

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

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ABILITY PINE HILLS, LLC,

Petitioner,

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

FHFC Case No. 2024-016BP
FHFC RFA No. 2024-103
Petitioner's Application No. 2024-293CSN

Respondent.

**FORMAL WRITTEN PROTEST AND
PETITION FOR ADMINISTRATIVE PROCEEDINGS**

Pursuant to Sections 120.569 and 120.57, Fla. Stat., and Florida Housing Finance Corporation Request for Application ("RFA") No. 2024-103, at Section Six, and Rules 28-106.205 and 67-60.009, Fla. Admin. Code, Petitioner ABILITY PINE HILLS, LLC., ("Petitioner" or "Ability"), an applicant for funding in RFA No. 2024-103 for Housing Credit and SAIL Financing for Homeless Housing Developments in Medium and Large Counties, hereby files its formal written protest to contest the proposed scoring, eligibility and ineligibility decisions and the failure to award to Ability funding in RFA 2024-103. Ability does not contest the award of funding to Cedar Cove, Application No. 2024-291CSN. In support of this Protest and Petition, Petitioner states as follows:

Parties

1. The agency affected is the Florida Housing Finance Corporation (the "Corporation", "Florida Housing," or "FHFC"), whose address is 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The solicitation number assigned to this process for the award of competitive federal law income housing tax credits ("housing credits" or "HC") and

State Apartment Incentive Loan (“SAIL”) is Request for Applications (“RFA”) 2024-103. By notice posted on its website, FHFC has given notice of its intent to award funding to only one applicant, and not to Petitioner. FHFC also posted notice at the same time of its determination or which applicants were eligible for consideration for funding and which were not, the numerical scores assigned to the applications, and whether applicants qualify for various preferences in the selection process.

2. Petitioner, Ability Pine Hills, LLC, is a Florida limited liability company, whose business address is 3740 Beach Boulevard, Suite 304, Jacksonville, Florida 32207. For purposes of this proceeding, Petitioner’s address is that of its undersigned counsel, M. Christopher Bryant, Oertel, Fernandez, Bryant & Atkinson, P.A., P.O. Box 1110, Tallahassee, Florida 32302-1110, telephone number 850-521-0700, facsimile number 850-521-0720, email cbryant@ohfc.com.

3. Petitioner submitted an application, assigned Application No. 2024-293CSN, in RFA 2024-103 seeking an award of tax credits in the annual amount of \$2,700,000, and SAIL financing of \$7,352,800. Petitioner proposes to construct a new 96-unit development to be known as Village of Pine Hills in Orange County, designated by Florida Housing as a Large County. Petitioner proposes that 76% of the units will be set aside for low-income tenants making no more than 60% of Area Median Income (“AMI”), 4% of the units for low income tenants making no more than 40% of AMI, and 20% of the units for Extremely Low Income tenants making no more than 30% AMI. FHFC has announced its intention to award funding to one development, but not to Petitioner.

Notice

4. On Wednesday, March 27, 2024 at 12:15 p.m., Petitioner and all other participants in RFA 2024-103 received notice that FHFC’s Board of Directors had adopted FHFC staff’s

determinations of which applications were eligible or ineligible for consideration for funding, the scores assigned to the applications, and the selection of one eligible applicant for awards of tax credits and SAIL financing, subject to satisfactory completion of the credit underwriting process. Such notice was provided by the posting of two spreadsheets, one listing the scoring, eligibility, and preference status of applications in RFA 2024-103 (copy attached as Exhibit “A”) and one identifying the application which FHFC proposed to fund (copy attached as Exhibit “B”) on the Florida Housing website, www.floridahousing.org. Petitioner timely filed a Notice of Protest at 8:57 a.m. on Monday, April 1, 2024, copy attached to this Petition as Exhibit “C.” Petitioner’s Formal Written Protest and Petition for Formal Administrative Proceedings is being filed within 10 calendar days of that notice.

Substantial Interests Affected

5. Petitioner’s substantial interests are being determined in the instant proceeding because Petitioner is an applicant for low income housing tax credit and SAIL funding. Petitioner was not preliminarily selected for an award of such funding. Petitioner cannot proceed with the proposed construction of its development for low income tenants without the award of the requested funding.

Factual Background

RFA 2024-103 Ranking and Selection Process

6. Through the RFA 2024-103 process, FHFC sought to award up to an estimated \$5,134,500 of Housing Credits and \$15,420,538 in SAIL financing for the construction of affordable housing developments for Homeless households in Large and Medium Counties.

