

# **HOUSING FINANCE AUTHORITY OF LEE COUNTY, FLORIDA**

## **MINUTES OF REGULAR MEETING**

**October 28, 2021**

**4:04 p.m.**

On Thursday, October 28, 2021, at 4:04 p.m. in the offices of PHILIP L. BURNETT, P.A., 2449 First Street, Fort Myers, Florida, E. Walter Barletta, Chairman of the Housing Finance Authority of Lee County, Florida (the "Authority"), called the meeting to order.

Immediately thereafter, the Chairman called for a roll call of the members. Philip Burnett, Esq., counsel for the Authority, called the roll. E. Walter Barletta, Walter Ferguson, Virginia Yates and Kirk Frohme were present at the commencement of the meeting. Michael Villalobos arrived shortly thereafter. Also appearing by phone were Tim Wranovix and Misty Dalke with Raymond James and Associates, Inc. ("Raymond James"), the Authority's managing underwriter, Tim Nelson and Mica Owens with Hilltop Securities, Inc. ("Hilltop Securities"), the Authority's Financial Advisor, Mark Mustian, Esquire and Alex Fischer, Esquire with Nabors, Giblin & Nickerson, P.A., the Authority's Bond Counsel, Debbie Berner with RBC Capital Markets ("RBC"), a co-managing underwriter, Sue Denihan and Paloma Miranda with Housing and Development Services, Inc. d/b/a eHousingPlus ("eHousing"), Devon Hoffman, Esq. and Robert Cheng with Shutts & Bowen, and Adolfo C. Deulofeut and Brian McDonough with Sterns Weaver Miller Weissler Alhadeff & Sitterson.

The Chairman then opened the floor for public comment. No members of the public were present at the meeting. Accordingly, no public comment was made. Thereafter, the Chairman closed the opportunity for public comment.

The Chairman next suggested that the Authority address the approval of the Authority's Minutes for its prior meeting. Thereafter, on motion duly made by Mr. Ferguson and seconded by Mr. Frohme, the members of the Authority unanimously approved the minutes of the Authority's September 16, 2021, regular meeting.

The Chairman recognized Mr. Burnett. Mr. Burnett suggested that the Authority first consider Item VI on its Agenda due to numerous parties on the phone waiting for the Authority to consider the matter, i.e., consider, discuss and vote on the request of BCORE Palm LLC, ("BCORE") a Delaware limited liability company with respect to Hawks Landing Associates, Ltd. ("Hawk's Landing"). More specifically, the request relates to the Land Use Restriction Agreement ("LURA") entered into in connection with the Authority's issuance of its \$10,750,000 Multifamily Housing Revenue Bonds (Hawk's Landing Apartments) Series 2003 and the proposed sale and transfer of the Project. Mr. Burnett suggested that someone from those on the phone representing parties to the proposed transaction state what relief they are requesting. Robert Cheng, Esq. briefly summarized their request. He said that he had been advised that the above-mentioned Bond loan

had been paid in full and that Hawk's Landing is no longer subject to the LURA as the Qualified Project Period Expired on or about August 22, 2019. Mr. Cheng said that BCORE is requesting that the Authority confirm that the LURA has expired and that the Authority's consent is not required to transfer Hawk's Landing to the Buyer. Alternatively, if the Authority determines that the LURA remains in effect that the Authority approve the contemplated transfer of Hawk's Landing. The Chairman recognized Mr. Mustian. Mr. Mustian said that, before the Authority can proceed as requested, the Authority will need to check with the Credit Underwriter on this Project to confirm what the status of the LURA is and to make sure that all of the Authority's fees have been paid. He suggested that the Authority authorize the Chairman, Mr. Burnett and himself to look into the matter and to authorize the Chairman to execute a Consent on behalf of the Authority if one is required. Immediately thereafter, on motion duly made by Ms. Yates and seconded by Mr. Ferguson, the members of the Authority unanimously authorized the Chairman, Mr. Burnett and Mr. Mustian to look into the matter and, if a Consent for the transfer of the Project is required, the Chairman is authorized to execute it on behalf of the Authority.

