

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ST. ELIZABETH GARDENS
APARTMENTS, LTD.,

Petitioner,

v.

DOAH CASE NO. 16-4132BID
FHFC CASE NO. 2016-031BP

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

ISLES OF PAHOKEE PHASE II, LLC;
HALEY SOFGE PRESERVATION
PHASE ONE; THREE ROUND TOWER
A, LLC; CATHEDRAL TOWERS, LTD.;
AND SP MANOR, LLC,

Intervenors.

_____ /
MARIAN TOWERS, LTD.,

Petitioner,

v.

DOAH Case No. 16-4133BID
FHFC Case No. 2016-032BP

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

ISLES OF PAHOKEE PHASE II, LLC;
HALEY SOFGE PRESERVATION

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

 /DATE: 10-28-16

PHASE ONE; THREE ROUND TOWER
A, LLC; CATHEDRAL TOWERS, LTD.;
AND SP MANOR, LLC,

Intervenors.

WCAR, LTD.,

Petitioner,

v.

DOAH Case No. 16-4134BID
FHFC Case No. 2016-028BP

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,
and

SP MANOR, LLC,

Intervenor.

SJRAR, LTD.,

Petitioner,

v.

DOAH Case No. 16-4135BID
FHFC Case No. 2016-030BP

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,
and

SP MANOR, LLC,

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 October 28, 2016. All Petitioners in these consolidated cases were Applicants under Request for Applications 2015-111: Housing Credit Financing for the Preservation of Existing Affordable Multifamily Housing Developments (the “RFA”). The matter for consideration before this Board is a Recommended Order pursuant to §§120.57(2) and (3)(e), Fla. Stat. (2016), and Fla. Admin. Code R. 67-60.009(3)(b) (Rev. 10-18-14), the Exceptions to the Recommended Order, and Responses thereto.

On June 24, 2016 Florida Housing Finance Corporation (“Florida Housing”) posted its notice of intended decision to award funding to five Applicants, including Intervenors Three Round Towers, Cathedral Towers, Isles of Pahokee Phase II, and SP Manor. All Petitioners herein were determined to be ineligible for funding. Intervenor Haley Sofge Preservation Phase One was found eligible but not entitled to funding based on the scoring and ranking criteria of the RFA.

All Petitioners timely filed notices of intent to protest followed by formal written protests pursuant to §120.57(3), Fla. Stat. (2016). After a review of the Petitions, Florida Housing determined that no disputes of material fact existed, and referred the cases to the Division of Administrative Hearings (DOAH) for informal proceedings per its contract with Florida Housing to provide informal hearing

officers. On July 22, 2016 the Administrative Law Judge acting as informal hearing officer consolidated the cases into this single action.

An informal hearing took place on August 16, 2016 in Tallahassee, Florida, before the Honorable Administrative Law Judge Garnett W. Chisenhall (“Hearing Officer”). Petitioners, Respondent and Intervenors 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 October 18, 2016. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The Hearing Officer therein recommended that Florida Housing issue a Final Order affirming Florida Housing’s scoring and ranking decisions regarding all issues and parties.

On October 24, 2016 Petitioners Marian Towers, Ltd. and St. Elizabeth Garden Apartments, Ltd. filed Exceptions to Recommended Order, attached hereto as Exhibit B (“Exceptions”). These Petitioners object to the Findings of Fact in paragraphs 60, 62 and 67-69; the Conclusions of Law in paragraphs 84, 85 and 87; and to the Recommendation of the Recommended Order. On October 25, 2016, Florida Housing and the Intervenors filed Intervenor’s Response to Joint Exceptions to Recommended Order attached hereto as “Exhibit C.”

RULING ON EXCEPTIONS

Exception 1

1. Petitioners take exception to the Findings of Fact set forth in ¶60 of the Recommended Order.

2. The Board finds that it has substantive jurisdiction over the issues presented in ¶60 of the Recommended Order.

3. After a review of the record, the Board finds that the Findings of Fact set forth in ¶60 of the Recommended Order are supported by competent substantial evidence, and rejects Petitioners' Exception 1.