7. Applicants request in their applications a specific dollar amount of housing credits to be given to the Applicant each year for a period of 10 years. Applicants typically sell the rights

to that future stream of income tax credits (through the sale of almost all of the ownership interest in the Applicant entity) to an investor to generate the majority of the capital necessary to construct the development. In addition, applicants request a loan under the State Apartment Incentive Loan program, which offers favorable repayment terms and interest rates that can be serviced by the limited rental revenue generated from the targeted tenant population.

8. Applicants in this RFA are assigned numerical scores on eleven items, worth points ranging from 5 to 35 each. The maximum total score an applicant could achieve was 170 points; and a minimum total score of 149 was necessary for an applicant to be deemed eligible. Some of the items are objectively scored, including:

- submission of a Principal Disclosure Form to Florida Housing for approval at least 14 days prior to the Application Deadline (5 points);
- bookmarking the Application attachments prior to submission (5 points);
- a completed and approved Executive Director Certification of Non-Profit Qualifications form (10 points);
- an FHFC-approved Pre-Application Meeting or Experience form (10 points); and
- the Developer's prior experience with FHFC-funded developments (5 points).

9. Other components of the scoring process consist of subjective scoring, assigning points based on narrative responses by applicants to questions concerning the experience of the developer and ongoing operations of the proposed development. These components include:

- Applicant's experience operating permanent supportive housing, including well-established protocols and staff supervision – up to 30 points
- Applicant's experience and capacity with integrating property management functions with housing stability services and resident services coordination – up to

30 points

- Ability of the tenants to access general and specific community-based services and resources – up to 35 points
- Applicant’s knowledge and experience in working to assist households in achieving permanent housing stability – up to 10 points
- Applicant’s knowledge and experience in working to assist households in achieving self-sufficiency – up to 10 points
- Applicant’s involvement in the local homeless resource network – up to 20 points

10. For this RFA, Florida Housing divided the state into four regions with relative equal Homeless populations: North Florida Region, South Florida Region, Central Region, and Tampa Bay Region. This RFA included a Goal to fund one Development in the Central Region and one in the Tampa Bay Region. Further, the RFA included a preference to fund at least one Development in a Large County, and one in a Medium County. See, RFA at numbered page 3 of 131.

11. In response to the RFA, Florida Housing received four applications. The four applications, by name, region, county, and county size are as follows:

2024-291CSN Cedar Cove, Tampa Bay Region, Manatee County (Medium)

2024-292CSN Copper Hill Crossings, Tampa Bay Region, Hillsborough County (Large)

2024-293CSN Village of Pine Hills, Central Florida Region, Orange County (Large)

2024-294CSN The Franklin, Tampa Bay Region, Hillsborough (Large)

Application Submission and Processing

12. Applications are considered for funding only if they are deemed “eligible,” based on whether the Application complies with Florida Housing’s various application content requirements. One of the eligibility requirements, as noted in paragraph 8 above, was to achieve a

total application score of at least 149 of the available 170 points. The total scores received by the four applications were as follows: Cedar Cove 157; Village of Pine Hills 153; The Franklin 151; and Copper Hill Crossings 138.

13. Of the four Applications submitted to FHFC in RFA 2024-103, only one of the applications was deemed eligible, and three (3) were found ineligible. Ability's application was one of the applications deemed ineligible. The bases for the applications deemed ineligible were as follows:

- (a) Copper Hill Crossings (2024-292CSN) achieved a total score of less than 149 points; it received only 138 points.
- (b) Ability's Village of Pine Hills (2024-293CSN) did not include an executed form entitled Executive Director Certification of Material Participation by Non-Profit. (This issue is discussed more fully below.)
- (c) The Franklin (2024-294CSN) failed to pay its required Application Fee. In addition, the person designated as the Authorized Principal Representative for the Application is not a Principal of the Non-Profit entity involved in the application, as required by this RFA.

14. FHFC employs a "Funding Test" to be used in the selection of applications for funding in this RFA. The "Funding Test" requires that the amount of Housing Credits and SAIL funding remaining (unawarded) when a particular application is being considered for selection must be enough to fully fund that applicant's Housing Credit and SAIL request amount; partial funding will not be given.

