

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLETCHER BLACK II, LLC,

Petitioner,

vs.

Case No. 21-0515BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

PINNACLE AT HAMMOCK SPRINGS, LLC;
AND ABILITY VNA,

Intervenors.

_____/
MADISON GROVE, LLC; ARC 2020, LLC;
AND NEW SOUTH RESIDENTIAL, LLC,

Petitioners,

vs.

Case No. 21-0516BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

MADISON OAKS EAST, LLC; ARC 2020,
LLC; AND NEW SOUTH RESIDENTIAL,
LLC,

Petitioners,

vs.

Case No. 21-0517BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

MADISON OAKS EAST, LLC; ARC 2020.
LLC; AND NEW SOUTH RESIDENTIAL,
LLC,

Petitioners,

vs.

Case No. 21-0518BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

TIMSHELL WALTON HOUSING, LLC,

Petitioner,

vs.

Case No. 21-0520BID

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent,

and

RM FL XX PRIME, LLC,

Intervenor.

RECOMMENDED ORDER

On Wednesday, March 10, 2021, Administrative Law Judge Lisa Shearer Nelson of the Florida Division of Administrative Hearings (DOAH) conducted a hearing pursuant to section 120.57(3), Florida Statutes, through the use of Zoom technology.

APPEARANCES

For Petitioners Fletcher Black II, LLC, and Timshell Walton Housing, LLC:

Michael P. Donaldson, Esquire
Carlton Fields, P.A.
Suite 500
215 South Monroe Street
Tallahassee, Florida 32302

For Petitioners Madison Grove, LLC, Madison Oaks East, LLC, Madison Oaks West, LLC, ARC 2020, and New South Residential:

J. Timothy Schulte, Esquire
Zimmerman, Kiser & Sutcliffe, P.A.
315 East Robinson Street
Post Office Box 3000 (32802)
Orlando, Florida 32801

For Respondent Florida Housing Finance Corporation:

Betty Zachem, Esquire
Florida Housing Finance Corporation
Suite 5000
227 North Bronough Street
Tallahassee, Florida 32301-1329

For Intervenors Ability VNA, LLC, and Pinnacle at Hammock Springs, LLC:

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

For Intervenor RM FL XX PRIME, LLC:

Lawrence E. Sellers, Jr., Esquire
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315 South Calhoun Street
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STATEMENT OF THE ISSUES

The issues to be determined are whether, with respect to each application filed, Florida Housing Finance Corporation's (Florida Housing) review and decision-making process in response to the Request for Applications 2020-201 (RFA) was contrary to the agency's governing statutes, the agency's rules or policies, or the RFA.

PRELIMINARY STATEMENT

On August 26, 2020, Florida Housing issued an RFA through which it expects to award over \$15 million of housing credits to proposed developments in medium-size counties, and over \$1.4 million of housing credits to proposed developments in small counties. The deadline for applications was November 5, 2020, and on January 22, 2021, Florida Housing announced its intent to award funding to 13 of the 84 applicants, including The Villages of New Augustine (The Villages), Pinnacle at Hammock Springs, and RM FL XX Prime, LLC (Rosemary Place).

On January 27, 2021, Petitioners, Fletcher Black II, LLC (Fletcher Black); Madison Grove, LLC (Madison Grove); Madison Oaks East, LLC (Madison Oaks East); Madison Oaks West, LLC (Madison Oaks West); ARC 2020; New South Residential; and Timshell Walton Housing, LLC (Timshell) (collectively, Petitioners), filed Notices of Intent to Protest, and on February 8, 2021, Petitioners filed Formal Written Protests and Petitions for

Administrative Hearing. All of the petitions were forwarded to DOAH on February 12, 2021, docketed as Case Nos. 21-0515BID, 21-0516BID, 21-0517BID, 21-0518BID, and 21-0520BID,¹ and assigned to Administrative Law Judge Gar Chisenhall. The cases were consolidated by Order dated February 18, 2021, and scheduled for hearing to commence March 10 and 11, 2021, by Zoom technology.

Ability VNA, LLC, and Pinnacle at Hammock Springs, LLC, filed Petitions for Leave to Intervene with respect to the challenge filed by Fletcher Black (docketed as Case No. 21-055BID) before the petitions were transmitted to DOAH, and the Petitions for Leave to Intervene were transmitted with the Fletcher Black Petition. Likewise, Rosemary Place filed a Notice of Appearance as a Specifically-Named Party on February 11, 2021, with respect to the Timshel Walton Housing Petition, and that Notice was forwarded to DOAH with Case No. 21-0520BID.

On February 19, 2021, the cases were transferred to Administrative Law Judge Yolonda Green. The parties engaged in significant discovery as reflected on the docket, and on March 2, 2021, Timshell filed a Motion for Leave to Amend Formal Written Protest and Petition for Administrative Proceeding, which was granted by Order dated March 3, 2021. Finally, on March 4, 2021, Panama Manor Developer, LLC (Panama Manor), entered an appearance as a specifically-named party, to which Pinnacle at Hammock Springs objected.

On March 8, 2021, the cases were transferred to the undersigned, and an Order granting Intervenor status was entered with respect to Ability VNA,

¹ An additional challenge was filed by Madison Palms, Ltd., and was docketed as Case No. 21-0519BID. Madison Palms filed a Notice of Voluntary Dismissal on March 5, 2021, and that case was severed from the rest and closed by Order dated March 8, 2021.

LLC, Pinnacle at Hammock Springs, and Panama Manor. Rosemary Place is also recognized as an Intervenor by means of its Notice of Appearance as a specifically named party.

On March 8, 2021, the parties filed a Joint Pre-hearing Stipulation, which included a significant number of facts to which the parties stipulated no evidence would be needed at hearing. Those facts to which the parties stipulated are included in the Findings of Fact below. While some stipulated facts have been edited for the sake of clarity or style, the substance remains the same.

The hearing commenced as scheduled and was completed in a single day. At the beginning of the hearing, Madison Groves, Madison Oaks East, Madison Oaks West, ARC 2020, and New Residential, along with Florida Housing, stipulated to a resolution of their respective challenges in Case Nos. 21-0516BID, 21-0517BID, and 21-0517BID, which will be discussed below.

Marissa Button testified for Florida Housing, and Joint Exhibits 1 through 10, 12 through 14, and 16 through 20 were admitted into evidence. James Boyd, Jr., and Renee Sandell testified on behalf of Fletcher Black, and FB Exhibits 1 and 2 were admitted into evidence. Brian Waterfield testified for Timshell, and Timshell's Exhibits 1, 2 and 4 were admitted. Stewart Rutledge testified for Rosemary Place, and Rosemary Place's Exhibits 1 and 2 were also admitted.

The one-volume Transcript was filed with DOAH on March 24, 2021. In order to accommodate the parties' desire to have this case placed on the April 30, 2021, agenda of Florida Housing's Board of Directors, the deadline for filing proposed recommended orders was set for March 31, 2021. All post-

hearing submissions were timely filed, and carefully considered in the preparation of this Recommended Order. All quoted material in italics is emphasized by the undersigned.

