

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
November 1, 2013
Action Items



LEGAL

Action

I. LEGAL

A. Procedures for Public Comment

1. Background

Recent appellate courts had held that the Florida Open Meetings Law, Ch. 286, Florida Statutes, which allowed the public to attend any covered meeting, did not compel the meeting body to allow the public to speak in such meetings. Chapter 2013-227, Laws of Florida, essentially reversed those appellate court holdings by creating a new section 286.0114, Florida Statutes. That provision guaranteed the right of members of the public a reasonable opportunity to be heard at any meeting covered by section 286.011, Florida Statutes, and provided that the meeting body may establish rules and guidelines for public comment. A draft of proposed public comment procedures is attached as [Exhibit A](#).

2. Present Situation

The Board should implement the Public Comment provisions of 2013-227, Laws of Florida, by adopting procedures for Public Comment at Board meetings.

3. Recommendation

Staff recommends that the Board adopt procedures regarding Public Comment at Board meetings.

LEGAL

Action

B. Request Authorization to Commence the Rule Amendment and Promulgation Process for Rule 67-49, Procurement of Commodities or Contractual Services

1. Background

- a) Chapter 67-49, Florida Administrative Code, was originally promulgated in January, 1999, as part of the process implementing Ch. 97-167, Laws of Florida, which created the Florida Housing Finance Corporation. Section 420.507(27), Florida Statutes, grants Florida Housing authority to create its own guidelines for procurement of goods and services:

Notwithstanding the provisions of chapter 282 and part I of chapter 287, to establish guidelines for and to implement the purchase and procurement of materials and services for use by the corporation.

- b) Florida Housing has done so in Rule 67-49, which generally tracks Part I, Ch. 287, Florida statutes. It has been over ten years since the rule has been amended. In 2013, the Legislature passed HB 1309, codified as Ch. 2013-154, Laws of Florida, which addressed agency contracts. HB 1309 added some specific requirements, such as clarifying the agency's responsibility to make express in its contracts that the contractor/vendor is subject to responsible for compliance with the Public Records Law, Ch. 119, Florida Statutes. Updating the rule will require some amendment to most sections of the current rule, and the creation of a new section addressing contract terms, amendments, and renewals.
- c) This request is to allow staff to proceed with rulemaking to address these new requirements.

2. Present Situation

To implement recent legislative enactments, Florida Housing must amend and promulgate rules in Ch. 67-49, Florida Administrative Code.

3. Recommendation

Authorize staff to commence the rule amendment and promulgation processes by giving Notice of Rule Development for Ch. 67-49, Florida Administrative Code.

LEGAL

Action Supplement

I. LEGAL

A. Janie Poe Associates 3, LLC v. Florida Housing Finance Corporation - FHFC Case No.: 2013-015BP

Development Name: (“Development”):	Janie’s Garden Phase 3
Developer/Principal: (“Developer”):	The Michaels Development Company/Sarasota Housing Authority
Number of Units: 72	Location: Sarasota County
Type: Garden Apartments	Set Aside: 22% @ 35% AMI 58% @ 60% AMI
Demographics: Family	Housing Credits: \$820,000

1. Background

Janie Poe Associates 3, LLC (“Petitioner” or “Janie Poe”) applied for funding under RFP 2013-07 - PHA Revitalization High Priority Affordable Housing Developments (the “RFP”) seeking an allocation of Low Income Housing Tax Credits. Petitioner was notified of the Board’s intended decision to not fund the Janie Poe development on or about June 21, 2013. Although another development was selected to be fully funded, there remained sufficient housing credit allocation for this RFP to fund Janie Poe should it prevail in its challenge to the Corporation’s rejection of its application. Janie Poe timely filed a Petition and later an “Amended Formal Written Protest and Petition for Administrative Hearing under Sections 120.569 and 120.57(3), Florida Statutes, challenging the Corporation’s rejection of its Application on the grounds that Janie Poe failed to provide sufficient information regarding the Principals of the Developer entity – specifically that Janie Poe did not account for the presence or absence of managers in a limited liability company.

2. Present Situation

A hearing was conducted on October 1, 2013, before Florida Housing’s appointed Hearing Officer, Christopher D. McGuire. The parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order, finding that Florida Housing incorrectly scored the Janie Poe Application with regard to the listing of the Principals of Developer. A copy of the Recommended Order is attached as [Exhibit A](#). No written argument regarding the Recommended Order has been filed by either party.

3. Recommendation

Staff recommends that the Board: Adopt the Findings of Fact of the Recommended Order, the Conclusions of Law of the Recommended Order, and the Recommendation of the Recommended Order, and issue a Final Order in accord with same.

