

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
July 28, 2017
Action Items



HOME RENTAL

Action

I. HOME RENTAL

A. Request Approval to Deobligate \$4,531,000 in HOME Funds for Willie Downs Villas RFA 2016-101 / 2016-321H

1. Background

- a) Request for Applications (RFA) 2016-101 was open to Applicants proposing the construction of affordable housing utilizing HOME Investment Partnerships Program (“HOME Rental”) to be used for Rental Developments in Rural Areas. The RFA was issued on January 22, 2016 and Applications were received on or prior to February 25, 2016.
- b) Florida Housing received nine (9) Applications in response to the RFA. On May 6, 2016, the Board approved and Florida Housing posted a notice of its intended decision to award funding to five (5) eligible applicants.
- c) National Development Foundation, Inc. (“NDF”) the developer for American Way Townhomes (“American Way”) an ineligible Applicant, filed a formal written protest contesting the ineligibility of its Application. A hearing was conducted on June 22, 2016 and a Recommended Order was received on July 18, 2016.
- d) On August 5, 2016, the Board approved American Way for selection for funding under RFA 2016-101, in addition to the original five Applicants selected on May 6, 2016 and all six Applicants to receive an invitation to credit underwriting.
- e) On August 10, 2016, the Corporation issued preliminary commitment letters for all six Applicants. On March 24, 2017, the Board approved the underwriting report for the Towns of Okeechobee. In accordance with Rule 67-48, the Developers of the remaining five developments had a May 5, 2017 deadline to complete the credit underwriting report.
- f) On May 5, 2017, the Board approved extensions to the credit underwriting deadline for Willie Downs Villas, American Way Townhomes, Highland Grove, St. John Paul II Villas and Turner Senior at Five Ash until July 28, 2017. The Developer for Turner Senior at Five Ash formally withdrew their Application on June 8, 2017.

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2. Present Situation

- a) At present, three Applicants have completed credit underwriting by the July 28, 2017 deadline and one Applicant has asked for an additional extension. The Applicant for Willie Downs has not completed credit underwriting nor asked for an additional extension and has been non-responsive regarding completion of the Credit Underwriting process. The Applicant did request a Loan Closing Extension but without having a Board-approved Credit Underwriting Report, the request is moot.

3. Recommendation

- a) Approve Staff recommendation to deobligate \$4,531,000 in HOME funds for Willie Downs Villas.

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II. LEGAL

A. **Joe Moretti Phase III, LLC, & Stirrup Plaza Phase III, LLC vs. Florida Housing Finance Corporation, GM Silver Creek, LTD (Intervenor), and Verbena, LLC (Intervenor); FHFC 2017-013BP & FHFC 2017-014BP; DOAH Case Nos. 17-1543BID & 17-1544BID**

1. **Background**

- a) This case regards two protests filed in Request for Applications 2016-114 Housing Credit Financing for Affordable Housing Developments located in Miami-Dade County (the “RFA”). Petitioners Joe Moretti Phase III, LLC (“Moretti”) and Stirrup Plaza Phase III, LLC (“Stirrup”) and Intervenor GM Silver Creek, LTD (“Silver Creek”) and Verbena, LLC (“Verbena”) applied for funding through the RFA seeking an allocation of Low Income Housing Tax Credits. Moretti and Stirrup were deemed ineligible for funding under Rule 67-48.023(1), F.A.C., because the proposed development sites in their Applications were subject to existing Extended Use Agreements (EUA) at the time their Applications to the RFA were filed. Through the ranking and selection process outlined in the RFA, Intervenor Verbena and Silver Creek were deemed eligible for funding and Verbena was recommended for funding, as well as a third-party Applicant Ambar Key, LLC, and Northside Property IV, Ltd. Through a separate case regarding this RFA, which was settled with a consent agreement that will be presented to the Board, third-party Applicant Ambar Key agreed it was ineligible for funding. Pending the result of this matter, if Moretti and Stirrup remain ineligible for funding, Intervenor Silver Creek would move into the funding range.
- b) Moretti and Stirrup timely filed notices of intent to protest and formal written protests challenging the Board’s finding that they were ineligible for funding. Specifically, they alleged that they timely submitted a request to amend the EUAs on their proposed development sites to remove the proposed development sites from the EUAs prior to the Application deadline. In response to the protests, Verbena filed a Motion to Intervene, alleging that it could be displaced from funding if Moretti’s challenge was successful and further alleging that Moretti’s Application was ineligible for funding not only due to the existence of an EUA on the proposed development site, but also because the Application contained a sewer letter that did not comply with the terms of the RFA. Moretti filed a Motion in Limine to preclude Verbena from bringing up any challenge to its sewer letter.
- c) The matters were referred to the Division of Administrative Hearings (DOAH) and consolidated. The consolidated matter was scheduled for hearing on April 12, 2017.

