

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
September 8, 2017
Action Items



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Action

I. LEGAL

A. Pinnacle Housing Group – Approval of Settlement Agreement

1. Background

- a) At its March 24, 2017 meeting, the Board of Directors (“Board”) authorized staff to issue an Administrative Complaint against Pinnacle Housing Group, LLC (“PHG”) and certain of its Affiliates and Principals, alleging material misrepresentation and fraudulent actions in connection with Corporation programs, pursuant to Fla. Admin. Code R. 67-48.004(2).
- b) Staff issued the Administrative Complaint on May 1, 2017, and an accompanying Temporary Order of Suspension on May 2, 2017. Staff referred the Administrative Complaint and PHG’s Response thereto to the Division of Administrative Hearings (DOAH) on June 5, 2017 to be scheduled for a final hearing. Final hearing is currently scheduled for November 2017. While the Administrative Complaint case was proceeding at DOAH, PHG filed a Petition to Review the Temporary Suspension Order at the Third District Court of Appeal. While the Petition was pending and with the consent of the Court, an Amended Temporary Order of Suspension was issued on June 27, 2017 to clarify the initial Temporary Order. The Third District Court of Appeal denied PHG’s Petition to Review on August 10, 2017. Additionally, on June 30, 2017, PHG filed a Complaint for Declaratory and Injunctive Relief against Florida Housing and the State of Florida, seeking a declaration of unconstitutionality and enjoinder of the enforcement of certain proviso language set forth in Specific Appropriation 2225 of the 2017-2018 General Appropriations Act, which bars Florida Housing from issuing certain funding to entities having been served with an Administrative Complaint.

2. Present Situation

- a) Florida Housing and PHG entered mediation regarding the three separate lawsuits referenced above, for the purpose of engaging in good faith negotiations to reach mutual resolution on the lawsuits through a neutral arbiter. The mediation was held on August 16, 2017 in Tallahassee. At mediation, Florida Housing and PHG came to an agreement, subject to Board approval, to resolve all of the lawsuits that has been incorporated into a fully executed Settlement Agreement set forth in [Exhibit A](#). The pertinent terms of the Settlement Agreement include:
 - For the next two RFA cycle years (2017-2018 and 2018-2019), if any project is submitted by PHG or the related Affiliates and Principals, the PHG entity will be limited to developer fees capped at 5% and General Contractor fees capped at 6%. The limitation will apply to the following RFAs: Miami-Dade 9%, Large County Geographic 9%, Small Medium Geographic 9%, Preservation 9%, Revitalization 9%, Family & Elderly SAIL, and Workforce. The limitation will not apply to other RFAs. Should any project include a PHG-related developer and an unrelated co-developer, the project can still receive a full developer fee so long as the PHG-related developer receives no more than 5%.

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- The Pinnacle at Peacefield development will be awarded consistent with the scoring recommendations for RFA 2016-113; however, PHG's developer fee will be capped at 13% and the general contractor fee will be capped at 12%.
- Any future deals awarded to PHG subject to the Settlement Agreement will undergo a heightened level of scrutiny whereby at least 12 subcontractors are audited and at least 80% of costs are audited.
- PHG will pay Florida Housing's attorneys' fees and costs.
- Florida Housing will withdraw the Administrative Complaint against PHG.
- PHG will withdraw the Complaint for Declaratory and Injunctive relief against Florida Housing and the State of Florida regarding proviso language.
- PHG will not pursue the Third District Court of Appeal case any further.

3. Recommendation

- a) Staff recommends the Board approve the Settlement Agreement set forth in Exhibit A.

