

**Florida Housing Finance Corporation  
Board of Directors' Meeting Minutes  
January 26, 2007**

**TIME:** 9:00 a.m.

**LOCATION:** Hyatt Regency Tampa  
2 Tampa City Center  
211 North Tampa Street  
Tampa, Florida

**BOARD MEMBERS PRESENT:**

Lynn Stultz, Chairman  
David Oellerich, Vice Chairman  
James F. Banks, Jr.  
J. Luis Rodriguez  
Zully Ruiz  
Sandra Terry  
Vicki Vargo

**CORPORATION STAFF PRESENT:**

Stephen P. Auger, Executive Director  
Wayne Conner  
Laura Cox  
Rebecca DeLaRosa  
Sheila Freaney  
Barbara Goltz  
Wellington Meffert  
Nancy Muller  
Vicki Robinson  
David Westcott

**ADVISORS AND OTHERS PRESENT:**

Junious Brown, Nabors, Giblin & Nickerson  
Ben Johnson, Seltzer Management  
Doug McCree, First Housing  
Al Cardenas, Tew Cardenas  
Jan Carpenter, Shuffield, Lowman  
Bill Johnston, WLJ Capital  
Warren Husband, Metz, Husband and Daughton  
Jack Weir, Creative Choice Homes  
Lynn Washington, Holland and Knight

Chairman Stultz called the Board of Directors' meeting to order at 9:00 a.m., and confirmed that a quorum was present.

### **ELDERLY HOUSING COMMUNITY LOAN PROGRAM (EHCL)**

Chairman Stultz recognized Vicki Robinson to address the Board regarding Elderly Housing Community Loan Program (EHCL) matters.

**Item A, Rule Amendments to Chapter 67-32, F.A.C.** Ms. Robinson reminded the Board that on September 8, 2006, it authorized staff to proceed with the process to amend Rule Chapter 67-32 of the Florida Administrative Code that governs the Elderly Housing Community Loan Program, which is funded with a portion of the SAIL elderly dollars as required by statute. She stated that a rule development workshop was held on October 13, 2006, and a rule hearing was held on November 28, 2008, and no comments were received, and no changes were suggested by the Joint Administrative Procedures Committee after submittal. She asked the Board to approve the final Rule Chapter 67-32, Florida Administrative Code, and direct staff to continue with the rule amendment process.

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

### **LEGAL**

Chairman Stultz recognized Wellington Meffert to address the Board regarding Legal matters.

**Item A, Harbour Cove Associates, Ltd.** Mr. Meffert stated that the Harbor Cove Associates matter was a continuation of the consideration of the petition for rule waiver that was brought before the Board at the December Board Meeting. Mr. Meffert explained the difference between the usual recommended orders presented to the Board for consideration and the consideration of a petition for waiver or variance. He stated that when a recommended order comes before the Board, it has already been through a hearing process, while a petition for waiver or variance is presented to the Board as the first step in the process, and if it denies a petition, that triggers the right to a hearing before an administrative law judge. He asked the Board to approved staff's recommendation to deny both rule waivers and deny the request for an additional \$2 million in SAIL funds and deny the request for a change in interest rate.

Motion to take the matter up for discussion was made by Mr. Banks with a second by Mr. Oellerich.

Al Cardenas, from the law firm of Tew, Cardenas, representing the petitioner, Harbour Cove Development, reminded the Board that the Petition is based on substantial hardship, and summarized the history of the development, noting that this development is on a brownfield site and as a result of this substantial hardship, the development should get additional funds.

Mr. Oellerich asked about the construction timeline. Mr. Cardenas said the project was almost finished. Mr. Oellerich asked if the actual cost of the mitigation would be reimbursed through different methods. Mr. Cardenas said the total brownfield mitigation costs were approximately \$8 million, which leaves a \$3.9 million gap, and stated they were asking the Board for half of that.

Ms. Vargo stated that in correspondence from Mr. Cardenas he suggests that the litigation proceeds would be applied to the mitigation, but should really be applied to the cost overruns since they are the responsible parties. Mr. Cardenas stated that they have attempted to settle the matter with the seller for the \$500,000 sum, which would be the best case scenario. Ms. Vargo asked if there is another opportunity to receive additional brownfield money from the State of Florida. Mr. Cardenas said they assumed they would get the money, and that was included in the breakdown presented to the Board. Ms. Vargo stated it appears that based on the environmental addendum and the commitments there was enough notice for the developer to be prepared to embark on an environmental cleanup. Mr. Cardenas state that the developer undertook what it felt were all the steps any reasonable developer could take.

Mr. Oellerich asked if they had not taken the approach of coming to Florida Housing to request a variance would there be other means of traditional financing to cover the additional costs. Mr. Cardenas stated that the project was almost finished, so it had already been paid for.

