

**FLORIDA HOUSING FINANCE CORPORATION**  
**Board Meeting**  
**July 27, 2018**  
**Action Items**



## LEGAL

### *Action*

#### I. LEGAL

##### A. Osceola Palos Verdes, Ltd., v. Florida Housing Finance Corporation, FHFC 2018-041BP

###### 1. Background

- a) This case regards a protest filed against the funding awarded under Request for Applications 2018-109 Development Viability Loan Funding (the “RFA”). Petitioner Osceola Palos Verdes, Ltd (“Palos Verdes”) applied for funding through the RFA seeking viability loan funding for its proposed Development to be located in Osceola County. The Review Committee determined that Palos Verdes was ineligible for funding because it was a “Related Application” to two other applicants contrary to the terms of the RFA.
- b) Palos Verdes timely filed a Notice of Intent to Protest and a Formal Written Protest (“Petition”) challenging Florida Housing’s scoring of its Application, alleging that Florida Housing erred in deeming Palos Verdes ineligible. A Notice to Bidders was issued by Florida Housing informing all bidders that their substantial interests might be affected by the Petition. No bidders sought to intervene.

###### 2. Present Situation

- a) The purpose behind the limitation in the RFA to no more than two Related Applications is to ensure that no natural person Principal or corporate entity Principal benefits from more than two applications receiving Development Viability Loan funding. As a result of settlement discussions, Palos Verdes and Florida Housing agree that while Palos Verdes is Related to two applications submitted in the RFA, no natural person Principal or corporate entity Principal involved in any of the three Related Applications benefits from more than two applications receiving Development Viability Loan funding.
- b) In the interest of avoiding the time, expense, and uncertainty of litigation, Palos Verdes and Florida Housing entered into a Consent Agreement, attached as [Exhibit A](#). The Consent Agreement results in Palos Verdes being deemed an eligible application and awarded Development Viability Loan funding, subject to credit underwriting. The Consent Agreement does not displace any other applicants recommended for funding in the RFA.

###### 3. Recommendation

- a) Staff recommends that the Board adopt the Consent Agreement and issue a Final Order in accord with the Consent Agreement.

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#### **B. Cathedral Townhouse, Ltd., v. Florida Housing Finance Corporation and Hogan Creek Redevelopment Partners, LLC; FHFC 2018-013BP, DOAH Case No.: 18-2021BID**

##### **1. Background**

- a) This case regards a protest filed against the funding awards under Request for Applications 2017-114 Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the “RFA”). Petitioner Cathedral Townhouse, Ltd (“Cathedral”) applied for funding through the RFA for its proposed Development to be located in Duval County.
- b) Eight applicants applied for funding in the RFA. All eight applications were deemed eligible, but only six applicants were selected for funding due to the amount of funding available. Cathedral and St. Andrew Towers I, Ltd (“St. Andrew”) were not preliminarily selected for funding under the RFA.
- c) Cathedral, St. Andrew, and Hogan Creek Redevelopment Partners, LLC (“Hogan Creek”) timely filed protests to the notice of intended decision issued by Florida Housing on March 16, 2018. The cases were referred to the Division of Administrative Hearings and consolidated.
- d) Applicant SP Tower, LLC (“SP Tower”) intervened in the Cathedral and St. Andrew petitions. St. Andrew intervened in the Hogan Creek petition. Palms of Deerfield Apartments, LLP (“Deerfield”) intervened in the Cathedral and St. Andrew petitions.

##### **2. Present Situation**

- a) SP Tower was selected for preliminary funding under the RFA. On May 2, 2018, the parties entered into a Consent Agreement, attached as [Exhibit B](#) agreeing that because SP Tower accepted funding under RFA 2017-108, it was ineligible to receive funding under RFA 2017-114. Because SP Tower is ineligible for funding, then pursuant to the ranking and selection process outlined in RFA 2017-114, St. Andrew will be selected for funding, subject to credit underwriting.
- b) A hearing was held on May 14, 2018 at the Division of Administrative Hearings (“DOAH”). At hearing, Hogan Creek and St. Andrew voluntarily dismissed their petitions, and Hogan Creek was granted status as a named intervenor in Cathedral’s proceeding. Cathedral challenged Florida Housing’s scoring of the Hogan Creek application alleging that Hogan Creek was ineligible because Hogan Creek’s equity proposal letter contained errors in designating the beneficiary.
- c) After SP Tower’s ineligibility and subsequent selection of St. Andrew for funding and the preliminary selection of six other applicants (including Hogan Creek) for funding, Cathedral is the only eligible, un-funded applicant in RFA 2017-114.

