

## City of Alexandria, Virginia

## MEMORANDUM

DATE: APRIL 28, 2010

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: CONSIDERATION OF ENTERING INTO A FORBEARANCE AGREEMENT AND OTHER AGREEMENTS WITH THE ARLANDRIA CHIRILAGUA HOUSING CORPORATION (ACHC) LEADING TO THE FORGIVENESS OF A \$232,000 LOAN AFTER A PERIOD OF SUCCESSFUL OPERATION

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**ISSUE:** Recommendations regarding partial forgiveness of the City's loans to ACHC.

**RECOMMENDATION:** That the City Council:

- (1) Authorize a forbearance agreement between the City and the Arlandria Chirilagua Housing Corporation (ACHC) to allow ACHC six months to implement actions necessary to achieve successful operation, followed by another 12 months of sustained operation in this manner;
- (2) Authorize modifications to ACHC's two remaining loans, which total \$305,000, to be amended to provide that failure to continue successful operation as a cooperative will become an element of default under those loans upon forgiveness of the \$232,000 loan, should such forgiveness occur;
- (3) Agree that, in the event staff determines, and Council concurs, that the standards for successful operation have been met and sustained for the required period of time under the forbearance agreement, as contemplated at the time the loan was made that Council will forgive the City loan in the amount of \$232,000; and
- (4) Thank the law firm of MercerTrigiani for providing (*pro bono*) legal assistance in helping address issues in this matter for the mutual benefit of ACHC's residents and the City.

**BACKGROUND:** The Arlandria Chirilagua Housing Cooperative, owned by the Arlandria Chirilagua Housing Corporation (ACHC) has benefited from \$537,000 in City loans for acquisition and rehabilitation made from 1994 through 1996.

Under the terms of the loan documents for the first \$232,000, this portion of the loan is to be forgiven in 15 years (July 15, 2009) if the City determines in its sole discretion that the cooperative is operating successfully, but otherwise must be repaid. During FY 2010, staff from

the Office of Housing, Code Administration and the City Attorney's Office, with assistance provided *pro bono* by MercerTrigiani, a local law firm with considerable expertise in the field of community association law, has undertaken an extensive review of various criteria to determine whether ACHC is successfully operating as a limited equity cooperative.

**DISCUSSION:** Since this item was last before Council in December 2009, the newly elected ACHC Board of Directors and its counsel reviewed the recommendations that had been made to the previous Board following the City's review of ACHC's operations, and met with staff to discuss its proposed actions to comply with those recommendations. Subsequently, ACHC's counsel provided staff with copies of draft documents to implement the proposed actions.

The initial recommendations, ACHC's proposed actions, and MercerTrigiani's assessment of the proposed actions are discussed in Attachment I. In essence, ACHC has proposed to do the following, and where applicable, has prepared the necessary documents to be presented to the membership for approval:

- (1) Revise its bylaws (subject to membership approval) to do the following:
  - (a) Provide a clear delineation of the maintenance and repair responsibilities between members and ACHC,
  - (b) Expressly define boundaries between dwelling units and common areas,
  - (c) Impose specific notice requirements on the Board,
  - (d) Provide a method for allocating common expenses,
  - (e) Include provisions related to access to the books and records of the association, and
  - (f) Include a requirement for the provision of a resale certificate to all potential purchasers
- (2) Provide a collections policy through which the Board may terminate membership in the cooperative
- (3) Allow a common interest community management company engaged by MercerTrigiani to review and evaluate the financial records of ACHC and ACHC facilities<sup>1</sup>
- (4) Participate in board training regarding governance and financial management best practices

It should also be noted that ACHC is in the process of documenting conditions in every unit and developing a plan for addressing problems. This information will be shared with staff when it is completed. However, recommended physical improvements beyond what can be accommodated within the property's budget will also require membership approval of any additional charges, an outcome that the ACHC Board cannot guarantee.

As noted in Attachment I, MercerTrigiani is reasonably satisfied that the actions proposed by ACHC, if and when implemented, will bring the organization to a status of successful operation as a limited equity cooperative. Implementation of the changes to the By-Laws will require adoption of the changes by a majority of the membership, a process that ACHC estimates will take several months given the need to first translate the documents into Spanish (a process that

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<sup>1</sup> Although a site review was conducted on March 17 at the request of MercerTrigiani by CMS Services, Inc., staff has seen only a brief e-mail summary but has not received the promised, detailed report as of this writing.

has already begun), and then hold a number of informational meetings to educate the membership about the proposed changes and their implications for residents.

With specific reference to the property's physical condition, the previous Board provided staff with a copy of a 2008 Physical Needs Assessment conducted to satisfy a requirement of Fannie Mae, along with its specific list of work items that required attention in the immediate and/or short term because of life/safety issues or environmental mitigation. The firm engaged by Fannie Mae toured all of the property's common areas, as well as 100% of the units, and developed a list of short term and long term work items. ACHC has taken care of a considerable number of the work items, drawing down on loan funds escrowed for this purpose. It is yet unclear if the property's reserves are sufficient to address all of the work items listed in the Physical Needs Analysis throughout the 12 year follow up period identified in the Assessment. It is staff's understanding that this has been reviewed by CMS Services, Inc, and staff is awaiting the detailed report. As noted above, the new ACHC Board has begun its own comprehensive assessment of conditions.

Code Administration has a statutory requirement to ensure compliance of Virginia's building and fire codes, and ACHC's counsel has indicated that Code Administration is welcome at the property at any time; however, all parties agree that only the units that are rented (approximately 8% of the total) are subject to the Residential Rental Inspection Program, and neither the City nor the ACHC Board has the authority to compel cooperative members (owners) to open their units to inspection.

Code Administration cannot assume an advisory role, but has recommended that an inspection program start with an educational effort. They have prepared programs to be presented to staff, occupants, and the Board that contain information regarding the requirements of the Virginia Maintenance Code and various City ordinances regarding property upkeep. Staff proposes to work with the ACHC Board to explain the nature of the inspection process to the members and to encourage members to participate in the inspection process on a voluntary basis. Given that the current ACHC Board has now assumed responsibility for maintenance and repair of a number of items which the previous board had assigned to members, staff is hopeful that owners will come to see inspections as a benefit designed to result in improved living conditions. Inspections by Code staff of all rental units (and any additional units whose members agree to participate) can be accomplished if the board provides proper notice to the residents. However, if the desire is to conduct more inspections than the ten percent of total units authorized under the Residential Rental Inspection Program, the process may need to be scheduled over several months. Given the reduced staffing levels in Code Administration and the need to accommodate other inspection demands, this will need to be incorporated in to the Code Administration work plan.

Although the foregoing reflects what staff considers to be a reasonable path toward achieving successful operation, the fact remains that most of the proposed actions have yet to be accomplished. Therefore, staff recommends that the City enter into a forbearance agreement that will allow ACHC six months to accomplish the desired objectives, and then requires that successful operation be maintained for an additional 12 months. In order to ensure that the City will continue to have some ability to influence ACHC's successful to the operations, staff further recommends that ACHC's remaining loans in the amount of \$305,000 be amended to provide

that failure to continue successful operation as a cooperative will become an element of default under those loans upon forgiveness of the \$232,000 loan, should such forgiveness occur.

Because of the considerable amount of time and effort that will be invested in this process, it is important that ACHC have some assurance that its planned actions, if successful, will result in the desired loan forgiveness. Therefore, staff recommends that Council agree that, in the event staff determines, and Council concurs, that the standards for successful operation have been met and sustained for the required period of time under the forbearance agreement, it will forgive the City loan in the amount of \$232,000.

**STAFF:**

Mildrilyn Davis, Director, Office of Housing

Christina Zechman Brown, Assistant City Attorney

Helen McIlvaine, Deputy Director, Office of Housing

Jannine Pennell, Deputy Director, Office of Building and Fire Code Administration

Melodie Seau, Division Chief, Landlord Tenant Relations

**ATTACHMENTS:**

Attachment I. Letter from MercerTrigiani, April 26, 2010

Attachment II. December 9, 2009 Docket Item

# MERCERTRIGIANI

Jeremy R. Moss  
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April 30, 2010

## VIA ELECTRONIC MAIL

Mildrilyn S. Davis, Director  
City of Alexandria, Office of Housing  
421 King Street, Suite 200  
Alexandria, Virginia 22314

MAY 3 2010

Re: City of Alexandria, Office of Housing --  
Arlandria/Chirilagua Housing Corporation

Dear Ms. Davis:

On behalf of the City of Alexandria ("City") Office of Housing, we were asked to make recommendations to the City related to the operation of Arlandria/Chirilagua Housing Corporation ("ACHC"). Our firm was engaged on a *pro bono* basis to assist the City in its determination of whether ACHC is "operating successfully." In our letter to you dated November 24, 2009, we provided several recommendations to be considered prior to a determination whether ACHC is operating successfully.

Our recommendations were based on documentation provided by ACHC and their legal counsel in response to the City's request for documents on July 21, 2009 and October 5, 2009. Our review of the documentation focused primarily on the standards set out in the City's July 17, 2009 letter to the Board of Directors of ACHC ("Board"). As set forth in the City's July 17, 2009 letter to the Board and the ACHC President, we established the following criteria to determine whether ACHC is operating successfully:

1. The governance and management of ACHC shall be in compliance with the provision of Article 3 (Management of Cooperatives) of the Virginia Real Estate Cooperative Act ("Act").
2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest shall comply with Section 55-484 of the Act.
3. The governance and management of ACHC shall be in compliance with the provisions of the Declaration (the instrument(s) that created the cooperative and all other governing documents of the Association).
4. The ratio of delinquent assessments is within the accepted industry range.
5. The government and management of ACHC are open and transparent to the members of ACHC and allow for participation of all members in the conduct of the meetings of the Board and all committees.

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6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.
7. ACHC Property is in a clean and sanitary condition, landscaping is in good order and a qualified engineer has conducted a reserve study on which ACHC has based its budget and reserve contributions.

