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

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION
DATE 6/24/19

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 Intervenors 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 Intervenors 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. Intervenors 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

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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, 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.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BLUE PINELLAS, LLC,

Petitioner,

vs.

FLORIDA HOUSING
FINANCE CORPORATION.
Respondent.
_____/

Case No. 19-1301BID

HTG BANYAN, LLC,

Petitioner,

vs.

FLORIDA HOUSING
FINANCE CORPORATION.
Respondent.

and

HTG HERON ESTATES FAMILY, LLC
Intervenor.
_____/

Case No. 19-1302BID

NOTICE OF VOLUNTARY DISMISSAL

Petitioner, HTG Banyan, LLC (the "Petitioner" or "HTG Banyan") hereby files its Notice of Voluntary Dismissal of their *Formal Written Protest and Petition for Administrative Hearing.*

Dated this 1st day of April 2019.

Respectfully Submitted,

/s/ Maureen McCarthy Daughton
Maureen M. Daughton, Esq.
FBN 0655805
Maureen McCarthy Daughton, LLC
1725 Capital Circle NE, Ste 304
Tallahassee, Florida 32308

Counsel for HTG BANYAN, LLC

Filed April 1, 2019 11:04 AM Division of Administrative Hearings

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been served by electronic mail this 1st day of April 2019 to Chris McGuire (Chris.McGuire@floridahousing.org), Deputy General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Ste 5000, Tallahassee, Florida 32301; M. Christopher Bryant (cbryant@ohfc.com), Oertel, Fernandez, Bryant & Atkinson, P.A., P.O. Box 1110, Tallahassee, Florida 32301, Donna E. Blanton (dblanton@radeylaw.com), Radey Law Firm, 301 South Bronough, Suite 200, Tallahassee, Florida 32301 and Michael Donaldson (Mdonaldson@carltonfields.com) Carlton Fields, 215 South Monroe Street, Ste 500, Tallahassee, Florida 32301-1866.

/s/ Maureen M. Daughton

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BLUE PINELLAS, LLC,

Petitioner,

vs.

FLORIDA HOUSING
FINANCE CORPORATION.
Respondent.
_____/

Case No. 19-1301BID

HTG BANYAN, LLC,

Petitioner,

vs.

FLORIDA HOUSING
FINANCE CORPORATION.
Respondent.
and

HTG HERON ESTATES FAMILY, LLC
Intervenor.
_____/

Case No. 19-1302BID

STIPULATION FOR DISMISSAL

Pursuant to Section 120.57(4), Fla. Stat., Petitioner, HTG Banyan, LLC, Intervenor, HTG Heron Estates Family, LLC and Respondent, Florida Housing Finance Corporation hereby enter into the following Stipulation for Dismissal.

Factual Background

1. Petitioner, HTG Banyan, LLC ("HTG Banyan") and Intervenor, HTG Heron Estates Family, LLC ("Heron Estates") each submitted applications for proposed developments in Palm Beach County in Request for Applications 2018-112. Of the three applications that sought

funding, Heron Estates (Application No. 2019-115C) was selected for funding, followed by Berkeley Landing Ltd., (Application No. 2019-110C) and HTG Banyan (Application No. 2019-117C) which were both deemed eligible but unfunded.

2. Both HTG Banyan and Berkeley Landing, Ltd. filed a protest, with Berkeley Landing challenging the eligibility determination of Heron Estates and HTG Banyan challenging the eligibility determination of both Berkeley Landing and HTG Heron Estates due to the fact that they each chose the City of Riviera Beach as the source of their Local Government Contribution for purposes of Local Government Area of Opportunity status.

3. Berkeley Landing, Ltd., filed a Notice of Voluntary Dismissal on March 20, 2019.

Agreement to Resolve Dispute

4. As a result of settlement discussions, HTG Banyan, Florida Housing Finance Corporation and Heron Estates have resolved the issues in this litigation, and agree in the interest of avoiding time, expense, and uncertainty of litigation, to the following terms:

(a) Heron Estates agrees to the designation of its own application to RFA 2018-112 as ineligible for consideration for funding, and hereby waives the right to challenge that determination. Florida Housing agrees that the applications of Heron Estates and Berkeley Landing should have been deemed ineligible and that the determination of ineligibility is not the result of any misrepresentation or admission of wrongdoing by Heron Estates or Berkeley Landing.

(b) Florida Housing agrees that neither the submission of the Heron Estates application and/or this stipulation shall impact in any way the ability of Heron Estates, the Applicant and Developer entities identified in the Heron Estates Application, or the Principals of the Applicant and Developer entities from submitting applications in

future or other RFA's or funding programs and having these applications considered for funding under the terms of those RFAs or funding programs.

(c) Florida Housing agrees that the HTG Banyan application, pursuant to application of the eligibility, ranking and scoring criteria of the RFA, shall be funded to meet the Palm Beach County Funding Goal and invited into credit underwriting, subject to approval of the Florida Housing Board of Directors.

(d) HTG Banyan will voluntarily dismiss its Formal Written Protest and Petition for Formal Administrative Hearing filed in this matter.

5. All parties shall bear their own costs and attorneys' fees incurred in this matter.

DATED this 1 day of April 2019.

Chris McGuire, Esq.
Florida Housing Finance Corp
FBN: 0622303
227 North Bronough Street, Ste 5000
Tallahassee, Fl. 32301
Chris.McGuire@floridahousing.org
Counsel for Florida Housing Finance Corporation

Maureen M. Daughton, Esq.
Maureen McCarthy Daughton, LLC
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Counsel for HTG Banyan, LLC

Donna E. Blanton, Esq.
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Dblanton@radeylaw.com
Counsel for HTG Heron Estates Family, LLC

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BLUE PINELLAS, LLC,

Petitioner,

v.

DOAH CASE NO. 19-1301BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

SHORES APARTMENTS, LTD.

Intervenor.

_____/

BLUE PINELLAS, LLC'S NOTICE OF VOLUNTARY DISMISSAL

Petitioner, Blue Pinellas, LLC ("Blue Pinellas") filed their Formal Written Protest and Petition for Administrative Hearing challenging Florida Housing's scoring of applications submitted in response to RFA 2018-112. As reflected in the Stipulation for Dismissal entered into in this case by the parties including Blue Pinellas, Florida Housing and the Shores Apartments, Ltd., Blue Pinellas need no longer litigate its challenge. (See Stipulation Attached as Exhibit A)

WHEREFORE, Blue Pinellas hereby gives notice of the voluntary dismissal of its' Formal Written Protest and Petition for Formal Administrative Hearing.

Respectfully submitted,

/s/ Michael P. Donaldson
Michael P. Donaldson
Florida Bar No. 0802761
CARLTON FIELDS, P.A.
Post Office Drawer 190
Tallahassee, Florida 32302
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Filed April 12, 2019 12:27 PM Division of Administrative Hearings

Add'l: rcbrown@carltonfields.com
Telephone: 850/224-1585
Facsimile: 850/222-0398

Counsel for Blue Pinellas, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by E-Mail this 12th day of April 2019 to:

Hugh Brown, General Counsel
Chris McGuire, Assistant General Counsel
Florida Housing and Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
hugh.brown@floridahousing.org
chris.mcguire@floridahousing.org
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Counsel for Respondent
Florida Housing Finance Corporation

M. Christopher Bryant, Esq.
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Add'l: bpetty@ohfc.com

Counsel for Shores Apartments, Ltd

/s/ Michael P. Donaldson
Attorney

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BLUE PINELLAS, LLC,

Petitioner,

v.

FLORIDA HOUSING FINANCE CORPORATION,

DOAH Case No. 19-1301BID

Respondent,

and

SHORES APARTMENTS, LTD.,

Intervenor.
_____/

STIPULATION FOR DISMISSAL

Pursuant to Section 120.57(4), Fla. Stat., Petitioner BLUE PINELLAS, LLC; Intervenor SHORES APARTMENTS, LLC; and Respondent FLORIDA HOUSING FINANCE CORPORATION ("FHFC"), hereby enter into the following Stipulation for Dismissal.

Factual Background

1. Petitioner, BLUE PINELLAS, LLC ("Blue Pinellas") and Intervenor, SHORES APARTMENTS, LLC ("The Shores") each submitted applications for tax credit funding of proposed developments in Pinellas County in FHFC Request for Applications 2018-112, and were the only two Applications for Pinellas County developments submitted in RFA 2018-112. The Shores (Application No. 2019-110C) was selected for funding. Blue Pinellas (Application No. 2019-114C) was deemed eligible but was not selected for funding.

2. Blue Pinellas timely filed a notice of protest and formal protest challenging the selection of The Shores, and particularly challenging proximity points claimed by The Shores for

a Public School and a Medical Facility.

Agreement to Resolve Dispute

3. As a result of factual information learned by the parties through discovery, and Florida Housing Finance Corporation's application of its "Medical Facility" and "Public School" definitions to that information, Blue Pinellas, The Shores, and FHFC in the interest of avoiding time, expense, and uncertainty of litigation, agree to resolve this litigation on the following terms:

(a) The Shores agrees to the designation of its own application to RFA 2018-112 as ineligible for consideration for funding, and hereby waives the right to challenge that determination. The Shores does not admit any wrongdoing or intentional misrepresentation, and neither Blue Pinellas nor FHFC assert any wrongdoing or intentional misrepresentations by The Shores. Florida Housing agrees that, based on information now known to the parties, the application of The Shores should be deemed ineligible; agrees that The Shores did not intentionally mispresent information in its application; and further agrees that the determination of ineligibility is not the result of any misrepresentation or wrongdoing by The Shores.

(b) FHFC agrees that this stipulation does not constitute the withdrawal of an application by The Shores, or by its Applicant, Developer, Principals of the Applicant or Developer, Affiliate of the Applicant or Developer, or Financial Beneficiary of the Applicant or Developer; and shall not result in any point loss, preference loss, ineligibility determination, or penalty or negative impact of any kind against such entities or individuals in any pending or future FHFC funding program.

(c) Florida Housing agrees that neither the submission of The Shores' application nor this stipulation shall impact in any way the ability of The Shores, the Applicant and Developer entities identified in The Shores' Application, or the Principals of the Applicant

and Developer entities from submitting applications in future or other RFAs or funding programs and having these applications considered for funding under the terms of those RFAs or funding programs.

(d) Florida Housing agrees that the Blue Pinellas application, pursuant to application of the eligibility, ranking and scoring criteria of the RFA, shall be funded to meet the Pinellas County Funding Goal and invited into credit underwriting, subject to approval of the Florida Housing Board of Directors.

(e) Blue Pinellas will voluntarily dismiss its Formal Written Protest and Petition for Formal Administrative Hearing filed in this matter.

4. All parties shall bear their own costs and attorneys' fees incurred in this matter.

DATED this 12th day of April, 2019.

Chris McGuire, Assistant General Counsel
Florida Bar No. 0622303
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

Attorney for Respondent, Florida Housing Finance Corporation

Michael P. Donaldson, Esq.
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Carlton, Fields, Jorden Burt, P.A.
Post Office Drawer 190
215 S. Monroe St., Suite 500
Tallahassee, Florida 32302

Attorney for Petitioner, Blue Pinellas, LLC

4/12/2019

M. Christopher Bryant, Esq.
Florida Bar No. 434450
Oertel, Fernandez, Bryant & Atkinson, P.A.
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Tallahassee, Florida 32302-1110

Attorney for Intervenor, Shores Apartments, Ltd.

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DURHAM PLACE, LTD; AND DURHAM PLACE DEVELOPER, LLC,

Petitioners,

vs. Case No. 19-1396BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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

Petitioner,

vs. Case No. 19-1397BID

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

and

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

Intervenors.
_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and

120.57(1) and (3), Florida Statutes (2018),[1/] on April 15, 2019, in Tallahassee, Florida.

APPEARANCES

For Petitioners Durham Place, LTD.; and Durham Place Developer, LLC ("Durham Place") (Case No. 19-1936BID); and Intervenors Hawthorne Park, LTD; and Hawthorne Park Developer, LLC ("Hawthorne Park") (Case No. 19-1937BID):

Douglas P. Manson, Esquire
Amy Wells Brennan, Esquire
Manson Bolves Donaldson Varn, P.A.
109 North Brush Street, Suite 300
Tampa, Florida 33602

Craig D. Varn, Esquire
Manson Bolves Donaldson Varn
106 East College Avenue, Suite 820
Tallahassee, Florida 32301

For Petitioner Amelia Court at Creative Village - Phase II Partners, LTD. ("Amelia Court") (Case No. 19-1937BID):

M. Christopher Bryant, Esquire
Oertel, Fernandez, Bryant & Atkinson, P.A.
Post Office Box 1110
Tallahassee, Florida 32302-1110

For Respondent Florida Housing Finance Corporation ("Florida Housing"):

Christopher Dale McGuire, Esquire
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in this bid protest matter is whether Respondent, Florida Housing Finance Corporation's, intended award of funding under Request for Applications 2018-112 was contrary to its governing statutes, rules, or the solicitation specifications.

PRELIMINARY STATEMENT

This matter involves two protests to a Notice of Intent to Award issued by Florida Housing under Request for Applications 2018-112 ("RFA 2018-112"). On September 6, 2018, Florida Housing, through RFA 2018-112, solicited applications to allocate competitive tax credits for affordable housing developments located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas counties.

On February 1, 2019, Florida Housing posted notice of its intent to award funding in Orange County, Florida, to Hawthorne Park.

On February 15, 2019, Durham Place, the third ranked applicant, timely filed a formal written protest challenging Florida Housing's scoring of the second ranked applicant, Amelia Court (DOAH Case No. 19-1396BID).[2/] On February 18, 2019, Amelia Court timely filed a formal written protest of Florida Housing's award to Hawthorne Park (DOAH Case No. 19-1396BID). On March 15, 2019, Hawthorne Park filed a Notice of Intervention of a Specifically Named Party in Case No. 19-1397BID (Amelia Court's protest).[3/] On March 25, 2019, Durham Place also filed a Motion to Intervene in DOAH Case No. 19-1397BID, which was granted.[4/]

On March 15, 2019, Florida Housing referred both Durham Place's and Amelia Court's protests to the Division of

Administrative Hearings ("DOAH") for assignment to an Administrative Law Judge ("ALJ") to conduct a chapter 120 evidentiary hearing. On March 20, 2019, DOAH Case Nos. 19-1396BID and 19-1397BID were consolidated pursuant to Florida Administrative Code Rule 28-106.108.

The final hearing was held on April 15, 2019. Joint Exhibits 1 through 7 were admitted into evidence. Amelia Court's Exhibits 7, 8, 10, 11, 13, and 14 were admitted into evidence.[5/] Florida Housing presented the testimony of Marisa Button. Amelia Court called Scott Culp to testify.

A one-volume Transcript of the final hearing was filed with DOAH on April 30, 2019. At the close of the hearing, the parties were advised of a ten-day time frame after receipt of the hearing transcript to file post-hearing submittals. All parties filed Proposed Recommended Orders, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Florida Housing is a public corporation created pursuant to section 420.504, Florida Statutes. Its purpose is to provide and promote public welfare by administering the governmental function of financing affordable housing in the State of Florida. For purposes of this administrative proceeding, Florida Housing is considered an agency of the State of Florida.

2. Hawthorne Park, Amelia Court, and Durham Place are all properly registered business entities in Florida and engage in the business of providing affordable housing.

3. The low-income housing tax credit program (commonly referred to as "tax credits" or "housing credits") was enacted to incentivize the private market to invest in affordable rental housing. The affordable housing industry relies heavily on public funding, subsidies, and tax credits to develop projects that are financially sustainable in light of the sub-market rents they charge. Because tax credits allow developers to reduce the amount necessary to fund a housing project, they can (and must) offer the tax credit property at lower, more affordable rents. Developers also agree to maintain rental prices at affordable levels for periods of 30 to 50 years.

4. Florida Housing has been designated as the housing credit agency for the state of Florida within the meaning of section 42(h)(7)(A) of the Internal Revenue Code. As such, Florida Housing is authorized to establish procedures to distribute low-income housing tax credits and to exercise all powers necessary to administer the allocation of those credits. § 420.5099, Fla. Stat.

5. Florida Housing uses a competitive solicitation process to award low-income housing tax credits. Florida Housing initiates the solicitation process by issuing a request for

applications ("RFA"). §§ 420.507(48) and 420.5087(1), Fla. Stat.; and Fla. Admin. Code R. 67-60.009(4).