FINDINGS OF FACT

1. Florida Housing is a public corporation created pursuant to section 420.504, Florida Statutes. Its purpose is to promote public welfare by administering the governmental function of financing affordable housing in Florida. Section 420.5099 designates Florida Housing as the housing credit agency for Florida within the meaning of section 42(h)(7)(a) of the Internal Revenue Code and has the responsibility and authority to establish procedures for allocating and distributing low-income housing tax credits.

2. 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. These housing credits are awarded competitively to housing developers in Florida for rental housing projects which qualify. The effect is to reduce the amount that the developer must otherwise borrow. Because the total debt is lower, the housing credit property can (and must) offer lower, more affordable rents. Developers also covenant to keep rents at affordable levels for periods of 30 to 50 years as consideration for receipt of the housing credits.

3. The demand for housing credits provided by the federal government exceeds supply.

The Competitive Application Process

4. Section 420.507(48) authorizes Florida Housing to allocate housing credits and other funding through requests for proposals or other competitive solicitations, and Florida Housing has adopted Florida Administrative Code Chapter 67-60 to prescribe the competitive solicitation process. Chapter 67-60

provides that Florida Housing allocate its competitive funding through the bid protest provisions of section 120.57(3).

5. Applicants for funding request, in their applications, a specific dollar amount of housing credits to be given to the applicant each year for a period of ten years. Applicants normally will sell the rights to the future stream of income housing credits (through the sale of almost all of the ownership interest in the applicant entity) to an investor to generate the amount of capital needed to build the development. The amount an applicant can receive depends on several factors, such as a certain percentage of the projected total development cost; a maximum funding amount per development based on the county in which the development will be located; and whether the development is located within certain designated areas of some counties. These are just examples of the factors considered, and this is by no means an exhaustive list.

6. Housing credits are made available through a competitive application process that starts with the issuance of an RFA. An RFA is considered to be a “request for proposal” as indicated in rule 67-60.009(4).

7. The RFA in this case was issued on August 26, 2020, and responses were due November 5, 2020. The RFA was modified September 11, 2020, and October 12, 2020, but with no change with respect to the response deadline.

8. Through the RFA, Florida Housing expects to award up to an estimated \$15,275,810 of housing credits to proposed developments in medium-sized counties, and up to an estimated \$1,453,730 of housing credits to proposed developments in small counties.

9. Florida Housing received 84 applications in response to RFA 2020-201.

10. A Review Committee was appointed to review the applications and make recommendations to the Florida Housing Board of Directors (Board). The Review Committee found 79 applications eligible and five applications ineligible for funding. Through the ranking and selection process outlined in the RFA, 10 applications were preliminarily recommended for funding. The

Review Committee developed charts listing its eligibility and funding recommendations to be presented to the Board.

11. The federal government enacted the Consolidated Appropriations Act (CCA) in December 2020, and as a result, an additional \$3,367,501 in housing credits became available for affordable housing for Escambia, Santa Rosa, Okaloosa, Walton, and Bay Counties, which were impacted by Hurricane Sally.

12. The staff at Florida Housing recommended using the CCA funding to award housing credits to additional highest-ranking eligible applications in qualified disaster areas, subject to the county award tally, regardless of the county size in RFA 2020-201 and developed a chart listing its CCA funding recommendations to be presented to the Board.

13. On January 22, 2021, the Board met and considered the recommendations of the Review Committee and staff for RFA 2020-201. At approximately 2:50 p.m. that day, all of the applicants in RFA 2020-201 were provided notice that the Board determined whether applications were eligible or ineligible for consideration of funding, and that certain eligible applicants were preliminarily selected for funding, subject to satisfactory completion of the credit underwriting process. Notice was provided by posting on the Florida Housing website two spreadsheets: one listing the Board-approved scoring results in RFA 2020-201; and one identifying the applications which Florida Housing proposed to fund.

14. In the January 22, 2021, posting, Florida Housing announced its intention to award funding to 24 applicants, including The Villages, Pinnacle at Hammock Springs, and Rosemary Place.

15. Petitioners timely filed Notices of Protest and Petitions for Formal Administrative Proceedings. All Intervenors have been properly recognized as such.

16. The terms of RFA 2020-201 were not challenged.

RFA 2020-201 Ranking and Selection Process

17. The RFA contemplates a structure in which the applicant is scored on eligibility items and obtains points for other items. A summary of the eligibility items is listed in Section 5.A.1. of the RFA, beginning at page 71. Only applications that meet all of the eligibility requirements will be eligible for funding and considered for the funding selection.

18. This challenge does not raise any issues with respect to the point totals awarded to the applicants.

19. The RFA has four funding goals:

a. The Corporation has a goal to fund five Medium County Developments that qualify for the Local Government Areas of Opportunity Funding Goal outlined in Section Four A.11.a of the RFA, with a preference that three of the Applications meet the criteria outlined in Section Four, A.11.b(1) of the RFA to be considered submitted but not awarded in RFA 2019-113, and two of the Applications meet the criteria outlined in Section Four, A.11.b(2) of the RFA to be considered not submitted in RFA 2019-113.

b. The Corporation has a goal to fund one Development that qualifies for the Local Revitalization Initiative Goal outlined in Section Four A.5.i of the RFA.

c. The Corporation has a goal to fund two Developments with a Demographic commitment of Family that select and qualify for the geographic Areas of Opportunity/ SADDA Goal outlined in Section Four A.10.a(1)(d) of the RFA.

d. The Corporation has a goal to fund one Development that qualifies for the SunRail Goal outlined in Section Four, A.5.e.(5) of the RFA.

*Note: During the Funding Selection Process, outlined below, Developments selected for these goals will only count toward one goal with one exception: If an Application that was selected to

meet the Local Government Areas of Opportunity Goal or Local Revitalization Initiative Goal also qualifies for the SunRail Goal, the SunRail Goal will also be considered met. (Jt. Exh. 1, pp.75).

20. At page 76 of Joint Exhibit 1, the RFA also sets forth the sorting order to be used when selecting applications to meet the Local Government Areas of Opportunity Funding Goal:

The highest scoring applications will be determined by first sorting together all eligible Priority I Medium County Applications from highest score to lowest score, with any scores that are tied separated in the following order. This will then be repeated for Priority II Applications:

(1) First, counties of the Applications that (i) qualified for the Local Government Areas of Opportunity Funding Goal in FRA 2019-113 and (ii) were invited to enter credit underwriting will receive lower preference than other Medium Counties competing for the Local Government Areas of Opportunity Funding Goal. This affects the following counties: Brevard, Lee, Santa Rosa, Sarasota, and Volusia. The remaining counties will receive higher preference.

