

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES CHALLANCIN,

Petitioner,

vs.

Case No. 20-1354

DEPARTMENT OF ECONOMIC
OPPORTUNITY,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham, Division of Administrative Hearings (“DOAH”), for final hearing by Zoom teleconference on October 13, 2020.

APPEARANCES

For Petitioner: James Challancin
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8761 Highway 78, West
Okeechobee, Florida 34974

For Respondent: Brandon W. White, Esquire
James M. Jordan, Esquire
Department of Economic Opportunity
107 East Madison Street, Mail Stop 110
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STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner’s single-family residence is an “eligible structure” for purposes of receiving housing assistance under the Rebuild Florida Housing Repair and Replacement Program.

PRELIMINARY STATEMENT

By letter dated December 16, 2019, Respondent Department of Economic Opportunity (“DEO”) notified Petitioner James Challancin (“Challancin”) that his application for housing assistance under the Rebuild Florida Housing Repair and Replacement would be denied based upon the determination that “the damaged property [i.e., Challancin’s residence,] is not an eligible structure type per program policies and the Department of Housing and Urban Development requirements.” Challancin timely requested a formal hearing to contest this preliminary determination, and, on March 13, 2020, his petition was filed with DOAH.

The final hearing took place on October 13, 2020, with both parties present. Although Challancin has the burden of proof, the parties agreed at hearing that DEO should present its case first, which it did. DEO called two witnesses, Andy Janacek and Joanne Mis, and offered Respondent’s Exhibits A, B, C, F, G, and H, which were admitted. Challancin testified on his own behalf and moved Petitioner’s Exhibits A through E into evidence.

The final hearing transcript was filed on November 6, 2020, and shortly thereafter the parties timely filed their respective proposed recommended orders, which have been considered.

Unless otherwise indicated, citations to the official statute law of the State of Florida refer to Florida Statutes 2020.

FINDINGS OF FACT

1. DEO is the state administrative agency responsible for disbursing federal funds allocated to Florida for disaster recovery pursuant to a U.S. Department of Housing and Urban Development (“HUD”) block grant. In June 2018, HUD approved the state’s Action Plan for rebuilding those areas

in Florida which were most impacted by Hurricane Irma, agreeing to fund the Rebuild Florida Housing Repair and Replacement Program (the “Program”). The Program provides financial assistance to Florida homeowners for fixing hurricane-damaged residential structures, using federal funds appropriated to the Community Development Block Grant Program under the Supplemental Appropriations for Disaster Relief Act of 2017.¹

2. To administer the Program, DEO developed a detailed policy manual called the Single Family Owner-Occupied Housing Guidelines (the “Guidelines”). The Guidelines are approved by HUD and may not be modified without HUD’s consent. As relevant, the Guidelines enumerate both “eligible structures” and “ineligible structures.” To receive assistance under the Program, an owner or occupant’s housing must be an “eligible structure.”

3. Challancin owns and occupies a housing “structure” in Okeechobee, Florida, which he purchased in 2012 and has lived in ever since. Challancin considers his dwelling to be a “mobile home,” whereas DEO deems it a “camper trailer.” This disagreement is at the heart of the instant dispute because, under the Guidelines, mobile homes are among the “eligible structures,” while camper trailers are on the list of “ineligible structures.” What is not disputed, however, is that whatever its type, the subject structure is Challancin’s permanent residence (the “Residence”). It is hereby found, as stated in Department of Economic Opportunity’s Proposed Recommended Order (“*DEO-PRO*”), that the Residence “is used as a residence and [is] recognizable as such.” *DEO-PRO* at 8.

4. The Residence suffered damage due to Hurricane Irma. In May 2019, Challancin applied to DEO seeking assistance under the Program. In his application, when asked to describe the “structure type” of his housing, Challancin identified the Residence as a “mobile home.” In fact, the

¹ The Community Development Block Grant Program comes under DEO’s jurisdiction pursuant to section 20.60(5)(b)2., Florida Statutes.

Residence incorporates a 32-foot 1984 Corsair trailer (the “Corsair”) as a structural element of the building envelope, and, at all times relevant, the Corsair has been registered as a mobile home with the Department of Highway Safety and Motor Vehicles.

