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A. City Vista v. Florida Housing Finance Corporation, FHFC Case No. 2014-038BP (Intervenors Wisdom Village Crossing, LP, and HTG Broward 3, LLC)

1. Background

- a) This case regards “RFA 2013-003 - For Affordable Housing Developments Located in Broward, Miami-Dade, and Palm Beach Counties,” (the “RFA”) No material facts were in dispute, so the cases were heard by Florida Housing’s Hearing Officer. City Vista and Intervenors applied for funding through the RFA seeking allocations of Low Income Housing Tax Credits. Petitioners were notified of the Board’s intended decision on or about December 13, 2013. Petitioners timely filed notice of intent to protest and formal written protests as required by section 120.57(3), Florida Statutes, challenging the Corporation’s scoring and ranking of Applicants for funding under RFA 2013-003. Intervenors properly and timely filed for intervention to participate in these cases.
- b) The central issue here is whether Respondent Florida Housing Finance Corporation’s (“Florida Housing”) decisions to award or deny funding under Request for Applications (“RFA”) 2013-003, as proposed on December 13, 2013, are contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. More specifically, whether Florida Housing’s scoring and ranking decision to reject City Vista’s application for failure to document site control was within the bounds described above.
- c) Florida Housing’s position on the site control issue was that the plain language of the instructions in RFA 2013-003 clearly require that for a purchase contract to be acceptable,

“[T]he buyer MUST be the Applicant unless an assignment of the eligible contract which assigns all of the buyer's rights, title and interests in the eligible contract to the Applicant, is provided. Petitioner’s application failed to meet this mandatory requirement.”
(Uppercase in original)
- d) City Vista was not the buyer on the contract. City Vista argued that its parent, Landmark, was its agent for purposes of the contract, but provided no documentation of agency.

2. Present Situation

- a) A hearing was conducted on May 12, 2014, before Florida Housing’s appointed Hearing Officer, Christopher D. McGuire. The parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order on May 30, 2014. The Recommended Order affirmed Florida Housing’s scoring and ranking decision as to the site control issue noted above. A copy of the Recommended Order is attached as [Exhibit A](#).

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- b) No exceptions or objections to the Recommended Order have been filed.

3. Recommendation

Staff recommends that the Board adopt the Findings of Fact of the Recommended Order, the Conclusions of Law of the Recommended Order, and the Recommendation of the Recommended Order, and issue a Final Order in accord with such decisions.

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B. Pinnacle Rio, LLC, *et al*, v. Florida Housing Finance Corporation, DOAH Case No. 14-1398BID; FHFC Case No. 2014-051BP (Intervenor Allapattah Trace Apartments, Ltd.);

Pinnacle Rio, LLC, *et al*, v. Florida Housing Finance Corporation, DOAH Case No. 14-1399BID; FHFC Case No.2014-052BP (Intervenors Allapattah Trace Apartments, Ltd. and Town Center Phase One, LLC);

Town Center Phase One, LLC, v. Florida Housing Finance Corporation, DOAH Case No. 14-1400BID; FHFC Case No.2014-053BP (Intervenor Allapattah Trace Apartments, Ltd.); and

APC Forty-Four, Ltd., v. Florida Housing Finance Corporation, DOAH Case No. 14-1428BID; FHFC Case No. 2014-057BP (Intervenor Allapattah Trace Apartments, Ltd.)

1. Background

- a) These cases are in regard to the protests filed against the funding awards for Miami-Dade projects under “RFA 2013-003 - For Affordable Housing Developments Located in Broward, Miami-Dade, and Palm Beach Counties,” (the “RFA”). All parties applied for funding through the RFA seeking allocations of Low Income Housing Tax Credits. Petitioners were notified of the Board’s intended decision on or about December 13, 2013. Petitioners timely filed notice of intent to protest and formal written protests as required by section 120.57(3), Florida Statutes, challenging Florida Housing’s scoring and ranking of Applicants for funding under RFA 2013-001. Intervenors properly and timely filed for intervention to participate in these cases. Florida Housing found that these cases involved disputes of material fact, and forwarded them to the Division of Administrative Hearings (DOAH) for consolidation and formal hearing before an Administrative Law Judge (ALJ).
- b) The central issue common to all the consolidated cases is whether Respondent Florida Housing Finance Corporation’s (“Florida Housing”) decisions to award or deny funding under Request for Applications (“RFA”) 2013-003, as proposed on January 31, 2014, are contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. More specifically, the Petitioners respectively alleged that:
 - (1) Application #2014-239C (Wagner Creek) should have been deemed ineligible for failing to properly disclose the Principals of the Applicant and Developer.
 - (2) Application #2014-184C (Allapattah Trace) should have been found ineligible for funding for an invalid Application Certification, in that the Applicant could not show sewer infrastructure availability and site plan approval as of Application Deadline.
 - (3) Application #2014-267C (Town Center Phase One) should have been deemed ineligible for failing to demonstrate site control, in that the contract for sale and purchase of the Development site was incorrectly signed.

