

**Florida Housing Finance Corporation
Board of Directors' Meeting Minutes
August 7, 2015**

TIME: 8:30 a.m.

LOCATION: Tallahassee City Hall Commission Chambers
300 S. Adams Street
Tallahassee, Florida

BOARD MEMBERS PRESENT:

Barney Smith, Chairman
Natacha Munilla, Vice Chair
Renier Diaz de la Portilla
Ray Dubuque
John Hawthorne
Brian Katz
Bill Killingsworth
Len Tylka

CORPORATION STAFF PRESENTING:

Stephen P. Auger
Hugh Brown
Barb Goltz
Ken Reecy
Chris McGuire
Nancy Muller

OTHERS PRESENTING:

Michael Donaldson, Carlton Fields
David Deutch, Pinnacle Housing
Paola Roman, Carrfour Supportive Housing

Chairman Smith called the meeting to order at 8:30 a.m.

MINUTES

Item A, Approval of Minutes of the June 19, 2015, Board Meeting. Chairman Smith asked for a motion to approve the Minutes of the June 19, 2015, Board Meeting.

Motion to approve the Minutes was made by Mr. Dubuque with a second by Mr. Hawthorne.
Motion passed unanimously.

AUDIT COMMITTEE UPDATE

Committee Chair Brian Katz reported that the Audit Committee met on Thursday, August 7, 2015, and during the meeting, Steve Auger and Nancy Muller presented a performance measure dashboard outlining metrics the Corporation will judge itself against from a statute and internal performance standpoint. He stated that David Westcott briefed the Committee on the recent Treasury review of the Hardest-Hit program and that there was discussion on reports tracking open audit items which will also be integrated into the dashboard.

FISCAL

Item A, Documentary Stamp Tax Allocation – 2015/2016 Documentary Stamp Tax Appropriation Split.

Barb Goltz reminded the Board that Chapter 420.507, F.S., authorizes Florida Housing to expend funds from the housing trust funds, and of the \$70 million appropriated from the State Housing Trust Fund, the 2015 legislature made \$12 million available to Florida Housing to allocate. She asked the Board to approve staff's recommendation to allocate the \$12 million as follows:

- \$11,300,000 to the State Apartment Incentive Loan Program (SAIL);
- Up to \$400,000 to the Affordable Housing Catalyst Program; and
- Up to \$300,000 to the Florida Housing Data Clearinghouse and for the 2016 rental market study required by Section 420.5087(i), Florida Statutes.

Motion to approve staff's recommendation was made by Mr. Hawthorne with a second by Ms. Munilla. Motion passed unanimously.

Ms. Goltz also asked the Board to approve staff's recommendation to use any funds not used for the Catalyst Program, the data clearinghouse or the SAIL market study, in the SAIL program.

Motion to approve staff's recommendation was made by Mr. Hawthorne with a second by Mr. Killingsworth. Motion passed unanimously.

HARDEST-HIT FUND

Item A, Request Approval to Modify and Expand the Elderly Mortgage Assistance Program ("Elmore").

David Westcott asked the Board to authorize staff to amend the Elmore term sheets to allow for assistance to non-borrowing surviving spouses in accordance with HUD guidelines, and to increase the maximum amount of assistance to \$50,000 per applicant subject to further approvals and conditions from Florida Housing's counsel, US Treasury and appropriate Florida Housing staff.

Motion to approve staff's recommendation was made by Mr. Dubuque with a second by Ms. Munilla. Motion passed unanimously.

Item B, Request Approval to Remove Dedicated County Allocations for UMAP and MLRP Programs.

David Westcott asked the Board to authorize staff to remove the dedicated county allocations in place for the Unemployment Mortgage Assistance Program and the Mortgage Loan Reinstatement Program, as there are enough funds available four years into the program to offer these programs statewide on a first-come, first-approved basis.

Motion to approve staff's recommendation was made by Mr. Hawthorne with a second by Ms. Munilla. Motion passed unanimously.

Item C, Request Approval to Expand the Modification Enabling Pilot Program (MEP) Strategy of the Hardest-Hit Fund.

David Westcott asked the Board to approve staff's recommendation to approve the expansion of the Modification Enabling Pilot Program to include Fannie Mae, Freddie Mac and regulated financial institutions, and to include qualified, experienced MEP program managers to be added to the process in addition to National Community Capital, which would continue in its role, and to extend the MEP program through December 31, 2017, the end of the Hardest-Hit Fund program. He also asked the Board to authorize staff to amend the approved term sheets with Treasury, amend the contract with National Community Capital as necessary to accommodate the program changes, all subject to further approvals and recommendations from Florida Housing's counsel, U.S. Treasury and Florida Housing staff.