Our November 24, 2009 letter reviewed each standard and included recommendations for additional actions or policies which may be pursued in order to meet those criteria. We will review each criteria and recommendation separately below, discuss the proposed action by ACHC for each recommendation, and provide a brief analysis about whether the proposed action would allow a determination of whether ACHC was operating successfully.

**1. The governance and management of ACHC shall be in compliance with the provisions of Article 3 (Management of Cooperatives) of the Act.**

*Recommendation: Request a description by the Board (or legal counsel) of the Board's authority to make unilateral changes to the maintenance and repair responsibility of ACHC and members.*

As stated in our November 2009 letter, a cooperative that is operating successfully must have a clear, static delineation of the maintenance and repair responsibilities between members and ACHC. We cannot recommend that the City consider ACHC to be operating successfully unless such a clear delineation is established, in writing, in a document which requires member approval to amend.

*Proposed Action: Amend the By-Laws to provide a clear delineation of the maintenance and repair responsibilities between members and ACHC.*

In response to our recommendations, ACHC proposes a comprehensive amendment to the existing By-Laws and other documents governing the cooperative. On April 2, 2010, legal counsel for ACHC provided draft Second Amended and Restated By-Laws of the Arlandria Chirilagua Housing Corporation, Inc. ("By-Laws"), draft Articles of Restatement of Arlandria/Chirilagua Housing Corporation ("Articles"), and a draft Maintenance Responsibilities Chart to be included as Exhibit B to the By-Laws ("Maintenance Chart") for our review.

Based on our review of the By-Laws and Maintenance Chart, the proposed amendment to the By-Laws with the inclusion of the Maintenance Chart would satisfy our recommendation. Section 11.6.1 of the By-Laws provides that with two exceptions, "the specific maintenance responsibilities and the costs attributable thereto shall be determined pursuant to" the Maintenance Chart. The Maintenance Chart provides a clear delineation of the maintenance and repair responsibilities between members and the ACHC.

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In addition to providing a clear delineation, the By-Laws and Maintenance Chart establish the maintenance responsibilities in such a manner that the Board could not unilaterally alter the maintenance responsibilities provided by the By-Laws and Maintenance Chart. Article 9 of the By-Laws provides that the By-Laws and all Occupancy Agreements may be amended upon the vote of two-thirds of the entire regular membership at an annual or special meeting and that for as long as ACHC is a party to a loan with the City of Alexandria, all amendments to the By-Laws must be consented to by the City Manager.

The amendment provision of the By-Laws provides sufficient safeguards to protect our opinion that successfully operating cooperatives should have a clear delineation that is also difficult to unilaterally amend. We are encouraged by the provision of Article 9 which requires the consent of the City Manager prior to any amendment to the By-Laws

***Recommendation:*** *The boundaries between units and common elements should be expressly defined in some form of document amendable only with the consent of a large percentage of members (we recommend two-thirds of all members). This document should also expressly set out the maintenance, repair and replacement obligations of the members and ACHC and should correlate to the unit boundaries.*

***Proposed Action:*** *Amend the By-Laws to expressly define boundaries in the By-Laws.*

The By-Laws define “Dwelling Units” and “Common Elements” in a manner which expressly defines the boundaries between the Units and common area. Section 11.6.5 of the By-Laws provides that “Dwelling Units”:

means portions of the buildings designed for individual occupancy as a residence, including the materials comprising the exterior face of unfinished walls bounding the unit, the concrete slab or subfloor below the finished floors or carpeting, and uppermost surface of the finished ceilings thereof, and any other fixtures, appliances or other apparatus designed to serve that residence only.

The definition of Dwelling Unit establishes the vertical and parametric boundaries of the Units at ACHC and, when combined with the Maintenance Chart and Article 9 of the By-Laws (dealing with amendments to the By-Laws), satisfied our recommendation.

***Recommendation:*** *In an effort to encourage ACHC to comply with “best practices” for a cooperative, the City should require that notices of all meetings of the Board be published where it is reasonably calculated to be available to a majority of the members, and that members be given an opportunity to speak in an open forum at meetings of the Board.*

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***Proposed Action:*** Amend the By-Laws to impose specific notice requirements on the Board.

Section 4.4 of the By-Laws provides that for all meetings of the members:

The Secretary must post in the common areas of the Property, where everyone can see it, a notice of each annual or special meeting, stating the purpose, time and place of the meeting. The Secretary must also mail or deliver a notice to each Member of record, at least three (3) but not more than twenty (20) days prior to such meeting.

In addition to notices of all meetings of the members, we recommend that the By-Laws also require notices of all meetings of the Board be published where it is reasonably calculated to be available to a majority of the members, and that members be given an opportunity to speak in an open forum at meetings of the Board. Although these requirements are not provided for in the Act, the requirements are considered good business practices and essential for a cooperative to operate successfully.

In a telephone conversation this morning with Ed O'Connell, legal counsel for ACHC, Mr. O'Connell confirmed that he will revise the draft By-Laws to include provisions addressing our concerns about notice of Board meetings and an open forum for members to speak at such meetings. Once these revisions are made to the proposed By-Laws, this recommendation will be satisfied.

***Recommendation:*** ACHC should provide a written statement from its insurance carrier about: (1) whether ACHC complies with the provisions of Section 55-470 of the Act; or (2) the provisions of Section 55-470 which ACHC does not comply with; and (3) a statement that ACHC is adequately insured and whether any additional coverage is recommended by the insurance carrier.

In response to our recommendation, we were provided with a letter dated January 18, 2010 from Patricia C. Robinson, Commercial Lines Account Manager for Preferred Insurance Services, Inc., which provides that "ACHC complies with Section 55-470 of the Virginia Real Estate Cooperative Act subject to the terms and conditions of this insurance policy." Enclosed is a copy of Ms. Robinson's letter along with an e-mail indicating that a copy was mailed to the City of Alexandria on January 19, 2010.

***Recommendation:*** The method for allocating common expenses to members should be set forth in a document similar to the delineation of maintenance and repair responsibility. This allocation may be included in the same document as the maintenance, repair and replacement obligation discussed above.

***Proposed Action:*** Amend By-Laws to provide method for allocating common expenses



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Section 3.1 of the Bylaws provides that:

Each Member has the duty to pay a proportionate share, which is based on the Common Element Interest of a Dwelling Unit, of these common expenses, on a monthly basis, as determined from time to time by the Board.

“Common Element Interest” is a common term used to establish the percentage share for which an owner in a cooperative is responsible. Section 11.6.5 of the Bylaws provides that “Common Element Interest” means the “interest assigned to the Member’s Unit, which is determined by the square footage of the Unit.” The By-Laws provide that the Common Element Interests of each Dwelling Unit will be described in Exhibit A to the By-Laws. We were not provided with Exhibit A to the By-Laws and recommend the City review that Exhibit prior to the amendment of the By-Laws.

***Recommendation:*** *The City should require ACHC to adopt a written resolution setting forth the procedure and parameters for terminating membership.*

***Proposed Action:*** *Provide a collections policy through which the Board may terminate membership in the cooperative.*

As we provided in our November 2009 letter, reducing the termination policy to a written resolution provides specific parameters by which ACHC may terminate membership and provides an additional layer of protection for ACHC members.

Legal counsel for ACHC provided us with a draft collections policy to review. The collections policy provides that if payment of any charge is not paid by the tenth day after the due date, it is delinquent, and a late fee of \$50.00 is added to the account, and the managing agent shall send a Late Notice to the delinquent owner. If payment in full is not received within twenty days of the due date, the managing agent must send a Notice of Hearing; a hearing shall occur no sooner than ten days after the Notice of Hearing, at which time the Board may:

- Refer the account to the Corporation’s legal counsel for collection of the balance and eviction proceedings.
- Charge a collection fee to the Member’s account, which shall include an initial referral fee and a monthly fee for providing updated information to legal counsel for the Corporation; and,
- Refuse to accept further payments from the Member, but will direct the Member to make payments to legal counsel for the Corporation and will advise legal counsel for the Corporation of all “lock-box” payments made on the delinquent account.

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The collections policy provides specific time frames after which certain actions will be taken. As long as the collections policy is applied uniformly and similar situated owners are treated in a similar fashion, then ACHC's pursuit of delinquent accounts could be considered to be "successfully operating."

**Recommendation:** *The City should require ACHC to adopt written resolutions setting forth the procedure and parameters for retaining records of the cooperative and governing the inspection of books and records by members.*

**Proposed Action:** *Amend the By-Laws to include provisions related to access to the books and records of the Association.*

Section 11.3 of the By-Laws provides that the financial reports and membership records of ACHC are available for inspection at reasonable times by the Members, their authorized agents and attorneys.

**Recommendation:** *The City should require AAMCI to carry the blanket fidelity bond or employee dishonesty insurance required for licensure by the Common Interest Community Board.*

At the meeting between the City, the Board and management, management provide a Certificate of Liability Insurance which covers Crime, Employee Dishonesty, Forgery and Alteration, with an employee dishonesty limit of \$1,100,000.00. Section 54.1-2346 of the Code of Virginia requires that a community interest community manager, as that term is defined in the Code, must provide blanket fidelity bond or employee dishonesty coverage:

In an amount equal to the lesser of \$2 million or the highest aggregate amount of the operating and reserve balances of all associations under the control of the common interest community manager during the prior fiscal year. The minimum coverage amount shall be \$10,000.

While the managing agent's coverage significantly exceeds the minimum coverage amount, we are unable to determine whether the coverage carried by AAMCI meets or exceeds the statutorily imposed fidelity bond. A copy of the Certificate of Liability Insurance is enclosed (note that although the Certificate of Liability Insurance was current as of the date it was provided, the policy was set to expire March 18, 2010 - the City may wish to confirm its renewal).

