

LEGAL

Supplement

I. LEGAL

A. **Flagship Manor, LLC v. Florida Housing Finance Corporation, FHFC Case No. 2015-009BP; (Intervenors: Spinal Cord Living Assistance Development, Inc.)**

1. **Background**

- a) This case regards RFA 2015-101: SAIL Financing for Smaller Permanent Supportive Housing Developments for Persons with Special Needs (the “RFA”). Flagship Manor, LLC (“Petitioner”) and Intervenor Spinal Cord Living Assistance Development, Inc. (“SCLAD”) applied for funding through the RFA seeking awards of State Apartment Incentive Loan (SAIL) program funds. SCLAD was selected for funding; Petitioner’s Application was deemed ineligible for failure to meet site control requirements.
- b) Petitioner timely filed a notice of intent to protest and formal written protest challenging the Corporation’s scoring and ranking of Applicants for funding under the RFA. SCLAD properly and timely filed for intervention to participate in the case. The central issue was whether Respondent Florida Housing Finance Corporation’s (“Florida Housing”) scoring and ranking decision to reject Petitioner’s application for failure to document site control was arbitrary and capricious.
- c) A hearing was conducted on May 22, 2015, before Hearing Officer, Junious D. Brown III. The Hearing Officer issued a Recommended Order on June 15, 2015 affirming Florida Housing’s scoring and ranking decision. Petitioner filed exceptions to the Recommended Order and Florida Housing filed a response to those exceptions. On June 19, 2015, the Board, after a review of the record and the arguments presented by the Parties, issued a Final Order affirming Florida Housing’s scoring of Petitioner’s Application.

2. **Present Situation**

- a) On July 16, 2015, Petitioner filed a Notice of Administrative Appeal with the First District Court of Appeal challenging the Final Order. On July 21, 2015, Petitioner filed Petitioner/Appellant’s Motion for Stay of Proceedings with Florida Housing seeking to stay agency action on the Final Order. A copy of the motion is attached as [Exhibit A](#). Florida Housing filed a Response to Petitioner/Appellant’s Motion for Stay of Proceedings on July 31, 2015. A copy of which is attached as [Exhibit B](#). Also on July 31, 2015, Petitioner filed Petitioner/Appellant’s Amended Motion for Stay of Proceedings which is attached as [Exhibit C](#). Intervenor SCLAD filed a Notice of Joinder in the Response to Petitioner/Appellant’s Motion for Stay of Proceedings on July 31, 2015. A copy of which is attached as [Exhibit D](#).
- b) Petitioner argues that neither Florida Housing nor the public will be prejudiced by a stay of the Final Order and that failure to enter a stay will result in a chaotic and untenable situation. Florida Housing argues that Flagship Manor has failed to demonstrate both a likelihood of success on the merits and a likelihood of harm absent the entry of the stay

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- c) Additionally, Florida Housing argues that a stay will harm those funded Applicants that have already entered credit underwriting as well as delay access to affordable housing to persons with special needs. Furthermore, Florida Housing argues that a stay is unnecessary in this situation because if Flagship Manor is successful on its appeal, then at that time, Florida Housing would make funds available for Petitioner's development. SCLAD joined in the Response submitted by Florida Housing.

3. **Recommendation**

Staff recommends that the Board deny Petitioner/Appellant's Motion for Stay of Proceedings, and issue a Final Order in accord with such decision.

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B. Capital Grove Limited Partnership v. Florida Housing Finance Corporation, DOAH Case No. 15-2386BID; FHFC Case No.2015-012BP (Intervenor HTG Wellington Family LLC)

1. Background

- a) This case regards a protest filed against the funding awards for projects under “RFA 2014-114 - For Affordable Housing Developments Located in Small and Medium Counties,” (the “RFA”). The parties applied for funding through the RFA seeking allocations of Low Income Housing Tax Credits. Petitioner (“Capital Grove”) was notified of the Board’s intended decision on or about March 20, 2015. Petitioner 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 2014-114. Intervenor (“HTG Wellington Family”) properly and timely filed for intervention to participate in this case.
- b) The central issue in this case is whether Respondent Florida Housing Finance Corporation’s (“Florida Housing”) decision to award or deny funding under Request for Applications (“RFA”) 2014-114, as proposed on March 20, 2015, is 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: rejection of Capital Grove’s Application for a nonresponsive Letter of Credit; and acceptance of HTG Wellington Family’s Application in regards to its proximity scoring (bus stop).
- c) Florida Housing’s position was that Capital Grove’s Letter of Credit was properly rejected as nonresponsive to the RFA specifications. HTG Wellington Family conceded that the bus stop it submitted for proximity scoring did not meet the RFA specifications, but established that the loss of this bus stop had no effect on its overall score.

2. Present Situation

- a) A hearing was conducted on July 1, 2015, before Administrative Law Judge James H. Peterson, III, 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 August 3, 2015. The Recommended Order affirmed Florida Housing’s scoring and ranking decisions as to the issue noted above. A copy of the Recommended Order is attached as [Exhibit E](#).

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.