(2) Next, by the Application's eligibility for the Per Unit Construction Funding Preference which is outlined in Section Four A.10.e. of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);

(3) Next, by the Application's eligibility for the Per Unit Construction Funding Preference which is outlined in Section Four A.10.e of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);

(4) Next, by the Application's Leveraging Classification, applying the multipliers outlined in Item 3 of Exhibit C of the RFA (with Applications

having the Classification of A listed above Applications having the Classification of B);

(5) Next, by the Application's eligibility for the Florida Job Creation Funding Preference which is outlined in Item 4 of Exhibit C of the RFA (with Applications that qualify for the preference listed above Applications that do not qualify for the preference);

(6) And finally, by lottery number, resulting in the lowest lottery number receiving preference.

21. Next, the RFA sets forth the sorting order for selecting applications to meet the Local Revitalization Initiative Goal. It then sets for the sorting order after selecting applications to meet the Local Government Areas of Opportunity Funding Goal (LGAO Designation) and Local Revitalization Initiative Goal.

22. The RFA includes a funding test where a) small county applications will be selected for funding only if there is enough small county funding (\$1,453,730) available to fully fund the Eligible Housing Credit Request Amount, and b) medium county applications will be selected for funding only if there is enough medium county funding (\$15,275,810) available to fully fund the Eligible Housing Credit Request Amount.

23. The RFA outlines a specific County Award Tally based on Priority Levels as follows:

a. Priority I County Award Tally

As each Priority I Application is selected for tentative funding, the county where the Development is located will have one Application credited towards the County Award Tally. The Corporation will prioritize eligible unfunded Priority I Applications that meet the Funding Test and are located within counties that have the lowest County Award Tally above other eligible unfunded Priority I Applications with a higher County Award Tally that also meet the Funding

Test, even if the Priority I Applications with a higher County Award Tally are higher ranked.

b. Priority II County Award Tally

As each Priority II Application is selected for tentative funding, the county where the proposed Development is located will have one Application credited towards the County Award Tally. The Corporation will prioritize eligible unfunded Priority II Applications that meet the Funding Test and are located within counties that have the lowest County Award Tally above other eligible unfunded Priority II Applications with a higher County Award Tally that also meet the Funding Test, even if the Priority II Applications with a higher County Award Tally are higher ranked. (Jt. Exh. 1, pp. 78-79)

24. The RFA outlines the selection process at pages 79-81 as follows:

a. Five Applications that qualify for the Local Government Areas of Opportunity Funding Goal

(1) Applications that were submitted in RFA 2019-113 but not Awarded

The first three Applications that will be considered for funding will be the highest ranking eligible Medium County Priority I Applications that qualify for the Local Government Areas of Opportunity Funding Goal that were submitted in RFA 2019-113 but not awarded, subject to the Funding Test and County Award Tally.

Priority I Applications will continue to be selected until this preference is met. If there are no remaining eligible unfunded Priority I Applications that qualify for this preference, then the process will continue using Priority II Applications until this preference is met.

(2) Applications that were not submitted in RFA 2019-113

The next Applications that will be considered for funding will be the highest ranking eligible Medium County Priority I Applications that qualify for the Local Government Areas of Opportunity Funding Goal that were not submitted in 2019-113, subject to the Funding Test and the County Award Tally.

Priority I Applications will continue to be selected until this Goal is met. If there are no remaining eligible unfunded Priority I Applications that qualify for this Goal, then the process will continue using Priority II Applications until this Goal is met or until it is determined that there are not eligible unfunded Applications that can meet this Goal.

b. One Application that qualifies for the Local Revitalization Initiative Goal

The next Application selected for funding will be the highest ranking eligible unfunded Priority I Application that qualifies for the Local Revitalization Initiative Goal, subject to the Funding Test and the County Award Tally.

If there are no eligible unfunded Priority I Applications that qualify for this Goal, then the highest ranking eligible unfunded Priority II Application that qualifies for the Local Revitalization Initiative Goal will be selected, subject to the Funding Test and the County Award Tally.

c. Two Family Applications that qualify for the Geographic Areas of Opportunity/ HUD-designated SADDA Goal

The next two Applications select [sic] for funding will be the highest ranking eligible unfunded Priority I Family Applications that qualify for the Geographic Areas of Opportunity/ HUD-designated SADDA Goal, subject to the Funding Test and the County Award Tally.

Priority I Applications will continue to be selected until this goal is met. If there are no remaining eligible unfunded Priority I Applications that qualify for this Goal, then the process will continue using Priority II Applications until this Goal is met or until it is determined that there are no eligible unfunded Applications that can meet this goal.

d. One Application that Qualifies for the SunRail Goal

If an Application that was selected to meet the Local Government Areas of Opportunity Goal described in a. above or Local Revitalization Initiative Goal described in b. above also qualifies for the SunRail Goal, this Goal will be considered met without selecting an additional Application.

If none of the Applications selected to meet the Local Government Areas of Opportunity Goal or Local Revitalization also qualify for the SunRail Goal, the next Application selected for funding will be the highest ranking eligible unfunded Priority I Application that qualifies for the SunRail Goal, subject to the Funding Test and the County Award Tally.

If there are no eligible unfunded Priority I Applications that qualify for this Goal, then the highest ranking eligible unfunded Priority II Application that qualifies for the SunRail Goal will be selected, subject to the Funding Test and the County Award Tally.

e. The next Applications selected for funding will be the highest ranking eligible unfunded Priority I Small County Applications that (i) can meet the Small County Funding Test and (ii) have a County Award Tally that is less than or equal to any other eligible unfunded Small County Priority I Applications. If Small County funding remains and no unfunded eligible Small County Priority I Application can meet the Small County Funding Test, then the process will continue using Priority

II Applications until this Goal is met or until no unfunded Small County Priority II Application can meet the Small County Funding Test.

If Small County funding remains and no unfunded eligible Small County Applications can meet the Small County Funding Test, no further Small County Applications will be selected, and the remaining Small County Funding will be added to the Medium County funding amount.

f. The next Applications selected for funding will be the highest ranking eligible unfunded Priority I Medium County Applications that (i) can meet the Medium County Funding Test and (ii) have a County Award Tally that is less than or equal to any other eligible unfunded Medium County Priority I Applications. If Medium County funding remains and no unfunded eligible Medium County Priority I Applications can meet the Medium County Funding Test, then the process will continue using Priority II Applications until this Goal is met or until no unfunded eligible Medium County Priority II Applications can meet the Small County Funding Test.

If Medium County Funding remains and no unfunded eligible Medium County Application can meet the Medium County Funding Test, no further Applications will be selected and the remaining funding will be distributed as approved by the Board.

25. After the description of the sorting process, the RFA specifies:

Funding that becomes available after the Board takes action on the Committee's recommendation(s), due to an Applicant withdrawing, an Applicant declining its invitation to enter credit underwriting or the Applicant's inability to satisfy a requirement outlined in this RFA, and/or provisions outlined in Rule Chapter 67-48, F.A.C., will be distributed as approved by the Board.

