

JAMES K. GREEN, P.A.
LAWYERS

JAMES K. GREEN
NINA M. ZOLLO
ANNE F. O'BERRY
JOHN E. PAULY, OF COUNSEL

SUITE 1650, ESPERANTE
222 LAKEVIEW AVENUE
WEST PALM BEACH, FLORIDA 33401
561.659.2029
FACSIMILE 561.655.1357

March 21, 2016

Florida Housing Finance Corporation
227 N. Bronough Street
6th Floor, Seltzer Room
Tallahassee, Florida

Re: *Comments for Rule Development Workshop – Rule Chapters 67-60, 67-21 and 67-48, F.A.C.*

Dear Florida Housing Finance Corporation:

I represent Beneficial Communities. Please treat this letter as its comments regarding the above rules.

Each year the Florida Housing Finance Corporation ("FHFC") allocates Low Income Housing Tax Credits ("LIHTC") to owner/developers of existing or proposed apartment communities through a competitive process. The private capital generated from the LIHTC program is the single largest source of private capital for affordable housing. Since 2013 the FHFC has used a request for applications ("RFA") for proposed tax credit financing developments in small, medium and large counties.

The LIHTC allocation process is highly competitive. One of the key items in the RFA is the requirement to demonstrate tangible support of a project from the local government in the form of a financial contribution. Qualifying contributions are typically in the \$50,000 range and may take the form of a grant, a below-market interest rate loan, or a fee waiver. This FHFC requirement effectively sets a threshold for whether a project can compete for funding or not. The effect of this requirement is to shift the decision on the types and locations of affordable housing developments to local governments, beyond the scope of their traditional zoning powers and beyond independent market factors. This can and has led to the restriction of development to specific locations and specific developers. My client, and its prospective residents, has been harmed by this process in Sarasota County, and the cities of Jacksonville, North Port and Daytona Beach.

There are a number of problems with requiring a local government's financial support to a specific development. First and foremost, it is inconsistent with the requirement that FHFC affirmatively further fair housing goals and opportunities. This FHFC requirement limits the freedom of choice for potential tenants that

would otherwise exist if developers were given the ability to select sites based on market desirability, superior locational factors, and the availability of ancillary tenant benefits such as employment, schools, low crime, and transportation.

Instead, FHFC's local government contribution requirement steers affordable housing developments in specific limited directions dictated by the priorities of local government, which are frequently at odds with the best interests of low-income tenants, creating a much higher likelihood of discrimination. Giving local government's exclusive control of site selection effectively allows local governments to perpetuate patterns of discrimination, by concentrating poverty and limiting options for individual and family improvement. See *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 937-8 (2d Cir.1988), *aff'd in part*, 488 U.S. 15 (1988). Last year the United States Supreme Court upheld a judgment against the Texas Housing Finance Corporation based upon the disparate impact its siting decisions had in perpetuating patterns of discrimination. *Tex. Dep't of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507 (2015). The very actions behind this court case were generated by this type of local governmental steering in opposition to an open and opportunity-driven process.

Further, even if FHFC has no intention to discriminate,¹ FHFC's effective mandate for local governments to make financial contributions to specific developments entrenches the incentive for local governments to discriminate, allowing local governments to perpetuate past patterns of discrimination by using arbitrary and subjective locational and developer criteria to determine project selection for local funding. The effects of such practices are demonstrated by the actual selections being made under the RFA processes implemented in 2013. With each passing year, unless this practice is stopped, these patterns of discrimination will only be reinforced.

Sincerely,

/s/ James K. Green

¹ *Hallmark Developers, Inc. v. Fulton County, GA*, 466 F.3d 1276, 1284 (11th Cir. 2006) (government officials are generally held to act with discriminatory intent, regardless of their personal views, when they implement the discriminatory desires of others); *Horizon House Dev. Servs., Inc. v. Twp. of Upper Southampton*, 804 F. Supp. 683, 696 (E.D. Pa. 1992), *aff'd mem.*, 995 F.2d 217 (3d Cir. 1993) ("In order to prove intentional discrimination it is not necessary to show an evil or hostile motive. It is a violation of the FHAA to discriminate even if the motive was benign or paternalistic.").