TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

BOARD MEETING

Room E1.010
Capital Extension
1500 N. Congress Avenue
Austin, Texas

July 21, 2008
9:40 a.m.

MEMBERS:

C. KENT CONINE, Chair
SONNY FLORES
GLORIA RAY
LESLIE BINGHAM-ESCARENO
TOM CARDENAS
DR. JUAN MUNOZ

STAFF:

Michael Gerber, Executive Director

A G E N D A

PAGE

CALL TO ORDER, ROLL CALL 4
CERTIFICATION OF QUORUM 4

PUBLIC COMMENT 4

CONSENT AGENDA

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

Legal Division 36

Financial Administration 36

ACTION ITEMS

Item 2: Real Estate Analysis

ITEM 3: Office of Colonia Initiatives 37

ITEM 4: Financial Administration 47

ITEM 5: Multifamily Division Items - Housing Tax Credit Items 47

Appeals Timely Filed 47

Item 6: Multifamily Division Items - Private Activity Bond Program Items 179

a) Presentation, Discussion and Possible Issuance of Determination Notices for Housing Tax Credits Associated with Mortgage Revenue Bond Transactions with Other Issuers:
08403 Village at Lakewest I
08404 Village at Lakewest II
08412 Alamito Gardens

b) Presentation, Discussion and Possible Action for Inducement Resolution Declaring Intent to Issue Multifamily Housing Mortgage Revenue Bonds for Development Throughout Texas and Authorizing Filing Related Actions, Private Activity Bonds with TBRB for PY 2008, Res. No. 08-027

086114 Felicity Place Apts.

EXECUTIVE SESSION

OPEN SESSION

REPORT ITEMS
1. TDHCA Outreach Activities June 2008
2. Challenges to Competitive Housing TCA

ADJOURN 215

P R O C E E D I N G S

MR. CONINE: Good morning. Welcome to the July 21 meeting of the Texas Department of Housing and Community Affairs Board.

The first order of business this morning is the call of the roll.

Leslie Bingham?

MS. BINGHAM-ESCARENO: Here.

MR. CONINE: Tomas Cardenas?

MR. CARDENAS: Here.

MR. CONINE: Tomas is here.

Juan Munoz?

DR. MUNOZ: Present.

MR. CONINE: Gloria Ray?

MS. RAY: Here.

MR. CONINE: Sonny Flores?

MR. FLORES: Here.

MR. CONINE: Everybody's here. Hope you're all having a good summer all those kind of good things.

Next is our public comment period before any of the agenda items start. Most of you know that we allow public comment both -- either in front of the meeting or at the particular agenda item as it comes up. I've got several witness affirmation forms for both. So we look

forward to hearing what you have say today.

So we'll start with Councilwoman Priscilla Leal. And I have Mayor Henry Garrett, and I have Daniel Gallegos. I understand the three of you are going to all three speak.

MAYOR GARRETT: Good morning, Mr. Chairman.

MR. CONINE: Good morning.

MAYOR GARRETT: Driving up here from Corpus Christi this morning I realized, when you get on Interstate 35 and you go through San Marcos you get here in a hurry whether you want to or not.

(General laughter.)

MAYOR GARRETT: The City of Corpus Christi is supporting two low income housing credit developments: the Oasis at the Park single room occupancy, an 80-unit development for persons that are single. Also the Buena Vida Senior Village, a 100-unit development for persons that are seniors.

In protecting the integrity of the process, the City of Corpus Christi has funded Oasis at the Park in physical year '07-'08 for more than 5 percent of the total development costs for the Home Investment Partnership Program. In terms of local support we have ranked this development as number one.

In providing local support for the Buena Vida Senior Village, the City of Corpus Christi has approved funding for 3 percent of the total development costs for Corpus Christi Community Development Improvement Corporation, CCCIC. This was approved by the CCCIC on July 14 of '08. As a result, we have ranked the development as number two.

The City of Corpus Christi will be requesting for a forward commitment of future tax credit allocations to cover TDHCA's support for their two developments. Both developments are increasingly needed in Corpus Christi, and both developments are supported by the City of Corpus Christ's five-year consolidated plan.

We would really appreciate your support in these two projects. If you have any questions, I have my staff here with Councilperson Priscilla Leal, and our man who has all the answers over here, the guy that's over here.

Any questions?

MR. GALLEGOS: Just wanted to kind of speak on behalf of the projects. We are --

MALE VOICE: Identify yourself.

MR. GALLEGOS: Oh, excuse me. I'm sorry. Daniel Gallegos. I'm with Community Development for the

City of Corpus Christi.

The -- you know, as you're going through a process, we go through our local process as well. The SRO Development is highly needed for the City of Corpus Christi. That development is tied to our continuing care grant application. It's a competitive grant application process.

Something that we don't have right now is permanent housing for people with -- that are homeless, or the people that are at the 50 to 30 percent of AMI, or less. And that's why we're supporting this development. And we -- if we don't fund this project, you know, it's going to really hurt our competitive grant application. So that's why we're really needing this project.

The Buena Vida project is -- came forward to you I believe a couple of years ago and that project is also needed as well as for seniors. So anything that you can do there.

We have a letter from the Diocese of Corpus Christi from the Most Reverend Edmond Carmody, he's our bishop. And we have a letter here supporting the Texas LULAC Oasis at the Park project. So I'd like to go ahead and pass this on to -- is it to you here?

MALE VOICE: Michelle.

MR. GALLEGOS: Michelle? Thank you.

MAYOR GARRETT: Anything else, sir?

MR. GALLEGOS: That's it. Thank you for your support.

MS. RAY: Thank you.

MR. GERBER: Mayor and Board members, I would just add that we are also working with the City of Corpus Christi on their '06 application, and we're very pleased to lend our -- the state's support to, you know, to that -- and we really applaud the very progressive approach the city has taken on -- in general.

MAYOR GARRETT: We --

MR. GALLEGOS: Yes.

MAYOR GARRETT: -- appreciate that, Mike.

MR. GALLEGOS: We thank you for that.

MR. FLORES: Mike, is this on the agenda, Oasis --

MR. GERBER: It's on the 9 percent tax credit list.

MS. LEAL: First of all, like they said, my name is Priscilla Leal, and I'm a city councilwoman in District 3. And I represent the people that are in most need, or dire need of affordable housing.

We, as a city, have come here to ask for your

support for the tax credit for both of the projects that are needed in Corpus Christi. And I'm very proud to announce that we are unified to seek your help to help the people in Corpus Christi.

And we do support the Buena Vida project for the elderly, 100 units. And it's placed in an area that's right across from a golf course, walking distance, next to the bus stops and as such.

But this would help a lot of the people that are now losing their homes, and most especially the elderly that will need this kind of affordable housing. And we sure do appreciate all your work for public service.

As well as I would like to thank Senator "Chuy" Juan Hinojosa and Representative Abel Herrero, the region 10 representatives. Thank you very much.

MR. CONINE: Thank you. Any comments for the witnesses?

(No response.)

MR. CONINE: Michael Elledge.

MR. ELLEDGE: Good morning.

MR. CONINE: Good morning.

MR. ELLEDGE: My name's Michael Elledge and I live in the south side historic district in the Palestine,

TX. And I am strongly opposed to the housing tax credits for the historic walks of Palestine project, primarily due to how it will affect our neighborhood.

The project has been presented to you by the developer and by the City of Palestine officials as a downtown project. But a large -- a substantial part of this project will also be in an area -- pardon me -- that is not downtown, but is in the south side historical district. A National Register historic district since 1998, and a local district since the spring of 2008.

At your last meeting, Palestine Mayor Carolyn Salter spoke to you, described the area where the new apartment complex would go as in the middle of a commercial district.

However, the site for the apartments on South Queen is near numerous 19th Century homes, including the best Victorian house and grounds in Palestine, the Bowers Mansion, a Texas state landmark. The house is on the same block as the proposed apartments.

Mayor Salter, and a document submitted by the developer, refer to it as an antique store or a bed and breakfast. It is both of these. However, it has been a single family home since 1878.

Near the proposed apartments are numerous

Victorian homes. Some have always been single family dwellings; others, like my house, have been converted back to single family dwellings.

I would opposed any apartment development in the south side historic district. This is an inappropriate development, out of keeping with a historical residential district. But it's also a development that will affect the rest of us already living there inappropriate.

Adding more apartments will only overload existing roads and the roads near the proposed project especially are narrow, old roads not suited to the kind of traffic an additional 20-unit complex will create.

The apartment will also be built very close to a rail yard and near railroad tracks, basically across the street. I find it worrisome that these apartments for families with children would be across the street from an area that could be of such risk to them. The only family units in the entire complex will be across the street from the railroad.

Thank you all for your time. I appreciate it.

DR. MUNOZ: Thank you, sir.

MS. RAY: Thank you.

MR. ELLEDGE: Thank you.

MR. CONINE: Michael Lank.

MR. GERBER: Mr. Chairman, as the Board members come up, I just want to remind the Board that we'll be hearing about deals -- you're going to be hearing a lot of comments today about 9 percent deals that are not all on this agenda. As just a reminder they'll be issues that'll be coming forward also at the next Board meeting as part of the 9 percent tax credit list.

MR. LANKFORD: Good morning, Chairman, members of the Board.

MR. CONINE: Good morning.

MR. LANKFORD: I'm Michael Lankford, principal with Lankford Interest out of Houston, Texas. And I've appeared before the Board on the June 26 meeting, and after reading the transcript with all the "ands" and "ahs" and -- I'm just going to read a letter.

And it's addressed to Mr. Kent Conine, Chairman of the Board, and it's regarding a challenge -- appeals score revised by TDHCA general counsel and executive director.

"Dear Mr. Chair, Please find attached the complete documentation and correspondence regarding the above-referenced subject matter. I, again, respectfully request that the Board hear and rule on the legitimacy of

a waiver of a QAP provision by the executive director.

"Due to an approval of an executive director appeal, six points were reinstated to TDHCA application number 08208. The appeal revolved around scoring item number 18, demonstration of community sport, other than quantifiable community participation.

"The executive director gave points to the application despite the fact that the QAP clearly states that points will only be awarded to an applicant if they are requested by the applicant."

I've attached page 45 of the QAP, section 50.9(I), selection criteria. It states that points, other than paragraphs two and six of this subjection, will not be awarded unless requested in a self-scoring form.

On page 56 of the QAP, also attached under 50.9(I)(18), it says that points will be awarded under this section if an applicant requests these points on a self-scoring form. The applicant very clearly did not request these points, despite the requirements of the QAP and despite the fact that staff had made this point very, very clear at all the application workshops.

"In granting the appeal, the executive director waived the QAP rules, something not even the Board has the authority to do. In response to my inquiry regarding the

competitor's appeal, Ms. Robbye Meyers, TDHCA director of multifamily finance, states in a June 23, 2008 e-mail, "Our legal counsel and ED believe that the applicant was stuck in a crack. We will have to fix the language of the QAP and the application material so this does not happen in the future."

I think it's clear that Ms. Meyers, in using the term "fix", is actually saying "change" the language, and admits that legal counsel and ED changed the 2008 QAP provision in this instance.

By reinstating the points, I believe general counsel proved what he clearly stated in the June 26, 2008 Board meeting transcript, page 58, "cannot be done without posting without posting with the *Texas Register* conducting a public hearing and a governor approval. Reinstating the points is a change to the 208 QAP rule and under general counsel's own statement, cannot be done without the above steps being taken."

At that June 26 Board meeting, the executive director, Mr. Gerber, page 60 of the transcript, stated, "Give staff a couple of hours and we will be back," in response to the Board's request that staff find a way to allow my concerns to be addressed. Please note the staff, as far as I know, did not -- never did report back to the

Board.

Because I felt the Board was clear, the Board gave clear instructions about this matter, I submitted a timely appeal to be included as an agenda item at this meeting, which was not done.

The attached e-mail from Mr. Gerber, dated July 7 at 4:16 p.m., acknowledged receipt of the appeal and, "We will review your e-mail and get back in touch with you."

On July 17 I received a letter via fax from Mrs. Meyers in response to my July 7 e-mail, in which she states --

MR. CONINE: Wrap it up.

MR. LANKFORD: All right. "That the staff originally did deduct points from the application, however, the applicant appealed the staff's decision based on the belief that a qualified neighborhood did exist." The executive director, Gerber, agreed and the 2000 uniform application did not give the applicant an accurate certification was in conflict with the requirements of the certification. Consequently reinstated the points under the Section 50.9(I)(18).

For the record, I would like to mention that I reviewed randomly over 20 different applications, and all

the applicants had checked the box. It was very obvious what should have been done.

In conclusion I just have one statement and one question. Under these exact same circumstances, rules, everything, this applicant did check the box in 2007, and if, in fact, he did think there was a qualified neighborhood community organization, why would he submit seven letters of community support. Thank you.

MR. CONINE: Have you given --

MR. LANKFORD: Questions?

MR. CONINE: -- a copy of that letter --

MR. LANKFORD: Yes.

MR. CONINE: -- to everybody?

MR. LANKFORD: Everybody has one.

MR. CONINE: I don't know that we -- oh, yes, I've got it up here. I've got it up here. Okay. We'll take a look at it and get back to you in the next Board meeting.

MR. LANKFORD: Thank you.

MR. CONINE: Ike Monty?

MR. MONTY: Good morning, Mr. Chairman, Board members.

MR. CONINE: Good morning.

MS. RAY: Good morning.

MR. MONTY: My name is Ike Monty. I'm president of Investment Builders. As you know, our company has been working for many years to bring affordable housing to my home town of El Paso. We received our first tax credit allocation in 1995 and have built several developments. And we thank you.

Yet the demand for affordable housing in El Paso remains very strong. Our two most recent tax credit projects have a waiting list of over 2700 residents. And our last allocation is 75 percent complete, and we've actually begun -- we're in the leasing process.

As you are making your tax credit awards this year, I hope you will consider the need in El Paso for making your allocations. Based on regional funding and scoring, it's possible that only one tax credit award will be made in the City of El Paso. With the demand we are seeing on our existing properties, we believe El Paso needs much more than that.

Our application designated as TDHCA number 08183 would provide 94 units of affordable housing if it receives a forward allocation. We hope you will consider awarding more than one application in the City of El Paso, and thank you for your time.

MR. CONINE: Any questions of the witness?

(No response.)

MR. MONTY: Thanks.

MR. CONINE: Thank you, Mr. Monty.

Corrine Von Berg?

MS. VON BERG: I was --

MR. CONINE: Just a resource?

MS. VON BERG: Yes.

MR. CONINE: Okay. Jeff Fulenchek?

MR. FULENCHEK: Jeff Fulenchek, Carleton Residential Properties.

Just real briefly I want to talk to you about our application, Wind River, 08205. We had been in a position of getting an award in Region 3 last month, and there was an appeal that was approved at the last Board meeting -- excuse me -- that put us on the marginal area, and I just wanted to put our name out there to consider for forward application, if you get to that point and have money available. Thank you.

MR. CONINE: Thank you.

Any questions?

(No response.)

MR. CONINE: I'll remind everybody that we have a public comment policy that limits public comment on any one issue to three for and three against and on the next

item it looks like to me I've got one, two, three, four, five for a project and one, two, three, four against.

So I'm going to read off all the names that I have and you guys can decided upon yourself which three are going to come up for the project, and then which three are going to come up against the project.

The for project I've got Diana Lewis, Joseph Diiorio, Frank Fernandez, Caitlin Uzzell, DeWayne Loftin. Of that group, any three can come on up and get started. Tell us who you are.

MR. FERNANDEZ: One of those was just going to seek time, and then I'll talk briefly and figure out --

MR. CONINE: Come on. Come on. State your name for the record, please, sir.

MR. FERNANDEZ: Good morning, Board members. My name is Frank Fernandez. I am the executive director for Community Partnership for the Homeless, and I'm here to testify regarding application number 08271, Manor Road SRO. And I'm here again to urge you to strongly consider funding our application on a forward commitment basis.

For the last few meetings, myself and others have testified on behalf of our project and our application and talked about some of the -- a lot of the details of what our 110-unit SRO project's about, and

share with you some of the challenges that we face in trying to build neighborhood and community support and the high bar that we now have in terms of being able -- that we need to secure broad political and community support to move forward.

What I wanted to focus on very briefly today is to talk about the critical need for this type of supportive housing in our community here in Austin. In the past I've shared with you that the need for housing for extremely low income people exceeds 20,000 units, and for folks struggling with homelessness, over 3,000 units. And that's for emergency shelter, transitional beds and supportive housing.

Focusing more particularly, when you think about supportive housing, the needs exceeds 1,000 units here in Austin. And supportive housing is so critical because it is that last piece that helps ensure that we break the cycle of homelessness. Because what often happens in our community is that you get someone off the streets, you get them into shelter and you get them into a transitional program where they stabilize; they get access to the services they need, hopefully they get a job, or access to the benefits.

And then they transition to what? If you

transition to market rate here in Austin it's too expensive. It's $600 or more. So where do they go? They go to [indiscernible] supportive housing if it's available. You know, it's affordable, and has the services they need.

But unfortunately we don't have enough of it here in Austin. And that is problematic, from my perspective, not only morally, but problematic just from a straight, economic, fiscal perspective.

The cause is not adequately addressing homelessness. In our community and communities across the State, it is significant and comprehensive. For example, some of you may be aware that for folks who are serving the homeless, they tend to use emergency rooms a lot more than others; they tend to end up unfortunately in our county lockups for petty crimes much more so than others.

They tend to take up the time of our police officers, our EMS workers, and social workers much more than others. And that has a direct financial and non-financial impact on our -- on that individual in our community.

To illustrate, here in Austin you look at the data, and you take someone who's homeless and who has -- for example, dealing with severe alcoholism. That person,

the data will tell you, will end up at the ER between 50 to 100 times in a given year.

Every time they go to the ER, that costs between $500 to $2,000, or more if it's for more services. So, say if you just take an average cost of $1,000 per visit and they go 50 times, that's over $50,000.

Couple that with the cost of having them locked up, the costs of services that aren't effected because they're not adequately, appropriately housed, it's pretty considerable.

Now, contrast that with the cost of supportive housing. It costs us to operate these facilities from the housing side, a little under $5,000 per year per person. Add the social service cost to that, it's between $10,000 and $15,000. And even when you allow for some relapses and things like that, the costs just to the taxpayer, to the community, is less than it would be just not adequately addressing the issue.

But take it at the person level. What do you have? Do you have someone who's on the street, who's a nuisance and a danger to themselves and others, who decreases our community's quality of life, versus having someone who's housed, who's stable, who's productive. I'd say it's a clear win-win.

And so from our perspective when you're evaluating properties for commitment, when you think about this type of price, supportive housing that is -- there's a drastic need in our community, these are very difficult deals to do; and the benefit to the individual and to the community, it makes a very clear and compelling case that this is something that we as a community and as a state need to prioritize. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: And Caitlin is the one that granted you the time?

MR. FERNANDEZ: Yes.

MR. CONINE: Okay. Now, DeWayne Loftin?

(No response.)

MR. CONINE: Okay.

MR. LOFTIN: Good morning. My name's DeWayne Loftin, and I'm a native Austinite, and I've lived in East Austin all my life. And this particular neighborhood we are -- Community, for the Partnership for the Homeless is going to build their facility, I've lived there for 23 years.

I'm an officer in one of the adjoining neighborhood associations, and I came here today because I

support this project. I've been involved in this community practically all my life, but specifically for the last 20 or so years. And one of the things that I've worked on is helping to bring affordable housing to Austin.

As we look at the way our economy is changing, and things are getting more expensive, gas, food, more and more people are finding themselves in a situation where they can't afford to pay for the things that, you know, they normally would be able to.

And, you know, I think it's important that we start trying to put into the community some avenues where people, once they fall below that line where they can support themselves to a position where they can't support themselves, that they have an outlet; something that they can fall back on.

And I think that's exactly what this particular project will do: It will provide housing for people that are falling below that line. And so I think it's critically important that you support this project, so that you can not only help those folks in need, but you'll be helping our community. Because just like Frank said, I mean, if we don't do something for these folks, they're going to wind up in jails, they're going to wind up in the

hospitals, and they're going to create more of a burden for us as a community than I feel they would be if they had supportive housing and services where they could be self-sufficient.

So again I would just urge you to support this project, it's something that I think the community needs, I think it's something that that particular neighborhood needs, and we're asking for your support. Thank you.

MR. CONINE: Thank you. Down to one more speaker. Yes, Mr. Munoz.

DR. MUNOZ: I've got a question --

MR. CONINE: Okay.

DR. MUNOZ: -- for either you or Frank. I just -- you mentioned that you were a member of a neighborhood association? Because I have a letter here that says, "Every neighborhood association contingent and adjacent to this proposed project is opposed to the project."

And you're saying that you're a member of a neighborhood association adjacent to this project, and you're in support of this.

MR. LOFTIN: That is correct. I am the president of the Pecan Springs Neighborhood Association, and our neighborhood does not support this project as an

association --

DR. MUNOZ: Okay.

MR. LOFTIN: -- I support it as an individual.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: Thank you, sir. One more speaker, for.

MR. DIIORIO: Good morning, ladies and gentlemen of the Board --

MR. CONINE: Good morning.

MR. DIIORIO: -- this is Joseph Diiorio, and at the present I am a resident with the Community Development Partnership of the Homeless; and I'm just here to share briefly how I got there.

Up until ten years ago I was very successful in my pursuit in my life, and what I was doing. Unfortunately I went through a family breakup, a divorce, and it set me off into a depression that I've never experienced before. So therefore, I got involved with drugs and alcohol.

I've been clean for two years. I spent a year in a drug rehab; it helped me a great deal. And through

the VA, they moved me into one of the residences here in south Austin.

I'm very grateful that the house was provided for me, the management of the place was superb; I mean, if something goes wrong, it's taken care of. I've been given the opportunity to go back to school, so I started full time back in January, full time at ACC, and currently taking a curriculum directed to drug and alcohol counseling.

Without the program that I'm in, I really don't know where -- you know, how I would have been able to get housing. I'm just very, very, grateful for it. And I do believe that, you know, the community needs low-income housing, from a person that's often been very successful.

So that's all I have to say.

MR. CONINE: Thank you for your testimony. Any questions?

(No response.)

MR. CONINE: Okay. Against the project I have again four names, Eliza May, Steve Speir, Meredith Morningstar and Al Weber. Only three of those can speak. Three minutes at a time, unless somebody else donates some more time, otherwise it's five minutes.

VOICE: I'd like to donate my time, Steve

Speir, to Mr. Soldana, if that's permissible.

MR. CONINE: That would be great. Thank you very much. To who, now?

MR. SPEIR: Paul Soldana.

MR. CONINE: I don't even have him in here.

MS. MORNINGSTAR: I'm representing him for today --

MR. SPEIR: This --

MR. CONINE: Okay, all right.

MR. SPEIR: -- thank you.

MR. CONINE: Now I got it.

MS. MORNINGSTAR: Good morning to --

MR. CONINE: Good morning. State your name, please.

MS. MORNINGSTAR: I'm Meredith Morningstar.

MR. CONINE: Thank you.

MS. MORNINGSTAR: And in regards to this project, we all agree that there is a need for this type of housing. However, this site location is greatly opposed by the neighborhoods in the area. And it's actually opposed by the police officers who are familiar with this area.

This area is already -- it's already a dicey area; it's already somewhat at risk. And I'd like to

point out that Windsor Park, University Hills, and Pecan Springs, the neighborhoods are against this project. You may be aware that there's a deficit of parks and recreational facilities on the East Side; this particular site is like a private park, it's privately owned, but people can make arrangements to have family reunions, birthday parties, whatever, there.

And the neighborhood would like to see the City purchase the land and turn it into a park, so that they can continue to reclaim the neighborhood, and have safe places to gather.

It's also right next door to a Dairy Queen. And there's not that much in businesses in that area that I think are going to be able to sustain if there aren't people who have the ability to support the neighborhood; small individual businesses will close if they don't have business.

So I would just like to say, please consider what these neighborhoods are asking. Thank you.

MR. CONINE: Thank you. Any questions?

(No response.)

