

FLORIDA HOUSING FINANCE CORPORATION
Board Meeting
March 6, 2020
Action Items



LEGAL

Action

I. LEGAL

A. **Bid-A-Wee Apartments, LLC, v. Florida Housing Finance Corporation, MHP Canopy Cove, LLC, MHP Magnolia Oaks, LLC, and MHP New River Landing, LLC, FHFC 2019-103BP**

SP Bay LLC and SP Bluffs LLC v. Florida Housing Finance Corporation, MHP Canopy Cove, LLC, MHP Magnolia Oaks, LLC, and MHP New River Landing, LLC, FHFC 2019-105BP

1. **Background**

- a) This case regards protests filed against the funding awarded under Request for Applications 2019-111 Rental Recovery Loan Program (“RRLP”) Financing to be Used for Rental Developments in Hurricane Michael Impacted Counties (the “RFA”). Petitioners Bid-A-Wee Apartments, LLC (“Bid-A-Wee”), SP Bay LLC (“SP Bay”), and SP Bluffs LLC (“SP Bluffs”) applied for funding through the RFA. The Review Committee determined that Bid-A-Wee was ineligible for funding because it did not expressly identify an “investor member of the Applicant limited liability company in its Principal Disclosure Form.
- b) Bid-A-Wee, SP Bay, and SP Bluffs timely filed notices of intent to protest and Formal Written Protests and Petitions for Administrative Hearing (“Petitions”) challenging Florida Housing’s scoring of Bid-A-Wee, MHP Canopy Cove, LLC (“Canopy Cove”), MHP Magnolia Oaks, LLC (“Magnolia Oaks”), and MHP New River Landing, LLC (“New River”). A Notice to Bidders was issued by Florida Housing informing all bidders that their substantial interests might be affected by the Petition. Canopy Cove, Magnolia Oaks, and New River filed Notices of Appearance of a Specifically-Named Party in the Petitions.

2. **Present Situation**

- a) During scoring, Florida Housing determined that the Bid-A-Wee Application failed to meet the RFA requirements for the Principals Disclosure Form. The RFA requires that on the Principals Disclosure Form in applications for housing credits “the investor limited partner of an Applicant limited partnership, or the investor member of an Applicant limited liability company must be identified.” According to the terms of the RFA, Applicants will receive five points if the Principals Disclosure Form was stamped “Approved” during the Advance Review Process.
- b) The Bid-A-Wee Application was found ineligible because it did not expressly identify an “investor member” of the Applicant in its Principals Disclosure Form, which was thus stamped “Approved” for non-housing credits only. The Bid-A-Wee application requested non-competitive housing credits. However, there were no investor members for the Bid-A-Wee Applicant as of the Application Deadline. Additionally, within the four corners of the Bid-A-Wee Application, an investor member was disclosed in the equity proposal letter. Florida Housing can determine, based on Bid-A-Wee’s Application as a whole, that Bid-A-Wee disclosed an investor member within its application. While Bid-A-Wee’s Application met all eligibility criteria in the RFA, it loses five points from its Application score because Applicants that submit the wrong

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version of the Principals Disclosure Form are not entitled to the benefit of the five points.

- c) In the interest of avoiding the time, expense, and uncertainty of litigation, the parties entered into a Consent Agreement, attached as [Exhibit A](#). The Consent Agreement results in Bid-A-Wee being deemed an eligible application, losing five points from its Application and being selected for funding under the terms of the RFA. Additionally, Canopy Cove has withdrawn its Application and is no longer considered for funding in this RFA. Other than Canopy Cove, the Consent Agreement does not displace any other applicants recommended for funding at the December 13, 2019 Board meeting.

