

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

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FLORIDA HOUSING
FINANCE CORPORATION

HATTON HOUSE SENIOR HOUSING
PARTNERS, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2002-0034

FLORIDA HOUSING FINANCE
CORPORATION,

APPLICATION NO.: 2002-164S

Respondent.

_____ /

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on October 10, 2002. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of SAIL funds. Petitioner timely filed a Petition Requesting Informal Hearing and Grant of the Relief Requested, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(c), Florida Statutes. An informal hearing was held in this case on September 10, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, David E. Ramba. Petitioner and Respondent presented a Joint Proposed Recommended Order at the hearing.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and

correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order accepting Petitioner's Application, that Part III, Section C, Subsection 3.d., Exhibit 27 be accepted as meeting threshold, and Florida Housing score and rank the Petitioner's Application accordingly.

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

In accordance with the foregoing, it is hereby **ORDERED**:

1. The findings of fact of the Recommended Order are adopted in full as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Final Order.
2. The conclusions of law of the Recommended Order are adopted in full as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Final Order.
3. The Hearing Officer's recommendation that a Final Order be entered finding that Part III, Section C, Subsection 3.d., Exhibit 27 meets threshold, is approved and accepted as the appropriate disposition of this case. Accordingly, staff is directed to accept Petitioner's Application as meeting threshold, score, and rank Petitioner's Application.

DONE and ORDERED this 10th day of October, 2002.

FLORIDA HOUSING FINANCE
CORPORATION

By: _____


Chairperson

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies to:

Laura J. Cox
Assistant General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Gary J. Cohen
Shutts & Bowen, LL
201 South Biscayne Boulevard
1500 Miami Center
Miami, FL 33131

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HATTON HOUSE SENIOR HOUSING
PARTNERS, LTD.,

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v.

FHFC CASE NO.: 2002-0034

App No.: 2002-164S

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, on September 10, 2002, an informal administrative hearing was held in the above-styled case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba.

APPEARANCES

The representatives for the parties at the hearing are as follows:

For Petitioner:

Gary J. Cohen
Shutts & Bowen, LLP
201 South Biscayne Boulevard
1500 Miami Center
Miami, FL 33131

For Respondent:

Laura J. Cox
Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, Florida 32301-1329

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EXHIBIT

A

JOINT EXHIBITS

The following exhibits were admitted into evidence:

Exhibit 1: Prehearing Joint Stipulation of Facts.

Exhibit 2: 2002 Universal Scoring Summary for Petitioner's Application

Exhibit 3: Petitioner's Cure form for Part III, Section C, Subsection 3. d. of the Universal Application, including Petitioner's Explanation for Cure and Exhibit 27 (3 pages total.)

Exhibit 4: 1931 Fla. Laws ch. 15483.

Exhibit 5: November 13, 2001 Minutes of the Town Council of the Town of Sneads, Florida.

Exhibit 6: Rosemary Housing Limited Partnership v. Florida Housing Finance Corporation Final Order, Case No. 1998-077C.

Exhibit 7: Letter from H. Guy Green, City Attorney for the Town of Sneads.

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioner submitted an application to Florida Housing for SAIL funds in the 2002 Universal Cycle program. On July 22, 2002, Florida Housing notified Petitioner of the results of the scoring of Petitioner's application and provided Petitioner with a Notice of Rights pursuant to Sec. 120.569 and 120.57, Fla. Stat. On August 12, 2002, Petitioner filed its Election of Rights. On August 13, 2002, Petitioner timely filed its Petition Requesting Informal Hearing and Grant of the Relief Requested. An Informal hearing was conducted pursuant to Sec. 120.569 and 120.57(2), Fla. Stat. There are no disputed issues of material fact.

STATEMENT OF THE ISSUE

The issue in this case is whether Florida Housing Finance Corporation ("Florida Housing") erred when it scored Petitioner's application for SAIL funds in the 2002

Universal Cycle program. Specifically, whether Petitioner's Exhibit 27 (Verification of Availability of Infrastructure - Roads) is executed as required.

FINDINGS OF FACT

1. On or before April 15, 2002, Petitioner submitted an Application to Florida Housing Finance Corporation ("Florida Housing") for the award of funds from the State Apartment Incentive Loan ("SAIL") program for the development of affordable rental housing in the 2002 Universal Cycle. (Exhibit 1).

2. Florida Housing is a public corporation organized under Chapter 420, Fla. Stat., to provide and promote the public welfare by administering the governmental function of financing and refinancing houses and related facilities in Florida in order to provide decent, safe and sanitary housing to persons and families of low, moderate and middle income. (Exhibit 1).

3. Florida Housing receives its funds for the SAIL program from an allocation of documentary stamp tax revenue. Pursuant to the Notice of Funding Availability published in Florida Administrative Weekly on January 18, 2002, there was \$46,453,101 available to fund SAIL applications in the 2002 Universal Cycle. (Exhibit 1).

4. Pursuant to statutory mandate, SAIL funds are apportioned among the most populated counties, medium populated counties and the least populated counties. There are also set-asides and special targeting goals set forth in the statute for commercial fishing workers and farmworkers; families; persons who are homeless; and elderly persons. (See Sec. 420.5087 (3) Fla. Stat. and Exhibit 1.)

5. Pursuant to statutory mandate, Florida Housing has established by rule an application process to evaluate, score and competitively rank all applicants. (See Sec. 420.507 (22) (f) Fla. Stat. and Fla. Admin. Code R. 67-48 *et. al.*) Awards for the SAIL program are included in a single application process (the “Universal Application”) governed by Fla. Admin. Code R. 67-48 *et. al.* (Exhibit 1).