26. All 84 applications for RFA 2020-201 were received, processed, deemed eligible or ineligible, scored, and ranked, pursuant to the terms of the RFA, Florida Administrative Code Chapters 67-48 and 67-60, and applicable federal regulations.

The Fletcher Black Application

27. During the scoring process, Florida Housing determined that the Fletcher Black application was eligible for funding, but ineligible for the LGAO Designation. Fletcher Black was not selected for preliminary funding.

28. If Fletcher Black's application was eligible for the LGAO Designation, it would have been selected for funding. It would have been selected as the second of the three developments selected for the LGAO Priority I applications that qualified for the preference for those development applications submitted in RFA 2019-113, but not awarded as outlined on pages 69-70 of the RFA. Additionally, if Fletcher Black is eligible for the LGAO Designation, then The Villages and Pinnacle at Hammock Springs will be displaced from funding.

29. In order to qualify for the LGAO Designation and Goal, applicants must "*demonstrate* a high level of Local Government interest in the project via an increased amount of Local Government contributions in the form of cash loans and/or cash grants."

30. The RFA outlines the types and amounts of contributions from Local Governments that will be accepted to meet the LGAO Designation.

31. Fletcher Black's proposed development is in Bay County. Therefore, Fletcher Black would be required to demonstrate a contribution of at least \$340,000 to be considered for the LGAO Designation.

32. The RFA at page 67 expressly limits the number of applications from the same government jurisdiction as follows:

Limit on the number of Applications within the same jurisdiction

A proposed Development may only qualify where a jurisdiction (i.e., the county or a municipality) has contributed cash loans and/or cash grants for any proposed Development applying for this RFA in an amount sufficient to qualify for the Local Government Areas of Opportunity Designation. A Local Government can only contribute to one Application that qualifies for the Local Government Area of Opportunity Designation, regardless of how the contribution is characterized. Any single jurisdiction may not contribute cash loans and/or cash grants to more than one proposed Development applying for the Local Government Areas of Opportunity Designation. If multiple Applications *demonstrate* Local Government Areas of Opportunity Funding from the same jurisdiction and those Applications qualify for the Local Government Areas of Opportunity Designation, then all such Applications will be deemed ineligible for the Local Government Areas of Opportunity Designation, regardless of the amount of Local Government Areas of Opportunity Funding or how the contribution is characterized. However, Local Governments may pool contributions to support one Application (i.e., the county and the city may provide contribution to the same Development and each Local Government will submit its own form as an Attachment to the Application).

33. Page 68 of the RFA describes the requirements for demonstrating LGAO funding:

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. 07-2019), called “Local Government Verification of Contribution – Loan” form and/or the “Local Government Verification of Contribution -- Grant” form. The

forms must meet the Non-Corporation Funding Proposal Requirements outlined in 10.b.(2)(a) above, the qualifying funding must be reflected as a source on the Development Cost Pro Forma, and the applicable form(s) must be provided as Attachment 16 to the Application. Applications are not required to reflect the value (difference between the face amount and the net present value of the payment streams) on any Local Government Verification Forms.

Similarly, Section 10.b.(2)(a) of the RFA specifies that,

Note: Eligible Local Government financial commitments (i.e., grants and loans) can be considered a source of financing without meeting the requirements above if the Applicant provides a *properly completed and executed* Local Government Verification of Contribution – Grant Form (Form 0702019) and/or the Local Government Verification of Contribution – Loan Form (Form 07-2019).

34. Fletcher Black submitted a Local Government Verification of Contribution – Grant Form (Grant Form) from the City of Panama City in the amount of \$340,000. Fletcher Black’s Grant Form was executed by Greg Bridnicki, as the Mayor of Panama City and “Approved as to Form and Correctness” by Nevin Zimmerman, City Attorney. Fletcher Black’s request for funding from Panama City was placed on the agenda for the City of Panama City City Commission’s August 25, 2020, meeting, and approved by the City Commission, which authorized Mr. Bridnicki to sign the Grant Form. Fletcher Black had obtained a similar LGAO Form in the previous year using the same established process.

35. Fletcher Black did not submit any documentation in the RFA Application regarding the process used to gain approval of the grant. However, no party identified any requirement in the RFA that such a description must be included in the Application. Fletcher Black cannot be faulted for not supplying something that is not required.

36. Another Applicant, Panama Manor App. No. 2021-074C, submitted a Grant Form from the City of Panama City in the amount of \$340,000 executed by Michael Johnson. Mr. Johnson's title is listed as the Director of Community Development/CRA/CDBG/SHIP. During the scoring process, Florida Housing's scorer found that since both Fletcher Black and Panama Manor submitted documentation for the LGAO Designation from the same jurisdiction, the City of Panama City, according to the terms of the RFA, both applications were deemed ineligible for the LGAO Designation.

37. The Grant Form submitted by both Fletcher Black and Panama Manor contains the following instruction regarding who is authorized to sign the form on behalf of the local government:

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. ... One of the authorized persons named above may sign this form for certification of state, federal or Local Government funds initially obtained or derived from a Local Government that is directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO). *Other signatories are not acceptable. The Applicant will not receive credit for this contribution if the certification is improperly signed.* To be considered for points, the amount of the contribution stated on this form must be a precise dollar amount and cannot include words such as estimated, up to, maximum, not to exceed, etc.

38. Michael Johnson was not authorized by the City of Panama City to sign the Grant Form. Greg Bridnicki, as Mayor of Panama City, is an authorized signatory. Panama Manor's request was not submitted to the City Commission for approval. Because the Grant Form was improperly signed,

Panama Manor should not, by the terms of the RFA, receive credit for the LGAO Designation.

39. Had Panama Manor's application received the LGAO Designation, it would not have been selected for funding because its lottery number was too high.

40. Michael Johnson is the Director of Community Development for the City of Panama City. While he is an employee for the City of Panama City, he also performs duties for Bay County through an interlocal agreement between the city and the county. The Grant Form submitted for Panama Manor stated on its face that it was signed on behalf of the City of Panama City, but Mr. Johnson testified that the form was supposed to reflect that it was for Bay County.

41. Mr. Johnson testified that over the last 17 years, he has executed approximately 40 forms for applications for funding from Florida Housing. He acknowledged that there are multiple types of forms that may need signatures from city or county officials to complete a Florida Housing application, such as zoning forms and infrastructure-verification forms, as well as local government contribution forms. Since Florida Housing changed its process to use RFAs in 2013, Mr. Johnson could not recall if he signed the Grant Forms or whether the city manager did. He could not confirm signing a single Grant Form for either the city or the county since 2013. Mr. Johnson believed that he had the authority to sign Grant Forms on behalf of both the city and the county. Mark McQueen, the City of Panama City city manager and Mr. Johnson's boss, does not share his belief. According to Mr. McQueen, whose testimony is credited, Panama City committed only to the Fletcher Black property, took no official action with respect to Panama Manor's application, and Mr. Johnson was not authorized to sign the Grant Form committing funds on behalf of the City.

