

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**TWC SIXTY-SEVEN, LTD. (2002-113BS)  
(PROJECT NAME: WEXFORD APARTMENTS)**

**Petitioner,**

**vs.**

**Case No.:** \_\_\_\_\_

**FLORIDA HOUSING FINANCE CORPORATION,**

**Respondent.**

---

**PETITION FOR FORMAL  
ADMINISTRATIVE HEARING**

Petitioner, TWC Sixty-Seven, Ltd., ("Wexford" or "the Applicant"), by and through its undersigned attorneys and pursuant to Section 120.57(1), Florida Statutes (2001), and Rule 28-106.201 and Rule 67-48.005, Florida Administrative Code ("F.A.C."), hereby files its petition for a formal administrative hearing to review the scoring of its application/development which was submitted to the Florida Housing Finance Corporation ("FHFC" or "Corporation") incident to seeking an allocation of funds from the 2002 Universal Application Cycle ("Universal Cycle") funding batch.

1. Petitioner's name, address and telephone number are:

TWC Sixty-Seven, Ltd.  
665 North Franklin Street  
Suite 2200  
Tampa, Florida 33602  
(813) 281-8888

2. The name, address and telephone number of Petitioner's representatives for service purposes during the course of this proceeding are:

Michael G. Maida  
J. Stephen Menton  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 S. Monroe Street, Ste. 420  
P.O. Box 551  
Tallahassee, FL 32302  
850/681-6788 (Telephone)  
850/681-6515 (Telecopier)

3. The name and address of the affected agency are:

Florida Housing Finance Corporation  
227 N. Bronough Street  
City Centre Building, Room 5000  
Tallahassee, Florida 32301-1329

4. The FHFC administers the State Apartment Incentives Loan (SAIL) program, as provided in Sections 420.507 and 420.5087, Florida Statutes (2001). The FHFC also administers the Housing Credit (HC) program, as provided in Section 420.5099, Florida Statutes (2001). The SAIL and HC programs provide funds or tax credits for entities constructing or rehabilitating affordable residential rental units for low income and/or very low income persons. These funds are allocated through a competitive application process in accordance with Rule 67-48.004, F.A.C. The applications are competitively ranked within set-aside categories. All of the projects within a specific set-aside compete for a limited number of funds during a given cycle.

5. Wexford and numerous other entities submitted applications seeking an allocation of funds from the 2002 Universal Cycle. Wexford's application was assigned Application Scoring No. 2002-113BS (the "Application"). FHFC released its final scoring of the applications in the 2002 Universal Cycle which were contained in a Notice dated July 22, 2002. The Applicant received the

Notice on July 23, 2002 via overnight express mail. The final scores indicated that Wexford received a score of 71 points out of a possible 71 points. In addition, Wexford received 5.75 Proximity Tie-Breaker Points out of a possible 7.5 points.

6. Pursuant to the Corporation's July 22, 2002 Notice, any applicant who was adversely affected as a result of scoring may contest the Corporation's decision. Under Rule 67-48.005, an applicant may petition for a formal hearing if the appeal involves disputed issues of material fact.

7. The final scores indicate that Wexford's Proximity Tie-Breaker Points were less than the maximum points allowed and consequently Wexford may not be entitled to an allocation of funds from the 2002 Universal Cycle. However, Wexford will be entitled to an allocation of funds from the Corporation during the 2002 Universal Cycle if it is successful in this petition to reinstate the points deducted from the scoring of its application. Thus, Wexford's substantial interests are subject to a determination in this proceeding.

8. The following paragraphs set forth the relevant scoring issues that led to a reduced score for Wexford's Application. As set forth below, the Corporation acted improperly when it unilaterally re-scored Wexford's application. Moreover, the Corporation's analysis in reducing Wexford's score was flawed and the scoring of Wexford's Application is inconsistent with the requirements contained in the application.

#### The Application Selection Procedure:

The Corporation has a somewhat unique application process with respect to scoring and evaluating applications. Pursuant to Rule 67-48.004 F.A.C., applicants are required to submit their applications to the Corporation for evaluation and scoring. The applications are preliminarily scored

based upon factors contained in the application package as well as the Corporation's published applicable rules. After scoring, preliminary scores are issued to all applicants.