MR. CONINE: Who's next? Al Weber, maybe? Or Eliza May, either one. You have five minutes.

MS. MAY: Good morning. My name is Eliza May

and I'm here today representing Adelante Solutions, and I also represent the Northeast Austin Business and Community Alliance.

Before you, you've got a packet of information that is going around; you can then have a copy of my testimony, as well as supporting documents I'll reference in this testimony.

The Alliance, as hereafter I'll refer to it, is made up of eleven neighborhood associations, most notably the Windsor Park, Pecan Springs and University Hills, all of which overwhelmingly oppose the proposed Manor Road SRO Project.

We oppose the project for the following reasons: First, the project violates the integrity of the zoning land use and compatibility standards outlined in the Windsor Park/University Hills neighborhood plans, a two and a half year voluntary process undertaken by the residents of the neighborhood. This neighborhood plan was adopted by the Austin City Council in 2007.

Furthermore, over 900 neighborhood residents have signed a petition opposing the project. Most importantly, 70 percent of property owners living within 200 feet of the project have submitted a valid petition to the Austin City Council. As a result, the requirement of

a super-majority vote from the Austin City Council is now necessary for the approval of the rezoning request to complete this project.

This action is separate and apart from your decision to fund the requested tax credit allocations. The Austin City Council has a request on this week's agenda to delay the action on the proposed rezoning until this body makes this determination on the future of the requested tax credits, an action which is scheduled on your agenda I believe on July 31st.

Local interest and support on the merits of the Alliance's opposition of the Manor project reflects the realization that the proposed project did not seek the advice and inclusion of the neighborhood. The engagement of the neighborhood, from the inception of the planned proposed project to the submission of the TDHCA tax credit application was critical; the neighborhood learned about the project by going onto your website.

Moreover, the Austin *American-Statesman* editorial board has begun to question the moral issue of one community bearing all of the City's burdens, which has now given pause to a larger local issue, and that is that of equity; should one community be the home to less desirable projects, even though they benefit the entire

city?

We realize that you're not here to answer that local question for us; I am here to ask you to deny the requested tax credits for the Manor Road SRO Project, and to let the local community first answer the question of equity. We are posing the same question to the larger Austin community today at a press conference.

Additionally, we ask that you not grant a forward commitment to this project. As stewards of state and federal dollars, you should be concerned that the land acquisition price is five and a half times greater than that of what it is appraised for. According to the application before you, the cost of the land is $784,485, while the value of the land is listed as $144,612.

I am certain that the State can find a better return on its investment in regions where the poverty rates are much higher.

State Representative Dawnna Dukes has submitted a letter of opposition to this project because she understands that the Austin community is struggling with such moral issues, found in her district. County Commissioner Ron Davis, whose district is in the heart of the proposed project, has also sent the Austin City Council a similar letter of opposition and concern over

this project.

Thank you very much for your attention to the points in my testimony, and for your honorable consideration of our request. I'm happy to answer any questions.

MR. CONINE: Any questions for the witness?

(No response.)

MR. CONINE: Thank you very much -- yes.

MR. FLORES: Before you go.

MR. CONINE: Yes, Mr. Flores.

MR. FLORES: Did you see that the City Council had not spoken on this project yet?

MS. MAY: That's correct.

MR. FLORES: The Austin City Council.

MS. MAY: That's correct.

MR. FLORES: Okay. But the County Commissioner has a letter in here, and so does Ms. Dukes, your State Rep?

MS. MAY: Correct.

MR. FLORES: Okay. Thank you.

MS. MAY: Thank you.

DR. MUNOZ: Eliza?

MS. MAY: Yes, sir.

DR. MUNOZ: I very much appreciate having this

script in front of me as you read. Tell me, what do you mean when you say, one community -- I think I know what you mean --

MS. MAY: Uh-huh.

DR. MUNOZ: -- should not be burdened by less desirable projects. How is this undesirable? Is it -- I won't answer the question.

MS. MAY: Thank you very much for asking that question. Because that is indeed what we're struggling -- as a City of Austin community, what's happened to us, because land is perceived, and it is, much cheaper on the east side of IH-35, that is where a lot of projects, social service projects are home to.

Partly because (a) it's available land that's affordable, and partly because there some of the community has transitioned into that area. So as we look at those individuals who have been a part of those neighborhoods and have been a part of the establishment of those neighborhoods, one of the things that they've learned through the years is, they've had the unshared burden of most homeless projects, MHMR homes, et cetera.

Not to say that they are not supportive of such projects, and such necessary resources. However they just feel like, instead of having it all in one side of the

community, why not try to evenly distribute some of these projects across the City of Austin?

Because right now, and there is a map -- and I know we don't have this today but we have a map that literally has placed each of these sites, everything from where we have crime, to where we have MHMR facilities to where we have any other facilities for homeless or housing projects, meaning affordable housing, in there. And you'll see the map clearly charts the way the City has grown and how all these projects are located in this one particular community.

What happens is that, the individuals who are homeowners -- and of course they want to see their environment become a liveable, and one that has the same quality of life as the remainder of the city; what they're learning is that they're not having the same opportunity to have economic viability in those communities because they are burdened with so many of these projects in their area.

Did I answer your question?

DR. MUNOZ: You did, thank you.

MS. MAY: Thank you.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: Thank you for your testimony.

MS. MAY: Thank you.

MR. CONINE: Al Weber?

MR. WEBER: My name is Al Weber, I'm the president of the University Hills Neighborhood Association, and thank you for the opportunity to address you.

Our neighborhood held a vote. This project is located in the neighborhood adjacent to our neighborhood; our neighborhood held a vote and the vote was unanimously against it.

Our neighborhood is not against projects like this per se; a number of years ago there was another nonprofit organization that came to us and said, "We want to buy an apartment complex in your neighborhood, and we want to put transitional housing in there, but before you make a decision about whether or not you support us, we would like you to go by and see some of our other projects."

And so members of our neighborhood association did. The projects were well-run, and we supported them coming into the neighborhood. And they run a tight ship, and you wouldn't know it was a transitional living facility, to go there; in fact, it's such a tight ship I

would probably get thrown out if I lived there.

(Laughter.)

MR. WEBER: But we really admired the work they're doing. We don't have a problem with these facilities per se; excuse me, I'm a little bit nervous. But we don't have a problem with these facilities per se, but as the previous speaker noted, we do have a large number of them in our neighborhood.

And I used to work for MHMR with severely retarded, non-ambulatory clientele. In order to deal with people like this, you do need resources, and we don't get the adequate resources from the City in order to deal with the population we currently have, and if you put this unit in here, we certainly won't have the resources to deal with an additional population.

We're opposed to it, and we think it -- the population would be better served if the project was somewhere else. And once again, our vote was unanimously against it. Thank you.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: Thank you, sir.

That's all the witness affirmation forms I have for the public comment period. The rest of them are

specific to agenda items, unless I've made a mistake somewhere along the way.

Now moving on to the Consent Agenda, Item 1, the Legal Division, and Item 2, or 1(b) is the Financial Administration of David Cervantes. Mr. Gerber?

MR. GERBER: Mr. Chairman, these are both the items on the Consent Agenda. Would -- if the members would like to hear about other of these items we can certainly take them off that agenda --

MR. CONINE: Not, otherwise I'll entertain a motion.

MS. RAY: So move, Mr. Chairman.

MR. CARDENAS: Second.

MR. CONINE: Motion to approve Consent Agenda, seconded by Mr. Cardenas. Motion by Ms. Ray. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

If you don't mind, we're going to jump to Item

3, the Office of Colonia Initiatives. Mr. Gerber?

MR. GERBER: Mr. Chairman, Board members. On July 12, 2007, this governing board approved a pilot reservation system to distribute funds under the Texas Bootstrap Fund project, through a readiness to proceed model that rewards high volume producers and grassroots organizations alike.

A notice of funding availability for $6.5 million from the Housing Trust Fund was later approved by the Board on August 23, 2007. The Texas Bootstrap reservation system went into effect on November 1, 2007, and is well exceeding the expenditure rates of previous allocation systems.

Under the reservation system, over 60 percent of the funds released from the November 1, 2007, $6.5 million NOFA has been committed to owner-builder applicants, and over 25 percent of the funds have been expended. And these results come from the approval of 127 loan applications within the first eight months of the existence of the reservation system.

If you could track this data with previous allocation systems shows that zero funds were expended in the first eight months of the previous two fiscal years; under the contract system it took -- typically took one

year to close the first loan and two to four years to identify the 127 loan applications. So this has been a real point of success for the Department. It was really the brainchild of our colleagues, of our team members who work in the Office of Colonia Initiatives, headed by Homer Cabello and Homer, if you would just touch on this, describe a little bit more fully for the Board what you're doing.

MR. CABELLO: Well, basically with this new system we've increased production by 880 percent within the first eight months compared to the previous way, where we were allocating funds under the Bootstrap Program. So we are expending funds rapidly; it's a first come, first served, ready to proceed model.

All of the nonprofits that want to participate in the Bootstrap can participate; it saves us a lot of staff time, from doing an application, putting the application together, doing application workshops, publishing notebooks, doing board writeups, scoring applications, ranking them, and then bringing them back to the Board.

So we have saved all that staff time, and it's a first come, ready to proceed initiative that is helping us expend funds a lot quicker.

MR. GERBER: Homer, can you describe some of the successes of that -- our biggest volume builders, are experiencing, to -- Nancy Hanson [phonetic], and --

MR. CABELLO: Well, it's -- we had nonprofit organizations apply for -- it was capped at $600,000 for 20 homes under the Bootstrap Program. But historically your larger-producing nonprofits would utilize their funds within a year. We were doing two-year funding cycles just to get all the funds committed, so we can start moving our projects forward.

And what happens, with the larger-producing nonprofits, they will expend our funds within 12, 18 months and then they had to wait another year before they could come back for another application of funds.

So under this system, we allow up to ten reservations, and for example, San Antonio Habitat for Humanity, they have built over 40 houses within eight months under this program.

So, before the -- doing it the old way, they would have had to wait another two years to get the money. So it allows the larger producing nonprofits to build more houses, but it also allows the grass-roots organization -- it's a better business plan; because a lot of times they cannot compete with more sophisticated

nonprofit organizations.

So if they want to do one a year, two a year, it gives them the capacity to do so.

MR. GERBER: Okay. Again, we are just so pleased with how well the system is going, and I see Raul Gonzales is back there, I know there's probably other members of the OCI Team here, but Homer, great work and we -- keep it up.

MR. CABELLO: Thank you.

MR. CONINE: Yes, I appreciate again the efficiency, obviously and the improved collection on the front end. That's obviously getting the money out faster, and that's our goal here. So -- I want to applaud your efforts and your whole team.

MR. CABELLO: Thank you.

MS. RAY: Mr. Chairman --

MR. CONINE: Yes, Ms. Ray?

MS. RAY: -- before Mr. Cabello sits down, I'd like to, if you don't mind, just -- his staff members to stand up; it's a tremendous increase in services to the people of the State of Texas, providing resources, and we just want to honor you, and thank you for your work, and, remark.

MR. CABELLO: Thank you.

MR. GERBER: It was a great task, and Raul, but there's several others, including three field offices that we have, and those staff really work hard day in and day out to get them to work; and in Edinburgh and in Merino and in El Paso as well. So it's a small group of really dedicated professionals, who move a lot of money.

MR. CABELLO: And Raul, the direct lending officer that oversees the whole Bootstrap program, so he deserves a lot of recognition also.

MR. CONINE: Hey, Homer?

MR. CABELLO: Yes, sir.

MR. CONINE: Cowboy Training Camp opens Friday.

MR. CABELLO: That's right. For all the cowboys.

(Laughter.)

MR. CONINE: Thank you.

MR. CABELLO: Thank you.

MR. CONINE: All right. Moving on to next Item 4, Presentation, Discussion and Possible Approval of Proposed Exceptional Item for LAR Request. Mr. Gerber.

MR. GERBER: Mr. Chairman and Board members, at the June 26 Board meeting public comment was provided that urged the Department to request additional funding for the items -- System Benefit Exceptional Item, that's been

included in TDHCA's 2010-2011 Legislative Appropriations Request.

The Board directed staff to consider an increase and report. We've reviewed this issue, including consideration of the capacity of both internal staff and sub-recipients, to administer additional funding, and therefore Staff is recommending increasing the request from $7.5 million to $8.7 million a year in order to attain full restoration of the SBF Weatherization Assistance Programs.

Bill, do you want to touch on a couple of the points, here?

MR. DALY: Let me point out that what's existing Weatherization Program which was proposed, it would be coordinated with the System Benefit Fund Weatherization Program, would fund improvements to increase the energy efficiency of a home occupied by an income-eligible household.

Weatherization measures that could be funded through the program include such things as installation of wall and attic insulation, and repair or replacement of energy inefficient appliances, as well as heating and cooling systems.

By making homes more energy efficient, the

Department would reduce families' monthly energy consumption, create a healthier environment and decrease the overall energy demand in the State.

Like our existing weatherization assistance program, this funding would give special consideration to the elderly, families with small children and special needs populations.

Only areas of the State where the electric utility industry has been de-regulated would be served by the program.

At last month's meeting we asked the Board's permission to again include a System Benefit Exceptional Item; in this case, for $7-1/2 million. In response to public comment for a far higher request, the Board directed the Staff to consider the possibility of requesting more funding.

Looking at historical appropriations and taking into consideration the capacity of both our internal Staff and the sub-recipients to administer additional funding, we believe it appropriate to increase the request from $7-1/2 to $10.7 million a year.

This will fully restore funding to historical levels without placing undue stress on our delivery infrastructure. Staff recommends increasing this

exceptional item, the System Benefit Fund, from $7-1/2 million a year to $10.7 per year.

MR. GERBER: And Bill, just to be clear, our systems have been set up internally to be able to handle the $10.7 million; we managed that amount of money for many, many years up until about 2004, when those funds were no longer made available to us.

So we have that capacity.

MR. DALY: That's correct.

MR. GERBER: And certainly any additional funds the Legislature may choose to provide, there's clearly a long waiting list of tens of thousands of names of people who would benefit from that program. So --

MR. DALY: And the important thing is, this puts us on the agenda for discussion in this Legislative Session; so funding can go up or down, but this gets our request out there in a constructive discussion.

MR. CONINE: I do have one public comment on this particular agenda item. Cyrus Reed?

MR. REED: Yes, this is my second time in a row I've been before the Board. I hope I'm involved in more discussions; I will be participating in some of your rulemaking on energy efficiency, because from our point of view, you know, as I said before, the cheapest -- in fact

that's most efficient way to get our energy needs is to become more efficient, and I just wanted to thank you for raising the request.

Obviously I thought you should ask for much more and I still do.

(Laughter.)

MR. REED: But I'm happy to work with my considerable levying power in the Legislature to try and get more money for it. But I think it is a good use of the public's money; the public is paying for it, and from my point of view, it makes a lot more sense to make existing homes more efficient than subsidize people to raze, because once you make their homes more efficient, their bills are going to go down, long-term.

So I think it's a good first step you're taking, and I look forward to working with all of you to try to get even more money, that already exists. You know, we're not talking about putting more money on the backs of taxpayers; we're talking about using existing money to fund this worthy program.

The one other recommendation I would make is that we -- all of us do a better job of reporting the gains we get from efficiency in terms of, you know, when you make homes more efficient, it also means there's less

pollution going into the atmosphere, the IOUs do a pretty good job in their programs of reporting that, and there could be some improvements from TDHCA in terms of just reporting that.

Because those are other natural allies you would have, is, those cities that are trying to reduce their noxious emissions, and any time you become more efficient, that means there's less pollution in the air, because your power plants don't have to run as much.

So that would be my additional recommendation, and probably there's ways to report on it, so thank you.

MR. CONINE: Thank you, any questions of the witness?

MS. BINGHAM-ESCARENO: Move to approve the increase.

MR. FLORES: Second.

MR. CONINE: There's a motion to improve the increase on Item -- on Agenda Item 4. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Opposed?

(No response.)

MR. CONINE: Motion carries. I want to remind everyone to turn off their cellphones or you'll be making a $100 contribution to the Housing Trust Fund which will be much appreciated --

(Laughter.)

MR. CONINE: -- moving on to Item 5, Multifamily Division Housing Tax Credit Program item. Mr. Gerber.

MR. GERBER: And Mr. Chairman, I'm under the belief that that item has been pulled. It's been withdrawn by the applicant, so there's no Item 5 today.

MR. CONINE: Okay.

MR. GERBER: We're going to go back to --

MR. CONINE: I did have a public witness affirmation form, Robert Salas?

MR. SALAS: Good morning. In retrospect I guess we should have gone early on, but anyway, I'm Bob Salas, I'm the Director of Community Development for the City of San Angelo, and with me is Ms. Kathy Keane, who is the director of the development corporation for the city.

And we're both here to express the City of San Angelo's support for the Blackshear Homes Project that's competing for the 2008 tax credits. It's a project, 08300

in Region 12, and it's sponsored by the National Development Council.

And based on the current score, it's in danger of not getting funded. I want to stress the importance of funding Blackshear Homes, it is located in the most neglected and blighted area in the City of San Angelo, and the city has targeted that neighborhood for revitalization, according to -- with our strategic plan.

We have invested quite heavily in there, in that area, including partnering with the National Guard, who demolished over 20 blighted homes, and structures, substandard structures; we worked with Keeping San Angelo Beautiful to go in there and clean up the area, pick up junk cars and trash and that kind of thing.

We financed over half a million dollars' infrastructure support like sidewalks and street paving; we've earmarked over $200,000 to -- I'm sorry, $200,000 and spending numerous man-hours on this particular project, and we're working with nonprofits such as Habitat for Humanity and other affordable housing organizations to help start building in that area.

We have basically cleared the area, we've instituted the infrastructure, and now we need housing. And that's where the Blackshear Homes project comes in.

It is really the shot in the arm that the city needs to increase the city's capacity to fill an affordable housing need, and in the gap there we need to maintain an enlarging community.

We don't need more additional senior citizens' apartments. What we desperately need is single family housing. And we ask you to please consider the scoring of the Blackshear Homes to perhaps increase that scoring number and to help us bring a change to the city, that we desperately need. Thank you.

MR. CONINE: Thank you. Any questions of the witness?

(No response.)

MR. CONINE: Thank you very much. Did you --

MS. KEANE: I filled out one.

MR. CONINE: You did? And your name again, one more --

MS. KEANE: Kathy Keane.

MR. CONINE: Okay, just go ahead and speak, and speak your name for the record and I'll see if I can find one.

MS. KEANE: My name is Kathy Keane, and as Bob said, I'm director for the Economic Development Group in the City of San Angelo. We are partnering with the

Community Development and Housing Department by, in 2004 our voters asked us to look at affordable housing as part of the sales tax ventures.

And so we are partnering with the Community Development and Housing by providing gap financing for new construction. And so we very much are looking at this same area of our community that has been long overbooked.

We have had tremendous support from the grassroots group called the West Texas Organizing Strategy, and they came and spoke before you in April this year, and over 25 of those representatives came and spoke in favor of this project.

So again, I would echo everything that Bob has said, that this is something that is vitally important to our community, and we ask for your support.

MR. CONINE: Thank you, ma'am. I found it. Thank you. Any questions?

(No response.)

MR. CONINE: Thank you very much. Okay, I'd like to recognize if I could Jackie King from the Governor's Office, where is Ms. Jackie? There she is. How are you doing? You had your hair pulled back, I didn't see you; Carolyn Scott from the Lieutenant Governor's Office; thank you, Carolyn, appreciate you guys

being here today.

At the prerogative of the Chair, we're going to take a five-minute break, and we'll be right back.

(Whereupon, at 10:40 a.m., a recess was taken, to reconvene at 10:50 a.m.)

MR. CONINE: We're going to Item 2 now, I believe.

MR. GERBER: Well, sir, we are going to Number 2; we're actually going to conduct a little Board training here before we start on the appeals. And we've had requests from Board members, obviously, to walk through some issues with respect to the tables that you all received, and that you're going to be receiving as we prepare -- I think you'll be receiving this coming week as we prepare for the award of credits for the 2008 round.

Robbye's going to start the Board training, which will take just a few minutes, on how you read the chart that the table -- that you're going to receive. And of course, if you have additional questions, please don't hesitate to be in touch with us.

And then Tom is going to take over and conduct a training on the underwriting process, and what certain underwriting terms mean, as we walk into underwriting appeals, just to give you a sense of context, especially

for newer board members who have not gone through this before.

So Robbye, real quickly if you would just walk quickly through the tables that Board members will be receiving later in the week.

MS. MEYER: Okay. Robbye Meyer, Director of Multifamily Finance. We've put up a copy of a short, little report, and this is very short compared to what you're going to have next week.

You'll have two sets of each report; there will be six reports total, and there will be two sets of each one; one is at at-risk, and at the top it will say, "At Risk," logo up here at the top. And then on the second one it will have your regional allocation.

What your At-Risk log will also tell you, the total appears at the top in the long-headed box across the top; it gives you the total that's available in At-Risk; and it will also give you how much is available in USDA, in the USDA set-aside.

All that will come out of the At-Risk log, or the At-Risk sheet. And then everything else will come out of the regional allocation, and I'll come back to that one in just a minute.

If you'll go -- the columns that go across the

page, the first column is the file number, and it tells you what region they're in, and on the At-Risk log, they're only allocated by score; so it's not divided up into regions as it is on your regional log.

So it will tell you what region it's in, the next one will tell you -- it will either have an "A," an "R" or an "N." An "A" means that the Board has already awarded that application, so it's either a binding agreement that the Board gave in 2006 for the additional credits, or it was a forward commitment from last year, out of the 2008 ceiling.

If it has an "R" it means that it's recommended by Staff, and then if it has an "N" it means it's not recommended by Staff. Then it gives you --

DR. MUNOZ: Hey, Robbye?

MS. MEYER: Yes?

DR. MUNOZ: -- during this training, are we allowed to interrupt with question?

MR. CONINE: Yes, please do.

(Simultaneous discussion.)

DR. MUNOZ: Go back to the forward commitment; how do you distinguish that --

MS. MEYER: Okay, well, go here -- actually it will tell you over here, in the far right hand side of

yours --

MR. CONINE: Look at the second one there, that uses it for an example.

MS. MEYER: Well, it will give you --

MR. CONINE: Mr. Shugrue's deal.

COMMISSIONER BROWN: Well --

MR. CONINE: The cheese factor.

(Laughter.)

MS. MEYER: -- it's over in the far right hand column --

DR. MUNOZ: On the second page?

MS. MEYER: -- it's a binding agreement, and that's in the "Notes" section. It will tell you whether it's a forward commitment.

DR. MUNOZ: Okay.

MS. MEYER: And then it will also tell you why it was being recommended by Staff or not recommended by Staff. Whether it was competitive in the region, or not. Okay?

Then you'll have the name of the development, its address, city, and the allocation, whether it's in the rural allocation or the urban allocation; on the At-Risk log we have the USDA, nonprofit, and then, "AR" is At-Risk.

DR. MUNOZ: Quickly define At-Risk one more time.

MS. MEYER: At-Risk is if they have funding already on the development and it is to expire within the next two years, then it's considered an at-risk development.

MR. CONINE: So it's an existing deal, already has funding, typically a rehab, you know --

MS. MEYER: My existing tax credit. If it has existing federal funding and it could have HUD funding, it could have several different funds --

DR. MUNOZ: Right. Okay.

MS. MEYER: -- but those funds are about to expire.

DR. MUNOZ: So that's the condition that places it at risk?

MS. MEYER: That's correct. And those will all be on this one log.

MR. CONINE: The theory is, it's at-risk in leaving the affordable housing pool; and we don't want to lose any of the affordable housing pool, so the Legislature has mandated that we do a set-aside for at-risk. So that we take care of those the best we can.

(Simultaneous discussion.)

MS. MEYER: And you have USDA, "NP" is nonprofit, "AR" is At-Risk, then it will give you the number of low-income units, and then the total units for the development, the target population is, general, elderly, or inter-generational is an "I," and you have the housing activity, whether it's rehab or new construction or adaptive re-use. And reconstruction is actually in the rehab, so it would be "RH" for rehab. If there's acquisition credits that they're also applying for, the box will be checked --

MR. CONINE: Stop, now explain the difference between rehab and reconstruction.