The Chairman next suggested that the Authority consider Item V on its Agenda, i.e., consider, discuss and vote on a Resolution of the Authority approving a plan of finance involving the issuance by the Authority of its Single Family Mortgage Revenue Bonds in an aggregate face amount of not to exceed \$50,000,000 in one or more series; approving use of state-awarded private activity bond allocation ("allocation") for mortgage credit certificate programs or multifamily carry forward; authorizing the proper officers of the Authority to do all things necessary or advisable in connection with the plan of finance and providing an effective date for this Resolution. The Chairman recognized Mr. Mustian. Mr. Mustian briefly described the proposed plan of finance and the proposed Resolution. He said that the purpose of the proposed plan of finance is to hopefully enable the Authority to reserve tax exempt volume cap allocation for future multifamily projects. He said that if the plan of finance and Resolution are approved by the Authority and by the Lee County Board of County Commissioners and the Authority is able to obtain tax exempt volume cap allocation from Division of Bond Finance with the Florida Housing Finance Corporation, the Authority will be able to carry forward the tax exempt volume cap allocation for three years. Thereafter, on motion duly made by Mr. Ferguson and seconded by Mr. Frohme, the members unanimously approved the plan of finance and the Resolution as described above. Mr. Frohme then made a motion for the Authority to temporarily adjourn to conduct a Tax Equity Fiscal Responsibility Act ("TEFRA") Hearing on the plan of refinance and the Resolution for the Authority's issuance of an aggregate principal amount of not to exceed of \$50,000,000 pursuant to the plan of finance. The motion was seconded by Ms. Yates and the Authority meeting was temporarily adjourned. The Chairman and the members then proceeded to conduct the TEFRA Hearing. The Chairman opened the TEFRA Hearing for public comment. He noted that no members of the public were present. Mr. Frohme then made a motion, which was seconded by Mr. Villalobos, that the TEFRA Hearing be adjourned and the Authority meeting be reconvened. The members of the Authority unanimously agreed to adjournment of the TEFRA Hearing and the reconvened. The Chairman then reconvened the Authority meeting noting that all of the members of the Authority were still present. Immediately thereafter, on motion duly made by Mr. Frohme and seconded by Ms. Yates the members approved the minutes of the just concluded TEFRA Hearing.

The Chairman next recognized Mr. Burnett. Mr. Burnett said that he thought that it was appropriate at this time to inform the members of the Authority of a phone conversation that he had this week with Don Pickworth, the attorney for the Housing Finance Authority Collier County, Florida (“Collier HFA”). He said that Mr. Pickworth called to see if he and the Chairman of the Collier HFA could meet with the Authority or the Chairman and me to try to coordinate the distribution of the tax-exempt volume cap allocation for Region 8 like the various HFA’s and Counties have done in the past so that, to the extent possible each HFA and/or County can finance at least one project. Mr. Burnett said that Region 8 had approximately \$99 million of tax-exempt volume cap allocation this year. He said that Mr. Pickworth indicated that the Collier HFA presently has two proposed projects that they need volume cap allocation to finance, one for approximately \$36 million and one for approximately \$42 million. He said that Mr. Pickworth said that he had advised the Collier HFA that at best, they might only get tax-exempt volume cap allocation, probably for the \$36 million project. Mr. Burnett said that he had discussed this matter with Mr. Mustian and they both agreed that it would be beneficial for all parties concerned to try to work things out with the Collier HFA understanding that there might be other parties in Region 8 applying for tax-exempt volume cap allocation. After a brief discussion, on motion duly made by Mr. Ferguson and seconded by Mr. Frohme, the members of the Authority unanimously agreed for the Chairman, Mr. Mustian and Mr. Burnett to meet with representatives from the Collier HFA and for the Chairman to negotiate with the Collier HFA to try to work out an amicable allocation of the tax-exempt volume cap for Region 8, if possible.

