

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PASCO COUNTY PARTNERS, LLC,

Petitioner,

v.

DOAH Case No. 09-3330
FHFC Case No. 2009-015GA

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

LEGACY POINTE, INC.,

Petitioner,

v.

DOAH Case No. 09-3332
FHFC Case No. 2009-018GA

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

VILLA CAPRI, INC.,

Petitioner,

v.

DOAH Case No. 09-3333
FHFC Case No. 2009-019GA

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PRIME HOMEBUILDERS,

Petitioner,

v.

DOAH Case Nos. 09-3333
09-3335
09-3336
FHFC Case Nos. 2009-016GA
2009-017GA
2009-020GA

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Della M. Hurvill /DATE. *5/4/2010*

MDG CAPITAL CORPORATION,

Petitioner,

v.

DOAH Case Nos. 09-4031
FHFC Case No. 2009-011GA

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on April 30, 2010. Pasco CWHIP Partners, LLC, Legacy Pointe, Inc., Villa Capri, Inc., Prime Homebuilders, and MDG Capital Corporation (collectively “Petitioners”) all received preliminary commitments for funding under the Community Workforce Housing Innovation Pilot (“CWHIP”) program in our about November, 2008.

In a special session on the 2008-2009 budget held in January, 2009, the Florida Legislature made budget cuts, swept trust fund balances, general revenue, transferred certain funds among programs, and most significantly, commanded Florida Housing to pay \$ 190,000,000 of “unexpended funds,” to the state treasury not later than June 1, 2009. (See Ch. 2009-1, Laws. of Fla.) Those funds have been paid. The Legislature granted Florida Housing broad discretion to determine how to apportion the retrieval of funds to make up the \$190,000,000, and authorized it to do by adopting emergency rules pursuant to s. 120.54(4), Fla. Stat.

On March 13, 2009, after holding public hearing and receiving comments (neither of which is required to adopt an emergency rule) Florida Housing adopted R. 67ER09-3, Fla. Admin. Code, which established the order of deobligation of funds to be used to make up the \$ 190,000,000 payment to the treasury. On April 24, 2009, acting in compliance with R. 67ER09-3, Fla. Admin. Code, the Board accepted staff recommendation to deobligate funding for a number of projects in several programs, including the CWHIP developments of the Petitioners.

In response, the Petitioners timely filed Petitions for Formal Administrative Hearings (“Petitions”) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, challenging the deobligation of the funds preliminarily allocated to their developments.

Florida Housing reviewed the Petitions pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petitions raised disputed issues of material fact. The cases resulting from these Petitions were subsequently consolidated into a single proceeding before the Division of Administrative Hearings (DOAH). Pursuant to Section 120.57(1), Florida Statutes, a formal hearing was held in this case on October 13-14, 2009, in Tallahassee, Florida, before Administrative Law Judge John G. Van Laningham. Petitioners and Florida Housing timely filed Proposed Recommended Orders.

After consideration of the evidence and arguments presented at hearing, and the Proposed Recommended Orders, Judge Van Laningham issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” Judge Van Laningham found that the actions taken by Florida Housing to deobligate funding were modifications of the agency budget, which are not, pursuant to sec. 120.56(16)(c)1, Fla. Stat., within the definition of “rule.” Judge Van Laningham also found that these budget decisions do not fall within the definition of “final order,” in sec. 120.56(7), Fla. Stat. As agency budget decisions are not subject to challenge as either rules or final orders, Judge Van Laningham recommended that Florida Housing issue a Final Order dismissing the consolidated cases for lack of jurisdiction.

Section 120.57(1)(k), Florida Statutes, provides a procedure for Petitioners to challenge the findings of a recommended order entered pursuant to a formal hearing, by filing exceptions to the findings of fact, conclusions of law, an recommendation of the Recommended Order. Petitioners Legacy Pointe, LLC, Villa Capri, Inc., Prime Homebuilders and MDG Capital Corporation timely filed Exceptions to the Recommended Order (hereinafter “Exceptions”), a copy of which is attached hereto as “Exhibit B” and made a part hereof by reference.

RULING ON THE RECOMMENDED ORDER
AND PETITIONERS' EXCEPTIONS

1. The findings of fact set out in the Recommended Order are supported by competent substantial evidence.

2. The conclusions of law in the Recommended Order are supported by competent substantial evidence.

3. The arguments presented in Petitioners' Exceptions are specifically rejected as follows:

a. Petitioners' Exception to Finding of Fact 13 is specifically rejected on the grounds that this Finding of Fact is supported by competent, substantial evidence. Accordingly, this Board is not permitted to reweigh the evidence or judge the credibility of the witnesses. *Rogers v. Department of Health*, 920 So.2d 29 (Fla. 1st DCA 2005).

b. Having found that Conclusion of Law 26 of the Recommended Order is based on competent, substantial evidence, the Board specifically rejects Petitioners' Exception to Conclusion of Law 26.

c. Having found that Conclusions of Law 28-32 of the Recommended Order are based on competent, substantial evidence, the Board specifically rejects Petitioners' Exceptions to Conclusions of Law 28-32.

- d. Having found that Conclusions of Law 33-39 of the Recommended Order are based on competent, substantial evidence, the Board specifically rejects Petitioners' Exceptions to Conclusions of Law 33-39.
- e. Having found that Conclusions of Law 40-45 of the Recommended Order are based on competent, substantial evidence, the Board specifically rejects Petitioners' Exceptions to Conclusions of Law 40-45.
- f. Having found that Conclusions of Law 46-50 of the Recommended Order are based on competent, substantial evidence, the Board specifically rejects Petitioners' Exceptions to Conclusions of Law 46-50.
- g. Having found that Conclusion of Law 51-61 of the Recommended Order is based on competent, substantial evidence, the Board specifically rejects Petitioners' Exception to Conclusions of Law 51-61.
- h. Having found that Conclusions of Law 64 of the Recommended Order are based on competent, substantial evidence, the Board specifically rejects Petitioners' Exceptions to Conclusions of Law 64.
- j. Having found that all of the Findings of Fact and Conclusions of Law of the Recommended Order are based on competent, substantial evidence, the Board specifically rejects Petitioners' Exception to the recommended disposition of these proceedings.

ORDER

In accordance with the foregoing, it is hereby **ORDERED**:

4. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

5. The conclusions of law in the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

6. Petitioners' Exceptions to the Finding of Fact and Conclusions of law are rejected for the reasons stated in paragraph 3 above.

IT IS HEREBY ORDERED that these consolidated cases are **DISMISSED** for lack of jurisdiction.

DONE and ORDERED this 30th day of April, 2010.



FLORIDA HOUSING FINANCE
CORPORATION

By: Stuart Schrage
Chair

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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, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, 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.