

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NOS. 14-1398BID
14-1399BID
14-1400BID
14-1425BID
14-1426BID
14-1427BID
14-1428BID

PINNACLE RIO, LLC,

Petitioner,
vs.

Volume 1
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FLORIDA HOUSING FINANCE CORPORATION,

Respondent,
and

ALLAPATTAH TRACE APARTMENTS, LTD.

Intervenor.

_____ /

IN RE: Final Hearing
BEFORE: Honorable F. SCOTT BOYD
DATE: April 22, 2014
TIME: Commenced at 9:29 a.m.
Concluded at 9:47 a.m.
LOCATION: 1230 Apalachee Parkway
Tallahassee, FL
REPORTED BY: LISA D. FREEZE, RPR, CRR
Notary Public

ACCURATE STENOGRAPHY REPORTERS, INC
2894 REMINGTON GREEN LANE
TALLAHASSEE, FL 32308 (850)878-2221

APPEARANCES:

REPRESENTING PETITIONER: (by telephone)
(Pinnacle Rio, LLC)

JOSEPH M. GOLDSTEIN, ESQUIRE
jgoldstein@shutts.com
SHUTTS & BOWEN, LLP
201 South Biscayne Blvd.
1500 Miami Center
Miami, FL 33131
954.847.3837

REPRESENTING RESPONDENT:
(FHFC)

HUGH R. BROWN, ESQUIRE
hugh.brown@floridahousing.org
FLORIDA HOUSING FINANCE CORPORATION
123 North Monroe Street
Tallahassee, FL 32301
850.488.4197

REPRESENTING INTERVENOR:
(Allapattah Trace Apartments)

MICHAEL J. GLAZER, ESQUIRE
mglazer@ausley.com
AUSLEY & McMULLEN
123 South Calhoun Street
Tallahassee, FL 32301
850.224.9115

REPRESENTING TOWN CENTER PHASE TWO, LLC:

MICHAEL P. DONALDSON, ESQUIRE
mdonaldson@cfjblaw.com
CARLTON FIELDS
215 South Monroe Street, Suite 500
Tallahassee, FL 32302
850.224.1585

REPRESENTING APC FOUR FORTY FOUR, LTD:

BRITTANY A. LONG, ESQUIRE
balong@radeylaw.com
RADEY LAW FIRM
301 S. Bronough Street, Suite 200
Tallahassee, FL 32301
850.425.6654

REPRESENTING 2401 NW, LLC:

BRIAN A. NEWMAN, ESQUIRE
brian@penningtonlaw.com
PENNINGTON MOORE WILKINSON BELL DUNBAR
215 S. Monroe Street, #200
Tallahassee, FL 32301
850.222.3533

REPRESENTING HTG MIAMI-DADE 5, LLC:

MAUREEN MCCARTHY DAUGHTON, ESQUIRE
mdaughton@sniffenlaw.com
SNIFFEN & SPELLAMN, P.A.
123 North Monroe Street
Tallahassee, FL 32301
850.205.1996

P R O C E E D I N G S

1
2 THE COURT: Please be seated.

3 This hearing will now be in order. We are
4 here in Tallahassee, Florida before the
5 Division of Administrative Hearings in the
6 cases 14-1398, 1399, 1400, 1425, and 1428.
7 These consolidated cases involve the
8 proceedings by the Florida Housing Finance
9 Corporation in its allocation of low-income
10 housing credits, tax credits.

11 My name is Scott Boyd, and I've
12 been assigned as the administrative law judge
13 in this case. The purpose of the hearing is to
14 determine whether the Florida Housing Finance
15 Corporation's intended award of housing credits
16 was clearly erroneous, contrary to competition,
17 arbitrary or capricious.

18 We are scheduled for as long as we need
19 today and then we are scheduled to resume at
20 1:30 p.m. on the afternoon of Tuesday, the
21 29th of April, all day on the 30th, and May 1st
22 and half a day on May 2nd.

23 Unfortunately, as it now stands, we have
24 to move out of this room on Wednesday,
25 April 30th because it was previously booked for

1 another large case, and the other large room is
2 also booked. So unless one of those doesn't
3 need the time, which is possible -- Judge
4 McKibben is starting tomorrow for the case, and
5 he may be wrapped up by then -- we're going to
6 have to try to move into a smaller room. So
7 we'll have to do what we can do.