Competitors who wish to notify the Corporation of an alleged scoring error relative to another applicant's application, must file a written Notice of Possible Scoring Error (NOPSE). The Corporation then considers the issues raised in the NOPSE and notifies the affected applicant of its decision regarding the NOPSE.

Following preliminary and NOPSE scoring, applicants are then permitted an opportunity to submit "additional documentation, revised pages and such other information as the [a]pplicant deems appropriate to address the issues" raised as a result of preliminary or NOPSE scoring. (Rule 67-48.004(6) F.A.C.) Applicants are therefore given an opportunity to cure errors in their applications that were raised by the Corporation during preliminary scoring or a competitor during the NOPSE process.

After affected applicants submit additional documentation to cure errors in their applications, competitors may then file Notices of Alleged Deficiencies (NOADs), challenging the quality or validity of the cure. The Corporation then considers the cure material submitted by the affected applicants and reviews issues raised in the NOADs. Following this review, the Corporation publishes final scores.

In scoring applications, the Corporation issues scores in two different categories: Total Points and Proximity Tie-Breaker Points. Total Points are awarded based upon the Corporation's scoring of substantive information provided by an applicant. Proximity Tie-Breaker Points are awarded based upon the proximity of the proposed development to various facilities, such as grocery stores, schools, and bus stops. The number of points awarded in each tie-breaker category varies, based

on how close a particular facility is to the development. An applicant's tie-breaker point total increases the closer the facility is to the development. As there is a great deal of competition for funding, an applicant will often be required to obtain tie-breaker points in order to obtain funding.

### 2002 Application

Wexford submitted an application for the 2002 Universal Cycle seeking an allocation of bonds and SAIL funding. The Wexford development is a new construction development which is designed to provide affordable housing for large families. During preliminary scoring, the Applicant received 7.0 points under the Corporation's scoring of Proximity Tie-Breaker Points. However, after preliminary scoring, the Applicant's score was reduced by 1.25 points. In order to obtain funding, the Applicant will need to receive 7.00 Proximity Tie-Breaker Points.

### Part III Development

#### A. General Development Information

#### 11b.(1) Proximity

Part III of the Application requires an applicant to provide information regarding the development. Under Section A, Subsection 11, Wexford provided information regarding the development's proximity to a grocery store. Under the Corporation's General Instructions, a grocery store, is defined as follows:

For purposes of tie-breaker points, a grocery store means a self-service retail market that sells food and household goods and has at least 4,500 square feet of air conditioned space.

(See Page 10 of the Application General Instructions, attached hereto as Exhibit "A"). Thus, in order to be a grocery store for scoring purposes, the facility must satisfy three criteria: (1) be a self service

retail market; (2) sell food and household goods; and (3) have at least 4,500 square feet of air-conditioned space.

The Corporation adopted this definition during its application rule-making process. During rule-making, several alternative definitions or guidelines were proposed with respect to determining what constituted a “grocery store.” Proposed definitions included limiting a qualifying store to those that were licensed or inspected in a particular manner. None of these additional standards were adopted.

In submitting its application, Wexford listed “Quality Meat Market” as a qualifying grocery store. (See attached Exhibit “B” to this Petition). During preliminary scoring, the Corporation agreed that Quality Meat Market satisfied the elements of a grocery store as defined in the application and awarded Wexford 1.25 points, the maximum tie-breaker points available under this portion of the application. (See 2002 Preliminary Universal Scoring Summary attached “C” to this Petition).

During the NOPSE phase, four competitors filed challenges alleging that the Quality Meat Market store failed to satisfy the third prong of the “grocery store” definition - that the store did not contain at least 4,500 square feet of air-conditioned space. No other allegation was raised with respect to whether Quality Meat Market was a grocery store within the meaning of the application’s instructions. In response to this NOPSE challenge, the Corporation incorrectly concluded that the market did not contain at least 4,500 square feet of air-conditioned space and deducted 1.25 Proximity Tie-Breaker Points from the Applicant’s score.

As part of its NOPSE scoring summary, the Corporation stated that “the store listed in the application is not a grocery store.” However, no competitor ever questioned whether the Quality

Meat Market store was a “grocery store,” within the meaning of the application. The Corporation never articulated any legal basis or authority to unilaterally rescore an application after preliminary scoring. Moreover, the Corporation has never provided any information as to how or why it reached this erroneous conclusion.