Upon the successful amendment of the By-Laws and collections policy to a form substantially similar to those provided on April 2, 2010 for our review, ACHC will be established in a manner required for a determination that ACHC was operating successfully - without such an amendment, however, we are still unable to make a determination that ACHC is operating successfully.

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- 2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest shall comply with Section 55-484 of the Act.**

*Recommendation: Prior to the forgiveness of the Loan, the City should require that all potential purchasers of interests in the cooperative be provided with a resale certificate.*

*Proposed Action: Amend By-Laws to include requirement for resale certificate.*

We were unable to locate a provision in the By-Laws requiring the provision of a resale certificate (or its equivalent). Without a resale certificate, a potential owner has no vehicle for determining the rights and obligations he or she will accept by purchase of a share in ACHC. In our opinion, the requirement for the provision of a resale certificate is as important to the successful operation of a cooperative as any other provision in the Act or By-Laws.

Without language imposing a requirement that ACHC provide a resale certificate upon the transfer of an interest in ACHC, we find it difficult to recommend that ACHC is (or can) operate successfully. In a telephone conversation this morning with Ed O'Connell, legal counsel for ACHC, Mr. O'Connell confirmed that he will revise the draft By-Laws to include provisions addressing our concerns the provision of a resale certificate. Once these revisions are made to the proposed By-Laws, this recommendation will be satisfied.

- 3. The governance and management of ACHC shall be in compliance with the provisions of the Declaration (the instrument(s) that created the cooperative and all other governing documents of the Association).**

*Recommendation: The City should pursue additional information related to the lack of a recorded declaration and the existence of remaining copies of the additional offering statement.*

The issues raised in our November 2009 have been addressed sufficiently and, with continued compliance with the proposed amended By-Laws, this criterion has been met.

- 4. The ratio of delinquent assessments is within the accepted industry range.**

We have not determined the current ratio of delinquent assessments within ACHC. In our experience, the accepted industry rate for successfully operating common interest community association delinquent assessments is between 3-5%. In more recent times, the acceptable range of delinquent assessments may actually be considered higher than 5%.

- 5. The government and management of ACHC are open and transparent to the members of ACHC and allows for participation of all members in the conduct of the meetings of the Board and all committees.**

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In our November 2009 letter, we recommended that:

- Members should have access to the books and records of ACHC;
- Members should be apprised, through adequate notice, of all meetings of ACHC, its Board and committees and members should be able to attend and participate in each meeting;
- Members should be able to review and ratify the budget for ACHC.

The By-Laws sufficiently address several of these issues (as described in detail above). However, the proposed amendment to the By-Laws has not addressed all of our concerns. If the By-Laws are amended as proposed by ACHC, including the addition of provisions discussed this morning with Mr. O'Connell, related to Board meeting notice and an open forum for members at Board meetings, this criterion will be satisfied.

With that said, the By-Laws do not provide that the members must ratify the budget (although they may review the corporate financial records. The omission of the members' authority to ratify the budget, by itself, is not significant enough to determine that ACHC is not successfully operating.

**6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.**

The collections policy provides specific time frames after which certain actions will be taken. As long as the collections policy is applied uniformly, and similar situated owners are treated in a similar fashion, then ACHC's pursuit of delinquent accounts could be considered to be "successfully operating."

Generally speaking, the proposed By-Laws provide members with additional notification and opportunities to be heard. However, in order for us to determine this criterion has been met, we would require notice of ACHC Board meetings, an opportunity for owners to speak at meetings of the Board, and the provision of a resale certificate prior to the transfer of an interest in the cooperative. Legal counsel for ACHC has agreed to address each of these concerns by revising the draft By-Laws, and once completed, this criterion will be satisfied.

**7. ACHC Property is in a clean and sanitary condition, landscaping is in good order and a qualified engineer has conducted a reserve study on which ACHC has based its budget and reserve contributions.**

*Recommendation:* Upon CMC's site inspection and review of the budget and financial statements of ACHC, the City should determine whether ACHC is operating successfully.

*Proposed Action:* Allow a common interest community management company engaged by our office to review and evaluate the financial records of ACHC and ACHC facilities.

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MercerTrigiani recruited the assistance of Thomas S. Patti, President of CMS Services, Inc. ("CMS") to assist in the review of ACHC's financial records and facilities. CMS is a common interest community management company licensed to provide management services to common interest communities in Virginia. In operation since 1984, CMS is well-respected in the industry and extremely capable of providing review and evaluation services.

On March 17, 2010, Mr. Patti, accompanied by Jeff Draper, CMS Community Manager, and Jerry Green, CMS Controller, reviewed the provided 2007 and 2008 audits and the January and February 2010 financial reports for ACHC and conducted a walk-through of the facilities operated and maintained by ACHC. Although Mr. Patti provided an informal summary of his findings by electronic mail, a more formal review will be provided separate from this letter.

**This letter is a privileged communication between attorney and client. It should be kept separate and apart from the books and records of the Association normally made available for public view.**

Yours truly,



Jeremy R. Moss

jrm

Enclosures

cc: Christina Z. Brown, Assistant City Attorney  
David S. Mercer, Esquire

#39432

EXHIBIT NO. 126  
12-8-09

## City of Alexandria, Virginia

## MEMORANDUM

DATE: DECEMBER 2, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: STAFF REPORT ON ARLANDRIA CHIRILAGUA HOUSING CORPORATION (ACHC)

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**ISSUE:** Status report on outside review to determine whether or not the Arlandria Chirilagua Housing Corporation is successfully operating as a cooperative

**RECOMMENDATION:** That Council receive the information contained in this memorandum and attachments, and request staff to report back to Council not later than Council's first April legislative meeting with the results of its final assessment, recommendations, and response from ACHC.

**BACKGROUND:** As more fully described in Attachment I, \$232,000 of the City's \$537,000 loan to the Arlandria Chirilagua Housing Corporation (ACHC) is subject to forgiveness if the City determines that ACHC is successfully operating as a housing cooperative. Based on issues that have arisen over the last few years the question of whether or not the coop is operating successfully is an open question that needs to be thoroughly researched and answered in order to protect the long term interests of preserving this affordable housing in the City. The law firm of MercerTrigiani, a firm with considerable expertise in the field of community association law, including cooperative housing, is assisting the City in its assessment of ACHC's operations. At its September 22 meeting, Council approved a recommendation to have staff report back no later than the December legislative meeting with the results of its assessment.

**DISCUSSION:** After reviewing documents submitted by ACHC in early September, MercerTrigiani outlined a number of follow-up items to be requested. Housing staff requested these items on October 5, and ACHC's response was received on November 5. On November 24, Housing staff and MercerTrigiani met with members of the ACHC Board to discuss the conclusions and recommendations contained in Attachment II.

Significantly, ACHC's elections, held on the following day, November 25, resulted in the replacement of eight of the nine Board members. Therefore, while the remainder of this memorandum reports the recommendations discussed with the previous Board, staff will now need to revisit this matter with the new Board.

Although drafted and presented by MercerTrigiani, the conclusions and recommendations in Attachment II reflect the results of discussions with staff from the Office of Housing and the City Attorney's Office. In summary, while there are some aspects of the review that cannot be completed pending an agreed-upon (by the previous Board) physical inspection and financial review to be carried out by Community Management Corporation at the request of MercerTrigiani, the review to date has determined that ACHC is meeting some but not all of the seven criteria (listed in Attachment I) established as the basis for assessing whether ACHC is successfully operating as a cooperative. The following recommendations/requests, grouped in accordance with the review criteria were made to ACHC:

**1. The governance and management of ACHC shall be in compliance with the provisions of Article 3 (Management of Cooperatives) of the Act.**

*Recommendations:*

- a. Provide a description of the Board's legal authority to make unilateral changes to the maintenance and repair responsibility of ACHC and members.
- b. The boundaries between units and common elements should be expressly defined in some form of document amendable only with the consent of a large percentage of members (we recommend two-thirds of all members). This document should also expressly set out the maintenance, repair and replacement obligations of the members and ACHC and should correlate to the unit boundaries.
- c. As a "best practice," notice of all meetings of the Board should be published where it is reasonably calculated to be available to a majority of the members, and members should be given an opportunity to speak in an open forum at meetings of the Board.
- d. ACHC should provide a written statement from its insurance carrier about: (1) whether ACHC complies with the provisions of Section 55-470 of the Act; or (2) the provisions of Section 55-470 which ACHC does not comply with; and (3) a statement that ACHC is adequately insured, and any additional coverage recommended by the insurance carrier.
- e. The method for allocating common expenses to members should be set forth in a document similar to the delineation of maintenance and repair responsibility. This allocation may be included in the same document as the maintenance, repair and replacement obligation discussed above.
- f. ACHC should adopt a written resolution setting forth the procedure and parameters for terminating membership. (Note: This is currently addressed in ACHC's bylaws.)
- g. ACHC should adopt written resolutions setting forth the procedure and parameters for retaining records of the cooperative and governing the inspection of books and records by members.
- h. AAMCI (ACHC's management company) should be required to carry the blanket fidelity bond or employee dishonesty insurance required by licensure by the Common Interest Community Board.

**2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest shall comply with Section 55-484 of the Act.**

*Recommendation:* Prior to the forgiveness of the loan, ACHC should amend its practices to ensure that all potential purchasers of interests in the cooperative be provided with a resale certificate.

- 3. The governance and management of ACHC shall be in compliance with the provisions of the Declaration (the instrument(s) that created the cooperative and all other governing documents of the Association).**

*Recommendation:* The City should pursue additional information related to the lack of a recorded declaration and the existence of remaining copies of the additional offering statement.

- 4. The ratio of delinquent assessments is within the accepted industry range.**

Community Management Corporation, in its review of the financial records of ACHC will assist MercerTrigiani and City staff in determining the delinquency rate for ACHC.

- 5. The governance and management of ACHC are open and transparent to the members of ACHC and allow for participation of all members in the conduct of the meetings of the Board and all committees.**

The above criteria are being met except that members are not receiving notice of the meetings of the Board (see recommendation 1(c) above).