MS. MEYER: Rehab is if you're rehabilitating the existing building; reconstruction is if you're tearing it down and building it back up. Short definition. But they're both in with the rehab definition this year.

MR. CONINE: So reconstruction is different from the new construction.

MS. MEYER: Correct.

DR. MUNOZ: If they're tearing it down to maybe the foundation?

MS. MEYER: You have -- new construction, actually if they added one more unit than was already there, if they added an additional unit then it would be

considered new construction. You have the recommended credit amount. Now if there's an asterisk by this, in your Board Book that means that the Real Estate Analysis Report has not been completed, so keep an eye on those.

And then it will be the applicant's requested amount, and not the Department's recommended amount.

It gives you the name of the developer. The next box tells you whether they have TDHCA HOME funds, if they've applied for our HOME funds at the same time; what their final scores are, the 300 scores are the binding agreements, and the 301 is the forward commitment, so those should come up at the top of your list.

And then it will give you the reason. Are there any questions about that?

(No response.)

MS. MEYER: Okay. If you'll switch over to the Regional Allocation real quick, with each region, you'll have the -- on the very first page it gives you the total for the entire regional allocation, but then for each region in that second box it goes all the way across the top; it gives you the total for that region, the total for the rural allocation and then the total for the urban -- rural and urban allocations.

Now, Staff will recommend applications up to

that amount without going over, in each one of the sub-regions; and when I say, sub-regions, that's the rural and the urban allocation.

So we will recommend applications up to that amount without going over. Anything that's left over in a sub-region, first we will collapse all of the rural sub-regions together, and then we will take the next highest-scoring application in the most under-served sub-region for rural. We'll go through that exercise, and then we will -- anything that's left over, then it will be combined with all of the sub-regional allocation amounts for the urban.

And then we will do the same thing for the most under-served sub-region as the total, statewide. This is just one report; this is the ARN Report; this has all three of them on there. You will also have two other reports: you'll have the report that only has the ones that are awarded; you'll have the report that are only the recommendations.

You'll also have two other reports. We have a nonprofit set-aside, a federal set-aside of 10 percent that we must meet; there will be a report for just that, and also the 20 percent rule allocation that we must meet for the State.

MR. GERBER: So the moral of the story is, these folks are going to be getting lots and lots of tables that are going to be as clear as clam chowder to most of them, and --

(Laughter.)

MR. GERBER: -- please call with questions. And Brooke, who did this for so many years, I don't know if there's anything you'd want to add that might help new Board members, any Board member (laughs) with deciphering it and what are sort of the key things they might want to look for when they receive it.

MS. BOSTON: Sure.

MR. GERBER: Why don't you -- Robbye, you can stay up here as well, and let's join in the discussion --

MS. BOSTON: I would just note, for when Robbye kept referencing the rural and urban, the Legislature requires that we allocate to 13 state service regions, and then that we divide those into a rural and urban area.

Through our regional allocation formula, we do that at the beginning, we'll be doing that in November. And so we would be telling you by then, "Here's the way we're going to decide which areas these regions get."

So when those numbers show up that Robbye was noting that run across the top, telling you what the rural

amount is, and the urban, that's something that you guys also decide at a different point in the year. And so that's how that's fed in.

As you look at a table, or -- these will be in your books that you'll get in about five or six days for the 31st meeting. And I guess I would encourage you, probably the easiest report to look at is the report that Robbye referenced, the ARN report, because that's the one that you're seeing every deal that is currently still competitive and hasn't been withdrawn or terminated.

Right.

MS. MEYER: Had the awards announced.

MS. BOSTON: The terminateds are gone, there. Right.

MS. MEYER: Right.

MS. BOSTON: So if you look at that, you'll get a real picture of who you might be hearing from at that meeting, who isn't getting recommended but wants to be; those are generally the people who are showing up as an "N" who will be asking for a forward commitment potentially.

Those are also occasionally, like if there's an appeal pending, they will be showing up as an "N." Correct?

MS. MEYER: Right.

MS. BOSTON: So next meeting, there will be appeals, and if for some reason they are not recommended, because they have an appeal pending, they may be showing up as what we call "below the line" or as an "N."

But they will be wanting an award.

MR. GERBER: So we will clearly denote which is the ARN list when you get this pile of lists, and the ARN being --

MS. MEYER: It will be the first report.

MR. GERBER: -- awards previously approved, "R" for ones being recommended, and for ones that are not being recommended. So --

Kevin, anything you wanted to add into the --

MS. BOSTON: I would also just note that when you do see that list, you'll be hearing public comment, you all have -- you as the Board have the right to make decisions other than score; and we'll put in your writeup what those reasons are. We'll make sure that you know what those are.

They're in the Qualified Allocation Plan; they're also in our statute. So they're generally, you know, other good cause, need, it's a pretty extensive list. But we'll make sure you all have that so you know,

if you choose to make any -- and you have to note that. So at the meeting, if you do for some reason decide to do that, you just need to make sure it's relayed in that meeting.

And then as Robbye mentioned too, there's -- one of the columns is a nonprofit set-aside; that's a federal set-aside, it's our only federal set-aside; it's 10 percent of our whole state ceiling. And if it ever looks as though, based on just typical competition in a region, or the at-risk set-aside, that that's not going to be achieved, then we would kind of come in and manually make sure that that happened.

But generally, based on just pure competition, the nonprofits are able to get met each year. I would just point out that over the last few years that has gone -- the number of nonprofits who get funded based on pure competition has gone down incrementally over the last three or four years.

So this year it's very close, but it's looking like it will still be fine. But next year, that may actually pop up as something we'll need to manipulate.

I think those are the big issues, so just -- and then there's also going to be a two-page report, you'll be getting an addendum to your book; and for every

deal that's on these lists you will see a two-page report that shows you all of the support and opposition; it will identify for you who the developer is, the architect, things that may be of note for you.

You will see a number of units, just some basic information about every deal that's more descriptive than just one row. So if you want to look at that, that's probably the first place, if you're interested in a deal, that you would look.

Then behind that is the underwriting report. So you can definitely always call us for more information, but that's kind of your quick guide.

DR. MUNOZ: Will it have whether the developer or those responsible for the proposal have been awarded tax credits in the past?

MS. BOSTON: It's --

DR. MUNOZ: And whether that has been fulfilled?

MS. BOSTON: No, it doesn't. But that's a great idea.

DR. MUNOZ: The interim --

MS. BOSTON: The underwriting report does, but that is something we can -- yes. So I guess if you skip through the underwriting report, you'll be able to find

that.

But maybe in the future we can list them --

DR. MUNOZ: The reports are difficult to skim --

(Laughter.)

MS. BOSTON: Yes. I agree with you. And going forward, that may be something we can populate it to the --

(Simultaneous discussion.)

DR. MUNOZ: -- to me it's much better, much more efficient distillation --

MS. BOSTON: Yes.

(Simultaneous discussion.)

DR. MUNOZ: -- for the information, than trying to locate a line --

MR. GERBER: We will try to put that in the two-pager, if we can figure out a way to do that; we'll work with it -- and if not, we'll see exactly where to go to for it; but we'll try hard to put it in, given the --

MS. BOSTON: Yes.

(Simultaneous discussion.)

DR. MUNOZ: I just have a question about something that you said earlier, in terms of the latitude of the Board --

MS. BOSTON: Uh-huh.

DR. MUNOZ: A number of areas for need or what have you?

MS. BOSTON: Uh-huh.

DR. MUNOZ: I mean, you know. Can you sort of cover that again?

MS. BOSTON: Yes. Actually I have my QAP with me.

DR. MUNOZ: So projects can be approved by the Board --

MR. HAMBY: Dr. Munoz, that's one of the reasons -- Kevin Hamby, General Counsel; that's one of the reasons that it's statutory; we had some issues once upon a time with ones just popping up.

There is -- provisions both in statute and the QAP to allow the Board to exercise good, sound judgment when they see a need that may need to be met at that particular moment.

Such examples have been, when the Board felt like something was under investigation they may have postponed actually giving an award at that time and done a forward commitment instead; if they decide that they want to forward-commit all of the funds for the next year, to meet a hurricane need, those sorts of things, that gives

the Staff or gives the Board latitude to provide that information.

The big issue is, because of some past transgressions that we're still recovering from, the Board has to give just cause for it; it can't just be, we want that.

DR. MUNOZ: And there are categories that constitute just cause?

MR. HAMBY: Yes. Go for it.

(Simultaneous discussion.)

MS. BOSTON: Yes, it can be based on the developer's market study; and to be candid, that's not something you would have in front of you, although in the underwriting report in your materials there would be a summary of the salient factors from the market study; also generally if there's something very compelling about a market study issue that would be a reason why we weren't recommending, that would generally come up in an appeal. So you'd be aware of it in that case.

The location of the property, the compliance history of the developer; the financial feasibility; the appropriateness of the development size and configuration in relation to the housing need in the community where the development is located; the development's proximity to

other low-income housing; the availability of adequate public facilities and services; the anticipated impact on school districts; zoning and other land use considerations; any matter considered by the Board to be relevant to the decision, and in furtherance of the Department's purposes; and then other good cause, as determined by you all.

MR. GERBER: And I would just note that the Board has historically been, in the last several years, been cautious about exercising that authority, really only using it for those most worthy of developments. For example, there's a development last year where the State had put a substantial amount of money into an enterprise fund, and some other -- I think the Workforce Commission, and that's literally tens of millions of dollars' investment in a cheese factory up in the Texas Panhandle.

There was a real lack of housing up there, and the Board determined that there was a compelling need for that development to proceed in a forward commitment.

The same was true three years ago -- two years ago, with Region 5, where the Board made the decision to go and allocate that entire region's next -- the following year's funding allocation because of the needs for Hurricane Rita; to get -- sort of get a jump start on

construction.

There have been worthy projects, you know, where there's just, you know, a real compelling human need where people have come through and shared stories and have made that case to the Board.

But historically it's been -- you know, it's been -- there have been few. Because it takes away your ability to work on the following year; you're going to have less to do stuff with; and the process is intended to be sufficiently merit-based so that the best really do -- the best projects and the most deserving projects, the ones that are ready to go, really do advance to the top of the list.

But there are every year, you know, appropriate instances of -- meriting a forward, and the Chairman has already indicated this year that the Board will take those forward-commitment requests up as an agenda item at the September 4 Board meeting, so that's when forward-commitments will be awarded, if any, by this Board.

MS. BOSTON: And I would just note that the list that we just went through is generally used by the Board as it relates to forward commitment, although it is not solely restricted to that; just as a technical.

And then the other thing I would just mention

is, when you are looking at the deals on your list, and when you look through them in your book, the -- they are conditioned on underwriting conditions. And those are outlined on the underwriting report.

And so that may include anything from, they just need to get a Phase 2 environmental site assessment; they may need to firm up their -- well, almost all of them are conditioned on their loan being solidified, and then that we would be re-evaluating them if something changed in that regard.

So those aren't obviously stated in the lists anywhere except for behind each deal; but they definitely do still have significant conditions they need to meet. And then the writeup that you'll receive in your book for the 31st also notes other timelines and conditions that they are subject to, according to our QAP, so you don't have to re-read the whole QAP, you can just glance at it in there.

And that includes federal deadlines for when they need to have expended 10 percent of their costs; and when they would need to cost-certify and finish the property and have the units, what we call placed in service, which means they're actually in use.

So -- but again as Mike said, once you get your

book feel free to call me, Robbye, Mike, Kevin, Tom, we're all pretty adept at talking through the lists and all the issues.

DR. MUNOZ: How soon can we get the books?

MR. GERBER: We'll be posting them on Thursday.

(Simultaneous discussion.)

MR. GERBER: -- available on the website, we will have them to your respective offices or homes by Friday morning. This book is going to be the most horrific that you'll ever see --

(Laughter.)

MR. GERBER: -- takes all the underwriting reports, it's usually two big binders, so you -- if you are receiving a hard copy of the book, this may be one that you don't want to receive a hard copy of; you may just want to work through it online.

But of course we're glad to send a copy to everybody who'd like one, and then don't feel an obligation to bring the hard -- we have another copy for you here, so you don't have to travel with another piece of luggage. We don't want you to get over that 15 -- or 50 pound --

(Laughter.)

MR. FLORES: Tom, to put it in a more succinct

way, it's about 2500 pages last time.

MS. BOSTON: And the --

(Simultaneous discussion.)

MS. BOSTON: -- the other thing I would really like to emphasize is, the list that you will see is not necessarily the list that you all will end up approving. And not because you will be moving them around because of the list we just went through, of areas for you all's consideration.

But there are still going to be more appeals at the next meeting, and they'll be earlier on the agenda. For every decision that you make relating to an appeal, that can make the list move, someone who -- let's say if you grant an appeal, and they were an "N," they will then become an "A" and the implication of that is, generally, then someone else who was an "A" will fall below, and become an "N."

MR. CONINE: Or become an "R" I think.

MS. BOSTON: An "R," sorry. So the list that you'll see is current as of the day we send you the book, but of course will potentially change, not only -- well, generally at the meeting. And in theory there sometimes are changes between the day the book goes up and the day of the meeting, and then we would give you a new list at

the meeting, so --

MR. GERBER: And with respect to the list it's important that as you consider appeals, you should be considering the appeal just on the merits of the issue before you, not on the basis of the list.

MS. BOSTON: Right.

MR. GERBER: And because those lists really are in constant flux, and --

(Simultaneous discussion.)

MR. GERBER: -- the questions that are before you -- against the rules.

MS. BOSTON: And it's not uncommon for someone who is going to be the impacted deal, to get off on their testimony on the appeal.

MR. GERBER: Great. Let's shift if we can, Board members, from the 9 percent list, which you'll be getting, onto tax credit appeals, and I'll ask Mr. Gouris to come forward. Thank you very much, Robbye.

MR. GOURIS: We have before you several appeals that are related to the financial underwriting of tax credit applications, and as a part of the appeals policy in statute, applicants were able to appeal determinations until several days just before this Board meeting.

Therefore, there are no materials in your Board

books for these, they are eligible appeals for the Board to consider. A packet of materials is before you, and that has been made available to the public, relating to these underwriting appeals.

These are fairly complex issues so I encourage you, as you already have been doing, to ask questions of Staff as we proceed and if you need clarification on an issue, please seek it.

Let me take a moment to emphasize that all these appeals relate to the financial feasibility of the transactions. We have heard throughout this process about challenged housing markets and economy recession; you've also heard testimony at the Board meetings about concerns with the pricing of the credits and the utility cost increases, and that entered into repeat applications, with slow and sometimes negative increase in incomes and rents.

All of these factors together only further emphasize the importance of not evaluating these transactions --

(Simultaneous discussion.)

MR. GERBER: -- rules were created specifically with an eye towards maximizing the instant credits, but not to the point to make the long-term financial stability is jeopardized. So I ask you to keep that in mind as Mr.

Gouris walks through each of these appeals, but before we go through the appeals we're going to get a quick additional training just on what's in the underwriting reports and the -- why they're -- sort of set up a context.

Tom.

MR. GOURIS: Great. Tom Gouris, Director of Real Estate Analysis, Senior Programs Director for the Department.

Before you, you have a book that has the appeals for this meeting that were timely filed. Inside the front cover is a one-page sheet that was available to everyone outside as well. That goes through some key issues that I want to talk about as we talk about what's in the underwriting report, so --

The Real Estate Analysis Division Commission, in underwriting each development that's going to be approved for you is to provide you all, the governing board and the public, with a comprehensive analytical evaluation necessary to make decisions.

The underwriting report is the Department's analysis in this evaluation, that evaluation is required in the IRS Code and the Department's enabling legislation.

The rules and guidelines under which this

analysis is conducted is codified in Title X of the Texas Administrative Code, Section 132. And these rules are evaluated every year on an annual basis by you all and the public.

The underwriting report -- let's turn, if you will, as we're going through this mini-training, if you go to, about 20 pages into the book you'll see your first underwriting report, and it will look like this (indicating), it will have a set of -- there's the Texas emblem on the top corner there; about 20 pages in, it says, "1 of 14" at the bottom.

Now, just -- there's nothing particular about this one for the moment, I'm just using it as an example to kind of walk you through some of the pieces that you might be interested in.

The report is divided into 11 sections of mostly narrative analysis, three pages of numerical analysis and one or two maps. Occasionally you'll see an underwriting addendum, an addendum is an abbreviated report that augments the original underwriting report with an updated analysis of specific sections of the original report, and the result of significant changes being made by the development -- being made to the development by the applicant.

Those happen after the fact; those are the things that you've been seeing thus far. The changes to the transactions.

This is where it starts, though, with the underwriting report. While the sections are mostly self-explanatory, there are a couple of key areas I want to mention to you, that are designed to help you quickly identify the important issues that the underwriter wants you and everyone else to know about the transactions.

In the middle of the first page, as the report mentioned, there is the allocation section and the condition section. The allocation sections shows first the requested amount, and then next to that, to the right of that is the recommended amounts that the underwriters believe are what should be approved.

Below that are the conditions the underwriter believes should be met to address the assumptions, gaps or risks that have been identified in the body of the report. And I'll note in this report that Item Number 3 is one of those commissions that were added, we've added that to every report this year, based on the comments that we got early on and the concerns that were addressed about the market, we've conditioned each report on coming back to us at carryover, and providing us revised commitment letters

to make sure that those transactions are -- still have the support of the lenders and their syndicators.

After that there's a section on the incomes and rents, but below that is the pros and cons, actually on the next page in this case. And between the pros and cons and the conditions section, those are the areas that I would say are the most important for you to focus on, because they provide the reader with the issues that the underwriter really wanted to get to your attention. And they give you direction as to what parts of the rest of the report those issues are contained in.

So the narrative section goes on to discuss ownership issues, [inaudible] issues. They also discuss various third-party reports and the underwriter's firsthand financial evaluation.

You'll see there at the bottom of that second page is an organizational structure chart. This one was scanned in, and so it's not quite as pretty as we'd like it to be, but you'll have an organizational chart usually on that second page, and then the next page, you'll have a site plan that will show you a physical representation of what the developer is proposing to develop.

Then starting on the next page, on page 4 of 14 there's the market highlights, and this section summarizes

the market analyst's findings regarding the primary market area; we sometimes call it the PMA. And particularly concludes on the market rents, which in this case will be two pages down on page 6 of 14, the rent analysis chart, gives you an analysis of what the market -- what the proposed rents are, what the program maximums are, and what the market rents are.

And that's critical, as we'll see in the underwriting -- in the numerical analysis to make sure that we're underwriting the correct rent models.

And also in the market study section if you go back one page, we'll also talk about the implicit capture rate, the all-important calculation of demand, and the concentration ring.

Let me tell you a second about the implicit capture rate; it's a measure of how much potential demand will be needed to support new product that is coming into an area, including the subject. Specifically, it's calculated by taking the number of units of the subject, plus competing units that have not leased up, divided by the adjusted demand.

The inclusive capture rate must be less than 75 percent, for -- and less than 25 percent for urban developments open to all families. In this case, you have

a capture rate but the market analysis is estimated to be 15.2 percent, and the underwriter's estimate was 10.1 percent; both were acceptable rates.

There's another important measure of existing concentration that we look at by census tract. And we call this simply the concentration rate. If you use the concentration rate as the total number of existing apartment units, with regards to the total number of apartment units per square mile, we look at this by census tract, and we'll not recommend a transaction that is in the census tract that's more that 1432 units per square mile, or one where the average for all census tracts in the program market area is over 1,000 units per square mile.

Yes, ma'am?

MS. RAY: I apologize, but I am not following you on that segment of your presentation.

MR. GOURIS: That concentration rate is the last paragraph, the last section of the market study, so if you go to 6 of 14 --

MS. RAY: Six?

MR. GOURIS: -- it says, "Concentration"?

MS. RAY: Okay. I see it, yes.

MR. GOURIS: I'm sorry, I got ourselves of

order here, but that is the -- that was added this past year. There's also a map that goes with this; if it's an issue of concern, and I'll talk to you -- I'll point out that map to you as we get through the rest of the --

MS. RAY: It would be helpful as you go through if you can quickly --

MR. GOURIS: Yes, ma'am?

MS. RAY: -- if you can let us know what page you're on.

MR. GOURIS: Okay.

MS. RAY: Then we can follow this a lot more helpfully that way. Thank you.

MR. GOURIS: The other key points of the narrative part, just go over the financial points so I'm going to point to them, but then I'm going to go ahead and talk to you about them as we talk about the numerical pages.

And those describe the operating pro forma, the construction cost estimate, the financing, and the conclusion.

If you go to page -- he also signed the report, the underwriter -- you can tell who underwrote the deal, on page 10 of 14, and while this is a small thing, it's important because each of the underwriters that underwrite

these deals take ownership of this transaction and takes ownership of the information in there, for evaluating it and verifying every piece of information in there.

We have a reviewer that reviews most transactions, and then I do a final review of the transaction as well, of the underwriting report as well, as so we have a multi-step process that we all say, "Yes, we think this is the best information we have, and to our best knowledge, this is the analysis that we've done."

The top of page 11, 11 of 14 it begins what we call the numerical section of the report. And this is just the numerical section, it's three pages and it's broken into eight sub-sections. The top half of the first page has the rent schedule; that's completed by the underwriter.

This is a critical area which establishes the gross potential income for a development by including the lesser of market rent, or the maximum tax credit rent, less tenant-paid utilities. So in this instance it looks at the same things as the chart I showed you earlier; look at the where -- what the right rent would be, but it takes the gross rents for a 30 percent unit in that first, in the first line, the gross rent is -- I think it's six columns over, the $292, and subtracts the tenant-paid

utilities, which is the second to the last column, 92, and you get to "rent collected" of $200.

That's the maximum rent that that unit can charge; and we go through each projected unit and each rent, to determine what's the maximum rent that they can charge. We compare those rents to market rentals, if the market rent is less then we use the market rent.

So we get to a bottom line run for each unit and a bound-line gross income for each -- for the property.

And as I tell my staff all the time, that's one of the foundations of the numerical analysis; if you get that wrong, the rest of the analysis isn't going to make any sense. So it's critical that we get that correct.

We -- the next section of the analysis talks about the operating pro forma, which are merely the operating -- as we look at the operating expenses. We closely evaluate each line expense listed by comparing it with our database, other third-party expense data sources, and historical performance of comparable properties allotted by the owner, or other substantial justification from the applicant.

As you can see, we calculate and consider each expense in our percentage of income per unit and per

square foot basis. That's what those columns -- to the left and right. It's worth noting that this section, the underwriters' information is on the left side, the applicants' estimates, most current estimates are on the right side.

MS. RAY: You're on page 12 --

MR. GOURIS: We're on page 11.

MS. RAY: Eleven?

MR. GOURIS: Eleven of 14. You can see the top middle of the page, it says, "TDHCA" and "Applicant" in the middle? Everything to the right is the applicant's information, and everything to the left is the underwriter's information.

Toward the bottom of that section in the middle part of the page you'll see on the left side of the line it says, "Total expenses." And there's a percentage listed there on both ends of that line. The TDHCA total expense percentage and the applicant's total expense percentage. That total expense percentage is the expense to income ratio that you hear us talking about all the time. And in this case it's 63.98 percent for the underwriter and 61.2 for the applicant.

That expense to income ratio is important because deals that are -- that have expense to income

ratio over 65 percent are generally characterized as unfeasible because they're stretched too thin. Typically this is because they have, in their quest for more selection points they may have attempted to deepen our target too far.

In other words, they have more units targeting households earning 30 or 50 percent of area median income, than is safe for the long-term viability of the project.

The problem is, it deals with high expense-to-income ratios, and -- periods when rents become very flat. You can have -- even if expenses are flat or worse, they'll expense their increase and it makes them not be viable down the road.

We will generally identify an issue with the expense to income ratio if it's over 60 percent, because we think 65 percent is the upper maximum that we should have.

