

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

RECEIVED

17 DEC 25 AM 11:53

LIBERTY SQUARE PHASE TWO, LLC

FHFC Case No.: 2017-100BP

Petitioner,
vs.

RFA No. 2017-108

Application No. 2018-016BS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**FORMAL WRITTEN PROTEST AND
PETITION FOR ADMINISTRATIVE HEARING**

Petitioner, LIBERTY SQUARE PHASE TWO, LLC (“Liberty Square”), pursuant to sections 120.57(3), Florida Statutes (“F.S.”), and Rules 28-110 and 67-60, Florida Administrative Code (“FAC”) hereby files this Formal Written Protest and Petition for Administrative Hearing regarding the review, ranking and scoring decision of Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”) to award funding to responsive bidders pursuant to Request for Application 2017-108 SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax Exempt Bonds and Non-Competitive Housing Credits (“the RFA”). In support Liberty Square provides as follows:

1. Liberty Square is a Florida limited liability company authorized to transact business in Florida. Liberty Square is in the business of providing affordable housing. Liberty Square is located at 315 S. Biscayne Blvd, Miami, Florida 33131.

2. Florida Housing is the allocating agency for the State of Florida that was granted the authority to issue the RFA for the purpose of providing much needed affordable housing. Florida Housing's address is 227 North Bronough Street, Suite 500, Tallahassee, Florida 32301.

3. On August 31, 2017, Florida Housing issued the RFA to award an estimated \$87,380,000 in SAIL Funding as follows:

A. SAIL:

Florida Housing Finance Corporation (the Corporation) expects to offer an estimated \$87,320,000, comprised of a part of the Family and Elderly Demographic portion of the SAIL funding appropriated by the 2016 Florida Legislature. The amounts listed in 1 and 2 below include ELI Loan funding to cover the units that must be set aside for Extremely Low Income (ELI) Households, including the commitment for a portion of ELI Set-Aside units as Link Units for Persons with special needs, as further outlined in Sections Four A.6.9 of the RFA.

1. Demographic Categories:

- a. \$24,576,000 of Elderly funding for proposed Developments with the Elderly Demographic Commitment (ALF and Non-ALF), and
- b. \$62,750,000 of Family funding for proposed Developments with the Family Demographic Commitment.

2. County Geographic Categories:

The following information is based on the most recent statewide low-income rental housing market study;

County Geographic Category	Amount of Funding Allocated to Each County Geographic Category
Large Counties	\$46,279,600
Medium Counties	\$32,308,000
Small Counties	\$8,732,000

4. Through the issuance of the RFA, Florida Housing sought to solicit proposals from qualified Applicants that would provide housing consistent with the terms and conditions of the RFA, applicable laws, rules, and regulations.

5. On September 13, 2017, Florida Housing issued a modification to the RFA.

6. Subsequently Florida Housing issued a second and third modification to the RFA which among other things extended the Application due date to October 12, 2017. In addition to

posting the modification on its webpage, Florida Housing also issued an electronic announcement to all developers and interested parties that had registered to receive such notices.

7. On October 12, 2017, Liberty Square submitted an Application in Response to the RFA that included information concerning a 204 unit apartment complex in Miami-Dade, Florida, named Liberty Square Phase Two. Through the Application, Liberty Square requested \$7,000,000 in SAIL funding assistance for its proposed Development. In addition Liberty Square requested \$600,000 in ELI Loan Funding and \$1,695,407 in non-competitive housing credits. Liberty Square believed that it had satisfied all requirements of the RFA. Florida Housing received 38 applications in response to the RFA.

8. As the owner and Developer of a project seeking funding through the RFA, Liberty Square is substantially affected by the review, scoring, and ranking of the responses to the RFA. The results of this and related proceedings may affect Liberty Square's ability to obtain funding through the RFA.

9. Consistent with the primary mission and goal of the RFA, Liberty Square will provide much needed affordable housing and services in Miami-Dade County. Without the funds provided by the RFA, Liberty Square will be unable to provide this much needed affordable housing. Accordingly Liberty Square's substantial interests are affected by the decisions made by Florida Housing.

10. On November 15, 2017, consistent with the RFA instructions the Florida Housing designated Review Committee met and considered all Applications responding to the RFA. At the meeting the Review Committee orally listed and manually input the scores for each section of each RFA Response and ultimately made recommendations to the Board of Directors for their consideration. The Review Committee consisted of Florida Housing staff.

11. The Review Committee also during the meeting determined the eligibility of each Application. During the meeting, the Review Committee determined that the Liberty Square Application was eligible for funding, however not in the funding range. The Committee found both Application 2018-044BS (“Woodland Grove”) and 2018-048BS (Harbour Springs) eligible for funding and each was recommended for funding. At the conclusion of the meeting the Review Committee voted to send a funding recommendation to Florida Housing’s Board of Directors for approval.

