

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ROSEDALE HOLDINGS, LLC,
H&H DEVELOPMENT, LLC AND
BROOKESTONE I, LP, FHFC Case No. 2013-038BP

Petitioners,
vs.
FLORIDA HOUSING FINANCE CORPORATION,
Respondent

and
PARADISE POINT SENIOR HOUSING, LLC,
Intervenor,
ARBOURS AT TUMBLIN CREEK, LLC,
Intervenor,
ARBOURS AT CENTRAL PARKWAY, LLC,
Intervenor,

OCDC PALM VILLAGE, LP,
PRESTWICK DEVELOPMENT
COMPANY, LLC,
AND OKALOOSA COMMUNITY
DEVELOPMENT CORPORATION FHFC Case No. 2013-042BP

Petitioners,
vs.
FLORIDA HOUSING FINANCE CORPORATION,
Respondent,
and
KATIE MANOR, LTD.,
Intervenor.

FRENCHTOWN SQUARE, LLC, FHFC Case No. 2013-043BP
Petitioner,
vs.
FLORIDA HOUSING FINANCE CORPORATION,
Respondent,

DEPOSITION OF KEN REECY

FEBRUARY 26, 2014

Page 2

1 JPM WESTBROOK I LIMITED PARTNERSHIP,
 2 Petitioners, FHFC Case No. 2013-044BP
 3 vs.
 4 FLORIDA HOUSING FINANCE CORPORATION,
 5 Respondent,
 6 and
 7 KATIE MANOR, LTD.,
 8 Intervenor.

9 SUMMERSET APARTMENTS LIMITED PARTNERSHIP,
 10 Petitioners FHFC Case No. 2013-047BP
 11 vs.
 12 FLORIDA HOUSING FINANCE CORPORATION,
 13 Respondent,
 14 and
 15 FOREST RIDGE AT BEVERLY HILLS, LTD. and
 16 ARBOURS AT CENTRAL PARKWAY, LLC,
 17 Intervenor.

18 DEPOSITION OF: KEN REECY
 19 DATE: FEBRUARY 26, 2014
 20 TIME: COMMENCED: 10:08 A.M.
 21 LOCATION: FLORIDA HOUSING FINANCE CORP
 22 227 NORTH BRONOUGH STREET
 23 TALLAHASSEE, FL
 24 REPORTED BY: DEBRA R. KRICK
 25 Court Reporter and
 Notary Public in and for
 State of Florida at Large

PREMIER REPORTING
 114 W. 5TH AVENUE
 TALLAHASSEE, FLORIDA
 (850) 894-0828

Page 3

1 APPEARANCES:
 2 REPRESENTING FLORIDA HOUSING FINANCE CORP:
 3 WELLINGTON H. MEFFERT, ESQ.
 4 Florida Housing Finance Corp.
 5 227 N Bronough Street
 6 Suite 5000
 7 Tallahassee, Florida 32301
 8 REPRESENTING SUMMERSET APARTMENTS:
 9 STEPHEN MENTON, ESQ.
 10 Rutledge, Ecenia & Purnell, P.A.
 11 119 South Monroe Street
 12 Suite 202
 13 Tallahassee, FL 32301
 14 REPRESENTING ROSEDALE HOLDINGS, H&H
 15 DEVELOPMENT & BROOKSTONE:
 16 KAREN WALKER, ESQ.
 17 LARRY SELLERS, ESQ.
 18 Holland & Knight, LLP
 19 315 South Calhoun Street
 20 Suite 600
 21 Tallahassee, FL 32301
 22 REPRESENTING JPM WESTBROOK, OCDC PALM
 23 VILLAGE and OKALOOSA COMMUNITY:
 24 MICHAEL P. DONALDSON, ESQ.
 25 Carlton, Fields Jordan Burt
 215 South Monroe Street
 Suite 500
 Tallahassee, FL 32301

Page 4

1 APPEARANCES CONTINUED:
 2 REPRESENTING KATIE MANOR:
 3 CRAIG VARN, ESQ.
 4 Mason Bolves
 5 201 East Park Avenue
 6 Tallahassee, FL 32301
 7 REPRESENTING ARBOURS AT TUMBLIN
 8 CREEK and ARBOURS AT CENTRAL PARKWAY:
 9 GARY COHEN, ESQ.
 10 Shutts & Bowen, LLP
 11 201 South Biscayne Blvd
 12 Suite 1600
 13 Miami, FL 33131

Page 5

INDEX TO WITNESS

	PAGE
KEN REECY	
Examination by Mr. Menton	6
Examination by Ms. Walker	29
Examination by Mr. Donaldson	43

INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED
2	Transcript excerpt from December 13, 2013 board meeting	19

*Uh-uh is a negative response
 *Uh-huh is a positive response

Page 6

1 DEPOSITION

2 Whereupon,

3 KEN REECY

4 was called as a witness, having been first duly sworn to

5 speak the truth, the whole truth, and nothing but the

6 truth, was examined and testified as follows:

7 EXAMINATION

8 BY MR. MENTON:

9 Q Good morning, Mr. Reecy. We met earlier.

10 A Good morning.

11 Q My name is Steve Menton. I am with the firm

12 of Rutledge, Ecenia, and we represent Summerset

13 Apartments, which is one of the applicants that's

14 involved in these proceedings. I want to ask you a few

15 questions related to the RFA-03, is it?

16 MR. SELLERS: 01.

17 MR. MENTON: 01.

18 MR. DONALDSON: 001?

19 MR. MENTON: 001.

20 BY MR. MENTON:

21 Q And as I understand it, you are going to be

22 the corporate representative with Florida Housing with

23 respect to the informal hearing, is that correct?

24 A That's correct.

25 Q Can you briefly ever summarize for me your

Page 8

1 A My -- I started in the final days as this RFA

2 was about to be issued, so I was involved in the very

3 last portion of the development.

4 Q Okay. So at the time that you came on board,

5 about six months ago, the RFA was largely drafted, is

6 that correct?

7 A That is correct.

8 Q Okay. And so it was in the process of being

9 issued to the development community for purposes of

10 preparing their applications?

11 A Yes. I believe there had been workshops prior

12 to my coming on board.

13 Q Okay. And did you go back and review any of

14 those workshops or have any involvement in that?

15 A I probably did. I don't recall specifically.

16 Q Okay. And I am going to get into some of the

17 specific issues involved in this proceeding a little bit

18 later, but one of the issues that's raised in the

19 Summerset petition relates to the withdrawal of

20 applications. Prior to the time that the RFA was

21 issued, you were involved in any discussions as to the

22 process by which applicants could withdraw their

23 applications?

24 A I was not, no.

25 Q Okay. Have you gone back and reviewed the

Page 7

1 current position and how long you have been with Florida

2 Housing and what your job responsibilities are?

3 A I am the Director of Multi-Family Programs and

4 I have been with Florida Housing for about six months.

5 Q Okay. And where were you prior coming to

6 Florida Housing?

7 A The Department of Economic Opportunity with

8 the State.

9 Q Okay. And how long were you there?

10 A Well, I was with the State for 31 plus years

11 in a number of agencies.

12 Q Okay. How long at Economic Opportunity?

13 A From the beginning of the agency,

14 September 2011, I believe, when it was first -- there

15 were three agencies that were merged to create DEO, so

16 since the inception.

17 Q Okay. And what are your job responsibilities

18 as Director of Multi-Family Housing?

19 A I am responsible for the RFA allocation

20 process, coordination of that, bonds and credit

21 underwriting associated with housing credits, et cetera.

22 There is just a myriad of things.

23 Q Right. Well, let me ask you, then,

24 specifically, what was your role with regard to the RFA

25 that's the subject of this proceeding, the RFA-001?

Page 9

1 petitions that have been filed as part of this

2 proceeding that we are heading into?

3 A I have reviewed -- not completely, no, I have

4 not.

5 Q Okay. Have you been involved -- are you going

6 to be the person who speaks on behalf of Florida Housing

7 with respect to the issues that have been raised in the

8 petitions?

9 A I am prepared to answer questions on all of

10 them.

11 Q Okay. Let me start, then, with Summerset, who

12 is my client. One of the issues that has been raised

13 regarding the Summerset application relates to its

14 purchase agreement and the closing date that's listed

15 within the purchase agreement. Are you familiar with

16 that issue?

17 A Not in specific detail, no. I am aware of the

18 issue in general terms, but as far as the specifics, no.

19 Q Okay. Well, one of the assertions that's been

20 made is that the Summerset application was not eligible

21 for an award --

22 A I am sorry, I misunderstood your question. I

23 thought you were talking about a different one. Restate

24 the question, please.

25 Q Okay. I can't remember it.

Page 10

1 (Whereupon, the court reporter read the
2 requested portion of the record.)
3 THE WITNESS: I am not familiar with the
4 purchase agreement issue, no.
5 BY MR. MENTON:
6 Q Okay. So then you don't know whether or not
7 the closing date that was listed on here of April 1st,
8 2013, was viewed as a typographical error as part of the
9 scoring process?
10 A I am not specifically aware of that, no. I
11 know in general terms about the issue in that the -- my
12 staff who scored it, you know, we consulted, you know,
13 but I do not have specific information about that
14 myself.
15 Q Okay. And that would be Amy, then, that I
16 would ask about that?
17 A Correct.
18 Q Okay. Well, I will save those questions for
19 Amy. But just on that general topic, let me ask you,
20 you are familiar with the rules that Florida Housing has
21 adopted for purposes of the RFA process?
22 A Yes.
23 Q And one of the rules is 67-60.0008 and I have
24 got a copy of this. We will get that marked as
25 probably -- just do it as the next number.

Page 12

1 the exhibits to the stipulation, and actually I
2 haven't corresponded on the list which application
3 numbers match the developer names.
4 MR. MENTON: That's fine. Whatever way is the
5 consensus.
6 MR. MEFFERT: I think on that particular one,
7 I went back and added the project names as they
8 appeared in the stip. And that's the one that you
9 have got, Steve?
10 MR. MENTON: Yes.
11 MR. MEFFERT: I can make a few copies of that
12 real quick if you want, so we can refer to it.
13 MS. WALKER: We can do it that way. We
14 probably won't use all of those exhibits. I think
15 it will make it confusing if there is that, and
16 then if we just have a set of deposition or
17 interview exhibits.
18 MR. MEFFERT: And this one will be -- I think
19 we have agreed to officially recognize 67-48 and
20 67-60 already, so --
21 MR. MENTON: That's the simplest way. I won't
22 even number it. We will just take official
23 recognition of it.
24 MR. DONALDSON: That's what the judge did in
25 the first one we had, is he took official

Page 11

1 MR. MENTON: Just for the record, at this
2 point there have been 13 exhibits identified in the
3 draft joint prehearing stipulation. We have not
4 yet, as a group, gone through and confirmed all of
5 those. But just for purposes of, I think, trying
6 to keep the record straight and moving forward, I
7 would suggest that we use the numbering of those
8 13, and then any additional exhibits we will
9 identify it by new numbers going forward, and then
10 I think it will make it easier if we use that
11 approach. Is that okay?
12 MR. SELLERS: So you are using it off the --
13 well, we had added some to the list we sent around
14 last night -- or this morning. So if you are
15 looking for the -- is it on the list already?
16 MR. MENTON: No, it's not.
17 MS. WALKER: This is new.
18 MR. SELLERS: So the new one actually to the
19 list -- if you were just looking for one to start
20 with, we had added some to the prehearing
21 stipulation. So why don't you start with 17
22 instead of 14.
23 MS. WALKER: Well, I guess it was confusing,
24 though. Shouldn't we just use deposition exhibit
25 numbers? Because we are not going to use all of

Page 13

1 recognition.
2 MR. MENTON: That's probably the correct way,
3 but I just had the document, everybody got a copy
4 of it? Anybody want one?
5 MR. WALKER: Yes.
6 MR. MENTON: Okay. So we are not going to
7 mark that after all.
8 BY MR. MENTON:
9 Q Mr. Reecy, I have handed you a copy of a
10 portion of the rules that were adopted, and just ask you
11 to take a look at that and see if you can identify it.
12 A This is a page from 67-60 Florida
13 Administrative Code pertaining specifically to right to
14 waive minor irregularities.
15 Q Okay. And what is your understanding of the
16 purpose of that rule?
17 A The purpose of that rule is to give the
18 Corporation the ability, when reviewing requests for
19 applications, to waive minor irregularities if mistakes
20 are clearly evident to the staff that are reviewing
21 applications.
22 Q And who is it that is responsible for making a
23 determination if there is a minor irregularity?
24 A Ultimately, it's the staff person who is
25 assigned to whichever aspect of the RFA they have been

Page 14

1 assigned to score.

2 **Q Okay. And so I think we established earlier**

3 **that with respect to reviewing site control issues and**

4 **that would include review of purchase agreements, that**

5 **would be Amy?**

6 A Amy Garmon.

7 **Q Amy Garmon?**

8 A Yes.

9 **Q And are you aware of whether she made any**

10 **determination as to minor irregularities that fell**

11 **within the scope of this rule for purposes of RFA-001?**

12 A I am sure that she has. The specifics right

13 now, I could not recall.

14 **Q Okay. So there is no basis for you, as the**

15 **corporate representative, to disagree with any**

16 **determinations that she may have made regarding minor**

17 **irregularities as it relates to site control issues?**

18 A That is correct.

19 **Q Okay. And just for my own comfort level,**

20 **there is not going to be any review by you of those**

21 **issues prior to the hearing that we are getting ready**

22 **for to come up with a determination that might be**

23 **different than what your scorer came up with, is it?**

24 A No. No.

25 **Q Okay. So as I get ready for hearing, I can**

Page 16

1 **Q -- that relates to the withdrawal of**

2 **competitive applications. Are you familiar with that?**

3 A I am aware of it, yes.

4 **Q Okay. And that's 67-60.004?**

5 A Yes.

6 **Q Is that the only rule provision that you are**

7 **aware of that relates to the withdrawal of applications?**

8 A That is the only rule provision that I am

9 aware of, yes, that relates to it.

10 **Q Do you know whether there was any provision**

11 **within the RFA-001 regarding the withdrawal of**

12 **applications?**

13 A There is, yes.

14 **Q Okay. And can you help me find that?**

15 A I believe it has to do with funding

16 subsequent -- I can help you find it.

17 **Q Okay. Let me get it out.**

18 A It starts on page 39.

19 **Q Okay. And that would be --**

20 A Number eight of --

21 **Q Number eight, Returned Allocation?**

22 A Yes.

23 **Q Okay. Now, is that the only provision in the**

24 **RF that you are aware of that addresses withdrawn**

25 **applications?**

Page 15

1 **rely upon what Amy said?**

2 A (Witness nods head in the affirmative.)

3 **Q All right. Let me move, then, to another**

4 **issue, and that relates to the withdrawal of one of the**

5 **applications that was filed as part of RFA-001. Are you**

6 **familiar with that?**

7 A I am, yes.

8 **Q And why don't you tell me what you understand**

9 **about the circumstances there.**

10 A I am aware that, I believe it was Hammock

11 Crossings with -- notified us, the Corporation, of their

12 intent to withdraw. I think it was -- I became aware of

13 it the day before the board meeting.

14 **Q Okay. So --**

15 A On December 12th, I believe.

16 **Q And I am correct that Florida Housing received**

17 **written notification of the withdrawal of the Hammock**

18 **Crossings application prior to the board meeting at**

19 **which the preliminary allocation decisions were made?**

20 A That is correct.

21 **Q Okay. And there is a provision within the**

22 **rules that were adopted for purposes of the competitive**

23 **solicitation funding process, that's 67-60, we looked at**

24 **a portion of that before --**

25 A Yes.

Page 17

1 A I believe so.

2 **Q Okay. Paragraph eight here talks about**

3 **funding that becomes available after Board -- after the**

4 **Board takes as on the committee's recommendations due to**

5 **an applicant declining its invitation to enter credit**

6 **underwriting or the applicant's inability to satisfy a**

7 **requirement outlined in the RFA and/or Rule 67-48. And**

8 **it talks about how the funds would be distributed in**

9 **those events. Is that -- am I reading that correctly?**

10 A That is correct.

11 **Q And so paragraph eight here addresses**

12 **situations where a withdrawal takes place after the**

13 **Board decisions, isn't that right?**

14 A It could be applied for that purpose, yes.

15 **Q Does it say that it could be applied for**

16 **withdrawals that occurred before the board meeting?**

17 A This section has to do with returned

18 allocations subsequent to the board meeting.

19 **Q Okay. And you are aware that in other RFAs**

20 **there is language that includes -- or that directs when**

21 **an applicant has to withdraw an application in advance**

22 **of a board meeting?**

23 A The question again? I am sorry.

24 **Q It wasn't worded that well, but read it back**

25 **and let me see if I can -- if you can answer it. If you**

Page 18

1 can't, then I will try and restructure it.
 2 (Whereupon, the court reporter read the
 3 requested portion of the record.)
 4 THE WITNESS: In other RFAs? Yes, I am aware
 5 of that. Yes.
 6 BY MR. MENTON:
 7 Q Okay. And there was no language to that
 8 effect to this RFA, correct?
 9 A That's correct.
 10 Q And if I understand the -- hold on a second.
 11 Just for the -- let's go off the record for a
 12 second.
 13 (Discussion off the record.)
 14 BY MR. MENTON:
 15 Q Mr. Reecy, just to see if we can pick up here.
 16 Joint Exhibit 5 from the prehearing stipulation -- I
 17 don't know if you want to mark it as Deposition Exhibit
 18 1 -- is an e-mail and letter requesting withdrawal of
 19 the Hammock Crossings application, is that correct?
 20 A That is correct.
 21 Q And that's dated December --
 22 A 11th.
 23 Q -- 11th, which was in advance of the board
 24 meeting where the allocations were approved, correct?
 25 A That is correct.

