

RECEIVED

DEC 28 2021 8:00 AM

FLORIDA HOUSING
FINANCE CORPORATION

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

WINDMILL FARMS ASSOCIATES, LLC, AND
LANDMARK DEVELOPMENT CORP.,

Petitioners,

FHFC Case No: 2021-103BP
APPLICATION NO: 2022-216S

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

PETITION FOR ADMINISTRATIVE HEARING

Pursuant to sections 120.569, 120.57(3), Florida Statutes (Fla. Stat.), and Chapter 28-106, Florida Administrative Code (“Fla. Admin. Code”), Petitioners, Windmill Farms Associates, LLC, and Landmark Development Corp., (collectively “Windmill Farms”), 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, Windmill Farms Associates, LLC, is the Applicant entity of a proposed affordable housing development to be located in Miami-Dade County, Application #2022-216S. Petitioner, Landmark Development Corp., is a “Developer” entity as defined by Florida Housing in rule 67-48.002, Florida Administrative Code.

3. Windmill Farms is supporting Florida Housing's determination regarding Windmill Farms' eligibility for funding and challenging other eligibility determinations under Request for Applications 2021-205 through an administrative hearing before the Department of Administrative Hearing ("DOAH").

4. Counsel for Windmill Farms and Windmill Farms' address for this proceeding is Craig D. Varn, Manson Bolves Donaldson Varn, 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, Fla. Admin. Code, and has the responsibility and authority to establish procedures for allocating and distributing Housing Credits. Section 420.5099, Fla. Stat.

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, Fla. Admin. Code.

7. On or about August 17, 2021, Florida Housing issued RFA 2021-205, SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits ("RFA" or "RFA 2021-205"). The application deadline for the RFA was October 19, 2021 ("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/or Rule Chapter 67-21, 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 88-89, a list of mandatory “Eligibility Items” that must be included in an application.

Notice of Agency Action

10. Windmill Farms received notice of Florida Housing’s Final Agency Action entitled “RFA 2021-205 Board Approved Preliminary Awards” on or about December 10, 2021 (“Corporation’s Notice”).

Notice of Protest

11. On December 15, 2021, Windmill Farms timely filed a Notice of Protest regarding the Corporation’s Notice.

Substantial Interests

12. Windmill Farms timely submitted an application in response to RFA 2021-205, Application #2022-216S (“Windmill Farms Application”). In the Windmill Farms Application, Windmill Farms sought \$6.3 million in SAIL funding to help finance the development of its project which includes two hundred and seventy-four (274) garden apartments.

13. Windmill Farms was scored as having satisfied the Eligibility Items and eligible for funding. Windmill Farms was assigned lottery number one as reflected in the document entitled “RFA 2021-205 Board Approved Scoring Results.”

14. On December 10, 2021, Florida Housing’s Board of Directors adopted the scoring committee’s recommendations and tentatively authorized the selection for funding of those applications identified in the Corporation’s Notice, including Windmill Farms.

15. Windmill Farms and several other applicants filed timely Notices of Intent. Florida Housing correctly determined Windmill Farms was eligible for and entitled to funding pursuant to the terms of the RFA. However, the results of any challenge may impact Windmill Farms' funding, and any change would be arbitrary and capricious. As an applicant seeking funding through this RFA, Windmill Farms is substantially affected by the review, scoring, and ranking of the responses to the RFA. The results of this and related proceedings may affect Windmill Farms' ability to obtain funding under the RFA.

Errors in Scoring

16. As stated above, only applications that meet the Eligibility Items are eligible for funding. These Eligibility Items include a properly completed Development Cost Pro Forma.

17. The application of MJHS FL South Parcel, Ltd., Application #2022-199BS, failed to comply with the RFA requirements. As such, Florida Housing's recommendation that this applicant is eligible for financing was incorrect.

Disputed Issues of Law

18. The issues of law in this matter include but are not limited to the following

- a) Whether the preliminary rankings properly support the eligibility determinations of MJHS FL South Parcel, Ltd., and other applicants, for funding in accordance with the standards and provisions of the RFA;
- b) Whether the RFA's criteria for determining eligibility, ranking and evaluation of proposals were properly applied; and,
- c) Such other issues as may be revealed during the protest process.

19. 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

20. As a matter of ultimate fact and law, Florida Housing properly applied the RFA specifications, existing rules and prior Florida Housing interpretations and precedents to Windmill Farms.

21. As a matter of ultimate fact and law, Florida Housing correctly determined that Windmill Farms was eligible for an allocation of funding.

22. 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 to MJHS FL South Parcel, Ltd., and potentially other applicants.

23. As a matter of ultimate fact and law, Florida Housing incorrectly determined the eligibility of MJHS FL South Parcel, Ltd., and potentially other applicants, for an allocation of funding.

Statutes and Rules

24. 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 confirm Florida Housing's eligibility determination as it affects Windmill Farms' Application;

B. The Administrative Law Judge enter a Recommended Order determining that:

