

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 3
Page 221 - 396

FLORIDA HOUSING FINANCE CORPORATION,
Respondent,
and

ALLAPATTAH TRACE APARTMENTS, LTD.,
Intervenor.

_____/

IN RE: FINAL HEARING

BEFORE: Honorable F. SCOTT BOYD

DATE: April 30, 2014

TIME: Commenced at 8:33 a.m.
Terminated at 12:20 p.m.

PLACE: 1230 Apalachee Parkway
Tallahassee, Florida

REPORTED BY: SARAH B. GILROY, RPR, CRR
sbrinkhoff@comcast.net
Notary Public in and for
the State of Florida at
Large

ACCURATE STENOGRAPHY REPORTERS, INC.
2894-A Remington Green Lane
Tallahassee, FL 32308
(850) 878-2221

1 APPEARANCES:

2 REPRESENTING PETITIONER:

3 (Pinnacle Rio, LLC)

4 JOSEPH M. GOLDSTEIN, ESQUIRE
5 jgoldstein@shutts.com
6 SHUTTS & BOWEN, LLP
7 201 South Biscayne Boulevard
8 1500 Miami Center
9 Miami, Florida 33131
10 954.847.3837

11 REPRESENTING RESPONDENT:

12 (FHFC)

13 HUGH R. BROWN, ESQUIRE
14 hugh.brown@floridahousing.org
15 FLORIDA HOUSING FINANCE CORPORATION
16 123 North Monroe Street
17 Tallahassee, Florida 32301
18 850.488.4197

19 REPRESENTING INTERVENOR:

20 (Allapattah Trace Apartments)

21 MICHAEL J. GLAZER, ESQUIRE
22 mglazer@ausley.com
23 AUSLEY & McMULLEN
24 123 South Calhoun Street
25 Tallahassee, Florida 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, Florida 32302
850.224,1585

1 REPRESENTING APC FOUR FORTY FOUR, LTD:

2 DONNA BLANTON, ESQUIRE
3 dblanton@radeylaw.com
4 RADEY LAW FIRM
5 301 South Bronough Street, Suite 200
6 Tallahassee, Florida 32301
7 950.425.6654

8 REPRESENTING HTG MIAMI-DADE 5, LLC:

9 MAUREEN MCCARTHY DAUGHTON, ESQUIRE
10 mdaughton@sniffenlaw.com
11 SNIFFEN & SPELLMAN, P.A.
12 123 North Monroe Street
13 Tallahassee, Florida 32301
14 850.205.1996

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

INDEX OF WITNESSES

		PAGE NO.
1		
2		
3	ELIZABETH THORP	
	Direct Examination by Mr. Brown	226
4	Cross Examination by Ms. Blanton	241
	Cross Examination by Ms. Daughton	245
5	Recross Examination by Ms. Blanton	248
6	KENNETH REECY	
	Direct Examination by Mr. Brown	255
7	Cross Examination by Mr. Glazer	266
	Cross Examination by Mr. Goldstein	274
8	Cross Examination by Ms. Blanton	286
	Cross Examination by Mr. Donaldson	289
9	Recross Examination by Mr. Glazer	314
	Recross Examination by Mr. Donaldson	320
10		
	ALBERTO MILO	
11	Direct Examination by Mr. Donaldson	335
	Cross Examination by Mr. Goldstein	340
12		
	WILLIAM T. FABBRI	
13	Direct Examination by Mr. Glazer	347
	Cross Examination by Mr. Donaldson	364
14	Cross Examination by Mr. Goldstein	371
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>INDEX OF EXHIBITS</u>		
2	<u>JOINT EXHIBITS</u>		
3	<u>NUMBER DESCRIPTION</u>		
4	1	Universal cycle documents on disk	5
5	<u>TC EXHIBITS</u>		
6	<u>NUMBER DESCRIPTION</u>		
7	2	2013 sewer form	312
8	7 - 8	Depositions of Frank Lezcano	332
9	11	(document previously identified as 11)	344
10	12	(document previously identified as 12)	344
11	13	Page from Secretary of State web page	344
12	14	Written consent	344
13	18	Request for admissions	345
14	20	Interrogatory responses for TC and ATA	346
15	21	Request for admissions for TC and ATA	346
16	<u>FHFC EXHIBITS</u>		
17	<u>NUMBER DESCRIPTION</u>		
18	1	Deposition of Amy Garmon	323
19	<u>ATA EXHIBITS</u>		
20	<u>NUMBER DESCRIPTION</u>		
21	3	Excerpt of 2011 universal cycle app	326
22	4 - 7	Requests for admissions and responses	326
23	8 - 13	Exhibits to Milo deposition	327
24	14	Resume of Fabbri	349
25	18	Miami-Dade letter re: Sewer	360
26	19	Deposition of Jorge Cordoves	329
27	20	Deposition of Mark Johnson	329
28	21	Deposition of Douglas Pile	329
29	CERTIFICATE OF REPORTER		396

PROCEEDINGS

08:33 1
08:33 2 THE COURT: Okay. We're ready to begin, and
08:33 3 we're on the record. We're going to take a couple
08:33 4 of witnesses out of order from the Florida Housing
08:33 5 Finance Corporation.

08:33 6 MR. BROWN: I am prepared to call my witnesses
08:33 7 now, if that's fine.

08:33 8 THE COURT: Okay. Let's proceed with that.

08:33 9 MR. BROWN: Respondent calls Elizabeth Thorp,
08:33 10 and I'll just grab her.

08:34 11 Thereupon,

08:34 12 ELIZABETH THORP,
08:34 13 was called as a witness, having been first duly sworn,
08:34 14 was examined and testified as follows:

08:34 15 THE COURT: Please be seated.

08:34 16 DIRECT EXAMINATION

08:34 17 BY MR. BROWN:

08:34 18 Q Would you state your complete name for the
08:34 19 record, please.

08:34 20 A Elizabeth Thorp.

08:34 21 Q That's Thorp without an E?

08:34 22 A That is Thorp without an E.

08:34 23 Q Would you mind describing your educational
08:34 24 background for the Court.

08:34 25 A I have a BA from Florida State.

08:34 1 Q In what subject?

08:34 2 A Humanities.

08:34 3 Q All right. I'm also glad to see an employed
08:34 4 liberal arts major.

08:34 5 A (Laughter.)

08:34 6 Q How long have you been employed by Florida
08:34 7 Housing?

08:34 8 A Six years.

08:34 9 Q And what was your previous job experience?

08:34 10 A I worked for 14 years at Solomon, Solomon,
08:34 11 Romo & Durrett, and a year and a half with Rick
08:34 12 Bateman.

08:34 13 Q Okay. A year and a half with Rick Bateman?

08:34 14 A Just a year and a half.

08:35 15 (Discussion off the record.)

08:35 16 BY MR. BROWN:

08:35 17 Q What is your current title at Florida Housing?

08:35 18 A Multifamily programs manager.

08:35 19 Q And what job duties does that position entail?

08:35 20 A I work mainly with housing credits, beginning
08:35 21 with application and going through issuance of 8609s.

08:35 22 Q What is an 8609?

08:35 23 A That's the form that we issue when they're
08:35 24 actually getting the tax credits.

08:35 25 Q And is that an IRS form?

08:35 1 A Yes, it's an IRS form.

08:35 2 Q So are you involved with the housing
08:35 3 allocation process from beginning to end?

08:35 4 A Yes.

08:35 5 Q What is your involvement in the scoring of
08:35 6 applications for housing credits or other Florida
08:35 7 Housing --

08:35 8 A For this particular RFA?

08:35 9 Q In general.

08:35 10 A I have been an actual scorer from 2009 to now.

08:35 11 Q If you could give me your best estimate, how
08:35 12 many applications do you think you've scored?

08:35 13 A How many applications?

08:35 14 Q Applications, yes.

08:36 15 A It's in the hundreds.

08:36 16 Q Hundreds?

08:36 17 A I don't know.

08:36 18 Q You think --

08:36 19 A We had -- let's see. Let's just say 3- or
08:36 20 400, possibly.

08:36 21 Q Three- or 400?

08:36 22 A Uh-huh.

08:36 23 Q And what subject matter did you score in those
08:36 24 applications, in general?

08:36 25 A I've scored features and amenities. I've

08:36 1 scored site control, finance, principals, developer
08:36 2 experience.

08:36 3 Q What was your involvement in this particular
08:36 4 RFA 2013-003?

08:36 5 A I assisted the scorer, if she needed any --

08:36 6 Q What scorer was that?

08:36 7 A It would be Libby.

08:36 8 Q Elizabeth O'Neil?

08:36 9 A Elizabeth O'Neil.

08:36 10 Q We've got three Elizabeths. We've got
08:36 11 Elizabeth, Libby, and Liz.

08:36 12 How did you assist Ms. O'Neil in scoring?

08:36 13 A If she had any questions or needed any help
08:36 14 with anything, I would assist her and help her with
08:36 15 any research or help her decipher anything, answer any
08:37 16 questions she had.

08:37 17 Q Who had the ultimate responsibility for making
08:37 18 the scoring decisions on applications?

08:37 19 A Elizabeth O'Neil.

08:37 20 Q What subject matter did you assist her with
08:37 21 for this RFA?

08:37 22 A Principals and developer experience.

08:37 23 Q Okay. Are you involved with what has been
08:37 24 called "the advance-review process" for principals
08:37 25 connected to this RFA?

08:37 1 A Yes.

08:37 2 Q How were you involved with that?

08:37 3 A I was the main reviewer for those.

08:37 4 Q So that stamp that appears on the -- the
08:37 5 approval stamp that appears on some of the principals'
08:37 6 exhibits, who puts that stamp on there?

08:37 7 A I did.

08:37 8 Q That's your stamp?

08:37 9 A That is my stamp.

08:37 10 Q Okay. Why does Florida Housing have an
08:37 11 advance-review process?

08:37 12 A We started the advance-review process to help
08:37 13 the applicants, just to assist them in filling out the
08:37 14 principals' information correctly.

08:37 15 Q Now, when you're looking for principal
08:37 16 information, what do you expect to see, or what is
08:38 17 your understanding of what is required for a
08:38 18 corporation?

08:38 19 A For a corporation we require that they list
08:38 20 officers, directors, and shareholders.

08:38 21 Q And how many levels down would that go in sort
08:38 22 of a structure of an entity?

08:38 23 A Two.

08:38 24 Q What about in a limited partnership?

08:38 25 A Limited partnerships, we would require a

08:38 1 general partner and a limited partner.

08:38 2 Q Would you require officers or directors for a
08:38 3 limited partner?

08:38 4 A No.

08:38 5 Q How about a limited liability company or LLC?

08:38 6 A We would require managers and members for
08:38 7 those.

08:38 8 Q Would you require officers or directors for
08:38 9 that LLC?

08:38 10 A No.

08:38 11 Q Have you ever, as long as you've been at
08:38 12 Florida Housing, required an applicant to list
08:38 13 officers or directors for an LLC applicant entity?

08:38 14 A No.

08:38 15 Q If principal information came in with an
08:38 16 application with your approval stamp on it, would it
08:38 17 be reviewed again?

08:39 18 A It would only be reviewed to make sure that
08:39 19 the applicant name and the developer name matched with
08:39 20 what was in the application.

08:39 21 Q What happens if an applicant gives more
08:39 22 information than is required for the identification of
08:39 23 principals?

08:39 24 A We do nothing with that. They just gave us
08:39 25 too much information.

08:39 1 Q Would that be the same for the advance-review
08:39 2 process?

08:39 3 A Yes.

08:39 4 Q Do you recall occasions where some applicants
08:39 5 gave the minimum information and other applicants
08:39 6 maybe gave more than the minimum?

08:39 7 A Yes.

08:39 8 Q But both of those would pass?

08:39 9 A Yes.

08:39 10 Q Let me turn your attention to what is -- there
08:39 11 is a joint exhibits notebook up there that has as its
08:39 12 first exhibit, which is J-1, I believe, in this
08:39 13 proceeding, the RFA, Request for Application,
08:39 14 2013-003. I think that's it, yes.

08:39 15 Let me turn your attention to page 61. I will
08:40 16 give you a second to get there.

08:40 17 This would be a paragraph labeled 3,
08:40 18 "Principal Disclosures for Applicant and Each
08:40 19 Developer." Underneath that you can see the beginning
08:40 20 of a list of what is labeled "Charts" under A.

08:40 21 A Uh-huh.

08:40 22 Q And if you turn to the next couple of pages on
08:40 23 page 64, there is a Section B labeled "Examples."

08:40 24 Now turning back to we'll say 61 and I guess
08:40 25 62, where these charts appear, do you consider these

08:40 1 charts to be examples for developers?

08:40 2 A No. These charts are what is required.

08:40 3 Q Okay. Then would the examples be what is
08:40 4 listed on page 64 under examples?

08:40 5 A Yes, those are examples.

08:40 6 Q If an applicant listed less than what these
08:41 7 charts provide, what would you do as a scorer?

08:41 8 A They would not pass.

08:41 9 Q You would fail the application?

08:41 10 A Yes.

08:41 11 Q And I think you've already testified that if
08:41 12 they gave more information than is required --

08:41 13 A That's not a problem.

08:41 14 Q -- that's not a problem. Okay.

08:41 15 Again on page 62, I would like you to look at
08:41 16 the chart in the middle of the page under (b), where
08:41 17 it says, "If the applicant is a limited liability
08:41 18 company..."

08:41 19 In your experience as a scorer in looking at
08:41 20 this chart, would you expect an applicant to provide
08:41 21 information regarding officers and directors?

08:41 22 A If they're a limited liability company, no.
08:41 23 Only managers and members.

08:41 24 Q If they did not provide officers and
08:41 25 directors, would that cause the application to fail,

08:41 1 if it were an LLC?

08:41 2 A No.

08:41 3 Q To the best of your knowledge, in scoring
08:42 4 these hundreds of applications that you've scored, how
08:42 5 long has this practice of requiring different
08:42 6 information for LLCs, corporations, and limited
08:42 7 partnerships been practiced in scoring?

08:42 8 A Since I've been employed at least.

08:42 9 Q Do you know whether or not that was the case
08:42 10 in the universal cycle?

08:42 11 A Yes, it was.

08:42 12 Q To the best of your knowledge, has Florida
08:42 13 Housing ever required directors or officers to be
08:42 14 listed for an LLC?

08:42 15 A No.

08:42 16 Q Let me ask you a few more questions about
08:42 17 developer experience.

08:42 18 I believe you testified, did you assist
08:42 19 Ms. O'Neil in scoring developer experience?

08:42 20 A Yes.

08:42 21 Q Does the advance-review process have anything
08:42 22 to do with the evaluation of developer experience?

08:42 23 A No.

08:42 24 Q Do you recall assisting Ms. O'Neil with the
08:42 25 scoring of developer experience in regards to the APC

08:42 1 Four Forty Four application?

08:42 2 A Yes.

08:42 3 Q What was the result of the scoring of
08:42 4 developer experience on the APC Four Forty Four
08:43 5 application?

08:43 6 A We found that Ms. Wong did not have the
08:43 7 experience listed for St. Luke's Life Center.

08:43 8 Q And why was that?

08:43 9 A She was not listed as a principal in that
08:43 10 file, in the development.

08:43 11 Q How did you come to that conclusion?

08:43 12 A We researched the application, the file, the
08:43 13 credit underwriting report, e-mails, everything, and
08:43 14 did not find her anywhere.

08:43 15 Q What prompted you to conduct that sort of
08:43 16 investigation?

08:43 17 A A couple of days, maybe, before we issued this
08:43 18 RFA, we received a request to change the developer
08:43 19 entity for Sailboat Bend Apartments, which is a
08:43 20 current development that we have. And at the time
08:43 21 there was discussion that the principals of the new
08:43 22 developer entity did not have the experience, so they
08:43 23 looked to their co-developer, the Housing Authority,
08:44 24 for the experience.

08:44 25 Q Okay.

08:44 1 MR. BROWN: May I approach the witness? I
08:44 2 don't remember what tab Ms. Blanton put this
08:44 3 exhibit under, but this has been admitted into
08:44 4 evidence as Exhibit APC 9.

08:44 5 BY MR. BROWN:

08:44 6 Q Do you recognize that document, Ms. Thorp?

08:44 7 A Yes.

08:44 8 Q And would you describe it for us.

08:44 9 A This is the board action, dated September
08:44 10 20th, 2013, for Sailboat Bend Apartments.

08:44 11 Q How is it that you're familiar with this
08:44 12 document?

08:44 13 A I created this document.

08:44 14 Q Okay. So did you have personal knowledge of
08:44 15 the Sailboat Bend, I guess, request for entity change?

08:44 16 A Yes.

08:44 17 Q Are you the person who processed that change?

08:44 18 A It's a group effort. But, yes, I'm the one
08:44 19 that ultimately wrote this board action.

08:44 20 Q And could you tell me what about this document
08:44 21 led you to conduct a further investigation into the
08:44 22 experience of Ms. Wong?

08:44 23 A Item F on this document states, "The applicant
08:45 24 provided a prior experience chart demonstrating that
08:45 25 the codeveloper, Housing Enterprises of

08:45 1 Ft. Lauderdale, Florida, Inc., possesses the prior
08:45 2 experience."

08:45 3 Q Okay. And why did that make you think that
08:45 4 Ms. Wong did not have the experience?

08:45 5 A Well, if she had had the experience -- she was
08:45 6 already listed as principal on this deal -- she should
08:45 7 have sent us her experience and not have to look to
08:45 8 the codeveloper.

08:45 9 Q Now, I think you testified that you reviewed
08:45 10 the credit underwriting report for St. Luke's Life
08:45 11 Center?

08:45 12 A Yes.

08:45 13 Q Let me ask you first, back up a little bit.
08:45 14 You were not on the review committee for this RFA;
08:45 15 were you?

08:45 16 A No.

08:45 17 Q Okay. But were you assigned to help
08:45 18 Ms. O'Neil with this?

08:45 19 A Yes.

08:45 20 Q Okay. And who asked you to do that?

08:45 21 A My supervisor.

08:45 22 Q Who is your supervisor?

08:45 23 A Candace Allbaugh.

08:45 24 Q Okay. So when you -- who selects which
08:46 25 developments to count for developer experience in that

08:46 1 location? Does Florida Housing choose those
08:46 2 developments, or does the applicant choose those
08:46 3 developments?

08:46 4 A The applicant chooses those developments.

08:46 5 Q Okay. And when you reviewed the credit -- I
08:46 6 think you've already said this, but I just want to
08:46 7 make sure we got it on the record.

08:46 8 When you reviewed the credit underwriting
08:46 9 report for St. Luke's Life Center, did you find that
08:46 10 Ms. Wong was listed anywhere as a principal on that
08:46 11 development?

08:46 12 A No.

08:46 13 Q Did you find her listed anywhere else on any
08:46 14 other Florida Housing records that you looked at?

08:46 15 A No.

08:46 16 Q Okay. Why didn't you contact Ms. Wong or some
08:46 17 other representative of APC to clarify whether or not
08:46 18 she was a principal?

08:46 19 A To contact the applicant during the scoring
08:46 20 process would give them an unfair advantage over
08:46 21 anyone else.

08:46 22 Q Why do you believe that?

08:46 23 A We aren't going to call every -- to call an
08:46 24 applicant would just make it unfair on someone else.
08:46 25 We can't call every applicant to clarify their

08:47 1 application. That would be unfair to other
08:47 2 applicants. And we're in a blackout period.

08:47 3 Q Now, I understand the blackout period means,
08:47 4 as I think Ms. Blanton has correctly argued, that the
08:47 5 applicants aren't allowed to contact Florida Housing
08:47 6 staff.

08:47 7 A Uh-huh.

08:47 8 Q But I just want to make sure what your
08:47 9 understanding is of why you believe that Florida
08:47 10 Housing staff can't contact the applicants.

08:47 11 A Right. Because it would give them an unfair
08:47 12 advantage over anyone else.

08:47 13 Q Are cures allowed for this RFA?

08:47 14 A No.

08:47 15 Q Are the applicants allowed to supply any
08:47 16 information to Florida Housing after the application
08:47 17 deadline, to the best of your knowledge?

08:47 18 A No.

08:47 19 Q Would you consider a conversation with an
08:47 20 applicant as providing additional information that
08:47 21 would not be in the application?

08:47 22 A Yes.

08:47 23 Q In Tab 8 -- there is a notebook in front of
08:47 24 you there that has APC exhibits, and I would like you
08:48 25 to turn to Tab 8. This is an exhibit admitted as APC

08:48 1 8. Would you describe that document for me? Or just
08:48 2 read the title; that would be fine.

08:48 3 A That is the amendments, consent of sole --
08:48 4 each sole member listed on Exhibit A hereto.

08:48 5 Q Now, I want to ask you whether you believe
08:48 6 this document would make Liz Wong a principal of
08:48 7 St. Luke's Life Center. And take a minute to review
08:48 8 it, if you need to.

08:48 9 A Sure. If we had had this in the file at the
08:48 10 time we were reviewing files, we would have taken it.

08:48 11 Q Did you have this document available to you
08:48 12 during scoring?

08:48 13 A No.

08:48 14 Q To the best of your knowledge, did you find
08:48 15 this document anywhere in Florida Housing's records
08:48 16 when you conducted your investigation?

08:48 17 A No.

08:48 18 Q When was the first time you saw this document?

08:49 19 A In the petition.

08:49 20 Q That was after scoring?

08:49 21 A Yes.

08:49 22 Q Thank you.

08:49 23 How could a developer provide information such
08:49 24 as this in the application if they knew or should have
08:49 25 known that Florida Housing didn't have it?

08:49 1 A There was an addenda in the application where
08:49 2 they could give us additional information. They could
08:49 3 have attached it as part of an exhibit. They could
08:49 4 have simply sent an e-mail to Florida Housing
08:49 5 beforehand and said, hey, add this to the St. Luke's
08:49 6 file.

08:49 7 Q Okay. As far as you know, did APC do that or
08:49 8 anyone else do that?

08:49 9 A No.

08:49 10 MR. BROWN: No further questions.

08:49 11 THE COURT: Mr. Goldstein?

08:49 12 MR. GOLDSTEIN: No questions, Your Honor.

08:49 13 THE COURT: Ms. Blanton?

08:49 14 MS. BLANTON: Thank you.

08:49 15 CROSS-EXAMINATION

08:49 16 BY MS. BLANTON:

08:49 17 Q Good morning. Let's go back to what's been
08:49 18 marked as APC Exhibit 9, the Sailboat Bend document
08:49 19 that Mr. Brown asked you about.

08:50 20 A Yes.

08:50 21 Q And you testified, I believe, regarding
08:50 22 paragraph 1(f) on that; correct?

08:50 23 A Uh-huh.

08:50 24 Q And I believe I heard you to say that Ms. Wong
08:50 25 should have used her experience and not relied on the

08:50 1 codeveloper. Why is that?

08:50 2 A If she had the experience --

08:50 3 Q Why would she -- is there a requirement that
08:50 4 she has to do that?

08:50 5 A No.

08:50 6 Q Well, the Housing Authority has been the
08:50 7 codeveloper of Sailboat Bend all along with the other
08:50 8 developer entity; correct?

08:50 9 A Yes.

08:50 10 Q So what's wrong with relying on the Housing
08:50 11 Authority experience?

08:50 12 A There is nothing wrong with it. But the
08:50 13 original experience was Matt Greer. So when they
08:50 14 changed the experience -- and he was under the
08:50 15 developer Carlisle. When they changed the experience
08:50 16 over, she was still a principal of that same entity.
08:50 17 If she was actually a principal and had the
08:50 18 experience, she could have just used her --

08:50 19 Q She could have, but she didn't have to;
08:50 20 correct?

08:50 21 A She did not have to.

08:50 22 Q So there's nothing wrong with using the
08:50 23 experience of the Housing Authority?

08:50 24 A No.

08:50 25 Q And having now seen what's behind Tab 8, the

08:51 1 omnibus written consent that Mr. Brown asked you
08:51 2 about, you now concede that she does in fact have the
08:51 3 requisite developer experience; correct?

08:51 4 MR. BROWN: Objection. That's the ultimate
08:51 5 issue here.

08:51 6 THE COURT: Rephrase the question. I meant --
08:51 7 excuse me. For me. What did you say?

08:51 8 MS. BLANTON: Let's go back. I'm sorry. I'll
08:51 9 rephrase.

08:51 10 BY MS. BLANTON:

08:51 11 Q Let's go back to Tab 8. Mr. Brown asked you
08:51 12 about that a minute ago; right?

08:51 13 A Right.

08:51 14 Q You said, if you had seen that in the files,
08:51 15 you would have found that she was a principal of
08:51 16 St. Luke's Life Center; right?

08:51 17 A Correct.

08:51 18 Q You also determined she was a principal of
08:51 19 Silurian Pond; correct?

08:51 20 A That's correct.

08:51 21 Q And you determined she was a principal of
08:51 22 Morris Court III; correct?

08:51 23 A Correct.

08:51 24 Q So with those three developments of which she
08:51 25 was a principal, does she have the ultimate developer

08:51 1 experience required?

08:51 2 A Yes.

08:51 3 Q I would like to ask you a few questions about
08:51 4 the principal issue.

08:52 5 Are you familiar with the definition of
08:52 6 "principal" in Florida Housing's rules?

08:52 7 A Yes.

08:52 8 Q I think it may be up there. If not, I will
08:52 9 bring it to you.

08:52 10 Do you see a copy of it on the desk up there?

08:52 11 A Yes.

08:52 12 Q Okay. And I believe the correct subsection is
08:52 13 89. You already knew that; I can tell from your face.
08:52 14 You've looked at it before.

08:52 15 A Yes.

08:52 16 Q Okay. Does this definition apply to this RFA?

08:52 17 A Yes, it does.

08:52 18 Q Are the applicants required to follow the
08:52 19 definition of principal when they are disclosing the
08:52 20 principals of the applicant entity and the developer
08:52 21 entity?

08:52 22 A Yes.

08:52 23 MS. BLANTON: That's all I have.

08:52 24 MR. DONALDSON: No questions.

