

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
September 14, 2018
Action Items



LEGAL

Action

I. LEGAL

A. HTG Village View, LLC, vs. Florida Housing Finance Corporation and Marquis Partners, Ltd., (Respondents) - FHFC Case No.: 2018-017BP, DOAH Case No.: 18-2156BID

1. Background

- a) This case regards a protest filed in Request for Applications 2017-113 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”). HTG Village View, LLC (“HTG Village”) and Marquis Partners, Ltd., (“Marquis”), applied for funding through the RFA for proposed Developments in Broward County.
- b) HTG Village and Marquis were initially deemed eligible for funding. Sailboat Bend II, Ltd (“Sailboat”) was selected for preliminary funding as the first Broward County proposed Development and Marquis was selected for preliminarily as the second Broward County proposed Development.
- c) HTG Village, Marquis, and Sailboat timely filed notices of intent to protest and formal written protests challenging the scoring process. Ultimately, Sailboat and Marquis voluntarily dismissed their petitions. Marquis withdrew its challenge to Sailboat and Marquis was granted party status to proceed to defend its application.
- d) HTG Village contested the eligibility of Marquis alleging fatal errors within Marquis’ Principal Disclosure Form. Based on information discovered during litigation, Florida Housing took the position that the uncontested errors within Marquis’s Principal Disclosure Form were material deviations and Marquis should be ineligible as well as lose five points.
- e) The matters were referred to the Division of Administrative Hearings (DOAH). A hearing in the matter was held on June 1, 2018 in Tallahassee, Florida.

2. Present Situation

- a) The hearing was conducted as scheduled before Administrative Law Judge (“ALJ”) Yolonda Y. Green at DOAH 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 July 27, 2018. A copy of the Recommended Order is attached as [Exhibit A](#). The ALJ concluded that the evidence demonstrated that the omission error within Marquis’ Principal Disclosure Form rendered it ineligible for funding and ineligible five scoring points. The ALJ further concluded that based on a preponderance of evidence, Florida Housing’s initial scoring decision finding Marquis eligible was erroneous and inconsistent with the requirements of the RFA.

LEGAL

Action

- b) The Recommended Order recommended that Florida Housing enter a final order finding that Florida Housing's initial scoring decision regarding Marquis' application was erroneous, concluding that Marquis was ineligible for funding and not eligible for five additional points, and awarding funding to HTG Village.
- c) Florida Housing and HTG Village filed a joint exception to one paragraph of the Recommended Order, attached as [Exhibit B](#). In its exception, Florida Housing and HTG Village do not seek to overturn or disturb the ultimate conclusions and eligibility decision reached by the ALJ. Rather, Florida Housing and HTG Village request to remove a finding of fact that is inconsistent on its face.
- d) Marquis filed exceptions to the Recommended Order, attached as [Exhibit C](#). In its exception, Marquis takes exception to eleven paragraphs in the Recommended Order including the Recommendation. In short, Marquis argues that the ALJ erred in finding that: 1) HTG Village had standing to participate in the proceeding, 2) Marquis was ineligible, and 3) Marquis should lose five scoring points.
- e) Marquis filed a response to Florida Housing and HTG Village's joint exception, attached as [Exhibit D](#). Florida Housing and HTG Village filed a joint response to Marquis' exceptions, attached as [Exhibit E](#).

3. Recommendation

- a) Staff recommends that the Board adopt grant the single exception filed by Florida Housing and HTG Village and enter a Final Order excluding the Finding of Fact in paragraph 48, and otherwise adopt the remaining Findings of Fact, Conclusions of Law and Recommendation of the Recommended Order, and issue a Final Order accordingly.

LEGAL

Action

B. In re: Resolution 2018-036; Delegation of Temporary Authority to Designated Staff to Consider, Grant or Deny Requests for Waiver or Variance of R. 67-48.0023(2), Fla. Admin. Code

1. Background

- a) On March 23, 2018, H.R. 1625 was signed into law by the President, creating a new subsection C within Section 42(g)(1) of the Internal Revenue Code (IRC), the regulations that govern the Corporation's administration of the Low Income Tax Credit (LIHTC) program.
- b) This new provision of the IRC permits Developers of LIHTC developments to average the imputed income limitations of tenants, in ten percent increments, for purposes of compliance with the IRC.
- c) R. 67-48.0023(2), Fla. Admin. Code does not currently permit income averaging to impute income for LIHTC purposes. Interested parties will be unable to take advantage of the new additions to the IRC without a waiver or variance of this Rule, until such time as the Rule is amended.