Page 20

1 A That is correct.
 2 Q And was there any discussion as to whether
 3 Hammock Crossings was, in fact, going to move forward
 4 with its application so that the tax credit award would
 5 be viable?
 6 A The discussion basically centered from the
 7 Executive Director Steve Auger was that they had
 8 submitted Hammock Crossings, which was on the review
 9 committee's recommendation list, which was -- I don't
 10 remember the exhibit, maybe Exhibit B or something like
 11 that -- for the Board's consideration that it was on the
 12 list that they had submitted a withdrawal that we had
 13 become aware of the day before the board meeting.
 14 And, you know, to summarize, that we were
 15 aware of it but that there is a provision in the RFA
 16 which, you know, we talked about on returned allocation,
 17 that it's -- you know, it has an operation to handle
 18 returned allocations and that, you know, the Corporation
 19 would handle it in that manner.
 20 And so -- so it -- so that was during the
 21 discussion period, you know, before the vote was taken,
 22 you know, the final vote. So, you know, it basically
 23 divulged to the Board, if you will, that one of the
 24 recommended, Hammock Crossings, had submitted a
 25 withdrawal and that it would be handled as a returned

Page 19

1 Q And there was some discussion during the board
 2 meeting that the applicant for Hammock Crossings had
 3 withdrawn its application, is that right?
 4 A That is correct.
 5 Q And that's reflected within the pages of the
 6 transcript of the December 13th board meeting eight
 7 through 18, which have been marked as Exhibit 4 in the
 8 joint stipulation and we will make Exhibit 2 for
 9 purposes of this deposition?
 10 A Okay. That's correct.
 11 (Whereupon, Exhibit No. 2 was marked for
 12 identification.)
 13 BY MR. MENTON:
 14 Q In that portion of the board meeting is the
 15 entire discussion with regard to the withdrawal of the
 16 Hammock Crossings application, is that right?
 17 A Yes.
 18 Q And there were no other communications or
 19 discussions with the Board with respect to the
 20 withdrawal of the Hammock Crossings allocation?
 21 A There were none that I am aware of.
 22 Q Now, if I understand correctly, the
 23 allocations that the Board approved at the meeting on
 24 December 13th included an allocation of tax credits to
 25 Hammock Crossings, is that right?

Page 21

1 allocation as per the RFA. And then they did their
 2 vote.
 3 Q Was the Board ever advised that it needed to
 4 formally accept a withdrawal of an application?
 5 A No, not that I am aware of.
 6 Q And from your position, has the Board ever
 7 been presented with a request to approve the withdrawal
 8 of an application?
 9 A Not that I am aware of.
 10 Q And the provisions that are in the RFA call
 11 for the Board to make the determination as to ranking of
 12 the applicants and the awards, is that right?
 13 A That is correct.
 14 Q Okay. And so any of the staff
 15 recommendations, which I think are included as joint
 16 Exhibit 3 in the list that Wellington prepared, those
 17 are just recommendations until the Board actually
 18 approves them --
 19 A That is correct.
 20 Q -- is that correct?
 21 A Yes.
 22 Q Did the Board raise any questions as to
 23 whether or not Hammock Crossings was, in fact, going to
 24 proceed?
 25 A Not that I recall, no.

Page 22

1 **Q And the way that the ranking criteria worked**
 2 **is that if a preliminary allocation is made to an**
 3 **applicant, then that takes money out of the total pie**
 4 **that's available for distribution through the RFA**
 5 **process?**
 6 A That is correct.
 7 **Q There was no ability for four allocations**
 8 **under this RFA, is that right?**
 9 A That's right.
 10 **Q And so one of the provisions that was included**
 11 **in the RFA was that if an applicant was not -- if there**
 12 **was insufficient tax credits to fully fund an applicant,**
 13 **then they would be skipped over to the next applicant**
 14 **who could be fully funded; is that correct?**
 15 A That's correct, in the sorting order
 16 methodology outlined in the RFA.
 17 **Q So by allocating tax credits to Hammock**
 18 **Crossings, which had notified the Board of its**
 19 **withdrawal of its application, then that changed how the**
 20 **allocation process went for applicants below -- with**
 21 **lottery numbers below Hammock Crossings, did it not?**
 22 A It could have, I would suppose, if the Board
 23 had acted on the withdrawal. But what they did is they
 24 accepted the exhibit with Hammock Crossings, so it went
 25 to the returned allocation process outlined in the RFA.

Page 24

1 Hammock Crossings' withdrawal, they let that operation
 2 go through their vote.
 3 **Q But in looking at -- I mean, was the Board**
 4 **every presented with the option to simply take Hammock**
 5 **Crossings out of the allocation process and follow the**
 6 **structure that was set forth within the RFA itself for**
 7 **making its final awards?**
 8 A Not specifically, no.
 9 **Q At the conclusion of the process that we are**
 10 **going through now, these informal procedures, is the**
 11 **Board going to rerank the applications again?**
 12 A No.
 13 **Q How is that going to work?**
 14 A Well, I guess I would need more information to
 15 answer that question. I would assume that if there is
 16 some recommended action, the Board will consider it. So
 17 that's all I can say, whatever that is.
 18 **Q Well, I guess where I am getting to is the**
 19 **allocations that were approved on December 13th are not**
 20 **final action at this point, is that what you understand?**
 21 A That is what I understand.
 22 **Q When this goes back before the Board, you**
 23 **know, at the next meeting, will there continue to be an**
 24 **award allocated to Hammock Crossings?**
 25 MR. MEFFERT: Steve, I think you are asking

Page 23

1 **Q But the process outlined in the RFA didn't**
 2 **deal with withdrawn applications, did it?**
 3 A The returned allocation? Inability to
 4 satisfy, you know, a requirement could be broadly
 5 construed that, you know, if they were not prepared to
 6 move forward, then it would be applicable.
 7 **Q Okay. I guess for purposes of today, you**
 8 **know, for the deposition today, I just want to make sure**
 9 **that I understand what the position of Florida Housing**
 10 **is going to be with the hearing officer as to why you**
 11 **would award tax credits -- or why the Board would award**
 12 **tax credits to an applicant who has notified them that**
 13 **they have withdrawn their application.**
 14 A We received the application while we were on
 15 the road, and there was a mechanism in the RFA to handle
 16 returned allocation. And so we made the Board aware
 17 that there was a request for withdrawal, and presumably
 18 it was within their power to make a request at that
 19 point that a reranking be done; however, they did not do
 20 that. They accepted the -- they -- you know, they not
 21 accepted, but they voted and passed the recommendation
 22 of the review committee, which did include Hammock
 23 Crossings, so -- and, you know, when made aware of the
 24 fact that this was a returned allocation procedure that
 25 would, you know, allocate the funds associated with