08:52 25 THE COURT: Ms. Daughton?

08:52 1 MS. DAUGHTON: I have a few.

08:53 2 CROSS-EXAMINATION

08:53 3 BY MS. DAUGHTON:

08:53 4 Q Ms. Thorp, good morning.

08:53 5 A Good morning.

08:53 6 Q I'm going to show you --

08:53 7 MS. DAUGHTON: May I approach the witness,
08:53 8 Your Honor?

08:53 9 THE COURT: Yes.

08:53 10 BY MS. DAUGHTON:

08:53 11 Q I'm going to show you what has been marked as
08:53 12 HTG 1. I don't think it has made it into a fancy
08:53 13 notebook yet. That is the application of HTG
08:53 14 Miami-Dade 5, LLC. I'm going to ask you to turn in
08:53 15 that exhibit to Attachment 3. And let me know when
08:53 16 you're there.

08:53 17 A Okay.

08:53 18 THE COURT: Sorry.

08:53 19 MS. DAUGHTON: I have an extra copy, Judge.

08:53 20 THE COURT: I have it.

08:53 21 MS. DAUGHTON: Great.

08:53 22 BY MS. DAUGHTON:

08:53 23 Q And what is -- what does that appear to be,
08:53 24 Ms. Thorp?

08:53 25 A This is their list of principals.

08:53 1 Q Okay. And for what applicant entity?

08:54 2 A HTG Miami-Dade 5, LLC.

08:54 3 Q Does it also list the principals for their
08:54 4 developer entity?

08:54 5 A Yes.

08:54 6 Q Okay. And up in the upper right-hand corner,
08:54 7 can you read for us what that states?

08:54 8 A It says, "Approved FHFC Advance-Review
08:54 9 10-18-13."

08:54 10 Q I'm sorry. 10-18 or --

08:54 11 A 10-8-13. I'm sorry.

08:54 12 Q And you spoke a little bit before about the
08:54 13 advance-review process. Is this your stamp on this
08:54 14 document?

08:54 15 A Yes, it is.

08:54 16 Q Okay. And just looking at that document for a
08:54 17 minute, just take a minute to review that, if you
08:54 18 would.

08:54 19 A (Witness complies.)

08:54 20 Q And in your role as the reviewer, does it
08:54 21 appear that HTG Miami-Dade 5, LLC, has provided the
08:55 22 required information from Florida Housing for the RFA
08:55 23 for the designation of principals?

08:55 24 A Yes.

08:55 25 Q And let me ask you to go down and look at that

08:55 1 form again for developer, HTG Miami-Dade 5 Developer,
08:55 2 LLC, take a look at what they've indicated there. And
08:55 3 has the applicant provided the required principals for
08:55 4 the developer entity?

08:55 5 A Yes, they have.

08:55 6 Q And that is why you approved it; correct?

08:55 7 A Correct.

08:55 8 MS. DAUGHTON: I'm sorry. Your Honor. I'm
08:55 9 searching for something, and I haven't found it
08:55 10 yet.

08:55 11 THE COURT: Take your time.

08:55 12 MS. DAUGHTON: Just give me a minute.

08:56 13 BY MS. DAUGHTON:

08:56 14 Q Let me ask you to turn -- I think it's in
08:56 15 Joint Exhibit Notebook 1. The joint exhibit book, the
08:56 16 first exhibit, I think it's the --

08:56 17 A The RFA?

08:56 18 Q Yes. I guess I could have just said that,
08:56 19 huh?

08:56 20 And let me ask you to turn to page 5. Let me
08:56 21 know when you're there.

08:56 22 A Okay.

08:56 23 Q Okay. I'm looking under letter D and under --
08:56 24 you see some numbered paragraphs, which are 1, 2, 3.
08:56 25 And then there is -- there is another sentence under 3

08:56 1 where it starts, "This eligibility requirement..."
08:56 2 can you read that for us, please.

08:56 3 A "This eligibility requirement may be met by
08:56 4 providing a copy of the list of principals that was
08:56 5 reviewed and approved by the corporation during the
08:56 6 advance-review process."

08:56 7 Q And in fact, after looking at HTG's
08:57 8 application, that's in fact what they did here?

08:57 9 A Correct.

08:57 10 MS. DAUGHTON: Nothing further.

08:57 11 MR. GLAZER: No questions.

08:57 12 MR. BROWN: No further questions.

08:57 13 THE COURT: Can this witness be excused?

08:57 14 MS. BLANTON: May I have one follow-up?

08:57 15 THE COURT: Yes. I kind of went out of order.
08:57 16 I should have had these folks go and then you. I
08:57 17 apologize.

08:57 18 RE-CROSS-EXAMINATION

08:57 19 BY MS. BLANTON:

08:57 20 Q What is the purpose of having applicants
08:57 21 disclose their principals to Florida Housing?

08:57 22 A Florida Housing uses the list of principals to
08:57 23 determine if there are financial arrearage to the
08:57 24 corporation. They also use it just to know who is
08:57 25 behind the deal during credit underwriting, so we know

08:57 1 who is involved.

08:57 2 Q So you want to know who you're dealing with,
08:57 3 basically; correct?

08:57 4 A Basically.

08:57 5 Q Let me ask you to look at a document -- bear
08:57 6 with me for a moment.

08:58 7 This is going to be in the APC notebook that's
08:58 8 up there, and it will be behind Tab 12. Let me know
08:58 9 when you get there.

08:58 10 Are you there?

08:58 11 A I believe so.

08:58 12 Q Okay. These are -- and I will just tell you,
08:58 13 these are the responses to some interrogatories that
08:58 14 my client, APC, sent to Housing Trust Group. And as
08:58 15 you can see, if you turn to about page 4, that's where
08:58 16 the responses start.

08:58 17 The very first question we asked that Housing
08:58 18 Trust Group identify all general partners, limited
08:58 19 partners, managers, members, officers, directors, and
08:58 20 shareholders of applicant HTG Miami-Dade 5, LLC, as of
08:58 21 the application deadline. And I will represent to you
08:58 22 that language came right out of the rule of the
08:59 23 definition of principal.

08:59 24 And do you see the response?

08:59 25 A Yes.

08:59 1 Q Officers are disclosed as Randy Rieger,
08:59 2 Matthew Rieger, and Mario Sariol. Do you see that?

08:59 3 A I see it.

08:59 4 Q And then if you turn over to the next page
08:59 5 under B, it says, "Officers are the same as the
08:59 6 response to Interrogatory Number 1-A." And here we're
08:59 7 asking about the developer entity. Do you see that?

08:59 8 A Yes.

08:59 9 Q Okay. So, again, it would be Randy Rieger,
08:59 10 Matthew Rieger, and Mario Sariol, correct, based on
08:59 11 their response?

08:59 12 A Uh-huh.

08:59 13 Q Okay. And if we turn back to what's behind
08:59 14 Tab 14, which is the approved advance review, do you
08:59 15 see there?

08:59 16 A Yes.

08:59 17 Q Does Mario Sariol's name appear anywhere on
08:59 18 this list of principals?

08:59 19 A I do not see it, no.

09:00 20 Q Does then -- does Florida Housing really know
09:00 21 who it's dealing with in this application?

09:00 22 A If this is not correct, it comes out in
09:00 23 underwriting, and we can deal with it then.

09:00 24 Q You can deal with it in underwriting?

09:00 25 A Uh-huh.

09:00 1 Q Okay.

09:00 2 A But as an LLC, they're only -- they're only
09:00 3 required to give us their members and their managers.
09:00 4 They are not required to give us their officers,
09:00 5 directors, and shareholders. The definition of
09:00 6 "principal" is intended to be all-inclusive of
09:00 7 anything that could possibly be there. But all that's
09:00 8 required of an LLC are members and managers, not
09:00 9 officers and directors and shareholders. That is
09:00 10 reserved for corporations.

09:00 11 Q Is that your interpretation of the rule?

09:00 12 A That is the -- that's our interpretation of
09:00 13 the definition, and that's how LLCs are set up, to
09:00 14 include managers and members, not necessarily
09:00 15 officers, directors, and shareholders. Some did give
09:00 16 us that information, but it was considered too much
09:01 17 information.

09:01 18 Q LLCs can have officers; correct?

09:01 19 A Yes, they can. But they are set up to include
09:01 20 managers and members.

09:01 21 Q Where does it say in the RFA that officers of
09:01 22 an LLC are not required to be disclosed?

09:01 23 A It doesn't necessarily say that, except in the
09:01 24 chart where we put in what we require.

09:01 25 Q Right. And let's go to that page 61 of the

09:01 1 RFA, which is in Joint Exhibit No. 1.

09:01 2 A I'm sorry. You said page 61?

09:01 3 Q Yes. Do you know why the sentence, "The term
09:01 4 'principals' is defined in Section 67-48.002, F.A.C.,"
09:01 5 why that statement is there?

09:01 6 A To refer back to the rule.

09:01 7 Q And the rule governs this; correct?

09:01 8 A Correct.

09:01 9 MS. BLANTON: That's all I have.

09:02 10 THE COURT: Further questions?

09:02 11 MR. BROWN: No questions.

09:02 12 THE COURT: Thank you very much. Please don't
09:02 13 discuss your testimony with anyone else, other than
09:02 14 counsel.

09:02 15 (Witness excused.)

09:02 16 MR. GLAZER: Your Honor, I believe the next
09:02 17 witness that Mr. Brown is going to call is
09:02 18 Mr. Reecy, but there are a number of issues we were
09:02 19 going to cover that, I believe, in conversation
09:02 20 with Ms. Blanton, we now are going to be able to
09:02 21 remove from the proceeding, and that will affect
09:02 22 and limit his testimony.

09:02 23 What I would like to do is go over my
09:02 24 understanding of those on the record so that --
09:02 25 before we put Mr. Reecy on the stand.

09:02 1 There were three issues in the amended
09:02 2 petition by APC that dealt with Allapattah Trace
09:02 3 and one also to HTG that were only raised by APC,
09:02 4 not by any of the other providers that -- is my
09:02 5 understanding -- they're no longer going to pursue.
09:02 6 One of those I would describe is the signature on
09:02 7 the local government contribution form. And as I
09:03 8 look at APC's amended petition, I believe that is
09:03 9 paragraphs 30, 31, 32, and 33.

09:03 10 MS. BLANTON: I can confirm that we're not
09:03 11 pursuing the signature issue. I don't have my
09:03 12 petition right in front of me. But if those are
09:03 13 the correct paragraphs, I'm not going to pursue
09:03 14 that issue.

09:03 15 MR. GLAZER: The second issue is there was a
09:03 16 question about an error on the assignment document,
09:03 17 which is Attachment 7 to the Allapattah Trace
09:03 18 application, a typographical -- what we call a
09:03 19 typographical error on that form. And that, it's
09:03 20 my understanding, they're not going to pursue that
09:03 21 any longer, which I have as Exhibits 34 and 35.

09:03 22 But if Ms. Blanton can confirm that's not an
09:03 23 issue they're going to pursue?

09:03 24 MS. BLANTON: That's correct.

09:03 25 MR. GLAZER: And, by the way, that first issue

09:03 1 was also common to HTG as well.

09:03 2 MS. BLANTON: That's correct. I'm not
09:03 3 pursuing that issue as to either HTG or Allapattah.

09:04 4 MR. GLAZER: And then the third issue is that
09:04 5 there is a -- there was a question raised in the
09:04 6 amended petition about what is called a, quote,
09:04 7 scattered site, close quote. And they are no
09:04 8 longer going to pursue that issue, which is not to
09:04 9 say that they are not sharing in the issue that
09:04 10 Pinnacle has, which they're both site-control
09:04 11 issues, but they are different.

09:04 12 And so the scattered site question is no
09:04 13 longer an issue in this proceeding. They still
09:04 14 reserve their right to pursue the issue of site
09:04 15 control, which is the question of whether there was
09:04 16 proper representation of the site to the City of
09:04 17 Miami.

09:04 18 MS. BLANTON: That's correct.

09:04 19 MR. GLAZER: And we had a big discussion of
09:04 20 that yesterday.

09:04 21 MS. BLANTON: That's correct.

09:04 22 MR. GLAZER: And with that understanding, that
09:04 23 will limit the need for some testimony from
09:04 24 Mr. Reecy and Mr. Fabbri, and it will help move us
09:04 25 right along.

09:04 1 THE COURT: Thank you.

09:04 2 MR. BROWN: Respondent calls Ken Reecy.

09:05 3 Thereupon,

09:05 4 KENNETH L. REECY,

09:05 5 Was called as a witness, having been first duly sworn,

09:05 6 was examined and testified as follows:

09:05 7 DIRECT EXAMINATION

09:05 8 BY MR. BROWN:

09:05 9 Q Mr. Reecy, please state your full name for the
09:05 10 record.

09:05 11 A Kenneth L. Reecy.

09:05 12 Q And would you describe for us your educational
09:05 13 background.

09:05 14 A I graduated with a bachelor's degree in
09:05 15 history from Florida State University.

09:05 16 Q So then you are also an employed liberal arts
09:05 17 major?

09:05 18 A (Laughter.)

09:05 19 Q Since college, would you please describe your
09:05 20 work experience.

09:05 21 A I worked for 31 and a half years with state
09:05 22 government, basically, moving up through the ranks up
09:05 23 to division director level; retired from the
09:05 24 Department of Economic Opportunity; and then started
09:05 25 in August of last year at Florida Housing Finance

09:06 1 Corporation.

09:06 2 Q When you were employed by the Department of
09:06 3 Economic Opportunity, did you have any involvement
09:06 4 with the Florida Housing Finance Corporation?

09:06 5 A I did.

09:06 6 Q What was that involvement?

09:06 7 A I was the delegated ex officio board member
09:06 8 for the executive director of DEO.

09:06 9 Q So you were a member of Florida Housing's
09:06 10 board of directors?

09:06 11 A Correct.

09:06 12 Q And when was that?

09:06 13 A Basically, I believe from April of 2000 -- let
09:06 14 me think -- April of 2012 through April 2013.

09:06 15 Q And where did you go in April 2013?

09:06 16 A I basically retired from DEO, and then started
09:06 17 in August with Florida Housing Finance Corporation.

09:06 18 Q What is your position at Florida Housing?

09:06 19 A I am the director of multifamily programs.

09:06 20 Q What duties does that position entail with
09:06 21 Florida Housing?

09:06 22 A Basically responsible for the allocation of
09:06 23 the tax credits, various loan programs, the bonds,
09:06 24 multifamily bond program, et cetera; and also the
09:07 25 credit underwriting, the scoring, et cetera -- just a

09:07 1 whole host of issues.

09:07 2 Q You were not employed by Florida Housing
09:07 3 during the time it was using the universal cycle?

09:07 4 A That's correct.

09:07 5 Q But you have been employed since they've
09:07 6 started using this new RFA system, I will call it?

09:07 7 A That is correct.

09:07 8 Q What is your knowledge or involvement with the
09:07 9 scoring of applications under this new RFA system?

09:07 10 A Basically, you know, I'm basically familiar
09:07 11 with all aspects of the scoring, from assigning the
09:07 12 scorers, moving through, you know, the basic approach
09:07 13 to scoring, et cetera.

09:07 14 Q Are you familiar with decisions made to move
09:07 15 what used to be required information in the
09:07 16 application out of the application and into credit
09:07 17 underwriting?

09:07 18 A Yes, I am.

09:07 19 Q Do you understand why those decisions were
09:07 20 made?

09:07 21 A Yes. It's part of the -- part of the process
09:08 22 to change from the universal cycle that was, you know,
09:08 23 very strict, where much of the criteria was, you know,
09:08 24 incorporated into the rule; and, you know, there were
09:08 25 issues where -- and then there was a cure process in

09:08 1 the universal cycle.

09:08 2 But, basically, you know, the thought was --
09:08 3 was to limit the opportunities for failure on, you
09:08 4 know, some issues that really don't necessarily have a
09:08 5 bearing on the ultimate, you know, whether or not the
09:08 6 project is good enough to be funded, et cetera.

09:08 7 Q Those issues that were moved to credit
09:08 8 underwriting, are they no longer part of the scoring
09:08 9 process?

09:08 10 A That's correct.

09:08 11 Q Is infrastructure availability in regards to
09:08 12 sewer part of the scoring process for this RFA?

09:08 13 A It is not part of the scoring process.

09:09 14 Q Is information regarding sewer availability
09:09 15 provided to the scorers to review in this process?

09:09 16 A No, it is not.

09:09 17 Q Would that be -- would that also be true for
09:09 18 site plan issues?

09:09 19 A That is correct. It would not be -- nothing
09:09 20 about site plans.

09:09 21 Q Are those issues then handled in credit
09:09 22 underwriting?

09:09 23 A Yes.

09:09 24 Q What is credit underwriting?

09:09 25 A Credit underwriting is basically a methodology

09:09 1 to do the due diligence required to basically limit
09:09 2 the risk to the corporation for providing or
09:09 3 allocating, you know, a very dear source of funding,
09:09 4 such as tax credits or loans, or something like that,
09:09 5 you know, to determine whether or not cash flows and
09:09 6 whether or not the deal works.

09:09 7 Q I'm not sure if this is up there for you, so I
09:09 8 will bring you my copy --

09:10 9 MR. BROWN: If you don't mind, Your Honor.

09:10 10 THE COURT: What is that document, Mr. Brown?

09:10 11 MR. BROWN: This document is Exhibit P-1.

09:10 12 This is the Pinnacle Rio application for this RFA.

09:10 13 BY MR. BROWN:

09:10 14 Q And I would ask you to look at what is marked
09:10 15 there as Attachment 11.

09:10 16 A Okay.

09:10 17 Q And if you could describe that document for
09:10 18 me, please.

09:10 19 A This is the equity letter associated with this
09:10 20 application.

09:10 21 Q Could you turn to page 3 of that letter,
09:10 22 please. There is no page 3?

09:10 23 A I don't see it. I tried.

09:10 24 Q All right. Well, are you familiar -- have you
09:10 25 had a chance before this hearing to review this

09:11 1 document before?

09:11 2 A Yes.

09:11 3 Q Okay. So you were aware before today that
09:11 4 this letter was missing page 3?

09:11 5 A Yes.

09:11 6 Q Do you understand why this letter was not
09:11 7 rejected as being, I guess, improper or not acceptable
09:11 8 under our standards?

09:11 9 A Yes. The information that was required, you
09:11 10 know, for the financing section of the scoring was --
09:11 11 was provided elsewhere in this equity letter.

09:11 12 Q So the missing page 3, is that a problem for
09:11 13 Florida Housing? Is that going to be something that
09:11 14 they would reject an application for?

09:11 15 A No, it is not.

09:11 16 Q Would this have been a problem in the
09:11 17 universal cycle, if you know?

09:11 18 A Based on my understanding of what the
09:11 19 universal cycle was, yes.

09:11 20 Q So would you say that is a change that we made
09:11 21 from the universal cycle to this new system?

09:11 22 A Yes.

09:11 23 MR. BROWN: I have no further questions about
09:11 24 that. I would like to retrieve my notebook if I
09:12 25 could.

09:12 1 BY MR. BROWN:

09:12 2 Q Mr. Reecy, let me give you a copy -- I'm going
09:12 3 to have to give you a copy of a printout that is
09:12 4 separate, a copy of Rule 67-60, Florida Administrative
09:12 5 Code. Are you familiar with this rule?

09:12 6 A I am indeed.

09:12 7 Q And I would ask you to find the definition of
09:12 8 minor irregularity under Section .002 of that rule.

09:12 9 A I see it.

09:12 10 Q Okay. And -- I've lost my notes.

09:12 11 Are you familiar with this definition?

09:12 12 A I am.

09:12 13 Q Are you, as -- well, let me ask again. You
09:12 14 are the supervisor over the scoring process
09:13 15 ultimately; are you not?

09:13 16 A That is correct.

09:13 17 Q Okay. Are you familiar with the manner in
09:13 18 which Florida Housing applied this definition to
09:13 19 scoring?

09:13 20 A Yes.

09:13 21 Q Take a minute to read that definition, if
09:13 22 you'd like -- I won't ask you to read it into the
09:13 23 record but -- what is your understanding of how
09:13 24 Florida Housing applied this definition to scoring?

09:13 25 A My understanding of it is that basically, if

09:13 1 the information we need is within the RFA, is readily
09:13 2 available, and it's, you know, reasonably -- we can
09:13 3 arrive at -- if there is some missing information that
09:13 4 may be in a certain location -- we have asked for some
09:13 5 piece of information, and it wasn't provided in that
09:13 6 particular place, but it is available somewhere else,
09:13 7 and we feel confident that that is the answer to what
09:13 8 we are seeking, we accept that. We consider that to
09:14 9 be a minor irregularity.

09:14 10 Q So would the Pinnacle Rio missing page from
09:14 11 their equity commitment, would that be considered a
09:14 12 minor irregularity?

09:14 13 A Yes.

09:14 14 Q This definition excludes waiving matters that
09:14 15 might give an applicant a competitive advantage over
09:14 16 others; do you understand that?

09:14 17 A Yes, I do.

09:14 18 Q What would be an example of giving an
09:14 19 applicant a competitive advantage over another?

09:14 20 A Well, if we sought some sort of additional
09:14 21 information beyond what was provided in the
09:14 22 application, if we e-mailed somebody and asked for
09:14 23 clarification, if we called them, if we asked for a
09:14 24 document -- something like that.

09:14 25 Q I don't wish to be repetitive, but why -- why

09:14 1 have the scorers who have testified here, why are they
09:14 2 saying that they don't believe that they should be
09:14 3 contacting applicants during the application process?

09:15 4 A Because that would give a competitive -- a
09:15 5 competitive advantage. You know, basically, you know,
09:15 6 there is an application deadline. There is
09:15 7 information that's requested. And if there is a hole
09:15 8 there that can't be filled, so to speak, you know, we
09:15 9 can't seek information to fill that hole.

09:15 10 Q Are cures permitted by this RFA?

09:15 11 A No.

09:15 12 Q When I say "cures," I mean the submission of
09:15 13 additional information after application deadline to
09:15 14 supplement or clarify or explain anything in an
09:15 15 application.

09:15 16 A No. Because that would provide a competitive
09:15 17 advantage; and, you know, it would be very difficult
09:15 18 to manage anything like that, you know, seeking
09:15 19 additional information in that manner.

09:15 20 MR. BROWN: One moment, Your Honor.

09:16 21 BY MR. BROWN:

09:16 22 Q Now, you were in the room when, I believe --
09:16 23 I'm not sure who testified to it, but there was --
09:16 24 actually, no, it wasn't testimony. It was a bit of a
09:16 25 debate between Mr. Glazer and Mr. Goldstein regarding

09:16 1 the site plan and whether or not that was considered
09:16 2 in scoring.

09:16 3 I want to make this clear. The site plan for
09:16 4 this -- for Allapattah Trace Apartments was not
09:16 5 considered in scoring; was it?

09:16 6 A It was not.

09:16 7 Q When is that considered?

09:16 8 A That would be potentially considered during
09:17 9 the credit underwriting process.

09:17 10 Q And you were here to hear Mr. Glazer's
09:17 11 description and Mr. Goldstein's description of this
09:17 12 12-foot alley contiguous to the development that
09:17 13 Mr. Glazer said is not part of their development site.

09:17 14 A Yes, I was.

09:17 15 Q If that were a part of scoring, would that be
09:17 16 a problem for Florida Housing? Would that be grounds
09:17 17 to reject an application?

09:17 18 A Not as described, no.

09:17 19 Q When could that be a problem?

09:17 20 A If it was a road or some such as that. But
09:17 21 otherwise, you know, during -- during credit
09:17 22 underwriting, and it was determined that it was a road
09:17 23 or some such, but otherwise no.

09:17 24 Q Okay. Would it be a problem if the tiebreaker
09:17 25 measurement point, which is the point used to -- on

09:17 1 the development to measure distance to nearby
09:17 2 amenities, would it be a problem if that measurement
09:17 3 point was not on the property?

09:17 4 A Yes.

09:17 5 Q But if -- is that the case here with
09:18 6 Allapattah?

09:18 7 A Not that I'm aware of.

09:18 8 Q In regard to the sewer issues, you've had a
09:18 9 chance to review the issues as brought up, I believe,
09:18 10 in Mr. Donaldson's petition on behalf of Town Center?

09:18 11 A Yes.

09:18 12 Q Okay. Is review of sewer availability part of
09:18 13 the scoring process for this RFA?

09:18 14 A No.

09:18 15 Q Okay. Is that an issue that is handled in
09:18 16 credit underwriting?

09:18 17 A Yes, it is.

09:18 18 Q What is your understanding of what is
09:18 19 availability of sewer service?

09:18 20 A My understanding of availability of sewer
09:18 21 service is basically, ultimately, being able to
09:18 22 provide, you know -- is it possible to provide the
09:18 23 sewer service necessary for the scope of the
09:18 24 development being considered.

09:18 25 Q In your understanding, would it be -- would it

09:18 1 be -- would a moratorium on a single pump station
09:18 2 necessarily mean that the sewer service was not
09:19 3 available?

09:19 4 A No. It might be, you know, an obstacle.
09:19 5 However, if there are other ways to achieve that, the
09:19 6 sewer service connectivity, then it would not be a
09:19 7 problem.

09:19 8 Q Why does Florida Housing accept both a letter
09:19 9 and a form, or either one, for sewer availability
09:19 10 during the credit underwriting phase?

09:19 11 A There are some jurisdictions that, frankly,
09:19 12 will not provide us a form and insist on sending --
09:19 13 will only do it in a letter form; and, therefore, we
09:19 14 have built in that flexibility.

09:19 15 Q Regarding that flexibility, does the letter
09:19 16 have to say exactly what is on the form?

09:19 17 A No.

09:19 18 MR. BROWN: No further questions.

09:19 19 THE COURT: Have you --

09:19 20 MR. GLAZER: Want to go?

09:20 21 CROSS-EXAMINATION

09:20 22 BY MR. GLAZER:

09:20 23 Q Mr. Reecy, you stated that infrastructure
09:20 24 availability with regard to site plan and sewer was
09:20 25 not part of the scoring process. Do you recall that?

