

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

SOUTHPORT DEVELOPMENT, INC.
d/b/a SOUTHPORT DEVELOPMENT
SERVICES, INC.

Petitioner,

vs.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

FHFC Case No. 2013-034BP

RFA 2013-009

DOAH Case No. _____

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

Petitioner, Southport Development, Inc. d/b/a Southport Development Services, Inc. (“Southport”), by and through undersigned counsel, files this Formal Written Protest and Petition for Formal Administrative Hearing (“Petition”) pursuant to Section 120.57(3), Florida Statutes, Rules 28-110.003 and 67-60.009, Florida Administrative Code, and Section 3.E. of Request for Applications 2013-009 for the Preservation of Existing Affordable Housing Developments (the “RFA”). Through this Petition, Southport challenges the specifications in the RFA as posted by Respondent, Florida Housing Finance Corporation (“Florida Housing”) on November 1, 2013. Specifically, Southport is protesting the fact that the Thelma Boltin Senior Activity Center¹ in Alachua County, Florida (the “Thelma Boltin Center”) is not included on the Preservation RFA Senior Center List that is Item 14 of Exhibit C to the RFA (the “Senior Center List”). In support of its Petition, Southport states as follows:

¹ The Thelma Boltin Senior Activity Center is also referred to as the Thelma Boltin Community Center.

Parties

1. Petitioner, Southport is a Washington corporation authorized to transact business in Florida with an address at 2430 Estancia Blvd., Suite 101, Clearwater, Florida 33761. For purposes of this proceeding, Southport's address and phone number are that of its undersigned counsel.

2. Florida Housing is the agency affected by this Petition. Florida Housing's address is 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301.

Statement of Ultimate Facts

Background

3. Florida Housing is designated as the housing credit agency for the State of Florida within the meaning of Section 42(h)(7)(A) of the Internal Revenue Code and has the responsibility and authority to establish procedures for allocating and distributing low-income housing tax credits ("Housing Credits"). § 420.5099, Fla. Stat. (2013).

4. Florida Housing has adopted Chapter 67-60, Florida Administrative Code, which, among other things, establishes the procedures by which Florida Housing administers competitive solicitation processes to implement the provisions of the Housing Credit Program authorized by Section 42 of the Internal Revenue Code and Section 420.5099, Florida Statutes.

5. Chapter 67-60 requires Florida Housing to provide public notice of any competitive solicitation by posting the competitive solicitation on its Website and publishing notice in the Florida Administrative Register ("FAR"). Fla. Admin. Code R. 67-60.003. Rule 67-60.009(1) provides that interested parties wishing to protest the terms of any competitive solicitation issued pursuant to Chapter 67-60, Florida Administrative Code, may do so pursuant

to the procedures in Section 120.57(3), Florida Statutes, and Chapter 28-110, Florida Administrative Code.

6. Florida Housing posted the RFA on its Website at 2:47 p.m. on November 1, 2013. Florida Housing published notice of the RFA in the FAR on November 4, 2013.²

7. Through the RFA, Florida Housing expects to award up to an estimated \$5,369,334 of Housing Credits to proposed Preservation Developments. [RFA, § 1, p. 2]. The RFA seeks Applications³ from qualified Applicants⁴ committing to preserve existing affordable housing developments in accordance with the terms and conditions of the RFA, applicable laws, rules and regulations, and Florida Housing's general applicable construction and financial standards. [RFA, § 1, p. 2].

8. The RFA sets forth a process by which eligible Applications for funding will be ranked. [RFA, § 4.B.2., pp. 30-31]. The ranking will determine whether an Application will be selected by Florida Housing for funding. [RFA, § 4.B.6, p. 31].

9. The RFA requires an Applicant to select one of the following demographic categories that the Applicant's proposed development will serve: (a) Family, (b) Elderly, or (c) Person with a Disability. [RFA, § A.1, p. 4; Ex. A, p. 35].

10. The RFA provides for proximity points that may be awarded to an Application based on the proximity of the Applicant's proposed development to certain specified Transit and Community Services. [RFA, § 4.A.5.c., p. 10]. The Applicant's Proximity Score is a significant

²Pursuant to Rule 67-60.003(3), Florida Administrative Code, the RFA was considered published at the date and time indicated on Florida Housing's Website which is 2:47 p.m. on November 1, 2013.

³ An "Application" is defined in Rule 67-60.002(2) as "the sealed response submitted to [Florida Housing] to participate in a competitive solicitation for funding pursuant to Chapter 67-60, Florida Administrative Code[.]"

⁴ An "Applicant" is defined in Rule 67-60.002(1) as "any person or legally formed entity that is seeking . . . funding from [Florida Housing] by submitting an Application or responding to a competitive solicitation pursuant to [Chapter 67-60, Florida Administrative Code] for one or more of [Florida Housing's] programs."

factor in determining whether an Application will receive funding under the RFA. [RFA, § 4.B.2., p. 30].