Page 25

1 him to do a couple of things that he can't do right
 2 now. One is predict the future, and the other is
 3 make some sort of legal conclusion about what will
 4 happen at the end of this proceeding.
 5 I will tell you that my position is we are
 6 going to recommend that the Board take the
 7 recommendations of the hearing officer and apply
 8 them in whatever fashion they say. And that said,
 9 the Board may decide to do that. Or if it goes
 10 badly enough for me, the Board may decide the whole
 11 process is so screwed up, they will just throw the
 12 whole thing out and start over. They do have that
 13 ability as well.
 14 So somewhere on that continuum, I would expect
 15 is where we will land, but none of us know at this
 16 point what the Board is going to do.
 17 MR. MENTON: And that's fair enough. I mean,
 18 I understand there is a lot of speculation built
 19 in.
 20 MR. MEFFERT: Sure.
 21 BY MR. MENTON:
 22 **Q I am just trying to understand, going into the**
 23 **hearing, you know, what I am attempting to accomplish on**
 24 **the back end here so that, you know, I can prepare my**
 25 **presentation to the hearing officer accordingly.**

Page 26

1 **And in that regard, you know, one of the**
 2 **questions that certainly occurs to me is that if none of**
 3 **the allocations are final until such time as the Board**
 4 **considers the results of what happens here and makes the**
 5 **final determination, are they going to continue to treat**
 6 **Hammock Crossings as an applicant that's entitled to an**
 7 **allocation for purposes of making those decisions?**
 8 A And I really cannot answer that question. I
 9 mean, I don't know. I just don't know the answer to
 10 that.
 11 **Q Okay. Has Florida Housing received any**
 12 **indication subsequent to this letter of December 11th,**
 13 **2013, that Hammock Crossings does, in fact, intend to**
 14 **proceed with its project?**
 15 A We have not, no.
 16 **Q And they haven't started the credit**
 17 **underwriting process or anything like that?**
 18 A No one has.
 19 **Q No one has, okay.**
 20 **All right. I may have asked you this before,**
 21 **and I apologize if I am being repetitive, but to your**
 22 **knowledge, has the Board ever previously been asked to**
 23 **approve the withdrawal of an application?**
 24 A Not to my knowledge.
 25 **Q Is there some point in time prior to**

Page 28

1 **whether or not it was timely enough?**
 2 A Yes.
 3 **Q Are there any standards or guidelines that**
 4 **would govern the Board in making that determination as**
 5 **to whether or not it was received timely enough?**
 6 A Not currently, not for this RFA.
 7 **Q And with the other RFA, I guess it was the**
 8 **sale RFA, where there is a 14 day timeframe, is there**
 9 **any requirement for the Board to take action to approve**
 10 **the withdrawal of that application as part of the**
 11 **ranking process?**
 12 A I do not believe so, no. It is simply -- if
 13 my recollection is correct, it's just that it
 14 specifically states that, you know, the Corporation --
 15 or the Board will not act on a withdrawal request made
 16 within 14 days of the board meeting.
 17 **Q Okay. And so if -- under those other RFAs, if**
 18 **an applicant withdraws its application more than 14 days**
 19 **in advance of the board meeting, then that applicant is**
 20 **not considered as part of the rankings that are**
 21 **presented for preliminary allocation by the Board?**
 22 A I wouldn't say it unequivocally, no. It
 23 depends on whether or not the Corporation decides, you
 24 know, whether the timing works with when the review
 25 committee meeting is, et cetera. So I would say it's

Page 27

1 **December 11th where a notification from Hammock**
 2 **Crossings would have resulted in them not being awarded**
 3 **a preliminary allocation at the board meeting on**
 4 **December 13th?**
 5 A Theoretically, perhaps if it had been received
 6 before the review committee meeting so that it could be
 7 considered before making their recommendation to the
 8 Board, yes.
 9 **Q Okay, because in other RFAs, there is a**
 10 **process by which a withdrawal occurs, and the applicant**
 11 **who withdraws its application is not included within a**
 12 **recommendation presented to the Board; is that right?**
 13 A I believe the way we have it in the other
 14 RFAs, is that we will not act upon a withdrawal request
 15 within 14 days of the board meeting. I believe that's
 16 what we have got in there.
 17 **Q Okay. But that wasn't in this RFA?**
 18 A That's correct.
 19 **Q So there wasn't any timeframe by which an**
 20 **applicant would know it had to act in order for its**
 21 **withdrawal to not be considered as part of the ranking**
 22 **process presented to the Board?**
 23 A Correct. There is nothing in the rule that
 24 speaks to timing.
 25 **Q So then that would be up to the Board as to**

Page 29

1 possible, yes, because the rule, again, doesn't tell us
 2 when we have to act on it.
 3 **Q And why is it important for the review**
 4 **committee to have 14 days to be able to respond to a**
 5 **withdrawal?**
 6 A What we would like is to have the withdrawal
 7 within -- before the review committee meets for the last
 8 time and makes its recommendations to the Board.
 9 **Q Okay. But in terms of whether or not Hammock**
 10 **Crossings is, in fact, going to utilize the tax credits**
 11 **allocated to it, it doesn't matter whether you received**
 12 **it 14 days in advance or two days in advance, does it?**
 13 A I guess I would say, no, it doesn't matter.
 14 Right.
 15 MR. MENTON: Okay. That's all the questions I
 16 have. Thank you.
 17 THE WITNESS: Sure.
 18 MS. WALKER: This way or this way?
 19 MR. VARN: I don't have any questions.
 20 MR. DONALDSON: I don't think I have any
 21 questions either. Thank you.
 22 EXAMINATION
 23 BY MS. WALKER:
 24 **Q I have just a few followup questions.**
 25 **Mr. Reecy, I am Karen Walker, and Mr. Sellers**