Motion to approve staff's recommendation was made by Mr. Hawthorne with a second by Ms. Munilla. Motion passed unanimously.

LEGAL

Item A, Clearlake Village, L.P. v. Florida Housing Finance Corporation. Hugh Brown stated that Petitioner, Clearlake Village, challenged its own score under RFA 2014-114 for small/medium counties. He stated that during scoring, their application was rejected for not meeting site control requirements because the contract provided that it could not be assigned without the seller's written consent and such consent was not found in the application. He stated that the case was taken to the Division of Administrative Hearings and the judge affirmed Florida Housing's scoring of the Clearlake application. He stated that ten exceptions had been filed by the Petitioner and asked the Board to approve staff's recommendation to deny all ten exceptions.

Motion to approve staff's recommendation was made by Ms. Munilla with a second by Mr. Killingsworth. Motion passed unanimously.

Mr. Brown then asked the Board to accept the recommended order and the findings of fact and conclusions of law as set forth in the recommended order.

Motion to approve staff's recommendation was made by Ms. Munilla with a second by Mr. Killingsworth. Motion passed unanimously.

Item B, Flagship Manor LLC v. Florida Housing Finance Corporation. Chris McGuire reminded the Board that at the June 21, 2015, meeting, it accepted the recommended order of the hearing officer to uphold the finding that Flagship Manor's application was ineligible for funding for failure to demonstrate site control, and issued a final order accordingly. He stated that Flagship Manor subsequently filed a Notice of Appeal in the First District Court of Appeal and a Motion to Stay with the Corporation. He asked the Board to approve staff's recommendation to deny the Motion to Stay, as it would stop the RFA funding process if it was granted, meaning that awardees currently in the middle of credit underwriting would be stopped, but it would not harm the Petitioner if it was not granted.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Mr. Dubuque. Motion passed unanimously.

Item C, Capital Grove Limited Partnership v. Florida Housing Finance Corporation. Chris McGuire stated that Florida Housing issued RFA 2014-114 in November 2014 for awards of low income housing tax credits to assist in the development of affordable housing in medium and small counties. He stated that in March 2015, the Board approved staff's funding recommendations, and HTG Wellington was found to be eligible for funding, while Capital Grove was not because they provided a letter of credit in lieu of a cash deposit for the withdrawal incentive, which did not meet the requirements of the RFA. He stated that Capital Grove challenged that finding, as well as HTG Wellington's eligibility determination, arguing that HTG Wellington should have been found ineligible because it provided some inaccurate information regarding the number of units they were going to build, as well as the eligibility of their bus stop. He stated that a hearing was held on July 1, 2015, and the administrative law judge issued a recommended order on August 3, 2015, affirming Florida Housing's scoring and ranking decisions and recommended denying Capital Grove's petition. He stated that on August 5, Capital Grove filed five exceptions to the recommended order, and the Corporation filed its responses to those exceptions on August 6. He asked the Board to approve staff's recommendation to deny all of Petitioner's exceptions.

Michael Donaldson, representing Capital Grove, asked the Board to reject the recommended order and find Capital Grove's application eligible.

Motion to approve staff's recommendation was made by Ms. Munilla with a second by Mr. Hawthorne. Motion passed unanimously.

Mr. McGuire asked the Board to accept the recommended order of the hearing officer.

Motion to approve staff's recommendation was made by Mr. Hawthorne with a second by Ms. Munilla. Motion passed unanimously.

Hugh Brown asked the Board to go back to Item A, Clearlake Village, to clarify the motion approved. He restated his second motion in the Clearlake Village matter as follows: He asked the Board to adopt the findings of fact and conclusions of law of the recommended order, and to adopt the final order as the Board's final order .

Motion to approve staff's recommendation was made by Mr. Killingsworth with a second by Ms. Munilla. Motion passed unanimously.