11. A maximum Proximity Score of 22 proximity points may be awarded to an Application. RFA, § 4.A.5., p. 9]. Of these 22 total available proximity points, up to 16 proximity points can be awarded for the proximity of the proposed development to Community Services (a maximum of 4 proximity points each for up to four out of six eligible Community Services defined in the RFA). [RFA, § 4.A.5.c.(2), p. 12].

12. The Community Services identified in the RFA include a Senior Center which is defined as:

a community facility that provides a broad spectrum of services suited to the diverse needs and interests of independent older persons and is among the properties identified on the Preservation RFA Senior Center List set out at Item 14 of Exhibit C of the RFA.

[RFA, § 4.A.5.c.(2)(c), p. 12 (emphasis added)].

13. A Senior Center may be selected as one of the Community Services for which proximity points may be awarded if the Applicant has selected the Elderly Demographic Commitment.

14. Based on the definition of the term “Senior Center” in the RFA, proximity points may only be awarded for a “community facility that provides a broad spectrum of services suited to the diverse needs and interests of independent older persons” if such facility is on the Senior Center List in the RFA. It is unclear what criteria, if any, Florida Housing used to determine what properties should be included on the Senior Center List and there was no formal process for community facilities that otherwise meet the definition of Senior Center to be added to the Senior Center List.

15. Southport intends to submit an application in response to the RFA for a proposed development in Alachua County that will serve the Elderly Demographic. The proposed development is located in proximity to the Thelma Boltin Center. The Senior Center List in the RFA does not include the Thelma Boltin Center. [RFA, Ex. C, pp. 78-83].⁵ Accordingly, based on the RFA as currently written, Southport would not be entitled to any proximity points based on the location of its proposed development in relation to the Thelma Boltin Center.

16. On November 6, 2013, Southport timely filed its notice of its intent to protest the specifications in the RFA. A copy of the Notice of Protest is attached as Exhibit "A."

17. In accordance with Section 120.57(3), Florida Statutes, Chapter 28-110 and Rule 67-60.009, Florida Administrative Code, and Section 3.E. of the RFA, this Petition is being filed within 10 days of the date that Southport filed its Notice of Protest.

**Florida Housing's Failure to Include the Thelma Boltin
Center on the Senior Center List Is Arbitrary and Capricious**

18. As noted above, the RFA defines a Senior Center as a “community facility that provides a broad spectrum of services suited to the diverse needs and interests of independent older persons” and is among those properties identified on the Senior Center List. [RFA, § 4.A.5.c.(2)(c), p. 12].

19. The Thelma Boltin Center, which is located at 516 NE 2nd Avenue in Gainesville, Florida, meets this definition but for the fact it is not among the properties identified on the Senior Center List in the RFA. The Thelma Boltin Center is one of the City of Gainesville

⁵ Prior to the issuance of the RFA, Southport's consultants raised concerns with Florida Housing staff about the accuracy and completeness of the proposed Senior Center List and Southport expressly asked that the Thelma Boltin Center be included on the Senior Center List. By e-mail dated November 1, 2013, Southport was informed by Florida Housing staff that its request was received too late to be included in the RFA, but that the “Senior Center Association” would vet Southport's request so that it might be added to future competitive solicitations by Florida Housing. It is not clear how the properties on the Senior Center List were selected or what role, if any, the “Senior Center Association” played in that process. There is no reference to a “Senior Center Association” in the RFA.

("City") Recreation Department's Community Centers and it is utilized by the City as a Senior Program Center.⁶ Senior activities such as arts/crafts, movies, exercise, board games, and BINGO are offered between the hours of 8:30 a.m. until noon Monday, Tuesday, Wednesday and Friday of each week (except on holidays). Eldercare of Alachua County also provides a free hot lunch at the Thelma Boltin Center to those who qualify. Attached as Exhibit "B" is the Monthly Activity Schedule for the activities offered for seniors at the Thelma Boltin Center in November 2013. Attached as Exhibit "B" is the menu for the lunch meals to be served to seniors at the Thelma Boltin Center in November 2013.

20. There are more than 250 properties on the Senior Center List. These properties include facilities that offer activities for seniors several hours a day four days a week and a hot lunch, just like the services offered by the Thelma Boltin Center. The Senior Center List, however, also includes properties that are not community facilities providing a broad spectrum of services suited to the diverse needs and interests of independent older persons. For example, the first page of the six-page Senior Center List includes: (a) Trinity Towers Senior Center in Brevard County which is not a "community facility" because it only provides services to residents of Trinity Towers and their guests; and (b) Hawthorne Senior Center in Alachua County which does not provide a "broad spectrum of services" to independent older persons and, at most, offers approximately one activity a month for seniors typically held at a location other than the address on the Senior Center List,⁷ such as a library or private home.

⁶ In addition to offering an Active Senior Day Program including senior activities and meals four days a week, the Thelma Boltin Center also is available for special event gatherings.

⁷ The address on the Senior Center List for the Hawthorne Senior Center is actually the address of the United Methodist Church which at one time served as a hub for meals on wheels. The Hawthorne Senior Center does not have any physical location and instead is a group of individuals who have been unsuccessfully attempting, without the necessary funding, to build a senior center for some time.