Page 30

1 and I are both with Holland & Knight and we represent
 2 Rosedale Holdings, H&H Development and Brookstone. And
 3 I want to start with some questions about this
 4 withdrawal issue and follow up where Mr. Menton left
 5 off.
 6 If you can go back and look at Rule 67-60.004,
 7 and I want to make sure I understand your prior
 8 statements in response to Mr. Menton's questions.
 9 Do I understand correctly that Florida
 10 Housing's position is that it will recognize a request
 11 for withdrawal if it's made prior to their staff
 12 recommendations being developed?
 13 A Most likely, yes.
 14 Q Okay. When you say most likely, are there
 15 situations where Florida Housing hasn't recognized a
 16 withdrawal in the past if it's made prior to --
 17 A Not that I am aware of, but, you know, because
 18 we are not compelled by the rule to -- you know, it says
 19 that they may request in writing to withdraw its
 20 application at any time prior. I mean, that gives
 21 the -- that speaks to the applicant's ability to make
 22 the request, but it does not speak to what we, as the
 23 Corporation, actually have to do with it. And so
 24 depending on the situation, you know, I don't want to
 25 state unequivocally that we would act on every single

Page 32

1 time prior. Would you agree with me that the rule says,
 2 any time prior to the vote by the Corporation's board,
 3 right?
 4 A I would agree with that, yes.
 5 Q Okay. The rule doesn't say, any time prior to
 6 the staff recommendations being developed, right?
 7 A That is correct.
 8 Q Okay. And you could have developed a rule
 9 that said that, right?
 10 A That is correct.
 11 Q Let's now, if you can look at page 39 of the
 12 RFA. And again, I want to make sure I understand your
 13 prior answers.
 14 If I understand correctly, you said that
 15 paragraph eight on page 39 is what you consider the
 16 provision in the RFA that speaks to withdrawal?
 17 A This is the operation by which we handled the
 18 withdrawal, given that it's funding that becomes
 19 available after the Board takes action.
 20 Q Okay. But the word withdrawal actually
 21 doesn't appear in paragraph eight, does it?
 22 A That is correct.
 23 Q Okay. And as I think, as Mr. Menton pointed
 24 out, there are provisions in other RFAs, including more
 25 recently issued ones that have a specific provision

Page 31

1 request immediately. I don't know.
 2 Q As you sit here today, are you aware of any
 3 situations where an applicant has made a request to
 4 withdraw an application prior to staff developing its
 5 recommendation and that request has been denied?
 6 A Not that I am aware of, no.
 7 Q Are you aware of any situations where an
 8 applicant has made a request to withdraw its application
 9 after the staff recommendation has been developed but
 10 prior to the Board vote, other than the Hammock
 11 Crossings, where that request has been denied?
 12 A Not that I am aware of, no.
 13 Q Are you aware of any situations in the past
 14 where an applicant has made a request to withdraw its
 15 application after the staff recommendation, but prior to
 16 the Board action, where that withdrawal has been
 17 accepted?
 18 A I am not aware of that either, no.
 19 Q Okay. So Hammock Crossings is the first
 20 situation you are aware of where anyone has requested to
 21 withdraw an application in this time period between the
 22 staff recommendation and the Board taking action?
 23 A It's the first one I am aware of, yes.
 24 Q Okay. And going back to the rule, you started
 25 to read part of it you stopped at, and you said at any

Page 33

1 dealing with withdrawal?
 2 A That is correct.
 3 Q Okay. And I think you said that looking back
 4 at paragraph eight, talking about returned allocations,
 5 one of the situations in which you can have a returned
 6 allocation is where an applicant fails to satisfy a
 7 requirement outlined in the RFA?
 8 A Correct.
 9 Q Okay. And I think you said you could broadly
 10 read that to mean, well, if you weren't ready to move
 11 forward, you failed to satisfy a requirement outlined in
 12 the RFA; is that Florida Housing's position?
 13 A Yes.
 14 Q Okay. Did the Board, when it voted, find that
 15 Hammock Crossings failed to comply with some requirement
 16 of the RFA?
 17 A No.
 18 Q In fact, if they found that Hammock Crossings
 19 failed to comply with some requirement in the RFA, they
 20 wouldn't have been allocated any funding, right?
 21 A That is correct.
 22 Q Was Hammock Crossings invited to enter into
 23 credit underwriting?
 24 A No.
 25 MR. MEFFERT: Has anyone been?

Page 34

1 THE WITNESS: No one has been due to the legal
 2 action that we currently have.
 3 MR. DONALDSON: I object.
 4 MR. MEFFERT: To what?
 5 MR. DONALDSON: You can't ask questions.
 6 MR. MENTON: Out of order.
 7 MR. SELLERS: That was probably our next
 8 question anyway.
 9 MR. MEFFERT: I just throw that one in. We
 10 are being kind of casual here.
 11 THE WITNESS: Well, I think I already stated
 12 earlier that no one has.
 13 BY MS. WALKER:
 14 **Q Okay. And I haven't had a chance yet to read**
 15 **the portion of the transcript that we have been handed**
 16 **today. But the Board was aware of this letter dated**
 17 **December 11th when they voted regarding Hammock**
 18 **Crossings, right?**
 19 A They were aware of the withdrawal request,
 20 that is correct.
 21 **Q Okay. So they knew at the time that they**
 22 **voted to allocate funding to Hammock Crossings that**
 23 **Hammock Crossings was not going to move forward with**
 24 **that funding, right?**
 25 A That is correct.