6. The RFA at issue in this matter is RFA 2018-112, entitled "Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties." The purpose of RFA 2018-112 is to distribute funding to create affordable housing developments in the State of Florida. Through RFA 2018-112, Florida Housing intends to provide an estimated $17,314,387.00 of housing tax credits.

7. This bid protest concerns Florida Housing's intended award of tax credits to Hawthorne Park for its proposed housing development in Orange County, Florida. Amelia Court, the second ranked developer, challenges Florida Housing's determination of eligibility and award to Hawthorne Park. Durham Place, the third-place developer, challenges Florida Housing's ranking of Amelia Court.

8. Florida Housing issued RFA 2018-112 on September 6, 2018.[6/] Applications were due to Florida Housing by November 13, 2018.

9. Florida Housing received 23 applications for housing credits under RFA 2018-112. Hawthorne Park, Amelia Court, and Durham Place all timely applied for funding to assist in the development of multi-family housing in Orange County, Florida.

10. RFA 2018-112 set forth certain information which each applicant was required to submit with the application. RFA 2018-112, Section Five, A.1, expressly stated that "[o]nly Applications that meet all of the following Eligibility Items will be eligible for funding and considered for funding selection." Thereafter, Section Five, A.1, listed 45 separate Eligibility Items.

11. Pertinent to these bid protests, one Eligibility Item required each applicant to demonstrate that its housing project "[q]ualifies for Local Government Support." An applicant satisfied this requirement by submitting a Florida Housing Local Government Verification of Contribution Form (a "Contribution Form") as referenced in RFA 2018-112, Sections Four, A.11.a.(3), and A.11.b. Failure to show evidence of Local Government Support would render an application ineligible for funding.

12. In addition, RFA 2018-112, Section Four, A.3.c.(1), required each applicant to "state the name of each Developer, including all co-Developers" of the planned housing project. The application was also to include a "Principals of the Applicant and Developer(s) Disclosure Form." See Fla. Admin. Code R. 67-48.002(93).

13. A total of six applicants applied for funding for Orange County. Upon receipt of the applications, Florida Housing assigned each applicant a lottery number. Hawthorne

Park was given a lottery number of 1. Amelia Court was assigned a lottery number of 24. Durham Place received a lottery number of 3.

14. Thereafter, Florida Housing selected a Review Committee from amongst its staff to score each application. The Review Committee reviewed, deemed eligible or ineligible, scored, and ranked applications pursuant to the terms of RFA 2018-112, as well as Florida Administrative Code Chapters 67-48 and 67-60, and applicable federal regulations.

15. The Review Committee met on January 22, 2019, to discuss their scores. The Review Committee found that Hawthorne Park's application satisfied all mandatory eligibility requirements for funding and awarded it 10 out of 10 Total Points. Amelia Court was also found to have satisfied all eligibility requirements for funding, and also received a score of 10 out of 10 Total Points. Finally, the Review Committee concluded that Durham Place satisfied the eligibility requirements for funding, and it too was given a score of 10 out of 10 Total Points.

16. On February 1, 2019, the Review Committee presented its recommendation of preliminary rankings and allocations to Florida Housing's Board of Directors. The Board of Directors also found that Hawthorne Park, Amelia Court, and Durham Place

all satisfied the mandatory and eligibility requirements for funding in Orange County.

17. Thereafter, per RFA 2018-112, Section Five, B.2., and Section Six, the Board of Directors selected Hawthorne Park to receive tax credits for its affordable housing development in Orange County. The Board of Directors chose Hawthorne Park based on the Review Committee's recommendation, RFA 2018-112's funding selection criteria, as well as the fact that Hawthorne Park held the lowest lottery number of 1.

18. The Board of Directors ranked Amelia Court's application the next highest based on the selection criteria. Durham Place's application placed third. Durham Place held a lower lottery number than Amelia Court. However, as addressed below, Amelia Court's application included Local Government Support in the form of Local Government Areas of Opportunity Funding ("Areas of Opportunity Funding"), as opposed to Local Government Contribution funding. Under the provisions of RFA 2018-112, applicants who obtained Areas of Opportunity Funding were given a ranking preference. Of the six applications for Orange County, only Hawthorne Park and Amelia Court claimed Areas of Opportunity Funding.

19. The Board of Directors approved $2,300,000 in annual federal tax credits to help finance Hawthorne Park's 120-unit, Garden Apartment complex in Orange County.

I. AMELIA COURT'S CHALLENGE OF HAWTHORNE PARK:

20. Amelia Court protests Florida Housing's selection of Hawthorne Park instead of its own development. Amelia Court specifically challenges Florida Housing's determination that Hawthorne Park submitted a valid Contribution Form.[7/]

21. Amelia Court seeks an allocation of $2,375,000 in tax credits to help finance its affordable housing project in the City of Orlando. If Amelia Court successfully demonstrates that Florida Housing erred in accepting, then scoring, Hawthorne Park's application, Amelia Court, by virtue of qualifying for Areas of Opportunity Funding, as well as holding the next lowest lottery number, stands in line to be selected for funding instead of Hawthorne Park.

22. As indicated above, RFA 2018-112, section Four, A.11, required applicants to provide evidence of Local Government Support for their proposed housing development. This support could come in the form of a grant, loan, fee waiver and/or a fee deferral from the local government entity. Florida Housing did not intend for this local funding to serve as the primary financial support for the housing project. Instead, Florida Housing established a contribution threshold amount which could be used to gauge the local government's interest in the proposed development.

23. An applicant could satisfy the Local Government Support requirement in two ways. An applicant could obtain either 1) a Local Government Contribution (Section Four, A.11.a.); or 2) Areas of Opportunity Funding (Section Four, A.11.b.).

24. RFA 2018-112 established the minimum financial commitment for the Local Government Contribution at $75,000. Areas of Opportunity Funding contemplated much larger support from the local government. RFA 2018-112, Section Four, A.11.b., called for a cash loan and/or a cash grant in a minimum qualifying amount ranging from $472,000 to $747,000 depending on the building and construction type. Consequently, as set forth in RFA 2018-112, Section Five, B.3.e., and Section Six, Areas of Opportunity Funding enabled an application to receive a preference in the selection process.

25. To substantiate the receipt of Local Government Support, applicants were instructed to include with their applications a properly executed Contribution Form. With respect to Areas of Opportunity Funding, RFA 2018-112, Section Four, A.11.b., stated:

> In order to be eligible to be considered Local Government Areas of Opportunity Funding, the cash loans and/or cash grants must be demonstrated via one or both of the Florida Housing Local Government Verification of Contribution forms (Form Rev. 08-16), called "Local Government

> Verification of Contribution – Loan" form and/or the "Local Government Verification of Contribution - Grant" form.

26. Both the Local Government Verification of Contribution – Loan form (the "Contribution Form - Loan") and the Local Government Verification of Contribution - Grant form (the "Contribution Form - Grant") directed an applicant to include certain information. First, the loan or grant must be dedicated to the specific RFA at issue (RFA 2018-112 in this matter). Next, the Contribution Form must explicitly record the face amount or value of the Local Government Contribution, as well as the source of the local government loan or grant. In addition, the funds could not come from a prohibited source.

27. Finally, the Contribution Form had to be signed by a representative of the local government who certified the correctness of the loan amount and source. The Contribution Form expressed:

> This certification must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager/Administrator/Coordinator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners. . . . The Applicant will not receive credit for this contribution if the certification is improperly signed.

28. RFA 2018-112, Section Four, A.11.b., also required that "funding . . . shall be paid in full by the local

jurisdiction no later than 90 days following the date the proposed Development is placed in-service.

29. Hawthorne Park, to establish its Areas of Opportunity Funding, included both a Contribution Form - Loan, as well as a Contribution Form - Grant, for a combined Local Government Support amount of $567,500. Hawthorne Park's Contribution Form - Loan represented that Orange County had agreed to provide Hawthorne Park a reduced interest rate loan in the amount of $317,500. This loan, by itself, was not large enough to meet the Areas of Opportunity Funding threshold. However, Hawthorne Park's Contribution Form - Grant identified an additional $250,000 from Orange County in the form of a State Housing Initiative Partnership ("SHIP")[8/] grant. The combined loan and grant (if both are valid) established sufficient Local Government Support to qualify Hawthorne Park for the Areas of Opportunity Funding ranking preference.

30. Amelia Court alleges that the SHIP grant Hawthorne Park identified on its Contribution Form - Grant is illegal or invalid.[9/] To formally contest Orange County's SHIP grant, Atlantic Housing Partners, LLLP ("Atlantic Housing"), the developer of the Amelia Court housing project, sued Orange County and Wendover Housing Partners, LLC ("Wendover"), in the Circuit Court of the Ninth Judicial Circuit in Orange County, Florida, in a case entitled Atlantic Housing Partners, LLLP v.

Orange County, Florida, and Wendover Housing Partners, LLC, Case No. 2018-CA-12227-O. (The suit identifies Wendover as the developer of the Hawthorne Park housing project.)

31. In the circuit court action, Amelia Court specifically alleges that Orange County failed to follow its local housing assistance plan ("Assistance Plan") prior to offering the SHIP grant to Hawthorne Park. Amelia Court claims that the Assistance Plan required Orange County to initiate a competitive solicitation process (request for proposals) before awarding SHIP funds.[10/] Orange County undisputedly did not do so prior to issuing the SHIP grant to Hawthorne Park. Based on Orange County's failure to comply with its Assistance Plan, Amelia Court charges that Hawthorne Park's Contribution Form - Grant is invalid.

32. On January 21, 2019, the circuit court issued a Temporary Injunction. Agreeing with Atlantic Housing/Amelia Court, the circuit court held that "Orange County deviated from the requirements of its [Assistance Plan]." The circuit court found that, "[b]y the plain terms of its own [Assistance Plan], Orange County was required to conduct an [request for proposals] to award SHIP funds to Wendover."

33. Through the Temporary Injunction, the circuit court enjoined Orange County from conveying the SHIP funds to Wendover

for the Hawthorne Park development. The circuit court specifically ruled that Orange County and Wendover:

> are temporarily enjoined, pending a final adjudication and the granting or [sic] permanent relief, from awarding SHIP funds to Wendover as [Areas of Opportunity Funding] for Orange County related to Hawthorne Park and the 2018 RFA.

The circuit court concluded that, "Wendover should not be permitted to compete given its illegal award of SHIP funds as an [Areas of Opportunity Funding] from Orange County in the first place."

34. Florida Housing, however, was not joined as a party to the circuit court action. Commenting on this fact, the circuit court inserted a footnote stating:

> Inasmuch as [Florida Housing] is not a party to these proceedings, necessarily, this injunction does not enjoin any activity of [Florida Housing].

35. On January 22, 2019, Orange County and Wendover appealed the Temporary Injunction to the Fifth District Court of Appeal. The appeal is pending as of the date of this Recommended Order.

36. In the meantime, on January 31, 2019, the circuit court entered an Order Granting Motion to Vacate Stay. Consequently, the terms of the Temporary Injunction remain in effect pending the outcome of the appeal.

37. Based on the Temporary Injunction, at this time, Orange County is not authorized to distribute the $250,000 SHIP grant to Hawthorne Park to help fund its housing project. Without the SHIP grant, Hawthorne Park does not qualify for the Areas of Opportunity Funding selection preference. As a result, Amelia Court contends that Florida Housing should invalidate Hawthorne Park's Areas of Opportunity Funding, and select Amelia Court as the top ranked applicant for tax credits for Orange County.

38. In response to Amelia Court's challenge, Florida Housing takes the position that the Temporary Injunction is a preliminary determination, not a final adjudication. Consequently, the Temporary Injunction does not conclusively establish that the SHIP grant from Orange County is tainted by fraud or illegality, or is in some manner invalid. Therefore, the Contribution Form - Grant that Hawthorne Park provided with its application complied with the express terms of RFA 2018-112, and Hawthorne Park's application remains eligible for tax credit funding.

39. In support of its position, Florida Housing presented the testimony of Marisa Button, Florida Housing's Director of Multi-family Allocations. In her job, Ms. Button oversees Florida Housing's RFA process.

40. Ms. Button disagreed with Amelia Court's argument that Florida Housing should reject the Contribution Form - Grant based on the circuit court's Temporary Injunction. Ms. Button testified that, as a rule, Florida Housing assumes the correctness of a properly executed Contribution Form. Because Hawthorne Park's Contribution Form - Grant included the required information and signatory, Florida Housing did not question its underlying validity when scoring the applications.

41. Ms. Button further explained that Florida Housing does not have the authority to independently determine whether a local government followed the appropriate procedures to award a grant or loan. Therefore, Florida Housing defers to the local government's exercise of its own ordinances and processes. Similarly, Ms. Button maintained that the circuit court is the proper venue to determine the validity of the Orange County SHIP grant. Ms. Button declared that Florida Housing will be bound by the circuit court's ultimate ruling on the issue, whenever that decision becomes final.[11/] However, until the $250,000 SHIP grant is found invalid or otherwise prohibited, Florida Housing considers its initial decision to award tax credits to Hawthorne Park to be appropriate and correct.

42. On the other hand, Ms. Button conveyed that if a court does rule that Orange County's SHIP grant is invalid or illegal, Florida Housing will deem Hawthorne Park's Contribution Form -

Grant as though it contained a material error. In other words, Florida Housing would treat the Contribution Form - Grant as nonresponsive, or as if it was left blank. Consequently, if Hawthorne Park's remaining Local Government Support (the $317,500 loan from Orange County) did not reach the financial threshold to qualify for Areas of Opportunity Funding, Hawthorne Park would not receive a scoring preference.

43. Regarding the question of how Florida Housing will treat Hawthorne Park's application while the $250,000 SHIP grant is temporarily enjoined, Ms. Button testified that Florida Housing would reevaluate the situation in its credit underwriting process. Ms. Button explained that after its Board of Directors selects an application, Florida Housing invites the applicant (Hawthorne Park) into credit underwriting. During that stage, the application is reexamined to ensure that it complies with all RFA eligibility requirements, including the obligation to secure sufficient Local Government Support.[12/] If Hawthorne Park has the necessary Areas of Opportunity Funding to ultimately finance its housing development, the award of tax credits proceeds. If an award is determined inappropriate based on the circumstances, then Florida Housing would likely not advance its efforts to fund Hawthorne Park's development.[13/]

44. That being said, Ms. Button stressed that, at this time, no court has conclusively invalidated the $250,000 SHIP

grant to Hawthorne Park. Furthermore, the circuit court expressly stated that the Temporary Injunction "does not enjoin any activity" of Florida Housing. Therefore, Florida Housing takes the position that Hawthorne Park has not been formally disqualified from consideration under RFA 2018-112. Neither is Florida Housing prohibited from proceeding with an award of tax credits to Hawthorne Park.

45. In response to Amelia Court's challenge, Hawthorne Park concurs with Florida Housing that the Temporary Injunction is not a final judgment. Therefore, the Temporary Injunction does not preclude Florida Housing from awarding tax credits under RFA 2018-112 for Hawthorne Park's development.

46. Hawthorne Park points out that the Temporary Injunction is a provisional decision by the circuit court. The purpose of the Temporary Injunction is to maintain the status quo by temporarily enjoining Orange County from releasing SHIP funds for the Hawthorne Park housing project. However, the Temporary Injunction, without more, does not automatically void Orange County's selection of Wendover/Hawthorne Park for the SHIP grant. Therefore, the Contribution Form - Grant that Hawthorne Park submitted with its application remains in effect unless and until the circuit court issues a final ruling.

47. Furthermore, Hawthorne Park insists that Orange County's allocation of SHIP funds does not violate any law or

local ordinance. Hawthorne Park declares that the circuit court issued the Temporary Injunction based on a misunderstanding of the Orange County Assistance Plan. Hawthorne Park fully intends to fight Atlantic Housing/Amelia Court's allegations in circuit court where it will have a full opportunity to present its case.

II. DURHAM PLACE'S CHALLENGE OF AMELIA COURT:

48. Durham Place responded to RFA 2018-112 seeking an allocation of $2,375,000 in tax credits to help finance its housing development in Orange County. Durham Place received the same score as Hawthorne Park and Amelia Court (10 out of 10 Total Points).

49. For its application, Durham Place secured Local Government Support in the amount of $75,000. This funding was sufficient to satisfy the Local Government Contribution eligibility requirements under RFA 2018-112, Section Four, A.11.a. However, this funding amount was not large enough to receive a selection preference as Areas of Opportunity Funding. Therefore, Durham Place's application fell behind Hawthorne Park and Amelia Court in RFA 2018-112's sorting methodology under RFA 2018-112, Section Five, B.2.