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B. Madison Point, LLC and American Residential Development, LLC vs. Florida Housing Finance Corporation and HTG Hudson, LLC and Heritage Oaks, LLLP. DOAH Case No. 17-3270BID, FHFC 2017-031BP

1. Background

- a) This case regards a protest filed in Request for Applications 2016-113 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”). Madison Point, LLC and American Residential Development, LLC (collectively referred to as “Madison Point” or “Petitioners”), Intervenor HTG Hudson, LLC (“HTG Hudson”), and Intervenor Heritage Oaks, LLLP (“Heritage Oaks”) applied for funding through the RFA seeking an allocation of housing credits for proposed developments in Pinellas County. Madison Point, HTG Hudson, and Heritage Oaks were all deemed eligible for funding and funding was preliminarily awarded to Heritage Oaks.
- b) Madison Point timely filed a notice of intent to protest and formal written protest challenging the eligibility of the applications for HTG Hudson and Heritage Oaks. Heritage Oaks and HTG Hudson timely intervened. During the course of the litigation, Madison Point, Florida Housing, and HTG Hudson agreed that HTG Hudson’s application was ineligible for funding.
- c) The ultimate issues at hearing were Madison Point’s allegations that Heritage Oaks’ application was ineligible for 1) failure to select the appropriate Development Category, 2) failure to accurately respond to the question regarding occupancy status, and 3) failure to submit a proper Local Government Contribution Form.
- d) The petition was referred to the Division of Administrative Hearings (DOAH) and the formal hearing was scheduled for July 5, 2017. Based on information discovered through the course of the litigation, Florida Housing took the position at hearing that Heritage Oaks’ application should be ineligible for failure to accurately respond to the question regarding occupancy status but disagreed with the other issues raised by Madison Point.

2. Present Situation

- a) The hearing was conducted as scheduled on July 5, 2017, before Administrative Law Judge (“ALJ”) Yolanda Y. Green at the Division of Administrative Hearings in Tallahassee, Florida. After the hearing, the parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the ALJ issued a Recommended Order on August 11, 2017, a copy of which is attached as [Exhibit B](#). The ALJ determined that Heritage Oaks’ failure to accurately respond to the occupancy status of existing units was a false statement and material deviation and, therefore, Florida Housing’s scoring decision was contrary to the terms of the RFA and clearly erroneous.
- b) The Recommended Order recommended that Florida Housing enter a final order rescinding the intended award to Heritage Oaks and designate Madison Point as a recipient of funding under RFA 2016-113.
- c) On August 21, 2017, Heritage Oaks filed Exceptions to the Recommended Order, a copy of which is attached as [Exhibit C](#). Heritage Oaks seeks

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Exceptions to Findings of Fact 45, 46, 48, and 50 and Conclusions of Law paragraphs 81, 82, and 83. Essentially, Heritage Oaks objects to the ALJ's findings and conclusions involving whether Heritage Oaks provided incorrect information regarding the occupancy status question and, if that information was incorrect, whether it should have been waived as a minor irregularity.

- d) On August 29, 2017, Madison Point and Florida Housing filed a Joint Response to Heritage Oaks' Exceptions to Recommended Order, attached as [Exhibit D](#). Madison Point and Florida Housing responded that there is competent, substantial evidence in the record to support Findings of Fact 45, 46, 48, and 50 as well as Conclusions of Law paragraphs 81, 82, and 83.

3. **Recommendation**

- a) Staff recommends that the Board:
 - (1) Reject all of Heritage Oaks' exceptions and adopt the Findings of Fact, Conclusions of Law and Recommendation as set forth in the Recommended Order, and
 - (2) Enter a Final Order consistent with the same.

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Action Supplement

I. LEGAL

A. **Blue Broadway, LLC v. Florida Housing Finance Corporation, DOAH Case No. 17-3273BID, FHFC Case No. 2017-032BP (Intervenor West River Phase 2, LP)**