8 Let's make appearances, for the record.
9 Mr. Goldstein, you are joining us by telephone
10 from North Carolina representing Pinnacle Rio;
11 is that correct?

12 MR. GOLDSTEIN: Yes, Your Honor, thank you.

13 THE COURT: And who is representing 2401
14 Northwest?

15 MR. NEWMAN: Brian Newman with Pennington PA,
16 Your Honor.

17 THE COURT: Mr. Newman.

18 And APC Four Forty Four?

19 MS. LONG: Brittany Long with the Radey Law
20 Firm, and Donna Blanton will also be joining us
21 next week.

22 THE COURT: Okay. Ms. Long.

23 Town Center Phase Two.

24 MR. DONALDSON: Michael Donaldson, Judge.

25 THE COURT: Mr. Donaldson.

1 And HTG Miami-Dade 5.

2 MS. DAUGHTON: Maureen Daughton with Sniffen
3 & Spellman, Your Honor.

4 THE COURT: Thank you.

5 And Allapattah Trace.

6 MR. GLAZER: Michael Glazer with Ausley
7 McMullen.

8 THE COURT: Okay. This morning Village Miami
9 filed a voluntary notice of dismissal. It's my
10 understanding that we're just going to take care
11 of some preliminary matters this morning and begin
12 with evidence and witnesses next week.

13 Have the parties had any discussions as to
14 how we should proceed in this, who should
15 present their case first of all these
16 petitioners?

17 MR. GLAZER: Your Honor, we decided as a
18 group that we -- because we still have additional
19 discovery to do, that you previously granted our
20 motion to extend the time for filing the joint
21 stipulation.

22 Frankly, we decided that it didn't really
23 make sense to do opening statements today
24 either. And so, with your permission, we'd
25 like to reserve those for next Tuesday as well.

1 We've not discussed an order of
2 presentation yet; although, we have also
3 discussed that, if your schedule permits next
4 Tuesday, if rather than starting at 1:30, we
5 could start in the morning that would make more
6 sense. The reason it was originally set in the
7 afternoon was an issue that Judge Staros had on
8 her calendar. None of us had that issue.

9 And so we think -- I've not had this
10 conversation with others, but I think it's
11 pretty fair to say that if we could start on
12 the morning of Tuesday, the odds of us going
13 past Wednesday are probably fairly low. I'll
14 look to others to agree or disagree, but I
15 think that's...

16 MR. NEWMAN: I agree.

17 MR. DONALDSON: I agree to that.

18 MR. BROWN: I agree to that.

19 THE COURT: Actually, the conflict that she
20 had is some judicial training that I'm also
21 involved in.

22 MR. GLAZER: Okay.

23 THE COURT: So I'd prefer not to do that.

24 If it looks like -- I also changed the
25 schedule a little bit to set the rule challenge

1 on the afternoon of our final day. Is it the
2 feeling of the parties that we could get this
3 completed in that time? Because if not, I can
4 skip that training. I'm so well trained
5 already.

6 MR. NEWMAN: Are you looking for an excuse to
7 skip the training?

8 THE COURT: No, not really.

9 MR. NEWMAN: Your Honor, I think we may --
10 and I'll get with Mr. Meffert, but I -- to
11 finalize this, but we had discussed perhaps filing
12 joint motions to resolve the rule challenge, okay?
13 So it may be the case that we don't need actual
14 hearing time for that.

15 THE COURT: Okay.

16 MR. NEWMAN: But I've got to get with him
17 about that.

18 THE COURT: Okay. Even if we did continue
19 with that, since the parties would already be in
20 the room, we might be able to put that off a
21 little bit. I don't know that that would take
22 half a day. I can't imagine there would be too
23 many witnesses. It seems to be a question of law
24 --

25 MR. NEWMAN: There may be no witnesses, Your

1 Honor.

2 THE COURT: -- and stipulation, yeah. Okay.

3 MR. NEWMAN: We're talking about that, and
4 that's probably where we will end up.

5 THE COURT: Okay.

6 MR. NEWMAN: But again, I have to discuss
7 that with him, and we will get back to you.

8 THE COURT: Let's discuss the order of
9 presentation, and we have -- I guess, Allapattah
10 Trace and HTG Miami-Dade would be aligned for all
11 purposes with the department; is that correct?