Page 36

1 **Q And they knew that before they took a vote?**
 2 A That is correct.
 3 **Q And I think you already answered this**
 4 **question, but the Board has never, itself, taken a vote**
 5 **on whether to accept or reject a withdrawal previously,**
 6 **right?**
 7 A Not that I am aware of.
 8 **Q And they didn't do that in this case either?**
 9 A They did not.
 10 **Q And I will just follow up, I think Mr. Menton**
 11 **asked this, but are there criteria that either staff or**
 12 **the Board reviews in determining whether or not to**
 13 **accept a withdrawal request?**
 14 A There are not -- there is no other guidance
 15 other than what's in 67-60.
 16 **Q And are there criteria in 67-60 about when --**
 17 **what criteria the Board or staff is to use in**
 18 **determining whether to accept a withdrawal request or**
 19 **not?**
 20 A No, not that I am aware of.
 21 **Q Are you aware of any withdrawal request ever**
 22 **being denied?**
 23 A Not that I am aware of, no.
 24 **Q So usually they are accepted at face value?**
 25 A I don't have enough experience here to tell

Page 35

1 **Q Was there a determination by the Board made to**
 2 **reject the withdrawal by Hammock Crossings?**
 3 A There was not, no.
 4 **Q So if the Board knew that -- I am just trying**
 5 **to understand. If the Board knew that the funding was**
 6 **going to be available before it took a vote, how do you**
 7 **reconcile that with the language in paragraph eight that**
 8 **says, funding that becomes available after the Board**
 9 **takes action?**
 10 A It was meant -- it was presented to them that
 11 there was a withdrawal. And they also had a recommended
 12 group that included Hammock Crossings for consideration
 13 before them, and one of them, you know, had requested
 14 withdrawal. And they were made aware of the provision
 15 in the RFA regarding returned funding as the operational
 16 methodology after their action.
 17 **Q But when the Board voted on Hammock Crossings**
 18 **knowing that Hammock Crossings had said they wanted to**
 19 **withdraw their application, the Board, at that time,**
 20 **knew that the funding was already available for some**
 21 **other use?**
 22 A I guess you could say that, yes.
 23 **Q Because Hammock Crossings had no intention of**
 24 **moving forward?**
 25 A Right.

Page 37

1 you because I have not personally experienced it.
 2 **Q Okay. Let's me switch subjects here a little**
 3 **bit and talk about the waiver of minor irregularities**
 4 **generally. And if I can have you now look at rule**
 5 **67-60.008, which you have in front of you. And again, I**
 6 **want to make sure I understand your prior answers.**
 7 **Do I understand correctly that you said the**
 8 **staff that conducts the review, when they see something**
 9 **they think is an issue, then they make a determination**
 10 **whether or not to waive something as a minor**
 11 **irregularity?**
 12 A They have the ultimate authority on that, yes.
 13 **Q Has the Board delegated authority to them to**
 14 **waive a minor irregularity?**
 15 A I don't know the answer to that. I don't know
 16 how to answer that.
 17 **Q Are you aware of the Board ever taking a vote**
 18 **or taking any action to say that the staff has the**
 19 **authority to waive minor irregularities?**
 20 A Specifically, I don't know.
 21 **Q And again, the rule, if we are looking at the**
 22 **rule, it refers to the Corporation waiving minor**
 23 **irregularities, right?**
 24 A Right.
 25 **Q And the Corporation would act through the**

<p style="text-align: right;">Page 38</p> <p>1 board?</p> <p>2 A Yes.</p> <p>3 Q Are you aware -- you were at the board meeting</p> <p>4 on December 13th, I assuming. I have not read the</p> <p>5 transcript yet.</p> <p>6 A Yes.</p> <p>7 Q Are you aware of the Board being advised of</p> <p>8 any minor irregularities that staff decided to waive</p> <p>9 with respect to the Summerset application?</p> <p>10 A No.</p> <p>11 Q Are you aware of the Board being advised of</p> <p>12 any minor irregularities that staff had decided to waive</p> <p>13 with respect to the Arbours at Tumblin Creek</p> <p>14 application?</p> <p>15 A No.</p> <p>16 Q Are you aware of any minor irregularities that</p> <p>17 staff determined to waive that was presented to the</p> <p>18 Board with respect to the Paradise Point application?</p> <p>19 A No.</p> <p>20 Q Did the staff present any issues about waiving</p> <p>21 minor irregularities to the Board?</p> <p>22 A No.</p> <p>23 Q Okay. So those determinations are made solely</p> <p>24 by staff without even briefing the Board on those</p> <p>25 issues?</p>	<p style="text-align: right;">Page 39</p> <p>1 A Those determinations are made by staff and</p> <p>2 are, I guess, if you will, incorporated into the</p> <p>3 recommendation that the review committee gives to the</p> <p>4 Board.</p> <p>5 Q Okay. And does the recommendation specify</p> <p>6 where there have been minor irregularities that have</p> <p>7 been waived?</p> <p>8 A It does not specifically. There are two</p> <p>9 motions that are made.</p> <p>10 Q There is no written document that says, here</p> <p>11 is the things we found that were problems with the</p> <p>12 applications and we decided to waive these?</p> <p>13 A To the Board, no.</p> <p>14 Q Is it usually one single staff person that</p> <p>15 makes the determination of whether to waive a minor</p> <p>16 irregularity, or is there a committee or a group that</p> <p>17 makes that determination?</p> <p>18 A It -- so the final responsibility rests with</p> <p>19 the staff member to whom that criteria -- criterion,</p> <p>20 criteria -- is assigned. However, they do consult with</p> <p>21 myself, legal staff, et cetera, in consideration of that</p> <p>22 question.</p> <p>23 Q And for site control, that person would be Amy</p> <p>24 Garmon?</p> <p>25 A That is correct.</p>
<p style="text-align: right;">Page 40</p> <p>1 Q And for the scoring of financing, that would</p> <p>2 be Jade Grubbs?</p> <p>3 A In this case, for this RFA, yes.</p> <p>4 Q Okay. And when staff makes a determination to</p> <p>5 waive a minor irregularity, do they use 67-60.008?</p> <p>6 A Yes.</p> <p>7 Q Is there any other legal authority or</p> <p>8 definition of minor irregularity they look at in making</p> <p>9 that determination?</p> <p>10 A No.</p> <p>11 Q Is the requirement that there be site control</p> <p>12 something that Florida Housing would waive?</p> <p>13 A The requirement that there be site control?</p> <p>14 Q Yes.</p> <p>15 A No.</p> <p>16 Q If I understand correctly, you don't have</p> <p>17 specific knowledge about any determination that Ms.</p> <p>18 Garmon may have made to waive the closing date of</p> <p>19 April 1st, 2013, in the Summerset real estate agreement;</p> <p>20 correct?</p> <p>21 A I guess the way I would characterize it is my</p> <p>22 recollection probably isn't specific enough to assist</p> <p>23 you.</p> <p>24 Q Okay.</p> <p>25 A I mean, certainly -- did I discuss it with</p>	<p style="text-align: right;">Page 41</p> <p>1 her, you know, back when things were going on? Very</p> <p>2 likely, but I just don't have enough of a recollection</p> <p>3 to help you.</p> <p>4 Q So you don't recall any specific discussion of</p> <p>5 that issue prior to the staff recommendations being</p> <p>6 developed?</p> <p>7 A No, I don't actually.</p> <p>8 Q Okay.</p> <p>9 A Only in very general terms. Amy would be able</p> <p>10 to --</p> <p>11 Q When you say, in general terms. Did you have</p> <p>12 a discussion with Ms. Garmon about a problem with the</p> <p>13 closing date in the Summerset application prior to the</p> <p>14 staff recommendation being developed?</p> <p>15 A And I don't recall that specificity. I just</p> <p>16 discussed all of the issues with her that she was</p> <p>17 looking at, whether it was a failure to meet threshold,</p> <p>18 or if there was something that she was trying to make a</p> <p>19 call on, such as, you know, a minor irregularity.</p> <p>20 Q What about -- let's talk for a minute about</p> <p>21 the Tumblin Creek application. Would you have knowledge</p> <p>22 of any issues with respect to the Tumblin Creek equity</p> <p>23 proposal?</p> <p>24 A No.</p> <p>25 Q Okay. And that would be Jade Grubbs?</p>

