

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

MHP LEE II, LLC,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC Case # 2023-056BP

RFA No. 2023-304

App. Nos. 2023-212BR

2023-BR

2023-BR

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FLORIDA HOUSING
FINANCE CORPORATION

**MHP LEE II, LLC’S FORMAL WRITTEN PROTEST AND
PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS**

MHP Lee II, LLC (“MHP Lee II”) petitions to protest a preliminary procurement decision made by the Florida Housing Finance Corporation (“Florida Housing”). Florida Housing issued Request for Applications 2023-304 to solicit proposals for financing Rental Recovery Loan Program Financing to be Used for Rental Developments in Hurricane Ian and Hurricane Nicole Impacted Counties (the “RFA”). MHP Lee II now files this Formal Written Protest and Petition for Formal Administrative Proceedings to contest Florida Housing’s preliminary decision to award financing to applicants other than MHP Lee II. The application filed by Hermosa NFTM 41 II, Ltd., d/b/a Hermosa North Fort Myers II (“Hermosa”) should not have received a Proximity Funding Preference and should have received a lower rank than MHP Lee II. Additionally, CORE Oak Park LLLP’s, d/b/a Oak Park (“Oak Park”) Application is ineligible due to a failure to properly disclose principals affiliated with the project and HTG Legacy II, LTD’s (“Legacy Park II”) Application is ineligible due to a failure to demonstrate control of the proposed development

site. MHP Lee II's Application should have been funded over these applicants. Support for this Petition follows:

The Parties and the RFA

1. The agency affected by this protest is the Florida Housing Finance Corporation ("Florida Housing"). Florida Housing's address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

2. Florida Housing is a public corporation created by section 420.504, Florida Statutes, to administer the governmental function of financing or refinancing affordable housing. Florida Housing's statutory authority and mandates are found in Part V, Chapter 420, Florida Statutes. *See* §§ 420.501- 420.55, Fla. Stat.

3. Florida Housing administers competitive solicitations to make and service mortgage loans for the construction of affordable housing under several programs, including the Rental Recovery Loan Program (RRLP) Program. *See* ch. 67-60, Fla. Admin. Code.

4. Florida Housing published Request for Applications No. 2023-304 (the "RFA") to solicit proposals for applicants proposing the construction of affordable housing utilizing Rental Recovery Loan Program (RRLP) funding for developments in the Hurricane impacted counties and based on the available impact criteria and FEMA data.

5. Through the RFA, Florida Housing announced that it expected to offer an estimated \$81,600,000 in funding appropriated by the 2022 Florida Legislature.

6. MHP Lee II is a Florida Limited Liability Company in the business of providing affordable housing. MHP Lee II is located at 777 Brickell Avenue, Suite 1300, Miami, Florida 33131. For purposes of this proceeding, MHP Lee II's address, telephone number and email address are those of its undersigned counsel.

7. MHP Lee II timely submitted a proposal in response to the RFA, Application No. 2023-229BR, as did several other applicants.

8. MHP Lee II's Application was fully responsive to the requirements of the RFA but was not selected for funding.

9. The Applications filed by Hermosa NFTM 41 II, Ltd., d/b/a Hermosa North Fort Myers II ("Hermosa") and HTG Legacy II, LTD. d/b/a Legacy Park II ("Legacy Park II") were both selected for funding, as were other applicants. If Hermosa's or Legacy Park II's Application were found ineligible or scored lower, then CORE Oak Park LLLP's, d/b/a Oak Park ("Oak Park") Application would be the next selected for funding.

10. As set forth below, the Application filed by Hermosa was not entitled to Proximity Funding preference while the Application of MHP Lee II was entitled to this preference. MHP Lee II should have been ranked higher than the applications of Hermosa and Oak Park, and should have been funded. In addition, the application filed by Oak Park was ineligible for funding because it failed to disclose a required principal on its Principal Disclosure Form and the application filed by Legacy Park II was ineligible for failure to demonstrate site control.

