

**FLORIDA HOUSING FINANCE CORPORATION**

**VESTCOR FUND XII, LTD., d/b/a  
MADALYN LANDING APARTMENTS,**

**Petitioner,**

v.

Case No:

2008-1186A

**FLORIDA HOUSING FINANCE CORPORATION,**

**Respondent.**

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**PETITION FOR ADMINISTRATIVE HEARING**

Pursuant to sections 120.569 and 120.57(1), Florida Statutes, and rule 28-106.201, Florida Administrative Code, Petitioner Vestcor Fund XII, Ltd., d/b/a Madalyn Landing Apartments, files this Petition for Administrative Hearing to contest the decision by Respondent Florida Housing Finance Corporation (“Florida Housing”) to approve the final credit underwriting report recommendations for Malabar Cove – Phase I Cycle XIX (2007-197BS) and for Malabar Cove – Phase II, Cycle XX (2008-242S) (collectively, “Malabar Cove”).

**Agency Affected**

1. The agency affected is the Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 500, Tallahassee, Florida 32301-1329 (“Florida Housing”). The telephone number is 850-488-4197. The agency’s identification names and numbers are Malabar Cove – Phase I Cycle XIX (2007-197BS) and

Malabar Cove – Phase II, Cycle XX (2008-242S). References to “Malabar Cove” without reference to a specific phase of the development should be construed to encompass both phases.

**Petitioner and Petitioner’s Representative**

2. The Petitioner is Vestcor Fund XII, Ltd., d/b/a Madalyn Landing Apartments (“Madalyn Landing”). Madalyn Landing is a 304-unit apartment complex in Brevard County that is located approximately 0.4 mile from Malabar Cove. Madalyn Landing was awarded \$14 million from Florida Housing through the Multi-Family Mortgage Revenue Bond (“MMRB”) program in 1998 to assist with the project’s development.<sup>1</sup> Construction of Madalyn Landing was completed in 2000.

3. Madalyn Landing’s legal representative is Donna E. Blanton, Radey Thomas Yon & Clark, P.A., 301 S. Bronough Street, Suite 200, Tallahassee, Florida 32301. Counsel’s telephone number is 850-425-6654.

**Background Information and Effect on Substantial Interests**

4. Florida Housing is a public corporation organized under Chapter 420, Florida Statutes, to provide and promote the public welfare by administering the governmental function of financing and refinancing houses and related facilities in

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<sup>1</sup> Florida Housing Application numbers for Madalyn Landing were MR 1998N and 1999-504C.

Florida in order to provide decent, safe, and affordable housing to persons and families of low, moderate, and middle income.

5. Florida Housing provides funding through a number of different programs to assist in the development of affordable housing in this state.

6. Each year Florida Housing conducts a "Universal Cycle," through which applicants for certain Florida Housing multi-family rental programs submit a single application (the "Universal Cycle Application") by which projects are evaluated, scored, and competitively ranked. *See* Ch. 67-48, Fla. Admin. Code.

7. Phase I of Malabar Cove, consisting of 76 three-bedroom apartment units, was ranked for funding in the 2007 Universal Cycle, and Phase 2 of Malabar Cove, consisting of another 72 two-, three-, and four-bedroom units, was ranked for funding in the 2008 Universal Cycle. Both Malabar Cove and Madalyn Landing are located on Malabar Road NW in Palm Bay, Florida.

8. On October 1, 2007, Florida Housing issued Malabar Cove Phase I a preliminary commitment letter and an invitation to enter credit underwriting for a State Apartment Incentive Loan Program ("SAIL") loan in an amount up to \$4 million, and a supplemental loan in the amount of \$680,000. On September 30, 2008, Florida Housing issued Malabar Cove Phase II a preliminary commitment letter and an invitation to enter credit underwriting for a SAIL loan in an amount up to \$2 million and a supplemental loan in the amount of \$680,000.

9. Credit underwriting review of a development selected for funding includes “a comprehensive analysis of the Applicant, the real estate, the economics of the Development, the ability of the Applicant and the Development team to proceed, [and] the evidence of need for affordable housing in order to determine that the Development meets the program requirements . . . .” R. 67-48.0072, Fla. Admin. Code. The rule also provides that funding will be based on “appraisals of comparable developments, cost benefit analysis, and other documents evidencing justification of costs.” *Id.*

10. Florida Housing selects a credit underwriter for each development that has been invited to enter credit underwriting. R. 67-48.0072(1), Fla. Admin. Code. The underwriting process is governed by rule 67-48.0072. In particular, rule 67-48.0072(10) provides:

(10) A full or self-contained appraisal as defined by the Uniform Standards of Professional Appraisal Practice and a separate market study shall be ordered by the Credit Underwriter, at the Applicant’s expense, from an appraiser qualified for the geographic area and product type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the proposed property’s financial feasibility. Appraisals which have been ordered and submitted by third party credit enhancers, first mortgagors or Housing Credit Syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development’s financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or

disapprove a loan, a Housing Credit Allocation, a combined SAIL loan and Housing Credit Allocation, or a Housing Credit Allocation and supplemental loan. The Credit Underwriter shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application.

(Emphasis supplied).

11. Final credit underwriting reports for both phases of Malabar Cove were prepared by the Seltzer Management Group, Inc. (“Seltzer”) and submitted to Florida Housing in early December of 2008. The reports discuss market studies prepared for both phases of Malabar Cove by Novogradac & Company, LLP, a certified public accounting firm.

12. The Novogradac studies reference an “overall softness” in the Brevard County rental market and state that “[t]he rents at Madalyn Landing were reduced to address significant vacancy (18.4 percent in the second quarter of the year) . . . .” See Novogradac & Company, LLP, *A Market Conditions and Project Evaluation Summary of Malabar Cove I*, September 15, 2008, at 6-7; see also Novogradac & Company, LLP, *A Market Conditions and Project Evaluation Summary of Malabar Cove II*, September 15, 2008, at 6-7 (identical language).

13. The Novogradac studies identify nine “comparable properties” in the area that could be expected to compete with Malabar Cove. *Id.* at 6. The closest of these to Malabar Cove is Madalyn Landing, at just 0.4 miles away. The most distant is 10.8 miles away. The reports conclude: “Based on our market research,

the rental market in Palm Bay is currently soft with decreasing rents at the LIHTC properties.”<sup>2</sup> *Id.* The studies also describe Madalyn Landing as “the most similar” LIHTC property to Malabar Cove. *Id.* at 8.

14. Novogradac analyzed historical occupancy rates in four affordable housing properties in Malabar Cove’s submarket. Seltzer – the credit underwriter -- summarized these findings, noting that average occupancy rates are currently at 87%, compared with more than 95% in the years 2004, 2005, and 2006: “Average occupancy dropped to 92% in 2007, evidencing the beginning of a weakening market. This trend has continued into 2008 . . . .” *See Credit Underwriting Report for Malabar Cove – Phase I*, Seltzer Management Group, Inc., p. A-7, December 3, 2008; *see also Credit Underwriting Report for Malabar Cove – Phase II*, Seltzer Management Group, Inc., p. A-7, December 4, 2008 (identical language).