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- (4) Application #2014-213C (Pinnacle Rio) should have been deemed ineligible for a financial shortfall resulting from an invalid equity commitment letter that was missing a page.
 - (5) Application #2014-340C (APC Four Forty Four) should have been deemed eligible, in that Florida Housing erred in finding that the Development team lacked the requisite experience, in that the Principal on which they relied for experience was not a Principal on one of the prior Developments cited for experience.
- c) Florida Housing's position on each issue was as follows, respectively:
- (1) Florida Housing correctly scored Application #2014-239C (Wagner Creek), in that the Applicant provided all the information required by the RFA.
 - (2) Florida Housing correctly scored Application #2014-184C (Allapattah Trace), in that the Applicant was not required to submit a sewer availability form or letter until Credit Underwriting, that evaluation of such documentation was not part of the scoring process, and that the existence of alternative means of providing sewer service (a private pump station) is an acceptable alternative to prove and provide sewer availability during Credit Underwriting.
 - (3) Florida Housing correctly scored Application #2014-267C (Town Center Phase One), in that the typographical errors present in the signature page of the contract were properly waived as a Minor Irregularity.
 - (4) Florida Housing correctly scored Application #2014-213C (Pinnacle Rio) in that the missing page of the equity commitment letter was properly waived as a minor irregularity, because all of the information required by the RFA was present in the remaining pages.
 - (5) Florida Housing correctly scored Application #2014-239C (APC Four Forty Four), in that based on Florida Housing's internal documents, the proposed Developer had never been a Principal on one of the Developments cited for experience, as was required by the terms of the RFA.

2. Present Situation

- a) A hearing was conducted on April 22, 29, and 30, 2014, before Administrative Law Judge F. Scott Boyd at the Division of Administrative Hearings in Tallahassee, Florida. The parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on June 4, 2014. The Recommended Order affirmed Florida Housing's scoring and ranking decisions as to issues 1 through 4 above, but recommended that Florida Housing erred in regards to issue 5 above by deeming Application #2014-239C (APC Four Forty Four) ineligible due to lack of Developer experience, finding that the Principal in question was

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in fact a Principal on all three Developments listed for experience. A copy of the Recommended Order is attached as [Exhibit B](#).

- b) Exceptions to this Recommended Order have been filed by Petitioner Town Center Phase One, LLC, by Intervenor Allapattah Trace Apartments, Ltd., and by Respondent Florida Housing Finance Corporation. Copies of these Exceptions are attached hereto as Exhibits [C](#), [D](#) and [E](#), respectively. By agreement of the parties, any Responses to these Exceptions are due to be filed on Wednesday, June 11, 2014, and will be forwarded to the Board upon receipt.

3. **Recommendation**

Staff recommends that the Board adopt the Findings of Fact of the Recommended Order, the Conclusions of Law of the Recommended Order, as modified in response to the Exceptions, and the Recommendation of the Recommended Order, and issue a Final Order in accord with such decisions.

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- C. **Heritage at Pompano Housing Partners, Ltd., v. Florida Housing Finance Corporation, DOAH Case No. 14-1361BID; FHFC Case No. 2014-050BP (Intervenors Wisdom Village Crossing, LP, and Oakland Preserve, LLC); and**

HTG Broward 3, LLC, *et al*, v. Florida Housing Finance Corporation, DOAH Case No. 14-1362BID; FHFC Case No. 2014-055BP (Intervenors Wisdom Village Crossing, LP, and Oakland Preserve, LLC)