Notice and Authority for Petition

11. On April 12, 2023, Florida Housing issued the RFA.

12. Applications in response to the RFA were due May 3, 2023, at 3:00 p.m.

13. Florida Housing received thirty-six (36) applications in response to the RFA.

14. MHP Lee II is a responsible applicant that filed an application that was fully responsive to the material requirements of the RFA. MHP Lee II was deemed eligible for funding by Florida Housing, but was not selected for financing.

15. MHP Lee II received notice of Florida Housing’s preliminary RFA scoring and ranking through electronic posting on June 9, 2023, at 11:36 a.m.

16. On June 14, 2023, MHP Lee II timely filed its Notice of Intent to Protest, attached as Exhibit “A”.

17. This Protest and Petition is timely filed pursuant to Sections 120.569, 120.57(1) and 120.57(3), Florida Statutes, and Florida Administrative Code Chapters 28-110, 67-48, and 67-60.

18. Pursuant to Florida Administrative Code Rule 67-60.009(5), no bid protest bond is required for this protest.

RFA 2023-304 Goals and Criteria

19. The RFA sought proposals for the construction of affordable housing utilizing Rental Recovery Loan Program (RRLP) funding for Developments in Hurricane impacted counties and based on the available impact criteria and FEMA data.

20. The RFA provided the following funding goals:

- There is a goal to fund one Priority I, Tier 1 Application that qualifies for the [Public Housing Authority] Goal.
- There is a goal to fund three Applications in Lee County, with a preference that they be Priority I Applications.

See RFA § 5, B.2.

Requirement to Submit Responsive Applications

21. The RFA contained instructions regarding what must be provided in each responsive application. In order to be selected for funding, Applications were required to meet Eligibility Requirements. *See § 5, A.1.*

22. Eligibility items included application submission requirements such as demonstration of site control.

23. Each application had certain eligibility items for scoring and portions eligible for funding preferences.

24. Once deemed eligible, Applications were then scored by a committee of Florida Housing, using scoring guidelines contained within the RFA.

Application Sorting Order

25. The RFA then provided a sorting order for the selection of applicants for funding. The RFA provided that the highest scoring Applications would be determined by first sorting all eligible Applications from highest score to lowest score, with any scores that are tied separated in the following order:

- a) First, by the Application's Leveraging Classification, applying the multipliers outlined in Item 3 of Exhibit C of the RFA (with Applications having the Classification of A listed above Applications having the Classification of B);
- b) Next, by the Application's eligibility for the Proximity Funding Preference which is outlined in Section Four A.5.e. of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- c) Next, preference will be given to Applications that qualify for the Florida Job Creation Funding Preference which is outlined in Item 4 of Exhibit C (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);
- d) Finally, by lottery number, with Applications that have a lower lottery number listed above Applications with a higher lottery number.

See RFA § 5, B.1.a.-d.

Funding Selection Process

26. The RFA mandated a Funding Selection Process. *See RFA, § 5, B.5.*

27. First, the list of Applications that were invited to enter credit underwriting in RFA 2022-206 HOME Financing to be used for rental Developments in certain Hurricane Ian impacted counties were reviewed. If any of the Applications invited to enter credit underwriting in RFA 2022-206 were for Developments located in counties eligible for funding in this RFA, the affected county was considered to have one Application applied towards the county in the RFA. If multiple Applications invited to enter credit underwriting in RFA 2022-206 were for Developments located in the same county, the affected county would have only been considered to have one Application applied towards the County Award Tally in the RFA. *See* RFA, § 5, B.5.a.

28. Then, the Corporation will first select the highest-ranking eligible unfunded Priority I, Tier 1 Application to meet the Public Housing Authority (“PHA”) Goal. *See* RFA, § 5, B.5.b.