MULTIFAMILY PROGRAMS

Item A, Request for Applications (RFA) 2015-104 for Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments. Ken Reecy stated that RFA 2015-104 was issued on May 12, 2015, to solicit applications for approximately \$6.2 million in housing credits to preserve existing affordable multifamily housing developments for the demographic categories of family, elderly and persons with a disability. He stated that the RFA also included an elderly transformative preservation demographic component which offered SAIL program income as gap financing to provide design and support services to help elders stay in their home as long as possible. He stated that 28 applications were received. He asked the Board to approve the review committee's recommendation to adopt the scoring results for the 28 applications and authorize the tentative selection of the six applications set out in Exhibit B for funding and invitation into credit underwriting. He stated that if there is no notice of protest or formal written protest, staff would proceed to issue an invitation to enter credit underwriting to the applications set out in Exhibit B; however, if there is a notice of protest filed, at the completion of all litigation, staff will present all recommended orders to the Board for approval prior to issuing invitations into credit underwriting.

Motion to approve staff's recommendation was made by Mr. Dubuque with a second by Mr. Killingsworth. Motion passed unanimously.

Item B, 2015/2016 Funding Amounts and Timelines for Requests for Applications (RFAs) for Multifamily Developments. Steve Auger walked the Board through the multifamily plan and timeline for 2015-2016 funding, starting with housing credits as dictated in part by the Qualified Allocation Plan (QAP). He stated that staff estimates the total 2016 competitive housing credit allocation at \$46.5 million, with \$2.8 million already in binding commitments, leaving \$43.7 million. He stated that from there, 5 percent is taken off the top for high priority affordable housing projects as designated by the Board, and another 5 percent is targeted for persons who have a disabling condition, leaving \$39.3 million. He stated that then this amount is proposed to be split into 15 percent (\$5.9 million) for preservation and 85 percent (\$33.4 million) for non-preservation, and the Shimberg Center geographic split of small, medium and large counties would be applied to the \$33.4 million. He stated that one transaction out of the medium county pot and one transaction out of the large county pot will be set aside for a homeless Request for Applications. He stated that leaves \$17.6 million in the large county pot, which is then split, based on pro-rata distribution, into a pot for Miami-Dade and a pot for the other six large counties.

Mr. Auger described the proposed funding timeline, noting that HUD's 2016 changes to Difficult to Develop Areas (DDAs) will impact many aspects of the housing credit funding. He proposed to have applications for the 2016 housing credits submitted before the end of 2015 in order to use the current, broader, DDAs, and also to award the bulk of state funding before the legislature returns. He noted that SAIL program income has been added to the pot, and briefly described the process to get state grant funds for awarding housing for persons with developmental disabilities. He further described key details about the funding plan and the order of the planned RFAs.

Mr. Auger asked the Board to approve staff's recommendation to approve the allocation plan and authorize staff to proceed with the development of various RFAs for grant, SAIL, housing credits and HOME funding as outlined in Exhibit A and authorize the executive director to establish a review committee for each RFA as each one is issued in order to make recommendations to the Board.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Mr. Hawthorne.

John Hawthorne brought up a recent Supreme Court ruling saying that he would like to hear from the developers around the state to see what their thoughts are as to how the ruling is impacting them or what they anticipate the impact to be.

Steve Auger responded, noting that the ruling affirms recent changes by HUD and a greater focus on areas of opportunity, encouraging development of housing in more affluent communities, which raises land costs and other things. He indicated that Florida Housing will have workshops on this issue and will have to revise the QAP.

Motion passed unanimously.

Chairman Smith commented that when Florida Housing improved the application scoring process through the new request for application process, many items were pushed from the application to instead being reviewed during credit underwriting. He stated that many of those deals are with first-time and unsophisticated developers. He stated that the credit underwriting process appears to have gotten bogged down, and while he does not want to sacrifice quality, he believes there are some elements in credit underwriting that could be made more efficient. He stated that he would like to spend some time with the credit underwriters and stakeholders to see how to make the process more efficient going forward.

Steve Auger stated that Florida Housing has had the good fortune to have a lot of resources over the last few years after not having had much for quite a while, and all of a sudden, everyone has a lot of work. He stated that the process is constantly changing as each RFA reveals tweaks that need to be made to the next one. He stated that everyone - staff, the developers, the underwriters - are continually writing RFAs, applying, scoring, underwriting. He stated that for some of the special needs funding, means dealing with borrowers that are not developers, and staff is continually thinking about how to bring that group along with technical assistance. He added that another challenge is developers later switching out lenders and other items requiring more touches on the underwriting report.