6. The 2002 Universal Application, parts I through VI, and accompanying instructions are incorporated by reference into Fla. Admin. Code R. 67-48.002(116). Some of the parts include “threshold” items. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application, regardless of numeric score. Other parts allow applicants to earn points, however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score. (Exhibit 1).

7. Florida Housing’s staff commenced scoring the Petitioner’s Application pursuant to Chapter 420, Fla. Stat., and Fla. Admin. Code R. 67-48 *et. al.* Florida Housing completed the preliminary scoring process on May 13, 2002. (Exhibit 1).

8. After performing preliminary scoring, Florida Housing’s staff notified Petitioner of the results by letter that its preliminary score was 51, but that the Application had failed to satisfy a number of “threshold” items. Any applicant could question the scoring of Petitioner’s Application if it believed Florida Housing had made a scoring error, within ten calendar days after the date the applicant received the preliminary scores by filing a Notice of Possible Scoring Error (“NOPSE”). (Exhibits 1 and 2).

9. Florida Housing reviewed each NOPSE that was timely received. On June 10, 2002, Florida Housing sent Petitioner any NOPSE relating to its Application submitted by other applicants and Florida Housing's position on any NOPSE. (Exhibit 1).

10. Petitioner could submit additional documentation, revised forms, and other information that it deemed appropriate to address any curable issue raised in any NOPSE, Florida Housing's position on each NOPSE and preliminary scoring. These documents, revised forms and other information were known as "cures" and were due on or before June 26, 2002 (the "cure period"). (Exhibit 1).

11. After Petitioner submitted its cures, all applicants had an opportunity to review Petitioner's cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge the Petitioner's cures. (Exhibit 1).

12. Florida Housing advised Petitioner by notice on or about July 22, 2002 that its application had been rejected due to failure to achieve threshold requirements. The reason for failing threshold was "The cure for 6T provided a Roads Verification of Availability of Infrastructure (Exhibit 27) which was signed by a councilman. Signatures from local elected officials are not acceptable." (Exhibits 1, 2, and 3).

13. Following this process, Florida Housing on July 22, 2002, sent Pre-Appeal Scores and a Notice of Rights to Petitioner, informing Petitioner that it could contest Florida Housing's actions in accordance with the provisions of Sec. 120.569 and 120.57 Fla. Stat. (Exhibit 1).

14. Petitioner timely requested an informal hearing by filing its “Petition for Informal Proceeding in Accordance with sections 120.569 and 120.57(2), Florida Statutes”, on August 13, 2002. (Exhibit 1).

15. The Town of Sneads was created by 1931 Fla. Laws ch. 15483. Under Snead’s form of governance, once the town council is elected, the council establishes by ordinance or resolution the appointment of persons to carry out the affairs of four general departments or any other non-elected offices. (Exhibit 4).

16. The Town Council of the Town of Sneads appointed Council members to the positions of Department Heads for Sewer, Police & Fire, Water & Sanitation, and Streets at their regular meeting held November 13, 2001. (Exhibit 5).

17. Florida Housing, in its Final Order in Rosemary Housing Limited Partnership v. Florida Housing Finance Corporation, Case No. 1998-077C, recognized there are different forms of governance for local governments around the state and accepted Form 7, Project Feasibility and Ability to Proceed, Section III, Zoning and Land Use, and Section IV, Site Plan signed by the Mayor of the City of West Palm Beach whose form of governance was a “strong mayor” form. Form 7 also prohibited signatures of local elected officials. West Palm Beach’s “strong mayor” form of governance was created in 1993 when the voters of the City of West Palm Beach adopted a “strong mayor” form of government. To achieve this change, the City literally struck the words “city manager” from its Code of Ordinances and inserted the word “mayor”. Under West Palm Beach’s “strong mayor” form of government, the mayor serves as a city manager. (Exhibit 6).

CONCLUSION OF LAW

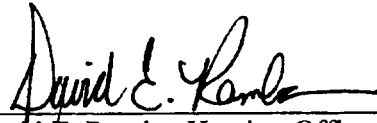
1. Pursuant to Sec. 120.569 and 120.57(2), Fla. Stat. and Fla. Admin. Code R. 67-48 *et. al.*, the Hearing Officer has jurisdiction over the parties to this proceeding.
2. Florida Housing is authorized to institute a competitive application process pursuant to Sec. 420.507 (22)(f), Fla. Stat., and has done so at Fla. Admin. Code R. 67-48.004.
3. The 2002 Universal Application, parts I through VI, and accompanying instructions are incorporated by reference into Fla. Admin. Code R. 67-48.002(116). Part III, Section C, Subsection 3. d. Exhibit 27, clearly states, "Signatures from local elected officials are not acceptable." (Exhibits 1 and 3).
4. Councilman Eddie Hand, who serves both as a local elected official and as Department Head for the Town of Sneads, signed the form at Exhibit 27. As such, Eddie Hand was authorized to sign the form in his capacity as a Department Head for the Town of Sneads. (Exhibits 3, 4, 5, 6 and 7).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law stated above, it is hereby
RECOMMENDED:

That a Final Order be entered by Respondent accepting Petitioner's Application, and that Part III, Section C, Subsection 3.d., Exhibit 27 be accepted as meeting threshold, and Respondent score and rank the Petitioner's application accordingly.

Dated this 23rd day of September, 2002 in Tallahassee, Florida.



David E. Ramba, Hearing Officer

Copies furnished:

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