15. In analyzing the Novogradac market studies, Seltzer explains:

Novogradac concludes that the reduced occupancy rate is directly related to the current economic downturn in general, and to the decline in the single family home market specifically. Many single family foreclosed and unoccupied investor properties have entered into the rental market at rates that are competitive with the traditional affordable housing market.

*Id.*

16. At the Florida Housing Board meeting on December 12, 2008, where the credit underwriting reports for Malabar Cove were discussed, a representative

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<sup>2</sup> LIHTC refers to a “Low Income Housing Tax Credit” development.

of Seltzer, Ben Johnson, reiterated the conclusion in the reports that the Palm Bay housing market is extremely weak:

I can tell you, this is indeed the weakest market that we've ever seen in a transaction. Initially, my reaction was this deal will never work because of the low occupancies. The economic occupancy<sup>3</sup> that we've utilized in this transaction is 85 percent, which is the lowest that we've ever utilized of any recommendation that's come in front of you . . . .

Transcript Excerpt (Tr. Excerpt) of the December 12, 2008, Florida Housing Board meeting, p. 26, lines 21-25 (emphasis supplied) (certified transcript excerpt attached as Exhibit A).

17. Despite these troubling trends, the Seltzer reports conclude that “Novogradac believes the current situation to be temporary and that single family home values will recover in the future.” Credit Underwriting Report for Malabar Cove – Phase I, Seltzer Management Group, Inc., p. A-7; *see also* Credit Underwriting Report for Malabar Cove – Phase II, Seltzer Management Group, Inc., p. A-7 (identical language) (emphasis supplied). Notably, the credit underwriter is not specific about what “in the future” means.

18. Despite the reference to an improved market sometime “in the future” in Palm Bay, Seltzer nonetheless flatly concludes that construction of Malabar Cove “will likely have a negative impact to both Madalyn Landing and Park at

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<sup>3</sup> “Economic occupancy” refers to the amount of rent actually collected in relation to the gross potential rent. Physical occupancy refers to the actual percentage of units rented.

Palm Bay.”<sup>4</sup> *Id.* at A-9. Seltzer also explains that both Madalyn Landing and Park at Palm Bay “have experienced financial trouble” and that through 2004, the general partner of Madalyn Landing “funded operating deficits in excess of \$3.5 million.” *Id.* In connection with first mortgage refinancing of Madalyn Landing in 2005, “operating deficit loans totaling approximately \$3.9 million [were] converted to equity.” *Id.* Madalyn Landing’s general partner funded an additional \$42,500 in operating deficits in 2007. *Id.* Concerning Madalyn Landing’s occupancy rates, Seltzer explained:

Correspondence received from the developer indicates current economic occupancy at less than 80%. Average occupancy for the nine, three and one month periods ending August 31, 2008, was 83%, 88%, and 87%, respectively.

*Id.*

19. In assessing Malabar Cove’s impact on Madalyn Landing, the Seltzer reports conclude:

The subject will compete directly with both Madalyn Landing and Park at Palm Bay. Novogradac does conclude that there are ample eligible renters in the sub-market, and once the current housing crisis eases the subject [Malabar Cove] will achieve stabilized occupancy of 94%. However, the subject will have a competitive advantage as it relates to age, condition, amenities and unit size. This would suggest that economic occupancy at Park at Palm Bay and Madalyn Landing would be somewhat less than that of the subject and possibly at below break even levels once the market stabilizes. During the subject’s

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<sup>4</sup> Park at Palm Bay is another affordable housing development in the area that received funding from Florida Housing.



initial lease-up, it is anticipated that the subject will offer various move-in incentives that will be attractive to existing tenants at both Park at Palm Bay and Madalyn Landing. It is likely that some number of existing tenants from these developments will re-locate to the subject. Construction of the subject development will likely have a negative impact to both Madalyn Landing and Park at Palm Bay.

*Id.*

20. Despite these conclusions, Seltzer recommended that Florida Housing's Board award the SAIL loans and supplemental loans to both phases of Malabar Cove. *Id.* at A-1 (in both reports). The award amounts total \$7.36 million. Florida Housing's staff, in turn, recommended that the Board approve the final credit underwriting reports for Malabar Cove and direct the staff to proceed with issuance of a firm loan commitment and loan closing activities. Tr. Excerpt, p. 4, lines 24-25; p. 5, lines 1-2. On December 12, 2008, the Board accepted the staff's recommendation after a lengthy discussion. *Id.*, p. 44, lines 12-20.

21. A key element of the discussion was what some perceived as an abrupt reversal of position by Florida Housing just six weeks after the Board rejected a credit underwriting report for a project because it would adversely affect existing affordable housing developments funded by Florida Housing. Tr. Excerpt, p. 2, lines 14-22; p. 3, lines 1-24; p. 26, lines 7-15; p. 35, lines 1-15.

22. On October 31, 2008, the Board rejected the recommendation of Seltzer – the same credit underwriter who evaluated Malabar Cove – to fund a Duval County project known as Pine Grove Apartments. The Board's action

followed its staff's recommendation, which was based on rule 67-48.0072(10). *See* Tr., Florida Housing Finance Corporation Board meeting, October 31, 2008, at p. 63, lines 19-25; p. 64, lines 1-8. Pine Grove Apartments is a proposed apartment complex that was awarded funding by Florida Housing in the 2007 Universal Cycle. The credit underwriter determined that Pine Grove Apartments would likely have a negative financial impact on other Florida Housing-funded projects in the same part of Duval County. Nonetheless, Seltzer recommended that the Board proceed with funding Pine Grove Apartments because it met the total credit worthiness standards of Florida Housing. *Id.*, p. 45, lines 10-20; p. 48, lines 14-18.

23. The Florida Housing staff, however, recommended against proceeding with funding for Pine Grove Apartments and accepting the credit underwriter's recommendation, citing the conclusion in the credit underwriting report that Pine Grove Apartments would negatively impact existing developments. *Id.*, p. 45, lines 22-25. Florida Housing Executive Director Steve Auger explained to the Board:

[T]he concern about the Duval County market is that perhaps by putting in new units will cannibalize, have a negative impact on what we have there. . . .

So the concern, the concern with the approval of Pine Grove is that if Pine Grove is built . . . the folks that are living in places like Lee Meadows would move down the street into Pine Grove, and not necessarily just because it's newer and shinier, and you've sort of generally just intuitively got that dynamic, but more significantly

because most of the folks living in the units around are probably more cost-burdened than they should be. So if a new development goes up with more deeply subsidized rents, they'd [be] sort of foolish not to move out of where they're living move into where they can get a nicer newer apartment and cheaper rent. . . .