29. Next, the Corporation will then select the three highest-ranking eligible unfunded Priority I Applications to meet the Lee County Goal. If the goal cannot be met because there were not enough eligible Priority I Applications that meets the goal, the Corporation will then select the highest-ranking eligible unfunded Priority II Applications that meet the Lee County Goal until this goal is met. *See* RFA, § 5, B.5.c.

30. After the selection of Applications to meet the goals listed above, the Corporation will select eligible unfunded Priority I, Tier 1 Applications. The selection of Priority I, Tier 1 Applications will be subject to the County Award Tally and Funding Test.

31. If any funding remains after selecting all eligible Priority I, Tier 1 Applications that can be fully funded, then eligible unfunded Priority I, Tier 2 Applications will be selected for funding. The selection of Priority I, Tier 2 Applications will be subject to the County Award Tally and Funding Test.

32. If any funding remains after selecting all eligible Priority I, Tier 2 Applications that can be fully funded, then eligible unfunded Priority II, Tier 1 Applications will be selected for funding. The selection of Priority II, Tier 1 Applications will be subject to the County Award Tally and Funding Test.

33. If any funding remains after selecting all eligible Priority II, Tier 1 Applications that can be fully funded, then eligible unfunded Priority II, Tier 2 Applications will be selected for funding. The selection of Priority II, Tier 2 Applications will be subject to the County Award Tally and Funding Test. *See RFA, § 5, B.5.d.*

34. If funding remains after selecting all Tier 1 and Tier 2 Applications that can be fully funded, eligible unfunded Priority I, Tier 3 Applications will be selected for funding. The selection of Priority I, Tier 3 Applications will be subject to the County Award Tally and Funding Test.

35. If any funding remains after selecting all eligible Priority I, Tier 3 Applications that can be fully funded, then eligible unfunded Priority II, Tier 3 Applications will be selected for funding. The selection of Priority II, Tier 3 Applications will be subject to the County Award Tally and Funding Test. *See RFA, § 5, B.5.d. [sic].*

36. If funding remains and no eligible unfunded Applications can be fully funded, no further Applications will be considered for funding and any remaining funding will be distributed as approved by the Board.

Review Committee Scoring and Selections

37. Appointed committee members from Florida Housing independently evaluated and scored their assigned portions of the submitted applications based on mandatory and scored items.

The Selection Process was carried out by the members of the Review Committee at a public meeting.

38. The following applications were selected by the Review Committee for funding:

Appl. No.	Name of Development
2023-201R	Lofts on Lemon Phase II
2023-212BR	Hermosa North Fort Myers II
2023-216BR	Palms Landing
2023-220BR	HTG Legacy II Developer, LLC
2023-226BR	Blue Ian Developer
2023-208BR	Cardinal Pointe
2023-223BR	EKOS on Pine
2023-196BR	Town Oaks Apartment
2023-206BR	Lakewood Senior Housing

However, the application filed for Hermosa should have been determined to fail to qualify for a Proximity Funding Preference, and the applications for CORE Oak Park and Legacy Park II should have been found ineligible, and should have been ranked lower than MHP Lee II.

**Hermosa NFTM 41 II, Ltd. Application No. 2023-212BR
Should Not Receive Proximity Points for a Bus Transfer Location**

39. Each applicant responding to the RFA had an opportunity to obtain a “Proximity Funding Preference” by earning “Proximity Points.” For medium county applications like the one filed by Hermosa in Lee County, 9 or more Proximity Points were needed to obtain a Proximity Preference. If a total of 9 or more Proximity Points were earned, then an applicant would receive a Proximity Preference. If less than 9 points were achieved by a medium county applicant, then an applicant would receive no Proximity Preference. See RFA, Exh. C, p. 94 of 108.

40. A Proximity Preference is used under the RFA to break ties in the funding selection process. See RFA, §4.5.e., p 19 of 148.

41. Among other methods, Proximity Points were available to applicants demonstrating that their proposed development was in close proximity to public transit. Applicants seeking Proximity Points were required to identify the latitude and longitude coordinates for the eligible transit service, and the distance from that point to the proposed development. See RFA §4.A.5.e(2).