15. In selecting among eligible applicants for funding, FHFC also applies a "County Award Tally." The County Award Tally is designed to prevent a disproportionate concentration

of funded developments in any one county. Generally, before a second application can be funded in any given county, all other counties which are represented by an eligible applicant must receive an award of funding, subject to the Funding Test.

16. Florida Housing appointed several employees to serve as the Review Committee to evaluate and score the applications, and the Committee held a public meeting on March 12, 2024 to announce scores and conduct ranking and funding selection. Following eligibility determinations and applications of funding preferences and the selection process, Florida Housing's staff Review Committee recommended selecting one application for funding: Cedar Cove. After selection of Cedar Cove, there remained \$2,992,500 in Housing Credits available and \$7,738,238 in SAIL financing. This remaining Housing Credit and SAIL funding would be sufficient to fully fund Ability's funding requests if its application is deemed eligible for consideration for funding, so it would satisfy the Funding Test described above.

17. Florida Housing's Board of Directors met on March 26, 2024, and its agenda included consideration of RFA 2024-103. The Board of Directors adopted all staff recommendations as to eligibility, scoring, and funding recommendations.

18. Petitioner challenges the determination that its own application, for Village of Pine Hills is ineligible for consideration for funding. The sole basis for ineligibility is the omission of a form which is not relevant to the Village of Pine Hills' application. The omission is a minor irregularity which should be waived.

Ability's Material Participation

19. Only Non-Profit Applicants were eligible to apply for funding in this RFA. The term "Non-Profit Applicant" is defined in the RFA at Exhibit B, numbered pages 80 to 81 of 131, as follows:

An Applicant entity that is owned in part or in whole by one or more qualified non-profit entities as defined in Section 42(h)(5)(C), subsection 501(c)(3) or 501(c)(4) of the IRC and organized under Chapter 617, F.S., if a Florida Corporation, or organized under similar state law if organized in a jurisdiction other than Florida, to provide housing and other services on a not-for-profit basis. The non-profit entity(ies) meets the following requirements:

(a) owns at least 51 percent of the ownership interest in the Development held by the general partner or managing member entity, specifically including at least 51 percent of the profits, losses, capital and other economic benefits;

(b) receives at least 25 percent of the Developer Fee; and

(c) is acceptable to federal and state agencies and financial institutions as a Sponsor for affordable housing, as further described in Rule 67-48.0075, F.A.C.

If a for-Profit entity has an ownership interest in the Development, it must be 49 percent or less of the Development.

In other words, a Non-Profit Applicant can be either wholly-owned by a 501(c)(3) or 501(c)(4) organization, or majority owned by such an entity in conjunction with a for-profit entity.

20. Petitioner is wholly-owned by Ability Housing, Inc., a 501(c)(3) non-profit corporation. By contrast, the other three applicants in this RFA are only partially owned by non-profits, and have for-profit entities and trusts within their ownership and management structure.

21. Petitioner submitted the only application in this RFA for which the sole developer is a non-profit entity. That sole developer is, again, Ability Housing, Inc. By contrast, the other three applicants either have for-profit entities as a co-developer, or, in the case of 294CSN, The Franklin, have a for-profit developer as its sole developer. It is not impermissible for an Applicant in this RFA to have a for-profit developer or co-developer, but the RFA requires that the Non-Profit receive at least 25% of the Developer Fee.

22. Florida Housing has historically encouraged non-profit applicants to partner with

experienced for-profit entities, either through joint venture, partnership, or co-developer arrangements. Such arrangements help non-profits gain development experience, and support the growth of a robust non-profit developer segment of the affordable housing industry. But to insure that non-profits are in fact gaining such valuable experience, Florida Housing requires that the non-profit materially participate in the development process. This is also a requirement of IRS regulation.

23. RFA 2024-103 included a Non-Profit Material Participation form to carry out the purposes described in the preceding paragraph. A blank copy of the Non-Profit Material Participation form is attached to this Petition as Exhibit “D.”

24. Petitioner had prepared a Non-Profit Material Participation form for purposes of responding to this RFA. In fact, Petitioner had included the completed Non-Profit Material Participation form when it underwent the Non-Profit Advance Review process for this RFA, by submission of the Non-Profit Application Package for pre-approval at least 14 days before the Application Deadline. That pre-application submittal was approved by Florida Housing, and the Executive Director Certification of Non-Profit Qualifications for Ability Housing, showing such approval, was included at Attachment 3 to the Village of Pine Hills’ application. Petitioner received the 10 points available for the Non-Profit Advance Review Process towards its Application score.