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- d) In order to avoid the time, expense, and uncertainty of further litigation, the parties entered into a Consent Agreement, attached as [Exhibit C](#). Florida Housing agrees to recommend fully funding the Cathedral application, subject to credit underwriting. The funding of the Cathedral application will not rescind or affect the funding awarded to any other application in RFA 2017-114. Cathedral agreed to voluntarily dismiss its petition with prejudice. The Consent Agreement results in all eligible applications in RFA 2017-114 being funded, subject to credit underwriting.

### 3. **Recommendation**

- a) Staff recommends that the Board adopt both Consent Agreements and issue a Final Order in accord with same.

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**C. Fair Oaks, LLC and Landmark Development, Corp., v. Florida Housing Finance Corporation and Las Brisas Estates, LLC and East Florida City, LLC; FHFC 2018-033BP, DOAH Case No.: 18-2953BID**

**1. Background**

- a) This case regards a protest filed against the funding awards under Request for Applications 2017-112 Housing Credit Financing for Affordable Housing Developments Located in Miami-Dade County (the “RFA”). Petitioners Fair Oaks, LLC and Landmark Development, Corp., (collectively referred to as “Fair Oaks”) applied for funding through the RFA for its proposed Development to be located in Miami-Dade County.
- b) Twenty-nine (29) applicants applied for funding in the RFA. Twenty-five (25) applications were deemed eligible, but only three applicants were selected for funding due to the amount of funding available. East Florida City, LLC (“East Florida City”) proposed a Development named Cordova Estates and was preliminarily selected for funding. Fair Oaks and Las Brisas Estates, LLC (“Las Brisas”) were deemed eligible but not preliminarily selected for funding.
- c) Fair Oaks timely filed a protest to the notice of intended decision issued by Florida Housing on May 4, 2018. Las Brisas and East Florida City timely intervened. The case was referred to the Division of Administrative Hearings and set for hearing on July 9, 2018.

**2. Present Situation**

- a) Prior to hearing, the parties executed a consent agreement, attached as [Exhibit D](#), in which East Florida City and Las Brisas agreed that both applications selected bus stops that did not meet the definition of a Public Bus Rapid Transit Stop in the RFA. Therefore, both Las Brisas and East Florida City are ineligible under the terms of the RFA because they failed to obtain the minimum required transit service score.
- b) Since East Florida City and Las Brisas are ineligible, according to the ranking and selection process in the RFA, Fair Oaks should be selected for funding subject to credit underwriting.

**3. Recommendation**

- a) Staff recommends that the Board adopt the Consent Agreement and issue a Final Order in accord with same.

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**D. Madison Highlands, LLC and American Residential Development, LLC v. Florida Housing Finance Corporation, DOAH Case No. 18-1558BID, FHFC Case No. 2016-006BP (Intervenors SP Gardens, LLC, and City Edge Senior Apartments, Ltd.)**

**1. Background**

- a) This case regards Request for Applications (“RFA”) 2015-107, 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 Madison Highlands and Intervenors City Edge and SP Gardens submitted applications in response to the RFA. On January 29, 2016, Florida Housing posted notice of its intended decision to award funding to several applicants, including SP Gardens. The Board found that City Edge, West River Phase 2, LP (“Boulevard”), and West River Phase 1A, LP (“Bethune”) satisfied all mandatory and eligibility requirements for funding and received 28 out of 28 Total Points, but awarded funding to SP Gardens on the basis that it had the lowest lottery number. Madison Highlands’ application was scored as having satisfied all mandatory and eligibility requirements for funding but received 23 out of 28 Total Points.
- b) Petitioners 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. Florida Housing dismissed the formal written protest for failing to demonstrate standing, and proceeded to invite SP Gardens into credit underwriting. After a lengthy appellate process the dismissal of Madison Highlands was overturned, and the case was eventually referred to the Division of Administrative Hearings for a formal hearing. SP Gardens and City Edge intervened in the case; Boulevard and Bethune had previously intervened, but filed notices of withdrawal.
- c) At the hearing, Florida Housing stipulated that Boulevard and Bethune’s applications should have been found ineligible. As part of the appellate process, Florida Housing agreed that if Madison Highlands prevailed in its challenge to the four other applicants, its own application would be funded through a forward allocation. Florida Housing also took the position that if only SP Gardens, Boulevard, and Bethune were found ineligible, that the City Edge application should be recommended for funding through a forward allocation. Finally, Florida Housing agreed that regardless of the outcome of the hearing, the funding already awarded to SP Gardens would not be rescinded, since SP Gardens has already completed credit underwriting and commenced construction.