Page 42

1 A That's correct.

2 **Q And did Jade Grubbs contact you regarding any**

3 **issues with respect to the Tumblin Creek proposal prior**

4 **to staff recommendation being developed?**

5 A I cannot specifically recall. I am sorry.

6 **Q We understand. I am just trying to figure out**

7 **who has the knowledge here.**

8 A Right.

9 **Q And would the same thing be true with regard**

10 **to any issues with the equity proposal for Paradise**

11 **Point, we should ask Jade Grubbs about that as well?**

12 A Yes.

13 MS. WALKER: That's all I have.

14 MR. DONALDSON: Could I just ask a question,

15 Mr. Reecy, and this is just kind of a followup to

16 this whole idea of funds turned in before the board

17 meeting and after the board meeting. And,

18 Wellington, did you say that there was an e-mail

19 that went along with these December 11th letter?

20 MR. MEFFERT: Yes.

21 MR. DONALDSON: Are we making that part of

22 this exhibit or --

23 MR. MEFFERT: I had intended to, yeah.

24 MS. WALKER: I don't have that.

25 MR. DONALDSON: I don't either.

Page 44

1 **Q And if the Board -- and you may not be able to**

2 **answer this. This might be a legal conclusion. But if**

3 **the Board had actually got this letter, knew about this**

4 **letter, would a possible option have been sending it**

5 **back to the review committee for the review committee to**

6 **actually --**

7 A Well, to answer your question, the Board was

8 aware of the withdrawal.

9 **Q Right.**

10 A And, yes, that is conceivable, that they could

11 have stopped action and sent it back to the review

12 committee. That is among the choices they could have

13 made with the knowledge they had.

14 MR. DONALDSON: That's all I have. Thank you.

15 MR. MEFFERT: Anybody else?

16 MR. DONALDSON: Gary is on the phone.

17 MR. MEFFERT: Gary?

18 MR. COHEN: I'm here.

19 MR. MEFFERT: You got any questions for Ken?

20 MR. COHEN: I do not.

21 MR. MEFFERT: Okay. Derek, are you on?

22 Okay. I don't have any.

23 MR. MENTON: Thank you.

24 (Whereupon, the deposition was concluded at

25 11:05 a.m.)

Page 43

1 MR. MEFFERT: It is 10:53 a.m., December 12th,

2 to Ken Reecy and Steve Auger from Gary Cohen, and I

3 will provide that.

4 MS. WALKER: December 12th or December 11th?

5 MR. MEFFERT: 12th.

6 MR. DONALDSON: It was dated the 11th.

7 MR. MEFFERT: The letter was dated the 11th.

8 MR. DONALDSON: Right.

9 EXAMINATION

10 BY MR. DONALDSON:

11 **Q Mr. Reecy, I am -- having dealt with Florida**

12 **Housing for a number of years, and understanding things**

13 **and how they get to the Board -- and this kind of goes**

14 **with your 14 days. I know that in the past we have**

15 **added supplemental things to board packages, and that**

16 **usually happens a specific time before the board**

17 **meeting, correct?**

18 A That is correct.

19 **Q So Florida Housing gets this letter on**

20 **December 12th, which was the day before the board**

21 **meeting, right?**

22 A Yes.

23 **Q And, as I understand it, the Board acted on a**

24 **recommendation from the review committee?**

25 A That is correct.

Page 45

1

2 CERTIFICATE OF OATH

3

4 STATE OF FLORIDA)

5 COUNTY OF LEON)

6

7 I, the undersigned authority, certify that the

8 above-named witness personally appeared before me and

9 was duly sworn.

10

11 WITNESS my hand and official seal this 3rd day

12 of March, 2014.

13

14

15

16

17

18

19 DEBRA R. KRICK

20 COMMISSION #EE212307

21 EXPIRES JULY 13, 2016

22 PROFESSIONAL COURT REPORTER

23 (850) 894-0828

24

25 CERTIFICATE OF REPORTER

1 STATE OF FLORIDA)
2 COUNTY OF LEON)

3 I, DEBRA R. KRICK, Professional Court
4 Reporter, certify that the foregoing proceedings were
5 taken before me at the time and place therein
6 designated; that my shorthand notes were thereafter
7 translated under my supervision; and the foregoing
8 pages, numbered 6 through 44, are a true and correct
9 record of the aforesaid proceedings.

10 I further certify that I am not a relative,
11 employee, attorney or counsel of any of the parties, nor
12 am I a relative or employee of any of the parties'
13 attorney or counsel connected with the action, nor am I
14 financially interested in the action.

15 DATED this 3rd day of March, 2014.
16
17
18

19
20 DEBRA R. KRICK
21 COMMISSION #EE212307
22 EXPIRES JULY 13, 2016
23 PROFESSIONAL COURT REPORTER
24 (850) 894-0828
25