09:20 1 A I do.

09:20 2 Q Am I correct that, beyond providing the
09:20 3 certification form in the application, those issues
09:20 4 are also not part of a determination of eligibility
09:20 5 either; are they?

09:20 6 A That is correct.

09:20 7 Q And I want to make sure we're clear. The
09:20 8 applicant does have to provide information about site
09:20 9 control in the application; correct?

09:20 10 A Oh, yes.

09:20 11 Q And that would be a deed, a contract, or a
09:20 12 lease; correct?

09:20 13 A Correct.

09:20 14 Q All right. But does the applicant have to
09:20 15 provide any information -- for example, does the
09:20 16 applicant have to provide a site plan to Florida
09:20 17 Housing during this RFA process?

09:20 18 A No.

09:20 19 Q Does the applicant have to provide any
09:20 20 specific zoning information during this application
09:20 21 process?

09:20 22 A No.

09:20 23 Q And is that in fact a change to your
09:20 24 understanding from the universal cycle?

09:21 25 A Yes, it is. It was a conscious change.

09:21 1 Q I want to ask you a couple more questions
09:21 2 about the credit underwriting process.

09:21 3 Can you describe briefly for the judge what
09:21 4 goes on in credit underwriting and who all is involved
09:21 5 in it?

09:21 6 A So we have -- Florida Housing has basically
09:21 7 three contracted credit underwriting firms, and they
09:21 8 basically -- they ask the initial awardee for a large
09:21 9 amount of financial information. We do collect the
09:21 10 ability to proceed forms, et cetera. Those also are
09:21 11 considered by the credit underwriters.

09:21 12 So they look at all aspects of the deal to
09:21 13 determine, you know, again, whether or not its cash
09:21 14 flows, whether or not it's sized correctly, and, you
09:22 15 know, whether or not there is the ability to proceed
09:22 16 within the scope of the application.

09:22 17 Q With regard to the issue of sewer
09:22 18 availability, at least in terms of the application
09:22 19 phase, are you looking for anything more than simply a
09:22 20 representation from the applicant that it's possible
09:22 21 to provide sewer to the project?

09:22 22 A No.

09:22 23 Q Now you said that some jurisdictions won't
09:22 24 accept -- or won't sign Florida Housing's forms. Do
09:22 25 you recall that?

09:22 1 A Yes.

09:22 2 Q And is Miami-Dade Water and Sewer one of those
09:22 3 jurisdictions?

09:22 4 A It is indeed.

09:22 5 Q And in your experience and to your knowledge,
09:22 6 is that -- is it fairly common knowledge amongst
09:22 7 Florida Housing and the developer community that
09:22 8 Miami-Dade Water and Sewer won't sign the forms?

09:22 9 A That is correct.

09:22 10 Q And in fact is that one of the reasons, to
09:23 11 your knowledge, that a letter is an available option
09:23 12 in lieu of providing a form?

09:23 13 A Yes. We built it into our criteria to cover
09:23 14 that possibility.

09:23 15 Q Is either the form or the letter of
09:23 16 availability required as part of this application
09:23 17 process we're talking about?

09:23 18 A No, it's not.

09:23 19 Q And, again, is that a change from the
09:23 20 universal cycle?

09:23 21 A Yes, it is.

09:23 22 MR. GLAZER: Judge, this is our exhibit
09:23 23 notebook. And in light of the conversation we had,
09:23 24 there's actually still some exhibits in here we
09:23 25 won't be using, but I can remove those later. I

09:23 1 don't want to take up the witness's time.

09:23 2 BY MR. GLAZER:

09:23 3 Q Mr. Reecy, let me show you -- if you could,
09:24 4 please, would you turn to Tab 18 in the notebook,
09:24 5 which is the Earlington Square -- I'm sorry -- which
09:24 6 is the Allapattah Trace letter from Miami-Dade Water
09:24 7 and Sewer.

09:24 8 A Yes.

09:24 9 Q And have you seen this document before?

09:24 10 A I have.

09:24 11 Q And -- but was this -- and is this what is
09:24 12 commonly referred to as a letter of availability?

09:24 13 A Yes, it is.

09:24 14 Q And is it a letter of availability for water
09:24 15 and sewer?

09:24 16 A Yes, it is.

09:24 17 Q And does this letter of availability say
09:24 18 exactly what is on the Florida Housing form?

09:24 19 A No, it does not.

09:24 20 Q Was this letter of availability required to be
09:24 21 submitted as part of Allapattah Trace's application in
09:24 22 this cycle?

09:24 23 A It was not.

09:24 24 Q And, in fact, was a letter like this or the
09:24 25 form required by any applicant in this cycle?

09:24 1 A It was not.

09:25 2 Q So has -- did Florida Housing review the
09:25 3 information in this letter of availability as part of
09:25 4 its process of determining either eligibility or
09:25 5 scoring for the Allapattah Trace application?

09:25 6 A No, it did not.

09:25 7 Q And the same would be true of other applicants
09:25 8 as to this issue; wouldn't it?

09:25 9 A That's correct.

09:25 10 Q Having, though, had a chance to review this
09:25 11 letter, do you recognize that it does reference a
09:25 12 moratorium --

09:25 13 A Yes.

09:25 14 Q -- on a pump station?

09:25 15 A Yes.

09:25 16 Q And you actually know Mr. Pile; don't you?

09:25 17 A Mister who?

09:25 18 Q Pile, the signature on the letter. Or you've
09:25 19 talked to him before? You know who he is?

09:25 20 A Yes.

09:25 21 Q And even if there was a moratorium on the pump
09:25 22 station at the time of the application, if there was
09:25 23 availability of a work-around solution such as the
09:25 24 private pump station referenced in the letter, is that
09:25 25 enough to require -- to satisfy the requirements for

09:25 1 the applicant to certify availability at the time of
09:26 2 filing the application?

09:26 3 A At the time of filing the application?

09:26 4 Q Yes.

09:26 5 A Yes.

09:26 6 Q And if this letter is presented to Florida
09:26 7 Housing at credit underwriting as evidence that, at
09:26 8 the time of application, sewer was available to the
09:26 9 Allapattah Trace site, do you believe Florida Housing
09:26 10 will accept that letter?

09:26 11 A I would think so, yes.

09:26 12 Q If this judge, though, however, is asked to
09:26 13 rule on the sufficiency of this letter of availability
09:26 14 as part of this process, would he be doing more than
09:26 15 Florida Housing did during the application review
09:26 16 process?

09:26 17 A Yes.

09:26 18 Q Likewise, if this judge is asked to rule on
09:26 19 any elements of a site plan submitted to the City of
09:26 20 Miami prior to filing an application, would he be
09:26 21 doing more than Florida Housing did during its
09:26 22 application review process?

09:27 23 MR. DONALDSON: Judge, I guess I will object
09:27 24 to this line of questioning. Ultimately, what you
09:27 25 decide to do is your call. You're the judge here.

09:27 1 Florida Housing's impression on what your job is
09:27 2 really isn't relevant here.

09:27 3 THE COURT: I agree with you, but I'm going to
09:27 4 allow the questions. I think this is his position.
09:27 5 Although I'm well aware of your position, so you
09:27 6 needn't spend too much time on that point.

09:27 7 MR. GLAZER: Last question on that point.

09:27 8 BY MR. GLAZER:

09:27 9 Q Do you recall that question?

09:27 10 A I do. And the answer is yes.

09:27 11 Q Yes, the judge would be doing more than
09:27 12 Florida Housing did?

09:27 13 A That is correct.

09:28 14 Q Mr. Reecy, is a project that's invited into
09:28 15 credit underwriting guaranteed of getting funding?

09:28 16 A No.

09:28 17 Q Can a project fail in credit underwriting?

09:28 18 A Yes, it can.

09:28 19 MR. GLAZER: That's all I've got. Thank you.

09:28 20 THE COURT: Ms. Daughton, any questions?

09:28 21 MS. DAUGHTON: No questions. Thank you, Your
09:28 22 Honor.

09:28 23 THE COURT: Mr. Goldstein?

09:28 24 MR. GOLDSTEIN: Yes, briefly.

09:28 25

CROSS-EXAMINATION

09:28 1
09:28 2 BY MR. GOLDSTEIN:

09:28 3 Q Mr. Reecy, Joe Goldstein. We've met before.
09:28 4 There's three issues that you testified to.
09:28 5 I'm going to address one -- actually, one of those,
09:28 6 and then -- regarding the site plan issue.

09:28 7 MR. GOLDSTEIN: And then, Your Honor, I'm
09:28 8 going to go beyond the direct as to my issue
09:28 9 against Town Center on the site control issue that
09:28 10 Mr. Reecy didn't ask about, but I believe you gave
09:28 11 me leeway to do that; correct?

09:28 12 THE COURT: Yes.

09:28 13 MR. GOLDSTEIN: Thank you, Your Honor.

09:28 14 BY MR. GOLDSTEIN:

09:28 15 Q Just briefly I want to talk about the ability
09:28 16 of an applicant -- do they have a point of entry to
09:28 17 challenge the credit underwriting process decision?
09:29 18 We had a discussion about that among the Court and the
09:29 19 lawyers yesterday. So I want to ask the corporation's
09:29 20 determination on that.

09:29 21 You would agree with me that, if Allapattah
09:29 22 gets through credit underwriting, that there is no
09:29 23 point of entry for any other applicant to challenge
09:29 24 that?

09:29 25 MR. BROWN: Objection. Calls for a legal

09:29 1 conclusion.

09:29 2 MR. GLAZER: I agree.

09:29 3 THE COURT: I just let Mr. Grazer ask
09:29 4 questions about it. I'm going to allow him as
09:29 5 well.

09:29 6 MR. BROWN: That's why I objected, because he
09:29 7 didn't. (Laughter.)

09:29 8 THE COURT: Go ahead.

09:29 9 THE WITNESS: I'm sorry. Would you please ask
09:29 10 the question again?

09:29 11 BY MR. GOLDSTEIN:

09:29 12 Q Absolutely. You would agree with me that, at
09:29 13 the conclusion of credit underwriting, should the
09:29 14 corporation determine that there is site plan approval
09:29 15 and the ability to proceed under sewer availability,
09:29 16 that at that point in time no other applicant has
09:30 17 standing to challenge that decision under your
09:30 18 published regulations; correct?

09:30 19 A Huh. I'm trying to think of the -- I mean,
09:30 20 other than the fact that we're discussing it here
09:30 21 today, I'm not sure that it would, no.

09:30 22 Q Okay.

09:30 23 MR. GOLDSTEIN: And just to point us to --
09:30 24 does he have a copy of Chapter 67-60 up there, what
09:30 25 we took official recognition of?

09:30 1 MS. DAUGHTON: It's in the joint notebook.

09:30 2 MR. GOLDSTEIN: It's in the joint notebook?

09:30 3 Number 4 it would be -- we took it out of the joint
09:30 4 notebook. I will hand it to you.

09:30 5 MR. BROWN: I think he has my copy up there.
09:30 6 It's in a blue notebook.

09:30 7 MS. BLANTON: I have one, too, if you need to
09:30 8 borrow it.

09:30 9 (Discussion off the record.)

09:30 10 BY MR. GOLDSTEIN:

09:30 11 Q And just to confirm that, if you can, look at
09:30 12 Florida Administrative Code provision 67-60.009,
09:31 13 entitled, "Applicant Administrative Appeal
09:31 14 Procedures."

09:31 15 A I'm there.

09:31 16 Q And that's the agency's rule that allows us to
09:31 17 be here today, because we're challenging a -- not
09:31 18 selected for funding, may protest the results of the
09:31 19 competitive solicitation process; correct, Subsection
09:31 20 2?

09:31 21 A Correct.

09:31 22 Q And there's no provision in there for
09:31 23 applicants to challenge the credit underwriting
09:31 24 process process decision; correct?

09:31 25 A Not in here, no.

09:31 1 Q Okay. Well, would it be -- is it in any other
09:31 2 published rule of the corporation?

09:31 3 A Not that I'm aware of.

09:31 4 Q I want to go back to what's the scoring of the
09:31 5 applications under the RFA. Now, in the RFA, which is
09:32 6 in the joint notebooks, if you could, I believe it's
09:32 7 Tab 1 on page 37.

09:32 8 A Okay. I'm there.

09:32 9 Q Page 37 has that table in there. And that's
09:32 10 what the -- as the RFA says, that's what the
09:32 11 applications will be scored on, based on the following
09:32 12 mandatory and point items; correct?

09:32 13 A Correct.

09:32 14 Q So there's two types of scoring. There's --
09:32 15 the first two rows are actually given point scores;
09:32 16 correct?

09:32 17 A Yes.

09:32 18 Q But all the other items, they're scored, but
09:33 19 they're scored pass-fail?

09:33 20 A Correct.

09:33 21 Q And the last item at the bottom is executed
09:33 22 applicant certification and acknowledgement; correct?

09:33 23 A Correct.

09:33 24 Q So the corporation does give a pass-fail score
09:33 25 to that mandatory item; correct?

09:33 1 A Correct. If they don't sign it in blue ink
09:33 2 that we require on the original, then they fail.

09:33 3 Q I appreciate that. And just so we put things
09:33 4 in context, I'm just going to -- Mr. Reecy, I'm going
09:33 5 to provide you a binder that has the exhibits that
09:33 6 Pinnacle Rio introduced into evidence yesterday, just
09:33 7 to -- just to make it clear to the Court what that
09:33 8 last item relates to.

09:33 9 We saw in the RFA, page 37, that one of the
09:33 10 items is the executed applicant certification. And if
09:34 11 I could have you look at Pinnacle Exhibit No. 2, which
09:34 12 I will represent to you is the applicant certification
09:34 13 acknowledgement from Allapattah's application.

09:34 14 A Okay.

09:34 15 Q Is this the section of the application that
09:34 16 relates to that mandatory item that you talked about
09:34 17 that you just need to have a signature in blue?

09:34 18 A Correct.

09:34 19 Q If you were presented information during your
09:34 20 review of this certification that, for instance, that
09:34 21 the site plan was -- an inaccurate description as of
09:34 22 the time of the application deadline, even if you had
09:34 23 that irrefutable evidence while you were reviewing
09:35 24 this application, would that be not reviewed by the
09:35 25 corporation, because the only thing you're going to

09:35 1 look at is the signature?

09:35 2 A I can't think of a circumstance where that --
09:35 3 something like that would happen. I think it's
09:35 4 something that, you know, we have consciously pushed
09:35 5 to the credit underwriting stage; and, you know, we
09:35 6 would -- I think we would let it go into the
09:35 7 underwriting process to make sure that, you know, as
09:35 8 part of that due diligence, that it was considered at
09:35 9 that point.

09:35 10 Q So whatever -- and I won't stay on this long,
09:35 11 because I won't go into the sewer issue. I will let
09:35 12 Mr. Donaldson address that.

09:35 13 But just so we're clear, regardless of
09:35 14 whatever information Florida Housing Corporation had
09:35 15 at hand as to the accuracy of these certifications, as
09:36 16 a matter of policy, that's always going to be pushed
09:36 17 to the underwriting stage is the corporation's
09:36 18 position?

09:36 19 MR. GLAZER: Objection. Overbroad. He's
09:36 20 asking about the whole world.

09:36 21 MR. GOLDSTEIN: I will focus it, Your Honor,
09:36 22 just on paragraph A, the paragraph that I'm
09:36 23 interested in, just to refocus. So we'll ask it
09:36 24 that way.

09:36 25 THE COURT: Okay.

09:36 1 BY MR. GOLDSTEIN:

09:36 2 Q Paragraph 10, I guess it would be B-2, talks
09:36 3 about certification of the status of site plan
09:36 4 approval as of application deadline. Do you see that?

09:36 5 A Yes.

09:36 6 Q And if you had -- if you had information
09:36 7 readily available to you that showed that there would
09:36 8 be an issue with the status of the site plan approval
09:36 9 as of the application deadline, at the time of scoring
09:37 10 this mandatory item pass-fail, would the corporation
09:37 11 consider that information; or would it, as long as it
09:37 12 was signed in blue ink, pass it along to credit
09:37 13 underwriting?

09:37 14 MR. GLAZER: Objection. Assumes facts that
09:37 15 are not in evidence.

09:37 16 A I honest --

09:37 17 THE COURT: One moment.

09:37 18 THE WITNESS: I apologize.

09:37 19 THE COURT: Well, it is a hypothetical
09:37 20 question. Is he listed as an expert?

09:37 21 MR. GLAZER: I don't have an issue with his
09:37 22 expertise. But it assumes facts that just aren't
09:37 23 in this case and can't be in this case.

09:37 24 THE COURT: Well, the question about them
09:37 25 knowing definitely is not -- there is no

09:37 1 contention; is there, that Florida Housing had any
09:37 2 knowledge at that time?

09:37 3 MR. GOLDSTEIN: No, Your Honor. We're merely
09:37 4 trying to establish the predicate of the -- what is
09:37 5 the corporation's position as to, if they had had
09:37 6 that type of information. Because, again, if
09:37 7 their -- if their policy and position statement is
09:37 8 it doesn't matter, it goes to credit underwriting,
09:38 9 then it leads to the argument, well, when can an
09:38 10 applicant ever challenge that, because, as the
09:38 11 witness testified to, there's no point of entry for
09:38 12 that latter stage.

09:38 13 THE COURT: Can you rephrase the question?
09:38 14 You're really asking if he takes it at face value;
09:38 15 aren't you? Didn't we have a discussion earlier
09:38 16 with respect to something else?

09:38 17 MR. GOLDSTEIN: I think that's exactly what
09:38 18 I'm asking, Your Honor.

09:38 19 THE COURT: Why don't you rephrase the
09:38 20 question in that way.

09:38 21 MR. GOLDSTEIN: Very good. I will rephrase.

09:38 22 BY MR. GOLDSTEIN:

09:38 23 Q If an applicant signs the certification for
09:38 24 all these items to -- for the site plan, the -- well,
09:38 25 let's limit it to the site plan for now.

09:38 1 If the applicant signs a certification, does
09:38 2 the agency take that at face value, regardless of what
09:38 3 other information they would have at hand?

09:38 4 A Yes.

09:38 5 Q I want to move on now to one of the issues
09:38 6 that, other than admitting documents, we have not --
09:38 7 we have not addressed, and that is the issue that
09:39 8 Pinnacle Rio has against Town Center.

09:39 9 You understand from the sorting order that
09:39 10 Pinnacle Rio is basically fourth in line for
09:39 11 Miami-Dade County; correct?

09:39 12 A I understand that, yes.

09:39 13 Q And for us to get funding from the
09:39 14 corporation, we have to move up to number two in line;
09:39 15 correct?

09:39 16 A I understand that, yes.

09:39 17 Q And we're challenging Allapattah and Town
09:39 18 Center. So now I'm going to talk to you about our
09:39 19 challenge to Town Center.

09:39 20 Our challenge to Town Center relates to
09:39 21 evidence of site control. Going back to the RFA -- we
09:39 22 don't even have to look at it, because we've looked at
09:39 23 it so many times.

09:39 24 But in the mandatory items in the RFA, one of
09:39 25 the mandatory items is evidence of site control;

09:39 1 correct?

09:39 2 A That is correct.

09:39 3 Q And there is, I believe, three types of ways
09:39 4 that an applicant can give the corporation evidence of
09:39 5 site control; correct?

09:39 6 A That's right.

09:39 7 Q One of them being, they can provide you an
09:40 8 eligible contract that they're going to acquire the
09:40 9 property?

09:40 10 A Correct. A lease or deed. Those are the --

09:40 11 Q And Town Center, I will represent to you,
09:40 12 provided a contract.

09:40 13 A Okay.

09:40 14 Q Now, the -- if we could point out to the -- to
09:40 15 the judge the section in the RFA, I believe it's at --
09:40 16 again, Joint Exhibit 1, page 23.

09:40 17 So on page 23, what's in bold as paragraph 7,
09:40 18 that's the RFA instructions as to showing -- what you
09:40 19 have to show to establish site control to pass that
09:40 20 item; correct?

09:41 21 A Correct.

09:41 22 Q And I'm going to focus on site control
09:41 23 paragraph A, eligible contract. And towards about
09:41 24 the -- right before the middle of paragraph A, one of
09:41 25 the requirements is the buyer -- and then "must" is in

09:41 1 all capital letters -- buyer must be the applicant
09:41 2 unless an assignment of the eligible contract -- let
09:41 3 me just paraphrase that.

09:41 4 Basically, the requirement is that the buyer
09:41 5 must be the applicant, unless there's an assignment or
09:41 6 some other things; correct?

09:41 7 A Correct.

09:41 8 Q If you could go to the -- well, first, before,
09:41 9 just to -- do you know that the Town Center, the
09:41 10 proper name for their applicant -- what the name of
09:41 11 their applicant was?

09:41 12 A I can't recall right off the top of my head.

09:41 13 Q One of the -- I believe you probably have it
09:41 14 up there in a binder. If you don't, the application
09:42 15 for Town Center, just so we can be clear as to what
09:42 16 their name is.

09:42 17 MR. GOLDSTEIN: Does he have one of your
09:42 18 applications up there, Mike?

09:42 19 THE WITNESS: Town Center exhibits? Is it in
09:42 20 here?

09:42 21 MR. DONALDSON: No. (Tendering document.)

09:42 22 MR. GOLDSTEIN: I can hand you my copy.

09:42 23 MR. DONALDSON: He's got one.

09:42 24 MR. GOLDSTEIN: Oh, he's got one? Okay.

09:42 25 BY MR. GOLDSTEIN:

09:42 1 Q This would be Town Center Exhibit No. 1. And
09:42 2 in the application, I believe the easiest way for me
09:42 3 to look at it is on paragraph 2, on page 1 of the
09:42 4 application, it says, "Applicant Information."

09:42 5 A Okay. So I have Exhibit A here on all of
09:43 6 these. I don't have a copy of the actual RFA here.
09:43 7 It looks like it's Exhibit A.

09:43 8 Q Exhibit A, that's the application; right?
09:43 9 It's called Exhibit A to RFA, but that's the 14-page
09:43 10 application --

09:43 11 A Yes. Yes.

09:43 12 Q -- for Town Center.

09:43 13 A Okay.

09:43 14 Q And in paragraph 2-A, we see that the name of
09:43 15 the applicant is Town Center Phase Two, LLC; correct?

09:43 16 A All right. Just a minute. Ah. Okay. I'm
09:43 17 with you now.

09:43 18 Q Okay.

09:43 19 A Yes. Town Center Phase Two, LLC.

09:43 20 Q Now, the instruction in the RFA that the buyer
09:43 21 must be the applicant -- first of all, why is "must"
09:43 22 in all capital letters?

09:43 23 A You know, clearly that's an important element
09:44 24 to establishing the site control, the ownership.

09:44 25 Q And why is that an important item?

09:44 1 A Because that's one of the primary bases for,
09:44 2 you know, the allocation of these funds. We want to
09:44 3 make sure who we're allocating to.

09:44 4 Q And if you will look in the binder that I gave
09:44 5 you that is Pinnacle Rio's exhibit list --

09:44 6 A Yes.

09:44 7 Q -- Exhibit No. 11, which is the contract that
09:44 8 Town Center submitted.

09:44 9 A I'm there.

09:44 10 Q If I could ask you to go to page 14 of that
09:44 11 contract, the signature page.

09:44 12 A Yes.

09:44 13 Q Who does it say is the buyer of their
09:44 14 property?

09:44 15 A RUDG, LLC.

09:44 16 Q And that is not the applicant; correct?

09:44 17 A That is correct.

09:45 18 MR. GOLDSTEIN: No further questions, Your
09:45 19 Honor.

09:45 20 THE COURT: Questions?

09:45 21 MS. BLANTON: A couple.

09:45 22 MR. DONALDSON: Go ahead.

09:45 23 MS. BLANTON: Very briefly.

09:45 24 CROSS-EXAMINATION

09:45 25 BY MS. BLANTON:

09:45 1 Q Mr. Reecy, you were asked a number of
09:45 2 questions about certain issues that are saved for the
09:45 3 credit underwriting process; correct?

09:45 4 A Correct.

09:45 5 Q The scoring of the principal issue, is that
09:45 6 handled earlier, or is that saved for credit
09:45 7 underwriting?

09:45 8 A That's handled at application. And actually
09:45 9 even before application, advance review, we have a
09:45 10 specific process for that.

09:45 11 Q So, if there are errors in the listing of the
09:45 12 principals as required in the RFA, they are to be
09:45 13 caught on the front end and not saved until credit
09:45 14 underwriting; correct?

09:45 15 A That is correct.

09:46 16 Q Mr. Brown asked you some questions about the
09:46 17 missing page in Pinnacle Rio's equity commitment
09:46 18 letter. Do you recall that?

09:46 19 A Yes, I do.

09:46 20 Q Now, you don't have any way of knowing, do
09:46 21 you, of what was on that missing page?

09:46 22 A No, I don't.

09:46 23 Q Is it possible that it included unacceptable
09:46 24 conditions for closing, for example?

09:46 25 A It's possible, yes.

09:46 1 Q And it -- there could have been inconsistent
09:46 2 information on that page 3 with other things in the
09:46 3 application; correct?

09:46 4 A That is possible, yes.

09:46 5 Q And is that not a concern for Florida Housing,
09:46 6 that you might be accepting an incomplete document
09:46 7 that could have unacceptable -- unacceptable
09:46 8 conditions on it?

09:46 9 A No. Because what we needed for purposes of
09:46 10 the financial scoring were elsewhere in that document.

09:46 11 Q But how did you know that what was on page 3
09:46 12 wouldn't perhaps contradict some of those items?

09:46 13 A We just could not make that assumption.

09:47 14 Q Did you consider during the scoring process of
09:47 15 rejecting this application as a result of the missing
09:47 16 page?

09:47 17 A No.

09:47 18 Q Was it a conscious decision to accept it, even
09:47 19 though the page was missing; or did you just not
09:47 20 notice the page was missing?