Len Tylka stated that he would be strongly opposed to putting too much emphasis on developer experience, which would not allow projects to come in that are not from the same old groups. He stated that there is no mechanism in place that allows somebody to become a newbie. He stated that there needs to be an education process that includes a mentoring program. He stated that as the RFA process goes forward, it will mature and become more efficient.

John Hawthorne reminded the Board that a discussion was held in the past about the capacity of small counties and small developers and their ability to get into the game and building that into some of the technical assistance Florida Housing provides to them.

Bill Killingsworth expressed his concerns about so much of the funding being awarded by lottery. Mr. Auger stated that one of the things in the proposed draft for the large counties was local government preference. He stated that staff heard from local governments that they do not have enough time to do what needs to be done to select a development with the short timeline for the RFAs, so staff intends to look at that for next year.

Item C, Request Approval of Proposed Changes to Rule 67-21, F.A.C. Ken Reecy stated that after staff discussion and a rule development workshop on June 25, 2015, staff proposed some minor changes to Rule 67-21, F.A.C., which incorporates the noncompetitive application. He touched on a few of the changes, and asked the Board to approve the proposed rule and authorize staff to file it for adoption if a notice of change is not required; however, if a notice of change is required, to authorize the Chair to determine whether it makes material, substantive changes to the rule, and if it does not, staff recommends that the Board approve such notice of change without the requirement of another Board meeting. He stated that if the Chair determines that any notice of change does make material, substantive changes to the rule, staff recommends that a telephonic Board meeting be called to obtain Board approval for any required changes, and that those changes be ratified at the next regularly scheduled Board meeting.

Motion to approve staff's recommendation was made by Mr. Hawthorne with a second by Ms. Munilla. Motion passed unanimously.

Item D, Proposed State Apartment Incentive Loan (SAIL) Program Demographic Allocation for Fiscal Year (FY) 2015-2016. Nancy Muller reminded the Board that the SAIL statute requires Florida Housing to allocate funds both geographically and demographically over a three-year period, using the most recent housing study to determinate the allocations. She stated that in 2014, the Board approved the allocations for the current three-year period, but during the 2015 legislative session, the legislature changed the demographic parameters for just the 2015-2016 fiscal year. She stated that the funding for persons with special needs had been "at or below 10 percent," but was changed to "at least 10 percent." She stated that the farmworker/fishing worker allocation had been "at least 10 percent," but was lowered to "at least 5 percent." She asked the Board to approve staff's recommendation to approve the percentages for the demographic allocation of SAIL funds for year 2015-2016 as follows: Commercial fishing workers and farmworkers together, 5 percent; homeless persons, 10 percent; persons with special needs, 13 percent; elderly persons, 20 percent; and families, 52 percent.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Mr. Hawthorne.

Mr. Tylka asked whether the three-year allocation approach is still practical Ms. Muller noted that the statutory working regarding the demographic allocation provides flexibility, but the geographic requirements are not flexible as thing change over the period.

Motion passed unanimously.

Item E, Request for Waiver of the 5 Percent Total Development Cost (TDC) Variance Test in Request for Applications (RFA) 2014-107 for the Financing of Permanent Supportive Housing with a Priority to Assist Veterans with a Disabling Condition that Lack Permanent and Stable Housing for Liberty Village.

Ken Reecy stated that Liberty Village requested a waiver of the 5 percent total development cost variance test in RFA 2014-017. He stated that on April 4, 2014, Florida Housing issued an RFA for financing of permanent supportive housing with a priority to assist veterans with a disabling condition that lacked permanent and stable housing, and Liberty Village was the only application received. He stated that the total development cost per unit base limitation for new construction, mid-rise and high-rise concrete developments for the RFA was \$216,000 per unit, and the Liberty Village application included the development cost pro forma which showed the development being viable within those allowable limits. He stated that the RFA outlines a developer fee TDC adjustment calculation

methodology that reduces the developer fee, if necessary, at three points in the process, and if the TDC, after the three reductions in developer fee, remains above the acceptable variance of 5 percent of the TDC base limitation for the number of units involved, the credit underwriter may not give a positive recommendation, even if there are enough sources to fund the higher TDC.

Mr. Reecy stated that on July 27, 2015, Liberty Village received one bid response to their general contractor's solicitation for the development, and after reducing costs by accepting certain proposed value engineering items and taking into account the amount of the sole construction bid received for Liberty Village, along with applying all three cuts to the developer fee, which would total approximately \$1 million in fee reduction from the maximum allowable developer fee as outlined in the RFA, the TDC budget would be \$17,725,315, which results in a TDC budget exceeding the TDC per unit based limitation by 20.92 percent above the 5 percent maximum TDC variance that triggers an automatic negative recommendation.