12 MR. GLAZER: Yes, Your Honor.

13 MS. DAUGHTON: Yes.

14 THE COURT: So I would like to, I guess, put
15 you last. So should we go with -- Mr. Goldstein,
16 would you want to proceed? You were the first
17 petition filed.

18 MR. GOLDSTEIN: Your Honor, Joe Goldstein.

19 We would prefer to go last as to the
20 petitioners, but we'll do whatever the court
21 directs us to do.

22 THE COURT: Well, it doesn't make much
23 difference to me which petitioner goes first.

24 Does anybody want to go first?

25 MR. DONALDSON: Judge, Michael Donaldson for

1 Town Center. I would love to go first. The
2 problem that I have is the witness that I'll be
3 using can't be here until Wednesday.

4 THE COURT: Okay.

5 MR. GLAZER: At this point, the challenges of
6 Pinnacle Rio and APC overlap. APC has more issues
7 than Pinnacle Rio does, but I think all of
8 Pinnacle Rio's issues are subsumed, also, with
9 what APC did. So whether one or the other goes
10 first or second amongst the two of them, I think,
11 you know, them going back to back makes some
12 sense.

13 THE COURT: Ms. Long, would you be prepared
14 to go first?

15 MS. LONG: Yes.

16 THE COURT: Okay. Why don't we start with
17 APC Four Forty Four, followed by Pinnacle Rio and
18 then go with -- is there any reason to have a
19 preference for Town Center or 2401 that I'm not
20 aware of? Does it matter?

21 MR. GLAZER: I'm not sure how many witnesses
22 Pinnacle or APC plans to call. My impression is
23 it's not a lot.

24 MS. LONG: Probably not. We're still
25 determining that.

1 MR. GLAZER: But it might make sense for
2 2401, then, to go next if Mr. Donaldson's witness
3 can't be here on Wednesday. Again, some of that
4 may determine what time -- depend on what time
5 we're going to start on Tuesday as well.

6 THE COURT: Right. Why don't we start -- if
7 there's any danger of us not getting through, I'd
8 rather start a little earlier on the subsequent
9 days. I mean, Tuesday, we can start at 1:30,
10 assuming we can get done and then start at 9:00.
11 Would that be a problem, or 8:30 on the succeeding
12 days?

13 MR. GLAZER: I don't think we're at any risk
14 of not getting done.

15 MR. DONALDSON: I can tell you, Judge, my
16 witness, if he's around through cross for over an
17 hour, I would be shocked.

18 THE COURT: Okay.

19 MR. GLAZER: And I expect only one live
20 witness other than maybe a Florida Housing person.
21 And I don't expect him to be lengthy either in my
22 case.

23 THE COURT: Okay. Well, why don't we -- why
24 don't we proceed with APC Four Forty Four going
25 first, followed by Pinnacle Rio, followed by 2401

1 and then Town Center. And that will give
2 Mr. Donaldson the most time for his witness and...

3 MR. NEWMAN: Your Honor, may I speak to our
4 --

5 THE COURT: Please.

6 MR. NEWMAN: -- witnesses?

7 And I don't care where you put us: First,
8 last, middle. It doesn't matter to me. I have
9 one witness that I'll call from my client, and
10 then I've got three witnesses that will be
11 department witnesses, now, all of whom I think
12 will testify at some point in time during this
13 proceeding. It is not important to me, the
14 order that they're called in.

15 But, you know, and I don't want to call
16 them twice. You know, I don't think it makes
17 sense for them to have to be up here twice,
18 depending on who is putting on what case at
19 what time.

20 So I throw that out there, but it's the
21 three witnesses that I deposed already, Ken
22 Reecy, Ms. O'Neill and Kevin Tatreau.

