

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASE NOS. 14-1398BID
14-1399BID
14-1400BID
14-1425BID
14-1426BID
14-1427BID
14-1428BID

PINNACLE RIO, LLC,

Petitioner,
vs.

Volume 2
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FLORIDA HOUSING FINANCE CORPORATION,

Respondent,
and

ALLAPATTAH TRACE APARTMENTS, LTD.

Intervenor.

_____ /

IN RE: Final Hearing
BEFORE: Honorable F. SCOTT BOYD
DATE: April 29, 2014
TIME: Commenced at 1:32 p.m.
Concluded at 5:14 p.m.
LOCATION: 1230 Apalachee Parkway
Tallahassee, FL
REPORTED BY: LISA D. FREEZE, RPR, CRR
Notary Public

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P R O C E E D I N G S

1
2 THE COURT: Please turn off your cell phones.
3 I always forget to turn mine off.

4 This hearing will now be in order. It's
5 Tuesday, April 29th, 2014 at 1:30 p.m. on my
6 watch, not by that clock. And we are
7 continuing here for the Division of
8 Administrative Hearings in consolidated cases
9 14-1398, 14-1399, 14-1400 and 14-1428BID.

10 Since we last met, 2401 gave notice of
11 voluntary dismissal of 14-1425. I apologize
12 for the room. I thought we were going to be in
13 the larger room, but we had some parties drop
14 and they had some parties add, so a little
15 shuffling order changed.

16 Before we give opening statements, we have
17 a pending motion in limine filed by Florida
18 Housing Finance Corporation. Mr. Brown, I read
19 your motion, but if you'd take me a few moments
20 to recap that for me.

21 MR. BROWN: Basically, Your Honor, it is much
22 the same issues we had with 2401.

23 This is a -- what the petitioner is
24 attempting to do here is to introduce a fact
25 that was not expressed in their application

1 and, in fact, not even within the four walls of
2 Florida Housing.

3 It is our position that this fact should
4 have been included in their application. If it
5 wasn't there, then they should have at least
6 expressed these facts to us when they selected
7 the developments for funding that they did.

8 I think it's important to note that the
9 developments they selected to show developer
10 experience were chosen by the applicant and not
11 by Florida Housing. And we think that it was
12 incumbent upon them to make sure that those
13 developments met our requirements. They could
14 have done that before the application. They
15 certainly could have done that in the
16 application, and they failed to do so. So we
17 scored what we had in the application and in
18 our own records of the applications that they
19 selected, and it was just not there.

20 So now they're trying to basically amend
21 or supplement their application by providing
22 you documentation that shows that Ms. Wong, who
23 is the developer at issue in this case, was a
24 principal of St. Luke's Life Development.

25 There was no record of her being a

1 principal in Florida Housing for that
2 development. There was no record of her being
3 a principal in the application that they
4 submitted. And we don't believe they should be
5 able to provide that information to you now or
6 that you should consider it.

7 THE COURT: Thank you.

8 Ms. Blanton is not on record. You want to
9 make an appearance on behalf...?

10 MS. BLANTON: Yes, Your Honor.

11 Donna Blanton with the Radey Law Firm on
12 behalf of APC Four Forty Four. I apologize for
13 not being here last week when you started. I
14 was in another proceeding.

15 We completely disagree with the way
16 Mr. Brown has characterized what happened here.
17 The evidence will show -- and we've taken
18 depositions on this -- is that the applicants
19 were asked to submit a chart of prior developer
20 experience. They all did. They included it.

21 The scorer was reviewing these, taking
22 them at face value, not checking anything.
23 She's testified to that. And then someone else
24 on Florida Housing staff came up to her and
25 said: Hey, I remember something that happened

1 back in September involving Liz Wong's employer
2 where they were transferring the ownership
3 interest and the developer interest in another
4 deal, and I think maybe she doesn't have the
5 experience. So maybe we ought to check.

6 So at that point, they started checking to
7 see if Ms. Wong did, in fact, have the
8 necessary developer experience. She does, but
9 she did not attach the clarifying information
10 that would have shown that that we would like
11 to put into evidence because there was no
12 requirement that documentation proving that
13 you're a principal be attached.

14 So at this point, Florida Housing starts
15 checking developer experience for those
16 applications that they can check. They will
17 also testify they had no way to check to see
18 whether applicants that listed out-of-state
19 developer experience, in fact, had that
20 experience because they don't have any
21 documents about deals that were done out of
22 state. So they accepted those at face value.

23 They just looked at what they had in their
24 files and, in fact, Ms. Wong had become a
25 principal of St. Luke's Life Center back in

1 2007. So she was, in fact, a principal of the
2 entity that was listed on the chart as well as
3 the two other entities that were required to be
4 listed.

5 There was nothing in the RFA to suggest
6 that, you know, backup documentation had to be
7 supplied. And so she assumed that it would be
8 taken at face value as, in fact, it started to
9 be when they began this process and as it was
10 for all the out-of-state developers. We think
11 this process was arbitrary and capricious in
12 terms of the way that the developer experience
13 was checked and the way that it was handled.

14 Florida Housing went outside of reviewing
15 the applications and went outside of its RFA in
16 trying to check all of this. And we feel like
17 this resulted in us being determined to be
18 ineligible, which is, you know, a pretty big
19 deal. It's as if we've been found
20 nonresponsive.

21 And if you take a look, Your Honor, at one
22 of the cases that we cite, a couple of cases
23 that we cited in our response, the rule is not
24 quite so rigid as Mr. Brown would suggest that
25 nothing new can be considered in a bid protest.

1 In fact, Judge Ruff in the case of
2 *Floridian Construction and Development Company*
3 *v. Florida Department of Environmental*
4 *Protection* said: The administrative law
5 judge -- and I'm sorry, the case is cited in
6 our motion, but it's 09-0858BID.

7 Judge Ruff said: The administrative law
8 judge may consider evidence that the agency did
9 not consider for the limited purpose of
10 considering whether the respondent agency's
11 failure to consider the other evidence was
12 clearly erroneous, contrary to competition,
13 arbitrary and capricious.

14 We think the evidence that we'll put on
15 through the Florida Housing witnesses we intend
16 to call and through our own witness, Ms. Wong,
17 will show that this process, as it related to
18 checking developer experience or evaluating
19 developer experience, was absolutely arbitrary
20 and capricious.

21 THE COURT: Ms. Blanton, do you find that the
22 process used by the corporation was arbitrary
23 because it was consulting information outside the
24 RFA or because it was unequally applied or both?

25 MS. BLANTON: Both.

1 Your Honor, they went outside of the RFA
2 because they thought -- they knew they had some
3 information in their files. For example,
4 Ms. Wong listed three developments that she had
5 served as a principal on, and these had come
6 through Florida Housing back in '05, '06, '07.

7 So they had some information they could go
8 look at, but they didn't have everything.
9 Because on the third deal, the St. Luke's deal,
10 the developer entity had changed in 2006 -- I
11 believe it was a 2005 application -- with
12 Florida Housing's approval. That document was
13 in the credit underwriting report, showing that
14 the developer entity had changed with Florida
15 Housing's board approval.

16 The staffers from Florida Housing will
17 testify that they did go and look at that
18 document, but they didn't go the step further
19 to see who new principals were of the new
20 developer entity. And Ms. Wong did become a
21 principal of the new developer entity in '07,
22 long before the credit underwriting report in
23 this development was completed.

24 So most RFPs will have a provision in them
25 allowing an agency to seek clarifying

1 information from applicants. That didn't
2 happen here. That provision doesn't appear to
3 be in here. But it was inequitable in that
4 she, in fact, has the experience.

5 And for many developers -- and I've got,
6 you know, documents I'd like to put into
7 evidence as we move on here.

8 For many developments -- many developments
9 just listed out-of-state developer experience.
10 There's several that listed only experience in
11 New York. Some that listed experience in
12 Wisconsin, other states. They'll testify that
13 they didn't check those. They have no way of
14 checking those. They took it at face value
15 that those applicants met the developer
16 experience requirements.

17 We feel like Ms. Wong, who has been
18 dealing with Florida Housing for probably 15
19 years -- they know her very well -- should have
20 been given the same benefit of the doubt. And
21 so it was inequitably applied.

22 THE COURT: Mr. Brown, the corporation when
23 it put out its RFA, it asked solely for a list of
24 developments that the principal had been involved
25 in; is that right? Did it ask for backup inform

1 -- background information?

2 MR. BROWN: It did not ask for background
3 information, and all that was required of the RFA
4 was that they list it. But I think in order to
5 agree with Ms. Blanton, you're going to have to
6 say that Florida Housing has to be willfully
7 ignorant of its own records and its own
8 experience.

9 And just a -- the same month that this RFA
10 was issued, Ms. Blanton's client asked for a
11 change in developer entity and developer entity
12 for another project on which Ms. Wong was a
13 principal, and part of that change was that
14 they were requesting an experienced developer
15 be brought in to replace the experienced
16 developer that was leaving.

17 Now, if Ms. Wong was an experienced
18 developer, why did they make that request? And
19 that is what triggered the inquiry in the
20 scorers and the person who was assisting the
21 scorers to go back and say: Wait a minute. If
22 Ms. Wong is an experienced developer, then why
23 am I writing up this board memo to switch out,
24 to exchange an experienced developer for an
25 experienced developer if she's already sitting

1 there?

2 And so that triggered a little bit of
3 suspicion about whether or not she had or --
4 Ms. Wong or a business entity had ever told us
5 that she was a principal on St. Luke's Life.
6 They went back, they looked at the credit
7 underwriting report for St. Luke's. They
8 looked at the application. Nowhere was
9 Ms. Wong listed as a principal.

10 Now, it may that be that out in the real
11 world that they had made her an officer at some
12 point during credit underwriting, but they
13 never told us. And they should have known that
14 they hadn't told us that when they selected
15 that development to stand for her developer
16 experience.

17 And they could have just put an asterisk
18 on their form and said: By the way, we know
19 you didn't know that she was a developer or was
20 a principal on that development that were
21 listed above, but we added it, we added her on.
22 And then we would have accepted it. But we
23 didn't get that, and we couldn't find her as a
24 principal on St. Luke's Life.

25 THE COURT: But the issue here, as you

1 phrased in your motion, is the application of
2 120.57(3) forbids this; is that correct?

3 MR. BROWN: Yes.

4 THE COURT: I'm having a little trouble
5 understanding why that is supplementing the
6 application when the application gave everything
7 that you asked for.

8 What they're trying to do now is put on
9 evidence as to the facts behind that, based on
10 your facts that you had before you in saying it
11 was not true; isn't that right?

12 MR. BROWN: Well, I think it applies because
13 if this is a modified de novo intraagency review,
14 as has been expressed in a couple of documents
15 that were filed and issued by you, then we can
16 only be held accountable for scoring what we had.

17 And I think that you would have to say
18 that we're not allowed to go and look at our
19 own records for a development that they chose
20 to use to stand for experience.

21 THE COURT: Okay. Mr. Brown, I'm going to
22 rule against the corporation's motion in limine.
23 I find that the de novo portion of this hearing is
24 broad enough to allow exhibits and testimony as to
25 what the actual facts were.

1 I do not feel I need to find that you
2 needed to be willfully ignorant, in fact, I
3 don't have any problem with your using the
4 knowledge you had, but maybe that knowledge was
5 inaccurate. And I think they have an
6 opportunity to show that that knowledge was
7 inaccurate here.

8 Do we have any other preliminary matters
9 before we begin with opening statements?

10 Ms. Daughton.

11 MS. DAUGHTON: Your Honor, I have Mark Logan
12 with me. Mr. Logan was not able to be here last
13 week to make a notice of appearance on the record
14 on behalf the HTG Miami-Dade 5, LLC.

15 THE COURT: Mr. Logan.

16 MR. LOGAN: Thank you, Your Honor.

17 THE COURT: Okay. I think we discussed that
18 APC Four Forty Four would begin.

19 MS. BLANTON: Yes, Your Honor.

20 THE COURT: If you would like to make a short
21 opening statement.

22 MS. BLANTON: Yes, Your Honor, and I will be
23 brief. This is what happens when you don't come
24 to the first day. You get picked to go first.

25 APC Four Forty Four is one of the entities

1 that applied for a housing credit allocation
2 pursuant to the RFA issued by Florida Housing.
3 APC sought the allocation in connection with
4 the development of a proposed high-rise
5 118-unit apartment complex in Miami.

6 Despite receiving the maximum number of
7 points, APC's application was deemed ineligible
8 for consideration by Florida Housing's review
9 committee because the committee found that a
10 chart APC completed did not include information
11 that satisfied the mandatory eligibility
12 requirements for prior general development
13 experience. This finding is incorrect. APC
14 met all requirements of the RFA, including
15 those for general development experience. And
16 the evidence will show this.

17 The prehearing stipulation describes in
18 great detail Florida Housing's process for
19 awarding housing credits. So I won't take too
20 much time in my opening statement to explain
21 that. You'll hear much about it in the next
22 couple of days; but given that I'm going first,
23 I thought, very briefly, I would just let you
24 know that, to be eligible for an allocation
25 award, applicants must meet a number of

1 mandatory eligibility requirements and are
2 scored based on the application's proximity to
3 transit and community services and local
4 government contributions.

5 The maximum number of points an applicant
6 can receive is 27. Because many applications
7 score the maximum number of points and meet the
8 mandatory requirements, Florida Housing applies
9 a series of tiebreakers. The final tiebreaker
10 is a lottery number.

11 Applications with the lowest lottery
12 number are given preference over applications
13 with higher lottery numbers. In addition,
14 there must be enough funding available to fully
15 fund the applicant's eligible housing credit
16 request amount as they go down the list.

17 And in Miami-Dade County, Wagner Creek and
18 Allapattah Trace were recommended for an
19 allocation of housing credits after Florida
20 Housing found that these applications had the
21 lowest lottery numbers of the applications that
22 met the mandatory requirements.

23 Now, as I mentioned, Florida Housing found
24 that APC did not meet the mandatory
25 requirements for developer experience. The RFA

1 required that at least one principal of an
2 applicant's identified developer entity meet
3 certain experience requirements.

4 Principal is a defined term in Florida
5 Housing's rules. The RFA required the
6 applicant to complete a specific chart
7 demonstrating this experience. The chart,
8 however, did not include a space for an
9 applicant to provide any explanations or
10 clarifications. They were just asked to
11 provide the information on a chart. Nor did
12 the RFA advise applicants to provide
13 documentation or any necessary explanations
14 concerning developer experience.

15 And as we heard a little bit in the motion
16 hearing a minute ago, APC listed Ms. Liz Wong
17 as the principal with the required experience.
18 For each of the three developments listed on
19 Florida Housing's chart, Ms. Wong served as an
20 officer of a previous developer entity, thus
21 meeting the definition of a principal in
22 Florida Housing's rule.

23 Florida Housing, however, did not accept
24 the information as submitted by APC at face
25 value. Based on an incorrect assumption about

1 an unrelated application involving Ms. Wong's
2 employer, one Florida Housing staffer decided
3 that Ms. Wong's listed developer experience
4 needed to be checked.

5 As part of this review of the experience
6 listed by Ms. Wong, Florida Housing relied on
7 incomplete information in its files to
8 determine that Ms. Wong had not been a
9 principal for one of the three developments
10 listed, St. Luke's Life Center.

11 Handwritten notes from one of APC's other
12 applications in this RFA state that Ms. Wong
13 was not listed as a principal for St. Luke's
14 when St. Luke's developer applied for housing
15 credits in 2005. And while that is an accurate
16 statement, it ignores that Ms. Wong became a
17 principal of the developer of St. Luke's Life
18 Center after the 2005 application was
19 submitted, but before Florida Housing's credit
20 underwriting review of St. Luke's was
21 completed.

22 Florida Housing actually approved a change
23 in the developer entity for St. Luke's in 2006,
24 a fact that is referenced in the credit
25 underwriting report. Ms. Wong became a

1 principal of this new approved developer entity
2 almost a full year before the credit
3 underwriting report for St. Luke's was
4 completed. Florida Housing could have easily
5 verified the information by making an inquiry
6 of Ms. Wong or her development company,
7 Atlantic Pacific Communities, rather than
8 assuming that a misrepresentation was made.

9 And while there is a prohibition in the
10 RFA for applicants to contact the corporation,
11 there is no such prohibition for the
12 corporation to contact applicants to seek
13 clarifying information.

14 The evidence will show that Florida
15 Housing's procedures for evaluating developer
16 experience are arbitrary and capricious.
17 Before the Florida Housing staffer remembered
18 something about an unrelated development
19 outside of this RFA process that she thought
20 proved Ms. Wong did not have the necessary
21 experience, Florida Housing scores were
22 accepting each applicant's developer experience
23 chart at face value. No investigation of any
24 kind was being made to determine whether the
25 applicant met the necessary experience

1 requirements. But then when the listed
2 development on APC's developer experience form
3 were checked, Florida Housing decided it should
4 check the list of developments on other
5 applications as well. Except for the reasons
6 we discussed a moment ago in the motion
7 hearing, they really aren't capable of doing
8 that because they have no means of checking
9 out-of-state developer experience, and they
10 will testify to that fact.

11 APC's substantial interests are affected
12 by the determination in this case that it was
13 determined ineligible. Because if Ms. Wong is
14 found not to have met the developer experience
15 requirements, then APC Four Forty Four
16 becomes -- I'm sorry, if Ms. Wong is found to
17 have met the developer experience requirements,
18 then we are, again, an eligible application as
19 opposed to an ineligible. The only reason we
20 were disqualified was because of this one issue
21 relating to St. Luke's Life Center.

22 As anyone who has worked around Florida
23 Housing for any length of time knows, funded
24 applications often don't make it through the
25 credit underwriting process. They often

1 decline an invitation to enter credit
2 underwriting for a variety of reasons.
3 Sometimes they aren't approved in the credit
4 underwriting process.

5 As Florida Housing's rules make clear,
6 being preliminarily awarded an allocation of
7 housing credits is only the first step in
8 getting funded. Florida Housing has an
9 extremely rigorous credit underwriting process.

10 Remaining on the list of eligible
11 applications is important to any developer with
12 a lottery number that's in striking distance of
13 the funding range, given the likelihood that
14 some deals simply will never close.

15 And this is actually contemplated in the
16 RFA. There's a statement in the RFA -- I
17 apologize, I didn't write down the page number,
18 but I'll have an opportunity to alert you to
19 the page number. It says: Funding that
20 becomes available after the board takes action
21 on the committee's recommendations, due to an
22 applicant declining to enter credit
23 underwriting or the applicant's inability to
24 satisfy a requirement outlined in this RFA
25 and/or Rule Chapter 67-48 FAC, will be

1 distributed to the highest scoring eligible
2 unfunded application located in the same county
3 as the development that returned the funding,
4 regardless of the funding test. If there's not
5 enough funding available to fully fund this
6 application, it will be entitled to receive a
7 binding commitment for the unfunded balance.

8 So in other words, what this means is that
9 there's some deals that may not make it
10 through. And Florida Housing has recognized
11 that. So remaining -- being determined to be
12 an eligible applicant and remaining on the list
13 for potential funding is extremely important to
14 my client.

15 Additionally, we have raised some issues
16 concerning some other deals with lower lottery
17 numbers that are ahead of us. We will be
18 putting on some evidence about some of the
19 issues we have raised. We will not be putting
20 on evidence about all of them.

21 So a number of the issues in my petition,
22 you won't get to hear about here this week.
23 But there are some that we will be putting on
24 and many other applicants here have raised some
25 of the same issues that we did. And so I

1 anticipate you'll hear quite a lot about a lot.

2 Thank you, Your Honor.

3 THE COURT: Thank you.

4 Mr. Goldstein, on behalf of Pinnacle Rio.

5 MR. GOLDSTEIN: Thank you. May it please the
6 Court, Joe Goldstein from Shutts & Bowen on behalf
7 of Pinnacle Rio.

8 Your Honor, we filed two separate
9 petitions. But for purposes of argument and
10 putting on the case, I'm going to treat that as
11 one petition against two of the -- two of the
12 applicants. And I will be brief, also.

13 As counsel previously said, in the end of
14 the day, this came down to the lottery numbers.
15 Pinnacle Rio stands in, essentially, fourth
16 place as we sit here today.

17 There were two of the applications that
18 are intended to be funded. One is the Wagner
19 Creek HTG, and then the other one is the
20 Allapattah. Those two are the funded
21 applications.

22 In third place is Town Center, and we've
23 challenged allegations as to Town Center and as
24 to Allapattah as to why they've not met minimum
25 requirements. And as a result of failing to

1 meet those minimum requirements, the agency has
2 acted arbitrary and capriciously in not
3 determining Allapattah and Town Center, the
4 No. 3 place applicant right now, to be
5 ineligible.

6 So I want to briefly explain our basis for
7 what we'll put on, the evidence today, through
8 documents and some testimony as to why
9 Allapattah and Town Center failed to meet
10 minimum requirements.

11 For Allapattah, it failed to meet two
12 minimum requirements relating to the status of
13 its site plan. It's a minimum requirement
14 under the RFA that you certify that as of the
15 application date that certain requirements of
16 your site plan be essentially ready to perform,
17 even though as you will hear argument from
18 counsel, even though the actual form that you
19 have to submit is 21 days after -- after during
20 the credit underwriting process, the
21 certification in your application for funding
22 is as of the application date.

23 And there's two bases within that site
24 control issue that Allapattah fails and should
25 have been determined to be ineligible. The

1 first issue relates to the site plan itself in
2 an actual alleyway that runs between the lots.

3 In the site plan that Allapattah included
4 in its application, it does not document that
5 they will retain -- that they will obtain title
6 to that alleyway. And therefore, without that
7 proof in their application, or that proof
8 existing elsewhere, the certification that
9 their site plan is ready to be performed, that
10 they had the ability to perform as of the date
11 of the application, even if they can fix it
12 later, shows that they should be determined to
13 be ineligible. And through portions of their
14 proposal -- their application, excuse me, and
15 some other documents, we will demonstrate why
16 they did not have the -- their certification at
17 the site plan because of that alleyway, it
18 renders them ineligible.

19 There's a second basis regarding their
20 site plan also, and that relates to the ability
21 for a sewer system. You'll hear we've
22 incorporated that argument by reference in our
23 pre -- in our prehearing stipulation. We will
24 not be -- we will be taking the second chair on
25 that issue, and I'll defer to Mr. Donaldson,

1 who will be briefing that issue in his opening
2 statement and taking the lead on the
3 presentation of evidence as to that. But
4 that's the second basis for Allapattah failing
5 to meet a minimum requirement.

6 Moving to the application that's in the
7 third spot, Town Center, which has not been
8 indicated for funding, but stands ahead of
9 Pinnacle. Pinnacle must jump ahead of those
10 two applicants for it to be entitled to funding
11 from the corporation. This is another minimum
12 mandatory that relates also to site control.

13 And to prove that you have the ownership
14 of the property, you have three things that you
15 can submit in your application. One of them is
16 that you have an eligible contract to acquire
17 that property. And the RFA is very specific as
18 to that requirement. It says that the
19 applicant must be the buyer. And the only
20 thing you look to is the contract itself.