2. Present Situation

- a) Corporation staff estimate that dozens of current Applicants and Developers participating in the LIHTC will request waivers or variances of the above Rule in light of the changes to the IRC.
- b) It is likely that all such requests would receive a positive staff recommendation, but would also require each individual case to be brought before the Board, potentially delaying the progress of LIHTC developments currently in the Corporation pipeline.
- c) To promote the efficient processing of these requests, Resolution 2018-XX would temporarily delegate the authority to designated staff to consider, grant or deny requests for waiver or variance of the above Rule. This authority would expire when the Rule is rescinded or amended.

3. Recommendation

- a) Staff recommends that the Board adopt Resolution 2018-036.

LEGAL

Action

- C. **Madison Oaks, LLC and American Residential Communities, LLC v. Florida Housing Finance Corporation, DOAH Case No. 18-2966BID, FHFC Case No. 2018-039BP (Intervenors Arbours at Hester Lake, LLC; Blue Sunbelt, LLC; Colonnade Park, Ltd.; Harper's Pointe, L.P.; HTG Creekside, LLC; And HTG Sunset, LLC); and**

Sterling Terrace, Ltd and Sterling Terrace Developer, LLC v. Florida Housing Finance Corporation, DOAH Case No. 18-2967BID, FHFC Case No. 2018-040BP (Intervenors Arbours at Hester Lake, LLC; Blue Sunbelt, LLC; Colonnade Park, Ltd.; Harper's Pointe, L.P.; HTG Creekside, LLC; And HTG Sunset, LLC)

1. Background

- a) This case regards Request for Applications (“RFA”) 2017-111, which solicited applications to compete for an allocation of Federal Low-Income Housing Tax Credit funding (“tax credits”) for affordable housing developments located in Small and Medium Counties. Petitioners and Intervenors all submitted applications in response to the RFA. On May 4, 2018, Florida Housing posted notice of its intended decision to award funding to several applicants, including Intervenors HTG Creekside, HTG Sunset, and Harper’s Pointe. The Board found that Madison Oaks and Sterling Terrace satisfied all mandatory and eligibility requirements for funding, but awarded funding to Intervenors based upon the ranking criteria in the RFA.
- b) Petitioners filed notices of intent to protest and formal written protests as required by section 120.57(3), Florida Statutes, challenging the Corporation’s scoring and ranking of Applicants for funding under the RFA. Florida Housing referred the petitions to the Division of Administrative Hearings for a formal hearing. Several other challenges were also filed, but eventually all challenges except for Petitioners’ challenges to HTG Creekside, HTG Sunset, and Harper’s Pointe were dismissed. The two formal written protests filed by Petitioners were consolidated.
- c) The central issue here is whether Florida Housing’s decisions to award funding under the RFA 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 HTG Creekside, HTG Sunset, and Harper’s Pointe were eligible was within the bounds described above. If one of these applicants had been deemed ineligible, then Clermont Ridge would have been selected for funding instead. If two of these applicants had been deemed ineligible, Sterling Terrace would have also been selected for funding. If all three of these applicants had been deemed ineligible, then Madison Oaks would also have been selected for funding.
- d) Prior to the hearing, Florida Housing changed its initial position regarding HTG Creekside and HTG Sunset, and agreed with Petitioners that each of these Applicants had incorrectly been awarded points for their proximity to public schools. Based upon evidence acquired during discovery, Florida Housing agreed that neither the magnet school listed by HTG Sunset nor the charter school listed by HTG Creekside met the definition of a “public school” because neither used geographic proximity as a principal admission criterion.

LEGAL

Action

2. **Present Situation**

- a) A hearing was conducted on July 11, 2018, before Administrative Law Judge Suzanne Van Wyk. All parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on August 23, 2018. The Recommended Order affirmed Florida Housing's initial determination that Harper's Pointe and HTG Creekside were properly awarded funding under RFA 2017-111, but concluded that the initial determination that HTG Sunset was properly awarded funding was erroneous. A copy of the Recommended Order is attached as [Exhibit G](#).

3. **Recommendation**

- a) At the time of drafting this agenda item, the time for the parties to file exceptions and responses thereto has not expired. Any exceptions and responses to exceptions will be attached as a supplemental agenda item and a recommendation by staff will be included at that time.

LEGAL

Action Supplement

I. LEGAL

A. Renaissance Pointe Apartments, LLC, vs. Florida Housing Finance Corporation and Midtown Lofts, Ltd., (Respondents) and HTG Rainbow, LLC (Intervenor); FHFC Case No.: 2018-055BP, DOAH Case No.: 18-3806BID

1. Background

- a) This case regards a protest filed in Request for Applications 2018-102 Housing Credit Financing to Provide Affordable Multifamily Rental Housing that is a Part of Local Revitalization Initiatives (the “RFA”). Renaissance Pointe Apartments, LLC (“Renaissance”), Midtown Lofts, Ltd., (“Midtown”), and HTG Rainbow, LLC (“HTG”) applied for funding through the RFA.
- b) Renaissance, Midtown, and HTG were initially deemed eligible for funding. Midtown was selected for preliminary funding as the highest scoring application. Renaissance earned the second highest score, but insufficient funding remained to fully fund the Renaissance application. HTG was selected for funding as the next highest scoring application with an allocation request amount that could be fully funded.
- c) Renaissance timely filed a notice of intent to protest and a formal written protest challenging the scoring of the Midtown application. Midtown and HTG timely intervened. Midtown was granted party status as a respondent.
- d) Renaissance contested the eligibility of Midtown alleging that Midtown’s incorrect response to a question regarding the occupancy status of its Development site rendered Midtown’s application ineligible for funding. During litigation, Florida Housing, Midtown, and HTG maintained that Midtown’s incorrect response to the occupancy status question was a waivable minor irregularity because it provided no competitive advantage and did not adversely impact Florida Housing or the public.
- e) The matter was referred to the Division of Administrative Hearings (DOAH). A hearing in the matter was held on August 17, 2018 in Tallahassee, Florida.

2. Present Situation

- a) The hearing was conducted as scheduled before Administrative Law Judge (“ALJ”) Robert E. Meale at DOAH 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 September 6, 2018. A copy of the Recommended Order is attached as [Exhibit A](#). The ALJ concluded that Renaissance failed to prove that Florida Housing’s decision to waive as a minor irregularity Midtown’s incorrect response to the occupancy status question was clearly erroneous, contrary to competition, arbitrary, or capricious. The Recommended Order recommended that Florida Housing enter a final order dismissing Renaissance’s protest.

LEGAL

Action Supplement

- b) On September 7, 2018, Florida Housing filed an exception to the Recommended Order, attached as [Exhibit B](#). In its exception, Florida Housing does not seek to overturn or disturb the ultimate conclusions and eligibility decision reached by the ALJ. Rather, Florida Housing requests to modify or reject portions of the Findings of Fact that are not supported by competent, substantial evidence.

3. **Recommendation**

- a) Staff recommends that the Board grant Florida Housing's exceptions to the Recommended Order and enter a Final Order adopting the Findings of Fact as modified by Florida Housing's exceptions, the Conclusions of Law, and the Recommendation of the Recommended Order.

LEGAL

Action Supplement

I. LEGAL

- A. **Madison Oaks, LLC and American Residential Communities, LLC v. Florida Housing Finance Corporation, DOAH Case No. 18-2966BID, FHFC Case No. 2018-039BP (Intervenors Arbours at Hester Lake, LLC; Blue Sunbelt, LLC; Colonnade Park, Ltd.; Harper's Pointe, L.P.; HTG Creekside, LLC; And HTG Sunset, LLC;)**

Sterling Terrace, Ltd and Sterling Terrace Developer, LLC v. Florida Housing Finance Corporation, DOAH Case No. 18-2967BID, FHFC Case No. 2018-040BP (Intervenors Arbours at Hester Lake, LLC; Blue Sunbelt, LLC; Colonnade Park, Ltd.; Harper's Pointe, L.P.; HTG Creekside, LLC; And HTG Sunset, LLC;)

1. Background

- a) This case regards Request for Applications ("RFA") 2017-111, which solicited applications to compete for an allocation of Federal Low-Income Housing Tax Credit funding ("tax credits") for affordable housing developments located in Small and Medium Counties. Petitioners and Intervenors all submitted applications in response to the RFA. On May 4, 2018, Florida Housing posted notice of its intended decision to award funding to several applicants, including Intervenors HTG Creekside, HTG Sunset, and Harper's Pointe. The Board found that Madison Oaks and Sterling Terrace satisfied all mandatory and eligibility requirements for funding, but awarded funding to Intervenors based upon the ranking criteria in the RFA.
- b) Petitioners filed notices of intent to protest and formal written protests as required by section 120.57(3), Florida Statutes, challenging the Corporation's scoring and ranking of Applicants for funding under the RFA. Florida Housing referred the petitions to the Division of Administrative Hearings for a formal hearing. Several other challenges were also filed, but eventually all challenges except for Petitioners' challenges to HTG Creekside, HTG Sunset, and Harper's Pointe were dismissed. The two formal written protests filed by Petitioners were consolidated.
- c) The central issue here is whether Florida Housing's decisions to award funding under the RFA 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 HTG Creekside, HTG Sunset, and Harper's Pointe were eligible was within the bounds described above. If one of these applicants had been deemed ineligible, then Clermont Ridge would have been selected for funding instead. If two of these applicants had been deemed ineligible, Sterling Terrace would have also been selected for funding. If all three of these applicants had been deemed ineligible, then Madison Oaks would also have been selected for funding.
- d) Prior to the hearing, Florida Housing changed its initial position regarding HTG Creekside and HTG Sunset, and agreed with Petitioners that each of these Applicants had incorrectly been awarded points for their proximity to public schools. Based upon evidence acquired during discovery, Florida Housing agreed that neither the magnet school listed by HTG Sunset nor the charter

LEGAL

Action Supplement

school listed by HTG Creekside met the definition of a “public school” because neither used geographic proximity as a principal admission criterion.

2. Present Situation

- a) A hearing was conducted on July 11, 2018, before Administrative Law Judge Suzanne Van Wyk. All parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on August 23, 2018. The Recommended Order affirmed Florida Housing’s initial determination that Harper’s Pointe and HTG Creekside were properly awarded funding under RFA 2017-111, but concluded that the initial determination that HTG Sunset was properly awarded funding was erroneous. A copy of the Recommended Order is attached as [Exhibit C](#).
- b) Florida Housing filed exceptions to the Recommended Order, attached as [Exhibit D](#). Blue Sunbelt and Clermont Ridge filed exceptions and objections to Recommended Order, attached as [Exhibit E](#). Madison Oaks and American Residential Communities filed exceptions to the Recommended Order attached as [Exhibit F](#). Sterling Terrace and Sterling Terrace Developer filed exceptions to the Recommended Order, attached as [Exhibit G](#). Intervenor, HTG Sunset filed exceptions to Recommended Order, attached as [Exhibit H](#).
- c) Florida Housing filed responses to HTG Sunset’s exceptions to Recommended Order, attached as [Exhibit I](#). Florida Housing also filed responses to Petitioners’ (Madison Oaks, American Residential, Sterling Terrance and Sterling Terrace Developers) exceptions to Recommended Order, attached as [Exhibit J](#).
- d)

3. Recommendation

- a) Staff recommends that the Board grant the exceptions filed by Florida Housing, deny the exceptions filed by all other parties, and enter a Final Order in accord with same.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

II. PROFESSIONAL SERVICES SELECTION (PSS)

A. Single Source Procurement for the Housing Project Portfolio System

1. Background

- a) In November 2001, Florida Housing entered into a contract with Housing and Development Software, LLC (HDS) to provide a Housing Project Portfolio System to assist with keeping track of funded projects and properties in Florida Housing's portfolio.

2. Present Situation

- a) The Housing Project Portfolio System was custom-designed for Florida Housing's specific needs and is only available from HDS. This application currently provides our fundamental tracking and management database system and has been in place for over 16 years. Multiple business processes, supporting systems, and reporting infrastructure rely upon the collected data and capabilities in the system.
- b) At the May 4, 2018, Board Meeting, Florida Housing's Board of Directors authorized staff to enter into contract negotiations with ProLink Solutions, Inc., for comprehensive multifamily line of business software system to replace the HDS software; however, Florida Housing has a continuing need to maintain this system until the ProLink software is fully operational.

3. Recommendation

- a) Staff requests authorization to enter into a new one-year single source contract with Housing and Development Software, LLC for maintenance and support of the Housing Project Portfolio System while the new system is being implemented.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

B. Single Source Procurement for Oversight of Cost/Benefit Research on High Needs/High Cost Pilot Developments

1. Background

- a) Florida Housing has issued grants to three pilot developments to develop and provide up to 50 units of rental housing to serve “high needs/high cost” chronically homeless residents in permanent supportive housing. The purpose of the pilot is to target and integrate supportive housing and community-based services to high needs persons with disabilities and frail elders who are homeless. These individuals typically are high utilizers of publicly funded crisis services, such as emergency rooms and jails.
- b) Each developer committed to hire a research team to carry out cost-benefit and personal outcome evaluations of how well this model works to evaluate the Florida-specific of public services/housing and residents’ personal outcomes, compared to when the residents were still homeless. While evaluations of this sort have occurred in other states, our staff and stakeholders in Florida have found that Florida policymakers want to know how well such a model works in this state.
- c) The data collection started as residents moved in to the units and will continue for 24 months, at which point the final reports will be written. Each organization is responsible for its own data collection, analysis and report.
- d) Because of the importance of this research, Florida Housing staff determined that it would be helpful to have assistance from a more knowledgeable organization to ensure that the three pilot sights are problem solving around data and research questions that arise. During the initial phase of this work in January 2016, Florida Housing released a Request for Quote to procure a firm that would provide research oversight and work with Florida Housing on these grants. The Corporation for Supportive Housing, Inc. (CSH), was the only firm to respond, and because of CSH’s qualifications as the only firm nationally that specializes in this type of research, Florida Housing entered into a contract with the organization.