3. **Recommendation**

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

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II. MULTIFAMILY PROGRAMS ALLOCATIONS

A. Request for Applications (RFA) 2019-113 Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties

1. Background

- a) On August 20, 2019, Florida Housing Finance Corporation (Florida Housing) issued RFA 2019-113 offering \$1,413,414 of Housing Credit Financing for affordable housing Developments located in small counties and \$14,805,028 of Housing Credit Financing for affordable Developments located in medium counties.
- b) The deadline for receipt of Applications was 3:00 p.m., Eastern Time, November 5, 2019.

2. Present Situation

- a) Florida Housing received 184 Applications in response to this RFA. The Review Committee members, designated by the Executive Director, were Tracy Willis, Quality Assurance Credit Underwriter Administrator (Chair), Elizabeth Crane, Multifamily Programs Manager, Ryan McKinless, Multifamily Programs Senior Analyst, and Sofia Miles, 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 February 18, 2020 Review Committee meeting, the individual committee members presented their scores and the Committee carried out the funding selection process in accordance with Section Five, B. of the RFA. The individual scores are set forth on the RFA webpage and can be accessed [here](#).
- c) The 2019-113 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 for the Review Committee to approve the scoring results as set out on Exhibit A and recommendations for funding as set out on [Exhibit B](#);
 - (2) A motion to recommend that the Board approve the scoring results as set out on Exhibit A and recommendations for funding, as set out on Exhibit B.
- e) The motions passed unanimously.

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- f) As outlined in the RFA, at the completion of all litigation and approval by the Board of all Recommended Orders with regard to this RFA, Florida Housing shall offer all Applicants within the funding range an invitation to enter credit underwriting.

3. Recommendation

- a) Approve the Committee's recommendations that the Board adopt the scoring results of the 184 Applications (set out on Exhibit A) and authorize the tentative selection of the 11 Applications (set out on Exhibit B) for funding.
- b) There is an unallocated balance of \$64,601 in Housing Credit funding remaining. As provided in Section Five, B. 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 an invitation to enter credit underwriting to the Applications set out on the supplemental item.
- 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 invitations to enter credit underwriting to those Applicants in the funding range.

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B. Request for Applications (RFA) 2019-114 Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties

1. Background

- a) On August 20, 2019, Florida Housing Finance Corporation (Florida Housing) issued RFA 2019-114 offering \$18,104,643 of Housing Credit Financing for affordable Developments located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties.
- b) The deadline for receipt of Applications was 3:00 p.m., Eastern Time, November 7, 2019.

2. Present Situation

- a) Florida Housing received 26 Applications in response to this RFA. The Review Committee members, designated by the Executive Director, were Rachael Grice, Multifamily Programs Coordinator (Chair), Jade Grubbs, Multifamily Programs Administrator, and Rebecca Sheffield, Multifamily Programs Coordinator. 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 February 18, 2020 Review Committee meeting, the individual committee members presented their scores and the Committee carried out the funding selection process in accordance with Section Five, B. of the RFA. The individual scores are set forth on the RFA webpage and can be accessed [here](#).
- c) The 2019-114 All Applications chart (provided as [Exhibit C](#)) 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 for the Review Committee to approve the scoring results as set out on Exhibit C and recommendations for funding as set out on [Exhibit D](#);
 - (2) A motion to recommend that the Board approve the scoring results as set out on Exhibit C and recommendations for funding, as set out on Exhibit D.
- e) The motions passed unanimously.
- f) As outlined in the RFA, at the completion of all litigation and approval by the Board of all Recommended Orders with regard to this RFA, Florida Housing shall offer all Applicants within the funding range an invitation to enter credit underwriting.

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3. **Recommendation**

- a) Approve the Committee's recommendations that the Board adopt the scoring results of the 26 Applications (set out on Exhibit C) and authorize the tentative selection of the 7 Applications (set out on Exhibit D) for funding.
- b) There is an unallocated balance of \$3,027,643 in Housing Credit funding remaining. As provided in Section Five, B. 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 an invitation to enter credit underwriting to the Applications set out on the supplemental item.
- 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 invitations to enter credit underwriting to those Applicants in the funding range.