1. **Background**

- a) This case regards Request for Applications (“RFA”) 2016-113, which solicited applications to compete for an allocation of Federal Low-Income Housing Tax Credit funding (“tax credits”) for affordable housing developments located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties. Petitioner Blue Broadway and Intervenor West River submitted applications in response to the RFA. On May 5, 2017, Florida Housing posted notice of its intended decision to award funding to seven applicants, including West River. Blue Broadway was determined to be eligible and scored the maximum number of points, but it was not selected for funding due to having a higher lottery number than West River.
- b) Petitioners timely filed a notice of intent to protest and formal written protest as required by section 120.57(3), Florida Statutes, challenging the Corporation’s scoring and ranking of Applicants for funding under the RFA. West River properly and timely filed for intervention to participate in the case. Because there were material facts in dispute, the case was referred to the Division of Administrative Hearings for a formal hearing.
- c) The central issue here is whether Florida Housing’s decisions to award or deny funding under the RFA, as proposed on May 5, 2017, are contrary to the agency’s governing statutes, the agency’s rules or policies, or the solicitation specifications. More specifically, the issue is whether Florida Housing’s determination that the application of West River was eligible for funding was within the bounds described above. If West River had been deemed ineligible, Blue Broadway would have been recommended for funding.
- d) Blue Broadway alleged in its petition that the West River application was deficient for failure to properly identify the Principals of the Developer, and also for failure to fulfill the requirements to get points for developer experience. During discovery prior to the hearing, Florida Housing concluded that Blue Broadway’s allegations were correct, and agreed that West River should not have been recommended for funding. As a result, Florida Housing filed a Notice of Change of Position with the Administrative Law Judge.

2. **Present Situation**

- a) A hearing was conducted on July 11, 2017, before Administrative Law Judge Linzie F. Bogan. All parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on August 29, 2017. The Recommended Order concluded that West River’s application should have been found ineligible, and that Blue Broadway should have been recommended for funding under RFA

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Action Supplement

2016-110. A copy of the Recommended Order is attached as Supplemental [Exhibit A](#).

- b) West River timely filed several Exceptions to the Recommended Order on September 13, 2017, attached as Supplemental [Exhibit B](#). Blue Broadway and Florida Housing each filed Responses to the Exceptions, attached as Supplemental Exhibits [C](#) and [D](#).

3. Recommendation

- a) Staff recommends that the Board reject all of West River's Exceptions, 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 recommending that Blue Broadway be awarded funding instead of West River.

MULTIFAMILY PROGRAMS

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II. MULTIFAMILY PROGRAMS

A. Request for Applications (RFA) 2017-109 Development Viability Loan Funding

1. Background

- a) On July 20, 2017, Florida Housing Finance Corporation (Florida Housing) issued RFA 2017-109 offering \$20 million in loan funding for Developments experiencing a significant reduction in Housing Credit equity as a result of changing market conditions.
- b) The deadline for receipt of Applications was 11:00 a.m., Eastern Time, Monday, August 7, 2017.

2. Present Situation

- a) Florida Housing received 8 Applications in response to this RFA. The Review Committee members, designated by the Executive Director, were Kevin Tatreau, Director of Development Finance (Chair); Elizabeth O'Neill, Multifamily Programs Manager; and Lisa Nickerson, Multifamily Programs Manager. Each member of the Review Committee independently evaluated and scored their assigned portions of the submitted Applications, consulting with non-committee staff and legal counsel as necessary and appropriate.
- b) At its August 22, 2017 Review Committee meeting, the individual committee members presented their scores and the Committee carried out the funding selection process in accordance with Section Five of the RFA.
- c) The RFA 2017-109 All Applications chart (provided as [Exhibit A](#)) lists the eligible and ineligible Applications. The eligible Applications (i.e., Applications that met all criteria to be eligible to be considered for funding) and the ineligible Applications are listed in assigned Application Number order.
- d) The Review Committee considered the following motions:
 - (1) A motion to adopt the scoring results, as set out on Exhibit A;
 - (2) A motion to tentatively select the Applications set out on [Exhibit B](#) for funding and issue Corporation letters of preliminary award to the Applicants.
- e) The motions passed unanimously.
- f) As outlined in Section Six of the RFA, after issuance by the Board of all final orders regarding this RFA, each approved Application will be sent a Corporation letter of preliminary award.