In response to these allegations, Wexford filed additional information conclusively demonstrating that Quality Meat Market exceeded this square foot requirement. Ultimately, the Corporation conceded the fact that the store had more than 4,500 square feet of air-conditioned space. Wexford also filed additional information conclusively demonstrating that Quality Meat Market met the Corporation’s definition of a “grocery store.”

In response to the cure material submitted by Wexford, no competitor filed a NOAD challenging whether Quality Meat Market was a “grocery store” as that term is commonly understood or defined in the Application’s General Instructions. Despite the lack of any challenge, the Corporation still maintained that the Quality Meat Market was not a grocery store within the meaning of the Application. Without explanation, the Corporation maintained its deduction of the 1.25 Proximity Tie-Breaker Points.

The Quality Meat Market store listed in the application clearly constitutes a “grocery store” as defined by the Corporation. The Quality Meat Market store is a self service retail market that sells food and household goods and has at least 4,500 square feet of air-conditioned space. The Corporation did not identify its basis for unilaterally rejecting Quality Meat Market as a qualifying grocery store. Instead, in the Final Universal Scoring Summary, the Corporation simply stated that “[t]he store listed in the Application is not a grocery store.”(See 2002 Final Universal Scoring Summary attached as “D”). The Corporation cannot amend the definition of what constitutes a

“grocery store” once it defines that term for purposes of the application. Applicants should be entitled to rely on the criteria that were unambiguously stated within the application.

The Quality Meat Market is a food store with all of its store space devoted to the sale of food and household goods, the overwhelming majority of which includes fresh meats and other grocery items. The Quality Meat Market is simply a family owned, “Mom and Pop,” neighborhood facility that satisfies both the Rule and common sense definition of “grocery store.” This assertion is further bolstered by the fact that, except for the frivolous challenge regarding the size of the facility, no competitor has ever alleged that Quality Meat Market does not satisfy the application’s definition of a grocery store.

The Quality Meat Market listed in the application provides food goods such as: fresh meats of all varieties, breads, milk, cheese, frozen vegetables, peanuts, spices, condiments, candy, ice cream, honey, mayonnaise, cookies, peanut butter, spaghetti sauce, beans, soup, olive oil, soda, juices, and other beverages. The store also sells household goods such as: aluminum foil, lighter fluid, charcoal, ziplock bags and aluminum pans. Both of these lists are by no means exhaustive. In addition, attached as composite Exhibit “E” are photographs of some of the goods sold by the Quality Meat Market.

The Corporation has, during this cycle, routinely accepted similar stores as grocery stores. In fact, 33 different non-chain stores were accepted as “grocery stores,” including Quality Discount Meats, Diaz Groceries and Meat, Smart and Final, El Bodegon, Sav-Rite, Total Plus, La Mia Market, Surf n Turf, and Bill’s Market. The fact that Quality Meat Market is in fact a grocery store is confirmed by the fact that no competitor has ever alleged that the Quality Meat Market should be scored differently than any other non-chain grocery store.



It is abundantly clear that the Quality Meat Market store is a qualifying “grocery store” for purposes of Proximity Tie-Breaker Points. In light of the foregoing, the Corporation erred in its evaluation and scoring of Part III of Wexford’s 2002 application and 1.25 points should be added back to the Applicant’s Proximity Tie-Breaker score.

Specific Disputed Issues of Material Fact and Law

9. Specific disputed issues of material fact and law in this proceeding include, but are not limited to the following:

a. Whether Quality Meat Market is a “grocery store” as that term is defined within the application instructions;

b. Whether the Corporation erred in its evaluation, scoring and re-scoring of Wexford’s 2002 application;

c. Whether the Corporation had the authority to unilaterally re-score Wexford’s application with respect to an issue that was not raised during preliminary scoring;

d. Whether the Corporation had the authority to unilaterally re-score Wexford’s application with respect to an issue that was not raised by any competitor during the NOPSE phase;

e. Whether the Corporation evaluated, scored and re-scored Wexford’s 2002 application in a manner different than the manner in which the Corporation evaluated, scored and re-scored applications involving similarly situated issues;

f. Whether the Corporation scored Application No. 2002-113BS in an arbitrary and capricious manner;

g. Whether the Corporation engaged in non-rule policy by changing the definition of a grocery store and consequently unilaterally re-scoring Wexford's application after preliminary scoring with respect to issues not raised by any competitor.

