

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

DURHAM PLACE, LTD. AND
DURHAM PLACE DEVELOPER, LLC

Petitioners,
v.

DOAH Case No. 19-1396BID
FHFC Case No. 2019-012BP

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

AMELIA COURT AT CREATIVE VILLAGE -
PHASE II PARTNERS, LTD.,

Petitioner,
v.

DOAH Case No. 19-1397BID
FHFC Case No. 2019-019BP

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

DURHAM PLACE, LTD; and DURHAM PLACE
DEVELOPER, LLC; and HAWTHORNE PARK,
LTD; and HAWTHORNE PARK DEVELOPER, LLC,

Intervenors.

HTG BANYAN, LLC,

Petitioner,

DOAH Case No. 19-1302BID

v.

FHFC Case No. 2019-016BP

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

HTG HERON ESTATES FAMILY, LLC,

Intervenor.

BLUE PINELLAS, LLC,

Petitioner,

DOAH Case No. 19-1301BID

v.

FHFC Case No. 2019-015BP

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

THE SHORES APARTMENTS, 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 June 21, 2019. Petitioners Durham Place, Ltd., (“Durham Place”), Amelia Court at Creative Village

– Phase II Partners, Ltd. (“Amelia Court”), HTG Banyan, LLC (“Banyan”) and Blue Pinellas, LLC (“Blue Pinellas”), and Intervenor Hawthorne Park, Ltd. (“Hawthorne Park”), HTG Heron Estates Family, LLC, (“Heron”) and The Shores Apartments, Ltd. (“The Shores”) were Applicants under Request for Applications 2018-112, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties (the “RFA”). Durham Place Developer, LLC was the developer entity for Durham Place, and Hawthorne Park Developer, LLC was the developer entity for Hawthorne Park. The matter for consideration before this Board is a Recommended Order issued pursuant to §§120.57(1) and (3), Fla. Stat. and the Exceptions to the Recommended Order.

On February 1, 2019, Florida Housing Finance Corporation (“Florida Housing”) posted notice of its intended decision to award funding to several applicants, including Hawthorne Park as the sole applicant funded from Orange County; HTG Heron Estates as the sole applicant funded from Palm Beach County; and The Shores Apartments as the sole applicant funded from Pinellas County. The Board found that all of the Petitioners and Intervenor satisfied all mandatory and eligibility requirements for funding, but awarded funding based upon the ranking criteria in the RFA. Petitioners timely filed their notices of intent to protest followed by formal written protests. Intervenor each filed a Notice of Appearance. The

protests were referred to the Division of Administrative Hearings (“DOAH”). The challenges by Amelia Court and Durham Place were consolidated, and the challenges from Banyan and Heron were consolidated.

Banyan and Heron

Banyan alleged in its petition that Herons’ application should have been deemed ineligible for failure to demonstrate a Local Government Contribution. During discovery prior to the hearing, Florida Housing concluded that Banyan’ allegations were correct, and agreed that Heron should not have been recommended for funding.

Berkeley Landing, Ltd was an applicant that was deemed eligible but not selected for funding. It filed a notice of intent to protest and formal written protest challenging the eligibility of Heron, but filed a Notice of Voluntary Dismissal on March 20, 2019. Berkeley Landing also stipulated that it should have been found ineligible for funding.

On April 1, 2019, Banyan, Heron, and Florida Housing entered into a Stipulation for Dismissal in which Heron agreed to the designation of its own application as ineligible and waived any right to challenge that determination. As a result, Banyan that same day filed a Notice of Voluntary Dismissal with the Administrative Law Judge (ALJ). Copies of the Notice and Stipulation are attached as Exhibits A and B.

Blue Pinellas and The Shores

Blue Pinellas alleged in its petition that The Shores' application should have been denied points for proximity to a public school and a medical facility. During discovery prior to the hearing, Florida Housing concluded that Blue Pinellas' allegations were correct, and agreed that The Shores should not have been recommended for funding. As a result, Florida Housing filed a Notice of Change of Position with the ALJ.

On April 12, 2019, Blue Pinellas, The Shores, and Florida Housing entered into a Stipulation for Dismissal in which The Shores agreed to the designation of its own application as ineligible and waived any right to challenge that determination. As a result, Blue Pinellas that same day filed a Notice of Voluntary Dismissal with the ALJ. A copy of the Notice and Stipulation is attached as Exhibit C.

Amelia Court, Hawthorne Park, and Durham Place

Hawthorne Park included with its application two forms intended to demonstrate that Orange County had committed to a Local Government Contribution sufficient to demonstrate that Hawthorne Park would qualify for the Local Government Area of Opportunity funding preference. Amelia Court alleged that this contribution should have been found ineligible because a circuit court judge had issued a temporary injunction preventing Orange County from providing the contribution from its intended funding source.