- 6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.**

See recommendation 1(f) above.

- 7. ACHC Property is in a clean and sanitary condition, landscaping is in good order and a qualified engineer has conducted a reserve study on which ACHA has based its budget and reserve contributions.**

Assessment of this criterion will be based upon CMC's site inspection and review of the budget and financial statements.

At the November 24 meeting, ACHC representatives agreed to consider the City's requests and provide us with a response. An additional item discussed by staff and MercerTrigiani, but inadvertently omitted from the recommendations made to ACHC, is that all ACHC Board members should participate in association volunteer leadership training. The details of such training remain to be worked out, but it is anticipated that staff and MercerTrigiani will identify a specific training course and/or method. Staff recommends that Council allow staff to work with the new Board (to include consultation with ACHC's general membership) through the first quarter of 2009, and return to Council no later than the first April legislative meeting with final results and recommendations.

**ATTACHMENTS:**

Attachment I. September 22, 2009 Docket Item

Attachment II. MercerTrigiani Letter, November 24, 2009



**STAFF:**

Mildrilyn Stephens Davis, Director, Office of Housing

Christina Zechman Brown, Assistant City Attorney

City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 14, 2009  
TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
FROM: JAMES K. HARTMANN, CITY MANAGER *J*  
SUBJECT: RECEIPT OF STATUS UPDATE ON STAFF ASSESSMENT OF THE OPERATION OF THE ALEXANDRIA CHIRILAGUA HOUSING CORPORATION AND CONSIDERATION OF NEXT STEPS

---

**ISSUE:** Receipt of update on staff's actions to assess the operation of the Alexandria Chirilagua Housing Corporation (ACHC) and consideration of next steps.

**RECOMMENDATION:** That City Council:

- (1) Receive a status update; and
- (2) Request staff to report back to Council not later than Council's December legislative meeting with the results of its assessment.

**BACKGROUND:** From 1994 through 1996, the City made a series of three loans, totaling \$537,000, in connection with the purchase and rehabilitation of the then-Potomac Village Apartments for the purpose of establishing a limited-equity cooperative. The first two loans (totaling \$425,000) were made to the Center for Cooperative Housing and were subsequently transferred to ACHC after the cooperative was established, and the final loan of \$150,000 (subsequently reduced to \$112,000) was made directly to ACHC. The initial loan, in the amount of \$232,000, was subject to forgiveness as of July 15, 2009, if the property was being successfully operated as a cooperative; otherwise, the loan would be due and payable at that time.

On June 23, 2009, Council reviewed staff's proposed seven criteria to determine whether ACHC is successfully operating as a cooperative (developed in conjunction with the law firm Mercer Trigiani, a firm with considerable expertise in the field of community association law, including cooperative housing), and directed that staff report back to Council with regard to this matter no later than Council's second legislative meeting in September (see Attachment II).

The seven criteria are:

1. The governance and management of Chirilagua should be in compliance with the provision of Article 3 (Management of Cooperatives) of the Virginia Real Estate Cooperative Act.
2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest should comply with Section 55-484 of the Virginia Real Estate Cooperative Act.
3. The governance and management of Chirilagua should be in compliance with the provisions of the Declaration and all other governing documents of ACHC.
4. The ratio of delinquent assessments is within the accepted industry range.
5. The governance and management of ACHC is open and transparent to the members of ACHS and allows for the participation of all members in the conduct of the meetings of the Board of Directors and all committees.
6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.
7. The buildings and grounds are in a clean and sanitary condition, landscaping is in good order, and a qualified engineer has conducted a reserve study on which ACHC has based its budget and reserve contributions.

**DISCUSSION:** After working with Mercer Trigiani to refine a specific list of documents to be requested from ACHC, in order to assess ACHC's performance in relation to the seven criteria, staff conveyed a letter (Attachment I) to ACHC on July 17 requesting the desired documents. All parties agreed that it would be desirable to meet and discuss the document request prior to ACHC's response. Due to vacation schedules, that meeting could not be held until August 19. Following that meeting, which also included representation from the City Attorney's Office, both ACHC and its counsel informed staff that the requested documents would be provided.

Staff received two three-ring binders of documents from ACHC on September 9. Given that ACHC's material has just been received, staff and Mercer Trigiani have not yet had sufficient time to review and assess the information provided, nor to verify its completeness. However, based on the cover letter accompanying the material, it appears that ACHC and its counsel have submitted documents so the City can assess ACHC performance in relation to the seven established criteria.

As noted in the June 23 docket item (Attachment II), staff's intent is to provide specific guidance to ACHC as to what actions are necessary to bring any identified areas of deficiency into compliance. Therefore, staff requests that Council give staff sufficient time to review the information, make its determination, and, if necessary, outline to ACHC a course of action for addressing any identified deficiencies. Staff recommends that Council request staff to report back to Council on the progress and/or conclusions of this review no later than its December legislative meeting.

**ATTACHMENTS:**

Attachment I. Letter to ACHC Board of Directors, July 17, 2009

Attachment II. June 23, 2009, Docket Item

**STAFF:** Mildrilyn Davis, Director, Office of Housing



**OFFICE OF HOUSING**  
Program Administration Division  
421 King Street, Suite 200  
Alexandria, Virginia 22314

www.alexandriava.gov

Phone (703) 746-4990  
Fax (703) 706-3904  
Hearing Impaired (703) 838-5056

July 17, 2009

Board of Directors  
Arlandria Chirilagua Housing Corporation  
3910 Bruce Street, Unit 106  
Alexandria, Virginia 22305

Mr. Santos Vega, President  
Arlandria Chirilagua Housing Corporation  
3910 Bruce Street, Unit 106  
Alexandria, Virginia 22305

Re: Arlandria Chirilagua Housing Corporation (ACHC)

Dear Sir/Madam:

In order to make a determination as to whether a portion of ACHC's City loan can be forgiven in accordance with the terms of the loan documents, the City is now working with the firm of Mercer Trigiani to determine whether ACHC is being successfully operated as a cooperative. Although ACHC is technically exempt from the requirements of the Virginia Real Estate Cooperative Act by virtue of HUD financing involved in the initial acquisition of the property, staff and Mercer Trigiani are in agreement that this Act provides the most appropriate standards for the evaluation of many aspects of a cooperative's successful operation. In connection with our planned analysis, and in consultation with Mercer Trigiani, we have established the following as the standards upon which the City will base its assessment:

1. The governance and management of ACHC shall be in compliance with the provisions of Article 3 (Management of Cooperatives) of the Virginia Real Estate Cooperative Act.
2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest shall comply with Section 55-484 of the Virginia Real Estate Cooperative Act.
3. The governance and management of ACHC shall be in compliance with the provisions of the Declaration (the instrument(s) that created the cooperative) and all other governing documents of the Association.
4. The ratio of delinquent assessments is within the accepted industry range.

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5. The governance and management of the Association is open and transparent to the members of the Association and allows for the participation of all members in the conduct of the meetings of the Board of Directors and all committees.
6. Both procedural and substantive due process is afforded to all members of the Association in all actions that affect their interests.
7. The Property is in a clean and sanitary condition, landscaping is in good order and a qualified engineer has conducted a reserve study on which the Association has based its budget and reserve contributions.

In order to assist the City in our assessment of whether ACHC is in compliance with the above criteria, we request that you please provide us with the documentation set forth in the attached list.

Following our review of your information, we would like to schedule a meeting to discuss our evaluation. Should there be any area(s) found not to be in compliance, we will then discuss what is necessary for any such area(s) to be brought into compliance, and establish time frames for this to occur. As you may know, the Office of Housing must provide a progress/status report to the Alexandria City Council with regard to this matter for the September 22 Council meeting. Therefore, please provide the requested documentation as soon as possible to allow us sufficient time to conduct our review and meet with you to discuss the results prior to reporting back to City Council.

If you have any questions, please let me know. Should you and your attorney desire to meet with our team to discuss the information request and our planned process, we are available in the late afternoon/early evening of July 21, but not again until the week of August 10. Between July 24 and August 10, the primary City contact on this matter will be Melodie Seau, Division Chief for Landlord-Tenant Relations (703-746-4990).

Sincerely,

  
Mildrilyn Stephens Davis, Director  
Office of Housing

Enclosure

cc: Edward J. O'Connell, Esquire  
Helen S. McIlvaine, Deputy Director, Office of Housing  
Christina Zechman Brown, Assistant City Attorney  
Melodie A. Seau, Division Chief, Landlord-Tenant Relations  
David S. Mercer, Esquire  
Lucia Anna Trigiani, Attorney at Law  
Jeremy R. Moss, Esquire

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**ARLANDRIA CHIRILAGUA HOUSING CORPORATION**  
**Documentation Requested to Evaluate Whether Cooperative is Operating Successfully.**

1. Copy of the Declaration;
2. Any amendments or revisions to First Amended and Restated Bylaws;
3. Any amendments or modifications of the Occupancy Agreement or Rules and Regulations since May 28, 2008;
4. A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from each proprietary lessee;
5. A statement of any other fees payable by proprietary lessees;
6. A statement of any capital expenditures anticipated by the association for the current and next two succeeding fiscal years;
7. The current reserve study report or a summary thereof and a statement of the status and amount of any reserve or replacement fund and of any portions of those reserves designated by the association for any specified projects;
8. The most recent regularly prepared balance sheet and income and expense statement, if any, of the association, including the amount of any debt owed by the association or to be assumed by the association, inclusive of principal and any accrued interest, loan fees and other similar charges;
9. The current operating budget of the association;
10. A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;
11. A statement describing any insurance coverage provided for the benefit of the executive board, including, but not limited to, Directors and officers liability coverage;
12. A statement as to whether the executive board has knowledge of any violations of the health or building codes for any other portion of the cooperative;
13. A statement of the remaining term of any leasehold estate affecting the cooperative and the provisions governing any extension or renewal thereof;
14. The current public offering statement, if available, and any amendments thereto;

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15. A statement of any restrictions in the declaration affecting the amount that may be received by a proprietary lessee upon sale, condemnation or loss to the unit or the cooperative on termination of the cooperative; and

16. Minutes from meeting of executive organ and cooperative, including special meetings, from past six months along with copy of notices from all meetings.

