

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

BERKELEY LANDING, LTD.,
AND BERKELEY LANDING
DEVELOPER, LLC

Petitioners,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC CASE NO: 2019-011BP
APPLICATION NO: 2019-110C
REQUEST FOR APPLICATIONS: 2018-112

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FLORIDA HOUSING FINANCE CORPORATION

**FORMAL WRITTEN PROTEST OF AWARD
AND PETITION FOR ADMINISTRATIVE HEARING**

Pursuant to Sections 120.569 and 120.57(3), Florida Statutes, and Chapter 28-110 and Rule 28-106.201, Florida Administrative Code (“Fla. Admin. Code”), Petitioners, Berkeley Landing, Ltd. and Berkeley Landing Developer, LLC., (collectively, “Petitioners”), file this Formal Written Protest of Award and 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. Berkeley Landing, Ltd (“Berkeley Landing”) is the Applicant entity for a proposed affordable housing development to be located in Orange County, Application #2019-110C. Berkeley Landing, Developer, LLC (“Berkeley Landing, Developer”) is the “Developer” entity as defined by Florida Housing in Rule 67-48.002(28), Fla. Admin. Code.

3. Petitioners' address is 1105 Kensington Park Drive, Ste. 200, Altamonte Springs, Florida 32714. Petitioners' telephone number is 407-333-3233. For purposes of this proceeding, Petitioners' address is that of its undersigned counsel.

4. Petitioners are challenging the eligibility of the applicants named in this petition for their failure to meet Eligibility or Proximity Funding Preference Point requirements for an award of Housing Credits ("HC") for funding under Request for Applications 2018-112, Housing Credit Financing for Affordable Housing Developments Located in Broward, Duval, Hillsborough, Orange, Palm Beach and Pinellas Counties (the "RFA" or "RFA 2018-112") through an administrative hearing before the Department of Administrative Hearing ("DOAH").

Petitioners' Counsel

5. Counsel for Petitioners and Petitioners' address for this proceeding are:

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Manson Bolves et. al.
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BACKGROUND

6. Florida Housing administers various affordable housing programs including the Housing Credit (HC) Program pursuant to Section 42 of the Internal Revenue Code (the "IRC" or "the Code") and Section 420.5099, Florida Statutes ("Fla. Stat."), under which 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.

7. Florida Housing administers a competitive solicitation process to implement the provisions of the housing credit program under which developers apply for funding. Chapter 67-60, Fla. Admin. Code.

8. Rule 67-60.006, Fla. Admin. Code, provides that “[t]he failure of an Applicant to supply required information in connection with any competitive solicitation pursuant to this rule chapter shall be grounds for a determination of non-responsiveness with respect to its Application.”

9. By applying, each Applicant certifies that:

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.

(RFA at p. 6).

10. Qualified affordable housing developments must compete for this funding because the demand for HC funding exceeds the available funding under the HC Program. Florida Housing has established by rule a competitive solicitation process known as the Request for Applications to assess the relative merits of proposed developments, pursuant Chapters 67-48 and 67-60, Fla. Admin. Code.

11. Specifically, Florida Housing’s solicitation process for RFA 2018-112, as set forth in Rules 67-60.001-.009, Fla. Admin. Code, involves the following:

- a) Florida Housing publishes its competitive solicitation (RFA) in the Florida Administrative Register;
- b) applicants prepare and submit their response to the competitive solicitation;
- c) Florida Housing appoints a scoring committee (“Review Committee”) to evaluate the applications;

- d) the scoring committee makes recommendations to Florida Housing's Board, which are then voted on by the Board; and
- e) applicants not selected for funding may protest the results of the competitive solicitation process.

12. Florida Housing issued RFA 2018-112 on or about September 6, 2018, and subsequently modified the RFA on October 4, and October 18, 2018. The application deadline for the RFA as modified was November 13, 2018 ("Application Deadline").

13. The RFA sets forth the information required to be provided by an Applicant, which includes a general description of the type of projects that will be considered eligible for funding and delineates the submission requirements. (RFA at pp. 2-68). The RFA sets forth on pages 69, 70 and 72, a list of mandatory Eligibility and Point Items that must be included in a response. The RFA expressly provides that "[o]nly Applications that meet all of the Eligibility Items will be eligible for funding and considered for funding selection." (RFA at p. 69).