25. In assembling the Village of Pine Hills’ application for submittal, Petitioner inadvertently omitted the Non-Profit Material Participation form from the All Attachments document. A scoring sheet prepared by one of the review committee members, produced in response to a public records request, is attached hereto as Exhibit “E.” It identifies Ability’s application number 2024-293CSN as an “exception” to the requirement of providing evidence of

qualifying as a Non-Profit Applicant, and gives the following explanation:

One exception: 2024-293CSN: Missing Executive Director Certificate of Material Representation (sic) form

(As discussed in this Petition, this form actually is intended to document Material Participation, not Material “Representation.”) However, under Petitioner’s set of circumstances, the omission was not a material omission, and it should be waived.

26. As explained in paragraphs 22 and 23 above, the purpose of the Material Participation form is to insure that the Non-Profit entity involved with the application is actually and significantly involved in the development process. Importantly, it insures that the Non-Profit is not mere “window dressing,” for an application that might otherwise be substantially developed, managed, and operated by a for-profit entity.

27. Ability Housing, Inc. is a bona fide non-profit entity as documented by the FHFC-approved Executive Director Certification of Non-Profit Qualifications included in Attachment 2 to the Village of Pine Hills’ application. As shown in the Principal Disclosure form, Ability Housing, Inc. is the Investor Member placeholder in the Applicant structure, and is the sole member of the entity which is both the manager and non-investor member of the Applicant entity. Ability Housing, Inc. is also the sole developer of Village of Pine Hills.

28. In short, Ability Pine Hills, LLC, and its non-profit owner and manager, Ability Housing, Inc., are by default material participants in all phases of this development. There is no other entity – for-profit or otherwise – in the Applicant or Developer structure. The sole participants in the pre-development, development, management, and operation of the proposed development (other than the management company retained by the Applicant) will be Ability Pine Hills, LLC, and its non-profit owner and manager Ability Housing, Inc.

Waivable Minor Irregularities

29. FHFC has a rule, 67-60.008, Right to Waive Minor Irregularities, which reads in its entirety as follows:

67-60.008 Right to Waive Minor Irregularities.

Minor irregularities are those irregularities in an Application, such as computation, typographical, or other errors, that do not result in the omission of any material information; do not create any uncertainty that the terms and requirements of the competitive solicitation have been met; do not provide a competitive advantage or benefit not enjoyed by other Applicants; and do not adversely impact the interests of the Corporation or the public. Minor irregularities may be waived or corrected by the Corporation.

30. The omission of the Non-Profit Material Participation form from the Village of Pine Hills application was a minor irregularity. Its inadvertent omission did not deprive Florida Housing of the material information which the form seeks, which is whether or not the Non-Profit will materially participate in the pre-development, operation, financing, and management of the development. Ability Pine Hills will necessarily “materially participate” in these functions, and in fact will be the only entity performing these functions since it has no for-profit partners, joint venturers, or co-developers. This distinguishes Ability Pine Hills from all other applicants who participated in this RFA.

31. For these same reasons, the omission of the form did not create any uncertainty that the terms and requirements of the competitive solicitation have been met. The purpose of this form is to provide assurance that the non-profit will materially participate, and that its participation is not minimized or non-existent. As the sole entity in the decision-making positions in both the Applicant and Developer structures, it will be the only entity performing such functions.

32. Ability Pine Hills would not gain any competitive advantage by Florida Housing waiving the omission, because no other purely non-profit applicant and developer participated in

this RFA. Because all of the other applicants involve both for-profit and non-profit entities, the completed form was necessary for those other applicants; it is not necessary here.

33. Finally, it is not adverse to Florida Housing's interests to waive the omission of the form and accept Ability Pine Hills as eligible. There is already sufficient funding remaining in this RFA to fully fund Ability Pine Hills' Housing Credit and SAIL requests. The RFA contained a Goal to fund an applicant from the Central Florida Region, and selecting Ability Pine Hills is the only way to satisfy that Goal, since the other three applicants were all from the Tampa Bay Region.