12. On December 8, 2017, Florida Housing's Board of Directors accepted the Review Committee’s ranking and funding recommendations, which included finding Liberty Square eligible but unfunded and awarding tentative funding to both Woodland Grove and Harbour Springs. Had either the Woodland Grove or Harbour Springs Applications been found ineligible or had their respective scores been reduced Liberty Square would have been awarded funding based on its lottery number and the RFA selection criteria.

13. On December 13, 2017, Liberty Square timely filed its Notice of Intent to Protest. (See Attachment 1) This Formal Written Protest is being timely filed and Florida Housing has waived the bid protest bond requirement for the RFA. As a Developer of affordable housing in need of supplemental funding, Liberty Square’s substantial interests are affected by Florida Housing's decision not to award the necessary funding pursuant to the RFA. Without the funding Liberty Square will not be able to develop its proposed Development.

14. In this challenge Liberty Square challenges the scoring and ranking of the Woodland Grove and Harbour Springs Applications as being located on the same subject property in violation of Rule 67-48.004(1), F.A.C. Additionally Liberty Square challenges the Development Location Points and location of Community Services selected by Woodland Grove and Harbour Springs.

15. In addressing the first issue, at page 7 of the RFA each Applicant agrees as follows:

Requirements. Proposed Developments funded under this RFA will be subject to the requirements of the RFA, inclusive of all Exhibits, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the requirements outlined in Rule Chapter 67-48, F.A.C., and/or Rule Chapter 67-21, F.A.C., and the Compliance requirements of Rule Chapter 67-53, F.A.C.

16. At issue in this proceeding, Rule 67-48.004(1) provides as follows:

67-48.004 Selection Procedures for Developments.

(1) SAIL, HOME and Housing Credit Applications **shall be limited to one submission per subject property.** Two or more Applications, submitted in the same competitive solicitation process, that have the same demographic commitment and one or more of the same Financial Beneficiaries, will be considered submissions for the same Development site if any of the following is true:

(a) **Any part of any of the property sites is contiguous with any part of any of the other property sites, or**

(b) Any of the property sites are divided by a street or easement,

(c) **It is readily apparent from the Applications, proximity, chain of title, or other information available to the Corporation that the properties are part of a common or related scheme of development.**

If two or more Applications are considered **to be submissions for the same Development site, the Corporation will reject all such Applications except the Application with the highest (worst) lottery number.** The Application(s) with the lowest lottery number(s) will still be rejected even if the Applicant withdraws the Application with the highest (worst) lottery number.

(emphasis added)

17. In essence this rule limits the submission of applications to one per subject property per RFA per demographic category. Additionally the rule specifically includes a remedy should Florida Housing conclude that more than one application has been submitted for the same subject property.

18. The proposed Woodland Grove and Harbour Springs Development sites pursuant to the Site Control documentation submitted at Attachment 8 in each Application are currently owned by one entity, Tower Road Gardens, Inc. Tower Road Gardens, Inc. in turn proposes to divide the overall subject property and sell a portion to Woodland Grove and a portion to Harbour Springs. The lone identified Principal for Tower Road Gardens, Inc. is Mr. Lewis Swezy.

19. Mr. Swezy as illustrated by the Principal Disclosure Forms submitted with each Application is also a designated Principal of both Woodland Grove and Harbour Springs. In fact Woodland Grove and Harbour Springs share Principals, specifically Mr. Swezy.

20. The proposed Harbour Springs and Woodland Grove proposed Development sites are contiguous and share a common border. Again each proposed Development site is part of the subject property currently owned by one entity, Tower Road Gardens, Inc. (See Attachment 2) At page 1 of each Application both Woodland Grove and Harbour Springs selected "Family" for the required Demographic Commitment respectively.

21. In the instant case based on information and belief the Woodland Grove and Harbour Springs proposed Developments are part of the same subject property. Each applicant has designated the same Demographic Commitment. While Florida Housing did not know this as of the Application Deadline it is clear that based on the available information the properties at issue here are contiguous, owned by the same entity, share Principals with Woodland Grove and Harbour Springs and are clearly subject to a common or related scheme of Development. This action, rather intentional or not, is in violation of Rule 67-48.004, F.A.C. and accordingly inconsistent with the requirements of the RFA.

22. Pursuant to Rule 67-48.004(1)(c), F.A.C. at least one of the Applications is ineligible for funding moving Liberty Square into the funding range.