1. **Background**

- a) These cases regarding the protests filed against the Broward County funding awards for Miami-Dade projects under “RFA 2013-003 - For Affordable Housing Developments Located in Broward, Miami-Dade, and Palm Beach Counties,” (the “RFA”) were consolidated for hearing. A formal hearing was held before an Administrative Law Judge at the Division of Administrative Hearings. All parties applied for funding through the RFA seeking allocations of Low Income Housing Tax Credits for projects in Broward County.
- b) Parties were notified of the Board’s intended decision on or about January 31, 2014. Petitioners timely filed notice of intent to protest and formal written protests as required by section 120.57(3), Florida Statutes, challenging the Corporation’s scoring and ranking of Applicants for funding under RFA 2013-003, as to the preliminary funding awards to Wisdom Village Crossing, LP (“Wisdom Village”), and Oakland Preserve, LLC (“Oakland”). Intervenors properly and timely filed for intervention to participate in these cases.
- c) The central issue common to all the consolidated cases is whether Respondent Florida Housing Finance Corporation’s (“Florida Housing”) decisions to award or deny funding under Request for Applications (“RFA”) 2013-003, as proposed on January 31, 2014, are contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. More specifically, whether Florida Housing’s scoring and ranking decisions as to the following were within the bounds described above as to:
 - (1) Heritage at Pompano Housing Partners, Ltd (“Heritage”) and HTG Broward 3, LLC (“HTG”) challenged Florida Housing’s decisions to accept, for purposes of proximity scoring:
 - (1) a Medical Facility provided by Oakland; and
 - (2) a Public School entrance provided by Wisdom Village;
 - (2) Additionally, HTG challenged Florida Housing’s decisions to accept:
 - (3) Site control documents provided by Wisdom Village;
 - (4) Evidence of financing terms provided by Wisdom Village;
 - (5) Wisdom Village’s Surveyor Certification Form re format;
 - (6) Heritage’s Surveyor Certification Form re location of DLP;
 - (7) Heritage’s RFA certification signed as “Manager” of limited partnership;

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- (8) The debt financing proposal provided by Heritage;
- (9) A public bus transfer stop provided by Heritage for proximity scoring purposes.
- (3) Florida Housing's position on each issue was as follows:
 - (a) The medical office of Dr. Durand was a "Medical Facility;"
 - (b) Wisdom Village's coordinates were not the main entrance of the school, but the point provided yielded the same proximity score;
 - (c) The site control documents established that all Seller's interest were being conveyed;
 - (d) The term "acknowledged" in context was "acceptance" of the proposal;
 - (e) The handwritten double digit format was acceptable;
 - (f) The Development Location Point was on the described development site;
 - (g) Signing as "Manager," of the limited partnership was a minor irregularity;
 - (h) Reference to "Heritage at Pompany," was a waivable typographical error; and
 - (i) The actual location of Heritage's public bus transfer stop made no difference in proximity score.

2. Present Situation

- a) A hearing was conducted on May 6 and 7, 2014, before Administrative Law Judge Elizabeth W. McArthur at the Division of Administrative Hearings in Tallahassee, Florida. The parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on June 10, 2014. The Recommended Order affirmed Florida Housing's scoring and ranking decisions as to each issue noted above. A copy of the Recommended Order is attached as [Exhibit F](#).
- b) All parties have waived the right to file exceptions.

3. Recommendation

Staff recommends that the Board adopt the Findings of Fact of the Recommended Order, the Conclusions of Law of the Recommended Order, and the Recommendation of the Recommended Order, and issue a Final Order in accord with such decisions.

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II. MULTIFAMILY PROGRAMS

A. Request for Applications (RFA) 2014-106 For PHA Revitalization Of Affordable Housing Developments

1. Background/Present Situation

- a) The RFA 2014-106 Sorting Order chart (provided as [Exhibit A](#)) lists the eligible and ineligible Applications. The eligible Applications (i.e., Applications that met all criteria to be eligible to be considered for funding) are listed in order from highest total score to lowest total score, with all funding selection criteria applied, as outlined in Section Five of the RFA.
- b) The Review Committee considered the following two (2) motions:
 - (1) A motion to adopt the scoring results, as set out on [Exhibit A](#); and
 - (2) A motion to tentatively select the Applications set out on [Exhibit B](#) for funding and invite the Applicants to enter credit underwriting.
- c) Both motions passed unanimously.
- d) As outlined in Subsection 67-48.0072(1), F.A.C., at the completion of all litigation and approval by the Board of all Recommended Orders with regard to this RFA, the Corporation shall offer all Applicants within the funding range an invitation to enter credit underwriting.

