

STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

CARISBROOKE TERRACE, LTD., and  
CARISBROOKE TERRACE DEVELOPER, LLC,

Petitioners,

FHFC Case No: 2020-014BP

APPLICATION NO: 2020-398SN

vs.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**PETITION FOR ADMINISTRATIVE HEARING**

Pursuant to sections 120.569, 120.57(3), Florida Statutes (Florida Statutes.), and Chapter 28-106, Florida Administrative Code (“Florida Administrative Code.”), Petitioners, Carisbrooke Terrace, Ltd., and Carisbrooke Terrace Developer, LLC (collectively “Carisbrooke Terrace”), 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, Carisbrooke Terrace, Ltd., is the Applicant entity of a proposed affordable housing development to be located in Seminole County, Application #2020-398SN. Petitioner, Carisbrooke Terrace Developer, LLC, is a “Developer” entity as defined by Florida Housing in rule 67-48.002, Florida Administrative Code.

3. Carisbrooke Terrace is challenging Florida Housing's determination regarding 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 Carisbrooke Terrace and Carisbrooke Terrace'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. One of the mandatory Eligibility Items is the “Availability of Roads demonstrated.”

10. 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

11. Carisbrooke Terrace 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

12. On March 11, 2020, Carisbrooke Terrace timely filed a Notice of Protest which challenged the selection of the applications in the Corporation’s Notice.

#### Substantial Interests

13. Carisbrooke Terrace timely submitted an application in response to RFA 2019-116, Application #2020-398SN (“Carisbrooke Terrace Application”). In the Carisbrooke Terrace

Application, Carisbrooke Terrace sought \$4.3 million in SAIL Funding and \$538,000 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”).

14. Villa Verde was scored as having satisfied the Availability of Roads Requirement. Villa Verde was assigned lottery number three as reflected in the document entitled “RFA 2019-116 Board Approved Scoring Results.”

15. 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.

16. Carisbrooke Terrace is challenging and seeking a determination that Florida Housing erred in the scoring, eligibility and decision to award funding to Villa Verde. Carisbrooke Terrace 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.

17. Florida Housing incorrectly determined that Villa Verde satisfied the Availability of Road Requirements. But for that determination, Carisbrooke Terrace would have been ranked higher for a funding allocation than other applicants awarded funding. Therefore, Carisbrooke Terrace should have been selected for funding.

#### Villa Verde Availability of Roads Requirement

18. 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.

19. 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

20. The issues of law in this matter include but are not limited to the following
- a) Whether Villa Verde’s Application met the Availability of Roads Requirement;
  - b) Whether the correct eligibility determination has been made for Villa Verde based upon the provisions of the RFA;
  - c) Whether the preliminarily rankings properly support the eligibility determinations of applicants for funding in accordance with the standards and provisions of the RFA;
  - d) Whether the RFA’s criteria for determining eligibility, ranking and evaluation of proposals were properly applied;
  - e) 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;
  - f) 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;
  - g) Whether the rankings and proposed awards are consistent with fair and open competition for the allocation funding;
  - h) Whether the rankings and proposed awards are based upon clearly erroneous or capricious eligibility determinations, scoring or ranking;
  - i) 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;

j) Whether failure to waive the alleged error as a minor irregularity was an abuse of discretion;

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

21. 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

22. As a matter of ultimate fact and law, Florida Housing failed to properly and/or consistently apply the RFA specifications, existing rules or prior Florida Housing interpretations and precedents.

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

24. As a matter of ultimate fact and law, Petitioners would have been entitled to an allocation of its requested funding but for the error in scoring of the Villa Verde Application.

Statutes and Rules

25. 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 Carisbrooke Terrace's and Villa Verde's Applications;

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

1) 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; and,

- 2) Florida Housing erred in determining that the application submitted by Villa Verde was completed in accordance with the competitive solicitation;

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 Carisbrooke Terrace Application eligible for funding, finding the Villa Verde Application ineligible for funding, and awarding Carisbrooke Terrace its requested allocation of funding; and,

E. Carisbrooke Terrace 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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