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Inspector General

OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY



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"Enhancing Public Trust in Government"

Investigative Report

2016-0005 WB

**Department of Housing &
Economic Sustainability**

April 9, 2018

Insight – Oversight – Foresight



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INVESTIGATIVE REPORT 2016-0005

DATE ISSUED : APRIL 9, 2018



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DEPARTMENT OF HOUSING & ECONOMIC SUSTAINABILITY

SUMMARY

This report details eleven allegations of impropriety involving the Palm Beach County Department of Housing & Economic Sustainability, nine of which were not substantiated. The two substantiated allegations have been addressed by the Department of Housing and Economic Sustainability. These allegations are at times highly technical in nature, and were investigated with attention toward the complexities presented. The report details those complexities, explains potential mitigating factors, and describes specific recommendations to prevent future issues.

WHAT WE DID

On January 6, 2016, the Palm Beach County Office of Inspector General received a whistleblower complaint alleging improprieties at the Palm Beach County Department of Economic Sustainability (n/k/a the Department of Housing and Economic Sustainability) (DES). The complainant expressed concern with three separate program areas and asserted:

(1) Habitat Housing Solutions, Inc. ("Habitat") was awarded funding under the HOME Investment Partnerships Program despite Habitat neither applying for nor being eligible to apply for the funds; (2) DES issued Dakota Abacoa Housing, LLC ("Dakota") a letter finding it in compliance with the terms of its participation in the Impact Fee Assistance Program despite Dakota not being in compliance; and (3) Assistant County Administrator Shannon LaRocque promised to award loan funds

under the State Housing Initiatives Partnership program ("S.H.I.P.") to Housing Trust Group prior to DES issuing a competitive request for proposals for these funds. According to the complainant, DES revised the Local Housing Assistance Plan - which guides the award of S.H.I.P. funds - in order to make the loan terms more favorable for Housing Trust Group.

Based upon this information the OIG initiated an investigation.

During the course of our investigation eight additional allegations were made by the complainant:

(4) Housing Trust Group did not comply with the requirement to submit annual financial reports to DES regarding other projects for which it had received loans, thereby making it ineligible to receive S.H.I.P. funds; (5) DES was out of compliance with the Palm Beach County Affordable Housing Ordinance when all of

the terms of advisory committee members expired by attrition and were not filled; (6) DES Administration deliberately failed to fill vacant positions on the advisory committee; (7) Assistant County Administrator Shannon LaRocque signed documentation relating to the S.H.I.P. program on behalf of Palm Beach County without proper authorization; (8) The Local Housing Assistance Plan strategies and fund allocation presented to the Board of County Commissioners (BCC) did not correspond to those certified by DES to the State of Florida. According to the complainant, DES Senior executives deliberately misrepresented the Local Housing Assistance Plan strategies and fund allocations to the BCC because they did not want to disclose how the funds were being used; (9) Ms. LaRocque instructed an Assistant County Attorney to delay foreclosure proceedings involving Brooks Subdivision to benefit herself; (10) the DES Senior executives underreported or did not report Neighborhood Stabilization Program account funds in order to obtain ad valorem funds from the Board of County Commissioners, which the Senior executives intended to use for improper purposes.; (11) DES senior executives provided false information to the Board of County Commissioners regarding the Tenant Based Rental Assistance program.

WHAT WE FOUND

The information obtained and reviewed by the OIG **does not support Allegations (1), (3), (4), (6), (7), (8), (9), (10) and (11), and supports Allegations (2) and (5).**

It should be noted that we found the whistleblower to be credible and highly knowledgeable regarding applicable laws and policies. Additionally, most of the issues discussed are very technical. Consequently, our report is lengthy in detailing the rationale for our conclusions.

WHAT WE RECOMMEND

Our report contains six (6) recommendations. Implementation of these recommendations will assist DES in complying with statutory requirements, provide better clarity in policy, and improve operations.

DES agreed with our findings and recommendations. We have included DES management responses as Attachment 1.

The whistleblower was provided the opportunity to review this report in draft. We have included the whistleblower's response as Attachment 2.

BACKGROUND

The Palm Beach County Department of Housing and Economic Sustainability administers programs for business development, housing, and community initiatives. It implements and oversees multiple federal and state grant and loan programs, utilizing both federal and state funds. The primary objective of many of these programs is making affordable housing available to very-low, low, and moderate income households.

On January 6, 2016, the Palm Beach County Office of Inspector General (OIG) received a complaint concerning alleged improprieties at DES. The complainant was granted whistleblower status pursuant to section 112.3188(1), Florida Statutes, of the Florida

Whistle-blower's Act. The whistleblower alleged issues with three separate program areas: the HOME Investment Partnerships Program, the Impact Fee Assistance Program, and the State Housing Initiatives Partnership Program ("S.H.I.P.").

According to the whistleblower, Habitat Housing Solutions, Inc. (Habitat) was awarded funding under the HOME Investment Partnerships Program (HOME) despite Habitat neither applying for nor being eligible to apply for those funds. The whistleblower also alleged that DES Director Edward Lowery issued a letter to Dakota Abacoa Housing, LLC (Dakota) finding it in compliance with the terms of its participation in the Impact Fee Assistance Program (Impact Program) although it was not actually in compliance with those terms. Additionally, the whistleblower alleged that Assistant County Administrator Shannon LaRocque promised to award loan funds under the State Housing Initiatives Partnership program to Housing Trust Group prior to DES issuing a competitive request for proposals (RFP) for the S.H.I.P. program funding. To that end, the complainant alleged that DES revised its Local Housing Assistance Plan (Local Plan) - which guides the award of State Housing Initiatives Partnership funds - in order to make the loan terms more favorable for Housing Trust Group and remove impediments to awarding the funds to it. One such change was allegedly made as a "technical revision" because technical revisions do not require approval from the BCC.

Based upon the information provided by the whistleblower, the OIG initiated an investigation. During the course of the investigation, the whistleblower alleged eight additional issues. We developed the following allegations based upon the whistleblower's information.

ALLEGATIONS AND FINDINGS

Allegation (1):

Habitat Housing Solutions, Inc. ("Habitat") was awarded funding under the HOME Investment Partnerships Program despite Habitat neither applying for nor being eligible to apply for the funds.

Governing Directives:

Title II, Subpart A of the Cranston-Gonzalez National Affordable Housing Act, 42 USC §12701-12756 ("HOME Investment Partnership Act"); 24 CFR 91 & 92 (Federal housing program guidelines); Palm Beach County Ordinance 93-8; CW-F-003 Grant Administration; and RFP DES.2014.1

Finding:

The information obtained **does not support** the allegation.

The HOME Program, originally authorized in 1990, is a U.S. Department of Housing and Urban Development (HUD) program created under Title II, Subpart A of the Cranston-Gonzalez National Affordable Housing Act, 42 USC §12701-12756. Subpart A provides for allocation of funds by formula to eligible state and local governments and sets forth the eligible uses for the HOME federal assistance grant. Funding is made available to

state and local governments in order to strengthen public-private partnerships and to expand the supply of affordable housing for low or very-low income households.

Palm Beach County is the recipient of HOME Program grant program funds from HUD. DES administers these funds on behalf of the BCC. The HOME Program allows the County to provide low interest loans to developers for acquisition and/or new construction and/or rehabilitation of affordable or mixed-income housing developments.

Title 24 CFR §91.220(l)(2)(vi) requires participating jurisdictions receiving HOME funds to develop an action plan that describes eligible applicants (e.g., categories of eligible applicants), its process for soliciting and funding applications or proposals (e.g., competition, first-come first-serve) and state where detailed information may be obtained (e.g., application packages are available at the office of the jurisdiction or on the jurisdiction's Web site). The Code of Federal Regulations do not require competition, but requires that the local entity develop a plan for distributing the funds. On August 3, 2014, DES issued Request for Proposals (RFP) DES.2014.1. This RFP made up to \$2,473,996 in federal HOME Program funds available to developers to create rental or for-sale housing.

Section III of the RFP provided,

B. Award Recommendation(s)

The "award, if any, will be made to the Respondent(s) whose proposal is considered to be the most advantageous to the County based on the Selection Committee's recommendations..."

C. Funding Award

.....**The BCC has the sole authority to award funding under this RFP.**

D. Agreement Negotiations

After approval by the BCC, the County will enter into negotiations with the Respondent awarded funding. If the County and the Respondent cannot successfully negotiate an agreement, the County may terminate said negotiations and the funding award, and may elect to initiate negotiations with the second highest ranked Respondent. This process may continue until an agreement(s) has been executed or until the County elects to terminate the process.

Eight developers submitted responsive proposals that were evaluated and ranked by the selection committee. New South Bay Villas, Ltd. was the number one ranked respondent, and was awarded a loan totaling \$1,033,996. The parties negotiated a Loan Agreement (R2014-1922). Habitat did not respond to the RFP.

On December 1, 2015, the BCC voted to terminate the County's Loan Agreement with New South Bay Villas, LLC, citing "recent changes in Federal law" prohibiting the use of HOME Program funds for projects receiving Family Self Sufficiency Program vouchers. Because the housing units in the New South Bay Villas received self-sufficiency vouchers,

New South Bay Villas requested termination of the Loan Agreement and returned the funding to the County. At that same meeting, the Commissioners conceptually approved the award of the \$1,033,996 to Habitat and Habitat for Humanity of Palm Beach County, Inc. The County's Agenda Item summarized that staff was recommending that the monies be provided to Habitat and Habitat for Humanity of Palm Beach County, Inc. "due to an expenditure deadline of September 2016" and the County's "long term success in partnering with Habitat on projects..." The Agenda Item also noted, "Habitat Housing Solutions, Inc. is a certified Community Housing Development Organization with the County." A letter from Habitat dated November 12, 2015, was attached wherein Habitat requested that the County allocate \$1,033,996 of HOME funds to Habitat, "a Palm Beach County (PBC) certified Community Housing Development Organization."

The whistleblower expressed two concerns with the allocation of money to Habitat. First, the whistleblower believed that, as a matter of best practice, the funds should have gone to the next-ranked developer that had responded to the RFP and not to Habitat, which had not responded to the RFP. Second, the whistleblower asserted that Habitat was not eligible to apply for the funds because it was not a Community Housing Development Organization with the County.

a. Next ranked vendor

A review of all governing directives of the HOME program and the applicable RFP revealed no requirement that funds be awarded to the "next in line". The RFP stated the County may negotiate with responders in the order of ranking until an agreement was reached or the County elected to terminate the process. The RFP did not address awarding the HOME funds in the event that an agreement was reached but then later terminated.

In the Agenda Item put before the Commissioners on December 1, 2015, DES explained that it was recommending the funds go to Habitat and Habitat for Humanity due to an approaching deadline of September 2016 for the funds to be expended and a history of successful partnerships with Habitat for Humanity. Based upon a view of the wording of the RFP and the applicable regulations, we cannot conclude that the award of the funds to Habitat violated applicable regulations relating to the HOME program.

b. Community Housing Development Organization

The whistleblower alleged that Habitat was not eligible to apply for the funds because it was not a certified Community Housing Development Organization with the County at the time the RFP was issued. Under HOME Program rules (42 C.F.R. §92.300), at least fifteen (15%) percent of a participating jurisdiction's annual HOME allocation must be set aside for Community Housing Development Organization activities in eligible housing. We found that Habitat was certified as a Community Housing Development Organization by the County on November 20, 2014, as reflected in a September 29, 2015 letter from Mr. Lowery to Habitat Chairman and Director Thomas Walker.

For the reasons set forth above, **Allegation (1)** is **not supported**.

Allegation (2):

DES issued Dakota Abacoa Housing, LLC ("Dakota") a letter finding it in compliance with the terms of its participation in the Impact Fee Assistance Program despite Dakota not being in compliance.

Governing Directives:

Impact Fee Assistance Program Guidelines (September 14, 2010 Palm Beach County Board of County Commissioners Agenda Item 5E-1); Palm Beach County Resolution No. R-2012-0524 (Impact Program Certificate of Award, including Conditions of Issuance, to Dakota Abacoa Housing, LLC) dated April 3, 2012; The Notice of Funding Availability (NOFA No. HCDIFAP1.2011.1); Declaration of Restrictions for Dakota Abacoa Housing executed June 21, 2012

Finding:

The information obtained and reviewed by the OIG **supports** the allegation. However, our review revealed various inconsistencies within documents which delineate the requirements for complying with the Impact Fee Assistance program, and in DES's interpretation of them. We recommend DES create and implement one clear, specific set of guidelines for the Impact Fee Assistance Program and provide training for appropriate staff on the applicable guidelines and monitoring requirements.

Chronology of Events

On November 17, 2009, the BCC authorized the use of impact fee investment earnings (earnings derived from fees assessed for population growth) on roads, parks, and public buildings to support affordable housing (Resolution No. R-2009-2013). The resolution was the result of recommendations from the Palm Beach County Department of Housing and Community Development, which had collaborated with the Commission on Affordable Housing, the Housing Leadership Council of Palm Beach County (Leadership Council), and People Engaged in Active Community Efforts. On September 14, 2010, the BCC approved the program guidelines for the Impact Fee Assistance program's implementation.

On October 23, 2011 and November 20, 2011, Palm Beach County, through the Department of Housing and Community Development, published a Notice of Funding Availability (NOFA No. HCDIFAP1.2011.1) of up to \$1,037,000 in Impact Fee Assistance Program funding.

On April 3, 2012, upon recommendation by DES, BCC approved (R 2012-0524) \$445,512 in impact fee credits for Dakota Abacoa Housing, LLC (Dakota) and issuance of an Impact Fee Assistance Program Assistance Program Certificate Award for a credit towards the payment of impact fees for the construction of 132 affordable rental units. On that same date, via the same agenda item, the Commissioners approved a Declaration of Restrictions in favor of Palm Beach County, which was recorded against the Dakota Apartment property to ensure Dakota complied with its agreement to rent 132 of 142 units within the apartment building as affordable housing for fifteen years. On June 21, 2012,

John Weir, as representative of Dakota and its managing member, Eastwind Abacoa, LLC, signed the Declaration of Restrictions.

On October 29, 2015, DES conducted an on-site monitoring visit of applicable apartments in order to verify that Dakota was in compliance with the requirements of the Declaration. The Mortgage and Housing Investments section of DES, which conducted the monitoring, found that Dakota was not in compliance. Mortgage and Housing Investments found that out of 33 files reviewed (25% of the required 132 affordable units), nine were in compliance, four had previously been in compliance but no longer were, and 20 units had never been in compliance.

After being informed that Dakota was not in compliance, Mr. Weir contacted then-DES Director Edward Lowery, DES Deputy Director Sheryl Howard, and then-Assistant County Administrator Shannon LaRocque to dispute the determination of noncompliance. In response, Mr. Lowery conducted his own analysis of the rental rates and found Dakota to be in compliance. In a letter dated November 20, 2015, Mr. Lowery notified Mr. Weir of his finding of compliance with the requirements of the Declaration of Restrictions.

Governing Directives

Our review of HUD, Florida Housing, and County governing documents revealed discrepancies between them. Further, interviews of Mr. Weir, DES Technical Services Coordinator Amin Houry, and Mr. Lowery revealed differences in the interpretation of the relevant guidelines and Dakota's obligations under the Declaration of Restrictions and a disagreement with regard to the permissible rental rates for the Dakota Apartment units.

The Palm Beach County Impact Fee Program Guidelines approved on September 14, 2010¹, which was in effect at the time of the compliance review, defined "affordable rental housing" projects as, "...housing units with a rent structure that charges the **lesser of** applicable United States Department of Housing and Urban Development (HUD) Fair Market Monthly Rents **or** a rental rate which does not exceed 30% of the adjusted gross income of the prospective tenant household." (emphasis added)

The Program Guidelines specifically defined the applicable HUD Fair Market Rental Rates for 2010. HUD Fair Market Monthly Rents are adjusted at the start of the federal fiscal year (generally October 1). Thus, the Impact Program Guidelines recognized that the appropriate rate could be *either* the fixed HUD Fair Market Monthly rate or an amount that did not exceed 30% of the adjusted gross income of the individual tenant household, whichever amount was less.

