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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TALLAND PARK, LTD., and
TALLAND PARK DEVELOPER, LLC,

FLORIDA HOUSING
FINANCE CORPORATION

Petitioners,

FHFC Case No: 2021-100BP
APPLICATION NO: 2022-185SN

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR ADMINISTRATIVE HEARING

Pursuant to sections 120.569, 120.57(3), Florida Statutes (Fla. Stat.), and Chapter 28-106, Florida Administrative Code (“Fla. Admin. Code”), Petitioners, Talland Park, Ltd., and Talland Park Developer, LLC (collectively “Talland Park”), file this Petition for Administrative Hearing and state:

Affected Agency

1. The agency affected is the Florida Housing Finance Corporation (“Florida Housing”), 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The telephone number is 850-488-4197.

Petitioners

2. Petitioner, Talland Park, Ltd., is the Applicant entity of a proposed affordable housing development to be located in Seminole County, Application #2022-185SN. Petitioner, Talland Park Developer, LLC, is a “Developer” entity as defined by Florida Housing in rule 67-48.002, Florida Administrative Code.

3. Talland Park is challenging Florida Housing's determination regarding Talland Park's eligibility for funding under Request for Applications 2021-205 through an administrative hearing before the Department of Administrative Hearing ("DOAH").

4. Counsel for Talland Park and Talland Park's address for this proceeding is Craig D. Varn, Manson Bolves Donaldson Varn, 109 North Brush Street, Suite 300, Tampa, Florida 33602.

Background

5. 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 IRC, and Chapters 67-48 and 67-60, Fla. Admin. Code, and has the responsibility and authority to establish procedures for allocating and distributing Housing Credits. Section 420.5099, Fla. Stat.

6. Florida Housing has established a competitive solicitation process known as the Request for Applications to assess the relative merits of proposed developments pursuant to Chapters 67-48 and 67-60, Fla. Admin. Code.

7. On or about August 17, 2021, Florida Housing issued RFA 2021-205, Sail Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits ("RFA" or "RFA 2021-205"). The application deadline for the RFA was October 19, 2021 ("Application Deadline").

8. By submitting an application, each applicant certified that the "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."

9. The RFA delineates the submission requirements and sets out the information required to be provided by an applicant, including, on pages 88-89, a list of mandatory “Eligibility Items” that must be included in an application. Two of the mandatory Eligibility Items are the “Development Category selected” and “Development Category Qualifying Conditions met.”

10. Section Four of the RFA identifies the information that must be provided in each application. Because Talland Park selected the Development Category of “Redevelopment” the RFA requires that the proposed development meet the following Redevelopment category requirements:

- (c) Redevelopment (with or without Acquisition)
- (i) If requesting NHTF funding, all units must be new construction without any rehabilitation. If not requesting NHTF funding, at least 50 percent of the total units must be new construction;
 - (ii) The Development must meet the definition of Redevelopment in Rule Chapter 67-48.002, F.A.C.; and
 - (iii) Provide, as **Attachment 6** to Exhibit A, a Development Category Qualification Letter from HUD or RD, dated within 12 months of the Application Deadline, which includes the following information:
 - Name of the Development*;
 - Address of the Development;
 - Year built**;
 - Total number of units that will receive PBRA and/or ACC if the proposed Development is funded;
 - Total number of units that currently have or are receiving PBRA and/or ACC. If none, the total number of units that originally received PBRA; and
 - The HUD or RD program currently associated with the existing development. If none, the HUD or RD program originally associated with the existing development.

(RFA pp. 18-20).

Notice of Agency Action

11. Talland Park received notice of Florida Housing's Final Agency Action entitled "RFA 2021-205 Board Approved Preliminary Awards" on or about December 10, 2021. ("Corporation's Notice").

Notice of Protest

12. On December 15, 2021, Talland Park timely filed a Notice of Protest which challenged the selection of the applications in the Corporation's Notice.

Substantial Interests

13. Talland Park timely submitted an application in response to RFA 2021-205, Application #2022-185SN ("Talland Park Application"). In the Talland Park Application, Talland Park sought \$5.5 million in SAIL Funding and \$600,000 in Extremely Low Income (ELI) funding to help finance the development of its project which includes one hundred and fifty (150) Garden Apartments.

14. Talland Park was scored as having not satisfied the Development Category Qualifying Conditions. Talland Park was assigned lottery number four as reflected in the document entitled "RFA 2021-205 Board Approved Scoring Results."

15. On December 10, 2021, Florida Housing's Board of Directors adopted the scoring committee's recommendations and tentatively authorized the selection for funding of those applications identified in the Corporation's Notice.

16. Talland Park is challenging and seeking a determination that Florida Housing erred in the scoring, eligibility and decision to not award funding to Talland Park. Talland Park is entitled to be ranked in the funded range and would have received an allocation of funding from RFA 2021-205 but for Florida Housing's error in its scoring, eligibility and funding decisions.