Chairman Stultz reminded the Board that there would be another opportunity for the developer to go through an official proceeding if the request were denied, and added that Florida Housing staff had done due diligence on the matter for months and requests that the petition be denied and let the matter go on to its next course.

Mr. Banks asked if the developer knew about the contamination at the front end of the project. Mr. Cardenas stated they found out after they closed. Ms. Robinson clarified that they knew about the contamination prior to closing on their SAIL loan, at which time they had a remediation plan that was approved by the County in December 2004 and the SAIL loan did not close until May 2005.

Mr. Oellerich agreed with Ms. Stultz regarding the availability of a further step if the Petition were denied. Ms. Vargo asked if a workshop could be held on brownfield matters. Mr. Auger agreed that it would be a good idea.

Mr. Cardenas noted that the developer was also asking for a reduction in the interest rate from 3 to 1 percent, which is today's SAIL interest rate.

Mr. Meffert clarified that the motion to be considered would be to accept staff's recommendation to deny both petitions for waiver.

Motion to accept staff's recommendation was made by Mr. Oellerich with a second by Ms. Terry. Motion passed unanimously.

For the record, Mr. Meffert stated that if the matter goes to the Division of Administrative Hearings, among the fact questions that should be answered is whether some of the cost overruns were attributable to the petitioner's exercise of due diligence; whether some of the cost overruns and delays are attributable to the petitioner's destruction of monitoring wells during construction; and to what extent that delay is part of this.

**Item B, Creative Choice Homes.** Mr. Meffert stated that Creative Choice Homes was petitioning for a rule waiver and asking for additional SAIL funds and a reduction in debt service coverage ratio for Mariner's Landing. He stated that the petition asks for additional funds due to cost overruns attributable to increased costs caused by the series of hurricanes. He asked the Board to approved staff's recommendation to deny the petition for rule waiver.

Motion to approve staff's recommendation was made by Mr. Banks with a second by Ms. Vargo.

Warren Husband, of the law firm of Metz, Husband and Daughton, representing the petitioner, stated the project has taken a \$3.5 million hit in unanticipated problems stemming from the 2004 and 2005 hurricanes. He stated they had \$2 million in cost overruns from a construction perspective and \$1.5 million in additional interest and tax credits because the project's placed in service date had to be delayed. He stated that the developer could have returned its SAIL and tax credits and flipped the land, made money and moved on, but they wanted to do the affordable housing. He stated that the developer isn't asking for additional SAIL money in order to draw a developer fee on the project. He stated there were at least five waivers granted due to increases caused by hurricanes. He then outlined the chronology of the development.

Jack Weir, of Creative Choice Homes, stated that they had closed the SAIL loan at the same time as their equity closing, but many deals close the SAIL loan later. He stated if you close on your equity but don't close on your SAIL loan, Florida Housing does not have the units, because there are provisions in the limited partnership agreement that would enable the general partner to repurchase the deal from the limited partner. He stated that until the SAIL loan closes and there is a LURA on the project, there is no obligation to deliver the units to Florida Housing. He stated that there were a total of seven projects in 2003 and six projects in 2004 that received placed in service extension because of hurricanes. He added that in Texas and Georgia, they have repeatedly provided relief for construction cost overruns directly attributed to natural disasters.

Mr. Oellerich asked for staff clarification on Mr. Weir's statements regarding Florida Housing having done this before. Mr. Auger stated that Florida Housing did approve a number of petitions for rule waiver that extended placed in service deadlines under the tax credit program, but no additional monies were awarded.

Mr. Rodriguez requested a recorded vote on the motion.

Motion to approve staff's recommendation to deny the petitioner's request for variance and adjustment to interest rate passed by a vote of 5-1, with Mr. Rodriguez casting the sole dissenting vote.

### **PROFESSIONAL SERVICES SELECTION (PSS)**

Chairman Stultz recognized Barb Goltz to address the Board regarding PSS matters.

**Item A, Financial Advisor Services.** Ms. Goltz asked the Board to authorize staff to begin the solicitation process to select a qualified financial advisor and to authorize the executive director to establish a review committee to make a recommendation to the Board. She added that Florida Housing uses two financial advisors and one of those contracts expires in June 2007, while the other will be ongoing until a new contract is signed. She stated that the request will allow staff to begin the request for proposals process to select a financial advisor after the two contracts end.

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

Chairman Stultz recognized Mr. Meffert to address the Board regarding PSS matters.

**Item B, Request for Proposals for the Community Workforce Housing Innovation Pilot Program (CWHIP).** Mr. Meffert stated that in the 2006 legislative session, House Bill 1363 passed, authorizing the Community Workforce Housing Innovation Pilot Program (CWHIP), to develop innovative housing for essential services personnel and workforce housing, which is defined as up to 140 percent of area median income, for both multifamily rental and home ownership.