Disputed Issues

34. Petitioner has initially identified the following disputed issues of material fact, which it reserves the right to supplement as additional facts become known to it:

- a. Whether Ability Pine Hills, LLC, will materially participate in all aspects of the predevelopment, management, and operation of the proposed development. Petitioner contends that it will.
- b. Whether Ability Pine Hills, LLC, has any for-profit partners, joint venturers, or co-developers in this proposed development. Petitioner contends that it does not; and that this information was apparent and obvious from the Ability Pine Hills' application.
- c. Whether Ability Pine Hills' material participation in all aspects of the proposed development is self-evident from the absence of any other entity in the Applicant and Developer structure in this application. Petitioner contends that it is.
- d. Whether Ability Pine Hills would be afforded any competitive advantage from waiver of the omission of the Non-Profit Entity Material Participation Form. Petitioner contends that it would not.

e. Whether waiving the omission of the Non-Profit Entity Material Participation form would adversely impact the interests of Florida Housing or the public. Petitioner contends that it would not.

f. Whether Ability Pine Hills' inadvertent omission of the Non-Profit Entity Material Participation form from its application is a minor irregularity which should be waived. Petitioner contends that it is.

g. Whether Ability Pine Hills' application should be selected to satisfy the Central Florida Region funding goal. Petitioner contends that it should.

35. Petitioner has not at this time identified any further disputed issues of fact, but it reserves the right to amend this Formal Protest as additional facts become known to it.

Concise Statement of Ultimate Facts, Relief Sought, and Entitlement to Relief

36. As its concise statement of ultimate fact, Petitioner asserts that, as a non-profit who is the only manager in the Applicant structure, and the only Developer in the application, it will necessarily materially participate in all aspects of the predevelopment, management, and operation of the proposed Village of Pine Hills development; and this is evident from the application as submitted, even without the Non-Profit Entity Material Participation form. Omission of the form was a minor irregularity which Florida Housing should waive. Petitioner would then be eligible for consideration for funding, and as the only applicant from the Central Florida Region and the second highest scoring application submitted in this RFA, it should be selected for funding.

37. If this matter cannot resolved through settlement, Petitioner seeks referral of this Formal Written Protest to the Division of Administrative Hearings for the assignment of an Administrative Law Judge to conduct formal evidentiary administrative proceedings. Petitioner seeks entry of recommended and final orders finding Petitioner's application to be eligible, and

selecting Petitioner's application for funding. Petitioner is entitled to this relief by the terms and conditions of the FHFC's RFA; by FHFC Rule Chapters 67-48 and 67-60, Fla. Admin. Code; and by Chapters 120 and 420, Florida Statutes, including but not limited to Sections 120.569 and 120.57, Florida Statutes.

Request for Settlement Meeting

38. Pursuant to Section 120.57(3)(d), Fla. Stat., Petitioner requests an opportunity to meet with Florida Housing to resolve this matter by mutual agreement within seven business days after filing. Petitioner reserves the right to agree to extend the time for such a settlement meeting.

FILED AND SERVED this 5th day of April, 2024.

/s/ M. Christopher Bryant

M. CHRISTOPHER BRYANT

Florida Bar No. 434450

OERTEL, FERNANDEZ,

BRYANT & ATKINSON, P.A.

P.O. Box 1110

Tallahassee, Florida 32302-1110

Telephone: 850-521-0700

Telecopier: 850-521-0720

cbryant@ohfc.com

Secondary: bpetty@ohfc.com

Attorney for Petitioner Ability Pine Hills, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Formal Written Protest and Petition for Administrative Proceedings has been filed by e-mail with the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 (CorporationClerk@floridahousing.org), and a copy via e-mail to the following this 5th day of April, 2024:

Ethan Katz, Office of General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Ethan.katz@floridahousing.org
Add'l: ana.mcglamory@floridahousing.org

*Attorneys for Respondent, Florida Housing
Finance Corporation*

/s/ M. Christopher Bryant
ATTORNEY

**EXHIBITS TO FORMAL WRITTEN PROTEST
OF ABILITY PINE HILLS, LLC, IN RFA 2024-103**

- A. Board-Adopted Scoring and Eligibility Determinations in RFA 2024-103, posted Wednesday, March 27, at 12:15 p.m.
- B. Board-Adopted Funding Selection in RFA 2024-103, posted Wednesday, March 27, at 12:15 p.m.
- C. Ability Pine Hills, LLC's Notice of Protest, filed Monday, April 1, at 8:57 a.m.
- D. Blank Non-Profit Material Entity Participation Form
- E. FHFC Staff Review Committee Scoring Sheet on Applicant and Developer identity-related point scoring and eligibility items

