

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

OASIS AT RENAISSANCE
PRESERVE I, LP.,

Petitioner,

v.

DOAH CASE NO. 17-00486BID
FHFC CASE NO. 2016-061BP

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

OSCEOLA PALOS VERDES, LTD.,

Intervenor.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on March 24, 2017. Oasis at Renaissance Preserve I, LP, (“Petitioner”), and Osceola Palos Verdes, Ltd. (“Intervenor”) were Applicants under Request for Applications 2016-109: SAIL Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the “RFA”). The matter for consideration before this Board is a Recommended Order issued pursuant to §§120.57(2) and (3)(e), Fla. Stat. (2016),

and Fla. Admin. Code R. 67-60.009(3)(b), and Petitioner's Exceptions to the Recommended Order, and Respondent and Intervenor's Responses thereto.

On September 19, 2016, Florida Housing issued the RFA soliciting applications to award financing. The RFA was modified on September 21, 2016, October 4, 2016, and October 5, 2016. The only modification relevant to the litigation at issue was the October 4, 2016 modification, which revised the Applicant Certification and Acknowledgment Form. On December 9, 2016, Florida Housing posted a notice of its intended decision to award funding to Intervenor and other applicants. Petitioner was deemed ineligible for funding due to its failure to meet the submission requirement for the modified Applicant Certification and Acknowledgment Form.

In Section 3.A.1.e, the RFA required that the Applicant Certification and Acknowledgment Form be submitted in the binder marked "Original" with an original signature. The RFA at Section 4.A.1 explicitly states, "[i]f the Applicant provides any version of the Applicant Certification and Acknowledgment Form other than the version included in this RFA, the form will not be considered. Also, Florida Housing issued a webBoard notice regarding the October 4, 2016 modification. The webBoard notice informed Applicants of the revisions to the RFA and stated "[f]or the Application to be eligible for funding, the Applicant

Certification and Acknowledgement Form reflecting the 2nd Modification posted on 10-4-16 must be submitted to the Corporation by the Application Deadline.”

Petitioner timely filed a notice of intent to protest followed by formal written protest pursuant to §120.57(3), Fla. Stat. (2016) contesting the ineligibility of its application due to its failure to meet the submission requirement for the Applicant Certification and Acknowledgment Form. Intervenor filed an intervention in the matter. No disputes of material fact existed, and the matter was referred to the Division of Administrative Hearings (DOAH) for informal proceedings per its ALJ Services Contract with Florida Housing to provide informal hearing officers.

An informal hearing took place on February 10, 2017, in Tallahassee, Florida, before the Honorable Administrative Law Judge June C. McKinney (“Hearing Officer”). The parties timely filed Proposed Recommended Orders.

After consideration of the evidence and arguments presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order on March 15, 2017. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The Hearing Officer therein recommended that Florida Housing:

[E]nter a final order consistent with its initial decisions:
(1) dismissing the formal written protests of Oasis at Renaissance Preserve I, LP, and (2) awarding funding to Osceola Palos Verdes, Ltd.

On March 20, 2017, Petitioner filed exceptions to the Recommended Order, attached hereto as “Exhibit B” (“Exceptions”). The Petitioner objects to the Conclusions of Law in paragraphs 44, 45, 47, and 48; which suggest that Florida Housing has the discretion to decide not to waive a minor irregularity. On March 21, 2017, Florida Housing filed a Response to Exceptions to Recommended Order that Intervenor joined in, attached hereto as “Exhibit C.”

RULING ON EXCEPTIONS

Exception 1

1. Petitioner takes exception to the Findings of Fact set forth in ¶44 of the Recommended Order.

2. The Board finds that it has substantive jurisdiction over the issue presented in ¶44 of the Recommended Order.

3. After a review of the record, the Board finds that the Conclusion of Law set forth in ¶44 of the Recommended Order is reasonable and supported by competent substantial evidence, and rejects Petitioner’s Exception 1.

Exception 2

4. Petitioner takes exception to the Conclusion of Law set forth in ¶45 of the Recommended Order.

5. The Board finds that it has substantive jurisdiction over the issue presented in ¶45 of the Recommended Order.

6. After a review of the record, the Board finds that the Conclusion of Law set forth in ¶45 of the Recommended Order is reasonable and supported by competent, substantial evidence, and rejects Petitioner's Exception 2.

Exception 3

7. Petitioner takes exception to the Conclusion of Law set forth in ¶47 of the Recommended Order.

8. The Board finds that it has substantive jurisdiction over the issue presented in ¶47 of the Recommended Order.

9. After a review of the record, the Board finds that the Conclusion of Law set forth in ¶47 of the Recommended Order is reasonable and supported by competent, substantial evidence, and rejects Petitioner's Exception 3.

Exception 4

10. Petitioner takes exception to the Conclusion of Law set forth in ¶48 of the Recommended Order.

11. The Board finds that it has substantive jurisdiction over the issue presented in ¶48 of the Recommended Order.

12. After a review of the record, the Board finds that the Conclusion of Law set forth in ¶48 of the Recommended Order is reasonable and supported by competent, substantial evidence, and rejects Petitioner's Exception 4.

RULING ON THE RECOMMENDED ORDER

13. The Findings of Fact set out in the Recommended Order are supported by competent substantial evidence.

14. The Conclusions of Law of the Recommended Order are reasonable and supported by competent, substantial evidence.

15. Petitioner's Exceptions to the Recommended Order are rejected.

16. The Recommendation of the Recommended Order is reasonable and supported by competent, substantial evidence.

ORDER

In accordance with the foregoing, it is hereby **ORDERED**:

17. The Findings of Fact of the Recommended Order are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.

18. The Conclusions of Law in the Recommended Order are adopted as Florida Housing's Conclusions of Law.

IT IS HEREBY ORDERED that Florida Housing's scoring and ranking of RFA 2016-109 is **AFFIRMED**, and the relief requested in the Petition is **DENIED**.

DONE and ORDERED this 24th day of March 2017.

FLORIDA HOUSING FINANCE
CORPORATION

By: 
Chair

Copies to:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of March, 2017.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

