

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

ROCHESTER PARK, LTD., and  
ROCHESTER PARK DEVELOPER, LLC,

Petitioners,

FHFC Case No: 2020-015BP  
APPLICATION NO: 2020-301C

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**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, Rochester Park, Ltd., and Rochester Park Developer, LLC (collectively “Rochester Park”), 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, Rochester Park, Ltd., is the Applicant entity of a proposed affordable housing development to be located in Hernando County, Application #2020-301C. Petitioner, Rochester Park Developer, LLC, is a “Developer” entity as defined by Florida Housing in rule 67-48.002, Florida Administrative Code.

3. Rochester Park is challenging Florida Housing's determination regarding Rochester Park's and Villa Verde's eligibility for funding under Request for Applications 2019-113 through an administrative hearing before the Department of Administrative Hearing ("DOAH").

4. Counsel for Rochester Park and Rochester Park's address for this proceeding are Craig D. Varn and Amy Wells Brennan, 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 September 20, 2019, Florida Housing issued RFA 2019-113, Housing Credit Financing for Affordable Housing Developments Located in Medium and Small Counties ("RFA" or "RFA 2019-113"). The application deadline for the RFA was November 5, 2019 ("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 64-65, a list of mandatory “Eligibility Items” that must be included in an application. One of the mandatory Eligibility Items is the “Appropriate Zoning demonstrated.”

10. An Applicant must demonstrate “Ability to Proceed elements as of the Application Deadline, for the entire proposed Development site.” (RFA at p. 35). The entire proposed Development site is typically found in the Applicant’s Site Control documents, such as a contract or lease, found at Attachment 8 in the application. (RFA at pp. 34-35).

11. Of relevance to this challenge, in order to demonstrate a Development’s ability to proceed, an Applicant is required to provide an executed verification form demonstrating that “as of the Application Deadline the entire proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use.” (RFA at pp. 35). Importantly, the form requires the signor to confirm that the “Development’s proposed number of units, density, and intended use are consistent with current land use regulations and zoning designation....” (Attachment 9).

#### Notice of Agency Action

12. Rochester Park received notice of Florida Housing’s Final Agency Action entitled “RFA 2019-113 Board Approved Preliminary Awards” on or about March 6, 2020. (“Corporation’s Notice”).

Notice of Protest

13. On March 11, 2020, Rochester Park timely filed a Notice of Protest which challenged the selection of the applications in the Corporation's Notice.

Substantial Interests

14. Rochester Park timely submitted an application in response to RFA 2019-113, Application #2020-301C ("Rochester Park Application"). In the Rochester Park Application, Rochester Park sought \$1,650,000 in annual federal tax credits to help finance the development of its project, eighty-four Garden Apartments. HTG Edgewood, Ltd. submitted an application in response to the RFA, Application #2020-247C, for its Edgewood Parc development ("Edgewood Parc Application").

15. Rochester Park was scored as having as satisfied all eligibility requirements and was eligible for funding. Rochester Park was assigned lottery number seven as reflected in the document entitled "RFA 2019-113 Board Approved Scoring Results." Edgewood Parc was scored as having satisfied the Appropriate Zoning Requirement. Edgewood Parc was assigned lottery number two.

16. On March 6, 2020, 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.

17. Rochester Park is challenging and seeking a determination that Florida Housing erred in the scoring, eligibility and decision to award funding to Edgewood Parc, is entitled to be ranked in the funded range and would have received an allocation of funding from RFA 2019-113 but for Florida Housing's error in its scoring, eligibility and funding decisions.

18. Florida Housing incorrectly determined Edgewood Parc satisfied the Appropriate Zoning Requirement. But for that determination, Rochester Park would have been ranked higher for a funding allocation than other applicants awarded funding. Therefore, Rochester Park should have been selected for funding.

#### Edgewood Parc Site Control Contract

19. As stated above, only applications that meet the Eligibility Items are eligible for funding. One of these Eligibility Items is to provide Evidence of Site Control. To demonstrate site control Edgewood Parc submitted in its Exhibit 8, a Site Control Certification Form, an Assignment of Agreement and an Agreement for Purchase and Sale. The Agreement for Purchase and Sale (“Agreement”) forms the foundation of Edgewood Parc’s site control. However, it fails to sufficiently describe the actual property that is the subject of the Agreement.