2. Present Situation

- a) The current contract with CSH for these services is set to expire on December 31, 2018. Florida Housing estimates that the research portion of this pilot will not be completed until late 2020, and has found these research oversight services to be very helpful.
- b) CSH is the only firm nationally that specializes in this type of research. Florida Housing’s High Need/High Cost Pilot is similar to a CSH’s signature initiative, FUSE (Frequent Users Systems Engagement), which has been implemented in approximately 30 communities nationwide – including Orlando. The CSH program has its origins more than 10 years ago as a pilot experiment in New York City to develop an enhanced supportive housing model to target individuals with established patterns of cycling between jail and shelters in the city. Nationally, evaluations have been released demonstrating the benefits of

PROFESSIONAL SERVICES SELECTION (PSS)

Action

this approach, and early results from one of the three projects financed by Florida Housing also demonstrate exciting benefits.

- c) No other technical assistance provider has the depth and breadth of experience CSH does with frequent user/high utilizer supportive housing initiatives generally, and Florida Housing is not aware of any that have tried to provide technical assistance particularly targeted to the type of pilot we are implementing. Such a contract will have an annual cost of approximately \$20,000.

3. **Recommendation**

- a) Staff believes that it is in the best interest of Florida Housing to continue with these services and proceed with a new one-year contract for 2019. Staff requests authorization to enter into negotiations for a single source contract with the Corporation for Supportive Housing, Inc., for this purpose.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

C. **Contract Renewal – Technical Assistance Provider Services for the Predevelopment Loan Program, Demonstration Loans and Other Florida Housing Programs**

1. **Background**

- a) At the October 2015 meeting, the Board of Directors of Florida Housing authorized staff to enter into contract negotiations with three firms to provide technical assistance provider services for the Predevelopment Loan Program, Demonstration Loans and other Florida Housing programs.
- b) Current contract information is as follows:

Contract Number	Vendor	Initial Term Start Date	Current Expiration Date
027-2015	Capital Access, Inc.	1/7/2016	1/6/2019
028-2015	Corporation for Supportive Housing, Inc.	1/7/2016	1/6/2019
029-2015	Florida Housing Coalition	1/7/2016	1/6/2019

- c) Contingent upon satisfactorily performing its obligations under the contract as determined by Florida Housing, these contracts may be renewed once for an additional three-year period.

2. **Present Situation**

- a) Florida Housing staff supports using the three-year renewal option for all three contracts.

3. **Recommendation**

- a) Staff recommends the Board direct staff to proceed with the three-year renewal option.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

D. Request for Qualifications (RFQ) 2018-04, Capital Needs Assessment Services

1. Background

- a) At the June 16, 2017 meeting, the Board authorized Florida Housing staff to issue a solicitation to procure one or more qualified firms to provide Capital Needs Assessment services.

2. Present Situation

- a) RFQ 2018-04 was issued on June 18, 2018. The deadline for receipt of responses was 2:00 p.m., July 17, 2018. A copy of the RFQ and Addendum #1 is provided as [Exhibit A](#).
- b) Eight responses were received from 2RW Consultants; AEI Consultants; Clampett Industries, LLC d/b/a EMG; GLE Associates, Inc.; Moran Construction Consultants, L.L.C.; On Solid Ground, LLC; Partner Assessment Corporation d/b/a Partner Engineering and Science, Inc.; and Varian Associates, P.A.
- c) Members of the review committee were Tim Kennedy, Assistant Director of Multifamily Programs (Chairperson); Ken Cureton, Construction Administrator; and Elaine Roberts, Senior Supportive Housing Analyst.
- d) Each member of the Review Committee individually reviewed the proposals submitted prior to convening for the Review Committee meeting which was held at 10:00 a.m., August 1, 2018.
- e) At the August 1st meeting, the Review Committee members provided their final scores for the responses received. The score sheet is provided as [Exhibit B](#).

3. Recommendation

- a) The review committee recommends that the Board authorize Florida Housing to enter into contract negotiations with AEI Consultants; Clampett Industries, LLC d/b/a EMG; GLE Associates, Inc.; Moran Construction Consultants, L.L.C.; On Solid Ground, LLC; Partner Assessment Corporation d/b/a Partner Engineering and Science, Inc.; and Varian Associates, P.A.