23. In next addressing the Development Location Point issue, at page 8 of the RFA applicants are required to provide latitude/longitude coordinates for the proposed Development as follows:

d. Latitude/Longitude Coordinates

- (1) All Applicants must provide a Development Location Point stated in decimal degrees, rounded at least the sixth decimal place. If the proposed Development consists of Scattered Sites, the Development Location Point must affirmatively be established on the site with the most units as of the Application Deadline, as required for a Scattered Site Development as outlined in Rule Chapter 67-48.002(33), F.A.C., and latitude and longitude coordinates for each Scattered Site must also be provided.
- (2) If the proposed Development consist of Scattered Sites, for each Scattered Site the Applicant must provide the latitude and longitude coordinates of one point located anywhere on the Scattered Site. The coordinates must be stated in decimal degrees and rounded to at least the sixth decimal place.

24. Based on the information provided at page 4 of each Application neither Woodland Grove nor Harbour Springs provided a Development Location Point located in Miami-Dade County. It appears the identified Development Location Point as well as the Community Services are actually located in India. This error impacts the proximity points for each Application in that neither Woodland Grove nor Harbour Springs is located in Miami-Dade County and neither can meet the minimum proximity score and accordingly each should be deemed ineligible.

25. Liberty Square reserves the right to amend this Petition as additional documents and facts are discovered.

26. Material issues to be resolved:

- a) Whether the review of the Woodland Grove Application was consistent with the RFA requirements or Florida Housing policies,

- b) Whether Florida Housing's review and actions taken concerning the Woodland Grove Application were arbitrary or capricious, clearly erroneous and contrary to competition,
- c) Whether the review of the Harbour Springs Application was consistent with the RFA requirements or Florida Housing policies,
- d) Whether Florida Housing's review and actions taken concerning the Harbour Springs Application were arbitrary or capricious, clearly erroneous and contrary to competition,

WHEREFORE, Liberty Square requests that a settlement meeting be scheduled and if settlement is not reached, a hearing be scheduled and ultimately an order be entered determining that Florida Housing's review and scoring was contrary to the RFA specifications and to Florida Housing's governing statutes, rules and policies to such an extent as to be arbitrary, capricious, contrary to competition, and clearly erroneous.

Respectfully submitted,

CARLTON, FIELDS, JORDEN BURT, P.A.

/s/ Michael P. Donaldson

MICHAEL P. DONALDSON

Florida Bar No. 0802761

Post Office Drawer 190

215 S. Monroe St., Suite 500

Tallahassee, Florida 32302

Telephone: 850/224-1585

Facsimile: 850/222-0398

Email: mdonaldson@carltonfields.com

Attorneys for Liberty Square Phase Two, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a copy of the foregoing has been filed by E-Mail and Hand Delivery to Ana McGlamory, Corporation Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, this 26th day of December, 2017.

/s/ Michael P. Donaldson
MICHAEL P. DONALDSON

Michael Donaldson
850 513-3613 Direct Dial
mdonaldson@carltonfields.com

Atlanta
Hartford
Los Angeles
Miami
New York
Orlando
Tallahassee
Tampa
Washington, DC
West Palm Beach

December 13, 2017

Florida Housing Finance Corporation
Ana McGlamory, CP, FCP, FRP, Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

VIA HAND DELIVERY

Re: RFA 2017-108 SAIL Financing of Affordable Multifamily Housing
Developments to be used in conjunction with Tax Exempt Bonds and
Non-Competitive Housing Credits

Dear Ms. McGlamory:

On behalf of Liberty Square Phase Two, LLC (2018-016BS), this letter constitutes a Notice of Intent to Protest ("Notice") filed pursuant to sections 120.569 and 120.57(3), Florida Statutes, Rules 28-110.003 and 67.60.009, Florida Administrative Code, and the RFA.

This Notice is being filed within 72 hours (not including weekends and holidays) of the posting of the RFA on the Florida Housing's website on December 8, 2017, at 3:40 p.m. Liberty Square reserves the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes.

Sincerely,



Michael P. Donaldson

MPD/rb

cc: Albert Milo

ATTACHMENT 1

RFA 2017-108 – Recommendations

SAIL Funding Balance Available 3,885,830.00

NHTF Funding will be 100% allocated in accordance with Exhibit H

Application Number	Name of Development	County	County Size	Name of Contact Person	Name of Developers	Dev Category	Demo. Commitment	SAIL Request	EI Request	Total SAIL Request (SAIL + EI)	County Award Tally	Total Points	Proximity Funding Preference	Leveraging Level	Florida Job Creation Preference	Lottery Number
--------------------	---------------------	--------	-------------	------------------------	--------------------	--------------	------------------	--------------	------------	--------------------------------	--------------------	--------------	------------------------------	------------------	---------------------------------	----------------