The Notice of Funding Availability (NOFA No. HCDIFAP1.2011.1) that led to the award of impact fee credits to Dakota for the Dakota Apartments project, defined affordable rental housing as, "...housing units with a rent structure that charges applicable United States Department of Housing and Urban Development (HUD) Fair Market Monthly Rents or a rental rate which does not exceed 30% of the adjusted gross income of a prospective

¹ The Impact Fee Affordable Housing Assistance Program Guidelines were revised as of January 10, 2017.

tenant household whose income does not exceed 120% of the Area Median Income.” (emphasis added)

The Notice specifically defined the HUD Fair Market Monthly Rates for 2011. The Notice of Funding Availability further defined “Area Median Income” as, “...the most current income limits published by the federal Department of Housing and Urban Development for the West Palm Beach- Boca Raton Metropolitan Statistical Area (Palm Beach County).”

As with the Impact Program Guidelines, the Notice of Funding Availability recognized that the appropriate rate could be *either* the fixed HUD Fair Market Monthly rate or an amount that did not exceed 30% of the adjusted gross income of the individual tenant household. The tenant household income could not exceed 120% of the Area Median Income, as determined by HUD.

The Palm Beach County Impact Program Certificate of Award issued to Dakota and approved by the BCC on April 3, 2012, states in the Conditions of Issuance,

6. Affordability of Rental Housing Units: Developer **shall**, for a period of fifteen (15) years from the date of issuance of the last certificate of occupancy for the Affordable Rental Housing Units at Dakota Apartments, lease each of the aforementioned one hundred and thirty-two (132) Affordable Rental Housing Units **to a household whose gross income, adjusted for family size, is no more than one hundred and twenty percent (120%) of Area Median Income** (hereinafter “AMI”) at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U.S. Department of Housing and Urban Development for the West Palm Beach- Boca Raton Metropolitan Statistical Area. (emphasis added)

The Section further states that,

Developer **shall**, for the fifteen (15) year period, lease each of the aforesaid Affordable Rental Housing Units at an **Affordable Rental Rate** where the monthly rate, including Utilities (hereinafter “Utilities”) **shall not exceed thirty percent (30%) of the gross income (adjusted for family size) of a prospective tenant household** whose annual income does not exceed one hundred and twenty percent (120%) of AMI. Utilities, for the purpose of this Section, and as the term hereinafter appears, shall be defined as, gas, water, electric, and sewer/garbage based on the current utility allowances in the Allowances for Tenant-Furnished Utilities and Other Services for Palm Beach County as published by HUD. The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals. (emphasis added)

The Program Certificate issued to Dakota specifically for the Dakota Apartment project did not provide two options for rental rates, including the fixed HUD Fair Market Rate; but instead, provided that the Impact Fee Credit was being given to Dakota in exchange for

Dakota's agreement to rent the units at a monthly rate, including utilities, that would not exceed 30% of the gross income (adjusted for family size) of a prospective tenant household whose annual income does not exceed one hundred and twenty percent (120%) of AMI.

The Conditions of Issuance also state that the developer shall execute and comply with the terms of a "Declaration of Restrictive Covenants."

On June 21, 2012, John Weir, a representative of Dakota's managing member, signed the Declaration of Restrictions. The Declaration of Restrictions stated,

- 2. In consideration for the receipt of the Certificate and its associated credit of \$445,512....[Dakota] hereby covenants and agrees as follows:
 -(d) To lease, for a period of fifteen (15) years from the date of issuance of the last certificate of occupancy for the Affordable Rental Housing Units at Dakota Apartments, all one hundred and thirty-two (132) Affordable Rental Housing Units to households who incomes, adjusted for family size, are no more than one hundred and twenty percent (120%) of Area Median Income (hereinafter "AMI") at the time these units are first occupied, and thereafter, at any time new tenants occupy these units. AMI shall mean the most recent area median income published by the U.S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach –Boca Raton Metropolitan Statistical Area.
 - (e) To lease, for the aforementioned fifteen (15) year period, each of the herein described Affordable Rental Housing Units at an Affordable Rental Rate **where the monthly rent including Utilities (hereinafter "Utilities") shall not exceed thirty percent (30%) of the gross income (adjusted for family size) of a prospective tenant household whose annual income does not exceed one hundred and twenty percent (120%) of AMI.** Utilities, for the purposes of this Section, and as this term hereinafter appears, shall be defined as gas, water, electric, and sewer/garbage based on the current utility allowances in the Allowances for Tenant-Furnished Utilities and Other Services for Palm Beach County as published by HUD." (emphasis added)

Consistent with the Program Certificate issued to Dakota, the Declaration of Restrictions encumbering the Dakota Apartments did not provide two options for rental rates (including the fixed HUD Fair Market Rate), but instead provided that Dakota agreed to rent the units at a monthly rate, including utilities, that would not exceed 30% of the gross income (adjusted for family size) of a prospective tenant household whose annual income does not exceed one hundred and twenty percent (120%) of AMI.

Interviews Conducted

OIG Interview of John Weir

At the time of the agreement between Dakota and the County, Mr. Weir was the manager of Eastwind Abacoa, LLC; the managing member of Dakota. Mr. Weir stated he was on the Board of the Leadership Council at the time the Palm Beach County's Impact Fee Assistance Program was developed. The program was administered the same way as the tax credit program, and he made that clear to DES. In the tax credit program, there are specific rent levels depending upon the number of bedrooms in each unit. Those levels are specified on a chart issued annually by the Florida Housing Finance Corporation (Florida Housing) based upon income information from HUD. Therefore, the rents are fixed for the units. Also, he said the incomes are based upon assumed household size, not based upon the actual number of people living in the unit. This is done to provide clarity for underwriting purposes, so that it is known what the rents and the eligible incomes are, regardless of the circumstances of a particular household. Mr. Weir believes that the County was interpreting the guidelines so that the rents charged in each unit should have been 30% of the income of that particular household.

Mr. Weir provided the OIG a copy of the 2016 Income Limits and Rent Limits chart produced by Florida Housing; a schedule of income and maximum rents based upon the number of bedrooms in a housing unit. Mr. Weir stated that the maximum income for a one bedroom apartment was \$60,540, for a two bedroom apartment \$72,600; and for a three bedroom apartment \$83,880. The maximum rents would be \$1,513 per month for a one bedroom apartment; \$1,815 for a two bedroom apartment; and \$2,097 for a three bedroom apartment in gross rents. To obtain the net rent amount that would be paid by the tenant, there was a utility allowance for Palm Beach County that is deducted from the gross amount.

OIG Interview of Amin Houry, Technical Services Director for DES

Mr. Houry drafted the Declaration of Restrictions for Dakota Abacoa Apartments. Mr. Houry stated that the Florida Housing chart was not supposed to have been used as the affordability guidelines for the Impact Program. Rather, he said, the developer should have used the HUD guidelines. When reading and interpreting the charts that outline the income and rental guidelines for the Impact Program, he said that is to be done at face value; there are no assumed household sizes or imputed income levels in interpreting affordability guideline charts. The Impact Fee Program uses 120% of Annual Median Income as an income limit for eligibility. The income of the household is compared to the income listed on the chart for a household with the same number of persons to determine if they are within the limit.

OIG Interview of Edward Lowery, then-DES Director

Mr. Lowery stated the DES policy regarding the Impact Fee Program is that developers cannot rent to persons who earn more than 120% of Annual Median Income, and that the rent charged cannot exceed 30% of that household's income. He said the Declaration of Restrictions that the developer agrees to in order to receive the credits requires the developer to send DES information confirming the rents and the household incomes of

the tenants. DES then does calculations to confirm that those incomes and rents are in compliance with the requirements.

Mr. Lowery stated that under those guidelines, developers would be required to charge a different rent amount to each tenant household. Therefore, he decided DES would use the Florida Housing chart - which lists the income caps and the rent caps - as the guidelines for the Impact Program. Ultimately, he concluded that Dakota was in compliance with the guidelines laid out in the Florida Housing chart.

According to Mr. Lowery, part of the confusion internally among DES personnel during the review of Dakota was that some people believed the HUD Fair Market Rental Rate chart should be used in determining compliance, and that each unit needed to have a different rental amount. Ultimately, Mr. Lowery decided to use the Florida Housing chart. It allowed DES to make a determination that Dakota was in compliance with its obligations under the signed Declaration of Restrictions.

Mr. Lowery said he did all of the Dakota review calculations himself, and that he contacted Florida Housing, who advised him to use its chart. Mr. Lowery stated that DES was not entirely clear in its policies as to what guidelines it was going to use. As such, he said, it was in the process of reviewing and revising the policies to make it absolutely clear that it is using the Florida Housing chart.

Emails and Other Documentation

The whistleblower provided the OIG documents from Mortgage and Housing Investments, the organization that conducted an inspection of Dakota's compliance. The monitoring reports and checklists from Dakota, as well as, certain DES emails purported to detail Dakota's lack of compliance:

- An email dated November 10, 2015, from Carol Eaddy Langford, then manager of Mortgage and Housing Investments, to Ms. Howard states: "The April 3, 2012 agreement (R-2012-0524) states that rents would be no more than 120 percent of the tenants (sic) adjusted gross income. A random sampling of 25 percent of the project identified 24 of the 33 (72%) units exceed the agreed upon amount."

We also reviewed Mr. Lowery and Ms. Howard's email activity, which revealed internal discussion amongst DES personnel, as well as communications between Mr. Weir and Ms. LaRocque throughout DES's review process. The communications appear to indicate conflicting opinions as to which guidelines should be used to govern the program to determine whether Dakota was in compliance. They also reveal that Mr. Weir provided DES the charts that Dakota used and appear to confirm that Mr. Lowery used those same charts to conduct his analysis. Notable email communications are as follows:

- An email dated November 12, 2015 from Mr. Weir to Ms. Howard in which he explains the guidelines of Dakota's participation in the program, as he understands them. He states: "I am sending you the information listed below with respect to the

County workforce housing program at Dakota Abacoa multifamily development in Jupiter..." Attached to the email were the 2015 Florida Housing Income Limits and Rent Limits chart; the HUD chart showing utility allowances for Palm Beach County effective 1/1/2015; and the 2015 utility allowance chart for West Palm Beach from the West Palm Beach Housing Authority.

- An email dated November 13, 2015 from Ms. LaRocque to Mr. Lowery and Ms. Howard stated, "I have reviewed the Agreement approved by the BCC on April 3, 2012 for Dakota Apartments. I have reviewed their Annual Affordability Report against the Agreement. I find that the 2015 Affordability Report meets the criteria for rental rates and income limits." It further states, "Unless you disagree, please provide a letter documenting that they have complied with the Agreement with respect to this requirement. If you feel otherwise, please discuss with me on Monday."
- An email dated November 17, 2015 at 12:52 PM from Ms. Langford to Ms. Howard and Mr. Lowery stated: "Dakota Apartments was awarded Impact Fee funding from the November 2011 NOFA. The NOFA references HUD Fair Market Rents and utility allowances. Utility allowances were defined as gas, water, electric, sewer, and garbage. I note discrepancies where Water Heating and Air Conditioning allowances appear to be used, there is nothing in the agreement that specifies other subcategories and therefore should not be included. The SHIP (FHFC) chart has no bearing on this analysis and should not be used for this program. The monitoring letter was revised."
- An email dated November 17, 2015 at 4:03 PM from Mr. Lowery to Ms. LaRocque stated, "It would appear that Dakota Apartments' staff utilized the wrong maximum rent chart to calculate rental affordability. Our Impact Fee Notice of Funding Availability and program requires developers to utilize 'HUD Fair Market Rents' to determine affordability. Dakota Apartments' staff utilized 'Florida Housing Finance Corporation's Multifamily Rental Program Rents' to determine affordability."
- An email dated November 17, 2015 at 10:42 PM from Mr. Weir to Ms. LaRocque states, "Ed is mistaken," and goes on to reiterate Mr. Weir's interpretation of the program guidelines. An email the next day (November 18, 2015) from Ms. LaRocque to Mr. Lowery states, "Call Jack please."
- In an email dated November 19, 2015 from Mr. Lowery to Mr. Weir, with a cc to Ms. LaRocque and Ms. Howard, stated, "I've completed the review of the units leased in 2015. Could you forward to me a copy of the FHFC 2014 Income Limits and Rent Limits chart? I want to complete my review of the units leased in 2014." In response to this email, Ms. LaRocque sent an email to Mr. Lowery asking if 2015 was in compliance, and Mr. Lowery replied to her that it was.
- An email dated November 20, 2015 from Mr. Lowery to Mr. Weir stated, "Find attached 2014 and 2015 Dakota Impact Fee Affordability Compliance Letters. We

have reviewed your certified unit rental financial report for the 2014 and 2015 fiscal years. We find that Dakota is in compliance with the requirements of the Declaration of Restrictions executed on June 21, 2012.”

Assessment

The review of these and other emails appears to indicate that after the initial report from Mortgage and Housing Investments, and subsequent conversations between Mr. Weir and Ms. LaRocque and DES, Mr. Lowery made the decision to utilize the guidelines that had been utilized by Weir and Dakota, and ultimately found Dakota to be in compliance under those guidelines. Those guidelines, however, were not the guidelines Dakota agreed to in the Declaration of Restrictions signed by Weir. Therefore, we find the whistleblower’s allegation to be **supported**.

The Impact Fee Program had multiple governing documents in apparent conflict with each other. Additionally, Dakota, the Mortgage and Housing Investments compliance monitors, and DES Senior executives disagreed regarding the appropriate rates for compliance with the Impact Fee assistance program. In the case of Dakota, Mr. Lowery made a management decision to resolve the situation in Dakota’s favor. We note that the program guidelines were revised by DES during or after OIG’s investigative activities and prior to the release of this report, and that the Impact Fee Assistance Program is now known as the Impact Fee Affordable Housing Assistance Program as of January 10, 2017.

Allegation (3):

Assistant County Administrator Shannon LaRocque promised to award loan funds under the State Housing Initiatives Partnership program (“S.H.I.P.”) to Housing Trust Group prior to DES issuing a competitive request for proposals for these funds, and DES revised the Local Housing Assistance Plan in order to make the loan terms more favorable Housing Trust Group.

Governing Directives:

State Housing Initiatives Partnership Act, sections 420.907-420.9079, Florida Statutes; Rule 67-37, Florida Administrative Code; State Housing Initiatives Partnership Program Overview and Procedures Manual; Palm Beach County Local Housing Assistance Plan 2013- 2016; Palm Beach County Resolution 2013-0487 ; Palm Beach County Resolution 2013-0488

Finding:

The information obtained and reviewed by the OIG **does not support** the allegation.

The State Housing Initiatives Partnership (S.H.I.P.) is a State of Florida program that distributes funds to local entities to create partnerships to conserve and improve existing housing and provide new housing for very-low-income, low-income, and moderate-income households. S.H.I.P. funds are distributed on an entitlement basis to all 67 counties and 52 Community Development Block Grant (CDBG) entitlement cities in

Florida based on population. Palm Beach County received an allocation of \$4,961,065 from FHFC for S.H.I.P. in FY 2015-2016.

In order to participate in the S.H.I.P. Program, local entities must approve a resolution that adopts a Local Housing Assistance Plan, which must be submitted and approved by the Florida Housing Finance Corporation (FHFC); create a local housing assistance trust fund; and create an affordable housing advisory committee. The Local Housing Assistance Plan describes the various strategies the local entity will use to expend the funds and the parameters under which it will do so.

Rule 67-37.006(3)², Florida Administrative Code (2009), provided

Amendments to an approved local housing assistance plan must be adopted by resolution and the county or eligible municipality must provide a copy to the Review Committee within 21 days after adoption. A county or eligible municipality must amend its plan if at any time a strategy will be deleted or a new strategy will be added. However, an amendment must at all times maintain consistency with SHIP program requirements. All amendments will be reviewed by the [FHFC] Review Committee.