42. Hermosa submitted Application No. 2023-212BR, identifying its proposed development location at:

Latitude: 26.700967
 Longitude -81.901183

43. Hermosa’s Application identified a public bus transfer stop as located at:

Latitude: 26.686622
 Longitude -81.901947

44. Hermosa sought and received 4.5 proximity points for this location, which was listed as .99 miles from the development.

(2) Transit Services

Applicants may select Private Transportation or provide the location information and distance for one of the remaining four Transit Services on which to base the Application’s Transit Score.

(a) If the proposed Development will serve the Elderly Demographic Commitment, does the Applicant commit to provide Private Transportation?

No (The proposed Development’s Demographic Commitment is Elderly Non-ALF, which qualifies to select this option for 2 transit points.)

Points awarded for Transit Type
0.0

(b) Other Transit Services

Service	Latitude Coordinates	Longitude Coordinates	Distance*	Points awarded for Transit Type
Public Bus Stop 1				
Public Bus Stop 2				
Public Bus Stop 3				
Public Bus Transfer Stop	26.686622	-81.901947	0.99	4.5
Public Bus Rapid Transit Stop				
Public Rail Station				

This area intentionally left blank.

See P. 6, Hermosa’s RFA Response.

45. The RFA provides the following instruction for measuring distance:

Rounded up to the nearest hundredth of a mile. Distance between the coordinates of the Development Location Point and the coordinates of the service. The method used to determine the latitude and longitude coordinates must conform to Rule 5J-17, F.A.C., formerly 61G17-6, F.A.C. All calculations shall be based on “WGS 84” and be grid distances. The horizontal positions shall be collected to meet sub-meter accuracy (no autonomous hand-held GPS units shall be used).

RFA, §4.A.5.e.(4)(b).

46. Hermosa incorrectly reported the location and distance of the public bus transfer stop. Hermosa's reported coordinates are not valid because a bus transfer stop is no longer located at that location due to construction that has been occurring since prior to the application deadline and remains ongoing. The future location for this transfer stop has yet to be decided and will not occur until the construction is complete. The Lee County bus operator, Lee Transit, made the following, publicly available comment about the bus stop that was once located at the coordinates identified by Hermosa



47. Without the proximity points received with this reported bus transfer stop, Hermosa no longer possesses the Minimum Total Proximity Points required for the Proximity Funding

Preference. Correctly calculated, Hermosa received 8.5 points, which is below the 9-point minimum to receive the Proximity Funding Preference.

48. By contrast, MHP Lee II's Application was correctly assigned 12.5 Proximity Points and was eligible for a Proximity Preference. With other scores amounting to a tie, MHP Lee II's Proximity Funding Preference would break the tie and rank MHP Lee II higher than Hermosa. Accordingly, MHP Lee II should have been ranked higher than Hermosa and, based upon the arguments set forth in this Petition, should have been funded.

Oak Park's Application is Ineligible due to a failure to disclose a Company Principal

49. The RFA required that all applicants disclose the officers and directors of the companies involved in the project, so that those individuals might be vetted. Full disclosure was a mandatory requirement of the RFA. *See* RFA §§4.A.3.c(1); 5.A.1. Failure to disclose an officer, director or owner of a principal would render an applicant and its application ineligible.

50. Oak Park included some information about affiliated officers and directors, but failed to disclose a key principal.

51. Companies involved with the Oak Park Application include the applicant, CORE Oak Park, LLLP, and the developer CORE Oak Park Developer, LLC.

52. On behalf of the applicant, CORE Oak Park, LLLP, the Oak Park Application identified two companies at the first level of disclosure: National Community Renaissance of Florida, Inc. as the Applicant's General Partner, and National Renaissance of California as Limited Partner.

