

**BEFORE THE STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

YBOR III, LTD.

Petitioner,

vs.

DOAH Case No.

FLORIDA HOUSING FINANCE,
CORPORATION,

Respondent.

_____ /

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDING

Petitioner, Ybor III, Ltd., pursuant to Section 120.569 and 120.57, Florida Statutes and Rule 28-106, Parts I and II, Florida Administrative Code, hereby files this petition for formal administrative hearing to challenge Florida Housing Finance Corporations' ("FHFC") scoring actions taken regarding the application of Windsong II (2001-125C) in the 2001 Combined Cycle. The result of the scoring actions, in clear violation of the plain and unambiguous wording of FHFC's rules, results in Ybor III not receiving requested low income housing funding and credits, and as grounds therefore states:

1. The agency affected by this proceeding is the Florida Housing Finance Corporation (hereinafter the "FHFC"). The non-agency party affected by this proceeding is TWC Sixty-five Development, Inc., developer of Windsong II. The FHFC file or identification number is 2001-125C.

2. Respondent is Ybor III Group, Inc., whose address is 2109 East Palm Avenue, suite 206, Tampa, Florida 33605, and whose telephone number is 813-247-2828. Ybor III was an applicant for low income housing funds in the 2001 Combined Cycle for Ochlocknee Pointe,

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Application 2001-131CS. Ybor III's representative is E. Gary Early, Messer, Caparello & Self, P.A., 215 South Monroe Street, Suite 701, Tallahassee, Florida 32301, telephone (850) 222-0720, who shall be Ybor III's representative for service purposes during the course of this proceeding.

3. Ybor III has not received formal notice of the scores as contemplated by Chapter 120, F.S. However, a score sheet was distributed at the FHFC Board meeting on September 20, 2001. Pursuant to Sections 120.569 and 120.57(1), Fla. Stat., Petitioner, Ybor III, Ltd., hereby requests a formal administrative hearing, and in support of this petition, states:

4. Windsong II initially applied to FHFC for HC funds in the amount of \$890,000 for the construction of a 152-unit apartment complex in Columbus County, Florida.

5. FHFC is the state agency delegated the authority by the Legislature to implement and administer several programs which provide financing incentives to developers for the development of affordable housing in Florida. In exchange for FHFC financing, developers enter into long term agreements with FHFC restricting the rents that can be charged to qualified low income residents. The demand for funding through these programs far exceeds the amount of funds FHFC has available. Accordingly, FHFC has established a competitive application process for the award of funds.

6. The HC and SAIL programs are federally funded programs which award project owners funds for construction of low and very low income housing. FHFC is the designated housing credit agency for the allocation of funds in the State of Florida.

7. Subsequent to the submittal of Applications, FHFC reviews the Applications and assigns a preliminary score. Rule 67-48.005, F.A.C., establishes an administrative appeal process which applicants are provided a limited opportunity to challenge all other applications. At the

completion of this process a score is assigned to each Application. Based on these final scores Applications are ranked. HC's are awarded to applicants starting with the highest scoring applicants, until the available amount of HC's are exhausted. Applicants compete for HC's, in large part, against other applicants in the same county size group, and against other applicants seeking to provide housing to the same demographic group. Ochlocknee Pointe and Windsong II were both applicants for projects in the small county category.

8. Ybor III received a final score of 620.5 on its application. That score would have allowed Ybor III to be within the funding range for housing credits and , as a result would have also received SAIL funding. However, Ybor III was displaced from the funding range by the FHFC's scoring action regarding the Windsong II application, resulting in a final score of 622. If the application were scored consistent with the clear rule directions, their final score would have been 608.86, which would have ranked below Ybor III.

9. FHFC's actions were in direct violation of the directions contained in FHFC rules governing the Combined Cycle application scoring process. By rule, Ybor III was not allowed to intervene in any proceeding regarding the Windsong II application, even though FHFC action on Windsong II affected Ybor III's substantial interests. Ybor III therefore has had no point of entry to correct FHFC's obvious error.

10. As an applicant for HC's allocated by FHFC, Ybor III's substantial interests are adversely affected by the scoring and ranking of Windsong II's competing application. The final scoring of the Windsong II application resulted in Ybor III being displaced from the funding range for small county HC projects. Since the purpose of the HC program is to provide HC's to apartment projects for low income residents, Ybor III's interests as defined by the HC program are adversely

and substantially affected by the loss of HC funding.

11. When the Windsong II application was initially reviewed and scored by FHFC staff, it received a preliminary score of 536 points.

12. Through the “cure” period process found at Rule 67-48.004(11), Florida Administrative Code, Windsong II was allowed to revise certain deficiencies found by FHFC.

13. After completion of the cure period, FHFC staff correctly determined however that several reductions in points were still warranted. Specifically, Windsong did not receive points for a \$102,000 local government contribution from Columbia County because Form 5, page 10 of the Application was executed by the “County Coordinator” for the county. The County Coordinator is not recognized by the application as an authorized signatory and, as a result, no points were awarded for the contribution. It must be noted that the information concerning this contribution was submitted for the first time during the cure period. Accordingly, there should have been no further opportunity to cure any mistakes. This was obviously a conscious decision by the applicant.

14. At Form 5, FHFC assessed a 1.5 point penalty based on the fact that Windsong II failed to provide documentation showing how a local government contribution submitted with Form 5 was calculated.

15. Windsong II also was not awarded 4 points for Form 6 of the application based on the fact that the executed local government verifications found at pages 2, 3 and 4 of Form 6 were not signed by an authorized signatory. Again, these forms were signed by the County Coordinator for Columbia County which is not the authorized signatory as described by the application instructions.