14. The highest scoring Applications are determined by first sorting together all eligible Applications from highest to lowest score, with any scores that are tied further separated by the following progression: (1) Applications eligible for Proximity Funding Preference will be ranked higher than those Applications that do not qualify for the preference; (2) Applications eligible for Per Unit Construction Funding Preference will be ranked higher than those Applications that do not qualify for the preference; (3) Applications eligible for Development Category Funding Preference will be ranked higher than those Applications that do not qualify for the preference; (4) Applications having a leveraging Classification of A will be ranked higher than those Applications having a leveraging Classification of B, with the leveraging Classification using a series of multipliers to group applications based on the amount of funding per unit; (5) Applications eligible for Florida Job Creation Funding Preference will be ranked higher than

those Applications that do not qualify for the preference; and (6) Applications with the lowest lottery number will receive preference. (RFA at pp. 72-73).

15. On or about January 22, 2019, the Review Committee, consisting of Florida Housing staff, met and considered the applications responding to the RFA. At the meeting the Review Committee listed and input the scores for each application and ultimately made recommendations to the Florida Housing Board of Directors (“Board”) for its consideration. The Review Committee determined that Berkeley Landing was eligible, but not selected for funding.

16. On May 4, 2018, Florida Housing’s Board of Directors adopted the Review Committee’s recommendations and tentatively authorized the selection for funding of those applications identified in RFA 2018-112 Board Approved Preliminary Awards report, which reflected the preliminary funded applicants.

NOTICE OF AGENCY ACTION

17. Petitioners received notice of Florida Housing’s Agency Action, the RFA 2018-112 Board Approved Preliminary Awards report, on or about February 1, 2019 (“Notice”).

NOTICE OF PROTEST

18. On February 5, 2019, Petitioners timely filed their Notice of Protest challenging the selection of the applications in the Corporation’s Notice. (See attached Exhibit A, which includes the Corporation’s Notice reflecting the preliminarily funded applicants).

SUBSTANTIAL INTERESTS

19. Petitioners timely submitted an application in response to the RFA, Application #2019–110C (“Application”). In their Application, Petitioners sought an allocation of \$2,375,000 in annual federal tax credits to help finance the development of their project, a 120-unit Garden Apartment complex in Palm Beach County. As reflected in RFA 2018-112, Board Approved Scoring Results, Petitioners were assigned lottery number 23. Petitioners were scored

as having satisfied eligibility requirements for funding, satisfied Proximity Funding Preference requirements and scored 10 out of 10 Total Points. (See RFA 2018-112 All Applications Report).

20. HTG Heron Estates Family, LLC (“Heron Estates”) submitted an application in response to the RFA, Application #2019-115C. Heron Estates sought an allocation of \$1,601,264 in annual federal tax credits to help finance the development of its project, a 79-unit Townhouses complex in Palm Beach County. As reflected in RFA 2018-112 Board Approved Scoring Results, Heron Estates was assigned lottery number 2.

21. Heron Estates was scored as having satisfied eligibility requirements for funding, satisfied Proximity Funding Preference requirements, and scored 10 out of 10 Total Points.

22. Heron Estates failed to meet or satisfy RFA eligibility, Proximity Funding Preference, or other requirements, and is not entitled to the eligibility determination, scoring, and preliminary ranking of its application. As discussed below, Florida Housing improperly determined that this applicant satisfied RFA mandatory, eligibility requirements.

23. Through this proceeding Petitioners challenge and are seeking a determination that Florida Housing erred in the preliminary scoring and eligibility determination of the Heron Estates application, and the decision to award Housing Credits to Heron Estates. But for Florida Housing’s error in its scoring and eligibility decision as to the Heron Estates application, Petitioners would have been ranked in the funded range and would have been entitled to an allocation of housing credits from RFA 2018-112.

SCATTERED SITE

24. Disclosure that the proposed development site is a scattered site is a mandatory Eligibility Item in the RFA. (RFA at p. 69). If an Applicant does not properly disclose that the site is a scattered site and properly answer the related questions regarding the scattered site, then

the Application must be deemed nonresponsive and ineligible for consideration of funding. Rule 67-60.006(1), Fla. Admin. Code.

25. A Scattered Site, for the purposes of the RFA, is defined as:

“Scattered Sites,” as applied to a single Development, means 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, a “Scattered Site”). For purposes of this definition “contiguous” means touching at a point or along a boundary. Real property is contiguous if the only intervening real property interest is an easement provided the easement is not a roadway or street.

In Attachment 8 to its Application, Heron Estates included a copy of its site control document, the Fourth Amended and Restated Ground Lease Between Riviera Beach Housing Authority and HTG Heron Estates Family, LLC. This site control document includes a sketch and legal description which demonstrates that the proposed development site consists of two separate parcels that are not contiguous and, therefore, meet the definition of a Scattered Site.

26. Since disclosure of a Scattered Site is a Mandatory Item, the Heron Estates Application is nonresponsive and ineligible for funding under the RFA.