Mr. Meffert stated that the Bill allowed Florida Housing to either go into rulemaking to define the process or to use the request for proposal (RFP) process to award the funds. He stated that staff chose to use the RFP process, as it is more flexible. He stated that four public hearings were held to solicit input and assistance in writing the RFP and to define the terms by which the \$50 million would be awarded, and a draft was posted to the Florida Housing website for comments. He stated that the Bill required several threshold items to be met in order for a project to be considered for funding, and the RFP clearly indicated that each of those items was a threshold item and failure to meet even one of those items would remove a proposal from consideration. He stated that 33 proposals were received, but 20 of them failed to meet threshold and were deemed non-responsive and not scored. He stated that in the RFP process, there is no provision to correct mistakes in proposals as there is in the application process. He stated that the review committee established for the RFP was expanded to seven members, as opposed to the normal three to five members, to even out the scores, and all members of the committee were senior managers, including the executive director, the chief financial officer and various others who run programs. He added that there were three review committee meetings as opposed to the normal two meetings. He asked the Board to approve the review committee's recommendation to fund the eleven projects that were selected by the review committee and to put a 12<sup>th</sup> on a wait list in case any of the others drop out.

Motion to approve the review committee's recommendation was made by Mr. Oellerich with a second by Ms. Ruiz.

Ms. Terry stated that she serves on the Board of the Community Housing Trust in Sarasota, but she did not write their proposal or serve on the committee to score the proposals, so there was no conflict.

Ms. Vargo stated that she supported the RFP process, and appreciated the speed with which it awards funding. Chairman Stultz echoed Ms. Vargo's sentiments, as did Ms. Ruiz.

Motion passed unanimously.

### **RENTAL RECOVERY LOAN PROGRAM (RRLP)**

Chairman Stultz recognized Vicki Robinson to address the Board regarding RRLP matters.

**Item A, Palmetto Ridge Estates.** Ms. Robinson asked the Board to approve staff's recommendation to approve a loan closing extension for Palmetto Ridge Estates to April 1, 2007, due to construction permitting delays.

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

## **STATE APARTMENT INCENTIVE LOAN PROGRAM (SAIL)**

Chairman Stultz recognized Vicki Robinson to address the Board regarding SAIL matters.

**Item A, RFP for New Construction/Substantial Rehabilitation of Commercial Fishing Worker/Farmworker Housing.** Ms. Robinson reminded the Board that statute requires a minimum of 10 percent of the annual SAIL appropriation be targeted to fund farmworker/commercial fishing worker housing. She stated that through discussions with stakeholders and from experience in prior years, staff determined that pairing SAIL farmworker funds with USDA's Rural Development funds is an effective utilization of the set-aside, but due to the timing of the Universal Application Cycle, it is difficult for developers to pair the SAIL funding with the Rural Development funds. She asked the Board to approve staff's recommendation to award a portion of the SAIL farmworker/commercial fishing worker allocation through a request for proposals process and direct staff to draft and issue an RFP to solicit proposals for new construction and/or substantial rehabilitation of farmworker/commercial fishing worker housing.

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

**Item B, McCurdy Center.** Ms. Robinson stated that McCurdy Center is a proposed 93-unit homeless development in Palm Beach County, and that on October 20, 2006, the Board approved the development for funding and directed staff to proceed with the issuance of a firm loan commitment. She stated that on October 26, 2006, a firm commitment letter was issued with a closing deadline of December 27, 2007, but on December 26, the credit underwriter received the 2006 financial statements which revealed that the developer, Greater Miami Neighborhoods, was in default without the staff discovering the circumstances surrounding the defaults on two existing properties that the borrower had previously failed to disclose to staff and counsel, and staff felt it was unacceptable to allow the pending SAIL loan to close. She stated that on December 28, 2006, staff received a letter from the developer requesting an extension of the SAIL loan closing deadline until April 4, 2007. Based on the defaults and developer's limited cash liquidity that was revealed in the audited financials, the underwriter and staff recommend an extension of the SAIL loan closing subject to the developer providing a letter of credit in the amount of five percent of the construction costs, or if the letter of credit cannot be provided, staff recommends that no funding be provided until the development is 100 percent lien-free complete to alleviate Florida Housing's risk during construction. Ben Johnson stated that the greatest risk is during the construction period, and to mitigate that, additional collateral was needed.

Motion to approve staff's recommendation was made by Mr. Oellerich with a second by Mr. Banks.

