

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

AMERICAN RESIDENTIAL DEVELOPMENT,
LLC; MADISON HIGHLANDS, LLC;
PATRICK LAW; JONATHAN L. WOLF;
BERKSHIRE SQUARE, LTD; HAWTHORNE
PARK LTD; and SOUTHWICK COMMONS, LTD

Petitioners,

v.

FHFC Case Nos.: 2016-048BP
2016-049BP
DOAH Case Nos.: 16-6698BID
16-6699BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

HERITAGE OAKS, LLLP, and HTG
ANDERSON TERRACE, LLC,

Intervenors.

_____ /

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on February 21, 2017. Petitioners American Residential Development, LLC (“ARD”), Madison Highlands, LLC (“Madison”), Patrick Law (“Law”), Jonathan L. Wolf (“Wolf”), Berkshire Square, Ltd. (“Berkshire”), Hawthorne Park, Ltd. (“Hawthorne”), and Southwick Commons, Ltd. (“Southwick”) timely submitted Applications for

funding (“Applications”) in response to Request for Applications RFA 2016-113 located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties. The matter for consideration before this Board is a Recommended Order pursuant to §120.57(1) and (3) Fla. Stat.

Petitioners timely filed a Petition for Formal Administrative Hearing pursuant to §§120.569 and 120.57(1) and (3), Fla. Stat. (2016), (the “Petition”) challenging the preliminary agency action of the Respondent, Florida Housing Finance Corporation (“Florida Housing”) regarding challenges to the terms and specifications of the RFA. Challenges were forwarded to DOAH with a request to assign an administrative law judge. Heritage Oaks, LLLP (“Heritage”), and HTG Anderson Terrace, LLC (“HTG”) intervened by filing a Notice of Appearance. Florida Housing referred the Petition to the Division of Administrative Hearings on November 28, 2016.

All parties ultimately agreed that no evidentiary hearing would be required, and instead filed a Joint Stipulation, the deposition of Steve Auger, and Proposed Recommended Orders with the Honorable Administrative Law Judge D.R. Alexander (“ALJ”).

After consideration of the stipulation, deposition, and proposed orders, the ALJ issued a Recommended Order finding that the Petitioners had failed to demonstrate that any provisions of the RFA violated applicable law or were

unreasonable, arbitrary, or capricious, and recommended that Florida Housing enter a Final Order dismissing the Petitions. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.”

Subsequently, Petitioners filed “Petitioners’ Exceptions to Recommended Order” (the “Exceptions”) attached hereto as “Exhibit B.” Florida Housing then submitted its Response to Petitioners’ Exceptions, attached hereto as “Exhibit C.”

RULING ON EXCEPTIONS

Exception 1

1. Petitioners take exception to Findings of Fact (FOF) 18 and 20 and to Conclusions of Law (COL) 30, 31, and 32. Based on a review of the record and the arguments presented by the parties, the Board finds that FOF 18 and 20 are supported by competent substantial evidence.

2. The Board also finds that in regards to COL 30, 31, and 32, that Petitioners have failed to demonstrate that any these conclusions were based on an incorrect interpretation of law over which Florida Housing has substantive jurisdiction.

Exception 2

3. Petitioners take exception to FOF 22, 23, and 24 and to COL 29, 30, and 32. Based on a review of the record and the arguments presented by the parties, the Board finds that Petitioners’ Exception regarding FOF 22 is not relevant to the

findings of the ALJ and cannot form the basis for an Exception, and is therefore rejected. The Board also finds that FOF 23 is supported by competent substantial evidence in the record, and rejects Petitioners' Exceptions thereto.

4. The Board further finds that Petitioners' Exceptions to FOF 24 is without support in the record, and thus cannot form the basis for an Exception to a finding that is supported by competent substantial evidence, and is rejected.

5. In regards to COL 29, 30, and 32, the Board finds that Petitioners have failed to demonstrate that any of the conclusions were based on an incorrect interpretation of law over which Florida Housing has substantive jurisdiction, and rejects Petitioners Exceptions thereto.

Exception 3

6. Herein, Petitioners take exception not to any Finding of Fact or Conclusion of Law, but to the ALJ's evidentiary ruling that the deposition of former Executive Director Steve Auger, which was not part of the Joint Stipulation, was admitted into evidence. Based on a review of the record and the arguments presented by the parties the Board rejects the Petitioners' Exceptions, as Florida Housing does not have substantive jurisdiction to overturn this ruling.

RULING ON THE RECOMMENDED ORDER

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

8. The Conclusions of Law in the Recommended Order are supported by competent, substantial evidence.

9. Petitioners' Exceptions are specifically rejected on the grounds set forth above and in the Recommended Order and Respondent's and Intervenors' Responses to Petitioners' Exceptions.

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

ORDER

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

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 Final Order.

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

IT IS HEREBY ORDERED that Florida Housing's scoring and ranking of Petitioners' Applications under RFA 2016-133 is **AFFIRMED** and the relief requested in the Petitions is **DENIED**.

DONE and ORDERED this 20th day of February, 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.