20. On page 1 of the Agreement, it states that the “Buyer wishes to purchase from the Seller the westerly portion of the Parcel which is more particularly described in **Exhibit “A”** attached hereto and made a part hereof (the “Property”).” However, Exhibit A only includes an approximation of the number of acres and a rough sketch of a portion of the parcel. Exhibit A specifically states that “Exhibit A shall be substituted by a certified surveyor’s Legal Description, provided in a boundary survey for the Western development of the Property (portion of the Parcel) ***that both parties shall agree to.***” (emphasis added). In other words, at the time of the filing of Edgewood Parc’s application, no agreement had been reached as to the exact size, shape or location of the parcel.

#### Edgewood Parc Appropriate Zoning Requirement

21. To demonstrate zoning, an applicant is required to provide an executed verification form demonstrating that “as of the Application Deadline the entire proposed Development site is

appropriately zoned and consistent with local land use regulations regarding density and intended use” And that the “Development’s proposed number of units, density, and intended use are consistent with current land use regulations and zoning designation....” (RFA at p. 35; Edgewood Parc Attachment 9).

22. In the Applicant Certification and Acknowledgement Form, Edgewood Parc certified that:

In eliciting information from third parties required by and/or included in this Application, the Applicant has provided such parties information that accurately describes the Development as proposed in this Application. The Applicant has reviewed the third-party information included in this Application and/or provided during the credit underwriting process and the information provided by any such party is based upon, and accurate with respect to, the Development as proposed in this Application.

(RFA at p. 132; Edgewood Parc Attachment 1). Assuming the Agreement to purchase the parcel sufficiently demonstrates the portion to be purchased, a portion of the property is composed of wetlands. Despite the requirement to disclose sufficient information, Edgewood Parc failed to disclose that fact to the City for its review prior to issuance of the form. Further, the property is not zoned properly for the proposed residential development.

23. As a result, Edgewood Parc’s proposed development is inconsistent with the local land use regulations. With these facts, the developable area is insufficient for the proposed development. Therefore, Florida Housing’s determination that Edgewood Parc was eligible for funding was incorrect.

#### Disputed Issues of Law

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

- a) Whether the Edgewood Parc Application met the Site Control Requirement;
- b) Whether the Edgewood Parc Application met the Appropriate Zoning Requirement;

- c) Whether the correct eligibility determination has been made for Edgewood Parc based upon the provisions of the RFA;
- d) Whether the preliminarily rankings properly support the eligibility determinations of applicants for funding in accordance with the standards and provisions of the RFA;
- e) Whether the RFA's criteria for determining eligibility, ranking and evaluation of proposals were properly applied;
- f) Whether the correct allocation funding determination has been made for Rochester Park and Edgewood Parc consistent with the requirements for the competitive procurement process in the RFA and Florida Housing's rules and governing statutes;
- g) Whether the correct allocation funding determination has been made for Edgewood Parc consistent with the requirements for the competitive procurement process in the RFA and Florida Housing's rules and governing statutes;
- h) Whether the criteria and procedures followed in reaching the proposed eligibility determination for Edgewood Parc 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;
- i) Whether the rankings and proposed awards are consistent with fair and open competition for the allocation funding;
- j) Whether the rankings and proposed awards are based upon clearly erroneous or capricious eligibility determinations, scoring or ranking;
- k) Whether the proposed awards improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules or prior Florida Housing interpretations and precedents;
- l) Such other issues as may be revealed during the protest process.

25. 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

26. 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.

27. As a matter of ultimate fact and law, Florida Housing incorrectly determined that Edgewood Parc was eligible for an allocation of funding.

28. As a matter of ultimate fact and law, Petitioners would have been entitled to an allocation of its requested funding but for the errors in scoring and ranking of the Edgewood Parc Application.

Statutes and Rules

29. 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 scoring determinations as they affect the Rochester Park and Edgewood Parc Applications;

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

- 1) The Rochester Park application should have been considered for funding and scored as having satisfied all mandatory Eligibility Items;
- 2) Edgewood Parc did not complete its application in accordance with the competitive solicitation; that its applications was non-responsive to and failed to comply with RFA 2019-113; and that its application should not have been considered for funding or scored as having satisfied all mandatory Eligibility Items;



3) Florida Housing erred in determining that the application submitted by Edgewood Parc was completed in accordance with the competitive solicitation; and,

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

D. Florida Housing enter a Final Order finding the Rochester Park Application eligible for funding, finding the Edgewood Parc Application ineligible for funding, and awarding Rochester Park its requested allocation of funding; and,

E. Rochester Park be granted such other relief as may be deemed appropriate.

RESPECTFULLY SUBMITTED this 20th day of March, 2020.

\_\_\_\_\_/s/ Craig D. Varn\_\_\_\_\_  
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