42. When Mr. Johnson realized that the Panama Manor Grant Form stated that it was signed on behalf of Panama City as opposed to Bay County,

he called the legal department for Florida Housing to explain the error. He testified that he spoke with several people at Florida Housing, including Jean Salmonson, David Weston, and someone in the multi-family development section. Mr. Johnson was not sure of the dates when these telephone calls were made, but it appears that the telephone calls were after the submission of the applications but before the posting of funding selections.

43. Marissa Button is Florida Housing's Director of Multifamily Programs. She testified that Florida Housing is aware of the contention that the form submitted by Panama Manor was signed in error and should have reflected that it was signed on behalf of Bay County. She was also aware that according to Mr. McQueen, Mr. Johnson did not have the authority to sign a Grant Form on behalf of the City of Panama City. She stated:

Q. How does that information impact Florida Housing's scoring decision?

A. This --at this juncture it does not impact Florida Housing's scoring determination as to the Panama Manor or Fletcher Black being designated as LGAO goal. ... We take the requirement of the RFA specifically references the -- the submission of what -- when there's a submission of multiple applications from the same jurisdiction, and so we, Florida Housing, consider that as of -- as of the application deadline what this applicant has submitted is a form executed on behalf of the City of Panama City.

To change the designation, which I understand from Mr. Johnson's testimony it was a mistake, he intended to issue on behalf of Bay County and reflect that, we interpret that to be a -- an improper amendment or modification to *the application* after the application submission. So we do not consider it to change the scoring designation of the -- of either the Panama Manor application or the resulting consequence to the Fletcher Black application.

* * *

Q. Now, Fletcher Black may argue that it's unfair to treat its application as ineligible for the LGAO designation and goals when the Fletcher Black [application] did not contain an error. What would your response be to that?

A. You know, my response is, we score the application in accordance with the terms of the RFA. The applications are responsible for all parts of that – that RFA with regard to *their application submission*. It's clear in this RFA that there would be a consequence if other applications were submitted from the same jurisdiction for an LGAO designation. And, unfortunately, that's the mistake that happened, but the fairness – it is a fair process because we are – we are administering the RFA as it has been, you know – as the terms exist to the public and to the fellow applications that came in for funding. So, I – I do believe it's unfortunate that that consequence impacts their application; however, it is – it is fair because that's the consequence if it happens. (T-39-40, 45-46).

44. Panama Manor's application did not demonstrate local government funding because the Grant Form was not signed by someone with authority to do so. The RFA specifically states that “[o]ther signatories are not acceptable. The Applicant will not receive credit for this contribution if the certification is improperly signed.”

45. Where forms signed by local government officials are challenged, Ms. Button indicated that Florida Housing has in the past relied upon or deferred to local government officials to address the propriety of the forms signed. The issue usually arises with forms related to zoning or other facets encompassed in the Ability to Proceed forms. Here, the credible testimony of local officials is that the Grant Form for Panama Manor was intended to reflect a funding commitment from Bay County and the signator on Panama Manor's Grant Form was not authorized to sign on behalf of the City of Panama City.

46. It would be contrary to competition if Panama Manor were allowed to amend its application to correct the Grant Form. It is appropriate to disregard Panama Manor's Grant Form, given the inaccuracies contained therein. If Panama Manor's application is not selected for the LGAO Designation because of its failure to demonstrate that the City of Panama City is providing local support for Panama Manor's project, then there is only one application with a valid Grant Form from the City of Panama City, and that is Fletcher Black.

47. Ms. Button testified that it would provide a competitive advantage to Fletcher Black if Fletcher Black were considered for the LGAO Designation. However, she stated that applicants are responsible for all parts of *their* application submission. Fletcher Black did not make an error in its application and is not requesting that it be amended in any way. It is asking that the application be considered as submitted, just as other applications are considered.

48. Florida Housing's decision to find Fletcher Black ineligible for the LGAO Designation is clearly erroneous, in light of the clear demonstration that Panama Manor did not demonstrate a local funding commitment from the City of Panama City, and Fletcher Black is the only entity that did so.

The Rosemary Place Application

49. Florida Housing deemed the Rosemary Place application to be eligible and, pursuant to the terms of the RFA, preliminarily selected Rosemary Place for funding.

50. One of the requirements for eligibility under the RFA is that applicants demonstrate Site Control by providing a properly completed and executed Florida Housing Finance Corporation Site Control Certification form (Site Control Form). For the Site Control Form to be considered complete, the applicant must attach documentation demonstrating that it is a party to an eligible contract or lease or is the owner of the subject property.

51. Applicants can demonstrate Site Control by providing documentation that meets the requirements in the RFA for an eligible contract, deed or certificate of title, or a lease.

52. The RFA specifies at pages 39-40 that an eligible contract must meet the following conditions:

(a) It must have a term that does not expire before May 31, 2021 or that contains extension options exercisable by the purchaser and conditioned solely upon payment of additional monies which, if exercised, would extend the term to a date that is not earlier than May 31, 2021;

(b) It must specifically state that the buyer's remedy for default on the part of the seller includes or is specific performance;

(c) The Applicant must be the buyer unless there is an assignment of the eligible contract, signed by the assignor and the assignee, which assigns all of the buyer's rights, title and interests in the eligible contract to the Applicant: and

(d) The owner of the subject property must be the seller, or is a party to one or more intermediate contracts, agreements, assignments, options, or conveyances between or among the owner, the Applicant, or other parties, that have the effect of assigning the owner's right to sell the property to the seller. Any intermediate contract must meet the criteria for an eligible contract in (a) and (b) above.

53. The RFA notifies applicants that Florida Housing's review of the Site Control documents is limited. At page 40, the RFA states:

Note: The Corporation will not review the site control documentation that is submitted with the Site Control Certification form during the scoring process unless there is a reason to believe that the form has been improperly executed, nor will it in any case evaluate the validity or enforceability of any such documentation. During scoring, the

Corporation will rely on the properly executed Site Control Certification form to determine whether an Applicant has met the requirement of this RFA to demonstrate site control. The Corporation has no authority to, and will not, evaluate the validity or enforceability of any eligible site control documentation that is attached to the Site Control Certification form during the scoring process. During credit underwriting, if it is determined that the site control documents do not meet the above requirements, the Corporation may rescind the award.

54. The RFA also requires that, for the purpose of demonstrating Site Control, “documentation must include all relevant intermediate contracts, agreements, assignments, options, conveyances, intermediate leases and subleases. If the proposed Development consists of Scattered Sites, site control must be demonstrated for all of the Scattered Sites.”

55. A “scattered site” is defined in Florida Administrative Code Rule 67-48.002(106) as “a Development site that, when taken as a whole, is comprised of real property that is not contiguous (each such non-contiguous site within a Scattered Site Development, is considered to be a “Scattered Site”). For purposes of this definition ‘contiguous’ means touching at a point or along a boundary. ...”