Two Elderly Large County New Construction Applications

2018-023BS	Sierra Bay	Miami-Dade	L	Mara S. Mades	Cornerstone Group Partners, LLC	NC	E, Non-ALF	4,400,000.00	600,000.00	5,000,000.00	1	15	Y	1	Y	37
2018-030BS	Brisas del Rio Apartments	Miami-Dade	L	Alberto Mito, Jr.	Brisas del Rio Apartments Developer, LLC	NC	E, Non-ALF	4,346,770.00	600,000.00	4,946,770.00	3	15	Y	2	Y	1

Three Family Large County New Construction Applications

2018-048BS	Harbour Springs	Miami-Dade	L	Lewis Swezy	Lewis Swezy, RS Development Corp	NC	F	7,000,000.00	600,000.00	7,600,000.00	1	15	Y	1	Y	7
2018-039S	The Waves	Duval	L	Fred McKinnies	Jax Urban Initiatives Development, LLC; TVC Development, Inc.	NC	F	7,000,000.00	600,000.00	7,600,000.00	1	15	Y	2	Y	16
2018-024S	Palmetto Pointe	Pinellas	L	John D Page	Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc.	NC	F	5,400,000.00	463,900.00	5,863,900.00	1	10	Y	4	Y	29

One Elderly Medium County New Construction Application

2018-032BS	Providence Reserve Seniors	Polk	M	Scott Zimmerman	Judd Roth Real Estate Development, Inc.; BDG Providence Reserve Seniors Developer, LLC	NC	E, Non-ALF	6,000,000.00	429,800.00	6,429,800.00	1	15	Y	2	Y	27
------------	----------------------------	------	---	-----------------	--	----	------------	--------------	------------	--------------	---	----	---	---	---	----

Two Family Medium County New Construction Applications

2018-041BS	Parrish Oaks	Manatee	M	John D Page	Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc.	NC	F	6,000,000.00	600,000.00	6,600,000.00	1	15	Y	2	Y	11
2018-042BS	Luna Lake	Pasco	M	John D Page	Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc.	NC	E, Non-ALF	5,800,000.00	465,000.00	6,265,000.00	1	15	Y	3	Y	13

RFA 2017-108 – Recommendations

Application Number	Name of Development	County	County Size	Name of Contact Person	Name of Developers	Dev Category	Demo. Commitment	SAL Request	ELI Request	Total SAL Request (SAL + ELI)	County Award Tally	Total Points	Proximity Funding Preference	Leveraging Level	Florida Job Creation Preference	Lottery Number	
Small County Application(s)																	
2018-0265	Springhill Apartments (currently known as Madison Heights Apartments)	Madison	S	James J. Kerr, Jr	AMCS Development, LLC; SCG Development Partners, LLC	A/R	F	3,064,400.00	251,600.00	3,316,000.00	1	15	Y	5	Y	14	
Medium County Application(s)																	
2018-0358S	Hibiscus Apartments	Lee	M	Scott Zimmerman	Jared Roth Real Estate Development, Inc.; BDG Hibiscus Apartments Developer, LLC	NC	F	5,125,000.00	510,800.00	5,635,800.00	1	15	Y	4	Y	17	
2018-0298S	Lofts on Lemon	Sarasota	M	Joseph J Chambers	Gardner Capital Development Florida, LLC; SHA Affordable Development, LLC; DB Development Florida, LLC	NC	F	2,700,000.00	423,400.00	3,123,400.00	1	15	Y	4	Y	23	
2018-0198S	Choctaw Village	Okaloosa	M	John D Page	Southport Development, Inc. a WA corporation doing business in FL as Southport Development Services, Inc.	A/R	F	2,500,000.00	396,300.00	2,896,300.00	1	15	Y	5	Y	22	
2018-0175	Venetian Walk II	Sarasota	M	Richard Higgins	Norstar Development USA, LP; Venetian Walk Developers, LLC	NC	F	2,290,000.00	464,200.00	2,754,200.00	2	15	Y	4	Y	33	
Large County Application(s)																	
2018-048S	Woodland Grove	Miami-Dade	L	Lewis Swezy	Lewis Swezy; BS Development Corp	NC	F	7,000,000.00	600,000.00	7,600,000.00	4	15	Y	1	Y	31	
2018-0258S	Water's Edge Apartments	Miami-Dade	L	Maria S Madies	Cornerstone Group Partners, LLC	NC	F	3,000,000.00	600,000.00	3,600,000.00	5	15	Y	1	Y	36	
2018-0338S*	Chadella Village	Miami-Dade	L	Samuel F. Diller	Little Haiti Housing Association, Inc.; Stone Soup Development, Inc.	NC	F	3,600,000.00	600,000.00	4,200,000.00	6	15	Y	4	Y	3	

*TDC was reduced during scoring which affected the Leveraging Percentage.

On December 8, 2017, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion and staff recommendation to select the above Applications for funding and invite the Applicants to enter credit underwriting.

Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