21 And what we see in Town Center's
22 application that by the signature page, by the
23 signature page of that real estate contract,
24 that eligible contract that Town Center put in
25 their application, the buyer is not the

1 applicant. The buyer is an entity called
2 R-U-D-G, LLC, which is the 99.99 percent member
3 of the buyer; but it's a separate incorporated
4 entity that narrows it to not being the buyer.

5 And even though this is what I would -- I
6 think we all would agree, somewhat of a
7 technicality that you have the 99.99 percent
8 member of the buyer signing that contract,
9 we're not here really on an issue as can the
10 contract be enforced or not enforced.

11 The issue is the contract itself must
12 establish that the buyer is the applicant by
13 placing that member of the applicant -- and not
14 the managing member -- that renders the Town
15 Center eligible contract invalid for purposes
16 of the instructions in this RFA. And the
17 corporation has acted arbitrary and
18 capriciously by not rejecting them on that
19 minimum requirement.

20 I'm not entirely sure, but I believe some
21 of the parties will be attacking the Pinnacle
22 application in part. Pinnacle was found to be
23 eligible. There's an issue arguably with our
24 equity proposal, that it was a four-page equity
25 proposal. It's missing one page.

1 Both the corporation and myself will
2 present evidence to you, if necessary, if
3 someone puts on evidence challenging that, that
4 there's six bullet points in the RFA as to what
5 an eligible equity proposal letter must
6 include. And the three pages of our equity
7 proposal that we put in our application track
8 all of those six bullets that are required.

9 So the missing third page is just that.
10 It can't modify our application for the better
11 or for the worse. It basically is unnecessary.
12 And that's exactly what, at most, a minor
13 irregularity is, something that doesn't have
14 any legal effect. We complied with the
15 instructions. We have in our equity proposal
16 all of the elements that the RFA requires.

17 So, therefore, we are an eligible
18 application. The two -- two of the
19 applications in front of us should be rejected
20 for being ineligible, and we should be entitled
21 to funding from the corporation.

22 Thank you.

23 THE COURT: Mr. Donaldson, Town Center?

24 MR. DONALDSON: Judge, do you mind if I sit,
25 because I feel if I go backwards, I'm going to

1 knock something over.

2 THE COURT: That will be fine.

3 MR. DONALDSON: I tried to pick a spot in the
4 middle because I feel that's where Town Center is
5 here. We're both the hunted, and we're the
6 hunter.

7 Town Center is the highest, unfunded
8 ranked application for Dade County. So we are
9 in a position where we are challenging
10 Allapattah, as Mr. Goldstein indicated; and yet
11 we are also being attacked from behind by
12 Pinnacle Rio.

13 So as to the Allapattah issue, I think
14 Mr. Goldstein summed it up succinctly.
15 However, it's not a site planning issue; it's
16 actually an ability to proceed issue. And I
17 think, as he indicated to you, the RFA
18 basically requires an applicant to certify, as
19 of the application deadline, that they have
20 infrastructure in place; specifically, we're
21 talking about sewer infrastructure. It's one
22 of the specific requirements of the RFA, and it
23 deals with an applicant's ability to proceed.

24 Now, what does ability to proceed mean?
25 You're going to hear testimony that ability to

1 proceed means basically that a development is
2 ready to go. So when it is invited into credit
3 underwriting and that process is completed,
4 development is ready to start.

5 Now, as Mr. Goldstein pointed out,
6 Allapattah seems to think that they had the --
7 and this was in their motion to dismiss the
8 Town Center challenge -- was the documentation
9 that you have infrastructure in place as of the
10 application deadline is submitted at some point
11 in the future in the underwriting process, 21
12 days after being invited into underwriting.

13 The problem with that argument is the RFA
14 specifically says when you turned in your
15 application, each applicant was required to
16 sign a certification. And within the four
17 corners of that certification is a
18 certification that you have infrastructure as
19 of the application deadline. And so that's the
20 time and point to which Florida Housing is
21 looking for infrastructure to be in place,
22 again, ability to proceed.

23 It is not that you will have sewer two
24 years in the future, after planning and
25 permitting a system that allows you to have

1 sewer capacity. It's you have sewer capacity
2 as of the application deadline. Our argument
3 is -- based on the evidence and the testimony
4 you'll hear is: There was no sewer to the
5 Allapattah site as of the application deadline,
6 which was November 12th of 2013.

7 Now, as to the Pinnacle Rio challenges,
8 Mr. Goldstein laid it out succinctly. Their
9 argument is that our site control documents and
10 our equity proposal documents, which are part
11 of the financing documents that needed to be
12 submitted in the RFA, were not signed by the
13 appropriate person.

14 Well, you will hear testimony from that
15 person, and he will explain to you why he's the
16 appropriate person and will explain the
17 relationship between the buyer and the general
18 partners of the buyer and that relationship to
19 the applicant. And the applicant and the buyer
20 actually has signed the documents
21 appropriately.

22 So again, we're hunting on the one side
23 where we think it is inappropriate to allow
24 Allapattah's application to stay in because
25 they haven't responded to the RFA; and then on

1 the other hand, as it relates to the Pinnacle
2 Rio challenges, we believe that Florida
3 Housing's actions, as it relates to the
4 documents that were submitted for site control
5 and the financial documents, were acceptable.

6 And I tried to stay under ten minutes,
7 unlike some people I know.

8 THE COURT: Mr. Brown.

9 MR. BROWN: Your Honor, Florida Housing
10 maintains that it correctly scored every
11 application at issue in this consolidated case.
12 And that scoring, in all these instances, was not
13 arbitrary nor capricious, not contrary to its
14 governing statutes or its rules or its policies
15 and was consistent with the provisions of the RFA.

16 After 12 years or so of using the
17 universal cycle to distribute the bulk of our
18 multifamily development funding housing
19 credits, a system in which all provisions and
20 requirements were incorporated into a rule, we
21 now administer what we think is a more flexible
22 and a more sensible system based on the
23 issuance of multiple competitive solicitations
24 throughout the year instead of doing it in one
25 huge go.

1 While we call these solicitations requests
2 for applications, they are in substance the
3 same as a request for proposal per our rules
4 and per Section 420.507(48) Florida statutes,
5 which gives us the authority to do so.

6 We made this change for several reasons
7 and based on recommendations by OPPAGA, from
8 commentary from the developer community that we
9 work with, but for two important reasons that
10 apply here: We wanted to make the application
11 simpler, and we wanted to make the scoring
12 process and the funding decisions happen on
13 substantive issues and not on issues of form or
14 technicalities or typos or computational errors
15 and so on.

16 We no longer wanted to be criticized, as
17 we often had been, for a burdensome application
18 process that sometimes seemed to elevate form
19 over substance. So we took a great deal of the
20 scoring criteria out of the rules. Some of it
21 we included in the RFA provisions. The rest we
22 took out of the application process all
23 together and decided that they were issues that
24 could be better decided in credit underwriting,
25 which comes later in the funding process.

1 The issues presented in this consolidated
2 case fall into four main categories: First,
3 there are issues regarding irregularities that
4 Florida Housing ignored in the scoring process.
5 These include such things as mistyped signature
6 blocks, which you are going to hear a little
7 bit about later on, I think, from
8 Mr. Donaldson; typographical errors in entity
9 names, which you're also going to hear about
10 from Mr. Glazer; perhaps a missing page where
11 the required information is found in the
12 remainder of the document, which you're going
13 to hear about and already have heard about from
14 Mr. Goldstein and other matters of form that we
15 considered minor irregularities.

16 The second category, as I previously
17 mentioned, issues that are not part of the
18 scoring process but are addressed later in
19 credit underwriting, such as infrastructure
20 availability: For example, sewer.

21 The third category involved whether
22 Florida Housing can accept as valid information
23 from a local government or another source, can
24 we accept that information on its face absent
25 any indication or evidence that there's

1 anything wrong with it.

2 In other words, can we accept a signature
3 from a local government official without any
4 sort of evidence or indication that it was
5 improper. We think that we can.

6 The fourth category and the one that
7 you're going to hear about first from
8 Ms. Blanton involved a situation where an
9 applicant simply did not provide Florida
10 Housing with enough information to meet a
11 requirement, in this case, developer
12 experience.

13 With regard to the first category, minor
14 irregularities, we believe this court should
15 recognize and validate our ability to score on
16 substance rather than form so that we can apply
17 some commonsense and reasonableness to our
18 scoring decisions to select the best
19 developments for funding.

20 With regard to the second category, we
21 believe this court should judge Florida
22 Housing's scoring based on what information it
23 actually scored and had available to it and not
24 to undo the work that we have done to simplify
25 the application process by moving much of what

1 was in the application into the credit
2 underwriting phase.

3 With regard to the third category, we
4 believe this court should agree that Florida
5 Housing may rely upon facially valid
6 third-party information such as that from a
7 local government where there is no reason to
8 suspect the information is wrong.

9 With regard to the fourth category, we
10 believe this court should place the
11 responsibility for submitting complete
12 information that meets our criteria on the
13 applicant and not on Florida Housing scorers.

14 We believe that if you truly understand
15 how we dealt with these four kinds of issue in
16 the scoring of this RFA that you will issue a
17 recommended order finding that Florida Housing
18 correctly scored all of the applications in
19 this case.

20 Thank you.

21 THE COURT: Mr. Glazer.

22 MR. GLAZER: Good afternoon, Your Honor.

23 Michael Glazer representing Allapattah
24 Trace Apartments, Limited. With me here today
25 are Todd Fabbri on the left, and Ely Banks on

1 the right. Mr. Fabbri is the executive vice
2 president of the Richman Group and the
3 authorized representative of the developer.
4 He'll be a witness in this case. Mr. Banks
5 also works for the company.

6 And you've read enough about this case to
7 have an idea of what some of the substantive
8 challenges are by APC, Pinnacle and Town
9 Center. You've heard about that this morning.
10 And what I want to spend a couple minutes
11 talking to you about is about the standards
12 that are to be applied here because I think
13 they're particularly important, not just to the
14 overall decision in the case but to the
15 evidence that's relevant and appropriate for
16 you to consider.

17 As has been noted, as I'm sure you're well
18 aware, this is a different kind of de novo
19 process. We're talking about a form of
20 intraagency review designed to evaluate the
21 application of the agency. You are not here
22 sitting as a scorer rescoring and redetermining
23 all of the things that Florida Housing did.

24 And the challengers, in order to prevail,
25 must prove that the actions of Florida Housing

1 were contrary to statute, contrary to rules or
2 policies or contrary to bid specifications.

3 Now, I don't think anybody is really focusing
4 too much on violations of statutes or rules,
5 certainly not as it relates to Allapattah
6 Trace. Instead, they're focused on the bid
7 specifications. But the standard you must
8 apply is quite high.

9 They must prove that the agency action is
10 not just wrong, but that it's clearly
11 erroneous, contrary to competition or arbitrary
12 or capricious, which is essentially an
13 abuse-of-discretion standard. And all of these
14 require a level of deference to the agency and
15 impose a heavy burden on the challengers.

16 Now, the fact that we're here to review
17 prior agency action is something that's
18 particularly important for us to talk about for
19 a second because each of these challengers is
20 going to try and take you way beyond what
21 Florida Housing did at this very early
22 application stage of the process.

23 You know, these tax credits are very
24 valuable. That's why we are here. And people
25 file lots and lots of applications in order to

1 have their best chance of success.

2 There were 119 applications filed for
3 essentially five slots in three counties. The
4 developer of Town Center alone filed 15 of the
5 119. Pinnacle Rio's developer filed another
6 15, and the developer for APC filed another 11.
7 Between the three of them, they were 35 percent
8 of the applications that were filed. Now, we
9 only filed four, but we were fortunate enough
10 to be one of the ones selected.

11 But what's happened is is that with so
12 many applications, this initial application
13 phase, as Mr. Brown said, is no longer a very
14 detailed review of the process. That is saved
15 for credit underwriting because credit
16 underwriting is a much more rigorous review,
17 and people can, in fact, fail in credit
18 underwriting. The selection in the first phase
19 is not a guarantee that your project is
20 ultimately going to be funded; and you can, in
21 fact, be kicked out or deselected if you don't
22 make it through credit underwriting.

23 But what is going to happen here in the
24 next day or two is that the challengers are
25 going to ask you to make decisions that Florida

1 Housing did not make in the application phase
2 and won't look at until credit underwriting.
3 And I'm going to suggest a very simple test for
4 you to apply because I'm going to object to
5 some of this evidence. And if the challengers
6 are asking you to do something that Florida
7 Housing did not and was not required to do at
8 the application phase, then it's not relevant
9 and you shouldn't be doing it either.

10 They have to lay a predicate for the
11 evidence they want to present that establishes
12 the action that they want you to review was an
13 action that Florida Housing had to take as part
14 of this initial application review. They're
15 not going to be able to do that, not as to
16 their challenge as to Allapattah Trace.

17 I want to touch briefly on the issues of
18 site control and sewer availability because
19 those fit very precisely into those two
20 categories. And by the way, on the merits,
21 they're just wrong. I mean, even if you let
22 the evidence in, we're confident that the
23 evidence will show that everything we did was
24 appropriate and that Florida Housing not only
25 was not wrong, they were absolutely correct in

1 scoring the Allapattah Trace application as
2 they did.

3 But they simply cannot meet their burden.
4 On the site control issues, all of the
5 information that they want to talk about was
6 not part of the application review process and
7 it was accurate. And we can walk through all
8 that if need be, but you should never even get
9 to that.

10 As to the sewer issue, though, Town
11 Center's entire case is based on a premise that
12 there was a moratorium on the closest pump
13 station to our site and that because of that
14 moratorium on that one piece of equipment, we
15 couldn't demonstrate sewer availability.

16 And by the way -- and I don't want to
17 belabor it -- you heard Mr. Goldstein say that
18 they've adopted the sewer argument, and I want
19 for the record to object. That was not part of
20 their petition. It was not anything we knew
21 until we knew until the -- we got the -- their
22 statement of position in the joint prehearing
23 statement late on Friday. And again, I don't
24 want to belabor it, but I want to state an
25 objection on the record to them pursuing that

1 issue at this point.

2 But the issue of sewer availability is
3 particularly important because it didn't have
4 to be shown until credit underwriting. All
5 that was required at the application phase was
6 a certification, and Mr. Fabbri signed the
7 certification based on information that was
8 available to him and that developers have used
9 in this process for years and years and years.

10 Miami-Dade Water & Sewer wrote a letter
11 saying: Yes, there's a moratorium on this one
12 piece of equipment, but you can do sewer by
13 this other route. And it's a common solution.
14 It's a common work-around, and if you decide to
15 let this evidence in, that will become
16 particularly evident.

17 The witnesses both from Miami-Dade Water &
18 Sewer and the witness, the engineer that
19 Mr. Donaldson called, both testified that, at
20 the date of the application, there was a
21 solution and there was ability to provide sewer
22 to this site, and that's all that was required.

23 Town Center is trying to live in the past.
24 They're trying to live based on this universal
25 application. And what I want to look at for

1 just a second is the language in the RFA and
2 the language that it replaced. This is a
3 little excerpt from the applicant certification
4 here at the top of the page.

5 What's important is, first of all, is
6 within 21 days of the date of the invitation to
7 credit underwriting, down the road, you have to
8 provide -- you're certifying that you can
9 provide documentation that confirms the
10 availability of sewer as of the date of the
11 application as outlined in item 13 of Exhibit
12 C. So you've got to then look at item 13 of
13 Exhibit C, and that's duplicated down below.

14 Again, it focuses on within 21 days of the
15 date of the invitation to credit underwriting.
16 And you provide evidence from the local
17 government and then there's a separate
18 paragraph on sewer. And it said:
19 Submission -- you have two options. You have
20 two options. That's important -- if you decide
21 to get to this. Again, Florida Housing didn't
22 deal with any of this at this application
23 stage.

24 But one option is submission of a form
25 that Florida Housing has or a letter from the

1 service provider dated within 12 months of the
2 application deadline which is development
3 specifically and states that sewer service is
4 available as of the application deadline.
5 That's all you need at credit underwriting.
6 And that's -- and that's what Allapattah Trace
7 had.

8 But it's important to recognize that
9 that's a conscious change by Florida Housing
10 from what it used to be. This is an excerpt
11 from the 2011 universal application
12 instructions, and that's the universal cycle
13 that Mr. Brown alluded to. That was the most
14 recent cycle prior to this.

15 First of all, evidence of infrastructure
16 availability was a threshold issue then. You
17 had to submit this information with the
18 application. That's no longer the case.

19 And there is a specific provision that
20 says should any variance or local hearing be
21 required or if there is a moratorium pertaining
22 to any of the utilities or roads for this
23 development, the infrastructure is not
24 available.

25 So they had an absolute prohibition in the

1 prior application that said if you had a
2 moratorium then infrastructure is not
3 available. That sentence doesn't exist any
4 longer in this application. And, in fact, the
5 moratorium doesn't exist any longer in this
6 application and, in fact, submitting this
7 information as a threshold part of the
8 application no longer exists.

9 And, frankly, none of it is relevant and
10 appropriate for you to consider at this stage;
11 because to do so, you would be going well
12 beyond what Florida Housing did when it
13 reviewed these applications.

14 Town Center is trying to play "gotcha"
15 here on this point. And yet they had a
16 project, the evidence would show, that was
17 right around the corner from ours. Another
18 application they submitted in this cycle, it
19 had the same issue; it had the same solution,
20 and now they're going to try and tell you:
21 Oops, we didn't mean to file that one. Well,
22 you're going to have to decide how that sits
23 with you.

24 Florida Housing had no problem with the
25 Allapattah Trace application. They have not

1 and would not have looked at any of this
2 information at the application phase of the
3 proceeding, and you shouldn't either; and you
4 should conclude that these challengers to
5 Allapattah Trace have failed to carry their
6 burden and would ask that you recommend
7 dismissal of their petitions.

8 Thank you.

9 THE COURT: Ms. Daughton.

10 MS. DAUGHTON: Thank you, Your Honor.

11 For the record, Maureen Daughton with
12 Sniffen & Spellman representing HTG Miami-Dade
13 5, LLC.

14 Your Honor, we were fortunate enough, I
15 think -- I say that -- to be the highest ranked
16 eligible application in Miami-Dade County. We
17 were -- our lottery number was No. 3. The only
18 applicant which has specifically alleged any
19 deficiencies with our application is APC,
20 which has the number tenth spot by lottery.

21 We're going to talk a lot about attachment
22 3 to the RFA. And attachment 3 asked for each
23 applicant to identify the principals of both
24 the applicant and the developer. And the
25 corporation did two things to assist the

1 applicants as they went through this process.

2 One of those is they incorporated some
3 charts within the RFA, and those are on page 61
4 through 63 of the RFA. And those charts
5 specifically identify what information --
6 specifically identifies what the applicants
7 have to provide in terms of the required
8 principals of the applicant and developer. And
9 the charts are divided by the type of entity
10 that your applicant is.

11 So, for instance, there will be a chart
12 that says if your applicant is a limited
13 partnership, this is what you need to -- this
14 is what you need to provide to us. If your
15 applicant is an LLC, which my client, the
16 applicant is an LLC as well as the developer,
17 this is what you have to provide. They do the
18 same thing for a corporation. If you have a
19 corporation, this is what you need to provide.

20 And you'll hear testimony this afternoon
21 that the reason the corporation did that was to
22 assist the applicants to make sure they got the
23 information correct. What you're going to hear
24 is that for an LLC, the only thing that is
25 required -- and by these charts -- is that the

1 applicant provide member information and
2 managing member information. And that's it.

3 Now, if your manager or if one of your
4 members is a corporation, you have to go one
5 step further and provide the officer or
6 shareholders and directors. But that is the
7 only instance where the applicant is an LLC
8 that you have to provide any officer
9 information. So that's the first thing that
10 the corporation did in terms of assisting the
11 developers.

12 Now, APC has raised the issue that our
13 attachment 3 is deficient because we did not
14 include officer information, director
15 information, shareholder information. And I
16 think, Your Honor, after thinking about this,
17 you know, we have the charts which are in the
18 RFA. This is really arguably a challenge to
19 the specifications of the RFA that was issued
20 and, therefore, this challenge is not timely.

21 The RFA is very specific in terms of how
22 the corporation was going to require -- or the
23 information that the corporation was going to
24 require applicants and developers to provide.
25 If APC had an issue with that, they had a

1 window of opportunity to go ahead and raise
2 their concerns and they did not.

3 The second issue, Your Honor, that the --
4 or the second thing that the corporation did in
5 terms of assisting applicants was a
6 pre-approval process. And so what that was is
7 that applicants, on their attachment 3 forms,
8 could submit them early to the corporation.

9 So they would take their attachment 3,
10 they would fill in their information for
11 principals of their applicant and also the
12 principals of their developer. This is prior
13 to when the RFA responses were due. They would
14 submit them to the corporation.

15 You'll hear testimony from the woman who
16 actually reviewed them, and she will testify
17 that what she used to determine if they were
18 correct is actually the charts that are in the
19 back of the RFA.

20 So she'll indicate that she reviewed them.
21 We submitted ours early, got it back. It has a
22 big approved circle on the top right-hand
23 corner of the form. And, in fact, Your Honor,
24 that is attachment 3 that's in our response to
25 the RFA.

1 So it's our position that the corporation
2 evaluated these correctly, that our attachment
3 3 was submitted and filled out correctly, that
4 we went through the pre-approval process, that
5 we filled out our attachment 3 in compliance
6 with the charts which are within the RFA and
7 that you should uphold the corporation's
8 intended agency action with regard to our
9 client.

10 Thank you.

11 THE COURT: You may proceed.

12 MS. BLANTON: Thank you.

13 Your Honor, I would like to invoke the
14 rule for everyone who is not a corporate
15 representative or an agency representative and
16 who is maybe testifying.

17 THE COURT: Okay. Any witnesses would please
18 step out of the room -- invoke the rule -- so you
19 don't hear the testimony of other witnesses.

20 Please don't discuss your testimony with
21 anyone else outside the hearing except with
22 counsel at the table here, okay, till you're
23 called and then after you're released, please
24 don't discuss it with anyone but counsel.

25 Thank you.

1 MS. BLANTON: Your Honor, if I might, while
2 they're moving out, I have some documents I'm
3 going to refer to with my witnesses, if I may
4 approach and give you a copy and put one for the
5 witness.

6 THE COURT: Thank you.

7 MS. BLANTON: Thank you.

8 At this point, I would like to call Liz
9 Wong, please.

10 THE COURT: Would you raise your right hand?

11 Do you solemnly swear or affirm the
12 evidence that you shall give will be the truth,
13 the whole truth and nothing but the truth?

14 MS. WONG: Yes, I do.

15 THE COURT: Ms. Blanton.

16 MS. BLANTON: Thank you.

17 Thereupon,

18 ELIZABETH WONG

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BLANTON:

23 **Q** Could you please state your full name for the
24 record, please.

25 **A** Elizabeth Wong.

1 **Q** And interestingly enough, all of the witnesses
2 I'm calling today have the first name of Elizabeth. So
3 I'll try not to confuse you.

4 Where are you employed?

5 **A** Atlantic Pacific Communities.

6 **Q** All right. And what is your position there?

7 **A** Vice president.

8 **Q** And how long have you been with Atlantic
9 Pacific Communities?

10 **A** Since the fall of 2014 -- '13.

11 **Q** Thirteen.