56. Rosemary Place submitted a properly completed and executed Site Control Form which was accepted by Florida Housing during its review, scoring, and ranking process.

57. As an attachment to its Site Control Form, Rosemary Place attached a Purchase and Sale Agreement (Rosemary Place Agreement) between Kyle McDorman as the Seller and RM FL XX Prime, LLC (the applicant entity for Rosemary Place) as the Purchaser.

58. The Rosemary Place Agreement has a term that does not expire before May 31, 2021, and states that the buyer’s remedy for default on the part of the seller includes or is specific performance.

59. The Rosemary Place Application identified the address of the proposed development as “690’ N of intscn of 331-Bus & Azalea Dr on W side of 331-Bus; within city limits of Freeport, FL (Walton County).” (J-16, page 5).

60. The Development Location Point, consisting of latitude and longitude coordinates was correctly identified, and the Rosemary Place Application stated that the proposed development did not consist of scattered sites.

61. Exhibit A of the Rosemary Place Purchase and Sale Agreement identifies the property as follows:

That Thirteen (13.0) Acres situated in the City of Freeport, FL (District 2); Section 10, Township 1S, Range 19, and which is part of Walton County, FL Parcel 10-1S-19-23000-009-0020 which is further described in the land records of Walton County, FL as 210FT SQ FT IN THE SE/C OF THE W1/2 OF THE NE1/4 OF SW1/4 IN SEC 10-1S-19W, 204-184, 1204-279, 2660-2976, 3084-4417 and which is recorded in that Warranty Deed from Grantor Aaron M and Rachel N Sloan Elkins to Grantee Kyle J. McDorman which Warranty Deed is recorded in the land records of Walton County, FL at Book 3084 and Page Number 4417. The Property is further described and identified as the shaded area denoted with an X in the image below.



62. Based on the Walton County Property Appraiser map, the shaded area denoted with an X is contained within Parcel No. 10-1S-19-23000-009-0000, which is owned by the Seller, Kyle McDorman, as opposed to Parcel No. 10-1S-19-23000-009-0020. Timshell contends that the shaded area denoted with an X overlaps parcels outside of Parcel No. 10-1S-19-23000-009-0000.

63. Timshell contends that the submitted Site Control documentation submitted by Rosemary Place is not consistent with the requirements of the RFA because of the uncertainty of the property that is actually being purchased and where the proposed Development site is actually located.

64. Timshell also contends that the Rosemary Place Purchase and Sale Agreement, as written and submitted to Florida Housing, denotes scattered sites which were not disclosed by Rosemary Place in its application.

65. Rosemary Place contends, and Florida Housing agrees, that the shaded area denoted with an X on Exhibit A to the Rosemary Place Agreement sufficiently identifies the property being purchased through the agreement as the Development site.

66. Moreover, the visual depiction of the property is consistent with the written description of the development location in the Rosemary Place Application at J-16, page 5.

67. The Rosemary Place Application does not depict scattered sites. Even assuming that the parcel number included in Exhibit A were part of the purchase reflected in the Sale and Purchase Agreement, an eligible contract may involve the purchase of multiple properties or a larger parcel of property than will be developed. What is most important is that the documents show where the development will be located, which Rosemary Place's application demonstrates, and that the applicant will have control over the location.

68. Ms. Button testified that Florida Housing did not consider the Rosemary Place Application to be proposing a scattered sites development. Rosemary Place affirmatively stated that it was not proposing a scattered

sites development; did not list coordinates for scattered sites; and did not identify the location of scattered sites on other forms required by the RFA.

69. Exhibit A to the Purchase and Sale Agreement contains typographical errors in the written description of the property being sold. Stewart Rutledge, who prepared the Purchase and Sale Agreement, testified credibly that parcel numbers are listed on the Walton County Property Appraiser website, and that to see a particular parcel description, the user clicks on the parcel number he or she wants to see. When preparing the Purchase and Sale Agreement, Mr. Rutledge mistakenly clicked on the parcel number immediately above the parcel number he wanted, and he did not notice the error. The parcel number reflected in the Purchase and Sale Agreement references another parcel owned by the seller, Kyle McDorman.

70. Florida Housing considered the typographical error within Exhibit A that results in the listing of the wrong parcel number and property description to be a waivable minor irregularity because the error did not result in the omission of any material information; did not create uncertainty that a term of the RFA was met; and did not adversely impact Florida Housing or the public. The same could be said for other typographical error in the Purchase and Sale Agreement, such as capitalizing the word “property” when it should not have been. Ms. Button also noted that the RFA does not require applicants to submit a land survey of the proposed development site with its application.

71. The RFA states that Florida Housing reserves the right to waive minor irregularities. A minor irregularity is defined in rule 67-60.008 as:

those irregularities in an Application, such as computation, typographical, or other errors, that do not result in the omission of any material information; do not create any uncertainty that the terms and requirements of the competitive solicitation have been met; do not provide a competitive advantage or benefit not enjoyed by other Applicants; and do not adversely impact the

interests of the Corporation or the public. Minor irregularities may be waived or corrected by the Corporation.

72. Timshell presented the testimony of Stephen Rutan, a professional land surveyor. Mr. Rutan believed that, based on the property description in the Purchase and Sale Agreement, the proposed development site overlapped with another parcel not owned by the seller. Mr. Rutan did not perform a professional land survey and admitted that the boundary lines in his informational Exhibit (Timshell Exhibit 4) were not completely accurate. Given that the measurements that Mr. Rutan provided were estimates and not the result of a survey, and the testimony by Mr. Rutledge that the parcel identification was the result of a clerical error, Mr. Rutan's testimony is given little weight, and does not demonstrate that the error in the Purchase and Sale Agreement included in Rosemary Place's application created any real uncertainty that the terms and requirements of the competitive solicitation have been met.

73. Florida Housing's determination that the error in Rosemary Place's application was a waivable minor irregularity is not clearly erroneous.

Madison Oaks East, Madison Oaks West, and Madison Grove

74. Florida Housing determined that the Madison Oaks West, Madison Oaks East, and Madison Grove Applications were eligible for funding but ineligible for the "submitted but not awarded in RFA 2019-113 Preference." Madison Oaks West, Madison Oaks East, and Madison Grove were not selected for preliminary funding.

75. Within the LGAO Designation and Goal, the RFA contained preferences for funding. One of those preferences was for developments that were submitted but not awarded in RFA 2019-113 (the 2019-113 Preference).

76. In order to qualify for the 2019-113 Preference, an Applicant must meet the following requirements:

- The question at 11.b.(1) of Exhibit A must reflect confirmation that the Development was submitted but not awarded in RFA 2019-113;
- The Application in RFA 2019-113 must have provided a Local Government Verification of Contribution – Loan or Grant form demonstrating the minimum Local Government Areas of Opportunity Funding Amount outlined in RFA 2019-113;
- The Development Location Point and latitude and longitude coordinates for all scattered sites stated at question 5. of Exhibit A for the proposed Development must be located on the same site(s) as the Application submitted in RFA 2019-113. These coordinates do not need to be identical to the Application submitted in RFA 2019-113.
- All entities that are Principals for the Applicant and Developer(s) disclosed on the Principal Disclosure Form submitted for the proposed Development and the Application submitted in RFA 2019-113 must be identical; and
- The Application submitted in RFA 2019-113 was not invited to enter credit underwriting.