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2. Present Situation

- a) A hearing was conducted on April 12, 2017, before Administrative Law Judge (“ALJ”) Garnett Chisenhall at the Division of Administrative Hearings in Tallahassee, Florida. After the hearing, the parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the ALJ issued a Recommended Order on June 9, 2017. A copy of the Recommended Order is attached as [Exhibit A](#). The ALJ determined Florida Housing’s actions or inactions pertaining to the Moretti and Stirrup EUA amendment requests were not arbitrary, capricious, or contrary to competition, resulting in Moretti and Stirrup remaining ineligible for funding under RFA 2016-114.
- b) The Recommended Order recommended that Florida Housing:

[I]ssue a final order awarding funding to Ambar Key, Ltd.; Verbena, LLC; and Northside Property IV, Ltd.
- c) The parties filed various Exceptions to the Recommended Order and Responses to Exceptions as follows:
 - (1) The Intervenor Silver Creek and Florida Housing filed a Joint Exception to the recommendation set forth in the Recommended Order to the extent the Recommended Order recommended Florida Housing award funding to third-party Applicant Ambar Key. A copy of the Joint Exceptions is attached as [Exhibit B](#). The basis for the exception is the previously referenced consent agreement between Silver Creek and Ambar Key, wherein Ambar Key conceded its application was ineligible for funding. Florida Housing and Silver Creek request a Final Order be entered which, a) dismisses the formal written protests filed by Moretti and Stirrup; and b) distributes funding under RFA 2016-114 through the ranking and selection process conducted pursuant to the RFA and the outcome of pending litigation under the same RFA. No parties have filed a response to the Joint Exception.
 - (2) Petitioners Moretti and Stirrup filed Exceptions to the Recommended Order. Petitioners seek Exceptions to Findings of Fact Paragraphs 85, 86, 87, and 88, and Conclusions of Law paragraphs 108, 109, 110, 112, 120, and 121, essentially objecting to the ALJ’s findings that Florida Housing did not act arbitrarily or capriciously in its processing of the EUA amendment requests. A copy of the Moretti and Stirrup Exceptions is attached as [Exhibit C](#). Florida Housing and Intervenor Verbena each filed a Response to the Exceptions seeking denial of all the Petitioners exceptions because the ALJ’s findings and conclusions were based on competent substantial evidence and were reasonable. Copies of Florida Housing’s and Verbena’s Responses are attached as Exhibits [D](#) and [E](#), respectively.

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- (3) Intervenor Verbena filed Exceptions to the Recommended Order. A copy of the Exception is attached as [Exhibit F](#). Verbena seeks an Exception to Footnote 8 to Conclusion of Law Paragraph 121, where the ALJ denied Moretti's Motion in Limine as being moot because the ALJ determined that Florida Housing did not act in an arbitrary or capricious manner. Verbena's exception seeks clarification in the Final Order that the merits of its argument against Moretti's sewer letter have not been addressed or resolved. Verbena also filed an Exception to Conclusion of Law Paragraph 121. Verbena's Exception to Conclusion of Law Paragraph 121 seeks a modification to the Final Order, clarifying that Florida Housing's determination that the Petitioners' Applications were ineligible for funding because the existing EUA covering the development sites for each Application was consistent with the requirements of Rule 67-48.023(1), F.A.C., consistent with the terms of the RFA, and that Florida Housing's actions were not contrary to its governing statutes, agency rules or policies, or the terms of the RFA. Florida Housing filed a Response, attached as [Exhibit G](#), seeking the denial of Verbena's exception to footnote 8 of paragraph 121 and approval of Verbena's exception to paragraph 121. Moretti and Stirrup and did not file Responses to Verbena's Exceptions.

