MS. RAY: Madam Chair?

MS. ANDERSON: Yes, ma'am.

MS. RAY: May I ask staff one question?

MS. ANDERSON: Sure.

MS. RAY: And this is always my hue and cry. You know, we're almost at the point of splitting hairs here.

MR. GOURIS: Yes.

MS. RAY: We're just talking about a couple of

units. What is this going to do for the citizens of the state of Texas that can benefit from this housing at this point? How are the people of the state of Texas going to be impacted by this so-close impasse?

MR. GOURIS: Well, it reduces the number of units that are available for folks at 30 percent or, if what these folks are saying is true, it could, you know, crater the transaction entirely. And it depends on, you know --

MS. ANDERSON: But isn't -- aren't the 12 site-based vouchers an offset to the claim that they're reducing the units for people at that income level? I mean if we make this up --

MR. CONINE: Only temporarily, though. See? He's saying -- the lenders are saying congress is shaky on the Section 8 program at best.

MS. ANDERSON: Right.

MR. CONINE: And if I'm making a 15-year loan, I can only count on that for two years.

MS. ANDERSON: Right.

MR. GOURIS: And it's taking those vouchers that could be used someplace else, whereas these units were actually -- theoretically structured to be able to serve the 30 percent units as is --

MS. ANDERSON: Right.

MR. GOURIS: -- without any vouchers.

MR. CONINE: And we've got no teeth to get the 12, anyway.

MS. ANDERSON: Right.

MR. CONINE: So he's just saying he's willing to put them there.

I'll tell you what I'm going to do. I'm going to move to table this because -- until next month. And the reason is I want Tom to go out and research the lender market on his three/four versus two/three assumption, because I'm a firm believer that as we've had, you know, the last several years of low inflation and low wage growth, I'm seeing more of that just personally in my business, as well.

And for us, if staff then goes back and concurs with the new lending assumptions, that's going to change a lot of different things. And it will also change staff recommendations relative to this project.

MR. SALINAS: I'll second.

MS. ANDERSON: We have a motion to table on the floor. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Thank you.

MR. GERBER: The next item, Madam Chair and Board members, is Santa Rosa Village. The owner is requesting approval to substitute \$38,000 in R-18 insulation coupled with a 12 SEER HVAC system for the 14 SEER HVAC system that was proposed. They're also asking to substitute barbecue grills and picnic tables for refrigerators with ice makers that were proposed and, also, to substitute a public telephone for two playgrounds that were proposed.

The substitutes appear to be acceptable; however, considering only points, the amenities would not be of equal value. However, the application would still have received an award in the at-risk set-aside even with the loss of points. So staff is recommending approval of the amendment with the assessment of penalties, however, due to the request being made after the changes were made.

MS. ANDERSON: I have no public comment.

MR. BOGANY: I have one question of staff on this.

MR. GERBER: Robbye, come forward.

MR. BOGANY: Robbye, when was this development

started?

MS. MEYER: They received credits in '05.

MR. BOGANY: '05. Now, if I understand, we were going to 14, going to a higher SEER air-conditioning system. And so I just -- I don't understand how a developer knowing -- and this is a perfect example of how a developer knows that you need 14 SEER and you go out and buy 12 SEER -- I just don't understand that -- and then turn around and tell me, I'm going to put barbecue grills, versus refrigerators. I don't think that's an equal deal there, because you've got a stove in there and you can cook all day long.

So I just don't understand how we're recommending this when the developer clearly did not do what he said he was going to do.

MS. MEYER: Well --

MR. BOGANY: And then what's the difference between this and the guy earlier who had roof shingles, or the person before that? I mean I don't see the -- this seems to be outright violation to me on this, and I don't understand how we recommend it.

MR. SALINAS: So they're replacing the refrigerator with a barbecue pit?

MS. MEYER: They're -- no.

(General laughter.)

MR. CONINE: With ice makers.

MS. ANDERSON: Let's let Robbye answer one question at a time.

So would you answer Mr. Bogany's question first?

MS. MEYER: Okay.

MS. ANDERSON: And then we'll come to the mayor.

MS. MEYER: Which air-conditioning that -- they tried to offset that by using the lower SEER air-conditioning with the insulation, and providing that those cost wise would offset each other. And staff relatively agreed with that. For points, though, it would have put them -- they would have lost points for that particular item. And if you look at it just from a points standpoint, it shouldn't have been done, but the actual amenity itself offset each other. So that's why staff is saying that it's offsetting or substitutes are equivalent.

MR. BOGANY: Okay. And because it was at-risk, it really didn't --

MS. MEYER: Because it was at-risk, the points didn't make a difference in the award.

MR. BOGANY: Okay.

MS. MEYER: So they still would have received an award.

MR. SALINAS: So what are they replacing? What?

MS. MEYER: Well, they're asking to substitute some insulation worth \$38,000 for the lower SEER air-conditioning units. And then they've also added in barbecue grills and picnic tables for refrigerators with ice makers. They still have refrigerators. They just don't have ice makers in the refrigerators. And then the other -- the public telephone and the playgrounds were the same point items at that particular year.

MR. SALINAS: But when they came before our Board, what was their obligation to those units to begin with?

MS. MEYER: They had checked the 14 SEER -- that's what they had represented and they had checked that they would have.

MR. SALINAS: And the refrigerators?

MS. MEYER: Refrigerators with ice makers.

MR. SALINAS: Well, why can't they do that?

MS. MEYER: Well, they didn't do that.

MR. SALINAS: Well, why can't you -- why can't they do that?

MS. MEYER: Well, that would be a question for the developer. That they --

MR. SALINAS: Well, why can't --

MS. MEYER: They've requested an amendment from us, and we feel that the substitutes that they've provided --

MS. ANDERSON: Are equivalent?

MS. MEYER: -- are equivalent.

MS. ANDERSON: Which is sort of the way we've been evaluating these over the past many months.

MR. SALINAS: But they're not equivalent. They're having a barbecue pit outside, you know. And when they came over here, they made a commitment. And when they got the project, they were supposed to do that. Now they come, and then they want to do amendments. Why do they want to do that?

MS. MEYER: They --

MR. SALINAS: I'm not in favor of doing that. It's like the shingle deal. Having it -- you know, one of these days, they're going to come in. People are going to start complaining about having leaks in the roof because they didn't have a 30-year warranty on the shingles. But that's fine. But I don't think this should be. They should do exactly what they said they were going to do

when they got the project.

MS. ANDERSON: Well, Mr. Mayor, you certainly can make a motion to, you know, approve the amendment but assess penalty points; you know, that's certainly -- you know, if that reflects how you feel about this.

MR. SALINAS: I feel that they -- what is it going to -- what are we going to gain by giving them penalties if they're really not -- if the people are really not going to get what they need?

MS. MEYER: There I guess it would depend on the penalty that you assess. If you assess them penalties for the next two application rounds, it could affect their being able to participate in the programs.

MR. BOGANY: How many points can we --

MS. MEYER: Up to ten points.

MR. SALINAS: Well, give them ten points.

MS. MEYER: I mean the QAP currently reads it's ten points, but our general counsel has stated that you have the ability to lower that if you so choose.

MR. BOGANY: Okay. I just think they should have some penalty. I mean you knew what you were going to get.

MR. SALINAS: That's it.

MR. BOGANY: I move that we approve your,

staff's, recommendation, with an assessment of penalties of five points.

MR. SALINAS: Can we amend that to ten?

MR. BOGANY: I will accept it all day long. I mean that's --

MR. SALINAS: Okay. So with ten, I'll second your motion.

MR. CONINE: And that occurs on their next application?

MR. SALINAS: That occurs on --

MS. MEYER: They're next two.

MR. SALINAS: -- their next application.

MS. ANDERSON: '08 and '09?

MS. MEYER: '08 and -- yes, their '08 and '09, the next two consecutive rounds. And it prohibits them from participating in the bond program if you choose to do that, as the current QAP reads.

MS. ANDERSON: Okay. So we have a motion on the floor, and it has been seconded. Is there discussion on the motion?

(Pause.)

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.

MR. CONINE: No.

MS. ANDERSON: The motion carries.

MR. GERBER: The next item is Navigation Pointe. This is a case where the builder is requesting acknowledgment for corrections that were made that did not negatively affect the development.

Simply put, in last October, the Board approved a reduction in the unit mix, and the summary of the request did not specify that some of the buildings in the final plan were actually three stories, whereas the actual constructed buildings were two stories on one end and three stories in the center. There's also with the original design with -- several units being -- since all of the units are now one-story units, as opposed to two-story units, there wasn't the need for the two-and-a-half baths, only two baths.

And so they want an acknowledgment from the Board of those changes. And no penalty assessment is recommended because this, again, is just an acknowledgment of that correction.

MR. BOGANY: So move.

MR. SALINAS: Move for staff's recommendation.

MS. ANDERSON: Any discussion?

(Pause.)

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.

MR. GERBER: The next item is Cunningham Manor, and the owner is requesting the Board's approval to not include the local HOME funding in the development financing, because HUD rescinded their commitment at the time of closing. The application still would have received an award in the at-risk set-aside without the points for local funding.

Staff recommends approval of the amendment, with the assessment of appropriate penalties due to the request, again, being made after the changes were made. The owner is requesting that the penalties associated with the amendment be waived because they were not able to request the amendment in advance of the change.

MS. ANDERSON: I have public comment on this item, Board members.

Mr. Anderson?

MR. ANDERSON: Good morning. My name is Ron Anderson, and I serve as the executive director for Housing and Community Services. I'm speaking to the Cunningham Manor issue. If this were a Catholic church, I'd be looking for the confessional.

Let me briefly explain that what you have before you is something that was completely outside of our control, forcing us to submit a request for an amendment after the fact. All I'm asking is that you consider the circumstances, approve the amendment as recommended by staff and waive the penalty because of the circumstances.

The documentation that you have pretty well sets out the details. The importance of waiving the penalty is explained in the last paragraph of HUD's letter of October 25, which is in your documentation. I'll be happy to walk you through the details, but I think that you probably have everything you need.

The situation was out of our control and unexpected because it hadn't come up before closing. At the end of the day, although unfortunate, the amendment doesn't affect the viability of the project. So I'm asking for approval of the amendment and a waiver on the penalty.

MR. BOGANY: Why did HUD take the funds back?

MR. ANDERSON: Originally, the HUD money was committed for -- to match the four-year FHA loan.

MR. BOGANY: Okay.

MR. ANDERSON: Unbeknownst to the FHA side of HUD, the CPD side of HUD reduced the HOME money to a one-year time frame. We knew that ahead of time. We went forward to the closing because the syndicator filled in the gap. The HUD money was in there, and we weren't going to take it out.

We got to the closing to find out that the CPD side and the FHA side of HUD had rules that did not agree with each other.

MR. BOGANY: Okay.

MS. RAY: Madam Chair, do we have from staff -- I'm sorry. Do we need to hear staff's position on this, because they're recommending the penalties? And I need to understand why staff would recommend penalties in a situation where you have conflicting issues between HUD entities, including --

MS. ANDERSON: Because staff doesn't exercise discretion, and this was requested after the fact.

MS. RAY: Okay. Then, Madam Chair?

MS. ANDERSON: Yes, ma'am.

MS. RAY: I move the staff recommendation and,

also, the waiver of the penalties in this case.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: Madam Chair and Board members, the next item is Heights Apartments. The owner is requesting a site plan change; however, the number of units and buildings, unit types and unit mix, net rentable area and common areas will remain as proposed. Staff recommends approval with no penalty assessment, because the change is being requested in advance.

MR. CONINE: Move approval.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: The next item, Lakeside Apartments, is very similar. The owner's requesting a site plan and building configuration change; however, again, the number of units and buildings, unit types --

MR. CONINE: Move approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: The next item is San Gabriel Crossing. The owner's requesting a change in the site plan and building configuration. The site change is due to the city of Liberty Hill requiring the development to relocate the access road to the site from one side of the development to the other. And again, we're recommending no penalty assessment, because it's being done in advance.

MS. RAY: Move approval.

MR. CONINE: Second.

MS. ANDERSON: Mr. Mayfield, do you waive your right to testify?

MR. MAYFIELD: Yes, ma'am.

MS. ANDERSON: Thank you.

All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

Okay. We are going to take a 15-minute break, and so we will reconvene at 10:45.

(Whereupon, a short recess was taken.)

MS. ANDERSON: We're ready to get started. We'll just -- we've got -- we'll have two Board members come back and join us.

MR. CONINE: What are we doing?

MS. ANDERSON: We'll, I'm just waiting for Sonny. We sent out a search party.

MR. CONINE: If we're waiting on Sonny, we may be here awhile.

MS. ANDERSON: Well, I sent Joe to -- I just don't want to start this one without him being right here

at the outset.

(Pause.)

MR. CONINE: There he is.

MR. FLORES: I took a wrong turn.

MS. ANDERSON: Okay. If the -- we will bring the meeting back to order. We're still on Agenda Item 2.f.

Mr. Gerber?

MR. GERBER: The next item, Madam Chair and Board members, is Providence at Edinburg. This application has two allocations: One for the original 2004 credits, and one represented as a binding allocation for extra 2007 credits given as part of the statewide credit increase to address cost increases.

The owner is requesting, first, a change in the site plan, unit plans and building plans; second, a change from acquisition, rehab and new construction. The Department's REA division confirmed the development to be new construction at the time the REA report was generated, but the development was built as rehabilitation and does not meet the unit size requirements.

Third, the application proposed 28 efficiency units and 72 one-bed/one-bath units, but built 40 efficiency units and 60 one-bedroom/one-bath units at

reduced square footage in each instance. Fourth, the application proposed two elevators, but only has one for a seven-story building and proposed one four-story building. However, they built two seven-story towers and one community building.

Fifth, the application proposed but did not provide nine-foot ceilings, dishwashers, microwave ovens, self-cleaning ovens, refrigerators with ice makers, storage rooms or closets, covered patios or balconies, Energy Star or equivalent appliances and a community room with warming kitchen or full kitchen and a service coordinator's office. There was no game room, recreation room, shuffleboard court and public telephone.

Sixth, staff is recommending -- well, most importantly, staff is recommending denial of the amendment request and rescission of the binding allocation which was provided for supplemental credits associated with cost increases statewide. Staff recommends the assessment of appropriate penalties, and staff does not recommend the issuance of IRS Forms 8609.

MS. ANDERSON: Public comment on this, Mr. Fisher?

And two people have yielded time to Mr. Fisher.

MR. FISHER: Good morning, Board members. Bill

Fisher, Odyssey Residential, the developer of the Edinburg Towers in Edinburg, Texas, which is owned by the Edinburg Housing Authority. We're here today to ask you for your support on this amendment request. We've been involved in over 25 developments since 1997. This is the first time we've ever even been in a position where we were told to ask for an amendment.

This case is materially different than everything else you've heard. It's not a, You promised to do this and that, and you've traded it out. This is a complete misunderstanding of the development as it was proposed.

What staff is recommending is the death penalty. It's a death penalty for the developer, it's a death penalty for the affordable housing, and it'll have significant negative repercussions for the Edinburg Housing Authority.

So we'd like the Board members to keep in mind this is a different matter than a simple amendment process. And we disagree with the whole presentation by the staff of, He did this and didn't do that. It's a fundamental issue of rehab versus new construction.

How we got here. I put in your -- the book I handed out a time line, and I'll take just a quick minute

to walk through the time line.

The Edinburg Housing Authority entered into a memorandum of understanding with Odyssey to rehab the Edinburg Towers. It's a senior housing towers, has been there for many years and is in need of renovation. We prepared a rehabilitation pre-application. We prepared a renovation application. And as a result of some mistaken correspondence that I think the Department at the time agreed -- and does now -- was a mistake on February 27, just a few days before the applications were submitted, caused us to add some new construction material to the application in an effort to preserve our opportunity in the app. round.

We applied on March 1. We were scored sometime in April. Our score was suggested materially down, and we were, I believe, for a long period of time the lowest scoring app. in the region. We appealed our score. That's pretty much how it remained.

For those Board members who were not here in '04, '04 was a very challenging year for staff; there were a lot of changes going on, and there were a lot of changes made by the attorney general. There were very few underwriting reports completed by the time that the Board made their awards in July. And we are caught up in that

process.

From April through July, our score remains 110 points. The night before the awards meeting in July -- if it was the 31st, it was the 30th; if the meeting was the 30th, it was the 29th -- we received a call from staff. And as a result of staff's review of our scoring appeal, all of our scoring was substantially reinstated, and we became the highest scoring application in the region. And in July, we were on the list that morning at 7:30 and were awarded Housing Tax Credits for the development in July.

We then, obviously, went into the August period, when the project would normally be underwritten and an award letter would happen. We had communication with staff at the time. They knew there was a mistake. The project even today shows in the award books -- awardees list today as, New construction/acquisition rehab. We were given the option at that time to choose how the project would be underwritten because of that mistake.

Because we had already foregone all of our acquisition credits, which would have added a substantial amount of money to do additional development, we told the executive director at the time that we would like the project to maximize the credits to be underwritten as a

new construction. August goes by, September goes by, and October goes by; we have no award letter and no underwriting report.

At this point, we're calling the agency to find out what the holdup is. We can't move forward with the financing of the project without an awards letter, as you can imagine. And we were told by staff at the time that the reason that we were not receiving an award letter at this time and it would be sometime later is that the rehabilitation projects, of which we were one, were being underwritten last.

So now the project has once again gone back to what the Edinburg Housing Authority originally wanted to do, which was a rehabilitation. November comes and goes, and we still don't have a report. The final report is dated the 8th. Our award letter is dated the 13th. I have correspondence with Ben Sheppard acknowledging that I received the material, the award letter, on the 15th of December.

At that time, we not only had to meet carryover, which was acquire the site and show evidence of that recorded, but we also had to meet the 10 Percent test. So we had to get an account's audit opinion we'd incur cost, which we did in the final 16 days of '04. The

underwriting report that came is a new construction.

So we've gone back and forth: New construction, rehab, rehab, new construction. This train got off the track for one reason: Because of the mistaken e-mail that's in your package. And we provided you in Tab Number 2 all of the references to rehabilitation in that process -- in Tab 2.

And at that time, staff was saying, No; for the rehab, you have to meet threshold, unit sizes. As you'll see from the cover picture, this is a concrete block structure. The architect for the housing authority went out there: Is there anything we could do to move -- expand these units in any way that could not be done which led to anything being in the application at all -- being new construction, because this project was always a rehab.

This is the year that we're doing transcripts of meetings with our neighbors. The transcript is replete with nothing but renovation.

So we have our award. It's '05. And we go forward and draw the plans as the housing authority wishes. And what we wanted to do from the beginning is a rehabilitation and process -- begin the process of a HUD mixed finance application. We get an estoppel certificate, and we go through that process. And we're in

that process while the Board awardee list shows this as acquisition rehab, as well.

We get to early '06. Now, at this point, you all have passed your adherence rule, effective December of '06. So we've not started construction yet. So unlike others who would say, "Gee, it all happened before, and we didn't know" -- those are legitimate arguments; it's hard to be sensitive to accountability two years ago when the accountability rules are now -- we're not saying that. We're saying we're accountable.

We get an estoppel certificate from the agency in January, and then we go to the Board meeting in the spring for an extension of our construction loan closing.

A copy of that writeup is in your pack. It once again confirms our application to be rehabilitation.

So utilizing that -- again, the one thing is -- surely the Board knows that if that type of development said new construction, we would have come immediately for a clarification. This thing has gone back and forth. We don't want to be Pollyannaish that clarification isn't required to proceed. This is a clarification by Board action at the time prior to the startup of our rehabilitation.

HUD approves our plan specifications and mixed

finance application with all of the subsidies, project-based vouchers, public housing subsidy in the development, and the Towers are systematically rehabilitated and brought up to code standards. There are two elevators in the project, despite the staff's report.

All the life safety issues are updated to code with complete input from the local fire department. And the residents of the Towers get exactly what they were promised all along: Their units rehabilitated to modern standards, with the right to relocate back into their unit. And again, if you'd read the transcript, you'd see the biggest concern these seniors had, being relocated, was, "Can I come back to the Towers," Number One, and, "Will my rent go up," which it didn't, and, "Can I occupy the same unit I've had for all these years." And that is exactly what we did.

If you flip, as part of that section, you will see our commitment notice letter is dated December 13, too late for us to certainly make any clarification at that time. And there's certainly nothing in there about being in jeopardy of rescinding our credits or some of these other accountability issues. The estoppel certificate I mentioned is there -- and a copy of our cost certification showing all of our costs that have been incurred and that

we qualify for all of our credits.

I included in the next tab the HUD mixed finance application approval letter, which clearly shows the development as a rehabilitation.

The issue of amenities that are promised even in the new construction application are there. If, for whatever -- we disagree with any representation they're not there -- other than the nine-foot floor place and the square footage. And if they're not there, we would remedy that.

In addition to what's in there, we provided other amenities already in place for the benefit of these Rio Grande Valley seniors. We've built a gazebo out there and a courtyard facility; we even put in community gardens.

We bought a handicapped-equipped large transportation van with driving services -- by the way, this was all done before this issue ever came up, so it isn't in response to try and cover our base because we got caught; this was all done prior to this issue of amendment coming up in October -- barbecues with tables out there, which was a particular item on your list, and patio and community furnishings in all of the common areas.

Amenities that we've not provided but that we

will provide that are rarely required. Because we do have a community facility with a kitchen, it requires gaming tables and chairs, which were not there at inspection, a pay phone for 24-hour access, which was not there, and the possible addition of a lawn bowling or shuffleboard court on the site.

The service coordinator's office. There is office space for the service coordinator. It's simply not labeled that way.

When we met with staff on Monday, the objective, obviously, was trying to reconcile this record.

And at the time, we wanted to say, Look are there some things we can do to narrow the gap between your position, which is, "You're completely off the reservation, haven't come even close to what you've promised," to, "Hey, this is clearly a mixed record; we always wanted to rehabilitate and -- if there's some things to bridge the gap." Staff did not feel that it was appropriate to explore those as they have with other developers.

I just want to make sure you know we raised the issue of, Are there things we could add that would counteract the differences. And that was not a discussion that they were comfortable having on Monday, and they left it for the Board.

To try and be proactive, some things we would add here that can be added that, again, would bring it in complete conformity with any of the extras in the new construction. The refrigerators don't have ice makers. We'd certainly run the lines and add the ice maker. We have carports out there. They're not on every space. We would certainly if it -- if the Board wished, cover every space with a carport, add gaming tables or pool tables or card tables specifically, which I think is in the new QAP.

Regarding -- you know, we have Energy Star-equivalent appliances. The Board package -- it has been noted, Well, you don't have Energy Star appliances. No. The rule is Energy Star or equivalent. And we have those throughout the units, including dishwashers. For the Towers, it's irrelevant. It's an all-bills-paid property. It's paid for, and the residents have no utility bills.

So again, even though we've done it and we have the equivalent, it's really not relevant to the regime here, because it is an all-bills-paid property and public housing. The units aren't individually metered. So we get one utility bill, and it is paid by the property.

MS. ANDERSON: I need to ask you to wrap up, sir.

MR. FISHER: It's a successful project. It was

100 percent occupied 60 days after we got a CO, because the seniors who wanted to come back came back in droves. They occupied 80 of the 100 units.

Before making any decision, we'd certainly invite the Board out to see the project. It is a high-quality project. It has been brought up to all modern standards. The rehabilitation precludes us from expanding the units.

We are accountable. We are prepared to be accountable. But this record isn't one-sided. This record is replete with rehabilitation. And we suggest that there is clearly mutual -- at the best, a mutual mistake here. And that -- we ask the Board to approve our amendment without penalties, offering to add whatever additions you feel would benefit the residents and bring it to something you'd be comfortable with.

MS. ANDERSON: Thank you.

Ms. Trevino?

MS. TREVINO: Good morning Madam Chairlady, members of the Board and Mr. Gerber. My name's Estella Trevino, and I'm the director of the Edinburg Housing Authority. And I'm here today to give you a little background of the Towers.

Our Towers high-rise was built -- February of

1972 is when we opened our doors with 60 one-bedroom apartments and 40 efficiencies. And it was built according to all the HUD codes; in fact, they financed the development. Our families have been very happy living at the Towers, but we were having many problems with the elevators. And we do -- we've always had two elevators. There's one in the east part of the units and one in the west.

And the problems that we were having were very serious with the elevators. And people were getting locked in the elevators on the different floors, and some of them were claustrophobic like me. And I was afraid to go into the elevators because -- I was afraid to get locked in there, also. But luckily, our fire department and our police department were ready to come, because our telephones in the elevators would ring at the police department. So they would come and help our elderly.

So we needed the renovation very bad. And that's what the Board wanted and the residents wanted from Day One, to rehab the units and make them more livable -- and especially the elevators and the air-conditioning. We had a chiller system at that time, and we were having problems with it, too.

So at all times, we wanted to rehab the units.