The S.H.I.P. Program Overview and Procedures Manual requires a Local Plan that describes strategies for allocation of State funds under the S.H.I.P. Program.³ The Manual states that the Local Plan generally has a three-year term, and may be changed at any time during that term. The Manual also specifies that the Local Plan is submitted electronically to Florida Housing and reviewed by the State Housing Initiatives Partnership Review Committee, which will either approve it or send it back to the local government for required changes. Plan amendments are handled the same way. Further, the Manual also dictates the process by which those changes may be made, stating "Changes to the LHAP are considered a plan amendment when a strategy is added or deleted and require approval of the SHIP review committee. All other changes can be made as technical or clarifying revisions and can be approved by the LG governing board and submitted to the SHIP Administrator for the purpose of notification."

Palm Beach County's 2013-2016 Local Plan was approved by the BCC on April 16, 2013. The Plan contained several housing strategies, including a Developer Assistance Rental Housing strategy to assist developers and owners of affordable rental housing of "25 units and fewer" serving lower income households. Additionally, the Plan contained a provision that financial assistance to the developer would require repayment "at an interest rate of three percent (3%) annually once project is completed."

The Local Plan was revised by DES on April 21, 2015. In that revision, the "25 units and fewer" provision was removed. The revised Local Plan was approved by the BCC on September 22, 2015.

² Rule 67-37.006, FAC was revised effective May 23, 2017.

³ The S.H.I.P. Manual was revised effective January 2018. The portions relevant to OIG's investigation did not change.

After the “25 units and fewer” provision was removed from the Plan, on February 9, 2016, the BCC approved the S.H.I.P. budget allocations for affordable housing strategies and allocated \$494,000 of the \$4,961,065 funding for Developer Assistance Rental Housing for FY 2015-16. To implement the strategy for Developer Assistance Rental Housing, DES issued RFP 2016.1 “Multi Family Rental Redevelopment Program” on March 20, 2016. RFP 2016.1 made \$494,000 available to project developers in the form of loans to finance the redevelopment of State Housing-assisted housing units for rental by eligible beneficiaries.

Two proposers responded to the RFP. The RFP selection committee recommended award to Grand Lake, LLC, an affiliate of Housing Trust Group, LLC, for the Grand Lakes Apartments, a 384-unit multi-family rental unit in Belle Glade. However, according to Ms. LaRocque, Mr. Lowery, and Housing Trust Group President and CEO Matthew Rieger, Housing Trust Group ultimately decided not to accept the funds.

According to the whistleblower, before issuance of the RFP Ms. LaRocque told Mr. Lowery, Ms. Howard, and Ms. Langford (then-manager of Mortgage and Housing Investments, the DES section which primarily oversees the State Housing Initiatives Partnership program) that Ms. LaRocque had promised Housing Trust Group \$2 million from program income, plus “whatever the award was from the last year.” The whistleblower contends that Ms. Langford told Ms. LaRocque that Ms. LaRocque could not give \$2 million to Housing Trust Group for FY 2015-16 because the program’s guidelines limited the potential award to Housing Trust Group to \$494,000, plus program income. The whistleblower further alleged that the “25 units and fewer” provision of the Plan had been removed prior to issuance of the RFP in order to ensure that Housing Trust Group could meet the qualification requirements in the RFP once it was issued.

The whistleblower further alleged that DES executives removed the requirement that the developer pay three percent (3%) interest on the loan of funds because Ms. LaRocque promised Housing Trust Group that it could receive the funds interest-free. The three percent interest rate requirement was allegedly removed as a technical revision, which did not require BCC approval. The whistleblower alleged that the instructions to remove these barriers from the Local Plan came from Ms. Howard and Mr. Lowery, but Ms. LaRocque wanted it done. Our review revealed that the 3% interest provision was eliminated from the 2016-2019 version of the Local Plan by approval by the BCC on April 19, 2016, but was not removed from the 2013-2016 Local Plan.

DES and Housing Trust Group Statements

OIG Interview of Shannon LaRocque, then Assistant County Administrator

Ms. LaRocque stated that she had been and continued to be involved with trying to advance the Grand Lakes project. However, she did not promise the funds to Housing Trust Group in advance of the RFP being issued, nor could she, as it was the BCC that made that decision. She said she made Housing Trust Group aware of the fact that the funds were available, and that it would be wise for Housing Trust Group to apply. She

said this was done regularly with developers, as part of her job was to make sure that developers knew funds were available.

Ms. LaRocque stated that the Local Plan was not revised in order to specifically allow for the award of the S.H.I.P. funds to Housing Trust Group. She said that she and DES constantly assessed programs so that the County could deploy the money in accordance with federal law and BCC priorities, and to realize affordable housing. Often she and DES found provisions that they believed impeded the ability to do that, but they would never modify something so that a particular individual or entity would be given funds. The Local Plan was meant to be broad and flexible, and she and DES modified it regularly while notifying the BCC. That, however, did not guarantee anyone any money, as it would still have to go through a public selection process and would still then have to go before the BCC for approval. She said she and DES probably modified the Local Plan, and it may have been to make it more flexible for this particular important project, not for a particular developer.

OIG Interview of Edward Lowery, then DES Director

Mr. Lowery stated that although Housing Trust Group had been recently chosen by a selection committee to receive S.H.I.P. funding for the Grand Lakes project through an RFP, Housing Trust Group sent a letter to DES notifying it that Housing Trust Group could not accept the funds because its partner, who Mr. Lowery believed was the Palm Beach County Housing Authority, did not have the correct type of vouchers. Mr. Lowery stated Housing Trust Group was not promised before the RFP process that it would receive the funds, and Housing Trust Group did not receive them.

Mr. Lowery stated DES removed the three percent interest requirement in order to have the flexibility to charge either more or less interest depending on the individual situation. Mr. Lowery had no knowledge of the removal of the 25 units or less requirement.

OIG Interview of Sherry Howard, DES Deputy Director

Ms. Howard stated that the three percent interest requirement was removed to allow for more flexibility, but did not recall the removal of the requirements that loans be awarded to small developers. Usually, decisions of that nature were made by herself, Mr. Lowery, and Ms. LaRocque. Ms. Howard further explained that DES tells the BCC when presenting the Local Plan that they want to allow for the most flexibility so that they are ready to accommodate priorities the BCC might have.

Ms. Howard had no knowledge of any deal to give funds to Housing Trust Group in advance of the RFP process. She said there was a selection committee that recommended awarding the funds to Housing Trust Group. The selection committee was comprised representatives from the Planning, Zoning, and Building Department; the Engineering Department; Contracts in the Finance and Budget Department, and two people from DES. She said the ultimate decision of who was asked to serve on the selection committees was made by Ms. Howard, Mr. Lowery, and Ms. LaRocque. Ms. Howard had no knowledge of anyone promising any S.H.I.P. funds to Housing Trust Group in advance of the RFP process.

OIG Interview of Matthew Rieger, President and CEO of Housing Trust Group

Mr. Rieger stated that neither Ms. LaRocque nor anyone at DES promised that Housing Trust Group would be awarded the S.H.I.P. funds prior to the RFP being issued. Housing Trust Group was not promised by Ms. LaRocque or anyone at DES that the State Housing Initiatives Partnership loan would be interest-free.

Document Review

The OIG reviewed Mr. Lowery and Ms. Howard's email activity. The review revealed the following notable email communications:

- An email from Ms. Langford to Ms. Howard and Mr. Lowery dated December 18, 2015 stated, "Please provide the revisions that you would like to make for the strategy Developer Strategy. What are the terms of the HTG first loan and are you also requesting changes to the scope rental (Grandview Apartments) rehabilitation or will it be open to all developers? Once I know the changes, I can better assess if it will be a technical or substantial revision."
- An email exchange between Mr. Lowery, Ms. Howard, and Ms. Langford on December 18, 2015 discusses revising the Local Plan. Ms. Langford inquired about making another revision, asking, "If HTG is combining funding, would you like the term maximum removed?" In response, Mr. Lowery states, "At this point we have no idea what project will be selected through the RFP. But if you are suggesting language that will provide increased flexibility for any developer, then that's something we should consider."

With respect to the allegation that Ms. LaRocque promised Housing Trust Group funds prior to the issuance of RFP 2016.1, Ms. LaRocque and Mr. Rieger both deny that any promises were made in advance. We found no written documentation and other evidence to contradict those assertions. Thus, the allegation **is not supported**.

With respect to the allegation that DES revised the Local Housing Assistance Plan to benefit Housing Trust Group, we note that the Plan was revised to remove the "25 units and fewer" in September 2015 upon approval by BCC. A memorandum from Ms. LaRocque to County Administrator Verdenia Baker through Ms. Howard dated December 21, 2015 requested that Ms. Baker review and approve certain proposed technical revisions to the Local Plan. One of the proposed revisions was the removal of the three percent interest rate requirement. However, a review of Ms. Howard and Mr. Lowery's emails reveals that the memorandum was never submitted to Ms. Baker. An email from Mr. Lowery to Ms. Howard on December 29, 2015 inquires whether the memorandum with a proposed change to the Local Plan concerning purchase assistance continued affordability - which also contained the change to the developer strategy - was sent to Ms. LaRocque. Ms. Howard responded on that date to Ms. Langford, Dorina Jenkins, and Mr. Lowery that, "This is a policy decision that we need to go to the BCC once Administration is on board." There were no other emails relating to changes to the interest requirement.

The OIG reviewed the Commission meeting minutes and the agenda for potential action concerning the proposed revision. The agenda for March 22, 2016 shows that the technical revisions concerning both the three percent interest requirement and the purchase assistance continued affordability matter were scheduled to go before the BCC for approval, but did not. Ms. Howard confirmed that in an email from Ms. Howard to the OIG on September 15, 2016 that the memorandum did not move forward, and clarified that the interest provision was eliminated from the 2016-2019 version of the Local Plan, but was not removed from the 2013-2016 Local Plan. The 2016-2019 Local Plan was approved by the BCC on April 19, 2016 (R-2016-0535).

Conclusion and Recommendation

While it appears DES considered removing the three percent interest requirement from the 2013-2016 Local Plan, such change was not made to the 2013-16 Local Plan. The rate was removed from the 2016-2019 triennial Local Plan upon approval by BCC. However, the whistleblower's overall allegations pertain to the motives or intent behind the action, as opposed to the action itself. Ms. LaRocque, Mr. Lowery, and Ms. Howard all denied that the Local Plan was changed specifically to benefit Housing Trust Group. We reviewed both Mr. Lowery and Ms. Howard's emails from September 1, 2015 - May 26, 2016 and found no communication from Ms. LaRocque (nor any other DES communications) directing the changes for the benefit of Housing Trust Group, nor any discussion about doing so. In fact, an email from Mr. Lowery specifically detailed that he did not know who would be receiving funding at that time.

However, in reviewing the State Housing Initiatives Partnership Program Overview and Procedures Manual, we noted that the requirement dictates that technical revisions "can" not "must" be approved by the local governing board, which in Palm Beach County is the BCC. In addition, S.H.I.P. documents do not detail clear requirements or offer clear guidance for making technical revisions. Further, BCC Resolution R2013-0487 authorizes the "County Administrator or designee" to "execute any documents and certifications... related to the Local Housing Assistance Plan, and to do all things necessary and proper to carry out the terms and conditions of said program." This leaves open the interpretation that the County Administrator- or potentially her designee - is the person responsible for approving Local Plan revisions.

Ms. Howard advised the OIG that DES relies on the State's manual for the technical revision process. Despite the existence of multiple governing documents for the S.H.I.P. program, we conclude that the guidelines for making technical revisions to the Local Plan are unclear. We therefore recommend that DES implement a policy that clearly documents the process for making technical revisions to the Local Plan, including whether such revisions require Commission approval.

Subsequent to the initial complaint, the whistleblower made additional allegations during the course of the investigation, as follows:

Allegation (4):

Housing Trust Group did not comply with the requirement to submit annual financial reports to DES regarding other projects for which it had received loans, thereby making it ineligible to receive State Housing Initiatives Partnership funds.

Governing Directives:

HTG Palm Beach II Loan Agreement and Amendments; Trust Lake Park Loan Agreement; Trust Lake Park II Loan Agreement; Executive Trust Loan Agreement; Marina Clinton Associates Loan Agreement dated 11/21/2000; Marina Clinton Associates Loan Agreement Dated 7/12/05; Green Cay Village Apartments Loan Agreement; State Housing Initiatives Partnership Act, Subsections 420.907-420.9079, Florida Statutes; Rules 67-37, Florida Administrative Code; State Housing Initiatives Partnership Program Overview and Procedures Manual; Palm Beach County Local Housing Assistance Plan 2013- 2016; 24 CFR 570; 24 CFR 91 & 92; 42 USC 12721

Finding:

The information obtained does **not support** the allegation.

DES records provided to the OIG by Ms. Howard revealed that Housing Trust Group has been involved with the following projects:

- Pine Run Apartments, wherein the mortgagee was HTG Palm Beach II, LLC and the funding source was Neighborhood Stabilization 2/ HOME;
- Venetian Isles I, wherein the mortgagee was Trust Lake Park, LTD and the funding source was State Housing;
- Venetian Isles II, wherein the mortgagee was Trust Lake Park II, LTD and the funding source was State Housing;
- Malibu Bay, wherein the mortgagee was Executive Trust, LTD and the funding source was State Housing;
- Marina Bay, wherein the mortgagee was Marina Clinton Associates LTD, and the funding source was State Housing;
- Green Cay Village, wherein the mortgagee was Green Cay Village Apartments, LTD and the funding source was State Housing Initiatives Partnership

We reviewed loan agreements that were executed between Palm Beach County and each entity. The agreements required financial reports be submitted to the County on an annual basis. DES Fiscal Manager Shairrette Major provided the OIG annual financial reports that had been submitted to DES for each of those projects for years 2015 and in some cases 2014, and indicated that they were in compliance with reporting requirements.

A review of the State Housing Initiatives Partnership Program Overview and Procedures Manual revealed criteria pertaining to awarding funds. Under section 6-B, item 2c, it states "Local governments create their own unique requirements, which are based on the project activities and other local preferences. These may include project feasibility, ability to proceed, project timetable, leveraging of funds, and past performance on similar projects."

A review of the State Housing Initiatives Partnership program governing directives (State Housing Initiatives Partnership Act; Chapter 67-37, Florida Administrative Code; Palm Beach County Local Housing Assistance Plan 2013-2016) and the documents governing the Neighborhood Stabilization and HOME programs (24 CFR 570; 24 CFR 91 & 92; 42 USC 12721) revealed no specific requirement for an entity to be in compliance with financial reporting requirements on existing loans in order to be eligible for additional program funding.

The records show that Housing Trust Group had, in fact, complied with financial reporting requirements. Further, no program requirements were found to indicate that had Housing Trust Group not complied with the financial reporting, it would be ineligible to participate in the State Housing Initiatives Partnership program in the future. As such, the allegation **is not supported**.

Allegation (5):

DES was out of compliance with the Palm Beach County Affordable Housing Ordinance when all of the terms of advisory committee members expired by attrition and were not filled.

Governing Directives:

Palm Beach County Affordable Housing Ordinance; State Housing Initiatives Partnership Act, sections 420.907-420.9079, Florida Statutes; Chapter 67-37, Florida Administrative Code.

Finding:

The information obtained and reviewed by the OIG **supports** the allegation.

Legal Requirements and Background

Section 420.9076(2), Florida Statutes, as applicable at the time of whistleblower's complaint to the OIG, require that to be eligible to receive S.H.I.P. funds, local governments must appoint an Affordable Housing Advisory Committee having 11 members.⁴ The committee is appointed "for the purpose of recommending specific initiatives and incentives to encourage or facilitate affordable housing..."⁵ The Act specifically detailed that the committee must consist of one representative from at least six of the categories enumerated in the Act.

The Palm Beach County Affordable Housing Ordinance is codified in Article V, Section 242-248 of the Palm Beach County Code. The Ordinance created the Commission on Affordable Housing, and designated it to serve as the affordable housing advisory committee required by the State Housing Initiatives Partnership Act. It provides for the

⁴ The provision was amended effective July 1, 2016 and now requires the membership be at least 8 but no more than 11 members.

⁵ §420.9071(3), Fla. Stats. (2015).