ISSUES OF MATERIAL FACT AND LAW

27. Disputed issues of material fact and law include those matters pled in this petition, and include but are not limited to the following:

- a) Whether the criteria for determining eligibility, ranking and evaluation of proposals in the RFA were properly followed;
- b) Whether the preliminarily rankings properly determine the eligibility of potential applicants for funding in accordance with the standards and provisions of the RFA;
- c) Whether the rankings are consistent with the RFA and the disclosed basis or grounds upon which tax credits are to be allocated;
- d) Whether the rankings are based on a correct determination of the eligibility of the applicants or correct scoring and ranking criteria in the RFA;
- e) Whether the rankings are consistent with fair and open competition for the allocation of tax credits;

f) Whether the rankings are based upon clearly erroneous or capricious eligibility determinations, scoring or rankings;

g) Whether the rankings improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules or prior Florida Housing interpretations and precedents;

h) Whether the Heron Estates Application should be deemed ineligible for funding under the RFA because of its failure to satisfy RFA requirements with respect to the Scattered Site disclosure requirements;

i) Whether the criteria and procedures for the scoring, ranking and eligibility determination of Heron Estates are arbitrary, capricious, contrary to competition, contrary to the RFA requirements, or are contrary to prior Florida Housing interpretations of the applicable statutes and administrative rules;

j) Whether the RFA's criteria were properly followed in determining eligibility, ranking and evaluation of the Heron Estates Application;

k) Whether Heron Estates' eligibility determination and ranking is consistent with fair and open competition for the allocation of tax credits;

l) Whether Heron Estates' eligibility determination and ranking are based on clearly erroneous or capricious eligibility determination, scoring or ranking;

m) Whether Heron Estates' eligibility determination and ranking improperly incorporate new policies and interpretations that impermissibly deviate from the RFA specifications, existing rules or prior Florida Housing interpretations and precedents; and,

n) Such other issues as may be revealed during the protest process.

28. Petitioners reserve the right to seek leave to amend this petition to include additional disputed issues of material fact and law that may become known through discovery.

STATEMENT OF ULTIMATE FACTS AND LAW

29. As a matter of ultimate fact and law, Heron Estates failed to complete its applications in accordance with the competitive solicitation; its application was not responsive to and failed to comply with relevant portions of the RFA 2018-112; and, therefore, its application should not have been considered for funding or scored as being an eligible application.

30. As a matter of ultimate fact and law Florida Housing improperly determined that Heron Estates' application was completed in accordance with the competitive solicitation; was responsive to all applicable provisions of the RFA 2018-112 and, and as a result was eligible for funding under RFA 2018-112.

31. As a matter of ultimate fact and law Florida Housing improperly scored Heron Estates' Application as having satisfied all mandatory eligibility requirements as of the Application Deadline.

32. As a matter of ultimate fact and law, Florida Housing improperly determined that Heron Estates was eligible for funding.

33. As a matter of ultimate fact and law, but for the errors in Heron Estates' Application, Petitioners would have been ranked as the second highest applicant for tax credit funding in Orange County. As the second highest ranked application, if the highest ranked application is displaced, Petitioners would be eligible for funding.

STATUTES AND RULES

Statutes and rules governing this proceeding are Sections 120.569 and 120.57(3), and Chapter 420, Fla. Stat., and Chapters 28-106, 67-48 and 67-40, Fla. Admin. Code.

WHEREFORE, Petitioners request that:

A. Florida Housing refers this Petition to the Division of Administrative Hearings for a formal administrative hearing and the assignment of an Administrative Law Judge pursuant to Section 120.57(3), Fla. Stat.;

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

- 1) Heron Estates failed to complete its applications in accordance with the competitive solicitation; that its application was non-responsive to and failed to comply with RFA 2018-112; and that its application should not have been scored as having satisfied

mandatory eligibility requirements as prescribed by RFA 2018-112;

- 2) Florida Housing improperly determined that the application submitted by Heron Estates was completed in accordance with the competitive solicitation;
- 3) Florida Housing improperly determined that the application submitted by Heron Estates was responsive to RFA 2018-112; and,
- 4) Florida Housing improperly determined that Heron Estates' application was eligible for funding under RFA 2018-112.

C. Florida Housing enter a Final Order adopting the Administrative Law Judge's Recommended Order; and,

D. Petitioners be granted such other relief as may be deemed appropriate.

Respectfully submitted this 15th day of February, 2019.



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Michael G. Maida, P.A.