77. Florida Housing scored Madison Oaks East, Madison Oaks West, and Madison Grove as qualifying for all requirements of the 2019-113 Preference except for the requirement that “[a]ll entities that are Principals for the Applicant and Developer(s) disclosed on the Principal Disclosure Form submitted for the proposed Development and the Application submitted in RFA 2019-113 must be identical.” (Identical Principals Requirement).

78. The Principals disclosed on the Principals Disclosure Form for Madison Oaks West, Madison Oaks East, and Madison Grove in RFA 2019-113 were identical to the Principals disclosed in the applications submitted for RFA 2020-201.

79. The plain language of the RFA only requires that the “entities *that are Principals* for the Applicant and Developer(s) be identical.” The plain language of the RFA does not require that the Applicant and Developer entities be identical to those listed in the 2019-113 application.

80. Madison Oaks West, Madison Oaks East, and Madison Grove met the requirements for the 2019-113 preference. However, even though Madison Oaks East, Madison Oaks West, and Madison Grove are eligible for the 2019-113 Preference, they would not be selected for funding under the terms of the RFA.

The Villages

81. Florida Housing determined that The Villages Application is eligible and, pursuant to the terms of the RFA, The Villages has been preliminarily selected for funding.

82. During scoring, Florida Housing reviewed the Villages’ Zoning Form and determined that it met the requirements of the RFA to demonstrate appropriate zoning.

83. Madison Oaks East, Madison Oaks West, and Madison Grove alleged in their Petitions that The Villages failed to demonstrate Ability to Proceed and appropriate zoning as required by the terms of the RFA. Prior to hearing, Madison Oaks West, Madison Oaks East, and Madison Grove withdrew their challenge to The Villages’ eligibility for funding.

84. However, should Florida Housing determine, as recommended, that Panama Manor’s Grant Form did not demonstrate a funding commitment from Panama City, then Fletcher Black would receive funding as opposed to The Villages and Pinnacle at Hammock Springs.

CONCLUSIONS OF LAW

85. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(3).

86. Section 420.507 authorizes Florida Housing to allocate low-income housing tax credits by competitive solicitation, stating:

The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

* * *

(49) To award its annual allocation of low-income housing tax credits, nontaxable revenue bonds, and State Apartment Incentive Loan Programs appropriated by the Legislature and available to allocate by request for proposals or other competitive solicitation.

87. Protests to competitive contract solicitations or awards are governed by section 120.57(3)(f), which provides in part:

(f) In a protest to an invitation to bid or request for proposals procurement, no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered. In a protest to an invitation to negotiate procurement, no submissions made after the agency announces its intent to award a contract, reject all replies, or withdraw the solicitation which amend or supplement the reply shall be considered. Unless otherwise provided by statute, the burden of proof shall rest with the party protesting the proposed agency action. In a competitive-procurement protest, other than a rejection of all bids, proposals, or replies, the 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.

88. As parties challenging Florida Housing's proposed awards, Petitioners Fletcher Black, Madison Oaks East, Madison Oaks West, Madison Grove, and Timshell bear the burden of proof with respect to their individual challenges.

89. All Petitioners have standing. All have established that their substantial interests are affected by proposed agency action, whether or not they would be chosen for funding during this award cycle.

90. Although chapter 120 uses the term "de novo" to describe competitive solicitation proceedings, courts have recognized that a different kind of "de novo" is contemplated for this particular type of agency action. Unlike truly de novo proceedings, bid disputes are a form of intra-agency review in which the purpose of the proceeding is to evaluate the action taken by the agency. *State Contracting and Eng'g Corp. v. Dep't of Transp.*, 709 So. 2d 607, 609 (Fla. 1st DCA 1998).

91. However, proceedings to challenge a competitive award are not simply a record review of the information that was before the agency. The proceedings remain "de novo" in that the evidence presented at hearing is not restricted to what was before the agency when it made its preliminary decision. A new evidentiary record based upon the historical, objective facts is developed. *Asphalt Pavers, Inc. v. Dep't of Transp.*, 602 So. 2d 558, 560-61 (Fla. 1st DCA 1992). The new findings of fact must support the final order to be issued by the agency. *Gtech Corp. v. Dep't of Lottery*, 737 So. 2d 615, 619 (Fla. 1st DCA 1999).

92. Facts are determined based upon the evidence presented at hearing. However, applicants are not permitted to submit information that should have been, but was not, included in the application submitted in response to the RFA. Section 120.57(3) expressly prohibits this type of evidence, stating, "no submissions made after the bid or proposal opening which amend or supplement the bid or proposal shall be considered." The application must

stand on its own, as originally submitted, in light of determined facts.
§ 120.57(3), Fla. Stat.

93. After the administrative law judge determines the relevant facts based upon the evidence presented at hearing, the agency's intended action must be considered in light of those facts, and the agency's determinations must remain undisturbed unless they are clearly erroneous, contrary to competition, arbitrary, or capricious. A proposed award will be upheld unless it is contrary to governing statutes, the agency's rules, or the terms of the RFA.

94. A decision is considered to be clearly erroneous when, although there is evidence to support it, after review of the entire record, the tribunal is left with the definite and firm conviction that a mistake has been committed. *U.S. v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *Tropical Jewelers, Inc. v. Bank of Am., N.A.*, 19 So. 3d 424, 426 (Fla. 3d DCA 2009). With respect to conclusions of law, the First District has held that the clearly erroneous standard requires that an agency's legal interpretation will be upheld if the agency's construction falls within the permissible range of interpretations, *Colbert v. Department of Health*, 890 So. 2d 1165, 1166 (Fla. 1st DCA 2004), unless the agency's interpretation conflicts with the plain and ordinary meaning of the law. *Fla. Hosp. v. Ag. for Health Care Admin.*, 823 So. 2d 844, 848 (Fla. 1st DCA 2002).

95. An agency's decision is contrary to competition if it unreasonably interferes with the purposes of competitive procurement, which the Supreme Court of Florida describes as protecting the public against collusive contracts and securing fair competition upon equal terms to all bidders. *Wester v. Belote*, 103 Fla. 976, 981-982, 138 So. 721, 723-724 (Fla. 1931); *see also Harry Pepper & Assoc. v. City of Cape Coral*, 352 So. 2d 1190, 1192 (Fla. 2d DCA 1977).