Commission on Affordable Housing to be comprised of 13 members⁶, appointed by the BCC, each with three year terms (with the exception of six initial members, whose terms are shorter, creating a staggered effect). Further, it requires the members to be, "concerned citizens who understand the complexities of affordable housing issues." It also specifically details the required qualifications for each of the 13 members. For example, one must be actively engaged in the residential home building industry in connection with affordable housing; and one must be actively engaged in the banking or mortgage industry in connection with affordable housing. Vacancies occurring during the term are to be filled for the unexpired term by BCC appointment. The ordinance also dictates that Commission on Affordable Housing members shall be governed by the applicable provisions of the Palm Beach County ethics resolution, R-94-693, as amended.

The whistleblower was interviewed on May 6, 2016 and stated the County was not in compliance with its own Affordable Housing Ordinance. The whistleblower alleged Ms. LaRocque, Mr. Lowery, and Ms. Howard ensured there was no advisory committee by allowing the members' terms to expire and telling the BCC that it was difficult to get people to serve due to the Ethics Commission and the Inspector General, and also by telling the Board that that there was a committee. The whistleblower stated that the committee had no members, and that County staff allowed the terms to expire and told the BCC that it was difficult to find advisory board members because staff would be able to do whatever they wanted - like make deals in advance - if this committee was not watching.

The video minutes of the February 9, 2016 morning BCC meeting were posted on the website of the Palm Beach County Clerk and Comptroller, during which Ms. LaRocque, Mr. Lowery, and Ms. Howard made a presentation to the BCC. During the discussion, Commissioner Taylor inquired at 1:42:53 "...the Commission on Affordable Housing - do we still have that?" Ms. LaRocque responded, "We do...We had a mass exodus when the ethics rules were put in place and we've had a very hard time finding people to sit because most of the people that sit on that committee receive funding so there's a conflict. But we have been talking internally about trying to make some changes to that so we can try to revamp it. But it has been nearly impossible to to (sic) do so we're continuing to work on that."

Administrative Staff Statements

OIG Interview of Shannon LaRocque, then Assistant County Administrator

Ms. LaRocque stated the Commission on Affordable Housing is required by statute and did, in fact, exist. However, there were at that time no actual members on it, because when the OIG and the Commission on Ethics (COE) "came into play," the Commission on Affordable Housing members all left. Ms. LaRocque stated that nobody wanted to sit on that body because they were from entities that wanted to receive money from the County and therefore would have had a conflict of interest. She said it became impossible to find members for the body. She further said the statute clearly defines the requirements

⁶ The Ordinance was amended, effective May 16, 2017, to remove the requirement of 13 members and states simply, "the [Commission on Affordable Housing] shall be comprised of citizens, all of whom shall be appointed by the Board of County Commissioners in accordance with F.S. § 420.9076, as may be amended."

for who must comprise the Commission on Affordable Housing, and all the members must be involved in some way with affordable housing. She and DES were in the process of trying to rewrite the local ordinance to make it comply with the State statute. The State has changed its criteria as pertains to the composition of the Commission on Affordable Housing over the course of time. Therefore, Ms. LaRocque and DES Administration were trying to change the ordinance to have it state, "in accordance with the statute," so that the ordinance does not have to be changed every time the statute changes.

Ms. LaRocque stated there was still an established advisory board Commission on Affordable Housing, but even while that commission was devoid of members and DES was looking for replacements, DES vetted everything and made recommendations to the BCC. She stated that the State said that DES was in full compliance, and that the Florida Housing understood the situation. Florida Housing also provided DES letters and emails stating that it was in compliance. Ms. LaRocque said that Ms. Howard had those letters. Ms. LaRocque stated that DES Administration did not deliberately allow the Commission on Affordable Housing to expire.

OIG Interview of Edward Lowery, then DES Director

Mr. Lowery stated Ms. Howard was working to reassemble the Commission on Affordable Housing, but it was extremely difficult because most of the people who were asked to be on the committee had a conflict and were unable to be on it. He said that most of the individuals asked to serve were either developers or representatives of non-profit organizations who were receiving S.H.I.P. funds or planned to apply for S.H.I.P. funds. The individuals who were serving on the committee did not want to continue to serve once their terms had expired, as they would rather receive funds from the program. As such, the committee slowly dissipated.

OIG Interview of Sherry Howard, DES Deputy Director

Ms. Howard said that when the COE was created, there were many conflicts of interest for people who had been serving on the Commission on Affordable Housing, and DES was not able to get anyone to serve on it. DES discussed the situation with the State and was working on getting it put back together, and there had also been some revision to the statute. She also stated DES had advised the BCC of this situation.

Document Review

Ms. LaRocque told the OIG that the State provided to DES letters and emails stating it was in compliance with state requirements, and that Ms. Howard was in possession of these documents. We requested these documents from Ms. Howard on September 9, 2016. Ms. Howard stated that the State had been verbally advised of the County's situation regarding Commission on Affordable Housing, and indicated that the State did not send anything in writing, but that it *would* send something in writing if the County were *not* in compliance.

Ms. Howard provided the OIG with an email dated March 14, 2016 from Ms. Howard to Ms. LaRocque. The subject was "Committee Appts," and it contained an attachment

called "Affordable Housing committee appointments.docx." The email was also found in the review of Ms. Howard's email. The email stated, "Attached is what we talked about. I will talk to Greg and Dianna- let me know who else you want me to handle." The document attached to the email was headed "Affordable Housing Advisory Committee Commission on Affordable Housing Overview." It listed requirements of the S.H.I.P. Act for the membership of the committee, with notes in red ink next to each member category which appear to suggest the names of persons to fill that position.

A review of Ms. Howard's email also revealed communications between Ms. Howard and the DES Special Projects Coordinator:

- May 4, 2016 from Ms. Howard, "Shannon asked if you could create a table with columns related to commission of affordable housing documents including housing code, Aff housing ordinance, FL statute, and elements of the comprehensive plan then list the responsibilities under each document in the table..."
- On May 9, 2016 to Ms. Howard, "last week, you asked that I pull together a table to compare various roles/responsibilities of the Commission on Affordable Housing as presented in regulatory documents. The attached brings together the following regulations..." It goes on to provide regulatory information in response to Ms. Howard's request.

Conclusion and Recommendation

The March 14, 2016 email from Ms. Howard to Ms. LaRocque, along with the emails between Ms. Howard and the DES Special Projects Coordinator appear to corroborate that DES was in the process of attempting to bring the County into compliance with both the Affordable Housing Ordinance and the S.H.I.P. Act. However, while Ms. LaRocque, Ms. Howard, and Mr. Lowery stated that the Commission on Affordable Housing technically still existed, none disputed that the Commission on Affordable Housing had no current members, and all stated that DES was attempting to re-assemble the committee.

While it appears that DES was attempting to bring the County into compliance, the Ordinance stated that the Commission on Affordable Housing *shall* be comprised of 13 members and that vacancies on the committee *shall* be filled. It also stated that Commission on Affordable Housing *shall* serve as the advisory body required by the S.H.I.P. Act. As the body currently had no members it was not functioning as the statutorily-required affordable housing advisory committee, and the County was therefore not in compliance with the Affordable Housing Ordinance or the State Housing Initiatives Partnership Act. Therefore, that portion of the whistleblower's allegation **is supported**.

Allegation (6):

DES Administration deliberately failed to fill vacant positions on the advisory committee.

Governing Directives:

Palm Beach County Affordable Housing Ordinance; State Housing Initiatives Partnership Act, sections 420.907-420.9079, Florida Statutes; Chapter 67-37, Florida Administrative Code.

Finding:

The information obtained and reviewed by the OIG **does not support** the allegation.

None of the individuals involved stated the DEC senior staff deliberately allowed the terms of committee members expire without replacement. The staff cited County ethics requirements as the underlying reason that all the committee seats were vacant. A review of Mr. Lowery's and Ms. Howard's emails from September 1, 2015-May 26, 2016 revealed no communications indicative of terms on the Commission on Affordable Housing being intentionally allowed to expire and the positions not refilled. Further, as previously stated, emails and other documents reviewed corroborate the verbal statements of Ms. LaRocque, Ms. Howard, and Mr. Lowery that DES was in the process of attempting to reassemble the committee.

Conclusion and Recommendation

Therefore, the allegation that DES Administration *deliberately* failed to fill vacant Commission on Affordable Housing positions is **not supported**.

To avoid potential vacancies in the future, the OIG recommends that DES provide the BCC with recommendations of individuals for new appointments to the Commission on Affordable Housing within a reasonable time before terms expire.

Allegation (7):

Ms. LaRocque signed State Housing Initiatives Partnership documentation on behalf of the County without proper authorization to do so.

Governing Directives:

BCC Resolution R2013-0487 (in which the BCC approved the 2013-2016 Local Plan)

Finding:

The information obtained and reviewed by the OIG **does not support** the allegation.

The S.H.I.P. Program Fiscal Year 2015-2016 Funding Certification - which certified to the State of Florida how funding would be distributed amongst the Local Plan strategies - was submitted via email by Mortgage and Housing Investments Manager Carol Eaddy Langford to Robert Dearduff and Terry Auringer at Florida Housing and on January 12, 2016. The certification form was signed by Ms. LaRocque on January 12, 2016. After Florida Housing required changes to the fund allocation, the new certification was signed by Ms. LaRocque on February 11, 2016. The whistleblower alleges that Ms. LaRocque did not have the authorization to sign.

A review of Ms. Howard's email and the information provided by the whistleblower revealed an email dated January 12, 2016, which shows that the S.H.I.P. certification was initially submitted by Ms. Langford to Mr. Dearduff and Mr. Auringer. The following emails were from earlier that same date:

- At 12:26 PM, an email with the subject "Certification Authorization- SHIP" was sent by Ms. Langford to Ms. Howard. It stated, "I do not see where Shannon was given delegated authority. I see where in 2013-2014 Mr. Weisman signed the SHIP Certification and last year, 2014- 2015, after the BCC approval (October 21, 2014) Shannon signed (sic) it but, I cannot find anything that provided the authority to do so. Attached is the resolution giving the County Administrator or designee authority, but I do not have a document providing for a designee (Resolution R2013-0487) nor is it in any agenda item."
- At 12:31 PM in an email from Ms. Howard to Langford, Ms. Howard states, "Ok Shannon is comfortable signing it so please send to Barbara for signature so she can sent (sic) it back to you to send to FHFC today- thank you!"

Ms. LaRocque stated she was not sure who had the authority to sign that form. When she signed forms, it was with delegated authority. In such cases, the authority was delegated by the BCC in an agenda item to the County Administrator, who then delegated it to Ms. LaRocque. The County Attorney's Office reviewed Ms. LaRocque's delegated authority. Sometimes, Ms. LaRocque and the other Assistant County Administrators had a specific letter delegating authority to them, and sometimes they did not.

Ms. LaRocque said she did not know which documents had been designated for her signature, but knew that whenever something came to her to be signed, it had already gone through the County Attorney. She required that when DES forwarded documents for her signature, they included the information stating where the delegated authority had come from, along with a copy of the BCC's item or the memo that stated that she had delegated authority. Ms. LaRocque tried not to just take the word of DES Administration that she had delegated authority. Ms. LaRocque stated that while this was all her typical procedure, "maybe something slipped through the cracks."

BCC Resolution R2013-0487, in which the BCC approved the 2013-2016 Local Plan, authorizes the "County Administrator or designee" to "execute any documents and certifications required by Florida Housing Finance Corporation as related to the Local Housing Assistance Plan and to do all things necessary and proper to carry out the terms and conditions of said program."

The OIG also reviewed a copy of a memorandum provided by Ms. Howard (and, separately, by Assistant County Attorney James Brako). The memorandum is from County Administrator Baker to Ms. LaRocque. It is dated February 12, 2016, and signed by Baker on February 16, 2016. The memorandum delegates to Ms. LaRocque signatory authority for, "documents and certifications required by the Florida Housing Finance Corporation as related to the Local Housing Assistance Plan." It is noted that while this

does provide clarity to the issue from that date forward, the certifications in question were signed by LaRocque prior to that date.

James Brako, the Assistant County Attorney who was assigned to DES, was interviewed on September 20, 2016. He reviewed all documents before DES forwarded them to Ms. LaRocque, with the exception of solicitations such as requests for proposal. Brako said the designation for Commissioners Resolution R2013-0487 was made to the County Administrator or the Administrator's designee. The language is vague as to whether the designee was automatic, whether it needed to be effectuated through a memo, or whether it could be done verbally. He has seen it done at DES with a blanket statement in the Resolution as the authorization for Ms. LaRocque to sign documents. He has also seen the County Administrator write an internal memo designating either an Assistant County Administrator or a department director to have that authority for a particular program. Brako believes either of these approaches are legally appropriate.

The language pertaining to signatory authority in the Commissioners resolution is open to interpretation. As such, the allegation **is not supported**. However, we recommend that DES or the Assistant County Administrator who oversees DES obtain and maintain a written designation of authority for whoever may be the "designee" of the County Administrator with signatory authority for documents pertaining to each particular program or item, as authorized by the BCC.

Allegation (8):

The Local Plan strategies and fund allocation presented to the BCC for approval did not correspond to those certified to the State of Florida. The Local Plan strategies and fund allocations were misrepresented to the BCC deliberately because DES Administration did not want to disclose how the funds were being used.

Governing Directives:

State Housing Initiatives Partnership Act, sections 420.907-420.9079, Florida Statutes; Rule 67-37, Florida Administrative Code; Commissioners Resolution 2013-0487 (in which the Commissioners approved the 2013-2016 Local Plan); State Housing Initiatives Partnership Program Overview and Procedures Manual; Palm Beach County Local Housing Assistance Plan 2013- 2016; Palm Beach County Code of Ethics.

Finding:

The information obtained **does not support** the allegation.

The State Housing Initiatives Partnership program is a Florida program, which distributes funds to local entities to award in their locales. The local entities develop Local Plan, which must be approved by the State. The Local Plan is generally prepared for a three-year period, and describes the strategies and parameters the local entity uses to expend the funds. The Palm Beach County Local Plan for 2013-2016 was initially approved by the Commissioners on April 16, 2013, and was revised on September 22, 2015.

Upon notification from Florida Housing of how much funding it received for a funding year, DES recommended to the BCC how it believed the funds should be allocated and distributed among the various existing strategies it developed and were detailed in the Local Plan, in accordance with the program's guidelines. For the fiscal year 2015-2016 S.H.I.P., there was an additional requirement that a minimum 20% of the funds be used to serve persons with special needs.

On February 9, 2016 Ms. LaRocque, Mr. Lowery, and Ms. Howard presented the BCC funding recommendations for the S.H.I.P funds that were allocated to Palm Beach County for FY 2015-2016. The County received an allocation of \$4,961,065. However, the allocations and strategies that DES presented to the BCC were different than the eventual certified allocations and strategies presented to the State on the fiscal year 2016 Funding Certification, as follows:

Strategies certified to State on 01/12/2016	Amount Allocated
Second Mortgages (Purchase Assistance)	\$1,600,000
Veterans Homeownership and Preservation Program	\$1,000,000
Housing Rehabilitation	\$718,852
Developer Assistance Rental Housing	\$400,000
Rapid Rental Housing Entry Assistance	\$250,000
Project Delivery	\$496,107

Strategies presented to Commissioners on 02/09/2016	Amount Allocated
Second Mortgages	\$1,026,779
Veterans Homeownership	\$1,000,000
Housing Rehabilitation	\$601,967
Developer Rental Assistance	\$594,000
Homeless Prevention	\$250,000
Special Needs	\$992,213
Program Administration	\$496,106

The State examined the DES State certification, and notified DES that the strategies and allocations listed to them were not appropriate. An email dated February 11, 2016, from Ms. Howard to Mr. Dearduff indicated that the Florida Housing Finance Corporation required changes to the fund allocation. It stated, "Per our conversation yesterday, I have revised the Funding Certification in underline/strikeout reducing the Project Delivery from 10% to 5% of the allocation." Attached to that email was the revised Funding Certification by Ms. LaRocque.

Strategies certified to State on 02/11/2016	Amended Amount Allocated
Second Mortgages (Purchase Assistance)	\$1,662,013
Veterans Homeownership and Preservation Program	\$1,062,014
Housing Rehabilitation	\$780,866
Developer Assistance Rental Housing	\$462,013
Rapid Rental Housing Entry Assistance	\$250,000
Project Delivery	\$248,053

The whistleblower alleged that the Local Plan strategies and fund allocation presented to the BCC for approval did not correspond to those certified to the State, and that this was done to deliberately misrepresent how the funds were being used.