53. As General Partner of the Applicant, all of the officers and directors of National Community Renaissance of Florida, Inc. were required to be disclosed within Oak Park's Application.

54. The Oak Park Application lists several officers and directors of National Community Renaissance of Florida, Inc. on its Principals for Applicant and Developer(s) Disclosure Form. However, the Oak Park Principal Disclosure Form does not include Laura Kurtz Kuhn. Upon information and belief, Ms. Kuhn is an officer of National Community Renaissance of Florida, Inc.

55. The failure to disclose Ms. Kuhn within the Disclosure Form renders the Oak Park Application ineligible.

HTG Legacy II, LTD. is Ineligible
Due to Unauthorized Signature on Assignment of Lease – Site Control Issue

56. HTG Legacy II, LTD (“Legacy Park II”) filed Application no. 2023-195BR.

57. The RFA required each eligible applicant to demonstrate its readiness to proceed with project development by demonstrating that the applicant had control of the site it intended to develop. See RFA, §4.A.7.a.

58. Legacy Park II attempted to demonstrate site control by providing contract which purported to grant Legacy Park II control to develop affordable housing on the identified property.

59. Attachment 6 to Legacy Park II’s Application included Assignment of Agreement. The Assignment sought to have Housing Trust Group, LLC assign a previously executed Agreement for Purchase and Sale from Housing Trust Group, LLC to the applicant, HTG Legacy II, LTD. The property in question was originally to be purchased by Housing Trust Group, LTD. from PF Collier, LLC and Don Pizzuti.

60. The Assignment included in Legacy Park II’s Application was signed on behalf of Housing Trust Group, LLC, the Assignor, by Matthew Reiger, as “Manager” for that company.

61. The Assignment is also signed on behalf of HTG Legacy, II, LTD., the Assignee, by Matthew Reiger as “Manager of SLP.” See Legacy Park II Appl., Att. 6, page 44 of 87.

62. Mr. Reiger does not have apparent or actual authority to sign the Assignment on behalf of the Assignees, HTG Legacy II, LTD. for two reasons. First, Mr. Reiger does not appear to individually serve as a partner for, nor hold a position with, HTG Legacy II, LTD. which would authorize him to personally sign the Assignment on behalf of that company. Second, there does not appear to be any company identified as “SLP” listed as a partner of HTG Legacy II, LTC.

63. The Florida Department of State, Division of Corporation’s “Sunbiz” records reflect that HTG Legacy II, LTD was registered on April 10, 2023, with a Certificate of Limited Partnership that identified AM Affordable Housing, Inc. as the only general partner for the limited partnership. No limited partner or special limited partner for HTG Legacy II, LTD. is identified on Sunbiz

64. Additionally, AM Affordable Housing, Inc. is a Florida not-for-profit corporation. Matthew Reiger is not identified on Sunbiz as an officer or director of that company. The only officers of AM Affordable Housing, Inc. are Alonzo Mourning, Allen Furst and Alonzo H. Mourning III.

65. Accordingly, Legacy Park II’s application failed to demonstrate that Mr. Reiger had any authority to personally sign the Assignment on behalf of HTG Legacy II, LTD—it thus failed to demonstrate it had control of the proposed development site.

Disputed Issues of Material Fact and Law

66. Disputed issues of fact and law include, but are not limited to:

a. Whether Florida Housing’s actions determining that Hermosa’s proposed development in Application No. 2023-212BR should be funded was arbitrary and capricious.

b. Whether Florida Housing’s actions determining that Hermosa’s proposed development in Application No. 2023-212BR should be funded was contrary to competition.

c. Whether Florida Housing's actions determining that Hermosa's proposed development in Application No. 2023-212BR should be funded was clearly erroneous.

d. Whether Hermosa's proposed development in Application No. 2023-212BR was entitled to Proximity Points for a nearby bus transfer stop.

e. Whether Hermosa's proposed development in Application No. 2023-212BR was entitled to receive a Proximity Funding Preference.

