

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

Florida Housing Finance Corporation
FILED 12/21/2020 2:17 P.M.

MHP FL II, LLC, MHP FL II
DEVELOPER, LLC and MAGELLAN
HOUSING, LLC

Petitioners,

FHFC Case No.: 2020-075BP

vs.

FLORIDA HOUSING FINANCE
CORPORATION, and MADISON
LANDING, II,

Respondents.

_____ /

PETITION FOR ADMINISTRATIVE HEARING

Pursuant to sections 120.569, 120.57(3), Florida Statutes (F.S.), and Chapter 28-106, Florida Administrative Code (“F.A.C.”), Petitioners, MHP FL II, LLC, MHP FL II Developer, LLC and Magellan Housing, LLC (collectively “MHP FL”), file this Petition for Administrative Hearing and state:

Affected Agency

1. The agency affected is the Florida Housing Finance Corporation (“Florida Housing”), 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The telephone number is 850-488-4197.

Petitioners

2. Petitioner, MHP FL II, LLC, is the Applicant entity of a proposed affordable housing development to be located in Orange County, Application #2021-013C. Petitioners, MHP FL II Developer, LLC and Magellan Housing, LLC, are “Developer” entities as defined by Florida Housing in Rule 67-48.002, F.A.C.

3. MHP FL is challenging Florida Housing's determination regarding Madison Landing II, LLC's eligibility for funding under RFA 2020-202 through an administrative hearing before the Division of Administrative Hearing ("DOAH").

4. Counsel for MHP FL and MHP FL's address for this proceeding are Craig D. Varn and Amy Wells Brennan, Manson Bolves Donaldson Varn, P.A., 109 North Brush Street, Suite 300, Tampa, Florida 33602.

Background

5. Florida Housing is designated as the Housing Credit agency for the State of Florida within the meaning of section 42(h)(7)(A) of the IRC, and Chapters 67-48 and 67-60, F.A.C., and has the responsibility and authority to establish procedures for allocating and distributing Housing Credits. Section 420.5099, F.S.

6. Florida Housing has established a competitive solicitation process known as the Request for Applications to assess the relative merits of proposed developments pursuant to Chapters 67-48 and 67-60, F.A.C.

7. On or about August 26, 2020, Florida Housing issued Request for Application 2020-202 Housing Credit Financing for Affordable Housing Development Located in Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas Counties. ("RFA" or "RFA 2020-202"). The application deadline for the RFA was October 20, 2020 ("Application Deadline").

8. By submitting an application, each applicant certified that the "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."

9. The RFA delineates the submission requirements and sets out the information required to be provided by an applicant, including, on pages 70-71, a list of mandatory “Eligibility Items” that must be included in an application. One of the mandatory Eligibility Items is the “Development Cost Pro Forma provided (listing expenses or uses) and Construction/Rehab analysis and Permanent analysis (listing sources) – Sources must equal or exceed uses.” The RFA also establishes specific requirements for the Development Cost Pro Forma and Non-Corporation Funding Proposals.

Notice of Agency Action

10. MHP FL received notice of Florida Housing’s Final Agency Action entitled “RFA 2020-102 Board Approved Preliminary Awards” on or about December 4, 2020. (“Corporation’s Notice”).

Notice of Protest

11. On December 9, 2020, MHP FL timely filed a Notice of Protest which challenged the ranking of the applications in the Corporation’s Notice.

Substantial Interests

12. MHP FL timely submitted an application in response to RFA 2020-202, Application #2021-013C (“MHP FL Application”). The MHP FL Application was scored as having satisfied all eligibility requirements and was eligible for funding. The Corporation’s Notice included and award of funding to the MHP FL Application.

Madison Landing II Eligibility

13. Madison Landing II was scored as having satisfied all the eligibility requirements and was deemed eligible for funding. Madison Landing II was not awarded funding in the Corporation’s Notice.