MULTIFAMILY PROGRAMS

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3. **Recommendation**

- a) Approve the Committee's recommendations that the Board adopt the scoring results of the 8 Applications (set out on Exhibit A), and authorize the tentative selection of the 7 Applications (set out on Exhibit B) for funding.
- b) An unallocated balance of \$ 13,472,173 of funding remains. As provided in Section Five of the RFA, any remaining funding will be distributed as approved by the Board.
- c) If no notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., staff will proceed to issue a Corporation letter of preliminary award to the Applications set out on Exhibit B.
- d) If a notice of protest or formal written protest is filed in accordance with Section 120.57(3), Fla. Stat., et. al., then at the completion of all litigation, staff will present all Recommended Orders for Board approval prior to issuing the Corporation letters of preliminary award to those Applicants in the funding range.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

III. PROFESSIONAL SERVICES SELECTION (PSS)

A. Request for Qualifications (RFQ) 2017-01, Credit Underwriting, Construction & Permanent Loan Servicing, and Compliance Monitoring

1. Background

- a) At the February 3, 2017 meeting, the Board authorized Florida Housing staff to issue a solicitation to procure qualified firms to provide Credit Underwriting, Construction & Permanent Loan Servicing, and Compliance Monitoring services.

2. Present Situation

- a) Request for Qualifications (RFQ) 2017-01 was issued on Tuesday, June 13, 2017 and one addendum was subsequently posted. The deadline for receipt of responses was 2:00 p.m., Wednesday, July 12, 2017. A copy of the RFQ and the addendum are provided as [Exhibit A](#).
- b) Three responsive responses were received by the deadline from the following:
 - (1) AmeriNat, LLC
 - (2) First Housing Development Corporation of Florida
 - (3) Seltzer Management Group, Inc.
- c) Members of the review committee were Kevin Pichard, Assistant Director of Guarantee Program (Chairperson); Karla Brown, Multifamily Programs Manager; Kenny Derrickson, Assistant Comptroller; David Hines, Compliance Monitoring Administrator; and Brian Williams, Special Assets Manager.
- d) Each member of the Review Committee individually reviewed the proposals submitted prior to convening for the Review Committee meeting which was held at 2:00 p.m., Thursday, August 17, 2017.
- e) At the August 17th meeting, the Review Committee members provided their final scores for the responses received. The score sheet is provided as [Exhibit B](#).

3. Recommendation

- a) The review committee recommends that the Board authorize Florida Housing to enter into contract negotiations with all three respondents: AmeriNat, LLC, First Housing Development Corporation of Florida, and Seltzer Management Group, Inc.

PROFESSIONAL SERVICES SELECTION (PSS)

Action

B. Request for Qualifications (RFQ) 2017-05, Investment Managers

1. Background

- a) At the May 5, 2017 meeting, the Board authorized Florida Housing staff to issue a solicitation to procure qualified firms to provide Investment Manager services.

2. Present Situation

- a) Request for Qualifications (RFQ) 2017-05 was issued on Monday, June 26, 2017. The deadline for receipt of responses was 2:00 p.m., Wednesday, July 12, 2017. A copy of the RFQ is provided as [Exhibit C](#).
- b) Nine responsive responses were received by the deadline from the following:
 - (1) Allianz Global Investors Distributors LLC
 - (2) Chandler Asset Management, Inc.
 - (3) Garcia Hamilton and Associates, L.P.
 - (4) Guggenheim Partners Investment Management, LLC
 - (5) Insight North America LLC
 - (6) LM Capital Group LLC
 - (7) Logan Circle Partners, L.P.
 - (8) PFM Asset Management LLC
 - (9) Western Asset Management Company
- c) Members of the review committee were Kirstin Helms, Assistant Comptroller (Chairperson); Denise Monzingo, Accounting Manager; and Melanie Weathers, Senior Financial Administrator.
- d) Each member of the Review Committee individually reviewed the proposals submitted prior to convening for the Review Committee meeting which was held at 10:00 a.m., Friday, August 18, 2017.
- e) At the August 18th meeting, the Review Committee members provided their final scores for the responses received. The score sheet is provided as [Exhibit D](#).

PROFESSIONAL SERVICES SELECTION (PSS)

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3. Recommendation

- a) The review committee recommends that the Board authorize Florida Housing to enter into contract negotiations with the two highest scoring respondents, Logan Circle Partners, L.P. and PFM Asset Management LLC. Should contract negotiations with any of these respondents fail, the Review Committee recommends that the Board authorize Florida Housing staff to negotiate with the third highest scoring respondent, Chandler Asset Management, Inc.