At the bottom of this section in the middle of the page which is the recommended debt-coverage ratio. In this case, it's -- the box, it says 1.26. The debt coverage ratio represents the amount of net operating income over projected debt and interest payments.

So a DCR that covers ratio 1.0 is breakeven, and in most cases, not enough to show financial viability.

At the underwriting -- during the underwriting process, we require a minimum of a 1.15 DCR or a 15 percent [indiscernible] efficient over the net income; of net income will be debt service.

We also limit that debt coverage ratio to a maximum of 1.35, or 35 percent [indiscernible] efficient. So that developments don't absorb too many credits or don't receive too much in subsidy from the Department, more than would be necessary for a healthy financial structure.

The gray box -- if the gray box is under the applicant side, it would signify that we had accepted the applicant's expenses and income; in this case, that wasn't the case, there were some issues with -- some differences, and so it's on the TDHCA side, which means we used our expenses and income, and any time that you see that, you'll see the comments in the body of the report reflect why we chose to do that or why we couldn't get comfortable with the expenses and income that were provided.

The bottom half of the page says, "Constructions Costs" and it's for the total development cost section of the page; and it also, at the very bottom it talks about the sources of funds. And it's similarly broken down with the underwriter's stuff on the left side

and the applicant's information, expense information on the right side.

Some of the key things to look for here are the contractor fees, which are to be not more than 14 percent of eligible costs; and in this case they've maxed that out; contingency, which is not allowed to be more than 5 percent of eligible construction costs for new construction or 10 percent for rehabilitation and developments.

In this case, they're at 4.94 percent, so there was an -- within that limit. And then the developer fees, which are limited to 15 percent of all eligible costs other than the developer fees themselves.

At the very bottom of this little part of the section before you get to the sources of funds, there's a construction cost recap section. And that's a useful line because it shows what's most similar to what a builder would say is their construction costs, because it includes the developer -- or it includes the set work costs, the construction costs, the contractor fees and contingency.

So you can look at that as a comparison for what the going construction costs are.

MR. CONINE: Yes. You're going to get the time limit bell pretty bell pretty quick.

MR. GOURIS: Okay.

(Laughter.)

MR. GOURIS: On the far right, there's a "Recommended" box and the gray box that has the recommended sources at the very bottom; we're on page 11, and that's where we came to -- what we come to for our final conclusion of, where the sources of funds, what they should look like.

What's key there is looking at the deferred fee; in this case it's $420,000, 420,129. It's less than the thing that's right next to it there, which is the 15-year community cash flow, which is 979, and that means they can -- they have enough cash flow to pay the developer fee.

When that situation is reversed that's one of those key things that we say we can't recommend the transaction.

The next page in numerical analysis is our Marshall & Swift is up in the top left, it gives you the assumptions that we have there; on the top right is what the terms of the debt that we saw and what we recommend the terms of the debt should be. And at the bottom of the page is the 30-year pro forma.

And to note there is that the coverage ratio on

the bottom needs to above the 1.15 for up to the first 15 years of the affordability period.

On the next page, 13 of 14, is a recap of the eligible basis calculation, and we redo, we recalculate that; it's a regrouping of the information that was on the first page of the numerical analysis for construction costs. And it lays out the -- what's allowed on the 4 percent credit and what's allowed on the 9 percent credit.

The 4 percent credit is allowed for acquisition costs; the 9 percent credit is allowed for new construction and the rehabilitation costs, and you have to separate those two things out. And that will become important in one of the appeals that we have there.

At the bottom of the page, there are some additions and subtractions in the calculation for the high-cost area, if it's in a DDA, difficult to develop area, a qualified census tract they get a 30 percent boost and that would be shown there.

After that is the alpha fraction; if it's 100 percent tax credits, as this one is, they get 100 percent; if it had 20 market units in a 100 unit transaction, then that calculation would be 80 percent.

And then the applicable percentage, that's that 8 -- that's the 9 percent credit or the 4 percent credit

as adjusted for today's markets. What those are supposed to represent as we talked about in a previous meeting I think is, the 9 percent credit is supposed to represent 70 percent of the cost of the project, the present value to today, so it gives me a number that you use; and then the 4 percent credit is at risk, it would be 30 percent of the project's value.

Let me just talk about the map at the end of the report real quick. Like I said, sometimes there will be two maps; in this case there was one. I'll show you the second map on the next project. The maps will identify other properties in the area; it will identify in this case this big green area; it is a permanent market area, the red circle in the middle is to give you scale for the one-mile radius around the subject; it will also show you if there's any deals that are in the one-mile radius that need to be considered for the statutory one-mile radius test.

We identify on the maps with flags and pins and dots which projects pre-exist, they're already existing. And the way we look at that is, if it's a red dot or pin or flag it's something that's relatively current and probably un-stabilized, and something we need to consider when we do our capture rate calculations. Something we

need to consider, make sure it gets leased up and stabilized before we do another transaction in the area.

MR. GERBER: Define stabilized.

MR. GOURIS: Stabilized is 90 percent occupied for 12 consecutive months. We want to make sure that it's got sea legs as operational before we go throw some more units on there that's going to overwhelm them, potentially.

The flags are tax credit deals, 9 percent tax credit deals; the pins are bond -- pins and dots are bond deals; pins are bond deals that we've done and the dots are bond deals that a local issuer has done; but we issue tax credits for all of them.

And as I said, the green flags, green dots are deals that are more -- typically more than three years old, and stabilized already. And then occasionally you'll see a yellow flag or yellow dot, and that may be a competing project as up for an application with you right now, it's a pending application that hasn't been approved yet, one to consider going forward.

Last thing, and then I'll go on to the presentation for these appeals. If you go to the very last page of the next section -- you'll see a map, the second map that we sometimes include in these underwriting

reports. And this is a census tract map, and this is that 1432 per square mile, units per square mile concentration issue that we -- that's new this year.

If you -- you can tell some of the census tracts on the far right are outlined in red, or not outlined but they're colored in red; those are census tracts that exceed the 1432 per unit per square mile, unit per square mile.

And then the orange ones, like the one at sort of the bottom table there -- the MA area, exceeds the 1,000 unit per square mile.

In conclusion to this section, we're also looking for ways to make these reports more usable to you all. You can feel free to let us know as time goes on, what things you want to see or don't want to see for that matter, and we'll still do the analysis but we don't also have to put in the report, that's something you can --

MR. GERBER: And Tom, we did a major retooling of the underwriting report last year, so this is the second year of --

MR. GOURIS: Yes.

MR. GERBER: -- report.

MR. GOURIS: You know, we're constantly re-looking at trying to make it better and we did; we changed

not only the formatting of it, we've included some of the, you know, the visual site plan and the org charts and some of those things, but we've also transferred it all to one -- electronic, in ExCel format so that numbers are plugged in by formula so you don't have to retype them so much.

So we're trying to make it both more efficient for us and more useful for you all.

MR. GERBER: And it's fair to say that just the -- on the second page where you deal with pros and cons you're going to highlight under the cons, the major outstanding issues --

MR. GOURIS: Yes. That, those are -- that's a key area that we want to point you all to; that and the conditions are areas that we want to point you all to, to look deeper if you're going to look deeper at the transaction.

MR. CONINE: Any other questions for Tom on the underwriting report?

VOICE: [inaudible]

MR. CONINE: Certainly earned your new nickname, "Ambien."

(Laughter.)

MR. GOURIS: Ambien?

MR. CONINE: Look at Jeff -- he's asleep.

VOICE: I already had my name used in vain plenty of times in my career. No, thank you.

MR. CONINE: Moving on.

MR. GOURIS: I guess there's just one other note -- not on that. It's -- but you know, we've gone through about 52 of these now, and there are a handful more we have to finish over the next couple of days.

To the extent that at the September meeting there are some thoughts about some forward commitments, those probably haven't been underwritten yet, and we try to figure out who's been speaking and which ones we might need to do.

But if there are, you know, deals that need to be, that you think you might want us to consider for you to have the underwriting report, please let us know so we can go ahead and get those underwritten as well.

Okay.

MR. GERBER: Evergreen, Mr. Rich.

MR. GOURIS: Evergreen --

MR. GERBER: First one.

MR. GOURIS: -- Mr. Rich, and -- actually the applicants, or both of these have asked -- they're not related but they've asked that we look at them together

because it's the same issue for both transactions.

And the issue is, the position of our HOME loan. In both cases we have twice as much or a little bit more than twice as much -- they're asking for twice as much HOME funds in the form of a loan as their conventional debt. And based on the conversations that we've had the discussions that we've been in at the Board, we believe that the Board has directed us to ensure that we have a first lien in such situations where we have the majority of the funds in the transaction, so that's what we've recommended.

I can go through some of the risk factors with why we should do that, but bottom line is, you know, we're trying to follow what we think is -- what we believe is the Board policy, and believe is good and prudent Board policy, to ensure that we can get these funds repaid, and potentially not have to repaid HUD if the foreclosure were to occur.

MR. GERBER: If the foreclosure were to occur, the HOME fund, the losses of HOME funds would mean that we would have to take the funds out of the Housing Trust Funds --

MR. GOURIS: That's correct.

MR. GERBER: -- to go and repay HUD.

MR. GOURIS: That's correct.

MR. GERBER: That's a loss --

MR. GOURIS: And in each of these situations, right now with the amount of HUD trust funds, it would amount to about half of the annual allocation of trust funds if we had to repay those.

DR. MUNOZ: If we're not in the first lien position.

MR. GOURIS: If we're not in the first lien position, and the first lien lender were to foreclose, we would suffer that kind of liabilities.

(Simultaneous discussion.)

MR. CONINE: Didn't we recently have a round table on this topic?

MR. GOURIS: Yes, sir. We did. And it was overwhelmingly --

MR. CONINE: How recent was it?

MR. GOURIS: It was prior to our last Board meeting --

MR. CONINE: Okay.

MR. GOURIS: -- just a couple of weeks prior. And overwhelmingly the industry believes that we should not be requiring a first lien for these situations; and the reasons for that I'll let them explain more

thoroughly, but basically they have a very difficult time finding a conventional lender that is willing to take a second lien to our first lien, because in many cases they're trying to sell those liens as well to other entities like Fannie Mae.

In fact, yesterday I had the good fortune, Lee Stevenson, one of the lenders on one of the transactions, and I met with the director of multifamily for Fannie Mae and I spoke with him, by phone yesterday. And you know, she did confirm that it is -- you know, it's a non-start issue for them to do a second lien.

They've proposed some other alternatives that really don't provide us any more protection as far as what we would happen if we close this restriction, in my opinion --

MR. GERBER: Okay.

MR. GOURIS: So I --

MR. CONINE: Do you want to make a presentation on these deals real quick --

MR. GOURIS: I can --

MR. CONINE: -- and then we'll go to other comments.

MR. GOURIS: Yes. I mean, I've given you the basics of what the issue is, and I -- the writeup talks

about the specifics and I can talk you through that if you'd like, but the basic issue is, you know, a million, three in conventional debt for the first one, and $2.9 million in HOME funds.

MR. CONINE: Well, we'll listen to the public testimony right quick. I have three for each of these two deals, I believe. I do. Emanuel Glockzin -- this is on Constitutional Court, which we'll do first because it's first in my -- Cynthia Bast and Mahesh Aiyer. Hope I didn't torture that up too bad.

We have our annual pilgrimage from Ms. Cynthia Bast.

MS. BAST: Annual, don't you mean, monthly.

MR. CONINE: On this subject, anyway.

MS. BAST: Good morning. Cynthia Bast with Locke, Lord representing the applicant. As you have heard, the applicant here proposes to build 108 units of affordable housing in Copperas Cove, which is a town of almost 30,000 people that right now has only about 50 tax credit units currently.

In a time when credit is tight; rents are remaining low; tax credit pricing is down; operational expenses are up. It is becoming increasingly difficult to finance new construction projects in these smaller

communities.

And it can be particularly difficult to finance a new construction project solely with conventional bank financing and tax credits.

So some sort of soft gap financing is needed. And Constitution Court is just the kind of project that HOME funds are intended to be used for, on both the federal and state level. They provide that extra support that is necessary to make a project feasible in an area where the housing might not otherwise be built.

When I chaired the Rental Housing Subcommittee for the HOME -- TDHCA HOME Funds Task Force last year I brought a report to this Board that encouraged above all else flexibility in the use of these funds.

Our task force encouraged the Board to understand that there is no one-size-fits-all way to use the HOME funds. The HOME funds need to be structured in a way that fits each and every transaction, being mindful that we do need to protect the lenders' position.

This is one of those situations that needs consideration and flexibility, given the cost to build these units and the amount of equity that can be generated from the tax credits. The project can only support a conventional bank loan of about $1.3 million, while still

maintaining a reasonable debt service coverage.

That leave a gap that needs to be filled with HOME funds, and it is a gap that is larger than the first -- than the conventional loan amount. So the underwriting report is supportive of these financial sources, so long as TDHCA has the first lien position for its HOME loan.

In our appeal package which you received this morning, you have a letter from our lender that says that it cannot take a second lien position; you have letters from other major financial institutions: Bank of America, Wells Fargo, Chase, and -- Capitol One, indicating that they would not be able to take a second lien or a pari-first lien position in this circumstance, even if their loan was less than that of TDHCA's.

So if the conventional financing institutions are not willing to play the game with these rules, you have to decide if you -- it's more important for the State of Texas to maintain these rules of a first lien position, or to find a way to work with HOME funds, that can be supportive of projects that need this money.

We know TDHCA wants to have its funds repaid so that they can be recycled; we know TDHCA wants to avoid foreclosure that would wipe out the affordability

restrictions. We've been trying for several years to give you solutions that work: subordination agreements with consent rights, and other means of making it work.

And I would note that in the tax credit program nationally, the foreclosure rate is very, very low. There's nothing in the HOME rules or the real estate analysis rules that requires TDHCA to have a first lien position. Staff indicates this has been a Board policy for some time, but if that's the case, why isn't it in the rules?

In fact, in the February and June Board meetings this year, Staff indicated that they were working on writing a policy to be presented later this year. But meanwhile we have applicants in -- working in small towns, trying to fit all the pieces together.

They're willing to work with you in creative ways that would help both protect TDHCA's interest as a lender, and ensure that housing can be built in places like Copperas Cove.

But we need your support and direction to find a way to make this work. So I'll turn it over to our client, the developer, Emanuel Glockzin to give his thoughts on the situation, and then Mahesh Aiyer from Wells, Fargo, while who is not related to this particular

transaction, is here to provide the financial industry's take on this matter.

MR. GLOCKZIN: Yes, good morning, Chairman and members of TDHCA Board. I'm Emanuel Glockzin, developer of Constitution Court. This is our second go-round this development. We tried last year but we didn't quite make the cut because of some underwriting issues.

So we're here back again. We've made application, and I just want to point out, when we made application, the maximum HOME fund we could apply for was $3 million. Since we made application the rules have changed, according to this real estate analysis that I just picked up this morning, to $4 million.

So an option that I had got okayed with First Victoria Bank -- in other words, if we would increase the HOME loan, as a possibility to $3.9 million, and reduce the bank loan or commercial loan to around $400,000, that they would be willing to work with me on a second lien position, and TDHCA would have a first lien position.

I also have in the packet an Option B that would leave all the loan amounts the same except the commercial lender would be paid off in ten years, with all the debt service proceeds going to the commercial lender, and defer payments on the HOME loan for ten years, and

then the HOME loan would be paid off in an additional 15 years, which is a total of 25 years, which is ten years sooner than what the original application has.

And we've been in this program probably for ten years, dealing with HOME funds, and I just want to say that we have never been late on a payment, and we're all current on all our accounts. Thank you very much.

MR. CONINE: Any questions of the witness?

DR. MUNOZ: Well, what's the scenario that you just presented in terms of increasing the loan from $3 million to $3.9 million and then the bank would consider, if their contribution was reduced to approximately $400,000 then they would consider a second lien position?

MR. GLOCKZIN: Yes, they would. I have a relationships, like Mr. Conine and some other members --

DR. MUNOZ: Presuming that this scenario you just laid out wasn't originally part of the --

MR. GLOCKZIN: No, it wasn't in the original package, no.

DR. MUNOZ: Does this change things?

(Simultaneous discussion.)

MR. GOURIS: The rules that changed to increase the award were for CHDOs, at the regular rental rate. And so there are rules, they're your rules, so you could

certainly waive your rule to increase the amount of the award beyond what the note fund with the rules currently say, which would be a $3 million limit.

VOICE: I -- that would -- you know, we would have to run those numbers to see if that would work --

DR. MUNOZ: Is this a CHDO eligible?

VOICE: No.

DR. MUNOZ: Okay.

MR. CONINE: Any other questions of the witness? Mr. Flores?

MR. FLORES: Mr. Gouris?

MR. GOURIS: Yes, sir.

MR. FLORES: Whatever scenario he presents, the State of Texas did jeopardy during that time, if anyone did default on a loan. Is that not correct?

MR. GOURIS: I'm sorry.

MR. FLORES: The State of Texas is still in jeopardy if --

MR. GOURIS: Yes --

MR. FLORES: -- there's a default on that loan.

MR. GOURIS: Yes, sir. We would not be -- we believe we'd be liable to repay those loans to HUD.

MR. FLORES: Okay, thanks.

MR. CONINE: Okay. Any other questions of the

witness?

(No response.)

MR. CONINE: Mr. Aiyer.

MR. AIYER: Good morning to the Board Chair and members of the Board. My name is Mahesh Aiyer, and I manage Wells Fargo's community involvement lending efforts in Texas, and specifically affordable housing.

As you've seen in the package here, four of the most active, among the most active lenders in the State, I can't speak for brother banks; I can tell you about Wells, Fargo; but generally as a whole I think you're going to find that the banking community is not able to provide second lien financing as a whole, in general, with some exceptions.

It's just not something we do, and I would be real honest with you, when the banking environment was really good in the last five years, it's probably not something we would have done, at all, and certainly not in the current banking environment, it's something that we would consider.

We're first lien lenders; we take depositor money, that's the way we're examined, that's the way we're regulated. If we get into a second lien position, we wind up being in the same position as what you're looking at as

a hybrid, we're effectively equity. And that's not something that we do as a lender.

Going to Mr. Glockzin's point, on the bank he's working with I think you're going to find that far more the exception than the rule, and it -- for very small local institutions, that -- where someone's got a deep, long standing relationship, you might be able to do a bit of something there, but you're going to wind up I think with unintended consequences as being requested to increase your HOME fund amount, and put even more capital in than you would have otherwise intended.

And so just I think in general on behalf of the lending community I think you're going to not find that this is a real viable source.

Additionally, for those of us who also place the construction loans out to the permanent loan market, that's certainly not an option there; they will not take a second lien, as Mr. Gouris indicated with Fannie Mae. I could tell you that Freddie Mac and Community Development Trust, three of the primary permanent lenders, secondary market lenders in Texas, would not accept a second lien for the long term piece.

And so you just -- it's very problematic for us; I think in any environment, and more so in this

current environment. Thank you.

MR. CONINE: Mr. Aiyers, from being a portfolio lender, if you were to keep it in your portfolio, you do have the ability to do that, though. Do you not?

MR. AIYERS: We do a fair amount of portfolio lending, but it's the same issue as if we were the construction lender; having a second lien on the books means from a capital standpoint internally we'd have to allocate a lot more capital to it; our regulators look at it a more difficult-ly. And I cannot recall in ten years that I've been, you know, a community involvement lender, that we've ever done a second lien. It's just not something we would be able to get approved. It's not something we hold on our books, because of the risk.

I mean, we'll do first lien financing as a matter of course, and, you know, second lien financing is just a different type of risk.

MR. CONINE: Any other questions of the witness?

(No response.)

MR. CONINE: You want to go ahead and move to the next transaction, and let them come speak, on Evergreen?

MR. AIYERS: Mr. Conine, I think I'm also -- I

might be listed on Evergreen as well. So I can waive on that one.

MR. CONINE: Barry Palmer and Brad Forslund, come on up here.

MR. GOURIS: I'd point out that one of the differences between this transaction, Evergreen, and Constitution Court is that Evergreen is a CHDO, and is in the process of applying for an additional million dollars under our 2008 CHDO allocation.

There's some complexity in that, but that's one of the options that they potentially could have. Of course those things weren't part of the original application, which makes it difficult to underwrite at this point.

MR. CONINE: Mr. Palmer?

MR. PALMER: Good morning. My name is Barry Palmer, with the Coates, Rose law firm, and we represent the Evergreen at Vista Ridge, which is to be a 95-unit elderly transaction in Louisville. And I don't want to repeat some of the points made earlier about the general need in the financial community to have a first lien to the conventional lender; that is pretty well understood I think, and as Mr. Conine mentioned, there was a workshop on this issue in June, where input from the development

community and the lending community was asked for, and the overwhelming response was that we needed to find a way for the HOME funds to be in a second lien position to make these transactions viable.

I would like to point out that the concern that's been raised by TDHCA Staff about the possibility of having to repay these funds if there is a foreclosure, that we have proposed a solution to that problem, which is, you only have to repay the funds if your land use restriction gets cut off by a foreclosure. It's not the foreclosure itself that would result in a repayment requirement.

So what we have suggested, and we've taken this from the City of Houston, the way that they have developed their HOME program, is that the land use restriction agreement of the State would be recorded in a first position prior to the first lienholder's lien. So in the event that there were a foreclosure, the restrictions would not be cut off, and with that, there would be no requirement on the TDHCA to repay any HOME funds.

And this is the way that the City of Houston has structured their program, a number of other entitlement jurisdictions that we work with, the bigger cities that get their own HOME funds, have been using this

program for a number of years, and they are always in a second lien position.

We've worked with entitlement jurisdictions in Houston, Dallas, Fort Worth, Amarillo, Brownsville, and in all those cases, the city's HOME funds were put in a second lien position, and in order to protect themselves from the risks that Mr. Gouris indicated, the way that it was handled was by requiring that the restriction, the land use restriction agreement be recorded first, so that you'll be protected in all cases. And we think that with this requirement, that would solve the major issue that we see from the TDHCA side on not risking having to pay the funds back, but would allow these transactions to go forward.

Because otherwise, these transactions are really not finance-able, if you're talking about a second lien for the conventional lender, or even a par y passu first lien position; there's no lender out there to do that.

So we'd ask the Board to consider the alternatives that we have proposed, and to help come up with a solution to this problem. Thank you.

MR. FORSLUND: Hi. My name is Brad Forslund, I'm a partner with Churchill Residential.

Chairman and members of the Board, we have been working with Staff to also develop some alternatives; they were presented in the letter to Mr. Gouris, and -- I'm sorry, Mr. Gerber, and I wanted to quickly walk through those with you.

The first one obviously is the option that we have -- that has been proposed at this point. The second one would be in an effort to try to get as close to what the TDHCA Staff requires, and underwriting requires, and that would be, asking for an abatement of interest and amortization on the HOME loan.

But by doing that, what that would allow us to do is decrease the HOME amount from our $3 million to $2 million, and that would allow us to leverage up our conventional financing, to $2.8 million, thereby the HOME loan now is less than the conventional debt.

I mean, the other benefit of that is, you are now leveraging HOME funds with more conventional debt, and also it does meet the debt coverage requirements.

We think that's the -- if we just can't get over the first lien hurdle, we think that is the most viable option, and closest to what TDHCA is looking for.

The third option was, is, increasing our HOME amount from the $3 million to the $4 million; it's an

option, it creates a much larger deferred developer fee, so we've asked in this option for a two-year abatement on the HOME loan, to allow us to just to get the deferred developer fee paid off.

Again we think it's a less viable option than our second option, one, you're using more HOME funds, you're not using any conventional debt; we would have to work through the administration of the construction loan, which I think would fall onto the shoulders of the equity investor. We probably could get that done but it is unconventional.

So in conclusion, obviously we would like the Board to consider these options in the order as presented, but I think also and as mentioned I think a little bit earlier by Ms. Bast is, these gaps are going to get larger, not smaller next year. Construction costs are going to continue to rise, as we're seeing interest rates are rising, more so in terms of spreads.