MULTIFAMILY BONDS

Action

II. MULTIFAMILY PROGRAMS

A. Request for Applications (RFA) to Finance Affordable Multifamily Housing Properties with SAIL and HOME Rental Funding to be used in Conjunction with Tax-Exempt Bond Financing

1. Background

Florida Housing Finance Corporation was appropriated \$35 million in State Apartment Incentive Loan (SAIL) funds by the 2013 Legislature, with \$25 million to be used for elderly housing and \$10 million to be used for families and a portion of the funding targeted to persons with developmental disabilities. This SAIL funding, along with \$15 million in federal funding appropriated for the HOME Investment Partnerships (HOME) Program and additional SAIL gap funding to finance a minimum required percentage of the units set aside for extremely low income households, will be available for proposed developments to be used in conjunction with tax-exempt bond financing.

2. Present Situation

The expected timeline for this RFA is as follows:

Early November – Provide draft RFA to the public for comment

November 14, 2013 – Hold a workshop in Tallahassee to discuss the proposed RFA and solicit public comments

December 13, 2013 – Issue the RFA

January 13, 2014 – Applications due to Florida Housing for scoring

March 2014 – Request Board approval of the Review Committee’s recommendations for funding

3. Recommendation

Authorize staff to proceed with the RFA competitive process that will offer \$35 million in SAIL funds and \$15 million in HOME funds to be used in conjunction with tax-exempt bonds to finance affordable multifamily housing properties, and authorize the Executive Director to proceed in establishing a review committee to make recommendations to the Board.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

III. PROFESSIONAL SERVICES SELECTION (PSS)

A. Request to Approve Responses to Request for Proposals for Cash Flow Verification Agent Services

1. Background

At its August 9, 2013, meeting the Board approved staff's recommendation to finalize and issue an RFP to solicit proposals for Cash Flow Verification Agent Services.

2. Present Situation

- a) An RFP process was initiated and RFP 2013-14 was issued on Wednesday, August 28, 2013. The deadline for receipt of responses was 2:00 p.m., Wednesday, September 11, 2013.
- b) One proposal was received by the deadline: Causey Demgen & Moore, P.C.
- c) The Review Committee members designated by the Executive Director were Wayne Conner (Chairman), Director of Multifamily Bonds, Melanie Weathers, Bond Administrator and Tamara Alford, Guarantee Program Asset Manager.
- d) Each member of the Review Committee individually reviewed the Proposal prior to convening for the Review Committee meeting, which was held at 10:00 a.m., Tuesday, September 24, 2013, and provided Final Scoring and Ranking ([Exhibit A](#)).

3. Recommendation

The Committee recommends that the Board authorize Florida Housing staff to enter into contract negotiations with Causey Demgen & Moore, P.C., subject to the following conditions and approvals of our Counsel and the appropriate Florida Housing staff:

- (1) Successful negotiation of fees,
- (2) Verification of insurance, and
- (3) Certificate of Good Standing from the Florida Department of State

PROFESSIONAL SERVICES SELECTION (PSS)

Action

B. Request Approval of Response to the Request for Qualifications 2013-01 for Housing Counseling Agencies to Provide Services for the Foreclosure Counseling Program

1. Background

- a) On February 1, 2013, the Board approved a staff recommendation to issue a Request for Qualifications (RFQ) for Housing Counseling Agencies (HCAs) for the implementation of the Foreclosure Counseling Program (FCP) funded through the National Mortgage Settlement.
- b) To date, the Board has approved 54 HCAs to provide services through the FCP.

2. Present Situation

- a) The RFQ allowed for HCAs to respond beyond the original submission date so that Florida Housing can maximize the number of qualified agencies to provide adequate foreclosure counseling coverage across the state. Tallahassee Urban League, Inc., has the only pending request to participate in the FCP.
- b) On Tuesday, October 8, 2013, the proposal was reviewed by the RFQ review committee and recommended for approval pending the submission of all required documentation.

3. Recommendation

Approve Tallahassee Urban League, Inc. as recommended for approval by the RFQ review committee on October 8, 2013.

SPECIAL PROGRAMS

Action

IV. SPECIAL PROGRAMS

A. Request Approval of Credit Underwriting Report for Arbor Place Apartments, Ltd., a Development Owned by Volunteers of America of Florida

DEVELOPMENT NAME (“Development”):	Arbor Place Apartments
DEVELOPER/PRINCIPAL (“Developer”):	Volunteers of America of Florida
NUMBER OF UNITS:	32
LOCATION (County):	Hillsborough
TYPE:	Rental
SET ASIDE:	Residents with Disabilities
LOAN AMOUNT:	\$674,556
ADDITIONAL COMMENTS: One of the 32 units is reserved for an on-site manager’s office	

