

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

OCEAN BREEZE HOUSING PARTNERS, LP,

Petitioner,

vs.

395S

FHFC Case No. 2016-059BP  
FHFC RFA No. 2016-109  
APPLICATION NO. 2016-

FLORIDA HOUSING FINANCE CORPORATION,


Respondent.

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**ORDER DISMISSING PETITION**

Upon consideration of Petitioner, Ocean Breeze Housing Partners, LP (“Ocean”)’s Response to Order to Show Cause, Florida Housing Finance Corporation (“Florida Housing”) hereby enters this Order dismissing Petitioner’s Amended Formal Written Protest and Petition for Administrative Hearing with prejudice due to Ocean’s lack of standing to protest its eligibility determination set forth in Florida Housing’s Notice of Intended Decision regarding the Request for Applications (“RFA”) 2016-109; and Ocean’s failure to state a disputed issue of material fact that would warrant dismissal or modification of Florida Housing’s funding determinations set forth in the Notice of Intended Decision regarding RFA 2016-109. As grounds for this Order, Florida Housing states:

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

 /DATE: 02/22/17

1. Florida Housing issued RFA No. 2016-109, for SAIL Financing of Affordable Multifamily Housing Developments to be used in conjunction with Tax Exempt Bonds and Non-Competitive Housing Credits on September 19, 2016.
2. Ocean applied for an allocation of funding under RFA 2016-109 for new construction in the Family/Large County demographic under Application No. 2016-395S (“Application”).
3. On December 9, 2016, Florida Housing posted its Notice of Intended Decision for RFA 2016-109 (“Notice”), setting forth Florida Housing’s eligibility and funding determinations for Applications to RFA 2016-109. The Notice reflected Florida Housing’s determination that Ocean’s Application to RFA 2016-109 was deemed ineligible for funding.
4. The Notice, reflecting Florida Housing’s eligibility and funding determinations for RFA 2016-109, is agency action pursuant to § 120.57(3), Fla. Stat., and as such, the Notice informed all applicants to RFA 2016-109 of protest procedures pursuant to § 120.57(3), Fla. Stat.
5. Ocean filed a timely Formal Written Protest and Petition for Administrative Hearing (“Petition”) on December 17, 2016, challenging Florida Housing’s determination that Ocean’s Application to RFA 2016-109 was ineligible for funding.

6. Ocean's December 17, 2016 Petition stated that Ocean was substantially affected by Florida Housing's eligibility determination because if its application was deemed eligible, "it will be selected for funding based on the application of the selection criteria set forth in the RFA, including tiebreakers." (Petition ¶19)
7. Ocean's December 17, 2016 Petition did not challenge any of Florida Housing's funding determinations for RFA 2016-109.
8. Ocean then filed an Amended Formal Written Protest and Petition for Administrative Hearing ("Amended Petition") on January 17, 2017, challenging the "eligibility and funding determinations" set forth in the Notice of Intended Decision for RFA 2016-109.
9. Ocean's Amended Petition did not identify a specific funding award challenge, and therefore did not challenge a funding determination set forth in the Notice of Intended Decision for RFA 2016-109.
10. Florida Housing issued an Order to Show Cause to Ocean on February 6, 2016, requiring Ocean to show cause why its Amended Petition should not be dismissed for Ocean's lack of standing to bring its Amended Petition, as well as Ocean's failure to raise a dispute of material fact in its Amended Petition.

11. Ocean filed a timely response to the Order to Show Cause on February 17, 2016.<sup>1</sup>
12. In considering the dismissal of a petition for a hearing under § 120.57, Fla. Stat., an agency must accept as true the factual allegations of the petition and may not consider any factual matters outside the petition. *Save Our Creeks v. Fla. Fish & Wildlife Conservation Com'n.*, 112 So. 3d 128, 130 (Fla. 1st DCA 2013)
13. Ocean's January 17, 2017 Amended Petition states that Ocean's substantial interests are affected by the Notice because, if Ocean's Application was deemed eligible "it would be placed back on the list as an eligible applicant and be entitled to funding if one or more of the 13 preliminarily selected applicants does not proceed or successfully pass credit underwriting." (Amended Petition ¶ 19)
14. Ocean's Amended Petition states that there is a disputed issue of material fact as to whether "all of the applications tentatively selected to enter the credit underwriting process will enter and successfully pass the credit underwriting process" (Amended Petition ¶ 35(j))
15. However, at the time of filing its Amended Petition, Ocean has not challenged the scoring or eligibility determinations set forth in the Notice of

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<sup>1</sup> Ocean filed a Motion for Extension of Time to respond to the Show Cause Order. Florida Housing granted Ocean an extension for its response to the Show Cause Order to February 17, 2016.