And everything that we are hearing from tax credit investors, the IRRs to these investors are going to be rising and tax credit pricing is going to continue to fall into '09. So this situation's going to get worse, not better, and we really ask the Board to help us come up with some solutions to use these HOME funds effectively.

Thank you.

MR. CONINE: Any question of the witness?

DR. MUNOZ: Well, Tom, do you intend to respond to at least those first two scenarios, either the instance of what's taking place in Houston and how that's able to take place, and the possibility of waiving these particular fees?

MR. FLORES: Tom, if I may interrupt, what you're saying, that -- tell us how the State of Texas is protected in the worst case scenario, if there's a default.

DR. MUNOZ: Well, and that's fine, but prior to that, apparently in the City of Houston there's a situation where this is taking place, and the State of Texas is, I'm presuming, insulated, protected. So how does that --

MR. GOURIS: Well, it would be the City of Houston that believes they're insulated, but we -- for a couple of reasons, we don't believe that we would be. Mostly because we don't have the ability to enforce the lien, if it's foreclosed, so we don't have the ability to force the LURA, if it were still enforceable in the first place.

I think -- Mr. Hamby is here and he can help

you understand our position -- discuss our position about that.

MR. HAMBY: Kevin Hamby, General Counsel. Good afternoon, Board members. We disagree with the position the City of Houston and other people have taken; we believe that the HOME rule makes it very clear that once a lien has been -- a first lien has been foreclosed upon, the LURA goes away.

And so that's not something you can subordinate to, we've not seen it tested in court; we've looked. So we have very little comfort level that that would indeed be the case.

Our biggest concern of course is the fact that we put our Housing Trust funds at risk because we would have to repay the affordability period if the LURA went away through non-federal revenues, and for us, that's only the Housing Trust Fund.

So I guess it's one of those legal questions we may be able to ask the Attorney General for a ruling on, I'm not sure they would do it, because it's more federal law, but we disagree with that premise that the LURA could stay in place even if you subordinated it.

MR. FLORES: Mr. Chairman?

MR. CONINE: Yes, Mr. Flores.

MR. FLORES: He offered three different scenarios, solutions, whatever. You've answered one of them regarding the LURA, but he had two others. Would you respond to those other two, Tom? Abating interest --

MR. GOURIS: Yes, the second one talks about --

MR. FLORES: -- and the other one was the --

MR. GOURIS: The second one talks about our loan being reduced so that it would be a second lien but be non-amortizing, and deferred to the point of a 16-year possible buyout or restructure at that point.

But the problem with that solution is that it would be very difficult for us to evaluate and suggest that there would be sufficient funds to refinance that transaction at that time.

If it doesn't refinance at the present time, it would be so much more difficult in 16 years, when the property is now 16 years old, needs to be rehabilitated, needs to be recapitalized, and our funds are sitting out there with -- at AFR, it would have to be at AFR, have to throw in interest, and be that much more difficult to repay.

So [indiscernible] analysis of that, my hunch is that that scenario would be the lesser position, you know, a worse position that even a parity lien would.

The third scenario is, providing additional funds, and that, you know, that would suggest some viability if we could provide $4 million. The difficulty in that is that that -- you're taking monies from two different application cycles, the second application -- I mean, some of it's technical; the second application cycle just opened up. It hasn't been available to other folks.

The HOME funds -- additional million dollars hasn't been vetted through the regional allocation formula, so we would have to show it as two different cycle years, kind of circumventing the regional allocation, you know the desired reallocation formula, and the HOME rules from last year.

So it's possible, but it's, you know, it's going to take some --

MR. FLORES: Well, even if you got the additional HOME funds, you still are in a second lien position, are you not?

MR. GOURIS: No, I think their recommendation -- or their suggestion on the third alternative was that we'd have a first lien position, and the conventional loan would be of such small magnitude that they could support it with some other source of funding, that wouldn't necessitate a conventional lender

taking a second lien position.

MR. FLORES: But we'd have to commit some funds on the next cycle, on the HOME fund --

MR. GOURIS: That's correct.

MR. FLORES: -- so actually, they missed the cycle.

MR. GOURIS: The second -- they missed, technically they missed the cycle. There's a cycle that just opened up, and the applications are being available to be received now, that they can apply for and I believe they expressed an interest in applying, I'm not sure --

MR. FLORES: Well, we've got a timing problem here --

MR. GOURIS: We do have a timing problem --

MR. FLORES: -- move on, where there's an odd cycle.

MR. GOURIS: Yes, sir. We do.

MR. FLORES: Okay. Thank you.

MR. GOURIS: And I might just note, this probably hasn't been a problem for us in the past so much, because of a couple of things. One, we've been the gap financier that -- the small piece; we've increased the amount of HOME funds available for developments, primarily to be able to do rural developments without tax credits,

but because it wasn't restricted to just that purpose, it's also being seen here in a tax credit development where there's some conventional debt, and looking for us to take the second spot, and lien position.

Actually while you're thinking I've got one more thing, if I can (laughs). The whole HOME policy discussion is something that we do want to bring back to you in the coming months. It's -- one of those potential solutions down the road is looking for lenders who might be willing to participate with us in the loan, where they take the first lien and take our funds in parity with their first lien, so they're looking at a 126 overall debt coverage ratio, but their cost of funds theoretically is reduced because they're using our loan funds to generate a 1 percent piece, where they're getting their 8 percent return.

That's an area that we have not explored nearly enough and something that we really must explore in the coming months.

MR. CONINE: Yes, I think that was the general scenario for the workshop, getting started. We continue to hear the problem, we try to respond by increasing the allocation of HOME funds, but the risk, at least from my perspective, the risk of getting wiped out, you know, $3

million or $4 million either one, and having to repay that out of the Housing Trust Fund, which doesn't get that much money in it to begin with, is substantial.

And the other issue here for me is the timing. You know? I'm okay with talking about how to fix these problems but to try to fix it in the middle of a cycle is not fair to those who didn't submit, who knew what the rules were on the first lien position going in, and would tend to place an unfair advantage, at least in my mind, to those who got us to change it in midstream.

So, any other discussion?

(No response.)

MR. CONINE: We need a motion here fairly soon. Any other questions?

(No response.)

MR. CONINE: Okay. We -- I'll entertain a motion for Evergreen at Vista Ridge and Constitution Court.

VOICE: Are we doing them together?

MR. CONINE: Sure.

MR. FLORES: Move to deny the appeal.

MR. CONINE: Is there a second?

MR. CARDENAS: Second.

MR. CONINE: Motion and a second to deny both

appeals. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Any opposed?

(No response.)

MR. CONINE: The motion carries.

Cypress Ridge?

MR. GOURIS: Yes, sir. These next two are similar but they're different enough to stay separate. The applicant submitted -- this, Cypress Ridge is an issue with regard to expense to income ratio being over 65 percent in the first year of operations.

The applicant submitted income and expenses that provided that expense to income ratio that did exceed 65 percent of that application, they were told and given the opportunity to correct the situation, they submitted revised expenses during the underwriting process, and brought them down to 64.91 percent. However, the expenses -- the revised expenses did not include the required TDHCA compliance fee of $40, and including those fees would bring that back over the 65 percent expense to income ratio, to 65.77 percent.

And in addition, the underwriter's expense to income ratio is over the 65 percent limit as well. They included as part of the director's appeal a couple of financial statements from -- partial financial statements from two properties that they own and operate, one of which is immediately adjacent to the subject.

They provided five months' worth of expense data, and provided no expense -- no specific references to where the additional expense savings would be achieved other than reflecting that overall. The second phase -- this is the second phase, and expected to save on payroll and leasing operations.

These things were things that the underwriter took into consideration when they did the original underwriting, and in fact reduced the utility costs and some of the other costs in the pro forma much lower than what would have otherwise been expected for a stand-alone development.

So we believe we took those costs into consideration. We still end up at a number that's well over the 65 percent standard, again, the 65 percent standard is something we believe pretty strongly in as a litmus test, the reality is that we have concerns when it's even lower than 65 percent, but 65 is sort of our

bottom line because we don't believe that the transaction will remain viable for the term of the affordability period if anything higher than that without some other support.

So it's got -- so the executive director denied the appeal, and Staff is recommending that the Board also deny the appeal.

MR. CONINE: Quick question, Tom.

MR. GOURIS: Yes, sir.

MR. CONINE: You said, well over, but is it 65.77, is that where you ended up?

MR. GOURIS: That's where she would end up or they would end up if the compliance fees were included.

MR. CONINE: Where did you end up?

MR. GOURIS: We ended up at 68.17.

MR. CONINE: Oh, 68.17 --

MR. GOURIS: Yes.

MR. CONINE: -- and can you tell me in dollar amounts how much that 3.1 percent's worth, on a monthly basis, or annual basis?

MR. GOURIS: Our annual basis at 3 percent is going to be worth roughly $9,000 a year --

MR. CONINE: Okay. Thank you. I have one witness affirmation form on this particular project, Anita

Kegley.

MS. KEGLEY: Good morning. My name is Anita Kegley and I'm the principal of Dane [phonetic] Development. And I apologize, I had prepared this booklet which you all have received a copy, and when I looked on the web last night I didn't see anything on the agenda as far as the detail so I'm a little bit redundant; you all received this, so you have two.

Anyway, the claims of the underwriter that my expense ratio to income exceeds 65 percent are incorrect. Under Tab 3, where I did give them a letter and try to the best of my ability explain why it was not, if you do look on that, on page 3, the expenses that I did give, it does have the compliance fees included in there, and I didn't put it on the form in the right place.

I included the compliance fees in the general and administrative expenses, and not down below. So if I revise that form I'm still not changing or making the expenses more, I am just re-appropriating them according to the TDHCA form.

So it clearly states in the response to the appeal, the line item is clearly -- and I know that they have just a ton of paperwork to go over, and if you're looking through that, you're not going to -- if you're

just kind of glancing over it and not paying attention to the detail, and not familiar with this report, but again whenever I ask them, I call them, I say, "Okay, how do I clearly demonstrate this," and so they didn't give me, you know, any form to go by.

They just said, "You just need to prove your numbers." So that's the way I thought to prove my numbers, was to show an actual statement of my expenses on the existing property. I'm just a small minority partner in this other property, but I have access to this, and I know what the numbers are, and the numbers that I did use are comparable to what the actual expenses are.

And they said that I only gave a five months -- the form that you have in front of you will have the annual budget on there as well as the actual for five months. So I'm kind of confused at --

MR. CONINE: Ms. Kegley, could you tell me where the -- in the G&A category of, what was it, the 20th category where the compliance fees are?

MS. KEGLEY: If you look on page 306 --

MR. CONINE: Uh-huh.

MS. KEGLEY: -- down under "General and Administrative," if you're going by the number, the account number, if you look at 745530, it says,

"Compliance fees," and the compliance fees is $3,048.

Although the compliance fees for my project or this proposed project would only be $2,160, because there's only 54 units, and this existing property has 76.

MR. CONINE: So what would the annual number be?

MS. KEGLEY: The annual number for the proposed funds at Cypress Ridge would be $2,160; that's $40 per unit.

MR. CONINE: And you got $3,048 in there?

MS. KEGLEY: Right. I've got, really there's more.

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

(General laughter.)

MR. FLORES: Ms. Kegley, you'll need to ignore some of the comments here and get serious about your project. You have two projects with us, at TDHCA? Your development company?

MS. KEGLEY: Actually the development does not have any. I'm the principal of Dane Development; I am just a small partner in the existing development at Cypress Ridge; Cypress Ridge Townhomes.

MR. FLORES: Who is the developer of homes at

Cypress Ridge -- you are?

MS. KEGLEY: Dane Development. Yes.

MR. FLORES: Do you have any projects with us in the past?

MS. KEGLEY: I've been involved in four previous projects.

MR. FLORES: How many.

MS. KEGLEY: Four.

MR. FLORES: Four.

MS. KEGLEY: Yes, sir.

MR. FLORES: Who is the lender of this project, the one that we have here before us? Who is the proposed lender on this project?

MS. KEGLEY: Alliant [phonetic] is a syndicator, and Greystone is doing the construction financing and the permanent financing.

MR. FLORES: Do you have any proof or in some way can -- we know that the lender is willing to go along with the project --

MS. KEGLEY: Yes, I --

MR. FLORES: -- something in our --

MS. KEGLEY: Yes, the --

MR. FLORES: -- paperwork?

MS. KEGLEY: -- I have the --

MR. FLORES: Yes, he's nodding his head, yes.

MS. KEGLEY: -- a letter --

MR. FLORES: You're nodding your head. Okay. And what we're talking about here is $9,000 per year I believe, Tom?

In the past we've -- Board members, we've had some projects where we have exceeded 65 percent. The cost of utilities obviously is going up, and we're going to have to re-think our way on the 65 percent. I don't see this as a problem as long as the lenders are willing to go along with it.

And so my recommendation to you is to go ahead and approve this appeal. It's not the first time we've done it, number one; number two, she's been here before, she's a proven developer, so I'm willing to go ahead and approve this. And I'll --

MR. CONINE: And I guess I would have a question again of the witness. If underwriting had you $9,000 out of whack, and the fees were $2160, where's the other $7,000 going to come from?

MS. KEGLEY: I'm sorry.

MR. CONINE: If underwriting came back to you and said that your expenses were in excess of the 65 percent rule, in a number of $9,000 a year, and you're

saying your compliance fees were embedded within your G&A number, that's only $2,160 based on your earlier testimony.

MS. KEGLEY: I'm not for sure where he got the $9,000 figure.

MR. CONINE: Okay. Tom, can you come clarify where you got the $9,000.

MR. GOURIS: It would be generally the combination of areas, but if you look on our -- these first pages of comparative analysis, the numbers page, you'll see that our G&A and the applicant's G&A were considerably different. To the extent that --

(Simultaneous discussion.)

MR. CONINE: Yes,

MR. GOURIS: -- this is first -- I'm sorry the numbers didn't get put on the bottom, but it's this page right here, it's the first page of the numerical analysis. It has the rent statement on top, and the --

MS. RAY: We're showing the TDHCA's 000078 there at the top side.

MR. GOURIS: No.

MS. RAY: That's not the one?

MR. GOURIS: The first line is multifamily comparative analysis at the very top, and this one is

Cypress Ridge -- it's toward the back of the packet --

VOICE: Here it is.

MR. GOURIS: -- one of the last pages.

MS. RAY: Got it.

MR. GOURIS: And as I mentioned, we do a, you know, comprehensive expense by expense and evaluation, line item by line item to determine if that's a reasonable level of expenses for that line item.

In the G&A number there, you'll see that our number's at $21,000 a year, it's about $390 a unit. Her number's $181 a unit, which is -- might be reasonable if you weren't having to lease up, you weren't having to do some things.

I'm not sure that the Phase 2 part of it would reduce the amount significantly. But certainly without that number actually including some compliance fees as well, then you know, there's another $2,000 that's not in that number.

And it's not in that number; typically it's listed down below. And to the extent that it was embedded in that number, and we didn't see it, it should have been taken out and that means there's $9,750 number there be $7,000, it would --

MR. CONINE: It would be further out of whack.

MR. GOURIS: -- yes. But to answer your question specifically, we look at it line by line. And so to say that that's the only place that we're outside of, you know, our normal outside of it, that certainly is an obvious place that we have a difference.

MR. CONINE: Any other question of either Tom or the witness?

(No response.)

MR. CONINE: I'd entertain a motion.

MR. FLORES: Move to approve the appeal.

MR. CONINE: There's a motion to approve the appeal. Is there a second.

MS. BINGHAM-ESCARENO: I second.

MR. CONINE: There's a second. Any further discussion?

(No response.)

MR. CONINE: And I would -- I guess I would speak against the motion, just -- there's just too big a risk and too great a standard relative to what we use. And I'd just be uncomfortable deviating too far from that.

Any other discussion?

DR. MUNOZ: Would that -- elaborate on that. Too big a risk, and your perception of the threat of deviating from what we've established --

MR. CONINE: Well, I think if you underwrite at a far too low number on the expense side, Mr. Gouris' concern about 15-year viability continues to be there.

So if you're starting at a number that may be artificially too low, you're going to -- reality will be that the number will be higher. And the concern about the 15-year viability is a concern to the whole industry, not just a bunch of us at TDHCA.

So I just get a little uncomfortable. We may have to revisit the 65 percent rule at some point in time. But again in the middle of the cycle, in the middle of the process, not the right time to do it. Any other discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed to the motion, signify by saying nay.

(A chorus of nays.)

MR. CONINE: Did you vote?

VOICE: Yes.

MR. CONINE: Motion fails, three-two.

Okay. Did I do something wrong?

MR. HAMBY: No, this is just one of those ones we have to have --

MR. CONINE: We got to reverse the motion?

MR. HAMBY: We have to deny the appeal.

MR. CONINE: Okay, is there a motion to deny the appeal?

MR. CARDENAS: So moved. Is there a second?

MR. FLORES: Second.

MR. CONINE: Motion and second to deny the appeal, any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Mansions at Briar Creek. No -- is that right?

MR. GOURIS: That's correct.

MR. CONINE: Okay, yes.

MR. GOURIS: Mansions at Briar Creek is a transaction that's somewhat similar in that it's not being recommended because of a financial feasibility issue.

It's not the 65 percent expense to income ratio

in this case. In this case, it's the fact that the deferred developer fee is not repayable within the first 15 years of cash flow.

And you can see that toward the back of the book if you want to look at page 11 of 14, the diverted developer fee, as estimated by the underwriter in the gray box at the bottom is $281,023, and the amount of cash flow available is $1,216,000. The reason for the difference is because the applicant utilized an utility expense, tried to pay a utility number, utility allowance number that was much lower than the amount that was available, that was produced in January by the Housing Authority.

They have since come back and requested that we consider a proposal from a consultant who is -- they're getting, trying to get the approval of the utility company, to support a lower utility bill, which is something we allow if they give that to us in advance, or if they actually operate the property, they can substitute the public housing authority's utility allowance with a utility -- letter from the utility company.

As of last I heard they hadn't gotten that approval, but even if they had, it would have come in subsequent to the original underwriting so we would have tended not to be able to use that, since we finished the

underwriting, and gone to you all to decide if you want us to use it or if executive wants us to use it.

We did look at that number, and we think that if that number was used, the situation would be much improved and probably would allow for our developer fee to be repaid in 15 years. But that's not the case that we have in front of us. The housing authority's utility allowances are the one that prevails. It causes income to be much less than what can be -- what can allow for the developer figure, and so we're not recommending it on that basis.

MR. CONINE: Has the applicant indicated that the utility numbers will be coming in shortly?

MR. GOURIS: Yes. I mean, they gave us a copy of them, and they're in --

MR. CONINE: Are we waiting on a bureaucratic utility company here, or what are we doing?

MR. GOURIS: Well, first of all they didn't recognize that these two allowances have changed on them. And --

MR. CONINE: Did they --

MR. GOURIS: -- the two allowances changed in January --

MR. CONINE: Okay.

MR. GOURIS: -- the submitted the applications several months later, they didn't recognize that change. We did use the most current ones. So by the time they got notice from us that we weren't able to recommend the transaction they realized this -- the two allowances, then they went about trying to get a letter from the utility company, and they engaged a consultant to help them with that.

And so at this point, they are waiting for that utility company to approve those utilities. You know, they've assured us that that's something that they're ready and willing to do, but they just haven't gotten that official sign-off on it, but I haven't talked to the utility company to confirm that solution.

MR. CONINE: Okay. I have no witness affirmation forms on this one. Any other questions of Staff?

MS. RAY: Mr. Chairman?

MR. CONINE: Yes, Ms. Ray?

MS. RAY: I move Staff recommendation.

MR. CONINE: Motion for Staff recommendation to deny. Is there a second?

MR. CARDENAS: Second.

MR. CONINE: Second, any other further

discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

St. Charles Place.

MR. GOURIS: The next two transactions, St. Charles Place and Prairie Village, which have a similar situation, they're -- and one piece of it that's different. We'll go to similar issue first.

These are both USDA transactions, that are being acquired by the applicant, it's a non-identity of interest acquisition, so there's no issues there.

The issue is, with regard to how much developer fee and how the developer fee is proportionately attributed to the acquisition piece versus the rehabilitation piece.

As I mentioned to you earlier, the acquisition piece of eligible basis gets 4 percent credits; the rehabilitation or new construction piece gets 9 percent credits.

What the developer made in these two instances is attributed more of the developer fee to the rehab piece than proportionate to the cost. So in this case, I think it was 52 percent of the eligible developer -- development costs parturated to the acquisition piece, but he only attributed 39 percent of the developer fee to the acquisition costs.

We're suggesting -- we've gone through this process quite a bit over the last couple of years to try to get it more clear, the proportionality of task to -- and developer fee. And we've made changes, here's suppositions that we say, it has to be for the work that's being done, and there's no really way for us to measure that work other than by the costs themselves and that's how we measure it.

So that issue is consistent with both transactions. The second issue for St. Charles Place is with regards to the amount of the HOME funds themselves. The applicant is requesting that we consider a higher than proportionate amount of HOME funds be attributed to -- be awarded from the HOME side.

Because he is applying for the HOME funds through the Persons with Disabilities NOFA, he originally applied, under the rental NOFA but was disqualified

because the property is in a participating jurisdiction. So the Persons with Disabilities NOFA is now available, and again sort of a timing issue but he's making application or made application where we review that in the next couple of days and try to see -- make sure that he qualifies for that.

But in so doing he's making the claim that his cost for the HOME units are going to be more than the costs for the other units, and while that may be the case, we believe that the statute, the federal requirements are that you can provide more funds if you're using actual costs, but if you're using projected costs there's no way for us to forecast that those cost for the HOME units would be more expensive.

In addition to that, he was going to be required to do some of the tax credit units as accessible units anyway, and so there's a proportionality issue just starting out with the transaction. So we're not recommending the additional HOME funds to the level that he's asking for, we are however going to re-look at what we did, because what we looked at was -- to get more complicated, we looked at it as a debt coverage ratio issue, and Mr. Gerber has accepted his appeal on that issue.

So when we look at the HOME fund we're going to adjust somewhat based on not the maximum debt coverage ratio but on a lower debt coverage ratio.

In a nutshell, he asked for $500,000 in HOME funds; we recommended $410,000 I believe, the proportionate share would be 426, but we're probably going to go to something in that 426 neighborhood, once we look at that HOME application in its entirety.

MR. CONINE: And I have a witness affirmation form from Patrick Barbolla.

MR. BARBOLLA: Good afternoon. Mr. Chairman, members of the Board. My name is Patrick Barbolla, and I am president of Fountainhead Affiliates, which is the developer of both of the properties in front of you today, the Whispering Oaks and the St. Charles Place.

Excuse me, that was for Prairie Village.

MR. CONINE: Yes, that was -- one of those was Prairie Village.

MR. BARBOLLA: Yes. Actually the issue in a way is much more simple than Tom explained it, but it's much more unique. This is a case where I as a developer intentionally requested less than the maximum developer's fee. And now it's coming back to haunt me.

What I did here on this property, the property,

when it was -- do you want to do Prairie Village first? That's the easiest one; we can do Prairie Village, it's the shorter one.

This application reflected -- it's less, it's a 24-unit complex. When I applied or requested a 20 percent developer fee based on the rehabilitation costs and 10.56 percent of the acquisition portions on an ill-equal basis. So both are these fees, are equal to or less than the development department's maximum levels.

I did this to maximize the credits, as allowed by law, while trying to keep rents as low as possible for the tenants, and to reduce the amount of the necessary other financing needed.

Indeed the developer's fee requested on Prairie Village was $63,000 less than the authorized maximum. Now, the underwriting report redistributes the developer's fees, based on cost. What I am saying today is, I believe the rules of the Department allow me as a developer to say, "I'm going to take 15 percent or less of developer's fees on the rehabilitation portion, and -- or 20 percent or less also on the acquisition." It's my decision, and it supports the rules.

Take a look at the qualified allocation plan for this year. It states "The Department will reduce the

applicant's estimate of developer's and/or general contractor's fees in instances where they exceed the fee limits determined by the Department. The developer's fees' limits will be calculated as follows," and it's 20 percent for the small properties like this one; it's 20 percent of the eligible basis less developer's fees on the acquisition portion and the same thing on the rehabilitation portion.