**2. Present Situation**

- a) A hearing was conducted on April 12, 2018, before Administrative Law Judge D.R. Alexander. All parties filed Proposed Recommended Orders. After reviewing the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on June 6, 2018. The Recommended Order affirmed Florida Housing’s determination that SP Gardens was properly

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awarded funding under RFA 2015-107 and recommended that the Petition be dismissed. A copy of the Recommended Order is attached as [Exhibit E](#).

- b) Madison Highlands timely filed eight Exceptions to the Findings of Fact and Conclusions of Law in the Recommended Order, attached as [Exhibit F](#). City Edge timely filed three Exceptions to the Findings of Fact and Conclusions of Law in the Recommended Order, attached as [Exhibit G](#). Florida Housing and City Edge all timely filed Responses to the Exception, attached as [Exhibit H](#).

### 3. **Recommendation**

- a) Staff recommends that the Board reject the exceptions and adopt the Findings of Fact, Conclusions of Law, and Recommendation in the Recommended Order.

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**E. HTG Heron Estates Family, LLC, vs. Florida Housing Finance Corporation and Ocean Breeze East Apartments, LLC (Respondents); FHFC Case No.: 2018-018BP, DOAH Case No.: 18-2130BID**

**Channel Side Apartments, Ltd, vs. Florida Housing Finance Corporation and Ocean Breeze East Apartments, LLC (Respondents) and HTG Heron Estates Family, LLC (Intervenor); FHFC Case No.: 2018-024BP, DOAH Case No.: 18-2132BID**

**1. Background**

- a) This case regards protests filed in Request for Applications 2017-113 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”). HTG Heron Estates Family, LLC (“HTG Heron”), Channel Side Apartments, Ltd., (“Channel Side”), Ocean Breeze East Apartments, LLC (“Ocean Breeze”), applied for funding through the RFA for proposed Developments in Palm Beach County.
- b) All applications subject to this litigation were initially deemed eligible for funding. Ocean Breeze was preliminarily selected for funding as the Palm Beach County proposed Development.
- c) HTG Heron, Channel Side and Ocean Breeze timely filed notices of intent to protest and formal written protests challenging the scoring process. Ocean Breeze voluntarily dismissed its petition and was granted status as a named party in the proceedings. HTG Heron timely intervened in the Channel Side petition.
- d) HTG Heron and Channel Side contested the eligibility of Ocean Breeze alleging fatal errors within Ocean Breeze’s site control documentation. Channel Side also challenged the eligibility of HTG Heron by alleging the address of HTG Heron’s proposed Development materially deviated from the requirements of the RFA.. Ocean Breeze challenged the site control documentation of Channel Side.
- e) At hearing, Florida Housing argued that its initial scoring and eligibility determinations for HTG Heron, Channel Side, and Ocean Breeze were correct, reasonable, and in accord with Florida Housing’s rules and the RFA specifications.
- f) The matters were referred to the Division of Administrative Hearings (DOAH) and consolidated. A hearing in the consolidated matter was held on May 21, 2018 in Tallahassee, Florida.

**2. Present Situation**

- a) The hearing was conducted as scheduled before Administrative Law Judge (“ALJ”) Hetal Desai 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 June 29, 2018. A copy of the Recommended Order is attached as [Exhibit I](#). The ALJ concluded that based on a preponderance of evidence: 1) Ocean Breeze’s application is eligible for funding, it received the proper scoring, and it should be the intended award for Palm Beach County; 2) HTG Heron’s address was established and its application is eligible for funding;



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and 3) Channel Side's application is eligible for funding. The ALJ concluded that the evidence failed to demonstrate that Florida Housing's were clearly erroneous, arbitrary, capricious, or contrary to competition.

- b) The Recommended Order recommended that Florida Housing enter a final order 1) finding the applications of Ocean Breeze, HTG Heron, and Channel Side eligible for funding; 2) awarding the RFA Palm Beach County funding to the Ocean Breeze proposed Development; and 3) dismissing the protests filed by HTG Heron and Channel Side.
- c) Florida Housing filed exceptions to three paragraphs of the Recommended Order, attached as [Exhibit J](#). In its exceptions, Florida Housing does not seek to overturn or disturb the ultimate conclusions and eligibility decisions reached by the ALJ. Rather, Florida Housing requests to remove findings of fact and conclusions of law that are not based on competent, substantial evidence and not necessary to the ultimate findings.