09:47 21 A We felt -- we noticed the page was missing,
09:47 22 and we felt that this was within the scope of the
09:47 23 minor irregularity as outlined in 67-60.

09:47 24 MS. BLANTON: That's all I have. Thank you.

09:47 25 THE COURT: Mr. Donaldson?

CROSS-EXAMINATION

09:47 1

09:47 2 BY MR. DONALDSON:

09:47 3 Q Good morning, Mr. Reecy.

09:47 4 A Good morning.

09:47 5 Q I have to figure out which hat I have. For
09:47 6 some of your testimony, I was on this side of the
09:47 7 room. Now I need to start on this side of the room, I
09:47 8 guess.

09:47 9 MS. DAUGHTON: Like an island.

09:47 10 (Laughter.)

09:47 11 BY MR. DONALDSON:

09:47 12 Q Let me ask you some questions about a
09:47 13 certification.

09:47 14 Why do you have a requirement that a
09:47 15 certification be signed and submitted with the
09:48 16 application?

09:48 17 A Basically to, you know, attest to, you know,
09:48 18 various aspects -- there is quite a number of them --
09:48 19 to attest to whether or not they have certain
09:48 20 conditions in their application, in their development.

09:48 21 Q So would you agree with me that, when an
09:48 22 applicant signs a certification -- and that's a
09:48 23 requirement; it has to be there; right?

09:48 24 A Correct.

09:48 25 Q -- that they are certifying they read the

09:48 1 application; they read the RFA; and they understand
09:48 2 the rules, the applicable rules; and they're agreeing
09:48 3 to those conditions; correct?

09:48 4 A Correct.

09:48 5 Q And that's as of the application deadline;
09:48 6 correct?

09:48 7 A That is correct.

09:48 8 Q Now, Mr. Goldstein asked you some questions
09:48 9 about what if you had irrefutable proof subsequent to
09:48 10 the submission of the applications that the
09:48 11 certification, for whatever reason, was not accurate.
09:48 12 Is it your testimony that there's nothing Florida
09:49 13 Housing can do about that?

09:49 14 For example, what if a certification was
09:49 15 signed by Mickey Mouse, but it was turned in. Are you
09:49 16 saying at face value we have to accept that, and you
09:49 17 would find out in underwriting that it really wasn't
09:49 18 Mickey Mouse who signed that, or could you determine
09:49 19 that now?

09:49 20 A So what we would do is, you know, we have
09:49 21 consciously set up certain aspects of the process to
09:49 22 be considered in credit underwriting that basically
09:49 23 there -- as it regards infrastructure, which I know we
09:49 24 talked about today, you know -- that we have
09:49 25 consciously moved that into a more rigorous review,

09:49 1 because there are variabilities or -- what's the word
09:49 2 I'm looking for? The word won't come to me.

09:50 3 But, you know, there are a number of
09:50 4 possibilities. You know, as it regards, for instance,
09:50 5 the sewer question, you know, there might be a
09:50 6 moratorium on a pump, but there might be another way
09:50 7 to do it. And, you know, we're kind of acknowledging
09:50 8 that that's a more complex issue that's difficult to
09:50 9 determine, you know, as a threshold failure issue at
09:50 10 application deadline, you know, we might not have
09:50 11 enough information.

09:50 12 So the -- the hypothetical, irrefutable proof,
09:50 13 first of all, I do not see where that would actually
09:50 14 come up in the application the way we have it set up.

09:50 15 Secondly, we have designed it to, you know,
09:50 16 push those questions on these complex issues to the
09:50 17 rigorous review in credit underwriting, basically.

09:51 18 Q Okay. And in the RFA -- and I think
09:51 19 Mr. Goldstein pointed you to this section -- I think
09:51 20 it's page 47 of the RFA. And this is paragraph 10,
09:51 21 the applicant certification and acknowledgement
09:51 22 section. Take your time. Let me know when you're
09:51 23 ready.

09:51 24 A Let's see. Okay. I found the right book.
09:51 25 I'm on page 47.

09:51 1 Q And go down to subparagraph 2 where it says,
09:51 2 "Within 21 calendar days, the date of the invitation
09:52 3 to credit underwriting."

09:52 4 A Yes.

09:52 5 Q And then go to B. "Certification confirming
09:52 6 the availability of the following," and it goes down,
09:52 7 and it lists some things, and sewer is one of those
09:52 8 things.

09:52 9 A Correct.

09:52 10 Q That says "confirming the availability." It
09:52 11 doesn't say the "possible" availability. It says "the
09:52 12 availability," and it goes on to say "sewer."

09:52 13 And that availability is as of the application
09:52 14 deadline; correct?

09:52 15 A Correct.

09:52 16 Q So, if an underwriter -- and you've talked
09:52 17 about how you pushed all this off -- would an
09:52 18 underwriter have any other standard, other than what's
09:52 19 in the RFA, to measure whether or not the form that
09:52 20 was turned in in 21 days was acceptable?

09:52 21 A No.

09:52 22 Q So they would use the same standard, in other
09:52 23 words?

09:52 24 A Correct.

09:52 25 Q Okay. Now, there's been some discussion about

09:53 1 a change in the format from the UAC -- universal
09:53 2 application cycle -- to the RFA, which I agree, there
09:53 3 has been a change.

09:53 4 But I'm curious as to what the change actually
09:53 5 is in terms of determining the availability of sewer.
09:53 6 And I want to show you a couple of documents.

09:53 7 MR. DONALDSON: Now, Judge, we have -- I think
09:53 8 Mr. Glazer wanted to use some excerpts from the
09:53 9 universal application, and I basically in response
09:53 10 said, let's use the whole universal; let's use the
09:53 11 whole application, instructions, and the rules,
09:53 12 which is what's on that disk.

09:53 13 So we're still going to be talking about
09:53 14 excerpts, but I think you've already taken official
09:53 15 recognition of the RFA and the rules applicable for
09:53 16 this year's RFA. What I would like you to do is
09:53 17 also -- since we talked so much about the universal
09:53 18 application, I would like you to take official
09:53 19 recognition of that, too. I don't think you've
09:54 20 done that.

09:54 21 THE COURT: I'm not sure I can do that. Which
09:54 22 section would allow me to take official recognition
09:54 23 of that? I guess maybe that it was an official
09:54 24 agency action? It's not really action. Why don't
09:54 25 we just stipulate that this is it and admit it as a

09:54 1 joint exhibit. Is that all right with everybody?

09:54 2 MR. GLAZER: I have no objection to admission
09:54 3 of the 2011 application package. I didn't get this
09:54 4 until last night. I haven't had a chance to look
09:54 5 at it. But subject to just checking it, I don't
09:54 6 have any objection to it being admitted.

09:54 7 THE COURT: Any party have any problem with
09:54 8 that?

09:54 9 MR. DONALDSON: I will admit, I did not look
09:54 10 at it, either. I directed my staff to put all of
09:54 11 that stuff on a disk, because it would be -- it's
09:54 12 300-plus pages. I didn't want to have another
09:54 13 binder of 300 pages.

09:54 14 THE COURT: You all are going to direct me to
09:54 15 precisely where I need to look at this; right?

09:54 16 MR. DONALDSON: Yes. In fact, I think, that's
09:54 17 why we're going to use excerpts. So we're going to
09:54 18 give you the pages that we want you to look at.
09:54 19 But they will be within the four corners of what's
09:54 20 on that disk.

09:54 21 THE COURT: All right. If nobody has
09:54 22 objection, I will accept this as Joint Exhibit No.
09:55 23 5.

09:55 24 (Joint Exhibit No. 5 received in evidence.)

09:55 25 It's a composite exhibit of universal cycle

09:55 1 documents.

09:55 2 BY MR. DONALDSON:

09:55 3 Q Mr. Reecy, I want to give you a document
09:55 4 (tendering document.)

09:55 5 Do you recognize that document, Mr. Reecy?

09:55 6 A Yes, I do.

09:55 7 Q And what is that document?

09:55 8 A This is one of the ability to proceed forms
09:55 9 for sewer capacity.

09:55 10 Q Okay. And that's from the 2011 application;
09:55 11 correct?

09:55 12 A Yes.

09:55 13 Q Now, this is an excerpt -- let you see it
09:55 14 first, see if you can identify that (tendering
09:56 15 document).

09:56 16 MR. GLAZER: Is that one of your exhibits?

09:56 17 MR. DONALDSON: I know it's a joint exhibit,
09:56 18 because it's in the RFA I think; isn't it?

09:56 19 MR. GLAZER: No, it's not.

09:56 20 MR. DONALDSON: The forms are not there?

09:56 21 MR. GLAZER: No.

09:56 22 MR. GOLDSTEIN: It's one of my exhibits that
09:56 23 was admitted yesterday.

09:56 24 MR. GLAZER: No, it's not. This is a
09:56 25 different one.

09:56 1 MR. GOLDSTEIN: Oh, a different one. I'm
09:56 2 sorry.

09:56 3 BY MR. DONALDSON:

09:56 4 Q Well, Mr. Reecy, can you identify that
09:56 5 document?

09:56 6 A The second one?

09:56 7 Q Yes.

09:56 8 A Okay. Yes. This is the 2013 verification --
09:56 9 ability to proceed form regarding sewer capacity
09:56 10 package treatment or septic tank.

09:56 11 Q Now, is there any difference between those two
09:56 12 documents that you see?

09:56 13 A A few things, but not much.

09:57 14 Q So substantively it looks like it's the same?

09:57 15 A Relatively so, yes.

09:57 16 Q Now, this is the document that an applicant
09:57 17 turns in; correct?

09:57 18 A Yes.

09:57 19 Q And this is the document that confirms or
09:57 20 verifies the availability of the infrastructure;
09:57 21 correct?

09:57 22 A Yes. This is the form. They can do a form or
09:57 23 a letter.

09:57 24 Q Okay. And this is what is turned in to the
09:57 25 underwriter or, in previous, the 2011, was turned in

09:57 1 to Florida Housing; correct?

09:57 2 A Correct.

09:57 3 Q And this is what the decision as to whether
09:57 4 there was the availability of sewer was based on;
09:57 5 correct?

09:57 6 MR. GLAZER: I'm sorry. Which, is this 11 or
09:57 7 13 for that question?

09:57 8 BY MR. DONALDSON:

09:57 9 Q Let's do 13 for now.

09:57 10 A This would be one of the two ways in which --
09:57 11 yes -- that it could be provided to the corporation
09:57 12 and on to the credit underwriter, yes.

09:58 13 Q And in 2011 it was the same thing; correct?

09:58 14 A Correct.

09:58 15 Q So you also talked about that a letter can
09:58 16 also be used for purposes of confirming. Now, what
09:58 17 local governments use letters?

09:58 18 A Miami-Dade certainly does. I think there are
09:58 19 others, and I cannot recall right off the bat who
09:58 20 does.

09:58 21 Q Now, when a letter is submitted, doesn't the
09:58 22 letter have to be consistent? It may not have to say
09:58 23 the same language, but doesn't it have to be
09:58 24 consistent with the form?

09:58 25 A It has to give us the relevant information,

09:58 1 basically, to let us know whether or not sewer is
09:58 2 possible or is not possible.

09:58 3 Q Well, now, you say "possible." I think if you
09:58 4 asked -- would you agree with me that, if you asked if
09:58 5 sewer is possible, isn't sewer possible anywhere at
09:59 6 any time?

09:59 7 A I guess the answer to that would be, no,
09:59 8 probably not, you know, in certain situations.

09:59 9 Q Well, for example, Miami-Dade County, wouldn't
09:59 10 sewer be possible? I could put a line from a site and
09:59 11 take it to Broward County and hook up to their sewer.
09:59 12 Isn't sewer possible under that scenario?

09:59 13 A Well, I think there's a whole host of
09:59 14 conditions that would need to be met. I mean, and you
09:59 15 might not be able to overcome the obstacles to do
09:59 16 that. So, you know, I think there's some
09:59 17 circumstances where sewer would not be possible.

09:59 18 Q Okay. Let's talk about that for a moment.

09:59 19 "Availability" is not defined in the RFA; is
09:59 20 it?

09:59 21 A Not that I'm aware of, no.

09:59 22 Q Okay. So the only guidance that you have
09:59 23 about what availability is would probably be to go to
09:59 24 the form; correct?

09:59 25 A Correct.

10:00 1 Q Okay. Now, the form, if you look at the
10:00 2 form -- and we're looking at 13 now, 2013 form --
10:00 3 gives you four criteria that a provider must confirm;
10:00 4 correct?

10:00 5 A Right.

10:00 6 Q Would you agree with me that that, to the
10:00 7 extent there is any guidance as to what "available"
10:00 8 means, is the guidance that applicants have when they
10:00 9 look at the RFA -- those four conditions?

10:00 10 A That's the available information, yes.

10:00 11 Q Okay. Now, do those conditions involve the
10:00 12 possibility, or does it involve -- for example, number
10:00 13 one, sewer capacity, package treatment plant or septic
10:00 14 tank is available to the proposed development.

10:00 15 Does that talk about possibly available to the
10:00 16 development?

10:00 17 A I mean -- so it is possible by definition,
10:00 18 because it's available. I guess I'm -- I know it's a
10:01 19 nuance thing that, you know ...

10:01 20 Can you restate your question?

10:01 21 Q No, because we could sit here and argue about
10:01 22 this for the rest of the day. That's not my intent.

10:01 23 But you would agree with me that, to the
10:01 24 extent that there's guidance provided as to what
10:01 25 "available" means, the form would basically be where

10:01 1 you would go for guidance; correct?

10:01 2 A That is the only source of information on that
10:01 3 subject, yes.

10:02 4 MR. DONALDSON: If I could just have a minute,
10:02 5 Judge.

10:02 6 THE COURT: Okay.

10:02 7 BY MR. DONALDSON:

10:02 8 Q Now, Mr. Reecy, Mr. Glazer gave you a notebook
10:03 9 that has Allapattah's exhibits in it.

10:03 10 A Yes.

10:03 11 Q And you looked at a letter, I think it's at
10:03 12 Tab 18 --

10:03 13 A Yes.

10:03 14 Q -- and you indicated that that letter would be
10:03 15 acceptable. And I wanted you to compare that letter
10:03 16 with the 2013 form. And specifically I wanted you to
10:03 17 look at -- the word "moratorium" is mentioned in the
10:03 18 Allapattah letter; isn't it?

10:03 19 A It is.

10:03 20 Q And you indicated that that's just for a
10:03 21 single pump station. I want to take you back to the
10:03 22 form. And this is for 2013.

10:03 23 A Yes.

10:03 24 Q And the fourth bullet point in the form says,
10:03 25 "To the best of our knowledge, there are no

10:03 1 moratoriums pertaining to this service which are
10:03 2 applicable to this development."

10:03 3 There is a moratorium that's applicable to
10:03 4 this development as referenced by the Miami-Dade
10:04 5 letter; isn't there?

10:04 6 A There is.

10:04 7 Q Okay. Now, I don't see in that form where it
10:04 8 says, but if you have an alternative that gets you
10:04 9 around the moratorium, that would be acceptable.

10:04 10 Is that anywhere?

10:04 11 A That is not in the form.

10:04 12 Q Okay. Now, the other interesting thing about
10:04 13 the Miami-Dade letter at Allapattah's Tab 18 is in the
10:04 14 second -- well, wait a minute -- the third complete
10:04 15 paragraph, the third sentence down, Miami-Dade -- at
10:04 16 least this segment of Miami-Dade, this department in
10:04 17 Miami-Dade says, "The owner cannot increase the flow
10:04 18 to the gravity system," which is the sewer system;
10:04 19 correct?

10:04 20 A As far as I know, yes.

10:04 21 Q And I realize you're not an engineer.

10:04 22 A I was going to say, I'm not an engineer.

10:04 23 Q If you can't increase the flow, doesn't that
10:04 24 mean you don't have capacity?

10:04 25 A I can't comment on that. That's one of the

10:05 1 reasons, again, why we put this into credit
10:05 2 underwriting for, you know, a more -- I'm not an
10:05 3 expert on that.

10:05 4 Q Sure. But the credit underwriter would have
10:05 5 the same information?

10:05 6 A Correct.

10:05 7 Q And they would have the same RFA requirements?

10:05 8 A That's right.

10:05 9 Q Okay. Or the same RFA guidance into how to
10:05 10 interpret information that they get in underwriting?

10:05 11 A That's correct.

10:05 12 Q Are there any other standards that the
10:05 13 underwriters have from Florida Housing dealing with
10:05 14 how to process an application in underwriting?

10:05 15 A Well, we -- obviously, as issues arise, there
10:05 16 is verbal and e-mail communication between credit
10:05 17 underwriters and, you know, Florida Housing staff to,
10:05 18 you know, resolve the issues that arise during credit
10:06 19 underwriting.

10:06 20 Q Now, taking you back to the RFA -- and maybe
10:06 21 you don't need to look at anything, but -- the
10:06 22 certification forms fall under what's called the
10:06 23 ability to proceed section.

10:06 24 A Yes.

10:06 25 Q What does "ability to proceed" mean?

10:06 1 A Ability to proceed basically means that, you
10:06 2 know, the deal or the project, you know, as scoped in
10:06 3 the application, has all of the necessary
10:06 4 infrastructure issues taken care of so that it can
10:06 5 actually be built; it can happen.

10:06 6 Q Now, is there a timing issue involved with the
10:06 7 allocation of housing credits? In other words, does
10:06 8 this development have to be built within a certain
10:07 9 period of time?

10:07 10 A Yes, it does.

10:07 11 Q Do you know how long a developer has to
10:07 12 actually build their development?

10:07 13 A I believe it's two years.

10:07 14 Q Okay. And if that's not built within two
10:07 15 years, what -- are there ramifications?

10:07 16 A Yes.

10:07 17 Q And --

10:07 18 A I believe they can lose the credits.

10:07 19 Q I think I'm going to give you another
10:08 20 notebook. How's that?

10:08 21 A Sure.

10:08 22 Q And these are Town Center's exhibits.

10:08 23 A Okay.

10:08 24 MR. DONALDSON: Here is one for you, Judge.

10:08 25 I, like Mr. Glazer, since we're having kind of a

10:08 1 difference in how we're doing things today, we will
10:08 2 go through that document and take things out that
10:08 3 we're not going to use.

10:09 4 BY MR. DONALDSON:

10:09 5 Q Mr. Reecy, if you would, go to Tab 7 of the
10:09 6 Town Center exhibits.

10:09 7 A Okay.

10:09 8 Q Let me know when you're there.

10:09 9 A I'm there.

10:09 10 Q Now, that's a letter from Miami-Dade County;
10:09 11 correct?

10:09 12 A Yes, it is.

10:09 13 Q And I will represent to you that the address
10:09 14 there is the Allapattah project.

10:09 15 A Okay.

10:09 16 Q And that letter is from the regulatory and
10:09 17 economic resources section of Dade County. And it
10:09 18 specifically says, county pump station, and it gives
10:09 19 you a number; 30-0054 has been under moratorium by the
10:09 20 Miami-Dade Department of Regulatory and Economic
10:09 21 Resources since October 10th of 2013, and it goes on
10:09 22 to tell you that that moratorium is going to be in
10:09 23 place until 2018. Do you see that?

10:09 24 A I do.

10:09 25 Q So this is not inconsistent with the letter

10:09 1 that was Tab 18 that Allapattah asked you to look at
10:10 2 earlier; was it? There is a moratorium in place;
10:10 3 correct?

10:10 4 A Right. I think for a particular pump station.

10:10 5 Q Why do you keep saying for a particular pump
10:10 6 station? Does that make a difference to you? I
10:10 7 realize you're not an engineer, but ...

10:10 8 A Well, it makes a difference in that, you know,
10:10 9 if there is the possibility of hooking up somewhere
10:10 10 else using another method, then the moratorium does
10:10 11 not stop the ability to proceed.

10:10 12 Q Again, it goes to that, if it's possible that
10:10 13 you can find sewer?

10:10 14 A Right.

10:10 15 Q Okay. Would the same apply for roads, which
10:10 16 is also --

10:10 17 MR. GLAZER: Objection; relevance. We don't
10:10 18 have any road issues in this case.

10:10 19 MR. DONALDSON: Well, I'm actually trying to
10:10 20 figure out what "possible" means. And since the
10:10 21 form -- and since the requirements of the RFA deal
10:10 22 with infrastructure, we're talking about sewer
10:10 23 here, I wanted to see if I could find some examples
10:10 24 of road infrastructure that's possible. In other
10:11 25 words, if we're going to be consistent --

10:11 1 THE COURT: I will allow the question.

10:11 2 A So I guess my answer would be the same would
10:11 3 hold for roads, yes. Because there might not be an
10:11 4 existing road, but you could build a road within the
10:11 5 time frame needed to be done to provide the access
10:11 6 needed for, you know -- you know, this is a statewide
10:11 7 program. So, obviously, we've got to consider, you
10:11 8 know, a number of possibilities.

10:11 9 And there may not be infrastructure, you know,
10:11 10 existing at, you know, that exact time. But we need
10:11 11 to know, you know, can it be done within the time
10:11 12 frame that --

10:11 13 THE COURT: Excuse me. You say at that time.
10:11 14 What time do you mean, not existing?

10:11 15 THE WITNESS: Existing today. The
10:11 16 application --

10:11 17 THE COURT: At the application deadline?

10:11 18 THE WITNESS: Right. The road may not be
10:11 19 there. But can the road be there -- is there the
10:12 20 possibility of building the road and providing the
10:12 21 access, and did that possibility exist at
10:12 22 application deadline.

10:12 23 THE COURT: Okay.

10:12 24 BY MR. DONALDSON:

10:12 25 Q So the --

10:12 1 MR. DONALDSON: Are you finished, Judge?

10:12 2 THE COURT: Yes. I'm sorry. Go ahead.

10:12 3 BY MR. DONALDSON:

10:12 4 Q So how does the possibility idea fit into the
10:12 5 two-year ability to proceed time frame?

10:12 6 A If it's -- restate the question.

10:12 7 Q Well, you talked about earlier that these tax
10:12 8 credit deals, you believed, had a two-year time limit
10:12 9 to be constructed for purposes of the tax credit
10:12 10 regulations.

10:12 11 A Uh-huh.

10:12 12 Q I'm going back to the ability to proceed. If
10:12 13 it's going to take me a year to run a road to a
10:12 14 development, but it's possible that in a year I'm
10:12 15 going to have a road, how does that factor into the
10:12 16 ability to proceed?

10:13 17 A Well, again, it has to do with, you know, the
10:13 18 time -- the time frame for the entire deal. And, you
10:13 19 know, whether or not there is no impediment to doing
10:13 20 the deal within the time that it must be done, you
10:13 21 know, and that that -- and that that situation existed
10:13 22 as of the application deadline, that there was no
10:13 23 impediment that existed, you know.

10:13 24 The road itself may not exist, you know, but
10:13 25 there is no impediment to having a road that existed

10:13 1 at the application deadline.

10:13 2 Q Is a moratorium an impediment?

10:13 3 A It's one impediment. It might not be a
10:13 4 complete impediment.

10:13 5 Q Okay. So would you agree with me that a
10:14 6 development -- that an application that has water,
10:14 7 sewer, electricity, roads, all the infrastructure
10:14 8 requirements in place as of the application deadline,
10:14 9 has a better ability to proceed than a development
10:14 10 that has an impediment, minor or otherwise?

10:14 11 MR. GLAZER: Objection. That's not relevant,
10:14 12 Your Honor. The fact one might go faster than
10:14 13 another is not an issue in this RFA. That's just
10:14 14 not a relevant issue.

10:14 15 THE COURT: Isn't this a pass-fail requirement
10:14 16 and not a --

10:14 17 MR. DONALDSON: Yes, Judge, and the reason I'm
10:14 18 asking that question --

10:14 19 THE COURT: Why is that relevant?

10:14 20 MR. DONALDSON: -- is to fit into the
10:14 21 definition of ability to proceed. That means that
10:14 22 the development is ready to go. And the question
10:14 23 here is, if a development has an impediment,
10:14 24 whatever that is, it's really not ready to go; is
10:14 25 it, under the ability to proceed idea that we

10:14 1 talked about earlier? That was just the question.

10:14 2 If the question is no good, then I will just --

10:15 3 THE COURT: Well, you can ask it that way. If
10:15 4 something doesn't have -- go ahead, as you just
10:15 5 phrased it.

10:15 6 MR. DONALDSON: How did I phrase that
10:15 7 question? Answer what the Judge just said.

10:15 8 THE COURT: The question here is, if a
10:15 9 development has an impediment, whatever that is,
10:15 10 it's really not ready to go; is it? I think that's
10:15 11 a relevant question. I'll allow that. The
10:15 12 question: If a development has an impediment, is
10:15 13 it ready to proceed?

10:15 14 THE WITNESS: Well, I guess the question would
10:15 15 be, you know, is that impediment surmountable? Is
10:16 16 it, in the final analysis, an impediment that
10:16 17 causes the project to not be able to proceed within
10:16 18 the time frame that it needs to be proceeding
10:16 19 within? You know, that's, again, why we put it
10:16 20 into underwriting, to make that final
10:16 21 determination, because there are, you know, a
10:16 22 number of issues associated with that.

10:16 23 And that's why it's not a threshold thing.
10:16 24 And it's been moved back to give -- be given, you
10:16 25 know, an in-depth treatment and look at what all of

10:16 1 those possibilities are.

10:16 2 And so there might be an impediment at first,
10:16 3 but, you know, if it's insurmountable, then they
10:16 4 fail the credit underwriting, and they lose the
10:16 5 allocation, so ...

10:17 6 MR. DONALDSON: Judge, I think that's all I
10:17 7 have for now. Oh, no. Oh, yeah, a couple more.

10:17 8 BY MR. DONALDSON:

10:17 9 Q Now let's leave the sewer alone. I'm leaving
10:17 10 this side of the room, and I'm going over here.

10:17 11 THE COURT: Before we leave the sewer issue,
10:17 12 did we determine that this 2013 form on the
10:17 13 availability of sewer capacity has been introduced
10:17 14 as an exhibit; and, if not, do you want to do so?