Exception 2

5. Petitioners take exception to the Finding of Fact set forth in ¶62 of the Recommended Order.

6. The Board finds that it has substantive jurisdiction over the issues presented in ¶62 of the Recommended Order.

7. After a review of the record, the Board finds that the Findings of Fact set forth in ¶62 of the Recommended Order are supported by competent, substantial evidence, and rejects Petitioners' Exception 2.

Exception 3

8. Petitioners take exception to the Finding of Fact set forth in ¶67 of the Recommended Order.

9. The Board finds that it has substantive jurisdiction over the issues presented in ¶67 of the Recommended Order.

10. After a review of the record, the Board finds that the Findings of Fact set forth in ¶67 of the Recommended Order are supported by competent, substantial evidence, and rejects Petitioners' Exception 3.

Exception 4

11. Petitioners take exception to the Finding of Fact set forth in ¶68 and 69 of the Recommended Order.

12. The Board finds that it has substantive jurisdiction over the issues presented in ¶68 and 69 of the Recommended Order.

13. After a review of the record, the Board finds that the Findings of Fact set forth in ¶68 and 69 of the Recommended Order are supported by competent, substantial evidence, and rejects Petitioners' Exception 4.

Exception 5

14. Petitioners take exception to the Conclusions of Law set forth in ¶84 and 85 of the Recommended Order in which the Hearing Officer concluded:

15. The Board finds that it has substantive jurisdiction over the issues presented in ¶84 and 85 of the Recommended Order.

16. After a review of the record, the Board finds that the Conclusions of Law set forth in ¶¶84 and 85 of the Recommended Order are reasonable and based upon competent, substantial evidence, and rejects Petitioners' Exception 5.

Exception 6

17. Petitioners take exception to the Conclusions of Law set forth in ¶¶87 of the Recommended Order.

18. The Board finds that it has substantive jurisdiction over the issues presented in ¶¶87 of the Recommended Order.

19. Petitioners and Respondents agree that certain language in ¶¶87 is inaccurate and not supported by competent, substantial evidence. Specifically, the parties object to the reference to "other comparable RFA language" and "the other RFA language," in that there is no other such comparable RFA language at issue in this proceeding, and therefore the references are not supported by competent, substantial evidence.

20. After a review of the record, the Board finds that the Conclusions of Law set forth in ¶¶87 of the Recommended Order are reasonable and supported by competent, substantial evidence, with the exception of that language noted above. The Board accepts Petitioners' Exception to the accuracy of the language of ¶¶87, but rejects the Exception as to the substantive conclusions thereof.

21. Accordingly, the Board grants Exception 6 in part, and denies it in part, and substitutes the following Conclusion of Law as reasonable as or more reasonable than that set forth in ¶87 of the Recommended Order:

87. As for St. Elizabeth's and Marian Towers' argument that other applicants with HUD or USDA letters referring to "subsidy layering review" or "other regulatory requirements" should have been assigned an RA level greater than one, Petitioners failed to carry their burden of proof on this point. As was explained in Findings of Fact 67 and 69, Petitioners failed to demonstrate that this additional language created conditions specific to any applications and failed to demonstrate that this additional language created any uncertainty as to the total number of units that would receive rental assistance.

Exception to Recommendation

22. Based on the foregoing, the Board rejects Petitioners' Exception to the Recommendation of the Recommended Order.

RULING ON THE RECOMMENDED ORDER

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

24. Except as noted below, the Conclusions of Law of the Recommended Order are reasonable and supported by competent, substantial evidence.

24. Petitioners' Exceptions to the Recommended Order are rejected, except for the objection to the inaccurate language in ¶87 as noted herein.

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

ORDER

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

26. 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.

27. The Conclusions of Law in the Recommended Order are adopted as Florida Housing's Conclusions of Law, with the exception of the Conclusions of Law in ¶87 of the Recommended Order.

20. The Conclusions of Law set forth in ¶87 of the Recommended Order are rejected and substituted as specified above and the substituted Conclusions of Law are incorporated by reference as though fully set forth in this Order.

IT IS HEREBY ORDERED that Florida Housing's scoring and ranking of RFA 2015-111 is **AFFIRMED** is and the relief requested in the Petitions is **DENIED**.

DONE and ORDERED this 28th day of October, 2016.

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.