2. Recommendation

- a) Approve the Committee's recommendations that the Board adopt the scoring results of the four (4) Applications (set out on [Exhibit A](#)) and authorize the tentative selection of the two (2) Applications (set out on [Exhibit B](#)) for funding and invitation to enter credit underwriting.
- b) If no notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., staff will proceed to issue an invitation to enter credit underwriting to the Applications set out on [Exhibit A](#).
- c) If a notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., then at the completion of all litigation, staff will present all Recommended Orders for Board approval prior to issuing invitations to enter credit underwriting to those Applicants in the funding range.

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B. Request for Applications (RFA) 2014-107 for the Financing of Permanent Supportive Housing with a Priority to Assist Veterans with a Disabling Condition that Lack Permanent and Stable Housing

1. Background/Present Situation

- a) At its June 9, 2014 meeting, the Review Committee considered the following two (2) motions with regard to the Application received in response to RFA 2014-107:
 - (1) A motion to adopt the scoring results; and
 - (2) A motion to tentatively select the Application for funding and invite the Applicant to enter credit underwriting.
- b) Both motions passed unanimously.
- c) The RFA 2014-107 Review Committee Recommendations chart (provided as [Exhibit C](#)) reflects the eligibility of the Application received in response to this RFA, with all funding selection criteria applied as outlined in Section Four B of the RFA, as well as the Committee's recommendation for funding.

2. Recommendation

- a) Approve the Committee's recommendations that the Board adopt the scoring results of the Application and authorize the tentative selection of this Application for funding and invitation to enter credit underwriting (as set out on [Exhibit C](#)).
- b) An unallocated balance of \$890,000 remains. As provided in Section Four B of the RFA, any remaining funding will be distributed as approved by the Board.
- c) If no notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., staff will proceed to issue an invitation to enter credit underwriting to the Application set out on [Exhibit C](#).
- d) If a notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., then at the completion of all litigation, staff will present all Recommended Orders for Board approval prior to issuing invitations to enter credit underwriting to those Applicants in the funding range.

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C. Request for Applications to Finance Affordable Multifamily Housing Properties with SAIL to be used in Conjunction with Tax-Exempt Bond Financing

1. Background

- a) Florida Housing was appropriated \$57,660,000 in State Apartment Incentive Loan (SAIL) funds by the 2014 Legislature, with an estimated \$28,830,000 million to be used for family housing and an estimated \$10,378,800 for elderly housing in accordance with the provisions outlined in section 420.5087(3), Florida Statutes. Developments receiving an award from these funds must include not less than 5 percent and no more than 10 percent of its units designed, constructed, and targeted for persons with a disabling condition as defined in section 420.0004 (7), Florida Statutes. The remainder of the SAIL funding appropriated will be used to serve additional demographic goals in Requests for Applications (RFA) issued later this year.
- b) Florida Housing also has approximately \$36,000,000 in uncommitted SAIL Program Income to add to the overall \$57,660,000 appropriation of SAIL. Applying the same demographic splits to this program income results in roughly \$18,000,000 to add to the family portion and roughly \$7,200,000 to add to the elder portion of the SAIL funds.

2. Present Situation

- a) Florida Housing intends to make these SAIL funds for developments providing family and elderly housing available for allocation through the competitive RFA process – including a set-aside within this SAIL RFA that will make approximately \$7,000,000 available for an Elderly Transformative Preservation transaction.
- b) The overall RFA may include a portion of the SAIL gap funding to finance a minimum required percentage of the units set-aside for extremely low income households, and the SAIL funding being made available for proposed developments here is to be used in conjunction with Tax-Exempt Bond financing.
- c) The expected time line for this RFA is as follows:
 - Mid July – Publish a first draft of the RFA to the public for comment
 - Late July – Hold a workshop in Tallahassee to discuss the proposed RFA and solicit public comments
 - Early August - Publish a second draft of the RFA to the public for comment
 - Late August - Issue the RFA
 - Late September – Applications due to Florida Housing for scoring
 - October 30, 2014 – Request Board approval of the Review Committee’s recommendations for funding

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3. **Recommendation**

Authorize staff to proceed with the RFA competitive process that will offer the estimated \$39,208,800 in appropriated SAIL funds, plus the applicable SAIL program income funding (roughly \$25,200,000), to be used in conjunction with Tax-Exempt Bonds to finance affordable multifamily housing properties for both the family and elder demographic set-asides, and authorize the Executive Director to proceed in establishing a review committee to make recommendations to the Board.