Intended Decision for RFA 2016-109, that warrant dismissal or modification of the Notice of Intended Decision for RFA 2016-109, which is the agency action at issue.

16. Credit underwriting is not at issue in the agency instant action. *See* Notice of Intended Decision for RFA 2016-109.

17. Therefore, even if Ocean's Application was deemed eligible, it would not be selected for funding under RFA 2016-109 because, as set forth in the Notice at issue, other eligible applicants were selected for funding in the relevant demographic with higher selection criteria and tiebreakers than Ocean. Ocean has not challenged any of those selections.

18. While Ocean's Amended Petition states that there is a disputed issue of material fact as to whether "all of the applications tentatively selected to enter the credit underwriting process will enter and successfully pass the credit underwriting process" (Amended Petition ¶35(j)), the results of the credit underwriting process **are not** the subject of the challenged agency action at issue, which is Florida Housing's eligibility and funding determinations set forth in the Notice of Intended Decision for RFA 2016-109. Thus, Ocean's speculation about credit underwriting is not material to Florida Housing's eligibility or funding decisions for RFA 2016-109.

19. Even if Ocean was correct that one or more of the 13 preliminarily selected applicants will not be able to proceed through credit underwriting, such a circumstance simply does not impact Ocean in this matter. The terms of the RFA specifically state, “[f]unding that becomes available after the Board takes action on the Committee’s recommendations, due to an Applicant withdrawing its application, an applicant declining its invitation to enter credit underwriting, or an Applicant’s inability to satisfy a requirement outlined in this RFA, will be distributed as approved by the Board.”
20. Accordingly, there is no “next in line” procedure set forth in the explicit terms of the RFA, and Ocean’s assertion that it would receive funding if one or more of the 13 preliminarily selected applicants drops out is entirely speculative and not a basis to substantiate injury in fact.
21. Even assuming Ocean’s assertion that “based on past practices, funding will go to the next highest ranked eligible applicant” was true (and it is not), Ocean has still failed to establish that it has a reasonable expectation of funding that is not entirely based in conjecture. *See Kathleen Pointe Partners, LLP v. Florida Housing Finance Corporation*, DOAH Case No. 06-4758 (Recommended Order of Dismissal, Feb. 20, 2007).

22. Standing is determined at the time a petition is filed and cannot be gained through subsequent acts. *Village Park Mobile Home Assoc., Inc. v. Dep't of Bus. Regulation*, 506 So. 2d 426, 433 (Fla. 1<sup>st</sup> DCA 1987).
23. Ocean's Amended Petition is improperly relying on potential subsequent acts out of credit underwriting to establish its substantial interest in this matter.
24. Accordingly, Ocean cannot establish standing because Ocean's Amended Petition does not demonstrate that Ocean suffered an injury in fact that is of sufficient immediacy and of a type that this proceeding is designed to protect. *See Agrico Chem. Co. v. Dept. Envir. Reg. Comm.*, 406 So.2d 478 (Fla. 2d DCA 1981).
25. Ocean's Amended Petition fails to establish that it is substantially affected by Florida Housing's eligibility determination set forth in the Notice of Intended Decision for RFA 2016-109. Additionally, Ocean's Amended Petition fails to set forth a disputed issue of material fact regarding any funding decision made by Florida Housing set forth in the Notice of Intended Decision for RFA 2016-109. Accordingly, Ocean's Amended Petition is dismissed pursuant to §120.569(2)(c), Fla. Stat.

**ORDERED** that Ocean's Amended Petition is **DISMISSED** with prejudice.

**DONE** and **ORDERED** this 22 day of February 2017



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Ken Reecy, Interim Executive Director  
Florida Housing Finance Corporation  
227 North Bronough Street, Suite 5000  
Tallahassee, FL 32301

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished on this 22 day of February, 2017 by mail and electronic mail to the following:

Counsel for Petitioner  
Ocean Breeze Housing Partners, LP,

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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32311, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**