10:17 15 MR. DONALDSON: If it has not, I would like
10:17 16 to. I think it may have been one of the exhibits
10:17 17 that came in yesterday, though. I really don't
10:17 18 want to duplicate it. But it's only one page,
10:17 19 so if --

10:17 20 MR. GLAZER: I don't think it is. It's an
10:17 21 exhibit to some of the depositions that you will
10:17 22 get, but it wasn't one Mr. Goldstein --

10:17 23 MR. DONALDSON: I will go ahead and try to
10:18 24 introduce it now, Judge.

10:18 25 THE COURT: Okay.

10:18 1 MR. DONALDSON: If that makes it easier.

10:18 2 THE COURT: Any objection to that exhibit?

10:18 3 MR. GLAZER: Only that I want to make sure
10:18 4 it's clear this was not part of the application.

10:18 5 THE COURT: I understand. This goes to the
10:18 6 same issue, they have to submit this for credit
10:18 7 underwriting --

10:18 8 MR. BROWN: That would be my relevance
10:18 9 objection to it as well.

10:18 10 THE COURT: I'm going to overrule those
10:18 11 objections and admit it. I think that's part of
10:18 12 the argument here.

10:18 13 MR. GLAZER: What are we going to call it?

10:18 14 THE COURT: I'm going to call it Town
10:18 15 Center --

10:18 16 MR. DONALDSON: 2?

10:18 17 THE COURT: Let me find it.

10:18 18 MR. GLAZER: You've got a 2 on your list.

10:18 19 MR. DONALDSON: Oh, oh, oh, that's right.

10:18 20 THE COURT: How many exhibits do you -- you
10:18 21 have 22. Should we make this 23?

10:18 22 MR. GLAZER: Well, 22 is not really an
10:18 23 exhibit.

10:18 24 MR. DONALDSON: Well, there's a lot of them.
10:18 25 I haven't gone through and reshuffled yet, Judge.

10:18 1 THE COURT: You tell me. The only one I've
10:18 2 admitted so far is TC 1, which is your application.
10:19 3 So let's make this TC 2, or does that cause another
10:19 4 problem?

10:19 5 MR. GLAZER: Your TC 2 is a joint exhibit
10:19 6 anyway.

10:19 7 MR. DONALDSON: Correct.

10:19 8 THE COURT: I will admit this as TC 2.
10:19 9 (TC Exhibit No. 2 received in evidence.)

10:19 10 THE COURT: Now you may leave the sewer issue.
10:19 11 BY MR. DONALDSON:

10:19 12 Q Mr. Reecy, you were asked by Mr. Goldstein
10:19 13 about the site control documents submitted by Town
10:19 14 Center; correct?

10:19 15 A Yes.

10:19 16 Q And you sat in on the deposition of Amy
10:19 17 Garmon, who was the person who actually scored the
10:19 18 site control sections; correct?

10:19 19 A I believe so, yes.

10:19 20 Q And you heard the questions that were asked as
10:19 21 to whether she found the site control documents
10:19 22 acceptable or not; correct?

10:19 23 A Right.

10:19 24 Q Do you agree with her conclusions?

10:19 25 A That it was a minor irregularity? Yes, I do.

10:19 1 MR. DONALDSON: Judge, at some point we're
10:19 2 going to actually introduce Ms. Garmon's
10:19 3 deposition, because she's on a cruise, as I
10:19 4 understand it, in the Caribbean. So she can't be
10:20 5 here today.

10:20 6 MR. BROWN: I will do that at the end of my
10:20 7 case, when we're done here.

10:20 8 BY MR. DONALDSON:

10:20 9 Q Now, Mr. Reecy, there was also allegations
10:20 10 about the same signature issue with the equity
10:20 11 proposal letters. Let me ask you to go ahead and look
10:20 12 at Tab 4 of Town Center's exhibits. So the judge
10:20 13 knows what we're talking about, if you could go to --
10:20 14 it looks like the last two attachments in the
10:20 15 application at the very end, Attachments 11 and 12.

10:21 16 A Okay. I'm there.

10:21 17 Q And just for the record, if you could identify
10:21 18 what those documents are.

10:21 19 A Looks like a -- looks like a letter of credit,
10:21 20 basically, allowing them a loan.

10:21 21 Q That's both 11 and 12?

10:21 22 A Yeah. And the equity -- equity letter, yeah.

10:22 23 Q Now, as I understand it, the challenge to
10:22 24 these letters is the signature of Albert Milo, Jr.,
10:22 25 vice-president, as not being the person authorized to

10:22 1 sign.

10:22 2 Was Florida Housing comfortable that the
10:22 3 appropriate person signed those letters?

10:22 4 A I am actually not familiar with this
10:22 5 particular situation.

10:22 6 Q Okay.

10:22 7 A So I cannot say.

10:22 8 Q That's fine.

10:22 9 MR. DONALDSON: That's all I have, Judge.

10:22 10 THE COURT: I'm not sure if it's redirect or
10:22 11 cross, but any questions?

10:22 12 MR. GLAZER: I do have some questions, Your
10:22 13 Honor.

10:22 14 CROSS-EXAMINATION

10:22 15 BY MR. GLAZER:

10:22 16 Q Mr. Goldstein asked you some questions
10:23 17 about -- or just a question or two about Chapter 67-60
10:23 18 of the Florida Administrative Code. And am I correct,
10:23 19 those are new rules for the Florida Housing; aren't
10:23 20 they?

10:23 21 A Yes, they are.

10:23 22 Q And these are rules dealing just with this
10:23 23 selection process in the application; correct?

10:23 24 A Correct.

10:23 25 Q These are not credit underwriting rules?

10:23 1 A Correct.

10:23 2 Q Credit underwriting is in a different part of
10:23 3 Florida Housing's rules; isn't it?

10:23 4 A Yes.

10:23 5 Q And he asked you some hypothetical questions
10:23 6 about, if a site plan was wrong and that sort of
10:23 7 thing. At this point do you have any information that
10:23 8 anything about Allapattah Trace's certification was
10:24 9 wrong?

10:24 10 A No.

10:24 11 Q And with regard to the issue of verification
10:24 12 of the site, let me show you, this is Exhibit --
10:24 13 Pinnacle's Exhibit 5, which is an excerpt from a
10:24 14 Stearns, Weaver letter that was submitted to the city
10:24 15 of Miami. And I'm not sure you've ever seen this
10:24 16 before.

10:24 17 A No, I have not.

10:24 18 Q I'm going to show you a document, though,
10:24 19 that's the second page of Exhibit 5. And do you
10:24 20 actually recognize this local government verification
10:24 21 of status of site plan form?

10:24 22 A Yes, I do.

10:24 23 Q And is this one of Florida Housing's forms?

10:24 24 A Yes.

10:24 25 Q And is this one of those forms that would be

10:24 1 submitted at credit underwriting by an applicant?

10:25 2 A Yes.

10:25 3 Q And if you know, was this actually -- was
10:25 4 there a version of this that was actually submitted as
10:25 5 part of the application during the universal cycle?

10:25 6 A I believe so, yes.

10:25 7 Q Now, assume for me, if you will, that this
10:25 8 site plan form reflects a signature -- well, it does.
10:25 9 It reflects a signature from the City of Miami. Do
10:25 10 you see that?

10:25 11 A Yes, I do.

10:25 12 Q And is this the kind of form that, if an
10:25 13 applicant had at the time that the application was
10:25 14 submitted, that this would in fact be the kind of
10:25 15 thing that would verify the site plan approval from
10:25 16 the city?

10:25 17 A Yes.

10:25 18 Q In fact, this is a form the credit underwriter
10:25 19 would look for?

10:25 20 A Yes.

10:25 21 Q And, by the way, if an applicant knowingly
10:25 22 signs a false certification, can bad things happen?

10:26 23 A Yes.

10:26 24 Q Really bad things?

10:26 25 A Yes. A two-year --

10:26 1 Q Two-year ban?

10:26 2 A Timeout, basically.

10:26 3 Q You don't get to participate in Florida
10:26 4 Housing's programs for two years?

10:26 5 A Correct.

10:26 6 Q So if you sign Mickey Mouse's name, and what
10:26 7 you signed is false, you and all your related
10:26 8 companies could be banned for two years; correct?

10:26 9 A That is correct.

10:26 10 Q And along this same line of having, you know,
10:26 11 evidence at the time of application that something was
10:26 12 wrong, am I correct, Mr. Reecy -- and I know you
10:26 13 weren't there, see if you know enough to be able to
10:26 14 answer this question -- in the universal cycle back in
10:26 15 2011 and '12, weren't applicants given the opportunity
10:26 16 to comment on applications of other developers?

10:26 17 A Yes.

10:26 18 Q And they could provide a notice to Florida
10:27 19 Housing if they thought there was something wrong with
10:27 20 somebody else's application?

10:27 21 A Yes, they could.

10:27 22 Q They had something called a Notice of Possible
10:27 23 Scoring Error; correct?

10:27 24 A NOPSE, yes.

10:27 25 Q NOPSE.

10:27 1 MR. GLAZER: Sarah, that's N-O-P-S-E.

10:27 2 BY MR. GLAZER:

10:27 3 Q And that was eliminated in the 2013 cycle;
10:27 4 correct?

10:27 5 A Yes, it was.

10:27 6 Q Nobody challenged the RFA as to the
10:27 7 elimination of that process; did they?

10:27 8 A No, they did not.

10:27 9 Q I just want to make sure our record is clear;
10:27 10 I think it is, but just in case.

10:27 11 You were shown the 2011 sewer form and the
10:27 12 2013 sewer verification form. You have those two?

10:27 13 A I have them.

10:27 14 Q Okay. Am I correct that one big difference is
10:27 15 the 2011 form had to be submitted with the
10:28 16 application; correct?

10:28 17 A That is correct.

10:28 18 Q The 2013 form does not?

10:28 19 A That is right.

10:28 20 Q It's submitted at credit underwriting?

10:28 21 A That's right. Twenty-one days after
10:28 22 invitation is the instruction.

10:28 23 Q And -- and, of course, as you've talked about,
10:28 24 you don't have to use the 2013 form; you could use a
10:28 25 letter of availability; correct?

10:28 1 A That's right.

10:28 2 Q And the credit underwriter gets a lot more
10:28 3 information than you get in the application phase; is
10:28 4 that fair?

10:28 5 A Yes, they do. Absolutely.

10:28 6 Q And the credit underwriter can request
10:28 7 information from the developer; correct?

10:28 8 A Yes.

10:28 9 Q And the credit underwriter can hire engineers
10:28 10 to determine the adequacy of the information submitted
10:28 11 by the applicant; can't they?

10:28 12 A Yes, they can.

10:28 13 Q And so they can look behind a lot of this
10:28 14 information in a way that Florida Housing doesn't do
10:28 15 during the application phase; correct?

10:28 16 A That is correct.

10:29 17 Q Mr. Donaldson asked you some questions using
10:29 18 his road hypothetical. Say, for example, that there
10:29 19 was a road to a site; and, as part of the process of
10:29 20 developing this project, the county or the city,
10:29 21 whoever has jurisdiction, tells the developer they've
10:29 22 got to widen the road. And in order to get their
10:29 23 permits, they're going to have to do that. That's not
10:29 24 uncommon; is it?

10:29 25 A No, not that I'm aware of.

10:29 1 Q That's not the kind of impediment that would
10:29 2 mean an application should be deemed ineligible; is
10:30 3 it?

10:30 4 A No.

10:30 5 Q Even if the applicant knew that at the time
10:30 6 they filed the application?

10:30 7 A That's correct.

10:30 8 Q And, likewise, if there is a moratorium on one
10:30 9 piece of sewer equipment, but there is another way to
10:30 10 provide sewer service to the site, according to the
10:30 11 water and sewer authority, that would not be an
10:30 12 obstacle to an application being deemed eligible
10:30 13 either; would it?

10:30 14 A That's right. It would not be a final
10:30 15 obstacle, true.

10:30 16 MR. GLAZER: Thank you, Judge. That's all
10:30 17 I've got.

10:30 18 THE COURT: Any further questions of this
10:30 19 witness?

10:30 20 MR. DONALDSON: One.

10:30 21 THE COURT: Mr. Donaldson.

10:31 22 RECROSS-EXAMINATION

10:31 23 BY MR. DONALDSON:

10:31 24 Q Hello again, Mr. Reecy. I'm on this side of
10:31 25 the room again for these questions.

10:31 1 Mr. Glazer asked you or indicated to you that
10:31 2 engineers could be hired by the applicants. That's
10:31 3 true; isn't it?

10:31 4 MR. GLAZER: I'm sorry. Did you say by the
10:31 5 applicant?

10:31 6 MR. DONALDSON: Yes. Isn't that what you
10:31 7 said?

10:31 8 MR. GLAZER: No. By the credit underwriter.

10:31 9 BY MR. DONALDSON:

10:31 10 Q By the credit underwriter.

10:31 11 A I didn't know that, but okay.

10:31 12 Q Can that engineer then make the provider sign
10:31 13 a different form? In other words, who signs the
10:31 14 certification of availability; is it an engineer, or
10:31 15 is it the service provider?

10:31 16 A It's the service provider.

10:31 17 MR. DONALDSON: That's all I have, Judge.

10:31 18 THE COURT: Any further questions of this
10:31 19 witness?

10:31 20 You may step down.

10:31 21 MS. BLANTON: Judge, would it be appropriate
10:31 22 to take a short break?

10:31 23 THE COURT: Yes.

10:31 24 (Witness excused.)

10:31 25 MR. GLAZER: Do we want to kind of talk about

10:31 1 logistics for a second, whether we want to get
10:32 2 Mr. Milo on the phone?

10:32 3 MR. DONALDSON: Yes. He said he was in his
10:32 4 office.

10:32 5 MR. GLAZER: I don't know if you had anybody
10:32 6 else.

10:32 7 MR. DONALDSON: No.

10:32 8 THE COURT: How long is Mr. Milo going to be?
10:32 9 Do you want to do him now? It's 10:30.

10:32 10 MR. DONALDSON: With the documents coming in,
10:32 11 Judge, that kind of reduces what he -- because
10:32 12 we're going to put in his deposition.

10:32 13 MR. GLAZER: We're going to put in his
10:32 14 deposition on the sewer issues. So he's not going
10:32 15 to talk about the sewer issues. He's going to deal
10:32 16 with the other. I would think it's going to be
10:32 17 pretty brief.

10:32 18 MR. DONALDSON: Can we take five minutes?

10:32 19 (Short recess.)

10:43 20 MR. BROWN: Judge, while we're waiting for
10:43 21 Mr. Milo to come in, just to use this otherwise
10:43 22 empty time, at the end of my case I intended to put
10:43 23 in the deposition of Amy Garmon. This is listed in
10:43 24 the prehearing stipulation. I think Mr. Donaldson
10:43 25 wanted to put it in as well.

10:43 1 This was a deposition taken April 15th, 2014.
10:43 2 This regards the site control issue raised by
10:43 3 Pinnacle against Town Center.

10:43 4 As you've heard from Mr. Donaldson -- I don't
10:44 5 think you've got a copy of it yet.

10:44 6 THE COURT: I was looking for a folder.

10:44 7 MR. BROWN: As he said, Ms. Garmon is,
10:44 8 fortunately for her, somewhere in the Caribbean and
10:44 9 more than 100 miles away. Unless there is any
10:44 10 objection, I would just like to give you the
10:44 11 original of this to put into evidence. I think
10:44 12 this would be Respondent's Exhibit 1.

10:44 13 MS. DAUGHTON: Never mind.

10:44 14 THE COURT: No objection to that?

10:44 15 MS. DAUGHTON: No objection.

10:44 16 MS. BLANTON: Your Honor, one other
10:44 17 housekeeping matter we might need to take care
10:44 18 of while we're waiting --

10:44 19 THE COURT: One minute. Let me write this
10:44 20 down. The deposition of Amy Garmon is admitted as
10:44 21 FHFC 1.

10:44 22 (FHFC Exhibit No. 1 received in evidence.)

10:44 23 Ms. Blanton?

10:44 24 MS. BLANTON: I'm sorry. Yesterday we had a
10:44 25 discussion about the definition of "principal" and

10:44 1 whether it had changed from the prior version.

10:44 2 THE COURT: Yes.

10:44 3 MS. BLANTON: I have it on my iPad from
10:45 4 Florida Housing's website, and I'm also having
10:45 5 copies brought out here. I would represent that it
10:45 6 has not changed substantively. I would say that
10:45 7 As, Bs, Cs, and Ds have been changed from little i,
10:45 8 ii, iii, iD. But otherwise it has not changed.
10:45 9 I'm happy to show this to anyone. I know
10:45 10 Ms. Daughton has already looked at it.

10:45 11 MS. DAUGHTON: I have.

10:45 12 MS. BLANTON: I'm going to have copies brought
10:45 13 for you. Hopefully, they will get here before we
10:45 14 finish.

10:45 15 THE COURT: Okay. That's fine. If it's your
10:45 16 agreement there has been no change, I can just rely
10:45 17 on the other one, because I don't think the
10:45 18 subdivision enumeration matters at all.

10:45 19 MR. BROWN: Yeah, I believe the change was
10:45 20 format only.

10:45 21 THE COURT: Yes.

10:45 22 MS. DAUGHTON: That's what it appears when I
10:45 23 looked at it.

10:45 24 MS. BLANTON: If anybody wants to take a look,
10:45 25 I have it up now.

10:45 1 THE COURT: If you want to take a look at it,
10:45 2 please do; otherwise, I'm going to accept the
10:45 3 existing copy to just keep the exhibits down.

10:45 4 MS. BLANTON: Thank you, Your Honor.

10:45 5 (Discussion off the record.)

10:46 6 THE COURT: Any matters we can --

10:46 7 MR. GLAZER: I have some exhibits that I can
10:46 8 go ahead and handle quickly.

10:46 9 THE COURT: As long as I can keep them
10:46 10 straight. Let me get to your book here.

10:46 11 MR. GLAZER: Allapattah Trace Exhibit No. 1 is
10:46 12 already in. That's our application.

10:46 13 Our No. 2 you can withdraw from the notebook.

10:46 14 THE COURT: Okay.

10:46 15 MR. GLAZER: I'm not offering that.

10:46 16 Exhibit No. 3 is an excerpt from the 2011
10:46 17 universal application cycle, application
10:46 18 instructions. I understand it's a subset of -- of
10:46 19 what's been -- what Mr. Donaldson provided you on
10:46 20 the disk, but it's a much smaller subset. I think
10:46 21 for ease of reference, it would be helpful to have
10:47 22 it, and I would offer that as our Exhibit 3.

10:47 23 THE COURT: Okay. Any objections?

10:47 24 MR. DONALDSON: No objection.

10:47 25 THE COURT: I will admit that as ATA 3.

10:47 1 (ATA Exhibit No. 3 received in evidence.)

10:47 2 MR. GLAZER: Exhibits 3, 4, 5, and 6 are
10:47 3 requests for admissions and responses -- I'm
10:47 4 sorry -- 4, 5, 6, and 7 are requests for admissions
10:47 5 and responses for Town Center, Pinnacle, and APC.
10:47 6 I offer those as a group.

10:47 7 THE COURT: Any objection to 4, 5, 6, or 7?
10:47 8 Those are admitted as ATA 4, 5, 6, and 7.

10:47 9 (ATA Exhibit Nos. 4, 5, 6, and 7 received in
10:47 10 evidence.)

10:47 11 MR. GLAZER: Exhibits 8 -- 8 through 13 are
10:47 12 actually in the deposition of Mr. Milo. My
10:47 13 understanding is that we're going to use his
10:47 14 deposition in lieu of him testifying about the
10:48 15 sewer issue at all. I have the original, which I'm
10:48 16 happy to use as the exhibit.

10:48 17 I would note that virtually everything in it I
10:48 18 would have objected to on the basis of the
10:48 19 discussion we had yesterday, but understanding your
10:48 20 ruling, would want you to have the deposition to
10:48 21 consider --

10:48 22 THE COURT: Want me to hear both sides?

10:48 23 MR. GLAZER: Not really. But I don't know if
10:48 24 you want to offer me -- but it doesn't really
10:48 25 matter to me. As long as the record is clear that

10:48 1 I object to, you know, the consideration of this
10:48 2 issue.

10:48 3 So I've actually got it already marked -- I
10:48 4 haven't marked the document, but I have it on the
10:48 5 list.

10:48 6 THE COURT: This is the deposition which
10:48 7 includes these exhibits, and you're offering the
10:48 8 deposition at this point?

10:48 9 MR. GLAZER: Plus the exhibits.

10:48 10 THE COURT: Okay. But -- now you didn't list
10:48 11 the deposition itself as an exhibit.

10:48 12 MR. GLAZER: Actually, I did. Well, no,
10:48 13 you're right. Actually I did not. But I'm happy
10:48 14 to make it as our Exhibit 22.

10:49 15 MR. DONALDSON: Judge, I didn't list it,
10:49 16 either, because he was going to be here, of course.

10:49 17 MR. GLAZER: Right. I think in light of the
10:49 18 weather issue, I don't think either of us have any
10:49 19 objection.

10:49 20 THE COURT: Okay. I admit as ATA Exhibit 22,
10:49 21 the deposition of Mr. Milo. For ease of reference,
10:49 22 let me admit also ATA 8, 9, 10, 11, 12, and 13,
10:49 23 which are also included as part of the deposition.

10:49 24 (ATA Exhibit Nos. 8, 9, 10, 11, 12, 13, and 22
10:49 25 received in evidence.)

10:49 1 MR. GLAZER: Yes. Do you want to admit those
10:49 2 separately in the notebook?

10:49 3 THE COURT: Yes, I will just leave it. It
10:49 4 makes it easier for me to flip to them.

10:49 5 MR. GLAZER: Okay. Great. And then I have
10:49 6 more depositions. I promised Mr. Goldstein a copy
10:50 7 of some exhibits.

10:50 8 MR. GOLDSTEIN: This is just what you sent me,
10:50 9 right, by e-mail?

10:50 10 MR. GLAZER: No. That's the one I didn't
10:50 11 have.

10:50 12 MR. GOLDSTEIN: Oh, that's the one you didn't
10:50 13 have? Okay. Thanks.

10:50 14 THE COURT: And these gentlemen are all more
10:50 15 than 100 miles also?

10:50 16 MR. GLAZER: Yes.

10:50 17 THE COURT: No objection to any of these
10:50 18 depositions?

10:50 19 MR. GLAZER: And I've got -- and that's on the
10:50 20 record. I have the depositions -- again, all of
10:50 21 these are subject to my same standing objection on
10:50 22 the relevance of them, but -- I have the deposition
10:50 23 of Jorge Cordoves as our Exhibit No. 19.

10:51 24 THE COURT: I will admit ATA 19, what has
10:51 25 previously been marked for identification as ATA

10:51 1 19.

10:51 2 (ATA Exhibit No. 19 received in evidence.)

10:51 3 MR. GLAZER: Deposition of Mark Johnson as ATA

10:51 4 20.

10:51 5 THE COURT: I will admit as ATA 20 the

10:51 6 deposition of Mark Johnson.

10:51 7 (ATA Exhibit No. 20 received in evidence.)

10:51 8 MR. GLAZER: And of Douglas Pile as ATA 21.

10:51 9 These exhibits were not secured in there, but

10:51 10 they're in the back, and they're marked.

10:51 11 THE COURT: I will admit as ATA 21 the

10:51 12 deposition of Douglas Pile.

10:51 13 (ATA Exhibit No. 21 received in evidence.)

10:51 14 MR. GLAZER: I've got some other documents,

10:51 15 but I will save those for when Mr. Fabbri

10:51 16 testifies.

10:51 17 THE COURT: Let me ask you a question,

10:51 18 Mr. Glazer. You mentioned in questioning that

10:51 19 the -- you clarified that the -- there were

10:52 20 separate rules that governed the credit

10:52 21 underwriting process. Are those -- do we all agree

10:52 22 that those are also in Chapter 67-60?

10:52 23 MR. GLAZER: No. They're actually in 67-48,

10:52 24 which you've also been provided.

10:52 25 THE COURT: Okay. I also have taken

10:52 1 recognition of that. I just wanted to be sure.

10:52 2 MR. GLAZER: 67-48 was one of the joint
10:52 3 exhibits.

10:52 4 MR. BROWN: Official recognition.

10:52 5 THE COURT: I didn't realize that we would be
10:52 6 referencing it. It's probably easier for me to
10:52 7 make it an exhibit, although I don't think they
10:52 8 technically are. I think that makes it easier than
10:52 9 if you just say --

10:52 10 MR. BROWN: It varies from judge to judge. I
10:52 11 never know what to expect.

10:52 12 MS. BLANTON: I believe the credit
10:52 13 underwriting rules is 67-48.0072.

10:52 14 MR. GLAZER: It's a long rule.

10:52 15 MS. BLANTON: It's a very long rule. Yeah,
10:52 16 0072.

10:52 17 MR. GLAZER: Unless you want me to sing, I
10:52 18 think that's all the time I can fill. And you
10:52 19 don't want me to sing.

10:53 20 THE COURT: We have some other exhibits here,
10:53 21 but we're going to wait on those.

10:53 22 MR. GLAZER: Correct. I don't expect to use
10:53 23 all of them, but let's wait for Mr. Fabbri to
10:53 24 testify.

10:53 25 THE COURT: Any other exhibits we can get in

10:53 1 while we're waiting for Mr. Milo to call?

10:53 2 MR. DONALDSON: I guess we can go to Town
10:53 3 Center's.

10:53 4 THE COURT: Let's look at Town Center's book.
10:53 5 Okay.

10:53 6 MR. DONALDSON: It looks like Exhibit 1 is
10:53 7 already there. That's the joint --

10:53 8 THE COURT: Hold on. I don't have a list for
10:53 9 you. Let me get one here.

10:53 10 MR. DONALDSON: It should have been in the
10:53 11 front.

10:53 12 THE COURT: Do you have one?

10:53 13 MR. DONALDSON: The index in the beginning of
10:53 14 the binder, which I don't think is the same as in
10:53 15 the prehearing stipulations.