They're two beautiful buildings, and we wanted to keep them like that. So I just wanted you to know that our residents are back where they lived before, very happy. It's a beautiful project, and I'd invite all of you to visit us and see the Towers elderly high-rise for yourselves. In fact, I'd like for you to even come down and have one of your meetings in the valley so that I could tour you through the development. We'd love to have you.

But I want you to know, in closing, that our residents are very happy with the product. And I am, too. And the community is very happy with the Towers. Thank you.

MS. ANDERSON: Thank you.

Mr. Palmer?

MR. PALMER: My name's Barry Palmer, with Coats Rose. And we represent the Edinburg Housing Authority. And we'd like to point out that the housing authority always intended this to be a rehab development. They procured a developer to rehab the Towers, and that's what the application that they signed said, that it was a rehab transaction.

Now, there may have been miscommunication between the developer and the Department that led the

Department to believe otherwise at some point, but we went back and reviewed the record at the Department's offices earlier this week, and it's really a very mixed record with, you know, some notification or discussion earlier in the process that it would be new construction. But then, later on, when it became time to do the construction loan closing, and after the Board had approved the extension of the construction loan closing, it indicate that it was going to be rehab.

And in the construction loan closing report that was filed at the time that the housing authority closed with the syndicator and the lender, that report included in the cost -- the certification from the architect -- clearly, from the architect, it's identified as rehab. The architect puts in the certification that they're not going to meet the minimum unit sizes because this is a rehab project.

And after that, the Department approved that construction loan cost certification and indicated that the project had satisfied the requirements. And the property went forward and closed based on that belief, that it had been approved as a rehab, at that point.

Now, the housing authority certainly never intended to do anything wrong here. They, -- all they

were trying to do was to rehab a property, an elderly property, that was in dire straits with elevators that didn't work, with air-conditioning that didn't work, and they've been successful at doing that. They certainly are -- apologize for any mistakes that were made.

They proceeded on a good-faith basis, and they would hope that any action that this Board would take would not penalize the elderly citizens of Edinburg who utilize this as their housing and who have for many years.

And the revocation of the tax credits would be disastrous to those citizens.

MS. ANDERSON: Thank you.

Mr. Shakelford?

Let's hear all of the public comment, and then we'll ask them to excuse themselves. And we'll -- thank you.

Mr. Shackelford?

MR. SHACKELFORD: Thank you, Madam Chair. Just to address the penalty issue, you all have a lot of authority and power in assessing penalties. And you've done that today. And again, as Mr. Fisher said, this issue before you with this particular case is in contrast to some of the other things, we think. And as Mr. Palmer just said, there's a mixed bag of the record and sort of

in the practice of law, where the adage is, Bad facts makes bad law.

And I guess I would ask you-all's indulgence that, when you go and assess penalties in a manner that could potentially put somebody out of the rounds for the next two years, the evidence be clear and convincing. And I don't think this case supports a clear and convincing conclusion that -- to exercise those kinds of penalties against either the housing authority or the developer or co-developer. So I would ask your indulgence on that.

I would also want to point out to your attention, not to excuse anything and not to cover over any kind of deficiencies, but -- Mr. Fisher is described or the housing authority and Mr. Fisher, the co-developer by staff as, Purposefully, egregiously and recklessly violating the rules of the program.

And we don't do business that way, and so much so that, at this very same time period in the fall of '04, as you all pretty well know due to news accounts, Mr. Fisher and I were staying off improper solicitations by public officials and, after a certain city council meeting, went to the FBI. And from that point forward, Mr. Fisher cooperated with the FBI, and that resulted last month in 16 federal indictments.

Mr. Fisher is not trying to violate any rules. He knows he has to be accountable for what he does. He plays it straight. And we'd ask that all those facts and circumstances be taken into account when you go and look at this issue and decide what penalties may be appropriate or fair under all of the circumstances, and that you judge this particular development as you would ask to be judged yourself. Thank you.

MS. ANDERSON: Thank you.

I also have a witness affirmation form from Rudy Ramirez with the Edinburg --

MR. RAMIREZ: I was going to yield my time to Mrs. Trevino.

MS. ANDERSON: Okay. Thank you.

MR. SALINAS: Ms. -- Madam Chair?

MS. ANDERSON: You have questions for the witnesses?

MR. SALINAS: No. I have questions for Mike.

MS. ANDERSON: Okay.

Then if I can, I ask you all to be excused.

And --

MR. SALINAS: The understanding that I always knew was that it was going to be a rehab, you know, because this is a building that -- if anybody would try to

tear it down, they probably would get killed by the people of Edinburg. You know, it's a site that was built back in 1972. And I thought everybody know that it was going to be a rehab.

And it's a beautiful building, and it's a historical marker for the city of Edinburg. So I don't know where the misunderstanding came about. I knew. I was here when --

MS. ANDERSON: Ms. Trevino, would -- you can go ahead and be seated. Thank you.

MR. SALINAS: I was here when we looked at this application, and I was very proud and happy that they had gotten the project and they were going to rehab this building. After the award, Mayor Garcia called me and told me how grateful he was that the housing -- that the agency had looked at the building, because they really needed help. It would be a disaster if they would not get their promised credits.

MS. ANDERSON: Robbye, can I ask you a question on the application? As -- Ms. Trevino indicated that the building was built in 1972 with 40 efficiencies and 60 one-bedroom units, yet the application proposed a different unit mix. So if it was rehab, would you expect to see a different unit mix in the application?

MS. MEYER: It was actually turned in as acquisition rehab with new construction. And that's the assumption --

MS. ANDERSON: So were they going to, you know, knock down part of it and build new and rehab part of the building? Was that --

MS. MEYER: I think that was part of it. I mean it was demolition/reconstruction, which would be new construction, too. That was what was presented to begin with.

MS. ANDERSON: Okay.

MR. CONINE: To begin with, or at the last minute?

MS. MEYER: That was how it --

MS. ANDERSON: At the February 27 --

MS. MEYER: -- originally came in. I mean -- and we actually sent an e-mail to the fact that they would have to meet the --

MR. CONINE: Threshold?

MS. MEYER: -- unit sizes.

MS. ANDERSON: Okay.

And, Tom, what about the comment that was made, that the underwriting -- you know, at some point in this process, post-July, the underwriting -- we were going to

underwrite it as new construction to maximize the credits?

I heard that said in the witness statements.

MR. GOURIS: That's correct.

Tom Gouris, director of real estate analysis.

The file has a mixed record, and one of the reasons it took so long to underwrite the file was to ascertain what they were actually planning on doing. We spent a large amount of time trying to figure that out and trying to confirm that and were very explicit and clear with regard to the expectations based on their statements that they were going to tear down the structures that were there, because they were no longer financially viable, and construct new buildings.

We went over that very strongly because of the mixed record in the application. And we made sure that we had the information we needed to be able to evaluate any construction transaction. We did not have all the information we needed to do -- to evaluate a rehabilitation transaction. And had that been the case, we would have pursued more information from them.

It was clear to us that it was reconstruction, and that's how we underwrote it. And we sent him --

MS. ANDERSON: Was there a PCA? Would you have had to have in that era a PCA for a rehab?

MR. GOURIS: We did require a PCA at that time. And they provided one as evidence of why it was financially infeasible to rehab it. And that was the purpose of their PCA.

We did not study or evaluate the PCA at any greater length, although we have looked at it since and realized that it would not have met our standard for the rehab portion of it, but it was only an ancillary piece of information to support their desire to do a new construction. And it wasn't a key factor in our evaluation from the standpoint of what we evaluated as far as what the costs and what the development would be.

You make a great point when you say that the rent schedule they're -- what their structure was clearly identifies that they could not have rehabbed this to meet that rent schedule. It was -- you know, there was a lot of miscommunication. And often times our division has suggested that we live in something of a vacuum. And, you know, we try not to do that.

And we certainly aren't trying to legislate perfection here, but we would like to know, you know, so that we can evaluate whether or not they're doing rehab or they're doing new construction. And we did, I think, a thorough job of confirming that issue, sending the

underwriting report, letting them know that if there are any questions in the appeal process, what they can do to appeal, and did not hear a word about the underwriting report.

MS. ANDERSON: And the underwriting report clearly said it was new construction?

MR. GOURIS: Yes, ma'am.

MR. BOGANY: Can I ask a question?

MR. GOURIS: Yes, sir.

MR. BOGANY: He had an e-mail here that he sent to Ms. Joyce that says that, "The units being rehabbed are less than mandated minimum size. Do they need to be increased in size through the rehab process to the state-mandated minimum." And he gave examples. Efficiencies are limited to 500 square feet for seniors, and so on -- 400 square feet. Look -- and this was dated February 18, 2004.

So I'm thinking why back then -- it looks like he had already started working on a rehab, based on his e-mail.

MR. GOURIS: Again, he had indicated both rehab and new construction back then. And back then, I think, based on that e-mail which -- I haven't checked the record, but -- he's claiming is erroneous -- and that's probably true, he was given guidance that suggested that

he couldn't -- he would have to meet the new construction standard for the rehab.

And at that point, he made a decision -- or at some point shortly thereafter -- in completion of our -- you know, as we completed the underwriting analysis, they made the decision they were going to do reconstruction. And that, again, is what they clearly -- what they clarified for us as we were doing our analysis.

During our discussions in the last month, you know, we asked the question, When did this change actually occur. And I was told verbally anyway that that change occurred some six months after -- six months into 2005, that they formally decided, No; the city really wants to do a rehab there, so we're going to go ahead and do a rehab. We weren't made aware of that in any formal way.

That -- some of our documentation reflects acquisition and rehab or a mixed record all goes back to a database entry situation where it was originally entered into it as it was applied for, with this mixed bag. And that wasn't corrected after we got confirmation through the underwriting process -- that they were going to do reconstruction. That wasn't corrected in the database, and so that error continued to be reflected in future items.

MS. ANDERSON: Well, it's in the amendment request, but the -- I mean sometimes when we -- the developers see a draft amendment request, if they see something in it that's inaccurate, do they come back to staff and ask for a correction to be -- or come testify to the Board and ask that a correction be -- I mean this amendment request says, "Rehab/new construction."

MS. MEYER: Correct. And normally, they would correct staff. And then we would inform the Board.

MR. BOGANY: Are you looking at this bit?

MS. ANDERSON: I'm looking at this.

MR. BOGANY: Okay. Because in, you know, the region development, it has Edinburg Towers and it has no -- "NC," New Construction -- "/acquisition rehab." And that was on page --

MS. ANDERSON: Well, that's the only way -- I mean they were going to have to do some new construction if they were going to be able to build the unit mix of --

MR. BOGANY: Okay.

MS. ANDERSON: -- 28 and 72, and not the 40/60 that was in the existing building, it seems to me.

MR. BOGANY: How did the points from the lowest scoring to the highest scoring -- how did we -- what made that change?

MS. MEYER: The AG opinion.

MR. BOGANY: The attorney general's opinion?

Okay.

MS. MEYER: Yes, sir.

MR. BOGANY: Okay.

MR. CONINE: Refresh my memory there.

MS. ANDERSON: Are you sure you want to hear this?

(General laughter.)

MS. BOSTON: There were --

MR. CONINE: I've slept since then.

MS. BOSTON: Brooke Boston. There were a series of scoring items that we were waiting to get attorney general feedback on, and it came literally like a few days before the final recommendations. And when we got it we had to go back and recalibrate scores uniformly for everyone. And based on how that was applied, some people's scores went up significantly -- who had lower scores.

But it was applied uniformly to everyone. It -- well, the new ruling applied uniformly to everyone.

It didn't mean that everybody's points got to go up, but the application of the interpretation was applied to everybody. And because it was on -- I want to say it was

on at least two or three scoring items that were fairly significant. So with some people, it made a huge difference right away.

MR. CONINE: I'm still confused --

MS. RAY: I am, too.

MR. CONINE: -- on the difference between new construction or even half new construction and half rehab. And, "We're just going to go in and rehab the 100 units that are there," is so diametrically, you know, opposite.

MR. GOURIS: Well --

MR. CONINE: What do our records state in that spring of that year that -- what did -- really did it look like to you was going to happen from a practical side of it?

MR. GOURIS: The spring of 2004, or --

MR. CONINE: Yes. '04, when the award was made.

MR. GOURIS: Well, the award was made in the fall of 2004.

MR. CONINE: Right.

MR. GOURIS: And the underwriting was --

MR. CONINE: Well, the award was made in the summer of '04. Right?

MR. GOURIS: Subject to the underwriting --

MR. CONINE: And you didn't get to the underwriting until a lot later than that?

MR. GOURIS: And, frankly, I think there would have been -- had this been in the mix to underwrite earlier in the summer, which -- it wasn't even close, so we didn't touch it until July.

MR. CONINE: I understand. I remember that. I remember all that.

MR. GOURIS: Okay. Had it been in the mix, I think we probably would have -- you know, this would be -- it would have been a really obvious situation, because they would have had to make that choice even more clear. And had they chosen to do rehab at that time, they would have not -- they would have been terminated because they didn't supply the information that was required to do rehabilitation.

MR. CONINE: Yes. But, Tom, I'm not going to -- you know, underwriting catches a lot of things, but our other -- the rest of our staff, if it's an ambiguous application with a mixture of hodgepodge and stuff that -- nothing makes sense, we ought to pick it up sooner than that.

We look at a lot more than just, you know, the feasibility analysis in that process. And that's -- what

I'm confused about is how -- unless, you know -- and I know a lot of negotiation goes on between developer and staff -- you know, If you'll do this, we can say it -- we can look at it this way. And I'm trying to figure out how much of that went on.

MS. MEYER: It obviously passed threshold, because it moved up in the ranks. And we were able to score it. I can't give you the specifics for that particular item. But when you go by what's actually checked in the application, which is what we're going off of as to what they were saying they were going to do, then they would have met the requirements.

MR. SALINAS: It says here by letter by Brooke Boston to Mr. Fisher that -- on February 14, a letter to Mr. Fisher by Brooke saying that she accepted this letter as a Department confirmation that all requirements that have come due to date, including the requirements to document the closing of the construction loan, have been met, and the development owner remains in good standing in respect to the subject development.

Now, I knew from Day One, when they made the application, that this was going to be a rehab. I knew that because I just knew that you all couldn't tear those buildings down, because there were -- but it's the same

way as it is in the picture. The people were not going to do that. And then it goes through, and they get approved.

And anybody that lives in Edinburg knew that they were going to get rehabbed.

Somehow, somewhere in your information, you have new construction and rehab. I don't know who made the mistake, but I don't think it's fair that one of the Board members knew that it was going to be a rehab, you know. And I can put my hand on the Bible that I know that it was not going to be a new construction. And now things change, and we have a different executive director that probably doesn't know anything about this. But I think by us sitting here -- well, he doesn't even know where the place is at.

(General laughter.)

MR. SALINAS: But I think -- I do. And I think it's very unfair that they get treated like this. Now, I'm fair. And if I knew that this could have been done new, I'll tell them right now that they made a mistake, but I just don't think so, because everything was coming around and was doing fine --

MR. CONINE: Okay.

MR. SALINAS: -- until today.

MS. ANDERSON: Right. But the record is mixed,

Mr. Mayor.

MR. SALINAS: I know it is.

MR. CONINE: Yes.

MS. ANDERSON: I mean there are documents that say, New construction. So, you know, it's a mixed --

MR. SALINAS: And there's documents --

MS. ANDERSON: -- situation.

MR. SALINAS: And there's documents that says, Rehab. Now, I just don't want the people --

MS. ANDERSON: The credits rescinded?

MR. SALINAS: Yes.

MS. ANDERSON: Right.

MR. CONINE: Yes. I hear you there.

How much money are we talking about? Give me the total cost of the project as currently constructed. And how much in debt and how much tax credit syndication are we talking about, just for fun?

MR. GOURIS: Five-million-four in total costs.

MR. CONINE: Have you underwritten it the way it stands today?

MR. GOURIS: We cannot, because we don't have a PCA that complies with our requirements. So we don't -- and we'd --

MR. CONINE: You could.

MR. GOURIS: We could underwrite everything but the costs.

MR. CONINE: Yes.

MR. GOURIS: I mean I can't evaluate the costs at this point, because they are what they are.

MR. CONINE: No. I know. But you could underwrite the debt and equity. What -- how many credits did they get? Excuse me

MR. GOURIS: It got 2004 credits of 357,369, and it got additional credits of 29,947.

MR. CONINE: On the construction cost bump?

MR. GOURIS: Yes, which -- again, that was based on -- I mean when we gave the construction cost bump, we evaluated that based on what their new construction costs would have been to give them the bump.

So --

MR. CONINE: Okay.

MR. GOURIS: I mean if I --

MR. CONINE: And we've got the same syndicator we had on the Fort Worth transaction that we redid, you know, a couple of months ago.

MR. GOURIS: Yes. If I could --

MR. CONINE: Sure.

MS. ANDERSON: Go ahead.

MR. GOURIS: I'd point to page 2 of the original underwriting report.

MR. CONINE: Yes, sir.

MR. GOURIS: At the bottom of page 2, in the closing --

MS. ANDERSON: Is that in our stuff here?

MR. GOURIS: I believe so.

MR. CONINE: Hang on.

MR. GOURIS: It's --

MR. CONINE: It'll take me a minute to get there.

MR. GOURIS: It's the underwriting, at -- toward the back.

MS. ANDERSON: Here it is.

MR. GOURIS: There's an amendment, then there's an addendum, and then there's an original underwriting report. And I don't have for you the copy of this letter, although I'm sure it's in the file. But at the bottom of that report, it says that --

MS. ANDERSON: What page are you on, Tom?

MR. GOURIS: I'm on page 2.

MS. ANDERSON: Okay.

MR. GOURIS: At the bottom of that page 2, in the middle of that paragraph, it says, "However, the

majority of the documentation refers to existing buildings as being demolished. And the Applicant subsequently confirmed this in writing, saying that, quote, 'Systems in the buildings since the date of application have experienced significant failures, making it a better economic choice to rebuild new.'" And the reference is in our August 10, 2004 letter.

And I mean that is what we had to go with. Though there was a mixed -- you know, there was mixed information in the application, that is -- we proceeded from then to move forward with the reconstruction of this transaction, which we still had to gain more information to get to underwriting.

MS. ANDERSON: All right. And that's --

MR. CONINE: And I'm sure the mayor's probably right in the respect that once -- even though the dialogue with the Department got into tear-down and new construction, because that made things easier, you know, and made life a lot easier, because you can jump hurdles.

MS. ANDERSON: Get more credits.

MR. CONINE: By the time they were awarded the credits and went down to the city of Edinburg, they probably got their hat handed to them -- I'm going to tear this. After looking at this building, I can see why they

would never -- you know, the city would never allow that or wouldn't want it. Let me put it that way.

And so I'm sure they had a mess at that point, and, Now how do we try to fix it up using the credits we got and trying to make the city happy at the same time. That's where I think this whole thing came about.

And Ms. Ray has been reminding us on several occasions in the last few months, Okay; where are the citizens of Texas, and how are they affected, and, in particular, these 100 residents. They're living in smaller units, although they're -- than we would like per our guidelines, although they're the same size, evidently, that they were before. And they just got rehabbed and then moved back in, in essence, is what has happened.

So I -- and we've got a \$5 million number out here that is the death penalty if -- for the housing authority, I would imagine, because they can't stomach that kind of a hit.

So I'm -- mentally, Madam Chair, I'm caught between trying to reconstruct what the heck happened and, How did our Department procedures not catch it at threshold, which it should have caught, in my mind.

MR. SALINAS: That's right.

MR. CONINE: And okay. How do -- we've got a

building standing there with 100 units, and it's fully leased. And we've got a syndicator on the hook and a developer on the hook and a banker on the hook and a housing authority on the hook. How do we try to make it where everybody's kind of happy?

And it sounds like -- to me that since you haven't had a chance to re-underwrite what's there from an underwriting perspective, I'll be real interested in what you say, based on what's sitting there, going forward, how this project is going to be -- if it's financially feasible, but we don't have that information. All we have is, you know, a bunch of history that we don't even know -- we have no frame of reference, I guess, on reality right now.

MR. GOURIS: We do, actually. The addendum that's in your packet is a re-evaluation based on what we -- the costing piece of it is based on what we thought it would cost to build new in that place if they were to --

MR. CONINE: Well, now, forget about cost.

MR. GOURIS: But the expenses --

MR. CONINE: You've got a cost that's 5-million-four.

MR. GOURIS: But the expenses are there. And

the operating --

MR. CONINE: Where is, There?

MR. GOURIS: It would be the addendum.

MR. SALINAS: Do you have an idea of how much it would cost you --

MS. ANDERSON: Wait just a second. Can we let Tom answer this question?

MR. SALINAS: Yes. Okay.

MS. ANDERSON: Okay. We'll get --

What page of the underwriting report, Tom? Walk us through it.

MR. GOURIS: It's the addendum section, and it's toward the back of that. You know, the numerical analysis is there.

MS. MEYER: It's in front of your original. You were just looking at the original.

MS. ANDERSON: Right. What page of the addendum? The addendum starts on page 2.

MR. GOURIS: It's actually -- it's numbered as another page 1, but it's after page 6. I believe that's a different format.

MS. ANDERSON: Is it that -- is the underwriting report dated October 31 of 2007?

MS. MEYER: That's right.

MR. GOURIS: Yes.

MS. MEYER: And then if you'll go to page 6 and then turn to page 1, you'll have it.

MR. GOURIS: That's based on the rent schedule that we had. And we --

MS. ANDERSON: So you're talking about this document?

MR. GOURIS: Correct.

MS. ANDERSON: Okay. Now --

MR. CONINE: And do you mind sharing with me, Madam Chair?

MS. ANDERSON: Absolutely.

Tell us which line items you want.

MR. GOURIS: And I apologize. I mis-spoke in that we have not re-underwritten it, based on the rent schedule that they're now saying is existing in the unit -- in the property. When they sent --

MR. CONINE: It looks like you got the square-footages and you got the number of units -- it looks like.

MR. GOURIS: But --

MR. CONINE: Right?

MR. GOURIS: -- I think there are more efficiencies than that. And so I think we would have to re-evaluate that for the efficiencies. So I -- this is

what they sent us at cost cert. So even at cost certification, they were giving us this mixed information, I guess, in hopes that we wouldn't, you know, figure this out, somehow. But we believe, though, that what's on the ground is not what this rent schedule is. And so we're still working to get through that.

So you're right. We do need to do a re-evaluation of this, yes.

MR. BOGANY: Can we table this and just let -- give them an opportunity to --

MR. CONINE: I think that would be prudent, Number One. But I -- again, there's two pieces to this pie. There's the, Okay, how do we make lemonade out of lemons, you know, and is it financially feasible, what kind of amenities can we offer the residents. I know the developer has put some proposals on the table. We could spend here the rest of the day trying to figure this out.

MS. ANDERSON: Absolutely.

MR. CONINE: But I'm more concerned -- I'm really concerned about -- I'm really concerned about financial feasibility. Just taking it -- just pretend like you're refinancing this thing and you've already got the costs and you're just looking forward. You're not looking backwards.

And see what it underwrites for. See what the credits are out there for. And come back to us with some of that information.

And then the second piece of this is the penalty phase, if any. And you know, we really need the first stuff before we can figure out the second.

MR. BOGANY: Okay.

MS. ANDERSON: And I would make an editorial comment that the developer's packet today does not propose a lot of amenities that would be available to them to be proposed, and that it might be in their interest to beef up the substitute amenities before this came back.

MR. GOURIS: And I'm sorry. If I could say one more thing about this?

MS. ANDERSON: Sure.

MR. GOURIS: And that has to do with the '07 credits, the additional credits.

MR. CONINE: Yes?

MR. GOURIS: They are on a very short time fuse. They have to be issued this year. There's no way that we can carry them over. They have to be issued, and in order to issue them, we have to be complete with this whole transaction.

MR. CONINE: Are you talking about the 28- or

29,000 that he got?

MR. GOURIS: Yes, sir. And while we could prolong that for another month and figure that out in december, we won't be able to go beyond that. From all that we understand of the IRS -- this is kind of a new area for folks, and so we're trying to follow guidance from our attorneys. But from what we understand, there's no, Hey, we're going to be able to move past that.

So this and about 20 other transactions that we're trying to get accomplished that need to get 8609s issued this year must be issued this year. And if we can't get this resolved, we need to either today or next month make a decision on, Can we rescind those credits and use those credits otherwise. Or --

MR. CONINE: Well, I am not a fan -- this Board member is not a fan of rescinding credits. I can --

MS. ANDERSON: I second.

MR. CONINE: I can go out on a limb to say that. I'm just trying to restructure the deal to, again, make lemonade out of lemons and -- with both the Department and the developer at fault, because that's kind of the way I see it. But as far as the credit decision, I'm not a gig fan of the death penalty, as it was expressed earlier.