### 3. **Recommendation**

- a) Staff recommends that the Board accept Florida Housing's exceptions to the Recommended Order and reject Findings of Fact Paragraphs 26 and 48 and Conclusions of Law Paragraph 89. Staff recommends that the Board enter a Final Order that adopts the Findings of Fact except for Paragraphs 26 and 48, the Conclusions of Law except Paragraph 80, and the Recommendation of the Recommended Order.

## MULTIFAMILY ALLOCATIONS

### *Action*

## II. MULTIFAMILY ALLOCATIONS

### A. 2018-2019 Tentative Funding Amounts for Request for Applications (RFAs) for Multifamily Developments

#### 1. Background

- a) During the remainder of 2018 and first half of 2019, the Corporation expects to offer the following funding through various RFAs:
  - (1) Estimated \$103 million in State Apartment Incentive Loan (SAIL) Program funding (2018 Legislative appropriation for the SAIL Program plus SAIL Program Income and Community Workforce Housing Innovation Pilot (CWHIP) funding that will be converted to SAIL funding;
  - (2) Estimated \$30 million in SAIL Workforce funding;
  - (3) Estimated \$10,442,914 in National Housing Trust Fund (NHTF) funding;
  - (4) Estimated \$120 million in Community Development Block Grant (CDBG) funding; and
  - (5) Estimated \$57.6 million in Housing Credit (HC) allocation (anticipated 2019 Annual Allocation of HC).

#### 2. Present Situation

- a) The Tentative 2018/2019 Funding Amounts/Time Line plan, outlining the estimated funding amounts and tentative timeframes for the various RFAs for which staff expects to hold workshops and issue through the remainder of 2018 and into the first half of 2019, is attached as [Exhibit A](#).

#### 3. Recommendation

- a) Authorize staff to proceed with the development of various RFAs for SAIL, HC, SAIL Workforce, NHTF, and CDBG funding, and authorize the Executive Director to establish a review committee for each RFA, as each RFA is issued, to make recommendations for award to the Board.

## PROFESSIONAL SERVICES SELECTION (PSS)

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### III. PROFESSIONAL SERVICES SELECTION (PSS)

#### A. Request Competitive Solicitations for Professional Services Needed for the Community Development Block Grant – Disaster Recovery (CDBG-DR) Program

##### 1. Background/Present Situation

- a) At the May 4, 2018 meeting, Florida Housing’s Board of Directors authorized staff to continue to work with the Department of Economic Opportunity in developing a CDBG-DR strategy to address the rental needs in the State, to enter into a subrecipient agreement with the Department of Economic Opportunity to administer CDBG-DR funding for the development of rental housing, and to issue appropriate Requests for Applications to fund rental developments with CDBG-DR funding.
- b) In order to successfully administer the sub-recipient agreement, Florida Housing will need to issue a competitive solicitation for the following services, specifically for CDBG-DR:
  - Environmental Engineering and Consulting Services; and
  - Credit Underwriting, Permanent and Construction Loan Servicing, and Compliance Monitoring Services.
- c) Even though we currently have contracts with providers of these services who have gone through Florida Housing’s normal competitive solicitation process, it is not sufficient for purposes of the CDBG-DR Program.

##### 2. Recommendation

- a) Authorize staff to proceed with any necessary competitive solicitations to provide the professional services required for the CDBG-DR Program.

## PROFESSIONAL SERVICES SELECTION (PSS)

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#### **B. Request Competitive Solicitation for Trustee Services**

##### **1. Background**

- a) Florida Housing has entered into contracts with qualified firms to provide services typical of trustees under trust indentures securing revenue bonds, including functions with respect to taxable and tax-exempt bond issues for multifamily purposes with or without HUD Risk-Sharing. Services also include acting as dissemination agent under continuing disclosure agreements entered with developers or Florida Housing for the above referenced bonds.

##### **2. Present Situation**

- a) Florida Housing's current contracts are outlined below and there is a continuing need for these services.

<b>Contract Number</b>	<b>Vendor</b>	<b>Initial Term Start Date</b>	<b>Current Expiration Date</b>
2013-15-Q-130-004	Zions Bank, a Division of ZB, National Association	3/18/2014	3/17/2019
2013-15-Q-130-002	Wells Fargo Bank, N.A.	3/25/2014	3/24/2019
2013-15-Q-130-005	Regions Bank	4/9/2014	4/8/2019
2013-15-Q-130-001	Bank of New York Mellon Trust Company, N.A.	4/10/2014	4/9/2019
2013-15-Q-130-003	U.S. Bank Corporate Trust Services	5/22/2014	5/21/2019

##### **3. Recommendation**

- a) Authorize staff to proceed with a competitive solicitation to select one or more qualified firms to provide trustee services.