10:53 16 MR. GLAZER: I'm sorry. Which one?

10:53 17 MR. DONALDSON: Town Center's. I don't think
10:53 18 my exhibit list in the binder is the same as
10:54 19 the -- I think maybe the easiest thing is just to
10:54 20 use the list with the binder, Judge.

10:54 21 THE COURT: Okay. So we have the request for
10:54 22 applications. Now I've already admitted as RFA 1
10:54 23 your application, which you have listed as 4.

10:54 24 MR. DONALDSON: Correct. So 4 becomes TC 1.

10:54 25 THE COURT: TC 1 is what you had as 4. And

10:54 1 then we've already admitted the request for
10:54 2 applications as a joint exhibit --

10:54 3 MR. DONALDSON: Correct.

10:54 4 THE COURT: -- the sorting order as a joint
10:54 5 exhibit --

10:54 6 MR. DONALDSON: Correct.

10:54 7 THE COURT: -- the review committee
10:54 8 recommendations as a joint exhibit.

10:54 9 MR. DONALDSON: Correct.

10:54 10 THE COURT: We have ATA 1 is your No. 5.

10:54 11 MR. DONALDSON: Correct.

10:54 12 THE COURT: The deposition of Amy Garmon has
10:54 13 been admitted. So let's go from there.

10:54 14 MR. DONALDSON: The deposition of Frank
10:54 15 Lezcano, actually, 7 and 8 will be the same thing,
10:54 16 and I have that deposition. And I'm sure it's
10:54 17 going to be subject to Mr. Glazer's objections
10:55 18 still.

10:55 19 MR. GLAZER: Correct. Same objection.

10:55 20 THE COURT: I'm going to admit those as TC 7
10:55 21 and 8, just to keep the numbers straight there, the
10:55 22 same as numbered in your index.

10:55 23 (TC Exhibit Nos. 7 and 8 received in evidence.)

10:55 24 MR. DONALDSON: Judge, the original is being
10:55 25 FedEx'd. So that's the best I have right now, is

10:55 1 just the copy. But I will get you the original.

10:55 2 THE COURT: And this is TC 8.

10:55 3 Is he on the line? I don't know how to do
10:55 4 that. If you will, bring him in.

10:55 5 (Discussion off the record.)

11:03 6 THE COURT: This is Judge Boyd. Who am I
11:03 7 speaking to? I want the notary public.

11:03 8 THE NOTARY: Did you hear that, Judge?

11:03 9 THE COURT: I need you to identify the witness
11:03 10 by personal identification or by driver's license
11:03 11 or other identification. Then I need you to swear
11:03 12 the witness just as you would normally do. And
11:03 13 then I need you to provide a certification to
11:03 14 Mr. Donaldson that you have done those two things,
11:03 15 and he will provide it to me. Can you do that?

11:03 16 THE NOTARY: Yes, sure. This is the notary. I
11:03 17 am here with Alberto Milo, Jr., whom I know
11:03 18 personally from working with him here at the
11:03 19 Related Group.

11:04 20 THE COURT: Okay. Can you swear him in,
21 please?

22 THE NOTARY: Do you hereby swear that you are
23 who you say you are and you are present here in
24 front of me?

25 MR. MILO: Yes.

11:04 1 THE COURT: I need him to swear or affirm that
11:04 2 he will tell the truth, the whole truth, and
11:04 3 nothing but the truth.

11:04 4 Can you administrator that oath?

11:04 5 THE NOTARY: That you swear to tell the truth
11:04 6 and nothing but the truth?

11:04 7 THE WITNESS: Yes.

11:04 8 THE COURT: Then I will need you to provide a
11:04 9 certification to Mr. Donaldson that you've done
11:04 10 that; okay? And he will provide it to the court
11:04 11 record.

11:04 12 THE NOTARY: Do you have a particular form you
11:04 13 want to maybe forward to us so that we can notarize
11:04 14 it accordingly?

11:04 15 THE COURT: I don't believe we have a form.

11:04 16 MR. DONALDSON: I'll work on it.

11:04 17 THE COURT: Mr. Donaldson will provide you a
11:04 18 form.

11:04 19 MR. DONALDSON: I will get you something.

11:04 20 THE WITNESS: Thanks.

11:04 21 THE COURT: Thank you.

11:04 22 THE WITNESS: Do you need her for the --
11:04 23 that's it for this part?

11:04 24 THE COURT: That's all we need her for except
11:04 25 the certification.

11:04 1 Mr. Milo, you're now under oath. And we're
11:04 2 going to have Mr. Donaldson first ask you some
11:04 3 questions, and then there will be other questions
11:04 4 from other counsel. All right?

11:04 5 THE WITNESS: Okay.

11:04 6 THE NOTARY: Thank you.

11:04 7 THE COURT: Mr. Donaldson?

11:04 8 Thereupon,

11:04 9 ALBERTO MILO, JR.,
11:04 10 was called as a witness, having been first duly sworn,
11:04 11 was examined and testified as follows:

11:04 12 DIRECT EXAMINATION

11:04 13 BY MR. DONALDSON:

11:04 14 Q Mr. Milo, good morning. For the record, can
11:05 15 you please state your name.

11:05 16 A Alberto Milo, Jr.

11:05 17 Q And, Mr. Milo, who are you employed with?

11:05 18 A Related Urban Development Group.

11:05 19 Q What is your position with urban -- with that
11:05 20 entity?

11:05 21 A I am principal and senior vice-president.

11:05 22 Q Okay.

11:05 23 MR. DONALDSON: Judge, I was going to go
11:05 24 through a series of questions to qualify him as an
11:05 25 expert, like we talked about earlier, in affordable

11:05 1 housing development in Florida. If there's no
11:05 2 objection to that, I'm going to proffer this
11:05 3 witness as an expert.

11:05 4 MR. GLAZER: No objection.

11:05 5 MR. BROWN: No objection.

11:05 6 THE COURT: Okay. I will accept him as an
11:05 7 expert.

11:05 8 BY MR. DONALDSON:

11:05 9 Q Mr. Milo, I want you -- do you have a copy of
11:05 10 Town Center's application in front of you?

11:05 11 A Yes.

11:05 12 Q Okay. I want you to go to Exhibit 3 of the
11:05 13 application, if you would.

11:05 14 A I'm going to put you on speaker. Is that
11:05 15 okay? It's easier to flip through the application.
11:06 16 Can you hear me good?

11:06 17 Q As long as you can hear us, and we can hear
11:06 18 you, that's fine.

11:06 19 A Okay. What page?

11:06 20 Q Exhibit -- I'm sorry -- Attachment 3.

11:06 21 A Okay.

11:06 22 Q Now, what is Attachment 3? What are you
11:06 23 looking at?

11:06 24 A The organizational chart of the entity.

11:06 25 Q Okay. Now, you indicated that you worked for

11:06 1 Related Urban. Is that RUDG, LLC?

11:06 2 A Yes. The corporate name is RUDG, LLC. Our
11:06 3 trade name is Related Urban Development Group.

11:06 4 Q And you're a vice-president of RUDG, LLC?

11:06 5 A That is correct.

11:06 6 Q Okay. Now, are you familiar with the
11:06 7 challenges that have been made to the Town Center
11:06 8 application as it relates to site control and the
11:06 9 equity proposal issues?

11:06 10 A Yes.

11:06 11 Q And those issues are, you didn't have the
11:07 12 authority to sign those documents; correct?

11:07 13 A Yes.

11:07 14 Q All right. Now let's look, if you would, if
11:07 15 you would go to Attachment 7 for me.

11:07 16 A Okay.

11:07 17 Q And I think that's the site control document;
11:07 18 correct?

11:07 19 A Yes.

11:07 20 Q Okay. Now, if you look at the first page of
11:07 21 the site control document, the buyer is Town Center
11:07 22 Phase Two, LLC. Do you see that?

11:07 23 A Yes.

11:07 24 Q Now let's go to the signature page, which is I
11:07 25 think the last page of that document. Are you there?

11:07 1 A Okay.

11:07 2 Q Now, the buyer at the -- almost the middle of
11:07 3 that page is listed as RUDG, LLC, and it's your
11:07 4 signature; correct?

11:07 5 A Yes.

11:07 6 Q Were you authorized to sign on behalf of the
11:08 7 buyer?

11:08 8 A Yes, I am.

11:08 9 Q Now let's go back to Attachment 3, if you
11:08 10 would.

11:08 11 A Yes, I'm at Attachment 3.

11:08 12 Q Okay. Now, explain to me the relationship
11:08 13 between RUDG, LLC, and the applicant entity, Town
11:08 14 Center Phase Two, LLC?

11:08 15 A Yes. Well, RUDG is the member of the
11:08 16 applicant, Town Center Phase Two, LLC. And RUDG is
11:08 17 also the sole member and manager of Town Center Phase
11:08 18 Two Manager, LLC, which is the manager of the outfit.

11:08 19 Q Okay. So RUDG, LLC, is the manager of Town
11:08 20 Center Phase Two Manager, LLC; correct?

11:08 21 A Yes.

11:08 22 Q And Town Center Phase Two Manager, LLC, is the
11:09 23 actual managing member of the applicant, Town Center
11:09 24 Phase Two, LLC; correct?

11:09 25 A Yes.

11:09 1 Q Now let me ask you this:

11:09 2 Are you a vice-president of each of those
11:09 3 entities?

11:09 4 A Yes.

11:09 5 Q Okay. But for purposes here, when you signed
11:09 6 RUDG, LLC, were you signing on behalf of the
11:09 7 applicant?

11:09 8 A Yes.

11:09 9 Q Okay. And did you have the authority to sign
11:09 10 on behalf of the applicant?

11:09 11 A Yes.

11:09 12 Q Mr. Milo, if you could go to Attachment 11 and
11:09 13 12, and let me know when you get there.

11:09 14 A Okay. I'm there.

11:10 15 Q Now, what are those documents?

11:10 16 A These are the equity commitments and the loan
11:10 17 commitments.

11:10 18 Q Okay. Now, your signature is on both of those
11:10 19 documents, too; and that signature has been challenged
11:10 20 as you not being the appropriate person to sign on
11:10 21 behalf of the applicant.

11:10 22 Are you authorized to sign on behalf of the
11:10 23 applicant?

11:10 24 A Yes.

11:10 25 Q Now -- and I'm sorry to jump around here,

11:10 1 Mr. Milo. But if you go back to Attachment Number
11:10 2 7 --

11:10 3 A Yes.

11:10 4 Q -- I notice that your signature is also at the
11:10 5 seller's block; is that correct?

11:10 6 A Yes; that's correct.

11:10 7 Q So in essence you're buying something from
11:10 8 yourself; correct?

11:10 9 A That's correct. The parcel, the entire
11:11 10 parcel.

11:11 11 MR. DONALDSON: Judge, that's all I have of
11:11 12 Mr. Milo.

11:11 13 MR. BROWN: No questions.

11:11 14 MR. GLAZER: No questions.

11:11 15 THE COURT: You're on that side of the room
11:11 16 now, so I'm asking them first.

11:11 17 Mr. Goldstein?

11:11 18 MR. GOLDSTEIN: Yes, Your Honor. May I come
11:11 19 closer to the speaker?

11:11 20 THE COURT: Please.

11:11 21 CROSS-EXAMINATION

11:11 22 BY MR. GOLDSTEIN:

11:11 23 Q Mr. Milo, this is Joe Goldstein. I'm an
11:11 24 attorney with Shutts & Bowen, and I represent Pinnacle
11:12 25 Rio. Good morning. How are you?

11:12 1 A Good morning. Good. How about yourself?

11:12 2 Q Wonderful. Thank you.

11:12 3 The entity that you're vice-president of, the
11:12 4 RU -- what is -- I stepped away from my book -- RUDG,
11:12 5 LLC, tell us, that entity was formed when?

11:12 6 A I believe it was formed in 2009.

11:12 7 Q And does it conduct business besides
11:12 8 submitting as a participant in this application that
11:12 9 we're here testifying about today?

11:12 10 A It's a development company. So it does
11:12 11 multiple developments.

11:12 12 Q And it's done that since its -- since its
11:12 13 existence; correct?

11:12 14 A Yes.

11:12 15 Q And it has other deals going on other than
11:12 16 this present deal; correct?

11:13 17 A It's a -- it's a participant in multiple
11:13 18 deals, yes.

11:13 19 MR. GOLDSTEIN: I have no further questions,
11:13 20 Your Honor.

11:13 21 THE COURT: Ms. Blanton?

11:13 22 MS. BLANTON: No, no questions.

11:13 23 THE COURT: Any further questions?

11:13 24 MR. BROWN: No.

11:13 25 THE COURT: Thank you, Mr. Milo. I think

11:13 1 that's all we're going to need today. Thank you
11:13 2 for your patience in establishing our connections.
11:13 3 THE WITNESS: That's it?
11:13 4 THE COURT: Yes. Would you remind the notary
11:13 5 public to please send that form to Mr. Donaldson so
11:13 6 that we can consider your testimony?
11:13 7 THE WITNESS: Okay. Thank you.
11:13 8 THE COURT: Thank you.
11:13 9 MR. DONALDSON: Thanks, Albert.
11:13 10 THE COURT: I'm lost. Where are we?
11:14 11 MR. BROWN: We are still on the respondent's
11:14 12 case currently, and I think everyone else --
11:14 13 THE COURT: Mr. Donaldson, you have completed
11:14 14 your case?
11:14 15 MR. DONALDSON: I guess we just need to go
11:14 16 through and finalize the exhibits that are coming
11:14 17 in, Judge.
11:14 18 THE COURT: Let's go ahead and do that. Then
11:14 19 we're finished with all the petitioners; is that
11:14 20 correct?
11:14 21 So let me find your book.
11:14 22 MR. BROWN: Your Honor, we went a little bit
11:14 23 out of order, of course, but the respondent rests.
11:14 24 THE COURT: Okay.
11:14 25 We've admitted TC 1, TC 7, TC 8.

11:14 1 MR. DONALDSON: TC 9 I think is already in in
11:14 2 Mr. Pile's deposition.

11:14 3 THE COURT: Okay. So we don't need that.

11:15 4 MR. DONALDSON: TC 10 I believe is in with
11:15 5 Mr. Lezcano's deposition.

11:15 6 MR. GLAZER: And Mr. Pile's.

11:15 7 MR. DONALDSON: And Mr. Pile's, correct.

11:15 8 THE COURT: Okay. I'm going to just cross
11:15 9 these off, then, unless somebody --

11:15 10 MR. GLAZER: You did not do 9?

11:15 11 MR. DONALDSON: Nine is already there.

11:15 12 THE COURT: Mr. Lezcano's resume?

11:15 13 MR. DONALDSON: I have that, Judge, and
11:15 14 Mr. Milo's resume as well.

11:15 15 MR. GLAZER: I'm sorry. Did you go ahead and
11:15 16 admit 9 and 10?

11:15 17 THE COURT: No, I did not. I just crossed
11:15 18 them through.

11:15 19 MR. GLAZER: Okay. Right.

11:15 20 THE COURT: I've only admitted TC 1, TC 7, and
11:15 21 TC 8 so far.

11:15 22 MR. DONALDSON: I have them someplace, Judge;
11:15 23 but, if there is no objection, I will provide
11:15 24 those.

11:15 25 THE COURT: I will admit as TC 11 what has

11:15 1 previously been marked for identification as TC 11;
11:15 2 and TC 12, what has previously been marked for
11:16 3 identification as TC 12.

11:16 4 (TC Exhibit Nos. 11 and 12 received in
11:16 5 evidence.)

11:16 6 MR. DONALDSON: Thirteen is excerpts from
11:16 7 secretary of state's web page that basically
11:16 8 confirm what Mr. Milo was saying about being a
11:16 9 vice-president of these different entities. I
11:16 10 don't necessarily know if it needs to be offered.
11:16 11 I suppose you could take official recognition of
11:16 12 it. It comes right off the secretary of state's
11:16 13 web page.

11:16 14 I would offer it as corroborative information
11:16 15 corroborating what Mr. Milo just testified to.

11:16 16 THE COURT: Any objection to that as an
11:16 17 exhibit? I will admit that as TC 13.

11:16 18 (TC Exhibit No. 13 received in evidence.)

11:16 19 MR. DONALDSON: TC 14 is a written consent
11:16 20 that basically, again, confirms Mr. Milo had the
11:16 21 authority to sign on behalf of RUDG, LLC.

11:17 22 THE COURT: Any objection? I will admit that
11:17 23 written consent as TC 14.

11:17 24 (TC Exhibit No. 14 received in evidence.)

11:17 25 MR. DONALDSON: Fifteen and 16 we can scratch

11:17 1 off for now. I don't know what those would be.

11:17 2 Seventeen, I think we have all the relevant
11:17 3 depositions that we need.

11:17 4 THE COURT: Okay.

11:17 5 MR. DONALDSON: Eighteen, I think Mr. Glazer
11:17 6 already has those as it relates to Town Center's
11:17 7 responses; correct?

11:17 8 MR. GLAZER: I think I did a request for
11:17 9 admissions. I don't think I did the --

11:17 10 MR. DONALDSON: Oh. I have those in the
11:17 11 notebook if you want -- I don't have any problem
11:17 12 with them coming in.

11:17 13 THE COURT: Is there any objection to that?

11:17 14 MR. GLAZER: Not to 18, no.

11:17 15 THE COURT: These are answers filed by you?

11:17 16 MR. DONALDSON: Yes.

11:17 17 THE COURT: You're offering those. I
11:18 18 appreciate the cooperative attitude. TC 18.

11:18 19 (TC Exhibit No. 18 received in evidence.)

11:18 20 MR. GLAZER: Nineteen is already in. I
11:18 21 offered those.

11:18 22 MR. DONALDSON: Correct. Correct.

11:18 23 THE COURT: Okay. I will cross off 19.

11:18 24 And do we have all the other interrogatory
11:18 25 answers we want in already?

11:18 1 MR. DONALDSON: I think what we had attached,
11:18 2 Judge, is just Town Center's and Allapattah's
11:18 3 responses at 20 and 21. Let me check.

11:18 4 THE COURT: Any objection to those?

11:18 5 I will admit those at TC 20, interrogatory
11:18 6 answers filed by Town Center and Allapattah; and as
11:18 7 TC 21, request for admissions filed by those two
11:18 8 parties.

11:17 9 (TC Exhibit Nos. 20 and 21 received in
11:18 10 evidence.)

11:18 11 All right. And respondent rests?

11:19 12 MR. BROWN: Yes, sir.

11:19 13 MR. GLAZER: Petitioners have all rested?

11:19 14 THE COURT: I think petitioners have all
11:19 15 rested. If not, speak up now.

11:19 16 Okay. Mr. Glazer, anything further?

11:19 17 MR. GLAZER: Yes. We will call Todd Fabbri to
11:19 18 the stand. Let's see if we can maybe clear off so
11:19 19 there is a place for him to sit.

11:20 20 Thereupon,

11:20 21 WILLIAM T. FABBRI,
11:20 22 was called as a witness, having been first duly sworn,
11:20 23 was examined and testified as follows:

11:20 24 THE COURT: Could you come up here and help me
11:20 25 organize what I have?

11:20 1 (Laughter.)

11:20 2 (Discussion off the record.)

11:21 3 DIRECT EXAMINATION

11:21 4 BY MR. GLAZER:

11:21 5 Q Would you please state your name and your
11:21 6 business address.

11:21 7 A My name is William T. Fabbri. 477 South
11:21 8 Rosemary Avenue, West Palm Beach, 33401, Suite 301.

11:21 9 Q And could you spell your last name for our
11:21 10 court reporter, please.

11:21 11 A F -- like Frank -- A-B-B-R-I.

11:21 12 Q Mr. Fabbri, by whom are you employed?

11:21 13 A The Richman Group Development Corporation.

11:21 14 Q And what is your position?

11:21 15 A I'm the principal -- excuse me -- executive
11:21 16 vice-president.

11:21 17 Q And are you also the representative of the
11:21 18 applicant in this case?

11:21 19 A I am.

11:21 20 Q Can you briefly outline your education for us.

11:21 21 A I have a bachelor of science degree in social
11:21 22 science from Pennsylvania State University; and a
11:21 23 master of science degree, geoenvironmental studies,
11:21 24 from the University of Shippensburg in Pennsylvania.

11:21 25 Q And briefly outline your work history in the

11:22 1 development industry.

11:22 2 A I've been in the development industry for a
11:22 3 total of 17 years. I've been with the Richman Group
11:22 4 developing affordable housing for the past almost 14
11:22 5 years.

11:22 6 Q Can you briefly describe some of that
11:22 7 experience for us.

11:22 8 A During the 14 years I have developed a total
11:22 9 of 44 projects, which includes roughly about 7,500
11:22 10 units of affordable housing for the Richman Group.

11:22 11 Q And are you also involved in the development
11:22 12 of other types of housing projects?

11:22 13 A We also develop conventionally-financed
11:22 14 multifamily rental housing as well.

11:22 15 Q And do you have responsibility in that area as
11:22 16 well?

11:22 17 A I do as well, yes.

11:22 18 Q If you would, in the notebook in front of you,
11:22 19 please turn to Tab 14. And is that a professional
11:22 20 summary for yourself?

11:22 21 A Yes, it is, and selected developments that
11:22 22 I've been a part of.

11:22 23 Q And is it current and accurate?

11:23 24 A Yes.

11:23 25 MR. GLAZER: Move Exhibit 14.

11:23 1 THE COURT: Admit as ATA 14, the resume of
11:23 2 William T. Fabbri.

11:23 3 (ATA Exhibit No. 14 received in evidence.)

11:23 4 BY MR. GLAZER:

11:23 5 Q Mr. Fabbri, are you familiar with Florida
11:23 6 Housing Finance Corporation?

11:23 7 A I am.

11:23 8 Q And have you previously prepared applications
11:23 9 for affordable housing projects submitted to Florida
11:23 10 Housing Finance?

11:23 11 A Yes, I have.

11:23 12 Q Do you know approximately how many?

11:23 13 A Approximately 100.

11:23 14 Q And have some of those been approved?

11:23 15 A Yes, they have.

11:23 16 Q And have some of those actually been built?

11:23 17 A Yes.

11:23 18 Q Give us a rough idea of how many.

11:23 19 A Forty-four roughly.

11:23 20 MR. GLAZER: We would tender Mr. Fabbri as an
11:23 21 expert in the development of multifamily affordable
11:23 22 housing projects.

11:23 23 THE COURT: Voir dire? Accepted as an expert.
11:23 24 Continue.

11:23 25 MR. DONALDSON: Judge, the only thing, I want

11:23 1 those to be consistent with what Mr. Milo is an
11:23 2 expert at, too.

11:23 3 MR. GLAZER: I think it's a similar category.

11:23 4 THE COURT: What was the title you had before?

11:24 5 MR. DONALDSON: Expert in developing of
11:24 6 affordable housing in Florida.

11:24 7 THE COURT: Is that an acceptable area of
11:24 8 expertise for you?

11:24 9 MR. GLAZER: That will be fine.

11:24 10 THE COURT: Okay. I find he's expert in that
11:24 11 category.

11:24 12 BY MR. GLAZER:

11:24 13 Q Mr. Fabbri, are you familiar with application
11:24 14 2014-184C filed by Allapattah Trace Apartments,
11:24 15 Limited, filed in response to request for applications
11:24 16 2013-003?

11:24 17 A Yes, I am.

11:24 18 Q And is that document in front of you a copy of
11:24 19 that application?

11:24 20 A I believe so. What's the exhibit?

11:24 21 Q In the separate spiral bound.

11:24 22 A Oh, yes. Yes, it is.

11:24 23 Q Are you the author and the person primarily
11:24 24 responsible for that application?

11:24 25 A That is correct.

11:24 1 Q And is it your signature that appears on the
11:24 2 certification?

11:24 3 A Yes, it is.

11:24 4 Q And can you briefly describe the project, just
11:24 5 in a sentence or two.

11:24 6 A Briefly, it's located in Miami-Dade County,
11:24 7 the City of Miami. It's 77 units, new construction,
11:24 8 high-rise project, including parking, and is located
11:25 9 at the northeast corner of Northwest 17th Avenue and
11:25 10 Northwest 34th Street.

11:25 11 Q Has the project been built yet?

11:25 12 A It has not.

11:25 13 Q And have you installed any of the
11:25 14 infrastructure necessary for the project yet?

11:25 15 A No, sir.

11:25 16 Q In all of your years of experience, would that
11:25 17 even make any sense at this phase of the project?

11:25 18 A No, that would make no sense at all.

11:25 19 Q Why not?

11:25 20 A Typically we don't install any infrastructure,
11:25 21 do designs of plans to do so prior to knowing whether
11:25 22 or not the application is going to receive the proper
11:25 23 funding in order to build the improvements. It would
11:25 24 just be a totally unreasonable thing to do.

11:25 25 Q And is that typical amongst developers in this

11:25 1 industry?

11:25 2 A Very typical.

11:25 3 Q I asked you a moment ago if you had signed the
11:26 4 certification. And were those certifications accurate
11:26 5 as of the date that you signed that application?

11:26 6 A Yes.

11:26 7 Q I'm going to switch to -- just so our record
11:26 8 is clear, you've been present throughout these
11:26 9 proceedings since they began yesterday; haven't you?

11:26 10 A I have.

11:26 11 Q You've heard the testimony of the various
11:26 12 witnesses?

11:26 13 A Yes.

11:26 14 Q And are you familiar with the argument that's
11:26 15 being made by Town Center and by Pinnacle that there
11:26 16 is an issue with sewer capacity and availability as of
11:26 17 the date of the application?

11:26 18 A Yes.

11:26 19 Q And was the certification that you signed as
11:26 20 to sewer availability accurate on the date you signed
11:26 21 the application?

11:26 22 A Yes.

11:26 23 Q Prior to the time the application was filed,
11:26 24 were you aware that there was a moratorium on the
11:26 25 closest Miami-Dade County pump station to this site?

11:27 1 A Yes. We were aware, once we received the
11:27 2 letter from the county stating such.

11:27 3 Q Does the application require you to file any
11:27 4 actual information regarding sewer availability beyond
11:27 5 the certification in the application?