As a Matter of Ultimate Fact and Law

10. As a matter of ultimate fact and law the Applicant states that it submitted appropriate information in its Application entitling it to an award of full Proximity Tie-Breaker Points in its application consistent with the Corporation's scoring of similar issues. The Applicant further states that the Corporation did not have the authority to unilaterally re-score its application once preliminary scores were issued.

Statutes and Rules at Issue in this Proceeding


11. Statutes and rules at issue in this proceeding include, but are not limited to, Sections 420.507, 420.5087, and 420.5099 Florida Statutes (2001); Rule 28-106.201, Florida Administrative Code; Rule 67-48.004, Florida Administrative Code and Rule 67-48.005, Florida Administrative Code.

**WHEREFORE**, Petitioner, Wexford, respectively requests:

- a. That the Florida Housing Finance Corporation refer this Petition to the Division of Administrative Hearing for the assignment of an Administrative Law Judge;
- b. That a formal administrative hearing be conducted pursuant to Section 120.57(1), Florida Statutes (2001), to correct the final scoring and ranking of Wexford's application;
- c. That recommended and final orders be issued enhancing Wexford's Proximity Tie-Breaker Points by 1.25 points as requested in this petition; and

d. That such further relief as may be deemed appropriate be granted.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of August 2002.



MICHAEL G. MAIDA

FL BAR No.: 0435945

J. STEPHEN MENTON

FL BAR No: 331181

Rutledge, Ecenia, Purnell & Hoffman, P.A.

215 S. Monroe Street, Ste. 420

P.O. Box 551

Tallahassee, FL 32302

850/681-6788 (Telephone)

850/681-6515 (Telecopier)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that an original and one copy of the foregoing has been filed with Corporation Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, on this 13<sup>th</sup> day of August 2002.



MICHAEL G. MAIDA

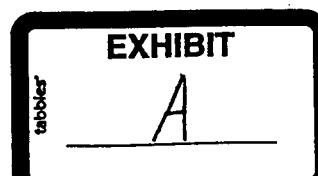
a. Proximity to services (Maximum 3.75 tie-breaker points):

Utilizing Street Atlas USA, version 9.0, published by DeLorme, measure the distance from the Tie-Breaker Measurement Point to the following service(s). If an Address for the service(s) is not included on Street Atlas USA, Version 9.0, the latitude and longitude coordinates must be stated (in degrees and minutes truncated after three decimals) on the Surveyor Certification Form and provided behind a tab labeled "Exhibit 21". The latitude and longitude coordinates must be located at the main entrance used by the general public.

If an Applicant concludes upon entering an Address for a service (Grocery Store, Public School or Medical Facility) into the Street Atlas USA, Version 9, software that the software fails to identify a location that is on a service site, the Applicant may provide evidence of the inaccuracy, as applicable, at Exhibit 21 of the Universal Application Package or within a Notice of Possible Scoring Error or within a Notice of Alleged Deficiency for consideration by Florida Housing. At a minimum, the evidence must contain a certification from a Florida licensed surveyor, not related to any party of the Applicant, which states: (1) the name of the service in question; (2) that the Street Atlas USA, Version 9, software fails to identify a location that is on the service site upon entering the service's Address; and (3) the correct latitude and longitude coordinates (minutes taken to a minimum of three decimal places) for the respective service. The surveyor's certification must be signed and dated by the surveyor under oath.

To be considered for tie-breaker points in this Application, the grocery store, public school or medical facility, and public bus stop or metro-rail stop must be in existence and available for use by the general public as of the Application Deadline.

- (1) Name and Address as assigned by the United States Postal Service of the closest:
  - (a) Grocery Store - For purposes of tie-breaker points, a grocery store means a self-service retail market that sells food and household goods and has at least 4,500 square feet of air conditioned space.
  - (b) Public School - For purposes of tie-breaker points, a public school means a public elementary, middle, junior and/or high school, including a charter school, except that a charter school that is not



11. Proximity

a. Provide the Surveyor Certification Form and map, including all required information, behind a tab labeled "Exhibit 21".

b. Proximity to Services (Maximum 3.75 TieBreaker Points):

(1) Will the proposed Development be located within 5 miles of a grocery store?