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C. **Request for Applications (RFA) 2019-116 SAIL of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits**

1. **Background**

- a) On November 6, 2019, Florida Housing Finance Corporation (Florida Housing) issued RFA 2019-116 offering \$71,362,643 of State Apartment Incentive Loan (SAIL) financing and \$6,950,850.50 of National Housing Trust Fund (NHTF) financing for affordable multifamily housing development to be used in conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits.
- b) The deadline for receipt of Applications was 3:00 p.m., Eastern Time, December 30, 2019.

2. **Present Situation**

- a) Florida Housing received 64 Applications in response to this RFA. The Review Committee members, designated by the Executive Director, were Rachael Grice, Multifamily Programs Coordinator (Chair), Heather Strickland, Tim Kennedy, Assistant Director of Multifamily Programs, and Multifamily Programs Coordinator. 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 February 19, 2020 Review Committee meeting, the individual committee members presented their scores and the Committee carried out the funding selection process in accordance with Section Five, B. of the RFA. The individual scores are set forth on the RFA webpage and can be accessed [here](#).
- c) The 2019-116 All Applications chart (provided as [Exhibit E](#)) 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 for the Review Committee to approve the scoring results as set out on Exhibit E and recommendations for funding as set out on [Exhibit F](#);
 - (2) A motion to recommend that the Board approve the scoring results as set out on Exhibit E and recommendations for funding, as set out on Exhibit F.
- e) The motions passed unanimously.
- f) As outlined in the RFA, at the completion of all litigation and approval by the Board of all Recommended Orders with regard to this RFA, Florida Housing shall offer all Applicants within the funding range an invitation to enter credit underwriting.

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3. **Recommendation**

- a) Approve the Committee's recommendations that the Board adopt the scoring results of the 64 Applications (set out on Exhibit E) and authorize the tentative selection of the 13 Applications (set out on Exhibit F) for funding.
- b) There is an unallocated balance of \$3,266,266 in SAIL funding remaining. As provided in Section Five, B. 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 an invitation to enter credit underwriting to the Applications set out on the supplemental item.
- 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 invitations to enter credit underwriting to those Applicants in the funding range.

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D. Total Development Cost Per Unit Limitations

1. Background

- a) Florida is experiencing a strong real estate construction boom across the state that started in 2014. The effects of Hurricanes Irma and Michael have exacerbated the situation by creating additional new demand on new construction and substantial rehabilitation services and building supplies. The effects of Hurricane Maria evacuees have further increased the demand for housing in Florida as well.
- b) The increased demand on building supplies and construction labor in Florida has caused construction costs to increase over this time period at a greater pace than expected at the time the respective Request for Applications (RFAs) were issued.
- c) There are many Applicants who had applied to Florida Housing for funding during this time and have received an Active Award, but have not yet started construction or rehabilitation of their proposed developments. As the Applicants enter negotiations with their prospective general contractors, it has become apparent the construction costs have escalated beyond expectations.
- d) The majority of Florida Housing's RFAs incorporate a Total Development Cost Per Unit (TDC PU) Limitation requirement that is tested at time of application, credit underwriting and, if applicable, final cost certification.
- e) As the Applicants finalize their development cost budgets and arrange for adequate sources of financing to pay these higher development costs, many find themselves in non-compliance with the TDC PU Limitation test set-forth in their respective RFA under which it applied. Non-compliance is established when an Applicant's development costs exceed the relative TDC PU Limitation and if the non-compliance excess costs exceeds five percent of the TDC PU Limitation, the credit underwriter must provide a negative recommendation to the Board when submitting the Credit Underwriting Report (CUR).
- f) On June 15, 2018, the Board authorized a change to the TDC PU Limitation requirements for all RFAs from the 2014-2015 RFA funding cycle (beginning with RFA 2014-111) through the 2017-2018 RFA funding cycle (ending with RFA 2018-109) to have the same TDC PU Limitation requirements for credit underwriting and final cost certification processes (if they originally included a TDC PU Limitation process) as set-forth above.