The Chairman next suggested that the Authority consider Item VII on its Agenda, i.e., consider, discuss and vote on such agreements, resolutions, authorizations, funding, Interlocal Agreements, documents and related matters as are necessary for the Authority to proceed with or amend its Own a Home Opportunity Program (“OAHOP Program”) with Raymond James & Associates, Inc. and such other actions as may be appropriate. The Chairman recognized Mr. Wranovix and asked him to bring the members of the Authority up to date as to how its OAHOP Program is going. Mr. Wranovix said that the Authority had had a settlement on November 19, 2021. He said that the settlement wasn’t as big as it has been in the past due primarily to the lack of inventory and price. He said that the median price of a home in the United States is approximately \$404,000. He also said that there have been multiple offers for homes, a lot of which are cash offers. Last, he said that the Authority had plenty of money in its Custody Account with U.S. Bank for the financing of second mortgages as most of the loans being made in the OAHOP Program are grants versus second mortgages. Ms. Yates asked Mr. Wranovix if he thought that there might be a crash coming in the housing market. Mr. Wranovix said that a Raymond James Economist said that he didn’t see a crash coming, probably more of a slowing down of the housing market. The Chairman said that in addition to the above, as a person working in the housing industry, he can affirmatively state that the cost of all materials for housing are going up and that there is a severe shortage of materials, i.e., delivery of cinder blocks are out 10 to 12 weeks. Mr. Nelson added that there is a reduced supply of housing, increased costs for housing and no labor.

The Chairman next suggested that the Authority consider Item VIII on its Agenda, i.e., consider, discuss and vote on the inquiry of First Housing, the Credit Underwriter on the

proposed East Pointe Phase Two Project (“Project”), as to whether or not the Authority wanted First Housing to handle the compliance monitoring and the review/approval of closing draws/construction draws for the Project and possibly other issues relating to the Authority’s financing of the Project. The Chairman recognized Mr. Burnett. Mr. Burnett said that the Authority has always asked the credit underwriter on a proposed financing to handle the developer’s compliance monitoring of the project but that it had never been asked whether a credit underwriter should review/approve closing/construction draws for a project. He said that First Housing had indicated that it would cost approximately \$2,600 additionally for them to handle the review/approval of closing/construction draws on the Project. He said that the developer would be responsible for paying the additional fees and that he wasn’t sure that it was warranted but that it is a policy question that he, Mark Mustian, Esq. and Tim Wranovix thought the Authority should decide. After a brief discussion, on motion duly made by Ms. Yates and seconded by Mr. Frohme, the members of the Authority unanimously agreed that First Housing should handle the compliance monitoring on the Project but that it would not be necessary for them to review/approve closing draws/construction draws. Mr. Burnett said that an issue had come up on the proposed financing dealing with the Authority’s fees on the Project that the Authority’s Professional Staff thought that the members of the Authority should be asked to decide. He suggested that Mr. Mustian explain the issue. He said that in this proposed financing the Tax Credit Syndicator and the Lender have a relationship that, pursuant to IRS Regulations, limits the amount of Authority’ fees that it can receive at closing to 12.5%. The other fees normally due to the Authority at closing could be put in trust until the construction of the Project is complete and the construction loan is converted to a permanent loan, at which time the Authority would have a right to receive the escrowed funds. Mr. Mustian said that the Authority’s other option is to go back to the developer and advise them that this is unacceptable to the Authority. He said that most of the other financing that he has worked on escrow the funds as described above. The Chairman said that to him it appears that there would be very little risk to the Authority. After a brief discussion, on motion duly made by Mr. Frohme and seconded by Mr. Villalobos, the members of the Authority unanimously approved the escrowing of the Authority’s fees normally due at closing that are in excess of the amount allowed by the IRS Regulations for this type of financing be escrowed in an escrow account established for that purpose and terminating at the completion of construction of the Project and the conversion of the construction loan to a permanent loan.

Mr. Burnett said that, although it related to the Venetian Walk II Apartment Project (“Venetian Walk Project”) in Venice, Florida and not the East Pointe Project, another issue had come up that he thought this would be an appropriate time to bring up. More specifically, he said that the developer’s agent had inquired as to whether or not they could use the FHFC Tenant Income Certification Format (“FHFC TIC Format”) instead of the Authority’s Tenant Income Certification Format. He said that his office had contacted the Authority’s Credit Underwriter on the Venetian Walk Project, i.e., AmeriNat, concerning this matter. He said that they had advised his office that either Format is acceptable but that it would be easier, cheaper and less paperwork if the FHFC TIC Format could be used. On motion duly made by Mr. Frohme and seconded by Ms. Yates, the members of the Authority unanimously agreed to and authorized the use and acceptance of the FHFC TIC Format.

