

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

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FLORIDA HOUSING FINANCE CORPORATION

ASWAN VILLAGE ASSOCIATES, L.L.C.,

Petitioner,

v.

FHFC CASE NO.: 2002-0037

FLORIDA HOUSING FINANCE
CORPORATION,

APPLICATION NO.: 2002-15S

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 for Hearing (the “Petition”), but did not specify a preference for either a formal hearing under Section 120.57(1), Florida Statutes or an informal hearing pursuant to Section 120.57(2), Florida Statutes, 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 13, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, David E. Ramba. Petitioner and Respondent timely filed Proposed Recommended Orders.

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 affirming the rejection of Petitioner's Application, and denying the relief requested in the Petition.

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 affirming the rejection of Petitioner's Application, and denying the relief requested in the Petition is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner's Application is rejected.

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:

Hugh R. Brown
Assistant General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Lynn C. Washington, Esq.
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Miami, FL 33131

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ASWAN VILLAGE ASSOCIATES, L.L.C.,

Petitioner,

v.

FHFC CASE NO.: 2002-0037

App No.: 2002-015S

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, on September 13, 2002, an informal administrative hearing was held in this case in Tallahassee, Florida, before for 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:

Lynn C. Washington
Holland and Knight LLP
701 Brickell Avenue, Suite 3000
Miami, FL 33131

For Respondent:

Hugh R. Brown, Assistant General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, Florida 32301-1329

EXHIBIT

"A"

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EXHIBITS

Petitioner:

1. Petition in re Aswan Village Application.
2. Original 2002 Universal Cycle Application of Aswan Village Associates, L.L.C., #2002-015S.
3. Final Scoring Summary for Application #2002-015S, dated July 22, 2002.
4. Revised Exhibit 21 to the Aswan Village application (Surveyor Certification).
5. Revised Exhibit 48 to the Aswan Village application (letter from the Enterprise Social Investment Corporation dated June 21, 2002).
6. Revised Exhibit 50 to the Aswan Village application (undated letter from Miami-Dade County).
7. Original Exhibit 45 to the Aswan Village application (Commitment to Defer Developer Fee form).
8. Original Exhibit 10 to the Aswan Village application (Developer Certification and Experience Chart).
9. Revised Exhibit 45 to the Aswan Village application (Commitment to Defer Developer Fee forms (2)).
10. Revised Exhibit 52 to the Aswan Village application (letter dated June 17, 2002, from the Banc of America Community Development Corporation).
11. Revised Exhibit 43 to the Aswan Village application (Construction of Rehab Analysis form).
12. Original Exhibit 44 to the Aswan Village application (Permanent Analysis form).

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioner submitted an application to Florida Housing for SAIL funding 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 Sections 120.569 and 120.57, Florida Statutes. On August 13, 2002, Petitioner timely filed its Petition for a hearing, but did not specify a preference for either a formal hearing under Section 120.57(1), Florida Statutes, or an informal hearing pursuant to Section 120.57(2), Florida Statutes. Petitioner did not submit an Election of Rights in this matter. Upon reviewing the Petition, Florida Housing determined that no disputed issues of material fact existed, and an informal hearing was conducted pursuant to Sections 120.569 and 120.57(2), Florida Statutes. No disputes of material fact were raised during this informal hearing.

STATEMENT OF ISSUE

The issue in this case is whether Florida Housing Finance Corporation ("Florida Housing") erred when it scored Petitioner's application for State Apartment Incentive Loan (SAIL) program funding in the 2002 Universal Cycle program. Specifically, the issue is whether Florida Housing correctly rejected Petitioner's application for failure to meet threshold requirements regarding seven (7) items, including the Surveyor Certification form, an Equity Commitment letter, a Local Government Contribution letter, the Commitment to Defer Developer Fee forms, a Partner Contribution letter,

and for resulting financing shortfalls in the Construction Analysis and Permanent Analysis portions of the application.

FINDINGS OF FACT

1. Petitioner, Aswan Village Associates, L.L.C. (“Aswan Village”), is a Florida limited liability company in the business of developing affordable housing in the State of Florida, with its principal place of business at c/o Banc of America Community Development Corporation, 100 S.E. Second Street, 14th Floor, Miami, Florida 33131.
2. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in Florida. (Section 420.504, Florida Statutes).
3. Through the State Apartment Incentive Loan (“SAIL”) program, Florida Housing funds low-interest mortgage loans to developers from various sources of state revenue, which are generally secured by second mortgages on the property.
4. Because Florida Housing’s available pool of SAIL funds is limited, qualified projects must compete for this funding. To determine which proposed projects will put the available funds to the best use, Florida Housing has established a competitive application process to assess the relative merits of proposed projects.
5. Florida Housing’s competitive application process for SAIL financing is included with other financing programs in a common process, in a single application

(the "Universal Application") governed by rule Chapters 67-21 and 67-48, Florida Administrative Code.