14. MHP FL is challenging and seeking a determination that Florida Housing erred in the eligibility determination of Madison Landing II. Florida Housing incorrectly determined Madison Landing II satisfied the Development Cost Pro Forma and Non-Corporation Funding Proposals.

15. As stated above, only applications that meet the Eligibility Items are eligible for funding. One of these Eligibility Items is to provide Development Cost Pro Forma provided (listing expenses or uses) and Construction/Rehab analysis and Permanent analysis (listing sources) – Sources must equal or exceed uses. also establishes specific requirements for the Development Cost Pro Forma and Non-Corporation Funding Proposals. The RFA also establishes specific requirements for the Development Cost Pro Forma and Non-Corporation Funding Proposals.

16. Madison Landing II submitted it Cost Pro Forma, but failed to meet the specific requirements established in the RFA.

Disputed Issues of Law

17. The issues of law in this matter include but are not limited to the following
- a) Whether the Madison Landing II Application met the requirements for the Development Cost Pro Forma
 - b) Whether the Madison Landing II Application met the requirements for Non-Corporation Funding Proposals;
 - c) Whether the correct eligibility determination has been made for the Madison Landing II Application based upon the provisions of the RFA;
 - d) Whether the RFA's criteria for determining eligibility and evaluation of proposals were properly applied to the Madison Landing II Application;
 - e) Whether the criteria and procedures followed in reaching the proposed eligibility determination for Madison Landing II are arbitrary, capricious, contrary to competition, contrary to the RFA requirements, an abuse of discretion or are contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules;

- f) Whether the eligibility determination of the Madison Landing II Application is consistent with fair and open competition for the allocation funding;
- g) Whether the eligibility determination of the Madison Landing II Application is based upon clearly erroneous or capricious eligibility determinations, scoring or ranking;
- h) Such other issues as may be revealed during the protest process.

18. Petitioners reserve the right to seek leave to amend this Petition to include additional material facts and issues of law that may become known through discovery.

Statement of Ultimate Facts and Law

19. As a matter of ultimate fact and law, Florida Housing failed to properly and/or consistently apply the RFA specifications, existing rules or prior Florida Housing interpretations and precedents.

20. As a matter of ultimate fact and law, Florida Housing incorrectly determined that Madison Landing II was eligible for an allocation of funding.

Statutes and Rules

21. Statutes and rules governing this proceeding are Chapter 420 and sections 120.569, 120.57(3), Florida Statutes, and Chapters 28-106, 28-110, 67-48 and 67-60, Florida Administrative Code.

WHEREFORE, Petitioners request that:

- A. An administrative hearing be conducted pursuant to section 120.57(3), Florida Statutes, to review Florida Housing's eligibility determination of Madison Landing II;
- B. The Administrative Law Judge enter a Recommended Order determining that:
 - 1) The MHP FL Application was correctly considered for funding and scored as having satisfied all mandatory Eligibility Items;
 - 2) Madison Landing II did not complete its application in accordance with the competitive solicitation; that its applications was non-responsive to and failed to comply with RFA 2020-202; and that its application should not

have been considered for funding or scored as having satisfied all mandatory Eligibility Items; and,

- 3) Florida Housing erred in determining that the application submitted by Madison Landing II was completed in accordance with the competitive solicitation.

C. The Administrative Law Judge enter a Recommended Order recommending that Florida Housing award Petitioners their requested allocation of funding and finding Madison Landing II ineligible;

D. Florida Housing enter a Final Order finding the MHP FL Application eligible for funding, finding the Madison Landing II Application ineligible for funding, and awarding MHP FL its requested allocation of funding; and,

E. MHP FL be granted such other relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 21st day of December 2020.

/s/ Craig D. Varn _____

Craig D. Varn

Florida Bar # 90247

cvarn@mansonbolves.com

Amy Wells Brennan

Florida Bar # 0723533

abrennan@mansonbolves.com

Manson Bolves Donaldson & Varn

109 North Brush Street, Suite 300

Tampa, FL 33602

813-514-4700 (phone)

813-514-4701 (fax)