12 Okay. And where did you work before that?

13 **A** Carlisle Development Group.

14 **Q** And how long were you with Carlisle?

15 **A** A little over 14 years.

16 **Q** Okay. And what does your job entail?

17 **A** I primarily submit applications for funding to
18 various states and local governments. I also -- very
19 involved in the closing of the construction financing on
20 the developments, from credit underwriting through due
21 diligence with the attorneys. We also handle insurance.

22 **Q** And did you have similar responsibilities at
23 Carlisle Development Group?

24 **A** Yes, I did.

25 **Q** Tell me a little bit about how Atlantic Pacific

1 came to acquire a portion -- how did you move from
2 Carlisle Development Group to Atlantic Pacific?

3 Tell me about that transaction.

4 **A** Well, I think as everyone here knows, Carlisle
5 Development Group has been in the news in the last couple
6 of years. They've been under investigation, and the
7 owners thought it best to sell their development arm as
8 well as the pipeline to Atlantic Pacific Companies.

9 **Q** And how many former Carlisle employees moved to
10 Atlantic Pacific?

11 **A** Fifteen.

12 **Q** Now, did Atlantic Pacific Communities submit
13 applications in connection with the RFA we're here about
14 today, 2013-003?

15 **A** Yes.

16 **Q** Do you recall how many?

17 **A** I believe we submitted 19 applications.

18 **Q** Okay. Let me ask you to look, there's a small
19 notebook up there called joint exhibit notebook; do you
20 see that?

21 **A** Yes.

22 **Q** Could you look at joint Exhibit 3. I believe
23 it should be called "Sorting Order"; do you see that?

24 **A** Yes.

25 **Q** Okay. And your name appears beside a number of

1 these applications; correct?

2 **A** Yes.

3 **Q** Would all of those where your name appear be
4 applications submitted by Atlantic Pacific?

5 **A** Yes.

6 **Q** Let's talk about Four Forty Four.

7 And I believe it's at the top of the next to
8 the last page of the sorting order, and that's going to
9 be all the way back where the ineligible applications
10 are.

11 **A** I found it.

12 **Q** You found that, okay.

13 What kind of proposed development is Four
14 Forty Four?

15 **A** Four Forty Four is new construction of a
16 high-rise, affordable development with 118 units. It's
17 located in the city of Miami on Northwest Fourth Avenue.

18 **Q** And what was Four Forty Four's lottery number
19 in connection with RFA --

20 **A** Number 10.

21 **Q** I'm sorry -- 2013-003?

22 **A** Number 10.

23 **Q** Number 10.

24 And I know we heard a little bit in the
25 opening statements today, but that's really not

1 evidence.

2 So could you just briefly describe for us
3 what the significance of the lottery numbers are?

4 **A** I'll try to briefly explain.

5 **Q** I know it's not simple.

6 **A** Florida Housing -- well, tax credits are a very
7 sought-after funding source in the affordable-housing
8 community, obviously. And in this particular RFA, in
9 Broward, Miami-Dade and Palm Beach, as you heard earlier,
10 there were 119 applications submitted.

11 So Florida Housing has a scoring ranking
12 methodology, and one of the items is points, which
13 almost everyone scores the maximum number of points.
14 And then they go through five tiebreakers. The fifth
15 tiebreaker is the lottery number.

16 So the lower your lottery number, the more
17 chances you have of being funded.

18 **Q** Okay. And did you learn at some point that
19 Four Forty Four was found ineligible to be funded by
20 Florida Housing's review committee?

21 **A** Yes, we found out the day that you attended the
22 review, Florida Housing's review meeting.

23 **Q** And what was your understanding at that time of
24 why you were found ineligible?

25 **A** You had sent us a note stating that our

1 developer experience was unacceptable to Florida Housing.

2 **Q** Based on a statement made at the review
3 committee meeting; correct?

4 **A** A meeting, correct.

5 **Q** Okay. Let me ask you to look at what's behind
6 tab 3 in the APC notebook up there.

7 MS. BLANTON: And, Your Honor, we provided
8 electronic copies of all these exhibits to all the
9 parties previously so they should all have them.

10 BY MS. BLANTON:

11 **Q** Are you there?

12 **A** Yes.

13 **Q** Okay. Do you recognize this document?

14 **A** Yes.

15 **Q** What is it?

16 **A** This is the exhibit required by the RFA to
17 provide the information to evidence of all of our
18 experience.

19 **Q** And it was required to be submitted with your
20 application; correct?

21 **A** Yes, it was.

22 **Q** Okay. And briefly, if you look in the joint
23 exhibit notebook, Exhibit 1, that is the RFA itself. So
24 I'm going to ask you to maybe kind of look at both of
25 them, if you don't mind. And turn, please, to page 5 and

1 6 in the RFA.

2 Are these the RFA requirements for developer
3 experience?

4 **A** Yes, it is.

5 **Q** And are you generally familiar with these
6 documents?

7 **A** Yes, I am.

8 **Q** Okay. And just briefly describe for me what
9 you are required to demonstrate in order to satisfy the
10 developer experience requirements.

11 **A** The RFA only asked for a chart with three
12 projects, affordable-housing projects that have been
13 completed since January 1st, 1991. And one of those
14 projects needed to have been completed by January 1st of
15 2001, and one of the projects must have contained at
16 least 50 percent of the units that you're proposing in
17 the current application.

18 **Q** And was the person that is identified as the
19 principal of the developer required to have been a
20 principal for these prior developments?

21 **A** Yes.

22 **Q** Okay. Your Honor, I know you indicated at last
23 week's first day of the hearing that you would take
24 judicial recognition of the rules rather than admit them
25 as exhibits.

1 I'm going to ask her to refer to a rule so,
2 if you don't mind, may I pass them out so everyone can
3 follow along?

4 THE COURT: Sure.

5 BY MS. BLANTON:

6 Q Let me ask you to turn in this document to the
7 definition section of Florida Housing rules. It's a very
8 long document. They have a lot of definitions. Could
9 you turn to subsection 89, the definition of principal.

10 Are you familiar with this definition?

11 A Yes, I am.

12 Q Have you had occasion to read it quite a few
13 times?

14 A Yes, I have.

15 Q Okay. What is your understanding of the term
16 "principal"? Who does it include?

17 A This definition is a very broad definition and
18 includes a lot of persons that are affiliated with the
19 applicant or developer entities.

20 Q Okay. And by identifying yourself as a
21 principal of Four Forty Four, you needed to know what
22 this required; correct?

23 A Yes.

24 Q Let's go back to the prior development
25 experience chart, APC tab 3, that we were looking at a

1 minute ago. And you are listed here as the principal
2 with the required experience; correct?

3 **A** Yes, I am.

4 **Q** Okay. Tell me a little bit about each of the
5 developments that are listed here as your -- what is
6 supposedly evidencing your prior experience.

7 **A** Well, the first development is a garden-style
8 new construction family development that we joint
9 ventured with a nonprofit in Pensacola, Florida. It has
10 72 units, was funded primarily with 4 percent credits and
11 bonds as well as hurricane recovery funds.

12 **Q** Okay. And that development has been completed;
13 correct?

14 **A** Yes, it has.

15 **Q** Okay. All three of these have been completed;
16 right?

17 **A** Yes, that's a requirement.

18 **Q** All right. And now the -- were you a principal
19 or are you a principal of the developer entity for
20 Silurian Pond?

21 **A** Yes.

22 **Q** Okay. Let's take a look quickly at what has
23 been marked behind APC tab 11 in your APC notebook there.

24 **A** Yes.

25 **Q** Can you tell me what this document is?

1 **A** This is the credit underwriting report.

2 **Q** APC 11, are you at Silurian Pond?

3 **A** Yes. Oh, I'm sorry. This is the application
4 for Silurian Pond for rental recovery loan program funds.

5 **Q** All right. And if you turn one page in, you
6 see something that's marked Exhibit 9; what is that?

7 **A** This is similar to the list of principals that
8 was used during the universal cycle. It details all of
9 the officers, shareholders, general partners, limited
10 partners, etc..

11 **Q** All right. And if you turn to the last page of
12 this exhibit, your name appears as an officer of a
13 codeveloper entity; correct?

14 **A** Yes.

15 **Q** And by virtue of your understanding of the
16 definition of principal in the rule, does that make you a
17 principal?

18 **A** Yes, yes.

19 **Q** Tell me a little bit about Morris Court III.

20 **A** Morris Court III is another joint venture that
21 we did in Pensacola, but this time with the housing
22 authority, the area housing commission: A garden-style
23 new construction, also funded with hurricane recovery
24 funds.

25 **Q** All right. And briefly, take a look at what's

1 behind tab 10, if you would, in the APC notebook.

2 **A** Okay.

3 **Q** Do you recognize that document?

4 **A** Yes.

5 **Q** What is that?

6 **A** This is another application for rental recovery
7 loan program funds.

8 **Q** All right. For Morris Court; correct?

9 **A** Correct.

10 **Q** And you are identified as an officer of the
11 developer entity; correct?

12 **A** Yes.

13 **Q** And would that make you a principal?

14 **A** Yes.

15 **Q** Okay. Now, St. Luke's Life Center is the third
16 development listed here.

17 What is St. Luke's Life Center?

18 **A** St. Luke's is a joint venture with St. Luke's
19 ministry out of Lakeland, Florida. It's new
20 construction, 150 units for the elderly.

21 **Q** Are you --

22 **A** It also has hurricane recovery funds.

23 **Q** I'm sorry. I didn't mean to interrupt you.

24 And are you a principal of the developer
25 entity for St. Luke's Life Center?

1 **A** Yes, I am.

2 **Q** Now, were you a principal of the developer
3 entity for St. Luke's when the application for housing
4 credits was originally submitted to Florida Housing?

5 **A** No, I was not.

6 **Q** And that would have been in approximately what
7 year, if you recall?

8 **A** I was made a principal in March of 2007.

9 **Q** I guess -- I'm sorry, I didn't phrase it very
10 well.

11 My question was: Do you recall what years
12 the application for St. Luke's was submitted to Florida
13 Housing?

14 **A** Oh, it was in 2005.

15 **Q** 2005? Okay.

16 Now, at some point after the application for
17 St. Luke's was submitted to Florida Housing, did the
18 developer entity for St. Luke's change?

19 **A** Yes, it did.

20 **Q** Okay. Let's take a look at what's behind
21 tab 7. That might help us walk through that.

22 Tab 7 in the APC notebook, are you there?

23 **A** Yes.

24 **Q** Okay. And what is this document?

25 **A** This is a credit underwriting report for

1 St. Luke's Life Center.

2 Q And what is the date of this document?

3 A January 15th, 2008.

4 Q Okay. And, if you would, tell me a little bit
5 about what is the purpose of a credit underwriting
6 report.

7 A Well, the primary purpose is for Florida
8 Housing to make its final decision on whether or not to
9 allocate tax credits or a loan to the project.

10 Q And what sort of things does the credit
11 underwriter look at?

12 A It's a comprehensive review of the applicant,
13 the team members, the site itself, the market, the
14 financial feasibility of the project.

15 Q So, for example, if the credit underwriter
16 thinks this deal isn't really going to work, you could
17 fail credit underwriting and not be recommended for
18 funding by the board; correct?

19 A Correct.

20 Q Look at -- if you would, turn to page A3 of
21 this credit underwriting report. And the numbers are in
22 the right-hand corner; do you see that?

23 A Yes.

24 Q Okay. Do you see No. 1 there?

25 A Yes.

1 **Q** Could you just read -- it's just one
2 sentence -- would you mind reading what that states?

3 **A** The applicant received prior approval on
4 March 31st, 2006 from Florida Housing Finance Corporation
5 to change the developer entity from Carlisle Development
6 Group, LLC, to St. Luke's Development, LLC.

7 **Q** Okay. Now, at the time this credit
8 underwriting report was prepared, were you a principal of
9 St. Luke's Development, LLC?

10 **A** Yes.

11 **Q** Okay. And I think you testified earlier in
12 response to one of my other questions, but tell me again,
13 when did you become a principal for St. Luke's?

14 **A** In March of 2007.

15 **Q** Okay. 2007; right?

16 **A** Correct.

17 **Q** Okay. Look, please, at what's behind tab 8, if
18 you would. Tell me what this document is, please.

19 **A** It's an omnibus which appoints officers to
20 various developer entities.

21 **Q** Tell me why -- and if you go over to Exhibit A,
22 what are those entities listed there?

23 **A** Those are developments that were either -- had
24 been awarded tax credits or a loan from Florida Housing
25 Finance Corporation. It also includes template entities

1 that we may use in the future applications.

2 **Q** Okay. And on the first page of this, it
3 appears that the sole member of the LLC company is
4 appointing a number of officers; correct?

5 **A** Yes.

6 **Q** And am I correct that you were appointed as a
7 secretary?

8 **A** Yes.

9 **Q** And would that be as an officer, secretary for
10 all of the developments listed, development entities
11 listed on Exhibit A?

12 **A** Yes.

13 **Q** And that includes St. Luke's Development, LLC;
14 correct?

15 **A** Correct.

16 **Q** And you see that about two-thirds of the way
17 down the list; right?

18 **A** Yes.

19 **Q** Is this the document that named you a principal
20 of St. Luke's Development, LLC?

21 **A** Yes, it is.

22 **Q** Real briefly, why did your company, Carlisle
23 Development Group, LLC, at this point, decide to appoint
24 all these officers to all these development entities?

25 **A** Luckily, in 2005 and 2006, Carlisle was very

1 successful in obtaining financing for numerous projects,
2 and the principals at the time thought they needed -- and
3 actually they did -- they required assistance with going
4 through the due diligence and executing on all the
5 projects, so they assigned -- appointed officers to, you
6 know, be able to sign documents, draws.

7 **Q** Was this around the time that Florida Housing
8 was funding a lot more development than they are now for
9 certain reasons?

10 **A** Yes, absolutely.

11 There were two funding cycles in 2005 and
12 2006. There's typically only one application cycle per
13 year. But because of the hurricane seasons in 2004 and
14 2005, hurricane recovery funds were made available to
15 Florida Housing -- excuse me, and Florida Housing put
16 out these -- an RFA in 2005 and again in 2006 in order
17 to help those counties that were affected by the
18 hurricanes.

19 **Q** Okay. And are you still an officer of
20 St. Luke's Development, LLC?

21 **A** Yes.

22 **Q** Now, you testified that you're a principal of
23 all three of the developer entities listed on your prior
24 development experience chart; correct?

25 **A** Yes.

1 **Q** Based on your understanding of the RFA's
2 requirements and the definition of principal, do you
3 satisfy the developer experience requirements?

4 **A** Yes, I do.

5 **Q** Let's look at what's behind tab 4 of APC's
6 notebook, please.

7 **A** (Views document.)

8 **Q** You there?

9 **A** Yes.

10 **Q** Okay. I'm sorry. I know sometimes it takes a
11 while to get there.

12 Have you seen this document before?

13 **A** Yes, I have.

14 **Q** What is this document, if you know?

15 **A** This came from a public records request that
16 was made to Florida Housing after we had found out that
17 the developer experience -- the information provided for
18 the developer experience was not accepted.

19 **Q** Okay. And if you look at the developer entity
20 in here, it actually says: APC Riolado Development.

21 This is a different application than from the
22 Four Forty Four one that we're here about today; right?

23 **A** Yes.

24 **Q** It's one of the other 18 or 19 applications
25 that you submitted during the cycle?

1 **A** Yes, it is.

2 **Q** Okay. Of the 19 applications that you
3 submitted to Florida Housing, how many were you found
4 ineligible on for reasons of developer experience?

5 **A** Seventeen.

6 **Q** And the other two that you were not found
7 ineligible on, do you know why?

8 **A** Yes, we had submitted the -- the city of Fort
9 Lauderdale's Housing Authority's experience on those two
10 applications.

11 **Q** So for every one where you submitted your own
12 experience as Liz Wong, principal with the Atlantic
13 Pacific Communities' entities, you were found ineligible;
14 correct?

15 **A** Yes.

16 **Q** And do you see the handwritten notes here on
17 attachment 4?

18 **A** Yes.

19 **Q** Okay. When you first saw that, did you
20 understand -- come to understand what may have happened
21 and why Florida Housing found you to be ineligible?

22 **A** Well, my understanding of the application
23 process is that you submit all the information that's
24 provided for this developer chart and that they check to
25 see if, you know, there's a -- if the -- the projects

1 were completed per the RFA, if the number of units that
2 are required equal the amount -- the amount of units
3 required for the current application for being submitted
4 and that they take it at face value that the rest of the
5 information is correct.

6 **Q** And so when you saw this, you assumed something
7 more was done; correct?

8 **A** Right. So I saw this; and at first, I couldn't
9 figure out what was wrong or what was going on because
10 the information that I put on there is correct. And so I
11 came to the conclusion that they must have looked at
12 something in their records, such as an application or a
13 credit underwriting report, board package, they looked
14 internally to see if they could find any more information
15 on these developments, I guess.

16 But the problem here is that, you know, they
17 didn't do so on out-of-state developers.

18 **Q** Right. And we'll talk about that in a minute.

19 Was there any requirement that you notify
20 Florida Housing of when you were appointed an officer
21 of St. Luke's Development, LLC?

22 **A** For the RFA, there's no requirement to --

23 **Q** No, I mean in general. I mean when you became
24 an officer of St. Luke's Development and, therefore,
25 became a principal of that deal, did you have to send

1 that into Florida Housing?

2 **A** Not necessarily, but it was submitted to the
3 credit underwriter.

4 **Q** Okay. So that resolution that we talked about
5 behind Exhibit A would have been submitted to the credit
6 underwriter during the credit underwriting process?

7 **A** Yes, yes.

8 **Q** Did anyone from Florida Housing contact you to
9 ask you if you were, in fact, a principal of St. Luke's
10 Life Center?

11 **A** No, they did not.

12 **Q** And did you submit any information with your
13 application explaining that you were, in fact, a
14 principal of St. Luke's?

15 **A** It wasn't required in the RFA, and I didn't
16 think it was needed.

17 **Q** Do you have an understanding of how Florida
18 Housing went about checking applications to determine
19 whether an applicant has the required developer
20 experience?

21 **A** I do now after the public records request.
22 Apparently, staff goes through applications
23 and credit underwriting reports and any other
24 information that they have internally.

25 **Q** And you've read a couple of depositions that

1 have been taken in this case; correct?

2 **A** That is correct.

3 **Q** And did that help you understand the process
4 that they went through?

5 **A** Yes, it did.

6 **Q** And also, I think we served some
7 interrogatories to Florida Housing, asking some questions
8 about this; correct?

9 **A** Yes.

10 **Q** Okay. Let's take a look at what's behind
11 tab 5. And Mr. Brown made this very, very difficult for
12 me, so bear with me.

13 Instead of retyping my interrogatories on his
14 answers, he just typed the answers. So we're going to
15 have to look back and forth at the interrogatories and
16 then look at the answers.

17 So if you would turn and I'll try to direct
18 everyone to page numbers as best I can.

19 If you would turn to page 10 of the first
20 document behind tab 5, which are my interrogatories.

21 **A** Page 10, tab 5, got it.

22 **Q** Do you see the question No. 4 there?

23 **A** Yes.

24 **Q** Okay. And I asked Florida Housing, basically,
25 to explain their determination that you didn't meet the

1 mandatory eligibility requirements; correct?

2 **A** Correct.

3 **Q** Okay. And if you go to the answer -- and,
4 again, this is going to be the second document behind
5 tab 5 --

6 MS. BLANTON: And the pages aren't numbered
7 in the answer, either, Mr. Brown. So you did not
8 make this easy.

9 BY MS. BLANTON:

10 **Q** But if you see at the top of the third page of
11 the answers; are you there?

12 **A** Yes.

13 **Q** Okay. I'm sorry. It's the bottom of the
14 second page. This is No. 4.

15 **A** Okay.

16 **Q** Do you see -- did this help you understand why
17 Florida Housing found that you were ineligible?

18 **A** Yes, it did.

19 **Q** Okay. Now I want to focus on the next
20 question, next interrogatory, which is No. 5. And so we
21 have to go back to page 11 of the interrogatories.

22 And, essentially, I asked here for Mr. Brown
23 to describe in detail the process of how they made this
24 determination; and I asked him if the process was the
25 same for in-state -- applicants listing in-state

1 experience as out-of-state experience; do you see that?

2 **A** Yes.

3 **Q** Okay. And go to his answer on No. 5 and tell
4 me when you saw that, what your understanding was of what
5 Florida Housing did with out-of-state experience?

6 **A** It states that: Florida Housing does not
7 assess detailed records of out-of-state developments that
8 it did not fund.

9 **Q** Did you understand that to mean they didn't
10 check them at all?

11 **A** Yes.

12 **Q** Okay. I want to ask you about another document
13 that is behind tab 9 in APC's notebook.

14 **A** Okay.

15 **Q** What is this document?

16 **A** This is from the board package. It's a request
17 to approve the transfer of Matthew Greer's ownership
18 interest in the general partner and developer entity, the
19 Sailboat Bend Apartments.

20 **Q** Okay. What is Sailboat Bend Apartments?

21 **A** Sailboat Bend Apartments is the
22 ninth development that we did with the housing authority
23 of the city of Fort Lauderdale. It was funded with tax
24 credits in the 2011 cycle and has 105 units that we are
25 rehabbing.

1 **Q** And was this transfer related to the
2 acquisition of the Carlisle Development arm by Atlantic
3 Pacific?

4 **A** Yes, it was. Yes, it was.

5 In addition to the employees transferring
6 over to Atlantic Pacific, Matthew Greer sold the
7 pipeline that was in Carlisle -- that Carlisle had.
8 And it included Sailboat Bend as well as six other
9 developments.

10 **Q** Okay. So developments that had received
11 housing credits but had not yet been all the way through
12 the process?

13 **A** Closed, right.

14 **Q** Hadn't closed. Okay.

15 And tell us again who Matthew Greer is.

16 **A** Matthew Greer is a principal of Carlisle
17 Development Group.

18 **Q** And he is the one who sold it to Atlantic
19 Pacific?

20 **A** Yes, he is.

21 **Q** Okay. Now, look at 1F, 1AF, I guess, on
22 page -- the first page of this exhibit.

23 Do you see that --

24 **A** Yes.

25 **Q** -- document?

1 And what is that telling Florida Housing?

2 **A** One of the requirements in order for the
3 transfer to occur, to be approved, is that the
4 replacement of the developer has to have the same
5 experience required in the -- per the rule.

6 **Q** And you listed the experience of the housing
7 authority of Fort Lauderdale here; correct?

8 **A** Yes, I did.

9 **Q** And the housing authority of Fort Lauderdale
10 was the codeveloper of Sailboat Bend?

11 **A** Yes.

12 **Q** Had they been the codeveloper with Carlisle
13 from the time the application was submitted?

14 **A** Yes.

15 **Q** Could you have also structured this in a way to
16 list your own experience?

17 **A** Sure.

18 **Q** Why did you -- and for the reasons we've talked
19 about, you were principal on a number of other deals;
20 correct?

21 **A** Correct.

22 **Q** Why did you list the experience of the housing
23 authority instead of your own experience?

24 **A** It was during the summer. We were -- I
25 already -- we were working on the transfer, etc., but I

1 had already had a chart with the housing authority's
2 projects that we've completed over the past nine years --
3 or eight years.