17. Copy of current management agreement, including statement of qualification of managing agent.

18. Memoranda of insurance showing compliance with Section 55-470 of Code, or written certification from insurance provider that insurance coverage meets Section 55-470 of the Code of Virginia, including any additional recommended coverage.

19. Status report of all assessment collection matters and eviction proceedings.

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EXHIBIT NO. 1

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6-23-09

**City of Alexandria, Virginia**

**MEMORANDUM**

DATE: JUNE 18, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: FOLLOW UP TO JUNE 9 DOCKET ITEM CONCERNING ARLANDRIA CHIRILAGUA HOUSING CORPORATION (ACHC)

**ISSUE:** Response to questions from Council concerning the effect of taking no action at this time with regard to the City loan to the Arlandria Chirilagua Housing Corporation (ACHC)

**RECOMMENDATION:** That City Council based on the information in this memorandum:

- (1) Take no action at this time in regard to the City loan to ACHC; and
- (2) Request that City staff report back to Council by its second legislative meeting in September with the results of its review of ACHC's operations.

**DISCUSSION:** On June 9, Council considered a staff recommendation (Attachment) to extend by one year the date for determination of forgiveness or repayment of a portion of the City's loan to ACHC in order to allow time for ACHC to comply with forthcoming guidance to be provided by staff as to requirements that must be met in order to demonstrate the organization's successful operation as a limited equity cooperative. Councilman Krupicka suggested extending only until the second meeting in September, at which time staff would report back to Council on the progress made by that time. Other Council members questioned whether it was necessary to take any action at this time, as opposed to simply waiting for staff's report in September before taking any action. Mayor Euille also wanted additional information with regard to how staff intends to measure "successful operation as a limited equity cooperative."

Based on a review of the loan documents by the City Attorney, in the event Council elects to take no action at this time, there is no negative consequence. Repayment would not be triggered without an affirmative action by Council to declare the loan in default.

Since the June 9 Council meeting, staff has had further communication with David Mercer of the law firm Mercer Trigiani. Although ACHC is technically exempt from the requirements of the Virginia Real Estate Cooperative Act by virtue of HUD financing involved in the initial acquisition of the property, staff and Mercer Trigiani are in agreement that this Act provides the most appropriate standards for the evaluation of many aspects of a cooperative's successful

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operation. While the details to be communicated to ACHC are still being formulated, the following reflects some of the general criteria by which ACHC's successful operation will be measured:

1. The governance and management of Chirilagua should be in compliance with the provisions of Article 3 (Management of Cooperatives) of the Virginia Real Estate Cooperative Act.
2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest should comply with Section 55-484 of the Virginia Real Estate Cooperative Act.
3. The governance and management of Chirilagua should be in compliance with the provisions of the Declaration and all other governing documents of ACHC.
4. The ratio of delinquent assessments is within the accepted industry range.
5. The governance and management of ACHC is open and transparent to the members of ACHC and allows for the participation of all members in the conduct of the meetings of the Board of Directors and all committees.
6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.
7. The buildings and grounds are in a clean and sanitary condition, landscaping is in good order, and a qualified engineer has conducted a reserve study on which ACHC has based its budget and reserve contributions.

Regardless of whether Council extends the date until September or elects to take no action at this time, staff plans to continue to work with Mercer Trigiani to finalize the list of standards and information requests, and then to meet with ACHC to discuss these items. At Council's second legislative meeting in September, staff will report to Council on whether the requested items have been received, and on any preliminary determinations that have been made by that point. Staff's intent is to provide specific guidance to ACHC as to what actions are necessary to bring any areas of deficiency into compliance. Therefore, provided ACHC is working cooperatively with staff to furnish the required information and is working toward addressing any identified deficiencies, staff would not recommend declaring the loan in default as part of its response to Council at its second legislative meeting in September.

**FISCAL IMPACT:** None at this time.

**ATTACHMENT:** Docket item from June 9 meeting

**STAFF:**

Mildrilyn Stephens Davis, Director, Office of Housing  
James Banks, City Attorney  
Christina Zechman Brown, Assistant City Attorney

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EXHIBIT NO. 134  
6-9-09**City of Alexandria, Virginia****MEMORANDUM**

DATE: JUNE 1, 2009

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER *J*

SUBJECT: CONSIDERATION OF EXTENDING THE DETERMINATION DATE  
REGARDING PARTIAL LOAN FORGIVENESS FOR THE ARLANDRIA  
CHIRILAGUA HOUSING COOPERATIVE

**ISSUE** Consideration of extending the date for forgiveness or repayment of a portion of the City's loan to the Arlandria Chirilagua Housing Corporation

**RECOMMENDATION:** That City Council:

- (1) Extend the date for determination of forgiveness or repayment of \$232,000 of the City's \$537,000 loan to the Arlandria Chirilagua Housing Corporation (ACHC) from July 15, 2009 to July 15, 2010, to allow time for ACHC to comply with forthcoming guidance to be provided by staff as to requirements that must be met in order to demonstrate ACHC's successful operation as a limited equity cooperative; and
- (2) Require that the forgivable portion of the loan become due and payable on January 31, 2010, in the event ACHC has not, by that date, demonstrated to the City's sole satisfaction a willingness to cooperate with the City's requests.

**DISCUSSION:** The Arlandria Chirilagua Housing Cooperative, owned by the Arlandria Chirilagua Housing Corporation (ACHC) has benefited from \$537,000 in City acquisition and rehabilitation loans made from 1994 through 1996. The first two portions of the loan, totaling \$425,000, were made to the Center for Cooperative Housing, a subsidiary of the National Center for Cooperative Housing, and were later transferred to ACHC to accomplish the goal of creating a resident-owned cooperative. The three segments of the loan are as follows:

- \$232,000 approved in February 1993 (Promissory Note 1)
- \$193,000 approved in March 1994 as part of a larger amount (Promissory Note 2)
- \$112,000 approved January 1997 as a reduction of a prior approval for \$150,000 (Promissory Note 3)

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Under the terms of the loan documents for the first \$232,000, this portion of the loan will be fully forgiven in 15 years if the City determines in its sole discretion that the cooperative is operating successfully, but otherwise must be repaid at that time. The Deed of Trust for this portion of the loan establishes the 15-year target date as July 15, 2009. The other portions of the loan are due upon the earlier of 99 years or when the property ceases to operate as a cooperative affordable to low- and moderate-income households.

Over the past year, in preparation for making the determination as to whether ACHC is operating successfully, staff has requested considerable information from ACHC, much, but not all, of which has been provided. After reviewing the material provided by ACHC, staff is not confident that it has either sufficient evidence to determine that the cooperative is operating successfully. The law firm of Mercer Trigiani, a firm with considerable expertise in the field of community association law, including cooperative housing, has offered its pro bono assistance to the City to assist City staff with making a determination. It is anticipated that the review by Mercer Trigiani will be completed expeditiously, and staff will then present ACHC with a list of criteria to be met as evidence of successful operation as a limited equity cooperative.

In order to allow ample time for the ACHC to receive, review, and address the City's requirements stemming from the forthcoming review by Mercer Trigiani, staff recommends a one-year extension, to July 31, 2010, of the date by which a decision must be made concerning the forgiveness of the \$232,000 note. Should ACHC demonstrate compliance with the City's recommendations prior to that date, staff will forward a recommendation to Council for forgiveness of the loan immediately following its determination that the City's conditions have been met. Should ACHC not be able to demonstrate such compliance during that period, the loan would become due and payable on January 31, 2010.

However, staff further recommends that if ACHC declines to cooperate with the City in this matter, the \$232,000 shall become due and payable on January 15, 2010, six months from the current trigger date.

ACHC has been notified of the proposed extension of the forgiveness date.

**FISCAL IMPACT:** None at this time.

**STAFF:**

Mark Jinks, Deputy City Manager  
Mildrilyn Stephens Davis, Director, Office of Housing  
Helen McIlvaine, Deputy Director, Office of Housing  
Melodie Seau, Division Chief, Office of Housing

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9-22-09



Jeff Price  
<jeff@alexandriainternet.com>

09/21/2009 01:24 PM

Please respond to  
Jeff Price  
<jeff@alexandriainternet.com>

To william.euille@alexandriava.gov, frank.fannon@alexandriava.gov,  
kerry.donley@alexandriava.gov, alicia.hughes@alexandriava.gov,  
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Fiscal Management



Time: [Mon Sep 21, 2009 13:24:26] Message ID: [15452]

**Issue Type:** Mayor, Vice Mayor, and Council Members

**First Name:** Jeff

**Last Name:** Price

**Street Address:** 2402 King ST

**City:**

**State:**

**Zip:**

**Phone:** 703-836-6325

**Email Address:** jeff@alexandriainternet.com

**Subject:** Fiscal Management

I noticed two items on the docket which taken together tell a disturbing

tale of fiscal mismanagement.

In one case the Council appears set to

increase a loan to construct 8 units of affordable housing, because the

developer apparently can't manage to a budget. And following right on that

is a proposal to forgive a prior loan given to build affordable

housing.

When I see that, I realize that developing

"affordable" housing is the best scam in the world. You propose

something, get the city to give you the money to build it. Run out of

money, get the city to give you more money. It's no big deal that you

**Comments:** increased the loan amount, because in a few years you go back and get the

loan forgiven.

Given the current economic environment this seems to be

poor stewardship of the peoples money, and demonstrates how poorly it is

managed in better times, when the good times roll.