5. Yet, although the Corsair is an identifiable and distinct part of the Residence, the Residence indisputably comprises other structural elements as well, including a common roof, several walls, and a ceiling, which elements together form a unified single building that exists as a separate creation, at once integrated with—and more than—the Corsair. The undersigned adopts, as accurate, the following description of the Residence, by DEO:

[The Residence] consists of [the Corsair], to which additional rooms have been attached on one side, all capped with a single roof which extends over a carport/patio on the other side. The carport/patio is met by a driveway. A sidewalk runs from the driveway to an external door to one of the attached rooms.

DEO-PRO at 5. Further, as DEO correctly states, the Residence “is affixed directly to one or more contiguous, concrete slabs and is attached to utilities and an external HVAC unit.” *Id.* at 6.

6. The Residence is a unique structure, and for that reason photographs might be more helpful than words in depicting this atypical dwelling.

Figure 1, below, shows the front of the Residence.



Figure 1

The Corsair is in the center, with the covered patio to the right, and the “additional rooms” to the left. Hurricane damage to the roof can also be seen in the picture.

7. Figure 2 is a photograph of the back of the Residence. The Corsair (outlined in yellow highlighter) is located to the left of the “additional rooms.” It is, noticeably, less than half the width of those attached rooms. The central HVAC unit mentioned above is on the ground, adjacent to the Corsair. Look closely, and, in the circle above the HVAC, the Corsair’s license plate is visible.



Figure 2

8. The covered patio is shown in Figure 3, as is the Corsair, which forms the outer wall of the Residence on this side of the building.



Figure 3

9. The other side of the Residence, opposite the patio, is shown in Figure 4.



Figure 4

10. The total area of the Residence is 568.90 square feet, which means that the combined width of the Corsair plus the additional rooms is approximately 17.78 feet (since the length of the Corsair is 32 feet). The enclosed “floor area” within the building envelope (i.e., the portion “under air”) is 514.90 square feet. Although the record lacks specific measurements, a back-of-the-envelope calculation, based on the observation that the Corsair appears to be roughly 40% as wide as the entire building (see Figure 2), reveals that the Corsair contributes approximately 206 square feet to the Residence, while the “additional rooms” afford approximately 309 square feet of living space. To be clear, these are admittedly not precise numbers. What the rough numbers drive home, however, is that the Residence is not *just* the Corsair; indeed, the Corsair is *not even most* of the Residence.

11. In arguing over whether the Corsair is a mobile home or a camper trailer, the parties have misidentified the ultimate issue as being whether *the Corsair* is an eligible structure. The real issue, which the parties have overlooked, is whether *the Residence* is an eligible structure. As discussed above, the Residence and the Corsair are two different things.

12. It is found that, regardless of whether *the Corsair* is considered to be a mobile home or a camper trailer, *the Residence*, as a matter of fact, is *neither* a mobile home nor a camper trailer. The Residence, rather, is an integrated structure of which the Corsair is a connected and contiguous component, which forms a single, unified building envelope under a common roof.

13. Because the Residence is not a camper trailer, it is determined, as a matter of ultimate fact, that the Residence is *not* an “ineligible structure” for the reason advanced by DEO.

14. At the same time, because the Residence is not, in fact, a mobile home, it cannot be considered an “eligible structure” qua mobile home. This is not fatal to Challancin’s application for assistance, however, because, while all mobile homes are eligible structures pursuant to the Guidelines, not all eligible structures are mobile homes.

15. Because there is no basis in law or fact for deeming the Residence as anything other than a physically unified, structurally integrated, single-family residential dwelling, it is determined, as an ultimate fact, that the Residence *is* an “eligible structure” for purposes of receiving housing assistance under the Program.

CONCLUSIONS OF LAW

16. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

17. As an applicant for housing assistance, Challancin has the burden of proof in this proceeding. *See, e.g., Fla. Dep’t of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

18. As a preliminary matter, it must be noted that the Guidelines have not been adopted as rules. DEO asserts that it is required to follow the Guidelines, which HUD has approved, as a condition of receiving federal funds for the Program. No doubt this is true. Nothing in the record suggests, however, that HUD’s approval of the Guidelines either precludes DEO from adopting them as rules or exempts DEO from the rulemaking requirements prescribed in the Florida Administrative Procedure Act. In short, compliance with the HUD-approved Guidelines and adoption of the Guidelines as rules are not mutually exclusive courses of action.

19. Yet, the Guidelines—or at least the portions thereof upon which DEO is relying in determining Challancin’s substantial interests—are almost certainly rules by definition. *See* § 120.52(16), Fla. Stat. DEO is clearly applying the Guidelines’ definitions of “eligible structures,” “ineligible structures,” and “mobile/manufactured housing units” as if these provisions had the full force and effect of law and applied generally to all applicants.

20. As a matter of law, neither the undersigned, nor DEO, may determine Challancin’s substantial interests based upon an unadopted rule. *See* § 120.57(1)(e)1., Fla. Stat. The problem here is that the Guidelines are the stuff of the Program, the only source, apparently, of detailed criteria for its

administration. Without the Guidelines, every eligibility determination, for example, would need to be made on an ad hoc basis, as there are no other generally applicable standards of decision.

21. The question, then, is this: If, following section 120.57(1)(e), Challancin's substantial interests were not determined based upon the Guidelines, upon what would the determination of his interests be based? While the undersigned hesitates to apply the Guidelines as law, since they have not been adopted as rules, as a practical matter he has little choice but to do so. Fortunately, in this instance, Challancin's interests should be determined *in his favor* under the Guidelines, which makes the unadopted rule dilemma less urgent. If Challancin's application for housing assistance is approved, DEO's failure to adopt the Guidelines as rules will effectively be moot, at least as far as Challancin is concerned.

22. Section 1.8 of the Guidelines defines the eligible and ineligible structure types as follows:

Eligible Structures:

1. Single family stick-built dwelling units.
2. Attached structures under the common roof of the damaged single structure and permanently affixed to the structure.
3. Mobile/Manufactured Housing Units (MHUs) may be eligible for repair under this program. However, to be cost effective, the MHU to be rehabilitated must be no more than five years old at the time of assistance and the repair costs necessary to rehabilitate the MHU must not exceed \$15,000 (hard and soft construction costs). Any MHU that is older than five years old or has an estimated repair cost greater than \$15,000 will require the MHU to be replaced with another MHU or modular home. If rehabilitated, the MHU must meet program standards upon completion. Replacement MHUs will meet applicable Green

Building Standards. Local zoning and code requirements will be observed by the program.

4. A structure where any portion of the dwelling is composed of a MHU, no matter how extensive the additions or modifications are, will be considered for repair or replacement on a case-by-case basis.

5. MHUs may only be replaced with another MHU where land use restrictions do not prohibit replacement of the MHU.

6. Condominiums, townhomes and other owner-occupied units that share a common wall may be eligible structure types. However, there are additional restrictions related to common areas in such structures. Reference Section 1.8.1 for additional restrictions specific to Condominiums, townhomes, and other structures with shared walls.

7. Duplexes, triplexes and quadplexes are eligible single family structure types under the HRRP as long as one unit is owner-occupied.

8. Structures that are used for both residential and commercial purposes will be considered for eligibility on a case-by-case basis; however, if the structure is approved, repairs may be limited to the residential portion[.]

Ineligible Structures:

1. Garages, sheds and outbuildings not attached to the main dwelling unit are not eligible for repair. Improvements must be physically attached to the structure and be permanent in nature to be eligible.

2. Recreational Vehicles and camper trailers used as a residence are not eligible for the program.

3. Houseboats used as a residence are not eligible for the program.

4. Second homes are not eligible under the single family repair and replacement program as described in these guidelines.

5. Seasonal, short-term and vacation rental properties are not eligible for assistance.

6. Housing units located where federal assistance is not permitted by federal regulation, including floodways, or within runway clear zones of either a civil or military airport are not eligible.

23. DEO contends that the Corsair is a recreational vehicle or camper trailer and, thus, a Category 2 “ineligible structure.” This argument is rejected for several reasons. First, the Guidelines do not define the terms “recreational vehicle” (“RV”) or “camper trailer.” The Guidelines do, however, define the term “Mobile/Manufactured Housing Unit (MHU)” as follows:

A structure, transportable in one or more sections which, in the traveling mode is 8 body-feet or more in width, or 40 body-feet or more in length, or when erected on site, is at least 320 square feet, is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. Sometimes referred to as mobile homes. A MHU is built to the specifications required in the Manufactured Home Construction and Safety Standards Act of 1974, 42 U.S.C. 70 § 5401 et seq. MHUs display a red certification label on the exterior of each transportable section. Manufactured homes are built in the controlled environment of a manufacturing plant and are transported in one or more sections on a permanent chassis.

DEO’s argument, essentially, is that, because the Corsair does not satisfy the foregoing definition of MHU, it must be an RV or camper trailer. This argument is a bit suspect, from a logical standpoint, because it assumes, without establishing, that the Corsair must be an MHU, RV, or camper

trailer. Absent formal definitions of “RV” and “camper trailer” for this purpose, however, this premise is not necessarily true.

24. That said, the undersigned agrees with DEO that the Corsair, as a standalone vehicle, would not fall under the Guidelines’ definition of MHU. The undersigned also agrees that the Corsair, as a standalone vehicle, could reasonably be called a “travel trailer” or “camper trailer” as those terms are used in everyday discourse. But then, so too could one who is engaging in common conversation reasonably refer to the Corsair, on its own, as a “mobile home,” for that term is flexible enough to describe a large, live-in trailer such as the Corsair, especially when it has been affixed to real property and is being used as a permanent residence. Given that DEO has not adopted a rule defining “camper trailer” for purposes of the Program, the undersigned hesitates to conclude that the Corsair, as a standalone vehicle, must be deemed a “camper trailer” simply because it is not an “MHU” as that term is specifically defined in the Guidelines.

25. Second, and more important, the Corsair, as a standalone vehicle, is *not* being used as a residence. As found above, the Residence, in fact, is a single, integrated, standalone building which *incorporates* the Corsair as a structural element, but is not coterminous with the Corsair. However one categorizes the Corsair as a standalone vehicle, *the Residence* is not a “camper trailer” under the plain meaning of that term, and it is ultimately the Residence whose structure type matters here.

26. Finally, DEO has not adopted a rule defining the term “ineligible structure” to include a structure any portion of which is composed of a camper trailer or RV. To construe Category 2 ineligible structures as including dwellings, such as the Residence, which incorporate a camper trailer as a structural element would give that category a meaning not readily apparent from a literal reading of the text, thereby *amplifying* the unadopted rule dilemma previously mentioned, in clear violation of section 120.57(1)(e).

27. It is concluded that the Residence is not a Category 2 ineligible structure.

28. The final question is whether the Residence is an eligible structure. Because the Residence is a single-family owner-occupied dwelling that is not specifically described as an ineligible structure, the Residence should be eligible by process of elimination. This is because, logically, a structure must be either eligible or ineligible; a structure which is not eligible is necessarily ineligible, and vice versa.

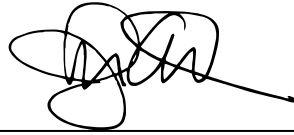
29. Here, as a matter of fact, the Residence is a Category 2 eligible structure, because it comprises “attached structures under the common roof of the damaged single structure” and all of its components are integrated and “permanently affixed” to one another, forming a single residential dwelling.

30. In closing, it is worth mentioning that the purpose of the Program is to “provide housing assistance to those affected by Hurricane Irma in 2017.” Specifically, the Program “is a centralized housing repair or replacement program for Low- and Moderate-Income (LM) families impacted by Hurricane Irma.” Challancin’s home was damaged by Hurricane Irma, and, as DEO has forthrightly acknowledged, his Residence “is [being] used as a residence and [is] recognizable as such.” As the photographs reproduced above demonstrate, moreover, the Residence is a modest dwelling, built in part out of nontraditional construction materials. By all appearances, Challancin is precisely the sort of homeowner whom the Program was designed to assist.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Economic Opportunity enter a final order determining that James Challancin’s Residence is an “eligible structure” for purposes of receiving housing assistance under the Program.

DONE AND ENTERED this 11th day of December, 2020, in Tallahassee,
Leon County, Florida.



JOHN G. VAN LANINGHAM
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Filed with the Clerk of the
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 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.