An email from Ms. Langford to Ms. Howard, Mr. Lowery, Mr. Houry, Ms. Major, Dorina Jenkins, and Betsy Barr on January 27, 2016 at 10:01 AM was provided to the OIG by the whistleblower. Attached to it was the proposed agenda

item showing the funding recommendations and the certification that had been submitted to Florida Housing on January 12, 2016. The email states, "This is not accurate, there is no special needs housing strategy and the amounts for rental assistance exceed the 15 percent threshold, unless you are subtracting it from administrative costs. These are the correct strategies and amounts that were sent to FHFC..." An email was sent by Ms. Langford to the same individuals on the same date at 10:16 AM. It added, "P.S. the LHAP does not have a Homeless Prevention strategy either, we have a Rapid Rental Housing Entry Assistance strategy but, it is not exclusive to homeless populations."

As previously noted, the video minutes of the February 9, 2016 BCC meeting were posted on the website of the Palm Beach County Clerk and Comptroller. We reviewed the video of the regular AM session, which showed the presentation by Ms. LaRocque, Mr. Lowery, and Ms. Howard to the BCC regarding the proposed allocation of the 2016 funds from the State amongst the various Local Plan strategies, and the subsequent discussion:

- In explaining the Local Plan to the board members, Ms. LaRocque advised that the Local Plan strategies were board approved, and stated at 1:20:39, "These strategies incorporate a mandatory 20% set-aside for people with special needs."
- Ms. LaRocque also stated, at 1:21:15, "The homeless prevention strategy is known as the rapid rental housing re-entry assistance program."
- A visual breakdown of strategies and funding recommendations was shown to the Board members. Mr. Lowery stated, "Once again, the SHIP special needs set-aside is distributed throughout these strategies."

Information from DES Fiscal Manager

DES Fiscal Manager Shairrette Major explained how the S.H.I.P program operates. She said the County is allocated funding for the program every year by the State through the Florida Housing Finance Corporation, which administers the program. The funding year is from July 1 - June 30. The State wires funds to the County on a quarterly basis. DES then puts those funds in the Affordable Housing Trust Fund where they earn interest that

can be used to increase funding for projects. All S.H.I.P fund expenditure and revenue transactions are accounted for in this fund.

To receive funding under the program, every three years DES must create a Local Plan, which must be approved by the BCC and then submitted to and accepted by Florida Housing. The Local Plan lists all funding strategies, including purchasing assistance; rental re-entry assistance; and strategies with developers.

Ms. Major said both federal and Florida program guidelines pertaining to grant funding state that program income may only be used towards the particular program under which the income was earned. The specific minimum and maximum amounts of funds that may be directed towards any activity within the State Housing Initiatives Partnership program are delineated in the Local Plan. During the budget process, the S.H.I.P program administrators and DES administration determine how Local Plan funds will be allocated, including statements of what percentages may be used for particular activities and appropriate uses for program income.

For the 2015-2016 award year, the County was given \$4,961,065 in S.H.I.P funds. Under the state statute, a locality was permitted to use five percent of its program income for administrative costs. Ms. Major said that DES' program administrators were trying to get that increased to ten percent because of the amount of costs and the commensurate high program income. She said there was no clear language in the State Housing Initiatives Partnership regulations about project delivery costs, which were direct project expenses. She said the County was not eligible for an increase to ten percent. Also, Ms. Major believed that the State could not set a specific percentage limit on how a locality could spend project delivery funds. Therefore, DES was limited to using five percent of program income for administrative expenses, but no maximum for use of program income for project delivery.

Ms. Major said that when she reviewed the fiscal year 2015-2016 State Housing Initiatives Partnership budget allocations that were put before the BCC, 20 percent of the funds awarded to the County were required to have been used for special needs. Since DES had no special needs strategy, the funds were allocated throughout other strategies for special needs projects. The allocation process included things that had never been done before, such as combining items and not stating how much would be used for project delivery. Ms. Major said that project delivery costs were built into the specific Local Plan strategies, which created difficulties for her. DES' budget was within the limitations of allowed spending on program administration, and she believed that for project delivery, only half (five percent) was ultimately budgeted. Ultimately DES stayed within the guidelines of State Housing Initiatives Partnership program allowances.

Statements of DES and County Administration

OIG Interview of Shannon LaRocque, then Assistant County Administrator

Ms. LaRocque stated that the allegation that the strategies and allocations presented to the BCC did not match what was being certified to the State was a matter of terminology,

and to her knowledge there was no requirement that names of the strategies exactly match. She stated that there was no “special needs” category in the Local Plan; instead, DES used other named categories to distribute special needs funds. There was never a goal or desire to mislead the BCC.

OIG Interview of Edward Lowery, then DES Director

Mr. Lowery stated that under the State Housing Initiatives Partnership program, DES was notified by the State how much funding it would receive in a year. DES then decided how to allocate those funds under existing programs. It prepared its recommendations and presented them to Ms. LaRocque and then to the BCC for approval. After the BCC approved the allocations, DES did a public notice announcing how much money was received from the State and how it was to be allocated. The announcement informed members of the public of what to do to benefit from each program.

Mr. Lowery stated the State requires 20 percent of the funds must be spent on “special needs.” DES tries to target 20 percent of each activity’s funding toward special needs. There is no named special needs category; DES spreads out this funding among various categories, at times using different strategy names than the State. DES also normally adds the funds that will be used for project delivery to the total recommendation for the BCC because that is money that program administration does not cover.

According to Mr. Lowery the funds for project delivery were spread amongst the various programs represented on the recommendation to the BCC.

Mr. Lowery explained that the “Rapid Rental Housing Entry Assistance” strategy listed on the certification to the State was the same thing as the “Homeless Prevention” allocation listed on the Commission Agenda Item. DES used the generic term of “homeless prevention” to explain how the funds were allocated.

Mr. Lowery stated that after DES funding allocation recommendations were approved by the Commission, they were submitted to the State. The State did not approve them, as it required five percent of funds for project delivery, not ten. Mr. Lowery assumed that thereafter, the funding level for project delivery was corrected and re-submitted.

OIG Interview of Sherry Howard, DES Deputy Director

Ms. Howard stated that under the State Housing Initiatives Partnership program, after the State gives funds to the County, DES makes recommendations to the BCC for fund distribution. Ms. Howard believed the agenda items DES prepared were very clear. The Local Plan lays out the strategies for DES’s use of State Housing Initiatives Partnership funds. After being put together by DES, the Local Plan is taken to the BCC for approval, and then certified to the State via a form signed by the County Administrator or designee. The Local Plan is updated triennially unless there are changes that a locality wants to make. If at any point during the period covered by the Local Plan it is decided by DES that a technical revision to the Local Plan needs to be made, it is submitted directly to the State for approval.

Funding special needs was a “hot-button” issue with the BCC, and as such it was very important that they knew that there was money going to it. There was a requirement under the State Housing Initiatives Partnership guidelines that a certain amount of money go to Special Needs. That requirement for the particular funding year of 2015-2016 was \$992,000. Ms. Howard said DES wanted to be sure that the BCC saw that it was a requirement to put a percentage of money into Special Needs projects. So DES distinctly separated the funds from the Local Plan strategies in the presentation to the BCC. DES wanted the BCC to understand, in writing, that five percent of the total allocation had been dedicated to project delivery and rolled into each strategy based on the percentage use of the activity, whereas on the certification form that is set up by the State and completed by DES, the funds for project delivery were shown. She said the actual amounts that were allocated to each strategy were the same on both documents.

The certification to the State that was prepared by DES and submitted on February 11, 2016 reflects amounts for each strategy that are different than what had been approved by the BCC and submitted to the State on the initial certification. Ms. Howard believed this new certification was done because the State rejected the initial submittal on the basis that the State wanted DES to lower the amount of funds being used for project delivery from ten percent to five percent. After the changes required by the State were made by DES, those changes did not go back to the BCC for approval; they were not required to.

Review of Certification and Directives

Per State Housing Initiatives Partnership Program Overview and Procedures Manual, “an amendment is not necessary when shifting funds between approved Strategies in the LHAP...” As such, it may be done as a technical revision, which does not necessarily require BCC approval. The manual also states, “Changes to the LHAP are considered a plan amendment when a strategy is added or deleted... All other changes can be made as technical or clarifying revisions...”

A review of all of the State Housing Initiatives Partnership program’s governing documents revealed no clear requirements regarding who makes technical revisions to the Local Plan. However, BCC Resolution R2013-0487 authorizes the “County Administrator or designee” to execute any documents and certifications required by Florida Housing as related to the Local Plan and to do all things necessary and proper to carry out the terms and conditions of the program. Taken together, this leaves open the potential interpretation that the revisions could permissibly be made by DES, and that the certification of funds distribution could permissibly be made by Ms. LaRocque.

In addition, the OIG reviewed the S.H.I.P governing documents and no guideline was found stating that the wording of a presentation to a local government’s governing body must exactly match the certification form to the State.

Conclusion and Recommendation

Taken in totality, it appears that DES attempted to meet program requirements, and made changes as needed to do so within the parameters of the program guidelines. Further, it appears that DES and Ms. LaRocque attempted to make clear to the Commissioners how the S.H.I.P funds would be utilized. The presentation to the Commissioners at the February 9, 2016 meeting made by Ms. LaRocque, Mr. Lowery, and Ms. Howard appears to explain and clarify what otherwise could be seen as discrepancies. Therefore, the allegation **is not supported**. However, for purposes of clarity and transparency, we recommend that the agenda item presented by DES to the Commissioners concerning the funding of the Local Plan strategies each funding year correspond more precisely with the certification to the State/ Florida Housing.

Allegation (9):

Ms. LaRocque instructed Assistant County Attorney Philip Mugavero to delay foreclosure proceedings involving Brooks Subdivision in order to benefit herself.

Governing Directives:

Palm Beach County Merit Rules #7 (Dishonesty)

Finding:

The information obtained by OIG does **not support** the allegation.

In a memorandum from Assistant County Attorney Tammy Fields to Chief Assistant County Attorney Andrew McMahon dated February 7, 2014, DES requested litigation regarding Brooks Subdivision to enforce the County's interest in the property and obtain title or reimbursement for the investment. The memo from Fields explained that the matter involved a commercial foreclosure of vacant land stemming from three state and federal loans awarded to the Northwest Riviera Beach Community Redevelopment Corporation and Brooks Subdivision LLC for the development of Brooks Subdivision, which was to be an affordable housing project in Riviera Beach. The three loans were given between August 27, 2007 and August 18, 2009, and totaled \$1,414,500.00, of which the County released \$786,778.51 (\$600,000 to purchase the land and \$186,778 for development costs).

The funds came from the S.H.I.P. and HOME programs; funding was contingent upon project completion and beneficiaries realized. The memorandum further explained that under those programs, there was a requirement that the housing units must be occupied within certain timeframes; three years for S.H.I.P. and five years for HOME. Since those requirements had not been realized, the County would be required to repay the \$786,778.51 unless the County took possession of the land for future development. The memorandum stated that DES was hoping a foreclosure lawsuit would be filed very quickly. It stated that the priority was to get title to the property so it could be developed and the County would not be required to repay the original loans. The memorandum also noted that Rosso Paving & Drainage, Inc. recorded a summary judgment against Brooks based upon work it had performed for which it was not fully compensated.

The whistleblower alleged that Ms. LaRocque instructed Assistant County Attorney Philip Mugavero to delay the foreclosure proceedings involving Brooks Subdivision in order to benefit herself. Specifically, the whistleblower stated that then-Deputy County Administrator Verdenia Baker had a big initiative for workforce housing and that at the time, LaRocque and Baker were in direct competition for the position as the next County Administrator. Therefore, the whistleblower alleged, in order to prevent Ms. Baker from gaining an edge in the job competition by moving forward with a plan to utilize the land the County was going to foreclose on to realize more workforce housing, Ms. LaRocque directed that the foreclosure proceedings be delayed.

OIG Interview of Shannon LaRocque, then Assistant County Administrator

Ms. LaRocque stated that sometimes there are reasons to delay legal proceedings, such as attempting to work out a solution before undertaking a lengthy, expensive legal process. She said that she may have communicated that the County should wait because she and DES wanted to have additional conversations about solutions, but ultimately they wanted the property back. She stated that foreclosure takes a long time, during which the property would not be used. As such, she looked into other options that would have helped to realize affordable housing more quickly. She did not, however, direct that the foreclosure be delayed in order to benefit herself in any way.

Ms. LaRocque further stated that the Brooks Subdivision matter was a very complicated transaction. There were liens on the property and other entities involved, and many conversations were had with Riviera Beach. Ms. LaRocque said she probably communicated a desire to delay the foreclosure proceedings to the County Attorney's Office in order to attempt to find another solution to get title to the land and work with the entity who owned it at the time. The entity that had been awarded the funding had fallen apart but the person in charge of it was representing that the entity was still solid. Ms. LaRocque stated that the County had to determine whether or not that was true. The County eventually found out that the individual was misrepresenting the fact that he still had the authority over the entity that owned the land. Ms. LaRocque said there were a lot of discussions surrounding the matter, and she wanted to find the most cost effective, expeditious solution rather than rushing to spend the money to reimburse the County Attorney's Office. She said Mr. Mugavero was the individual at the County Attorney's Office who was handling the matter and with whom she communicated.

OIG Interview of Philip Mugavero, then Assistant County Attorney

Mr. Mugavero stated that Ms. LaRocque did not ask or instruct him to intentionally slow the foreclosure proceedings. To the contrary, he said, Ms. LaRocque wanted him to move as quickly as he could, and she wanted to be kept informed that it was moving quickly. She called him frequently to inquire as to the status of the matter.

Mr. Mugavero said this matter took a little bit longer than other foreclosure proceedings because the intent of the County and DES was to put affordable housing on the property. As such, Ms. LaRocque wanted to try to work something out with the city of Riviera Beach. He said the City was unhappy because it was being wiped out in the foreclosure proceeding and there was nothing they could do about it. However, the County and the

City were going to try to work together to put affordable housing on the property. To that end, it took time to coordinate the meetings between Ms. LaRocque and the appropriate City administrator. In addition, Rosso wanted to meet with Ms. LaRocque to see if the County was willing to pay them or accommodate them in some way, as they knew they were going to get nothing from the foreclosure proceeding. Ms. LaRocque, he said, told them she would not effect that accommodation.

Mr. Mugavero explained that after Brooks had defaulted on the mortgage, the corporation was dissolved and the principals were “gone”. The judge had instructed Mr. Mugavero to contact the Economic Crimes Division of the State Attorney’s Office to see if there were any crimes committed that it could pursue. Mr. Mugavero did so, and also was in contact with the Palm Beach County Sheriff’s Office, who looked into the matter as well. All of these things slowed the process a little, but not unreasonably so, he said.

The County Attorney’s Office file of the Brooks Subdivision matter was reviewed by OIG, and revealed an Unopposed Motion for Continuance filed by the County on July 27, 2015. It stated “Assistant County Administrator, Shannon R. LaRocque, P.E., has requested that this case be continued in order to meet and discuss any settlement possibilities with each Defendant, while also being able to pursue development possibilities with the property as intended for this vacant lot in the City of Riviera Beach.” The file also contained a copy of the court order which granted the motion on July 28, 2016.

By the first person accounts of both individuals primarily involved, the Brooks Subdivision matter was more complicated than a standard foreclosure. Ms. LaRocque denies the allegation that her motivation was one of self-interest. Mr. Mugavero, allegedly the recipient of the instruction from Ms. LaRocque, stated that it did not happen. Additionally, a court order corroborated the accounts of Ms. LaRocque and Mr. Mugavero. As such, the allegation is **not supported**.

Allegation (10):

The DES senior executives were underreporting or not reporting Neighborhood Stabilization Program account funds in order to obtain ad valorem funds from the Board of County Commissioners, which the senior executives intended to use for improper purposes.