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How will this be  
better managed in the future. Please feel free to contact me during normal  
business hours using the contact info provided.  
thanks for your  
time  
Jeff Price

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9-22-09



Michele Evans/Alex  
09/22/2009 07:59 PM

To Gloria.Sitton@alexandriava.gov  
cc  
bcc  
Subject Fw: Additional background information re Arlandria Chirilagua Cooperative (Docket item #15)

here you go

--- Forwarded by Michele Evans/Alex on 09/22/2009 08:02 PM ---



Mildrilyn Davis/Alex  
09/22/2009 09:22 AM

To William.Euille@alexandriava.gov,  
kerry.donley@alexandriava.gov,  
frank.fannon@alexandriava.gov,  
alicia.hughes@alexandriava.gov, council@krupicka.com,  
del.pepper@alexandriava.gov, paulcsmedberg@aol.com  
cc Mark Jinks/Alex@Alex, Michele Evans/Alex@Alex  
Subject Additional background information re Arlandria Chirilagua Cooperative (Docket item #15)

Several of you have asked various questions about the Arlandria Chirilagua Housing Corporation in relation to docket item #15. This e-mail consolidates the answers to a number of those questions.

1. The City's \$537,000 loan is in second trust position behind a loan of \$8.8 million from Reilly Mortgage Capital Corporation.
2. According to the Department of Real Estate Assessments, the property's 2009 assessed value is \$21,150,000.
3. There are 22 separate street addresses associated with the property: 3200 Commonwealth Ave.; 3910 - 3918 (9 addresses, both odd and even nos.) Bruce Street; 400, 402, 502, 506, 510, 517, 518, 519 and 526 Four Mile Road; and 3917, 3918 and 3921 Elbert Avenue. The City's loans are secured against the entire property.
4. One new member requested and received copies of prior docket items concerning this project. I am attaching them below for all members.
5. In response to a request for a copy of the relevant loan documents, I am also attaching the loan agreement, deed of trust, and two notes for the initial \$425,000, which includes the \$232,000 that is subject to forgiveness.

Mildrilyn Davis, Director  
Alexandria Office of Housing  
703-746-4990

Below is the text of an e-mail sent to an ACHC Board member who requested this history prior to the June 2009 Council docket items:

This docket item from 12-16-95 has older docket items attached that will give you the history of this loan. The attachments have attachments (some of which are other docket

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items), so the attachment numbering is hard to follow. But included in the package are docket items from 6-13-95, 3-16-94, and 2/19/93. The Tenants Support Committee application is also included in the package.

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This next item is from 1/28/97, and includes attached docket items from 12/10/96 and 6/25/96. This, together with the above, should provide a complete history of the Council actions for all of the City loans for the co-op property.

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#### Loan Documents



CCH Loan Agreement, 1994.pdf CCH Deed of Trust, 1994.pdf CCH Promissory Notes 1 and 2, 1994.pdf

# MERCERTRIGIANI

David S. Mercer  
david.mercer@mercertrigiani.com

Direct Dial: 703-837-5007  
Direct Fax: 703-837-5017

November 24, 2009

## VIA HAND DELIVERY

Mildrilyn S. Davis, Director  
City of Alexandria, Office of Housing  
421 King Street, Suite 200  
Alexandria, Virginia 22314

Re: City of Alexandria, Office of Housing --  
Arlandria/Chirilagua Housing Corporation

Dear Ms. Davis:

On behalf of the City of Alexandria ("City") Office of Housing, we were asked to make recommendations to the City related to the operation of Arlandria/Chirilagua Housing Corporation ("ACHC"). Our firm was engaged on a *pro bono* basis to assist the City in its determination of whether ACHC is "operating successfully."

The inquiry relates to a Loan Agreement dated August 1, 1994 between the City and ACHC ("Loan Agreement") whereby a portion (\$232,000.00) of the total amount (the "Loan") set forth in the Loan Agreement may be forgiven by the City. Section 8.a. of the Loan Agreement provides that:

The loan in the amount of \$232,000...is to be placed as a no-interest deferred payment loan (no payment being due until maturity) secured by a third trust against the property for a term of 15 years, after which time *it may be fully forgiven if the City determines in its sole discretion that the cooperative is operating successfully.* (Emphasis added).

This letter provides our recommendations about whether ACHC is operating successfully.

Our recommendations are based on documentation provided by ACHC, and their legal counsel, in response to the City's request for documents on July 21, 2009 and October 5, 2009. Our review of the documentation focuses primarily on the standards set out in the City's July 17, 2009 letter to the Board of Directors of ACHC ("Board") and the ACHC President. As set forth in that letter, we have based on our assessment of whether ACHC is operating successfully on:

1. The governance and management of ACHC shall be in compliance with the provision of Article 3 (Management of Cooperatives) of the Virginia Real Estate Cooperative Act ("Act").
2. The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest shall comply with Section 55-484 of the Act.



## MERCERTRIGIANI

Mildrilyn S. Davis  
November 24, 2009  
Page 2

3. The governance and management of ACHC shall be in compliance with the provisions of the Declaration (the instrument(s) that created the cooperative and all other governing documents of the Association).
4. The ratio of delinquent assessments is within the accepted industry range.
5. The government and management of ACHC are open and transparent to the members of ACHC and allows for participation of all members in the conduct of the meetings of the Board and all committees.
6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.
7. ACHC Property is in a clean and sanitary condition, landscaping is in good order and a qualified engineer has conducted a reserve study on which ACHC has based its budget and reserve contributions.

We will review each of those standards below and include our recommendation as to whether the ACHC is operating successfully. Where appropriate, we make additional recommendations about additional actions or policies which may be pursued in order to meet our expectations for how a successful cooperative should operate.

1. **The governance and management of ACHC shall be in compliance with the provisions of Article 3 (Management of Cooperatives) of the Act.**

As an initial matter, we the City should continue to rely on the Act to provide acceptable standards for evaluating ACHC. This belief is affirmed by certain documentation provided by ACHC in response to the City's requests.

Section 2(a) of the Articles of Incorporation of Arlandria/Chirilagua Housing Corporation ("Articles") provides that the purpose for ACHC is as follows:

[T]o sponsor, develop and otherwise provide housing accommodations and related community facilities on a cooperative basis, without pecuniary gain or profit, to the corporation's members, directors or officers or other private persons *and in compliance with the Virginia Real Estate Cooperative Act (Sections 55-424, et seq., Code of Virginia, 1950).*

ACHC is organized as a Virginia nonstock corporation formed for the purpose of providing housing on a cooperative basis. If ACHC's membership consists exclusively of all of the members, then ACHC complies with Section 55-458 of the Act. There is no indication from documentation

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Mildrilyn S. Davis  
November 24, 2009  
Page 3

we've received that ACHC is not in compliance with this provision and no additional documentation is necessary.

Section 55-460 of the Act contains a number of requirements which must be followed by the Board. Section 55-460 A. of the Act requires that the ACHC Board exercise "ordinary and reasonable care" in the performance of their duties.

Section 55-460 B. of the Act provides that the "executive board may not act on behalf of the association to amend the declaration..." When asked for a copy of the current Declaration for ACHC, ACHC legal counsel responded that "We are not aware nor have been presented with a Declaration for the ACHC property." However, "Declaration" is defined by Section 55-426 of the Act to mean "any instruments, however denominated, that create a cooperative and any amendment to those instruments." For ACHC, the Articles and Land Use Restriction Agreement by and between SAD Realty Corp. and Center for Cooperative Housing ("Multifamily Properties"), recorded in Deed Book 1430 at Page 1755 among the Land Records of the City of Alexandria, Virginia ("Land Use Agreement") may be considered the Declaration for ACHC under the definition from Section 55-426.

Section 55-460 C. of the Act provides that:

within 30 days after adoption of any proposed budget for the cooperative, the executive board shall provide a summary of the budget to all the proprietary lessees<sup>1</sup> and shall set a date for a meeting of the proprietary lessees to consider ratification of the budget.

This provision of the Act is mirrored substantially by Section 11.5 of the By-Laws. Information provided by ACHC indicates that ACHC abides by these provisions in the Act and By-Laws.<sup>2</sup>

Sections 55-461 and 55-462 of the Act do not apply to our review and were not considered for our recommendation. Section 55-463 of the Act sets forth specific provisions which the By-Laws must provide for. The By-Laws appear to meet the requirements of Section 55-463 of the Act.

Section 55-464 A. of the Act provides that except to the extent otherwise provided by the declaration, ACHC is responsible for maintenance, repair and replacement of the common elements, and each member is responsible for the maintenance, repair and replacement of his unit. We are concerned about the fluctuation in maintenance, repair and replacement requirements for components of ACHC. In none of the documentation we were provided were the boundaries between unit and common element expressly set forth. In addition, nowhere in the documentation

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<sup>1</sup> "Proprietary Lessee" is defined in Section 55-426 of the Act as "a person who owns a cooperative interest, other than as security for an obligation[.]" In other words, a proprietary lessee is a "member" (in general parlance) of the cooperative.

<sup>2</sup> See Notice of 2008 Budget Ratification meeting date January 4, 2008.

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was the maintenance and repair responsibility explained in detail. Also, as we discussed above, we are very concerned about the Board's unilateral amendment of operating agreements to change the maintenance and repair responsibility. We suggest the City require an explanation of the Board's authority to make such unilateral changes.

*Recommendation: Request a description by the Board (or legal counsel) of the Board's authority to make unilateral changes to the maintenance and repair responsibility of ACHC and members.*

In our opinion, a cooperative that is operating successfully must have a clear, static delineation of the maintenance and repair responsibilities between members and the association. We cannot recommend that the City consider ACHC to be operating successfully unless such a clear delineation is established, in writing, in a document which requires member approval to amend.