Attorney at Law

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www.maidalawpa.com

Michael G. Maida
Civil Circuit Mediator

TELEPHONE (850)425-8124
TELECOPIER (850)681-0879

February 5, 2018

Via Hand Delivery

Via Electronic Mail: CorporationClerk@floridahousing.org

Ana McGlamory
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St., Ste. 5000
Tallahassee, FL 32301

RE: RFA 2018-112 Housing Credit Financing for Affordable Housing Developments
Located Broward, Duval, Hillsborough, Orange, Palm Beach, and Pinellas
Counties ("the RFA") - Notice of Protest

Dear Ms. McGlamory:

On behalf of Applicant Berkeley Landing, Ltd., Application No. 2019-110C ("Berkeley Landing") and Berkeley Landing Developer, LLC., ("Berkeley Landing Developer"), this letter constitutes a Notice of Protest ("Notice") filed pursuant to sections 120.569 and 120.57(3), Florida Statutes, Rules 28-110 and 67-60.009, Florida Administrative Code and the RFA. Berkeley Landing and Berkeley Landing Developer protest Florida Housing Finance Corporation's ("Corporation") intended decision with respect to the eligibility, scoring, ranking and selection of applications in the RFA, including but not limited to those applications selected for funding as identified in the notice of intended decision. (See Board Approved Preliminary Awards attached as Exhibit "A.")

This Notice is being filed within 72 hours (not including weekends) of the posting of the notice of intended decision on the Corporation's website on Friday, February 1, 2019 at 10:33 a.m. Berkeley Landing and Berkeley Landing Developer reserve the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes. This Notice is being filed to, among other matters, preserve Berkeley Landing's and Berkeley Landing Developer's ability to initiate or intervene in proceedings that may impact that eligibility, scoring, ranking and funding determination.

Please acknowledge receipt of this filing by stamping the date and time on the enclosed copy of this letter.

Sincerely,

Michael G. Maida
Michael G. Maida

MGM/sem
Attachment

RECEIVED
19 FEB -5 PM 4:08
FLORIDA HOUSING
FINANCE CORPORATION

RFA 2018-112 Board Approved Preliminary Awards

Total HC Available for RFA	17,314,387.00
Total HC Allocated	14,716,035.00
Total HC Remaining	2,598,352.00

Application Number	Name of Development	County	Name of Authorized Principal Representative	Name of Developers	Demo. Commitment	Total Units	HC Funding Amount	Eligible For Funding?	Development is in Broward County or Pinellas County and serves the Family Demographic Commitment, and qualifies for the Geographic Area of Opportunity Funding Goal.	Qualifies as a Local Government Area of Opportunity	Total Points	Proximity Funding Preference	Per Unit Construction Funding Preference	Development Category Funding Preference	Leveraging Classification	Florida Job Creation Preference	Lottery Number	
Pinellas County that serves the Family Demographic Commitment and qualifies for the Geographic Area of Opportunity Funding Goal																		
2019-100C	The Shores	Pinellas	William Todd Pabbin	The Richman Group of Florida, Inc.	F	51	910,000.00	Y	Y	N	10	Y	Y	Y	A	Y	9	
Broward County that serves the Family Demographic Commitment and qualifies for the Geographic Area of Opportunity Funding Goal																		
2019-111C	Fiori Village	Broward	Matthew A. Rieger	HTG Fiori Developer, LLC	F	96	2,779,771.00	Y	Y	N	10	Y	Y	Y	A	Y	21	
Duval County Application (with a preference for Application that qualifies as a Local Government Area of Opportunity)																		
2019-121C	Lofts at Brooklyn	Duval	James R. Hoover	TVC Development, Inc.	F	133	1,868,000.00	Y	N	Y	10	Y	Y	Y	A	Y	14	
Hillsborough County Application (with a preference for Application that qualifies as a Local Government Area of Opportunity)																		
2019-116C	WRDGT 13B	Hillsborough	Jerome Ryans	WRDGT 13B Developer, LLC	F	130	2,375,000.00	Y	N	Y	10	Y	Y	Y	A	Y	10	
Orange County Application (with a preference for Application that qualifies as a Local Government Area of Opportunity)																		
2019-123C	Hawthorne Park	Orange	Jonathan L. Wolf	Hawthorne Park Developer, LLC	E, Non-ALE	120	2,300,000.00	Y	N	Y	10	Y	Y	Y	A	Y	1	
Palm Beach County Application (with a preference for Application that qualifies as a Local Government Area of Opportunity)																		
2019-113C	Heron Estates Family	Palm Beach	Matthew A. Rieger	HTG Heron Estates Family Developer,	F	79	1,601,264.00	Y	N	Y	10	Y	Y	Y	A	Y	2	
Broward County Application																		
2019-119C	Poinciana Crossing	Broward	Kenneth Nay/or	APC Poinciana Crossing	F	113	2,882,000.00	Y	N	N	10	Y	Y	Y	A	Y	4	

On February 1, 2019, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion and staff recommendation to select the above Applications for funding and invite the Applicants to enter credit underwriting. Any unsuccessful Applicant may file a notice of protest and a formal written protest in accordance with Section 120.57(3), Fla. Stat., Rule Chapter 28-110, F.A.C., and Rule 67-60.009, F.A.C. Failure to file a protest within the time prescribed in Section 120.57(3), Fla. Stat., shall constitute a waiver of proceedings under Chapter 120, Fla. Stat.