MR. GOURIS: It would just be for the '07. And we're going to have to make a decision for those by the end of the year, regardless, because if -- we won't be able to sign them --

MS. ANDERSON: Well, can we --

MR. GOURIS: -- in January.

MR. CONINE: But they roll into the pot for next year. Right? I mean if somehow we can't get to a resolution in January, they just fall off and roll into '08's pot?

MR. GOURIS: There are -- because of the size of them --

MR. CONINE: Yes?

MR. GOURIS: -- the de minimis amounts, we're -- we have some concerns about not -- about having too many of those not --

MR. CONINE: Do you mean cumulative -- not just this deal, but the cumulative total --

MR. GOURIS: Correct.

MR. CONINE: -- of all the 8609s?

MR. GOURIS: Correct. It's at -- we're quite concerned about it, actually.

MR. CONINE: Well, what --

MS. MEYER: The resolution of the '04 credits

could go into January --

MR. GOURIS: Yes.

MS. MEYER: -- if that's what you needed to do.

MR. CONINE: Well --

MS. MEYER: But the resolution for the '07 credits would --

MR. SALINAS: Well, what if we tell you we're not going to rescind the credits and you work out the problem with the builder?

MR. CONINE: I think we could have a motion to that effect. I mean I'll make that motion --

MR. SALINAS: I'll second it.

MR. CONINE: -- that on this deal just right here that -- we're not going to rescind either the '04 or the '07 credits.

MR. SALINAS: I'll second it.

MR. CONINE: And we're going to allow them to stay there.

MR. SALINAS: That's right. And then --

MR. CONINE: And then we're going to restructure it next month.

MR. SALINAS: And be sure you get it done before December 31.

MR. GOURIS: And you're asking our executive

director to sign 8609s that are invalid?

MR. SALINAS: Yes.

MR. CONINE: Well, wait a minute now.

MR. GOURIS: Because we haven't completed the cost certification process.

MR. CONINE: Right.

MR. GOURIS: Or they just expire.

MR. CONINE: Doesn't he have a carryover -- doesn't he get to meet carryover on '07 credits?

MR. HAMBY: He wouldn't on this particular case, because of the way they're issued. But I -- Mr. Conine, I'm concerned if you're talking about negotiating additional issues in the project.

If you take the question about whether or not the developer and the PHA negotiate in good faith for additional items to benefit the individuals there, I mean you could do it subject to negotiation or you could do several things on your motion to, We're not going to rescind the credits pending a resolution to this issue.

MR. CONINE: Okay. Well, I --

MS. ANDERSON: Yes. That makes sense.

MR. CONINE: That makes sense. I mean I understand that.

MR. FLORES: Do we have a motion on the floor

to table it?

MR. SALINAS: No.

MS. ANDERSON: No.

MR. SALINAS: We have a motion to -- not to rescind the credits.

MS. ANDERSON: And that has been seconded.

MR. FLORES: No. I'm talking about about a half-hour ago.

MR. SALINAS: No.

MS. RAY: The motion that was --

MR. FLORES: Okay. Now, if we're going to have this motion, Madam Chair, I would prefer we break it up in little pieces. I think you all have done a great job of confusing me.

And, secondly, Mr. Conine, I think you need to clarify a statement you made. You made it sound like all the mistake on this thing was due to our staff and that there was no problem with the --

MR. CONINE: Oh. No. I said --

MR. FLORES: -- developer.

MR. CONINE: -- on both parts, both sides.

MR. FLORES: Does the developer have any fault in all this?

MR. CONINE: No. I said both.

MR. FLORES: Well, I just want to clarify that for the record, because I think there's certain, you know, fault on both sides.

MR. CONINE: No. I said both.

MR. FLORES: Okay.

MS. RAY: He said both.

MR. FLORES: Okay.

Now, if we're going to have a motion, Madam Chair, can we kind of divide it --

MR. CONINE: I'm going to withdraw my motion.

MS. ANDERSON: Can we withdraw all pending motions?

MR. CONINE: I'm going to withdraw my motion.

MS. ANDERSON: Everybody who thinks they made a motion --

(General laughter.)

MR. CONINE: Okay.

MS. ANDERSON: Okay. So there's nothing on the floor now.

MR. CONINE: Now explain the '07 credit situation one more time, because I'm not clear on why we've got to do something. Why can't he meet --

MR. GOURIS: They're --

MR. CONINE: -- carryover?

MR. GOURIS: They're '07 credits.

MR. CONINE: Yes.

MR. GOURIS: And they were issued via a binding allocation agreement last year.

MR. CONINE: Right.

MR. GOURIS: The only --

MS. ANDERSON: This year?

MR. GOURIS: No. That was actually signed last year.

MS. ANDERSON: Oh. They were signed last year. You're right.

MR. GOURIS: Yes. And they had to place in service by the end of last year, and that's why we had to sign them last year, because it was an '04 allocation. That was the only way we could do this.

MR. CONINE: So it was forward?

MR. GOURIS: So -- well, it wasn't exactly a forward. It was a forward credit, but it was through a binding allocation. The IRS only recognizes a carryover or the issuance of 8609s. Because you cannot carryover something that already placed in service, we have to issue 8609s this year. We cannot carry these over. We could -- well, we have to for the '07 credits.

MR. CONINE: Okay. Well, I'm --

MR. GOURIS: The '04 credits we could. They can take as long as they want.

MR. CONINE: If that's the case, then ultimately the 8609 is our hammer to get this negotiated the way we want to get it done. And I'm not comfortable doing anything with the credits, but I am comfortable in saying let's get it done by December whatever, our December Board meeting.

MS. RAY: The 13th.

MR. CONINE: Right? Because if we get it done or not done by the December Board meeting and then, let's say, we don't come to an agreement, then the '07 credits come back into the '07 pool and just either get used up then or in '08. Correct?

MR. GOURIS: Correct.

MR. HAMBY: That would be the -- your original discussion, Mr. Bogany, about a potential motion to table and bringing it back to the December meeting --

MR. BOGANY: Right.

MR. HAMBY: -- which is actually, Mr. Flores, the motion that --

MR. FLORES: That's a nice circle we just traveled, yes. Thank you very much.

(General laughter.)

MR. HAMBY: It's actually a motion postponed until a time certain.

MR. SALINAS: I make a motion to postpone it until the next Board meeting.

MR. HAMBY: And that is a privilege motion, Madam Chairman. So it needs to be voted upon, because he made it --

MS. RAY: I second the motion.

MR. CONINE: And we'll just table it until the next meeting.

MS. ANDERSON: Discussion -- oh, no. 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. BOGANY: Madam Chair, now that we've passed this issue here at least until the next meeting, I have a question. What do we have in place so this doesn't happen again?

MS. ANDERSON: Well, we have a new set of rules that say -- you know, that impose these penalties that -- you see that today we've dealt with several '07 deals coming in requesting changes ahead of time, because they

want to be out in front of and not be put in this situation.

MR. BOGANY: Okay.

MS. ANDERSON: So to some extent, I'd hope it is self-correcting. But --

MS. MEYER: There's a lot more discussion between real estate analysis and multifamily as we go through the process. And I think Mr. Gouris will back that statement up. So I think you'll have that eliminated in the future. It has certainly helped this year and last year, also.

MR. BOGANY: Okay. Thank you. But --

MR. CONINE: And -- but I -- this Board member's feeling is that -- I'm not certain it helps to get bogged down in too much history, because we're trying to figure out how to financially structure this transaction today so that the residents get what they need to get. You know the worst-case scenario? We take the credits away, the housing authority, you know, has a huge debt on their hands, they've got to raise rents, and all those residents have to move out.

I mean it could get really nasty. And what I'm trying to do is figure out a way to financially make this plausible today based on what's on the ground and --

coupled with the appropriate recognition of penalties, if any, and then move forward. So --

MR. HAMBY: Mr. Conine, just for clarification, as Board secretary, I believe that the Board made a pretty clear statement to both the developer and the staff, that the developer needs to come forward with more potential amenities and make a recommendation and be holistic and wrapped up by the December Board meeting.

MR. CONINE: Absolutely.

MS. ANDERSON: Absolutely.

MR. FLORES: That is --

MR. HAMBY: And that's the direction you gave.

MR. FLORES: Madam Chair, I want to suggest to Mr. Gouris and Robbye that --

When you come back, if you have any recommendations on how to avoid this in the future, please feel free to bring some recommendations to us, because I don't think we want to go through this every time.

MS. ANDERSON: Well, we want the development community to build what they say they're going to build and, per our rules, come to us when they are making changes. We understand that things happen and things change, but that -- they ought to be coming to the Department. And, hopefully, a lot of them can be handled

administratively and don't have to come to us except in a quarterly summary.

MR. FLORES: Early on.

MS. ANDERSON: Right.

MR. SALINAS: But I'm going to say one thing. They were rebuilding this building, and our staff never went to see it, because -- apparently they didn't, because it was being rehabbed from Day One. And nobody from our staff was able to catch it.

I knew it was being rehabbed. Everybody in the valley knew it was going to be a rehab -- except our own staff.

MR. GOURIS: Mayor, I --

MR. FLORES: But, Mr. --

MS. ANDERSON: Well, Mr. Mayor, I think that -- well, I --

MR. FLORES: No. I'm serious.

MS. ANDERSON: I think the record's mixed and you're being very harsh to our staff.

MR. SALINAS: Well, I don't care if I'm very harsh. I'm just telling you the truth, because the people that are going to suffer are the people that are living there right now, because somebody --

MS. ANDERSON: I think we've just had a

conversation that the Board --

MR. SALINAS: Yes. Because somebody in our staff and our builder or the -- or Mr. Fisher weren't able to catch on to this.

MS. ANDERSON: And I just --

MR. SALINAS: You know, there's no --

MS. ANDERSON: I think the responsibility for that is shared.

MR. SALINAS: There's no landfill in the valley that would be able to take care of all this cement, to be able to reconstruct the whole building. And the amount of dollars to reconstruct a new one is completely different than what they're talking about.

MR. FLORES: Mr. Mayor, the only way to solve this is for us to provide money to have inspectors to go out and do that. I brought that up before.

MR. SALINAS: Fine.

MR. FLORES: And it's a substantial amount of money. So if we want to talk about that come budgeting time --

MR. SALINAS: Yes.

MR. FLORES: -- we need to talk about some serious money, about having the money well spent. However --

MR. SALINAS: I think we need some serious people inspecting these buildings.

MR. FLORES: -- it does require a substantial amount of money.

MR. GERBER: If I could just interject? And then I'll let Tom speak. But I would just say that I think that we all agree that there is fault to be shared on both sides. And staff will go back and review this. We do some inspections. And I'd like Tom to have a moment to just very quickly --

MS. ANDERSON: Let's -- no. Let's move on to the next item. We need to move on. We have a very long agenda. We've discussed this. It has consumed, you know, an hour of Board time, and it's going to next month, too. So get -- be prepared for it. Okay? Thank you.

The next one is Fenner Square.

Mr. Gerber?

MR. GERBER: The owner has requested numerous changes to the application since the approval of the Housing Tax Credit award in 2004 and the Housing Tax Credit award in 2005, both verbally and in writing, due to the various exchanges, interpretations and miscommunication. Staff has recognized the inconsistencies between both the Department and the owner.

Staff reviewed all correspondence, application materials and an affirmation from the owner and is recommending that the applicant still should provide microwave ovens in all the units, construct the community garden and provide the high-speed internet access in each unit at no charge. Staff also requests the Board's affirmation of staff's representations of the amenities that have been waived.

MS. ANDERSON: Mr. Driggers?

MR. DRIGGERS: Good morning. My name is --

MR. CONINE: It's still morning? It doesn't feel like it.

MR. DRIGGERS: Oh. I'm sorry.

(General laughter.)

MR. DRIGGERS: It might be afternoon.

My name is Gary Driggers, and I served as the developer for Fenner Square in Goliad. The amendment before you is related to two applications, HTC Application 04289 and HTF Application 05259, which was a loan of \$110,000 to cover unforeseen cost increases incurred during 2005.

There was a discrepancy in items listed in the specification and amenities section of these two applications. When the error was discovered, we delivered

a complete set of construction drawings with a detail specification book and a letter explaining the differences and the details of our development plan for staff's review. That was submitted on October 3, 2005.

The result of staff's review was their recommendation for an amendment at the November 2005 Board meeting that described a reposition of some of our buildings and a slight change in the one-bedroom building that we pursued for aesthetic reasons. In that amendment request, we attached our detailed floor plans for every building and the site plan. After the Board's approval of the amendment, we began construction in December of 2005 and delivered the development in August of 2006, per the approved plan.

During construction in April and in June of 2006, we received compliance letters regarding the plan review and the mid-inspection review respectfully. In both of these correspondences, staff provided helpful observations related to scoring, threshold and certification issues; we agreed with all of their observations except for dishwashers and disposals, because we are a USDA property.

We provided our comments on June 23, 2006. We installed all the other observations related to threshold

and certification. In our letter dated October 3, 2005 to the staff, we indicated that dishwashers and disposals did not apply due to our classification as a USDA property.

On January 10, 2007, we received a letter from Portfolio Management and Compliance providing clearance from all identified issues. In February of this year, 2007, we filed our cost certification. And we were informed on March 15, 2007 that we had to file an amendment for scoring items -- ice makers, self-cleaning ovens and community gardens -- that had previously been cleared on January 10.

After several attempts, starting in April of 2007, to file an amendment as requested by staff, we received staff's recommendation last week that we should install microwaves, gardens, as well as provide free internet service to our residents. The microwaves and gardens are scheduled for installation next week.

We installed the necessary equipment and infrastructure of the property to receive high-speed internet access. We provide free service to our residents, with five stations in our community building, and we will provide free service to the units if the Board deems it necessary. However, the box on the application we checked states, "Access," not, "Service." And it is

listed in the specifications section of the application.

Under unit amenities, there is another box, which states, "Internet service to all units at no charge." We did not check this box, and, therefore, we do not understand how our application can be interpreted to include free service in the units. But again, if the Board deems it necessary, we will do exactly what staff says to do.

Fenner Square was built according to the plans that were submitted. And with guidance from staff, we were assured that we were in compliance during and after construction. Based on the short list of items that need to be addressed plus the many substitutes that we listed in our amendments and that were not considered, we respectfully request that the penalties be waived. If the Board finds that a penalty is necessary, I request that the penalty be assessed against me, the developer, instead of the general partner.

MR. BOGANY: I have a question.

MS. ANDERSON: Yes, Mr. Bogany.

MR. BOGANY: Are you saying the reason you didn't put the microwaves and things in is because you were a USDA property?

MR. DRIGGERS: No. The -- no. The USDA issue

is simply for the dishwashers and the disposals. And that was provided to the staff in 2005. And we got clearance on that. At least --

MR. SALINAS: At least you thought you had?

MR. DRIGGERS: At least we thought we had.

(General laughter.)

MR. DRIGGERS: And from that point forward -- and then we went through the construction process. We went through our inspections. We got clearance on it eventually in January 2007. And then when we go to do our certification, we were talking to another group, and they said, No, you have to get an amendment. And that process started in April of this year.

And since April of this year, we've been trying to come to terms with what it is we need to install. And so a week ago or ten days ago, we received that from staff.

MR. BOGANY: Okay. Thank you.

MR. CONINE: Why weren't they put in originally?

MR. DRIGGERS: The --

MS. ANDERSON: Microwave ovens.

MR. CONINE: The microwaves and community gardens. Why weren't they put in originally?

MR. DRIGGERS: In the --

MR. CONINE: Just those two things.

MR. GUAJARDO: Because in the -- I'd like to -- in the process and the inspections, we were given certification groups of amenities, threshold groups and then scoring amenities. We were told that if you maintain your score, you have a choice of the check marks that you provided. So that's what we said in our answers to the inspector: Here's our list of amenities that we provided for the score, and we are well past our points. We had 16 points, and all we needed to do was provide 12.

The application, quite frankly -- and I've suggested some ways to improve the process. In a specification book, when a developer or a contractor thinks of specifications, there's choices. When you read a specification manual, there's different choices you can have; as long as you fulfill your obligations for the scoring, it was my understanding and several other developers' understanding that you were in compliance.

And that was the inspection process, too. They classified it: Here's a threshold item, here's a certification item, and here's a scoring item; and if you came up with the amount -- you had to do all the certifications, you had to do all the thresholds, and

here's the scoring; you need to get the amount of points that you signed up for. And that's where we were.

MR. CONINE: Could we get staff's response to that?

MS. ANDERSON: Yes. If --

MR. CONINE: I'd like to hear specifically their response to that.

MS. ANDERSON: If I can ask you -- well, you're fine where you are. Thank you.

MS. MEYER: I love my job.

MR. CONINE: I know.

(General laughter.)

MR. CONINE: I love mine, too.

MS. MEYER: First of all, this is another miscommunication. We will just state that up front, and staff concedes that.

In Mr. Driggers' application for 2005, he did receive a notification from our portfolio management and compliance division, after discussion with multifamily at the time, that the representations in his '04 application of the amenities would be not considered in the future. And we conceded with -- that.

However, in his '05 application, in the HTF application, which was the second funds that were awarded

to this development, he did check on there that he would have high-speed internet access at no cost to the tenant.

And not only that. On October 3 of --

MS. ANDERSON: What about the microwave ovens?

MS. MEYER: That was also checked in the 2005 application.

MS. RAY: It was.

MS. ANDERSON: And you agree with that?

MR. DRIGGERS: Yes, ma'am.

MS. ANDERSON: And the community garden?

MS. RAY: It was.

MR. DRIGGERS: Well, I'd have to check on that.

MS. RAY: It's right there. He just handed it to you.

MR. DRIGGERS: I'm sorry.

MS. MEYER: It's in there.

He also had a letter that he sent to the Department on October 3, 2005, and he affirmed the things that he was going to supply. And in that was also high-speed internet access to all the units. Obviously, there's a disagreement on what access and what service mean; however, if it's free to the tenants -- you know, if it's to the tenants at no additional charge, then you would assume that it is service and not just a plug in the

wall.

MS. ANDERSON: Thank you.

Mr. Conine?

MR. CONINE: I'd like to make a motion that we accept staff's recommendation except for the internet services. I think the internet access is adequate. And I would like to make a recommendation we assess a 10-point penalty to Mr. Driggers himself personally.

Is that what you asked for? Or --

(General laughter.)

MR. DRIGGERS: Well, no. I thought --

MR. CONINE: You said --

MR. DRIGGERS: I said --

MR. CONINE: -- not the general partner.

MR. DRIGGERS: I said if a penalty was necessary --

(General laughter.)

MR. DRIGGERS: -- to assess it to me, and not the general partner. I don't -- I didn't think the penalty was necessary.

MR. CONINE: Well, let me just bifurcate it into two pieces. Let's fix the staff recommendation thing first.

MS. ANDERSON: Yes.

MR. CONINE: That -- we ask him to put the microwaves in. And the -- and he has got internet access. It's already there. Right?

MR. DRIGGERS: Yes.

MR. CONINE: I mean that's no problem. Construct the community garden.

MR. DRIGGERS: That will be installed next week.

MR. CONINE: Okay.

That's my motion.

MR. BOGANY: Second.

MR. DRIGGERS: We're complying with --

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. CONINE: I don't care about the --

MR. SALINAS: What do we do about the penalty?

MR. CONINE: I'll pass on that.

MR. HAMBY: Madam Chair, who seconded the

motion?

MR. CONINE: I don't --

MS. ANDERSON: I'm sorry?

MR. HAMBY: Who seconded the motion?

MS. ANDERSON: Shad.

MR. HAMBY: Okay. Thank you. I'm sorry.

MS. ANDERSON: Mr. Flores?

MR. FLORES: Oh. I thought ten points were a little harsh. So --

MS. ANDERSON: Yes.

MR. FLORES: -- I was trying to get an amendment. And, obviously, you've changed your mind about the penalty.

MR. CONINE: Yes.

MR. FLORES: Okay.

MS. ANDERSON: Well, I move that we assess a penalty --

MR. CONINE: Five points?

MS. ANDERSON: -- of one point.

MR. CONINE: One point? Okay. Agreed.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. DRIGGERS: Is that for two years, or one year?

MS. ANDERSON: Two years.

Okay. We are going to take a lunch break at this point, and the Board has an executive session that's going to last approximately an hour. So we will reconvene on or about one o'clock.

And I ask Board members --

Nidia, if you will, direct us where we're supposed to go.

-- that we not take long detours, we take a short detour between here and our room for executive session, because we need to get that started.

MS. HIROMS: It's right next-door.

MS. ANDERSON: Good.

And I have to read the following statement: On this day, November 8, 2007, in a regular meeting of the Governing Board of the Texas Department of Housing and Community Affairs, held in Austin, Texas, the Board

adjourned into closed executive session, as evidenced by the following.

The Board will begin its executive session today, November 8, 2007, at 12 o'clock p.m. The Board may go into executive session, close its meeting to the public, on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

The Board may go into executive session pursuant to Texas Government Code, Section 551.074 for the purposes of discussing personnel matters, including to deliberate the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of a public officer or employee.

Consultation with attorney pursuant to Section 551.071(a), Texas Government Code: Number 1, with respect to pending litigation, styled Brandal versus TDHCA, filed in state court in Potter County; with respect to contract negotiations with selected vendor on Housing Assistance Program Disaster Recovery RFP; with respect to any other pending litigation filed since the last meeting.

(Whereupon, the Board met in closed executive session.)

MS. ANDERSON: And while -- we will come back

to order. And the Board had completed its executive session of the Texas Department of Housing and Community Affairs on November 8, 2007 at 1:15 p.m.

I hereby certify that this agenda of the executive session of the Governing Board of the Texas Department of Housing and Community Affairs was properly authorized pursuant to Section 551.103 of the Texas Government Code, the agenda was posted with 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 and that this is a true and correct record of the proceedings pursuant to the Texas Open Meetings Act, Chapter 551, Texas Government Code.

Agenda Item 2.g.

Mr. Gerber?

MR. GERBER: Madam Chair and Board members, in this action item, two applicants are requesting a waiver of the non-refundable commitment fee requirement of the 2007 QAP. Both 2007 applications were originally awarded a commitment and subsequently terminated by the Department for not meeting the conditions of the commitment notices.

The QAP allows for a 50-percent refund if requested prior to carryover, which applies in this case.

They are both requesting full refunds instead of the 50-percent refund. Staff's recommending that the requests be denied and that only the 50-percent refunds be provided, because of the staff resources that were used to review the commitments.

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

Mr. de los Santos?

And then the next witness will be Mr. Burchfield.

MR. de los SANTOS: Good afternoon. My name is Robert de los Santos, and I'm the project manager for Fortuna Enterprise; I'm here representing Fortuna Enterprises, Ltd. and the city of Alton.

Madam Chair, ladies and gentlemen of the Board and Mr. Gerber, I would like to thank the TDHC, the Board, the directors and the staff for all the great work they have done and for the hard work they have put in. I would also like to thank them for awarding the tax credits to Los Ebanos Apartments, TDHCA Number 07153.

Unfortunately, the USDA saw different and refused to see what the TDHC saw as a fit and feasible project and what we saw as a good project for the city of Alton. Thus, the TDHCA had no choice but to rescind our

tax credits.

And I myself, for the record, am not a big fan of having my tax credits rescinded, Mr. Conine.

MR. CONINE: I can imagine.

MR. de los SANTOS: After executive director review of the USDA's decision by the TDHCA, we passed on a Board appeal by the TDHCA and conceded to the rescission of our tax credits and to allow extra time for the next development in line, to have time to get their stuff together for the USDA. However, we respectfully are requesting a full refund of our commitment fees, based on two reasons.

Although it's not in the QAP, it is outlined in Item 3.d. from the July 30, 2007 Board book, stating, "In the event that all appeals are denied and tax credits remain rescinded, the commitment fee will be refunded." Based on that and the event that the tax credits must be rescinded. Also, we feel that the simple review of our commitment notice does not seem to justify half of our commitment fee.

Once again, I would like to thank you for your time. And we appreciate your consideration in this matter.

MS. ANDERSON: Yes, Mr. Conine?

MR. CONINE: Could you share with us a little insight as to why the USDA didn't approve the project?

MR. de los SANTOS: Two reasons. It was a flood zone issue and a pipeline, gas pipeline, issue, which -- we mitigated resolutions to this or ways to resolve it, several different options.

We were going to raise the land, have a retention pond to eliminate the property being or the development being out of [sic] the flood zone. And the other one came down to making adequate easements for the pipeline. And even the city of Alton said they would move the pipeline off the property. And they still refused.

MR. CONINE: Okay. Thank you.

MR. de los SANTOS: Thank you.

MS. ANDERSON: Thank you.

Any other questions for this witness?

(Pause.)

MS. ANDERSON: Thank you.

MR. de los SANTOS: Thank you, very much.

MS. ANDERSON: Mr. Burchfield?

MR. BURCHFIELD: Rob Burchfield, Houston, Texas. I'll make it short and sweet. I love my job, I love the Board, and I love Ms. Robbye as well.

(General laughter.)

MR. BURCHFIELD: Mansions at Briar are a very, very desperately needed, it seems, product in a very proud and very tradition-oriented community. We worked on it for three years. We're continuing to work on it. We will get there someday.

We thought we were at the promised land. I paid our commitment fee. It was -- became an issue. We take the full fault for it. But the result of that, without doing any history, is that we had tax credits for ten days. And my understanding is that the tax credits were completely used by the state and that there was no harm to anybody but us. And so my prayer would be for your mercy with respect to the fact that we only had tax credits for ten days.

And I hope that's short enough. Thank you very, very much for all that you do for the state.

MS. ANDERSON: Thank you.

MR. CONINE: How much -- let me ask staff a question.

Refresh my memory on what the commitment fee is.

MS. MEYER: It's 5 percent of the total.

MS. ANDERSON: How many?

MS. MEYER: 5 percent.

MR. CONINE: So if they got a million dollars worth of tax --

MS. MEYER: It's 5 percent of the annual.

MR. CONINE: So okay.

MR. SALINAS: What is it in dollar signs.

MS. MEYER: What now?

MR. SALINAS: What is it in dollar signs?

MS. ANDERSON: It depends on the amount of tax credits --

MS. MEYER: Yes. It depends on the amount of tax credits, but it's 5 percent of the annual amount.

MR. CONINE: Madam Chair, I move the staff recommendation.

MR. FLORES: Second.

MR. SALINAS: Which is what?

MR. CONINE: To not refund -- to only refund half of the fee, which is what our policy is.

MR. SALINAS: 2-1/2 percent?

MR. CONINE: Well, right.

MR. FLORES: Second.

MS. ANDERSON: Thank you.

All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: The motion carries.

Now we move on to final Departmental rules.

Item 3.a. is the asset resolution and contract enforcement rule.

Mr. Gerber?

MR. GERBER: Madam Chair and Board members, this rule, again, is the asset resolution and enforcement rule, which was proposed in August and was taken out for public comment. Only one comment was received on the rule, asking that any debarments that occur be well thought out and have no unintended consequences.

Staff believes the rule as drafted provides sufficient procedural safeguards to protect the rights of persons referred for debarment. No rule changes are recommended from the draft that you saw in August, and we're recommending the Board's approval of these rules in final form today.

MR. CONINE: Move approval.

MS. RAY: Second.

MR. FLORES: Do we have any comment?

MS. ANDERSON: No.

MR. CONINE: Not on this.

MS. ANDERSON: Not on this one.

MR. CONINE: You will on some more before it's over.

MS. ANDERSON: Not on this one.

Okay. We have a motion on the floor, and it has been seconded. I assume we're ready for a vote. All in favor of the motion please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

MR. GERBER: Item 3.b. is the rule regarding providing current contact information for the Department.

This new administrative rule addresses the problems that we've had with multiple places in the Department getting contact information and making it difficult for sending notices to outdated -- and causing the problem of sending those notices to outdated addresses.

The new rule provides a single point of contact by mail, e-mail and the internet for updating contact information with any program --

MR. CONINE: Move approval.

MS. ANDERSON: Second.

MR. CONINE: Geez.

(General laughter.)

MS. ANDERSON: Any discussion?

(Pause.)

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.

Item 3.c., the QAP.

MR. GOURIS: Go ahead.

MR. GERBER: The QAP?

MS. ANDERSON: Yes.

MR. GERBER: We -- I thought we were doing REA rules, next in order. Is that right?

MS. RAY: Real estate analysis.

MR. GERBER: I'm sorry.

MS. ANDERSON: Oh. I'm sorry. No. I'm sorry.
3.c. is --

MR. GERBER: 3.c.

MS. ANDERSON: -- the real estate analysis rules.

MR. GERBER: Tom, do you want to come forward?

MS. ANDERSON: My confusion. I'm sorry.

MR. GOURIS: Good afternoon. Tom Gouris,

director of real estate analysis. Item 3.c. is the underwriting -- well, it's a long title that we affectionately call the real estate analysis rule.

There were 12 sections that had comment on -- from the rule that was published earlier in the fall, the draft rule. And we adopted four amendments or four adjustments to them. They're laid out in your Board book.

There was a considerable amount of public comment. The one piece of public comment that came in late we went ahead and responded to in the Board package -- from Mr. Jack -- because we felt like that was a pretty significant comment. We did not make any recommended changes based on that comment, however.

MS. ANDERSON: I have a question. Mr. Jack was here last month, and we heard public comment this morning about the senior capture rate. And both his chart last month and -- the comment was verbally made this morning that only -- under the proposed 50-percent capture rate, only five of the eighteen deals, or however many there were, would have cleared underwriting. Do you have a response to that?

MR. GOURIS: Yes. I want to make sure that I have this correct.

In our response -- in the back of your

information writeup, there's a response to all of Mr. Jack's comments. And we indicated there that while it's true that our underwriting analysis would have potentially had that impact, the reality is that the market analysts' actual capture rates were all below or -- a number of them were below.

And so what that really amounted to, that 13 of the 16 elderly transactions had -- would have been okay based on what the market analysts had. That's eight more than what was originally indicated by the market analysts.

And that would have -- I'm sorry. Only 17 percent of them -- I'm sorry. I got mixed up. Only 17 percent would have been not recommended based on the market analysts' underwriting or -- market analysts' capture rate.

MS. ANDERSON: So if we had the 50 percent rule in place for this past cycle, only 17 percent of the units would not have been recommended?

MR. GOURIS: That's correct. And the others would have been discussed in dialogue with the market analysts. Our numbers may have been higher than the 50 percent. Whenever that happens, we would dialogue with the market analysts and try to find out why our capture rate is different than what their capture rate was and try to figure that out and reconcile it. We didn't do that in

these cases because there was no need to, because they were both below 75 percent, which was the capture rate at the time.

So if you look just at our analysis, you get to a perception that we might have not recommended more deals than actually probably would have gotten recommended, because we had been -- we would have negotiated or discussed or dialogued with the market analysts to determine. There are -- only 17 percent of the ones that were approved would have not been approved, based on the market analysts' own information. In other words, only 17 percent of them would have been over 50 percent.

MR. CONINE: Well, why are we making a change then?

MS. RAY: Thank you.

MR. CONINE: What's the reason?

MS. RAY: Yes.

MR. GOURIS: Well, the change was based on comment that we received from the Board and comment received from the community that we've been working with.

And also, just because we have done a considerable number of elderly transactions in this last year and -- there's some concern on staff's part -- and I think we heard from Board members that there was concern about maybe doing too

many elderly transactions in this last cycle.

And so we attempted to adjust the level so that there would be a level that wasn't as high as it is for rural, but not as low as it is for family in urban areas, sort of in between. So the capture rate for families in the urban areas is 25 percent. The capture rate for elderly would be 50 percent if this is approved. And the capture rate for any rural transaction, family or other, would still be 75 percent.

MS. ANDERSON: And we do have public comment.

MR. CONINE: Okay.

MS. ANDERSON: Mr. Granger MacDonald?

MR. MacDONALD: Very quickly, Madam Chairman, I'd like to offer a compromise in the 50/75 debacle: That per chance it be considered in communities under 950,000 people. I think the problems that we've seen that I think some of the Board members have discussed are in the larger communities in excess of a million people.

And I think that this make sense, because these communities still need a certain amount of seniors housing. And we need to make sure it gets developed and delivered.

MS. ANDERSON: Thank you, sir.

That concludes the public comment for this

item.

Mr. Gouris, I'd come back up if I were you.

(General laughter.)

MR. BOGANY: I have a question for Mr. Gouris.

MS. ANDERSON: Yes.

MR. BOGANY: Mr. Gouris, what's your thoughts on Mr. MacDonald's compromise there? You know, one of the concerns I have and has been alluded to on several things -- I'm not interested in creating ghettos. I'm going to tell you I'm just not interested in doing that. And I ask the developers that are coming up here and getting tax credits how many of them live next-door to them and how many concerns do they have of how many tax credits are in their particular locations.

I feel that in the Houston area, we are putting them all in one place; we put them in the less resistance.

And I was one of the Board members that asked staff to look at this situation. And I think what Mr. MacDonald recommended was a compromise, because it may not affect San Antonio, but it may affect an area in Houston where you have a bunch of tax credits.

And in the last round, we awarded tax credits in areas there were tax credits up and down the street, everywhere. The only thing there was tax credits. And so

I don't think that was our intent. Our intent is to provide affordable housing.

But, you know, the way I look at it, Board members, is that it's affordable housing all over the city, not just in one location, based on certain census tracts. And I think what Mr. MacDonald just said, being able to have a certain area based on the population, may be a look of looking at it. And I'm from the thought that we try it and see how it works, and if it creates issues, then we relook at it again next year, but we continue to tweak it until we get it right.

MR. HAMBY: And before Tom answers that, as to the merits of the issue, I'm a bit -- this is Kevin Hamby, General Counsel. I'm a bit uncomfortable with that concept, because a size of market was never put out as a rule.

I don't -- you can tweak the up and down percentage, because everybody knows that there's a percentage that's out there, but to add a further limitation that was not made public prior to the final adoption to me seems to be a fairly significant change, because there may be communities that are right on the 950,000 border that may say, "No, no; that needs to be at 800,000" --

MR. BOGANY: Okay.

MR. HAMBY: -- or, "That needs to be at a million-two." Or -- it's just a significant enough change to where I'm afraid if you spring that on people without ever having public comment on it, it might be too much.

MR. BOGANY: Okay.

MR. HAMBY: Again --

MR. BOGANY: I --

MR. HAMBY: Moving percentages up and down I have no trouble with, because everybody's on notice there's going to be a percentage. Putting a further parameter on it just is my concern.

MR. BOGANY: Okay. And the other thought was that in some areas where there's an over-concentration of single -- of family units and developers wanted to come in and put those units there, they came in with a seniors project because that skirted the rules of the family. So you still had it at overly-concentrated units. And I still believe that if a senior wants to live in a tax credit unit, he can go down the street and move in and get the same rent as that particular seniors project.

So my thought process was that it seems as though the way we had it set up before, we were using senior units to get into areas that were overly

concentrated. And that was where my concern was. And I'm not looking for the exact point. I'm looking for a compromise to a situation. And if it doesn't work this year, then we go back and we relook at it again in next year's QAP rules. But I do believe over-concentration in Houston is of concern, and it should be in every major city in this place -- in the state. Over-concentration of San Antonio should be there. It should be in Dallas, everywhere.

MR. CONINE: Well, I don't think we should confuse capture rates with concentration. To me, they're two totally different subjects. And what I see happening in my areas of the state is you walk in with a family deal and, you know, the city council doesn't want to -- they don't want to talk to you, but, if it's a senior deal -- Come right on in, because we need to help grandma and grandpa.

So, you know, that's one of the reasons you're getting a lot of seniors projects developed. It's not because it's driven by any sort of demand equation; it's just the perception of, Grandma and grandpa with no kids in a multifamily community is an acceptable thing.

Now, as Baby Boomers, as the generation, we're getting a lot older. We had testimony this morning that

Mike Clark is now of age to be a senior. His problem is he doesn't qualify on the income side.

(General laughter.)

MR. CONINE: But the -- we need to -- these sorts of things, especially when we've had as much negative comment out there from market research people -- Senator [sic] Menendez had it on his -- you know, we need to be careful when we make moves like this. And I for one don't think we have near enough information -- at least I don't -- to make a change. I'm happy kind of with the way it is. And if concentration is the issue, then let's talk about a concentration clause.

MS. ANDERSON: Other questions for Mr. Gouris?

(Pause.)

MS. ANDERSON: I have one on the census tract boundaries. Is that in the scoring, or in the -- it's in the real estate rules. Right?

MR. GOURIS: It's in real estate.

MS. ANDERSON: I'm in the right place to ask a question?

MR. GOURIS: Yes, ma'am.

MS. ANDERSON: And Representative Menendez's comment this morning about the risk of increasing NIMBYism with the census tract boundaries approach and his question

about what the reason was for the change -- could you address those issues?

MR. GOURIS: Yes. I -- the thought is that this provides the Department with an across-the-board standard to work to and to look to, with regard to what concentration is of all multifamily units. It's -- it really gives the Board then an ability to say to NIMBY groups, "Hey, we applied our concentration standard, and it met the concentration standard," or, "It didn't."

It is tied to or it is related to standards that are out there already. And so we thought that that was a reasonable way to go to give staff and the Board an ability to say, "Yes, we are reviewing that on a blind basis," you know, looking at all of them and saying we looked -- because we already look at it, obviously, with the market study.

We already do, you know, a lot of that other investigation that is necessary, and we come up with sometimes some very difficult transactions for you all that, you know, some -- the folks that are opposing it say it's over-concentrated, and the other folks don't. This would give us a solid line to look at and say this is a reasonable approach at looking at it across the board. And it's a pure concentration policy, and it's a very

simplified way of doing it so that it doesn't get complicated so that it can't be gamed in any way and it is what it is.

MR. CONINE: Well, again, I think that -- you're looking for a standard. And I understand your need to kind of grab something that's out there, but a primary market area and a census tract have no inter-relation whatsoever.

MR. GOURIS: And we recognize that. And we're not requiring that the primary market area be defined by census tracts. We are requiring that the primary -- that the market analysts identify all the census tracts that are in the primary market area so that we can do some calculations based on that, because, regardless of how you define your primary market area, you're going to be using census data based on census tracts.

Regardless of if you split the census tract or not, you're going to be using census data. And the best census data with regard to income and appropriate household size is going to be based on a census tract level. So whenever a market analyst gives us information about a market area that splits a census tract or what have you, they're doing it based on a set of assumptions about that census tract and splitting it and prorating it.

We just want to be able to have a better idea of what census tracts that are being -- that are included in there. And that was the -- that's an addition to our rules this year, to clearly require that they identify what census tracts they're in.

And, you know, there is some likelihood that more market analysts will utilize those census tracts or contemplate those census tracts as they determine what the appropriate market area is. I would -- you know, I would concur with that thought process. But it's not a requirement that they must use census tracts. They're still required to look at the natural geographic boundaries of an area.

MR. CONINE: Do we have the 80 on -- the rural 80-unit limit is not in the rules?

MR. GOURIS: That's not in our rule. That's --

MR. CONINE: That's later?

MR. GOURIS: -- in the QAP rule.

MR. CONINE: Okay.

And the notary thing that Representative --

MS. ANDERSON: That's in the QAP.

MR. CONINE: That's in the QAP?

MS. ANDERSON: That's a scoring item, yes.

MR. CONINE: Okay. Madam Chair, I move we

approve the real estate rules with the change of the seniors capture rate going back from 50 to 75.

MS. RAY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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

MR. BOGANY: I still disagree with it being -- going back to 75. I just think, if anything, we raise the percentage. But, you guys, everywhere you read says if you put too many units in one place. And it just seems that in Houston, it's all in one place. And you've got a county next to me, Fort Bend, that has three or four tax credits all to Fort Bend. And so we're constantly putting these units all in one place.

And I'm just -- as a Board member, I think we need to make some adjustment, because I've seen areas like northwest Houston where you've got tax credits everywhere.

It's no new thing there at all but tax credits, and they're all in the same spot. And then we have people come up here and tell us that we're going to have development. Well, if you don't have people with income, how do you figure business is going to come and put up businesses and strip centers? What are these people going

to be able to purchase?

And I just personally believe that you've got to have a little bit more balance. Everybody here knows I'm not for NIMBYism, but I am for -- I just cannot believe in over-concentrating units and creating ghettos. I'm just not interested in doing that.

MR. SALINAS: Shad --

MS. ANDERSON: Does the census tract --

MR. SALINAS: Let me say something.

And I can understand, Mr. Conine, where he's coming from, because I understand him. You cannot understand that, because you have no zoning in Houston. See?

(General laughter.)

MR. SALINAS: You know, everybody in Houston can build where ever they want to, because the city council does not have zoning. And you want us to pay for that -- our price for your price over there. We can probably do this with -- except for Houston.

But everybody in the state of Texas has a planning and zoning commission which would allow you to have housing or not allow you to have housing, strips, or whatever. You have a zoning commission in every community in Texas except Houston. Now you want us to pay the

price.

MR. BOGANY: I'm not asking you to pay any price, Mayor.

MR. SALINAS: Well, the thing is that you have concentration simply because your elected officials in Houston --

MR. BOGANY: Mayor, I'm --

MR. SALINAS: -- do not care.

MR. BOGANY: Mayor, I'm okay with not having zoning. Okay?

MR. SALINAS: Okay. Well, then don't cry about it.

MR. BOGANY: I'm not crying about -- it has -- it's not a zoning issue. It's --

MR. SALINAS: It is a zoning issue.

MR. BOGANY: -- a concentration issue.

MR. SALINAS: It is a zoning issue.

MR. BOGANY: No. I don't believe so.

MS. ANDERSON: Mr. Gouris, does the census tract thing mitigate Mr. Bogany's concerns? I mean I know that capture rate and concentration aren't the same thing, but --

MR. SALINAS: Don't you think?

MR. BOGANY: It's not the same thing.

MS. ANDERSON: -- would it have the effect --

MR. CONINE: They're not the same.

MR. SALINAS: Of zoning?

MS. ANDERSON: -- of deconcentrating?

MR. GOURIS: It could. If there's already a number of apartment properties there and they're trying to fit one more in and trying to fit it in as elderly but it already exceeds that concentration policy, then it would. It would take care of it.

MR. BOGANY: And we've seen that in the past, though, Ms. Chairman. We've seen in the past where you go into an area, you couldn't get a family deal there, so they flip it around and do a seniors deal. Well, the same people would be renting those units that are there now; it's just that you're in a seniors deal.

I'm not against seniors deals. I'm just -- what I'm trying to do is not over-concentrate any particular area. And we've got areas where we don't have any tax credits at all -- you know, none at all. It's not a lot in Montgomery County. It's not a lot in Fort Bend County.

I live in Fort Bend County. Come do tax credits in Fort Bend County. I don't care. But when you start putting them all in one location in an area, I have

a real concern with that. And if you drive that area, none of you would buy a house in those locations -- not one person in this room. And so that's what concerns me.

I don't have a problem -- I've lived in a government-funded unit in my own lifetime. So I'm not against that at all. But what I am against is that everybody in the neighborhood is a tax credit deal, no new development, no commercial development, nothing. All we got is everybody and their tax credits, and that's what concerns me. And I'm just really --

MS. ANDERSON: Would you like to attempt to amend the motion?

MR. BOGANY: Yes -- well, I don't know what I want.

(General laughter.)

MR. BOGANY: Mr. Conine has -- and the mayor have totally confused me. But --

MR. CONINE: Well, you want -- here's what you want. You want to change the concentration policy.

MS. RAY: That's what we need to change.

MR. CONINE: What we're measuring with capture rate is demand of seniors in a particular area. That's what we're doing.

MR. BOGANY: Well --

MR. CONINE: And what you need to be focused on is the concentration policy.

MR. BOGANY: Well, I would not like to see where we use a seniors project to get a deal that's already over-concentrated with family units.

MR. CONINE: All right. Then we need to make the concentration policy applicable to both.

MR. BOGANY: And I'm okay with that.

MS. RAY: When we get to that point.

MR. CONINE: When we get to that point. But we're not to that point yet.

MS. ANDERSON: Okay. Amendment? No amendment?

(Pause.)

MS. ANDERSON: There is an amendment on the floor --

MS. RAY: Second.

MS. ANDERSON: -- and it has been seconded. Is there further -- there is a motion on the floor. Any other discussion?

(Pause.)

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 --

MR. BOGANY: No.

MS. ANDERSON: All right. Thank you, Mr. Bogany.

MR. GERBER: Item 3.d. is our First Time Homebuyer rules. They're -- we received no public comment, and we're recommending approval of the rules in final form.

MR. CONINE: Motion to approve staff recommendation.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: Ms. Meyer will walk us through the QAP, which is Item 3.e.

MS. MEYER: As you all know, the QAP governs the Housing Tax Credit program. And this year, we had 49

sources of public comment. Overall, the comment was less than there has been in previous years. So we're really pleased with that.

In addition to making some of the changes that address the public comment, as noted in your Board materials, staff has also made minor administrative changes and typographical revisions. Some of the more significant changes are what I'm about to go through.

From the draft that was approved by the Board in August, staff added a definition for adaptive reuse and clarification for that, a clarification for the definition of a disaster area, a change in one of the components to the ineligible building-type definition and also clarification on the non-profit development definition.

There was also a clarification added at different points throughout the QAP to provide guidance on how adaptive reuse developments are considered and how it relates to varying eligibility and design requirements.

The QAP also clarifies the 80-unit maximum that was a statutory change in the legislative session this past time. The change -- from August until now, we've actually clarified that if they're doing a multi-unit site, for bond transactions, they can exceed the 80-unit minimum, but for Housing Tax Credit developments, then it

would be the 80-unit restriction.

MR. CONINE: So repeat that now. You --

MS. MEYER: Okay. The 80 --

MR. CONINE: I heard you say for the bond deals, they can bundle them together now --

MS. MEYER: If they have --

MR. CONINE: -- in more than 80 units?

MS. MEYER: If they are working under the statutory Rule 1372 under the bond review board, under a multi-site --

MR. CONINE: Right.

MS. MEYER: So if they're doing several rural developments, they can exceed the 80-unit limit.

MR. CONINE: Okay.

MS. MEYER: Significant comment was received on the adherence to obligation, which is -- I'm sure you're going to hear more here in just a little bit. Staff believes that the way that the staff addressed the adherence to obligation penalties assessments, with the one exception that I'll go through here in just a minute -- as we drafted it in August, it gives the Board the flexibility to award up to ten points, and it also gives you -- well, it just gives you more flexibility.

And I think we've covered all the issues,

because everybody seems to have a different opinion of how and what penalties should apply. I think the way we've done it, the Board has more flexibility in administrating those penalties.

One clarification that we would like to make that I think will address a comment that was addressed earlier on the adherence to obligation. If they have substituting -- equivalent substitutes, in the QAP as it's written right now, they can have administrative penalties -- I mean administrative amendments that are approved by the executive director.

The penalties in Paragraph Two of this subsection will not be imposed -- and the QAP right now states, With the exception of if they ask for it after the fact. If we delete that last except, "For after the fact," that -- if they do still come in after the fact, the Board -- I mean we could do it administratively, and there would be no penalties imposed. So --

MR. BOGANY: Explain that to me, Robbye.

MS. MEYER: Okay. If --

MR. BOGANY: I don't understand that.

MS. MEYER: If they came in and requested an amendment after the fact but they had equivalent substitutes for that amendment, then if we handle it

administratively, then we wouldn't penalize them even though it was after the fact. But that's only for administrative penalties. If it has to come to the Board and it's a material change, obviously, then the penalties would still be in effect.

MR. CONINE: So to make sure I understand that, you are proposing the QAP that we're looking at today come already with that language stricken off of there. Is that right?

MS. MEYER: Well, we -- you would have to strike it in your motion --

MR. CONINE: Oh.

MS. MEYER: -- if you would agree that would be the agreement.

MR. CONINE: Okay. All right. Well --

MS. MEYER: And that would --

MR. CONINE: -- we'll make sure and pick it up then.

MS. MEYER: And that would be the equivalent to what you did with the amendments earlier today.

MR. BOGANY: What's an administrative deficiency?

MS. MEYER: All of that was outlined in the policy that you approved earlier. If you have a material

change -- if they're changing the unit mix of over or -- they're decreasing the common areas or the unit net rentable less than --

MR. BOGANY: Okay.

MS. MEYER: The statutory changes, for the most part, and material changes would come to the Board.

MR. BOGANY: Okay. So if I missed a bathroom or -- how does that work?

MS. MEYER: That's a material change.

MR. BOGANY: That's a material change?

MR. HAMBY: Well, it's also things, Mr. Bogany, that are identified by the Board as they want to see -- it's statutorily covered as to what is mandatorily -- a material change. But it is not -- the Board also has the discretion to say, We'd also like to see everything that impacts X.

So while there's a policy that was just put in place, at any point if there's -- if there was a pattern that you didn't like in your quarterly reports, you could say, We want to see these. And that would then make it material, because the Board has requested it. So it's an open-ended question as to what's material.

MR. BOGANY: Okay.

MS. MEYER: With that, the -- we had some

changes to the threshold criteria that were actually minimal. We had minor changes that were based on public comment, which clarified the issue of green building and the signage notifications, and relating to scoring, comments addressing relating to the quantifiable community participation, quality of units, local political subdivision funding and economic development initiatives, location and negative site features. And those were all as drafted and in your reasoned response.

MR. CONINE: Any questions?

MR. FLORES: Yes.

MR. CONINE: Yes? We do have some public comment. So --

MR. FLORES: Well, could I ask the staff a question?