It cannot be contested that the developer's fees requested, you know, did not meet this test; and in fact, they met the qualified application plan test. Now, although they met this test, the Department has come back and looked at the real estate analysis rules, which states that developer's fees claimed must be proportionate to the work for which it is earned. And consistent with Section 49, which is the 20 percent test.

The problem comes in, what does it mean by work? Okay? I did a quick division; work is not defined in the qualified allocation plan. The term "work" is not defined in the real estate analysis rules.

I think we need to take a look at what the word means under the dictionary. It means, "proportionate effort," it means many different things. It does not mean, cost. Let's -- according to Webster's Collegiate

Dictionary, it talks about exertion or effort directed to produce something. Labor, to look for work. Means, materials; it does not mean cost.

They go through eight different definitions for the word, "work." It does -- never do they mention cost. In Mr. Gerber's letter denying my appeal, he confirmed that the Department used this language to base that it should reallocate the developer's fee based on cost.

Now, what does this mean? It means, to this small property, a difference of about $3,000 a year in credits. That doesn't sound like much, but when you're talking a 24 unit property, an extra $23,000, $24,000 is proceeds means a lot.

Okay, so effectively I voluntarily gave up $60 some odd thousand dollars. So we're going to come back and take another $23,000 away. What you're telling everyone to do is, you must apply for the maximum amount of developer's fees, or it's going to hurt you. Okay?

Now, let's take a look -- there's another place that we need to look. Texas law has given us some guidance on what to do in this situation. Department rules are subject to the Texas Code Construction Act, which is Section I believe 311.002 of the Texas Government Code.

And it states, "Words and phrases shall be read in context and construed according to the rules of grammar and common usage." Here, thus, the Texas Government Code would require that the use of "work" means its normal dictionary meaning and not something completely foreign, such as based on cost.

Now, maybe it was missed but in the determination letter of Mr. Gerber dated July 17, there was no response made to the Texas Government Code, of what it means to this appeal.

But there was two things mentioned in his letter that I think should be mentioned today. There was two reasons that he gave to deny the appeal. First, it is claimed that Staff has no practical method by which to apply your interpretation of the rules. I think the mere allocation of credits does not mean the property will be entitled to the credit. Staff will receive a cost certification that contains an auditor report, verifying the funds spent for construction. All right?

So there is a practical means. And frankly today when you look at all these underwriting reports, they're just guesses. But what they're doing is capping things. What I'm saying is, let's go back, there is a practical means to apply this, and that's that cost

certification you receive from your auditor's report, and basis on cost, so you know what's going to be in front of you.

Second, the letter argues that your interpretation would render the rule pointless since the developer could claim up to 100 percent of the fee earned based on the acquisition prices, being eligible for the higher rehabilitation credit, and Staff would have insufficient information to challenge such an allocation of fees, and virtually no recourse otherwise.

I disagree with that. You have the basis, of you know what the developer's fee is going to be under rehabilitation. As long as it does not max out, it does not -- the total amount of developer's fees does not exceed 15 or 20 percent based on the property, of the amount of your rehabilitation hard costs, or rehabilitation costs, or it does not exceed the same limitations applied to acquisitions, then you will know. No one's going to turn this over.

Now, what is the meaning of the rule to me? If you read it plainly, the derivation of the rule has changed frequently over the past ten years. Originally the rule -- it is, it does have a meaning.

It means, let's say if I would go out on these

properties and obtain a $2 million grant, there's a lot of effort involved in that. Shouldn't someone that actually obtains a grant be entitled to a developer's fee? Yes.

This rule allows that. But of course it can't be an eligible basis of credit, but when you do your underwriting report, they could then receive it. So there's many different uses for the rule; so we're not really just doing away with the rule, the real estate analysis rule.

But the appeal today, I mean -- I could sit here and quote Lewis Carroll "Through the Looking Glass," as Humpty-Dumpty when he told Alice, and I think I will, let's go ahead and do this.

(Laughter.)

MR. CONINE: Oh, let's not.

MR. BARBOLLA: Yes, I'm for the Texas Supreme Court to take a look here. You know, Alice said, "'I don't know what you mean by, glory,' Alice said. Humpty-Dumpty smiled contentiously, 'Of course you don't, until I tell you. I meant that it bears a nice, knock-down drag-out argument for you.'

"'But glory doesn't mean a nice, knock-down, argument,' Alice objected. 'When I use a word,' Humpty-Dumpty said in a rather scornful tone, 'It means just what

I choose it to mean, neither more nor less.'

"'The question is, said Alice, 'whether you can make words mean so many different things.'"

I think today this Board needs to, frankly, accept my appeal on the allocation of developer's fees and reject the use of the real estate analysis rules based on the meaning of words. The word, "work" does not mean cost. It cannot be. So without that, I think you -- it's not protecting -- it's not going to do any harm to the program, and unless I'm wrong, this is if not the only two cases where the Department's ever been faced with a developer intentionally requesting less than the maximum developer fee.

And it may be the last time for sure --

(Laughter.)

MR. BARBOLLA: -- if this appeal is denied. Now --

MR. CONINE: Any questions of the --

MR. BARBOLLA: -- I'm willing to work on the, now the one on Crowley [phonetic] has a little different issue. It is the same situation but it means more money --

MR. CONINE: You've burned up -- unfortunately you've burned up your time.

MR. BARBOLLA: All right. I will just stop right there then.

MR. CONINE: That would be a good idea.

(Laughter.)

MR. CONINE: Any further questions of the witness?

MR. FLORES: Not of the witness. Of Mr. Gouris.

MR. CONINE: Okay. Mr. Gouris?

MR. FLORES: Mr. Gouris, I, first of all I want to say that I don't think we have arbitrary rules like you just said. Mr. Carroll is very amusing but it's not true.

If indeed we have to change the rule to define work by dollars, that's fine, because it's a good, solid way of defining the rule.

But the second part of it, I was thoroughly confused. How did his reducing the developer fee get him in a bad spot? I didn't quite get that. Explain it in 25 words or less --

(Laughter.)

MR. FLORES: -- that's what I'm looking for.

(Simultaneous discussion.)

MR. GOURIS: The developer could have chosen to request 20 percent developer fee for both the acquisition

and the rehab, and we would have said, that's fine.

He chose to request 10 percent on the acquisition and the full 20 percent or close to 20 percent on the rehab. Which is within our limits for each of those.

So he's saying, what he's saying is, I should have asked for 20 percent on both and then this wouldn't have been an issue and I'd have gotten more credits, and he's right. He's right.

The argument that he's made, though, leads us to a place that would make it difficult for us to defend that situation where the developer gets a 20 percent acquisition fee and slips it all over into rehab costs, which is what has happened in the past, and which is why we continue to try to make this rule prevent -- you know, adjust to make this rule --

DR. MUNOZ: Tom?

MR. GOURIS: Yes, sir.

DR. MUNOZ: Has it happened with this developer in the past?

MR. GOURIS: I can't -- I would -- I believe that it hasn't, but it's been an issue with developers.

MR. FLORES: Well, Tom, let's go back to the developer fee. So if you go and you turn it back where

you ask for the full developer fee, what happens then to the analysis?

MR. GOURIS: Well, he's not asking for the full developer fee --

MR. FLORES: Well, if, if.

MR. GOURIS: We'd have to look and see -- I would imagine we'd have to look and see if there's enough deferred developer fee to cover that extra cost. He'd get more credits -- well, he wouldn't get more credits because he's limited by the credit amount requested, but he'd get the full amount of credits, and then he'd show additional costs that would have to be covered with the source of funds that wasn't credits which would likely be deferred developer fee.

So we'd have to show that there's enough deferred developer fee -- there's enough cash flow to pay for the developer fee. But he would probably be okay.

MR. FLORES: Sounds like all we're doing is manipulating numbers here.

MR. GOURIS: That's --

MR. FLORES: And --

MR. GOURIS: And --

MR. FLORES: -- if indeed that's what we're doing, we need to fix this, then for the next round.

MR. GOURIS: Well, he makes a point in his comments here, he said, "These are all estimates of what is going to be," and that "We have a method of evaluating what the final numbers are at the end of cost service."

I'd argue that that's fine if we might or might not be able to rely on their CBA to look at those specific costs and have considered the language in our QAP that says, "work." I doubt that they would do that.

But beyond that, we have to deal with what we have, and this is what we have; we have these estimates that we evaluate, and that's how we allocate them. We have to allocate with the best information that we have present.

And, you know, if they make mistakes or we make mistakes, we all need to live with those, if we -- if an allocation is made, that's the way it works.

MR. CONINE: Any other questions?

(No response.)

MR. CONINE: Since we've got two projects with the same developer and the same situation, even though we got one extra issue to deal with, with one or the other, let's vote on the allocation of the developer fee first, for both, so that we can get that out of the way. Do I hear a motion?

MS. BINGHAM-ESCARENO: Mr. Chair, how would the motion be worded if they're -- are we making motions to approve or deny the appeals, based on the allocation of the developer fee?

MR. CONINE: Right. Staff recommendation was to deny, I believe.

MS. BINGHAM-ESCARENO: Okay.

MR. CONINE: Tough one.

DR. MUNOZ: Mr. Chair, certainly my hesitation has to do with -- since I don't completely understand the scenario, and his assertion that -- and Tom might have to get back up -- that not being overzealous in his request for the full amount, again positioned him in some kind of disadvantageous way.

I mean, you know, is there anything else wanting in this proposal other than this one issue?

MR. CONINE: This isn't a scoring question. This is strictly an allocation of credits. It has nothing to do with where it falls in the ranks of everything, which makes it a little more palatable I guess from my perspective; you're not going to upset the apple cart, although you're going to gobble up a few more credits. That's essentially the issue.

MR. GOURIS: And I don't know if that -- if my

explanation of that was --

MR. CONINE: Well --

MR. GOURIS: -- earlier, but I would agree, it's under his desire to, you know, appropriate a more reflective amount to developer fee for the acquisition, which was in the limit, and the rehab which was within the limit, is causing him to then receive less credits overall, potentially.

I mean, you know, this is a unique situation this year, and one of the things that could be done would be to, you know, waive that proportionality requirement and direct Staff to address the situation in the upcoming cycle.

So that is the sort of scenario, were it to come about again, we'd have clear direction -- clear requirements, or allow it to occur, if that were the case. So that if someone did choose to only request 10 percent developer fee here, on the acquisition, and 20 percent someplace else, that would be okay. It's the shifting that we have the big issue with, I believe.

DR. MUNOZ: Well, I certainly like that proposal; to me it's preferential to -- you know, it just seems to me that we've got to exercise some judgment. And there's got to be some flexibility. I mean, we've got to

be prepared to introduce some potential solutions in these rare instances, and quite frankly think it's our responsibility to do so. So I mean, even that kind of scenario to me would be preferential.

(Simultaneous discussion.)

MR. HAMBY: Kevin Hamby, General Counsel --

DR. MUNOZ: Well, what would the motion be?

MR. HAMBY: Well, I think if I understand your particular concern --

DR. MUNOZ: That's mine. I mean, there are others that might have --

MR. HAMBY: If you were making this motion I would probably say that you were going to look at, for this particular appeal, waiving that allocation question, not changing the rule, and it's only for this particular appeal based on this set of circumstances and facts.

And so that would take care of that one section of the appeal, and the entire appeal I guess for the other.

DR. MUNOZ: I'm prepared to make that motion.

(Laughter.)

MR. CONINE: Motion on the floor. Is there a second?

MR. HAMBY: Since I write the minutes it will

come out that way, too.

(Laughter.)

DR. MUNOZ: Make sure to accurately reflect my comments.

(Laughter.)

DR. MUNOZ: My motion.

MR. CONINE: Is there a second?

MS. BINGHAM-ESCARENO: Second.

MR. CONINE: There's a motion and a second on the floor. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Now we're going to deal with the HOME Fund question on the one project.

MR. GOURIS: And do you want to repeat the comments --

MR. CONINE: Yes, just kind of repeat the scenario.

MR. GOURIS: So the issue there is that he's

made application under the Persons with Disability NOFA, he's making application under that, and making -- indicating that the cost for those units are going to be more than the average cost for the rehabilitation of the other units.

And again I guess proportionality is one of my favorite words today, and that's one of the things that we're trying to see here, is that the HOME funds can't -- you can't put in more HOME funds per unit than the average cost of the transaction.

He's claiming that you can because these units are more costly; that would possibly be a valid argument if we had actual costs to deal with, but we have projected costs to deal with, and we don't believe you can make that leap with projected costs.

MR. CONINE: Which project is this referring to?

MR. GOURIS: This is St. Charles.

MR. CONINE: St. Charles. Okay. Any further questions of Mr. Gouris?

(No response.)

MR. CONINE: Okay. Do I hear a motion on the HOME fund issue on St. Charles?

MR. CARDENAS: I move to accept Staff comments.

MR. CONINE: Accept Staff comments to deny the appeal. Is there a second?

MS. RAY: Second.

MR. CONINE: There's a second from Ms. Ray. Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Moving on to Park Place.

MR. GOURIS: Park Place and Heritage Square are very similar transactions by the same developer or development team. And so I had asked them, I would imagine we could take them together as issues if you so desire.

The issue here in both transactions is that there are second and third HUD liens that have been secured by the seller, and then transferred by HUD to the nonprofit -- to the applicant and then to their nonprofit parent, at a nominal cost to them.

The -- in the Park Place transaction there's a

million, five in additional HUD liens, and in the Heritage transaction there's just over a million dollars in additional HUD liens. And what the applicant has done, is said, "Well, that's part of the acquisition costs. And yes, HUD has paid for that and transferred it to us, without us having to pay for that, but we would like to include that acquisition cost because it's true that it's included as part of the acquisition cost that they reflect to get tax credits on.

And our belief is that that would be a double subsidy, and they've already received a subsidy from HUD basically for getting that value. And so we don't believe that we should allocate credits on the acquisition part of that, on that part of the acquisition.

MR. CONINE: Well, I know we're going to have some testimony here --

MR. GOURIS: Yes.

MR. CONINE: -- let me see if I can understand what you're telling me. What was the actual acquisition price?

MR. GOURIS: For Park Place the acquisition price was $2.3 million.

MR. CONINE: And did that include the second and third liens?

MR. GOURIS: That includes the second and third liens.

MR. CONINE: Okay.

MR. GOURIS: We've taken the 1.5 out of the eligible basis portion of the acquisition cost, so if you go to the last -- second to last page on Park Place, 16 of 17 --

MR. CONINE: Yes.

MR. GOURIS: -- you'll see at the top there, there's the acquisition, applicant's acquisition on the basis of $2.1 million?

MR. CONINE: Hang on.

MR. GOURIS: Okay.

MR. CONINE: Second to -- you on 15 of 17?

MR. GOURIS: No, 16 of 17.

MR. CONINE: Sixteen of 17.

MR. GOURIS: HCC Allocation and Offices.

MR. CONINE: Okay.

MR. GOURIS: This is the eligible basis page I was telling you about before.

MR. CONINE: Okay.

MR. GOURIS: And the middle two columns have the acquisition basis; $2.171 is the acquisition basis that they would claim --

MR. CONINE: Got it.

MR. GOURIS: -- we've reduced it by the value of the HUD -- the amount of the HUD loans, and ended up with $555,000 of eligible basis.

MR. CONINE: Who was the seller, just out of curiosity?

MR. GOURIS: An arm of AMPCO --

MR. CONINE: Private?

MR. GOURIS: Yes.

MR. CONINE: And what was your reasoning for not including the second and third lien for the acquisition cost, since they obviously paid $2.171?

MR. GOURIS: They obviously had a note transferred to them in that amount, that they -- at closing, but their parent also got the other end of that note, got the lender end of that note. So that -- they also contend their parent have both sides of that transaction, and when the parent received that note, the transfer value was -- a small transfer fee was that $1.5 million. Does that --

MR. ASARCH: Well, I disagree with that. So I --

(Simultaneous discussion.)

MR. GOURIS: I think what -- because we've had

numerous conversations about this obviously, and what we've heard is that this is a real live note, that HUD expects to have repaid. So HUD won't receive directly the cash flow benefit; the property will receive the cash flow benefit from the note payments.

MR. CONINE: I'm going to have to listen to the applicant, to fully understand this. So I can understand.

MR. GOURIS: Yes, sir.

MR. CONINE: Any other questions of Tom before we go to the applicant?

(No response.)

MR. CONINE: I have three witness affirmation forms, Chad Asarch?

MR. ASARCH: Asarch.

MR. CONINE: Asarch, excuse me.

MR. ASARCH: That's okay.

MR. CONINE: And is someone -- and Sarah Andre, and Sarah Anderson [phonetic], is someone -- who's going to go first?

MR. ASARCH: Sarah Andre's going to go first.

MR. CONINE: Ms. Andre.

MS. ANDRE: Sarah Andre, good afternoon. My name is Sarah Andre. I am here to talk briefly about Heritage Square and Park Place. The developer in a moment

will outline the specifics of the case, but I wanted to talk to you about the generalities.

My work as a consultant, and I've been doing this for 14 years, is to ensure that projects meet the rules and the requirements as set out in the QAP, and in real estate analysis. And to provide guidance to developers as they attempt to navigate those rules and meet those rules.

As you know, the purpose of published rules is to inject the tax credit process with transparency and with objectivity, which are two very important features as we are allocating government funds.

I'm very concerned with the direction that Staff has taken in the case of these two projects. Staff has made two points: the first is that they would not issue more credits than a project needs; and to paraphrase Mr. Gouris, earlier today he said, "No more credits than they would need for a financially healthy deal."

And then second, Staff has stated that even if something is allowable under the QAP, it doesn't mean that they will choose to allocate credits for it. And while I agree very much with the first principle -- with the first point, in principle, in this case these arguments have provided Staff with a rationale to discriminate against

two projects that meet all of TDHCA's published guidelines.

Staff have manipulated the numbers and underwritten these projects with a gap that is to be filled with a 75 percent and a 93 percent deferred developer fee. If this practice is to be used as a benchmark for other projects, then in all fairness it should follow that every project put before TDHCA should be underwritten so that only enough credits are allocated so that three-quarters or more of their developer fee is deferred.

However, Staff does not do that, and I argue that they will not do that, because it's inconsistent with their own underwriting guidelines, and their own practices; and because it would also increase the difficulty of finding investment for these projects.

If the decisions in these cases constitute a policy decision on the part of the Department, then I see three basic flaws: First, there's no prior policy and no prior actions have been taken to set a precedent for this.

Second, other than a general statement about not awarding more credits than are necessary, there's nothing written in the QAP about reducing credits to the point of eliminating the developer's fee.

And third and most importantly, the subjectivity in this decision is counter to the principle of transparency and objectivity, which is the purpose of the rules.

I'd like to conclude that in this case, staff adherence to the idea that just because credits are allowable does not mean that they will provide credits has resulted in a loss of objectivity, and a lack of fairness in underwriting.

As you listen to the specifics of this case, I would urge you to consider whether or not you believe that's the case. Thank you.

MR. CONINE: Any questions for the witness?

(No response.)

MR. CONINE: Okay. Mr. Asarch.

MR. ASARCH: Thank you very much. My name is Chad Asarch representing the applicant. Heritage Square is a 60-unit senior project and Park Place is a 50-unit inter-generational project. It's over half senior.

We applied for both acquisition credits and rehabilitation credits as allowed by the QAP, and the basic issue on appeal is that the purchase price for Park Place was $2.3 million, the purchase price for Heritage Square was $1.7 million, and Staff has come to its own

neat conclusion that has reduced the purchase price by over $1 million for each project.

And the reason, as you've heard Mr. Gouris articulate, is that the loans that were assumed by buyer at closing shouldn't count. Unfortunately from our perspective, everyone else involved in this transaction disagrees with that perspective.

The Department of Housing and Urban Development disagrees; the IRS disagrees; the lawyers involved, the auditors, the accountants, the brokers involved, the seller and the buyer all consider that we bought the property for $1.7 million for Heritage, $2.3 million for Park Place, and in fact, if you look at TDHCA underwriting reports, they include these second and third loans, the HUD loans, as part of the debt service calculation for their underwriting analysis.

And just plain common sense, from our perspective, would come to this conclusion that if you paid for -- what you paid for the property, and that should be the acquisition cost.

Let me just give a simple example. If you bought a $150,000 house, and you said to the seller, "I'm going to pay you $50,000 in cash and I'm going to assume your existing $100,000 loan," you paid the seller

$150,000.

If you paid him $50,000 cash and $100,000 as a consideration that you were assuming an existing loan. But the Staff in this case is basically saying, "Well, that assumed loan doesn't count; you really only paid $50,000 for the project," and no one would look at the transaction that way.

The loans in question were established more than three years prior to the closing; the seller entered into loan agreements with HUD to borrow this money, and HUD put the money into the project. And included in the purchase price and it's in the contract, it's part of the settlement sheet, the Buyer had to assume the loan obligations at closing. And so we don't see how you can deduct out the value of that loan from the cost of the acquisition.

The staff seems to be arguing -- the basis of Staff argument to us appears to be that they're saying that because these loans were assigned at an upper tier level from HUD to the nonprofit, that they shouldn't count as part of the purchase price, and somehow this assignment created a gift or a grant, that the nonprofit didn't pay value for them.

But that conclusion has no justification; we've

given Staff significant amount of documentation to prove that, and the handout that we've given you if you want to look through it gives a more detailed response to the Staff's arguments.

But the basic question is, you know, did the nonprofit pay something of value for these loans, and were they part of the purchase price. And the simple answer is yes, they were. If you look at the handout you'll see that there's a letter from the Department of Housing and Urban Development, one of the exhibits, and it says that OAHP, the Office of Affordable Housing Preservation at HUD confirms that the assignment of the HUD mark to mark notes are not grants. These were not grants, they are loans.

If you look at the Internal Revenue Service Code, these loans are part of the acquisition basis for the project; they're going to be depreciated as part of the acquisition cost of the project under the Internal Revenue Code.

If you look at another one of the exhibits, there's a letter from counsel, Nixon & Peabody which by the way is the counsel that helped draft the rules regarding these types of loans, and if you look at the bottom of the second page, it says, "HUD does not view the mark to market HUD loans assigned or assumed as grants,

and in debt assignment transactions, the mark to market HUD loans remain in place as debt on the property."

If you look at the auditor's letter, which is also included as an exhibit, you'll see that the auditor concludes, "The loans constitute part of the buyer entity's cost basis for the acquisition of the property."

If you go to the broker letter that's attached as an exhibit, you'll see that the broker who -- by the way, this broker has done more affordable transactions than any other broker in the country, and they came to the conclusion that the HUD mark to market loans just like any other loan that must be assumed by a buyer, constitute part of the cost of acquisition to the buyer, and assignment of the HUD mark to market loans is only obtained by buyer in exchange for full value given to HUD.

And this broker by the way wasn't even involved in this transaction; this was just an opinion that they're giving based on their familiarity with these transactions.

Obviously, the closing settlement sheet lists the purchase price. The seller received value for the purchase price. The deed reflects the purchase price. The purchase and sale agreement reflects the purchase price. And the purchase and sale are between unrelated parties.

And so it's hard for us to see how Staff comes to this conclusion that is in contradiction with how everyone else views the transaction. And so hopefully we think that TDHCA should treat the assumed HUD loans by call of the loans assumed by buyer at closing, and that the HUD loans constitute part of the purchase price paid by the buyer to the seller, and should be included as part of the acquisition cost basis.

MR. CONINE: Any questions of the witness?

(No response.)

MR. CONINE: If not, thank you very much.

Would you like to respond, Mr. Gouris?

MR. GERBER: Tom, why don't you walk through why we're in such stark contrast to all the letters that Mr. -- this gentleman has presented.

MR. GOURIS: Well, because we're allocating the tax credits, and --

MR. GERBER: Just walk through that.

MR. GOURIS: -- we do have our, you know, it was earlier stated that we don't have anything in our rules. We do; we explicitly say at the beginning of our rules that we provide funds not more than is necessary.

And so I'm not sure how we're --

MR. GERBER: That's a conscious decision by

this Board --

MR. GOURIS: By this Board.

