

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

CLEARLAKE VILLAGE, LP,

Petitioner,  
v.

DOAH Case No.: 15-2394BID  
FHFC Case No.: 2015-010BP

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,  
and

CLEARLAKE ISLES, LP,

Intervenor.

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**FINAL ORDER**

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on August 7, 2015. The matter for consideration before this Board is a Recommended Order pursuant to §120.57(1) and (3), Fla. Stat. (2014). After a review of the record and being otherwise fully advised in these proceedings, this Board finds:

1. On or before January 22, 2015, Petitioner and Intervenor submitted applications to Florida Housing seeking allocations for low-income tax credits pursuant to RFA 2014-114. The Board announced its intention to fund certain projects on March 20, 2015.

FILED WITH THE CLERK OF THE FLORIDA  
HOUSING FINANCE CORPORATION

 /DATL: 8/7/15

2. Petitioner Clearlake Village, LP (“Clearlake Village”), timely filed a challenge to proposed funding awards pursuant to §120.57(3), Fla. Stat. (2014). Clearlake Isles, LP (“Clearlake Isles”), entered the case as an Intervenor in accordance with Fla. Admin. Code R. 28-106.205(3). A formal hearing was conducted pursuant to §§120.569 and 120.57(3), Fla. Stat. (2014), before Linzie F. Bogan, Administrative Law Judge, at the Division of Administrative Hearings in Tallahassee, Florida, on May 27, 2015.

3. The issue for determination was whether Respondent's intended decision to award low-income housing tax credits to Clearlake Isles, LP, was contrary to governing statutes, Florida Housing's rules, or the solicitation specifications. Following the hearing, Clearlake Village, Florida Housing, and Clearlake Isles each timely filed Proposed Recommended Orders.

4. After a review of the record and the Proposed Recommended Orders, the Administrative Law Judge issued a Recommended Order on June 25, 2015, which found that Clearlake Village failed to demonstrate that Florida Housing's proposed scoring of its Application was clearly erroneous, contrary to competition, arbitrary or capricious, and recommended that Florida Housing Finance Corporation enter a Final Order consistent with its initial decision to award funding for the Clearlake Isles proposed development; and dismissing the formal written protest of

Clearlake Village. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.”

5. On July 13, 2015, Clearlake Village filed “Petitioner’s Exceptions to Recommended Order,” challenging five Findings of Fact and five Conclusions of Law of the Recommended Order. Respondent Florida Housing filed its Response to Petitioner’s Exceptions to Recommended Order on July 27, 2015. Intervenor Clearlake Isles did not file a separate response, but joined in Florida Housing’s Response. By agreement of the parties, both filings were deemed timely.

### **RULING ON EXCEPTIONS**

6. Exception 1: Finding of Fact 31 is supported by competent substantial evidence in the record, specifically Ms. Garmon’s testimony and Joint Exhibits 4, 4A, and 4B. This Board cannot disregard the Administrative Law Judge’s weighing and review of that evidence. Exception 1 is rejected.

7. Exception 2: The exception does not address whether Finding of Fact 32 is supported by competent substantial evidence in the record; it merely argues that the Administrative Law Judge “misunderstood the Petitioner’s argument and the applicability of the . . . term of the contract.” To the extent Exception 2 addresses the Finding of Fact, as in Exception 1, there is competent substantial evidence in the record. Exception 2 involves the contract interpretation issue addressed in

conclusion of Law 56, which is outside the substantive jurisdiction of this Board. Exception 2 is rejected.

8. Exception 3: Finding of Fact 34 is supported by competent substantial evidence in the record; it is clear from Joint Exhibits 4, 4A, and 4B and testimony in the record that there was no written expression of seller's consent to the assignment in the record. This Board cannot disturb Finding of Fact 34. Exception 3 is rejected.

9. Exception 4: Finding of Fact 36 is supported by competent substantial evidence in the record. Petitioner would have this Board reweigh the testimony in the record, which the Administrative Law Judge chose to disregard. This Board cannot reweigh the testimony. Exception 4 involves the contract interpretation issue addressed in Conclusion of Law 48, which is outside the substantive jurisdiction of this Board. Exception 4 is rejected.

10. Exception 5: Finding of Fact 37 is supported by competent substantial evidence in the record, Ms. Garmon's testimony, thus this Board cannot disturb Finding of Fact 37. Exception 5 is rejected.

11. Exception 6: Conclusion of Law 48 is supported by competent substantial evidence in the record, as noted in the discussion of Exception 1, above. Whether the use of "or assigns," in naming the Buyer acts as blanket consent to assign is contract interpretation issue which is outside the substantive jurisdiction of this Board. Exception 6 is rejected.

12. Exception 7: Conclusion of Law 51 is supported by competent substantial evidence in the record, as noted above in the discussion of Exception 1. This Board cannot disturb it. Exception 7 also addresses the legal effect of the term “or assigns,” and as noted above, is a contract interpretation issue which is outside the substantive jurisdiction of this Board. Exception 7 is rejected.

13. Exception 8: Conclusion of Law 55 is supported by competent substantial evidence in the record, in Finding of Fact 31. This Board cannot disturb it. Exception 8 again addresses the legal effect of the term “or assigns,” and as noted above, is a contract interpretation issue which is outside the substantive jurisdiction of this Board. Exception 8 is rejected.

14. Exception 9: Conclusion of Law 56 is supported by competent substantial evidence in the record, in Finding of Fact 31. Exception 9 argues the effect of the “typewritten term controls,” provision in the Contract. As noted above, this is a contract interpretation issue which is outside the substantive jurisdiction of this Board. This Board cannot disturb Conclusion of Law 56. Exception 9 is rejected.

15. Exception 10: Conclusion of Law 57 is correct. A complete demonstration of site control was a requirement contained in RFA 2014-114. Petitioner failed to show that Florida Housing added any further requirement to that already contained in the RFA. Exception 10 is rejected.

16. All exceptions are rejected, thus there is no reason to alter the Recommendation in the Recommended Order.

**RULING ON THE RECOMMENDED ORDER**

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

18. The Conclusions of Law of the Recommended Order are supported by competent substantial evidence.

**ORDER**

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

19. 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.

20. The Conclusions of Law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

21. The Recommendation of the Recommended Order is adopted.

**IT IS HEREBY ORDERED** that the Application of Clearlake Isles, LP, No. 201-073C, is granted its requested funding, subject to credit underwriting; and the formal written protest of Clearlake Village, LP, is hereby **DISMISSED**.

**DONE and ORDERED** this 7th day of August, 2015.



FLORIDA HOUSING FINANCE  
CORPORATION

By: \_\_\_\_\_

Chair

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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.**