Mr. Reecy stated that on July 20, 2015, Florida Housing received a request to waive the 5 percent TDC variance limitation test for Liberty Village to allow the development to proceed. He asked the Board to approve the request to waive the 5 percent test in the RFA, allowing for a positive credit underwriting recommendation, if otherwise warranted, with a condition that any TDC budget increase above the \$17,725,315 for this development would result in a dollar-for-dollar reduction of the remaining developer fee until there is none left.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Mr. Killingsworth.

Mr. Dubuque asked if this type of waiver had been granted for a previous application. Mr. Reecy stated that it had not. Mr. Dubuque expressed his concerns about setting a precedent if the waiver was granted. Ms. Munilla, Mr. Hawthorne and Chairman Smith echoed his concerns. Mr. Auger explained that it was the post-application discovery of the requirement for a pedestal structure that increased the per unit cost by approximately \$50,000.

Chairman Smith stated that it was the wrong product in the wrong location. Mr. Hawthorne stated that apparently due diligence was not performed prior to submitting the application, or they would have been aware of the pedestal structure requirement.

Mr. Dubuque asked what would have happened to the application if it had been submitted with the higher numbers originally. Mr. Reecy said it would have failed threshold and been ineligible.

Chairman Smith asked the Board Members if they wanted to deny or defer the issue and asked what would happen if it was denied. Mr. Auger stated that he would then recommend that the credits and SAIL that would not be used on this deal be added to the homeless pot to keep the funds going to the same demographic group.

Chairman Smith called the motion.

Motion failed unanimously.

Mr. Auger asked the Board to approve the utilization of the tax credits and SAIL and ELI gap funding associated with the Liberty Village transaction in a request for applications targeted to persons who are homeless and to specifically fund at least one transaction targeting veterans with a disabling condition that lack permanent and stable housing.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Mr. Killingsworth. Motion passed unanimously.

PROFESSIONAL SERVICES SELECTION (PSS)

Item A, Request Approval to Issue a Request for Qualifications (RFQ) for Special Counsel Services.

Hugh Brown asked the Board to authorize staff to issue an RFQ to select multiple qualified attorneys to provide special counsel services to Florida Housing, and to authorize the executive director to establish a review committee to make that selection and make recommendations to the Board.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Mr. Katz. Motion passed unanimously.

Item B, Request Approval to Issue a Request for Qualifications (RFQ) for Technical Assistance Provider.

Nancy Muller asked the Board to authorize staff to issue an RFQ to select one or more technical assistance providers that may be assigned, if necessary, to developers new to the process, to those coming in for the Predevelopment Loan Program, and in situations where Florida Housing believes technical assistance would be helpful. She also asked the Board to authorize the executive director to establish a review committee to review the proposals and make recommendations to the Board.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Ms. Munilla. Motion passed unanimously.

CONSENT AGENDA

Chairman Smith stated that Multifamily Bonds Consent Item A was being pulled for discussion and correction of a typographical error.

Steve Auger asked the Board to approve the staff's recommendation to approve the credit underwriting report for Coquina Place recommending and allocating \$10 million in tax exempt mortgage revenue bonds (as opposed to \$9.75 million as noted in the board package), \$2.592 million in SAIL and \$750,000 in ELI gap funding for the construction of the development subject to further approvals and verifications by the credit underwriter, bond counsel, special counsel and appropriate Florida Housing staff.

Motion to approve staff's recommendation was made by Mr. Tylka with a second by Mr. Killingsworth. Motion passed unanimously.

Chairman Smith asked for a motion to approve the remaining items on the Consent Agenda.

Motion to approve the remaining items on the Consent Agenda was made by Mr. Hawthorne with a second by Mr. Tylka. Motion passed unanimously.

PUBLIC COMMENT

David Deutch, of Pinnacle Housing Group, stated that the credit underwriting process has not been reviewed in many years, and supported a possible overhaul of the process. He also stated that he believes the 50 year affordability period for new developments should be a shorter period of time. Mr. Tylka agreed with Mr. Deutch. Chairman Smith asked Mr. Deutch to submit written comments.

Paola Roman, of Carrfour Supportive Housing, spoke in support of the Liberty Village TDC waiver that had already been denied.

Chairman Smith adjourned the meeting at 10:31 a.m.