We are concerned about the Board's unilateral amendment of the ACHC Occupancy Agreements ("Occupancy Agreements"), particularly if such changes were necessary because of budget deficits. Among other things, the Occupancy Agreements set forth the maintenance and repair responsibilities relative to the members and ACHC. Nowhere else in the governing documents are the maintenance and repair responsibilities explained.

By letter to John Catlett, Director of the Office and Building and Fire Code Administration for the City dated April 3, 2009 from Mohammad Khan, Property Manager for ACHC, the City became aware of a unilateral transfer of the responsibility for the repair and replacement of appliances, air conditioning/heat, walls, floors, windows, kitchen and bathroom cabinets and electrical wiring to the lessee of each Unit. The ability to unilaterally change the maintenance and repair responsibility gives us great concern and appears to violate the spirit, if not the direct wording, of Section 55-460 B. of the Act and are outside of the scope of the Board's authority under Section 5.2 of the First Amended and Restated By-Laws of the Arlandria Chirilagua Housing Corporation, Inc. ("By-Laws").

*Recommendation: The boundaries between units and common elements should be expressly defined in some form of document amendable only with the consent of a large percentage of members (we recommend two-thirds of all members). This document should also expressly set out the maintenance, repair and replacement obligations of the members and ACHC and should correlate to the unit boundaries.*

Section 55-464.1 of the Act provides requires that ACHC post notification of any pesticide application in or upon the common elements of the cooperative. According to representation made by ACHC counsel by letter dated September 8, 2009, ACHC posts such notice.

Section 55-465 of the Act contains specific notice requirements prior to holding an annual or special meeting and requires that "not less than ten nor more than sixty days in advance of any meeting, the secretary...shall cause notice to be hand delivered" or sent by U.S. mail to the unit or

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other address designated by the owner for notice. In addition to the notices required by Section 55-465, members should be given notice of meetings of the executive board.

The Virginia Condominium Act (which does not apply to ACHC) includes a provision which should be followed by successfully operating cooperatives. Notice of a meeting of the Board for ACHC should be published where it is reasonably calculated to be available to a majority of the members. Members have the right to be made aware of, and attend, meetings of the Board.

*Recommendation: In an effort to encourage ACHC to comply with "best practices" for a cooperative, the City should require that notices of all meetings of the Board be published where it is reasonably calculated to be available to a majority of the members, and that members be given an opportunity to speak in an open forum at meetings of the Board.*

Section 55-466 of the Act provides the quorum requirements for meetings of ACHC (20% unless otherwise specified by the By-Laws) and the ACHC Board (majority of directors). Section 4.6 of the By-Laws increase to the quorum requirement to 30% of the members of record and Section 5.13 of the By-Laws mirrors the requirements of the Act for meetings of the Board. As long as the quorum requirements of Section 55-466 of the Act and Section 4.6 and 5.13 of the By-Laws are followed by ACHC, this suggests that a sufficient numbers of members and Board members are participating in the process governing ACHC.

The provisions are Section 55-468 of the Act relating to tort and contract liability of ACHC and its members were reviewed, but not considered in our recommendation.

Section 55-469 of the Act contains significant restriction for the conveyance or encumbrance of all or part of a cooperative. This provision, when combined with the pre-existing loan documents, contain significant restrictions for conveying or encumbering portions of the cooperative. The transfer or assignment of membership in the cooperative is governed by Sections 2.6 and 2.7 of the By-Laws. These provisions, while significant in the operation and future funding of potential capital improvement projects at ACHC, have little bearing on the day-to-day operation of ACHC.

Section 55-470 of the Act contains several significant requirements for insurance required for all cooperatives. By letter dated September 8, 2009, ACHC legal counsel provides that the insurance provided by ACHC conforms to the requirements of the loan documents and By-Laws. However, by letter dated November 4, 2009, Kathleen Henry (a member of the ACHC Board) contends that ACHC is not compliant with the provisions of Section 55-470 of the Act.

We were provided with copies of several insurance policies as part of the City's request for documentation, but were never provided with the specific information requested. The purchase and maintenance of insurance by ACHC is one of the components for the successful operation of the cooperative. If the City is to find that ACHC is operating successfully, it must first find that ACHC,

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and its members, have sufficient insurance coverage. Prior to making our determination for this provision, the City should make an additional request for a statement by ACHC's insurance carrier indicating either:

- A written statement by ACHC's insurance provider showing the specific provisions where ACHC's current insurance coverage complies or varies from the requirements of Section 55-470 of the Act; and,
- A narrative summary (by the insurance provider) of any insurance coverage provided for the benefit of the executive board and any additional coverage (for the Board or ACHC) recommended by the insurance carrier.

Only after review of these written statements and summaries of additional recommended coverage, will we be in position to make recommendations about ACHC's insurance coverage.

Further, Section 1.5.4 and 8 of the Occupancy Agreement provide that "members property is not insured by the Cooperative." This is not in compliance with the Act, as portions of the Units are required to be insured by Section 55-470 of the Act.

*Recommendation: ACHC should provide a written statement from its insurance carrier about: (1) whether ACHC complies with the provisions of Section 55-470 of the Act; or (2) the provisions of Section 55-470 which ACHC does not comply with; and, (3) a statement that ACHC is adequately insured and any additional coverage recommended by the insurance carrier.*

Section 55-471 B. of the Act requires that the common expenses of ACHC must be assessed as set forth in the declaration. With no recorded declaration, ACHC relies on provisions of the By-Laws (Section 3.1) and the Occupancy Agreements to levy assessments against owners. Similar to the missing allocation of maintenance responsibilities, there is no allocation set forth in a recorded document, of the obligation of the occupant for each Unit. ACHC provided a statement setting forth monthly common expenses, but it is unclear where these calculations originate. This type of allocation is typically set forth in a recorded declaration.

*Recommendation: The method for allocating common expenses to members should be set forth in a document similar to the delineation of maintenance and repair responsibility. This allocation may be included in the same document as the maintenance, repair and replacement obligation discussed above.*

Section 55-471.1 of the Act requires a cooperative to conduct a reserve study at least every five years. We will discuss this provision, and the capital components of ACHC under Standard 7. below.

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The manner by which ACHC deals with non-payment of assessments is significant in determining whether ACHC is operating successfully. ACHC must pursue similarly situated delinquent members in a uniform fashion. The termination of eighteen memberships appears high and ACHC's procedure for termination of memberships should be reviewed further, particularly in light of the low-income status of a number of ACHC's members. ACHC has the authority to collect unpaid assessments through the recordation of a lien, but it appears from the narrative that it is not ACHC's practice to record such liens.

While we are relieved to know that the due process procedures of ACHC have been upheld by the City of Alexandria General District Court, we recommend that the procedure for termination, if it has not already be done, should be included in a written resolution by the Board. Reducing the termination policy to a written resolution provides specific parameters by which ACHC may terminate membership and provides an additional layer of protection for ACHC members. If a resolution exists, we wish to review it.

*Recommendation: The City should require the ACHC to adopt a written resolution setting forth the procedure and parameters for terminating membership.*

Section 55-474 of the Act requires that all financial and other records be made reasonably available for examination by any member and his authorized agents. This provision of the Act is mirrored by Section 11.3 of the By-Laws. This provision of the Act and the By-Laws is, for the purposes of this review, as important as any other requirement of the Act or By-Laws. It is imperative that members have full access to books and records in order for ACHC to be considered to be operating successfully.

While it is encouraging that these provisions exist, it is important that these provisions are respected. We have not been provided, by narrative or otherwise, that ACHC is not in compliance with this provision and assume, therefore, that the provisions of the By-Laws have been respected. With that said, we suggest that the Board, if it has not already done so, adopt both a records retention resolution and a resolution governing the inspection of books and records by members. These resolutions assist the Board in allowing access to books and records in a uniform and consistent fashion.

*Recommendation: The City should require the ACHC to adopt written resolutions setting forth the procedure and parameters for retaining records of the cooperative and governing the inspection of books and records by members.*

In addition to those provisions of the Act discussed above, we also have recommendations related to the managing agent for ACHC. Effective January 1, 2009, entities offering management services to community associations (including cooperatives) must obtain and maintain a license with the Common Interest Community Board. The Common Interest Community Board issued *provisional licenses* to community association management firms engaged in the business that

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make application prior to January 1, 2009; the provisional licenses are effective until 2011. According to our research, American Apartment Management Company, Inc. ("AAMCI") is not licensed to provide management services to community associations in Virginia.

While AAMCI may not be required to obtain a license from the Common Interest Community Board (because ACHC is technically exempt from the Act), we believe some of the requirements for licensure would protect the interests of ACHC and may be considered a factor in determining whether ACHC is operating successfully.

The new law makes it clear that the management firm owes a fiduciary duty to the association to which the management firm is providing services. As a condition of licensure, the management firm must be in good standing and have established a code of conduct to avoid conflicts of interest as well as internal accounting controls to prevent the risk of fraud. The management firm must also certify to the Board that services are provided to community associations under a written form of contract. Also, the management firm must undergo an annual independent review or audit of the company's books and records.

Management firms are required to carry blanket fidelity bond or employee dishonesty insurance that protects the management firm and communities managed by the management firm from loss. The insurance coverage must be in an amount equal to the lesser of \$2,000,000.00, or the highest aggregate amount of both the operating and reserve balances of all associations under the control of the management firm, but in no event, not less than \$10,000.00.

While we have no reason to question the competency of AAMCI to manage ACHC, the licensure requirements discussed above may protect ACHC from potential financial dishonesty by ACHC. At a minimum, we recommend AAMCI be required to carry the blanket fidelity bond or employee dishonesty insurance required for licensure.

*Recommendation: The City should require AAMCI to carry the blanket fidelity bond or employee dishonesty insurance required for licensure by the Common Interest Community Board.*

To summarize our recommendation under Standard 1, that the governance and management of ACHC shall be in compliance with the provision of Article 3 of the Act, at this time we cannot recommend that the City determines that ACHC is "operating successfully" as a cooperative.