50. Nevertheless, if the evidence shows that Florida Housing should disqualify Hawthorne Park's Areas of Opportunity Funding, and the evidence further demonstrates that Amelia Court's application was nonresponsive or ineligible, then Durham

Place would be entitled to an award of tax credits as the third ranked qualified applicant.[14/]

51. Durham Place contests two aspects of Amelia Court's application. First, Durham Place claims that (similar to Hawthorne Park) Amelia Court did not qualify for the Areas of Opportunity Funding selection preference under RFA 2018-112, Section Four, A.11.b.

52. With its application, Amelia Court provided a Contribution Form - Grant from the City of Orlando purporting to commit $625,750 to its housing project. The Contribution Form - Grant identifies the source of the grant as the "City of Orlando - Community Redevelopment Agency (CRA)." The Contribution Form - Grant was signed by Byron Brooks as the Chief Administrative Officer of the City of Orlando.

53. Durham Place questions whether Mr. Brooks is the proper signatory to certify a grant from the CRA. Durham Place implies that the CRA does not employ Mr. Brooks. Therefore, he is not "the chief appointed official (staff) responsible for such approvals" who could certify the legitimacy of CRA's grant to the Amelia Court housing project.

54. Second, RFA 2018-112, Section Four, A.3.c.(1), required each applicant to "state the name of each Developer, including all co-Developers" of the housing project. Durham Place alleges that Amelia Court failed to list all the

developers or co-developers of its housing project. In support of its argument, Durham Place points to a Condominium Purchase Agreement that Amelia Court included with its Site Control Certification Form to demonstrate its site control under RFA 2018-112, Section Four, A.7. The Condominium Purchase Agreement identified "Amelia Court Developers, LLC" ("Amelia Court Developers") as a "Developer" of its proposed housing site.

55. Durham Place argues that Amelia Court did not list Amelia Court Developers in its application as either a developer, co-developer, or principal. By failing to disclose either Amelia Court Developers as a co-developer of the project or list the names of the officers of Amelia Court Developers as principals, Durham Place asserts that Amelia Court failed to include a mandatory Eligibility Item.

56. Amelia Court refutes Durham Place's allegations. Regarding its Local Government Support, Amelia Court claims that the CRA is a valid source for its Areas of Opportunity Funding. Amelia Court's retort was essentially unrebutted. At the final hearing, Durham Place did not present any evidence showing that Mr. Brooks was not authorized to represent the CRA on the Contribution Form - Grant. No party called Mr. Brooks to testify.

57. Regarding Amelia Court's developers or co-developers, Amelia Court introduced the testimony of Scott Culp. Mr. Culp

asserted that Atlantic Housing is the sole developer of the Amelia Court tax credit project. As the developer, Atlantic Housing will manage the work on the condominium building, the professionals who will design it, as well as the contractor who will construct the affordable housing units. Mr. Culp declared that no other entity or individual will participate in the project as either a developer or co-developer.

58. Regarding the role of Amelia Court Developers, Mr. Cole explained that Amelia Court Developers is the leasehold owner pursuant to a ground lease, as well as created the legal structure of the condominium in which the Amelia Court project will be located. Amelia Court Developers hired Atlantic Housing to develop the Amelia Court housing community. However, Amelia Court Developers does not have the same roster of principals as Atlantic Housing. Neither will Amelia Court Developers play any other role in Amelia Court's application for tax credits under RFA 2018-112.

59. Ms. Button testified that, to date, Florida Housing is not aware of any evidence supporting Durham Place's claim that Mr. Brooks is not authorized to sign Amelia Court's Contribution Form on behalf of the CRA. Furthermore, as with Hawthorne Park's Contribution Form - Grant, Ms. Button did not believe that Florida Housing has the authority to make an independent determination whether the CRA failed to comply with the

appropriate procedures to award $625,750 to the Amelia Court housing project.

60. Therefore (as with Hawthorne Park's application), after Florida Housing determined that Amelia Court's Contribution Form - Grant was properly executed, Florida Housing accepted it as valid on its face, and scored it accordingly. At the final hearing, Ms. Button maintained that, until Florida Housing receives some evidence that the Contribution Form - Grant is invalid, or tainted by fraud, illegality, or corruption, Amelia Court's second place ranking is appropriate.

61. Florida Housing reached a similar conclusion regarding Durham Place's allegation that Amelia Court did not identify all of its housing project's developers or co-developers. Ms. Button testified that, while Florida Housing did observe that Amelia Court Developers was connected to the proposed development through the Condominium Purchase Agreement, Florida Housing is not aware of any evidence indicating that Amelia Court Developers will serve as a developer or co-developer for Amelia Court's housing project.

62. Based on the evidence and testimony presented at the final hearing, Amelia Court did not establish, by a preponderance of the evidence, that Florida Housing's decision to consider, then rank, Hawthorne Park's application was clearly erroneous, contrary to competition, arbitrary, or capricious.

Accordingly, Amelia Court did not meet its burden of proving that Florida Housing's proposed action to award tax credit funding to Hawthorne Park under RFA 2018-112 was contrary to its governing statutes, rules or policies, or the provisions of RFA 2018-112.

63. Similarly, Durham Place failed to demonstrate that Florida Housing's consideration of Amelia Court's application was contrary to its governing statutes, rules or policies, or the solicitation specifications.

CONCLUSIONS OF LAW

64. DOAH has jurisdiction over the subject matter and the parties to this competitive procurement protest pursuant to sections 120.569, 120.57(1), and 120.57(3). See also Fla. Admin. Code R. 67-60.009(2).

65. Amelia Court challenges Florida Housing's selection of Hawthorne Park for an award of tax credit funding under RFA 2018-112. Pursuant to section 120.57(3)(f), the burden of proof in this matter rests with Amelia Court as the party protesting the proposed agency action. Similarly, Durham Place bears the burden of proving its protest of the award to Amelia Court. See State Contracting & Eng'g Corp. v. Dep't of Transp., 709 So. 2d 607, 609 (Fla. 1st DCA 1998). Section 120.57(3)(f) further provides that in a bid protest:

> [T]he administrative law judge shall conduct a de novo proceeding to determine whether the agency's proposed action is contrary to the agency's governing statutes, the agency's rules or policies, or the solicitation specifications. The standard of proof for such proceedings shall be whether the proposed agency action was clearly erroneous, contrary to competition, arbitrary, or capricious.

66. The phrase "de novo proceeding" describes a form of intra-agency review. The purpose of the ALJ's review is to "evaluate the action taken by the agency." J.D. v. Fla. Dep't of Child. & Fams., 114 So. 3d 1127, 1132 (Fla. 1st DCA 2013); and State Contracting, 709 So. 2d at 609. A de novo proceeding "simply means that there was an evidentiary hearing . . . for administrative review purposes" and does not mean that the ALJ "sits as a substitute for the [agency] and makes a determination whether to award the bid *de novo*." J.D., 114 So. 3d at 1133; Intercontinental Props., Inc. v. Dep't of Health & Rehab. Servs., 606 So. 2d 380, 386 (Fla. 3d DCA 1992). "The judge may receive evidence, as with any formal hearing under section 120.57(1), but the object of the proceeding is to evaluate the action taken by the agency." State Contracting, 709 So. 2d at 609.

67. Accordingly, Amelia Court (and Durham Place) must prove, by a preponderance of the evidence, that Florida Housing's proposed action is: (a) contrary to its governing

statutes; (b) contrary to its rules or policies; or (c) contrary to the specifications of RFA 2018-112. The standard of proof Amelia Court must meet to establish that the award to Hawthorne Park violates this statutory standard of conduct is whether Florida Housing's decision was: (a) clearly erroneous; (b) contrary to competition; or (c) arbitrary or capricious. §§ 120.57(3)(f) and 120.57(1)(j), Fla. Stat.; and AT&T Corp. v. State, Dep't of Mgmt. Servs., 201 So. 3d 852, 854 (Fla. 1st DCA 2016).

68. The "clearly erroneous" standard has been defined to mean "the interpretation will be upheld if the agency's construction falls within the permissible range of interpretations." Colbert v. Dep't of Health, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004); see also Holland v. Gross, 89 So. 2d 255, 258 (Fla. 1956)(when a finding of fact by the trial court "is without support of any substantial evidence, is clearly against the weight of the evidence or . . . the trial court has misapplied the law to the established facts, then the decision is 'clearly erroneous.'"). However, if "the agency's interpretation conflicts with the plain and ordinary intent of the law, judicial deference need not be given to it." Colbert, 809 So. 2d at 1166.

69. An agency action is "contrary to competition" if it unreasonably interferes with the purpose of competitive

procurement. As described in Wester v. Belote, 138 So. 721, 722 (Fla. 1931):

> The object and purpose [of the bidding process] . . . is to protect the public against collusive contracts; to secure fair competition upon equal terms to all bidders; to remove not only collusion but temptation for collusion and opportunity for gain at public expense; to close all avenues to favoritism and fraud in its various forms; to secure the best values . . . at the lowest possible expense; and to afford an equal advantage to all desiring to do business . . . , by affording an opportunity for an exact comparison of bids.

In other words, the "contrary to competition" test forbids agency actions that: (a) create the appearance and opportunity for favoritism; (b) reduce public confidence that contracts are awarded equitably and economically; (c) cause the procurement process to be genuinely unfair or unreasonably exclusive; or (d) are abuses, i.e., dishonest, fraudulent, illegal, or unethical. See § 287.001, Fla. Stat.; and Harry Pepper & Assoc., Inc. v. City of Cape Coral, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977).

70. Finally, section 120.57(3)(f) requires an agency action be set aside if it is "arbitrary, or capricious." An "arbitrary" decision is one that is "not supported by facts or logic, or is despotic." Agrico Chemical Co. v. Dep't of Envtl. Reg., 365 So. 2d 759, 763 (Fla. 1st DCA 1978), cert. denied, 376

So. 2d 74 (Fla. 1979). A "capricious" action is one which is "taken without thought or reason or irrationally." Id.

71. To determine whether an agency acted in an "arbitrary, or capricious" manner involves consideration of "whether the agency: (1) has considered all relevant factors; (2) given actual, good faith consideration to the factors; and (3) has used reason rather than whim to progress from consideration of these factors to its final decision." Adam Smith Enter. v. Dep't of Envtl. Reg., 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989). The standard has also been formulated by the court in Dravo Basic Materials Co. v. Department of Transportation, 602 So. 2d 632, 632 n.3 (Fla. 2d DCA 1992), as follows: "If an administrative decision is justifiable under any analysis that a reasonable person would use to reach a decision of similar importance, it would seem that the decision is neither arbitrary nor capricious."

72. Further, pursuant to its rulemaking authority under section 420.507(12), Florida Housing adopted chapter 67-60 to administer the competitive solicitation process. See Fla. Admin. Code R. 67-60.001(1).

73. According to rule 67-60.006(1):

> The failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of nonresponsiveness with

> respect to its Application. If a determination of nonresponsiveness is made by [Florida Housing], the Application shall not be considered.

74. In addition, by submitting an application, RFA 2018-112, Section Three, F.3., required each applicant to certify that:

> Proposed Developments funded under this RFA will be subject to the requirements of the RFA, inclusive of all Exhibits, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the requirements outlined in Rule Chapter 67-48, F.A.C. and the Compliance requirements of Rule Chapter 67-53, F.A.C.

75. Turning to the protests at hand, notwithstanding the effect of the Temporary Injunction (discussed below), the undersigned finds that Florida Housing's decision to consider, then rank, Hawthorne Park's application, as well as Amelia Court's application, was not contrary to its governing statutes; its rules or policies; or the specifications of RFA 2018-112.

76. Regarding Amelia Court's protest, the evidence in the record establishes that Hawthorne Park's Contribution Form - Grant contained all the required information and was valid on its face on the date Hawthorne Park submitted its application to Florida Housing. No evidence shows that Orange County's commitment of SHIP funds was not effective as of the application deadline, or will not be paid in full within 90 days following the date Hawthorne Park's proposed development is placed into

service (again, notwithstanding the Temporary Injunction). Therefore, as an initial conclusion, Florida Housing properly acted within its authority to qualify Hawthorne Park for Areas of Opportunity Funding, and rank its application accordingly.

77. The central issue in Amelia Court's challenge is the impact of the Temporary Injunction. Amelia Court argues that the Temporary Injunction effectively invalidates Hawthorne Park's Contribution Form - Grant. Amelia Court contends that Florida Housing should treat the circuit court's preliminary ruling as a conclusive determination that Hawthorne Park will not receive $250,000 in SHIP funds for its proposed housing development. Without the $250,000 grant, Hawthorne Park will not qualify for the Areas of Opportunity Funding selection preference. Therefore, Florida Housing's award of tax credits to Hawthorne Park, as the top ranked developer, will be contrary to its governing statutes, rules, policies, or the solicitation specifications.

78. However, based on the applicable case law, Florida Housing and Hawthorne Park present the more persuasive argument that the Temporary Injunction does not constitute a binding or final ruling that the SHIP grant is invalid. Neither does the Temporary Injunction preclude Florida Housing from considering Hawthorne Park's application under the terms of RFA 2018-112.

Therefore, Florida Housing is free to proceed with the award of tax credits in Orange County to Hawthorne Park.

79. Florida case law establishes that "[a] temporary injunction is provisional by nature." Planned Parenthood of Greater Orlando, Inc. v. MMB Props., 211 So. 3d 918, 924 (2017). "The purpose of a temporary injunction is not to resolve a dispute on the merits, but rather to preserve the status quo until the final hearing when full relief may be granted." Planned Parenthood, 211 So. 3d at 924 (quoting Grant v. Robert Half Intern., Inc., 597 So. 2d 801, 801-02 (Fla. 3d DCA 1992)). See also Kozich v. DeBrino, 837 So. 2d 1041, 1043 (Fla. 4th DCA 2002)(" A trial court's findings on a preliminary injunction do not constitute "law of the case" on final hearing. . . . The findings of fact and conclusions of law made at a preliminary injunction hearing are not binding on the court on final hearing, where the parties present their full case to the court"); and Hasley v. Harrell, 971 So. 2d 149, 152 (Fla. 2d DCA 2007)("a true temporary injunction is not law of the case.").

80. The non-binding effect of a temporary injunction is explained in Klak v. Eagles' Reserve Homeowners' Association, Inc., 862 So. 2d 947, 952-53 (Fla. 2d DCA 2004) as follows:

> The issuance or denial of a preliminary injunction is the paradigmatic circumstance where a determination is made by a court without the benefit of a full hearing of the issues. See Univ. of Tex. v. Camenisch,

> 451 U.S. 390, 395, 101 S.Ct. 1830, 68 L.Ed.2d 175 (1981)("[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits.")(citations omitted). Because a decision based on a less-than-full hearing—such as the issuance or denial of a preliminary injunction—is by its very nature provisional, it would be nonsensical to give it binding effect on the subsequent proceedings in the same case.

81. Furthermore, by the circuit court's express terms, the Temporary Injunction does not prevent "any activity" of Florida Housing, including an award of tax credits to Hawthorne Park. (Neither does the Temporary Injunction inhibit the actions of the administrative law judge in this matter.) The Temporary Injunction only controls the actions of Orange County and Wendover/Hawthorne Park "pending a final adjudication and the granting [of] permanent relief."

82. Accordingly, Florida Housing's decision to award funding to Hawthorne Park at this stage in the solicitation process is appropriate and correct under the circumstances. Ms. Button credibly testified (and the evidence shows) that Hawthorne Park's Contribution Form - Grant was properly executed and valid at the time Florida Housing accepted it. Consequently, until a court issues a final decision to the contrary, Florida Housing must consider, and rank, Hawthorne Park's application in accordance with the terms and conditions of RFA 2018-112. Therefore, as a matter of law, Florida Housing may proceed with

the award of tax credits to Hawthorne Park until it is affirmatively determined that Hawthorne Park cannot, or will not, receive the $250,000 SHIP grant.