11:27 6 A No, it does not.

11:27 7 Q And is that different from your experience in
11:27 8 the past?

11:27 9 A Yes. In the past one would have to file the
11:27 10 water and sewer certification with the application at
11:27 11 the time of the application deadline, amongst other
11:27 12 certifications as well that are also not required with
11:27 13 this RFA.

11:27 14 Q And when would the sewer certification
11:27 15 information, the detail beyond your signature on the
11:27 16 certification form, what is your understanding of when
11:27 17 that information would have to be provided if your
11:27 18 application is selected?

11:27 19 A If we're selected for funding and subsequently
11:27 20 invited into credit underwriting, I believe you have
11:27 21 21 days, calendar days, from the date that you're
11:28 22 invited to credit underwriting.

11:28 23 Q Notwithstanding that no information was
11:28 24 required beyond your signature, did you take into
11:28 25 account the sewer needs for this project when you

11:28 1 signed the certification and filed the application?

11:28 2 A Yes.

11:28 3 Q All right. I don't need to read this into the
11:28 4 record. It's been read I think a number of times.

11:28 5 But are you familiar with the language from the

11:28 6 certification form in Section 2(b) dealing with the

11:28 7 availability of sewer?

11:28 8 A Yes.

11:28 9 Q And is that the certification that you signed?

11:28 10 A Yes.

11:28 11 Q And were you familiar with the fact that that

11:28 12 certification referenced Item 13 of Exhibit C of the

11:28 13 RFA?

11:28 14 A Yes.

11:28 15 Q And prior to the time you signed the

11:28 16 application, did you also review that provision?

11:28 17 A Yes.

11:29 18 Q Item 2 of Exhibit C references two options for

11:29 19 demonstrating sewer availability. Are you aware of

11:29 20 that?

11:29 21 A Yes.

11:29 22 Q And I don't want to belabor it because we've

11:29 23 heard some of it this morning, but just to be sure

11:29 24 that your understanding is correct, are you familiar

11:29 25 with the form that's referenced in that certification?

11:29 1 A Yes.

11:29 2 Q And actually I believe that is -- it's not in
11:29 3 my notebook, but I believe that has already been
11:29 4 offered as Town Center Exhibit 2. And you're familiar
11:29 5 with that form?

11:29 6 A Yes.

11:29 7 Q And are you also familiar with the concept of
11:29 8 a letter of availability?

11:29 9 A I am, yes.

11:30 10 Q And looking back at the form, will Miami-Dade
11:30 11 water and sewer sign the form?

11:30 12 A No, they will not.

11:30 13 Q And in your experience over 14 years, have
11:30 14 they ever signed Florida Housing's forms?

11:30 15 A Not to my knowledge.

11:30 16 Q Is it fairly common in your industry that they
11:30 17 won't sign the forms?

11:30 18 A I would say, yes, that is very common
11:30 19 knowledge.

11:30 20 Q And so did -- however, prior to signing the
11:30 21 certification, did you obtain a letter dated within 12
11:30 22 months of filing -- 12 months of the application
11:30 23 deadline that's specific to your development and
11:30 24 states that sewer service is available to the proposed
11:30 25 development as of the application deadline?

11:30 1 A Yes, we did.

11:30 2 Q If you would, please, turn to Tab 18 in the
11:30 3 notebook. And are you familiar with that document?

11:30 4 A Yes, I am.

11:31 5 Q And is the Richman Group of Florida the
11:31 6 developer for this project?

11:31 7 A Yes, they are.

11:31 8 Q And is that the location of this project on
11:31 9 the site -- I'm sorry -- the location of the site of
11:31 10 this project?

11:31 11 A Correct.

11:31 12 Q And Allapattah Trace is its name; correct?

11:31 13 A Yes.

11:31 14 Q Why did you get this letter?

11:31 15 A We requested an availability letter from
11:31 16 Miami-Dade County as required by the application.

11:31 17 Q And is this similar in form to other letters
11:31 18 you've had over the years?

11:31 19 A Very similar, yes.

11:31 20 Q Does it reference the moratorium?

11:31 21 A The letter does reference a moratorium on Pump
11:31 22 Station 54.

11:31 23 Q What impact does that moratorium have on your
11:31 24 ability to demonstrate the availability of sewer to
11:31 25 this project as of the application deadline?

11:31 1 A None.

11:31 2 Q And why not?

11:31 3 A Because, as you can see in the letter, the
11:31 4 county has outlined very clearly an alternative to
11:32 5 connect to the sewer system -- to their sewer system.

11:32 6 Q And is that another option?

11:32 7 A Yes.

11:32 8 Q It references something called a private pump
11:32 9 station. What is that?

11:32 10 A A private pump station -- a pump station is a
11:32 11 mechanical facility that gets sewer flow waste from a
11:32 12 lower point to a higher elevated point. A private
11:32 13 pump station simply means that the owner will be
11:32 14 responsible for maintaining the pump station, and it
11:32 15 would be on the property -- located on the development
11:32 16 property.

11:32 17 Q And in your experience as a developer, are
11:32 18 private pump stations common?

11:32 19 A Extremely common.

11:32 20 Q And do you have a rough idea of how often you
11:32 21 use it in your project?

11:32 22 A We have probably, in the number of projects
11:32 23 that we've done, I think we're close to having to
11:32 24 utilize private pump stations -- pump stations almost
11:32 25 half the time.

11:32 1 Q Is that just because there is a moratorium, or
11:33 2 could there be other reasons?

11:33 3 A It's -- it could be moratorium-related, but
11:33 4 there could be other reasons as well. Simply in South
11:33 5 Florida and in Florida, most places in Florida things
11:33 6 are very flat, and a lot of times you can't
11:33 7 gravity-flow to a treatment facility, so you have to
11:33 8 pump it. So a pump station would be necessary.

11:33 9 Q And did you take that into account when you
11:33 10 signed the certification?

11:33 11 A Yes.

11:33 12 Q And are you aware of how far you would need to
11:33 13 run a sewer line?

11:33 14 A We were. We read the letter and were aware of
11:33 15 the distances, yes.

11:33 16 Q Are you generally familiar with the permitting
11:33 17 process that's going to be required for this project?

11:33 18 A Yes, generally.

11:33 19 Q Have you begun to apply for any actual permits
11:33 20 for this project?

11:33 21 A No, we have not.

11:33 22 Q Why not?

11:33 23 A It would just be extremely atypical to apply
11:33 24 for permitting on a project you do not know whether or
11:34 25 not you have received or obtained the funding

11:34 1 necessary to build it, and it's not required.

11:34 2 Q Have you started installing any pipes?

11:34 3 A Of course not, no.

11:34 4 Q Same reason?

11:34 5 A Same reason.

11:34 6 Q As of the date of the Allapattah Trace
11:34 7 application filing, was sewer service available to
11:34 8 that site?

11:34 9 A Yes.

11:34 10 Q And was there any reference to a moratorium in
11:34 11 this certification that you signed?

11:34 12 A No.

11:34 13 Q And was there any moratorium on hooking into
11:34 14 the Miami-Dade water and sewer system, or was that
11:34 15 just limited to that particular pump station?

11:34 16 A It's just limited to that particular pump
11:34 17 station. My understanding is the pump station is
11:34 18 what's under moratorium, correct.

11:34 19 MR. GLAZER: That's all the questions I have.

11:35 20 Thank you. We would go ahead and offer Exhibit 18.

11:35 21 THE COURT: Any objection to the letter from
11:35 22 Miami-Dade County, ATA Exhibit 18, regarding water
11:35 23 and sewer availability?

11:35 24 MR. DONALDSON: No objection. But isn't it
11:35 25 part of Pile's deposition already?

11:35 1 MR. GLAZER: It is. But he referenced it in
11:35 2 his testimony.

11:35 3 THE COURT: I will admit it as ATA Exhibit 18
11:35 4 for ease of reference.

11:17 5 (ATA Exhibit No. 18 received in evidence.)

11:35 6 Mr. Goldstein, questions?

11:35 7 MR. GOLDSTEIN: Yes, Your Honor, just briefly.
11:35 8 It goes beyond the -- in part, it goes beyond I
11:35 9 think Mr. Glazer, because he didn't ask him about
11:35 10 the site plan issues. But I beg the Court's
11:35 11 indulgence to pursue that.

11:35 12 MR. GLAZER: Well, we introduced depositions
11:35 13 of two other witnesses who were intimately involved
11:35 14 with that part of the process. There was no reason
11:35 15 for me to question Mr. Fabbri about it.

11:35 16 Mr. Goldstein chose not to participate in
11:35 17 those depositions. I didn't offer this witness for
11:36 18 that purpose, and that exceeds the scope.

11:36 19 THE COURT: It does. You didn't list him as a
11:36 20 witness -- one of your witnesses; did you?

11:36 21 MR. GOLDSTEIN: I listed as a catchall, all
11:36 22 witnesses listed by any other parties, Your Honor.

11:36 23 THE COURT: I'm not going to allow that, I
11:36 24 don't think.

11:36 25 MR. GOLDSTEIN: There is also an exhibit from

11:36 1 the Richman Group that's been admitted into
11:36 2 evidence already, and this witness is
11:36 3 representative of that. So I would just like to
11:36 4 ask him a brief set of questions about the --

11:36 5 THE COURT: About which exhibit?

11:36 6 MR. GOLDSTEIN: I admitted it as Pinnacle 4,
11:36 7 but it was in Mr. Glazer's proposed exhibits as
11:36 8 Exhibit No. 16, also, which you did not admit, but
11:36 9 it's essentially the same document.

11:36 10 MR. GLAZER: Correct. I did not admit it, and
11:36 11 I objected to his.

11:36 12 THE COURT: But it's Petitioners' 4 -- or
11:37 13 Pinnacle 4?

11:37 14 MR. GOLDSTEIN: Petitioners' 4, Pinnacle.

11:37 15 THE COURT: Let me make sure I identify what
11:37 16 that is.

11:37 17 MR. GOLDSTEIN: Your Honor, it's the letter by
11:37 18 Richman's law firm submitting the site plan review
11:37 19 to the City of Miami.

11:37 20 THE COURT: Well, there were still no
11:37 21 questions regarding the site plan.

11:37 22 MR. GOLDSTEIN: That's correct, Your Honor.
11:37 23 And, you know, before we started this morning, I
11:37 24 had asked the Court that -- that there might be
11:37 25 witnesses that were going to testify that I would

11:37 1 like to go beyond the scope of their direct and --

11:37 2 THE COURT: I know. I was doing that, if you
11:37 3 had also listed the witness, so we wouldn't have to
11:37 4 keep calling the witness back up and forth. I
11:37 5 think Mr. Glazer is right to insist.

11:37 6 I think the legal issues, are they not very
11:37 7 similar to those involved with the sewer? Perhaps
11:37 8 you can piggyback on Mr. Donaldson's questions here
11:37 9 and ask him to ask any question that you have
11:37 10 particularly, as far as the legal issue that
11:37 11 Mr. Glazer is objecting to about consideration of
11:38 12 something in the credit underwriting phase versus
11:38 13 the application phase. But I don't think I'm going
11:38 14 to allow questions of this witness on the site --
11:38 15 or on that document.

11:38 16 MR. GOLDSTEIN: Just one more point of
11:38 17 argument, Your Honor. I did list, by reference,
11:38 18 everyone else's witnesses. So to say that he's not
11:38 19 listed on my witness list, I think would be
11:38 20 inaccurate.

11:38 21 He's not listed by name, but all the other
11:38 22 witnesses -- as did -- and it's not a situation
11:38 23 where I was the only party to do that. I think
11:38 24 each of the parties listed each other's witnesses
11:38 25 as their own witnesses. And so there is no unfair

11:38 1 surprise. There is no prejudice.

11:38 2 So I, again, ask to explore that briefly.

11:38 3 Literally I'm going to show him one page of that
11:38 4 exhibit and ask him a question or two about it.

11:38 5 THE COURT: Our prehearing instructions don't
11:38 6 allow that kind of generic reference.

11:39 7 MR. GOLDSTEIN: Well, this is not a generic
11:39 8 reference. A generic reference I think, Your
11:39 9 Honor, would be some type of -- this is a --
11:39 10 basically a specific reference by incorporation,
11:39 11 because the other parties have identified those
11:39 12 witnesses specifically.

11:39 13 I agree with you. If we -- if we just said
11:39 14 rebuttal witnesses, or if we just said
11:39 15 representative of Miami-Dade County or
11:39 16 representative Richman Group, or if he wasn't
11:39 17 already listed as a witness, it certainly is not a
11:39 18 generic reference to a witness. It's an
11:39 19 incorporation by reference rather than listing each
11:39 20 of those people on their own exhibit list --
11:39 21 witness list.

11:39 22 MR. GLAZER: I stand by my objection, Your
11:39 23 Honor.

11:39 24 THE COURT: I think that's the kind of
11:39 25 reference that our order prohibits. And in light

11:39 1 of Mr. Glazer's objection, I'm going to sustain his
11:40 2 objection.

11:40 3 MR. GOLDSTEIN: Thank you, Your Honor.

11:40 4 THE COURT: Questions, Ms. Blanton?

11:40 5 MS. BLANTON: No. Thank you.

11:40 6 THE COURT: Questions, Mr. Donaldson?

11:40 7 CROSS-EXAMINATION

11:40 8 BY MR. DONALDSON:

11:40 9 Q Good after -- good morning, Mr. Fabbri.

11:40 10 A Still morning. Good morning.

11:40 11 Q I just have a few questions.

11:40 12 Mr. Glazer asked you some questions about the
11:40 13 distance in the November 12th, 2013, letter from
11:40 14 Miami-Dade County. How far is this connection? How
11:40 15 far is the sewer line you're going to have to install?

11:40 16 A Well, according to the letter, it appears to
11:40 17 be five blocks, roughly.

11:40 18 Q Five city blocks?

11:40 19 A Yes.

11:40 20 Q Miami-Dade is very urban, very densely
11:40 21 populated area; correct?

11:40 22 A I don't know your definition of "dense," but,
11:40 23 yeah, it's in the city of Miami.

11:40 24 Q It's not in the woods someplace where you
11:40 25 basically have vacant land?

11:40 1 A No, it's not.

11:40 2 Q Do you know how much that's going to cost?

11:40 3 A I have a rough idea of the cost, yes.

11:41 4 Q What's the rough idea of the cost?

11:41 5 A The actual -- are you asking about the pump
11:41 6 station and the force main together?

11:41 7 Q The whole --

11:41 8 A Roughly around \$500,000, and that's an
11:41 9 estimate.

11:41 10 Q Now, when did you actually submit the
11:41 11 application to Florida Housing; do you know?

11:41 12 A November 12th.

11:41 13 Q Now, if you look at the application that I
11:41 14 think is in front of you -- and I don't know what
11:41 15 exhibit that is --

11:41 16 MR. GLAZER: ATA 1.

11:41 17 MR. DONALDSON: ATA 1?

11:41 18 BY MR. DONALDSON:

11:42 19 Q Go to that page. That's fine. I think it's
11:42 20 the same.

11:42 21 At the top of the page -- and I think you were
11:42 22 on page 10 of 14, which I'm going to get to in a
11:42 23 minute -- it has -- and this is underneath your
11:42 24 signature. It says, last updated, 11-8-2013, and it's
11:42 25 got a time frame on it, and it has a form key.

11:42 1 Do you see that? And that's on every page.

11:42 2 A Oh, okay. Yes, I see it.

11:42 3 Q Now, did you actually submit online the
11:42 4 application November 8th of 2013?

11:42 5 A The process is a submission online and then
11:42 6 you hand in the -- we handed in the application on
11:42 7 the -- the actual date of the application deadline.

11:43 8 Q So you submitted it on the 8th, and then you
11:43 9 copied it, signed it, turned it in on the 12th, the
11:43 10 hard copies?

11:43 11 A That's correct.

11:43 12 Q Okay. So the information that's included in
11:43 13 the application -- especially the information in your
11:43 14 cost pro forma which states at page 10 -- was dated
11:43 15 11-8-2013; that's what you knew at that time; correct?

11:43 16 A Correct. That's what we estimated.

11:43 17 Q Correct.

11:43 18 A Yes.

11:43 19 Q So now the letter you got from WASA is dated
11:43 20 11-12 of 2013; correct?

11:43 21 A Correct.

11:43 22 Q So the actual alternative that WASA gave you,
11:43 23 you didn't -- I believe in your deposition you said
11:43 24 you didn't know about that alternative until you got
11:43 25 the letter; is that correct?

11:43 1 A When we read the letter, correct. I said that
11:43 2 I did not know, yes.

11:43 3 Q Okay. Now, did other people within the
11:43 4 Richman organization know about --

11:43 5 A As I recall other people -- I was not -- there
11:43 6 were other people involved in getting the letter
11:43 7 from -- signed by the county.

11:44 8 Q And you would have worked with those other
11:44 9 folks to do the cost estimates?

11:44 10 A Right.

11:44 11 Q So it's your testimony that the cost estimate
11:44 12 for the alternative was included in your cost pro
11:44 13 forma; correct?

11:44 14 A I think what I testified in the deposition to
11:44 15 was, we looked at the costs that we had in -- in our
11:44 16 pro forma, and we made an assessment. And we assessed
11:44 17 that, given what we knew now from the county, that we
11:44 18 had enough costs included in our pro forma to cover
11:44 19 those improvements.

11:44 20 Q Okay. Now, the five city blocks of the sewer
11:44 21 line, those are offsite improvements; correct?

11:44 22 MR. GLAZER: Objection, Your Honor. I'm not
11:44 23 sure why this is relevant. Now we're getting into
11:44 24 the details of how the building -- you know, how
11:44 25 the sewer line is going to be run?

11:44 1 THE COURT: Mr. Donaldson?

11:44 2 MR. DONALDSON: No. We're getting into the
11:44 3 details of the information that was submitted with
11:44 4 the application. The cost pro forma section is
11:44 5 right underneath the certification. So what this
11:44 6 basically goes to is what did you know and when.

11:45 7 Frankly, it's going to boil down to, they have
11:45 8 a letter dated 11-12 of 2013 that they already had.
11:45 9 Why did they have that letter if they believed they
11:45 10 could turn it in at some point in the future in
11:45 11 credit underwriting? They did what everybody else
11:45 12 did. They got the information upfront, as with the
11:45 13 universal application cycle, and they had it all
11:45 14 along. So this kind of goes to the issues of the
11:45 15 costs.

11:45 16 There's other implications that go along, not
11:45 17 just with the certification and whether or not you
11:45 18 had sewer or not, but whether or not you actually
11:45 19 factored in costs in the cost pro forma, the
11:45 20 accuracy of the cost pro forma, which could have
11:45 21 other implications. It is -- I hate to say this,
11:45 22 but it almost goes to credibility more than
11:45 23 anything else.

11:45 24 MR. GLAZER: Judge, there's no issues in the
11:45 25 case about the cost projections in this

11:45 1 application. I mean, we have been at this for
11:45 2 weeks and weeks now.

11:45 3 There's nothing -- I mean, I don't know where
11:45 4 this is going. And, you know, the only issue
11:45 5 that's been raised is the one that's been teed up
11:46 6 here. And now he seems to want to talk about all
11:46 7 the development costs in the project.

11:46 8 There is no issue in this proceeding about it.
11:46 9 This would be way outside the scope of what this --

11:46 10 THE COURT: I have trouble, Mr. Donaldson,
11:46 11 connecting this to your sewer issue. I know you
11:46 12 tried to explain it to me. Try again, because I
11:46 13 didn't get it.

11:46 14 MR. DONALDSON: Well, Judge, one of the things
11:46 15 that needs to be shown -- for example, if it was in
11:46 16 fact -- and I think Mr. Fabbri's testimony may say
11:46 17 that they contemplated it. But we're talking about
11:46 18 this alternative.

11:46 19 So one of the things that you would have to do
11:46 20 in the cost pro forma -- and you'll see this when
11:46 21 you go through the application -- you're going to
11:46 22 have to put costs for various things, sewer being
11:46 23 one of them, offsite improvements being one of
11:46 24 them, which is what this alternative is.

11:46 25 Now, I will represent to you that there is

11:46 1 nothing in the cost pro forma that talks about
11:46 2 offsite issues, which this alternative would. So
11:47 3 the issue becomes one of what did you know and when
11:47 4 did you know it and why didn't you put these costs
11:47 5 in your pro forma, since you seem to say you knew
11:47 6 about these sewer issues.

11:47 7 I don't know if it necessarily goes to the
11:47 8 heart of the issue here, which was whether or not
11:47 9 there was sewer as of the application deadline.
11:47 10 Again, it really kind of goes to the credibility of
11:47 11 the argument as to why information regarding sewer
11:47 12 wasn't in here.

11:47 13 So, you know, if it's causing this much
11:47 14 trouble, and I see that much confusion, I tell you
11:47 15 what, I just won't go down this line of questions.

11:47 16 THE COURT: I'm going to sustain the
11:47 17 objection. I don't see that it has much to do
11:47 18 with credibility, as to why he didn't include it in
11:47 19 the form, when the form wasn't included -- required
11:47 20 to be included at that point. So I'm going to
11:47 21 sustain that objection.

11:48 22 BY MR. DONALDSON:

11:48 23 Q Now, Mr. Fabbri, you may have answered this
11:48 24 already. Before you submitted your application, did
11:48 25 you talk to Miami-Dade County about sewer service?

11:48 1 A As I said, I have staff who talked to them,
11:48 2 yes.

11:48 3 MR. DONALDSON: I don't have any more
11:48 4 questions, Judge. Thanks.

11:48 5 MR. GOLDSTEIN: Your Honor, I believe I have
11:48 6 some questions within the scope of Mr. Glazer's
11:48 7 examination, so I would ask permission to question
11:48 8 the witness. And then Mr. Glazer can object to the
11:48 9 question if he believes it's outside the scope.
11:48 10 But before I just kind of proffer something, I
11:48 11 believe I can be inside the scope.

11:49 12 THE COURT: Okay.

11:49 13 CROSS-EXAMINATION

11:49 14 BY MR. GOLDSTEIN:

11:49 15 Q Mr. Fabbri, we talked on your direct from your
11:49 16 attorney that in your application you -- you testified
11:49 17 that your certifications in Section 10 were accurate?

11:49 18 A Uh-huh.

11:49 19 Q You just have to say yes or no.

11:49 20 A Yes.

11:49 21 Q One of those certifications relates to -- and
11:49 22 I'm looking at page 7 of 14 of your application. One
11:49 23 of the certifications asks about the status of the
11:49 24 site plan approval as of the application deadline?

11:49 25 A Yes, I see it.

11:49 1 Q And to be able to certify as to that, as to
11:49 2 the application deadline, the Richman Group submitted
11:49 3 materials to the City of Miami before --

11:49 4 MR. GLAZER: Object -- I'm sorry.

11:50 5 BY MR. GOLDSTEIN:

11:50 6 Q -- before the -- before you submitted your
11:50 7 application; correct?

11:50 8 MR. GLAZER: Objection. This exceeds the
11:50 9 scope.

11:50 10 THE COURT: I don't believe Mr. Glazer asked
11:50 11 anything about the -- my recollection is, we can
11:50 12 check the record, if you disagree -- but I don't
11:50 13 think he discussed at all the site -- the status of
11:50 14 the site plan.

11:50 15 MR. GOLDSTEIN: I thought he asked the
11:50 16 question, were the certifications accurate. And
11:50 17 one of the certifications is a site plan
11:50 18 certification.

11:50 19 MR. GLAZER: That does not open the door, Your
11:50 20 Honor, respectfully.

11:50 21 THE COURT: Yeah. I think that's too general.
11:50 22 I mean, there's lots of things with this
11:50 23 certification, and I think he did ask a question
11:50 24 about certification. But clearly with the
11:50 25 follow-up questions what he was going on was the

11:50 1 sewer issue. And I think his testimony -- the
11:50 2 questions were directed toward that issue alone.

11:50 3 MR. GOLDSTEIN: Clearly his follow-up
11:50 4 questions were, Your Honor. But he certainly, by
11:50 5 asking about the certifications, opened the door to
11:50 6 me asking what's the basis for him being able to
11:51 7 say that one of the certifications in the same
11:51 8 section and same page, I think, that clearly is
11:51 9 within the scope.

11:51 10 MR. GLAZER: I stand by my objection, Your
11:51 11 Honor.

11:51 12 THE COURT: I'm going to sustain the
11:51 13 objection.

11:51 14 MR. GOLDSTEIN: Thank you.

11:51 15 THE COURT: Is there any further questions of
11:51 16 this witness?

11:51 17 MR. GLAZER: No, Your Honor.

11:51 18 THE COURT: You may step down. Thank you.

11:51 19 THE WITNESS: Thank you, Judge.

11:51 20 (Witness excused.)

11:51 21 THE COURT: Further witnesses, Mr. Glazer?

11:51 22 MR. GLAZER: No. Let me just double-check my
11:51 23 exhibits. We are not offering, through this
11:51 24 witness, and withdraw, 15, 16, and 17. If you
11:51 25 want, Your Honor, you can remove 2, 15, 16, and 17

11:51 1 from the notebook.

11:52 2 So I have admitted Allapattah Trace's 1, 3
11:52 3 through 13 -- 3 through 14 --

11:52 4 THE COURT: Through 14.

11:52 5 MR. GLAZER: -- 18 and 19 through 22.

11:52 6 THE COURT: That's correct.

11:52 7 MR. GLAZER: That's all I have, Your Honor.

11:52 8 MS. DAUGHTON: Good morning, Your Honor. I
11:53 9 have no witnesses to offer at this time.

11:53 10 Your Honor, I have a very nice, organized
11:53 11 notebook that has HTG Exhibits 1 through 11. One
11:53 12 has already been admitted into evidence. It is our
11:53 13 response to the RFA.

11:53 14 I actually had a copy that was up on the
11:53 15 witness stand earlier, which I -- and, Your Honor,
11:53 16 I believe you have a copy of our response. I just
11:53 17 want to make sure before I move on that you do.