Yes (check only ONE applicable distance)  No

Proximity of Proposed Development to a grocery store	Proximity Tie-Breaker Points
<input checked="" type="checkbox"/> > 0 and < or equal to 1.0 mile	1.25
<input type="checkbox"/> > 1.0 and < or equal to 2.0 miles	1
<input type="checkbox"/> > 2.0 and < or equal to 3.0 miles	.75
<input type="checkbox"/> > 3.0 and < or equal to 4.0 miles	.5
<input type="checkbox"/> > 4.0 and < or equal to 5.0 miles	.25

Name of grocery store: Quality Meat Market

Address of grocery store:

Street: 4018 Orient Rd.

City: Tampa State: FL Zip Code: 33610

(2) If the proposed Development will serve any demographic group other than Elderly, i.e., the Applicant selected any Demographic or Area Commitment in this Application other than Elderly, will it be located within 5 miles of a public school?

Yes (check only ONE applicable distance)  No

Proximity of Proposed Development to a public school	Proximity Tie-Breaker Points
<input checked="" type="checkbox"/> > 0 and < or equal to 1.0 mile	1.25
<input type="checkbox"/> > 1.0 and < or equal to 2.0 miles	1
<input type="checkbox"/> > 2.0 and < or equal to 3.0 miles	.75
<input type="checkbox"/> > 3.0 and < or equal to 4.0 miles	.5
<input type="checkbox"/> > 4.0 and < or equal to 5.0 miles	.25

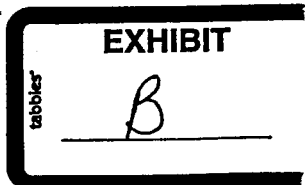
Name of public school: Tampa Bay Technical High School

Address of public school:

Street: 6410 Orient Road

City: Tampa State: FL Zip Code: 33610

(3) If the proposed Development will serve the Elderly, i.e., the Applicant selected Elderly in the Demographic or Area Commitment section of this Application, will it be located within 5 miles of a medical facility?



# 2002 Universal Scoring Summary

As of: 05/13/2002

File # 2002-113BS Development Name: Wexford

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
05 - 13 - 2002	71	Y	7	\$58,194.44	7.81%
Preliminary	71	Y	7	\$58,194.44	7.81%
NOPSE	0	Y	0		0
Final	0	Y	0		0
Post-Appeal	0	Y	0		0

\*Corporation funding includes Local Government-issued tax-exempt bond financing

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	if SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
<b>Optional Features &amp; Amenities:</b>									
2S	III	B	2.a	New Construction	9	9	0	0	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	0	0	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	0	0	0
<b>Demographic or Area Commitment:</b>									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	5	0	0	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

tabbles

**EXHIBIT**

## 2002 Universal Scoring Summary

As of: 05/13/2002

File # 2002-1138S

Development Name: Wexford

**Scores:**

Item #	Part Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
Set-Aside Commitment:								
6S	III	E	2. Commitment to Serve Lower AMI	5	5	0	0	0
7S	III	E	3. Total Set-Aside Commitment	3	3	0	0	0
8S	III	E	4. Affordability Period	5	5	0	0	0
Resident Programs:								
9S	III	F	1. Programs for Non-Elderly & Non-Homeless	6	6	0	0	0
9S	III	F	2. Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3. Programs for Elderly	6	0	0	0	0
10S	III	F	4. Programs for All Developments	8	8	0	0	0
Local Government Support								
11S	IV	a.	Contributions	5	5	0	0	0
12S	IV	b.	Incentives	4	4	0	0	0

**Reason(s) Scores Not Maxed:**

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	The proposed Development is not located in one of the stated counties.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

**Proximity Tie-Breaker Points:**

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1). Grocery Store	1.25	1.25	0	0	0
2P	III	A	11.b.(2). Public School	1.25	1.25	0	0	0
2P	III	A	11.b.(3). Medical Facility	1.25	0	0	0	0
3P	III	A	11.b.(4). Bus Stop or Metro-Rail Stop	1.25	0.75	0	0	0
4P	III	A	11.c. Address/Location on FHFC Development Proximity List	3.75	3.75	0	0	0

# 2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-113BS

Development Name: Wexford

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
07 - 22 - 2002	71	Y	5.75	\$58,194.44	7.81%
Preliminary	71	Y	7	\$58,194.44	7.81%
NOPSE	71	N	5.75	\$58,194.44	7.81%
Final	71	Y	5.75	\$58,194.44	7.81%
Post-Appeal	0	Y	0		0