MR. GERBER: -- to get maximum efficiency out of the credit, that's correct. We want to use them as efficiently as possible. Not making any deal too rich.

MR. GOURIS: Yes.

MS. RAY: Mr. Chairman, can I ask Mr. Gouris one question?

MR. CONINE: You may, Ms. Ray. Yes.

MS. RAY: Mr. Gouris, on the closing documents for the sale on the sale of these properties, what would the bottom line total of the --

MR. GOURIS: We have included the bottom line total in our underwriting. We just are not allowing acquisition credits to repay for what HUD has already paid for. That's the bottom line.

We are putting it in there, and showing the loan there, and showing the costs there, on the "Total" pages but not in the eligible basis, so that we don't pay again for something what HUD paid for.

MR. CONINE: Well, HUD didn't pay for it, I mean --

MR. GOURIS: Yes, in fact they did --

MR. CONINE: -- how did --

MR. GOURIS: -- they wrote down that debt, and paid the lender --

MR. CONINE: How do you know? I mean --

MR. GOURIS: They told us that.

MR. CONINE: I mean --

MR. GOURIS: Is that not true?

(Simultaneous discussion.)

MR. ASARCH: HUD paid the note; HUD didn't write down the cost of the note; from HUD's perspective, the note's still exists as a real debt.

MR. CONINE: Right.

MR. ASARCH: I mean, that's what their -- the letter says.

MR. GOURIS: And I don't want to debate, and we're not -- but HUD paid it down the note, took a note back, and then transferred that note to your parent institution, or to you --

MR. ASARCH: Well, I disagree with your characterization that they paid down the note; they didn't pay down the note.

MR. GOURIS: They paid the participating lender or the loan was outstanding --

MR. ASARCH: Three years ago, three years before the transaction, HUD wrote a check into the -- I

mean, wrote a check at a closing of a refinance transaction for a million and a half.

MR. GOURIS: That's --

MR. ASARCH: They never wrote that down.

MR. GOURIS: -- what I mean when, they paid --

MR. ASARCH: But the buyer had to assume that obligation.

MR. CONINE: That's a loan; that -- HUD doesn't pay for anything --

MR. GOURIS: But they, HUD, made -- wrote a check. Right? That's what he said, wrote a check --

MR. CONINE: They --

MR. GOURIS: -- and they took back --

MR. CONINE: -- funded a loan. In a second or third lien position. On a project.

MR. GOURIS: Which they now have transferred to the entity without taking any consideration other than a transfer fee.

MR. CONINE: But that's irrelevant, in my mind. If the note's still outstanding, the note's still outstanding. When it got transferred may be an interesting tidbit; when did it get transferred?

MR. GOURIS: According to our information, it was immediately prior to the closing --

MR. ASARCH: It was at the closing.

MR. CONINE: It was simultaneous. It was part of the closing transaction.

MS. RAY: Mr. Chair, I got -- my other question Mr. Gouris --

MR. GOURIS: Yes, ma'am?

MS. RAY: In your opinion, is this loan going to need to be repaid to HUD?

MR. GOURIS: No. It's not going to be repaid to HUD. HUD is done with the transaction, other than some oversight to ensure that the property maintains some affordability, and that the cash flow from the loan -- the payments from the loan go back into the property. That HUD themselves are not going to receive any of these funds back.

MR. CONINE: That's because they got consideration at the closing.

MR. GOURIS: The consideration was a nominal amount of dollars, it was in other forms, that they would be required to do under our program anyway.

MR. CONINE: And does the debt currently still exist on the property?

MR. ASARCH: Yes. As a matter of fact, HUD requires the debt to continue to exist, to continue to be

serviced, they have oversight over how the debt funds are used; they have a number of restrictions that they put on the property that honestly, in a normal circumstance no one would -- people don't -- you don't agree that the restrictions HUD put on as part of this transaction, for nothing.

I mean, those things HUD took for value, in other words, as saying, "if we're going to impose all these requirements on you, and we're going to retain this very tight control of the project," and what we do with the money that in essence, HUD still has control over the use of the funds.

MR. CONINE: They still have insurance on the note?

MR. ASARCH: Well, FHA insurance?

MR. CONINE: Yes.

MR. ASARCH: Well, no because the HUD loans didn't have FHA insurance to begin with. I mean, they weren't --

MR. GOURIS: Before they were HUD loans, when they were -- when HUD wrote the check, they were insured loans.

MR. ASARCH: Well, three years ago there was a first mortgage but it has nothing to do with this

transaction. So the FHA insurance funds weren't part of this transaction. But again, you know, from HUD's perspective as the letter makes clear, I mean, they -- this is a loan, not a grant. And to, you know, conclude otherwise from our perspective we'd just don't see how you get there. We had to assume that obligation at closing.

MR. CONINE: To rephrase Ms. Ray's question a little bit, the acquisition cost, the HUD closing statement on the acquisition cost showed $2 million --

MR. ASARCH: Showed $2.3 million.

MR. CONINE: $2.3 million.

MR. ASARCH: Right.

MR. GOURIS: And that's why we show the sources and uses of funds reflecting the full amounts. Again we just are -- because that portion was something that we think HUD paid -- wrote a check for and then transferred to the owner. It would be akin, his example was, if I had a $150,000 loan and $50,000 in cash, well, would that pay $200,000 for the property. Well, if $50,000 of the loan was to your wife or from your wife, would you have paid $200,000 for the property?

MR. CONINE: Yes, but that would be the same as saying HUD was included in the conspiracy to defraud us --

(Laughter.)

MR. CONINE: -- and issuing a credit based on a closing statement. I mean, that just -- I'm not going to buy that.

MR. GOURIS: It's not a conspiracy to defraud us; it's not at all. It -- they have a different view of something than we have. And our view I think should be that we're not going to over-subsidize a transaction, and that's what we would be doing by providing funds for acquisition that have already been provided.

MR. CONINE: I see it as two separate transactions. I see a note sale completely separate and apart from a real estate closing.

MR. GOURIS: I can't put that curtain to look out, at that point.

MR. CONINE: Okay. All right. Any other questions?

DR. MUNOZ: So Tom, there's nothing here in this packet -- I'm looking at some of the dates, and don't know whether you -- in time for the Board book and what have you, would have had an opportunity to carefully examine, there's nothing here that gives you pause to re-interpret your position? I assume you --

MR. GOURIS: There's nothing that occurred anyway; I presume -- I mean, we've talked -- another part

of the transparency issue, this didn't just pop up; I mean, we've been talking about this for quite a bit of time. As soon as I became aware of it we had a conference call about it, they came down and visited with us about it and we've been talking about this for quite a bit of time; it's not new, it's not -- you know, it's not a new issue. And we didn't have --

MR. CONINE: Are these at-risk projects?

MR. GOURIS: Uh --

MR. CONINE: In our set-aside?

MR. GOURIS: -- I don't think so --

MR. CONINE: No. They're just rehab deals?

MS. MEYER: [inaudible]

MR. CONINE: Excuse me?

MS. MEYER: They missed the pre-op period.

MR. CONINE: So they're just head's up rehab deals basically. Okay. Any other questions of the witness or Staff?

(Pause.)

MR. FLORES: Ready for a vote?

MR. CONINE: Yes, sir.

MR. FLORES: Move to approve the appeal.

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

MR. FLORES: To approve the appeal?

VOICE: Yes.

MR. FLORES: Against Staff recommendation?

VOICE: Yes.

DR. MUNOZ: Second.

MR. CONINE: There's a motion to approve the appeal, any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(A chorus of nays.)

MR. CONINE: We've got a 3-3 tie again.

MR. GERBER: Mr. Hamby, this is where you come in.

(Discussion off the record/off microphones.)

MR. CONINE: Let's go to the next one; we'll come back to this one.

MR. HAMBY: Okay -- the Chairman is allowed to vote if he so chooses; he doesn't have to vote --

MR. CONINE: Which one is the next one? I'll come back to it, don't worry.

VOICE: It's the same issue.

VOICE: Same issue.

MR. CONINE: I thought I was voting for Park Place and Heritage. I'm sorry. I thought the motion would cover both. Let's go to the next one which is Village West 1 and 2.

MR. GOURIS: Those are actually part of bond transactions, and we are accustomed when we look at a bond transaction, just to take care of that issue, appeal at that time -- they made appeals, and we haven't -- and this same group has not responded.

MR. CONINE: All right. So we'll go back to Park Place, and Heritage Square.

MS. BINGHAM-ESCARENO: I have a question, Mr. Chair.

MR. CONINE: The one -- yes?

MS. BINGHAM-ESCARENO: We're back, right, to this --

MR. CONINE: We're back.

MS. BINGHAM-ESCARENO: -- to this. Is there an opportunity to, if the appeal is approved, is there an opportunity to look at, help me with Board rule, QAP, is there an opportunity in the future to further specify wording in Board rules or something that would support what Tom voiced on behalf of Staff, for future

transactions.

I'm going to -- this is going to be not appropriate wording, but if the Staff believes that this, on kind of a technicality or an interpretation, if Staff tried to address that but applicant's position is that there's nothing in the supporting documents that shows that this is not part of acquisition costs, is there an opportunity for us in the future to further articulate in Board rule or somewhere what Staff's intent is for future applicants?

MR. HAMBY: Sure. You have the opportunity virtually -- well, every year you're required to re-adopt the QAP, so every year that's mandatory by, you know, by December 1st as the adopted fully in the Governor's Bond --

MR. GERBER: And the REA rules usually accompany that --

MR. HAMBY: And the REA rules, you can change at any time. You do not have to change them as long as you follow the strict guidelines of the APA, which is that you post it 30 days in advance, and you can even do that during the cycle if you so desire. Because the REA rules are not covered under statutory requirements; the QAP is covered under statutory requirements; there has been in

the past some precedent that the rules tandem together, but there is no requirement of that; this Board could do this however you want to.

MR. GERBER: It's true that we have brought them together, and we will bring them forward to the Board at the September 4 Board meeting, the QAP and the REA rules, as well as the multifamily bond rules --

MS. BINGHAM-ESCARENO: Okay.

MR. HAMBY: Those are draft rules.

MR. GERBER: Those are draft rules --

MR. HAMBY: Right --

MR. GERBER: -- for public comment.

MR. HAMBY: -- which is required for the QAP, it's not required for REA or any of the other --

MR. GERBER: And we'll certainly at your direction look for points to clarify, and that's actually on the top of the --

MR. CONINE: Inevitably every year we find little quirks and situations that crop up that --

(Simultaneous discussion.)

MR. GOURIS: The difficulty in crafting rules is always that you craft something that's very specific, and there's a, you know, tweak that someone comes up with that, "You didn't say what work and cost were," "You

didn't say," you know --

MS. BINGHAM-ESCARENO: Right.

MR. GOURIS: These things, you know, make it very difficult for us to then apply the intent, which is --

MS. BINGHAM-ESCARENO: I understand.

MR. GOURIS: -- much clearer.

MS. BINGHAM-ESCARENO: Thank you.

MS. RAY: Mr. Chairman?

MR. CONINE: Yes, ma'am.

MS. RAY: My only concern is, that the recommendations I would like the Staff to consider is that we clarify that this kind of rule is consistently applied. You know. I can certainly understand the developer's concern, but I'm also concerned that one underwriter may dig deep and apply a rule a certain way and another underwriter might look at the bottom line, purchase price, and miss that opportunity. And then we have negatively impacted a developer, and I'm concerned about that.

Because the bottom line is, putting housing on the ground, and that's my only concern, is to ensure the universal application of the rule.

MR. GERBER: Ms. Ray, I would just note real quickly, and we'll talk more about this; we -- while it's

usually the individual underwriter that takes the first cut at the report, it certainly goes through other underwriters who do quality assurance checks and then Tom ultimately sees all these.

And so there's a -- we work hard to make sure that there's that conformity with the Department's rules and the direction of this Board; Tom may even want to add to it?

MR. GOURIS: No, other than -- I mean, yes there is (laughs). This is a fairly unique situation, and sometimes these things pop up. We try to apply the intent of the rules consistently in all cases. If something similar but not exactly the same came up, we'd apply the same requirement.

What was actually conveyed in a purchase price is, did somebody else pay that purchase price, is that going to impact us, our ability to pay for that purchase price again. And that's sort of the bigger picture probably, to look at.

MR. FLORES: Mr. Chairman --

MR. CONINE: Yes, and I would argue, in looking through the packet that they've provided, the letter from HUD to me is fairly forthcoming. When the consideration of the sale of that note took place, they added 20 years

to the use agreement, from 30 to 50, and they accepted a ten-year sale restriction.

Nowhere in our rules say that that note has to be transferred on cash, dollar-for-dollar basis. They accepted other conditions as consideration for that note sale; and I just, you know, I strongly believe that if HUD is willing to put that in a letter to us, then it needs to be considered a basis; that's the only issue.

MR. FLORES: Mr. Chairman, I think we can settle this, if you'd let me make a motion?

MR. CONINE: I'll quit talking.

MR. FLORES: I move to approve the -- I move to approve the appeal.

MR. HAMBY: Again, Mr. Flores, you can't make that motion because you were on the losing side of that last motion --

MR. FLORES: No, I wasn't on the losing side; it was 3 to 3.

MR. HAMBY: It was 3 to 3, but that meant the motion failed. So that means, that was a losing side of the motion --

(Laughter.)

MR. FLORES: Oh, okay.

(Simultaneous discussion.)

MR. FLORES: I see, well, okay.

MS. RAY: Given that interpretation, and we thank you for that interpretation, and we the discussion period?

MR. CONINE: We are.

MS. RAY: I'd like to hear what Mr. Flores -- what your opinion is, on that issue. I may be willing to consider that opinion.

MR. FLORES: My whole point is that, that -- value is value, and they -- the deal stands on its own, and the value of the property is there, it belongs to us at this point, we're transacting -- if you look at it as a single transaction, we have control of that land, we have the lien on it, we have the LURA, what else do you want?

All the question is, how much is its value?

MS. RAY: My question, Mr. Flores, was, how would you have formed your motion?

MR. FLORES: Oh, my motion. We have been -- I (laughs) I move that we approve the appeal, on both transactions, which were, I believe the name of it were Park Place and Heritage Square. That's the way I would have done it, had I --

(Laughter.)

MS. RAY: Mr. Chairman --

MR. CONINE: Yes, Ms. Ray.

MS. RAY: -- given that I'm on the --

MR. CONINE: The --

MS. RAY: -- positive side of that issue, I move to grant the appeal.

MR. CONINE: Do I hear a second?

MS. BINGHAM-ESCARENO: Second.

MR. CONINE: Can she second it?

MR. HAMBY: Yes, she may.

MR. CONINE: Oh, okay.

(Laughter.)

MR. CONINE: Any other discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Opposed?

(No response.)

MR. CONINE: Motion carries.

Going on to Agenda Item Number -- I'm going to try to get us finished here, as you can tell, rather than going to lunch, 6. Private activity bonds. Villages of Lakewest I and II.

MS. MEYER: Robbye Meyer, Director of

Multifamily Finance. Chairman, Board, the Villages of Lakewest I and II are two tax exempt bond applications which are applying for housing tax credits from the Department.

Housing Options, Inc. is the issuer of the bonds on both transactions. These are Priority 1-A applications and they're proposing a new construction with a total number of units of 360 between the two units, targeting elderly population.

The applicant is proposing two developments to be located on contiguous sites; each development will have 180 units, which -- Lakewest I is the first development and Lakewest Apartments II is the second development.

Pursuant to 50.6(e) of the Qualified Allocation Plan and Rules, any development in an urban area is not to exceed 252 units unless it is a Phase 2 and has prior approval in the form of a resolution from a local governing body, stating the local governing body has reviewed the market study and concurs with the need for additional units over the 252 development size limitation.

Pursuant to 50.6(e)(iv)(B) of the QAP, this resolution was supposed to be submitted at the time of application; because the proposed properties are not one development, and not a Phase 2, the applicant failed to

include this resolution.

The Department subsequently requested the resolution as an administrative deficiency, upon completion of the threshold review, and the applicant submitted that resolution.

They are requesting a waiver of 50.6 of the QAP related to the deadline and submission of that resolution. The applicant has already submitted it, and they've also submitted a resolution that also addresses the one-mile issue.

The applications depart from our normal applications for Phase 1 and Phase 2 developments, in that really they -- instead of having a Phase 1 already there, and coming back with a Phase 2, they're requesting both of them at the same time.

There is no legal prohibition against this as the City has issued the resolution that says that they've examined the market study, and they believe that there is a need for the housing. However, Staff believes that this is a deviation from our rules, and they are -- they've received letters of support for both developments from State Representative Terry Hodge, and no letters of opposition.

The applicant is actually requesting $665,111

in tax credits, while the agenda reflects that the Lakewest II is recommending zero, they're actually -- they are actually recommending $596,228 in annual tax credits for each application. They have appealed their underwriting, and that's what you saw in your appeals; it's the last two.

MR. CONINE: So the only appeal is just doing them both at the same time.

MS. MEYER: The -- staff feels that that is a deviation from our rules because we have a 252 limit, with the number of units for development in urban areas.

MR. CONINE: Yes, okay. I think I understand what you're --

MS. MEYER: The appeal's on the square footage --

MR. CONINE: -- on what square footage?

MR. GOURIS: Let me jump in. Tom Gouris, Director of Real Estate Analysis. The appeal that they've submitted is based on the fact that they've submitted units that are 565 square feet, and we believe that that constitutes a unit that's the size of an efficiency, and should be treated as an efficiency.

And we've asked in our underwriting recommendations or suggested in our recommendations that

they have the market analysis go back and look at the units as efficiencies, and consider to see if there's enough demand, as efficiencies. But that they ought to also consider the units as efficiencies, and restrict them as efficiencies rather than one-bedroom.

This housing, $40, to help support the operations for the project for the near term and so it won't make a material difference on the rent schedule today, but down the road the lenders and [indiscernible] might have a concern about the operating assistance that might not be there, and their ability to garner efficiency rents versus one-bedroom rents.

And so that's why they're appealing.

DR. MUNOZ: Do we have square footage thresholds for one-bedrooms?

MR. GOURIS: We do. We have two sets; the ones that apply in this instance are the ones that are in 50.3 of the QAP, the "Definitions" section which talks about a unit and what size a unit might be, and it says that a unit with 649 square feet or less is considered an efficiency unit.

There's more to the sentence, that could lead the reader to make a different argument, and I'll let Ms. Bast make that argument for you; but the intent was, I

believe, as I understand it, that anything less than 649 square feet is an efficiency unit, and that's how we applied it.

MR. CONINE: Hang on just a second.

MR. GOURIS: It's actually, she's -- if you look at the back --

MR. CONINE: Let the Chair get organized --

MR. GOURIS: -- of the book that I gave you, there's the appeal that Ms. Bast wrote, and she goes through her argument on the subject.

MR. CONINE: Okay. I've got 1, 2, 3, 4, 5, folks that would like to sign up or that have signed up to speak for this project. As you know, you only get three, so between Tim Lott, Jeffrey Pollock, Cynthia Bast, Tony Jackson and Tom Langdon.

VOICE: The first three.

MR. CONINE: The first three.

MS. BAST: Tim Lott, Jeffrey Pollock and Cynthia Bast.

MR. CONINE: Okay.

MS. BAST: They will speak, the other two will yield.

MR. CONINE: The other two get to sit on the sidelines. Two of you have five minutes, one of you has

three minutes. Go.

MR. LOTT: Hopefully I'll have only three minutes.

THE CLERK: Okay.

MR. LOTT: Good afternoon, my name is Tim Lott, I'm the chief projects officer for the Dallas Housing Authority and I'm charged today with -- to bring you the reason for the need for the project.

The Housing Authority in 1993 and '94 under the *Walker* desegregation lawsuit, had to come up with a master plan for the Lakewest Development. The Lakewest Development was 3500 units of public housing; it was the largest low-rise concentration of public housing in the United States.

It was also probably, and has been referred to as the most dilapidated public housing development in the United States at that time. Since that time the Housing Authority did come up, worked with our neighborhood, worked with our residents and came up with a master plan for that subdivision.

We've spent $100 million in the renovation of that project, and this project -- the two projects that you have before us is the final phase in the redevelopment of that 360 acres.

The Housing Authority and its neighbors, and our residents, had a vision that included 850 units of public housing, private sector housing, and elderly housing on the same site, that same 360 acres in Lakewest.

Bear in mind, we're replacing 3500 barracks-style housing that was scattered out across the whole 360 acres; this last phase, this elderly phase was to be at the time just independent living. When we got into the development of the project, our board chair, who had a great vision, said, "Hey, you guys are looking at this way too small. What we need to do is provide for our families who are the lowest of the low-income something that every middle income family, or a lot of the middle income and the rich, can afford but our low income families can't afford, and that's a continuum of care on the same site.

"Let's provide a housing development that provides independent living; assisted living for those that need the assistance; and also the skilled nursing facility on the same site."

Bear in mind, the Lakewest site is five minutes from five of the major hospitals in the City of Dallas, and it's also the -- within ten minutes of all of the major hospitals in the City of Dallas.

That provides the skilled nursing facility its

needed base. What provides the needed base or the need for the independent living is the fact that the Housing Authority's 603 public housing senior units are all 38 years old as of this year.

Those units are in dire need of redevelopment, and for us to redevelop those units, which are fully occupied, we need these new units as replacement housing.

Also understand that the Housing Authority has a waiting list for one- and two-bedrooms somewhere in the neighborhood of 2,000 to 3,000 individuals at this point in time.

We are about to close that waiting list because you cannot get housing or expect to have housing within 24 to 36 months. We need this housing, and I'm going to defer to my partners in crime.

MR. CONINE: Mr. Pollock?

MR. POLLOCK: My name is Jeffrey Pollock, I'm a vice president of project finance for Stonegate Senior Care, which is the parent of the developer, SG Development. And on behalf of Stonegate and SG Development and John Taylor, the founder and CEO of Stonegate, and the 3300 residents in Stonegate's 27 senior properties, I want to thank the staff of the Texas Department of Housing and Community Affairs for the

recommendation of housing tax credits for these projects at the Village at Lakewest.

Continuum of care communities as Time said are the most effective lifestyle for elderly people. The ability to age in place, to move from one -- on a single campus from one supported living area up through a service area to another, is a luxury that rarely if ever is made available to lower income seniors.

Stonegate Senior Care is experienced in all levels of care, from independent living apartments like Lakewest, to skilled nursing facilities, and we are recognized among healthcare professionals, state regulators, and financing sources in the Dallas area, for our high level of senior care.

In the Dallas metroplex, where the majority of our properties are located, we are considered the gold standard for quality. We believe that Stonegate was chosen by the Dallas Housing Authority in a full RFP process because we're uniquely qualified to help make this campus happen.

This was the true marriage between a private healthcare provider and a housing authority to provide a continuum of care and to provide level of service to low income seniors who would never really be able to afford.

Our campuses are going to have 165 beds of skilled nursing and rehabilitation, an adult daycare facility for dementia and Alzheimer's patients whose families cannot afford the high cost of Alzheimer's care, but can have their Alzheimer's relatives in our daycare facility from 6:00 in the morning to 6:00 at night, so that people can go to work and have some respite from primary care.

And then we are having 260 apartments that are really the greatest challenge because we're taking people from elsewhere, who have aged in place in Dallas housing projects, and giving them a level of supportive services; we're taking resources from our senior care and our nursing home, and nutritional support and healthcare support, and making those available in the common areas of these apartment buildings, which is why our ratio of common space to rentable square feet, which is the way the Housing Authority generally looks at this stuff, is fairly high.

Because we're providing a different level of service, and we're using the private enterprise at Stonegate Senior Care and the synergies between all the elements of this campus, to make this work.

Stonegate designed these apartments at Lakewest

to meet the needs of older seniors who can live independently, and that is why we have wider hallways, more light in the rooms, wider windows, and we believe that these units were specifically designed, and the market study was designed to reflect 550 square-foot, one-bedroom apartments which is larger than the average size for independent living apartments on continuum campuses.

And that fact can be confirmed by the market analyst who did the report for Staff.