96. Finally, an action is arbitrary if it is not supported by logic or the necessary facts and is capricious if it is adopted without thought or reason, or

if it is irrational. *Hadi v. Liberty Behavioral Health Corp.*, 927 So. 2d 34, 38-39 (Fla. 1st DCA 2006); *Agrico Chem. Co. v. Dep't of Env'tl Reg.*, 365 So. 759, 763 (Fla. 1st DCA 1978). To determine whether an agency acted in an arbitrary or capricious manner, it must be determined whether the agency has considered all of the relevant factors; has given actual, good faith consideration to those factors; and has used reason rather than whim to progress from considering those factors to reaching a final decision. *Adam Smith Enter. v. Dep't of Env'tl. Reg.*, 553 So. 2d 1260, 1273 (Fla. 1st DCA 1989). However, if a decision is justifiable under any analysis that a reasonable person might use to reach a decision of similar importance, the decision is not arbitrary or capricious. *Dravo Basic Materials Co. v. Dep't of Transp.*, 602 So. 2d 632, 635 n.3 (Fla. 2d DCA 1992).

Fletcher Black

97. With this framework in mind, based on the evidentiary record presented at hearing, it must be determined whether the decision not to award an LGAO Designation and Goal to either Fletcher Black or Panama Manor is clearly erroneous, contrary to competition, arbitrary, or capricious.

98. Florida Housing did not award the LGAO Designation and Goal to either applicant because both had Grant Forms that indicated that they had committed funding from the City of Panama City. The question, however, is not whether both applicants submitted Grant Forms from the same governmental entity. The express terms of the RFA state:

If multiple Applications demonstrate Local Government Areas of Opportunity Funding from the same jurisdiction and those Applications qualify for the Local Government Areas of Opportunity Designation, then all such Applications will be deemed ineligible for the Local Government Areas of Opportunity Designation.

99. The Grant Form itself, identified in the RFA as required, includes the following requirement:

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. ... One of the authorized persons named above may sign this form for certification of state, federal or Local Government funds initially obtained or derived from a Local Government that is directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO). *Other signatories are not acceptable. The Applicant will not receive credit for this contribution if the certification is improperly signed.*

Similarly, Section 10.b.(2)(a) of the RFA requires the Grant Form to be properly completed and executed.

100. Taken together, these instructions in the RFA and in the Grant Form referenced in the RFA require that an Applicant submit a Grant Form as attachment 16 to its application that is signed by one of the named officials with authority to sign on behalf of the governmental entity committed to funding. No one other than those named officials is authorized to sign on behalf of a governmental entity, and according to the express terms of the Grant Form, an applicant will not receive credit for the contribution if the certification is improperly signed.

101. In this case, the Grant Form submitted with the Panama Manor application is not properly signed. Mr. Johnson testified that, while he believed he had the authority to sign the Grant Form, he intended it to commit funds from Bay County as opposed to the City of Panama City. His boss, Mark McQueen, testified that while Mr. Johnson's office processes these requests, Mr. Johnson did not have the authority to sign on behalf of the city.

Mr. McQueen's testimony is consistent with how Fletcher Black's request was processed, with presentation of the request to the city council and a vote to authorize the Mayor to sign on the city's behalf.

102. Panama Manor's Grant Form could not be amended, because allowing an amendment is expressly prohibited in the FRA and in section 120.57(3)(f). Under these circumstances, Panama Manor did not demonstrate entitlement to the LGAO Designation. Because Panama Manor did not demonstrate entitlement to the LGAO Designation based on a commitment from the City of Panama City, it was not entitled to the LGAO Designation.

103. It was not necessary, however, for Florida Housing to determine that Fletcher Black was also ineligible, and to do so was clearly erroneous. The RFA only requires that both applications be deemed ineligible for the LGAO Designation if multiple applications demonstrate funding from the same jurisdiction. Here, the more persuasive and compelling evidence is that the City of Panama City only committed to funding for one applicant, Fletcher Black, as opposed to two applicants.

104. Ms. Button acknowledged that the Panama Manor Grant Form had designated Panama City in error, but believed that to allow Fletcher Black to receive the LGAO Designation and Goal would somehow be contrary to competition. Her explanation is confusing, because her answer focused on the requirement that an applicant be fully responsible for all aspects of *its* application, even those portions completed by others. However, there is no dispute that Fletcher Black completed all portions of the application as directed, and the error was in Panama Manor's application, not Fletcher Black's. On the contrary, it seems that determining that Fletcher Black is ineligible for the LGAO Designation because of an error in another application when that error could be addressed by striking the improperly executed Grant Form, would be contrary to competition. Fletcher Black submitted its application in good faith, and the application did not contain any error that would make it ineligible for the LGAO Designation. The

application demonstrated committed funding from a local government entity, i.e., Panama City, and its Grant Form was signed by a local official expressly authorized to do so. It should have been considered eligible for the LGAO Designation, and it should have been recommended for funding.

105. In summary, because only Fletcher Black demonstrated committed funding from the City of Panama City, and Panama Manor's application contained an error that resulted in Panama Manor not being eligible for consideration, the terms of the RFA do not require that Fletcher Black be ineligible for the LGAO Designation, and to consider them ineligible was clearly erroneous and contrary to the RFA specifications.

Rosemary Place

106. Timshell has challenged the selection of Rosemary Place for funding because it believes that the Rosemary Place application does not demonstrate Site Control. Timshell bases its argument on errors in the Purchase and Sale Agreement attached to the application.

107. The more persuasive evidence supports Florida Housing's determination that the errors in the Purchase and Sale Agreement were waivable minor irregularities as that term is defined in rule 67-60.008. The Rosemary Place Application did not indicate that it was planning on developing on scattered sites, and Mr. Rutledge credibly testified that scattered sites were not intended. The evidence indicates that the Rosemary Place application sufficiently identified the suggested location for development, notwithstanding the errors in the Purchase and Sale Agreement. Florida Housing's decision to consider the errors as waivable, minor irregularities is not clearly erroneous, and is not contrary to governing statutes, rules, or the terms of the RFA.

Madison Oaks East, Madison Oaks West, and Madison Grove

108. As noted in the Findings of Fact, Florida Housing, The Villages, and Pinnacle agree that Madison Oaks West, Madison Oaks East, and Madison Grove met the requirements for the 2019-113 Preference. Given this agreement, which was reached before hearing, no further conclusions of law are required with respect to the issues presented by these petitioners. However, even though Madison Oaks East, Madison Oaks West, and Madison Grove are eligible for the 2019-113 Preference, they would not be selected for funding under the terms of the RFA.

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 as to Case No. 21-0515BID, finding that Fletcher Black is eligible for the LGAO Designation, and awarding funding to Fletcher Black, subject to the successful completion of credit underwriting; that with respect to Case Nos. 21-0516BID, 21-0517BID, and 21-0518BID, finding that Madison Oaks East, Madison Oaks West, and Madison Grove are eligible for the 2019-113 Preference, but are not selected for funding; and with respect to Case No. 21-0520BID, finding that the decision to award funding to Rosemary Place was not clearly erroneous, and the error in its application was a minor waivable irregularity.

DONE AND ENTERED this 14th day of April, 2021, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
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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.