4 **Q** And the requirement is only to list the
5 experience of one of the codevelopers; correct?

6 **A** Correct.

7 **Q** So it would have been a choice. You could have
8 listed yours or theirs; correct?

9 **A** Absolutely.

10 **Q** Does this Sailboat Bend board action item here
11 have anything whatsoever to do with this RFA?

12 **A** No, not at all.

13 **Q** I'd like to move on from the developer
14 experience to a couple of other topics.

15 As we prepared our protest in this case, did
16 you have occasion to review some of the other
17 applications that had lower lottery numbers than Four
18 Forty Four?

19 **A** Yes, I did.

20 **Q** And what was the purpose of that review?

21 **A** I reviewed the applications to see if there
22 were any discrepancies or errors made during scoring and
23 also to learn from them.

24 **Q** Let me ask you first about Wagner Creek, which
25 was the development proposed by HTG Miami-Dade 5, LLC.

1 And first, we'll look at the RFA requirements. So I'd
2 like your RFA, if you could turn to page -- let me see
3 here. Let me make sure I get the right page. Page 5 of
4 the RFA.

5 **A** Okay.

6 **Q** If you look up to the top of the page, you see
7 a little letter D; correct?

8 **A** Correct.

9 **Q** And what is this telling the applicants that
10 they have to do?

11 MS. DAUGHTON: Your Honor, I'm just going to
12 interpose an objection. It's pretty plain. The
13 document is in evidence. I'm not sure we need to
14 have this witness tell us what this exhibit is
15 telling the applicant to do.

16 MS. BLANTON: May I?

17 THE COURT: Ms. Blanton.

18 MS. BLANTON: I think I can ask her what her
19 understanding of this requirement was. She had to
20 comply with it as did all the other developers.

21 Ms. Daughton mentioned in her opening a
22 different part of the RFA with a chart in it
23 that I'm going to go to next; and I would like
24 to harmonize the two provisions, one of which
25 she thinks is relevant and one of which I think

1 is relevant.

2 MS. DAUGHTON: Your Honor --

3 THE COURT: Isn't it a matter of -- one
4 moment.

5 Isn't it a matter of legal interpretation?
6 Why do I need this witness to explain the
7 relationship between two provisions that I
8 think --

9 MS. BLANTON: I think it primarily is a
10 matter of legal interpretation. She's the one who
11 helped me identify issues for the petition, and I
12 was just going to ask her to briefly explain why
13 we identified that issue.

14 I'm happy to address it in my proposed
15 recommended order -- it is a legal issue, and
16 I'm happy to do that.

17 THE COURT: Ms. Daughton, isn't that an issue
18 here, the relationship between the language in
19 Section 4 and the charts that were provided?

20 MS. DAUGHTON: Yes -- well, I think it is,
21 but I don't think it's relevant to have this
22 witness testify as to what her interpretation of
23 these provisions means. And I don't think that's
24 relevant at all.

25 THE COURT: I'm going to allow it. I think

1 it might help me, and you certainly can ask your
2 witnesses if they have a different interpretation
3 of the relationship.

4 MS. DAUGHTON: Yes, Your Honor.

5 THE COURT: You may continue.

6 BY MS. BLANTON:

7 Q Thank you, Ms. Wong.

8 Do you remember the question or do you want
9 me to repeat it?

10 A It's the requirement to put together the list
11 of principals and everyone that needs to be named in this
12 list.

13 Q Okay. And we looked, a few moments ago, at the
14 definition of principal in 67-48.002(89); correct?

15 A Correct.

16 Q And in determining who your principals are,
17 would you look at this rule to get guidance as to who the
18 principals are?

19 A Absolutely, because principals is a defined
20 term in the rule.

21 Q And it's capitalized here in the RFA; correct?

22 A Yes.

23 Q Does that tip you off that it's a defined term?

24 A Yes, it does.

25 Q Okay. And there's a list here of what a

1 limited liability company is supposed to provide.
2 Principals of the applicants as of the application
3 deadline, principals for each developer as of the
4 application deadline; correct?

5 **A** Correct.

6 **Q** Let me ask you now then to turn to page 61 of
7 the RFA.

8 And I apologize. Before I did that, I think
9 there was a reference on the page we were just looking
10 at to there's a statement right above E, the last, the
11 last little statement about this issue under little
12 letter D. And that refers you to an exhibit later on
13 in the RFA about this; correct?

14 **A** Yes.

15 **Q** So turn to page 61. That's where I'm taking
16 you now.

17 Okay. Now, what did you understand this
18 section about principal disclosures for applicants and
19 developer to be?

20 **A** Florida Housing was kind enough to give us some
21 examples on how to go about putting together these list
22 of principals.

23 **Q** Okay. And they even say their examples under
24 No. 3; correct?

25 **A** Yes.

1 **Q** And is there a reference to the Rule 67-48.002,
2 where principal is defined?

3 **A** Yes, it's the second sentence in the first
4 section there.

5 **Q** All right. And if you would, turn over to page
6 62. And do you see where it talks about B, if the
7 applicant is a limited liability company?

8 **A** Yes.

9 **Q** And you see what's required to -- what the
10 chart says is required to be disclosed here?

11 **A** Yes, they provided an example.

12 **Q** Okay. Now, can limited liability companies
13 have officers?

14 **A** Yes.

15 **Q** Some do, some don't; correct?

16 **A** Correct.

17 **Q** Is it your understanding that if a limited
18 liability company has officers they have to be disclosed?

19 **A** Per the rule, yes.

20 **Q** Because they're included in the definition of
21 principal; correct?

22 **A** That is correct.

23 **Q** Now, did you, at some point, review the list of
24 principals submitted by Housing Trust Group in connection
25 with Wagner Creek?

1 **A** Yes, I did.

2 **Q** Let me direct you to, I think, what is going to
3 be tab 14.

4 Are you there?

5 **A** Yes.

6 **Q** What is this document?

7 **A** This is the principals provided by Wagner Creek
8 in attachment 3.

9 **Q** And in reviewing this document, did you make
10 any conclusions or determinations about it?

11 **A** Well, I reviewed the application in its
12 entirety; and there are attachments, exhibits in the --
13 in the application that they submitted that requires
14 either the applicant and/or developer to sign. You have
15 the application and certification in the application
16 itself and then there's the site control, there's the
17 equity letters that have to be signed also.

18 **Q** Did you notice that they were signed by
19 particular --

20 **A** Well --

21 **Q** Go ahead. I'm sorry.

22 **A** I'm sorry. Yes, what I realized was, going
23 through the exhibits, that officers were signing for
24 these documents; but they were not listed in the list of
25 principals here.

1 **Q** Okay. Well, let's take a look at a few of
2 those.

3 Take a look at the document behind tab 15; do
4 you see that?

5 **A** Yes.

6 **Q** Okay. What is this document?

7 **A** It's the site control submitted in their
8 application.

9 **Q** In Wagner Creek's application?

10 **A** Yes.

11 **Q** And when you look at the very last page, is
12 that one of the signatures that you were talking about a
13 moment ago?

14 **A** Yes, it is. The buyer is Housing Trust Group,
15 LLC, and it's signed by the president of Housing Trust
16 Group, LLC.

17 **Q** But when you had looked at attachment 3, you
18 did not see anybody identified as a president; correct?

19 **A** Correct.

20 **Q** Take a look, if you would, at the next tab,
21 tab 16. What is this document?

22 **A** This is also another document in site control.
23 And it's the assignment. And it is signed by the
24 applicant as the assignee. And it also -- it's also
25 signed by an officer, which is not listed as an officer,

1 a person who is not listed as an officer on the list of
2 principals.

3 **Q** Matthew Rieger, vice president; correct?

4 **A** Yes.

5 **Q** Is that the signature you're referring to?

6 **A** Yes.

7 **Q** And again, this is part of Wagner Creek's
8 application; right?

9 **A** Yes.

10 **Q** Take a look at what is marked as tab 17.

11 What is that document?

12 **A** This is the equity financing commitment for
13 Wagner Creek application.

14 **Q** And is it also signed by someone who is
15 identified as an officer?

16 **A** That is correct.

17 **Q** On the very last page; correct?

18 **A** Yes.

19 **Q** Again Matthew Rieger, vice president?

20 **A** Yes.

21 **Q** And one more of these. Let's look at 19.
22 Tab 19. What is this document?

23 **A** Nineteen is the online application portion of
24 the application, the RFA.

25 **Q** Okay. And is there anything here that

1 identifies...?

2 **A** Yes, there is the applicant's certification and
3 acknowledgment that is signed on page 9 by Matthew
4 Rieger, vice president.

5 **Q** Okay. I think it's actually the top, page 7;
6 correct, or am I looking at the wrong one?

7 MS. DAUGHTON: I think it's page 9.

8 MS. BLANTON: Page 9, okay.

9 THE WITNESS: Page 9 of the RFA.

10 MS. BLANTON: Oh, of the RFA.

11 THE WITNESS: Yeah.

12 BY MS. BLANTON:

13 **Q** Okay. Got it. All right.

14 Now, during the course of this litigation, do
15 you recall whether we sent out interrogatories to HTG
16 Miami-Dade 5 asking for the identities of the
17 principals of the applicant and developer entities?

18 **A** Yes.

19 **Q** And we got responses back from them; correct?

20 **A** Yes, we did.

21 **Q** Let's take a look at what's behind tab 12.

22 Are these the responses that we received
23 from the developers of Wagner Creek?

24 **A** Yes, it is, tab 12, yes.

25 **Q** I think so. Tab 12. Are you there?

1 **A** Yes.

2 **Q** Okay. Are these the interrogatory responses we
3 got?

4 **A** Yes.

5 **Q** Okay. Good. And they responded and gave us
6 their officers; correct?

7 **A** That is correct.

8 **Q** Okay. And if you look at response No. 1, they
9 refer to Officers Randy Rieger, Matthew Rieger and Mario
10 Sariol; and then later they tell us those same officers
11 are also officers of other entities; correct?

12 **A** Correct.

13 **Q** Okay. Now, did you take this information and
14 do something with it?

15 **A** Yes, I took the list of principals originally
16 submitted in their RFA, and I edited with the information
17 provided in the first set of interrogatories.

18 **Q** Okay. Well, let's turn to tab 13 and tell me
19 if that's what you put together.

20 **A** Yes, I put this together.

21 **Q** And you based the information that's added here
22 on the information that was provided in the
23 interrogatories; is that correct?

24 **A** Yes.

25 **Q** Based on your understanding of the RFA

1 requirements and the definition of principal, should
2 these officers listed here have been disclosed on Wagner
3 Creek's attachment?

4 **A** Yes.

5 MS. DAUGHTON: Your Honor, I'm sorry, we have
6 the same objection we had earlier. I didn't want
7 to interpose it through all Ms. Blanton's
8 questions. Just wanted to go ahead and
9 reemphasize our objection to this witness
10 testifying as to the appropriateness of including
11 officers and directors on our attachment 3.

12 MS. BLANTON: Your Honor, I understand it's a
13 legal issue; and I'm happy to address it in my
14 proposed recommended order.

15 THE COURT: I think this is going kind of far
16 afield, and we have an exhibit which is edited.

17 MS. BLANTON: Correct.

18 THE COURT: If you would -- if you would do
19 that, that will be fine. Just go ahead.

20 MS. BLANTON: Okay. I understand. We'll
21 move on.

22 BY MS. BLANTON:

23 **Q** Let me ask you about another applicant,
24 Pinnacle Rio, LLC. Did you have an occasion to look at
25 Pinnacle Rio's application?

1 **A** Yes, I did.

2 **Q** Okay. And what was the purpose of that?

3 **A** I reviewed their application as well for any
4 discrepancies or errors that may have been made, and I
5 found that their equity letter was missing a page.

6 **Q** Okay. Let's turn to tab 20 in the notebook,
7 please, if you would. And when you get there, tell me
8 what tab 20 is.

9 **A** It's the equity letter provided for Pinnacle
10 Rio by Wells Fargo Bank.

11 **Q** Why do applicants have to provide equity
12 commitment letters?

13 **A** It shows Florida Housing that the development
14 is feasible and that there's -- it's attractive to the
15 investors.

16 **Q** Okay. Now it's showing it missing page 3;
17 correct?

18 **A** Per the pagination in the headers, yes, it
19 looks like page 3 is missing.

20 **Q** And are you certain this was not just a failure
21 to scan it online, that the page was actually missing in
22 the hard copy of the application that was submitted?

23 **A** No, we made a public records request to make
24 sure what -- to confirm whether or not it was just a
25 scanning problem or whether, you know, it just wasn't

1 there.

2 **Q** And what did you conclude after we got the
3 documents?

4 **A** The page 3 was actually missing.

5 **Q** Okay. What is the problem, from your
6 perspective, with a missing page in an equity commitment
7 letter?

8 **MR. GOLDSTEIN:** Your Honor, objection, calls
9 for speculation and also relevance. Her opinion
10 as to what would be the effect of something
11 missing is more appropriate for the Florida
12 Housing Finance Corporation than this witness.

13 **MS. BLANTON:** If I might briefly respond,
14 Your Honor. She's been putting together these
15 applications for some 15 years. She knows what
16 needs to be in them.

17 I'm not asking her to speak for Florida
18 Housing. I'm just trying to get her
19 understanding of what needs to be in an equity
20 commitment letter and what might be missing.

21 **MR. GOLDSTEIN:** Your Honor, the RFA lists
22 specifically what is supposed to be in these
23 equity proposal letters. So we should look to the
24 RFA, not this witness's testimony as to what she
25 believes should be in the equity financing letter.

1 MS. BLANTON: Maybe I can get at it another
2 way.

3 THE COURT: I'm going to sustain the
4 objection, so you should try another way.

5 MS. BLANTON: Try to get at it another way?

6 BY MS. BLANTON:

7 Q Ms. Wong, do you put together equity commitment
8 letters or submit them as part of your applications?

9 A Yes, I do.

10 Q What is typically in an equity commitment
11 letter? Mr. Goldstein mentioned that the RFA has some
12 requirements of what must be in there, and we can look at
13 that, if you want. I think it starts around page 31, 32,
14 33, in that range; it's -- joint Exhibit 1 is the RFA.

15 A Yes, I'm there.

16 Q And should we be looking at -- I mean, it
17 starts talking about non-corporation funding on page 31,
18 and then it seems to go on over to page 35.

19 Is all of this relevant as to what must be
20 submitted in terms of funding?

21 A Yes, it is.

22 Q Do equity commitment letters -- what do they
23 typically include?

24 MR. GOLDSTEIN: Your Honor, again, I'd say
25 the same objection. If we look on page 34, that's

1 what this RFA required for the equity proposal.

2 So we should focus on what the RFA requires, not
3 what this witness believes is required by the RFA.

4 MS. BLANTON: That's not my question, though.

5 BY MS. BLANTON:

6 **Q** My question is: What do they typically
7 include? Sometimes they include more than what's in the
8 RFA; correct?

9 **A** Yes.

10 MR. GOLDSTEIN: Your Honor, I object to the
11 relevancy. If there's anything else in the
12 proposal in that equity letter that's not required
13 by the RFA, then it's just simply not relevant to
14 this proceeding.

15 THE COURT: Ms. Blanton, why is it relevant
16 what they usually include? Isn't the important
17 facts here what this particular RFA included?

18 MS. BLANTON: And the important fact is what
19 we don't know is on page 3, Your Honor. We don't
20 know what page 3 says in the equity commitment
21 letter. So we can't make a determination what
22 Florida Housing didn't know about the funding of
23 Pinnacle Rio.

24 The RFA requires certain things be in an
25 equity commitment letter, but other things can

1 be in an equity commitment letter. That's what
2 I was trying to explore with Ms. Wong, based on
3 her personal experience of putting these
4 together.

5 THE COURT: I'm going to sustain the
6 objection. That's getting too speculative to me.

7 MS. BLANTON: Okay.

8 THE COURT: You are going to have her
9 speculate as to what might have been included on
10 the other page?

11 MS. BLANTON: Well, no, because --

12 THE COURT: Is that basically where we're
13 going?

14 MS. BLANTON: -- because she doesn't know, so
15 I won't -- I wasn't going to have her speculate as
16 to that.

17 BY MS. BLANTON:

18 Q Ms. Wong, you've been putting together
19 applications for housing credits and other types of
20 funding at Florida Housing for how long?

21 A Fifteen years.

22 Q Is it common in cycles that you've been
23 involved in that some deals don't make it through the
24 credit underwriting process?

25 A Occasionally, some projects do not make it

1 through.

2 **Q** And, typically, what are the reasons for that?

3 **A** Well, as an example, in the rule, it says that
4 you have to have a market for the project in the location
5 that it's in. And there's a 92 percent average occupancy
6 as an example of one of the things that sometimes the
7 location of a site can't meet. Sometimes the development
8 team doesn't have the financial capability of seeing the
9 project through.

10 **Q** And the credit underwriter actually does a
11 market study to determine if the market can support the
12 affordable housing; correct?

13 **A** Absolutely. That's one of the first things
14 that the underwriter does is they order a market study.

15 **Q** Have you seen situations in your years of doing
16 this where, if one deal doesn't make it through credit
17 underwriting, the next one on the list can get funded,
18 even though they weren't originally funded?

19 **A** Yes, we actually had that experience where we
20 were called upon to go through credit underwriting.

21 **Q** When you thought you had not been awarded
22 anything; correct?

23 **A** Yes, that's correct.

24 **Q** And the RFA here actually provides for that
25 situation; correct?

1 **A** Yes, it does.

2 **Q** Okay. And I promised I would identify the page
3 of that in my opening statement.

4 And I think if you look to page 36 of the
5 RFA, right above where it says Section 5, does that
6 address what happens if some applicants either decline
7 to go into credit underwriting or don't make it through
8 credit underwriting?

9 **A** Yes, it does.

10 MS. BLANTON: Those are all the questions I
11 have. Some others may have some.

12 THE COURT: Mr. Goldstein, do you have any
13 questions for this witness?

14 MR. GOLDSTEIN: I have no questions, Your
15 Honor.

16 MR. DONALDSON: No questions, Judge.

17 MS. DAUGHTON: I have a few.

18 MR. GLAZER: Could we maybe --

19 THE COURT: We're going out of order.

20 Florida Housing, did you want to go first?

21 I'm trying to go the same order every time.

22 MR. BROWN: I don't -- that's fine with
23 Ms. Daughton going.

24 THE COURT: Ms. Daughton going...?

25 MS. DAUGHTON: Is that okay?

1 MR. GLAZER: Yeah.

2 MS. DAUGHTON: Thank you, Your Honor.

3 Your Honor, are you okay if I stay seated
4 while asking questions?

5 THE COURT: Certainly.

6 MS. DAUGHTON: Thank you.

7 CROSS EXAMINATION

8 BY MS. DAUGHTON:

9 Q Good afternoon.

10 Do you have -- I think you have a joint
11 exhibit book up in front of you.

12 A Yes.

13 Q Okay. I'm going to ask you to look at the
14 joint exhibit book and, if you would, I think Exhibit 1
15 is the RFA?

16 A Yes.

17 Q And if you would turn to page 5.

18 A Okay.

19 Q Are you there?

20 A Yes.

21 Q Okay. And let's look together at letter D.

22 A Yes.

23 Q And if you'll read that -- actually, read that
24 whole stanza that starts with: This eligibility
25 requirement, please.

1 **A** This eligibility requirement may be met by
2 providing a copy of the list of principals that was
3 reviewed and approved by the corporation through the
4 advance review process.

5 **Q** And the following line, please?

6 **A** To assist the applicant in compiling the
7 listing, the corporation has included additional
8 information, item 3 of Exhibit C.

9 **Q** Okay. And thank you.

10 And let's go ahead, if you would, and turn to
11 page 61 of that same exhibit, which is joint Exhibit 1.

12 **A** Okay.

13 **Q** And let me turn your attention to -- and you
14 briefly discussed this with Ms. Blanton -- No. 3. And I
15 think you referred to this as examples; is that right?

16 **A** Yes.

17 **Q** Okay. And I'd like you to read that or read
18 that whole paragraph under: "Principal Disclosures for
19 Applicants and Each Developer."

20 **A** The corporation is providing the following
21 charts and examples to assist the applicant in providing
22 the required list identifying the principals for the
23 applicant and for each developer. The term "principals"
24 is defined in Section 67-48.002, FAC.

25 **Q** Okay. And thank you. And then underneath

1 that, you see charts?

2 **A** Yes.

3 **Q** And it says (1) for the applicant; do you see
4 that?

5 **A** Yes.

6 **Q** Would you turn the page and go to letter B --

7 **A** Yes.

8 **Q** -- where it says: If the applicant is a
9 limited liability company, what does the corporation
10 direct you to provide?

11 **A** It says to identify all managers and identify
12 all members.

13 **Q** And then it continues on, "and," does it not?

14 **A** Yes, it does.

15 **Q** And then let me ask you to look at the middle
16 column. Then it says: For each manager that is a
17 limited liability company, what are you to identify?
18 What is the corporation asking the applicant to identify?

19 **A** Identify each manager and identify each member.

20 **Q** Okay. Now, let me ask you to look in that
21 column that you just read from, go to the far right-hand
22 column; do you see that?

23 **A** Yes.

24 **Q** And it says: For each manager that is a
25 corporation, what does it state under that column?

1 **A** It says to identify each officer and identify
2 each director and identify each shareholder.

3 **Q** Okay. And then let me ask you to continue; is
4 there another "and" there?

5 **A** Yes, there is.

6 **Q** Okay. And let me ask you to go back to the
7 middle column. And it says: For each member that is a
8 limited liability company, what does the corporation ask
9 you to do?

10 **A** It asked for -- to identify each manager and
11 identify each member.

12 **Q** And again, let me take you to the column on the
13 right-hand side where it says: For each member that is a
14 corporation, what does the corporation ask the applicant
15 to identify?

16 **A** Identify each officer and identify each
17 director and identify each shareholder.

18 **Q** Now, Ms. Wong, isn't it evident that the
19 corporation knew how to ask an applicant to identify an
20 officer and a shareholder by this form and --

21 **A** Yes.

22 **Q** And -- yes?

23 **A** Okay, yes.

24 **Q** And they did not ask applicants that are
25 limited liability companies to identify officers,

1 directors or shareholders, did they?

2 **A** Not in the example that they provided, but it's
3 in the rule.

4 **Q** Well, you keep using that word "example." Why
5 do you -- how is this an example?

6 **A** There could be various examples of how
7 companies are formed --

8 **Q** So let me ask --

9 **A** -- and they appoint officers.

10 **Q** Let me ask you this: When you read this and
11 you look at what's at B, do you not believe that's giving
12 the applicant guidance on how to fill out attachment 3?

13 **A** Yes, it's one example.

14 **Q** Where is the other examples?

15 **A** They didn't provide it. They probably didn't
16 think they needed to, but there's -- there could be
17 different variations of this.

18 **Q** But the only example they gave you is right
19 here.

20 **A** Yes.

21 **Q** This is the only direction they provided to
22 applicants?

23 **A** It's an example.

24 **Q** This is the only direction, example they
25 provided to applicants for listing principals for limited

1 liability companies, isn't it?

2 **A** Yes.

3 **Q** Okay. Let me ask you to turn to page 64 and
4 let me ask you to look at example No. 1.