f. Whether Florida Housing's actions determining that CORE Oak Park's proposed development in Application No. 2023-202BR was eligible was arbitrary and capricious.

g. Whether Florida Housing's actions determining that CORE Oak Park's proposed development in Application No. 2023-202BR was eligible was contrary to competition.

h. Whether Florida Housing's actions determining that CORE Oak Park's proposed development in Application No. 2023-202BR was eligible was clearly erroneous.

i. Whether CORE Oak Park's proposed development in Application No. 2023-202BR properly disclosed all required principals in its Principal Disclosure Form.

j. Whether Florida Housing's actions determining that Legacy Park II's proposed development in Application No. 2023-195BR was eligible was arbitrary and capricious.

k. Whether Florida Housing's actions determining that Legacy Park II's proposed development in Application No. 2023-195BR was eligible was contrary to competition.

l. Whether Florida Housing's actions determining that Legacy Park II's proposed development in Application No. 2023-195BR was eligible was clearly erroneous.

m. Whether Legacy Park II adequately demonstrate site control for its proposed development in Application No. 2023-195BR.

n. Such other disputed issues as are raised in this proceeding or identified during discovery.

Statutes and Rules Entitling Relief

67. MHP Lee II is entitled to relief pursuant to sections 120.569, 120.57(1), and 120.57(3), Florida Statutes, and Florida Administrative Code Chapters 28-106, 28-110 and 67-60.

Ultimate Statement of Facts and Law

68. Hermosa's Application No. 2023-212BR should not have been selected for funding because it incorrectly reported the location and distance of the nearest public bus transfer stop to the proposed development and as a result was improperly awarded enough proximity points for it to receive a Proximity Funding Preference.

69. CORE Oak Park's Application No. 2023-202BR was ineligible because it failed to disclose a principal within the Principal Disclosure Form.

70. Legacy Park II's Application No. 2023-195BR was ineligible for funding because it failed to demonstrate readiness to proceed with project development by demonstrating control over the proposed development site.

71. A correct application of the RFA's specifications would have resulted in funding of MHP Lee II's Application. MHP Lee II reserves the right to amend this Petition if additional disputed issues of material fact arise during discovery

Request for Relief

72. MHP Lee II requests the following relief:

A. That the Application funding process be halted until this protest is resolved by final agency action;

B. That Florida Housing provide an opportunity to resolve this Protest by mutual agreement within seven days of the filing of this Petition, as provided in section 120.57(3)(d)1., Florida Statutes;

C. If this protest cannot be resolved by agreement, that the matter be referred to the Division of Administrative Hearings for formal administrative proceedings involving disputed issues of material fact pursuant to section 120.57(1) and (3), Florida Statutes;

D. That the assigned administrative law judge determine, as a matter of fact and law, that the Applications No. 2023-202BR and 2023-195BR filed by CORE Oak Park and Legacy Park II, respectively, are ineligible for funding, that Application No. 2023-212BR filed by Hermosa did not qualify for a Proximity Funding Preference, and that MHP Lee II's Application should be funded;

E. That Florida Housing adopt the administrative law judge's recommendation to fund MHP Lee II's Application by final order; and

F. Such other relief as is just and equitable.

Dated on this 26th day of June, 2023.

Respectfully submitted,

PARKER, HUDSON, RAINER & DOBBS, LLP

/s/ Seann M. Frazier

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Formal Written Protest and Petition for Formal Administrative Hearing was filed by e-mail with Ana McGlamory, Corporation Clerk, at (corporationclerk@floridahousing.org), and a copy via email to Hugh Brown, General Counsel, at (Hugh.brown@floridahousing.org) and Betty Zachem, Assistant General Counsel, at (betty.zachem@floridahousing.org), all with the Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301, this 26th day of June, 2023.

/s/ Seann M. Frazier _____

Seann M. Frazier

Florida Bar No. 971200

EXHIBIT “A”