The Chairman next addressed the Authority’s consideration of Item IX on the Authority’s Agenda, i.e., consider, discuss and approve the Engagement Letters with Nabors, Giblin & Nickerson, P.A. (“NGN”), with CliftonLarsonAllen, LLP (“CLA”), and with Hilltop Securities (“Hilltop”). The Chairman recognized Mr. Burnett. Mr. Burnett said that the proposed Engagement Letter with CLA was pretty similar to their Engagement Letter for last year with two exceptions. First, he said that the last paragraph under Use of Financial Statements on page 7 was revised to allow the distribution of any preliminary draft of financial statements to the Authority’s members, its accountants, and its professional staff or, if requested by a member of the public, to said person or entity clearly stamped or marked as a “DRAFT”. Second, CLA had increased its fees from \$22,500 up to \$24,750. Immediately thereafter, on motion duly made by Mr. Frohme and seconded by Ms. Yates, the members unanimously approved CLA’s October 1, 2021, Engagement Letter and authorized the Chairman to sign it on behalf of the Authority. Mr. Burnett then addressed the proposed Engagement Letter with NGN, dated September 20, 2021. He briefly went through the terms of NGN’s proposed Engagement Letter. Thereafter, on motion duly made by Mr. Frohme and seconded by Mr. Ferguson, the members of the Authority approved NGN’s September 20, 2021, and authorized the Chairman to sign it on behalf of the Authority. Mr. Burnett then said that the proposed Engagement Letter with Hilltop was still in the process of being negotiated. He said that he had received the latest draft of a proposed Engagement Letter from Hilltop around 12:00 noon today but that he had not had an opportunity to review it. The Chairman recognized Mr. Nelson. Mr. Nelson confirmed what Mr. Burnett had said and, further, that he was confident that Hilltop and the Authority will be able to come together on an Engagement Letter that is acceptable to both parties. Thereafter, it was agreed that this matter be continued until the Authority’s next meeting.

The Chairman next addressed the Authority’s consideration of Item X on the Authority’s Agenda, i.e., consider and discuss bills and invoices submitted to the Authority for approval and payment. The Chairman then recognized Ms. Yates. Ms. Yates briefly listed the bills and invoices that had been submitted for payment. She then asked that the members of the Authority to approve and authorize the payment of said bills and invoices, which are set forth below:

October 2021

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| Ck # 1704 Florida ALHFA – Membership Dues  | \$ 1,000.00  |
| Ck # 1705 Florida Dept. of Economic Development –<br>Dept. of Community Affairs – Annual State Fee | \$ 175.00    |
| Ck # 1706 Papyrus Documents – Office Expenses  | \$ 36.00     |
| Ck # 1707 Philip L. Burnett, P.A. - Retainer/Fees/Admin  | \$ 8,932.76  |
| Ck # 1708 Sadowski Educational Effort - Contribution   | \$ 20,000.00 |

Immediately thereafter, on motion duly made by Mr. Ferguson and seconded by Mr. Frohme, the members of the Authority approved the payment of the Authority’s bills and invoices for October of 2021.

The Chairman next addressed Item XI on the Authority's Agenda, i.e., such other matters as may come before the meeting. The Chairman recognized Ms. Yates. Ms. Yates asked when the Region 8 Regional meeting will be held. After a brief discussion, it was agreed that the Regional would be held in January or February of 2022 at the Hilton Gardens Inn off of Summerlin Road, assuming that space is available. The Chairman then noted that the next NALHFA Educational Conference would be held in New York City between April 24<sup>th</sup> and 27<sup>th</sup> of 2022. Mr. Ferguson said that the next Florida ALHFA Educational Conference will be held in Sarasota in July of 2022.

The Chairman then raised the issue of the need for an Authority meeting in November. After a brief discussion, the members agreed that the Authority's next meeting should be set for November 18, 2021, at 4:00 P.M. at Mr. Burnett's office. At the suggestion of Ms. Yates, the members of the Authority agreed that the Authority's December meeting should be set for December 9, 2021, at 4:00 P.M. at Mr. Burnett's office.

The Chairman then asked if anyone had anything further to bring before the Authority. There being no further business to come before the Authority, on motion duly made by Mr. Frohme and seconded by Mr. Ferguson, the meeting was adjourned at 5:24 p.m.

Respectfully submitted,

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E. Walter Barletta, Chairman

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Kirk Frohme, Secretary

Approved at the \_\_\_\_\_,  
Meeting of the Housing Finance  
Authority of Lee County, Florida