RFA 2024-103 Board Approved Scoring Results

Application Number	Name of Development	County	County Size	Region	HC Request Amount	SAIL Request Amount	ELI Loan Request Amount	Total SAIL Request (SAIL plus ELI)	Eligible For Funding?	Priority Level	Total Points	Operating/ Managing Experience Points Preference	Involvement in the Local Homeless Resources Network Points Preference	Accessibility Preference	Corporation Funding Per Set-Aside	A/B Leveraging	Qualifying Financial Assistance Preference	Florida Job Creation Preference	Lottery Number
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Eligible Applications

2024-291CSN	Cedar Cove	Manatee	M	Tampa Bay	\$2,142,000	\$7,300,000	\$382,300	7,682,300	Y	1	157	N	Y	Y	\$245,680.39	A	Y	Y	2
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Ineligible Applications

2024-292CSN	Copper Hill Crossings	Hillsborough	L	Tampa Bay	\$2,992,500	\$2,840,000	\$249,200	3,089,200	N	1	138	N	N	Y	\$305,788.39	A	N	Y	4
2024-293CSN	Village of Pine Hills	Orange	L	Central Florida	\$2,700,000	\$7,352,800	\$347,200	7,700,000	N	1	153	Y	Y	Y	\$303,339.33	A	N	Y	1
2024-294CSN	The Franklin	Hillsborough	L	Tampa Bay	\$2,400,000	\$7,440,100	\$259,900	7,700,000	N	1	151	Y	Y	Y	\$268,439.42	A	N	Y	3

On March 26, 2024, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion to adopt the scoring results above.

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.

Total HC Available for RFA	5,134,500
Total HC Allocated	2,142,000
Total HC Remaining	2,992,500
Total SAIL Available for RFA	15,420,538
Total SAIL Allocated	7,682,300
Total SAIL Remaining	7,738,238

Application Number	Name of Development	County	County Size	Region	Demographic	Total Units	Name of Principal Representative	Developer	HC Request Amount	Total SAIL Request (SAIL plus EU)	Eligible For Funding?	Priority Level	Total Points	Operating/ Managing Experience Points Preference	Involvement in the Local Homeless Resources Network Points Preference	Accessibility Preference	A/B Leveraging	Qualifying Financial Assistance Preference	Florida Job Creation Preference	Lottery Number
2024-291CSN	Cedar Cove	Manatee	M	Tampa Bay	Homeless - less than 80%	80	Julian S Eller	Blue CC Developer, LLC; CASL Developer, LLC	\$2,142,000	7,682,300	Y	1	157	N	Y	Y	A	Y	Y	2

On March 26, 2024, 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.



OERTEL,
FERNANDEZ,
BRYANT &
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PHONE: 850-521-0700 | FAX: 850-521-0720 | WWW.OHFC.COM

April 1, 2024

Via email to CorporationClerk@floridahousing.org

Corporation Clerk
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301

RECEIVED

APR 1 2024 8:57 AM

FLORIDA HOUSING
FINANCE CORPORATION

Re: Notice of Intent to Protest by Ability Pine Hills, LLC, Application Number
2024-293CSN
RFA 2024-103, Housing Credit and SAIL Financing to Develop Housing for
Homeless Persons

Dear Corporation Clerk:

On behalf of Applicant Ability Pine Hills, LLC, Application Number 2024-293CSN, and pursuant to Section 120.57(3), Florida Statutes, and FHFC Rule 67-60.009, and Section Six of RFA 2024-103, we hereby give notice of intent to protest the eligibility, scoring, ranking and funding selection decisions in RFA 2024-103 made by the Corporation's Board of Directors at its meeting on Tuesday, March 26, 2024. Notice of these decisions was posted to the Corporation's website at 12:15 p.m. on Wednesday, March 27, 2024, and copies of the notices are attached to this Notice of Intent to Protest.

Ability Pine Hills does not contest the selection for funding of Application Number 2024-291CSN, for the Cedar Cove development in Manatee County. Ability Pine Hills will file its formal written protest within 10 days of this notice as required by Section 120.57(3).

Please return a date and time stamped copy of this Notice of Intent to Protest letter to me at: cbryant@ohfc.com.