5 **A** Yes.

6 **Q** And there -- and this truly is an example
7 because they labeled it that way -- they have the
8 applicant or developer, which is an LLC.

9 It's Acme Properties, LLC, and who do they
10 identify as the sole member manager?

11 **A** Another limited liability company, ABC, LLC.

12 **Q** And who did they identify under ABC, LLC?

13 **A** A manager, Amy Smith and a sole member, Patty
14 Jones.

15 **Q** And where are the officers, Ms. Wong?

16 **A** This example didn't have any officers.

17 **Q** Or couldn't it be that for an LLC, you were not
18 required to identify the officers?

19 MS. BLANTON: Objection, Your Honor. I think
20 this really does call for a legal conclusion we've
21 talked a lot about.

22 THE COURT: I'm going to allow her.

23 MS. BLANTON: Okay.

24 THE COURT: I'm interested in Ms. Wong's
25 interpretation as anyone else's.

1 **A** Per Rule Chapter 67-48 definition of principal,
2 and the officers are supposed to be listed if there are
3 any officers.

4 BY MS. DAUGHTON:

5 **Q** So is the corporation wrong in their example?

6 **A** They're not wrong; it's just an example.

7 **Q** Okay. Let me ask you to turn back to page 63,
8 because the examples that we were talking about before on
9 page 62 dealt with if the applicant is a limited
10 liability company; correct?

11 **A** Yes.

12 **Q** Okay. And now if we're on page 63 and we're
13 talking about up at the top of the page, it says: For
14 each developer; do you see that?

15 **A** Yes.

16 **Q** Okay. And let's go to (B): If the developer
17 is a limited liability company, what is the corporation
18 directing the applicant to identify?

19 **A** Identify all managers and identify all members.

20 **Q** Okay. Now let's skip down. Does it continue
21 on? Is there an "and" there?

22 **A** Yes.

23 **Q** And it says: For each manager that is a
24 limited liability company, what is the corporation
25 directing the applicant to do?

1 **A** Identify each manager and identify each member.

2 **Q** And is there another "and" -- so it continues
3 on; correct?

4 **A** Yes, it does.

5 **Q** Okay. And it continues on to say: For each
6 member that is a limited liability company, what are
7 applicants being directed to identify?

8 **A** Identify each manager and identify each member.

9 **Q** Now, looking at that paragraph B, and I'll ask
10 you to go to the far right-hand column where it says:
11 For each manager that is a corporation; do you see that?

12 **A** Yes.

13 **Q** And what does it indicate or what does it
14 direct the applicant to do for each manager that is a
15 corporation?

16 **A** Identify each officer and identify each
17 director and identify each shareholder.

18 **Q** And those same words appear at that next
19 paragraph underneath; correct?

20 **A** Yes.

21 **Q** And so the corporation is directing applicants
22 to include officers, directors and shareholders for
23 managers that are corporations, but it is not -- it is
24 not directing applicants to do that for managers that are
25 limited liability companies, are they?

1 **A** No, not in these template examples.

2 **Q** And as we read before, these are the examples
3 that are meant to assist the applicants in providing the
4 information at attachment 3; correct?

5 **A** Yes.

6 MS. DAUGHTON: Just a moment, Your Honor.

7 Nothing else. Thank you.

8 MR. BROWN: I think I'll do this backwards
9 and start with the principals issue, then I'll
10 address -- have some questions for the --
11 regarding the developer experience issue as well.

12 CROSS EXAMINATION

13 BY MR. BROWN:

14 **Q** Ms. Wong, if you would, look at -- I believe
15 it's page 61 of the RFA in front of you.

16 **A** Okay.

17 **Q** And under heading 3: "Principal Disclosures
18 for Applicant and Developer," do you see where it says:
19 The corporation is providing the following charts and
20 examples?

21 **A** Yes.

22 **Q** And below that, there's another heading. It
23 says: "A, Charts."

24 Is it not your understanding that these are
25 the charts --

1 **A** Correct.

2 **Q** -- referenced in the previous paragraph?

3 **A** Yes.

4 **Q** Okay. Then please turn to page 64.

5 Are these not the examples that were
6 referenced in that paragraph?

7 **A** Yes, they are.

8 **Q** Okay. So we've got two different things here.
9 We've got charts and then we have examples.

10 **A** Okay.

11 **Q** Do you agree with that?

12 **A** Yes.

13 **Q** Okay. Let me turn to the issue of the missing
14 page in the Pinnacle Rio equity commitment. And I don't
15 need you to look at it because the page isn't there.

16 So do you know what was on that page that was
17 not included?

18 **A** It could have been a lot of things.

19 **Q** Could have been.

20 Do you know what was maybe not included on
21 that page?

22 **A** I have no idea.

23 **Q** Thank you.

24 Do you know whether or not, do you have an
25 opinion whether or not the remaining pages of that

1 equity commitment meet the requirements of the RFA?

2 **A** The remaining pages meet the letter of the
3 requirements of the RFA.

4 **Q** Thank you.

5 Going back to the developer experience issue,
6 are you designated as a principal in the St. Luke's
7 Life credit underwriting report that Ms. Blanton had
8 you review?

9 **A** The report doesn't detail the officers.

10 **Q** So nowhere in that report do you show up as a
11 principal?

12 **A** No, I don't.

13 **Q** Okay. Did you undertake to notify Florida
14 Housing at any time after you were appointed as a
15 principal of St. Luke's Life to let them know that you
16 were an officer?

17 **A** No, it wasn't required.

18 **Q** Okay. If you've got codevelopers on a
19 development, do both codevelopers have to meet the
20 experience requirement?

21 **A** Only one needs to meet the requirement.

22 **Q** One will cover for both?

23 **A** Yes. For the project.

24 **Q** For the project.

25 Now, tab 8 in the notebook that Ms. Blanton

1 provided for you is the omnibus resolution appointing
2 you an officer for St. Luke's Life?

3 **A** Yes.

4 **Q** Was this document included in the application?

5 **A** No, it wasn't.

6 **Q** Was this document included in the credit
7 underwriting report?

8 **A** No, it wasn't.

9 **Q** Was this document ever given to Florida Housing
10 at any time, to the best of your knowledge?

11 **A** It could have been. I don't recall.

12 **Q** Don't know?

13 **A** I don't know.

14 **Q** What documentation do you have that the credit
15 underwriter assigned to St. Luke's Life Center was
16 provided this omnibus resolution?

17 **A** It could have been during the initial credit
18 underwriting process where they asked for all the various
19 forms.

20 **Q** It could have been, but you're not certain?

21 **A** I'm not certain.

22 **Q** If you had a chance to do this application over
23 again, would you include information showing that you
24 were a principal of St. Luke's Life Center?

25 **A** Yes.

1 MR. BROWN: Just one moment.

2 No further questions.

3 THE COURT: Mr. Glazer.

4 MR. GLAZER: No questions.

5 THE COURT: Redirect.

6 MS. BLANTON: Just very briefly.

7 REDIRECT EXAMINATION

8 BY MS. BLANTON:

9 Q You recall both Ms. Daughton and Mr. Brown
10 asking you some questions about pages 61 through 64 of
11 the RFA; correct?

12 A Yes.

13 Q And Mr. Brown asked you about A, charts and, B,
14 examples; do you recall that?

15 A Yes.

16 Q Okay. And I believe you also testified that
17 the reference to the rule appears on this page; correct?

18 A Yes.

19 Q Now, just speaking for yourself, putting this
20 together for your own application for Four Forty Four and
21 the other 18 applications that you put together, how did
22 you interpret the language here on page 61 through 64 in
23 terms of disclosing your principals?

24 A Well, it's very plainly written that you have
25 to look up the term "principals" in order to put the

1 charts together that they provided.

2 So when you look at the chart -- and we
3 typically form limited partnerships also with general
4 partners that are limited liability companies. I look
5 at the chart, and I realized that it does -- it's not
6 all inclusive of what it says in the rule. So I went
7 ahead and added the information required per the rule.

8 MS. BLANTON: That's all I have.

9 THE COURT: Let me -- and this may be like a
10 stipulation from counsel or, I don't know, maybe
11 Ms. Wong could answer this. But I notice that the
12 date of this rule was October of 2013, and that is
13 after the RFA was issued; is that not correct?

14 MR. DONALDSON: I think that's correct.

15 THE COURT: I was thinking it was September
16 sometime, but I may be wrong.

17 MR. GLAZER: It says on the cover.

18 MR. BROWN: The RFA was issued
19 September 19th, 2013.

20 THE COURT: So my question is: This was not
21 the rule that was in effect when the reference to
22 Section 67-48.002 was made; is that correct?

23 MS. BLANTON: Your Honor, I believe the
24 definition has not changed.

25 THE COURT: That's what I was asking. Can

1 everybody stipulate --

2 MS. BLANTON: Yeah.

3 THE COURT: -- the -- or should I take
4 official recognition of a different rule or if
5 this is the correct definition, everybody agrees
6 to that?

7 MS. BLANTON: We can pull -- and to be
8 certain, if it's all right, tomorrow I'll pull the
9 previous version of the definition.

10 THE COURT: Okay. If you'll all look at it,
11 I'm sure it's not a big deal.

12 MS. BLANTON: My recollection, it has not
13 changed; but I want to be 100 percent certain as
14 well.

15 MR. BROWN: I'm not in a position to dispute
16 whether it changed or not. I didn't bring any
17 copies of the --

18 MS. BLANTON: That's why I'll bring it
19 tomorrow because I don't remember.

20 MR. DONALDSON: I have it.

21 THE COURT: May this witness be excused,
22 Ms. Blanton?

23 MR. DONALDSON: I have the rule.

24 MR. BROWN: Mike has it.

25 MR. DONALDSON: I do.

1 MS. BLANTON: Would you like me to call my
2 next witness or do you want to...?

3 THE COURT: Let's take a little -- I was
4 going to excuse her and take a little break.

5 MS. DAUGHTON: I actually had one more
6 question, Your Honor.

7 THE COURT: I don't normally allow recross.
8 One question. Go ahead. But in the future -- I
9 didn't make that clear, perhaps. I don't usually
10 allow recross. But you may ask one more question.
11 Go ahead.

12 MS. DAUGHTON: And then you'll probably never
13 allow it again. Sorry, Judge.

14 THE COURT: Probably not.

15 RE CROSS EXAMINATION

16 BY MS. DAUGHTON:

17 Q Ms. Wong, you -- when the RFA was issued, did
18 you review it, like you reviewed all the applicants'
19 applications in this case as you've testified to?

20 A Yes.

21 Q And, Your Honor, one more question.

22 THE COURT: Okay.

23 MS. DAUGHTON: Thank you.

24 BY MS. DAUGHTON:

25 Q And did you note that in the charts that we've

1 been talking about, just as you've indicated, they don't
2 include everything that the rule does? Did you note that
3 when you reviewed this when the RFA was issued?

4 **A** Maybe.

5 **Q** Maybe?

6 **A** As I start putting together the actual
7 applications, then I start realizing what's needed or not
8 needed.

9 MS. DAUGHTON: I don't have anything else.

10 THE COURT: Let's take a ten-minute recess,
11 and we'll come back for your next witness.

12 MS. DAUGHTON: Thank you, Your Honor.

13 (Brief recess was taken.)

14 MS. BLANTON: I'll call Elizabeth O'Neill.
15 And I'll get her because she's out here.

16 (Ms. O'Neill entered courtroom.)

17 THE COURT: Raise your right hand, please.

18 Do you solemnly swear or affirm the
19 evidence that you shall give shall be the
20 truth, the whole truth and nothing but the
21 truth?

22 MS. O'NEILL: Yes, sir.

23 Thereupon,

24 ELIZABETH O'NEILL

25 was called as a witness, having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 THE COURT: Ms. Blanton.

4 MS. BLANTON: Thank you.

5 BY MS. BLANTON:

6 Q Ms. O'Neill, could you please state your full
7 name for the record, please.

8 A Elizabeth O'Neill.

9 Q Okay. And up on the witness stand are a couple
10 of notebooks, and I'm going to be referring occasionally
11 to these notebooks. And I will do my best to direct you
12 to the tab. But one is a joint exhibit notebook. One is
13 an APC notebook. And so I'll try to tell you which one
14 we're talking about.

15 Where are you employed?

16 A Florida Housing Finance Corporation.

17 Q And what is your position there?

18 A Senior policy analyst.

19 Q How long have you been there?

20 A Just under six years.

21 Q And what was your role in connection with
22 RFA 2013-003?

23 A I was on the review committee scoring a few
24 different sections, the demographic commitments,
25 developer information and applicant information.

1 **Q** Let me ask you to turn to what has been marked
2 as -- in the APC notebook behind tab 2. It has not
3 actually been marked as anything yet, but it's a document
4 behind tab 2.

5 Do you recognize this document?

6 **A** Yes.

7 **Q** What is it?

8 **A** This is a record of my scoring.

9 **Q** So you would have filled this out on a
10 computer?

11 **A** Yes, I created this.

12 **Q** You created the template?

13 **A** Yes.

14 **Q** Okay. And at the top, right-hand column at the
15 top, are these the issues you were responsible for
16 scoring?

17 **A** Yes.

18 **Q** Okay. Now, if you could turn over to page 3
19 and if you look at the bottom, there's some Bates labels
20 and the last number is a 3. Do you see that?

21 **A** Yes.

22 **Q** Okay. And if you look about two-thirds of the
23 way down, you'll see application No. 2014-240C Four Forty
24 Four; right?

25 **A** Yes.

1 **Q** Okay. And in the very far right-hand column,
2 there's a bright pink N. Can you tell me what that N
3 means?

4 **A** That indicates that they did not meet the
5 requirement for developer experience.

6 **Q** Okay. And what -- why not?

7 **A** They provided a chart listing their developer
8 experience as three developments; and through our search
9 of records, we found that the person that they listed as
10 a principal on that chart was not, in fact, a principal
11 on one of the developments on the list.

12 **Q** Now, you also found a number of other Atlantic
13 Pacific Communities' applications did not meet the
14 developer experience requirements; correct?

15 **A** Yes.

16 **Q** And if you flip over to the next two pages, you
17 see a lot of other bright pink Ns; right?

18 **A** Yes.

19 **Q** And are those primarily Atlantic Pacific
20 Communities' developments?

21 **A** Most of them are.

22 **Q** And were they found ineligible for the same
23 reason that Four Forty Four didn't meet the requirements?

24 **A** Yes.

25 **Q** In other words, the principal issue relating to

1 St. Luke's Life Center; correct?

2 **A** Yes.

3 **Q** Turn, if you would, please, to tab 3, which is
4 right behind the one you're looking at. Is this the
5 prior development experience chart you were talking about
6 a minute ago?

7 **A** Yes.

8 **Q** Okay. And all applicants were required to
9 submit a document like this with their application;
10 correct?

11 **A** Yes, that's correct.

12 **Q** All right. Turn over, if you would, to tab 4.
13 And do you recognize this document?

14 **A** Yes.

15 **Q** What is this document?

16 **A** This is a developer experience chart from a
17 different application, but that listed -- also listed Liz
18 Wong as the principal in these three developments for
19 developer experience.

20 **Q** And whose notes are these handwritten notes at
21 the bottom?

22 **A** Those are my colleague, Elizabeth Thorp.

23 **Q** And who is Liz Thorp? Elizabeth Thorp, I'm
24 sorry.

25 **A** She is my -- a colleague. She works in our

1 multifamily unit.

2 **Q** Now, how did Ms. Thorp come to be involved in
3 helping you with -- well, let me back up.

4 What role did Ms. Thorp have in scoring the
5 applications?

6 **A** She was not on the review committee, but I
7 consulted with her on the sections that I was
8 responsible.

9 **Q** When did you first consult with her, if you
10 recall?

11 **A** When in the process?

12 **Q** Yes. Was it at the very beginning or at some
13 point after you had started scoring?

14 **A** After I'd started it, I would go through
15 scoring all the applications and just if I had questions,
16 I would consult with her about those.

17 **Q** Now, when you first began scoring applications,
18 you weren't researching the developments listed on the
19 applicants' attachment 4 to determine if they had the
20 requisite experience; correct?

21 **A** No, not right at the beginning.

22 **Q** And why were you not doing it at the beginning?

23 **A** When we first started, we were taking them at
24 face value as they were presented and taking that they
25 met the requirement.

1 **Q** What changed that prompted you to start
2 checking them?

3 **A** At some point, one of my colleagues told me
4 about a development that's going through credit
5 underwriting which wanted to switch out a principal, and
6 it's called Sailboat Bend. And they were switching out a
7 principal to -- Liz Wong was a principal on one of the
8 developers; but in order to meet our developer experience
9 requirement, they used a codeveloper.

10 So that indicated to us that Ms. Wong may not
11 meet our requirement for developer experience, so that
12 just raised the question. So we decided to confirm
13 that she did have the required experience.

14 **Q** Okay. And who was this person who brought this
15 Sailboat Bend to your attention?

16 **A** It was my colleague, Ken DaSilva (phonetic).

17 **Q** Did Ms. Thorp have a role in that as well?

18 **A** I believe she knew about it because she's
19 involved in the deals, but I'm not sure exactly what her
20 role is.

21 **Q** Okay. Well, let's turn to tab 9 in the ABC
22 notebook. This references Sailboat Bend. Is this the
23 issue that you were just talking about?

24 **A** Yes.

25 **Q** And again, why is this relevant -- well, I

1 think you testified to that.

2 Tell me what on this document, if anything,
3 tipped you off -- I believe those were the words you
4 used -- that Ms. Wong might have an issue with
5 developer experience?

6 **A** (Views document.)

7 It's on -- it's No. F on here. Sorry to keep
8 you waiting.

9 For the prior experience chart, they use
10 Housing Enterprises of Fort Lauderdale to meet the
11 required developer experience.

12 **Q** And that's their codeveloper; correct?

13 **A** Yes.

14 **Q** Does that tell you that they couldn't -- that
15 Atlantic Pacific entity couldn't meet the development
16 experience itself?

17 **A** No, not necessarily.

18 **Q** So they could have -- potentially could have
19 used either the housing authority or the Atlantic Pacific
20 entity to satisfy developer experience requirements;
21 correct?

22 **A** They could have used either one that they --
23 that would meet our requirement.

24 **Q** Right. Assuming that Ms. Wong met the
25 requirements of the principal, they could have used the

1 Atlantic Pacific entity; correct?

2 **A** Sorry, could --

3 **Q** If they're codevelopers, one of them has to
4 meet the experience requirements; correct?

5 **A** Right.

6 **Q** Did you have any way of knowing that -- from
7 looking at this -- that the Atlantic Pacific entity
8 through Ms. Wong did not meet the developer experience
9 requirements?

10 **A** No.

11 **Q** So did you make an assumption from this that
12 she didn't, which then prompted you to start checking,
13 looking behind the prior experience charts in attachment
14 4?

15 **A** I wouldn't say an assumption. I guess it just
16 raised the question that she may not be, and so that was
17 reason enough to want to confirm them.

18 **Q** Now, this Sailboat Bend doesn't have anything
19 to do with this RFA; correct?

20 **A** No.

21 **Q** Did you ever make any inquiry of Ms. Wong or
22 Atlantic Pacific Communities about whether she was, in
23 fact, a principal of St. Luke's Life Center?

24 **A** Do you mean directly asking? No.

25 **Q** Okay. And why is that?

1 **A** Contacting one of the applicants during the
2 review process, we're not really supposed to do that. It
3 might show that we're giving them special treatment or
4 favor.

5 **Q** Does the RFA prohibit you from contacting them?

6 **A** I believe it prohibits them from contacting us.
7 I'm not sure about the other way.

8 **Q** Okay. Let me ask you to turn to tab 8, please.

9 And you've seen this document before;
10 correct?

11 **A** Yes.

12 **Q** And where have you seen it before?

13 **A** In the petition that you sent in.

14 **Q** Okay. And then we talked about it during your
15 deposition too; correct?

16 **A** Yes, yes.

17 **Q** Now, would you agree with me that this document
18 appoints Liz Wong as an officer of a number of limited
19 liability companies, including St. Luke's Development,
20 LLC?

21 **A** Yes.

22 **Q** Effective March of 2007; correct?

23 **A** Yes.

24 **Q** And do you know if St. Luke's development, LLC
25 is one of the developer entities of St. Luke's Life

1 Center?

2 **A** Yes.

3 **Q** Okay. And we can find that in the credit
4 underwriting report; correct?

5 **A** Correct.

6 **Q** Because you looked at the credit underwriting
7 report when you were checking these things; right?

8 **A** Right.

9 **Q** And you recall seeing a reference to St. Luke's
10 Development, LLC as the developer?

11 **A** I believe so.

12 **Q** We can check real quick. Let's go back to
13 tab 7.

14 And I think it's on page A-3. And you see
15 No. 1 down near the bottom of the page?

16 **A** Yes.

17 **Q** Okay. So you do recall seeing this at the time
18 you were doing your review?

19 **A** Yes.

20 **Q** Now, as an officer of the developer entity,
21 Ms. Wong meets the definition of principal in Florida
22 Housing's rule, doesn't she?

23 **A** Yes.

24 **Q** And if you had had this document in front of
25 you when you were reviewing, you would have found she met

1 the requirements as a principal of St. Luke's Life,
2 correct?

3 **A** Yes, if I'd had it at the time of review.

4 **Q** Now, when you were checking the developer
5 experience as you described, what documents did you look
6 at? I don't mean just for Ms. Wong, but the other ones
7 that you decided to check.

8 Well, let me ask you this. Let me back up
9 because I'm not sure we talked about it. You said the
10 Sailboat Bend -- you testified that Sailboat Bend
11 prompted you to check Ms. Wong's developer experience;
12 right?

13 **A** Yes.

14 **Q** Did you then decide to check other applicants'
15 developer experience?

16 **A** Yes.

17 **Q** Why did you do that?

18 **A** To be able to treat all of them fairly.

19 **Q** And what did you actually check? What did you
20 look at for each application?

21 **A** Well, I consulted with a colleague, so I looked
22 at some of them that had problems; but she checked
23 applications of the developments listed on the charts and
24 also credit underwriting reports. And if she couldn't
25 find answers in those, we like looked a little bit

1 further. We may have had some email records.

2 **Q** You looked only at information that you had
3 in-house at Florida Housing; correct?

4 **A** Yes.

5 **Q** You weren't able to check every applicant's
6 developer experience, were you?

7 **A** No.

8 **Q** And why is that?

9 **A** There are some that listed developments that
10 weren't in Florida, they're not Florida Housing, so we
11 don't have records on those developments.

12 **Q** Okay. Let's take a quick look at tab 6,
13 please.

14 And I may not need to go through all of
15 these. It's a composite exhibit, but the first one is
16 Madison Square. And if you turn back about four pages,
17 you see Madison Square's attachment 4; correct?

18 **A** Yes.

19 **Q** Okay. And am I correct that all of the
20 experience listed here for this particular principal is
21 John -- I'm sorry, is in New York?

22 **A** Yes, that's correct.

23 **Q** Okay. So what did you do to verify that John
24 J. Frezza had the experience that was required by the
25 RFA?

1 **A** I checked that he met the -- that they met the
2 criteria that we laid out in regards to how many
3 developments in a year, number of units. But in regards
4 to the particular developments, I didn't know further
5 verification.