And this notion of how do you gauge, you know, the impact of one development on another? Intuitively you know that, you know, folks are going to move into, you know, the newer, shinier stuff if they can, and just trying to get some sense of that that set us on the path of looking at, who – what are the actual incomes of the folks living in the units close by? And that was what sort of raised our concern level up once we saw the underwriting report and led us to the recommendation. . . .

*Id.*, p. 26, lines 9-12; p. 35, lines 5-25; p. 36, lines 1-7; p. 47, lines 1-10.

24. Mr. Auger also repeatedly emphasized to the Board that rule 67-48.0072(10) provides authority for the Board to reject a credit underwriting report and funding recommendation based on the negative impact of the proposed development on existing Florida Housing-funded projects. He stated:

I just want to make it clear that while we have never done this before . . . the market concerns haven't been at the level they're currently at now.

But in our 67-48.0072(10), we say here are the things the underwriters [are] going to look at, and one of those things is impact of development on other existing developments in that area. . . . And we have had in the rule for years one of the things we're going to look at is the impact. . . .

So do we have the rule authority to do it? Has it been in the rule? Yes. So, technically, have folks been aware that the rule is out there and that's the standard we're going to use? Yes. Have we acted on that before? No. And as you know there's a lot of things going on in the market these days that folks are doing things for the first time.

*Id.*, p. 63, lines 20-25; p. 64, lines 1-8; p. 66, lines 16-22.

25. In response to Board member questions about applying the rule to reject the credit underwriter's recommendation concerning Pine Grove Apartments, Mr. Auger stated: "So I think that again this is very difficult, this is a very difficult one, and I work hard to keep you all from being in this position, but we are in unprecedented weird times in the real estate and financial markets." *Id.*, p. 116, lines 6-10. He went on to compare Florida Housing's actions on Pine Grove Apartments to those of other prudent lenders:

Most lenders in the country are looking at their portfolios and looking at, you know: How can we shore those up as opposed to continuing to generate new units? So I think we have an alternative to, you know, to meet the mission and not to – meet the mission and not be creating new units and adding to the problem. . . .

I think that's what we were looking at, you know, scarce resources, soft market, is this how we want to spend our money building more new units in a soft market?

*Id.*, p. 120, lines 6-12; p. 121, lines 4-7.

26. Ultimately, the Board accepted the staff's recommendation to deny the credit underwriting report recommendation for Pine Grove Apartments by a vote of 5-1. *Id.*, p. 122, lines 23-25; p. 123, lines 1-6.

27. Based on the Board's action in the Pine Grove Apartments case just six weeks earlier, Madalyn Landing had a reasonable expectation that Florida Housing would apply rule 67-48.0072(10) in a consistent manner when faced with the credit underwriting reports for Malabar Cove. Like Pine Grove Apartments,

Malabar Cove was expected to have a negative impact on nearby developments, including Madalyn Landing. Like Duval County, Brevard County has a “soft” housing market. The only difference between the two situations is that some of the affordable housing developments that would have been affected by Pine Grove were covered by the Florida Housing Guarantee Program, which means that the Guarantee Fund would be affected financially if those developments failed. § 420.5092, Fla. Stat. However, as both the Board’s general counsel and executive director acknowledged at the meeting concerning Pine Grove, Florida Housing’s credit underwriting rule does not make a distinction relating to whether the impacted developments are part of the Guarantee Fund or not. Tr., p. 108, lines 16-25; p. 109, lines 1-9.<sup>5</sup>

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<sup>5</sup> An audience member at the October 31, 2008, Board meeting noted the precedential effect of the Board’s action concerning Pine Grove, which prompted an exchange among a Board member and the corporation’s General Counsel, Wellington Meffert, and Executive Director Steve Auger:

**Mr. Turken** (audience member): So if you’re sitting in the position of a developer or investor except you’re in Lee County or Brevard County or Broward County, and you see that the board has said that the affect on that project is a valid basis to object to a credit underwriting report, you have [the] perfectly same standing to get up and object; and even though the Guarantee projects, as I said before has created a different financial element, your rules and statutes do not make a distinction.

**Ms. Stultz** (Board member): Is that true, Wellington?

**Mr. Meffert**: Yes.

28. Board members involved in the discussion concerning Malabar Cove also indicated that the real issue is not whether the Guarantee Fund is involved, but whether the Board is going to evaluate the impact of new projects on existing developments in a consistent manner:

**Ms. Stultz** (Board member): I'll ask Steve if we can table this. I don't want to vote on this today, and I'll tell you why. . . . I would like to make sure that we are not setting some sort of a, you know, down the path that we can't come back - -

**Mr. Fairman** (Board member): Haven't you set that last month?

**Ms. Stultz**: No. That was a Guarantee Fund deal.

**Mr. Fairman**: Exactly. But the bigger picture is we're going to protect a development because we're tied to it, but we're not going to protect a development that we're less tied to. That's what I'm most uncomfortable with.

**Ms. Seroyer** (Board member): Me too. . . .

Tr. Excerpt, p. 35, lines 1-16.

29. Instead of applying rule 67-48.0072(10) to the Malabar Cove credit underwriting report recommendations in the same way it applied the rule to the recommendations concerning Pine Grove Apartments, the Florida Housing Board reversed itself and voted to accept the credit underwriter's recommendations to

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**Mr. Auger**: For now.

Tr., p. 108, lines 16-25; p. 109, lines 1-9.

fund Malabar Cove, despite the acknowledged negative impact that would befall Madalyn Landing. By doing so, Florida Housing adversely affected Madalyn Landing's substantial interests.

### **Notice**

30. A representative of Madalyn Landing personally attended the Florida Housing Board meeting on December 12, 2008, when the Board voted to accept the credit underwriting report recommendations concerning Malabar Cove. In addition, Madalyn Landing ordered relevant portions of the transcript of the Board meeting that was prepared by the court reporter retained by Florida Housing. *See* Exhibit A. That transcript shows that the Board voted to accept the Malabar Cove credit underwriting report recommendations. Tr. Excerpt, p. 44, lines 12-20.