Sincerely,

M. Christopher Bryant
Attorney for Ability Pine Hills, LLC

cc: Ethan Katz, Office of General Counsel, Florida Housing Finance Corporation

RFA 2024-103 Board Approved Scoring Results

Application Number	Name of Development	County	County Size	Region	HC Request Amount	SAIL Request Amount	EU Loan Request Amount	Total SAIL Request (SAIL plus EU)	Eligible For Funding?	Priority Level	Total Points	Operating/ Managing Experience Points Preference	Involvement in the Local Homeless Resources Network Points Preference	Accessibility Preference	Corporation Funding Per Set-Aside	A/B Leveraging	Qualifying Financial Assistance Preference	Florida Job Creation Preference	Lottery Number
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Eligible Applications

2024-291CSN	Cedar Cove	Manatee	M	Tampa Bay	\$2,142,000	\$7,300,000	\$382,300	7,682,300	Y	1	157	N	Y	Y	\$245,680.39	A	Y	Y	2
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Ineligible Applications

2024-292CSN	Copper Hill Crossings	Hillsborough	L	Tampa Bay	\$2,992,500	\$2,840,000	\$249,200	3,089,200	N	1	138	N	N	Y	\$305,788.39	A	N	Y	4
2024-293CSN	Village of Pine Hills	Orange	L	Central Florida	\$2,700,000	\$7,352,800	\$347,200	7,700,000	N	1	153	Y	Y	Y	\$303,339.33	A	N	Y	1
2024-294CSN	The Franklin	Hillsborough	L	Tampa Bay	\$2,400,000	\$7,440,100	\$259,900	7,700,000	N	1	151	Y	Y	Y	\$268,439.42	A	N	Y	3

On March 26, 2024, the Board of Directors of Florida Housing Finance Corporation approved the Review Committee's motion to adopt the scoring results above.

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.

RFA 2024-103 Board Approved Preliminary Awards

Page 1 of 1

Total HC Available for RFA	5,134,500
Total HC Allocated	2,142,000
Total HC Remaining	2,992,500
Total SAIL Available for RFA	15,420,538
Total SAIL Allocated	7,682,300
Total SAIL Remaining	7,738,238

Application Number	Name of Development	County	County Size	Region	Demographic	Total Units	Name of Principal Representative	Developer	HC Request Amount	Total SAIL Request (SAIL plus EU)	Eligible For Funding?	Priority Level	Total Points	Operating/ Managing Experience Points Preference	Involvement in the Local Homeless Resources Network Points Preference	Accessibility Preference	A/B Leveraging	Qualifying Financial Assistance Preference	Florida Job Creation Preference	Lottery Number
2024-291CSN	Cedar Cove	Manatee	M	Tampa Bay	Homeless - less than 80%	80	Julian S Eller	Blue CC Developer, LLC; CASL Developer, LLC	\$2,142,000	7,682,300	Y	1	157	N	Y	Y	A	Y	Y	2

On March 26, 2024, 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.

FLORIDA HOUSING FINANCE CORPORATION

EXECUTIVE DIRECTOR CERTIFICATION OF NON-PROFIT ENTITY MATERIAL PARTICIPATION

Name of Non-Profit Entity: [Click here to enter text.](#)

Name of Proposed Development: [Click here to enter text.](#)

The undersigned, as Executive Director¹ of the above-referenced non-profit entity ("NP Entity"), certifies that (a) the NP Entity will substantially and materially participate in the predevelopment, management, and operation of the proposed Development throughout the compliance period, within the meaning of material participation as defined in 26 USC §469, 26 USC §42, and the applicable Request for Applications ("RFA"); and (b) the NP Entity will (i) be regularly, continuously, and substantially involved in providing services integral to the development and operation of the proposed Development; and (ii) ensure such involvement is maintained throughout the calendar year; and (c) the NP Entity meets the definition of Non-Profit as set forth in Rule Chapters 67-48 or 67-21, or in the RFA, as applicable.

In order for the Corporation to better understand the role of the NP Entity in the proposed Development, and more specifically how the NP entity will participate materially across financial, development and asset management responsibilities in the proposed Development, complete the following:

1. Is this a Joint Venture with another entity (whether non-profit or for profit) and if so, will the joint venture be turn-key or long term?

[Click here to enter text.](#)

2. Describe how the Non-Profit entity will materially participate in the proposed Development. As set forth in Section 42 of the IRC, and as defined in Section 469(h) of the IRC, a non-profit entity shall be treated as materially participating in an activity only if the entity is involved in the operations of the activity on a basis which is regular, continuous, and substantial.