6 **Q** You weren't able to check as to whether he was
7 a principal of these developments that are listed here;
8 correct?

9 **A** No -- I mean, correct.

10 **Q** Correct.

11 Okay. And the same -- let's look at a couple
12 others. If you go back to Heritage at Pompano Station,
13 which is a few pages back. There's a couple of Florida
14 deals listed here, but then there's one for Decatur,
15 Georgia and Fort Worth, Texas; do you see those?

16 **A** Yes.

17 **Q** Were you able to verify that Robert G. Hoskins
18 was a principal on the deals that were in Georgia and
19 Texas?

20 **A** No.

21 **Q** And would that be true for any applicant that
22 listed out-of-state developer experience? You were not
23 able to verify that they were, in fact -- that the listed
24 principal was, in fact, principal on the other
25 developments that they listed for their experience?

1 **A** Yes, that's correct.

2 **Q** So you took at face value that these applicants
3 listing out-of-state developer experience met the
4 developer experience requirements; is that correct?

5 **A** Of the -- yes, of the person being a principal
6 on --

7 **Q** In terms of the principal issue.

8 **A** Yes.

9 **Q** Right.

10 Okay. And so you gave them the benefit of
11 the doubt on that issue; is that fair to say?

12 **A** Yeah, it's fair to say that I took them as
13 telling the truth in their application.

14 **Q** Why didn't you give Ms. Wong that same benefit
15 of the doubt?

16 **A** The question was raised because of the Sailboat
17 Bend issue with them switching out the developers, and
18 that was reason enough to want to check them.

19 **Q** You also were responsible for reviewing
20 applications to determine if they listed their principals
21 of the applicant and of the developer; correct?

22 **A** Yes.

23 **Q** Okay. And I want to ask you about a couple of
24 provisions in the RFA about that. And that's going to be
25 in the joint exhibit notebook, which is the other

1 notebook. And the RFA is the first joint exhibit.

2 Are you familiar with the definition of
3 principal in Florida Housing's rules?

4 **A** Yes.

5 **Q** And you would be familiar with that since you
6 are in charge of verifying principals; correct?

7 **A** Yes.

8 **Q** Now, there may be a copy already up there
9 because I handed one out to the previous witness, but...

10 **A** Yeah, it's up here.

11 **Q** You got it? Okay, good. I was going to give
12 you another one in case she walked off with it.

13 So let's take a quick look at subsection 89
14 of the definitions rule up there. Now, the first
15 paragraph here references officers of an applicant or a
16 developer; correct?

17 **A** Yes.

18 **Q** Okay. Why did -- well, let me back up.

19 Did the RFA require applicants to disclose
20 all of the principals of the applicant and of the
21 developer?

22 **A** Yes.

23 **Q** Okay. Look at page 5, if you would, of the
24 RFA. And I know you're probably familiar with it, but
25 it's little letter D there at the top of page 5; do you

1 see that?

2 **A** Yes.

3 **Q** Is this the provision that required applicants
4 to disclose the principals of the applicant and developer
5 entities?

6 **A** Yes, it is.

7 **Q** Okay. Now, you see down here -- well, let me
8 ask you this: In doing the disclosure, were the
9 applicants required to follow the definition of the
10 rule --

11 **A** Yes.

12 **Q** -- of principal?

13 **A** Yes.

14 **Q** Do you see towards the bottom of this page, it
15 says: To assist the applicant in compiling the listing,
16 the corporation has included additional information in
17 item 3 of Exhibit C. So let's turn to that and I'll -- I
18 believe it's on page 61 of the RFA.

19 Are you familiar with this language -- this
20 provision starting at No. 3 on page 61? Sorry.

21 **A** Yes.

22 **Q** I'll give you more time to get there.

23 **A** Yes.

24 **Q** Are you familiar with that?

25 **A** Yes.

1 **Q** Okay. Sorry.

2 Now, do you see the reference to the rule
3 again concerning the term "principal"?

4 **A** Yes.

5 **Q** And so applicants were required to follow the
6 definition in the rule in filling out their charts; is
7 that correct?

8 **A** Yes.

9 **Q** So what is the purpose of these charts here?

10 **A** The purpose of them is to assist applicants in
11 providing all the information that we're looking for in
12 the application.

13 **Q** Are these examples of what might be listed
14 depending on how the applicant is structured?

15 **A** Yes.

16 **Q** So, for example, if a limited liability company
17 does not have officers, they obviously don't need to list
18 officers; correct?

19 **A** Correct.

20 **Q** If they have officers, are they required to
21 list them?

22 **A** No, not based on these examples. They just
23 have to list the manager and member.

24 **Q** So does this modify the rule that we were
25 talking about earlier?

1 MR. BROWN: Objection.

2 MS. DAUGHTON: Objection. Calls for a legal
3 conclusion, Your Honor.

4 MS. BLANTON: Your Honor, she testified she's
5 familiar with the rule and was applying the rule.

6 THE COURT: Can you rephrase the question to
7 ask: If it's inconsistent as to which one takes
8 precedence.

9 It may be a legal but --

10 MS. BLANTON: Sure, sure, I can do that.

11 THE COURT: -- I'd allow that.

12 MS. BLANTON: Okay.

13 BY MS. BLANTON:

14 Q So if I understood your testimony, I think
15 you're probably talking about page 62 under B, limited
16 liability company; do you see that on the chart?

17 A Yes.

18 Q And here, if I'm correct, it just requires
19 disclosures of managers and members; correct?

20 A Yes.

21 Q Okay. Now, do you know if a limited liability
22 company could have officers?

23 A They could.

24 Q Okay. And let's go back to the rule and
25 definition of principal, subsection 89 there.

1 Do you know if the provisions of the RFA here
2 take precedence over the provision of the rule defining
3 principal?

4 MS. DAUGHTON: Same objection, Your Honor.

5 THE COURT: I'm going to sustain that
6 objection. I don't think she has the
7 qualifications to know which one takes precedence
8 or if it would, it wouldn't be helpful to me.

9 BY MS. BLANTON:

10 **Q** In checking the --

11 MS. BLANTON: I understand, Your Honor.

12 BY MS. BLANTON:

13 **Q** In checking the information provided by the
14 applicants, did you rely on these examples here or did
15 you rely on the rule or both?

16 **A** I relied on what was in the RFA examples.

17 **Q** Okay. Did you have any understanding of what
18 relevance the rule had to these charts?

19 **A** Yes, I knew the rule is involved in the
20 development of the RFA, so those definitions go into
21 creating these examples.

22 MS. BLANTON: Bear with me one second.

23 BY MS. BLANTON:

24 **Q** Now, in reviewing the applications for
25 principals during the scoring process, you assume that

1 every applicant disclosed all of its principals; correct?

2 **A** Yes.

3 **Q** You didn't go onto Sunbiz or anything like that
4 to verify if other principals might have been listed, did
5 you?

6 **A** No, I did not.

7 **Q** So you accepted at face value that they
8 followed the requirements and disclosed who they were
9 supposed to disclose?

10 **A** Yes.

11 **Q** Let's go back to what's marked as tab 2 in the
12 APC notebook.

13 Now, under the -- back at the top where you
14 testified, I think, that -- I'm sorry. I've got to get
15 closer to it because my eyes aren't that good. You
16 testified at the top that these were the issues that
17 you reviewed; correct?

18 **A** Yes.

19 **Q** Okay. And if you turn over to page 3, under
20 the heading "Principals of Applicant" -- and I think it
21 probably goes on and says more than that -- but what we
22 can see says "Principals of Applicant, No. 2D"; do you
23 see that?

24 **A** Yes.

25 **Q** And there are a couple of light pink Ns for

1 Tuscany Cove 1 and Tuscany Cove 2; do you see those?

2 **A** Yes.

3 **Q** Does that mean that Tuscany Cove 1 and Tuscany
4 Cove 2 did not meet the principal requirements?

5 **A** Yes, with those particular applications, I
6 believe what they did was switch the exhibit they
7 provided, like they provided the principal sheet for the
8 wrong applicant in their application.

9 **Q** And were they deemed ineligible because they
10 did that?

11 **A** Yes.

12 MS. BLANTON: That's all I have.

13 THE COURT: Questions for Ms. O'Neill?

14 MR. GOLDSTEIN: No questions, Your Honor.

15 MR. DONALDSON: No questions.

16 MS. DAUGHTON: No questions.

17 MR. BROWN: Just a few questions, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BROWN:

20 **Q** Ms. O'Neill, when you were reviewing these
21 applications filed in response to the RFA, were you
22 allowed to talk to other committee members?

23 **A** No.

24 **Q** Was Liz Thorp a committee member?

25 **A** No.

1 **Q** Was there an understanding that you would use
2 Ms. Thorp as a resource person for your scoring effort?

3 **A** Yes.

4 **Q** Okay. How many applications do you think
5 you've scored for Florida Housing?

6 **A** In the past year, probably 200, at least.

7 **Q** How many of those, as best you can remember,
8 did you score the issue of principals?

9 **A** Probably almost 200, almost all of them.

10 **Q** Have you ever understood that an LLC was
11 required to disclose officers or directors?

12 **A** No.

13 **Q** So would it be your testimony, then, that of
14 the approximately 200 applications that you've scored,
15 whenever there was an LLC involved, you did not expect to
16 see an officer or director listed?

17 **A** That's correct.

18 **Q** What if they did list the officers or
19 directors, would that be a problem?

20 **A** No.

21 **Q** Is it normal to consult non-committee staff or
22 legal counsel on scoring issues?

23 **A** Yes.

24 **Q** Okay. Take a look at -- if you would, at tab 8
25 in the APC notebook. And this is the omnibus resolution

1 that Ms. Blanton discussed with you.

2 I believe you testified that had this
3 document been included in the application, that Liz
4 Wong would have met the experience requirement; do you
5 recall that testimony?

6 **A** Yes.

7 **Q** Where did you first see this document?

8 **A** In the petition that they presented.

9 **Q** Was that after scoring?

10 **A** Yes.

11 **Q** Okay. And when you reviewed the credit
12 underwriting report for St. Luke's Life Center -- or did
13 you review the credit underwriting report for St. Luke's
14 Life Center?

15 **A** I had -- a colleague of mine reviewed it and
16 showed me a couple of -- the key parts of it.

17 **Q** Is it your understanding that Liz Wong was not
18 mentioned anywhere in that document as a principal?

19 **A** That's correct.

20 **Q** How about the application for St. Luke's Life
21 Center?

22 **A** She was not listed in the application.

23 **Q** Let me move on to the principals issue that you
24 were quizzed on by Ms. Blanton.

25 Would you agree that the rule lists all the

1 -- the rule definition of principal -- and please turn
2 to that if you've got it there in front of you --
3 wouldn't you agree that the rule lists all the possible
4 ways that someone or some entity could be a principal?

5 **A** Yes.

6 **Q** But looking back at page 62 of the RFA, would
7 you not agree that the chart provided doesn't ask for all
8 of these possibilities as set out in the rule?

9 **A** That's right.

10 MR. BROWN: No further questions.

11 THE COURT: Mr. Glazer, any questions for
12 this witness?

13 MR. GLAZER: No questions, thank you.

14 THE COURT: Redirect.

15 MS. BLANTON: Just one -- or two.

16 REDIRECT EXAMINATION

17 BY MS. BLANTON:

18 **Q** Turning back to page 61 in the RFA, the
19 language Mr. Brown was just asking you about about the
20 chart. Are you there?

21 **A** Is that in the...?

22 **Q** It's in the joint exhibit notebook, and it's
23 the first exhibit.

24 **A** Okay.

25 **Q** Do you know why the sentence is in the RFA that

1 says the term "principal" is defined in Section 67-48.002
2 FAC?

3 **A** So that applicants can refer to that to know
4 what we mean by principal.

5 **Q** When they're completing their charts; correct?

6 **A** Yes.

7 MS. BLANTON: That's all I have.

8 THE COURT: May this witness be excused?

9 MS. BLANTON: Yes, Your Honor.

10 THE COURT: Thank you for testifying. Please
11 don't discuss your testimony with anyone other
12 than counsel.

13 THE WITNESS: Okay.

14 MS. BLANTON: Your Honor, I had originally
15 planned to call another witness, but I don't think
16 I need to call her. So what I would like to do at
17 this point is move some exhibits into evidence if
18 that's okay.

19 THE COURT: Proceed.

20 MS. BLANTON: Okay. I think APC-1 has
21 already been admitted last week. APC-2 is
22 Elizabeth O'Neill's scoring sheets that we just
23 discussed with her. Three is the prior
24 development experience chart. Four is the
25 handwritten notes on a different prior development

1 experience chart. Five are the interrogatories
2 and responses from Florida Housing. Six is --
3 what is 6? Oh, the out-of-state developer
4 experience composite exhibit. Seven is the credit
5 underwriting report for St. Luke's. Eight is the
6 omnibus written consent that appoints Ms. Wong as
7 an officer. Sailboat Bend document is
8 Exhibit 9 -- or tab 9. Ten and 11 are the
9 documents demonstrating that Ms. Wong was a
10 principal of Morris Pond and Silurian Pond.
11 The -- 12 is the interrogatory responses from
12 Housing Trust Group to us. Thirteen is Housing
13 Trust Group attachment 3 to its application with
14 red line edits by Ms. Wong. Fourteen is the
15 actual attachment 3 to Housing Trust Group's
16 application. Fifteen, 16, 17, 18 and 19 are
17 documents that Ms. Wong testified to where
18 officers appear on documents that were submitted
19 with APC's application. Twenty is Pinnacle Rio's
20 equity commitment letter. Your Honor, I move all
21 those into evidence.

22 THE COURT: Objections?

23 MS. DAUGHTON: Your Honor, we would object to
24 APC Exhibit 13, which is the attachment 3 with the
25 red lines added by, I guess it was Ms. Wong.

1 MS. BLANTON: Yes, Your Honor, it simply
2 illustrates what she did to determine. When we
3 got their interrogatory responses, we asked them
4 to disclose their officers. She helped me by
5 seeing what she thought should have been disclosed
6 under the definition of principal. It's just a
7 demonstrative exhibit.

8 I recognize the legal issue of whether or
9 not those people had to be disclosed or not,
10 and I would think it's -- just perhaps helps
11 us.

12 THE COURT: I'm going to sustain the
13 objection. I don't think she's -- was proven
14 competent to edit someone else's -- what she felt
15 that should have been submitted. But I've
16 accepted a lot of testimony on that
17 interpretation, and I'll look at that.

18 MS. BLANTON: Okay.

19 THE COURT: Any other objections?

20 MS. DAUGHTON: No further objections from
21 HTG.

22 THE COURT: From any party?

23 Then I will admit Exhibits APC2-APC20, the
24 exhibits that have been marked for
25 identification with those numbers and as

1 described by Ms. Blanton.

2 MR. GLAZER: Except for No. 13.

3 THE COURT: Except -- excuse me, except for
4 No. 13.

5 (APC Exhibit Nos. APC2-APC12, APC14-APC20 were
6 received into evidence.)

7 MS. DAUGHTON: Thank you.

8 MS. BLANTON: At this point, Your Honor, APC
9 rests.

10 THE COURT: Mr. Goldstein.

11 MR. GOLDSTEIN: Your Honor, I'm going to hand
12 you a binder that has the -- our exhibits that are
13 essentially -- well, not essentially, are only the
14 exhibits that were attached to our petition. And
15 I advised the counsel that those were our
16 exhibits.

17 In putting together our pretrial
18 stipulation, the lawyers had agreed to reserve
19 objections to relevancy. And it will probably
20 shorten the testimony that I put on if we
21 resolve those objections that I know, at least,
22 Mr. Glazer has to some of them.

23 So if we could do that, I would ask the
24 court if we could resolve those first at least
25 preliminarily, and then if I need to put a

1 witness in, to establish the relevancy.

2 MR. GLAZER: You're just looking at the
3 exhibits from your petition; right?

4 MR. GOLDSTEIN: Just the exhibits -- yeah.

5 And it's the exhibit list that was
6 attached to the pretrial stips. It can -- the
7 numbers track. It goes from 1 to 15. One has
8 already been admitted. I put another copy of
9 our complete application, even though that was
10 part of the stipulated exhibits, just so you'd
11 have it all in one place.

12 THE COURT: Okay.

13 MR. GLAZER: Are you ready?

14 THE COURT: I'm ready.

15 MR. GLAZER: Your Honor, let me -- they're
16 listed -- I'm going to have to mirror his numbers
17 up to the -- because I'm looking at the -- they
18 had letters attached to them.

19 Okay. Let me start with No. 3, the site
20 plan format, Exhibit D. That is not a form
21 that was required for submission in this
22 application. It was not a form that Florida
23 Housing would have looked at. It was not a
24 form that the applicants were required to
25 submit. And there's no reason that any

1 information should be considered about it.

2 I understand this is a blank form, but it
3 is not a form that was required as part of this
4 application. That's D. Do you want me to keep
5 going or do you want to do them one at a time?

6 THE COURT: If they're the same objection,
7 let's do them all now; but if it's a different
8 objection, let's wait.

9 MR. GLAZER: They're very related. They're
10 very related. Tab E is actually -- and,
11 Mr. Goldstein, my version only has three pages.
12 This is actually a nine- or ten-page letter. But
13 I think you've only attached the ones you -- pages
14 you thought were relevant. I just want to make
15 sure your copy --

16 MR. GOLDSTEIN: Correct.

17 MR. GLAZER: Okay. In the exhibit notebook,
18 did you have the entire letter or just what was in
19 the -- attached to the petition?

20 MR. GOLDSTEIN: Just what was attached to the
21 petition, which was the three pages.

22 MR. GLAZER: Three pages.

23 Your Honor, this is a letter that was
24 submitted by counsel for Allapattah Trace to
25 the city of Miami planning and zoning.

1 Again, this is not information that was
2 required as part of the application. It is --
3 while I don't dispute the authenticity of it,
4 at the moment, it's hearsay. But that's not my
5 real issue.

6 My real issue is this is not information
7 that's required as part of this application
8 process. Under the new process, this is part
9 of credit underwriting, with information that
10 would be submitted after an applicant was
11 selected, after an applicant was invited into
12 credit underwriting, they might have to provide
13 information of this type to indicate issues
14 about zoning and about the project and so
15 forth.

16 So, again, in this particular application,
17 this is not part of the requirements. The
18 purchase and sale agreement is actually, this
19 is an excerpt from the application itself.
20 It's already in evidence. If you deny -- if
21 you grant my objection and don't admit Exhibits
22 D and E, then F is not relevant for the
23 purposes that they intend to admit it for.

24 Exhibit G is a document that they obtained
25 that was not a part of the application, not

1 required to be a part of the application. This
2 wasn't even a part of the Stearns Weaver
3 letter. This is something that they obtained
4 by looking at other documents dealing with the
5 particular site that we have.

6 You know, he talked about in his opening
7 statement this issue of an alleyway. I think
8 this is designed to show you that there's an
9 alley. We've never contended there was not an
10 alley. There is an alley. It is not part of
11 our project, never has been part of our
12 project. But that doesn't change the fact that
13 none of that was required as part of the
14 application submission.

15 All of these are issues that are dealt
16 with at the credit underwriting phase of the
17 project. So this is nothing that Florida
18 Housing would have requested, would have looked
19 at, would have needed to see as part of this
20 application process.

21 Exhibit H, I believe, is just, again,
22 intended to show that there's an alley and,
23 again, that's not part of what...

24 THE COURT: Those are emails? Is that the
25 email correspondence with First American Title?

1 MR. GOLDSTEIN: Your Honor, he's on tab 7.

2 MR. GLAZER: Tab 7.

3 THE COURT: Oh, okay. Exhibit H, you said?

4 MR. GLAZER: Right. These are documents that
5 weren't even part of anything that we, the
6 applicant, submitted to the city of Miami.

7 This is something that they came up with,
8 again, trying to demonstrate that there's an
9 alley between -- that runs through the site of
10 this particular project.

11 Again, nothing that was part of the
12 application would have been considered as part
13 of it. It's just simply nothing that Florida
14 Housing would have been interested in at this
15 phase of the project. And Exhibit I, I think
16 it's just a picture of the alley, same problem.
17 So -- and if you --

18 MR. GOLDSTEIN: I'm sorry, Mike, just to
19 interrupt you. I is Exhibit 8, which is the
20 email.

21 MR. GLAZER: I'm sorry, okay. Can I take a
22 look at yours? Because I have I as the picture.

23 MR. GOLDSTEIN: I've got an extra one here.

24 MR. GLAZER: This is -- okay.

25 This is different than what I have in my

1 notebook, but I've seen this before. This is a
2 title commitment. Again, this is nothing that
3 the applicant would have to submit or file with
4 the application. And they obtained it, you
5 know, a copy from other sources, and Florida
6 Housing simply did not require it, would not
7 have looked at it, was not considered as part
8 of this application process, nor would it have
9 been.

10 And for you to look at any of these
11 documents for the purposes for which they are
12 intended would have you engaging in an exercise
13 that Florida Housing did not or would not have
14 gone through in this process.

15 THE COURT: And also P9, you're objecting to?
16 That's the photograph.

17 MR. GLAZER: Yes, sir, same reason.

18 THE COURT: So you have objection to P3-P9 on
19 that ground?

20 MR. GLAZER: Correct. And if -- like I say,
21 there are a couple of documents that are excerpts
22 from the application, but as a practical matter,
23 if you grant the other objections, they have no
24 relevance for the purposes for which they are
25 intended.

1 THE COURT: Well, they've already been
2 admitted, so I won't let you object on relevance
3 as to those. But with respect to the others --
4 you can certainly argue that, though.

5 MR. GLAZER: Yes, sir.

6 THE COURT: Is that -- are you finished?

7 MR. GLAZER: Yes, sir.

8 THE COURT: Okay. I didn't mean to cut you
9 off.

10 Mr. Goldstein, why should I admit these?

11 MR. GOLDSTEIN: Yes, Your Honor, you should
12 admit them because they are relevant to the issue
13 that we've presented to DOAH.

14 The issue that we presented to DOAH and
15 these documents that Mr. Glazer is objecting to
16 relevancy all go to the site plan issue
17 regarding that certification. And it might be
18 helpful if I tie it, first all, to the RFA.
19 And if you could look at joint Exhibit No. 1,
20 please.

21 And if you look at page 84. And so what
22 the RFA requires the applicants to do is to
23 certify of their ability to proceed. And it
24 talks about the form -- and we'll get to
25 that -- that has to be provided within 21 days

1 of credit underwriting. But what's important
2 about the -- this certification of ability to
3 proceed, if you look to -- and let's use their
4 application, Allapattah. So that would be
5 Allapattah 1.

6 And this would be in all of the
7 applications, but since we're talking about
8 Allapattah, let's look at Allapattah 1. And
9 I'm going to direct the court to page 7 of 14.
10 And what the application attempts to do --

11 THE COURT: Hold on. I'm not there. One
12 moment.

13 MR. GOLDSTEIN: I'm sorry, Your Honor.

14 THE COURT: Okay. Go ahead.

15 MR. GOLDSTEIN: And Section 10 is the
16 applicant certification acknowledgment. And
17 again, like I said, I tied it to the RFA and
18 it's -- that part is four pages long and then you
19 see on page 10 of 14, the applicant signs it.