21. Based on the exclusion of the Thelma Boltin Center from the Senior Center List, if the RFA is not modified to include the Thelma Boltin Center, Southport will not receive any proximity points based on the location of its proposed development to the Thelma Boltin Center. The Thelma Boltin Center is a community facility that provides a broad spectrum of services and meals to seniors, but is not included on the Senior Center List. At the same time, the Senior Center List currently includes the Trinity Towers Senior Center which does not serve the community at large, but only residents of a particular development and their guests, and the Hawthorne Senior Center which has no physical location and, at most, offers one program for seniors each month.

22. The exclusion of the Thelma Boltin Center from the Senior Center List is arbitrary and capricious because the Thelma Boltin Center clearly provides “a broad spectrum of services suited to the diverse needs and interests of independent older persons” including services that are similar, if not identical to, to the services offered by other facilities that are currently on the Senior Center List. The arbitrary and capricious nature of the exclusion of the Thelma Boltin Center is particularly apparent when considering some of the properties that are currently included on the Senior Center List that do not offer services that can be utilized by elderly residents living in affordable housing in close proximity to such properties.

Disputed Issues of Material Fact

23. The disputed issues of material fact of which Southport is aware at this time include, but are not limited to:⁸

⁸ Southport reserves the right to amend or supplement this Petition, including but not limited to, the disputed issues of material fact, to the extent that Southport learns of additional issues of material fact in the course of discovery and preparation for final hearing in this matter.

(a) Whether the Thelma Boltin Center meets the definition of a “Senior Center” as sets forth in the RFA but for its exclusion from the Senior Center List;

(b) Whether properties currently included on the Senior Center List include facilities that offer services similar, or identical, to those offered by the Thelma Boltin Center;

(c) Whether properties currently included on the Senior Center List cannot be “community facilities” because they exclude seniors other than those residing in the building where the facility is located and their guests;

(d) Whether the properties currently included on the Senior Center List include facilities that do not offer services to independent older persons; and

(e) Whether Florida Housing's failure to include the Thelma Boltin Center on the Senior Center List is arbitrary and capricious.

Notice of Florida Housing's Proposed Action

24. Southport received notice of the RFA specifications when the RFA was posted on Florida Housing's website at 2:47 p.m. on Friday, November 1, 2013.

Substantial Interests Affected

25. Southport's interests are substantially affected by the specifications in the RFA as issued by Florida Housing on November 1, 2013, particularly the exclusion of the Thelma Boltin Center from the Senior Center List that is Item 14 of Exhibit C to the RFA. If the RFA is not modified to include the Thelma Boltin Center on the Senior Center List, Southport will not be eligible to receive proximity points based on the location of its proposed development in relation to the Thelma Boltin Center simply because the Thelma Boltin Center is not on the Senior Center List in the RFA even though the Thelma Boltin Center is a community facility offering services available to independent older persons. Southport's competitors for funding under the RFA,

however, may be able to receive proximity points that would advance the ranking of their Applications based on the proximity of their proposed developments to properties that are not community facilities and do not offer services to independent older persons in accordance with the definition of "Senior Center" in the RFA. Accordingly, the RFA specifications as currently written are arbitrary and capricious and will place Southport at an unfair competitive disadvantage that will result in injury to Southport if the RFA is not modified in response to this Petition to include the Thelma Boltin Center on the Senior Center List. This injury is the type of injury that a formal administrative proceeding pursuant to Section 120.57(3), Florida Statutes, and Chapter 28-110, Florida Administrative Code, is designed to protect.

Statutes and Rules that Entitle Southport to Relief

26. Southport is entitled to relief pursuant to Sections 120.569 and 120.57, Florida Statutes, Chapters 28-106, 28-110 and 67-60, Florida Administrative Code; and the established decisional law of Florida courts, the Division of Administrative Hearings, and Florida administrative agencies.

Demand for Relief

WHEREFORE, Southport respectfully requests that Florida Housing:

- a. Provide Southport with an opportunity to resolve this Petition by mutual agreement within seven (7) business days, as provided in Section 120.57(3), Florida Statutes;
- b. Transfer this Petition to the Division of Administrative Hearings for a formal hearing conducted before an Administrative Law Judge pursuant to Sections 120.569 and 120.57, Florida Statutes, if this Petition cannot be resolved within seven (7) business days; and

- c. Ultimately issue a Final Order: (i) modifying the terms of the RFA to add the Thelma Boltin Center to the Senior Center List; or, alternatively, (ii) removing the Senior Center List from the RFA and instead awarding proximity points based on an Applicant's demonstration of the proximity of its proposed development to a community facility that provides a broad spectrum of services suited to the diverse needs and interests of independent older persons.

Respectfully submitted this 15th day of November, 2013.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Formal Written Protest and Petition for Formal Administrative Hearing was filed by hand-delivery with Ashley Black, Agency Clerk, and that a true and correct copy was provided by hand-delivery to Wellington Meffert, General Counsel, Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 all on this 15th day of November, 2013.



Lawrence E. Sellers, Jr.