3. Recommendation

- a) Staff recommends that the Board:
 - (1) Grant Silver Creek and Florida Housing's Joint Exception to the Recommendation and issue a final order that:
 - (a) dismisses the formal written protests filed by Joe Moretti Phase Three, LLC and Stirrup Plaza Phase Three, LLC, and
 - (b) distributes funding under RFA 2016-114 through the ranking and selection process conducted pursuant to the RFA and the outcome of pending litigation under the same RFA.
 - (2) Reject Petitioners Moretti and Stirrup's Exceptions to the Findings of Fact set forth in the Recommended Order and accept the Findings of Fact in the ALJ's Recommended Order, and reject Moretti and Stirrup's Exceptions to the Conclusions of law set forth in the Recommended Order and, subject to the modifications to the conclusion of law in Paragraph 121 below, adopt the Conclusions of Law set forth in the Recommended Order in its Final Order.
 - (3) Reject Intervenor Verbena's Exception to Footnote 8 to Paragraph 121 of the Recommended Order and accept Intervenor Verbena's Exception to conclusions of law Paragraph 121 of the Recommended Order and modify Paragraph 121 to state:

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121. Therefore, Florida Housing's actions or inactions pertaining to the Moretti Phase Three and Stirrup Plaza Phase Three requests were not arbitrary, capricious, or contrary to competition.¹ Florida Housing's determination that the Petitioners' Applications were ineligible for funding was consistent with the requirements of Rule 67-48.023(1), F.A.C., and consistent with the terms of the RFA. Florida Housing's actions were not contrary to its governing statutes, agency rules or policies, or the terms of the RFA.

- (4) Enter a Final Order consistent with the above referenced rulings on Exceptions, accordingly.

¹ In light of this ruling, there is no need to address Moretti Phase Three's Motion in Limine. Accordingly, it is denied as being moot.

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B. GM Silver Creek, LTD., vs. Florida Housing Finance Corporation and Ambar Key, LTD.; FHFC 2017-010BP; DOAH Case No. 17-1545BID

1. Background

- a) This case regards a protest filed in Request for Applications 2016-114 Housing Credit Financing for Affordable Housing Developments located in Miami-Dade County (the “RFA”). Petitioner GM Silver Creek, LTD (“Silver Creek”) and Intervenor Ambar Key, LTD (“Ambar Key”) applied for funding through the RFA seeking an allocation of Low Income Housing Tax Credits. Both Silver Creek and Ambar Key were deemed eligible for funding. Through the ranking and selection process outlined in the RFA, Ambar Key was recommended for funding.
- b) Silver Creek timely filed a notice of intent to protest and a formal written protest challenging the Board’s finding that Ambar Key was eligible for funding. Specifically, Silver Creek challenged Ambar Key’s selected transit service, zoning form, the description of the location of its development site, that the development site constitutes Scattered Sites, and the development type.
- c) The matter was referred to the Division of Administrative Hearings (DOAH) and consolidated with Joe Moretti Phase Three, LLC and Stirrup Plaza Phase Three, LLC vs. Florida Housing Finance Corporation, Verbena, LLC and GM Silver Creek, LTD. (“Joe Moretti” and “Stirrup Plaza” respectively). The consolidated matter was scheduled for hearing on April 12, 2017.

2. Present Situation

- a) As a result of settlement discussions, the parties resolved certain issues in this litigation, and agreed that in the interest of avoiding the time, expense, and uncertainty of litigation entered into a Settlement Agreement on April 11, 2017. Upon motion, DOAH severed this case from the Joe Moretti and Stirrup Plaza matter and relinquished jurisdiction back to Florida Housing Finance Corporation.
- b) On June 1, 2017, the parties entered into a Consent Agreement, attached as [Exhibit H](#), which in significant part, the Consent Agreement results in:
 - (1) The parties agreeing that the transit service stop identified by Ambar Key in its Application does not qualify as a Public Bus Transfer Stop, as defined in RFA 2016-114. Ambar Key submits that its reliance in information to the contrary was reasonable and that there was no intent on Ambar Key’s part to mislead Florida Housing or misrepresent the status of the transit service stop. Florida Housing and Silver Creek do not contest Ambar Key’s contentions in this regard. The loss of the Public Bus Transfer Stop points for the Ambar Key Application results in the Application not receiving points for Transit Services, and thus, being deemed an ineligible Application under the terms of RFA 2016-114.