Governing Directives:

24 CFR 570; Palm Beach County Code of Ethics; Commissioners Resolution R2015-0926 (Settlement Agreement)

Finding:

The information obtained by OIG does **not support** the allegation.

The Neighborhood Stabilization Program is a federal program through HUD. It provides grants to every state, to local communities, and to other organizations to purchase foreclosed or abandoned homes and to rehabilitate, resell, or redevelop those homes. There were three rounds of funding for this program (Neighborhood Stabilization 1,

Neighborhood Stabilization 2 and Neighborhood Stabilization 3). The HUD website stated that since Neighborhood Stabilization is a component of the Community Development Block Grant (CDBG) Program, Neighborhood Stabilization is governed by CDBG regulations except where specifically waived.

The whistleblower alleged that DES Administration told the Commissioners that DES did not have enough money to run the Neighborhood Stabilization programs, even though DES had enough money. The whistleblower said DES senior staff provided incorrect information to BCC because DES needed to repay HUD for the failed Village Centre project. The whistleblower said DES senior staff told the Commissioners that the repayment to HUD would not be done with federal government funds, but they did not state that it would be done with ad valorem dollars. The whistleblower further alleged that rather than requesting ad valorem funding to repay the \$900,000 DES owed to HUD, DES administration deliberately deceived the Commissioners by underreporting the income from the Neighborhood Stabilization programs - which were already self-sustaining - so that they could represent that they needed the funds to run those programs. The whistleblower alleged DES was going to use \$250,000 of ad valorem funding to pay debt to HUD from the Village Centre project.

The whistleblower stated that there was \$4 million in Neighborhood Stabilization 1, of which \$2.5 million had not been allocated. That money, the whistleblower said, would have been under a pre-determined deal by DES Administration, which would have determined how much program income was available, and then would have contacted a developer to offer that money to them.

The whistleblower stated that the three Neighborhood Stabilizations had a total allocation amount of about \$88 million. There was a stipulation that after a period of time any funds that have not been obligated to one of the housing strategies could be used for things such as business loans and developers. The whistleblower stated that DES held those funds and waited for the time period to elapse, at which point they then awarded the funds to developers. The whistleblower stated that it is not against the program guidelines to do this; however, DES was not informing the Commissioners that those funds existed.

The whistleblower stated that the agenda item put before the Commissioners requesting funds to repay the HUD loan detailed that funds would come from a Housing Trust Group fund. However, the whistleblower believed that fund was empty because those funds were used to pay staffing costs. The whistleblower stated that DES Fiscal Manager Major inquired as to where the money would be coming from to pay the \$250,000 for the next installment payment to HUD. The whistleblower stated that Ms. LaRocque had already made a deal with the head of the Office of Financial Management and Budget to let the agenda item through, even though there was no identifiable source to pay the funds. Ms. Major, the whistleblower said, was told about that deal when she wanted to stop the agenda item from going through, and was also told to use the additional ad valorem funds that were given to DES for unfunded mandates to pay the Village Centre debt to HUD.

The whistleblower further alleged that Ms. LaRocque did not want to tell the Commissioners that the money had been lost. Instead, since federal funds could not be used to repay the federal government, Ms. LaRocque planned to claim the money was needed for the Neighborhood Stabilization programs and then divert it.

Statements of Administration

OIG Interview of Shannon LaRocque, then Assistant County Administrator

Ms. LaRocque stated the Neighborhood Stabilizations were very successful and that DES does not get ad valorem funds for those programs. DES does not report to the Commissioners every time they receive program income from those programs. There are existing strategies to spend that income and DES uses them. DES is not required to get approval from the Commissioners every time it deploys the program income.

Ms. LaRocque stated that the Village Centre project funded Northwood Renaissance under the HOME program. The project failed to meet its goal for many reasons, and DES was required to repay money to HUD. It is not permissible to repay the federal government with federal or state funds; the only way to repay the federal government is with County funds. As such, DES Administration went to the Commissioners and recommended that HUD be repaid. LaRocque said they disclosed all the facts of the situation. The Commissioners agreed to repay the money in three installments. The first payment was \$400,000, which DES had available in non-federal program income.

The whistleblower alleged that there was not sufficient non-federal program income funds available to make the payment. According to the whistleblower, Ms. LaRocque made a "deal" with the Office of Financial Management and Budget to allow the agenda item to go through anyway. Ms. LaRocque stated no such deal occurred. Ms. LaRocque did not want to go to the Commissioners to ask for the full \$900,000 up front. Instead, Ms. LaRocque and the Office of Financial Management and Budget agreed to request the \$400,000 that was already available. In approximately mid-July, 2016 Ms. LaRocque said she informed the Commissioners that DES did not have the program income to make the next payment, and requested contingency general funds to make the payment. The Commissioners approved that request.

OIG Interview of Edward Lowery, then DES Director

Mr. Lowery stated the County needed to repay HUD \$900,000 as a result of the failure of the Village Centre project, and that the first installment payment of \$400,000 was made in 2015. DES went to the Commissioners for the money, and did not use program income from the Neighborhood Stabilization programs to repay HUD. In 2016 DES made the second installment payment to HUD. DES went to the Commissioners for these funds as well, and would probably do so again. Mr. Lowery stated that checks and balances by the County and Federal governments insured that it would be impossible to hide or not report Neighborhood Stabilization program income. If program income was not budgeted, it would be because funds could only be used for eligible activities, and no such activities were available at the time. In such cases, funds stay in the account until there is an appropriate activity for fund use.

OIG Interview of Sherry Howard, DES Deputy Director

Ms. Howard stated it would be completely against regulations to underreport program income to the Commissioners in order to obtain ad valorem funding to pay HUD. DES went before the Commissioners with two agenda items requesting ad valorem funds specifically to make the first two payments of the debt owed to HUD. Howard state that DES's Fiscal Section reports all Neighborhood Stabilization funds. If funds were unbudgeted, that was because there was no available purpose within grant parameters.

Information from DES Fiscal Manager**OIG Interview of Shairette Major, DES Fiscal Manager**

Ms. Major said that DES never sought ad valorem funding from the Commissioners for Neighborhood Stabilization, only to use those funds for a different purpose. She explained that there was a lot of program income received through the Neighborhood Stabilization programs. On a quarterly basis DES must report the program income to HUD, and DES did a monthly management report of program income. There is a ten percent cap on the amount of program income that can be used for Neighborhood Stabilization program administration. Ms. Major said that when program funds are designated for items which are unrequired, those funds are deemed unbudgeted, and are not spent.

Ms. Major stated that the Commissioners were told about the need to repay funds owed to HUD; the total that needed to be repaid was \$900,000. \$400,000 was repaid up front, and there were two scheduled installments of \$250,000 each. \$390,000 of the \$400,000 came from the Universal Housing Trust Group Fund, and \$10,000 came from fees collected from developers. Ms. Major had a concern where the funds would come from. It was anticipated by DES Administration that the \$250,000 installments would be funded with non-federal program income, and Ms. Major knew that amount of program income would not be generated in that particular program. She had already submitted the year's budget, along with a projection that program would generate approximately \$70,000 in income. Ms. Major expressed her concerns to Mr. Lowery and Ms. Howard. She said she was informed that Ms. LaRocque had already spoken with the Office of Financial Management and Budget, which agreed to allow the agenda item to go though as written since they knew that DES would ultimately need to request ad valorem funds to make the payments. As of October 2015, DES compiled a monthly management report which includes information on how much money is in DES accounts. Ms. Major ultimately had no concerns about the appropriateness of DES's use of Neighborhood Stabilization funds.

Records Review

Ms. Major provided the OIG records from all of the systems used to track the funding of the Neighborhood Stabilization programs. We also visited the websites of HUD and the Palm Beach County Government. Ms. Major also provided the OIG records showing that the initial \$400,000 required payment to the local Home Trust Fund account was made on August 7, 2015, with \$390,000 coming from the Universal Housing Trust and \$10,000 coming from developer fees, as was represented to the Commissioners. The records further show the required \$250,000 installment payment being made to the local Home

Trust Fund account on July 20, 2016 from the Universal Housing Trust after a budget transfer from the Palm Beach County General Fund

We reviewed the account records of each of the bookkeeping/ tracking systems used by DES' fiscal section as reflected on April 6 and April 18, 2016 (FY 2016 Q2), and July 6, 2016 (FY 2016 Q3). The records clearly state, "Program Income Received," "Program Income Drawn," and "Available," with amounts shown for each. The "Available" funds listed appear to be the remainder after the "Drawn" income is subtracted from the "Received" income. The reports show detailed breakdowns of the revenues and revenue sources, including loan repayments.

Ms. Major provided the OIG a July 6, 2015 email detailing Ms. LaRocque's discussion with the Office of Financial Management & Budget. In that email, Ms. LaRocque tells Mr. Lowery, Ms. Major, and Ms. Howard that "I already spoke to (Office of Financial Management & Budget) about this item. They will not budget everything this year... If there are not sufficient project income we will address in the budget process or as a budget amendment..."

At the July 21, 2015 Commissioners meeting, the Commissioners approved agenda item 3I-3, which had been submitted by DES and states, "On March 14, 2006 (R2006-0469), the Board of County Commissioners (the Board) awarded a \$900,000 HOME loan to the Village Centre Apartments, Ltd. (general partner Northwood Renaissance, Inc.) for the development of 84 rental apartments..." It goes on to give further background on the Village Centre project and how it failed. It then states, "Because the project did not result in affordable housing, HUD is requiring the repayment of the \$900,000 in HOME funds.....The Settlement Agreement requires the refunding of the County's HOME Trust Fund Account in the amount of \$900,000 from non-federal funds to the County's local HOME Trust Fund Account, beginning with a payment of \$400,000 of non-Ad Valorem Program Income due no later than August 15, 2015, and followed by two (2) additional payments of \$250,000 each due no later than July 31, 2016, and July 31, 2017. The subsequent repayments are anticipated to be funded with non-Federal program income."

At the July 12, 2016 Commissioners meeting, the Commissioners approved Agenda Item 5B2, which had been submitted by DES. The agenda item summary provided background on the Village Centre project and the Commissioners-approved Settlement Agreement from July 21, 2015 (R2015-0926). It requested the \$250,000 required to make the next installment payment be transferred from the General Fund contingency reserves.

Assessment

The information we reviewed reflects that the Commission was advised of the failure of the Village Centre project, and that DES requested the funds required to repay HUD. Records show that the recommended source of funds did, in fact, have the funds available to make the payments. In addition, Neighborhood Stabilization program funds and income were being tracked and recorded by DES's fiscal section, and reported to the County and HUD via electronic systems.

In total, the information obtained by the OIG does not substantiate the statements of the whistleblower. Therefore, the allegation **is not supported**.

Allegation (11):

DES Administration provided false information to the Board of County Commissioners in response to a question concerning the amount of money for the Tenant Based Rental Assistance program.

Governing Directives:

Palm Beach County Merit Rules #7 (Dishonesty)

Finding:

The information obtained and reviewed by the OIG does **not support** the allegation. The whistleblower referenced a BCC meeting on February 9, 2016, wherein Commissioner Vana inquired as to whether or not DES had money under the tenant based rental assistance program and was told they did not by DES Administration. However, the whistleblower claimed an email was then sent by Ms. Howard stating that DES records showed a balance of almost a half million dollars.

The OIG reviewed the video minutes of the February 9, 2016 BCC meeting. It showed that after a presentation by Ms. LaRocque, Mr. Lowery, and Ms. Howard to BCC regarding the proposed allocation of the 2016 funds from the State amongst the various Local Plan strategies, as well as public comments, a discussion took place which included questions and comments from the commissioners. Department of Community Services Director Channell Wilkins also participated in this discussion, as Ms. LaRocque had explained (in response to a question from Ms. Vana) that DES works with Community Services to distribute certain funds. The discussion occurred in the BCC regular AM meeting. Within that discussion, no direct question was found from Ms. Vana (or any other Commissioner) as to whether DES had money under the tenant based rental assistance program. Further, no exchange was found in which Ms. LaRocque, Mr. Lowery, or Ms. Howard were asked if there was money followed by them responding that there was not.

There was, however, discussion about statutory regulations governing how funds can be used, as well as how under program regulations funds can exist and may be encumbered, but not yet spent. It appears the exchange to which the whistleblower is referring occurred when Ms. Vana stated "...if we have money that's not being spent and you have some left over, I would have to say why...". In response, Ms. LaRocque stated "I'm not inferring that we don't have money that we're not spending, everything is being encumbered and expended. Obviously it takes time to do these things because of the regulatory requirements to ensure that every person we help is eligible...". At another point, a similar exchange occurred when Commissioner Taylor inquired of Mr. Wilkins "So we do have money?" Mr. Wilkins' response was "We have money in place but it's encumbered..."

The OIG also reviewed an email provided by the whistleblower from Ms. Howard to Mr. Wilkins dated February 10, 2016, which was the day after that BCC meeting. The email

states, in part, "...I wanted to provide a reminder that of the SHIP 2014 money allocated to CS, according to our records there is a balance of \$457,064 that needs to be encumbered by June 30, 2016, in accordance to State Regulations."

The information reviewed does not reflect a deliberate effort by DES administration to lie to or mislead BCC. It appears to indicate efforts by Ms. LaRocque and Mr. Wilkins to explain to BCC the intricacies of certain regulatory requirements pertaining to state funds. As such, the allegation is **not supported**.

ACKNOWLEDGEMENT

The Inspector General's Investigations Division would like to thank the Department of Housing & Economic Sustainability staff for their cooperation throughout this investigation.

RECOMMENDED CORRECTIVE ACTIONS

Based on our findings, we recommend the following corrective actions with regard to **Allegations (2) and (3)**, and **Allegations (6), (7) and (8)**:

1. DES create and implement one clear, specific set of guidelines for the Impact Fee Assistance Program and provide technical assistance training for staff on the proper interpretation and implementation of such guidelines. (*We note that such program guidelines were developed by DES during or after the OIG's investigative activities and revised prior to the release of this report).
2. DES create a clearly written policy delineating the process and procedure for making "technical revisions" to the Local Housing Assistance Plan, including whether such revisions require Commission approval.
3. To meet statutory requirements, DES provide the Board of County Commissioners with recommendations of individuals for new appointments to the Commission on Affordable Housing advisory committee within a reasonable time before current terms expire.
4. DES recommend to the Board of County Commissioners that it revise the Affordable Housing Ordinance to include language that it incorporates by reference any applicable amendments to federal or state statutory or administrative regulations. (*We note that the Ordinance was amended by the BCC after the OIG's investigative activities and prior to the release of this report).
5. DES and its Assistant County Administrator maintain a written designation of authority for the "designee" of the County Administrator with signatory authority for documents pertaining to each particular program or item, as authorized by the Board of County Commissioners.
6. The Local Housing Assistance Plan strategies and fund allocations presented by the DES to the Board of County Commissioners correspond more precisely with strategies and allocations certified to the State of Florida.

RESPONSE FROM MANAGEMENT

Pursuant to Article XII, Section 2-427 of the Palm Beach County Code, DES was provided the opportunity to submit a written explanation or rebuttal to the findings as stated in this Investigative Report within ten (10) calendar days. DES agreed with our findings and we have included DES management response as Attachment 1.

RESPONSE FROM WHISTLEBLOWER

Pursuant to § 112.3189, Florida Statutes, the WB was provided the opportunity to review the OIG's findings and provide a written response within twenty (20) calendar days.

The OIG has addressed all of the viable initial investigative allegations by the Whistleblower. The attached response from the Whistleblower has not identified any new areas of OIG investigative interest. The Whistleblower's response is provided as Attachment 2.

This Investigation has been conducted in accordance with the ASSOCIATION OF INSPECTORS GENERAL Principles & Quality Standards for Investigations.

Attachment 1

Management Response

From: Sherry Howard
Sent: Monday, March 26, 2018 11:37 AM
To: Stu Robinson <SRobinson@pbcgov.org>
Cc: Jonathan Brown <JBrown2@pbcgov.org>
Subject: HES Response to IG Report

Good Morning,

Please find attached the response to Allegations number 2 and 5.
Please let me know if you have any questions or if there is anything further required.

Thank you,
Sherry Howard

Allegation (2):

DES issued Dakota Abacoa Housing, LLC ("Dakota") a letter finding it in compliance with the terms of its participation in the Impact Fee Assistance Program despite Dakota not being in compliance.