\*Corporation funding includes Local Government-issued tax-exempt bond financing

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
<b>Optional Features &amp; Amenities:</b>									
2S	III	B	2.a	New Construction	9	9	9	9	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	12	12	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	9	9	0
<b>Demographic or Area Commitment:</b>									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	5	5	5	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

tabbles

**EXHIBIT**

D



## 2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-113BS

Development Name: Wexford

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
6S	III	E	2.	Set-Aside Commitment: Commitment to Serve Lower AMI	5	5	5	5	0
7S	III	E	3.	Total Set-Aside Commitment	3	3	3	3	0
8S	III	E	4.	Affordability Period	5	5	5	5	0
9S	III	F	1.	Resident Programs: Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
9S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3.	Programs for Elderly	6	0	0	0	0
10S	III	F	4.	Programs for All Developments	8	8	8	8	0
11S	IV		a.	Local Government Support Contributions	5	5	5	5	0
12S	IV		b.	Incentives	4	4	4	4	0

**Reason(s) Scores Not Maxed:**

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	The proposed Development is not located in one of the stated counties.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	V	B		Commitment to Defer Developer Fee	Commitment to Defer Developer Fee does not include the Development name and therefore cannot be considered firm. Uses now exceed sources.	NOPSE	Final

**Proximity Tie-Breaker Points:**

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1).	Grocery Store	1.25	1.25	0	0	0
2P	III	A	11.b.(2).	Public School	1.25	1.25	1.25	1.25	0
2P	III	A	11.b.(3).	Medical Facility	1.25	0	0	0	0
3P	III	A	11.b.(4).	Bus Stop or Metro-Rail Stop	1.25	0.75	0.75	0.75	0

## 2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-113BS Development Name: Wexford

**Proximity Tie-Breaker Points:**

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
4P	III	A	11.c.	Address/Location on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

**Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:**

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Evidence submitted with a NOPSE indicates that the store listed in the Application does not have 4,500 square feet of air conditioned space. In addition, the store listed in the Application is not a grocery store.	NOPSE	Final
1P	The store listed in the Application is not a grocery store.	Final	



EXHIBIT  
E

tabbles





Coca-Cola

60%

VISO  
Best  
Soup Base

VISO  
Best  
Soup Base

HEINZ  
KETCHUP

HEINZ  
KETCHUP

VISO  
ADOB

VISO  
ADOB

VISO  
ADOB

Reynolds Freezer Paper

Reynolds Freezer Paper

HEINZ  
TOMATO  
KETCHUP

Reynolds Wrap

HEINZ  
KETCHUP

24 - 6 OZ. BOTTLES  
48400  
00002  
6oz.  
Crystal  
PURE HOT SAUCE  
PRODUCT OF U.S.A.

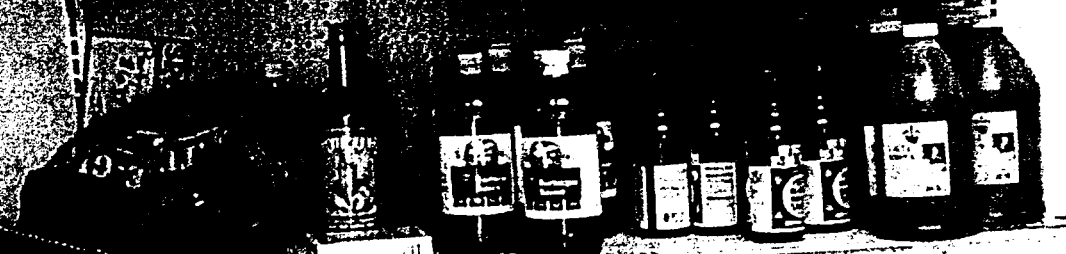
2002



**SPECIAL!**

\$1.19

2002



SALE  
\$1.19



SALE  
\$1.19







MILK  
MILK  
MILK

MURPHY'S HONEY GRAHAM'S  
MURPHY'S HONEY GRAHAM'S  
MURPHY'S HONEY GRAHAM'S  
Sugar Free

ASSORTED COOKIES  
ASSORTED COOKIES  
ASSORTED COOKIES  
GINGER SWAPS  
GINGER SWAPS  
GINGER SWAPS

COCONUT  
COCONUT  
COCONUT  
COCONUT  
COCONUT  
COCONUT  
OATMEAL  
OATMEAL  
OATMEAL  
OATMEAL  
OATMEAL  
OATMEAL  
iced OATMEAL  
iced OATMEAL  
iced OATMEAL  
iced OATMEAL  
iced OATMEAL  
iced OATMEAL