### **Disputed Issues of Material Fact and Law**

31. Disputed issues of material fact and law include:
- a. Whether development of Malabar Cove will have a negative financial impact on the existing Madalyn Landing apartment complex;
  - b. Whether development of Malabar Cove will have a negative financial impact on other developments in the area that were funded by Florida Housing;
  - c. Whether the current "soft" housing market in Palm Bay is temporary and whether single family home values will recover "in the future";

d. Whether the prediction in the market studies that the Palm Bay housing market will recover “in the future” is sufficient justification for the Florida Housing Board to approve the Malabar Cove credit underwriting report recommendations, despite an acknowledged “negative” financial impact on Madalyn Landing;

e. Whether Florida Housing acted arbitrarily and capriciously by approving the Malabar Cove credit underwriting report recommendations despite the conclusions in the credit underwriting reports that construction of Malabar Cove will likely have a negative financial impact on Madalyn Landing;

f. Whether Florida Housing acted contrary to its own rules by approving the Malabar Cove credit underwriting report recommendations despite the conclusions in the credit underwriting reports that construction of Malabar Cove will likely have a negative financial impact on Madalyn Landing;

g. Whether Florida Housing acted arbitrarily by accepting the credit underwriting report recommendations for Malabar Cove just six weeks after rejecting the credit underwriting report recommendation for Pine Grove Apartments;

h. Whether Florida Housing acted capriciously by accepting the credit underwriting report recommendations for Malabar Cove just six weeks after



rejecting the credit underwriting report recommendation for Pine Grove Apartments;

i. Whether Florida Housing's refusal to abide by its own precedent constituted an abuse of discretion;

j. Whether Florida Housing was bound by the doctrine of *stare decisis* to reject the Malabar Cove credit underwriting report recommendations; and

k. Whether Florida Housing's decision to accept the credit underwriting report recommendations concerning Malabar Cove is consistent with Florida Housing's statutory mission and its fiduciary duties.

### **Ultimate Facts and Law**

32. The ultimate facts and law are that Madalyn Landing will suffer a severe negative financial impact as a result of Florida Housing's approval of the credit underwriting report recommendations concerning Malabar Cove, and that by approving the credit underwriter's recommendations for Malabar Cove, Florida Housing violated its own credit underwriting rule, broke with its own recent precedent interpreting rule 67-48.0072(10), acted arbitrarily and capriciously, and abused its discretion.

### **Rules and Statutes**

33. Rules and statutes entitling Madalyn Landing to relief are sections 120.569 and 120.57, Florida Statutes; part V of chapter 420, Florida Statutes; and

chapter 67-48, Florida Administrative Code, including rule 67-48.0072. The relationship of the alleged facts to these statutes and rules has been discussed earlier in this petition.

**Relief Requested**

34 For the reasons expressed, Madalyn Landing requests the following:

- That Florida Housing forward this petition to the Division of Administrative Hearings (“DOAH”) to conduct a hearing in accordance with sections 120.569 and 120.57(1), Florida Statutes;
- That all activities of Florida Housing relating to closing of the SAIL and supplemental loans to Malabar Cove stop while this petition is considered by DOAH, in accordance with section 120.569(2)(a), Florida Statutes;
- That the Administrative Law Judge (“ALJ”) enter a recommended order finding that the Malabar Cove development will have a negative financial impact on Madalyn Landing;
- That the ALJ enter a recommended order finding that Florida Housing violated its credit underwriting rule by approving the Malabar Cove credit underwriter’s recommendations;
- That the ALJ enter a recommended order finding that Florida Housing acted arbitrarily and capriciously by approving the Malabar Cove credit underwriter’s recommendations;

- That the ALJ enter a recommended order finding that Florida Housing abused its discretion by approving the Malabar Cove credit underwriter's recommendations;
- That the ALJ enter a recommended order directing Florida Housing to reject the credit underwriting report recommendations concerning Malabar Cove; and
- That Florida Housing enter a Final Order adopting the ALJ's recommendations, as described above.

Respectfully submitted on December 24, 2008,

A handwritten signature in black ink, appearing to read "Donna E. Blanton", written over a horizontal line.

Donna E. Blanton  
Florida Bar No. 948500  
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Tel: 850-425-6654/ Fax: 850-425-6694  
Attorney for Petitioner

FLORIDA HOUSING FINANCE CORPORATION

IN RE: BOARD MEETING

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EXCERPT OF PROCEEDINGS

BOARD MEMBERS:

LYNN STULTZ  
STEVE AUGER  
STUART SCHARAGA  
SANDRA TERRY  
KEN FAIRMAN  
MARILYN SEROYER  
DAVID OELLERICH  
JERRY MAYGARDEN

CORPORATE STAFF:

SHEILA FREANEY  
BARBARA GOLTZ  
NANCY MULLER  
ROBERT PIERCE  
REBECCA J. DeLaROSA  
JAN CARPENTER  
DAVID WESTCOTT  
LAURA COX  
STEPHANIE SGOUROS  
JUNIOUS BROWN  
WAYNE CONNER

DATE: December 12, 2008

TIME: 8:30 a.m.

LOCATION: Hyatt Regency, Coconut Point Resort  
5001 Coconut Road  
Bonita Springs, Florida

REPORTED BY: Dorothy A. King, R.P.R.

**COPY**

EXCERPT OF PROCEEDINGS

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MR. AUGER: Yes, since Debbie Blinderman couldn't make the trip. So we've got three supplements, and let me take the first two up since they are Phase I and Phase 2 of a development, Malabar Cove.

And staff has, the reason that you got these, just they're supplements and you got these electronically on Friday as opposed to hard copy, we were -- as staff and the underwriters were working on this transaction.

This was not an easy one for us to formulate a recommendation on. At the last board meeting we went through a long discussion about whether or not to approve a transaction in Duval County. You know, Duval County had been a longstanding soft market as evidenced by being in Location A in our application cycle for four to five years or six years maybe.

And these are Location B and in Brevard County, which has not been Location A. The market study that you see referenced in the underwriting report talks about Brevard having been strong, I think '04, '05, '06, and the 95 percent occupancy, dipping a little

1 bit in '07; but now, you know, in a slump that the  
2 market study folks opine is due to the overbuilt  
3 single family stuff that's there. But it's a soft  
4 market now, and they predict that the market will  
5 come back in the future. So it's a little different  
6 market situation than Duval was. We've had something  
7 that was far more longstanding and clear.

8 The market study also indicates that there will  
9 be some impact to a couple of developments nearby  
10 this that are suffering. Now, neither one of those  
11 have a guarantee -- you know, neither one of those  
12 are Guarantee Fund where we guaranteed the mortgage,  
13 neither one of them have SAIL in them, I don't  
14 believe, but there are vacant units there in that  
15 market.

16 For some time Florida Housing has been sort of a  
17 new construction culture. We've sort of erred on the  
18 side of when in doubt try to produce the units unless  
19 there's something, as we had last month in Duval  
20 County, that really gets us to put the brakes on  
21 that. And that was sort of how we were approaching  
22 this. I think the reality is we have a lot of  
23 markets in Florida right now where we have temporary  
24 softness.

25 And this week, with what we've learned about the

1           scarceness of our resources, not only this year but  
2           over the next potentially two years, you know, that  
3           may be -- and we're going to talk about some of the  
4           strategic planning issues in a few minutes in the  
5           board package, but just as a bigger picture policy  
6           that I think sort of plays into these discussions is  
7           sort of what's the best use of our resources in these  
8           times, and how do we make sure we're being good  
9           stewards of that? And so there's a lot of things to  
10          balance in that.