23 THE COURT: Yeah, I think we would want to
24 endeavor not to put any witnesses on more than
25 once if we can. So what I would do is be liberal

1 in your -- if you listed that as a witness, we'll
2 just go ahead and present it, whether it was
3 covered on the person that called the witness or
4 not, we'll just proceed through that. Go through
5 each petitioner that may have questions for that
6 witness, and then we'll go to the intervenors and
7 the department.

8 Would you prefer to go last after the
9 intervenors or does that matter?

10 MR. BROWN: I don't have a preference. I
11 think Mr. Glazer may.

12 THE COURT: Mr. Glazer.

13 MR. GLAZER: I think because Florida Housing
14 has more -- for lack of a better word, "stuff" to
15 cover with the different issues, that it might
16 make more sense for Florida Housing to go after
17 the petitioners, followed by us and HTG.

18 THE COURT: Okay. We'll do it in that
19 fashion, then.

20 MR. GLAZER: Although, it's entirely possible
21 that by the time we get to Florida Housing that
22 all the same people will have testified.

23 MR. BROWN: That may be true.

24 MR. GLAZER: So it may work out.

25 THE COURT: So no one wants to do opening

1 statements. Are there any -- I know you haven't
2 done a stipulation yet. Are there any joint
3 exhibits that we can go ahead and introduce that
4 we know are...?

5 MR. BROWN: Yes, Your Honor. We've got what
6 we would like to have to be the first six joint
7 exhibits. And this is just the request for
8 application, the Q&A for that RFA, the
9 spreadsheets that sort of encompass the agency
10 preliminary action and I believe copies of the two
11 rules that are involved.

12 THE COURT: Okay. And all the parties have
13 agreed on these, I assume?

14 MS. DAUGHTON: Yes, Your Honor.

15 MR. NEWMAN: Yes, Your Honor.

16 MR. DONALDSON: Yes, Your Honor.

17 THE COURT: So I'll admit now as joint
18 exhibits J1 through J6. J1, the request for
19 applications, 2013-003; J2, questions and answers
20 for RFP 2013-003; Joint 3, RFA 2013-003, sorting
21 order spreadsheet; Joint 4, RFA 2013-003, review
22 committee recommendations; J5 -- well, I'm not
23 going to admit the two rules. I'll just take
24 official recognition of those. I don't usually do
25 those as exhibits.

1 But I'll take official recognition of
2 Rule 67-48 and 67-60. And these are the rules
3 that were effective as of what date, as the
4 effective date of the solicitation?

5 MR. BROWN: They were effective in September,
6 and the responses for the RFA were due in November
7 so...

8 THE COURT: So these are the September rules?

9 MR. BROWN: Yeah.

10 THE COURT: I'll take official recognition of
11 those.

12 MR. BROWN: Actually, Your Honor, I printed
13 those off from the department of state website, so
14 the corrections that were made to the citations
15 are going to show up in there, but there's no
16 other changes.

17 THE COURT: Okay.

18 MR. BROWN: So that -- Your Honor, would that
19 be J1 through J4, then?

20 THE COURT: Yes. I'm sorry. J1 through J4,
21 and I take official recognition of the two rules.

22 (Joint Exhibit Nos. J1-J4 were received into
23 evidence.)

24 MR. BROWN: I'm never sure whether the court
25 wants to make them exhibits or not. That's fine.

1 THE COURT: Yeah, I don't usually do that.

2 MR. BROWN: Okay.

3 THE COURT: You're all familiar with the
4 evidentiary standards, but let me just go over
5 that. They're relaxed in an administrative
6 proceeding. Irrelevant, immaterial evidence or
7 unduly repetitious evidence will be excluded, but
8 all other evidence will be admitted that's
9 reasonably relied upon by prudent persons in the
10 everyday conduct of their affairs.

11 I admit all hearsay. I know some ALJs do
12 not do that. But I will entertain your
13 objections to hearsay, and I will rule on the
14 record whether I consider it hearsay or not.
15 So if there's some question in your mind about
16 whether I might consider something hearsay or
17 you think an hearsay exception may be
18 applicable that I might not be aware of, please
19 call that to my attention or make an objection.
20 It's going to come in, but we'll all be on the
21 same page as to what I intend to do.