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- (2) Silver Creek withdraws the other issues raised in its petition regarding the Ambar Key site and both Silver Creek and Florida Housing agree as follows:
 - (a) As of December 15, 2016, the Ambar Key site is appropriately zoned for multifamily residential use and no further hearings or approvals are required to obtain the zoning classification or density necessary to construct the Ambar Key proposed development on its site;
 - (b) The Ambar Key Application's use of "Intersection of NE 2nd Street and NE 3rd Avenue, Florida City, Florida" as its development location is sufficient to comply with Florida Housing's RFA requirements for site address or location;
 - (c) The Ambar Key site does not constitute a Scattered Site; and
 - (d) The Ambar Key Application did not identify an incorrect development type by designating "Garden Apartments" in its application to Florida Housing.
- (3) The Parties agree that Silver Creek's Application meets all requirements and is eligible for funding under RFA 2016-114. However, the funding recommendation for RFA 2016-114 will depend on the outcome of the litigation in the Joe Moretti and Stirrup Plaza matter.
- (4) In the event Silver Creek's Application is recommended for a tax credit allocation under RFA 2016-114 to Florida Housing's Board of Directors, Ambar Key and/or its affiliates will in no way seek to overturn, negatively impact, modify, or otherwise challenge any such recommended award of funding to Silver Creek under RFA 2016-114.

3. **Recommendation**

- a) Staff recommends that the Board adopt the Consent Agreement and issue a Final Order in accord with such.

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C. JPM Outlook One LP and Grande Park LP v. Florida Housing Finance Corporation, DOAH Case Nos. 17-2499BID and 17-2500BID, FHFC Case Nos. 2017-018BP and 2017-019BP (Intervenor HTG Hammock Ridge II, LLC)

1. Background

- a) This case regards Request for Applications (“RFA”) 2016-110, which solicited applications to compete for an allocation of Federal Low-Income Housing Tax Credit funding (“tax credits”) for affordable housing developments located in Medium and Small Counties. Petitioners JPM Outlook and Grande Park, and Intervenor Hammock Ridge, submitted applications in response to the RFA. On March 24, 2017, Florida Housing posted notice of its intended decision to award funding to 10 applicants, including Hammock Ridge. JPM Outlook and Grande Park were determined to be ineligible for funding.
- b) Petitioners timely filed a notice of intent to protest and formal written protest as required by section 120.57(3), Florida Statutes, challenging the Corporation’s scoring and ranking of Applicants for funding under the RFA. Hammock Ridge properly and timely filed for intervention to participate in the case. Because no material facts were in dispute, the case was referred to the Division of Administrative Hearings for an informal hearing.
- c) The central issue here is whether Florida Housing’s decisions to award or deny funding under the RFA, as proposed on March 24, 2017, are contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. More specifically, the issue is whether Florida Housing’s determination that the applications of JPM Outlook and Grande Park were ineligible was within the bounds described above. If JPM Outlook and Grande Park had been deemed eligible, each would have been in the funding range based on its assigned lottery number and the RFA selection criteria. If Grande Park had been deemed eligible, Hammock Ridge would not have been recommended for funding.

2. Present Situation

- a) A hearing was conducted on May 15, 2017, before Administrative Law Judge Lawrence P. Stevenson. All parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on June 29, 2017. The Recommended Order affirmed Florida Housing’s determination that JPM Outlook and Grande Park were ineligible for funding under RFA 2016-110 and recommended that each Petition be dismissed. A copy of the Recommended Order is attached as [Exhibit I](#).
- b) JPM Outlook and Grande Park filed one Exception to three Conclusions of Law in the Recommended Order on July 10, 2017, attached as [Exhibit J](#). Hammock Ridge and Florida Housing filed Joint Responses to the Exception, attached as [Exhibit K](#).

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3. Recommendation

- a) Staff recommends that the Board reject all of Petitioners' Exceptions, adopt the Findings of Fact of the Recommended Order, the Conclusions of Law of the Recommended Order, and the Recommendation of the Recommended Order, and issue a Final Order dismissing the Petitions.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

III. PROFESSIONAL SERVICES SELECTION (PSS)

A. Rule Development for Chapter 67-49, F.A.C.

1. Background/Present Situation

- a) Staff would like to begin the process to update and amend the Corporation's Rule regarding the Procurement of Commodities or Contractual Services.