11                 So the staff recommendation had been to approve  
12          these credit underwriting reports, but we have some  
13          folks here who would like to talk and present to the  
14          board that I think will help us in the discussion as  
15          we're thinking through this. So the staff  
16          recommendation for I and II was to approve these, but  
17          I think it will be good for the Board to hear from  
18          the folks that are here, and I guess we need to  
19          approve the recommendation for motion and discussion,  
20          and then perhaps if we could get these folks.

21                 MS. STULTZ: You want us to take these up  
22          together or just open it up individually?

23                 MR. AUGER: Can we do them together? Let's do  
24          them together. So the recommendation would be the  
25          recommendation would be the staff recommendation to

1           approve the credit underwriting reports for  
2           Malabar Cove, Phase I and Phase II.

3           MS. STULTZ: Do I have motion to approve for  
4           discussion?

5           MS. TERRY: So move.

6           MS. STULTZ: Thank you. Do I have a second?

7           MS. SEROYER: Second for discussion.

8           MS. STULTZ: Thank you.

9           MR. SCHARAGA: Excuse me.

10          MS. STULTZ: Yes?

11          MR. SCHARAGA: I don't agree with that. When is  
12          the time for me to say so?

13          MS. STULTZ: We're opening up for discussion.  
14          Would you like to take our discussion first?

15          MR. AUGER: Would we like to hear from some of  
16          the parties?

17          MR. SCHARAGA: That's fine. But, I mean, you're  
18          going to call a vote on this after we hear it?

19          MS. STULTZ: Correct.

20          MR. SCHARAGA: So that what I may have to say  
21          would be moot then.

22          MS. STULTZ: Exactly.

23          MR. AUGER: Or you can make a motion to amend  
24          the recommendation.

25          MR. FAIRMAN: Madam Chair, is this an



1 appropriate time for a break?

2 MS. STULTZ: Absolutely, I agree. Can we break  
3 for five minutes before we open up this discussion?  
4 I can do it, I have the gavel. Five-minute break.

5 (Thereupon, a brief recess was taken.)

6 MS. STULTZ: If I can ask everybody to begin to  
7 take your seats, if I could have my Board back.

8 Where were we? We have a motion and a second to  
9 take up, now we're in discussion. Are we inviting  
10 someone up or did we have questions first from the  
11 Board?

12 MR. AUGER: Well, I would entertain that we  
13 invite up Steve Frick from Vestcor.

14 MS. STULTZ: Okay. Mr. Frick.

15 MR. AUGER: And one of Vestcor's properties,  
16 Madalyn Landing, is one of the ones close by that --

17 MS. STULTZ: Yes. I don't know if you've aware  
18 but we've received numerous e-mails over the last few  
19 days.

20 MR. FRICK: Good morning. My name is  
21 Steve Frick, as Steve said, with the Vestcor  
22 Companies and with GP in Madalyn Landing, a 312-unit  
23 deal in Brevard County. And we've been there the  
24 longest so we've got a pulse on the market.

25 I think we have some credibility on this issue

1 based on a couple letters, which we e-mailed copies  
2 around. I don't know if you've got them, I have  
3 copies if you'd like to refer to them. Let me know  
4 if you'd like copies.

5 Madalyn Landing was in the '98 cycle in this  
6 construction in 2000, coming out of construction with  
7 pretty decent lease-up. We got to about 70 percent,  
8 we started to slow down, and lo and behold we hear  
9 another deal is coming in on top of us in Palm Bay,  
10 which is a small market.

11 We wrote a letter on November 9th, 2000, which  
12 is embarrassingly accurate as to what's happened over  
13 time in that market since another deal came in. We  
14 referred to the market, talked about some of the  
15 softness in the market and some of the things that  
16 caused that, such as low to moderately priced single  
17 family homes in the Palm Bay market, low to  
18 moderately priced single family home rentals in the  
19 Palm Bay market, limited resident pool with tenant  
20 qualification issues, and conventional multifamily  
21 rental competition with no income restrictions. I'm  
22 quoting from the letter.

23 We've predicted what would happen, it happened,  
24 and so four years later we wrote another letter. And  
25 this was when the next deal -- that letter was

1 written before the Park at Palm Bay was built. The  
2 Park at Palm Bay was approved by Florida Housing, it  
3 was built.

4 Four years later, another deal, Park at  
5 Palm Bay, came before Florida Housing. We wrote  
6 another letter and asked to be protected upon the  
7 rule which had been put in place in 2003, which  
8 basically requires an analysis of the impact that any  
9 new deal would have on existing deals at the time,  
10 and we asked that you look at that in analyzing the  
11 deal.

12 And we pointed out that the same issues were in  
13 place, and we pointed out over the four years since  
14 the Park at Palm Bay came into being, we accumulated  
15 2.5 in operating deficit escrows as well as  
16 \$2.5 million pay-down to the loan.

17 So there's our two letters asking, one, to be  
18 protected, and, two, alerting to the market issues in  
19 Palm Bay.

20 In 2004, hurricanes came through in  
21 Brevard County, and for 2005 and 2006 the deficits  
22 stopped. The deals, the Villas -- I mean the Park at  
23 Palm Bay and Madalyn Landing got above 90 percent.  
24 Because we had paid down our loan, we finally got to  
25 break even; sat there making a little money in 2005

1 and 2006 -- post-hurricane, things were built back  
2 up, competition came back into play -- and the market  
3 started down again in 2007.

4 Now, I don't want you all to take my word for  
5 the softness in the market, so I'll quote from the  
6 Nova Grad market study, which is part of this  
7 presentation to you today. It was done, it was  
8 updated on September 15, 2008. Let me read just a  
9 few of phrases from that market study.

10 "The overall softness in the market indicates  
11 that at this time lower LIHTC rents would be  
12 necessary. Based upon our market research, the  
13 rental market in Palm Bay is currently soft with  
14 decreasing rents at the LIHTC progress.

15 "In June of 2008 we recommended a reduction of  
16 the subject's proposed LIHTC rents -- that's in  
17 reference in Malabar. Current market conditions  
18 indicate that another reduction is necessary. As of  
19 the date of this report, the property ... "

20 This is reference to Villas at Palm Bay, it says  
21 it was the only comparable property in lease-up to  
22 get any absorption information.

23 So they quote: "As of the date of this report,  
24 the property has leased 55 of 160 total units, which  
25 equates to an absorption rate of approximately six

1 units per month. According to the manager, lease-up  
2 has been slow due to competition from single family  
3 homes for rent in the market."

4 If that sounds familiar, it's because we talked  
5 about it in our two letters.

6 "Based on this information, the continued  
7 softening of the market and the performance of Villas  
8 of Palm Bay, we expect subject ... "

9 This is market study guy.

10 "... we expect the subject to achieve an  
11 absorption rate similar to Villas of Palm Bay of six  
12 units per month.