Amelia Court included with its application one form intended to demonstrate that the City of Orlando had committed to a Local Government Contribution sufficient to demonstrate that Amelia Court would qualify for the Local Government Area of Opportunity funding preference. Durham Place alleged that this contribution should have been found ineligible because based on the identified source of the funding. Durham Park also alleged that Amelia Court had not properly disclosed the identities of all developers of the proposed development.

If Hawthorne Park had been deemed ineligible, then Amelia Court would have been selected for funding instead. If both Hawthorne Park and Amelia Court been deemed ineligible, Durham Place would have been selected for funding.

A hearing was conducted on April 15, 2019, before ALJ James B. Culpeper. All parties filed Proposed Recommended Orders. After consideration of the Proposed Recommended Orders, the oral and documentary evidence presented at hearing, and the entire record in the proceeding, the ALJ issued a Recommended Order on June 7, 2019. The Recommended Order upheld Florida Housing's initial determination and recommended that the petitions of Amelia Court and Durham Place be dismissed and that Hawthorne Park should be awarded funding. A copy of the Recommended Order is attached as Exhibit D.

On June 12, 2019, Amelia Court filed six Exceptions to the Recommended Order. On June 17, Florida Housing and Hawthorne Park filed Responses to

Exceptions. Copies of the Exceptions and Responses are attached as Exhibits E, F & G.

RULING ON EXCEPTION #1

1. Petitioner filed an Exception to Findings of Fact 33, 37 and 46. After a review of the record, the Board finds that these Findings of Fact are supported by competent substantial evidence, and the Board rejects Exception #1.

RULING ON EXCEPTION #2

2. Petitioner filed an Exception to Conclusions of Law 83, 84, 85 and 86. After a review of the record, the Board finds that these Conclusions of Law are supported by competent substantial evidence and reasonable interpretations of applicable law, and the Board rejects Exception #2. The Board further affirms that in regards to Conclusion of Law 83-86, the ALJ did not conclude that an Application including an improperly completed Contribution Form could still be found eligible because any problems could be addressed during Credit Underwriting.

RULING ON EXCEPTION #3

3. Petitioner filed an Exception to Conclusions of Law 79 and 80. After a review of the record, the Board finds that these Conclusions of Law are supported by competent substantial evidence and reasonable interpretations of applicable law, and the Board rejects Exception #3.

RULING ON EXCEPTION #4

4. Petitioner filed an Exception to Conclusions of Law 75 and 82. After a review of the record, the Board finds that these Conclusions of Law are supported by competent substantial evidence and reasonable interpretations of applicable law, and the Board rejects Exception #4.

RULING ON EXCEPTION #5

5. Petitioner's fifth Exception challenges the ALJ's ruling, though not expressed in the Recommended Order, that Durham Place had standing to participate in these proceedings as a party litigant. This issue was addressed in the ALJ's Order of April 11, 2019, in which Petitioner's Motions to Dismiss were denied. §120.57(1)(l), Fla. State. (2018), provides that an agency may only reject or modify Conclusions of Law over which the agency has substantive jurisdiction. As the question of standing is a procedural issue not within Florida Housing's substantive jurisdiction, the Board rejects Exception #5.

RULING ON EXCEPTION #6

6. Petitioner filed an Exception to Conclusions of Law 89 and 90. After a review of the record, the Board finds that these Conclusions of Law are supported by competent substantial evidence and reasonable interpretations of applicable law, and the Board rejects Exception #6.

RULING ON THE RECOMMENDED ORDER

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

8. The Conclusions of Law set forth in the Recommended Order are supported by competent substantial evidence and reasonable interpretations of applicable law.

9. The Recommendation of the Recommended Order is supported by competent substantial evidence and reasonable interpretations of applicable law.

ORDER

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

10. 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 herein.

11. 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 herein.

12. The Recommendation of the Recommended Order are adopted as Florida Housing's Recommendation and incorporated by reference as though fully set forth herein.

13. Hawthorne Park is selected for funding under RFA 2018-112.

14. The Petitions filed in this case are dismissed.

DONE and ORDERED this 21st day of June, 2019.

FLORIDA HOUSING FINANCE
CORPORATION



By: 
Chair

Copies to:

Hugh R. Brown, General Counsel
Chris McGuire, Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Craig D. Varn
Amy Wells Brennan
Manson Bolves Donaldson & Varn, P.A.
106 East College Avenue
Tallahassee, FL 32301
cvarn@mansonbolves.com
abrennan@mansonbolves.com

Douglas Manson
Manson Bolves Donaldson & Varn, P.A.
109 North Brush Street, Suite 300
Tampa, FL 33602
dmanson@mansonbolves.com

M. Christopher Bryant
Oertel, Fernandez, Bryant & Atkinson, P.A.
P.O. Box 1110
Tallahassee, Florida 32302
Email: cbryant@ohfc.com

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, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32399-0950, 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.