20 And so they are certifying in their
21 application to the RFA that we will do this;
22 again, we'll submit that form. And I'll come
23 back to the form that's blank that Mr. Glazer's
24 objecting to. But it's saying: We can certify
25 to this in our application right now.

1 And what are they certifying to? Are they
2 certifying to a future event or are they
3 certifying to a present intent? And they're
4 certifying to both things, Your Honor. And
5 that's why these documents are relevant.

6 Yes, they're certifying that they're going
7 to provide the form in 21 days when
8 underwriting starts, but what they're
9 certifying in their application, let's dig down
10 on that, and it would be paragraph 10B2, which
11 starts about one quarter of the way down.

12 And here is why it's relevant. If you
13 look at 2A, this relates to the site plan. So
14 what they have to certify to is that they will
15 provide the form in 21 days of the invitation
16 to enter credit underwriting, but here is what
17 they're certifying to today. Certification of
18 the status of the site plan approval as of the
19 application deadline.

20 And that's the certification as to the
21 site plan. Paragraph B, which Mr. Donaldson
22 will -- I direct the court to is certification,
23 this relates to the sewer availability and
24 says: Certification confirming the
25 availability of the following as of the

1 application deadline.

2 So putting aside the blank form, which is
3 directly referenced in the RFA -- and I'll
4 point the court to that -- all of the documents
5 that Mr. Glazer is now objecting to go to that
6 this certification is inaccurate.

7 And yes, the Florida Housing Finance
8 Corporation did not look at them, apparently;
9 but it's kind of like the argument that was
10 just made. That credit underwriting report
11 that also wasn't part of the application,
12 Florida Housing Finance Corporation felt that
13 they should look at that because it was in
14 their possession.

15 Well, that's essentially what we're
16 arguing. We're arguing that if Florida Housing
17 Financing Corporation had looked at this
18 information, they would have essentially seen
19 that this certification in the application,
20 that's talking about as of the application
21 date, would have been inaccurate. And because
22 of that -- and it ties to those two minimum
23 mandatory requirements, site plan and then the
24 available sewers.

25 And most importantly, besides that's the

1 -- that's our argument, that they should have
2 done that. Now, again, it will be up to the
3 court to decide whether they were arbitrary and
4 capricious for not looking at it or will argue
5 over the merits of what these documents mean.
6 But that's the analysis which makes them
7 relevant. Everything else would go to the
8 weight.

9 And just one last thing. I thought -- I
10 lost my last thought, Your Honor. I've
11 convinced myself already. So the blank form
12 that is the form that you're going to have to
13 be provided in 21 days, that's why -- that's
14 actually, if you look at the RFA where we were
15 looking earlier on page 84 of the R -- the RFA
16 itself, joint Exhibit No. 1, if you click on
17 that link, it says there: The verification
18 form -- again, I'm reading from page 84 of the
19 RFA -- the verification forms referenced in
20 items A-D above, including A and B, which is
21 what we've been talking about, those are
22 available from the corporation's website.

23 So I'll represent to the court -- and I
24 don't think there would be any dispute -- if
25 you click on that link, it takes you to the

1 corporation's website, and then it's got
2 several forms, one of which is that, the first
3 exhibit that Mr. Glazer is objecting to.

4 That -- and that's referenced in the RFA.

5 But the significant point, Your Honor, is
6 just this, that our argument is that that
7 current certification that has to be made as of
8 the application date, these documents all are
9 relevant. The arguments of Mr. Glazer simply
10 go to the weight of that relevance, and that's
11 something that the court should consider after
12 the fact, after admitting all of those
13 documents.

14 MR. GLAZER: Judge, a couple of points, first

15 --

16 MR. DONALDSON: Can I say something?

17 MR. GLAZER: Oh, I'm sorry.

18 MR. DONALDSON: Since Mr. Goldstein has
19 already thrown me under the bus and this issue is
20 going to come up tomorrow when we get to the sewer
21 issue. So I might as well chime in now.

22 Judge, I would also take you to the RFA,
23 the second page of the RFA. And this is just
24 to basically give you a better understanding of
25 this actual requirement that's in the RFA. And

1 if you go to Section 3 -- and that's about
2 halfway down -- in that paragraph is where the
3 requirement is that the certification and
4 acknowledgment be part of the submittal.

5 In fact, it's supposed to be in blue ink;
6 it's supposed to be signed in blue ink. And if
7 you go to page 35 of the RFA, at paragraph 10,
8 that's the section that says: "Applicant
9 Certification and Acknowledgment." The
10 applicant's signature on the Exhibit A
11 indicates the applicant's certification and
12 acknowledgment of the provisions and
13 requirements of the RFA. And there's where we
14 get into the blue ink.

15 So while Mr. Glazer is correct that there
16 will be documents submitted in the future, in
17 terms of the actual forms, the certification
18 was submitted with the application. And the
19 certification certifies that we can meet, we
20 have read and we understand and we can meet the
21 conditions of the RFA.

22 Now, we take it to where Mr. Goldstein was
23 referring you to where it talks about meeting
24 that, certifying that is you've got to
25 demonstrate or you have the ability to

1 demonstrate that these various components of
2 the ability to proceed part are in place as of
3 the application deadline. If Mr. Glazer is
4 correct, there would be no way for us to
5 challenge what's in the certification.

6 So the certification is inaccurate.
7 Whether it's malicious or not, that's not the
8 point. It is not correct. If we're right,
9 it's not correct. They very well may be able
10 to prove that it's correct, and that's fine.
11 But to say that you can't look at the documents
12 that go to the heart of the issue as to whether
13 it was correct, how would we ever be able to
14 challenge whether or not somebody's
15 certification was signed correctly?

16 This is not a quirk in the process. This
17 is clear language. The RFA says what it says.
18 We're not trying to challenge the specs. We're
19 not trying to change the specs. The specs tell
20 you, the RFA tells you: Whatever you're going
21 to give, whether it be 21 days after
22 underwriting or whether be it five years from
23 now, has to show that you had those things as
24 of the application deadline, which is set in
25 stone, November 12, 2013, as you've heard

1 several times.

2 So, again, I come back to the point of if
3 we're not allowed to challenge whether or not
4 they're sewer, whether or not the site plan is
5 correct or accurate, how do we ever challenge
6 what's in the certification?

7 THE COURT: Let me ask -- Mr. Goldstein, I'll
8 give you an opportunity first and then -- how do
9 you respond to Mr. Glazer's argument that under
10 120.57(3), I'm not doing a normal 57(1)
11 proceeding. I'm reviewing a decision that has
12 already been made in a form of interagency review
13 and that this decision hasn't been made by the
14 department yet.

15 If this is not part of their department,
16 what am I reviewing? If this was not part of
17 their decision, what am I reviewing here?

18 MR. GOLDSTEIN: Well, you would need to
19 review the determination in the mandatory
20 checklist -- I forgot to point that out -- there's
21 an RFA -- in the request for application, there's
22 a checklist of mandatory items that they have to
23 review.

24 And this certification and the site plan,
25 those are items that they have to check off as

1 being compliant. And whether the policy or
2 practice of the agency is just to take it on
3 face value, the whole point of this proceeding
4 is for us to show that taking on face value is
5 arbitrary and capricious because it's wrong.

6 And just the same way as we went through
7 the development experience, bringing in the
8 other information to show that taking on face
9 value is wrong, it's the same way for the site
10 plan and the sewer issue. And I'll point out
11 to Your Honor -- and I know this other case is
12 not in front of you.

13 As you know, there's three counties here.
14 We're here in front of Miami-Dade County.
15 There's the companion case for Broward.
16 There's a -- there's a proximity issue that's
17 not involved in this case, but one of the
18 things is: How close is your proposed
19 development to a medical facility?

20 And my client Pinnacle, there, is the
21 intended funded applicant and the -- some of
22 these lawyers sitting in here today and others
23 are challenging that we're really not a medical
24 facility and that Florida Housing Corporation's
25 position in that case is simply: We take them

1 at face value.

2 They're going to bring in -- in fact,
3 they've put it in their petitions --
4 affidavits, a private investigator. So these
5 types of let's look behind the application
6 issues, they're very common in these
7 proceedings. And we're not asking you to do
8 anything unusual.

9 I would almost be happy if there was a
10 uniform rule, and you can't look behind it
11 because that would mean in my Broward companion
12 case in front of Judge McArthur, I believe it
13 is, then I would win there because we would
14 simply say: The Florida Housing Corporation
15 didn't look at this issue. They took it at
16 face value, and the petitioners can't put in
17 any other evidence against it.

18 What I'm doing here, based on those
19 documents, is essentially the same thing. The
20 agency did do an analysis of site plan
21 certification accurate, present ability to do
22 the sewer work; and they just said yes, based
23 on the face of that certification.

24 And our point to you is: That's not
25 enough under the facts of these petitions, both

1 on the site plan, as I'm arguing predominantly,
2 and as Mr. Donaldson. So that's why those
3 documents, it's -- we're not -- the provision
4 that you're discussing which you denied the
5 motion in limine of the agency to prevent, to
6 prohibit the admission of that, the same thing
7 should be done here as if Mr. Donaldson had
8 filed -- excuse me, Mr. Glazer had filed a
9 motion of limine to exclude these.

10 The analysis is exactly the same, the same
11 reason why you allowed APC to put in these
12 documents that weren't part of their
13 application to buttress why -- their argument
14 why they shouldn't have been thrown out. The
15 analogy is the exactly the same.

16 You should consider these documents to
17 buttress our argument that Allapattah should
18 have been thrown out. And it all goes to the
19 weight of that evidence.

20 THE COURT: Well, isn't there a distinction
21 between the motion in limine wherein the decision
22 was made by Florida Housing there that a
23 particular document did not sufficiently indicate
24 or that the application as a whole did not
25 demonstrate that the principal developer was

1 qualified. And I was allowing evidence there to
2 reach that determination of fact.

3 But there's a different issue. There's a
4 more complicated issue with this one and the
5 sewer, and that involves whether a decision has
6 even been made by Florida Housing at this
7 point. Can you address that? Is there
8 something -- in what sense did Florida Housing
9 make a decision on this issue already or should
10 they have?

11 MR. GOLDSTEIN: Yes, Your Honor.

12 If you'd go to the RFA at page -- if you
13 give me a moment, I'll get you the specific
14 page. If you go on page 37 of the RFA, Your
15 Honor, and this contains either the mandatory
16 pass/fail items or contains the scoring items.

17 And as you've heard testimony, all the
18 folks in this room have scored the maximum 27
19 points. So the issue comes down to the lottery
20 numbers or if someone is ineligible. If -- as
21 we're here talking about the issues relating to
22 Allapattah, again, the agency has to make a
23 concerted decision that they've met that
24 executed applicant certification.

25 So they have to -- they have to make a

1 decision whether it's complied with the
2 mandatory requirements. And now, it might be
3 the agency's position if you turn the form in
4 and you sign it in blue, case is over. And I
5 assume that's what the agency is going to
6 testify to.

7 But we should be able to do the converse
8 of what was already done over the past two
9 hours. We're trying to show here that other
10 documents show that that check-off yes, meet
11 the minimum, is met, just like the reverse,
12 which you heard two hours of testimony that the
13 check-off box was incorrect for development
14 experience, that the -- ineligible.

15 So it's exactly the same issue. It's the
16 agency must determine whether that minimum
17 mandatory is met. They determined it was met.
18 We simply want to present documents to you that
19 go to why that decision was wrong and not only
20 wrong, but inconsistent with the RFA and done
21 in an arbitrary and capricious manner.

22 It all goes to the weight, Your Honor.

23 THE COURT: Anything further, Mr. Donaldson?

24 MR. DONALDSON: Well, Judge, let me put my 2
25 cents in.

1 And I have talked to Mr. Glazer about
2 this. I have talked to Mr. Brown about this or
3 anybody else who wants to talk about this.
4 This is the first time we've actually had to
5 deal with this particular issue through these
6 -- through this RFA process.

7 Mr. Glazer, in his opening statement,
8 showed you the boards and everything. And he
9 wanted to keep telling you how we don't have to
10 do this now. We don't have to do this now.
11 And each time, he pointed you to language, he
12 ignored as of application deadlines.

13 So no matter where -- like I said earlier,
14 no matter where you go in this process,
15 whatever demonstration needs to be made is as
16 of the application -- as of the application
17 deadline.

18 If we can show you that as of the
19 application deadline, they didn't have
20 anything: They didn't have the sewer, they
21 didn't have the site plan approval, then
22 there's no way for them to show it at any time
23 in the future.

24 Now, what's the ramifications of that from
25 a practical perspective? Well, from the

1 application deadline, we're already six -- five
2 or six months into the process, and we don't
3 have an end result. This hearing process is
4 going to take more months. So we're looking at
5 June. So we're looking at time.

6 What's the -- what happens when we're
7 looking at time? We're looking at money that
8 these developers have to keep these facilities
9 locked down, site control and other things that
10 they have to spend, even Allapattah, everybody.

11 So that's the whole point of the ability
12 to proceed process. It's called ability to
13 proceed for a reason. And why these documents
14 are all required and why the certification that
15 you have these documents is required up front
16 is because we want this answered now.

17 Now, Mr. Glazer in his motion to dismiss
18 says: Well, they can have a point of entry
19 down the road sometime. Well, then he says:
20 But they don't really have a clear point of
21 entry down there. Maybe that's true; maybe
22 that's not.

23 What we do know now is we have a clear
24 point of entry to challenge the response to the
25 RFA. And in that response, there's a

1 certification that confirms that the applicant,
2 Allapattah here, had these things in place as
3 of the application deadline.

4 Now, if Florida Housing doesn't want to go
5 behind the certification, they want to take
6 things at face value, well, we're showing you
7 that that's arbitrary and capricious because we
8 will demonstrate that they don't have these
9 things.

10 And maybe that's what Florida Housing
11 wants you to decide here because, quite
12 frankly, I haven't heard what the position is
13 from Florida Housing. They did not go along
14 with the original motions to dismiss that said
15 this wasn't right. So I'm taking from the
16 record that that's not really the position
17 they're taking either.

18 Maybe they will say they want you to
19 decide this too, whether there's sewer now or
20 when do we make this call or maybe at the end
21 of this process, when the new RFAs comes out,
22 they take out "as of the application deadline."

23 That's the problem. If that language
24 wasn't there, then I think their argument would
25 make sense, that you could turn this stuff in

1 in underwriting and there really would be no
2 deadline, there would be no time frame. If you
3 had it then, you are good to go; but that's not
4 what the RFA says.

5 So I find myself in a quandary to try to
6 put this in the process of a pure 120.57(3)
7 where we're limiting the documents that can
8 come in. But the problem with that is as we've
9 argued -- or I've argued before or I pointed
10 out before, this really isn't your typical
11 120.57(3) procurement.

12 This is an allocation process. It's kind
13 of hybrid that some of the folks that aren't in
14 this case anymore argue that you couldn't do
15 this via this process. But that's neither here
16 nor there. But I think there's an argument
17 that the limitations that go into a pure
18 120.57(3) don't necessarily apply here, and
19 this is one of them.

20 And like I said earlier, how would we ever
21 be able to challenge somebody's certification
22 that they will have these things if we can't
23 point that out to you now, that they don't have
24 them.

25 THE COURT: Mr. Glazer, you had basically had

1 me read this as if the words "as of the
2 application deadline" weren't there; is that
3 correct?

4 MR. GLAZER: No.

5 THE COURT: What did those -- what
6 significance do those words have?

7 MR. GLAZER: That means that when the project
8 gets to credit underwriting, then the credit
9 underwriter will look back to see whether that
10 information existed as of the application
11 deadline. But Florida Housing does not go through
12 that process. Now, they used to.

13 This is a new process. And in the old
14 process, you had to submit all these forms with
15 the application and Florida Housing would
16 evaluate that. But now what they have done is
17 they have said: We're not going to go through
18 that exercise at this stage. We have 119
19 applications. We're not going to do that for
20 -- and we know only a couple are going to get
21 funded.

22 And what we're going to do is say:
23 Applicant, you're required to certify to us
24 that you can do these things, and we're going
25 to check you in credit underwriting and we're

1 going to take a look back. And if you can't
2 show that to us in credit underwriting, that it
3 existed as of that date, then you're probably
4 not going to survive.

5 But you have two issues here. That was
6 laid out in this application from day one. If
7 they didn't like it, if other applicants didn't
8 like that process, then they should have
9 challenged it at the time. And they didn't.
10 And that's --

11 THE COURT: Mr. Glazer, I've already ruled on
12 that. I think maybe they interpreted this their
13 way rather than your way and so didn't feel any
14 need to challenge it; isn't that possible?

15 MR. GLAZER: That may be their interpretation
16 but, Your Honor, respectfully, I think they're
17 just flat wrong on that point and that they knew
18 this was a significant change from the prior
19 cycles when there was a requirement to submit
20 dozens and dozens of forms and where it was a
21 threshold requirement to show certain things.

22 And now all that was required was Florida
23 Housing requiring a certification saying we are
24 warning you that when -- if and when you get to
25 credit underwriting, we're going to take a look

1 back.

2 But that then goes to that second point,
3 which is they're asking you to do something
4 that they have not done. Florida House -- you
5 can't get a Florida Housing witness on the
6 stand to say: What do you think of all this
7 stuff about the Allapattah Trace application
8 because they weren't required to look at it,
9 and they didn't and they didn't for anybody.

10 Now, so what you really have here is a
11 lack of predicate. There's no predicate for
12 all of this information on either the sewer or
13 the site control to be admitted into evidence
14 at this phase because it's not something that
15 was part of this application process.

16 Mr. Goldstein mentioned the Broward
17 situation and then he showed you this chart on
18 page 37. This whole issue about proximity to
19 different things, that was actually scored.
20 That wasn't in the certification. That was
21 part of the application process. Now, maybe he
22 ought to be making the same argument in Broward
23 County that we're making here.

24 But what they're talking about, I believe,
25 in that case -- and I'm not in it, so I can't

1 tell you precisely; I'm one of the few people
2 that's not -- is something that was, in fact,
3 part of the application information that was
4 submitted at the time.

5 What we're talking about was a conscious
6 decision by Florida Housing and one that was
7 broadly advertised, if you will, in the form of
8 the RFA that said all we're going to require at
9 this point is certification, that's all we're
10 going to look at, that's the check-off and then
11 if and when you make it to credit underwriting,
12 we're going to dig into this level of detail.

13 And that predicate is not, has not, cannot
14 be laid in this case. And because it can't,
15 frankly, we should be done.

16 THE COURT: Mr. Glazer, what action is taken
17 by Florida Housing Finance Corporation during
18 credit underwriting to determine site plan and
19 sewer? Do they make a decision at that point?

20 MR. GLAZER: It was --

21 THE COURT: After 21 days?

22 MR. GLAZER: The short answer is yes. But if
23 you look on that page where they referenced all of
24 these forms, was that at 84?

25 There's a whole bunch of forms. And you

1 have to submit forms about all sorts of things.
2 You have to submit forms and information about
3 the experience of your development team: Your
4 developer, your attorney has to submit
5 information, your accountant has to submit
6 information.

7 There is just -- I don't think it's a
8 legal term, "bocoodles" of stuff that has to be
9 submitted in credit underwriting. It is a much
10 more rigorous, much more thorough, much more
11 detailed review. If you go to that site, there
12 are dozens of forms, and those forms have
13 attachments. And the credit underwriter -- you
14 heard earlier, the credit underwriter does an
15 entire market study of the markets. So it is a
16 much more detailed review than this process is
17 now intended --

18 THE COURT: And if Florida Housing Finance
19 Corporation at that point made a horrible decision
20 that really hurt your client, would you have an
21 opportunity to challenge it?

22 MR. GLAZER: Sure, if we went to credit
23 underwriting and they didn't -- and they didn't
24 like something we submitted, I suspect -- I mean
25 -- and I haven't been there, so I can't tell you

1 for sure -- but I would argue as an administrative
2 law attorney and I will defer some to Mr. Brown on
3 this, that my interest would be substantially
4 affected, and I have an opportunity to challenge
5 that.

6 THE COURT: And would these other parties be
7 substantially affected if there's a determination
8 that -- let's take -- I'm just picking one of
9 these out, that sewer service was available at the
10 time of the application, but they felt that it
11 wasn't, could they challenge it at that point?

12 MR. GLAZER: Here would be my position on
13 that. And I don't want to concede anything, but
14 here is what I think.

15 I think the next one in line would. If
16 I'm No. 2 and No. 3 wants to challenge, then
17 under the principles that we apply in bid
18 protest proceedings, they probably would have
19 standing to challenge at that point. I'm not
20 sure four, five or 27 --

21 THE COURT: Wouldn't we have a proceeding
22 just like this, whereas if you can attack everyone
23 in front of you, then you also have standing?
24 What would be the difference? Aren't we going to
25 be just having two different proceedings?

1 MR. GLAZER: Not necessarily. And because A,
2 you don't know what will happen; B, I don't think
3 you would have as many people potentially with
4 standing; and C, again, if they didn't want --
5 that's the process that's been laid out here.

6 And if somebody didn't like the process,
7 then they should have attacked the
8 specifications because that's the process
9 that's been laid out. And whether one likes it
10 or not, I don't think is an issue in this case.

11 The question is that's what's been done.
12 And what Florida Housing has said is: We're
13 going to push all of this to credit
14 underwriting, and we're not going to require,
15 nor are we going to have looked at the level of
16 detail that Mr. Goldstein and Mr. Donaldson are
17 asking you to do at this phase.

18 THE COURT: If it were clear -- this is hard
19 to put you in this position -- but I want to ask
20 this hypothetical question. If it were clear that
21 you as an applicant could not certify that as of
22 the date, how can you certify at the time -- how
23 can you meet this applicant certification
24 acknowledgment when you read it? Because you know
25 now that you'll be unable.

1 Can you still certify? In what sense can
2 you still certify that you will be able to do
3 that in the future?

4 MR. GLAZER: Well, if you overrule all my
5 objections, then I have evidence on these issues.

6 THE COURT: No, I'm not asking if you have --
7 if you, in fact, can do it.

8 MR. GLAZER: Yeah.

9 THE COURT: I'm asking if you couldn't do it.

10 MR. GLAZER: Then you should --

11 THE COURT: If it was clear that you couldn't
12 do it, then should you certify? Would you be able
13 to honestly certify and say: There's no way I
14 would be able to do that in 21 days of credit
15 underwriting, but they're not asking me about that
16 now, so I can go ahead and certify it; is that
17 your position?

18 MR. GLAZER: Well, if you're willing to lie
19 on the form, I suppose you could.

20 THE COURT: But that would be lying?

21 MR. GLAZER: That would be lying, and you
22 would be caught in credit underwriting.

23 THE COURT: But they would be lying on the
24 application you're submitting -- on the
25 certification you're submitting earlier?

1 MR. GLAZER: If you knew for a fact that you
2 couldn't do it --

3 THE COURT: Yeah.

4 MR. GLAZER: -- then yes, you would be lying.

5 But Florida Housing has said: In this
6 process, we're going to defer that level of
7 review to credit underwriting.

8 THE COURT: I understand.

9 MR. GLAZER: And everybody knew that going
10 in; and if they didn't like that, they should have
11 challenged the way the process was laid out.