MR. CONINE: Sure.

MR. FLORES: Robbye, super-neighborhood councils in Houston -- we talked about there sometime earlier this year. And they were supposed to be covered somewhere in here. Are they in here somewhere that I can't find them?

MS. MEYER: They -- we did clarify that -- the super-neighborhood groups, if they meet the definition of neighborhood organizations. And we have clarified that

they would be eligible.

MR. FLORES: Is it in this section in here? I didn't see it.

MR. HAMBY: It is not.

MS. MEYER: It isn't actually stated --

MR. FLORES: It is not? Okay. Where is it?

MR. HAMBY: It's not specifically stated, because the definition of a neighborhood organizations has statutorily changed so it has been made more broad. So as long as the property development exists inside their boundaries, they could qualify. They've reduced -- some of the issues have been reduced.

In addition to that, whenever they become on record with the city or with the county or the state, under the new rules, as soon as they send us a letter opposing or agreeing with the property to be built in their area, supporting the property, they would be on record with the state. And therefore they would meet the three prongs of the test.

MR. FLORES: And is it in this section here? Okay. All that language?

MR. HAMBY: Yes.

MR. FLORES: The appropriate language. And so it's kind of coded --

MR. HAMBY: We did not --

MR. FLORES: -- so only lawyers can understand it -- and developers, I suppose? Okay.

MR. HAMBY: Yes.

MR. FLORES: Okay.

MR. HAMBY: Cynthia and I get together and come up with those things. So --

MR. FLORES: Okay. Kevin, as long as I'm here, is it possible to pass a resolution where a Board member doesn't bad-mouth municipalities that don't have zoning?

(General laughter.)

MR. HAMBY: Not in the QAP.

MR. FLORES: Not in the QAP? Okay.

MR. HAMBY: It would be too major of a change at this point.

MR. FLORES: I just thought I'd --

MR. SALINAS: You all need to run for mayor over there in Houston so you all can change that zoning.

MR. BOGANY: I have a question for you, Robbye, in regards to green building. You know, I had talked about possibly -- you know, we're hearing everybody talk about the energy costs going up. In the QAP, I know we've highlighted green building, but how much more are we requiring them to do that which would kind of offset the

energy costs, too?

MS. MEYER: There -- we have required Energy Star appliances. And that's not only just appliances, but it's lighting and ceiling fans. That's one area where we've required them to do. We've listed it as just a threshold so they can do points for threshold this year, because staff believes that we really need to have a little bit more research in finding out what, you know, points should be associated with certain items.

And I mean we would probably draft a QAP next year that would include that in the selection. So you would actually see a little bit more of that. There would be -- it would be incentivized on the points section next year.

MR. BOGANY: Okay.

MS. MEYER: But we just need a little bit more time to research all of those avenues.

MR. BOGANY: Okay. And my last question: Accountability with HUBs. We had talked a little bit about that. We've gone through a metamorphosis where we keep changing, trying to get that right. Where are we on the HUB -- in regard to HUBs? And I know we talked about accountability, if you say you're going to participate and how -- where are you going to be able to show that. Where

in there is that?

MS. MEYER: Well, what we've done in the QAP is that not only do they have to supply a plan at the time of application, but at cost certification, they'll actually have to produce a report that shows the success of that plan.

MR. BOGANY: All right. So accountability?

MS. MEYER: Uh-huh.

MR. BOGANY: Okay. Thank you.

MS. MEYER: Sure.

MR. CONINE: Any other questions of Ms. Meyer before we go to public comment?

(Pause.)

MR. CONINE: Okay. Matt Hull, number one on the list?

Granger's number two. Barry Kahn's number three.

MR. HULL: Thank you, Mr. Conine.

My name is Matt Hull; I'm with the Texas Association of CDCs. I wanted to follow up on something that Robbye Meyer said earlier about 49 groups making public comment. Actually, there were 50. We made public comment on -- before the actual open cycle, but it was not included in the actual comments. So there was, therefore,

no reasoned response. I checked to make sure that other organizations that made comment before the actual public comment period were also included in the reasoned response, and they were.

So I would just ask that the Board, well, optimally, just adopt my suggest sight unseen, and we'll just go from there, and I'll just go sit down. That would be terrific.

MR. CONINE: Nice try.

(General laughter.)

MR. HULL: At the very least, instruct staff to issue a reasoned response to our input into the QAP for 2008. I'm sure it was just a staff oversight, but, you know, for the benefit of myself personally, I'd like to be able to show my members that I actually have provided some public comment to the process.

That's Number One. Number Two is: I actually do have comments on the 2008 QAP. And it relates to Section 50.6(d)(4), which is related to credit amounts and the development consulting fees, or the consultants' fees on developments.

We were disappointed in the 2007 QAP in that it had a separation between what consultants could charge for-profits and non-profits: 10 percent of the

developer's fee for for-profits, or up to 20 percent for non-profits. This is a Board that has consistently tried to level the playing field between for-profits and non-profits and get rid of any perceived advantages one way or the other.

I think what you're actually trying to do is to address an issue that the consultants have that is actually very legitimate, and that is: If you're going to cap them at a certain amount. They have to provide a lot more work for inexperienced developers when they work with them. And that's fair, you know. For a more experienced developer, they do less work. I understand.

But what you're inherently saying -- and reverting back to the 2007 language -- is that all non-profit developers are inexperienced. And that's just certainly not the case.

So what I would propose is that you strike the change that has been made to the draft -- you know, in the original draft, it had reverted back to where it was just a level playing field; in the new draft coming up today for approval, it goes back to a ten and twenty -- that you either revert that back to the level playing field or you address it through some other mechanism, and that being like if a developer only has done -- if this is their

first or second deal, then you can go up to 20 percent regardless of whether it's a for-profit or a non-profit. And I think that would address the experience level that the consultants have.

I thank you for your time. I'll take any questions.

(Pause.)

MR. HULL: All right.

MS. ANDERSON: Thank you.

Mr. MacDonald?

MR. MacDONALD: At the severe risk of irritating the Board, I'm going to yield my time to Barry Kahn.

(General laughter.)

MS. ANDERSON: You can't do that. That's not the way this form was filled out.

MR. KAHN: I think this was -- I think that was a loaded comment.

MS. RAY: He'll let you take the heat.

MR. KAHN: Just real quickly, I think there's a typo on page 25. And it's in order to protect Mr. MacDonald. So I think he was trying to, you know, cover his territory.

But in (b) (2), staff is not allowed to

communicate about an application with somebody who has got an application in front of the Department. In (b)(1), it says a Board member can't communicate at all. And I think the intended language was about any application. And I think that Line 3 of (b)(2) needs to be consistent -- this is on page 25 -- with the third line of (b)(1), as well.

In other words, a Board member can communicate as long as it's not about an application during the application round -- unless maybe it was intended that the Board members don't want to talk to anybody between January and --

MR. CONINE: No. I'd rather talk to people at least about football or basketball or something.

MR. KAHN: Absolutely.

MS. ANDERSON: Thank you.

That concludes the public comment for the QAP.

MR. BOGANY: I have a question.

MS. ANDERSON: Yes, Mr. Bogany?

MR. CONINE: Amazing.

(General laughter.)

MR. BOGANY: The one comment I agreed with from Senator [sic] Menendez was about the notary and child-support deal. And can we correct that? Is that possible?

MS. ANDERSON: Mr. Hamby, would you like to

address what the statute requires us to do? In your -- would you opine about that?

MR. HAMBY: It's my understanding from the staff that they have assigned it two points and it could be moved to one point because -- the public was put on notice that there is a point structure. However, the statute does say that we have to incentivize having a notary public. I'm not -- it's my -- I'd rather have Robbye answer the question about whether or not it's higher or lower than the child care. I don't believe that child care gets points, but --

MS. ANDERSON: Right.

MR. HAMBY: -- I'm not positive on that.

MS. ANDERSON: That's my --

MR. HAMBY: But we do have to have an incentive statutorily for the notary public, because it was required in the language that was passed. And so that typically has been translated by the Department into a point incentive. And so I think it currently has two points, and it could be dropped to one point without any difficulty as long as it stays below the line.

MS. MEYER: Staff only put that there because it was statutorily required. And we put it in with the other services provided to tenants. We had no intention

of putting it above child care. Just -- child care is one of the services listed within the group of services that they could choose from.

MR. BOGANY: Okay.

MS. MEYER: I agree with Mr. Hamby that --

MR. BOGANY: So the way it is --

MS. MEYER: -- we could reduce it to one point if that would make everybody happy.

MR. BOGANY: Okay. Well, so the -- what he said, that the notary was getting more points, that's just one of the services that you can choose. So it's not -- the way we have it currently stated, it's okay?

MS. MEYER: We just have it set aside. I mean it's out all by itself --

MR. BOGANY: Okay.

MS. MEYER: -- as a service --

MR. BOGANY: Okay.

MS. MEYER: -- because the statute required that we put it in there. And we --

MR. BOGANY: So could you have the notary public and the child service, or is it one or the other?

MS. MEYER: Uh-huh.

MS. ANDERSON: Oh, yes.

MS. MEYER: You could have both of them.

MR. BOGANY: Okay.

MS. MEYER: The total item is worth eight points. It's the ninth-highest scoring item.

MR. BOGANY: Okay.

MS. MEYER: And that's just in one of the sections of that --

MR. CONINE: Everybody's going to get the two points or one point, anyway.

MR. BOGANY: Okay.

MR. CONINE: So it's not going to be an issue.

MR. BOGANY: All right.

MR. CONINE: I mean just from the -- what -- is child care one?

MS. MEYER: Child care is one. There's child care, transportation, basic adult education, legal assistance and counseling services, and it goes on.

MS. ANDERSON: And the staff thinking behind assigning more points to this service than to any of the other services was?

MS. MEYER: It wasn't a matter of whether we assigned more points to it; we just set it aside. And what they can do is -- they get two points for having two services, four points for having four services and six points for having six services. So we can just move it

down to one point, and then they'll all be equal.

MS. ANDERSON: Okay.

MR. CONINE: That's a good idea.

MS. ANDERSON: Yes.

MR. BOGANY: Okay.

MS. ANDERSON: Other questions?

MR. BOGANY: I had a question of Mr. Gouris.

Mr. Gouris, what's the difference in the QAP concentration issue of '07 and the new one? Did we -- how did we handle it in '08 in regards to concentration?

MS. ANDERSON: That's a QAP issue.

MR. GOURIS: We'd be talking about the one mile rule?

MR. BOGANY: Uh-huh.

MS. MEYER: The one mile rule is statutory.
That has --

MR. BOGANY: Okay.

MS. MEYER: That's in the four largest counties: Dallas, Tarrant, Bexar and Harris. And that should remain the same. It's a statutory requirement. So the --

MR. BOGANY: So there's no change in that at all?

MS. MEYER: No, sir.

MR. BOGANY: Then where Mr. Conine was talking about we needed -- we could fix something in the concentration issue --

MS. ANDERSON: Make it apply to both --

MS. MEYER: That's his --

MS. ANDERSON: Not --

MS. MEYER: Yes. That's in the real estate analysis rules.

MR. GOURIS: And you did a few moments ago approve a rule that included a concentration policy that required not more than 1,432 multifamily units within the census tract that the property's located in, and not more than 1,000 on average within the primary market area --

MR. BOGANY: Okay.

MR. GOURIS: -- that's defined by the market analyst.

MR. BOGANY: All right. Thank you.

MR. GOURIS: 1,000 per square mile. I'm sorry. And 1,432 per square mile.

MR. BOGANY: All right.

MS. ANDERSON: Have you already -- while I was out, did you talk about the 80 units new construction, rural?

MR. CONINE: Yes. When she was making her

presentation, she said they fixed that already -- on the rural side.

MS. ANDERSON: Great.

MS. MEYER: For --

MR. CONINE: Where you can bundle.

MS. MEYER: For multiple bond transactions --

MS. ANDERSON: Right.

MS. MEYER: Multiple site transactions.

MR. CONINE: On the bond side.

MS. ANDERSON: Yes.

MR. CONINE: That got fixed.

MS. ANDERSON: Okay.

MR. CONINE: Do we need to change the capture rate in the QAP to blend in to the same as the rules?

MS. MEYER: It refers to it --

MR. GOURIS: It's only identified in the underwriting rules.

MR. CONINE: Okay.

MS. ANDERSON: We had discussion this morning about cost per square foot for SROs. Did you discuss that already?

MR. CONINE: No. We haven't.

MS. ANDERSON: Cost per square foot for SROs, because of elevators, and the request to add SROs to the

category that gets the \$85 a foot, which already included elderly developments. Would you comment on that?

MS. MEYER: And after more discussion on that, we've agreed that the SROs could be added to that part of the QAP, included with the elderly and high-rise buildings.

MS. ANDERSON: Okay.

MS. MEYER: We just included that, the SRO, there. And I think that would take care of Mr. Sisk's question.

MR. CONINE: I've got a little bit of gas there --

(General laughter.)

MR. CONINE: -- in that the tax credit program was designed essentially for 60 and 50 percent of median income people. And when you start carving up and forcing tax credits to go subsidize, let's call it, homeless people or very, very, very low-income people through an increase of construction costs to be able to get them constructed, then I still have a concern about feasibility issues related to that.

And I'm not -- you know, I guess I'm not so sure that -- we already oversubscribe three-one, and we can't put enough of these things on the ground, as it is.

I'm just not -- I'm personally uncomfortable with that concept. I'm okay for the high-rise, and I'm okay with the elderly, because, again, that's not -- it's just the single-room occupancy I'm having difficulty with.

MR. BOGANY: Well, I think you're going to see more SROs coming especially in the major cities. And if it's going to be -- if the current structure's going to make it difficult to put those on the ground, I'm thinking maybe we should be a little more relaxed with it, because you're going to see more SROs, I assure you. With the homelessness problem and very, very low-income, I think you're going to see more.

MR. CONINE: Well, I guess, where are they getting their income to pay the rent that's required to pay the debt on these properties?

MS. ANDERSON: Yes. Well, the one at Canal Place didn't -- doesn't have much income. And they raised all this private money and put tax credits on top of it.

MR. BOGANY: Yes. It was a combination of private and non-profit in that.

MS. ANDERSON: And Foundation money.

MS. RAY: I think what we're going to begin to see in the major metropolitan areas in SROs is not necessarily just for the very, very low-income or the

homeless. You're going to start seeing many of the single working poor desiring SROs in some of the downtown areas.

So I don't think the population should be considered just for the homeless or the very, very low-income. You're going see more Baby Boomers -- not Baby Boomers, but Gen X and Y people living and wanting and desiring to live in the downtown areas to be close to their places of employment. And I think that that is going to become the norm.

MS. ANDERSON: They're going to want to live in those little SROs with --

MS. RAY: Some of them will --

MR. FLORES: And --

MS. RAY: -- because they'll be near downtown.

MR. FLORES: -- Canal Place does have some of those, by the way. Canal Place does have those.

MS. RAY: And it's already beginning to happen.

In a lot of the metropolitan areas, maybe not so much in Texas, because we haven't -- our real estate issue hasn't gotten as bad as it is in, say, the east coast or over on the west coast. But on the east coast and the west coast, you're seeing a lot of that, that the Gen Ys and Xs are wanting to live downtown. And they're desiring those SROs. And they'll be coming to have --

MS. ANDERSON: But there's certainly --

MR. CONINE: Okay.

MS. ANDERSON: The limiting factor is, Can they raise all the private -- because if the incomes are really that low, they're going to have to have an awful lot of private subsidy.

MR. CONINE: All right. Throw them in, as you suggested, with the elderly in that paragraph. And I'll be all right with that.

MR. GOURIS: And just so you -- I mean most of the SROs are going to be having close quarters and a lot of extra common areas. And that's really where they're going with that, that they wanted just that extra common area to be added to the net rentable square footage, so that they could -- so their cost wouldn't look so abnormally large. That's what that really amounts to. So if you include that as part of their net rentable square footage, then their cost per square foot will look more similar to other transactions.

MR. CONINE: Okay.

MR. FLORES: Mr. Gouris, the demand for SROs in relation to, you know, demand and supply -- is it three to one like Mr. Conine just said?

(Pause.)

MR. FLORES: There are three times as many applicants as there is money available?

MR. GOURIS: I don't know that that's --

MR. FLORES: Who can verify what the demand is for SROs?

MR. GOURIS: As far as demand for --

MR. CONINE: No. I was saying for tax credits in general, on our applications, winners and losers.

MR. GOURIS: We've only had --

MR. FLORES: What about SROs? What's the demand for SROs in this past round?

MR. GOURIS: I think we had two or maybe three applicants this last time.

MR. FLORES: There weren't very many, were there?

MR. GOURIS: There weren't very many. It's not an easy thing to do. And because --

MR. FLORES: And the reason for that?

MR. GOURIS: Because of the financial viability of it and the need to have an extraordinarily strong entity that's backing it up, because they're going to do a lot of fundraising and a lot of other --

MR. FLORES: Supplemental --

MR. GOURIS: Supplemental.

MR. FLORES: -- funding?

MR. GOURIS: Because they have to be operated or most have to be operated with no debt. And it's extremely difficult to make those transactions work with tax credits.

MR. FLORES: Okay. It's the elderly that we have the great demand for.

MR. GOURIS: There -- this last cycle, there was a lot of demand for elderly transactions, yes.

MR. FLORES: Okay.

MR. CONINE: Robbye, would you speak to Matt Hull's issue on the developer fees and non-profit or -- I mean -- excuse me -- the consultant fees?

MS. ANDERSON: The ten/twenty.

MS. MEYER: The staff originally put that in there because we thought there was some abuse of that piece of it. And so we had actually taken that out of the draft -- the percent going to non-profits. And it doesn't appear that there is that many of them. And so I don't really think it's a major issue.

I think one of the things -- the reason why staff is requesting that it be put back in at 20 percent is -- we came very close to our 10 percent non-profit set-aside this year as far as having eligible developments.

And I think if you limit that piece, we may not get as many non-profits involved, and, therefore, may not be able to meet our 10-percent set-aside overall. So it is --

MS. ANDERSON: Are you --

MS. MEYER: It is a little bit of an incentive to the non-profits, but it's not something that is a total disadvantage.

MS. ANDERSON: Is it that we wouldn't meet it, or we would just have to go down further on the list to meet it?

MS. MEYER: This year, we would have had to go down further to a non-qualified application or a non-scoring, a competitive application. If -- and that may be a possibility if we have one returning credits.

But we're getting very close. We don't have that many non-profits that are actually applying these days. So we're getting close to not being able to meet that 10-percent set-aside, and we're just squeaking by right now.

MR. CONINE: So what we're doing is increasing the consultant fee so they can be motivated to go out and get consultants? Is that what we're doing?

MS. ANDERSON: Go --

MS. MEYER: We're not increasing it. Actually,

we're putting it back to where it was in the 2007 QAP.

We're not --

MR. CONINE: Okay.

MS. MEYER: We're requesting that it stay the same.

MR. CONINE: It's staying the same?

MS. MEYER: Because we think we're going to have a negative effect on non-profit participation.

MR. CONINE: Would you mind doing a reasoned response for his comments?

MS. MEYER: I was --

MR. CONINE: Later on, after all this --

MS. MEYER: -- about to ask you if I could. It was not intentional to disregard or not give a reasoned response. Staff did evaluate that in the draft for the 2008 QAP. We actually received his request on August 3, and we had evaluated it at that time in the QAP for the draft. We apologize that we didn't add it in, you know, as a reasoned response.

The other ones that are included -- they weren't received during public comment, but they did request that we include them for that. And that's something that we did not get from Mr. Hull, to include that in the normal public response outside the public

comment period.

MR. CONINE: Well, write him out a little paragraph, and he'll be happy, I think.

MS. MEYER: I'll do that.

MS. ANDERSON: Have we talked about Mueller Airport?

MR. CONINE: No.

MS. ANDERSON: Would you talk about the comments made this morning about the Mueller Airport, about cost per square or something about like the underground parking that's not in eligible basis?

MS. MEYER: I'll let Mr. Gouris talk about the underground parking. We certainly are sympathetic to that development and the things that they are trying to accomplish. One thing that we don't want to do is set it aside for a particular development and, you know, organize the rules around that.

MS. ANDERSON: Yes.

MS. MEYER: I think staff has handled the responses to their requests. And again, we don't want to set the rules aside for just one particular development. As far as the underground parking and it not being in eligible basis, I'll let Mr. Gouris --

MR. GOURIS: The cost of the underground --

cost of the parking is a cost to the development as long as the parking is required by the development. And so we would have to look at it as part of the total cost.

It would seem a little misleading to suggest that because it's not eligible basis, it's not something we'd consider or we're concerned about, because, clearly, we do look at the gap basis and -- for credit allocation.

And this would increase their costs considerably and make that gap be larger. So that might make them eligible for more credits than they otherwise would be for a different transaction. So I think it does impact the total development costs, and it should be considered.

MR. CONINE: Do we need to add a 30-day cure period into these regs and the QAP?

MS. MEYER: That's in the policy.

MR. CONINE: It's in the policy. So we don't need to duplicate it here?

MS. MEYER: The only thing you do have here is the adherence to obligations, that strikethrough.

MR. CONINE: Right. Well, that'll be in the motion, I hope.

MS. MEYER: Okay.

MR. CONINE: Okay. I guess we'll make a motion to accept the QAP with the following changes. The one

strike on the adherence to policy, where you can --

You might want to explain that to Ms. Anderson, since she was out of the room, right quick.

MS. MEYER: In the adherence to obligations, we actually have that the penalties -- if the amendment is handled administratively, the penalties would not be imposed unless they're done after the fact. And we're proposing that you strike the, "After the fact," because if they're handled administratively, then they've supplied us with --

MS. ANDERSON: Didn't rise to a material level.

MR. CONINE: Right.

MS. MEYER: Right. And --

MR. CONINE: So they can waive the penalty.

MS. ANDERSON: Yes. Okay. Got it.

Thank you.

MR. CONINE: Changed the notary to one point instead of two.

MS. ANDERSON: SRO?

MR. CONINE: Add SROs to the elderly language for the square-foot cost issue.

Am I missing anything else?

MS. ANDERSON: And then go back to the 20 percent for non-profit consultants.

MR. CONINE: Well, that's the way it's written.

MS. MEYER: That's how --

MR. CONINE: That's the way it's written.

MS. ANDERSON: Okay.

MS. MEYER: That's how it's presented to you
now.

MS. RAY: Ex parte?

MR. BOGANY: We have the ex parte.

MR. CONINE: Oh, the ex parte language.

Did you comment on that?

MR. HAMBY: I didn't comment on that.

Actually, that's statutory. It's exactly the way it's
written in the statute. However, you are going to have
the opportunity to discuss the Tech loss with anybody you
want to with a social event, at a social meeting.

MR. CONINE: Oh, come on now.

(General laughter.)

MR. HAMBY: That's part of the statute, as
well, and it's also included in the provisions that
Section 5 of the QAP and in the statute Section E.

MR. CONINE: Well, look for me at halftime,
will you?

MR. HAMBY: Okay. I will.

MR. CONINE: Texas always comes from behind, to

my recollection.

(General laughter.)

MR. CONINE: I guess that's the motion. We're done.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

I want to thank the development community and all of our partners for working with our staff during the 2008 rulemaking process. It's about as calm and clean as I can remember seeing it, and that's a credit both to our partners in the development community and to our staff. So thank you all.

We're now ready to proceed to 3.f., which is the multifamily revenue bond rules.

MR. GERBER: Go ahead.

MS. MEYER: There have been some administrative changes that we've made to be consistent with the QAP.

Materially, they're the same as they were that we -- when we drafted the August rules. The write up in your Board book correctly states that the Department did not receive any public comment for the bond rules, but we did and -- but they were specific to the utility allowances. And those were covered in the portfolio management and compliant rules.

Staff -- we recommend the Board approve the rules as is with the administrative changes to be consistent with the QAP.

MR. CONINE: Any public comment?

MS. ANDERSON: No.

MR. CONINE: Motion to approve.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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 carried.

Item 3.g. is the Housing Trust Fund rule.

MR. GERBER: Madam Chair and Board members, the

Trust Fund rules were taken out for comment. The Department received only one comment on the Trust Fund, which was general in nature and relating to leveraging of funds, and did not require any rule changes other than one other administrative change that was made to the definition of persons with disabilities, to ensure consistency with the HOME rule changes that are going to be provided to the Board next month.

Staff also requests approval to make any other administrative changes that might be necessary to, again, just ensure consistency with other Department rules. And we're recommending approval of these rules.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: Item 3.h. are the compliance and monitoring rules. After the publication of the proposed

new Chapter 60, Subchapter (a), comments were received from several interested parties. Comments were made regarding the language used regarding termination or non-renewal of leases, rent overcharges and income changes at recertification. No changes were made in response to these comments.