HES Response

HES agrees with the OIG assessment that there were contradictions between the multiple documents governing the Impact Fee Assistance Program award to the Dakota project, and that a management decision was made to select one (1) set of clear and objective set of criteria to apply to the Dakota project. Consistent with management's selection, the Impact Fee Program Guidelines were revised on January 10, 2017, to address rental rates as follow:

...Rental housing Units: shall be rented at rental rates where the sum of the actual monthly rent paid by the tenant plus the cost of Tenant Paid Utilities does not exceed the rent limit for Palm Beach County households at one hundred and forty percent (140%) of AMI as shown on a current rent limit chart approved by DES. The initial approved chart is the "Income Limits and Rent Limits" chart published by FHFC for its "Multifamily Rental Programs – Except HOME and SHIP", as updated from time to time, and fixed according to number of bedrooms. Should FHFC discontinue publication of the aforesaid rent limits chart, then DES shall designate and alternative source of information for such rent limits.

Allegation (5)

DES was out of compliance with the Palm Beach County Affordable Housing Ordinance when all of the terms of the advisory committee members expired by attrition and were not filled.

HES Response

HES agrees with the OIG assessment that there were compliance issues with the Affordable Housing Ordinance as there was not a sufficient amount of members to generate a quorum. The Ordinance was created in 1993 and amended in 2008. The issue was created due to the required composition of the members in F.S. and at that time, the Commission on Affordable Housing made funding recommendations

for housing projects to developers and to homeowners. The Committee was comprised of developers and non-profits who were either receiving funding through the County or desired to apply for funding. The State recognized the challenge of SHIP funding entities to fulfill the required membership due to conflicts of interest and amended the composition of the Commission on Affordable Housing in F.S. The amended definitions reduce the Commission members from 13 to a minimum of 8 and broadens the requirements of the members to assist in eliminating the conflicts of interest. Additionally, HES prepared for BCC approval, the repeal and replacement of the Affordable Housing Ordinance due to the substantive changes to bring it in compliance with F.S., and also to reference F.S. in lieu of reciting F.S. to avoid compliance issues in the future. The BCC approved the new Ordinance on May 16, 2017. HES has actively pursued volunteers to serve on the Commission on Affordable Housing and in February 2018 provided a memorandum to the BCC seeking nominations for membership. It is anticipated that nominations will be brought to the Board for appointment at its meeting of June 5, 2018. Following approval by the Board, staff will proceed with reactivating the Committee.

Attachment 2

Whistleblower Response

April 3, 2018

Palm Beach County Office of Inspector General
C/o Stuart A. Robinson, Director of Investigations
P.O. Box 16568
West Palm Beach, FL 33416-6568

Dear Director Robinson,

The citizens, residents, businesses and public servants (employees and elected officials) are indebted to the Office of Inspector General (OIG) for providing independent investigations and oversight. This correspondence is in response to the March 26, 2018, OIG drafted report #2018-005.

Response Overview:

Throughout OIG report #2016-005, the various violators offered "plausible deniability" responses, denying knowledge of or responsibility for any damnable actions committed by others in an organizational hierarchy because of a lack of evidence that can confirm their participation, even if they were personally involved in or at least willfully ignorant of the actions. In the case(s) that illegal or otherwise disreputable and unpopular activities become public or investigated, high-ranking officials (former Assistant County Administrator, Shannon LaRocque, former DES Director Edward Lowery, and DES Deputy Director Sherry Howard) may deny any awareness of such acts to insulate themselves and shift blame onto the agents who carried out the acts, as they are confident that their doubters will be unable to prove otherwise. The lack of supporting evidence may make the denial plausible or merely unactionable but to do so would require huge leaps in deductive reasoning to conclude that the allegations asserted by the whistleblower were merely "not supported".

According to the OIG report a Whistleblower alleged 11 questionable practices, improper application of ordinances, F.A.C., Request for Proposals (RFP) awards and biases that may have been applied resulting in an environment of disparate treatment. As a point of clarification it should also be noted that there were 13 allegations not 11, and the remaining two shall be restated herein. Moreover, while all allegations are reaffirmed, despite coordinated assertions of deniability, detailed responses are provided specifically for allegations 2, 3, 5 and 7.

Allegation – (2) – DES issued Dakota Abacoa Housing, LLC ("Dakota") a letter finding it in compliance with the terms of its participation in the impact Fee Assistance Program despite Dakota not being in compliance.

Response (2):

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Director Lowery, Deputy Director Howard, and Compliance Director Barr were first alerted of possible non-compliance via email on July 24, 2015 (email copied for easy reference).

Before a drafted letter of non-compliance was composed or issued by the section manager, Carol Eaddy Langford, and immediately after the on-site monitoring visit had concluded, Developer Jack Weir, contacted County Administration requesting intervention. Deputy Director Sherry Howard requested a status and an email was provided indicated the initial review and findings.

Subsequently, a review and documentation used as a basis for the findings, was presented to Director Lowery, who concurred with the section manager's report findings and indicated such in an email to Ms. LaRocque on November 17, 2015 at 4:03 PM, which stated, "It would appear that Dakota Apartments' staff utilized the wrong maximum rent chart to calculate rental affordability. Our Impact Fee Notice of Funding Availability and program requires developers to utilize "HUD Fair Market Rents' to determine affordability. Dakota Apartments' staff utilized 'Florida Housing Finance Corporation's Multifamily Rental Program Rents' to determine affordability."

In the following days 11/19/2015, Ms. LaRocque advised Mr. Lowery to "Call Jack please"; and 11/20/2015, Mr. Lowery issued a letter advising Mr. Weir had complied. Why the reverse in decision? The person(s) most knowledgeable about the program and applicability were the section manger, Carol Eaddy Langford and the very competent MHI staff.

Mr. Weir asserted that to comply with the restrictive covenant he would be required to charge a different rent amount to each household; a statement that was reiterated by Director Lowery in the OIG report. This assertion is not only absurd, illogical and completely without merit.

The Developer had two options:

1. Set fixed rental rates for the units according to bedroom size and advise all prospective tenants that their gross monthly income must be at least the Rent Restricted Amount (there was nothing in the agreement that required a floor for tenant rents, merely a ceiling of 30 percent)
2. Set the fixed rental rates in accordance to the HUD Fair Market Rents (FMR), (*not Florida Housing Finance which was not the agreed upon matrix*) for the respective fiscal year as published by HUD (Attachment 3 of the AIS, Agreement).

Should either option impede the development to achieve lease-up or maintain sufficient cash flow for long-term affordability, the Developer could have requested relief from said agreement justifying the basis of their request. The Board of County Commissioners (BCC) had the authority to modify the existing agreement. Neither

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of the afore-referenced rental options was utilized nor was a request made to modify the agreement or use an alternative matrix. Mr. Weir could have also made his concerns known prior to leasing or sought pre-approval of rental rate amounts (as is required from other rental housing programs), to ensure compliance was achieved.

Example:

DAKOTA ANALYSES – FY-2015				
Household Size	1	2	3	4
2015 MSA Income Limits (120%)	\$55,200	\$63,000	\$70,720	\$85,080
Rent Restricted Amounts (30% AMI)	\$1,380	\$1,575	\$1,768	\$2,127
Bedroom Size	1	2	3	
HUD FMR (2015)	\$965	\$1,206	\$1,628	
Dakota's Rents Ranges	\$1,320 - \$1,440	\$1,545 - \$1,890	\$1,685 - \$1,865	

The agreement stated:

Page 2 of 4 (Agenda Item)

6. Affordability of Rental Housing Units: Developer shall, for a period of fifteen (15) years from the date of issuance of the last certificate of occupancy for the Affordable Rental Housing Units at Dakota Apartments, lease each of the aforesaid one hundred and thirty-two (132) Affordable Rental Housing Units to a household whose gross income, adjusted for family size, is no more than one hundred and twenty percent (120%) of Area Median Income (hereinafter "AMI") at the time the unit is first occupied, and thereafter, at any time a new tenant occupies the unit. AMI shall mean the most recent area median income published by the U. S. Department of Housing and Urban Development (hereinafter "HUD") for the West Palm Beach-Boca Raton Metropolitan Statistical Area.

Developer shall, for the aforesaid fifteen (15) year period, lease each of the aforesaid Affordable Rental Housing Units at an Affordable Rental Rate where the monthly rent including Utilities (hereinafter "Utilities") shall not exceed thirty percent (30%) of the gross income (adjusted for family size) of a prospective tenant household whose annual income does not exceed one hundred and twenty percent (120%) of AMI. Utilities, for the purposes of this Section, and as this term hereinafter appears, shall be defined as gas, water, electric, and sewer/garbage based on the current utility allowances in the Allowances for Tenant-Furnished Utilities and Other Services for Palm Beach County as published by HUD.

The above rental rate requirement shall apply to all initial leases with tenants, as well as all subsequent leases and lease renewals.

Page 3 of 5 (Declaration Restriction)

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Remedy of Default

8. The Declarant acknowledges and covenants that the Declarant's failure to perform any covenant, agreement, term, or condition contained herein, or in the Certificate referenced herein, shall constitute a default under this Declaration. If the Declarant fails, neglects, or refuses to perform any of the provisions, terms and conditions set forth herein, or in the Certificate, or fails to cure any breach of this Declaration, or the Certificate, after appropriate notice, the Declarant shall pay the County an amount equal to the entire credit amount as described herein. If the Declarant shall fail to pay said amount, the County shall have the right to file in a court of competent jurisdiction an action for collection of due and unpaid amounts and penalties which the Declarant is obligated to pay hereunder.

In the event of default, before the County shall pursue any of its rights or remedies under this Declaration, the County shall first give the Declarant written notice of the default complained of which such notice shall be given to the Declarant at their address shown herein. The Declarant shall then have thirty (30) calendar days from the date such notice is given to cure or correct any such default to the County's satisfaction. Should the Declarant fail to cure or correct any such default to the County's satisfaction within the aforesaid period, then the Declarant shall, within thirty (30) calendar days after such failure, and then once every year thereafter where such default persist in the opinion of the County, pay the County a penalty of One Thousand and 00/100 Dollars (\$1,000.00) per Affordable Rental Housing Unit per calendar year where such default exists. In lieu of paying the aforesaid penalty, the Declarant may cure or correct any such default by renting the next available vacant Unrestricted Unit such that it becomes compliant with the requirements for Affordable Rental Housing Units provided that the Declarant has obtained the County's advance approval to do so.

HUD's Fair Market Rents (2014 - 2018)

The following table shows the Final FY 2014 FMRs by unit bedrooms for **Palm Beach County**.

Final FY 2014 FMRs By Unit Bedrooms				
<u>Efficiency</u>	<u>One-Bedroom</u>	<u>Two-Bedroom</u>	<u>Three-Bedroom</u>	<u>Four-Bedroom</u>
\$750	\$962	\$1,202	\$1,623	\$1,938

The following table shows the Final FY 2015 FMRs by unit bedrooms for **Palm Beach County, Florida**.

Final FY 2015 FMRs By Unit Bedrooms				
<u>Efficiency</u>	<u>One-Bedroom</u>	<u>Two-Bedroom</u>	<u>Three-Bedroom</u>	<u>Four-Bedroom</u>
\$752	\$965	\$1,206	\$1,628	\$1,945

The Final FY 2016 FMRs for All Bedroom Sizes

Final FY 2016 FMRs By Unit Bedrooms				
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RESPONSE OIG REPORT 2016-005 (REVISED)

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Final FY 2016 FMRs By Unit Bedrooms

<u>Efficiency</u>	<u>One-Bedroom</u>	<u>Two-Bedroom</u>	<u>Three-Bedroom</u>	<u>Four-Bedroom</u>
\$765	\$991	\$1,240	\$1,691	\$2,044

The Final FY 2017 FMRs for All Bedroom Sizes

Final FY 2017 & Final FY 2016 FMRs By Unit Bedrooms

<u>Year</u>	<u>Efficiency</u>	<u>One-Bedroom</u>	<u>Two-Bedroom</u>	<u>Three-Bedroom</u>	<u>Four-Bedroom</u>
Final FY 2017 FMR	\$869	\$1,093	\$1,370	\$1,878	\$2,228
Final FY 2016 FMR	\$765	\$991	\$1,240	\$1,691	\$2,044
Percentage Change	13.6%	10.3%	10.5%	11.1%	9.0%

FMR is delineated by zip code, Dakota Apartments 33458

**West Palm Beach-Boca Raton, FL HUD Metro FMR Area Small Area
Demonstration Rents By Unit Bedrooms**

<u>ZIP Code</u>	<u>Efficiency</u>	<u>One-Bedroom</u>	<u>Two-Bedroom</u>	<u>Three-Bedroom</u>	<u>Four-Bedroom</u>
<u>33401</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33402</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33403</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33404</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33405</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33406</u>	\$790	\$980	\$1,230	\$1,690	\$2,010
<u>33407</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33408</u>	\$900	\$1,120	\$1,400	\$1,910	\$2,230
<u>33409</u>	\$860	\$1,070	\$1,340	\$1,830	\$2,150
<u>33410</u>	\$1,000	\$1,240	\$1,550	\$2,120	\$2,480
<u>33411</u>	\$890	\$1,100	\$1,380	\$1,890	\$2,210

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West Palm Beach-Boca Raton, FL HUD Metro FMR Area Small Area Demonstration Rents By Unit Bedrooms					
ZIP Code	Efficiency	One- Bedroom	Two- Bedroom	Three- Bedroom	Four- Bedroom
<u>33412</u>	\$1,160	\$1,440	\$1,800	\$2,460	\$2,880
<u>33413</u>	\$930	\$1,150	\$1,450	\$1,970	\$2,310
<u>33414</u>	\$1,060	\$1,320	\$1,660	\$2,260	\$2,650
<u>33415</u>	\$810	\$1,010	\$1,260	\$1,720	\$2,010
<u>33416</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33417</u>	\$800	\$990	\$1,240	\$1,690	\$2,010
<u>33418</u>	\$1,040	\$1,300	\$1,630	\$2,220	\$2,600
<u>33419</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33420</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33421</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33422</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33424</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33425</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33426</u>	\$980	\$1,230	\$1,530	\$2,100	\$2,450
<u>33427</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33428</u>	\$1,020	\$1,280	\$1,600	\$2,180	\$2,550
<u>33429</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33430</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33431</u>	\$1,010	\$1,250	\$1,570	\$2,150	\$2,510
<u>33432</u>	\$950	\$1,180	\$1,470	\$2,010	\$2,360
<u>33433</u>	\$1,130	\$1,410	\$1,770	\$2,410	\$2,820
<u>33434</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33435</u>	\$920	\$1,140	\$1,430	\$1,950	\$2,280
<u>33436</u>	\$1,010	\$1,260	\$1,580	\$2,160	\$2,520

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**West Palm Beach-Boca Raton, FL HUD Metro FMR Area Small Area
Demonstration Rents By Unit Bedrooms**

ZIP Code	Efficiency	One-Bedroom	Two-Bedroom	Three-Bedroom	Four-Bedroom
<u>33437</u>	\$950	\$1,180	\$1,480	\$2,020	\$2,370
<u>33438</u>	\$840	\$1,050	\$1,310	\$1,790	\$2,100
<u>33440</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33444</u>	\$880	\$1,100	\$1,380	\$1,880	\$2,200
<u>33445</u>	\$960	\$1,190	\$1,490	\$2,040	\$2,380
<u>33446</u>	\$780	\$980	\$1,230	\$1,690	\$2,010
<u>33448</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33449</u>	\$1,270	\$1,580	\$1,980	\$2,700	\$3,160
<u>33454</u>	\$850	\$1,050	\$1,320	\$1,800	\$2,110
<u>33458</u>	\$990	\$1,220	\$1,530	\$2,090	\$2,450

Email to Director Edward Lowery, Deputy Director, Sherry Howard, and Compliance Director, Betsy Barr from Carol Eaddy Langford, Housing Manager Dated July 24, 2015 at 3:24 p.m. alerting management of possible non-compliance:

Sherry/Ed/Betsy,

The rents being charged for Dakota Apartments under the Impact Fee Program are above HUD FMR. The agreement stipulates the units are to be Affordable Housing units with no more than 10 units unrestricted. See below matrix and current rents. The attached agreement is not executed; is there perhaps another executed agreement that provides for different rental terms?