17. Florida Housing incorrectly determined Talland Park failed to satisfy the Development Category Qualifying Conditions. But for that determination, Talland Park would have been ranked higher for a funding allocation than other applicants awarded funding. Therefore, Talland Park should have been selected for funding.

Talland Park Development Category Qualifying Conditions

18. As stated above, only applications that meet the Eligibility Items are eligible for funding. To meet the Development Category Qualifying Conditions for Redevelopment the RFA required the Talland Park development to: (1) be new construction without any rehabilitation; (2) meet the definition of Redevelopment in Rule Chapter 67-48.002, F.A.C.; and (3) provide a Development Category Qualification Letter which included the specified information.

19. The Board did not explain why Talland Park failed to satisfy the Development Category Qualifying Conditions, but it is presumed that its decision was based upon the recommendation of the Review Committee. During the Review Committee meeting it was suggested that Talland Park did not meet satisfy the conditions because: “Based upon the letter provided, the Development does not meet the Redevelopment definition due to not meeting the requirement that at least 25% of the total new units will provide PBRA, ACC, or both, after Redevelopment.” See Florida Housing Finance Corporation, *Review Committee Meeting for RFA 2021-205 SAIL for Affordable Multifamily Housing Developments*, YouTube (Dec. 2, 2021), <https://www.youtube.com/watch?v=imEgaPnIb2g>.

20. Nevertheless, this recommendation was incorrect. The Talland Park application meets the Redevelopment definition and, therefore, satisfied the Development Category Qualifying Conditions.

Disputed Issues of Law

21. The issues of law in this matter include but are not limited to the following
 - a) Whether Talland Park's Application meets the Redevelopment definition and, therefore, satisfied the Development Category Qualifying Conditions.
 - b) Whether the correct eligibility determination has been made for Talland Park based upon the provisions of the RFA;
 - c) Whether the preliminary rankings properly support the eligibility determinations of applicants for funding in accordance with the standards and provisions of the RFA;
 - d) Whether the RFA's criteria for determining eligibility, ranking and evaluation of proposals were properly applied;
 - e) Whether the correct allocation funding determination has been made for Talland Park consistent with the requirements for the competitive procurement process in the RFA and Florida Housing's rules and governing statutes;
 - f) Whether the criteria and procedures followed in reaching the proposed ineligibility determination for Talland Park are arbitrary, capricious, contrary to competition, contrary to the RFA requirements, an abuse of discretion or are contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules;
 - g) Whether the rankings and proposed awards are based upon clearly erroneous or capricious eligibility determinations, scoring or ranking;
 - h) Whether the proposed awards improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules or prior Florida Housing interpretations and precedents;
 - i) Whether failure to waive the alleged error as a minor irregularity was an abuse of discretion; and,
 - j) Such other issues as may be revealed during the protest process.

22. Petitioners reserve the right to seek leave to amend this Petition to include additional material facts and issues of law that may become known through discovery.

Statement of Ultimate Facts and Law

23. As a matter of ultimate fact and law, Florida Housing failed to properly and/or consistently apply the RFA specifications, existing rules or prior Florida Housing interpretations and precedents.

24. As a matter of ultimate fact and law, Florida Housing incorrectly determined that Talland Park was ineligible for an allocation of funding.

25. As a matter of ultimate fact and law, Florida Housing's failure to waive the alleged error by Talland Park as a minor irregularity was an abuse of discretion.

26. As a matter of ultimate fact and law, Petitioners would have been entitled to an allocation of its requested funding but for the errors in scoring of the Talland Park Application.

Statutes and Rules

27. Statutes and rules governing this proceeding are Chapter 420 and sections 120.569, 120.57(3), Florida Statutes, and Chapters 28-106, 28-110, 67-48 and 67-60, Florida Administrative Code.

WHEREFORE, Petitioners request that:

A. An administrative hearing be conducted pursuant to section 120.57(3), Florida Statutes, to review Florida Housing's eligibility determination as it affects Talland Park's Application;

B. The Administrative Law Judge enter a Recommended Order determining that:

- 1) Talland Park properly completed its application in accordance with the competitive solicitation; that its application was responsive to and complied with RFA 2021-205; and that its application should have been considered for funding and scored as having satisfied all mandatory Eligibility Items;

- 2) Florida Housing erred in determining that the application submitted by Talland Park was not completed in accordance with the competitive solicitation;
- 3) To the extent there was any error in Talland Park's satisfaction of the Development Category Qualifying Conditions, Florida Housing's failure to waive such error as a minor irregularity was an abuse of discretion;

C. The Administrative Law Judge enter a Recommended Order recommending that Florida Housing award Petitioners their requested allocation of funding;

D. Florida Housing enter a Final Order finding the Talland Park Application eligible for funding, and awarding Talland Park its requested allocation of funding; and,

E. Talland Park be granted such other relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 27th day of December, 2021.

/s/ Craig D. Varn
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