Many comments concerned the definition of substantial construction; changes were made to address the concerns raised. Comments were received also regarding changes concerning acceptable methods for calculating utility allowances. Additions to the rule were made concerning record retention for calculations of and sources for utility allowances. And staff's recommending that the Board approve the rule as proposed.

MR. CONINE: So move.

MR. BOGANY: Second.

MS. ANDERSON: I do have one person who wants to make comment.

Bobby Bowling?

MR. BOWLING: I'm fine, Madam Chair.

MS. ANDERSON: Okay. Thank you.

Did someone second it?

MS. RAY: Yes.

MR. BOGANY: Second.

MS. ANDERSON: Thank you.

Any discussion?

(Pause.)

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.

MR. GERBER: Kevin, do you want to come forward and talk about administrative penalties, which is Item f [sic]?

MR. HAMBY: Madam Chairman and members of the Board, the Item f [sic] is the administrative penalty rules that are based on the new statutory language that we have that will provide us the ability to seek up to \$1,000 per day per violation. We had some public comment on this. We tried to address the comments that were involved, and those are in your notes. If you have questions about the Board writeup, I'd be happy to answer them.

This will provide us the ability to -- for people who are not doing what they're supposed to do under their land use restriction agreements or other compliance

documents, it'll give us the ability to provide a hearing to people and assess penalties that can be enforced by the attorney general.

MR. BOGANY: Do they have to come back before us?

MR. HAMBY: Ultimately, yes, they would have to come back before you, because the Board would have to approve an order unless they agreed to the penalties. If there was a contested matter, it would go to an administrative law judge. The administrative law judge would write up a proposal for a decision, and the Board would have to approve an order, a Board order, assessing the penalties.

MR. BOGANY: Okay.

MS. ANDERSON: I do have a witness on this.
Mr. Granger MacDonald would like to --

MR. FLORES: Madam Chair, may I ask --

MS. ANDERSON: -- make comment on this.

MR. MacDONALD: I pass.

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

MS. ANDERSON: Absolutely.

MR. FLORES: Kevin, this process in time -- how much time does -- would it normally take from the

beginning to the Board if indeed, you know, the developer didn't get satisfaction?

MR. HAMBY: From the time that we -- well, it depends on what you mean by that. If -- from the time that we --

MR. FLORES: With an administrative law judge, all of a sudden, it becomes to me kind of a time-consuming process. So --

MR. HAMBY: Well, the administrative law judge is somewhat of a time-consuming process, but not for the Board.

MR. FLORES: No. I realize that. But what I'm saying is that if this developer is looking for justice and he doesn't find it along the administrative process, he has the ability to come before us, but not until he goes through all those steps.

MR. HAMBY: Correct.

MR. FLORES: And so I'm trying to find out. How much time are you eating up for him?

MR. HAMBY: Well --

MR. FLORES: Three months? Four months?

MR. HAMBY: From the time -- because it's a two-step process, the compliance people have to find a finding first. And the developer or the owner of the

property, which is one of the clarifications we made. The owner of the property would have a cure period.

And if they didn't cure -- I mean that cure period could be 60 to 90 days. And then there's an additional 90 days that they could request if they're seeking out some sort of resolution under the current compliance process. We have people we are already non-compliant and have not sought it. So we could have some people quicker than that.

Then you have a process where the -- it would have to be referred to an internal committee, enforcement committee, where the owner of the property would then get to come before the enforcement committee before the executive director makes a recommendation. So they would have 30 days notice there.

The executive director would make a recommendation. They would have a period of time -- I believe it's 30 days -- to either accept or reject that and ask for a hearing. Then you would have the time frame that would be required to hold the hearing. So it would depend on the administrative law judge's docket and whether or not they could hear the hearing.

I mean in SOAH, it can take anywhere from 60 to 90 days to hear it. And again, that depends on the

administrative law judge's docket. We're not going through SOAH, so we're hiring an administrative law judge.

MR. FLORES: Right.

MR. HAMBY: So we imagine we'll get heard pretty quickly. So probably 30 days to set the hearing once he has received the notice.

And then after that, he would -- an owner -- I'm saying, "He," but generically, He. He would then go before the administrative law judge, and the administrative law judge could have up to 60 days under SOAH rules, which is what we're somewhat adopting in this, to produce the proposal for decision. And at that point, it would then get scheduled on our agenda to come before the Board.

MR. FLORES: So if we just assume the staff and developer don't agree, with the cure periods and so on, and that process of appeal begins, it appears to me that you're talking about over six months before they come before the final approving agency, which is us?

MR. HAMBY: Correct.

MR. FLORES: I'm just worried that this time is going to, you know, start killing some folks. And I suppose we have a year to try it out and find out.

MR. HAMBY: One of the things -- the reason it

won't kill folks is because they don't have to pay the penalty until such time as the Board order has been issued.

MR. FLORES: But there are some things pending, you know, that -- you know, over there at that development that -- essentially, you need to get rid of this cloud from whatever they're doing in trying to take care of the paper work administratively.

MR. HAMBY: Well, I think everybody on -- the staff's perspective would be excited if the people cleared up the problems prior to going through the process.

MR. FLORES: It sounds like we're giving them an incentive to take it to staff level.

MR. HAMBY: We are.

MR. FLORES: But I think we may be penalizing them. But I assume we can look at this back again in 12 months.

MR. HAMBY: Sure. You can look at it any time, actually.

MR. FLORES: At any time?

MR. HAMBY: There's some of it that's statutory, but --

MR. FLORES: Okay. I am curious to find out how the process works, because it looks awfully unwieldy.

I know where we're trying to get it, but I think that the cure may be worse than the disease.

MR. HAMBY: It's consistent with what the State Office of Administrative Hearings office does. And that's -- what we've tried to do is provide -- you know, there's a due process period that does take more time. So that is better than the --

MR. FLORES: I understand. But -- we'll just have to see how it works, but I'm familiar with the process. Thank you.

MS. RAY: Do we have a motion, Madam Chair?

MS. ANDERSON: No. No, we don't have a motion.

MS. RAY: Madam Chair, I move staff's recommendation.

MR. FLORES: Second. I thought we had somebody who wanted to speak to this.

MS. ANDERSON: He passed.

MR. FLORES: He passed? Okay.

MS. ANDERSON: Yes.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

Item Number --

MR. GERBER: Four.

MS. ANDERSON: -- 4.

MR. GERBER: The Temple Housing Authority.

Madam Chair and Board members, the Temple Housing Authority previously requested an amendment to extend their contract for 12 months at the August 2007 Board meeting. And that request was denied by the Board since the administrator at that time was not able to outline a specific plan to assist the remaining households within the 12-month extension period.

Since that time, the administrator has submitted a request to extend the contract for six months, until March 28, 2008, to provide assistance to seven households that are pending approval in the Department's contract system. Staff has received and reviewed detailed information regarding the status of these households HOME purchase transaction, and it is anticipated that all construction of the homes and mortgage loan closings will occur prior to that March 28 deadline.

Staff recommends approval of this request to provide assistance to the households identified in the Department's contract system, with the condition that the administrator not be allowed to substitute or add another household unless that household can be provided assistance, again, prior to March 28 of 2008.

MS. RAY: Do we have public comment, Madam Chair?

MS. ANDERSON: Yes, we do.

Ms. Barbara Bozon?

MS. BOZON: Good afternoon. My name is Barbara Bozon, and I'm the director for the Temple housing authority. And as recommended by the staff, we are requesting the six-month extension, to March of 2008, for the seven homebuyers we have committed funds to.

Two of these homes actually closed last week. We have one more that's scheduled for November 19, and the remaining four custom homes are under construction and will all be done by February of 2008.

All of these commitments were based on communication with TDHCA staff that a six-month extension could be done as long as the homebuyers were in place and entered into the system prior to September 28, the original contract expiration date, which they were.

In addition to the six-month extension, we are once again asking for the one-year extension. In addition to the seven homes that have closed and the seven that will close, we would like to serve at least ten more homebuyers and have a total of 24. And this is a conservative estimate that we are certain we can accomplish.

As a quick review, we have been grantees under the DPA program since 1997, and we have closed 365 homes during this time frame. And this is the first time since 1997 that we have asked for a one-year extension. Like the market in general, we have seen a slowdown in our program due to various factors such as increasing interest rates, increasing home costs without a comparable increase in the adjusted median family income limits, and an increasing number of applicants who are not eligible due to poor credit history.

After expending previous grants, we began using this 2005 grant in March of this year and have closed a number of homes. Our plan to use the additional DPA funds includes a meeting that we had with our five qualified home builders, who are currently building program homes. And they have committed to building a minimum of ten homes on lots they already own, and it's a significant

investment on their part. We also have additional lots available that our agency currently owns.

We have an average of 30 inquiries per month. And out of this group, we consistently have at least one to two qualified homebuyers. And we currently have a list of six potential homebuyers at this time.

Both the cities of Temple and Belton are strong supporters of our program, and they provided an additional \$2,500 in down payment assistance, to bring the total to 12,500 per buyer. Community support for our DPA program is strong. The city of Temple is currently working with a consultant in developing long-range plan. And in the housing chapter, our program is listed as a vital component in order to increase the stock of affordable housing for a growing community.

It is highly likely, based on our past experience, that we would have more than the ten home closings by next September. If the Board is willing to consider an extension of the entire remaining balance, we would once again aggressively market a program with strong support from both the builders and our Board. And we would commit ourselves to the goal of expending 100 percent of the remaining funds.

Our agency has a dedicated and knowledgeable

staff, and we have a strong desire to serve our customers, which is the low-income first-time homebuyers. And in addition to down payment assistance, we are also grantees under a number of programs and have a lot of experience with TDHCA and have successfully completed TBRA grants, SECO grants and also have several current loans right now through the Department. So I respectfully request the Board to vote favorably on our requests.

MR. FLORES: If there's no other comment, I move staff's recommendation.

MS. ANDERSON: I'd just ask for some -- to clarify, Mr. Flores. The staff recommendation is for a six-month extension on the already identified. Right? Is that your intent?

MS. RAY: And no substitutions.

MR. FLORES: That's my intent, yes.

MS. ANDERSON: Okay.

There's a motion on the floor.

MR. SALINAS: But she's asking for a year.

MR. FLORES: I realize what she's asking for, but staff's recommending six months. And so there must be a reason for it. They --

MS. ANDERSON: We've already turned down a one-year request one time.

MR. SALINAS: Oh.

MS. ANDERSON: And, you know, I just am acknowledging the witness provided a lot more detail today about how she would propose to use the funds if a full year extension were granted.

We need a second.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(Pause.)

MS. ANDERSON: Hearing none, I assume -- so we all understand, we're voting on the staff recommendation?

MS. RAY: Yes.

MR. FLORES: Six months. Right?

MS. ANDERSON: Okay. All those in favor please say aye.

(A chorus of ayes.)

MS. ANDERSON: Opposed, no.

(No response.)

MS. ANDERSON: Motion carries.

5.a.

MR. GERBER: Ms. Crawford, do you want to come forward and talk about disaster recovery efforts?

MS. CRAWFORD: Good afternoon. Kelly Crawford, deputy executive director for disaster recovery.

I'd like to start this update by commending the Southeast Texas Regional Planning Commission. They've completed two stick-built homes in addition to the manufactured homes that they've put on the ground. So they have now a big part of their process underway, and they've gotten some success. And they're really heading forward with that. And I think that's going to help some of the other COGs that are going to be doing stick-built homes in addition to the manufactured homes.

For this Board meeting, we had set a goal with the COGs to have 50 percent of their applicants that they're planning on serving certified eligible. And in an effort to provide you with the most current information, the numbers that I have are more updated than the numbers you were given in the Board book.

For HGAC, they have 52 percent certified eligible. For the regional planning commission, they have 95 percent of theirs certified eligible. Their subs -- the City of Beaumont has 24 percent certified eligible, and Port Arthur has 46 percent certified eligible. So for the most part, they're doing really well on those goals that we've established for them. Deep East Texas Council of Governments has about 8 percent certified eligible.

MR. GERBER: Let me just say that for Beaumont

and for Port Arthur and for DETCOG, which have not met their goals, admittedly, Beaumont and Port Arthur are doing better than DETCOG is, but if they do not make significant headway in the next couple of weeks, I will be seeking to administratively remove them from their operation of this program, because they will not be able to complete their deadlines and get assistance to the people on the ground.

And I would ask any of the community leaders who are in the room listening, if they can think of other delivery systems to service DETCOG or those areas of southeast Texas, the Department is receptive now to start thinking about what Plan B is, because we're just running out of time to deliver assistance to folks.

And so the levels of assistance, while identified as improvements over last month, are improvements, they clearly are not acceptable improvements in terms of the overall fulfillment of the contract which we made with DETCOG and which Southeast Regional Planning Commission has made as a subcontractee for the cities of Beaumont and Port Arthur. So that actually will be happening in the next couple of weeks if we don't see substantial improvement to qualify eligible applicants.

MS. CRAWFORD: And so, to give you an overall

picture on Round 1, 156 applicants have been certified eligible, and 29 homes are complete. We have two stick-built and 27 manufactured homes. And 55 contracts --

MS. ANDERSON: I'm sorry, Kelly.

MS. CRAWFORD: Yes, ma'am.

MS. ANDERSON: Where are you?

MS. CRAWFORD: I'm providing you with more current information.

MS. ANDERSON: But are you -- does it relate to something we already have?

MS. CRAWFORD: It does.

MS. ANDERSON: Okay.

MS. CRAWFORD: It does.

MS. ANDERSON: Where would that be?

MS. CRAWFORD: On the -- under the project activity charts.

MS. ANDERSON: Okay.

MS. CRAWFORD: But I just have more current information than --

MS. ANDERSON: Okay. Would you just back up and rewind --

MS. CRAWFORD: Oh. I'm sorry.

MS. ANDERSON: -- all that? And --

MS. CRAWFORD: Yes, ma'am.

MS. ANDERSON: -- replay it now?

MS. CRAWFORD: Overall, we have 156 applicants certified eligible.

MS. ANDERSON: Instead of 204?

MS. CRAWFORD: Do we have 204 --

MR. CONINE: Yes.

MS. CRAWFORD: -- in the Board book?

MR. CONINE: Yes.

MS. CRAWFORD: What we do is -- we go off of what they provide us on spreadsheets. And then we call, and we start asking questions and confirming and getting better information.

MS. ANDERSON: Okay.

MS. CRAWFORD: Typically, we have higher numbers than what was in the Board book.

MS. ANDERSON: Okay.

MS. CRAWFORD: We have 29 homes complete. And you don't see the breakout, but two are stick-built and 27 are manufactured homes. And we have 55 contracts that have been bid out or awarded. So they're soon to be underway or are already underway.

MS. ANDERSON: But the 29 are in that 55?

MS. CRAWFORD: No.

MS. ANDERSON: This is 55 incremental over the

29 already served?

MS. CRAWFORD: Right. So -- and 42 of those are stick-builts, and 13 are manufactured homes.

Then we also have knowledge of 39 more homeowners that have been identified that will be able to go into this process as soon as we have the Housing Trust Fund gap funding rules lined out. And we're working with legal on that.

MS. ANDERSON: And what is the commitment of the Department to the communities to have those rules published and available in those communities?

MS. CRAWFORD: I know we're working on --

MS. ANDERSON: I mean the Board voted that change.

MS. CRAWFORD: Right. Two weeks in my estimation. We're working on, when they have to be loans, how that looks. And that's what we're working with legal on. And we're also developing the rest of the rules. And we're working off of some concerns and considerations that the COGs have been presenting to us so we can incorporate those.

MS. ANDERSON: So that would be Thanksgiving Day. So that will -- we will be very grateful on Thanksgiving Day if that is complete.

(General laughter.)

MS. ANDERSON: And, you know, I think the Board will expect to see those rules just shot in an e-mail, as you sometimes do, the day after Thanksgiving --

MS. CRAWFORD: Yes, ma'am.

MS. ANDERSON: -- because we cannot afford to have the bottleneck be in the Department.

MS. CRAWFORD: Yes, ma'am. I agree.

As you can see, I think, we've overcome the eligibility determination and we've really moved into production. So as a division, we're moving from program implementation into program management and, with that, program oversight, to include monitoring.

And we've hired a monitor for the programs that's physically located in Houston. And it's going to allow us to begin providing independent assessment of compliance with the program rules. And we're developing a monitoring plan schedule. And the first monitoring review is planned to occur within the next month, and the results of those monitoring reviews will be a standard Board reporting item to you.

MS. ANDERSON: Any questions of Kelly on this item?

MR. FLORES: None. Just that I certainly

support Mr. Gerber on his comments regarding the Deep East Texas COG.

MS. CRAWFORD: Yes, sir.

MR. FLORES: And I'm sure others on this Board do, too. But we're under the gun, and we've got to do something.

MS. CRAWFORD: Yes, sir.

MR. FLORES: Thank you.

MS. CRAWFORD: Thank you.

MR. GERBER: Moving on to Item 5.b., Madam Chair?

MS. ANDERSON: Right, the amendments.

MR. GERBER: The amendments. This is a request for an amendment to the CDBG disaster recovery for the contract for the Houston-Galveston Area Council. They're requesting a transfer of \$3,183,000 from the emergency repair budget category and \$964,000 from the rehabilitation budget category to the reconstruction budget category.

This request will eliminate the emergency repair budget category and reduce the rehabilitation category to \$919,000 and increase the reconstruction budget category to 5.3 million. This change is needed because HGAC's current budget categories were projected

and were provided during July 2006, before the intake of applications and housing inspections had begun. And based on the assessments of the actual needs of their applicant pool, we believe these adjustments are needed.

Of significant note, the required beneficiaries will be reduced by 846. And the number of required households will be reduced by 314.

MR. BOGANY: So moved.

MR. FLORES: Second.

MS. ANDERSON: Mr. Wemple, do you --

MR. WEMPLE: [inaudible].

MS. ANDERSON: Okay. Thank you.

Did somebody second it?

MR. FLORES: Second.

MS. ANDERSON: Thank you, Mr. Flores.

Any other -- any discussion?

(Pause.)

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.

MR. GERBER: I would just add, Madam Chair,

this just goes to underscore again that the longer we can get away with getting the assistance out, the fewer beneficiaries and requiring of more expensive repairs.

MS. ANDERSON: Right.

MR. GERBER: The next item is non-disaster -- non-housing related, and I'll ask Director Stone to come forward and talk about 5.c.

MR. STONE: Madam Chair, I'm Charlie Stone, executive director with the Office of Rural and Community Affairs. To my right is Heather Lagrone, who is a manager with the CDBG program. To my immediate left is Jerald Ferguson, a program specialist with the division. And Mr. Mark Wyatt is on the end -- who is the division director.

Under 5.c., this is our report relating to non-housing activities for the CDBG Round 1 funding. And also, we'll follow up with Round 2. To give you an update, at this time, we have expended \$5.7 million in Round 1, which is about 47 percent of the contracts. And we've received draws totaling about 17.7 percent of the non-housing funds.

And we have reported to you in the past that we've had some problems with FEMA and hazard mitigation projects. And as a result of a request by the Board last time, you're being handed a report, a status report, on

every single contract that we have under DR-1. And this gives you a blow-by-blow description of exactly what the status is on each of these.

And very quickly, across the top of that page, it tells what the contractor is, which is actually the grantee, the contract number, who is administrating the grant, whether it's self- or a consultant, otherwise, a short description of the project, the amount, the amount drawn -- and it's starting out by each COG region, and it's starting out with the one who has the highest draw on it, and the percentage there -- and then the status and next step. And in the right columns, you will see whether it's a FEMA issue or if it's a local issue or if it's something in ORCA's hands.

So it very clearly identifies for you where the project is and who has to do the next steps. So I think this will provide for you a very clear understanding of where we are. The FEMA and HMGP projects really represent about 25 percent of the total. All the rest of them are moving along, what we would expect, at a reasonable pace, based upon a typical CDBG disaster grant program.

So if you have any questions on that at this time, I will tell you that we will have this updated for you and back at each subsequent Board meeting. So you'll

have an exact status report.

The one question I do wish to ask, because we're required to about two to two-and-a-half weeks ahead of time for your Board meeting have information prepared for your Board books. We can give you a more accurate representation if we have this ready at the Board meeting, because it will have at least more weeks' worth of activity that we can include in there. So it's really up to the Board on how you'd like to receive this.

But this thing was worked on immediately after the last Board meeting, and it was just finished this morning. That's why you're seeing it today.

MR. BOGANY: I have just a couple of questions.

MR. STONE: Yes, sir.

MR. BOGANY: I notice a lot of zeros here. And I'm just wondering like -- for example, the city of Waverly ordered their generator in July, and we're still pending delivery in November. I -- as you go down, I see where you -- and I like this because it really lays it out. Very well done. We've got Huntsville, water and sewer generators, for example. \$350,000 has been allocated. Generators are scheduled to be bid by December 30. I don't understand that.

MR. STONE: Yes. That's a good question. What

we're finding out -- there's a lot of orders for generators right now, and there are some backorder issues.

It's taking about 19 to 20 weeks to get generators in. So it's -- that's a new issue that has come up that's slowing things down.

MR. BOGANY: Okay. Is it -- where do you guys see the problem at?

MR. STONE: Well, there's multiple problems listed here. FEMA is a portion. You can see the Xs in the FEMA column. And the local issues -- there's a lot of them that are underway. We're asking for schedules to give us some very specific time frames on when they expect to get the bid and the construction installation.

So we're asking them to put that information together for us so --

MR. BOGANY: Excuse me for just one second.

MR. STONE: Sure.

MR. BOGANY: I notice on all your FEMA deals, you say it's scaled back. What does that mean?

(Pause.)

MR. BOGANY: Like, for example --

MR. STONE: Mark, do you want to answer that?

MR. WYATT: I -- let me just briefly explain. What's happening there is because of some

severe delays on their just working with the program on that. A lot of the communities have decided just to move forward and do a portion that we're funding.

MR. BOGANY: Okay.

MR. WYATT: Basically, what they're doing is saying time has run out. And they are going to move forward with one-fourth of the project instead of the entire project.

So it recognizes the need to at some point move forward. And staff actually met as a group with all the entities involved just recently, on November 1, and worked out the details of that. So you will see a lot of amendments. And frankly, they just feel they have to move forward, given the fact that FEMA is not progressing or working with us.

MR. BOGANY: Well -- and I guess we're at -- it looks like we're caught between a rock and a hard place. We're getting pressure from upper saying, Why is this money not out. You're telling me it's a FEMA issue. So why is it -- what are we doing to let people know that's -- above us, This is a FEMA issue; it's not our issue?

MR. WYATT: Well, I think one of the things that you've brought up -- and this will be helpful with

the status report. You know, there's some hesitancy early on to not really -- to kind of keep it in broader terms. Now we're starting to pinpoint exactly the issues.

And, frankly, with FEMA, as I understand it, they're focusing on other states. Louisiana is their top priority. Texas is not. There will probably be testimony today -- or there certainly could -- of the frustration with the process. I think that's a fair characterization of working with them. They've tried to move it forward.

And to answer your question, I think just sharing this and making this an ongoing open process of the delays -- we had one meeting, and we expect to continue with that process, to the extent we can, and work with them. And if not, in this case, just move on.

MR. BOGANY: One last question.

MR. WYATT: Yes, sir.

MR. BOGANY: In regards to FEMA, then why can't we put something in writing so this Department could send this back up to Washington that says, This is where the issues are?

MR. WYATT: Well, I think it's a good suggestion of --

MR. HAMBY: We could do that.

MR. WYATT: -- starting to --

MR. BOGANY: Send it to both our -- Senator Hutchison and Senator Cornyn --

MR. WYATT: Absolutely.

MR. BOGANY: -- and everybody in the Texas delegation, and, This is where our problem is.

MR. WYATT: I think we're probably at that point where a lot of people -- instead of just keeping it at that broad level and saying there has been some impediments and delays, I think we're all at the point where we just have to share who actually is the impediment at this point.

MR. BOGANY: And just call a spade a spade.

MR. WYATT: Yes, sir.

MR. FLORES: Mr. Chairman --

MR. CONINE: Yes.

MR. FLORES: I mean, Mr. Stone, my preference is to give it to us at the Board meeting and give us -- you know, get those two extra weeks on this FEMA thing. I certainly would push for that --

MR. STONE: Okay.

MR. FLORES: -- sending that letter to all the delegation, because I think our congressmen need to know about this because, you know, that -- I count 12 projects here that are on hold essentially because of that. Your

local communities are ready to move ahead, and those guys are holding them back.

But this is a great format for -- now we know where your problems are. But keep it moving. And this is helpful. And, you know, let's push our congressmen to do their jobs over there, because that's the only people that FEMA is going to listen to -- certainly a lot more so than the rest of us in this room.

MR. STONE: I understand. Are you wanting ORCA to write the letter, or do you -- does the TDHCA Board wish to write the letter?

MR. FLORES: Well, I'll tell you. You write your letter, and we'll figure our side out. But I think if we sent two letters, that has got to be better than one letter.