2. **The documentation provided to a purchaser before execution of any contract for sale of a cooperative interest shall comply with Section 55-484 of the Act.**

Section 55-484 of the Act requires that a member furnishes to a purchaser a copy of the declaration, the bylaws, the rules and regulations of the association and a certificate containing a number of statements and disclosure. Resale certificates are an important and effective method of

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providing a potential purchaser with full disclosure of the rights and obligations of members and the association prior to the purchase of the property. According to ACHC legal counsel, ACHC has not, and does not, provide resale certificates to potential purchasers.

Prior to approving the forgiveness of the Loan, the City should impose a requirement that ACHC provide resale certificates to all potential purchasers. Without a resale certificate, a potential owner has no vehicle for determining the rights and obligations he or she will accept by purchase of a share in ACHC. Similar to access to books and records, the requirement for the provision of a resale certificate is as important to the successful operation of a cooperative as any other provision in the Act or By-Laws.

*Recommendation: Prior to the forgiveness of the Loan, the City should require that all potential purchasers of interests in the cooperative be provided with a resale certificate.*

- 3. The governance and management of ACHC shall be in compliance with the provisions of the Declaration (the instrument(s) that created the cooperative and all other governing documents of the Association).**

According to statements made by ACHC legal counsel, the governance and management of ACHC is in compliance with provisions of the By-Laws. However, there does not appear to be a recorded declaration for this project. Without a recorded declaration, ACHC should be reviewed on its compliance with the existing governing documents (e.g., the Articles and Land Use Agreement).

While we cannot attest to any historical practices of ACHC or the City about this provision of the Articles, the plain language of this provision of the Articles contemplates a cooperative which acts in compliance with the Act.

As discussed above, without a recorded declaration, there are several important provisions related to the operation and governance which are not sufficiently established. At a minimum, we recommend the following information be memorialized in a document binding on all members:

1. A legally sufficient description of the real estate included in the cooperative;
2. A statement of the number of units in the cooperative;
3. A description, which may be by plats or plans, of each unit in the cooperative, including the unit's identifying number, its size or number of rooms, and its location within a building if it is within a building containing more than one unit;
4. A description of any limited common elements, other than those specified in paragraphs 2 and 4 of Section 55-439 of the Act;

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5. An allocation to each cooperative interest in the manner described in Section 55-444 of the Act;
6. Any restrictions on (i) use and occupancy of the units; (ii) alienation of the cooperative interests; and (iii) the amount for which a cooperative interest may be sold or the amount that may be received by a proprietary lessee upon sale, condemnation or casualty loss to the unit or the cooperative or termination of the cooperative;

*Recommendation: The City should pursue additional information related to the lack of a recorded declaration and the existence of remaining copies of the additional offering statement.*

**4. The ratio of delinquent assessments is within the accepted industry range.**

Community Management Corporation, in its review of the financial records of ACHC will assist our office in determining the delinquency rate for ACHC. In our experience, the accepted industry rate for delinquent assessments is between 3-5%.

**5. The government and management of ACHC are open and transparent to the members of ACHC and allows for participation of all members in the conduct of the meetings of the Board and all committees.**

Transparency into the operation and governance of ACHC is important in protecting the substantive and procedural due process of ACHC's members. Among other things, the following minimum criteria should be met:

- Members should have access to the books and records of ACHC (as discussed above related to Section 55-474 of the Act and Section 11.3 of the By-Laws);
- Members should be apprised, through adequate notice, of all meetings of ACHC, its Board and committees and members should be able to attend and participate (through an open forum) in each meeting (as discussed above related to Section 55-465 of the Act);
- Members should be able to review and ratify the budget for ACHC.

According to the documentation presented by ACHC, the above criteria are being met except that members are not receiving notice of the meetings of the Board. As discussed above, notice of a meeting of the Board should be published where it is reasonably calculated to be available to a majority of the members.

**6. Both procedural and substantive due process is afforded to all members of ACHC in all actions that affect their interests.**

In addition to those criteria set forth under Standard 5 above, the due process rights

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(generally, the requirement of notice and an opportunity to be heard) should be afforded for all actions which have significant impact on the membership of a member within ACHC. As discussed above, we recommend that the procedure for termination, if it has not already been done, should be included in a written resolution by the Board. Reducing the termination policy to a written resolution provides specific parameters by which ACHC may terminate membership and provides an additional layer of protection for ACHC members. If a resolution exists, we would like the opportunity to review it.

- 7. ACHC Property is in a clean and sanitary condition, landscaping is in good order and a qualified engineer has conducted a reserve study on which ACHC has based its budget and reserve contributions.**

At this time, we have not completed a site visit or done an analysis of the budget's reserve contributions. Both of these items should be reviewed by Community Management Corporation, Inc. ("CMC") as part of their review. Once CMC has conducted a site visit and reviewed the reserve study information and budget, we will be in a position to supply additional recommendations.

*Recommendation: Upon CMC's site inspection and review of the budget and financial statements of ACHC, the City should determine whether ACHC is operating successfully.*

**This letter is a privileged communication between attorney and client. It should be kept separate and apart from the books and records of the Association normally made available for public view.**

Yours truly,



David S. Mercer


DSM/jrm

cc: Helen S. Mellvaine, Deputy Director, Office of Housing  
Christina Z. Brown, Assistant City Attorney  
Melodie A. Seau, Division Chief, Landlord-Tenant Relations  
Lucia Anna Trigiani, Attorney at Law  
Jeremy R. Moss, Esquire

#32523

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26  
12-8-09

 Mildrilyn Davis/Alex  
12/07/2009 02:16 PM

To Jackie Henderson/Alex@Alex  
cc Michele Evans/Alex@Alex, Mark Jinks/Alex@Alex  
bcc  
Subject Fw: ACHC - Forgiveness of the Promissory Note - New Board of Directors

Please forward the attached to Council in connection with tomorrow's docket item #26 re Arlandria Chirilagua Housing Corporation. Thanks.

Mildrilyn Davis, Director  
Alexandria Office of Housing  
703-746-4990

----- Forwarded by Mildrilyn Davis/Alex on 12/07/2009 02:11 PM -----



"O'Connell, Edward J."  
<EOConnell@wtplaw.com>  
12/07/2009 08:12 AM

To "Mildrilyn.Davis@alexandriava.gov"  
<Mildrilyn.Davis@alexandriava.gov>  
cc "Cotto, Olga" <OCotto@wtplaw.com>, "rfleming@aamci.com"  
<rfleming@aamci.com>  
Subject ACHC - Forgiveness of the Promissory Note - New Board of Directors

Good Morning Mildrilyn:

I met with the new Board of Directors at ACHC on Thursday night last week. As you know, it is a newly elected Board. All but one of the newly elected directors are new to the Board. I provided a brief overview to the Board of the current discussions about City forgiving the promissory note. The Board asked me to relate to you and have you express to the City Council on December 8, 2009 that it is the intention of this Board to work with the City to find a resolution of any concerns that City may have as to whether ACHC is successfully operating as a cooperative. The ACHC Board of Directors respectfully requests that the City Council defer action on the matter until April of 2010 in order to give the Board the opportunity to come up to speed on matter and respond to the issues raised in the most recent letter from David Mercer to you about issues and concerns.

Please let me know if you need anything further from me or ACHC regarding this matter prior to the City Council meeting on December 8, 2009.

Best Regards

Ed

Edward J. O'Connell, III  
Whiteford, Taylor & Preston, LLP  
3190 Fairview Park Drive, Suite 300  
Falls Church, Virginia 22042-4510  
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**Circular 230 Disclosure:**

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**Mildrilyn Davis/Alex**  
12/07/2009 02:58 PM

To Jackie Henderson/Alex@Alex  
cc  
bcc  
Subject Fw: My letter to ACHC Board PLEASE SEND TO COUNCIL

I just heard from Mark; he wants this letter to go to Council as well. Please send along w/the e-mail from Ed O'Connell that I sent separately.

Mildrilyn Davis, Director  
Alexandria Office of Housing  
703-746-4990

----- Forwarded by Mildrilyn Davis/Alex on 12/07/2009 02:56 PM -----



**Mildrilyn Davis/Alex**  
12/07/2009 02:29 PM

To Michele Evans/Alex, Mark Jinks/Alex  
cc Jackie Henderson/Alex@Alex  
Subject My letter to ACHC Board

I've forwarded Jackie the e-mail from ACHC Attorney Ed O'Connell to send to Council. Pls. let me know if my attached letter to the new Board should be sent as well. I think the Ed O'Connell e-mail is sufficient, but can send this as well if you think it would be helpful.



New ACHC Board Members Letter.pdf

Mildrilyn Davis, Director  
Alexandria Office of Housing  
703-746-4990



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December 4, 2009

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3200 Commonwealth Avenue, #305  
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Hector Zelada  
3913 A Bruce Street, #105  
Alexandria, VA 22305

Dear Board Members:

Congratulations on your election as the new Board of Directors for the Arlandria Chirilagua Housing Corporation, (ACHC). As you may know, the Alexandria Office of Housing has been working with the previous Board and ACHC's attorney Edward O' Connell, to determine whether ACHC is successfully operating as a cooperative, for the purpose of making a recommendation to City Council as to whether the City should forgive \$232,000 of ACHC's \$537,000 City loan. I am attaching for your review a copy of the docket item that will be considered by City Council on Tuesday, December 8 regarding this matter.

In the attached memorandum, which outlines our initial recommendations, staff is recommending that we be given additional time to revisit this matter with you, the new Board. I would like to invite you to meet with City staff and representatives from MercerTrigiani, the firm that is assisting us in our review, at your earliest convenience. When you are ready to schedule a meeting, please contact me at 703-746-4990, or by e-mail to [mildrilyn.davis@alexandriava.gov](mailto:mildrilyn.davis@alexandriava.gov). I look forward to hearing from you soon.

Sincerely,

  
Mildrilyn Stephens Davis  
Director

Enclosure