Mr. Auger stated that there was an experienced, creditworthy syndicator involved in the project so that should there be any issues with the developer, there would be a syndicator that could get a general contractor there to ensure the project got done. Mr. Johnson stated Florida Housing's funding was a very small component of the overall funding. He stated that the project was a homeless deal in Belle Glade and the community is very involved, as is the non-profit partner that will run and manage the assisted living facility.

Motion passed unanimously.

## **SINGLE FAMILY BONDS**

Chairman Stultz recognized Barb Goltz to address the Board regarding Single Family Bond matters.

**Item A, Single Family Homeowner Program.** Ms. Goltz stated that Florida Housing sold its last homeowner mortgage revenue bonds in November and closed in December. She asked the Board to authorize staff to go into the market again for up to \$200 million of homeowner mortgage revenue bonds to allow continuous funding for the homeowner mortgage revenue bond program.

Motion to approve staff's recommendation was made by Ms. Terry with a second by Ms. Ruiz. Motion passed unanimously.

## **SPECIAL ASSETS**

Chairman Stultz recognized Laura Cox to address the Board regarding Special Asset matters.

**Item A, Arundel Apartments.** Ms. Cox reminded the Board that Arundel Apartments is a 24-unit apartment building in Miami Beach that received a 1990 allocation of housing credits in the amount of \$150,250. She stated that due to non-compliance, the credits were recaptured in 2002 and monetary penalties were paid to the IRS. She stated that the current owner purchased the development in July 2005 and came before the Board twice to discuss transferring the use restrictions in a two-for-one swap. She stated that in July 2006 the Board authorized staff to negotiate the substitution and transfer of the use restrictions subject to the following conditions: The first mortgage on the proposed property will be reduced to meet the pro forma rent and debt service; lead-based paint and asbestos surveys will be completed and the recommendations from those tests will be complied with; and the project would have a new 50 year use restriction agreement. She asked the Board to approve the transfer and amendments to the use restrictions to the proposed development subject to the conditions outlined in the credit underwriting report and further approvals by the credit underwriter.

Motion to approve staff's recommendation was made by Mr. Banks with a second by Ms. Terry.

Ms. Ruiz asked if the development had a 40 year certification from the City of Miami. Ms. Cox stated she did not know about a 40 year certificate, but that was why the physical needs assessment was done and they have to comply with all requirements found in that assessment. Doug McCree from First Housing stated that they could include that as a condition of the loan closing.

Ms. Vargo stated that she did not support staff's recommendation to give up affordable housing units on Miami Beach and transfer those units to a neighborhood where there is already plenty of affordable housing. Mr. Oellerich asked for clarification that the property in question was vacant and had been vacant for quite some time, and had no future use as affordable housing. Ms. Cox assured him that was the case.

Motion to approve staff's recommendation passed by a vote of 5-1, with Ms. Vargo casting the sole dissenting vote.

## **UNIVERSAL CYCLE**

Chairman Stultz recognized Vicki Robinson to address the Board regarding Universal Cycle matters.

**Item A, 2007 Universal Cycle.** Ms. Robinson stated that as a result of a public meeting and three rule development workshops, staff has revised the Universal Application and the rules governing the multifamily programs. She asked the Board to approve staff's recommendation to approve the proposed strike-through version of the Universal Application and Qualified Allocation Plan and authorize staff to file the rules for adoption if a notice of change is not required, and if a notice of change is required, authorize the chair to determine whether the notice of change makes material, substantive changes to the rule chapters, and if she determines it does not, approve such notice of change without the requirement for another Board Meeting. If the Chair determines that the notice of change does make material, substantive changes to the rule chapters, she asked the Board to approve staff's recommendation that a telephonic Board Meeting be called to obtain approval for any other required changes.

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

## **CONSENT AGENDA**

Ms. Vargo made a motion to pull Multifamily Bonds Consent Item D for discussion. Mr. Banks seconded the motion.

Motion to pull Multifamily Bonds Consent Item D for discussion passed unanimously.

Chairman Stultz asked for motion to approve everything on the January 26, 2007, Consent Agenda with the exception of PLP Consent Item B, SAIL Consent Item E, and Multifamily Bonds Consent Item D.

Motion to approve everything on the Consent Agenda with the exception of the items mentioned was made by Ms. Vargo with a second by Ms. Ruiz. Motion passed unanimously.

Ms. Vargo made a motion to approve Multifamily Bonds Consent Item D regarding Brittany at Rosemont I and II by approving staff recommendation to approve the assumption and amendment of the LURA obligation to the development, subject to further approvals and verifications by the credit underwriter, bond counsel, special counsel and appropriate Florida Housing staff, including insuring that the lighting, unit marking and security issues are specifically addressed.

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

Hearing no further business, Chairman Stultz adjourned the January 26, 2007, Board of Directors' Meeting at 11:45 a.m.