MR. STONE: Okay.

MR. BOGANY: I think your being closer to it and -- you know what the issues are, based on this right here. And so what -- all I'm constantly hearing from congressmen is that we're not doing our job and we're not getting this money out. And I know why they're calling us, because their constituents are calling them.

MR. STONE: Absolutely.

MR. BOGANY: So in my end, let's go back and

say, This is where the issues are. Why are we messing with it? Let's just say what it is.

MR. GERBER: Why don't we get that letter out?

MR. STONE: All right.

MR. GERBER: We'll do it together. And --

MR. STONE: We'll -- let's do that. We'll do it together --

MR. GERBER: We'll prepare a draft. That would be fine.

MR. STONE: -- over the executive director's signature.

MR. GERBER: Fine.

MR. STONE: We appreciate the support on that. And thank you for your comments about this report. We're very pleased with it, and, as I say, we'll get it to you at each Board meeting so you have a --

MR. FLORES: We've had trouble kind of putting our arms around things. You've given us a document so that I think we can actually, you know, put our arms around something and know where problems are specifically.

MR. STONE: All right. If there are no other questions on Round 1, we'll move to Round 2, which is on -- in your Board book packet is Page 2 of 6, the non-housing activities for Round 2.

Just as a reminder, in August, you approved the 6 million set-aside for Memorial Hermann. And then you -- also, on October 11, at the last Board meeting, you approved the \$10 million Hardin County. And I'm happy to report that today we'll be bringing to you a Bridge City recommendation for 3.8 million, which will be under a different agenda item, 5.e.

And also, we'll also be bringing to you recommendations for the competitive part of Round 2, which is under 5.f. So you'll hear that in another agenda item this afternoon. And we have entered into MOUs, so there's no problem with money flowing out of the Agency as these contracts are signed.

So any questions on Round 2? We can get into the other agenda items if you wish.

MR. CONINE: Move right on.

MR. STONE: Okay.

The next one is actually Agenda Item 5.d. And this is the discussion and possible approval of requests for amendments to CDBG disaster recovery contracts under Round 1. And we have Woodville, Jasper, Hardin County and Montgomery County in your Board books under 5.d., Board members.

Specifically, the City of Woodville is

requesting approval of a transfer of funding categories to move \$111,300 from and \$3,522, which is a total of 114,822, into the water facilities line item. At the bottom of Page 1 of 3, you'll see the beginning of that budget; it continues on the top of Page 2 of 3. And it doesn't change the total pricing, but it just moves it into the line items. And we're requesting that that amendment be approved.

Moving along to the City of Jasper contract, they're requesting approval of a transfer in funding categories to move \$183,650 from the specially authorized public facilities and using 66,197 in the water facilities and 117,453 in the sewer facilities line items. And that budget is broken down for you in that section on Page 2 of 3. And we would recommend those amendments for you, also.

We have Hardin County on Page 3 of 3, and that is requesting to move \$75,000 from the flood and drainage activity and use 55,000 of that in the street activity line item and \$20,000 in the engineering line item. And that budget is broken down for you in that section, also.

And the fourth and last one is Montgomery County. And they're requesting approval of a performance statement amendment to reduce the number of generators to be purchased from four to three. And that goes back to

the question awhile ago. The prices are going up along with the fact that they're getting hard to get right now.

So they're just asking to change that performance statement and amend it to say three generators instead of four.

So those are the amendments that we have presented to the Board at this time.

Mr. Conine?

MR. BOGANY: I make the motion.

MR. CONINE: Any --

MR. FLORES: Second.

MR. CONINE: There was a motion and a second.

Any further discussion?

(Pause.)

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

(A chorus of ayes.)

MR. CONINE: All opposed --

MR. FLORES: Mr. Chairman, before you move on, why didn't we give them authority to move monies within categories -- ORCA? Why did they have to come -- they could issue all those contracts, but they can't shift the -- shift contracts. And I don't quite understand why didn't give them the authority to do this --

MR. CONINE: Well, I think we wanted to make sure that we understood even though it was, you know, a subset of the non-housing funds, we still wanted to maintain the financial -- since we have the ultimate financial responsibility to HUD to make sure these funds are expended in the right way, we want to monitor that. And the best way to do that is to have them bring it back here.

MR. STONE: Yes.

MR. FLORES: Well, we've sure handed them a lot of money. And now we're asking them to come back one at a time, every 30 days. But I'm starting to think that's not a real good idea.

MR. SALINAS: How long have you had these moneys?

MR. STONE: How long? Let's see. What was the date on it?

MS. LAGRONE: The dollars came to the state in February of 2006.

MR. SALINAS: 2006?

MS. LAGRONE: Yes.

MR. SALINAS: But it hasn't really been us -- you know, it is the first time. It has been the -- who'd you say, the development council?

MR. STONE: No. This -- these are not handled through the councils of governments. So --

MR. SALINAS: This is not handled --

MR. STONE: These were handled specifically --

MR. SALINAS: -- through ORCA?

MR. STONE: -- between ORCA and our grantees, which are cities and counties.

MR. SALINAS: Okay.

MR. STONE: So this is a familiar working relationship that we have, and we chose to do it that was. There's nothing about this that's really negative toward the TDHCA Board. We're working through this, and it's moving along.

MR. BOGANY: Can I ask you a question? And this is just a point of information. These generators -- are these special generators? Are these huge --

MR. STONE: These are big generators.

MR. BOGANY: Okay. That's what they are?

MR. STONE: They're big, yes, sir.

MR. BOGANY: Okay. Because I see generators all the time advertised, and I was --

MR. STONE: Yes. Well, these are not your little Honda versions.

MR. BOGANY: Okay. I'm just --

MR. STONE: That's a good point. These happen to be --

MR. BOGANY: It's a silly question, but I had to ask.

MR. STONE: No. These are located on concrete pads with special electrical disconnects and everything. They're impressive, to put it lightly.

MR. CONINE: Hang on, Charlie.

MR. STONE: Yes, sir.

MR. CONINE: I have another -- a witness affirmation form from a Tom Warner. Did -- where is Tom?

MR. WARNER: It's for Item f.

MR. CONINE: Item f?

MR. WARNER: Yes, sir.

MR. CONINE: Okay. I just wanted to make sure. Thank you.

MR. BOGANY: Mr. Stone, I have another question. I noticed Beaumont got 2 percent of their money. And then I go up to their sister city, Port Arthur, who seemed to be moving in a much quicker progress. What's going on there?

MS. LAGRONE: The city of Beaumont is using our money to match HMGP money from FEMA. So as FEMA expends dollars, we will match those dollars. And it's the same

issue in Beaumont as we've seen in the HGAC, where we're waiting on FEMA to start spending those dollars so they can draw that.

MR. BOGANY: So I'm sure you're probably getting your biggest complaints from the Beaumont area.

MS. LAGRONE: Actually, Beaumont is more comfortable with their HMGP grant than some of our other communities.

MR. BOGANY: Okay.

MS. LAGRONE: It's a very large grant, I think the largest that HMGP has ever issued. So that one's being watched a little bit closer.

MR. BOGANY: Okay. Thank you.

MR. STONE: Any other questions?

(Pause.)

MR. STONE: We'll move to the next item.

MR. CONINE: 5.e.

MR. STONE: 5.e. This one is the Bridge City set-aside project that I alluded to earlier. And in your Board package, you have six pages. If you turn to Page 2 of 6, there's a better description there.

At the August meeting, we were not able to recommend to the TDHCA Board the approval of this Bridge City set-aside, because we needed additional information

on the administrative cost. That has since been provided to the agency. And so we are now comfortable in recommending the \$211,316 for the administrative cost.

And on Page 3 of 6, members of the Board, you will see the breakdown of the budget. And so we are recommending the approval of the Bridge City set-aside project, which has the activities listed under water, sewer, flood and drainage, engineering and the administration of 211,316, for a total of \$3,800,000.

MR. BOGANY: So move.

MR. FLORES: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. STONE: All right. Moving along to 5.f., this is the one we've been waiting for all day. These are the competitive projects under the Restoration of Critical Infrastructure Program. We have as an agency \$22.2

million in the competitive awards. It is important to note that we had 24 applications for these awards, totaling 70,809,000, which is a \$48.6-million shortfall.

And after going through and scrubbing these -- in your Board packet, I believe there are six pages there.

Turn to Page 2 of 5, and we'll go down one at a time and give you the recommendations based upon the action plan and the scoring process that each of these were put through.

The first one, on Page 2 of 5, is Jefferson County. And they have requested \$4,750,000 to replace and/or elevate eight bridges impacted by Hurricane Rita with appropriate engineering and administrative costs. And it'll benefit 18,702 individuals. You'll see the breakdown of the budget down there toward the bottom of the page for street improvements, engineering and administrative costs, \$4,750,000. We'd recommend approval of that one.

If you wish, I'll just go through each of these and get to the end. And I think you have some public comment after this.

Tyler County is the next one. Turning to the top of Page 3 of 5, you'll see that Tyler County's requesting \$4,994,540 to replace and/or elevate 11

bridges, five drainage structures and two headwalls impacted by Hurricane Rita with appropriate acquisition, engineering and administrative costs. And it'll benefit 20,871 individuals. And you see a general breakdown on that budget below. And we'd also recommend this Tyler County application to you.

The City of Lumberton, at the bottom of Page 3 of 5. They're requesting 5 million for the construction of two detention ponds and diversion channels with the appropriate acquisition, engineering and administration. And the project there will benefit 8,731 individuals. The budget for that breakdown is at the top of Page 4 of 5. And we're recommending the budget as presented, for a total of \$5 million, as you see there.

The City of Silsbee. This one is -- will make major improvements to three drainage facilities. The project will benefit the entire city since the drainage improvements will protect two sewer treatment plants from excessive infiltration and inflow from flood waters. The project will benefit 6,393 residents. The budget is there in the box for you, showing \$4,895,000.

Jasper County. And we can move to Page 5 of 5. And they're requesting 5 million for the replacement of seven bridges and debris removal, with the appropriate

acquisition, engineering and administration. And we're recommending this as presented in the budget below. And it is partially funded because that's where the money ran out. So it is \$2,560,460.

So that's the recommendations that we have from the agency. Behind Page 5 of 5, you will see the complete list of the applicants that came in, and you will see how far the funding went under the recommended funding column.

And as you can see, Jasper County was the last one that was able to get partially funded. They requested more. And all of the rest of them -- there's not enough money to fund those.

And behind that page, Madam Chair and members, is a detailed administrative budget for each one of these top five. And I think you have some public comment waiting for this.

MS. ANDERSON: Yes. We do. But don't go too far away.

MR. STONE: No. We won't go far.

MS. ANDERSON: The first witness is Tom Warner, and then Mark Allen.

MR. WARNER: Good afternoon, Madam Chair and members of the Board. My name is Tom Warner; I'm the director of public works for the City of Beaumont.

First, let me state, on one of the previous items, the award that we got from ORCA was approximately \$2 million. We were very satisfied with that. FEMA is not the holdup. This is a \$49 million project that we're doing. We've gotten the largest funding from FEMA ever in the country, of over \$23 million. So we're beginning the first phase of construction on this project at the beginning of the first of the year.

So we're very satisfied. And we consider it to be on schedule.

What I wanted to talk to you about this afternoon was the Restoration of Critical Infrastructure Program. What I want to say is that ORCA had good intentions in developing a formula that they used to distribute these funds. However, I don't think that the crux of the real problem was solved in the fact that the major metropolitan areas did not get funding that was in an equitable amount.

For example -- and I'm not going to knock my neighbors to the north because they did get their funding, but if you look at the P5 damages that are in the handout that you have, Beaumont, Port Arthur and Jefferson County had over \$73 million worth of damages. One entity received funding, and that was in the amount of \$5

million. And that was to Jefferson County.

Our neighbors to the north, two cities, had damages of 6.6 million. They received \$10 million in awards or recommended awards.

It should be noted that in Silsbee and Lumberton, both areas to the north, and in Hardin County, there are approximately 48,000 persons in that county. In Jefferson County, including Beaumont and Port Arthur, there are over 252,000. So I think you can see that the numbers don't truly reflect or get to the areas that have the most need.

The project that we had submitted was a drainage project in a predominantly low- to moderate-income neighborhood. One of the things that is included in the application but is not considered a part of the funding process or formula is the fact that the City of Beaumont is matching that money in the tune of about \$5 million. So we're taking a \$10-million project and not getting very much credit for the fact that the City of Beaumont is putting in that additional funding.

We've always been told that we don't come with problems; we come with solutions. The solution that I offer is probably not one that's going to be well received, but there is over \$200 million that TDHCA has

now in housing, of which -- some of it could be reallocated to the infrastructure area and could be used by all the parties that submitted applications under this program.

At the very minimum at this point in time, we would ask that the Board hold this item for at least another month and give us an opportunity to work with staff through some of the issues that we have. Thank you.

MS. ANDERSON: Mr. Warner, can I ask you a question, please?

MR. WARNER: Yes, ma'am.

MS. ANDERSON: In the first round of disaster recovery awards, the City of Beaumont received \$1.95 million. The information we have is that what has been drawn to date is \$37,000. And this contract is well over a year old. Can you explain to me why these funds are not being drawn down and spent?

MR. WARNER: Yes, ma'am. We're doing the engineering in house. It's a construction project, a \$49 million project. And that's the one that I mentioned earlier. We've had to break it up into three phases. The first phase is going to be approximately somewhere around the range of 16- to \$20 million. When we let the project after the first of the year and construction begins, we

anticipate, we're going to pull -- do the full draw-down on the full 1.97 million.

MS. ANDERSON: In what quarter of next year?

MR. WARNER: It most likely would be at the end of the first quarter or early second quarter.

MS. ANDERSON: You can appreciate that that puts us in a difficult position when you're coming asking for more money when you have not spent money that you have had available to you for many months, and with the backdrop of the newspaper articles and the, you know, concern of elected officials about the ability of this Department and ORCA and the COGs and the local communities to move this money?

MR. WARNER: Yes, ma'am. If I could also just add that we are working with the local drainage district, Jefferson County Drainage District Number 6? They are actually the recipient of the FEMA HMGP funding, and we are the subcontractor for that work. So it actually is working through the group. We did not get their funding until November of last year, about this time last year -- the FEMA funding.

We're using it as part of our local match. It has taken us that long to design that first phase of the project, but, like I say, we anticipate that we will be

under construction very shortly after the first of the year.

MS. ANDERSON: Thank you.

MR. WARNER: Thank you.

MS. ANDERSON: Mark Allen?

MR. FLORES: Madam Chair?

MS. ANDERSON: Yes, sir.

MR. FLORES: Just the way I understood this, I think he was asking us to transfer money out of the housing account into the infrastructure account. Is that what --

MS. ANDERSON: That was a suggestion he made, yes.

MR. FLORES: Okay.

MR. GERBER: Mr. Flores, I would just interject that that decision was made by the governor working with local officials, including the then-mayor of the city of Beaumont, the city council and the representatives of the Southeast Texas Regional Planning Commission and the elected officials who serve on that commission, for those funding amounts.

MR. FLORES: No. I'm talking about his request was to transfer more.

MR. GERBER: Right.

MR. FLORES: Over and beyond.

MR. GERBER: Right. But --

MR. FLORES: Okay. We already -- have done that already. That's --

MR. GERBER: No. We have not moved any additional dollars into --

MR. FLORES: But that's what he's requesting.

MR. GERBER: That's what he's asking.

MS. ANDERSON: Right.

MR. FLORES: Okay. That's fine.

MS. ANDERSON: Nice try.

MR. CONINE: He's not running for office.

(General laughter.)

MS. ANDERSON: Hi, Mark.

JUDGE ALLEN: Yes, ma'am. My name's Mark Allen; I'm a county judge in Jasper County, Texas. I want to tell you I appreciate all of you having and giving us the time to be here. I appreciate your patience, also.

I have to admit I've sat through this whole hearing, and it's about as much fun as watching two turtles fight. So -- but unlike Mr. Warner, we'll take our check now.

(General laughter.)

JUDGE ALLEN: Rita's a regional program, and

it's becoming a big, big problem. Mr. Gerber has fought the battle with us, and there's quite a few people in this room who've all fought it together. And we appreciate all you all have done.

We do certainly appreciate ORCA's recommendations. And we urge you to continue and to go ahead and fund these projects as they've been detailed out; however, in the event that you are able to allocate additional funding, our friends over in the east, Newton County, and the south, Jefferson County and Orange County, were greatly affected by Hurricane Rita, and anything you can do to help them out as well, you know, we would greatly appreciate.

I think it's kind of just a -- it's all an, "Everybody has got to pull together," kind of deal. But, once again, Jasper County does appreciate your consideration. I won't hold your time or anything. I know you guys have been at it all day. Thank you very much.

MS. ANDERSON: Well, you've been here with us all day. And we appreciate your patience and also appreciate the fact that the draw records indicate you're drawing the first block of money right now. And so we appreciate that.

JUDGE ALLEN: Thank you. We appreciate all the work, and, like I said, it has all been coming together. Thank you.

MS. ANDERSON: Thank you.

Dale Watson?

MR. WATSON: Good afternoon, Madam Chair, members of the Board. I'm Dale Watson, director of planning, City of Port Arthur. And you approved an amendment to our Round 1 last month, and you'll probably be getting a request for the remainder of those funds this month.

I'm here today to ask that the Board table action on the Critical Infrastructure Program to enable us and the other applicants to work with ORCA to ensure that the calculations that were done are accurate. I know ORCA has worked really hard on that, but there's a lot of things that are involved.

We only heard Tuesday that this was going to be on your agenda today, and we were able to review some of the supporting data yesterday. And in just that short review, we found several errors that affected the dollar amounts of those calculations. And there may be more. We just don't know. We haven't had time to look at it.

In addition, the procedure used to calculate

per capita damage appears to skew the results. If a -- the way they were calculated is if a city and a county made application, the city's population was subtracted from the county so that that population didn't count against the county's per capita damage calculations.

An extreme example of how this would affect our could affect the results is if Houston and Harris County made application. Since basically their boundaries are the same, Harris County's per capita damage number would be zero. So it's obvious that that does affect the results.

Another item is: There's no credit for damage that's covered by insurance. Anything that's covered by insurance doesn't show up on the FEMA forms. And in Port Arthur's case, we had \$4.7 million in FEMA damage, and we had \$7.1 million covered by insurance. That's a big chunk of money.

And lastly, I think it should raise a red flag that there might be a problem with the process when Port Arthur, who had the third-highest amount of damage on their P5 FEMA forms and was the city that Rita made landfall, doesn't meet the minimum criteria for funding. But -- so I just ask that you table it and give us a chance to look at it.

MR. FLORES: May I?

MS. ANDERSON: Uh-huh.

MR. FLORES: Have you had a discussion with Mr. Stone on this subject matter?

MR. WATSON: Yes. We've --

MR. FLORES: You obviously don't agree.

MR. WATSON: No, we don't.

MR. FLORES: Okay.

MR. WATSON: And to -- you know, ORCA has worked with us. They've looked at some of the questions that we raised yesterday. You know, they don't think or -- they indicate that they don't think that they'll change the outcome of the scoring, but we just haven't had a chance to look at it.

MR. FLORES: Okay. Thank you.

MS. ANDERSON: What did you just say, that you don't think it'll change the outcome of the scoring?

MR. WATSON: No. ORCA said -- ORCA looked at the numbers --

MS. ANDERSON: Right.

MR. WATSON: -- on the questions that we raised. They indicated that, you know, they don't think that it will change the outcome. But we haven't had a chance to look at it.

MS. ANDERSON: Do you -- are you not aware that this Board book goes up seven days before the Board -- the agenda goes up seven days and the Board book goes up Thursday night -- Friday morning?

MR. WATSON: We did not know this item was going to be on the agenda. We don't normally --

MS. ANDERSON: It was -- the Board book was up last week. The agenda was up the day before that.

MR. WATSON: Very well.

MS. ANDERSON: Our Board -- just for future reference, our Board book's up a week ahead.

MR. WATSON: All right.

MS. ANDERSON: Okay. Thank you.

Mr. Dougharty -- Judge Dougharty?

(Pause.)

MS. ANDERSON: Can I direct the ORCA staff to be sure and notify all the affected counties that the TDHCA Board book is up a week before the Board meetings? Would you take care of that immediately? Thank you.

JUDGE DOUGHARTY: Thank you. My name's Truman Dougharty; I'm the Newton County Judge.

Madam Chair, Board members and Mr. Gerber, I want to thank you first. Do you remember last month, in October, I was here asking for an increase in the amount

of a trailer, one home, from 60,000 to 71,000?

MS. ANDERSON: Yes.

JUDGE DOUGHARTY: I want to tell you that on October 19, we moved those folks in.

MS. ANDERSON: Wow.

JUDGE DOUGHARTY: There's no greater pleasure than having seven children hug your neck for having a new home. I want to thank you all for that.

I want to thank Mr. Stone for helping me on the monies to do a match on bridges -- some of that infrastructure money. You know, we're a poor county with a \$10 million budget, and we don't have a lot. So we appreciate that.

I guess what I'm here about is -- last Friday, I was in the money on this scoring process. And then Friday, I was out of the money. And I understand there were some scoring errors and Silsbee had gotten moved up.

And I don't want to bash any of my neighbors, either, but I'd have felt better if I never knew I was in the money to start with. So it left me with some things to think about.

You have a letter before you from Congressman Brady. And I can't speak for Mr. Stone, but I'm going to tell you about our friends at FEMA. If you all can, bear

with me.

That letter took me a year-and-a-half to get -- that you're looking at there. I had fought this battle, showing Newton County has got \$2.5 million in damage, for a year-and-a-half. While it shows Jasper County with 38 million and Tyler County with 28 million, I was in the same storm they were in, folks. The eye came up between Newton and Jasper Counties.

I have fought this, and I've fought it at every meeting. Newton was punished in the first round of funding because of that number, and I'm punished in this meeting because of that number, and it's not right.

And it took me a year -and-a-half. So if you expect Mr. Stone and them to get something out of FEMA in any hurry, good luck. When those folks came to Newton, do you think they told me that we had Blue Roof programs available? No. I had a judge from Florida call me: Judge, do you know you've got a Blue Roof program you can ask for through FEMA? No. You go ask those folks.

What did they send them down here for, folks? They need to leave FEMA at home and let the State of Texas handle this or send in the US Army. I'm -- and I hate to be here at this stage. I'm not saying anything I haven't said before. It's pitiful, in the United States of

America.

So good luck on getting your stuff from FEMA. That's what's holding them up. I can guarantee it. When you write those letters, I hope you get something sooner than I did.

But, that said, Judge Caraway in Hardin County is a personal friend of mine. I don't blame him for the funds he has gotten. But when you look at the overall total of this, Hardin County got a 10-million set-aside, Silsbee gets nearly 5-, Lumberton gets nearly 5-. That's \$20 million in one county, and I'm sitting over there, and I'm out.

MS. ANDERSON: Sir, can you explain where the calculations go wrong or where what -- I mean how -- if FEMA said there was \$2-1/2 million in your county -- is that correct?

JUDGE DOUGHARTY: Yes.

MS. ANDERSON: Okay. And why is that number inaccurate?

JUDGE DOUGHARTY: From the letter -- I've been trying to find it out for a year-and-a-half, and nobody would talk to me. Finally, we get this letter when Congressman Brady starts getting into it. And they didn't give us credit for probably \$10 million worth of debris

that we had to remove.

MS. ANDERSON: That the Corps dealt with?

JUDGE DOUGHARTY: Yes. We went with the Corps, which saved everybody money. We thought we were being good stewards of the taxpayers' money. And it seemed like I got punished for it. And I fought this with my own COG. I didn't approve our distribution.

I've made public comments with ORCA and TDHCA about how I didn't think that number was fair. And I've said that if Newton County did all we did, if we're that good, they should send us to Washington and put us on a stage and give us an award. If I could do all of that with that little bit of stuff, then we were pretty good.

And yes, we went to Houston and got 15 generators and did not -- and they donated them to us. Cingular did. We didn't pay \$80,000 for each one of those generators for three or four weeks. We probably saved a couple million dollars, but who cares now? Nobody.

So I'm a very -- they say I'm as tight as the bark on a tree, and I am with my personal money, and I am with the taxpayers' money. And I think that's what we're supposed to be doing. And all this is not about me; it's about my people. And I just don't think I'm getting a fair shake in this, and that's why I'm here.

This debris number, \$10 million, does this -- your per capita damages, per person, on this scoring sheet? I'm killed there. I'm killed on the estimate of the infrastructure damage. I've got three colonias in my county, and I'm not on the Mexico border. I'm bordering Louisiana, and I've got three colonias.

We're an EDAP county. We have a high elderly population. We don't have a lot of infrastructure. But what do I do? My kids can't get to school without the buses taking detours because my bridges are out. My roads are blowed out. I need house money, but I need infrastructure money, too. I need them both.