1. Background

- a) On January 23, 2009, the Board approved a loan to Volunteers of America-Florida for Arbor Place Apartments in the amount of \$674,556 under RFP 2008-04. This RFP was issued to provide funding for rehabilitation of units for properties in Florida Housing’s portfolio that were approaching the end of their affordability period.
- b) On February 13, 2009, the loan was assigned to First Housing as the credit underwriter. The credit underwriter provided a list of required documentation for the developer to provide in order for the underwriting process to begin. The developer was unable to provide all documentation which left the underwriter unable to proceed.
- c) On August 25, 2010, the loan was re-assigned to Seltzer Management Group as the credit underwriter upon mutual request of the developer and First Housing.
- d) On December 7, 2012, the Board approved a restructuring of the SAIL loan in the amount of \$185,000 on Arbor Place that matured on May 31, 2012, provided that the developer pay all accrued interest and extend the affordability period for 15 years. The SAIL loan restructuring has been ready for execution pending the developer getting necessary information to the credit underwriter to complete the credit underwriting report and recommend for approval for this rehabilitation loan.
- e) On October 3, 2013, staff and the credit underwriter met with VOA of Florida staff to discuss the final requirements that must be met by the developer in order to recommend the loan for Board approval.
- f) The development also has existing loans totaling \$476,248 from Hillsborough County SHIP and HOME funds. These loans have been in a position subordinate to the SAIL loan and will be required to be re-subordinated to the refinanced SAIL and RFP rehabilitation loan.

SPECIAL PROGRAMS

Action

2. **Present Situation**

- a) After receiving the necessary information from VOA of Florida, the credit underwriter has submitted a report ([Exhibit A](#)) with a positive recommendation for the rehabilitation loan in the amount of \$674,556 contingent upon the conditions detailed in the report.
- b) Staff has reviewed the credit underwriting report and supports the recommendation of the credit underwriter. The staff further recommends that all conditions must be met and loan closing documents executed by VOA of Florida no later than 120 days from electronic transmission of the loan commitment letter.

3. **Recommendation**

Approve the credit underwriting report contingent upon the developer meeting all conditions in the report for Arbor Place Apartments, Ltd., for a rehabilitation loan in the amount of \$674,556 and allow staff to proceed with the loan closing with a closing deadline of no later than 120 days from electronic transmission of the loan commitment letter.

SPECIAL ASSETS

Action

V. SPECIAL ASSETS

A. Request Affirmation of Short Sale for Bonita Springs Area Housing Development Corporation for Red Hibiscus Lane (PLP 03-052)

Development Name: Red Hibiscus Lane (“Development”)	Location: Lee County
Developer/Principal: Bonita Springs Area Housing Development Corporation (“Borrower”)	Set-Aside: 100% @ 80% AMI
Number of Units: 18	Allocated Amount: PLP \$317,420
Demographics: Family	Servicer: NA

1. Background

- a) Bonita Springs Area Housing Development Corporation applied for Pre-Development Loan Program (PLP) funds in 2004 and was awarded a PLP loan in the amount of \$317,420 for predevelopment expenses of an 18 unit homeownership development in Lee County. The PLP loan closed on June 28, 2005. The original maturity date of the loan was approved for two one year extensions by the Board from June 28, 2008 to June 28, 2010 due to construction delays. The borrower drew \$112,010 of PLP funds but was unable to complete the Development and in May 2010 the first mortgagee, BB&T initiated a foreclosure action against the borrower. Due to problems with the foreclosure BB&T decided to vacate the prior foreclosure and re-foreclose on the land.
- b) As of September 19, 2013, Habitat for Humanity Lee and Hendry Counties, had negotiated a purchase price from BB&T for the land. Habitat intends to build 6 homes per year for affordable housing. Habitat offered \$60,000 to Florida Housing for satisfaction of the PLP mortgage. BB&T has agreed to delay the foreclosure but Habitat needed to close the transaction by October 21 or the property would be back in foreclosure and possibly lost through a court ordered sale of the property. If the first mortgagee foreclosed, there was a stronger likelihood that Florida Housing would be unable to recover any monies towards the PLP mortgage. Further, the affordability requirements would have been removed upon foreclosure. In this regard, staff proposed that the \$60,000 offer be accepted allowing Florida Housing to recover a portion of the PLP loan amount and allowing Habitat to build single family homes to be sold as affordable units.

SPECIAL ASSETS

Action

2. **Present Situation**

- a) Pursuant to Board Resolution 2010-02 dated January 22, 2010, the Board delegated authority to the Chair or Vice Chair, with the advice of Florida Housing's Financial Advisor, upon approval by the Chair, or in the absence of the Chair, the Vice Chair (i) to engage in activities to sell the Development (the "Sale"), (ii) negotiate, finalize, execute, deliver, and perform on behalf of Florida Housing any and all agreements, documents, certificates, and instruments required in connection with the Sale of the Development, and (iii) bind Florida Housing thereby, as may become necessary between Board meetings to maintain or recover the maximum value from such properties.
- b) On October 11, 2013, the Board Chair authorized staff to proceed with the sale of the Red Hibiscus Lane property.
- c) The sale is expected to close before the end of October.

3. **Recommendation**

Ratify the short sale for the Red Hibiscus Lane property.