2. Present Situation

- a) Florida Housing has made efforts to maintain the viability of the developments in this predicament and continues to believe it is beneficial to deliver these much-needed affordable housing units and communities in a timely manner. An important hurdle that remains to be addressed is to reasonably accommodate a request by the stakeholders to reduce the burden of the TDC PU Limitations which would otherwise create an unreasonable financial burden on the development and its Principals or even stop its delivery.

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- b) Staff has had discussions with the stakeholders about a reasonable increase in the current TDC PU Limitation to reduce this burden and believes an increase of 2.0% to the post-application limits is reasonable. It is believed this increase would be able to accommodate an additional construction delay of up to six months. The current TDC PU Limitation process has assumed the general contractor construction contract should be executed and construction would commence within 9-12 months of being invited into credit underwriting. This timeline follows the IRS deadline of requiring a development to be placed in service by December 31st of the second year.
- c) The implementation of this recommendation would be to simply determine the proposed Development's post-application TDC PU Limitation as previously documented and then multiply that amount by 1.02 to arrive at the new post-application TDC PU Limitation. This process would be implemented on all applications receiving funding starting with RFA 2014-113 through RFA 2020-302 (the last RFA in the 2019-2020 RFA Cycle) that have not yet had their IRS Form 8609s issued.
- d) There are some Applicants during this period that were better positioned to execute a general contractor agreement, finalize and close on its funding sources and start construction. Florida Housing does not desire to have Applicants that could complete this process timelier to have a higher standard of delivery than those who found themselves delayed in this process.

3. Recommendation

- a) Staff recommends the Board to authorize a change to the TDC PU Limitation requirements for all RFAs (beginning with RFA 2014-113) through the current 2019-2020 RFA funding cycle (ending with RFA 2020-302) to receive a 2.0% boost for credit underwriting and final cost certification processes (if they originally included a TDC PU Limitation process) as set-forth above.
- b) Staff recommends the Board to authorize a re-examination of credit underwriting reports and final cost certifications previously completed relative to awards in the above referenced RFAs and to re-evaluate any applicable developer fee discounts for non-compliance of the TDC PU Limitation requirements utilizing the boost outlined above.

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E. Request for Applications (RFA) 2019-103 Community Development Block Grant-Disaster Recovery (CDBG-DR) For Small Developments In Areas Deemed Hurricane Recovery Priorities

1. Background

- a) On July 30, 2019, Florida Housing Finance Corporation (Florida Housing) issued RFA 2019-103 offering \$20,000,000 of CDBG-DR Program funding for the construction of Workforce Housing (Development Funding), for those Developments located in small counties deemed Hurricane Recovery Priorities.
- b) The proposed developments must help address the unmet Workforce Housing need in the HUD-Designated Most Impacted and Distressed (MID) zip codes (“MID Zip Codes”), HUD-Designated (“HUD-Designated MIDs”), or other areas impacted by the storms and deemed as a priority by the State that are not HUD MIDs (“State-Designated MIDs”).
 - MID Zip Codes: 32091 in Bradford County; 32068 in Clay County; 34266 in DeSoto County; 32136 in Flagler County; 33440 and 33935 in Hendry County; 33825 and 33870 in Highlands County; 33523 in Pasco County; 32084 and 32145 in Saint Johns County; 32771 in Seminole County.
 - HUD-Designated MIDs*: Brevard; Broward; Clay; Collier; Duval; Hillsborough; Lee; Miami-Dade; Orange; Osceola; Palm Beach; Polk; Saint Lucie; Volusia
 - State-Designated MIDs: Alachua; Baker; Bradford; Charlotte; Citrus; Columbia; DeSoto; Dixie; Flagler; Gilchrist; Glades; Hamilton; Hardee; Hendry; Hernando; Highlands; Indian River; Lafayette; Lake; Levy; Manatee; Marion; Martin; Nassau; Okeechobee; Pasco; Putnam; Saint Johns; Sarasota; Seminole; Sumter; Suwannee; Union