2. Recommendation

- a) Authorize staff to proceed with the rule development process for Chapter 67-49, F.A.C.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

B. Competitive Solicitation for Comprehensive Multifamily Line of Business Software

1. Background

- a) Florida Housing's multifamily portfolio includes data and documents on approximately 1,700 rental properties located throughout Florida. The data collected is wide ranging, including but not limited to information from the initial application, credit underwriting, financial and loan servicing, land use restrictions, the physical property, tenant demographics, occupancy and compliance monitoring (to name a few types). Data comes from both one-time and ongoing monthly, quarterly and annual documents/processes. Over the life of a development, from application to the point when it leaves Florida Housing's portfolio, thousands of data variables are evaluated by Florida Housing staff and servicers. We also keep track of a development's movement through various processes in its life cycle, such as credit underwriting or refinancing.
- b) Florida Housing has made excellent progress with data and document management over time. We have a number of systems purchased or built internally by our Information Technology (IT) staff to meet reporting needs. Our ability to generate many reports on demand has evolved with our need, and the sophistication of our IT staff has increased to assist our business units with their information needs.
- c) About 1.5 years ago, our Director of Information Technology Services completed a comprehensive review of our multifamily data management systems and reported to the executive director that our systems are not integrated and are therefore unable to be used as a platform to build better reporting systems or for more sophisticated scoring of applications. That is, we have built a variety of databases for different types of portfolio information, but they are difficult to combine to provide more robust information. Moreover, some databases do not provide easy reporting capabilities, leaving staff to request special reports from IT staff or maintain separate spreadsheets as a way around the situation.
- d) During 2016, Florida Housing business and IT units reviewed available vendor options and determined that we can more timely meet many of our needs through third party software. The staff found that, in addition to purchasing the software, this project will require Florida Housing to contract with the software company to build out their modules to meet our particular needs, assist us as we implement the software and import data, and train both our IT and business unit staffs, and servicers. This project will require robust business unit involvement (particularly Multifamily and Asset Management).

PROFESSIONAL SERVICES SELECTION (PSS)

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2. Present Situation

- a) The Board-approved 2017 operating budget includes funding to solicit vendors for this purpose. At this time, the staff believes the best solicitation option is an Invitation to Negotiate, which requires interested vendors to respond to the scope of work and other requirements for information outlined in the solicitation, including pricing information. This approach allows Florida Housing to negotiate with the top approved vendor(s) to develop the final specifications and associated pricing for what Florida Housing needs in the product. This type of solicitation is particularly useful when seeking services and products for extremely complex projects.
- b) Subsequent to Board approval, Florida Housing expects to issue this solicitation in the next month, and based on the selection process, we will likely begin this project in early 2018. This means that funds set aside to be used in the 2017 budget will not be spent on this system.

3. Recommendation

- a) Authorize staff to begin the competitive solicitation process and establish a review committee to make recommendations to the Board for a vendor to negotiate and contract with for the purchase and customization of software and consulting related to implementation of multifamily line of business software; and
- b) Approve the use of unrestricted net position for payment of the system in 2018.

MULTIFAMILY PROGRAMS

Action

IV. MULTIFAMILY PROGRAMS

A. 2017-2018 Tentative Funding Amounts and Time Lines for Request for Applications (RFAs) for Multifamily Developments

1. Background

- a) During the remainder of 2017 and first half of 2018, the Corporation expects to offer the following funding through various RFAs:
 - (1) Estimated \$16,714,893 in grant funding (remaining 2016 plus projected 2017 Legislative appropriation for housing developments designed, constructed and targeted for persons with developmental disabilities, as defined in section 393.063, F.S.);
 - (2) Estimated \$130 million in State Apartment Incentive Loan (SAIL) Program funding (2017 Legislative appropriation for the SAIL Program plus SAIL Program Income);
 - (3) Estimated \$41 million in SAIL Workforce funding;
 - (4) Estimated \$6,893,053 in National Housing Trust Fund (NHTF) funding;
 - (5) Estimated \$49 million in Housing Credit (HC) allocation (anticipated 2018 Annual Allocation of HC); and
 - (6) Estimated \$ TBD in HOME Program funding (2017 Annual Allocation of HOME funding plus HOME Program Income);

2. Present Situation

- a) The Tentative 2017/2018 Funding Amounts/Time Line plan, outlining the estimated funding amounts and tentative timeframes for the various RFAs for which staff expects to hold workshops and issue through the remainder of 2017 and into the first half of 2018, is attached as [Exhibit A](#).

3. Recommendation

- a) Approve the plan and authorize staff to proceed with the development of various RFAs for grant, SAIL, HC, HOME, NHTF, and SAIL Workforce, as outlined in Tentative 2017/2018 Funding Amounts/Time Line plan, and authorize the Executive Director to establish a review committee for each RFA, as each RFA is issued, to make recommendations for award to the Board.