	Fair Market Rents vs. Actual Rents			
	<u>Efficiency</u>	<u>One Bedroom</u>	<u>Two Bedroom</u>	<u>Three Bedroom</u>
HUD 2015	\$752	\$965	\$1,206	\$1,628
	<u>Dakota Apartments</u>			
Actual (12/9/2014)	N/A	\$1,320 to \$1,440	\$1,545 to \$1,890	\$1,685 to \$1,865
Increase Range(s)	N/A	\$355 - \$475	\$339, \$454, & \$684	\$57 - \$237

Dakota Apartments in Jupiter unit details (current rents):

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Apartment Style	Square Footage	Rent
Barcelona 1 bedroom 1 bath	772	Starting at \$1,320 to \$1,440
Valencia 2 bedroom 2 bath	1,017	Starting at \$1,545 to \$1,655
Antigua 2 bedroom 2 bath	1,054	Starting at \$1,550 to \$1,660
Aragon 2 bedroom 2.5 bath TH	1,535	\$1,890
With Attached Garage		
St. Lucia 3 bedroom 2 bath	1,210	Starting at \$1,685 to \$1,795
St. Martin 3 bedroom 2 bath	1,278	Starting at \$1,710 to \$1,820
St. Vincent 3 bedroom 2 bath	1,295	Starting at \$1,755 to \$1,865

Response (2) continued:

It is unconscionable that in the midst of a housing crises, that a developer would be permitted to overcharge rents and claim mea culpa. Each tenant is entitled to remedies to include refunding of over payments and adjustments of rent, and any other remedies stipulated in the agreement. It should also be noted that other rental developments tenants in close proximity to the Dakota apartments were adversely impacted because Dakota rents were used to justify higher rents of similarly situated rental units in the market area.

Under no circumstances should a RFP selection panel consist of subordinates that would be obligated to concur with their superior or risk termination as an at-will employee; this was a common practice with Ms. LaRocque who exerted extraordinary pressure and admonished subordinates who sought to maintain integrity, equity, fairness and transparency in the performance of their duties.

Allegation – (3) – Assistant County Administrator Shannon LaRocque promised to award loan funds under the State housing Initiatives Partnership program (SHIP) to Housing Trust Group prior to DES issuing a competitive request for proposals for these funds, and DES revised the Local Housing Assistance Plan in order to make the loan terms more favorable to Housing Trust Group.

Response – (3):

The question that ultimately must to be answered is “but for...” But for the changes to the “25 units and fewer” language being removed, would the Housing Trust Group be eligible for funding under the Developer Assistance program? No. Emails from section manager, Carol Eaddy Langford, on December 18, 2015, repeatedly inquired about other provisions for the HTG, which could be rightly concluded that Mrs. Langford had some knowledge that HTG was the intended awardee recipient in advance of a formal Request for Proposal (RFP) issuance.

In the absence of a governing Affordable Housing Advisory Committee (AHAC), as required by PBC Affordable Housing Ordinance (codified in Article V. Section 242-

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248) and Florida Administrative Code (2009), F.A.C., Rule 67-37.006(3), Ms. LaRocque had complete autonomy of over an estimated \$19.2 million in State funds (FYs 2011-12 through 2016-17), she selected RFP review committees and led the review process. These actions advanced self-serving career motives and were contrary to various governing policies.

SHIP FUNDING OVERVIEW

FISCAL YEAR	ALLOCATION
2016-2017	\$6,630,016
2015 - 2016	\$4,961,065
2014 - 2015	\$4,975,613
2013 - 2014	\$1,450,757
2012 - 2013	\$395,053
2011 - 2012	\$794,222
TOTAL	\$19,206,756

Allegation - (5) - DES was out of compliance with the Palm Beach County Affordable Housing Ordinance when all of the terms of advisory committee members expired by attrition and were not filled.

Response - (5):

The last Commission on Affordable Housing Advisory Committee (AHAC) meeting was held in 2011. Ms. LaRocques' statements that there was a mass exodus were a result of the creation of the Ethics and OIG oversight is a complete falsehood. In order for a *reasonable person* to believe that the former Assistant County Administrator, Shannon LaRocque was unable to maintain the AHAC, as required by PBC Ordinance and F.A.C., one would also have to deduce the following:

1. That none of the prior AHAC members were willing and able to serve on the AHAC;
2. That the seven Board of County Commissioners (BCC) had no viable recommendations for appointment;
3. That all 1.4 million PBC residents and thousands of PBC business personnel were unable or unwilling to serve on the AHAC;

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4. That all residents and business representatives receive financial benefits from the County, DES, and more specifically, awards from SHIP funding;
5. That the Commission on Ethics reviewed multiple AHAC candidates requests for conflicts of interest waivers and determined in every instance that their business relationships were so egregious that no COI waivers would be granted;
6. That the Advisory Committee reports submitted annually were vague, ambiguous or simply overlooked (1-14-2013 report attached); and
7. That when former Commissioner Taylor inquired during a February 9, 2016, BCC meeting..."the Commission on Affordable Housing do we still have that? And Ms. LaRocques' response, "We do...We had a mass exodus when the ethics rules were put in place and we've had a very hard time finding people to sit because most of the people that sit on that committee receive funding so there's a conflict..." were factual and completely conceivable.

Noticeably absent from the OIG report were interviews with former AHAC members; evidence that administration sought replacements or reinstatements of AHAC members (i.e. notices to the public, recommendations from the BCC, CoE denial of waivers, and the like). Moreover, the assertion that an AHAC exists with no members is akin to a forest with no trees. The fact, as stated in the report, that only when the administration was questioned as part of the allegations made to the OIG did administration begin to take corrective measures in updating the PBC Ordinance and reinstatement of an AHAC (the last AHAC member term expired February 2013).

Commission on Affordable Housing Advisory Committee (a/k/a Affordable Housing Advisory Committee)

Statute:

April 3, 2018

67-37.010 Local Affordable Housing Advisory Committees and Incentive Strategies.

(1) The affordable housing advisory committee, as established in Section 420.9076(3), F.S., must approve the local affordable housing incentive strategy recommendations at a public hearing by affirmative vote of a majority of the membership of the advisory committee.

(2) The affordable housing advisory committee shall evaluate established policies, procedures, ordinances, land development regulations, and the local government comprehensive plan submitted and report to the local government governing board including recommended changes as established in Section 420.9076, F.S. The initial report shall be submitted to the local government governing board by December 31, 2008. After this initial submission, the reports are required to be submitted triennially on December 31 of the year preceding the submission of the local housing assistance plan. For local governments required to submit a local housing assistance plan on May 2, 2010, the report submitted by December 31, 2008 shall constitute the required report for December 31, 2009.

(3) The county or eligible municipality shall transmit to the Corporation an electronic copy of the report which has been submitted to the local governing board for consideration by May 2 of the year following the report due date.

(4) A county or eligible municipality which does not have an established affordable housing advisory committee shall establish said committee and appoint all required members by June 30, 2008.

(5) Local governments that administer the SHIP program under an Interlocal Agreement as established in Rule 67-37.011, F.A.C., and have one LHAP may request approval from the Corporation to use the same affordable housing advisory committee. When one advisory committee is utilized for the local governments participating in an Interlocal Agreement, the advisory committee shall comply with all requirements for advisory committees as established in Section 420.9076, F.S., for each of the local governments in the Interlocal Agreement separately.

Rulemaking Authority 420.9072(9) FS. Law Implemented 420.907, 420.9076 FS. History—New 2-9-94, 1-6-98, Formerly 9I-37.010, Amended 12-26-99, Repromulgated 9-22-03, Amended 2-24-08, 11-22-09.

Board Members 13 members required – (existing members attended a mandatory Ethics training on June 17, 2011)

William Sanders, Residential BLDR Affordable Housing, Chair
John Howard, Active Banker or Mortgage Banker
Dionna Brahs, Representative of Real Estate Professional

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Maite Reyes-Coles, Rep. of Service Orgn. For Special Needs Housing
 Suzanne P. Cabrera, Representing Employers
 Paula J. Ryan, Representing Member of Local Planning Agency
 Hazel Lucas, Fair Housing Representative
 Seat #3 – Labor engaged in homebuilding of affordable housing
 Seat #4 – Advocate for low-income housing
 Seat #5 – For-profit affordable housing
 Seat #7 – Non-profit affordable housing
 Seat #11 – Essential Services Personnel
 Seat #12 – Resident of Palm Beach County

2012 CAH Meeting Schedule (no meetings ever transpired)

BUSINESS AND HOUSING INVESTMENTS ADVISORY BOARD MEETING SCHEDULE

Department of Economic Sustainability (DES)						
2012 CAH Advisory Committee Calendar						
Business and Housing Investments (BHI)						
Governmental Center 301 North Olive Avenue West Palm Beach, FL 33401 McEaddy Conference Room 12th Floor 9:30 - 12 noon (est.)						
MHA ADVISORY Meeting Date	Agenda to Carol	Agenda to Mr. Lowery & Mrs. Howard	Agenda to Shannon	Final Agenda	Package Delivery Date	Quorum Confirmation s
1/26/2012	12/29	1/5	1/10	1/19	1/19	1/23
2/2	2/8	2/13	2/17	2/22		2/27
4/26/2012	3/29	4/5	4/10	4/19	4/19	4/23
7/26/2012	6/28	7/5	7/10	7/19	7/19	7/23
Triennial Review Meetings Begin						
10/25/2012	9/28	10/5	10/12	10/18	10/18	10/22
Meetings are held on the 4th Thursday, Quarterly at the Governmental Center						
Triennial Review will begin scheduling 3rd quarter at the Vista Center 2300 N. Jog Road WPB Room VC1W47 from 4 7 p.m.						
Planning Assistant, 561- 233-3688 email sabrown@pbcgov.org						

Palm Beach County Population 2018 Palm Beach County's estimated population is ...

YEAR	POPULATION	GROWTH	GROWTH RATE
2016	1,443,810	21,967	1.54%
2015	1,421,843	24,317	1.74%
2014	1,397,526	21,907	1.59%
2013	1,375,619	20,632	1.52%

Affordable Housing Ordinance

April 3, 2018

Agenda Item #:

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 22, 2008 [☐] Consent [☐] Regular
 [☐] Workshop [☒] Public Hearing

Department:

Submitted By: The County Attorney's Office
Submitted For: Housing and Community Development Department
(Commission on Affordable Housing)

1. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to adopt: An Ordinance of the Board of County Commissioners of Palm Beach County, Florida, amending Sections 14-242 through 14-248 of the Palm Beach County Code, codifying Palm Beach County Ordinances No. 93-38, as amended by Ordinances No. 94-1, 94-24, 95-22, 01-026, and 03-026, known as the Palm Beach County Affordable Housing Ordinance, providing for policy and purpose; providing for definitions; providing for use of funds; providing for the Commission On Affordable Housing; providing for roles and responsibilities; providing for distribution of monies; providing for maximum administrative expenses; providing for implementation of programs; providing for repeal of laws in conflict; providing for savings clause; providing for severability; providing for inclusion in the code of laws and ordinances; providing for enforcement; providing for penalties; providing for captions; and providing for an effective date.

Summary: On June 17, 2008, the Board of County Commissioners held preliminary reading of this ordinance and authorized advertising for public hearing. Changes to the CAH Ordinance are recommended to meet the requirements of Ch. 2007-198, Laws of Florida, Section 420.9076, Florida Statutes. Countywide (TKF)

Background and Policy Issues: In 2007, the Florida Legislature passed Ch. 2007-198, Laws of Florida, Section 420.9076, Florida Statutes, requiring counties which receive State Housing Incentive Program (SHIP) funds to appoint an Affordable Housing Advisory Committee. Palm Beach County already has a Commission on Affordable Housing that fulfills many of the responsibilities of the new law; therefore, it is only necessary to amend the County's current ordinance to comply with the requirements. (Continues on page 3).

State Housing Initiatives Program (SHIP):

April 3, 2018

Background and Policy Issues: (continued from page 1)

The proposed changes are highlighted below:

- Addition of the definitions of "Essential Services Personnel", "Public-Private Partnership" and "Workforce Housing". (Section II)
- Addition of Workforce Housing as an allowable use of funds. (Section III and Section VIII)
- Change the composition of the Commission on Affordable Housing to delete a provider of professional services and a representative of the public school system, and add a for-profit provider of affordable housing, a not-for-profit provider of affordable housing, a representative of employers, a Planning Commission member, a representative of essential services personnel, a resident of the County and a fair housing representative. (Section IV)
- Amend the roles and responsibilities of the CAH consistent with the new requirements. (Section V)
- Clarify the method of distribution of monies. (Section VI and Section VII)

April 3, 2018

WHEREAS, the Palm Beach County Comprehensive Plan, Housing Element, requires the establishment of the Commission on Affordable Housing with prescribed duties; and

WHEREAS, in 2007, the Florida Legislature passed CH. 2007-198, Laws of Florida Section 420.9076, Florida Statutes, requiring counties receiving SHIP funds to appoint an Affordable Housing Advisory Committee or make amendments to current Affordable Housing Advisory Committees; and

WHEREAS, it is necessary to amend the Palm Beach County Code Sections 14-242 through 14-248 to incorporate the changes required by the Florida Legislature.

Allegation - (7) – Ms. LaRocque signed State Housing Initiatives Partnership documentation on behalf of the County without proper authorization to do so

Response - (7):

January 12, 2016, emails throughout the day between DES Deputy Director Howard and DES Section Manager, Carol Eaddy Langford repeatedly stated that Assistant County Administrator, Shannon LaRocque, did not possess signatory authority to execute the SHIP Certification on behalf of the BCC. Assertions that a SHIP Certification would have gone through the County Attorney are false and there was no evidence presented that such actions had transpired in the past. Moreover, if the section manager provided detailed evidence that only the County Administrator, Verdenia Baker had the authority to execute the SHIP Certification, Ms. LaRocques' statement, "*maybe something slipped through the cracks*" was inaccurate at best. Why then was it necessary for Ms. LaRocque to draft a memorandum, a month later, for County Administrator Bakers' signature on February 12, 2016, and subsequently executed on February 16, 2016. This would mean that at the time of execution (January, 2016), Ms. LaRocque did not have authority to execute the SHIP Certification.

Allegations 12 and 13:

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The whistleblower alleged that William Lowenstein, an Economic Consultant has had a contract (and subsequent renewals/extensions) to provide services to DES (and formerly Economic Development) for nearly a decade without an RFP; and Medical Career Institute of South Florida (MCI) submitted false statements that were relied upon and resulted in business loan(s) awarded and subsequent defaults.

Response Summary:

In conclusion, affordable housing is critical to economic growth, sustainability, and a quality of life for the elderly, persons with special needs, low-to-moderate income individuals and families, and essential services personnel. The failure to maintain and comply with established ordinances and funding requirements mutes housing professionals and practitioners, and communities from input prior to policy and funding recommendations. It was an abuse of power to omit or selectively include stakeholders, and silence others. DES was non-compliant with the legal requirements and did not comply with the spirit of the ordinance, when opting to have private (staff only) vetting and decision-making without public input. Former Assistant County Administrator, LaRocque, former DES Director Lowery and current DES Deputy Director, Howard, elected to ignore Housing Ordinances and F.A.C. requirements to have an AHAC and triennial review, and in doing so eliminated public oversight. These same individuals only took corrective actions, of which have not been fully enforced, once the OIG began interviews as a direct result of the allegations that prompted the OIG report. Florida Housing Finance Corporation, who has recently had its fair share of scrutiny for its lack of oversight, had not appropriately reviewed the County's compliance related to the AHAC and Triennial Review.

Lastly, the great news is there is excellent oversight under the leadership of County Administrator Baker, Assistant County Administrator Johnson, and DES Director Brown. The public and PBC employees can be assured that their concerns will be heard and the need to engage the OIG will become less necessary.

Respectfully Submitted

C: IG, J. A. Carey
Investigator, C. Dyckman

Attachments