12 THE COURT: Mr. Brown.

13 MR. BROWN: Your Honor, I see this much more
14 simply, and I agree with everything that
15 Mr. Glazer says; but the fact is this issue with
16 the site plan and the sewer is beyond the scope of
17 this proceeding.

18 This was not scored by Florida Housing.
19 No one at Florida Housing scored a sewer form
20 or a sewer letter. No one at Florida Housing
21 looked at the site plan and cared about it or
22 scored it. It was not part of scoring, and it
23 should not be part of this proceeding.

24 MR. GLAZER: And one other point. There was
25 site information in the application. You had to

1 demonstrate site control.

2 Florida Housing made the decision that
3 they wanted to see site control. That was this
4 issue of having a contract or a deed. But they
5 didn't want this other information, nor did
6 they look at it.

7 THE COURT: It's a very difficult issue for
8 me. I'm going to allow this testimony, not
9 because I agree that it necessarily is admissible
10 because I find many of the arguments over here
11 persuasive; but I think it requires more study on
12 my part.

13 And, frankly, I have to look at some other
14 cases and see. And so I think the best course
15 for me to do is accept the evidence, and I'll
16 allow you to argue this issue in the future.

17 I'm troubled by -- I mean, because this is
18 a complicated language that says you certify in
19 the future as to something that took place in
20 the past. And I don't know that this has been
21 done before. I guess it hasn't.

22 But in the meantime, I'm going to allow
23 testimony and allow that issue to be preserved.
24 I don't know how else to do it because I just
25 don't feel comfortable either way right now.

1 MR. GLAZER: Your Honor, I would note, A, a
2 continuing objection so I don't have to interrupt
3 the flow. I'll try --

4 THE COURT: I understand.

5 MR. GLAZER: -- and note it at the front end
6 of things. But if it's okay with you and the
7 other parties, I don't want to have to object to
8 every question.

9 THE COURT: I understand. And I'll
10 acknowledge that -- I understand the position. I
11 assume that's also your position, Ms. Daughton?

12 MS. DAUGHTON: Yes.

13 THE COURT: The three -- the intervenors and
14 the corporation have an objection to this, and I
15 think I understand your grounds.

16 Anything further?

17 MR. GOLDSTEIN: Your Honor, just so we can be
18 clear --

19 THE COURT: Are you going to try to change my
20 mind? Just kidding.

21 MR. GOLDSTEIN: I'm not -- I've been
22 practicing long enough not to do that, Your Honor.

23 I just want to make clear for Pinnacle
24 Rio's exhibits, Exhibit 1 was already admitted,
25 and I believe by the court's ruling, you've now

1 admitted Exhibits 2-9.

2 THE COURT: If there is no other objection to
3 those, I was ruling on that one objection. Are
4 there other objections to those exhibits? And if
5 not, I will.

6 MS. DAUGHTON: Did you have anything else,
7 Mike?

8 MR. GLAZER: Can I have just one second?

9 THE COURT: Yes, take your time.

10 MR. GOLDSTEIN: Because I thought you gave
11 him a chance to state all his objections already
12 so...

13 MR. GLAZER: There is a certain amount of
14 hearsay in these, and I know you've already
15 indicated you will admit documents over hear --
16 that you'll admit hearsay, but they're...

17 THE COURT: Okay. If there's something
18 that's --

19 MR. GLAZER: Well, the email correspondence
20 --

21 THE COURT: Let me repeat to all counsel: If
22 there's something that's critical to your case and
23 you think that hearsay applies, call it to my
24 attention specifically as when we're talking about
25 it.

1 By the same token, if you feel the hearsay
2 exception applies because I cannot make a
3 finding of fact based on hearsay, even though I
4 admit it. And so you need to be aware of that
5 and everybody needs to be on the same page.
6 And I'll try to let you know what I think about
7 it ahead of time.

8 So make those objections, even though I'm
9 going to overrule the objection; but it will
10 call attention. And I'll tell you whether I
11 think that's -- yes, that's a business record
12 or whatever, okay.

13 MR. GLAZER: Item No. 8, I have a hearsay
14 objection to.

15 THE COURT: Okay.

16 MR. GLAZER: Item 7, Mr. Goldstein, this is
17 all right off the property appraiser's website?

18 MR. GOLDSTEIN: Correct.

19 MR. GLAZER: Okay. I'll note a hearsay
20 objection. There's probably an exception for
21 that. And item 6, I have a hearsay objection to.

22 THE COURT: Those all appear to be hearsay to
23 me as well. So if there's any exceptions, let me
24 know now or later.

25 MR. GOLDSTEIN: Your Honor, I --

1 THE COURT: Yes.

2 MR. GOLDSTEIN: Well, item No. 6 is a
3 printout from the plat that is, if you go to -- if
4 you go to Exhibit No. 5, which is their purchase
5 and sale agreement, and then in Exhibit A, they
6 reference the plat, book 6, page 164, that is what
7 the next document is.

8 So there's -- it's two hearsay exceptions,
9 Your Honor. One is a public record; two, it's
10 the statements affecting an interest in
11 property is one of the hearsay objections. I
12 thought this might come up. So it's 90, so the
13 first is public record, and I'm looking at
14 Florida statutes 90.803, the exceptions for
15 public records is subsection (8) and then the
16 section for records of documents, statements
17 and documents affecting an interest in property
18 is subparagraph 15.

19 And I think as Mr. Glazer already
20 acknowledged during the arguments, these
21 documents really only go to the issue that
22 there's an alley there. And, but --

23 THE COURT: Well, can't we avoid a lot of
24 this testimony by stipulating that there's an
25 alley there. I think Mr. Glazer has already said

1 that.

2 MR. GOLDSTEIN: Your Honor, part of the
3 reason why I wanted to engage in this legal issue
4 first is I'm going ask the court if, instead of
5 calling any witnesses for the Allapattah issue,
6 that I'll just proffer what I would have those
7 witnesses say based on the documents. That's what
8 I'd like to do.

9 Rather than defer to my closing argument,
10 I'd like to, at least, make a brief proffer,
11 walk the court through what these exhibits,
12 pointing what's important to them. That's the
13 way I'd suggest to handle it to save some time,
14 but I don't feel comfortable not doing the
15 proffer or not presenting a little bit of
16 testimony, at least, to highlight it just like
17 we did earlier.

18 Certainly, all those things I can now
19 argue in our closing -- in our recommended,
20 proposed recommended orders, but I'd like the
21 chance at this point in my case. But on the
22 Allapattah, if I can do that, I won't need to
23 call any witnesses. I'll just proffer, in
24 essence, what I believe the significance of
25 each of those documents is.

1 THE COURT: Okay.

2 MR. GOLDSTEIN: So those, I think, all are
3 hearsay exceptions to those documents. And then
4 the other issue is, Your Honor, even if there
5 weren't a hearsay exception based on the other,
6 the other documents in the record and the
7 stipulation or, at least, a concession as to the
8 alley, those -- the point about the alley is
9 already established and these documents will just
10 be supportive of that.

11 And under the rules for DOAH, while
12 hearsay can't stand alone, these additional
13 documents -- even if the exceptions didn't
14 apply, and I think at least three of them do,
15 or at least two of those do, either public
16 records or statements affecting an interest in
17 property --

18 THE COURT: Let me -- I don't think public
19 records applies right offhand, but let me look at
20 statements 803 -- isn't the public records
21 exception, to my understanding -- I have eminent
22 counsel here to correct me, all over the place --
23 involves -- it's not the same as a public record
24 under Chapter 119.

25 It has to do with a statement of the

1 duties of the agency or similar things, and
2 it's actually rather limited, I think. I mean,
3 there's certain agency reports, things that --
4 where an employee has observed something by
5 law, and I don't think that applies here. I
6 mean, maybe it does, but...

7 MR. GOLDSTEIN: I think the exception goes
8 beyond that type of report, Your Honor; and it
9 talks about records or data compilations. And I
10 believe, again, for that plat issue, it's the --
11 it's referenced in the prior document and then
12 that's just showing what the reference in their
13 contract that is already in evidence shows.

14 THE COURT: Okay.

15 MR. GLAZER: Judge --

16 THE COURT: Maybe we're just arguing without
17 a point.

18 Let me understand. You are offering all
19 of this evidence, first of all, to show that
20 there was an alley and, secondly, and that
21 would be what you would be offering these
22 documents for, so that is for the truth
23 contained therein, but also that what was
24 submitted to the city was not accurate; is that
25 right?

1 MR. GOLDSTEIN: Correct.

2 The argument is that the site plan
3 submitted to the city did not accurately show
4 that this alley had not been vacated and,
5 therefore, was under the control or ownership
6 of the applicant.

7 So it's -- those are the two factual
8 issues that we're asking you to decide: A,
9 there was the ally, and I don't believe there's
10 any dispute, and then the issue is all these
11 documents all go to the point that the public
12 records do not show that that alley is owned by
13 the applicant and that it would have to be
14 vacated from the government back to the
15 applicant.

16 So that's what all these documents go to,
17 those two points.

18 MR. GLAZER: Judge, part of the problem with
19 Pinnacle's case is they have completely
20 misunderstood this from the get-go.

21 We've never disputed that there was an
22 alley. And we have always said the alley is
23 not part of our project. Mr. -- I have
24 given -- in light of your rulings, I have two
25 depositions to offer into evidence on this very

1 point.

2 Mr. Goldstein didn't attend either
3 deposition, but both of those witnesses -- one
4 is the architect who wrote up the site plan,
5 and the other is the surveyor who did the
6 survey -- said: Yes, there's an alley; and no,
7 it's not part of the site.

8 We have never contended that it was part
9 of the site, and it wasn't submitted to the
10 city that way. And their argument that somehow
11 we misrepresented to the city because we didn't
12 show we were going to own the alley is
13 completely backwards because we never intended
14 to own the alley. It was never part of the
15 site.

16 THE COURT: So I'm convinced more than ever
17 that all these exhibits trying to show that
18 there's an alley are kind of irrelevant. You're
19 conceding that. We don't need that.

20 Can we just stipulate to that here right
21 now, that there's an alley?

22 MR. GOLDSTEIN: We can stipulate to that,
23 Your Honor, but we still need the documents to
24 show the other point and -- for instance, and we
25 can go to Exhibit No. 4.

1 Exhibit No. 4, this is a document
2 submitted on behalf of the applicant, so it's
3 an exception to hearsay as an admission against
4 interest. So I don't think Mr. Glazer raised
5 that as a hearsay objection because it was them
6 submitting it to the city.

7 And our point is, the stipulated fact that
8 there is an alley, our point is that this site
9 plan description, which would be -- it's the
10 third page in after the -- under tab 4 after it
11 says Exhibit E of the -- it's the drawing of
12 the site plan.

13 And what our argument is on that second
14 point is they should -- when they submitted
15 this site plan to the city of Miami, they
16 should have -- the alley runs north to south
17 here, which would go directly through that
18 description. They should have put in an
19 indication in this picture: The alley is not
20 part of our site plan request.

21 The whole argument is by them not putting
22 it in this description, that is the -- that is
23 what they presented to the city was inaccurate,
24 therefore, their certification is inaccurate.
25 That's our whole argument.

1 And all those documents go to supporting
2 why Exhibit No. 4, which I believe is not --
3 which there is no additional objection to --
4 why that is inaccurate.

5 MR. GLAZER: And that's why you should not be
6 listening to any of this because Florida Housing
7 has not done any of this at this point. But -- so
8 maybe we've gone on a little too long, and it kind
9 of makes my point. But we --

10 THE COURT: I think this is just the
11 beginning, Mr. Glazer.

12 MR. GLAZER: I think so.

13 But here is the deal. The architect who
14 wrote this site plan testified. The surveyor
15 who did the survey testified. I'm going to
16 give you their deposition. He has no evidence
17 to refute what they've said. Didn't even come
18 to the depositions or cross-examine the
19 witnesses.

20 THE COURT: Okay. But we're just talking
21 about the admissibility of these documents right
22 now so...

23 MR. GLAZER: Exactly, but he's trying to tell
24 you what they show; and I want to make sure the
25 record is clear that that's just not right.

1 THE COURT: Okay. But I'm going to -- based
2 on the stipulation that we have that there was an
3 alley, I'm going to admit these other -- on the
4 hearsay objection as well as supplementing. I
5 admit hearsay for that purpose so...

6 Any other objections to petitioner's
7 Exhibits 2 through -- is it 14 -- no -- yeah,
8 2-14.

9 MR. GOLDSTEIN: Your Honor, I've been taking
10 these apart. This would be 2-9.

11 THE COURT: 2-9, yes.

12 MR. GOLDSTEIN: There's nothing behind 10.

13 THE COURT: The others deal with the Town
14 Center issue.

15 MR. GOLDSTEIN: The same issue would be for
16 Town Center from 11-13.

17 THE COURT: Well, let's -- hold up. Any
18 further objections for P2-P10?

19 Okay. I'll admit as Pinnacle Rio Exhibits
20 P2-P10, those have been marked with those
21 numbers for identification. And now go on,
22 Mr. Goldstein, for P11-P14 -- or do we have any
23 objection to those?

24 MR. DONALDSON: I think they're all in the
25 application already.

1 THE COURT: These are all in the application?

2 MR. DONALDSON: They're all --

3 THE COURT: So they're already admitted.

4 MR. DONALDSON: -- exhibits to the
5 application except for 14.

6 THE COURT: Okay.

7 MR. DONALDSON: I don't know what that is.

8 MR. GOLDSTEIN: We have nothing for 14, Your
9 Honor. So just as we had nothing for 10, that was
10 if we needed to put in the checklist from the
11 agency.

12 THE COURT: So you're withdrawing 10?

13 MR. GOLDSTEIN: Withdrawing 10. There's
14 nothing behind there.

15 MS. DAUGHTON: Withdrawing 14 from the list?

16 MR. GOLDSTEIN: Yes, Your Honor.

17 THE COURT: Okay.

18 And so those are admitted.

19 (Pinnacle Rio's Exhibit Nos. P2-9 were
20 received into evidence.)

21 (Pinnacle Rio's Exhibit Nos. P11-13 were
22 received into evidence.)

23 MR. GOLDSTEIN: Yes, Your Honor. Thank you.

24 THE COURT: You may proceed.

25 MR. GOLDSTEIN: Your Honor, what -- as to

1 the -- you've already had a preview of that for
2 the Allapattah issue.

3 Like I said, my intention either would be
4 to be put Mr. Reecy on for him to testify as to
5 what he didn't look at, but I think we can
6 stipulate to that. And so then I'd just ask
7 the court's indulgence for a brief proffer as
8 to what I think is significant.

9 And I've said it already in large part
10 during our argument as to the relevancy of
11 those, but rather than doing that through
12 Mr. Reecy, I'd just as soon walk the court
13 through -- what I would like to do is just walk
14 the court through where the RFA requires the
15 information, at least, my argument and through
16 those exhibits.

17 And then I presume when Mr. Glazer, as he
18 said, when -- he'll put on his witnesses
19 rebutting that. And then I can cross them
20 rather than call them initially. That's the
21 way I'd prefer to proceed. I think --

22 THE COURT: Any objection to that,
23 Mr. Glazer?

24 MR. GLAZER: I'm not sure what he is going to
25 say. Mr. Reecy, I'm sure, is going to testify

1 tomorrow. I can't imagine this will take terribly
2 long.

3 MS. DAUGHTON: Why don't we just do it now.

4 MR. GLAZER: Well, once we put Mr. Reecy on,
5 we'll probably need to cover a bunch of stuff, and
6 it's kind of late for that but...

7 I can't cross-examine Mr. Goldstein's
8 representation. I mean --

9 THE COURT: I understand. And the witness is
10 here.

11 MR. GLAZER: -- if what he is saying is
12 Florida Housing didn't look at any of this, we can
13 all agree to that, I think. And if that's all
14 that is, I'm fine with it. I'm just not sure what
15 else it is.

16 THE COURT: And the other part of your
17 proffer is as to relevance, which I've already
18 agreed to let it come in so what are you --

19 MR. GOLDSTEIN: Your Honor, what I would plan
20 to do, again, there's one thing for me to argue
21 and it's kind of the objection and the response
22 you got earlier.

23 Walking through the witnesses through
24 here's the relevant provision in the RFA that
25 calls for this, here is the -- here is what

1 Allapattah provided in response to that. It
2 just highlights it to -- to you. I intended to
3 do that through the corporate representative of
4 the agency. I'm willing to do that.

5 I'm not saying that I don't want to do
6 that, but I think it could be -- since I don't
7 -- I'm not talking about anything that I
8 believe is in dispute, I'm just trying to speed
9 this up.

10 THE COURT: I don't believe any of that is
11 factual. Aren't we talking about the way to
12 interpret the specifications in light of the rule
13 in light of the --

14 MR. GOLDSTEIN: Absolutely, Your Honor. And
15 it's the same way as you saw with Ms. Blanton.

16 THE COURT: So why do we need -- I mean,
17 can't we just do that in argument later?

18 MR. GOLDSTEIN: Well, Your Honor, the problem
19 is, in my experience, in the DOAH proceedings, we
20 don't have any closing statement. You wait until
21 the recommended order. And that's just a long
22 ways away.

23 So I'm not going to waive my right to put
24 on a witness to highlight those points to you,
25 even if there's going to be an objection to:

1 Why should we go over that? The documents
2 speak for themselves.

3 Well, the documents always speak for
4 themselves. I should have an opportunity to
5 walk you through what I think is pertinent and,
6 A, an RFA that's got 84 pages, like I said, I
7 was planning on doing it through Mr. Reecy as a
8 corporate represent --

9 THE COURT: Let's do this.

10 It may come as a disappointment to all of
11 you that I usually do allow closing arguments,
12 short closing arguments, in addition to your
13 post recommended orders, if you want to do
14 that. So that will put us even longer.

15 But why don't we -- we have -- it's 4:30,
16 so I don't think we'll be wasting any time if
17 you want to --

18 MR. GLAZER: No, no, it's ten after 5:00.

19 THE COURT: Ten after 5:00. Okay, that
20 clock.

21 MR. GLAZER: That's not a real clock.

22 THE COURT: It's ten after 5:00.

23 In that case, why don't we wait and you
24 can put on what you want -- I just changed my
25 mind based on that clock. Why don't we wait,

1 and you can put Mr. Reecy on and cover that
2 briefly in the morning. And I've gotten a lot
3 of that, I think, already with the --

4 MR. GOLDSTEIN: Absolutely, Your Honor.

5 And I'll be less inclined to walk him
6 through it if I do know that we're going to
7 have the ability to make at least a brief
8 closing statement.

9 THE COURT: Okay.

10 MR. GOLDSTEIN: Because, in fact, I probably
11 might not need to present any testimony, like I
12 said, but I just want to have that word today or
13 tomorrow rather than 20 days from when we get the
14 transcript.

15 THE COURT: Right.

16 MR. GOLDSTEIN: Thank you.

17 THE COURT: I understand.

18 Is there anything further we can
19 accomplish before we all go home? All right.
20 Let's -- can we can we start tomorrow about
21 9:00? Is that agreeable to everyone?

22 MR. GLAZER: Can we talk a little bit about
23 the --

24 MR. DONALDSON: My witness gets here at
25 8:30 at the airport. So if I have to go first,

1 which it doesn't look like I'm going to have to,
2 I'd really like till 9:30. But we should be here
3 by then. So maybe --

4 THE COURT: Well, what witnesses do you have?

5 MR. GOLDSTEIN: Your Honor, my witness would
6 be Mr. Reecy and then Mr. Donaldson's
7 representative.

8 THE COURT: How long do you anticipate
9 Mr. Reecy?

10 MR. GOLDSTEIN: Again, based on --

11 THE COURT: With cross, if he'll be here by
12 9:30, I think we'll be fine.

13 MR. GOLDSTEIN: Yeah, I --

14 MR. GLAZER: The other thing about Mr. Reecy
15 too, I don't know what your pleasure is, but we
16 would want to call him --

17 THE COURT: Yeah, and I -- when he's on the
18 stand, let's go with everyone question's -- and
19 I'll be very liberal and that was not on direct --

20 MR. GLAZER: Right.

21 THE COURT: -- but you're all direct if
22 you've listed him as witness.

23 MR. GLAZER: And candidly, the ruling today,
24 I mean, things that I really didn't want to have
25 to cover with Mr. Reecy --

1 THE COURT: I understand.

2 MR. GLAZER: -- in light of your ruling
3 today, I probably will need to or Mr. Brown might
4 and so if we put him on --

5 THE COURT: It's all Mr. Brown's fault for
6 writing the RFA this way.

7 MR. BROWN: Mr. Brown did not write the RFA.

8 MS. DAUGHTON: Is there any way to -- I may
9 have one witness that I have to take out of turn
10 tomorrow who has got -- traveling in tonight,
11 maybe traveling out tomorrow.

12 If that's the case, I would love it if we
13 could start at 8:30 and then I know I can get
14 him on and off. We had talked about starting
15 earlier.

16 THE COURT: Is that agreeable with everyone,
17 8:30? That will just give you more time for your
18 witness to get here. We'll put that -- her
19 witness on first and then go to Mr. Reecy.

20 MS. DAUGHTON: And I don't know -- I really
21 appreciate it.

22 THE COURT: That's fine with me. No
23 objection.

24 MS. DAUGHTON: I don't know yet, but that, at
25 least, gives me on the option.

1 THE COURT: 8:30 tomorrow, then.

2 MS. DAUGHTON: Thank you.

3 MR. GOLDSTEIN: And Your Honor, I just want
4 to make clear because I don't want people to be
5 surprised tomorrow, based on the court's statement
6 that we will have some closing statement, there's
7 a significant possibility -- I just need to
8 confirm it with my client -- that I will not call
9 Mr. Reecy.

10 THE COURT: Okay.

11 MR. GOLDSTEIN: Because, like I said, I don't
12 think I need to as long as I'll have that time.
13 So, but we'll do Maureen's witness at 8:30 and
14 then we'll see where we are at after that, but I
15 do have like --

16 THE COURT: How long is your witness? Now we
17 have back to -- is he going to be an hour?

18 MS. DAUGHTON: Well, I have to go back,
19 Judge, and make that determination as to whether
20 we're going to put him on or not. He will be very
21 brief, less than 30 minutes.

22 THE COURT: Well, let's start at 8:30 and if
23 your witness is not here yet, we'll just that take
24 a recess. I think that's the most efficient
25 thing.

1 MS. DAUGHTON: Okay.

2 THE COURT: All right. We'll start at 8:30.

3 MS. DAUGHTON: Thank you.

4 THE COURT: And I understand Mr. Reecy will
5 undoubtedly be on the stand with others anyway, so
6 if you change your mind, I'll allow you to direct
7 later.

8 MR. GOLDSTEIN: I appreciate that, Your
9 Honor. Thank you.

10 THE COURT: Thank you.

11 MS. DAUGHTON: Thank you, Judge.

12 THE COURT: And I -- as far as I know, we're
13 going to be in here all week so you can leave
14 whatever you feel comfortable leaving.

15 MR. GLAZER: I hope we'll be done tomorrow.

16 THE COURT: Okay.

17 (The proceedings concluded at 5:14 PM)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, LISA D. FREEZE, Notary Public, certify that I was authorized to and did stenographically report the proceedings herein, and that the transcript is a true and complete record of my stenographic notes.

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

WITNESS my hand and official seal this 4th day of May, 2014.



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