

September 6, 2018

Sent via Email: [marisa.button@floridahousing.org](mailto:marisa.button@floridahousing.org)

Florida Housing Finance Corporation  
c/o Marisa Button, Director of Multifamily Allocations  
227 N. Bronough Street, Suite 5000  
Tallahassee, Florida 32301

**Re: Public Comment re RFA 2018-112, RFA 2018-111 and RFA 2018-110**

Dear Ms. Button:

RFA 2018-112, RFA 2018-111 and RFA 2018-110 each contain references in sixteen separate sections to the “Scattered Sites” defined in Rule 67-48.002(105), F.A.C. If a development site meets the definition of Scattered Sites, additional requirements and costs are added to the project. Scattered Sites is defined in the rule as:

“Scattered Sites,” as applied to a single Development, means a Development site that, when taken as a whole, is comprised of real property that is not contiguous (each such non-contiguous site within a Scattered Site Development, is considered to be a “Scattered Site”). For purposes of this definition “contiguous” means touching at a point or along a boundary. Real property is contiguous if the only intervening real property interest is an easement, provided the easement is not a roadway or street. All of the Scattered Sites must be located in the same county.

Until a recent Recommended Order (RO) was issued in Madison Oaks, LLC vs. Florida Housing Finance Corporation and Harper’s Pointe, LP, Case Number 18-2966BID, if an easement for a roadway or street bisected the project, even if it was not constructed, the project would be interpreted as meeting the definition of “Scattered Sites” by Florida Housing. After the recent RO and Florida Housing Response to Petitioner’s Exceptions in the above referenced case, the definition of “Scattered Sites” is no longer ascertainable.

Although most developers know what an easement for a roadway or street is, under the new implicit and unspoken definition of roadway and street easement in the RO, it is impossible to determine what meets the definition of “Scattered Site.” Florida Housing counsel stated in its Response to Exceptions (in the above referenced case) that although “It was stipulated by the parties that an express easement existed on the property, that it bisected the property, and that it was labeled as an easement for a ‘street,’” that the subject property was not a “Scattered Site.”

Assuming this new definition of “Scattered Site” is adopted by the Florida Housing Board, great uncertainty will exist in attempting to determine when a project site with a street easement bisecting a project consists of “Scattered Sites.” Reviewing the RO, it could involve the application of non-rule policy to determine the undefined weighing of “other factors” such as whether the street is paved and constructed, what material the street is paved with, whether the street creates connections to other streets, whether existing structures built on the easement will require demolition to build the project, whether physical obstructions prevent access to the “prospective” roadway or street, and whether the public had a right to use the “prospective” roadway or street. With these added factors needed in order to create scattered sites under the new proposed definition of the rule, developers will be unable to determine which sites with street easements bisecting their projects meet the new applied definition of Scattered Sites. Potentially, this could open up many new properties thought to be Scattered Sites (prior to the recent RO and new proposed definition) to now be available for projects without the burdensome Scattered Sites requirements that would have been applied in the past. Without clarification, it would allow Florida Housing unbridled discretion to apply this ill defined Scattered Sites policy to select which projects can apply this new more restrictive definition of the rule for what constitutes a “Scattered Site.”

Either the RFAs should delete all references and requirements for “Scattered Sites” or Florida Housing should amend its “Scattered Sites” rule prior to issuing the RFAs to create a clear definition of “Scattered Sites” for application to the new RFAs. With no means to determine how the “Scattered Sites” rule will be applied in the proposed RFAs, the RFA requirements, depending on the application of the rule, will be arbitrary and capricious. The RFA sections prescribing the requirements for “Scattered Sites” and the underwriting provisions mandating rescinding the funding for undisclosed “Scattered Sites” will be found to be invalid due to unbridled discretion created by the new undefined process to determine “Scattered Sites.” If the references and requirements to Scattered Sites in the RFAs are not deleted or the Scattered Sites rule is not amended, then the RFA’s specifications regarding Scattered Sites would either be found to be unlawful unadopted rules or contrary to Florida Housing’s governing rules.

Thank you for your consideration of these comments and proposed changes to the RFAs and “Scattered Sites” rule.

Sincerely,

MANSON BOLVES DONALDSON VARN, P.A.

A handwritten signature in blue ink that reads "Douglas Manson" followed by a stylized initial "dlr".

Douglas Manson

DPM/dlr

cc: Hugh Brown, Esq. (via email)