83. This matter is analogous to Brownsville Manor, LP v. Redding Development Partners, LLC, 224 So. 3d 891 (Fla. 1st DCA 2017). In Brownsville, the housing developer (Brownsville) appealed a Florida Housing final order finding it ineligible for funding. Following an administrative hearing, Florida Housing determined that Brownville's application did not qualify because Brownsville had not finalized its development location point (a "scattered site") at the time it submitted its application. Brownsville conceded that "it had not definitively determined the development's site configuration" at the application stage. However, Brownsville argued that it had submitted all the forms the RFA required, and it intended to comply with all RFA requirements should it be awarded tax credits. Brownsville further asserted that it intended to confirm its development location point "at the final site plan approval phase, which occurs during the credit underwriting process, not at the application stage."[15/]

84. In reversing Florida Housing's final order, the appellate court opined that:

> Florida Housing was required to interpret the RFA consistently with its plain and unambiguous language. . . . Brownsville

> clearly complied with all of the RFA requirements at the application stage by submitting the required forms, providing a [development location point], and providing the appropriate assurances that it intended to comply with all of the RFA terms. Brownsville, 224 So. 3d at 894.

85. Therefore, because "nothing in the RFA required Brownsville to begin the clustering process or guarantee approval as of the application stage," Florida Housing should not have found Brownsville's application ineligible "if the configuration of a proposed development would be fleshed out in the final site plan approval process, which occurs after the application stage during the credit underwriting." Brownsville, 224 So. 3d at 895. Consequently, even though the true configuration of Brownsville's development was "unknown at the application stage," because Brownsville "complied with all that was required of it at the application stage under the plain and unambiguous terms of the RFA," the appellate court ordered Florida Housing to reinstate Brownsville's eligibility for funding.

86. Similarly, in this matter, the Temporary Injunction causes the availability of the Orange County SHIP grant to be "unknown at the application stage." However, the evidence in the record establishes that Hawthorne Park provided the required Contribution Forms and complied with all RFA mandatory Eligibility Items when it submitted its application. Moreover, RFA 2018-112, Section Four, A.11.b., informed the applicants that

Areas of Opportunity Funding "shall be paid . . . no later than 90 days following the date the proposed Development is placed in-service." This provision appears to allow Florida Housing the flexibility to confirm the certainty of a local government grant during credit underwriting; where, pursuant to Brownville, Florida Housing may "flesh out" the viability of the Areas of Opportunity Funding status. Accordingly, at this stage in the application process, Florida Housing appropriately deemed Hawthorne Park's application eligible for an award of tax credit funding in Orange County.

87. Similar to Amelia Court's protest, Durham Place asserts that Amelia Court's Contribution Form - Grant should be considered non-responsive because the individual who signed the form (Mr. Brooks) lacked the authority to certify the source of the CRA grant. However, the evidence shows that the Contribution Form - Grant was valid on the face of the document when Amelia Court applied for funding. In addition, at the final hearing, Durham Place did not produce any substantive evidence or testimony that Mr. Brooks was not authorized to certify the validity of the CRA grant. Neither did Durham Place prove that the CRA will not pay $625,750 to Amelia Court for its housing development. Accordingly, Durham Place did not meet its burden of proving that Florida Housing's decision to deem Amelia Court eligible for Areas of Opportunity Funding was contrary to

Florida Housing's governing statutes, rules or policies, or the specifications of RFA 2018-112.

88. Further, the evidence does not support Durham Place's claim that Amelia Court should have identified Amelia Court Developers as a developer or co-developer of its housing project. Mr. Culp credibly testified that Atlantic Housing is the only entity that will serve as the developer for Amelia Court. The fact that Amelia Court Developers is identified in a Condominium Purchase Agreement is not sufficient, without more information, to establish that it will participate as another tax credit developer for Amelia Court. Therefore, Florida Housing appropriately considered and ranked Amelia Court's application.

89. In sum, the evidence in the record establishes that Florida Housing's award to Hawthorne Park followed the selection process outlined in RFA 2018-112. At the final hearing, Florida Housing presented good faith, factual, and logical reasons why it found Hawthorne Park's application complied with the mandatory Eligibility Items detailed in RFA 2018-112, and then ranked Hawthorne Park higher than its competitors. (The undersigned reaches the same conclusion regarding Amelia Court's second ranked application.)

90. Conversely, Amelia Court failed to demonstrate that Florida Housing's award of tax credits to Hawthorne Park was made in a manner that was clearly erroneous, contrary to

competition, arbitrary, or capricious. Therefore, Amelia Court did not meet its burden of proving that Florida Housing's decision to provide tax credit funding for Hawthorne Park's proposed housing development was contrary to its governing statutes, rules, or policies, or RFA 2018-112's terms or provisions. Florida Housing's selection of Hawthorne Park should not be set aside.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Housing Finance Corporation enter a final order dismissing the protests of both Amelia Court and Durham Place. It is further recommended that the Florida Housing Finance Corporation select Hawthorne Park as the recipient of tax credit funding for Orange County under RFA 2018-112.

DONE AND ENTERED this 7th day of June, 2019, in Tallahassee, Leon County, Florida.

J. BRUCE CULPEPPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of June, 2019.

ENDNOTES

[1/] Unless otherwise stated, all citations to the Florida Statutes and Florida Administrative Code are to the 2018 versions.

[2/] Durham Place subsequently amended its formal written protest to include allegations challenging Florida Housing's award to Hawthorne Park.

[3/] Under Florida Administrative Code Rule 28-106.205(3), specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.

[4/] No protests were made to the specifications or terms of RFA 2018-112.

[5/] Following the final hearing, Hawthorne Park, with the undersigned's acquiesce, filed a Second Request for Official Recognition attaching numerous filings and pleadings from the related action pending in the Circuit Court of the Ninth Judicial Circuit, in and for Orange County, Florida. Hawthorne Park proposed that these documents would help establish the timeline of the circuit court proceedings. Upon review, however, the only documents relevant to this administrative matter are those accepted into evidence as Amelia Court Exhibits 7 and 8. Therefore, Hawthorne Park's Second Request for Official Recognition is denied.

[6/] Florida Housing subsequently modified RFA 2018-112 on October 4 and October 18, 2018.

[7/] Hawthorne Park's Contribution Form - Grant is the only portion of its application challenged in this bid protest.

[8/] The SHIP Act is governed by sections 420.907-.9079. Under the SHIP Act, Florida Housing provides funds to local governments "as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government

comprehensive plan specific to affordable housing, and to increase housing-related employment." § 420.9072, Fla. Stat.

[9/] With the exception of the legitimacy of the SHIP grant, no party has alleged any other material errors in Hawthorne Park's application.

[10/] The circuit court specifically referenced the Assistance Plan, section II.E.a., which states:

> [t]he availability of funding will be marketed to the multi-family affordable housing development community and in accordance with SHIP requirements; the availability of SHIP funds, services and selection criteria will be advertised . . . through a request for proposals for private developers.

[11/] Towards this end, at the final hearing, Florida Housing submitted a Motion in Limine seeking to preclude the entry of any argument, evidence, or testimony regarding whether Orange County failed to act in accordance with its ordinances or procedures, except as might be relevant to prove that the person who signed a Contribution Form lacked the requisite authority to speak for the government entity, or that the grant was tainted by fraud, illegality, or corruption. No party objected to Florida Housing's motion. The undersigned granted the motion. See, e.g., Houston Street Manor LP v. Fla. Housing Fin. Corp., Case No. 15-3302 (Fla. DOAH Aug. 18, 2015), *adopted in toto* (FO Sept. 21, 2015).

[12/] Florida Housing's credit underwriting procedures are described in rule 67-48.0072, which provides:

> Credit underwriting is a de novo review of all information supplied, received or discovered during or after any competitive solicitation scoring and funding preference process. . . . The success of an Applicant in being selected for funding is not an indication that the Applicant will receive a positive recommendation from the Credit Underwriter or that the Development team's experience, past performance or financial capacity is satisfactory. The credit

> underwriting review shall include . . . the ability of the Applicant and the Development team to proceed. . . .

[13/] Ms. Button cautioned, however, that her testimony was not intended to serve as an advisory opinion or in some manner bind Florida Housing's future decisions on the award of tax credits to Hawthorne Park. Ms. Button urged that, as of the final hearing, she could not determine with any certainty whether or not Hawthorne Park would be able to proceed with its application for funding following the credit underwriting review.

[14/] No party alleged that Durham Place's application failed to satisfy all eligibility requirements or was otherwise ineligible for funding under RFA 2018-112.

[15/] In describing the basis for Florida Housing's final order, the appellate court referred to the ALJ's comments regarding Brownsville's reliance "on the future potential for clustering" as an approach to designate its development's location point. While the ALJ found that Brownsville proposed a "potentially viable process, Brownsville had not started the process before its application and there was no guarantee clustering would be approved as per [the local government representative's] testimony that he was not sure if the density transfer was even a viable option." Brownsville, 224 So. 3d at 894; Redding Dev. Partners, LLC v. Brownsville Manner, LP, et. al., Case No. 16-1138BID (Fla. DOAH Apr. 19, 2016), amended (FHFC FO Dec. 11, 2017). Florida Housing's final order adopted the ALJ's conclusion that Brownsville's application included a material, non-waivable deviation from the terms of the RFA that rendered Brownsville ineligible for funding.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 10 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.

BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DURHAM PLACE, LTD., AND
DURHAM PLACE DEVELOPER, LLC,

Petitioners,

v.

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

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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

Petitioner,

vs.

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

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

---/

PETITIONER, AMELIA COURT'S EXCEPTIONS TO RECOMMENDED ORDER

Pursuant to Sections 120.57(3)(e), Fla. Stat. and Rule 28-106.217, Fla. Admin. Code, Petitioner AMELIA COURT AT CREATIVE VILLAGE – PHASE II PARTNERS, LTD. ("Amelia Court") files its Exceptions to the Recommended Order entered into this matter on June 7, 2019 by Administrative Law Judge J. Bruce Culpepper of the Division of Administrative Hearings.

Background

1. This case concerns the proposed award of competitive housing credits for a development in Orange County, Florida, in RFA 2018-112, the "Six Large County" RFA. Florida

Housing had proposed to award the housing credits to Hawthorne Park.

2. Under the terms of the RFA, the highest scoring Orange County application which had secured a Local Government Area of Opportunity ("LGAO") funding-level commitment would be selected. Of seven (7) applicants from Orange County, only two claimed to have received LGAO funding commitments: Hawthorne Park and Amelia Court. Hawthorne Park was selected instead of Amelia Court because Hawthorne Park had a better lottery number (number 1 for Hawthorne Park, number 24 for Amelia Court).

3. Durham Place was the third place applicant in Orange County. It did not claim an LGAO-level contribution; it claimed only the base Local Government Contribution amount of $75,000 necessary to be eligible for consideration for funding.

4. Hawthorne Park's claimed LGAO contribution totaled $567,500, and consisted of a $317,500 Loan from Orange County and a $250,000 Grant from Orange County. Both were funded from Orange County SHIP funds.

5. Prior to the Florida Housing Application Deadline for this RFA, Atlantic Housing Partners, LLLP ("AHP"), the Developer of Amelia Court, filed suit in Orange County Circuit Court against Wendover Housing Partners, Ltd. (the development company behind the Hawthorne Park application) and Orange County, seeking declaratory and injunctive relief. AHP claimed that Orange County's award of SHIP funding for Hawthorne Park was illegal and invalid. AHP argued that Orange County's Local Housing Assistance Place ("LHAP"), adopted by ordinance as a statutory prerequisite to receiving SHIP funding from the state, required the County to conduct a competitive Request for Proposal ("RFP") process before awarding funding to private developers for multifamily rental housing. Orange County did not conduct an RFP before its Board of County Commissioners voted on October 16, 2018, to award $567,500 in SHIP funding to Hawthorne

Park.

6. AHP filed a Motion for Temporary Injunction with the Circuit Court. The Circuit Court conducted a full day of evidentiary hearing on the Temporary Injunction request on December 27, 2018. During that evidentiary hearing, all parties (including Hawthorne Park) were represented by counsel, and all parties presented documentary and testimonial evidence and had full and fair opportunities for cross-examination. On January 21, 2019, the day before Florida Housing's Review Committee meeting for RFA 2018-112, the Circuit Court entered a detailed, 17 page ruling granting a temporary injunction. A copy of that Temporary Injunction, which was admitted into evidence as Amelia Court Exhibit 7, is attached to these exceptions.

7. The Temporary Injunction order expressly found that Orange County violated the provisions of its SHIP Local Housing Assistance Plan by failing to issue a Request for Proposals before awarding funding for the Hawthorne Park application in RFA 2018-112. The Court characterized the SHIP funding as having been "illegally awarded to Wendover," and again as an "illegal award of SHIP funds as an LGAO." Temporary Injunction (Amelia Court Exh. 7) at p. 15, paragraphs 77 and 79. The Court then specifically enjoined Orange County "from awarding SHIP funds to Wendover as an LGAO for Orange County related to Hawthorne Park and the 2018 RFA [2018-112]." Id., at p. 17.

8. Florida Housing became aware of the issuance of the January 21 Temporary Injunction before Florida Housing's January 22 review committee met to score the applications in this RFA, when counsel for Amelia Court contacted FHFC's legal counsel and provided a copy of the Temporary Injunction.

9. Orange County and Wendover appealed the Temporary Injunction. Because an automatic stay is imposed whenever a public body (such as Orange County) initiates an appeal,

AHP immediately filed a motion with the Circuit Court to dissolve the automatic stay.

10. The Circuit Court's entered an Order Granting Motion to Vacate Automatic Stay on January 31, 2019, prior to the February 1, 2019 FHFC Board meeting at which the Board approved the review committee's funding selections. (FHFC's legal staff was made aware of the January 31 Order, prior to the Board's approval of the committee's funding selection.) The circuit court found "compelling circumstances" which justified vacating the stay. [Amelia Court Exh. 8, p. 2]

STANDARD OF REVIEW

11. Under § 120.57(1)(1), Fla. Stat., an agency reviewing a recommended order may reject or modify the findings of fact of an ALJ if "the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." *See, Padron v. Dep't of Envtl. Prot.*, 143 So. 3d 1037, 1040-41 (Fla. 3d DCA 2014), reh'g denied; *Stokes v. Bd. of Prof'l Eng'rs*, 952 So. 2d 1224, 1225 (Fla. 1st DCA 2007). "Competent, substantial evidence has been defined as such evidence as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred . . . ." *G.C. v. Dep't of Children & Families*, 791 So. 2d 17, 19 (Fla. 5th DCA 2001).

12. Section 120.57(1)(l), Fla. Stat., also authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So. 2d 1140, 1143 (Fla. 2d DCA 2001).

13. Controlling case law on appeals of agency final orders requires a party to raise issues by exception, or risk waiving the issue for subsequent judicial review. When a party to an administrative proceeding does not file exceptions to a recommended order, it waives objections

and those matters are not preserved for possible subsequent appellate review. *Kantor v. School Board of Monroe County*, 648 So. 2d 1266, 1267 (Fla. 3rd DCA 1995), citing *Environmental Coalition of Florida, Inc. v. Broward County*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991). Amelia Court takes exception to the findings of fact and conclusions of law described below.

PETITIONER'S EXCEPTIONS

Exception No. 1 – Findings of Fact Paragraphs 33, 37 and 46. Circuit Court Injunction Prevents Orange County's Award of SHIP Funds, Not Merely "Distribution" or "Release" of SHIP Funds.

14. At several points in the Recommended Order, the ALJ characterized the Temporary Injunction as preventing the "distribution" or "release" of SHIP funds. Amelia Court takes exception to the following underscored words contained in Findings of Fact 33, 37 and 46:

> 33. Through the Temporary Injunction, the circuit court enjoined Orange County from conveying the SHIP funds to Wendover for the Hawthorne Park development. . . .
>
> 37. Based on the Temporary Injunction, at this time, Orange County is not authorized to distribute the $250,000 SHIP grant to Hawthorne Park to help fund its housing project.
>
> 46. Hawthorne Park points out that the Temporary Injunction is a provisional decision by the circuit court. The purpose of the Temporary Injunction is to maintain the status quo by temporarily enjoining Orange County from releasing SHIP funds for the Hawthorne Park housing project.

It is unclear whether paragraph 46, and particularly the second sentence of paragraph 46, was intended by the ALJ to be his finding as to the purpose of the Temporary Injunction, or simply a recitation of Hawthorne Park's position.

15. In any event, the characterization of the Temporary Injunction as enjoining just the conveyance, distribution, or release of SHIP funds is not supported by the wording of the Temporary Injunction, or by any fair reading of its intent. Instead, what the Temporary Injunction

enjoined was the award of SHIP funds; i.e., the original award decision of the Orange County Board of County Commissioners that occurred on October 16, 2018.