Exhibit A

Michael G. Maida, P.A.

Attorney at Law

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www.maidalawpa.com

Michael G. Maida
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February 5, 2018

Via Hand Delivery

Via Electronic Mail: CorporationClerk@floridahousing.org

Ana McGlamory
Corporation Clerk
Florida Housing Finance Corporation
227 N. Bronough St., Ste. 5000
Tallahassee, FL 32301

RECEIVED
19 FEB -5 PM 4:08
OFFICE OF CORPORATION CLERK

RE: RFA 2018-112 Housing Credit Financing for Affordable Housing Developments
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Dear Ms. McGlamory:

On behalf of Applicant Berkeley Landing, Ltd., Application No. 2019-110C ("Berkeley Landing") and Berkeley Landing Developer, LLC., ("Berkeley Landing Developer"), this letter constitutes a Notice of Protest ("Notice") filed pursuant to sections 120.569 and 120.57(3), Florida Statutes, Rules 28-110 and 67-60.009, Florida Administrative Code and the RFA. Berkeley Landing and Berkeley Landing Developer protest Florida Housing Finance Corporation's ("Corporation") intended decision with respect to the eligibility, scoring, ranking and selection of applications in the RFA, including but not limited to those applications selected for funding as identified in the notice of intended decision. (See Board Approved Preliminary Awards attached as Exhibit "A.")

This Notice is being filed within 72 hours (not including weekends) of the posting of the notice of intended decision on the Corporation's website on Friday, February 1, 2019 at 10:33 a.m. Berkeley Landing and Berkeley Landing Developer reserve the right to file a formal written protest within (10) days of the filing of this Notice pursuant to section 120.57(3), Florida Statutes. This Notice is being filed to, among other matters, preserve Berkeley Landing's and Berkeley Landing Developer's ability to initiate or intervene in proceedings that may impact that eligibility, scoring, ranking and funding determination.

Please acknowledge receipt of this filing by stamping the date and time on the enclosed copy of this letter.

Sincerely,

Michael G. Maida
Michael G. Maida

MGM/sem
Attachment

Exhibit A

RFA 2018-112 Board Approved Preliminary Awards

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Total HC Allocated	14,716,035.00
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Broward County that serves the Family Demographic Commitment and qualifies for the Geographic Area of Opportunity Funding Goal																		
2019-111C	Front Village	Broward	Matthew A. Rieger	HFG Iron Developer, LLC	F	96	2,779,771.00	Y	Y	N	10	Y	Y	Y	A	Y	21	
Duval County Application with a preference for Application that qualifies as a Local Government Area of Opportunity																		
2019-121C	Leffo at Brooklyn	Duval	James R. Hoover	TVC Development, Inc.	F	138	1,860,000.00	Y	N	Y	10	Y	Y	Y	A	Y	14	
Hillsborough County Application with a preference for Application that qualifies as a Local Government Area of Opportunity																		
2019-116C	WPOG T38	Hillsborough	Jerome Ryan	WHBO T38 Developer, LLC	F	130	2,375,000.00	Y	N	Y	10	Y	Y	Y	A	Y	10	
Orange County Application with a preference for Application that qualifies as a Local Government Area of Opportunity																		
2019-123C	Hambridge Park	Orange	Jonathan L. Wolf	Hambridge Park Developer, LLC	E, Non-AUF	120	2,300,000.00	Y	N	Y	10	Y	Y	Y	A	Y	1	
Palm Beach County Application with a preference for Application that qualifies as a Local Government Area of Opportunity																		
2019-115C	Heron Estates Family	Palm Beach	Matthew A. Rieger	HFG Heron Estates Family Developer	F	79	1,601,264.00	Y	N	Y	10	Y	Y	Y	A	Y	2	
Broward County Application																		
2019-119C	Penouaa Crossing	Broward	Kenneth Naylor	AFC Penouaa Crossing	F	113	1,882,000.00	Y	N	N	10	Y	Y	Y	A	Y	4	

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Exhibit A