

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

VESTCOR FUND XII, LTD.

DOAH CASE NO. 09-00366
FHFC CASE NO.: 2008-118GA

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

MALABAR COVE, LLLP, and
MALABAR COVE II, LTD.

FILED
09 AUG 27 PM 4:43
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation for consideration and final agency action on July 24, 2009. On December 24, 2008, Vestcor Fund XII, Ltd. ("Vestcor") timely filed its Petition for Administrative Hearing ("Petition") with Respondent, Florida Housing Finance Corporation ("Florida Housing"), pursuant to Sections 120.569 and 120.57(1), Florida Statutes, challenging Florida Housing's acceptance of a credit underwriting report for a proposed nearby development known as Malabar Cove (Phase I and II). Finding that the allegations in the Petition included disputes of material fact, Florida Housing forwarded the Petition to the Division of Administrative Hearings

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Farrell / DATE: 7/24/09

(DOAH) on January 22, 2009. The developers of Malabar Cove, Malabar Cove LLLP and Malabar Cove Phase II, Ltd. (collectively, "Malabar Cove") subsequently filed a Petition to Intervene, which was granted. A formal hearing was held in this case on March 26 and 27, 2009, in Tallahassee, Florida, before Administrative Law Judge William F. Quattlebaum ("ALJ"). Vestcor, Florida Housing and Malabar Cove timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The ALJ recommended that Florida Housing enter a Final Order dismissing the Petition filed by Vestcor.

Pursuant to Section 120.57(1)(k), Florida Statutes, Vestcor filed "Petitioner's Exceptions to Recommended Order" ("Exceptions") with Florida Housing on June 17, 2009. A copy of the Exceptions is attached hereto as "Exhibit B." Florida Housing and Malabar Cove subsequently filed responses in opposition to the Exceptions ("Responses"). Copies of the Responses of Florida Housing and Malabar Cove are attached hereto as "Exhibit C" and "Exhibit D", respectively.

RULING ON EXCEPTIONS TO RECOMMENDED ORDER

Vestcor's Exceptions to the Recommended Order are as follows:

1. That the Administrative Law Judge ("ALJ") erred by not conducting a *de novo* proceeding to formulate agency action; and,
2. That the ALJ also erred in determining that the only issue for consideration was whether the credit underwriter and Florida Housing complied with "the applicable rule requirements" ... and not also the applicable statutory requirements that the credit underwriting rule carries out.

With respect to the first Exception set forth above, the Board rejects Vestcor's argument and Exception for the reasons set forth in the Responses filed by Florida Housing and Malabar Cove. The Board adopts the Responses attached hereto as its grounds for rejecting the first Exception set forth above and incorporates these Responses herein.

With respect to the second Exception set forth above, the Board rejects Vestcor's argument and Exception for the reasons set forth in the Responses filed by Florida Housing and Malabar Cove. The Board adopts the Responses attached hereto as its grounds for rejecting the second Exception set forth above and incorporates these Responses herein.

RULING ON THE RECOMMENDED ORDER

The aforementioned Exceptions having been rejected, the Board finds that the findings of fact and conclusions of law of the Recommended Order are supported by competent substantial evidence.

ORDER

In accordance with the foregoing, it is hereby **ORDERED**:


1. The Findings of Fact of the Recommended Order are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.

2. The Conclusions of Law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

3. The Petition for Administrative Hearing filed in this matter by Petitioner, Vestcor Fund XII, is hereby **DISMISSED** and all relief requested therein is **DENIED**.

DONE and ORDERED this 24th day of July, 2009.

FLORIDA HOUSING FINANCE
CORPORATION

By: 
Chairperson



Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.