We cannot proceed with our financing if these units are artificially classified as efficiency units instead of one-bedroom units. This artificial reclassification would lower the rent on a contingency basis to a level that would not allow the facility to make its debt service requirements.

If that is the determination, Dallas will lose an important opportunity to serve its lower income seniors and Lakewest would lose the opportunity to be a model for senior campuses across the country. Thank you.

MR. CONINE: Thank you. Ms. Bast?

MS. BAST: Good afternoon. Cynthia Bast of Locke, Lord, representing the developer. And again to clarify: the issue we are asking you to address is Staff's characterization of these units as efficiency

units.

I don't know if you've had a chance to review my underwriting appeal letter, that was referenced to just a moment ago. You may want to have a copy available during the testimony.

These units are designed for the elderly, with 550 square feet. Each unit, as shown in my appeal letter, has a living room, a bedroom, a closet, a kitchen and a bathroom, and an eating area. These units are designed to be one-bedroom units, not efficiency units.

Now, the QAP defines the word, "bedroom." A bedroom is defined based on square footage and dimensions, based on the availability of a closet with certain dimensions, and based on a window with exterior access.

The bedroom on this floor plan meets all of these criteria. And I don't think Staff disputes that. Now, the QAP does not contain a definition of an efficiency unit. The QAP -- also 23.06, your Government Code, does not contain a definition of an efficiency unit.

The QAP does contain the definition of a "unit," and that is what Mr. Gouris was referring to in his opening remarks. If you look at the second page of my letter in my underwriting appeal, you will see the language that we're talking about, and it starts with this

bold language here. Remember, this is in the definition of a "unit."

It says, "For purposes of completing the rent schedule for loft or studio type units, which still must meet the definition of bedroom, a unit with 649 square feet or less is considered an efficiency unit." So what Mr. Gouris is saying is that the intent here was to establish that all efficiency units would have fewer than 649 square feet.

But that's not what this language says. This plain language says that if you have fewer than 649 square feet, and you are a loft or studio type unit, then that is an efficiency.

Well, a loft or studio unit is generally considered in the real estate industry to have one, great room, where your living quarters and your sleeping quarters are combined. Not the situation we have here, where we have a living room, separating a bedroom with a wall and a door.

So based on your plain language, if this is not a studio or loft type unit, then it doesn't fall within this construction, this instructional language in your QAP.

The other thing that I would point out is that

there is an inconsistency in the QAP, in that if you go to the selection criteria section, there is a place where an applicant can receive points for having a one-bedroom unit with 550 square feet or more.

Now, selection criteria don't apply to a bond deal, and we're not arguing that. But what I'm saying is, how can you have a definition of efficiency unit in one place of QAP with one set of dimensions, and a definition of a one-bedroom unit that contradicts that in another place in the QAP.

It doesn't make sense, and that's why we believe that the Staff's argument here is flawed. Why does it matter? Mr. Pollock touched on this. It matters because it impacts the rents that can be charged.

Now, we do expect that this project will have a half contract, which means that it will have HUD rental subsidies. That makes it financially feasible. However, if that rental subsidy were ever to be lost, and TDHCA's restriction were imposed, that only efficiency rents could be charged, then we would have an infeasible project.

And our tax credit investor has said, that is a risk it cannot accept. So I'm not asking you to change a policy; or even establish a policy, or even create a definition of what is or is not an efficiency unit.

What I'm asking you to do is, recognize that the QAP has an inconsistency here, and we need the Board to give guidance for this particular project, considering everything you've heard from the Dallas Housing Authority as to the need for this project, from Stonegate Senior Care as to the experienced developer that has been in this business, providing this continuum of care for a number of years.

Again, even though the definition of an efficiency unit may not be particularly clear in the QAP, the definition of a bedroom is clear. And this is a floorplan that does have a bedroom. So therefore we respectfully request that you direct Staff to revise the underwriting conditions to classify these units as one-bedroom units. Thank you.

MR. CONINE: It's never anything simple with you, is it?

(Laughter.)

MR. GERBER: Mr. Chairman with the Board's indulgence, Kevin why don't you walk us through --

MR. HAMBY: I think this is pretty simple, Mr. Gerber, and I applaud Ms. Bast's effort, but "unit" is a pretty well-defined term, and she was making the argument that we are -- she is using the definition for points.

That mission has no bearing on this particular case, because that's a whole separate issue; and there is an inconsistency, and we've made notes to correct it.

The problem is, "unit" is a very clearly defined term. And anything less than 649 square feet is an efficiency. If you came up with a bedroom that was 10 by 8 and had 30 additional feet, would you consider that to be a one bedroom unit. Her argument just doesn't hold up; she wants you to accept part of the QAP but not the other parts.

So you can waive the rule, but that's what you're doing is, you're waiving the rule.

DR. MUNOZ: Right. I've got a question.

MR. CONINE: Dr. Munoz?

DR. MUNOZ: Yes, thank you.

So is the language not in relation to a loft or studio type?

MR. HAMBY: That's one part; then there's an infamous comma that then says, "a unit under 649 square feet," is an efficiency.

DR. MUNOZ: Okay.

(Simultaneous discussion.)

VOICE: What's the parentheses, is that also part -- is that also there, or is that their emphasis?

MR. HAMBY: That's theirs.

VOICE: Oh, that's theirs. Okay.

MR. HAMBY: That's a completely separate part; that's the description of what we qualify as an efficiency, but then it's "anything ... a unit with 69 [sic] square feet or less is considered an efficiency unit."

MR. POLLOCK: Respectfully, I don't think that's the way -- the Board would read that.

MR. HAMBY: Here's our published QAP.

(Discussion off the record/off microphone)

MR. CONINE: Tom, you -- we don't have --

DR. MUNOZ: Do you want me to read the whole thing?

MR. CONINE: No.

(Laughter.)

DR. MUNOZ: "For the purposes of completing the rent schedule, for loft or studio type units which still meet the definition of -- "

(Simultaneous discussion.)

MR. HAMBY: -- a unit of less than 649 is considered an efficiency unit.

DR. MUNOZ: But it's in such close proximity to, the nature of a bedroom --

VOICE: Right.

MR. CONINE: There's no question, it's designed as a one-bedroom. There is no question as to the design. The question is, it's -- I guess, it sounds like to me, it's less than 649 square feet, and we don't have a provision for seniors being any smaller than that, minimum square footage?

MR. GOURIS: Not in this -- not for a tax credit.

MR. CONINE: We talked about that for a while, we just haven't done it yet.

MR. HAMBY: And one of the things you have to remember is that this Board has established its rule because we didn't want to see units shrink, so people didn't end up in smaller and smaller units as the costs go up; and so that's why we put in these -- that's why you put in these minimum standards.

MR. CARDENAS: Mr. Chairman?

MR. CONINE: Mr. Cardenas.

MR. CARDENAS: I have a question for Kevin or Tom. Has this ever been tested?

MR. HAMBY: How do you mean, tested?

(Simultaneous discussion.)

MR. CARDENAS: I mean, has anyone ever come in

with something similar to this?

MR. HAMBY: I believe -- I don't actually know, it's not since I've been here, because I'd have known --

MR. GOURIS: It hasn't come to an issue, like this has to the extent that -- I mean, this was sort of unique; we were looking at it very detailed, and 100 percent of them were this unit type, and it became very clear and obvious to us that -- that as well.

I don't know if we might have had one unit someplace that would have come under that, that we missed, it's possible. I don't know.

(Simultaneous discussion.)

MR. CONINE: This thing is already been introduced, right?

MR. GOURIS: Yes.

MR. CONINE: So the 150-day meter is ticking.

MR. GOURIS: Yes, sir.

MR. CONINE: You know, again this is one of those issues that I think needs a policy discussion, and I hate to --

MS. RAY: Mr. Chairman?

MR. CONINE: Yes, ma'am.

MS. RAY: I guess I would ask you to ask Staff in Ms. Bast's next letter section, 50.9(I)(iv)(A)(ii), of

the QAP that has the contradictory language for seniors, that specifically says, "a one-bedroom unit with 550 square feet," which is -- puts the stuff in the game, if you will.

MR. HAMBY: Well, that is a contradiction we accept, as Ms. Bast argued. She's not making that argument because it doesn't apply to this deal.

MR. GOURIS: That only applies to 9 percent credits --

MR. HAMBY: That applies to a 9 percent tax credit, elderly deal.

MS. RAY: And then -- okay. And this is a bond deal.

MR. HAMBY: Right.

MR. GOURIS: In essence, it's an overall departmental wide consistency issue that she's pointing out.

MS. RAY: I guess that's why you guys bring us the tough ones. Right?

(Laughter.)

MR. GOURIS: Yes.

MR. POLLOCK: Just --

MR. CONINE: Yes, Mr. Pollock?

MR. POLLOCK: When we applied, we thought,

since it was so clear that the intent of senior apartments was to be 550 square feet, in the selection process of the 9 percent deal, we never thought that that would work for a 9 percent deal, but if it was a bond deal, the guidance that we gave to a developer on a 9 percent deal was irrelevant.

And all of a sudden it didn't make sense, because --

MS. RAY: Yes, I understand.

MR. POLLOCK: -- we were going to go to another difference, especially because of the proximity of "loft and studio," on the 649 square feet, we never read that sentence that way.

MR. HAMBY: But under that consideration, you'd be following all the 9 percent tax issues, which of course you're not. If you were saying, "I'm going to select again," the selection question, "I'll select this rule because it works in my favor, I'll ignore this rule because it doesn't rule in my favor."

MR. CONINE: I mean, I totally agree that seniors' units need to be -- can be smaller and more efficient, and should be, and as opposed to a family project. Again, I'm just a little uncomfortable changing horses in midstream without a thorough policy discussion

and some change in the QAP that would allow us to do that.

MR. POLLOCK: But we applied -- we were with Staff for this for six months; this only came up in the last few days. It wasn't an evident question that was raised to us in the five months of discussion since we filed in December; so we're just asking that if anything there could be a waiver on this one deal, and then you could make it more consistent.

But this is not something that we thought of, we selectively did, we went based on what we thought -- and we never had any indication from Staff that we were off-base, and that one-bedroom assumptions for five and a half months, and all of our additional information that we gave the Staff, up until 72 hours ago.

MS. RAY: So --

MR. CONINE: Well, that would beg the question then --

(Simultaneous discussion.)

MR. CONINE: That would beg the question from Staff as to, why wasn't it picked up on an earlier basis.

MR. GOURIS: We were focused on the waiver of the over 250 units; we were focused on the other issues, that were so large that we didn't know if they were going to be --

MS. RAY: Mr. Chairman, I move for the waiver in favor of the appeal for the Village at Lakewood West I and II.

MR. CONINE: There's a motion to --

MR. FLORES: Second.

MR. CONINE: -- move for the waiver, and a second. Any further discussion?

MR. GOURIS: Yes.

MR. CONINE: Mr. Gouris.

MR. GOURIS: You're moving to waive both the efficiency requirement and the timing of the letter?

MS. RAY: Yes. I am.

MR. CONINE: Any further discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries. Next one, 6(b), or 6 --

(Simultaneous discussion.)

MR. CONINE: Is there a question?

MS. BINGHAM-ESCARENO: We still have to approve

the amount of --

MR. CONINE: Oh.

MR. GERBER: They're saying that the motion to recommend the award of credits in the amount of $596,028 for each one of these applications. So we need to do the motion --

MS. BINGHAM-ESCARENO: Move that Staff recommendation.

MR. FLORES: Second.

MR. CONINE: Motion and a second, on both the Village at Lakewest I and Village at Lakewest II, to the same amount of credits for each deal. Is that correct?

MR. GOURIS: That's correct.

MR. CONINE: $596,028?

MR. GOURIS: Correct.

THE CLERK: Is there a second?

MS. RAY: Second.

MR. CONINE: Did I hear a second?

MR. FLORES: Second.

MR. CONINE: Any other discussion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: All opposed?

(No response.)

MR. CONINE: Motion carries.

Now we go to Alamito Gardens.

MS. MEYER: Next is Alamito Gardens. This is another tax-exempt bond transaction, that's applying to the Department for 4 percent credits. Alamito Public Facilities Corporation is the issuer of the bonds. This is a Priority 1-A application; it's proposed new construction of 142 units that will target general population.

The Department has received letters of support from Senator Shapleigh, from Mayor Cook, from City Council Member O'Rourke, County Commissioner Escobar, and since we also have an underwriting appeal for this particular transaction, and we've also received support since that appeal from Congressman Reyes, and State Representative Norm Chavez, the applicant is requesting $894,434 in housing tax credits, and the Staff is recommending $602,176 in tax credits.

MR. CONINE: How much is Staff recommending one more time?

MS. MEYER: $602,176.

MR. CONINE: So there's a $250,000 gap. Okay.

MR. GOURIS: And if I might just add, there's a letter in back of the appeal book that has the Housing Authority revising their request for credits to $851,427 based on bids that they've received and they've supplied to us late Friday, and we reviewed them over the weekend, and -- I mean, we still don't agree, we think the costs are too high, but if you accepted the bids we could get to that credit.

MR. CONINE: Okay.

(Simultaneous discussion.)

MR. GERBER: -- this has been a project that has come back -- this is now coming back before the Board, this is a very important project to the City of El Paso, which is a rare Texas community that's received a Hope 6 project in its community. This is one of the big component parts of that.

The issues that came before the Board last year are similar to this year, and that cost of the construction seem to be higher for this housing authority versus comparables of other developers, you know, who are doing work in that community. We're just struggling, again, it gets down to it, making the most efficient use of these limited resources that we struggle with.

So Tom, if you want to add to that, for --

MR. GOURIS: I mean, just for a reference point, we've, you know, finished 52 underwriting reports for the 9 percent cycle and we haven't had any costing issues this year; this is a bond transaction, we've done lots of other bond transactions for this year, this -- we're having a costing issue on this transaction, it is because it's a unique transaction of the Housing Authority, and I believe it's because of the process that goes -- the housing authorities go through to solicit, you know, contracts, and contractors.

I can't put my finger on it any further than that, because the construction quality that they're building is not significantly different, in my opinion, than the other transactions that we've seen.

MR. CONINE: Okay. Any other questions of Staff before we have public comment?

(No response.)

MR. CONINE: Barry Palmer, Karen Jones, and Gerald Cichon.

MR. CICHON: Good afternoon, thank you. My name is Gerald Cichon, I'm the executive director at the Housing Authority for the City of El Paso, and we thank you for your time in allowing me to be here.

Just sitting out there, it seems like this is the probably easiest issue you've had to deal with today; we're just asking for more money.

(Laughter.)

MR. CONINE: Is that all?

MR. CICHON: But that being said, we are a Hope 6 Grant recipient. That being said, we have to do certain things by 2010 or we lose the money. If we lose this particular grant, if we lose this particular allotment of money from you all, we probably can't build the main, 150 units in the middle of our area, which means it's possible that the entire Hope 6 may fail.

What the Alamito Community is, it's right in, and I'm not sure, those of you who are familiar with El Paso, very close to the border, right in the middle of our downtown is the Alamito Project. It's five phases; we just completed one phase of it with a mid-rise going up.

This is the central most integral part of it, is the phase that we're asking for with this tax credit itself. In looking at that, we have currently razed all the land; we have displaced 375 families, of which 80 percent of them have asked to come back to that particular community.

That being said, if we'd known that the process

was this arduous and difficult to go through, we probably wouldn't have razed it, or even accepted the Hope grant to be straight with you.

But that being said, we turn to you today with nothing more than the procedures that we've gone through in attempting to get the cheapest process and price for this amount. And with that, I want to turn it over to my procurement director, Ms. Karen Jones, who actually went through the entire, basically three-state area.

We actually advertised in eight different cities of populations over 300,000 and above in order to get the cheapest price; and we did find a local entity that was able to come in and just that being said, we don't know what else we can do in order to get it any cheaper than this. Thank you.

MS. JONES: Good afternoon. Karen Jones, Procurement Director for the Housing Authority, City of El Paso. My task today is to briefly outline to you the process, the procurement process that I used in order to acquire this bid that we hope that you'll accept and fund today.

We -- my outreach efforts did consist of the *Albuquerque Journal*, the *Arizona Daily Star*, the *Dallas Morning News*, the Austin *American-Statesman*, the *Arizona*

Republic, of course the local paper, our HACEP website, we did go nationally with the *F.W. Dodge Report*, the reconstruction data; we followed up with one of the largest construction general contractors within the tri-state area, and attempted to solicit as many bids as we possibly could.

There were 61 sets of plans that were picked up or distributed, we did have quite a large interest in our prebid conferences; we had hoped to have more of an outreach as far as returning back the bids.

We did consult with some of the individual general contractors that did not return bids back to us, to find out or de-brief why they didn't bid for this. As you have noted already and you probably already know, the -- El Paso's construction environment is very unique in that within the next seven years we are going to have a 20 percent influx in our population due to the BRAC; in preparation for the BRAC and the 140,000 soldiers and family members that are going to be put into our populace, the school districts, the City of El Paso and of course Fort Bliss have put out multi, multi-million dollar contracts.

In fact, our bids closed on July 3. July 2 the Socorro Independent School District awarded a $20 million

contract. Two days before that, Fort Bliss awarded three, over $10 million contracts. So what's happening here within our construction environment is, the saturation of the bonding capabilities amongst our general contractors.

And the multitude of multi-million dollar awards is just tying up our labor pools; that and in conjunction with the material escalations, the *Davis-Bacon* and the administration burdens that have been put on our contractors we had a very limited response.

We do feel like we had a comprehensive outreach, we do have three very good bidders that are responsive and responsible, although I was given a budget or an in-house estimate of $15 million-plus, I was able to bring back this acquisition at $13.8. So we did have a cost savings of $1.4 million.

It is maybe less than desirable in the amount, but based on the current construction environment we feel like we have done a comprehensive effort. Thank you for your time.

MR. PALMER: Hello, my name is Barry Palmer, and I'm with the Coates, Rose law firm, and we represent the Housing Authority of the City of El Paso on this Hope 6 finance transaction.

I just wanted to point out a couple of things.

One is to make it clear this is a bond transaction, a 4 percent deal; it is not in the competitive 9 percent round. So awarding these additional tax credits will not have any impact on any other applicants before the Department.

We're just asking to award tax credits based on our true cost, as documented by the bids that we have received.

If we award the credits based on the underwriting report, it creates a $2 million gap in the financing that does not allow the project to go forward at this time.

I'd like to point out that this is not a new issue that has not been before the Board. I myself have been before the Board on at least three occasions for other housing authorities throughout the State that have suffered the same problem in completing tax credit transactions, is that their costs come in somewhat higher than the private sector.

That's because there are a number of restrictions imposed upon them by HUD and by Congress that private developers don't have; they have to publicly bid the construction contract, which causes the construction to cost more. They have to have payment performance

bonds, which many private developers don't have.

They have to comply with *Davis-Bacon* requirements, they have to comply with Section 3 requirements. So these costs that are not the Housing Authority's fault, it's in Congress' wisdom that they are subject to these restrictions. But they still need to build, to serve the lowest income clientele in El Paso.

So we're merely asking you to award credits based on their actual cost, and I'd point out that when this has come to the Board in the past, for other housing authorities, the Board has awarded the credits at the higher amount based on the actual cost, not on the underwriting report. And we'd ask for the same treatment for the El Paso Housing Authority on this important Hope 6 transaction. Thank you.

MR. BROWN: Mr. Chairman, Board members. I would just add to what Mr. Palmer said, that the -- this is a development project that I'm very familiar with, having seen it from both the HUD end as well as when from the city was trying to secure this Hope 6 application, actually going out there and actually seeing what's being constructed there; it's an impressive restoration of the community.

And this is different, as Mr. Palmer mentions,

than the 9 percent round where we're dealing with a much more finite competitive process; in this case with the 4 percent transactions, we're always looking for the efficiencies and we seek those, and Mr. -- and I know the executive director's got his work cut out for him for sure.

But in this case there is no shortage of 4 percent tax credits, that we have available to us, it's really only capped by the volume cap, that's available to the State. Still we want to be responsible allocators of those credits, but understanding that with the bids, it has been tough, it's a process that we've been -- we're very familiar with at TDHCA and watched with great interest when we got these folks that tried very, very hard in a difficult construction environment.

So I just wanted to add that to it, as the project that the Department's really been in partnership with the city on for quite some time.

MR. FLORES: Mike, have we funded a deal there, the same place?

MR. GERBER: We did another bond deal --

MR. FLORES: A couple years ago?

MR. GERBER: We did, and it's being well -- I know we were there for the ground breaking about a year

ago, so it's probably pretty close to --

MR. FLORES: With this same complex?

MR. GERBER: Yes, sir.

MR. FLORES: Downtown.

MR. GERBER: Yes. It's a tremendous complex.

(Simultaneous discussion.)

MR. CONINE: Any physical characteristics of this thing that would make it out of whack like this? I mean, from $7 million to $12.3 is a pretty good sized jump. Especially on a per square foot basis. The physical characteristics itself. Is it three-storey, stick frame, on a slab, you know --

MR. GOURIS: It's typical garden-style apartments. It would be, yes. The -- some of the uniqueness might be that they have some awnings that are going to be -- that are going to have -- you know, metal roof awnings, some features like that that aren't -- and we accounted for but aren't tremendously significant in increasing the cost of the project. It's pretty typical stuff.

And Mr. Palmer's right, we've had this discussion over the years with a couple of the housing authorities; we've had transactions, including El Paso and Dallas in particular; we've had this -- just this peer

disconnect between what it costs us to do these kinds of developments everywhere else, and what it's costing housing authorities to do these developments.

The other thing to note in this transaction, and -- is that this, what they're actually acquiring, what actually -- is taking down the bonds, and then using the Hope 6 to retire the bonds, and utilizing the Hope 6 and the tax credits that are awarded in support of the bonds, to develop the property.

And so the private financing that's going into this is very, very short term, in the sense that the bonds won't stay outstanding and they won't have to support anything. So they're using all the -- you know, Hope 6, and the tax credit funds to its maximum potential to try to provide the deepest --

MS. RAY: Mr. Chairman?

MR. CONINE: Ms. Ray?

MS. RAY: I move to support the appeal.

MR. CONINE: There's a motion to approve the appeal. And do I hear a second?

MR. FLORES: Second.

MR. CONINE: There's a second. Any further discussion?

(No response.)

MR. CONINE: Mr. Chairman?

MR. CONINE: There is --

MR. GERBER: The amount of the recommendation would be -- $851?

VOICE: $851,457.

(Simultaneous discussion.)

MR. CONINE: Any further clarification of the motion?

(No response.)

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

(A chorus of ayes.)

MR. CONINE: Opposed?

(No response.)

MR. CONINE: Motion carries. Note that Mr. Cardenas abstained.

Okay. Mr. Gerber, any wrap-up items, sir?

MR. GERBER: Mr. Chairman, I would just note we have again in the back of your Board Books, information about outreach activities; we continue to do a variety of foreclosure prevention activities, some of which you've all are participating and we're grateful for that.

I would also make note to you that on August 11th through the 13th here in Austin, our Community

Affairs Division is hosting a workshop with community action agencies around the State, it's a workshop that covers everything from the community resources block grant to the weatherization activities that those community action agencies are so heavily involved in.

Ms. Ray was gracious enough last year when we had the conference in San Antonio to be the keynote speaker at that event; we certainly welcome additional Board participation if your schedules allow; it's here in Austin at the Doubletree Hotel, and let us know if you're available, we'd welcome you at that event.

Other than that, we'll see everybody in about ten minutes.

(Laughter.)

MR. CONINE: We stand adjourned. Thank you.

(Whereupon, at 2:10 p.m., the meeting was adjourned.)

C E R T I F I C A T E

MEETING OF: TDHCA Board

LOCATION: Austin, Texas

DATE: July 21, 2008

I do hereby certify that the foregoing pages, numbers 1 through 226, inclusive, are the true, accurate, and complete transcript prepared from the verbal recording made by electronic recording by Penny Bynum before the Texas Department of Housing and Community Affairs.

7/28/2008
(Transcriber) (Date)

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