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D. Request to Use State Apartment Incentive Loan Program Extremely Low Income Funding

1. Background

- a) Between November 2008 and April 2010, in the height of the financial crisis and economic recession, Florida Housing experienced eight claims/foreclosures in the Guarantee Program (Program) multifamily portfolio (see the Guarantee Program Informational Item for a list of those claims/foreclosures). In 2009, Fitch Ratings Service downgraded the Guarantee Fund's (Fund) insurer financial strength (IFS) rating from A+/Stable to A-/Negative. In June 2012, Fitch reaffirmed that A- rating but revised the outlook to "stable." In their report, Fitch stated they view "the SAIL ELI initiative as a positive action by management to assist properties during a period of economic and financial stress on the portfolio." Fitch further added, "The extent to which the combination of losses from claims and loan repayments will impact the GF's risk-to-capital ratio partially depends on the number of developments that refinance out of the portfolio." Developments that refinance out of the Program portfolio, terminate the mortgage guaranty and its associated financial risk to Florida Housing, yet the affordable units remain in Florida's affordable housing stock. However, in the event of a claim on the Guarantee Fund and subsequent foreclosure of a development, Florida not only loses the affordable housing units, such claims and further potential downgrade of the Fund's rating put future State Housing Trust Fund resources at risk.
- b) To mitigate against further claims/foreclosures in the Program portfolio, Florida Housing has attempted to (1) halt cannibalization of current Program guaranteed developments by keeping new units serving similar households from being built in close proximity to existing Program developments with low occupancy; (2) provide resources through the Subordinate Mortgage Initiative to aid struggling transactions in the Program's portfolio for a short term period; and, (3) provide Extremely Low Income (ELI) funding preference to developments in the Program portfolio, to "buy down" the debt on units currently targeted to families earning 60% Area Median Income (AMI) in exchange for units set-aside for ELI households (generally meaning households earning 30% to 35% AMI and below). To date, Florida Housing has used SAIL ELI to pay off part of the Program-guaranteed mortgage in return for renting a specified number of units to ELI households for a 15-year period, thus increasing occupancies at these properties while reducing Program risk and facilitating refinancings out of the Program:

<u>Year</u>	<u># At-risk properties funded</u>	<u>ELI units</u>	<u>Risk reduction</u>
2010	18	673	\$50,475,000*
2011	16	554	\$41,625,000
2012	9	362	Up to \$20,000,000

*Includes \$28.5 million in previously appropriated doc stamps.

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- c) Florida Housing has many units in its portfolio, including the Program portfolio, that are targeted to households earning up to 60% of AMI that, in many of the softer rental markets throughout the state, are currently vacant. Each year, Florida Housing carries out an evaluation of six months of physical occupancy data for Florida Housing's entire portfolio. This analysis, along with more detailed information specific to the Guarantee Program properties and data on new affordable rental units under construction, allows Florida Housing to target financing to areas of the state where housing is most needed. Florida Housing is just beginning this work for the fall 2014 Request for Applications process. Early indications are that overall, physical occupancy is improving. The statewide rental needs study, however, indicates a great need for units targeted to households earning extremely low incomes.

2. Present Situation

- a) In May, 2014, Fitch upgraded the Funds' IFS rating to A+; outlook remains stable. In their report, Fitch acknowledged the low risk-to-capital ratio (due primarily to the volume of refinancing activity and the associated ceding of portfolio risk) and repayment of the Citibank loan, but also noted that a smaller portfolio coupled with poor performance of existing properties could result in an adverse concentration of risk, putting negative pressure on the rating. Specifically, Fitch commented

“Following further decreases in the size of the portfolio, in the future, Fitch may analyze the program on a project-by-project basis to reflect the risk inherent in a small portfolio, including any adverse selection of remaining loans in the portfolio...”

- b) Florida Housing has approximately \$8.7 million of uncommitted SAIL [ELI] funds and could be used to relieve ratings pressure with respect to existing underperforming Guarantee Program developments.

3. Recommendation

Authorize staff to award the SAIL [ELI] funding (approximately \$8.7 million) through a Request for Applications process to existing Florida Housing Guarantee Program developments, with closing on the SAIL ELI funding to occur simultaneously to their refinancing out of the Guarantee Program portfolio effectively terminating the mortgage guaranty issued by the Guarantee Program and its associated financial risk to FHFC.