

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

TALLAND PARK, LTD., and  
TALLAND PARK DEVELOPER, LLC,

Petitioners,

FHFC Case No: 2020-013BP  
APPLICATION NO: 2020-399SN

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, Talland Park, Ltd., and Talland Park Developer, LLC (collectively “Talland 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, Talland Park, Ltd., is the Applicant entity of a proposed affordable housing development to be located in Seminole County, Application #2020-399SN. Petitioner, Talland Park Developer, LLC, is a “Developer” entity as defined by Florida Housing in rule 67-48.002, Florida Administrative Code.

3. Talland Park is challenging Florida Housing's determination regarding Talland Park's and Villa Verde's eligibility for funding under Request for Applications 2019-116 through an administrative hearing before the Department of Administrative Hearing ("DOAH").

4. Counsel for Talland Park and Talland 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 November 6, 2019, Florida Housing issued RFA 2019-116, 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 2019-116"). The application deadline for the RFA was December 30, 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/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 81-82, a list of mandatory “Eligibility Items” that must be included in an application. Two of the mandatory Eligibility Items are the “Mandatory Distance Requirement met” and “Availability of Roads demonstrated.”

10. Applications could qualify automatically for the Mandatory Distance Requirement. Applications that were not eligible for the automatic qualification could qualify if the distance between the Development Location Point, and any Scattered Sites, to the coordinates for the other properties identified on the August 16, 2019 FHFC Development Proximity List that serve the same demographic group as the proposed Development met the Mandatory Distance Requirement.

11. To automatically qualify for the Mandatory Distance Requirement, the proposed Development must be classified as RA Level 1 or RA Level 2, and the applicant must select the Rehabilitation Development Category and either:

- (a) the proposed Development must involve the Rehabilitation of an existing, occupied residential rental property in operation as of the Application Deadline, and the applicant must commit to set aside thirty percent of the total units as ELI Set-Aside units on the Total Set-Aside Breakdown Chart; or
- (b) the Applicant must commit to set aside thirty percent of the total units as ELI Set-Aside units on the Total Set-Aside Breakdown Chart, and the Percentage of Total Units that will have Rental Assistance is greater than seventy-five percent.

(RFA pp. 25-26).

12. To demonstrate the Availability of Roads, an applicant must have demonstrated that, as of the Application Deadline, paved roads either existed and would provide access to the proposed Development site or would be constructed as part of the entire proposed Development. Applicants could make either demonstration by providing in Attachment 13 the “properly completed and executed Florida Housing Finance Corporation Verification of Availability of

Infrastructure – Roads form (Form Rev. 08-18)” or documentation from the Local Government dated within 12 months of the Application Deadline. Neither documentation could be signed by the Applicant, by any related parties of the Applicant, by any Principals or Financial Beneficiaries of the Applicant, or by any local elected officials.

#### Notice of Agency Action

13. Talland Park received notice of Florida Housing’s Final Agency Action entitled “RFA 2019-116 Board Approved Preliminary Awards” on or about March 6, 2020. (“Corporation’s Notice”).

#### Notice of Protest

14. On March 11, 2020, Talland Park timely filed a Notice of Protest which challenged the selection of the applications in the Corporation’s Notice.

#### Substantial Interests

15. Talland Park timely submitted an application in response to RFA 2019-116, Application #2020-399SN (“Talland Park Application”). In the Talland Park Application, Talland Park sought \$4.1 million in SAIL Funding and \$557,900 in Extremely Low Income (ELI) funding to help finance the development of its project which includes eighty Garden Apartments. Villa Verde submitted an application in response to the RFA, Application #2020-385BSN (“Villa Verde Application”).

16. Talland Park was scored as having not satisfied the Mandatory Distance Requirement. Talland Park was assigned lottery number fifty-four as reflected in the document entitled “RFA 2019-116 Board Approved Scoring Results.” Villa Verde was scored as having satisfied the Availability of Roads Requirement. Villa Verde was assigned lottery number three.

17. 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.

18. Talland Park is challenging and seeking a determination that Florida Housing erred in the scoring, eligibility and decision to not award funding to Talland Park. Talland Park is also challenging and seeking a determination that Florida Housing erred in the scoring, eligibility and decision to award funding to Villa Verde. Talland Park is entitled to be ranked in the funded range and would have received an allocation of funding from RFA 2019-116 but for Florida Housing's error in its scoring, eligibility and funding decisions.

19. Florida Housing incorrectly determined Talland Park failed to satisfy the Mandatory Distance Requirement. Florida Housing incorrectly determined Villa Verde satisfied the Availability of Road Requirements. But for those determinations, Talland Park would have been ranked higher for a funding allocation than other applicants awarded funding. Therefore, Talland Park should have been selected for funding.