13 "Current rents at the property and indications  
14 that the market continues to soften, it would appear  
15 that a further reduction in rents is warranted."

16 "All of the ..." this is in the rental  
17 comparable section.

18 "All of the LIHTC properties except Sabal Palms  
19 have reduced their rents since our last survey in  
20 June of 2008. Generally ... "

21 This is funny, after all those statements,  
22 almost comical.

23 "Generally, rent increases do not appear likely  
24 in the immediate future based on current market  
25 conditions."

1           That's from the market study.

2           Now I'd like to quote from the market section of  
3           underwriting report which was presented to you guys  
4           today.

5           "Average occupancy was reported at 87 percent.  
6           Nova Grad concludes..."

7           And this is Seltzer analysis of the Nova Grad  
8           study, which I would say is accurate.

9           "Nova Grad concludes that the reduced occupancy  
10          rate is directly related to the current economic  
11          downturn in general, and to the decline in single  
12          family home markets specifically.

13          "Nova Grad believes the current situation to be  
14          temporary and that single family home values will  
15          recover..."

16          Now, get this.

17          "... they will recover in the future." No time  
18          table.

19          "Nova Grad concludes that when the supply of  
20          competing single family homes is reduced to normal  
21          levels, affordable housing occupancy levels will  
22          increase to levels just below those experienced  
23          between 2004 and 2006."

24          And those were the post-hurricane years.

25          And then Seltzer Management did a good job, I

1 think, of summarizing here the impact that the  
2 Malabar Cove will have on existing deals in that  
3 market.

4 "The subject will compete directly with both  
5 Madalyn Landing and Park at Palm Bay."

6 And it goes on to talk about the Malabar Cove  
7 because it's new and so forth will have a competitive  
8 advantage.

9 And it talks about: "This would suggest that  
10 the economic occupancy at the Park at Palm Bay and  
11 Madalyn Landing will be somewhat less than that of  
12 the subject and possibly at below break-even levels  
13 once the market stabilizes. Construction of the  
14 subject development will likely have a negative  
15 impact to both Madalyn Landing and Park at Palm Bay."

16 I'd like to leave you with this, and I think  
17 Mr. Scharaga said it earlier in the meeting, you have  
18 a fiduciary responsibility to the taxpayers of the  
19 State of Florida. This deal is asking for  
20 \$7.6 million in SAIL and supplemental loan. There's  
21 much better uses for that money than to go into a  
22 market such as this where the prediction on the part  
23 of the market study professional and the underwriter  
24 is that this unit will lease up at six units per  
25 month. That tells you all you need to know about the

1 market.

2 And there's no time table as to when this market  
3 would come back. And we would submit that if anyone  
4 thinks Palm Bay is going to be the lead area in  
5 rebound in home values, I think that would be just a  
6 little bit incredible.

7 Thank you for the opportunity to speak here  
8 today.

9 MS. STULTZ: Thank you.

10 MR. AUGER: We'll recognize Scott Culp from  
11 Atlantic Housing on behalf of the Malabars.

12 MS. STULTZ: Thank you for the pictures.

13 MR. CULP: Scott Culp, for Atlantic Housing.

14 I, of course, was here last month for a very  
15 different, uniquely different situation that was  
16 before you, and here this month with the same  
17 developer coming back, making claims in another area.

18 I question the earnestness and the genuineness  
19 of their claims, and what they're asking of you and  
20 what they're saying their concerns are; a developer  
21 with troubled properties throughout the state, a  
22 developer who we are alongside in every county  
23 they're in, and through all of our studies show that  
24 we are consistently about seven percent higher in  
25 occupancy, every location that we're alongside of



1           them; a developer who is no longer interested in  
2           developing new affordable units in the state, who has  
3           as its primary goal protecting their portfolio; and  
4           who came to the Brevard County Housing Finance  
5           Authority when we were getting final approval of our  
6           closing documents for this particular development.

7           As you may have read or may not have read in the  
8           credit underwriting package, the taxes and bonds are  
9           closed in this community. The community, as you can  
10          see from the pictures, is under construction. Site  
11          work is almost complete. We have pulled the building  
12          permits, we're about ready to start construction. We  
13          are developing 148 affordable units in that location,  
14          period. That is happening, those bonds are closed.  
15          We are proceeding.

16          Mr. Frick's quote, and I'll read from the  
17          excerpt from the transcript at the Brevard County  
18          Housing Finance Authority meeting:

19          "Let me close by just telling you that -- and I  
20          don't want this to sound like a threat, but  
21          Madalyn Landing apartments will go over under, tax  
22          credits will blow up, and 340 units of affordable  
23          housing will be lost if the 148 units are built,  
24          because we are not going to fund it anymore, our  
25          investor is not going to fund it anymore."

1           Okay. We are under construction, we are closed.  
2           If what he said at Brevard County Housing Finance  
3           Authority is accurate, he's not going to fund the  
4           deal anymore. You've lost 340 units of affordable  
5           housing. Now more than ever you need our 148 units.

6           Either that or he wasn't earnest in what he was  
7           saying to Brevard HFA, or he's not quite earnest in  
8           what he's saying to you, I'm not quite sure what the  
9           case is; but, we are developing and building 148  
10          units in this location.

11          I think it's important that -- we all know the  
12          very precarious nature right now of the SAIL program.  
13          We know the difficulty in the financial industry  
14          today of getting any Bond/SAIL deal closed. We don't  
15          know the future of that program, we don't know if  
16          there will be a future of that program. We have  
17          indications in all the reports that the affordable  
18          housing demand is going to increase. You have market  
19          studies that say that it's going to increase. And to  
20          not build the affordable housing while we have that  
21          funding available, when it meets all the criteria of  
22          your underwriters and all the criteria from the  
23          market study, it would seem to be shortsighted.

24          I do question whether or not there's other  
25          issues here. Why do we have occupancy levels that

1 are lower in most of their communities than the  
2 comparable products that you had helped to finance?  
3 Why are our communities in that same market area  
4 doing better than their communities?

5 Maybe one indicator might be, you see this  
6 package here? This is 182 pages of police calls from  
7 Madalyn Landings in the last 20 months, over 3,000  
8 calls from Madalyn Landings in the last 20 months.

9 Here's 20 pages of police calls for our two  
10 properties in that same period; 300 approximate  
11 calls. Is there some problem with management? Is  
12 there some problem with what's been allowed to  
13 happen?

14 If you read the entire transcript at Brevard  
15 County HFA where they approved our final closing  
16 documents and they questioned, based upon people that  
17 are there in the local market and had to put up with  
18 the City of Palm Bay coming to the Brevard County  
19 HFA, saying: "Please don't do anything like  
20 Madalyn Landings, we have so many problems there.  
21 Please don't create those problems for us."

22 I question whether this is an issue really of  
23 market or whether it's a question of management.

24 The underwriter report that you have before you  
25 today has recommendations. They've evaluated the

1 market. You have underwriters, it's their role, it's  
2 their responsibility. We actually delayed bringing  
3 this to the board to give them additional time  
4 because they had heard from other people in the area,  
5 particularly Vestcor. So you gave them additional  
6 time to look at the market to make sure that this was  
7 a good decision, that the recommendation was right.  
8 So you gave them additional time to do that. That's  
9 why this is coming to this board meeting and wasn't  
10 at the prior board meeting.

11 Their indication, Seltzer concludes that the  
12 underlying economic data and its own due diligence  
13 supports Nova Grad's stabilized occupancy assumption  
14 of 94 percent.

15 "Seltzer concludes that the underlying economic  
16 data and its own due diligence supports Novar Grad's  
17 rental rate assumptions."

18 We've got a lot invested in this community. We  
19 develop quality affordable units, that's all we do.  
20 We only do that down in Florida. We've been a  
21 producer with you, and stakeholders and partners with  
22 you for a long time, and we're going to continue to  
23 do that. We're one of the few that have been able to  
24 continue to do that with the Bond/SAIL program. That  
25 program may come to an end, we don't know.

1           But to -- because of a developer who has  
2           questionable motivations and contradicting statements  
3           on what they're actually doing with their existing  
4           properties, trying to prevent a deal from having the  
5           resources that make it economically sustainable just  
6           doesn't seem to fit with the mission and where we've  
7           been with this organization long-term.

8           We've developed over 20,000 units in Florida,  
9           with your help. Those units are doing well. We pay  
10          our SAIL loan interest, and we're going to continue  
11          to develop affordable units throughout Florida.

12          And I think this attempt to try and -- it's  
13          essentially somewhat of a reverse nimbyism. We're  
14          used to dealing with this in zoning hearings and comp  
15          plan amendment hearings and conceptual site plan  
16          approval, PUD hearings; we're not used to dealing  
17          with it in the nature of trying to provide the  
18          affordable housing that the needs and the studies  
19          show are needed, studies and report show are needed.

20          And the studies and report show that the demand  
21          is going to grow, so you know your limitations on  
22          your funding, you know your limitations on what you  
23          can do in the future, and you know that all your  
24          reports show that the demand is going to grow.

25          And we don't feel that there's any justification

1 at this point for denying the funding that makes this  
2 community economically sustainable long-term.

3 Thank you.

4 MS. STULTZ: Thank you.

5 MR. AUGER: Madam Chair, if I may, I don't have  
6 copies of these so I'll just -- if you all will kind  
7 of pass those down.

8 Those are the monitoring reports and you can  
9 just kind of see the pictures. Those are the  
10 monitoring reports from Madalyn Landing from  
11 September and from Park at Palm Bay from March. They  
12 were both were satisfactory, satisfactory reviews,  
13 and you just get some pictures there that give you a  
14 sense that they do appear to be properties that are  
15 not falling into horrible disrepair and that sort of  
16 thing.

17 MS. COX: Steve, Sheila has copies for all the  
18 board members.

19 MR. AUGER: Great. Thank you, Laura.

20 MS. STULTZ: That's fine.

21 MR. FRICK: Thank you. I suspect they're going  
22 to build the 148 units anyway, so now to give  
23 \$7.6 million of state money I think would be  
24 irresponsible.

25 Let me talk about the crime statistics for a

1 second. First of all, we're across the street -- the  
2 only market where we're actually across the street in  
3 same market with a like-type product is in Sanford.  
4 We pulled the crime statistics this week from their  
5 deal in Sanford and our deal in Sanford. We're  
6 literally across the street. We've got more units  
7 than they've got, and they've got a gate on their  
8 community and we don't. There's been 360 calls to  
9 their property since June, there's been 249 to ours.  
10 Okay? Didn't want to air there but since Scott  
11 wanted to bring that out.

12 There's crime at affordable communities and  
13 especially in ones in soft market where the average  
14 median incomes are down to the 40 percent level  
15 rather than the 60 percent.

16 Yes, sir?

17 MR. SCHARAGA: Steve, can I ask you a question?  
18 You've made a statement just now that they will build  
19 this unit without our money.

20 MR. FRICK: That's what he just said.

21 MS. STULTZ: They're under construction.

22 MR. SCHARAGA: In other words, they're going to  
23 build --

24 MR. FRICK: I'm just going by --

25 MR. SCHARAGA: All right. I'll ask Scott.

1           MR. FRICK: Other deals, it's the management of  
2           Madalyn Landing that's causing the issue here. We  
3           we're not managing Park at Palm Bay, we're not  
4           managing Villas at Palm Bay. I'm assuming they must  
5           have really poor management to only get five units  
6           absorption and not take our tenants into their  
7           property they're not leasing up. The 94 percent is,  
8           you're betting on the company, on the 94 percent  
9           occupancy to go back to the '05 and the '06 levels,  
10          which are post-hurricane levels.

11          Scott talked about this deal getting to the  
12          94 percent level, it's 87 today. Our property is  
13          80 percent occupied, 70 percent economic; okay?  
14          Which is actually lower than September now three  
15          months later. And I suspect this market may be in  
16          further decline, and the language in the market study  
17          by Nova Grad will tell you the same thing, declining  
18          rents.

19          But just let me reiterate the management issue,  
20          it's not Vestcor. Look at Villas at Palm Bay, look  
21          at Park at Palm Bay, it's a market issue, not a  
22          management issue.

23          MR. SCHARAGA: Excuse me, Madam Chair. Is the  
24          underwriter for this, Seltzer, is he here?

25          MS. STULTZ: Ben Johnson, he is.



1 MR. SCHARAGA: Ben?

2 MR. JOHNSON: Yes, sir.

3 MS. STULTZ: Ben could you please come up to the  
4 Mike? Poor Ben.

5 And I'm going to say something real quick  
6 because I don't know if you're aware of this. When  
7 Florida Housing -- because we had this discussion  
8 several years ago about credit underwriting. That's  
9 part of policy, the board and staff direct who our  
10 underwriters are and the criteria by which they --  
11 you know, how something actually gets through  
12 underwriting. So I just wanted to make sure that you  
13 were aware of that.

14 Because that's something that, as Steve and I,  
15 we sort of talk about what gets you through. What is  
16 that criteria? What should we tell them? You know,  
17 we want to use as criteria. And that changes and it  
18 evolves. And part of our strategic planning and what  
19 we're going to talk about next is do we want to  
20 define for them, you know, soft market criteria?  
21 Maybe we want to say if it gets to this percentage,  
22 you know what? We don't even want to see it, it  
23 shouldn't come to us. We help direct that. I just  
24 wanted to make that clear because poor Ben's going to  
25 get --

1           MR. SCHARAGA: Ben, when you did your  
2           underwriting, did you have the information that Steve  
3           was talking about as far as the vacancy situation,  
4           the lease-up situation in the markets?

5           MR. JOHNSON: Yes, we did.

6           MS. STULTZ: You did? So you took that all into  
7           consideration then?

8           MR. JOHNSON: Yes, we did.

9           MR. SCHARAGA: That's all I wanted to know.

10          MR. AUGER: And then the underwriting report  
11          mentions, it talks about the market, it also talks  
12          about the impact of Madalyn Landing and Park at Palm  
13          Bay.

14          MS. STULTZ: Where was I reading that? What  
15          page?

16          MR. AUGER: If you look at 8-7 through 8-9 of  
17          the underwriting report, I'm looking at  
18          Malabar Cove I where it talks about -- on 8-9, it  
19          talks about existing property impact. And again when  
20          we were formulating the recommendation, we were  
21          looking at the bar of Guarantee Fund properties and  
22          that sort of thing and markets where there had been  
23          historical softness, and the difference of that  
24          scenario versus this scenario when we were  
25          formulating this recommendation.

1           The funding scenario that we'll be dealing with,  
2           you know, in the next couple of years certainly gives  
3           one pause about the course that we've been on, if we  
4           can get there with doing it we should do it. That's  
5           something that certainly in this week, as I've been  
6           hearing more and more of the presentation on the  
7           budget, has been an issue.

8           MR. SCHARAGA: May I ask another question?

9           MS. STULTZ: Yes.

10          MR. SCHARAGA: Madam Chair.

11                 Steve, do you think that we have to -- we,  
12                 meaning the staff, or you all -- have to go back and  
13                 do a little bit more homework on this? Update this  
14                 situation?

15          MS. STULTZ: Which situation? I'm just  
16                 confused.

17          MR. AUGER: Occupancy, and where it is now and  
18                 the remedies.

19          MS. STULTZ: Okay. You're asking Steve?

20          MR. AUGER: Something that I think could be  
21                 useful would be, we have a lot -- there's a lot of  
22                 markets in Florida that are currently temporarily  
23                 soft that staff could go back and look at, you know,  
24                 what's the impact of the deals that we have in the  
25                 pipeline? You know, and the ones in soft markets?

---

1           What would an implication of saying, you know, no, we  
2           don't want to do deals where there is some temporary  
3           softness or what we think is temporary soft, the  
4           market study opines it's temporary softness, and what  
5           are the potential impacts to or what are the  
6           developments in those areas that have vacancy units,  
7           and bring back a more holistic picture of that.

8           So as we've been going through the things sort  
9           of one by one, we're really at a point where the  
10          Malabars are kind of the first ones here, but there's  
11          lots of markets where there's temporary softness and  
12          vacant units, and so to make sure that we're sort of  
13          clear about what our policy is going forward. Do we  
14          want err on the side of doing deals even if there's  
15          temporary softness and it may impact some? Or do we  
16          need to look at a different approach to approving  
17          deals where there is what appears to be some  
18          temporary softness?

19          MS. STULTZ: Here's my -- I have just an issue  
20          that I want to talk about.

21          MR. SCHARAGA: Talk into the mike.

22          MR. AUGER: I want for us to realize that by us  
23          sitting up here and we're taking a credit  
24          underwriting -- we have a positive credit  
25          underwriting report from our credit underwriters.

1           They've been through our process that we established  
2           for them successfully. And for us to sit up here and  
3           decline deals based on that; okay? The markets we  
4           get, I mean, we're setting a precedent. We are  
5           setting, are we going to begin to do this? Because  
6           it's going to happen in the next couple of years?

7           MR. FAIRMAN: It's like Pine Grove, all because  
8           of the Guarantee Fund.

9           MS. STULTZ: Yeah, all because of the Guarantee  
10          Fund. I mean, this is what we're beginning to do.  
11          We're seeing it at every meeting now, and getting  
12          phone calls, e-mails, all this sort of stuff. And  
13          I'm thinking, is this the direction that we want to  
14          take? Because, if so, we're going to review every  
15          deal that comes before it.

16          MS. SEROYER: Madam Chair, may I ask one  
17          question?

18          MS. STULTZ: Go ahead.

19          MS. SEROYER: Do you still stand behind your  
20          credit underwriting and why?

21          MR. JOHNSON: Absolutely, we do. I can tell  
22          you, this is indeed the weakest market that we've  
23          ever seen a transaction. Initially, my reaction was  
24          this deal will never work because of the low  
25          occupancies. The economic occupancy that we've

---

1 utilized in this transaction is 85 percent, which is  
2 the lowest that we've ever utilized of any  
3 recommendation that's come in front of you; however,  
4 it still meets your criteria at 85 percent occupancy.

5 We have updated occupancy information through  
6 October. I believe that the market is still  
7 relatively stable at 87 occupancy. Absolutely, if  
8 anything had changed between the time I submitted my  
9 recommendation and the time I got here, I would  
10 personally have requested that the recommendation be  
11 pulled. But every recommendation that comes before  
12 you still has our blessings and our approval. Like I  
13 say, just to repeat myself, if something had changed  
14 I would have been the first to pull it.

15 MS. SEROYER: Thank you. Just one more question  
16 on that. Have we ever experienced a problem or  
17 default with the developer?

18 MS. STULTZ: The current developer?

19 MS. SEROYER: Um-hum.

20 MS. STULTZ: Have we?

21 MR. CULP: No.

22 MR. JOHNSON: No.

23 MS. STULTZ: Okay.

24 MS. SEROYER: Okay. Thanks.

25 MR. SCHARAGA: I think I would like to dispute

1           your statement. First of all, let me say one thing,  
2           I think the projects that I have seen from Atlantic  
3           are beautiful. So there's no doubt if there was a  
4           soft market and that someone would survive in that  
5           market, I would think that they would with their  
6           product.

7           But what we're doing is no different than if you  
8           have a credit line with a bank for X-amount of  
9           dollars, and that credit line is renewable on a  
10          yearly basis; and eight months into the year, the  
11          bank comes up to you and says, "We can't do it any  
12          more, we've got to back off your credit line." Is  
13          that happening? Sure is happening, all over the  
14          place.

15          So the reason for that is putting good money  
16          after bad is the reason they're trying to do that to  
17          prevent their losses, obviously.

18          And, again, I don't want to sound like a broken  
19          record but I do believe it is our job to make sure  
20          that we protect the State's funds.

21          MS. STULTZ: Absolutely.

22          MR. SCHARAGA: And, Scott, this is not personal.

23          MR. CULP: I agree with you.

24          MR. SCHARAGA: Okay. Like I said before, and I  
25          don't want to reiterate, your projects are beautiful.