16. To challenge these scoring issues, Windsong II requested an informal hearing. On

August 27, 2001, prior to the scheduled informal hearing for Windsong II, FHFC conceded all challenged issues and awarded Windsong II maximum points for its application. In doing so, the FHFC ignored specific instructions in its application. Moreover, in reaching its conclusion FHFC allowed Windsong II to supplement and explain its application responses by using materials that were provided subsequent to the submission of the application and the designated “cure” period. In so doing, the FHFC has acted contrary to its frequently announced position taken when any other applicant attempted to use non-application information to explain any issue.

17. In its concession at the informal hearing, FHFC awarded points for the Columbia County contribution of roadway turn lanes and other utility and service extensions. The application at Form 5, page 10 of 20, specifically provides that “[t]he amount of this contribution was calculated as shown behind the tab labeled Form 5, Exhibit A.” A review of the information provided at Exhibit A reveals that Windsong II provided no calculation, but rather provided a summary of the projected amounts without any amounts, numbers or calculations of any kind. The apparent basis for FHFC’s concession was that a different form for fee waivers contained a more explicit requirement for a calculation. The Form 5, page 10 of 20 requirement is nonetheless explicit in its requirement that a calculation be shown. The FHFC action is improper and incorrect.

18. The second item conceded by the FHFC involved the signature on several Form 5 and Form 7 forms by the “County Coordinator.” The forms each contain an explicit instruction that “[t]his form must be signed by the Mayor, City Manager, County Manager/Administrator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners.” A simple explanation of the role of the “County Coordinator” was not provided anywhere in the application, nor did the application contain any information that the “County

Coordinator” was equivalent to a County Administrator.

19. After all opportunities to submit information as part of the application or additional information resulting from a cure had passed, Windsong II provided FHFC with an organizational chart, allegedly from Columbia County’s website, that showed the County Coordinator occupied the same hierarchical position as one would expect for a County Administrator. What is improper about FHFC’s concession is that it relied on a post-application and post-cure period submittal to bolster the application and cure, a courtesy extended to **NO** other applicant.

20. The FHFC’s conclusion is clearly erroneous. Indeed, all applicants during the 2001 funding cycle were aware of the controlling Rules (i.e., application). All applicants, including Ybor III and Windsong II, were required to execute at Form 1 a certification which acknowledged the review of all applicable rules and that each applicant would be bound to those rules. Accordingly, all applicants were entitled to rely upon the rules promulgated by FHFC, and indeed FHFC was bound to follow those rules. To the extent the rules are in conflict, like the hearing officer opines here, those rules should be amended not ignored. Cleveland Clinic v. Agency for Health Care, 679 So. 2d 1237 (Fla. 1st DCA 1996). FHFC nonetheless ignored the rules and awarded the application maximum points. Based on the concessions, the hearing officer entered a Recommended Order accordingly.

21. On September 20, 2001, the Board, in a perfunctory manner and without discussion, adopted the hearing officer’s Recommended Order. The Board’s action in approving the Recommended Order was in violation of the applicable rules. FHFC’s rules require the imposition of a penalty.

22. Ybor III initially identifies the following disputed issues of material fact, and reserves

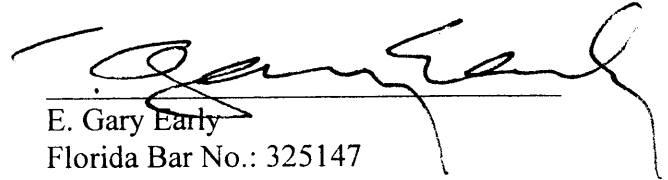
the right to supplement as additional facts become known to them:

- (a) Whether an applicant is allowed to supplement its application subsequent to the application submittal deadline or the cure period.
- (b) Whether the FHFC rule requiring the imposition of a penalty for the providing inaccurate information is clear and unambiguous.
- (c) Whether FHFC acted inconsistently and contrary to its clear and unambiguous rules when it rescinded a penalty in the Windsong II application.
- (d) Whether the decision of FHFC to waive the application of its clear and unambiguous rule and to act inconsistently with and contrary to its own rules, works to Ybor III's detriment and adversely affects its substantial interests.

23. Ybor III requests that it be granted a formal administrative hearing to contest FHFC's clearly erroneous decision. Since the removal of this penalty affects Ybor III's substantial interests, it is entitled to this relief by Chapter 120, Florida Statutes. Ybor III requests the entry of recommended and final orders that the rescission of the penalty was arbitrary, capricious, and inconsistent with and contrary to FHFC rules; and that, but for FHFC's arbitrary, capricious and illegal action, Ybor III's funding request would have been granted.

WHEREFORE, Ybor III demands that this request for formal administrative hearing be referred to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a formal proceeding.

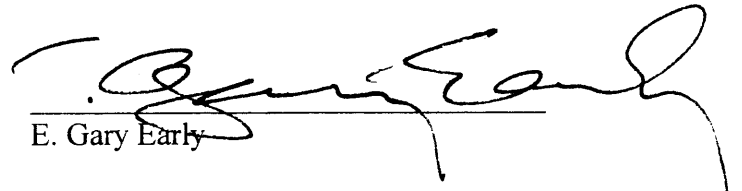
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing has been delivered to The Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301, and a copy to Elizabeth Arthur, General Counsel, FHFC, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida 32301 by hand delivery this 11th day of October, 2001.



E. Gary Early