11:53 18 THE COURT: Let me find it.

11:53 19 MS. DAUGHTON: Okay.

11:53 20 THE COURT: I have a copy of what's been
11:53 21 admitted as HTG response, Exhibit 5.

11:53 22 MS. DAUGHTON: Great. Your Honor, I'm happy
11:53 23 to give you this amended exhibit list with our
11:53 24 Exhibits 2 through 11, but we are not moving any of
11:53 25 them in.

11:54 1 THE COURT: Okay.

11:54 2 MS. DAUGHTON: So the only exhibit that HTG is
11:54 3 offering is 1, and I believe that's already been
11:54 4 admitted into evidence.

11:54 5 THE COURT: Okay. Thank you.

11:54 6 Any rebuttal here? Are we finished?

11:54 7 Shall we take a lunch break and come back for
11:54 8 some -- I threatened you with an opportunity to do
11:54 9 closing arguments.

11:54 10 MR. GLAZER: If you're going to stick by your
11:54 11 rule, and we'll keep them short, I would suggest we
11:54 12 work through, take a little bit later lunch, and be
11:54 13 done. I don't think --

11:54 14 THE COURT: We'll be done by 1:00, probably,
11:54 15 if you all stick to the time.

11:54 16 MR. DONALDSON: Judge, frankly, if it's all
11:54 17 the same to you, I would like to reserve my closing
11:54 18 arguments to my recommended order.

11:54 19 THE COURT: That's fine. I wanted to make
11:54 20 that clear, by presenting a closing argument,
11:54 21 you're not in any way giving up your right to
11:54 22 discuss those legal arguments in your proposed
11:54 23 recommended order. But I'll give you the option to
11:55 24 do both.

11:55 25 So let's go ahead and proceed, especially in

11:55 1 that case, if everybody is not going to do one. So
11:55 2 let's begin.

11:55 3 MS. BLANTON: I'm going to reserve my argument
11:55 4 until the proposed recommended order.

11:55 5 THE COURT: Okay.

11:55 6 MR. DONALDSON: Same.

11:55 7 THE COURT: Mr. Goldstein?

11:55 8 MR. GOLDSTEIN: Your Honor, I will take
11:55 9 advantage of summarizing my thoughts, especially
11:55 10 since I couldn't get the last thought in through a
11:55 11 witness.

11:55 12 THE COURT: Go ahead.

11:55 13 MR. GOLDSTEIN: So may it please the Court.
11:55 14 On behalf of Pinnacle Rio, we believe that the
11:55 15 evidence and the testimony presented over the last
11:55 16 two days should show that the applications of
11:55 17 Allapattah and Town Center are ineligible for
11:55 18 award, and Pinnacle Rio should be moved up in the
11:55 19 scoring situation based on a lower lottery number
11:55 20 and received funding.

11:55 21 I won't -- I won't belabor the point. But let
11:55 22 me first talk about Allapattah's site plan and why
11:56 23 that certification is inaccurate and is arbitrary
11:56 24 and capricious for the corporation to have not
11:56 25 determined them ineligible.

11:56 1 And where I was trying to take us to with the
11:56 2 last witness, but I think it's self-evident, so we
11:56 3 don't really need a witness for it, but I was just
11:56 4 going to highlight that. If I could point the
11:56 5 Court to Pinnacle's Exhibit No. 4, which has been
11:56 6 admitted into evidence.

11:56 7 As you heard from the stipulation of the
11:56 8 parties and the testimony and the evidence that has
11:56 9 been admitted, there is an alley that goes through
11:56 10 the proposed site that Allapattah is seeking to
11:56 11 develop here.

11:56 12 And if you look at the attachment that
11:57 13 Allapattah's attorneys, Stearns, Weaver, sent on in
11:57 14 their behalf to the City of Miami, that alley is
11:57 15 not depicted on the site plan.

11:57 16 And so that is -- that is the gist of the
11:57 17 argument, that they depict -- I believe if we lined
11:57 18 up the other exhibits and the pictures to that, the
11:57 19 alleyway would be somewhere where they're
11:57 20 describing as most likely the edge of either the
11:57 21 parking deck or at least the landscaping there, if
11:57 22 you line them up and check the public records,
11:57 23 which have been admitted into evidence.

11:57 24 By not putting that alleyway in there, the
11:57 25 certification that they put in is inaccurate,

11:57 1 because there has not been any review of the actual
11:57 2 site plan that exists, because that alleyway is
11:57 3 missing. And that's the gist of that basis of the
11:57 4 argument.

11:57 5 I won't address the sewer issue, as
11:57 6 Mr. Donaldson was the lead on that and will be
11:57 7 addressing in his closing -- his proposed
11:58 8 recommended order.

11:58 9 As to Town Center, I just want to highlight
11:58 10 the position because the testimony was fairly
11:58 11 brief.

11:58 12 You heard Mr. Reecy say that the RFA requires
11:58 13 for evidence of site control that you -- one of the
11:58 14 three ways to show you've achieved that is by
11:58 15 submitting a contract. And there is a special
11:58 16 instruction in the RFA that the buyer must be the
11:58 17 applicant.

11:58 18 And we saw -- again, it was Pinnacle's
11:58 19 Exhibit 11 -- and we saw on the signature page,
11:58 20 page 14, that the buyer is not the applicant; the
11:58 21 buyer is RUDG, LLC, a Florida limited liability
11:59 22 company.

11:59 23 Now, because of that, the buyer is not the
11:59 24 applicant. The testimony of Mr. Milo is that he's
11:59 25 authorized to sign on behalf of RUDG, and RUDG is

11:59 1 authorized to sign on behalf of the applicant. But
11:59 2 that's not what the RFA asks for. This is not a
11:59 3 question of the enforceability of the contract,
11:59 4 per se.

11:59 5 What the corporation is looking for is, they
11:59 6 want to know that the applicant is going to be the
11:59 7 buyer of that property from the form of the
11:59 8 contract. And my only cross-examination of
11:59 9 Mr. Milo was, what else does RUDG, LLC, do?
11:59 10 Because I wanted to make it clear to the Court that
11:59 11 it's not just some single-purpose entity created
11:59 12 just for this process.

12:00 13 They've been doing developments since 2010.
12:00 14 And so RUDG, LLC, because it's identified as the
12:00 15 buyer in the signature block of this property, they
12:00 16 could change their mind. There are -- I'm sure
12:00 17 they would have testified he won't, and they're
12:00 18 committed to this project, but there is a risk
12:00 19 there. And it's the type of risk that is what
12:00 20 Florida Housing Corporation does not accept.
12:00 21 That's why they have it in capital letters.

12:00 22 And I will give you an analogy to a legal
12:00 23 argument.

12:00 24 I'm a bid protest attorney. I do procurement
12:00 25 stuff all the time. My partner, Gary Cohen, is the

12:00 1 affordable housing finance corporation, but he's
12:00 2 not a litigator.

12:00 3 The first case that he had us do -- that I
12:00 4 did, once they switched off the universal cycle and
12:00 5 now they come to Chapter 120, was a case where
12:00 6 another developer, they did the notice of protest
12:00 7 without us involved. And we -- and the agency
12:01 8 referred it to DOAH. And we were literally a few
12:01 9 days before the hearing, and the intervenor filed a
12:01 10 motion to dismiss.

12:01 11 And the intervenor's motion to dismiss was,
12:01 12 wait a second, the applicant did not file the
12:01 13 notice of protest. And I'll provide this in our
12:01 14 written -- the applicant did not file the notice of
12:01 15 protest, because the notice of protest was in the
12:01 16 name of the 99.9 percent member, not managing
12:01 17 member. That's what was the name.

12:01 18 And one of your DOAH -- one of your colleagues
12:01 19 granted the motion to dismiss of the intervenor,
12:01 20 which the agency joined, saying, wait a second,
12:01 21 that entity is not the applicant. It doesn't
12:01 22 matter if they're authorized; it doesn't matter if
12:01 23 they're an officer in all of the other entities; we
12:01 24 have to stand by that direction; that is, the
12:01 25 applicant has to do that.

12:01 1 And that same result that caused my client to
12:02 2 do the notice of protest on their own and signed it
12:02 3 in this exact similar way as we will see it here,
12:02 4 that was fatal. That was fatal in the eyes of the
12:02 5 agency and in the eyes of the Court. And the same
12:02 6 should be done here.

12:02 7 So as to Town Center -- as to Town Center site
12:02 8 control, they are ineligible, because the buyer of
12:02 9 the eligible contract is not the applicant.

12:02 10 I appreciate your time. Thank you very much.

12:02 11 THE COURT: Anyone else for closing argument?
12:02 12 Mr. Brown?

12:02 13 MR. BROWN: Just briefly, Your Honor.

12:02 14 My opening identified four types of issues
12:02 15 that I thought you would hear about during this
12:02 16 hearing, and the third one was withdrawn. But the
12:02 17 first one was minor irregularities, things that we
12:02 18 don't think are substantial errors that we should
12:02 19 be able to ignore.

12:02 20 So we make decisions on substantive evidence
12:02 21 about who should receive the funding, and not
12:02 22 reward necessarily good application filler hours,
12:02 23 as our executive director has described them for 12
12:03 24 years now, but to pick the best development based
12:03 25 on what is really the substantive evidence and what

12:03 1 would be best to meet our statutory goals and for
12:03 2 the people of Florida.

12:03 3 The second type were credit underwriting
12:03 4 issues, which I think Mr. Glazer put it perfectly
12:03 5 with regards to the sewer and the site control
12:03 6 issues, that the petitioners are really asking you
12:03 7 to do more than Florida Housing had to review or
12:03 8 more that we were able to do. I would ask you to
12:03 9 consider that, if we had done as they asked, would
12:03 10 we not be here with a slightly different seating
12:03 11 chart, with a different set of petitioners and
12:03 12 intervenors? Because I think that we would, if we
12:03 13 had failed those applications for things that we
12:03 14 didn't ask for and didn't consider in scoring.

12:03 15 The fourth one identified was -- really
12:03 16 relates to a lack of sufficiency of evidence to
12:03 17 accept someone's developer experience. And I would
12:03 18 just remind you, Your Honor, that that burden and
12:04 19 that duty to provide the sufficient evidence for us
12:04 20 to accept someone as a developer is a burden that
12:04 21 is on the applicant. It is not on Florida Housing,
12:04 22 and would add moreover that it is perfectly
12:04 23 reasonable for Florida Housing to look at its own
12:04 24 records inside its four walls when an applicant has
12:04 25 selected a development that we funded.

12:04 1 I think, when you understand where the lines
12:04 2 are drawn in this case, and what Florida Housing
12:04 3 had before it, and what it was allowed to do, and
12:04 4 what was appropriate to do, that you will find our
12:04 5 scoring to be reasonable and correct in all
12:04 6 circumstances.

12:04 7 Thank you.

12:04 8 THE COURT: Mr. Glazer?

12:04 9 MR. GLAZER: Your Honor, remember that this is
12:04 10 a form of intra-agency review. And nothing that
12:04 11 the challengers want you to focus on with regard to
12:04 12 Allapattah Trace was part of the application
12:04 13 process or reviewed by Florida Housing. That
12:04 14 really is the crux of this. Because you can only
12:05 15 rule for them if you decide to go beyond the RFA
12:05 16 and did do that which Florida Housing did not do.

12:05 17 But the evidence we have tried to present to
12:05 18 you over the last day or so is that, even if you
12:05 19 do, there is nothing to those challenges.

12:05 20 Candidly, it isn't going to bother me if, at
12:05 21 the end of the day, you conclude, I shouldn't -- I,
12:05 22 Judge -- shouldn't consider these issues, but even
12:05 23 if I did, Allapattah Trace would win, because there
12:05 24 is no issue with the site.

12:05 25 The depositions that we will point you to will

12:05 1 show you that the alley that we've talked about was
12:05 2 not now, was never a part of the site. And that
12:05 3 what was submitted to the City of Miami, and that
12:05 4 you saw from Mr. Goldstein's own exhibit, was
12:05 5 signed off on by the city, accurately portrayed the
12:05 6 site. And despite Mr. Goldstein's attempt to
12:05 7 testify to the contrary, there is not a shred of
12:05 8 evidence to the contrary.

12:05 9 On the sewer issue, Florida Housing never
12:05 10 looked at the issue at the level that Mr. Donaldson
12:06 11 wants you to do so. And they weren't supposed to.

12:06 12 Again, you can only rule for them if you go
12:06 13 beyond this RFA process. But if you do, I want to
12:06 14 just read you two very short excerpts from the two
12:06 15 depositions of the county officials that were
12:06 16 deposed.

12:06 17 Mr. Pile, the guy who wrote the letter to
12:06 18 Allapattah Trace, was asked: Despite that
12:06 19 moratorium on November 12, 2013, was sewer service
12:06 20 available to this site identified in Exhibit 1 for
12:06 21 an apartment complex of approximately 80 units?

12:06 22 Answer: Yes, it was.

12:06 23 Question: And how would that be accomplished?

12:06 24 Answer: Anytime a project is abutting a
12:06 25 gravity sewer that is in moratorium -- well, with

12:06 1 the downstream pump stations in moratorium, we give
12:06 2 the developer the option to install a private pump
12:06 3 station that would pump the sanitary sewage into a
12:06 4 force main that would attach to the water and sewer
12:06 5 department's force main. And that force main takes
12:06 6 the sewage directly to our sewage treatment center,
12:07 7 bypassing the gravity sewer system, bypassing the
12:07 8 pump station that would be in moratorium.

12:07 9 Question: Would that option have been
12:07 10 available to the Allapattah Trace project in 2013?

12:07 11 Answer: Yes, it was.

12:07 12 And then Mr. Lezcano, the witness that I'm
12:07 13 confident you're going to hear a lot about from
12:07 14 Mr. Donaldson, I asked Mr. Lezcano:

12:07 15 Mr. Lezcano, looking at the Miami-Dade -- the
12:07 16 WASA letter -- that's water and sewer department
12:07 17 letter -- is it correct that, if the developer
12:07 18 wanted to do a private pump station, run the line
12:07 19 to this force main that's referenced in the letter,
12:07 20 that they could in fact have a way to provide sewer
12:07 21 to that project through the Miami-Dade water and
12:07 22 sewer system? That is an option that's available?

12:07 23 Answer: Yes.

12:07 24 And was that -- and that option was available
12:07 25 November 2013; wasn't it?

12:07 1 Answer: Yes.

12:07 2 We did everything we needed to do. Mr. Fabbri
12:07 3 signed the certification with a clear understanding
12:07 4 and a clear conscience that sewer service was
12:08 5 available.

12:08 6 Mr. Reecy told you, we never looked at this
12:08 7 stuff. We pushed it all to credit underwriting.
12:08 8 We have engineers that they can bring to credit
12:08 9 underwriting if we need to. But even if we were to
12:08 10 look at this, that letter looks fine. Miami-Dade
12:08 11 won't sign our forms. The letters look fine.

12:08 12 The certification doesn't mention moratoriums.
12:08 13 It only mentions availability.

12:08 14 And what the evidence is also going to show
12:08 15 you in the depositions is that Town Center, while
12:08 16 they're claiming our certification was wrong, they
12:08 17 filed an application for property served by that
12:08 18 same pump station. They received information that
12:08 19 the pump station was under moratorium. But they
12:08 20 requested a letter seeking a -- an amendment to
12:08 21 their letter of availability, seeking a private
12:08 22 pump station option.

12:08 23 They closed on that piece of property after
12:08 24 they got the letter about the moratorium. And they
12:08 25 now are going to tell you, through Mr. Milo's

12:09 1 deposition, that that application was in error, and
12:09 2 you're going to have to decide what to make of
12:09 3 that.

12:09 4 Let me briefly comment about APC. I know
12:09 5 they're very unhappy that Ms. Wong was found to
12:09 6 lack adequate developer experience. They blame
12:09 7 Florida Housing rather than themselves for not
12:09 8 submitting what they should have.

12:09 9 But more importantly, they have to leap over
12:09 10 three projects to get into the funding. And if
12:09 11 they can't do either, they don't have standing.

12:09 12 I suggest Pinnacle has the same issue. If
12:09 13 they can't leap over Town Center and Allapattah,
12:09 14 they are not going to be shown to demonstrate
12:09 15 standing either.

12:09 16 Please remember the standards. You know, they
12:09 17 must show -- they must prove to you that what
12:09 18 Florida Housing did was contrary to the bid
12:09 19 specifications and that the actions were clearly
12:09 20 erroneous, contrary to competition, or arbitrary
12:09 21 and capricious.

12:10 22 Candidly, if anyone is trying to go outside
12:10 23 the bid specs, at least to their challenges to
12:10 24 Allapattah Trace, it's these petitioners; and we're
12:10 25 asking you to please dismiss their petitions.

12:10 1 Thank you very much for your time.

12:10 2 MS. DAUGHTON: Your Honor, I know I only had
12:10 3 one exhibit, but I would still like a minute.

12:10 4 THE COURT: Please go ahead.

12:10 5 MS. DAUGHTON: We concur with -- on the issues
12:10 6 of standing with the comments that Mr. Glazer has
12:10 7 already made.

12:10 8 The one thing that I want to finish on and
12:10 9 comment on is something that I talked about in my
12:10 10 opening statement; and that is this issue of
12:10 11 whether what APC is doing here is really a
12:10 12 challenge to bid specifications that is not timely.

12:10 13 If you look at the RFA in its entirety, and
12:10 14 you recollect the testimony of the incorporation
12:10 15 witnesses, they indicate that, within the RFA,
12:10 16 applicants were directed to go to the charts and to
12:11 17 use those charts to fill out Attachment 3.

12:11 18 They were specifically directed -- I know we
12:11 19 talked a lot about whether it was an instruction or
12:11 20 a chart or what that means. But it was very clear
12:11 21 to anyone who looked that, if an applicant was an
12:11 22 LLC, what the corporation and their -- and they
12:11 23 listed their members and managers, and then their
12:11 24 member and managers were LLCs.

12:11 25 With the corporation, the only thing that the

12:11 1 corporation required was their members and
12:11 2 managers. And it's on those charts.

12:11 3 The only place on that chart which indicates
12:11 4 officers, directors, or shareholders is if one of
12:11 5 the members or managers of the LLC is a corporate
12:11 6 entity. It was very clear to APC the moment that
12:11 7 RFA was issued that that's the standard that was
12:11 8 going to be applied.

12:11 9 It specifically states in Rule 67-60.009(1),
12:12 10 "Interested parties that wish to protest the terms
12:12 11 of any competitive solicitation issued pursuant to
12:12 12 this rule chapter may do so pursuant to the
12:12 13 procedures set forth in Section 120.57(3) and
12:12 14 Chapter 28-110, Florida Administrative Code."

12:12 15 They had 72 hours. They didn't do it. This
12:12 16 is a bid -- this is a challenge to bid specs that
12:12 17 is not timely.

12:12 18 Thank you.

12:12 19 THE COURT: Okay. We have discussed that you
12:13 20 will be filing proposed recommended orders. Those
12:13 21 are due ten calendar days after the transcript or
12:13 22 after the hearing. I don't know what your time
12:13 23 would be. But if we would give you -- ten work
12:13 24 days would be the 14th of April. That would be
12:13 25 about --

12:13 1 Mr. Brown?

12:13 2 MR. BROWN: I did want to make a comment about
12:13 3 that. It is the corporation's hope, and I think
12:13 4 probably in the interest of everybody here, that
12:13 5 this final order goes to the June 13th board
12:13 6 meeting that is here in Tallahassee. Otherwise,
12:13 7 all of these petitioners in this process is held up
12:13 8 until the August 8th meeting.

12:13 9 That's going to present some financial
12:13 10 difficulties, I think, for everyone involved,
12:13 11 except for the corporation who hands out the money.

12:13 12 But I am going to ask that this transcript be
12:13 13 expedited as quickly as possible. I understand you
12:13 14 have 30 days from the filing of the transcript to
12:14 15 file your order. I would be amenable if anybody --
12:14 16 I don't know if there is any objection, but I would
12:14 17 certainly be okay with a faster response time for
12:14 18 the PROs to assist you in meeting your statutory
12:14 19 obligations.

12:14 20 It's beyond the scope of -- it's not your
12:14 21 problem. But I'm also going to be asking them
12:14 22 about an abbreviated time for exceptions and
12:14 23 responses to try to get this to the June 13th
12:14 24 meeting, so that no one else has to pay extra money
12:14 25 to extend contracts or otherwise hold up the

12:14 1 funding process.

12:14 2 THE COURT: You have to get a final order by
12:14 3 June 13th?

12:14 4 MR. BROWN: That would be best, yes.

12:14 5 THE COURT: When would you need a recommended
12:14 6 order to feasibly do that?

12:14 7 MR. BROWN: Well, that depends on how long we
12:14 8 agree to have exceptions for. Considering that, I
12:14 9 mean, if a response to exceptions is filed the day
12:14 10 before the board meeting, we could get that to the
12:14 11 board, or even two days before the board meeting.

12:14 12 It would be tight, but we would do the best we
12:15 13 could to make sure the board had that in time to
12:15 14 consider it for their meeting on Friday, June 13th.

12:15 15 THE COURT: Well, the time frames are amenable
12:15 16 only by stipulation by all the parties, as I
12:15 17 recall. So is that where we are? Are you
12:15 18 proposing specific dates, and we will see if we
12:15 19 have stipulation? Is that correct?

12:15 20 MR. BROWN: If we had responses to the
12:15 21 exceptions by June 10th or 11th, I think we could
12:15 22 get them to the board, and they would have time to
12:15 23 consider them. Again, my concern is, the board
12:15 24 meeting is June 13th, and the next one isn't until
12:15 25 August 8th.

12:15 1 MS. BLANTON: Your Honor --

12:15 2 THE COURT: We know you can't move board
12:15 3 meetings.

12:15 4 MR. BROWN: No. Or least I can't.

12:15 5 MS. BLANTON: Your Honor, I don't mind this
12:15 6 being slightly expedited, but it sounds like this
12:15 7 is going to be extremely expedited. I would just
12:16 8 point out that Florida Housing sat on these
12:16 9 petitions in this case for almost a month.

12:16 10 Technically, they were supposed to be
12:16 11 transferred to DOAH within 15 days of being
12:16 12 received. That did not happen. They sat there for
12:16 13 many, many weeks. And now suddenly we've got an
12:16 14 emergency.

12:16 15 And I just find it -- many of us have other
12:16 16 cases going on, other things to do. And expediting
12:16 17 it as quickly as you're suggesting, I think is
12:16 18 perhaps a burden on everybody.

12:16 19 THE COURT: I think the time frames require
12:16 20 stipulation by all parties, is the way I read this
12:16 21 paragraph 120.57(3)(e). I will certainly try to
12:16 22 enter my recommended order -- I don't necessarily
12:16 23 need 30 days -- as expeditiously as I can do in
12:17 24 good conscience. I'm usually prompt with my
12:17 25 orders.

12:17 1 MR. BROWN: The way I see it, it's less of a
12:17 2 problem with your recommended order, and I don't
12:17 3 know how quickly we can get the transcript to start
12:17 4 that clock, but -- than it is with the time for
12:17 5 response -- time for exceptions and responses.

12:17 6 THE COURT: That paragraph is also in -- each
12:17 7 party should be allowed ten days in which to submit
12:17 8 written exceptions. And then the final sentence of
12:17 9 that paragraph, "The provisions of this paragraph
12:17 10 may be waived upon stipulation." So have at it.
12:17 11 You're going to have to get a stipulation from all
12:17 12 of them, otherwise --

12:17 13 MR. BROWN: I understand that's not within
12:17 14 your jurisdiction, but I will try to do that. And
12:17 15 certainly, we will ask that the transcript be as
12:17 16 expedited as possible.

12:17 17 THE REPORTER: Monday?

12:17 18 MR. BROWN: Monday would be wonderful.

12:17 19 THE COURT: Monday is the 5th. You have ten
12:17 20 calendar days, so that would be -- would be the
12:18 21 15th; is that right? Thursday the 15th? If you
12:18 22 could get me -- assuming that's the 5th. It counts
12:18 23 from the date it's available, but that would be a
12:18 24 target date we would look for, the 15th for
12:18 25 proposed recommended orders and --

12:18 1 MR. BROWN: It would be May -- or June 4th, I
12:18 2 believe, for your recommended order. So the only
12:18 3 abbreviation really would be a day or two off the
12:18 4 exceptions or responses. It's not so great an
12:18 5 abbreviation, I don't think. Of course that's not
12:18 6 something I have to discuss with you. I will see
12:18 7 if I can discuss that with counsel.

12:18 8 THE COURT: Okay. The court reporter has
12:18 9 agreed to expedite that. She may or may not be
12:18 10 able to get it by Monday. But if it's quickly
12:18 11 done, I think we will be in the ballpark.

12:18 12 We don't have to waive any time frames, as far
12:18 13 as the ten days for recommended orders. And then
12:19 14 as for exceptions, I will leave that to the
12:19 15 parties.

12:19 16 Anything further we need to discuss here
12:19 17 today?

12:19 18 MS. BLANTON: I don't think so.

12:19 19 MR. GOLDSTEIN: No, thanks.

12:19 20 THE COURT: If not, these proceedings are
12:19 21 closed.

12:19 22 MR. DONALDSON: Oh, Judge, I'm sorry. I had
12:19 23 copies of those resumes. Those are the two resumes
12:19 24 I couldn't find the copies for.

12:19 25 THE COURT: These have been admitted as

12:19

1

exhibits already.

12:19

2

(The proceedings were adjourned at 12:20 p.m.)

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA)
COUNTY OF LEON)

I, SARAH B. GILROY, Registered Professional Reporter,
and Notary Public, do hereby certify that the foregoing
proceedings were taken before me at the time and place
therein designated; and that the foregoing pages
numbered 1 through 395 are a true and correct record of
the aforesaid proceedings.

I further certify that I am not a relative, employee,
attorney or counsel of any 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.

DATED this _____ day of May, 2014.

s/ Sarah B. Gilroy
SARAH B. GILROY, RPR, CRR
sbrinkhoff@comcast.net
850-878-2221