22 Is any party planning to request a copy of
23 the transcript at this point?

24 MR. GLAZER: Yes.

25 MR. DONALDSON: Yes, I would expect.

1 MR. BROWN: Yes.

2 THE COURT: Just don't take quite as careful
3 notes when...

4 Florida Housing Finance Commission
5 yesterday filed a motion in limine. Obviously,
6 you haven't had time to respond to that, and it
7 seems to be a pretty critical issue. So I'm
8 not going to rule on that today. I'll rule on
9 that when we reconvene.

10 Anything else we need to do here today?

11 MR. GLAZER: We have -- I think we all
12 brought our applications and agreed that we could
13 give those today as joint exhibits.

14 THE COURT: That would be good.

15 MR. DONALDSON: I'll collect them.

16 MR. GLAZER: Mr. Goldstein, I think, was
17 going to send one, but I don't know that it's
18 arrived.

19 THE COURT: Okay.

20 MR. GOLDSTEIN: This is Joe Goldstein.

21 I -- it was hand-delivered yesterday, Your
22 Honor, I believe to the -- either your chambers
23 or the clerk's office, but I didn't receive a
24 confirmation.

25 THE COURT: Okay. I don't believe that's

1 shown up on the docket yet, but I'll take it --
2 and that represents your application. I'm sure
3 there's no objection to anyone's application, so
4 I'll accept that when it comes in. And I'll
5 accept as -- let's see, how am I going to number
6 these? I guess Town Center, TC1, the application
7 from Town Center Phase Two, LLC.

8 What should we call your client, HTG or is
9 that...?

10 (Town Center Exhibit No. TC-1 was received
11 into evidence.)

12 MS. DAUGHTON: HTG is great.

13 (HTG Exhibit No. HTG-1 was received into
14 evidence.)

15 (2401 Exhibit No. 2401-1 was received into
16 evidence.)

17 (APC Exhibit No. APC-1 was received into
18 evidence.)

19 (Allapattah Exhibit No. ATA-1 was received
20 into evidence.)

21 (Pinnacle Rio Exhibit No. P-1 was received
22 into evidence.)

23 THE COURT: We will accept as Exhibit HTG-1
24 the application of HTG Miami-Dade Wagner Creek.

25 We will accept as Exhibit 2401-1 the

1 application of 2401 Northwest, LLC.

2 And we will accept as Exhibit APC-1 the
3 application of APC Four Forty Four.

4 And as ATA-1 the application of Allapattah
5 Trace Apartments, Limited. And when the
6 application of Mr. Goldstein arrives, we will
7 -- what's a short for -- I'll just call that P,
8 P-1 for Pinnacle. The application of Pinnacle
9 Rio will be accepted.

10 So we have the applications in. We have
11 the four joint exhibits. What else can we do
12 this morning? I was hoping to get over your
13 opening arguments, but you're not prepared to
14 do those, so we'll wait. That's all right.

15 Let's limit those opening arguments to --
16 I think ten minutes ought to be applicable.
17 I've read your pleadings, and I know that's
18 plenty of time, if you will focus on the right
19 things.

20 MR. GLAZER: Are we going to stick with 1:30,
21 then, on Tuesday?

22 THE COURT: Yeah, let's do. If you think
23 we're not going have trouble finishing, I need all
24 the training I can get. So I better go to the
25 morning session.

1 Anything else that we can accomplish
2 today?

3 MS. DAUGHTON: I don't think so, no.

4 THE COURT: I was going to set the rule
5 challenge for this afternoon, but I didn't think
6 that -- I thought that was a little quick.

7 Okay. Thank you very much.

8 MS. DAUGHTON: Thank you, Your Honor.

9 MR. BROWN: Thank you.

10 MR. GOLDSTEIN: Thank you, Your Honor.

11 (The proceedings concluded at 9:47 AM)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, LISA D. FREEZE, Notary Public, certify that I was authorized to and did stenographically report the proceedings herein, and that the transcript is a true and complete record of my stenographic notes.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

WITNESS my hand and official seal this 3rd day of May, 2014.

LISA D. FREEZE, CRR, NOTARY PUBLIC
2894 REMINGTON GREEN LANE
TALLAHASSEE, FL 32308
850-878-2221