16. The Temporary Injunction used the word "award" to describe the decision to award SHIP funds, not the release or distribution or conveyance of funds. See, for example:

> T.I. at para. 43: "Nonetheless, in the fall of 2018, Orange County awarded $567,500.00 in SHIP funds to Wendover for Hawthorne Park . . ."
>
> T.I. at para. 46: "Moreover, by awarding SHIP funds sufficient for Hawthorne Park to qualify as an LGAO, Orange County enabled Hawthorne Park to receive preference in the competition for 9% Tax Credits awarded by FHFC . . ."

Clearly, then, the Circuit Court used the word "award" to mean the County's act of deciding to grant (and loan) SHIP funds to Hawthorne Park.

17. The significance of this is that, by declaring the "award" illegal and invalid, there was no valid decision made by Orange County to award SHIP funds to Hawthorne Park. The Local Government Contribution forms included in the Hawthorne Park application, while appearing to be facially valid, are in fact invalid. It is not merely a matter of Hawthorne Park being prevented from "cashing the check" pending further action by the circuit court; it's a determination that there is no valid check.

18. In setting forth the relief granted, the Temporary Injunction states that: "Defendants are temporarily enjoined . . . from **awarding** SHIP funds to Wendover as an LGAO for Orange County related to Hawthorne Park and the 2018 RFA." [Temporary Injunction, p. 17, paragraph 3 (emphasis added)]

19. The Temporary Injunction also notes that the legislature requires local governments who participate in the SHIP program to develop and implement an LHAP, and that, while an LHAP is not required to include a competitive bidding process for SHIP funds, the circuit court notes

that:

> the Court concludes that that does not preclude a local government from opting, in its LHAP, to provide for a competitive process for the award of SHIP funds. In fact, there may be very good reasons (e.g., transparency in the award of public funds, avoidance of preferential treatment, etc.); in other words, the same reasons that justify competitive processes in areas of public procurement.

[Temporary Injunction, p. 6, footnote 2]

20. Thus, while Orange County was not required to implement a competitive procurement process for the award of SHIP funds, it chose to do so, and that process is designed to protect against the same public policy concerns that the competitive procurement process for affordable housing tax credits is designed to protect. Accordingly, a violation of the Orange County LHAP competitive bidding process should be considered a violation of the standards applicable here, whether the award was arbitrary, capricious, or contrary to competition.

Exception No. 2 – Conclusion of Law Paragraphs 83 through 86. The ALJ misunderstood and misapplied the holding of *Brownsville Manor, L.P. v. Redding Development Partners, LLC and Florida Housing Finance Corporation*, 224 So. 3d 891 (Fla. 1st DCA 2017).

21. At paragraphs 83 through 86 of his Recommended Order, the ALJ analogizes this case to the situation in *Brownsville Manor, L.P. v. Redding Development Partners, LLC, and Florida Housing Finance Corporation*, 224 So. 3d 891 (Fla. 1st DCA 2017). In doing so, the ALJ misunderstood and misapplied *Brownsville*.

22. In *Brownsville*, an applicant proposing an eighty-seven (87) unit "scattered site" development (on two parcels separated by a street) had designated its Development Location Point ("DLP"), from which the distance to services needed by tenants is measured, to be located on the smaller of the two parcels. *Id.*, at 893. Under FHFC Rule 67-48.002(33) (now found at (34)), the definition of "Development Location Point," a DLP for a scattered site development must be located on the parcel where the majority of the units in the development will be located; and must

be within 100 feet of a building containing apartments. *Id.* The smaller (1.45 acre) parcel on which Brownsville located its DLP could only accommodate thirty-six units, not a majority of the eighty-seven units. *Id.* Although it may have been possible to move units between the two parcels under a "clustering" process authorized by local zoning regulations, Brownsville had not initiated such process as of the FHFC Application Deadline, or even as of the time of final hearing. *Id.*, at 894. Florida Housing adopted an ALJ's recommended order finding the Brownsville application ineligible because, as of the Application Deadline, Brownsville did not comply with the rule requirements for DLP location.

23. On appeal, the rejection of the Brownsville application was reversed by the First District Court, which found that Brownsville was not required by FHFC to obtain site plan approval until credit underwriting. Brownsville might, in fact, qualify for "clustering," and its DLP might then in fact be on the parcel with the most units. In short, because it found the basis for rejection (the DLP being on a parcel that could not contain a majority of the development's units) to be unknowable as of the Application Deadline, the First District reversed the Final Order.

24. *Brownsville* is inapplicable because, under the logic employed by the First District, and as quoted by the ALJ in his Recommended Order in this case, the "configuration of a proposed development would be fleshed out in the final site plan approval process, which occurs after the application stage." *Id.*, at 894 [RO, page 36, para. 86] Only upon site plan approval conducted at the local government level would the number of units on each of the two parcels comprising the Brownsville site be known. *Id.*

25. By contrast, in the instant case, securing valid Local Government Area of Opportunity contributions must be accomplished prior to the Florida Housing Application Deadline. [RFA 2018-112, pp. 62, 65-66] Hawthorne Park obtained executed forms from Orange

County that appeared facially valid, but have since been judicially determined to be illegal and invalid. Contrary to the representation in the Hawthorne Park application, the LGAO contributions from Orange County to Hawthorne Park were invalid from the moment they were awarded in mid-October, 2018, because they were not the result of the RFP process required by Orange County's SHIP Local Housing Assistance Plan. It is arbitrary, capricious, clearly erroneous, and contrary to competition to continue to treat the forms as valid.

Exception No. 3 – Conclusions of Law 79 and 80. Circuit Court Injunction has Collateral Estoppel Effect such that it was Clearly Erroneous for the ALJ to Recommend that Florida Housing Select Hawthorne Park as the Prevailing Applicant.

26. The ALJ erred in concluding that the Temporary Injunction is non-binding and has no preclusive effect under the doctrines of collateral estoppel and issue preclusion. [RO, p. 32, paragraphs 79-80] The doctrines of collateral estoppel and issue preclusion are available in administrative proceedings in the same manner as they are available in judicial proceedings. *See, e.g., Hays v. State of Florida, Department of Business Regulation, Division of Pari-Mutuel Wagering*, 418 So. 2d 331 (Fla. 3d DCA 1982). Contrary to the ALJ's conclusions, a temporary injunction does have preclusive effect under Florida law, when certain elements are met. *See, e.g., Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1203 (Fla. 2d DCA 2014).

27. As detailed in Amelia Court's proposed recommended order (Amelia Court PRO, pp. 30-34, paragraphs 94-100, adopted by reference herein), all of the elements established by *Gawker* are met here, and the circuit court's ruling on the Temporary Injunction—that Orange County's award of SHIP funds to Hawthorne Park is illegal and invalid—should be given preclusive effect in this case to decide the same issue. Florida Housing should apply the circuit court's determination in the Temporary Injunction that Orange County's award of SHIP funds to Hawthorne Park was illegal as determinative of the same issue in this case under the doctrine of

issue preclusion (or, collateral estoppel).

28. The ALJ likewise erred in considering Amelia Court's argument collateral estoppel arguments to be based on the "law of the case" doctrine. [RO, p. 32, paragraph 79] Amelia Court's argument is not based on law of the case. Law of the case is not the same as issue preclusion; the doctrines apply under different circumstances and require different elements to be invoked. *See, e.g., Harris v. Lewis State Bank*, 482 So. 2d 1378, 1384 (Fla. 1st DCA 1986) (law of the case applies when successive appeals are taken in the same case); *Bradenton Group, Inc. v. State*, 970 So. 2d 403, 408–09 (Fla. 5th DCA 2007) ("collateral estoppel bars the re-litigation of specific issues that were litigated and decided in the former suit.") (citing *Zikofsky v. Mktg. 10, Inc.*, 904 So.2d 520, 525 (Fla. 4th DCA 2005)).

29. Hawthorne Park was present at the circuit court hearing on Amelia Court's motion for injunction and subjected itself to the circuit court's jurisdiction at that hearing. Hawthorne Park raised no objection to being a party at that hearing. Moreover, the circuit court hearing was a full evidentiary hearing and involved a full day of evidentiary presentations (including live testimony) and argument. Following the hearing, the circuit court entered a lengthy (17 page) and well-reasoned order granting the temporary injunction. Hawthorne Park had a full and fair opportunity to litigate the limited issue which Amelia Court contends should be granted preclusive effect, i.e., whether Hawthorne Park can claim a valid award of SHIP funds from Orange County.

30. Courts have held that prior decisions may be given preclusive effect only where the prior decision is based on a "decisive determination" not on the mere "likelihood of success." *Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1204 (Fla. 2d DCA 2014), and *see also, Miller Brewing Co. v. Jos. Schlitz Brewing Co.*, 605 F.2d 990, 995 (7th Cir. 1979). "[D]ecisions granting or denying preliminary injunctions may be sufficiently final to be given preclusive effect," but the

court further held that in order for decisions to have such effect, they must be "based upon a determination that constitutes an 'insuperable obstacle' to the plaintiff's success on the merits." *Abbott Labs. v. Andrx Pharm., Inc.*, 473 F.3d 1196, 1205 (Fed. Cir. 2007) (citations omitted). Said "insuperable obstacle" only exists where the prior decision is based on a decisive determination and not on the mere likelihood of success." *Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1204 (Fla. 2d DCA 2014) (citing *Andrx*, 473 F. 3d, at 1206)).

31. There is a limited universe of evidence that could be probative of whether Orange County's SHIP award to Hawthorne Park was invalid as non-compliant with the county LHAP's competitive procurement requirements. Specifically, the only matters relevant to that issue are: the requirements of Orange County's LHAP and Orange County's award to Hawthorne Park in derogation of those requirements. Hawthorne Park failed to identify what additional factual information or subject matters of discovery could possibly influence or alter the circuit court's determination regarding that issue. Hawthorne Park's arguments in that regard were conclusory and the ALJ erred by accepting them.

32. Here, the circuit court decisively determined that Orange County's SHIP award to Hawthorne Park was illegal. This determination was not simply based on Atlantic Housing's likelihood of success on the merits of its injunction claim. Thus, that conclusion is sufficiently "final" to be afforded preclusive effect under Florida law.

Exception No. 4 – Conclusions of Law 75 and 82. The ALJ Erred in Concluding that Florida Housing's Decision to Consider and Rank Hawthorne Park's Application was not Contrary to the Governing Statutes and Rules.

33. The ALJ's conclusions that Florida Housing's decision to consider and rank Hawthorne Parks' application was not contrary to Florida Housing's governing statutes, rules, and policies, and that Hawthorne Parks' contribution form was properly executed and valid at the time

Florida Housing accepted it, were erroneous. [RO p. 30, paragraph 75; p. 33, paragraph 82].

34. Rule 67-60.006, Fla. Admin. Code, provides that "[t]he failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of non-responsiveness with respect to its Application." By applying, each Applicant certifies that:

> Proposed Developments funded under this RFA will be subject to the requirements of the RFA, inclusive of all Exhibits, the Application requirements outlined in Rule Chapter 67-60, F.A.C., the requirements outlined in Rule Chapter 67-48, F.A.C. and the Compliance requirements of Rule Chapter 67-53, F.A.C.

(RFA at p. 6).

35. Florida Housing's award to Hawthorne Park is predicated on Orange County's award of SHIP funds to Hawthorne Park, which rendered Hawthorne Park the preferred status of an LGAO applicant. At the time Hawthorne Park submitted its Application in response to the RFA, both Hawthorne Park and Orange County knew or should have known that Orange County's award of SHIP funds to Hawthorne Park was void for failing to comply with the Orange County LHAP's requirements to conduct an RFP.

36. The Temporary Injunction was issued before Florida Housing scored the applications. The circuit court's order includes unequivocal rulings, not couched in terms of probabilities, but in terms of certainties, that Orange County's award of SHIP funds to Hawthorne Park was illegal and violated the county's LHAP. Moreover, Florida Housing received that order before formally scoring the applications at the review committee meeting, and it scored Hawthorne Park's application as if Hawthorne Park was a valid LGAO applicant, even though Florida Housing knew at that time, that Hawthorne Park was not a valid LGAO applicant, and that the award of SHIP funds Hawthorne Park claimed to qualify it as such had been judicially deemed invalid.

37. In addition, regardless of whether Florida Housing's original proposed action of accepting Hawthorne Park's LGAO status and selecting it for funding was arbitrary, capricious, or clearly erroneous at the time the actions were taken, it would be arbitrary, capricious and clearly erroneous to continue on that course now, with the factual record developed at the hearing. Like all administrative proceedings concerning agency action, a Section 120.57(3) hearing on a competitive award decision is a "de novo" proceeding. A petitioner is entitled to build a factual record upon which the agency decision will ultimately be based. Even under the modified type of "de novo" proceeding contemplated for competitive award cases[1], the factual record developed at hearing must have significance. The factual record for final agency action is not frozen in time as of the agency's initial decision, as that would render the right to a fact-finding hearing meaningless.

38. Accordingly, the ALJ's conclusions at RO paragraphs 75 and 82 that the decisions of Florida Housing, even in light of the Temporary Injunction, are not contrary to the RFA specifications are incorrect, and are clearly erroneous, and must be rejected.

Exception No. 5 – The ALJ erred by failing to dismiss Durham Place for failure to adequately allege standing and failure to prove its standing.

39. As noted, the "third place" Orange County applicant was Durham Place, Ltd. In order for a third place applicant to have standing to participate in a competitive proceeding, in which only one applicant will be selected, that third place applicant must allege facts that would demonstrate that neither of the two higher ranked applicants are entitled to be selected. The ALJ's RO treats Durham Place as if it had standing to proceed. [RO pp. 26-27, paragraph 67 and pp. 36-37, paragraphs 87-88]

40. Durham Place filed its initial Formal Written Protest and Petition for Formal

[1] See, *State Contracting and Eng'g Corp. v. Department of Transportation*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998)

Administrative Proceedings on February 15, 2019. Amelia Court filed a Notice of Appearance and Motion to Dismiss on February 27, 2019, for failure to adequately allege standing. Before the motion could be heard, Durham Place filed an Amended Formal Written Protest on March 1, 2019. Amelia Court renewed its Motion to Dismiss once the case was referred to DOAH. The Motion was granted, and Durham Place was given leave to amend.

41. Durham Place then filed a Second Amended Formal Written Protest, to which both Amelia Court and Florida Housing responded with Motions to Dismiss. Amelia Court and Florida Housing both argued that Durham Place only challenged the eligibility of Amelia Court, and did not challenge the preliminarily selected applicant Hawthorne Park. The ALJ denied the motions to dismiss by order entered April 11. In footnote 2 to the third paragraph of his Preliminary Statement, the ALJ expressly stated that Durham Place "amended its formal written protest to include allegations challenging Florida Housing's award to Hawthorne Park." This is incorrect; Durham Place only asserted that, if Amelia Court is successful in challenging Hawthorne Park, and if Amelia Court is then also deemed ineligible, then Durham Place would be funded. This is not the same as Durham Place challenging both of the higher ranked applicants, which Florida law clearly requires it to do.

42. A protestor in a competitive award case must allege in its petition that all competitors ranked ahead of it are either ineligible/non-responsive, or otherwise are not entitled to the award. *See*, *Preston Carroll Company v. Florida Keys Aqueduct Authority*, 400 So. 2d 524, 525 (Fla. 3rd DCA 1981)("Preston Carroll, as third low bidder, was unable to demonstrate that it was substantially affected; therefore lacked standing to protest the award of the contract to another bidder"); and, see also, *Silver Express Company v. Miami-Dade Community College*, 691 So. 2d 1099, 1100 (Fla. 3rd DCA 1997) (". . . Silver Express, as third-ranked proponent, did not have

standing to challenge the first-ranked proposal in the absence of a challenge to the second-ranked proposal," quoting hearing officer's recommendation which was adopted by the College, and which was affirmed on appeal, *Silver Express Co. v. Miami-Dade Community College*, 691 So. 2d 14 (Fla. 3rd DCA 1997)).

43. In *Madison Highlands, LLC v. Florida Housing Finance Corporation*, 220 So. 3d 467 (Fla. 5th DCA 2017), the Court cited *Preston Carroll* regarding standing requirements in competitive bidding cases, adding, "An applicant who submits the fifth lowest bid does not have a substantial interest, unless the applicant can establish that the four higher-ranked applications must all be rejected or re-calculated, resulting in the protesting filer being ranked highest." *Madison Highlands*, 220 So. 3d at 473 (citing *Preston Carroll*, 400 So. 2d at 525). The Court reversed dismissal of the petition of the fifth-ranked Madison Highlands, noting that the petition "alleges that the applications of the four higher-ranked applicants had deficiencies and that if FHFC had properly scored or considered the higher ranked applicants, [Madison Highlands] would have been awarded the housing tax credits[.]" 720 So. 3d at 474.