[Click here to enter text.](#)

3. Briefly describe the following as it pertains to the Non-Profit entity:

- Developer experience
- Property (land)
- Access to local government funding
- Local Government/other relationships
- Access to supportive services
- Financial strength

¹ If the NP Entity does not have a position called Executive Director, the individual that is comparable to an Executive Director (e.g., President, Chief Executive Officer, etc.) will be considered the Executive Director. This individual must be identified on the Principals of the Applicant and Developer(s) Disclosure Form (Form Rev. 05-2019) as the Executive Director of the NP Entity.

[Click here to enter text.](#)

4. Will the Non-Profit entity participate in the procurement of pre-development funding, construction financing, and operations funding? Explain.

[Click here to enter text.](#)

5. Will the Non-Profit entity be involved in the financial decision affecting guarantees during construction? Explain.

[Click here to enter text.](#)

6. How will the Non-Profit entity be involved in project management during the construction phase?

[Click here to enter text.](#)

7. How will the Non-Profit entity be involved in the management of community/political relationships?

[Click here to enter text.](#)

8. Describe how the Non-Profit entity will be involved in the operations and management decisions, including:

- Tenant leasing, including income targeting and mitigating barriers to entry
- Marketing the property through relationships with the community

[Click here to enter text.](#)

[Click here to enter text.](#)

Name of Executive Director

Signature of Executive Director

Date Signed

Scoring Items	Contributor/ Reporter	Report these to RCM (such as "No exceptions" or "All Met with the following exception(s)"	Also, scorer will be asked questions at the RCM...
Development Name			
Points Items			
3.a.(4) Submission of Executive Director Certification of Non-Profit Entity Qualifications Form (Rev. 10-2021) stamped "Received" by the Corporation at least 14 Calendar Days prior to the Application Deadline AND stamped "Approved" prior to the Application Deadline (10 points)	Mitch	No exceptions	N/A
3.a.(5) Submission of Corporation-approved Pre-Application Meeting form that meets the requirements of the RFA (10 points)		One exception: 2024-294CSN: No natural person principal of Mental Health Care, Inc. attended the meeting. Susan Morgan represented Mental Health Care, Inc. at the meeting; however, Susan Morgan is not listed as a principal of the non-profit on the Principal Disclosure Form	N/A
3.b.(3)(b) Developer Experience with Corporation funded Developments (5 points)		No exceptions	N/A
3.c.(2) Submission of Principal Disclosure Form that is either (a) stamped "Approved" at least 14 Calendar Days prior to the Application Deadline; or (b) stamped "Received" by the Corporation at least 14 Calendar Days prior to the Application Deadline AND stamped "Approved" prior to the Application Deadline (maximum of 5 points)		One exception: 2024-293CSN: Forms not stamped "Received" or "Approved"	N/A
Eligibility Requirements			
3.a.(1) Name of Applicant provided	Mitch	No exceptions	N/A
3.a.(2) Evidence Applicant is a legally formed entity qualified to do business in the state of Florida as of the Application Deadline provided		No exceptions	N/A
3.a.(3) Evidence that Applicant qualifies as a Non-Profit Applicant provided		One exception: 2024-293CSN: Missing Executive Director Certificate of Material Representation form	N/A
3.a.(6) Documentation that the Applicant informed the jurisdiction's Local Continuum of Care lead agency head of its intent to apply for funding to develop housing pursuant to this RFA provided		No exceptions	N/A
3.b.(1) Name of Each Developer provided		No exceptions	N/A
3.b.(2) Evidence that each Developer entity is a legally formed entity qualified to do business in the state of Florida as of the Application Deadline		No exceptions	N/A
3.b.(3)(a) Developer Experience Requirement met		No exceptions	N/A
3.c.(1) Principals for Applicant and Developer(s) Disclosure Form provided and meets requirements		No exceptions	N/A
3.d. Contact information of Management Company provided		No exceptions	N/A
3.e. Community-Based Board of Directors Requirement met		No exceptions	N/A
3.f.(1) Authorized Principal Representative provided and meets requirements		One exception: 2024-294CSN: Authorized Principal: Bowen Arnold is not listed as a Principal of the non-profit Mental Health Care, Inc.	N/A
Priority Level			
Application's Priority Level	Mitch	All Applicants were Priority 1	Only will be asked if any Priority 2's - Did any Applicants say they qualify as Priority 1 but fail to qualify?