

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

ROBERT KING HIGH PRESERVATION  
PHASE ONE, LLC,

v.

FHFC Case No. 2014-062BP

Petitioner,

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

COQUINA PLACE ASSOCIATES, LTD., and  
TALCOCY TUSCANY COVE 1, LLC,

Intervenors.

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**FINAL ORDER**

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on the Recommended Order filed in this matter pursuant to Section 120.57(3), *Florida Statutes*, and Rule 28-106.216, *Florida Administrative Code*. The Board has jurisdiction. After a review of the record and being otherwise fully advised in these proceedings, the Board finds:

Petitioner Robert King High Preservation Phase One, LLC (“Petitioner” or “Robert King”) timely filed a formal written protest pursuant to Sections 120.569 and 120.57(3), *Florida Statutes*, (the “Petition”) challenging Florida Housing’s scoring and ranking decisions regarding RFA 2014-103, which provided State

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION



/DATE: 08.11.14

Apartment Incentive Loan (SAIL) program funds to help develop affordable housing projects in the State of Florida. There are no disputed issues of material fact. Pursuant to Section 120.57(1), *Florida Statutes*, an informal hearing was held in this case on July 18, 2014, in Tallahassee, Florida, before Florida Housing's appointed Hearing Officer, Junious D. Brown, III. Both Intervenors appeared at the hearing through counsel.

The parties timely filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order on July 31, 2014. The Recommended Order found that Petitioner had failed to prove that Florida Housing's scoring and ranking decision regarding its Application was clearly erroneous, arbitrary or capricious, or contrary to competition, and recommended that a Final Order be entered affirming Florida Housing's actions regarding RFA 2014-103, and denying the relief requested in the Petition. A copy of the Recommended Order is attached as Exhibit A.

On August 4, 2014, Robert King filed "Robert King High Preservation Phase One, LLC Exceptions to Recommended Order," ("Exceptions") taking exception with certain of the Hearing Officer's Recommended Findings of Fact and Conclusions of Law (a copy is attached as Exhibit B). On August 6, 2014, Florida Housing filed "Florida Housing's Response to Exceptions to Recommended Order" (the "Response") A copy of this Response is attached as Exhibit C.

After a review of the entire record in this proceeding, the Board makes the following findings and rulings:

### EXCEPTIONS

1. In reviewing a Recommended Order, an agency is not free to re-weigh the evidence or to reject findings of fact unless there is no competent, substantial evidence to support them. *See Health Care and Retirement Corporation v. Department of Health and Rehabilitative Services*, 561 So.2d 292, 296 (Fla. 1st DCA 1987); *Heifetz v. Department of Business Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). There must be some competent substantial evidence to support each finding of fact that the Judge recommends that the agency adopt. *See* Section 120.57(1)(1), *Florida Statutes*.

2. An agency is permitted to interpret statutes and administrative rules over which it has substantive jurisdiction and to reject or modify erroneous conclusions of law over which it has substantive jurisdiction. *See* Section 120.57(1)(1), Fla. Stat. (2014). As long as the agency states with particularity the reasons for rejecting an ALJ's conclusion of law and finds that its substituted conclusion is as reasonable, or more reasonable, the agency is not bound by the ALJ's conclusions of law. Sec. 120.57(1)(1), Fla. Stat. (2014). *See also, Harloff v. City of Sarasota*, 575 So.2d 1324, 1328 (Fla. 2d DCA 1991), *review denied*, 583 So.2d 1035 (Fla. 1991).

3. Robert King filed six Exceptions regarding the issues of this case: whether a lease provided to demonstrate site control was valid when it contained an automatic termination clause; whether the Application included evidence obviating that clause; and whether Robert King should be permitted to submit documentation not included in the Application to prove the automatic termination clause had been obviated. The Board's ruling on each of these six Exceptions is set forth below.

**Exception 1**

4. The Board finds that Robert King's Exception to Finding of Fact 23 should be rejected for the reasons stated in the Recommended Order and in the Response, as it is based on competent, substantial evidence and the Hearing Officer's interpretation of the effect of the evidence in question is reasonable, correct, and neither arbitrary nor capricious.

**Exception 2**

5. The Board finds that Robert King's Exception to Finding of Fact 20 should be rejected for the reasons stated in the Recommended Order and the Response, as it is based on competent, substantial evidence and the Hearing Officer's interpretation of the evidence in question is reasonable, correct, and neither arbitrary nor capricious.

**Exception 3**

6. The Board finds that Robert King's Exception to Conclusions of Law

13-20 should be rejected for the reasons stated in the Recommended Order and the Response, in that the Hearing Officer correctly excluded the additional documentation presented at hearing by Robert King that was not included in its Application, pursuant to Section 120.57(3), *Florida Statutes* (2014).

**Exception 4**

7. The Board finds that Robert King's Exception to Conclusion of Law 21 should be rejected for the reasons stated in the Recommended Order and the Response, in that to permit Robert King to submit additional documentation to supplement its Application in violation of Section 120.57(3), *Florida Statutes* (2014) would be arbitrary and capricious.

**Exception 5**

8. The Board finds that Robert King's Exception to Conclusion of Law 23 should be rejected for the reasons stated in the Recommended Order and Response, in that the Hearing Officer correctly restricted his interpretation of the automatic termination clause to the plain language of the lease itself, where to do otherwise in the absence of ambiguity would be arbitrary and capricious.

**Exception 6**

9. The Board finds that Robert King's Exception to Conclusion of Law 24 and 26 should be rejected for the reasons stated in the Recommended Order and the Response, in that the Hearing Officer reasonably and correctly determined the

applicability and relevance of Florida Housing's prior decisions regarding similar issues, and to do otherwise would be arbitrary and capricious.

**RULING ON EXCEPTIONS**

For the reasons set forth above, and in Florida Housing's Response to Exceptions, Petitioner Robert King's Exceptions to the Recommended Order are not adopted.

**RULING ON THE RECOMMENDED ORDER**

1. The findings of fact in the Recommended Order are supported by competent substantial evidence.
2. The conclusions of law in the Recommended Order are supported by competent substantial evidence.

**ORDER**

In accordance with the foregoing:

1. Each and all of Robert King's Exceptions are rejected. The Findings of Fact of the Recommended Order are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.
2. The Conclusions of Law in the Recommended Order are adopted as Florida Housing's Conclusions of Law and incorporated by reference as though fully set forth in this Order.

3. The Recommendation of the Recommended Order is adopted.

**IT IS HEREBY FOUND AND ORDERED** that Florida Housing's scoring and ranking actions regarding RFA 2014-103 are affirmed, and the relief requested in the Petition is hereby DENIED.

**DONE and ORDERED** this 8th day of August, 2014.



FLORIDA HOUSING FINANCE CORPORATION

By:   
Chair

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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32399-0950, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**