44. Durham Place made no such allegation that both Hawthorne Park and Amelia Court "had deficiencies;" Durham Place only challenged the application of Amelia Court.

45. The proof of Durham Place's actual intent in this case was revealed in Durham Place's post-hearing proposed recommended order ("PRO"). In its PRO, Durham Place did not request as its relief in the case that it would be awarded funding. Instead, Durham Place requested that Hawthorne Park be awarded funding. See, Durham Place PRO, at paragraphs 52 and the proposed recommendation.

46. Durham Place was clearly not seeking the award of the tax credit funding for an Orange County development for itself. This was expressly pointed out to the ALJ by Amelia Court

in its own PRO, at paragraph 72. Durham Place had filed and served its PRO on May 9, 2019, the day before it was due, so it was available for review by Amelia Court and its counsel before Amelia Court's PRO was finalized and timely filed. The ALJ erred in not dismissing Durham Place for failure to allege standing and to prove standing. Durham Place should be dismissed.

Exception No. 6 – Conclusion of Law Paragraphs 89 and 90 and Recommendation

47. For the reasons set forth in these exceptions, Amelia Court takes exception to the first two sentences of Conclusion of Law 89 and the entirety of Conclusion of Law 90, and the ultimate recommendation to select Hawthorne Park for funding and to dismiss the protest of Amelia Court:

> 89. In sum, the evidence in the record establishes that Florida Housing's award to Hawthorne Park followed the selection process outlined in RFA 2018-112. At the final hearing, Florida Housing presented good faith, factual, and logical reasons why it found Hawthorne Park's application complied with the mandatory Eligibility Items detailed in RFA 2018-112, and then ranked Hawthorne Park higher than its competitors. (The undersigned reaches the same conclusion regarding Amelia Court's second ranked application.)
>
> 90. Conversely, Amelia Court failed to demonstrate that Florida Housing's award of tax credits to Hawthorne Park was made in a manner that was clearly erroneous, contrary to competition, arbitrary, or capricious. Therefore, Amelia Court did not meet its burden of proving that Florida Housing's decision to provide tax credit funding for Hawthorne Park's proposed housing development was contrary to its governing statutes, rules, or policies, or RFA 2018-112's terms or provisions. Florida Housing's selection of Hawthorne Park should not be set aside.
>
> RECOMMENDATION
>
> Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Housing Finance Corporation enter a final order dismissing the protests of both Amelia Court and Durham Place. It is further recommended that the Florida Housing Finance Corporation select Hawthorne Park as the recipient of tax credit funding for Orange County under RFA 2018-112.

48. The Circuit Court determined, by Temporary Injunction entered January 21, 2019, that Orange County's award of SHIP funding for Hawthorne Park was illegal and invalid. While Florida Housing would not have known that on the November 13, 2018 Application Deadline for RFA 2018-112, Hawthorne Park and Orange County knew or should have known that the SHIP award was invalid at that time.

49. Florida Housing was certainly aware of the court's determination on invalidity when the review committee took action on January 22, and when the Board took action on February 1. But, more importantly, the invalidity of SHIP award remains effective today, and for Florida Housing to award SHIP funding to Hawthorne Park today would be contrary to the RFA. Without the SHIP award, Hawthorne Park is not entitled to the LGAO preference, and to treat Hawthorne Park as if it was entitled to the LGAO preference would be contrary to the RFA specifications, in a manner that is arbitrary (not supported by fact), capricious (contrary to fact), and clearly erroneous.

50. The Conclusions of Law should be modified to conclude that Amelia Court did meet its burden of showing that Hawthorne Park was not entitled to funding. The ALJ's Recommendation should be rejected and the requested tax credit funding should be awarded to Amelia Court.

FILED AND SERVED this 12th day of June, 2019.

/s/ M. Christopher Bryant

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed by e-mail with the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 (CorporationClerk@floridahousing.org), and copies have been furnished to the following by e-mail this 12th day of June, 2019:

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/s/ M. Christopher Bryant
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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT, IN AND FOR ORANGE COUNTY, FLORIDA

ATLANTIC HOUSING PARTNERS, L.L.L.P., a Florida limited liability limited partnership,

Plaintiff,

vs.

ORANGE COUNTY, FLORIDA, a political subdivision of the State of Florida; and WENDOVER HOUSING PARTNERS, LLC, a Florida limited liability company,

Defendants.

CASE NO. 2018-CA-012227

TEMPORARY INJUNCTION

THIS MATTER came before the Court on November 30, 2018 for a hearing on Defendant, Wendover Housing Partners, LLC's Motion for Expedited Discovery and Motion to Dismiss Plaintiff's Complaint ("Motion to Dismiss"), and on December 27, 2018 for an evidentiary hearing ("Hearing") on Plaintiff, Atlantic Housing Partners, L.L.L.P.'s ("Atlantic") Emergency Motion for Temporary Injunction ("Motion for Temporary Injunction"), and the Court having reviewed the Motion to Dismiss and the Motion for Temporary Injunction, having considered the testimony and documentary evidence presented at the Hearing, having heard argument of counsel, and being otherwise fully advised in the premises, hereby makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. At issue is whether Orange County should be temporarily enjoined from awarding funding to Defendant Wendover Housing Partners, LLC's ("Wendover")

Hawthorne Park affordable housing project under Florida's State Housing Initiative Partnership ("SHIP") program.

2. Plaintiff, Atlantic, argues that the award of funding was illegal because Orange County failed to comply with its prescribed rule established under Orange County's adopted Local Housing Assistance Plan ("LHAP") which, Atlantic contends, only allows for the award of SHIP funds to multi-family construction projects based upon a request for proposals ("RFP") process.

3. Defendants argue that the funding was not illegal because an RFP process was not required. All parties agree that the determination of the legality of the SHIP award would impact the awarding of Federal Income Tax Credits by Florida Housing Finance Corporation ("FHFC") set to be made on February 1, 2019, hence the immediate need for a preliminary determination of the legality of the SHIP award by Orange County.

4. At the hearing, the evidence established the following.

5. Plaintiff, Atlantic Housing Partners, L.L.L.P. is an affordable housing developer doing business in Orange County, Florida.

6. Atlantic regularly competes for public finance funding in Orange County and other Florida counties.

7. Atlantic is the developer of a multi-family rental project known as Amelia Court, which was selected as the affordable housing element in the "Creative Village" development project, a 68-acre mixed-use, transit-oriented, urban infill project in the Parramore neighborhood in downtown Orlando.

8. Amelia Court Phase II ("Amelia Court"), which is currently under construction, is scheduled to receive its certificate of occupancy upon completion in the

early summer of 2019.

9. Defendant, Orange County, Florida, is a political subdivision of the State of Florida responsible for the administration of local funding for the public financing of affordable housing projects in Orange County, Florida.

10. Defendant, Wendover Housing Partners, LLC, is a developer of affordable multi-family rental projects. Wendover is the developer of a prospective affordable housing project known as "Hawthorne Park," planned for development in the Pine Hills neighborhood of Orange County, Florida.[1]

11. The evidence presented at the hearing demonstrated the importance of public financing resources to support the development of affordable housing projects.

12. Affordable housing projects often require financial assistance to remain economically viable because the developments charge below market rental rates. Local governments provide such financial assistance, often operating under the auspices of state-funded programs such as Florida's SHIP program.

13. Economically viable and sustainable development of affordable housing in urban areas with mid-rise or high rise construction may often not be feasible without significant public resources. The only economically viable public resources available for development of urban mid-rise or high rise residential development are Federal Housing Tax Credits allocated through state agencies, such as FHFC.

14. Federal Housing Tax Credits represent one of the more advantageous forms of public financial assistance. The testimony of the witnesses at the hearing identified two

[1]At the hearing, Wendover's attorneys clarified that the name of the party competing for the tax credits at issue as Hawthorne Park, Ltd. Although Hawthorne Park, Ltd. has not been named as a party to the action, its attorneys submitted this entity to the jurisdiction of this Court.

(2) common forms of such credits: (a) a nine percent (9%) tax credit; and (b) a four percent (4%) tax credit.

15. The nine percent (9%) tax credits, which are dispensed annually by the FHFC through a competitive process, typically suffice to provide the necessary public financial assistance to support an affordable housing project. The four percent (4%) tax credits, issued as a matter of course by FHFC – but not competitively – are the companion public resource to the issuance of tax-exempt bonds to finance affordable housing projects.

16. Because the demand for nine percent (9%) Federal Housing Tax Credits ("9% Tax Credits") to fund affordable housing projects exceeds available allocations, developers must go through a competitive process to be awarded the 9% Tax Credits. FHFC initiates the process to award the 9% Tax Credits through a Request for Applications ("RFA"), inviting developers to submit applications for the 9% Tax Credits.

17. To be eligible to respond competitively to the RFA, applicants must receive sufficient local government support demonstrated, in part, by the provision of funding in a minimum amount set forth by FHFC in an RFA, such that the local government deems the project a "Local Government Area of Opportunity" ("LGAO"), commonly referred to as a "Preference Project."

18. In the current FHFC RFA 2018-112 ("2018 RFA") applicable to this case, a local government may only select one development project to receive LGAO funding, colloquially referred to as a "Super Contribution" (Joint Ex. 2 at p. 67). The selected project will receive preference in consideration for the 9% Tax Credits awarded by FHFC.

19. The 2018 RFA established the minimum LGAO funding commitment of $625,750.00 for mid-rise concrete projects in Orange County, such as Amelia Court (Joint

Ex. 2 at p. 68).

20. Under the terms of the 2018 RFA, only one (1) project in Orange County will be awarded the 9% Tax Credits (Joint Ex. 2 at pp. 73-74).

21. On or about October 8, 2018, the City of Orlando awarded a financial commitment to Atlantic for Amelia Court for LGAO funding in the amount of $625,750.00. The City of Orlando funded the award through the City's Community Redevelopment Agency ("CRA")(Pltf.'s Ex. 12).

22. At the time the City of Orlando awarded funds, Atlantic stood as the only affordable housing developer that had received LGAO funding in Orange County.

23. Described colloquially in the Hearing as the "Golden Ticket," the LGAO designation identifying Amelia Court as the preference project for the City of Orlando would have given Atlantic a substantial advantage in the ranking of affordable housing projects submitted by applicants to FHFC. Prior to Orange County's award of LGAO funding to Wendover, Amelia Court was positioned to receive the 9% Tax Credit award for a development located in Orange County

24. The SHIP program constitutes one of the primary programs for funding affordable housing through local governments. The SHIP program operates within a statutory framework established in Chapter 420, Fla. Stat.

25. Section 420.9072(1)(b), Fla. Stat., evidences the Legislature's intent that the SHIP program "provide the maximum flexibility to local governments to determine the use of funds for housing programs while ensuring accountability for the efficient use of public resources…"

26. Section 420.9072(2)(b), Fla. Stat., provides that "[a] county…must adopt

an ordinance containing…[a]doption by resolution of a local housing assistance plan [LHAP]…"

27. Section 420.9072(7)(a), Fla. Stat., provides "[a] county…must expend its portion of the local housing distribution only to implement a local housing assistance plan…"

28. Section 420.9073(7), Fla. Stat., provides "[a] county receiving local housing distributions…shall expend those funds in accordance with provisions of ss. 420.907-420.9079, rules of the corporation, and the county's local housing assistance plan."

29. Thus, the legislative scheme requires local governments who participate in in the SHIP program to develop and implement an LHAP.[2]

30. As prescribed by the state statute governing the SHIP program, local governments cannot deviate from the LHAP once implemented.

31. Orange County has adopted and maintained an LHAP.

32. The most recent LHAP applicable to the events at issue, dated February 6, 2018, describes the process by which SHIP funding can be awarded by Orange County. In pertinent part, the LHAP states:

> [t]he availability of funding will be marketed to the multi-family affordable housing development community and in accordance with SHIP requirements; the availability of SHIP funds, services and selection criteria will be advertised…through a request for proposals for private developers.

(Joint Ex. 1 at II.E.a.).

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[2]It is undisputed that the statute itself does not require competitive bidding for SHIP funds through a request for proposals. However, the Court concludes that that does not preclude a local government from opting, in its LHAP, to provide for a competitive process for the award of SHIP funds. In fact, there may be very good reasons (*e.g.*, transparency in the award of public funds, avoidance of preferential treatment, etc.); in other words, the same reasons that justify competitive processes in areas of public procurement.

33. Although Defendants contested whether the awarding of SHIP funds to developers of multi-family projects could only be made through an RFP process, the language of the LHAP expressly contemplates just such a process.

34. The Court's conclusion is supported by the testimony of Scott Culp, principal of Atlantic, who has extensive experience in the public financing of affordable housing projects.

35. Defendants argued around the plain language of the LHAP, suggesting, among other things, that the use of an RFP was optional, but the Court is not persuaded by the argument, specifically as relates to multi-family construction.

36. Moreover, the prior conduct of Orange County seemed consistent with the Court's reading of the LHAP and related Orange County documents.

37. For example, the Notice of Funding Availability ("NOFA") published by Orange County on February 22, 2018, presaged the requirement for an RFP, stating: "[e]ligible sponsors such as developers, non-profits, and builders who provide affordable housing will need to respond to future requests for proposals (RFPs) which will be advertised at a later date" (Joint Ex. 3).

38. Thus, Orange County's LHAP contemplates an RFP process, and Orange County's NOFA suggested, consistent with the LHAP, that an RFP would be forthcoming prior to the award of SHIP funds.

39. Furthermore, Mitchell Glasser, who heads Orange County's Housing and Community Development Division, admitted in testimony and prior written correspondence Orange County's intent to utilize an RFP to award funding for tax credit applicants in 2019 (Pltf.'s Exs. 4 and 5).

40. Although Mr. Glasser equivocated on whether he believed RFPs had ever been contemplated before awarding SHIP funds to Wendover, Orange County's own agenda memorandum submitted to the Board of County Commissioners proves that Mr. Glasser (and Orange County) knew that SHIP funding for multi-family construction contemplated an RFP, stating:

> [g]iven the short turnaround time for FHFC's RFA, Orange County is not able to conduct its own [RFP] to select a preference project; however, the County may select a project it believes offers unique opportunities and is beneficial to the County.

(Joint Ex. 4 at p. 3).

41. Had the LHAP not required an RFP for the award of funding to multi-family construction projects, there would have been no reason to mention the intent to proceed without one.

42. Glasser made repeated assertions in response to inquiries from Atlantic's representatives indicating Orange County did not intend to award local government funding (*i.e.*, a "Super Contribution") to support developers applying for the 9% Tax Credits to be issued by FHFC. (Pltf.'s Exs. 4 and 5.)

43. Nonetheless, in the fall of 2018, Orange County awarded $567,500.00 in SHIP funds to Wendover for Hawthorne Park in support of its efforts to obtain 9% Tax Credits (Pltf.'s Ex. 7).[3]

44. In doing so, Orange County did not issue an RFP, and instead proceeded through a process in which unnamed or unidentified participants decided that Wendover's

[3]This sum ($567,500.00) represents the minimum local government funding required for a concrete construction garden apartment project such as Hawthorne Park to qualify as a LGAO for purposes of ranking in the 2018 RFA for 9% Tax Credits (Joint Ex. 2 at p. 68).

Hawthorne Park project alone would be offered up to the Board of County Commissioners as the sole candidate to receive an award of the amount of SHIP funds necessary to qualify as an LGAO, and then awarded the funds to Hawthorne Park.

45. Orange County's designating Hawthorne Park to receive an award of SHIP funding sufficient to qualify as an LGAO without a competitive RFP process precluded Atlantic from competing for Orange County's award of SHIP funding sufficient to qualify as an LGAO in the 2018 RFA.

46. Moreover, by awarding SHIP funds sufficient for Hawthorne Park to qualify as an LGAO, Orange County enabled Hawthorne Park to receive preference in the competition for 9% Tax Credits awarded by FHFC in the 2018 RFA to a project in Orange County.

47. All things being equal, the competition between Amelia Court and Hawthorne Park for the 9% Tax Credits under the 2018 RFA would have to be decided by which project receives the better lottery number.