#### Talland Park Mandatory Distance Requirement

20. As stated above, only applications that meet the Eligibility Items are eligible for funding. Applicants could qualify automatically for the Mandatory Distance Requirement or could qualify by demonstrating that the distance between the Development Location Point, and any Scattered Sites, to the coordinates for the other properties identified on the August 16, 2019 FHFC Development Proximity List that serve the same demographic group met the Mandatory Distance Requirement.

21. The Board did not explain why Talland Park failed to satisfy the Mandatory Distance Requirement, but it is presumed that its decision was based upon the recommendation of

the Review Committee. Nevertheless, this recommendation was incorrect. The Talland Park application automatically qualified for the Mandatory Distance Requirement.

#### Villa Verde Availability of Roads Requirement

22. As stated above, only applications that meet the Eligibility Items are eligible for funding. Applicants could qualify automatically for the Availability of Roads Requirement by filing the “Verification of Availability of Infrastructure – Roads form (Form Rev. 08-18)” or other documentation from the Local Government. However, the RFA is clear that neither could be signed by, among others, any local elected officials.

23. Despite this requirement, Villa Verde submitted the “Verification of Availability of Infrastructure – Roads form (Form Rev. 08-18)” signed by a locally elective official. Therefore, Florida Housing’s determination that Villa Verde 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 Talland Park’s Application automatically qualified for the Mandatory Distance Requirement;
  - b) Whether the correct eligibility determination has been made for Talland Park based upon the provisions of the RFA;
  - c) Whether Villa Verde’s Application met the Availability of Roads Requirement;
  - d) Whether the correct eligibility determination has been made for Villa Verde based upon the provisions of the RFA;
  - e) Whether the preliminary rankings properly support the eligibility determinations of applicants for funding in accordance with the standards and provisions of the RFA;
  - f) Whether the RFA’s criteria for determining eligibility, ranking and evaluation of proposals were properly applied;
  - g) Whether the correct allocation funding determination has been made for Talland Park 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 ineligibility determination for Talland Park 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 correct allocation funding determination has been made for Villa Verde consistent with the requirements for the competitive procurement process in the RFA and Florida Housing's rules and governing statutes;
- j) Whether the criteria and procedures followed in reaching the proposed eligibility determination for Villa Verde 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;
- k) Whether the rankings and proposed awards are consistent with fair and open competition for the allocation funding;
- l) Whether the rankings and proposed awards are based upon clearly erroneous or capricious eligibility determinations, scoring or ranking;
- m) 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;
- n) Whether failure to waive the alleged error as a minor irregularity was an abuse of discretion;
- o) 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 Talland Park was ineligible for an allocation of funding.

28. As a matter of ultimate fact and law, Florida Housing incorrectly determined that Villa Verde was eligible for an allocation of funding.

29. As a matter of ultimate fact and law, Florida Housing's failure to waive the Mandatory Distance Requirement issue as a minor irregularity was an abuse of discretion.

30. 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 of the Talland Park and Villa Verde Applications.

#### Statutes and Rules

31. 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 Talland Park's and Villa Verde's Applications;

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

- 1) Talland Park properly completed its application in accordance with the competitive solicitation; that its application was responsive to and complied with RFA 2019-116; and that its application should have been considered for funding and scored as having satisfied all mandatory Eligibility Items;
- 2) Florida Housing erred in determining that the application submitted by Talland Park was not completed in accordance with the competitive solicitation;

- 3) Villa Verde did not complete its application in accordance with the competitive solicitation; that its application was non-responsive to and failed to comply with RFA 2019-116; and that its application should not have been considered for funding or scored as having satisfied all mandatory Eligibility Items;
- 4) Florida Housing erred in determining that the application submitted by Villa Verde was completed in accordance with the competitive solicitation; and,
- 5) To the extent there was any error in Talland Park's satisfaction of the Mandatory Distance Requirement, Florida Housing's failure to waive such error as a minor irregularity was an abuse of discretion;

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

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

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

RESPECTFULLY SUBMITTED this 20th day of March, 2020.

          /s/ Craig D. Varn            
Craig D. Varn  
Florida Bar # 90247  
[cvarn@mansonbolves.com](mailto:cvarn@mansonbolves.com)  
Amy Wells Brennan  
Florida Bar # 0723533  
[abrennan@mansonbolves.com](mailto:abrennan@mansonbolves.com)  
Manson Bolves Donaldson & Varn  
109 North Brush Street, Suite 300  
Tampa, FL 33602  
813-514-4700 (phone)  
813-514-4701 (fax)