6. For the 2002 Universal Application cycle, applicants who complete and submit form UA1016 with attachments are given a preliminary score by Florida Housing.

7. Following the issuance of preliminary scores, applicants are provided an opportunity to challenge the scoring of any competing application through the filing of a Notice of Possible Scoring Error ("NOPSE").

8. Florida Housing considers each NOPSE filed, and provides each applicant with notice of any resulting change in their preliminary scores (the "NOPSE scores").

9. Following the issuance of NOPSE scores, Florida Housing provides an opportunity for applicants to submit additional materials to "cure" any items for which the applicant received less than the maximum score, or for which the application may have been rejected for failure to achieve "threshold."

10. Following the "cure" period, applicants may again contest the scoring of a competing application by filing a Notice of Alleged Deficiencies ("NOAD"), identifying deficiencies arising from the submitted "cure" materials.

11. After considering the submitted NOADs, Florida Housing provides notice to applicants of any resulting scoring changes. The resulting scores are known as “pre-appeal” scores.

12. Applicants may appeal and challenge, via formal or informal hearings, Florida Housing’s scoring of any item for which the applicant received less than the maximum score, or for any item that resulted in the rejection of the application for failure to meet “threshold.”

13. Upon the conclusion of the informal hearings, and of formal hearings where appropriate, Florida Housing issues the final scores and ranking of applicants. Applicants are then awarded tentative MMRB and/or SAIL funding in order of rank; Florida Housing issues Final Orders allocating the tentative funding and inviting successful applicants in the credit underwriting process.

14. On or before April 15, 2002, Aswan Village and others submitted applications for SAIL financing in the 2002 Universal Application Cycle. Aswan Village requested \$2,000,000 in SAIL funds to help finance its project, a 216-unit garden-style apartment complex to be located in Opa-Locka, Florida.

15. Florida Housing evaluated all applications and notified applicants of their preliminary scores on or before May 14, 2002. Applicants were then given an opportunity to file NOPSEs on or before May 24, 2002.

16. After considering all NOPSEs, Florida Housing notified applicants by overnight mail on or about June 11, 2002, of any resulting changes in the scoring of their applications. Applicants were then required to submit, on or before June 26, 2002, "cure" materials to correct any alleged deficiencies in their applications previously identified by Florida Housing.

17. Applicants were required to file NOADs on competing applications on or before July 8, 2002. After considering the submitted NOADs, Florida Housing issued notice to Aswan Village and others of their adjusted scores (a.k.a. "pre-appeal scores") on or about July 22, 2002.

18. The Aswan Village application pre-appeal scores indicate that Florida Housing rejected the application on seven (7) threshold grounds, including: the imaged and/or retyped Surveyor Certification form, a disqualified Equity Commitment letter, a disqualified Local Government Contribution letter, disqualified Commitment to Defer Developer Fee forms, a disqualified Partner Contribution letter, and for resulting financing shortfalls in the Construction Analysis and Permanent Analysis portions of the application.

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes and Rule 67-47, Florida Administrative Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. The Surveyor Certification form as provided by FHFC clearly indicates that the entire application will be rejected for failure to meet threshold if the form is

“scanned, imaged, altered or retyped.” Petitioner admits that the surveyor “imaged” the form, and as this is a threshold issue, mandatory rejection of this application is required by Rules 67-48.004(2), (9) and (13), Florida Administrative Code and page 55 of the UA1016 instructions.

3. Petitioner has admitted that the Enterprise Social Investment Corporation letter does not constitute a firm commitment to provide the equity financing, which is a threshold issue.

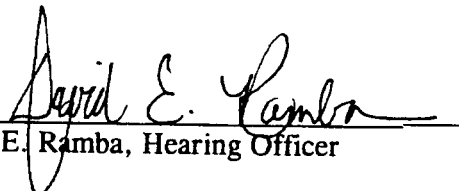
4. Based on the admission of these issues by Petitioner and these issues being threshold issues, there is no purpose in addressing the other threshold issues in contention as they are now moot.

RECOMMENDATION

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

That Florida Housing Finance Corporation enter a Final Order affirming the rejection of Petitioner’s application, and denying the relief requested in the Petition.

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



David E. Ramba, Hearing Officer

Copies furnished:

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