48. Since the evidence showed that Hawthorne Park has already received the lowest lottery number, barring a fatal error in its application, Hawthorne Park would stand to receive the 9% Tax Credits based upon Orange County's award to Wendover of SHIP funds sufficient to qualify as a LGAO.

49. Amelia Court's only opportunity to receive nine percent (9%) federal tax credits – and thus be economically viable as an affordable housing project – exists under the 2018 RFA. Amelia Court will not be eligible to apply for future nine percent (9%) federal tax credits because it will have completed construction of Amelia Court in the early summer of 2019.

50. Wendover, on the other hand, has not commenced construction on Hawthorne Park and will be eligible to apply for tax credits from FHFC in future cycles.

51. Defendants advanced several arguments to blunt the impact of Orange County's failure to issue an RFP before awarding the SHIP funds for multi-family construction in an amount sufficient to qualify an applicant as an LGAO. Defendants argued that the NOFA provided sufficient notice to Atlantic to allow it to compete for these funds. This is not so; the NOFA specifically says that an RFP will be issued before SHIP funds are awarded to multi-family developers (Joint Ex. 3). Accordingly, Atlantic could reasonably have concluded that it would not be required to apply for SHIP funding until an RFP had been issued by Orange County.

52. Defendants also suggest the NOFA adequately notified developers to apply for the SHIP funds, arguing that the $75,000 figure designated for multi-family construction in the NOFA is a "per unit" (per apartment) figure. This argument contradicts Orange County's LHAP, which shows in Exhibit C "Total SHIP Dollars" available for multi-family construction in Fiscal Year 2017-2018 of only $75,000 (Joint Ex. 1 at p. 33). Moreover, the language in the NOFA clearly describes $75,000.00 as the total funds available for multi-family construction.

53. Defendants have also argued to this Court that the public advertisement of the Board of County's Commissioners' regular meeting provided adequate notice allowing Atlantic to compete for SHIP funds; but, the notice did not invite competitive submittals by competing developers. It advised of Orange County's intent to select Hawthorne Park as the designated recipient of SHIP funds sufficient to qualify it as an LGAO in the 2018 RFA (Joint Ex. 4).

54. Atlantic's representative, Scott Culp, credibly testified that Atlantic would have applied for SHIP funding sufficient to qualify for the designation as an LGAO by Orange County for one of Atlantic's other projects, had such an RFP been issued.

55. In anticipation of the Court's temporarily enjoining the award of SHIP funds for Hawthorne Park, Defendant Wendover offered testimony claiming it will suffer damages for which it should be bonded. Specifically, Defendant Wendover argued it would suffer $7,754,728.00 in damages if enjoined from claiming Orange County's designation as an LGAO in its application for 9% Tax Credits to FHFC (Def. Wendover's Ex. 22).

56. Defendant Wendover's claim suffers from numerous deficiencies. First, the alleged damages are not only speculative, they are also significantly overstated. Defendants have repeatedly argued to this Court that the ultimate award of 9% Tax Credits is not a sure thing, even for an applicant with LGAO preference; yet Wendover asks this Court to assume its losses are assured, which is contradictory, at best. More importantly, however, Wendover's calculation of losses is beset with fatal defects. Its calculation of lost residual value based upon the income net of operations fails to account for debt service contemplated by the developer. The projections also fail to account for the gross uncertainty in the true cost and future revenues of the project without knowing the terms of the construction contract, the impact of declining cash flows over the life of the project, the variance in median income levels, and the vagaries of "cap rates" to establish value.

57. Based upon Wendover's own projections, the residual value of the project would only be $248,164.00.

58. Additionally, there is no testimony that Wendover would not be able to develop the Hawthorne Park property as economically viable market rate rental housing as

it had argued was the alternative for Amelia Court.

59. Furthermore, testimony at the hearing identified the realistic potential and historic examples of applying for tax credits in future cycles and successfully developing an economically viable affordable housing community with those resources.

60. Alternatively, Wendover's "loss," if any, would be the cost of preparing its application to FHFC, which is estimated to be $25,000.00, and certainly significantly less than Wendover's projected Predevelopment Expenses.

CONCLUSIONS OF LAW

61. This Court has jurisdiction over the dispute between the parties because it concerns an illegal award of funds made by Orange County.

62. Atlantic has standing to challenge the award of SHIP funds by Orange County to Wendover because Atlantic was a potential competitor for such funding.

63. The cases relied on by Wendover to contest Atlantic's standing are unavailing.[4] Those cases implicate a private citizen's right to enjoin public action where the would-be plaintiff can show no special injury, and they are an outgrowth of taxpayer challenge cases. By contrast, in *Accela, Inc. v. Sarasota County*, 901 So. 2d 237 (Fla. 2d DCA 2005), the appellate court reversed the trial court's summary judgment on standing grounds, finding that "the plaintiffs had standing to complain because they were potential competitors who had a right to seek a determination of whether competitive bidding was required." *Accela*, 901 So. 2d at 238. So, too, does Atlantic have standing here.

64. A court may enter a temporary injunction against a municipality to restrain

[4] *Smith v. City of Fort Myers*, 994 So. 2d 1092 (Fla. 2d DCA 2006); *Solares v. City of Miami*, 166 So. 3d 887 (Fla. 3d DCA 2015).

it from "the arbitrary exercise of its lawful powers." *Town of Palm Beach v. Palm Beach County,* 332 So. 2d 355, 357 (Fla. 4th DCA 1976).[5]

65. Section 420.9072(1)(b), Fla. Stat., evidences the Legislature's intent that the SHIP program "provide the maximum flexibility to local governments to determine the use of funds for housing programs while ensuring accountability for the efficient use of public resources..."

66. Section 420.9072(2)(b), Fla. Stat., provides that "[a] county...must adopt an ordinance containing...[a]doption by resolution of a local housing assistance plan [LHAP]..."

67. Section 420.9072(7)(a), Fla. Stat., provides "[a] county...must expend its portion of the local housing distribution only to implement a local housing assistance plan..."

68. Section 420.9073(7), Fla. Stat., provides "[a] county receiving local housing distributions...shall expend those funds in accordance with provisions of ss. 420.907-420.9079, rules of the corporation, and the county's local housing assistance plan."

69. Thus, the legislative scheme requires local government who participate in in the SHIP program to develop and implement an LHAP, and then to expend those funds, inter alia, "...in accordance with...the county's local housing assistance plan." § 420.9073(7), Fla. Stat.

70. Orange County has adopted and maintained an LHAP.

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[5]Orange County is, of course, a county, and not a municipality. While Orange County raised the issue of whether a court can enjoin a county at the Hearing, the issue was not briefed, despite the Court's invitation. Moreover, Plaintiff has pleaded for a writ of mandamus, which is an appropriate form of relief against a state subdivision. Accordingly, the Court concludes that entry of an injunction under these circumstances is a corollary to Plaintiff's claimed entitlement to a writ of mandamus.

71. The Court concludes that, as a matter of law, Orange County had, and has, a duty to comply with its own LHAP.

72. The most recent LHAP applicable to the events at issue, dated February 6, 2018, describes the process by which SHIP funding can be awarded by Orange County.

73. In pertinent part, the LHAP states:

> [t]he availability of funding will be marketed to the multi-family affordable housing development community and in accordance with SHIP requirements; the availability of SHIP funds, services and selection criteria **will be advertised...through a request for proposals for private developers.**

(Joint Ex. 1 at II.E.a.)(emphasis added).

74. By the plain terms of its own LHAP, Orange County was required to conduct an RFP to award SHIP funds to Wendover for the Hawthorne Park project.

75. Wendover's attempt to parse the applicable portions of the LHAP into language pertaining to tax credit, and non-tax credit, projects is not convincing. Orange County, at other portions of its LHAP, did expressly differentiate between tax credit, and non-tax credit, projects; for example, in delineating the terms of recapture and default, it expressly identified the terms applicable "[f]or tax credit projects" and those applicable "[f]or non-tax credit projects" (Joint Ex. 1 at II.E.e.). No such distinction appears in the generally applicable "Summary of the Strategy" (Joint Ex. 1 at II.E.a.). Because Orange County demonstrated the ability to differentiate between tax credit, and non-tax credit, projects when it intended to do so, the Court concludes that the "Summary of the Strategy" contained in the LHAP requiring the use of an RFP procedure does not distinguish between tax credit, and non-tax credit, projects, and that the language contained therein applies irrespective of whether a given project is a tax credit, or non-tax credit, project.

76. Because Orange County deviated from the requirements of its LHAP in failing to issue an RFP and allow competing developers to apply for the funds, Atlantic has shown a substantial likelihood of succeeding on the merits.

77. Atlantic has suffered irreparable harm because it was prevented from competing for the SHIP funding illegally awarded to Wendover. Moreover, Atlantic will continue to suffer irreparable harm because Wendover's illegal claim of Orange County's Super Contribution on its application to FHFC jeopardizes the commitment of Atlantic's Amelia Court project to affordable housing.

78. Atlantic does not have an adequate remedy at law. The award of money damages is not an adequate remedy at law because Atlantic's damages cannot be adequately measured. *Thompson v. Planning Com'n of City of Jacksonville,* 464 So. 2d 1231, 1238 (Fla. 1st DCA 1985)(holding that remedy at law is inadequate when damages cannot be adequately measured due to uncertainties and variables).

79. Atlantic's ability to challenge the award of tax credits to Wendover through an administrative appeals process at FHFC does not provide an adequate remedy at law because Wendover should not be permitted to compete given its illegal award of SHIP funds as an LGAO from Orange County in the first place.

80. Section 420.9075(13), Fla. Stat., does not provide an adequate remedy at law because it identifies FHFC's enforcement powers relating to the SHIP program to address institutional deficiencies described as "patterns of violations of the criteria for a local housing assistance plan," and specific violations of "applicable award conditions" by an eligible sponsor or person after the receipt of an award, neither of which applies to the instant case. *See* § 420.9075(13)(a), Fla. Stat.

81. Further, even in the event a local government violates its LHAP, the consequence appears to be FHFC's suspension of the distribution of additional SHIP funds to the offending local government until the violation is corrected, not a rescission or cancellation of local awards of the SHIP funds already awarded by the local government. Taken as a whole, Section 420.9075(13), Fla. Stat., is a regulatory compliance mechanism, and not an avenue for a private developer to seek redress for an alleged violation of a local government LHAP.

82. An injunction serves the public interest because Orange County's awarding of SHIP funds without the required competitive process, and in direct violation of its own LHAP, runs afoul of public policy. Moreover, Section 420.9072(1)(b), Fla. Stat., provides that the Legislature intended for local governments to have "maximum flexibility," while also ensuring "accountability for the efficient use of public resources." The public interest is served in requiring compliance with Orange County's own LHAP, especially inasmuch as the LHAP contemplates a competitive process which has its own inherent merits.

83. In determining the bond amount, this Court has discretion to consider the likelihood that the Defendants will be successful in overturning the temporary injunction. The damages, if any, suffered by Defendant Wendover, are either speculative or limited. Therefore, the bond imposed on Atlantic should be nominal. By virtue of all of the foregoing, it is accordingly

ORDERED and ADJUDGED as follows:

1. The Motion to Dismiss is DENIED.

2. The Motion for Temporary Injunction is GRANTED.

3. Defendants[6] are temporarily enjoined, pending a final adjudication and the granting or permanent relief, from awarding SHIP funds to Wendover as an LGAO for Orange County related to Hawthorne Park and the 2018 RFA. This injunction does not enjoin any process related to the award of SHIP funding for any other RFA.

4. As a condition of this temporary injunction, Plaintiff shall post a bond in the amount of $25,000.

DONE AND ORDERED in Chambers in Orange County, Florida this 21st day of January 2019.

CHAD K. ALVARO
Circuit Judge

Copies to Counsel of
Record via ePortal

[6]Inasmuch as FHFC is not a party to these proceedings, necessarily, this injunction does not enjoin any activity of FHFC.

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DURHAM PLACE, LTD. AND
DURHAM PLACE DEVELOPER, LLC,

Petitioners,

v.

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

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

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

Petitioner,

v.

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

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____/

HAWTHORNE PARK, LTD. AND HAWTHORNE PARK DEVELOPER, LLC'S AND DURHAM PLACE, LTD. AND DURHAM PLACE DEVELOPER, LLC'S RESPONSE TO EXCEPTIONS

Petitioners Durham Place, Ltd. and Durham Place Developer, LLC ("Durham Place"), and Intervenors Hawthorne Park, Ltd. and Hawthorne Park Developer, LLC ("Hawthorne Park"), by and through the undersigned counsel, and pursuant to Section 120.57, Florida Statutes ("F.S."), and Rule 28-106.217, Florida Administrative Code ("F.A.C."), hereby submit the following Response to the Exceptions filed by Petitioner Amelia Court at Creative Village -

Phase II Partners, Ltd. ("Amelia Court") to the Recommended Order issued in this proceeding, and state as follows:

STANDARD OF REVIEW

Section 120.57(1)(l), F.S., sets forth the standard for exceptions to conclusions of law and provides that:

> The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact.

Section 120.57(1)(l), F.S., also sets forth the standard for exceptions to findings of fact and provides that an agency reviewing a recommended order may not reject or modify the findings of fact of an administrative law judge ("ALJ") "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence" or that the proceedings on which the findings were based did not comply with essential requirements of law. Section 120.57(1)(l), F.S.; Charlotte Cty. v. IMC Phosphates Co., 18 So. 3d 1089 (Fla. 2d DCA 2009); Wills v. Fla. Elections Comm'n, 955 So. 2d 61 (Fla. 1st DCA 2007). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" is explained as: "the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." Dept. of Highway Safety and Motor

Vehicles v. Wiggins, 151 So. 3d 457 (Fla. 1st DCA 2014) (quoting DeGroot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957)).

Section 120.57(1), F.S., expressly precludes the Board of Florida Housing Finance Corporation ("Florida Housing") from rejecting findings of fact that are based upon competent substantial evidence. Stokes v. Bd. of Prof. Eng'rs, 952 So. 2d 1224 (Fla. 2007). Furthermore, a reviewing agency may not reweigh the evidence presented at a Division of Administrative Hearings ("DOAH") final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. See, e.g., Rogers v. Dep't of Health, 920 So. 2d 27, 30 (Fla. 1st DCA 2005); Belleau v. Dep't of Envtl. Prot., 695 So. 2d 1305, 1307 (Fla. 1st DCA 1997); Dunham v. Highlands Cty. Sch. Bd., 652 So. 2d 894 (Fla. 2d DCA 1995). As explained in Walker v. of Prof'l Eng'rs, 946 So. 2d 604 (Fla. 1st DCA 2006) (quoting Heifetz v. Dep't of Bus. Regulation, 475 So. 2d 1277 (Fla. 1st DCA 1985)):

> Factual issues susceptible of ordinary methods of proof that are not infused with policy considerations are the prerogative of the hearing officer as the finder of fact. It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Where there is conflicting or differing evidence, and reasonable people can differ about the facts, an agency is bound by the ALJ's reasonable inference based on the conflicting inferences arising from the evidence. Greseth v. Dep't of Health and Rehab. Servs., 573 So. 2d 1004, 1006 -1007 (Fla. 4th DCA 1991). Furthermore, if there is competent substantial evidence to support an

ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. See, e.g., Arand Constr. Co. v. Dyer, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); Conshor, Inc. v. Roberts, 498 So. 2d 622 (Fla. 1st DCA 1986). In addition, an agency has no authority to make independent or supplemental findings of fact. See, e.g., North Port, Fla. v. Consol. Minerals, 645 So. 2d 485, 487 (Fla. 2d DCA 1994). Therefore, if the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing the Final Order. See, e.g., Walker v. Bd. of Prof. Eng'rs, 946 So. 2d 604 (Fla. 1st DCA 2006); Dep't of Corr. v. Bradley, 510 So. 2d 1122, 1123 (Fla. 1st DCA 1987).

GENERAL STATEMENT

Though Amelia Court raises some ancillary issues that do not change the ALJ's final determination, its primary argument, which was fully argued and briefed in the administrative proceeding, is its continued misrepresentation that the Temporary Injunction is a final determination. Even ignoring the title of the document attached to Amelia Court's exceptions ("**TEMPORARY** INJUNCTION"), the Temporary Injunction clearly states that "Defendants are ***temporarily enjoined***, pending a final adjudication and the granting [of] permanent relief...." Acknowledging the express terms of the Temporary Injunction and the applicable facts and law, the Administrative Law Judge found that "the Temporary Injunction, without more, does not automatically void Orange County's selection of Wendover/Hawthorne Park for the SHIP grant. Therefore, the Contribution Form – Grant that Hawthorne Park submitted with its application remains in effect unless and until the circuit court issues a final ruling." (R.O. ¶46). The ALJ further concluded that the "Temporary Injunction does not constitute a binding or final ruling that the SHIP grant is invalid. Neither does the Temporary Injunction preclude Florida Housing

from considering Hawthorne Park's application under the terms of RFA 2018-112." Therefore, for purposes of RFA 2018-112, the Circuit Court's Temporary Injunction Order ("Order") does not impact the award as neither its findings nor its conclusions are binding or conclusive in this administrative proceeding. Finally, the Order is not applicable in this proceeding because, by its own terms, it does not enjoin any activity of the Florida Housing. Amelia Court's version of the "facts" does not change this reality.

RESPONSES TO EXCEPTIONS

Response to Exception No. 1

Amelia Court states that this exception is to Findings of Fact numbers 33, 37 and 46, but does not actually enunciate any specific objections to the findings other than its continued inaccurate suggestion that the Temporary Injunction is a final determination. Amelia Court continues its attempt to blur the clear line between a temporary and permanent injunction. Based upon this flawed argument, Amelia Court argues that the ALJ's ultimate conclusions were faulty. In Exception No. 1 Amelia Court is attempting to argue, again, that the Temporary Injunction was retroactive and should be interpreted as invalidating Orange County's decision to issue the Local Government Contribution forms included in the Hawthorne Park application. Amelia Court's alternative interpretation was suggested throughout the administrative hearing and in paragraphs 38-41 of Amelia Court's Proposed Recommended Order.

Amelia Court's interpretation was rejected by the Administrative Law Judge and fails as there is competent substantial evidence in the record supporting the finding that the Temporary Injunction did not invalidate Orange County's issuance of the Local Government Contribution forms. Amelia Court's error appears to be based in it lack of understanding of the law regarding injunctions. Florida law is well settled; an injunction will not be issued to address a past act. In

South Dade Farms, Inc. v. Peters, 88 So. 2d 891 (Fla., 1956), the Florida Supreme Court quoted its prior decision in Davis v. Wilson, 190 So. 716, 719 (Fla. 1956), stating:

> It is likewise well settled in this state that an injunction will not be issued to restrain an injurious act already committed. Pensacola & Ga. R. Co. v. Spratt, 12 Fla. 26, 91 Am.Dec. 747; Smith v. Davis, 22 Fla. 405; relief, if any, being in a court of law. Wilkinson v. Woodward, 105 Fla. 376, 141 So. 313; Hernandez v. Board of Commissioners of Hillsborough County, 114 Fla. 219, 153 So. 790.

Despite Amelia Court's suggestions to the contrary, in addition to the express language in the Temporary Injunction, the Circuit Court correctly recognized that it could not through injunction, prohibit a past act, i.e., Orange County's decision to commit funds to the Hawthorne Park development.

Response to Exception No. 2

In Exception No. 2, Amelia Court attacks the ALJ's comparison of this case to that in Brownsville Manor, L.P. v. Redding Dev. Partners, LLC, and Fla. Hous. Fin. Corp., 224 So. 3d 891 (Fla. 1st DCA 2017). However, its argument, once again, comes down to its suggestion that the findings in the Temporary Injunction are somehow final and binding. As discussed in the Proposed Recommended Order and the Responses to Exceptions Nos. 1, 3 and 4, both of these suggestions were rejected by the ALJ as being contrary to well established law.

Response to Exception No. 3

Amelia Court takes exception to Conclusions of Law 79 and 80 by re-raising its arguments in paragraphs 79-80 and 94-100 of its Proposed Recommended Order. Amelia Court incorrectly argues that collateral estoppel applies to this proceeding. This argument was rejected by the ALJ.

A judgment in one action is given conclusive effect in a second action only where the prior judgment is a relevant ***final*** judgment. Klak v. Eagles' Reserve Homeowners' Ass'n, Inc., 862 So. 2d 947, 951 (Fla. 2nd DCA 2004); see also Fla. Dep't of Transp. v. Juliano, 801 So. 2d

101, 105 (Fla. 2001) ("[a] judgment on the merits rendered in a former suit" is required for application of res judicata); Thoman v. Ashley, 170 So. 2d 332, 333 (Fla. 2d DCA 1964) ("One of the necessary elements in rendering a cause res judicata is a prior **final** judgment.") (emphasis added).[1] Here, the Circuit Court's Order cannot be applied for conclusive effect because the temporary injunction is not a final judgment by its express terms: "pending a final adjudication and the granting [of] permanent relief." It remains unclear why Amelia Court continues to push this falsehood given that it has actually filed a motion requesting that a final judgment be issued.

Response to Exception No. 4

Amelia Court's exception to Conclusions of Law 75 and 82 is predicated upon its continuing argument that the Orange County award was "void." There is no evidence supporting this incorrect allegation. Again, Amelia Court is attempting to convert the Temporary Injunction to a final determination. It is well established that a trial court's findings on a temporary injunction generally do not constitute "law of the case." Kozich v. DeBrino, 837 So. 2d 1041, 1043-44 (Fla. 4th DCA 2002) (reversing trial court's dismissal of counterclaim where court relied on findings made at the temporary injunction hearing). Unless a hearing for temporary injunction is specially set as the final hearing on a claim for injunctive relief, and the parties have had a full opportunity to present their cases, the findings of fact and conclusions of law made by the court at the temporary injunction hearing are not binding on the court on final hearing. See

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[1] Amelia Court relies primarily on Gawker Media, LLC v. Bollea, 129 So. 3d 1196 (Fla. 2d DCA 2014) to support its preclusion argument, but misrepresents both the holding of Gawker and the nature of the Temporary Injunction here. Gawker specific states that it is applying the "federal rules of preclusion" because a federal court ruling was at issue and cites a Federal Circuit case that has not been adopted in the Eleventh Circuit. Id. at 1203 (citing Abbott Labs. v. Andrx Pharm., Inc., 473 F.3d 1196 (Fed. Cir. 2007)). Nevertheless, even the Federal Circuit case discussed in Gawker requires "judicial finality" based on a "decisive determination and not on the mere likelihood of success" for preclusion to apply. Id. at 1203-04. Here, the Temporary Injunction found only that "Atlantic has shown a substantial likelihood of succeeding on the merits" (Temp. Inj. ¶76), and stated that "a final adjudication" would occur later. (Id. at p. 17).

e.g., City of Jacksonville v. Naegele Outdoor Adver. Co., 634 So. 2d 750, 754 (Fla. 1st DCA 1994). As noted by the Second District Court of Appeal, "[b]ecause a decision based on a less-than-full hearing—such as the issuance or denial of a preliminary injunction—is by its very nature provisional, it would be nonsensical to give it binding effect on the subsequent proceedings in the same case." Klak v. Eagles' Reserve Homeowners' Ass'n, Inc., 862 So. 2d 947, 951 (Fla. 2nd DCA 2004). In its exceptions, Amelia Court is attempting to push such a "nonsensical" argument.

Response to Exception No. 5

As the agency does not have substantive jurisdiction over standing determinations, it may not reject or modify the conclusions of law regarding Durham Place's standing in this proceeding.

CONCLUSION

In sum, Amelia Court's arguments that the Recommended Order's Findings of Fact are not based on competent substantial evidence are inaccurate; instead, Amelia Court is attempting to have the agency improperly insert and reweigh evidence which simply does not exist. As explained previously, if there is competent substantial evidence to support an ALJ's findings of fact, it is irrelevant that there may also be competent substantial evidence supporting a contrary finding. See, e.g., Arand Construction Co. v. Dyer, 592 So. 2d 276, 280 (Fla. 1st DCA 1991); Conshor, Inc. v. Roberts, 498 So. 2d 622 (Fla. 1st DCA 1986). Amelia Court's remaining exceptions are to the Recommended Order's Conclusions of Law regarding the applicability of the Temporary Injunction and Durham Place's standing. Neither of these legal issues is within the substantive jurisdiction of Florida Housing. Therefore, pursuant to Section 120.57(1)(l), F.S., neither of these legal conclusions should be rejected or modified.

WHEREFORE, Hawthorne Park and Durham Place respectfully request, for the reasons set forth above, that the Board of Directors reject each and all of Amelia Court's Exceptions, and adopt the Findings of Fact, Conclusions of Law and Recommendation set forth in the Recommended Order as its own and issue a Final Order consistent with same in this matter.

RESPECTFULLY SUBMITTED this 17th day of June, 2019.

MANSON BOLVES DONALDSON VARN, P.A.

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CERTIFICATE OF SERVICE

HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of Florida Housing and served via electronic mail on the following this 17th day of June, 2019:

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/s/ Craig D. Varn
Craig D. Varn

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

DURHAM PLACE, LTD. AND
DURHAM PLACE DEVELOPER, LLC

Petitioner, DOAH Case No. 19-1396BID

v. FHFC Case No. 2019-012BP

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

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

Petitioner, DOAH Case No. 19-1397BID

v. FHFC Case No. 2019-019BP

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

RESPONDENT FLORIDA HOUSING'S RESPONSE TO PETITIONER AMELIA COURT'S EXCEPTIONS TO RECOMMENDED ORDER

Respondent, Florida Housing Finance Corporation, hereby submits its Response to Petitioner Amelia Court's Exceptions, pursuant to Rule 28-106.217, Fla. Admin. Code.

The Findings of Fact in the Recommended Order will be referenced as (FOF #). The Conclusions of Law in the Recommended Order will be referenced as (COL #). The transcript of the administrative hearing will be referenced as (T. pg. #).

Response to Exception 1.

Petitioner takes exception to Findings of Fact #33, #37, and #46, in which the Administrative Law Judge (ALJ) used various words other than "award" when describing the effect of the Temporary Injunction issued by the Circuit Court in Orange County. Whether those specific words appear in the Temporary Injunction or not, there is competent substantial evidence to show that Orange County was temporarily enjoined from "conveying," "releasing," or "distributing" SHIP funds for the Hawthorne Park development. The fact that the county may also have been temporarily enjoined from "awarding" SHIP funds does not make the use of other descriptors inaccurate. Nor has Petitioner demonstrated how the ALJ's choice of wording could impact any of the findings or conclusions of the Recommended Order; its explanation of the significance is simply another argument that the Local Government Contribution Forms "are in fact invalid." Since the ALJ found that "the Temporary Injunction, without more, does not automatically void Orange County's selection of Wendover"/Hawthorne Park for the SHIP grant" (FOF #46), whether or not he could have more accurately described that injunction is irrelevant.

Findings of Fact #33, #37, and #46 are supported by competent substantial evidence, and no demonstration has been made that different wording could have led to different findings or conclusions. For these reasons, Petitioner's Exception #1 should be rejected.

Response to Exception #2.

Petitioner takes exception to Conclusions of Law #83, #84, #85, and #86, in which the ALJ discussed the applicability of Brownsville Manor, LP v. Redding Development Partners, LLC, 224 So. 3d 891 (Fla. 1st DCA 2017). Conclusions of Law #83-85 simply describe the holdings in Brownsville, and Petitioner does not actually object to any language in these conclusions. In Conclusion of Law #86, the ALJ notes certain similarities between Brownsville and the present case. It appears, though, that while the ALJ considered the holding in Brownsville to be supportive of his conclusions, there is no indication that he felt compelled or even influenced to reach his conclusions in the present case because of the precedential value of Brownsville.

As the ALJ properly found, submission of a properly completed Contribution Form is a mandatory eligibility item in this RFA. He also properly found that the RFA requires the local contribution to be paid within 90 days after the Development is placed in service. What he did not specifically conclude, and what should not be implied, is that an application that includes an improperly completed Contribution

Form could still be found eligible because any problems with the contribution could be addressed during credit underwriting.

The ALJ's comparison of the Brownsville case with the present case may or not have been useful, but there is no indication that it he improperly relied on an inapplicable precedent, or that any conclusions or recommendations are based upon an incorrect reading of that case. For this reason, Petitioner's Exception #2 should be rejected.

Response to Exception #3

Petitioner takes exception to Conclusions of Law #79 and #80, in which the ALJ cited cases indicating that temporary injunctions do not constitute binding or final rulings on the merits of a case.

Generally speaking, a temporary injunction is not a final adjudication on the factual and legal merits of a case, and is not given a conclusive effect. *See, e.g.,* Klak v. Eagles' Reserve Homeowners' Ass'n, Inc., 862 So. 2d 947, 951 (Fla. 2d DCA 2004) Petitioner argues in its Proposed Recommended Order that a temporary injunction may in some cases constitute "judicial finality" and thus have a preclusive effect on other litigation. In order for this to be the case, several elements must be met.

> Whether the resolution in the first proceeding is sufficiently firm to merit preclusive effect turns on a variety of factors: 'To claim the benefit of collateral estoppel the party relying on the doctrine must show that: (1) the issue at stake is identical to the one involved in the

> prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the determination of the issue in the prior litigation must have been 'a critical and necessary part' of the judgment in the first action; and (4) the party against whom collateral estoppel is asserted must have had a full and fair opportunity to litigate the issue in the prior proceeding.'

Gawker Media, LLC v. Bollea, 129 So. 3d 1196, 1204 (Fla. 2d DCA 2014) (quoting Christo v. Padgett, 223 F.3d 1324, 1339 (11th Cir. 2000) (citations omitted).

Petitioner argues that Hawthorne Park had a full and fair opportunity to litigate the issue in the prior proceeding. Hawthorne Park, in its Proposed Recommended Order, argues that it did not. Even assuming that Petitioner's reliance on Gawker is warranted, there is no evidence and no testimony presented in this case to demonstrate that all of the elements cited by Petitioners have been met. The only testimony regarding the circuit court case was that there was a hearing, it took all day, evidence was taken, and discovery is still ongoing. (T. pp. 134, 138) It was therefore not unreasonable for the ALJ to conclude that the general rule that a temporary injunction has no binding effect would be applicable in this case. Such a reading is also consistent with the express language of the temporary injunction, which noted that its action was temporary "pending a final adjudication and the granting of permanent relief."

The ALJ's conclusions regarding the effect of the temporary injunction on the current case were based on a reasonable reading of relevant case law on the subject. Florida Housing has no particular or inherent expertise in interpreting this case law,

and no compelling reason has been offered to reject the ALJ'S legal conclusions. For this reason, Petitioner's Exception #3 should be rejected.

Response to Exception #4.

Petitioner takes exception to Conclusions of Law #75 and #82, in which the ALJ concluded that Florida Housing's decision to award funding to Hawthorne Park at this stage in the solicitation process was not contrary to its governing statutes, its rules or policies, or the specifications of the RFA. These conclusions are consistent with the ALJ's other findings and conclusions, are supported by competent substantial evidence, and are a reasonable interpretation of relevant case law and the facts of this case. For these reasons, Petitioner's Exception #4 should be rejected.

Response to Exception #5.

Petitioner takes exception to the ALJ's ruling, not specifically reflected in the Recommended Order, that Durham Place had standing to participate in this proceeding as a party. This issue was raised in Motions to Dismiss filed prior to the administrative hearing, and on April 11, 2019, the ALJ issued an order denying the motions. Pursuant to §120.57(1)(l), F.S., an agency may only reject or modify those conclusions of law over which it has substantive jurisdiction. As the question of standing is not within the substantive jurisdiction of Florida Housing, Petitioner's Exception #5 should be rejected.

Response to Exception #6.

Petitioner takes exception to Conclusions of Law #89 and #90 and to the ultimate Recommendation, in which the ALJ concluded that Florida Housing's decision to award funding to Hawthorne Park at this stage in the solicitation process was not contrary to its governing statutes, its rules or policies, or the specifications of the RFA, and that Amelia Court had failed to demonstrate that Florida Housing's proposed action was clearly erroneous, contrary to competition, arbitrary or capricious. These conclusions are consistent with the ALJ's other findings and conclusions, are supported by competent substantial evidence, and are a reasonable interpretation of relevant case law and the facts of this case. For these reasons, Petitioner's Exception #6 should be rejected.

WHEREFORE, Florida Housing respectfully request that the Board of Directors reject the arguments presented in Petitioner Amelia Court's Exceptions, and adopt the Findings of Fact, Conclusions of Law, and Recommendation of the Recommended Order as its own and issue a Final Order consistent with same in this matter.

Respectfully submitted on this 17th day of June, 2019.

/s/ Chris McGuire
Chris McGuire
Florida Housing Finance Corporation
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 17th day of June, 2019 to:

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