2. Present Situation

- a) Florida Housing received 12 Applications in response to this RFA. At its November 13, 2019 Review Committee meeting, the individual committee members presented their scores and the committee carried out the funding selection process in accordance with Section Five, B. of the RFA. The committee recommended 4 Applications for funding. On December 13, 2019, the Board voted to adopt the scoring results of the 12 Applications and authorize the tentative selection of the 4 Applications.
- b) There was an unallocated balance of \$1,142,800 in funding remaining. As provided in Section Five, B. of the RFA, any remaining funding will be distributed as approved by the Board.

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- c) Because no notice of protest or formal written protest was filed in accordance with Section 120.57(3), Fla. Stat., et. al., staff proceeded to issue an invitation to enter credit underwriting to the 4 selected Applications. All Applicants that were sent the invitation to enter credit underwriting accepted the invitation, including Application number 2020-012D Baxley Gardens, an Application for a 40 unit proposed Development in Clay County.
- d) On February 4, 2020, Florida Housing received a letter from Baxley Gardens, (Application Number 2020-012D) stating that, due to higher than expected costs, it was not able to proceed with the proposed Development and it would be returning \$3,944,000 in CDBG-DR funding. This returned funding combined with the remaining balance of \$1,142,800, means that there is \$5,086,800 is unallocated CDBG-DR funding.

3. **Recommendation**

- a) Authorize Florida Housing to issue invitations to credit underwriting to the highest ranking Applications that can be fully funded, using the selection criteria outlined in Section Five of the RFA.

PROFESSIONAL SERVICES SELECTION (PSS)

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III. PROFESSIONAL SERVICES SELECTION (PSS)

A. Contract Renewal for Bond Counsel Services

1. Background

- a) At the May 5, 2017 meeting, Florida Housing's Board of Directors authorized staff to enter into contract negotiations with several firms for Bond Counsel services.
- b) Current contract information is as follows:

Contract Number	Vendor	Initial Term Start Date	Current Expiration Date
064-2017	Bryant Miller Olive, P.A.	7/14/2017	7/13/2020
065-2017	Greenberg Traurig, P.A., jointly with Edwards & Feanny, P.A.	7/19/2017	7/18/2020
066-2017	Kutak Rock, LLP	7/19/2017	7/18/2020
067-2017	Squire Patton Boggs jointly with Steve E. Bullock, P.A.	8/2/2017	8/1/2020

- c) Contingent upon satisfactorily performing its obligations under the contract as determined by Florida Housing, these contracts may be renewed once for an additional three-year period.

2. Present Situation

- a) Florida Housing staff supports using the three-year renewal option for all four contracts.

3. Recommendation

- a) Staff recommends the Board direct staff to proceed with the three-year renewal option.

PROFESSIONAL SERVICES SELECTION (PSS)

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B. Request for Qualifications (RFQ) 2020-02, Single Family Cash Flow Provider Services Award

1. Background

- a) At the October 31, 2019 meeting, the Board authorized Florida Housing staff to issue a solicitation to procure one or more qualified firms to provide Single Family Cash Flow Provider Services.

2. Present Situation

- a) RFQ 2020-02 was issued on January 6, 2020. The deadline for receipt of responses was 2:00 p.m., January 29, 2020. A copy of the RFQ is provided as [Exhibit A](#).
- b) Three responses were received from Caine Mitter & Associates Incorporated, cfX Incorporated, and RBC Capital Markets, LLC.
- c) Members of the committee were Melanie Weathers, Senior Financial Administrator (Chairperson); Tamara Alford, Financial Manager; and Michelle Connelly, Financial Manager (“Review Committee”).
- 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., February 12, 2020.
- e) At the February 12th 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 RBC Capital Markets, LLC as the lead cash flow provider and Caine Mitter & Associates Incorporated as the back up cash flow provider.