And I guess I'd close with saying this. That -- I'll read the last line of what Congressman Brady said: "I'm certain that you will continue to work toward an equitable and fair solution to the funding needs of Newton County that does not allow a formula-driven mistake to ignore the real damage." And it says --

MS. ANDERSON: And the formula-driven mistake in your mind is the exclusion of the Corps money?

JUDGE DOUGHARTY: Yes.

MS. ANDERSON: Okay.

JUDGE DOUGHARTY: The cost of the debris that's credited to the other counties and that I got no credit

for.

MS. ANDERSON: Okay.

JUDGE DOUGHARTY: Most of them used private contractors. And if you read that letter closely, even though we used the Corps, our numbers should have been in there just like if I had used a private contractor and paid him more money.

MS. ANDERSON: Okay. And then I have another question for you, Judge, please.

JUDGE DOUGHARTY: Good.

MS. ANDERSON: The same one that I've asked everybody else, which is -- in the first block of infrastructure money, Newton County received \$877,000. And what's drawn to date is, well, maybe not even 15 percent of that. Can you help me understand why this money is being -- is slow to be drawn down?

JUDGE DOUGHARTY: I think I can. We've ordered all those generators. That's back-ordered, \$250,000, I believe. I'm working on a hazard mitigation grant that is with FEMA, and we have some monies in there for that.

I had a problem with an audit. We got started with our audit. My auditor decided to sell his business. He went to another company, and the other company was coming in and started on our audit. They got -- he didn't

want to sell his business then. They got in a squabble and left old Truman with a letter of engagement signed and them getting into some kind of court battle, and I'm stuck.

ORCA says, We can't pay your bills until we get your audit. I had a deadline, and I missed that deadline. I finally got it. It cost me an extra \$22,000, if anybody wants to know, because of that. But I got it, because all my grants were at risk.

MS. ANDERSON: Right.

JUDGE DOUGHARTY: And if it wasn't for what you all help us do, well, Newton County would be in sad shape. So in looking at these grant applications -- I thought this was all about recovery. And I hate to talk about anybody's grants, but I'm going to build retention ponds, and I've got buses that can't get across bridges and are having to go longer routes to pick up school kids. I've got my mail routes cut short. Everybody --

(Pause.)

JUDGE DOUGHARTY: Just forgive me, folks. It's just hard for me to understand that. Some of this sounds like hazard mitigation grants, which FEMA has money available for, which I'm doing on a buyout program at Floods. I have to do a 25 percent match. If I could have

got it through this program and avoided that, I'd have tried to do it.

But I guess you all are kind of in my place. You all are the jury, and I'm the defendant. And I'm sitting here asking for justice and mercy. And I'll leave it at that.

MS. ANDERSON: Thank you, Judge.

The next witness is David Waxman.

MR. WAXMAN: I pass. Thank you.

MS. ANDERSON: It's getting to be that time of day, isn't it?

Mr. Jeff Beaver?

MR. BEAVER: I'll pass. Thank you.

MS. ANDERSON: So that concludes public comment on that item.

MR. BOGANY: Can I ask one question --

MS. ANDERSON: Sure.

MR. BOGANY: -- of Mr. Stone?

MS. ANDERSON: Mr. Stone?

(Pause.)

MR. BOGANY: Mr. Stone, I just needed to get some clarification on the county judge from you on what's happening with him and in that county and why it seems to be such a disproportion of funds going everywhere else

except for to him. And he was right there in the middle of the storm, too.

MR. STONE: It doesn't seem fair, does it? And I understand exactly where Judge Dougharty is coming from. If I were in his shoes, I'd be doing exactly and saying exactly what he's saying.

It -- we're operating the program within the guidelines of an action plan, and we have to follow those guidelines. And we have done that to the best of our ability.

The judge did some great work immediately after the storm. And as he said -- and I concur -- he appropriately took care of some business and got the corps of engineers in and got the debris removed. He did receive a benefit from that, and, unfortunately, we can't count that, according to the rules, to give him any extra points for that. So it's about numbers in this case.

MR. BOGANY: Well -- but it seems to me -- and I've seen this completely -- that if I had the money to fix my roof, I can't get reimbursed for my money, just because I took my life savings to go back and fix my house. I can't get that money back.

And it seems as though we ought to be able -- I know I'm talking about FEMA again. But just -- if FEMA

can't fix it, then, to me, those are the questions that should be going to the local congressmen, the Texas delegation and our senators, and saying, Hey, you know, he used the corps of engineers to help save some money, but it doesn't mean that he still doesn't have the bridges and all this.

And it just doesn't make any sense to me that -- why we don't and we can't fix this problem. And I know I'm following rules. But from my end, I just want it fixed. And I need to know what we need to do to fix it. And is that another trip for us to go to Washington and try to fix it? What do we need to do to fix this problem?

MR. STONE: It's going to take some more money.

MR. BOGANY: And we don't -- what about the cities -- you know, I'm looking. And most of this money's not being used at all. I mean what I'm looking at -- everybody's requesting it, but nobody's using it. Is there any deobligated funds? Where do we go? Can we shift funds around if people are not -- if they're ready to go and we've got all these other cities that are not doing what they need to do? Or whoever the COGs -- can we move this money around? How do we get this fixed?

MR. STONE: Well, the money's available. And as the draws come in, the money's sent out the door. So

it's not waiting for one after another after another. So that's not a problem.

MR. BOGANY: Then -- and I mean we've got Beaumont that has got \$2 million sitting here. He just said he's not going to use it until the end of March. I mean it just seems like we ought to be able to move this money around to help certain areas that need it right now, because Beaumont has got money sitting here for -- \$2 million. They've only taken \$37,000.

MR. STONE: Well, Beaumont's is a construction project. And those take longer.

MS. ANDERSON: You know, the newspapers aren't making any distinction in that.

MR. STONE: I understand.

MS. ANDERSON: And neither are the residents of the 27 counties of southeast Texas.

MR. STONE: I know. It's --

MS. ANDERSON: Why were those corps funds not included in the formula that went into the action plan? Did we just miss it?

MS. LAGRONE: This was an issue under DR-1, as well. Regionally, FEMA numbers are the only numbers that exist by county and by city so that we can compare them against one another. We just got information about the

corps numbers. We've made a few preliminary calls.

The corps lumps together their projects not necessarily at the county level. So the corps would not be able to report to us -- as we understand it today, they would not be able to tell me, Newton County got X amount of dollars from us; Jasper County got X amount of dollars from us. They could tell us that between Newton County and Jasper County, it was this much, but they don't split it by geographic location.

This was a problem under DR-1. We tried to find SBA numbers that we could potentially use, insurance figures that we might could use. Across the region, FEMA numbers, while we all recognize are flawed, are the only numbers that exist and that we can use to understand the damage.

MS. ANDERSON: Okay. In the NOFA, was this or -- this calculation that you've used here was in the draft action plan that we sent to HUD and HUD approved. Is that right? So did everybody have plenty -- have opportunity to comment that that was how these funds were going to be allocated?

MS. LAGRONE: It was let out in the NOFA and the application guide. We did go out. We went workshops. We went through it. We took public comment during that

period. We offered public comment during the Board meeting when you all approved it. You all approved it. We went away, we came back, and you all finally approved it.

There was opportunity for comment. We did get the comment that FEMA numbers are bad, that FEMA numbers aren't accurate, but no one had another alternative for us to be able to determine public assistance damages.

MR. SALINAS: Is there any way that you could look at Newton County's bridges -- at least the bridges -- and see how much money it would take to help the kids?

MS. LAGRONE: We could look at it, but we're out of money.

MR. SALINAS: Well --

MS. LAGRONE: Based on the scoring structure --

MR. SALINAS: Well, why don't you just look at it and let us know how much it is? Just do that.

MS. LAGRONE: We can do that.

MR. SALINAS: And then --

MS. LAGRONE: We can look at that.

MR. SALINAS: -- send it to Mike.

MS. LAGRONE: Okay.

MR. SALINAS: Because I think it's very important that those bridges be fixed for the school

buses.

MS. LAGRONE: Okay.

MR. STONE: So just the bridges?

MR. SALINAS: Just the bridges. I mean I think that's one of the most -- that's the first priority that you should have looked at before you all looked at anything else.

MR. CONINE: Piggybacking on Ms. Anderson's question, the comment about the per capital calculation where you take the city out of the county, can you comment on that?

MS. LAGRONE: Basically the way it worked is we looked at -- and Jefferson County is a good example. Jefferson County applied for funding, Beaumont applied for funding, and Port Arthur applied for funding. To establish the damages -- FEMA-estimated damages for each of those applicants -- we separated them.

So we took the worksheets that FEMA did, and we added all those together that applied to Jefferson County, all that applied to Beaumont and all that applied to Port Arthur. But in doing the calculation to do per capita damages for Jefferson County, we took out the populations of Beaumont and Port Arthur, because we only counted damages that the county sustained in the county itself

outside of Beaumont and Port Arthur.

So the per capita damages were based on the area outside of those city limits. So the population that we used to establish per capita needed to be the same.

MR. CONINE: So consequently, the damages per capita would be huge in the county as compared to --

MS. LAGRONE: That's correct, because --

MR. CONINE: -- in the city?

MS. LAGRONE: -- the population concentrations are in the communities.

MR. CONINE: And so the funding formula suggested what, that we were going to do it at the lowest cost per capita, or the highest cost per capita? How did that --

MS. LAGRONE: It was damages per capita. So the more damages you had per person, the more points you received.

MR. CONINE: Well, that means the county should have won out.

MS. LAGRONE: And they did.

MR. CONINE: And they did, instead of the cities?

MS. LAGRONE: Yes.

MR. CONINE: And what he's saying is that's not

quite fair. Okay.

MR. BOGANY: Can I ask you a question?

MS. LAGRONE: Yes, sir.

MR. BOGANY: We created these rules. Why can't we rearrange these rules? Because when we started off creating this, we didn't know -- you really didn't know what you were going to be up against. And as we've gotten into it, we've seen changes. And what I keep hearing is that, This is the way it is; it's etched in stone; this is the way we got it.

I'm sorry. No pun intended.

(General laughter.)

MS. ANDERSON: Mr. Bogany, I think what they're saying is there's no other source of data that's apples to apples county to county other than the FEMA data. Now, I'd be interested in anybody in the audience that wants to take issue with ORCA on that statement.

(Pause.)

MS. ANDERSON: You know, we also are bound by what we put in the action plan. And --

MR. BOGANY: We can't change any of that?

MS. ANDERSON: Well, we can certainly -- we absolutely can change it. And it just puts off -- you know, the action plan work we've done with HUD before has

led -- you know, it takes --

(Pause.)

MR. SALINAS: I think it's important to approve what they're recommending now and then look at it all over again. But I think what ORCA is recommending, to fix those bridges in certain counties -- I think that needs to be done today.

MR. CONINE: If the FEMA data didn't get specific to the county -- in other words, you had to have Jefferson and -- what was the other county that -- used in your example a minute ago, having two counties together and you had to guess?

MS. LAGRONE: No. What I was talking about was that the corps data is not specific to --

MR. CONINE: The corps data?

MS. ANDERSON: Right.

MS. LAGRONE: And that's why I don't think we can use corps data. We will look at it more. But at least from the phone calls we've made while you all were here meeting, we came up with that we -- it is not split out geographically by location. The corps bids out those projects by cubic yard, and they don't bid them out geographically.

So preliminarily, the corps is telling us that

they cannot look at a particular county and tell me exactly how much they spent in that county or that city. So I --

MR. CONINE: So that's not a damage assessment; that's just the amount of money in relief that they had provided --

MS. LAGRONE: Yes.

MR. CONINE: -- to a geographic area. Is that right?

MS. LAGRONE: Yes.

JUDGE DOUGHARTY: Could I comment again on that just real briefly?

MS. ANDERSON: Yes, sir.

And, Heather, would you --

You'll need to come back up so that you can -- we need your comments on the record.

Heather, if I could just get you to let the Judge have your spot for just a second?

MS. LAGRONE: Sure.

JUDGE DOUGHARTY: Newton County entered into a contract in a formal commissioner's court meeting with the corps of engineers to remove our debris. There were several other outside contractors there wanting that bid.

The information available to us at that time

was that if the county did not contract with the corps -- it's a 75/25 match. They were estimating, if I remember right, my debris at 350,000 to 400,000 cubic yards. And the figure I remember at that time with a FEMA contractor is \$25 per cubic yard. How can these people not have that contract we entered into showing what they paid that contractor, the amount, to remove the debris? It's unconscionable if they can't provide that.

MS. ANDERSON: Thank you, sir.

JUDGE DOUGHARTY: And I haven't been able to find an answer to that, either. I've asked for that, and I can't get it.

MS. ANDERSON: But you have your paper work showing what you --

JUDGE DOUGHARTY: Yes. We had a contract with those folks for Newton County, not with Jasper and the others all involved.

MS. ANDERSON: Right.

JUDGE DOUGHARTY: We should be split out. Those folks should have that somewhere.

MS. ANDERSON: Right. Okay.

JUDGE DOUGHARTY: Thank you.

MS. ANDERSON: Thank you, sir.

MR. SALINAS: I think we should allow the

recommendation -- accept the recommendation of those projects that they have for us and then look at whatever else we have to look at later on. But I think they've got some projects that are badly needed in some of those counties.

MS. ANDERSON: The concern --

MR. CONINE: Charlie --

MS. ANDERSON: The concern is that we don't have any more money. So it's not -- no matter what the number is that comes back from Newton County, at present, we don't -- unless we get --

MR. SALINAS: Well --

MS. ANDERSON: -- some deobligated money, you know, that other communities don't use. So --

MR. CONINE: Yes. But we had testimony here a minute ago, Charlie, that there's still -- in some opinion, there's some math problems with the recommendation list of the money you have.

MR. STONE: Right.

MR. CONINE: Now are you convinced that even though somebody showed up in the last 24, 36 or 48 hours, there are some discrepancies with the formula even as it was in the RFP or the plan? Or --

MR. STONE: There are no discrepancies with the

numbers that we have calculated based upon the action plan guidelines. Now, you can change -- pull numbers out of the city and put them back in the county and things like that, and you can manipulate this all you want, but we did it the way we did it. And Jerald has done the calculations, and they've been checked three or four times. There's not any mathematical errors with the way we did it, and we did it consistently with everyone.

MR. CONINE: Madam Chair, I move Item 5.f. as recommended.

MR. SALINAS: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: Madam Chair and Board members, Item 6.a. is the presentation, discussion and possible approval of the 2008 Regional Allocation Formula. This item, again, is -- incorporates legislatively required changes, including a change to the urban and rural

definitions, and a reservation of certain funding amounts before the formula is applied. The RAF also reserves a minimum rural allocation of 5,000 per region --

MS. ANDERSON: Hey, as you all leave, please do it a little more quietly. You all get to leave; we're still here.

MR. CONINE: We're stuck.

MS. ANDERSON: Thank you.

MR. GERBER: -- as well as a statewide minimum of 20 percent of the total state allocation. Only one comment was received during public comment about the RAF. Staff's recommending approval of the RAF as presented.

MR. BOGANY: So move.

MR. CONINE: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: Item 6.b. is the affordable housing needs score. The 2008 AHN score reflects updated

definitions for rural and urban places. Staff's recommending approval of this methodology as presented.

MR. CONINE: Move approval.

MR. BOGANY: Second.

MS. ANDERSON: Discussion?

(Pause.)

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.

MR. GERBER: Under the executive director report items, you have the outreach activities.

Historically underutilized businesses is under Tab 2. And this item provides information gathered from 2006 applicants who were awarded points for agreeing to put a plan in place for utilizing HUBs, persistent with -- pursuant to the Board's request at the last meeting.

Item 3 includes the Emergency Shelter Grant Program application edits that were made to the special initiatives section. And you asked for a copy of that, and so that is included in your Board book for your review. And the Department, you should know, has released

the 2008 ESGP application packet just last week, and applications are due on January 10.

Item 4 is a comprehensive report on the status of the HOME program.

Item 5 is ownership transfers for Housing Tax Credits. That's a quarterly update.

And Item 6 is a follow-up to the recommendations of Mr. Henneberger at the last Board meeting. And those, obviously, fall into a broader context of disaster recovery items that we've discussed. And so we put those items forward for your review and consideration at a future Board meeting.

And just for the benefit of everyone involved, our intent is to have the next Board meeting --

Held here in Austin on December 13?

MS. HIROMS: Yes.

MR. GERBER: -- here in Austin, at which point we'll be bringing forward the HOME rules and the disabled accessibility, among other fun items.

MR. CONINE: Do we need to discuss the report in Item 4, the utilization of the HOME program? I mean I don't know whether we need to do it now or do it later, but --

MS. ANDERSON: I mean I'm concerned because it

looks like we're moving the wrong way. When I compare this to the report from about a year ago, even when I back out the 2007 funds, we have more available to commit than we did at the last time of the annual report. So --

MR. GERBER: Ms. Arellano, do you want to come forward and talk about it?

MR. CONINE: I mean I can think of a lot of ways to give away HOME money.

(General laughter.)

MS. ARELLANO: Jeannie Arellano, director of the HOME division. Part of the discrepancy that you might see from last year's is deobligated funds. As we have administrators that are not performing and we close out contracts, there's a remaining balance of funds that we end up deobligating. And those funds translate back into the IDIS report in HUD's reporting system.

We are currently evaluating, obviously, our internal fund balance report, which is the second report in this section, to start programming funds.

MR. CONINE: We've got 30 million laying around.

MS. ANDERSON: Sixty --

MR. CONINE: If I take -- if I back out '07, available to commit --

MS. ANDERSON: Right.

MR. CONINE: If you back out '07 --

MS. ANDERSON: There's still 30-.

MR. CONINE: -- there's 30 million sitting there.

MS. ARELLANO: The '07 is what we awarded this summer.

MR. CONINE: Right.

MS. ARELLANO: So those are still commitments that we have to enter into IDIS. Those are still --

MS. ANDERSON: And what's the normal lag --

MR. CONINE: Okay. So --

MS. ARELLANO: So really what we have available is the 11 million.

MS. ANDERSON: So the HOME awards that we made in July, August -- these are the OCC and the --

MS. ARELLANO: Correct.

MS. ANDERSON: And those things are still not in IDIS?

MS. ARELLANO: Well, you can -- IDIS -- the entries in IDIS are supposed to be made for actual activities when it's an individual address that's being served.

MS. ANDERSON: Okay.

MS. ARELLANO: So once we actually commit funds to a homeowner when they've been deemed qualified to participate in a program -- not until that time -- is when we are supposed to be putting these entries into IDIS. So --

MS. ANDERSON: Let's put it on the --

MS. ARELLANO: -- IDIS doesn't receive entries prior to the contract level.

MR. CONINE: As late in the day and as tired as we all are, let's put it on the agenda for next month, but I'd like a thorough explanation of why that 30 million, as I see it, and the 4 million on the back can't be turned around and reobligated somewhere else, per our policy, of course. But --

MS. ANDERSON: And I know some of this is probably dependent upon the subrecipients we give the money to, but what are our internal performance measures and expectations of our HOME division about how quickly they will get -- to the extent it's in the division's control, how quickly we get these things committed? Because I'm aware, in the past of -- you know, a lifetime would pass between the award and the signing of the contract.

MR. CONINE: And maybe it's the heading of the

column that's confusing.

MS. ANDERSON: Yes.

MS. ARELLANO: Which --

MR. CONINE: That's kind of what I'm hearing.

MS. ARELLANO: Which one is it that you're referring to?

MR. CONINE: Look under the -- where it says, "Available to Commit." Down at the bottom, it says \$61,899,000 -- on the front page. If you --

MS. ARELLANO: Yes. That is from IDIS. Correct.

MR. CONINE: Okay. So if you back out the 31 million that we just got this year and -- even though we've allocated it, we haven't committed yet --

MS. ARELLANO: Well, if you turn --

MR. CONINE: That leaves \$30 million sitting there from previous years, prior to 2007, that in the way I define the word "commit" says it's not committed.

MS. ARELLANO: Correct. And with HUD, there's one way that the definition of "commit" is --

MR. CONINE: That's always the case with HUD.

MS. ARELLANO: Yes. If you turn to the top of page 3 --

MR. CONINE: Okay.

MS. ARELLANO: -- which is the HOME fund balance report --

MR. CONINE: Yes.

MS. ARELLANO: That's our internal report. So you can see there where we have actually committed funds to activities, whether it's a NOFA or set-asides that we've -- were mandated to accomplish. And then halfway down, you'll see where it says, "Less." We have the \$15 million out in a rental NOFA right now --

MR. CONINE: Right.

MS. ARELLANO: -- the CHDO NOFA that's out. So those are all --

MR. CONINE: Okay.

MS. ARELLANO: And so when you get to the bottom there, that's where the 11- --

MR. CONINE: So that took -- my \$34 million just shrunk to 11-.

MS. ARELLANO: Yes.

MR. CONINE: But --

MS. RAY: Still --

MS. ARELLANO: And we do currently have -- and this what I'm referring to that we're planning to program funds for. There are some NOFA's that will be coming before the Board to plan for programming for these funds.

MR. CONINE: Okay.

MS. ARELLANO: And our deobligated policy currently also covers procedures that only allow us to keep a certain balance in here for more than -- no longer than 90 days before we have to start committing it again.

So there are procedures in place --

MR. CONINE: Okay.

MS. ARELLANO: -- for that.

MR. CONINE: All right.

MS. ARELLANO: And that's what we're trying to reconcile and actually start programming funds for.

And in our deobligation policy, there's a disaster set-aside, which we also accounted for as the first line item as a set-aside, the \$2 million.

MR. CONINE: All right. Maybe we can just do a little more expanded report on that next time, Mr. Gerber.

MR. GERBER: Yes, sir.

MR. SALINAS: And also, can we get a report on the housing in east Texas and see how much money we have obligated to the east Texas area and how much money is not committed?

MS. ANDERSON: That's what there was -- that was what Item 5.a. --

MR. SALINAS: Yes.

How much money do you all have obligated in east Texas? We were talking today about --

MS. CRAWFORD: Well, we have about 40 million out there --

MR. SALINAS: 40 million --

MS. CRAWFORD: -- in Round 1.

MR. SALINAS: How much more do you have?

MS. CRAWFORD: In Round 2, we'll be awarding a contract for -- signing a contract for 232 million.

MR. SALINAS: Okay. Do you -- when do you think you'll be able to spend \$232 million in that region?

MS. CRAWFORD: Well, it's --

MR. SALINAS: So see? You need to let us know --

MR. GERBER: Over the course of the next two years, Mayor.

MR. SALINAS: You need to let us know and see if we can deobligate some of this --

MR. BOGANY: Yes. Right.

MR. SALINAS: -- housing money and spend it on bridges in east Texas.

MR. GERBER: Mayor, we can't do that. The --

MR. SALINAS: Okay. Well, that's what I needed to know.

MR. GERBER: The reason is that those decisions were made by --

MR. SALINAS: Well, if we can -- it's like Shad said --

MS. ANDERSON: We have 4,000 applicants that ACS has to --

MR. SALINAS: I know.

MS. ANDERSON: Okay.

MR. SALINAS: I know. But this -- she's getting -- she has got 40 million, and she's going to get 230 million more. What I'm saying is that we can -- it's like Shad said a few minutes ago, that if we can at least have some -- take care of some of the roads and bridges in some of those counties and just go with that --

MR. GERBER: Mayor, I'd also interject. It's kind of interesting that in the first round --

MR. SALINAS: Call me tomorrow or next week.

MR. GERBER: Okay. But it's kind of interesting that in the first round of funding, it was generators, shelters and other things.

MR. SALINAS: I understand.

MR. GERBER: Presumably the road was washed away and the bridge wasn't there then. And we never --

MR. SALINAS: But you would think --

MR. GERBER: We never heard about a lot of this infrastructure.

MR. SALINAS: Mike, do you really think we can spend \$272 million in east Texas on housing?

MS. ANDERSON: If we've got 4,000 and they each need 60 grand --

MR. SALINAS: At the rate we're going, we're not going to be there. I mean I saw the report today. I don't say very much, but, you know, I just don't think we would ever get there and spend \$272 million.

MR. FLORES: But, Mayor, we negotiated that with HUD. And I thought Mike Gerber, if I have this correctly --

MR. GERBER: Well --

MS. ANDERSON: I'll entertain a motion to adjourn.

MR. FLORES: So move.

MS. RAY: Second.

MS. ANDERSON: Thank you.

We are adjourned. I should have done that about ten minutes ago.

(Whereupon, at 3:47 p.m., this meeting concluded.)

C E R T I F I C A T E

MEETING OF: TDHCA Board
LOCATION: Austin, Texas
DATE: November 8, 2007

I do hereby certify that the foregoing pages, numbers 1 through 334, 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 and Community Affairs.

(Transcriber) 11/15/2007
(Date)

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