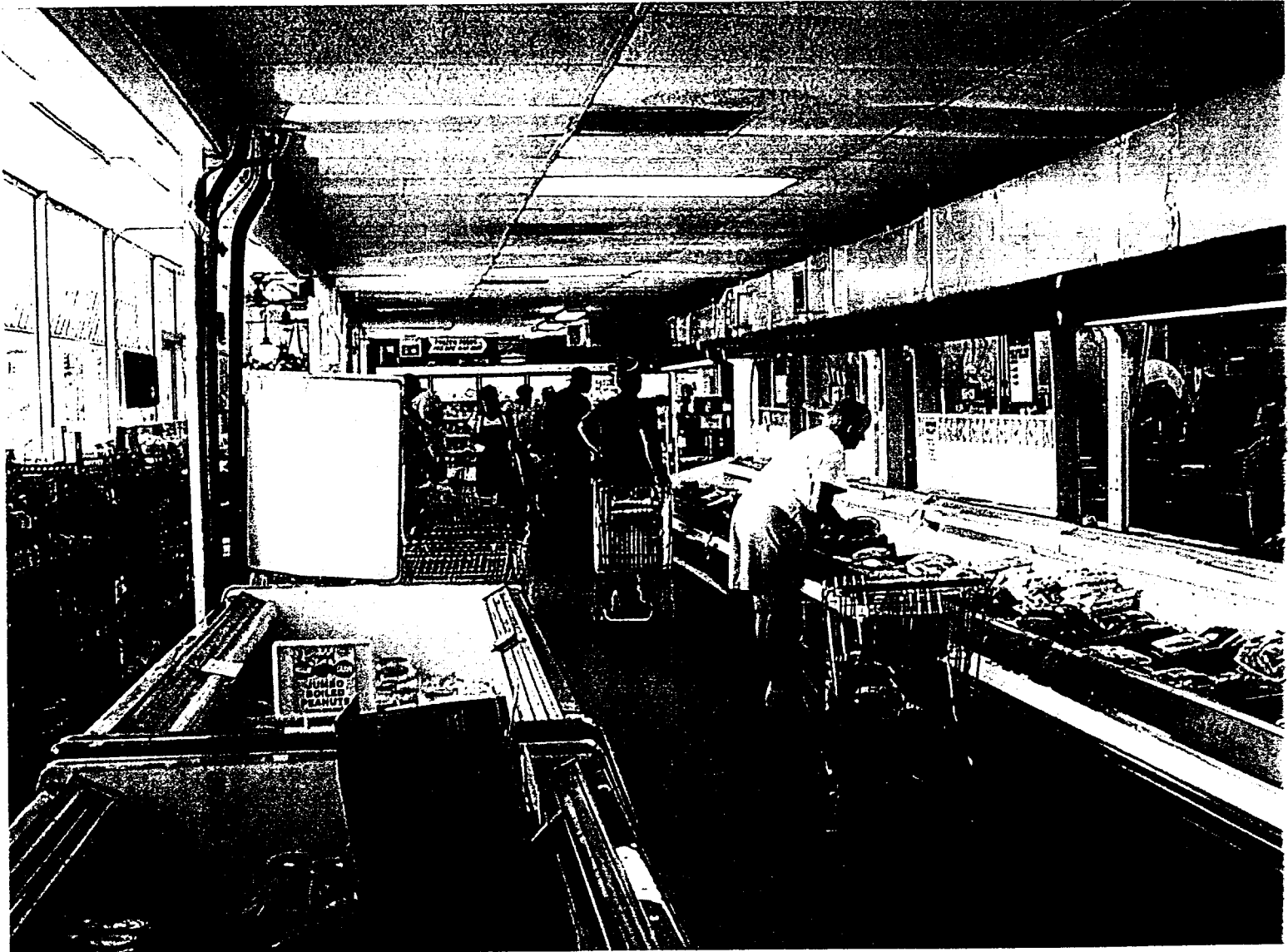
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos

Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos

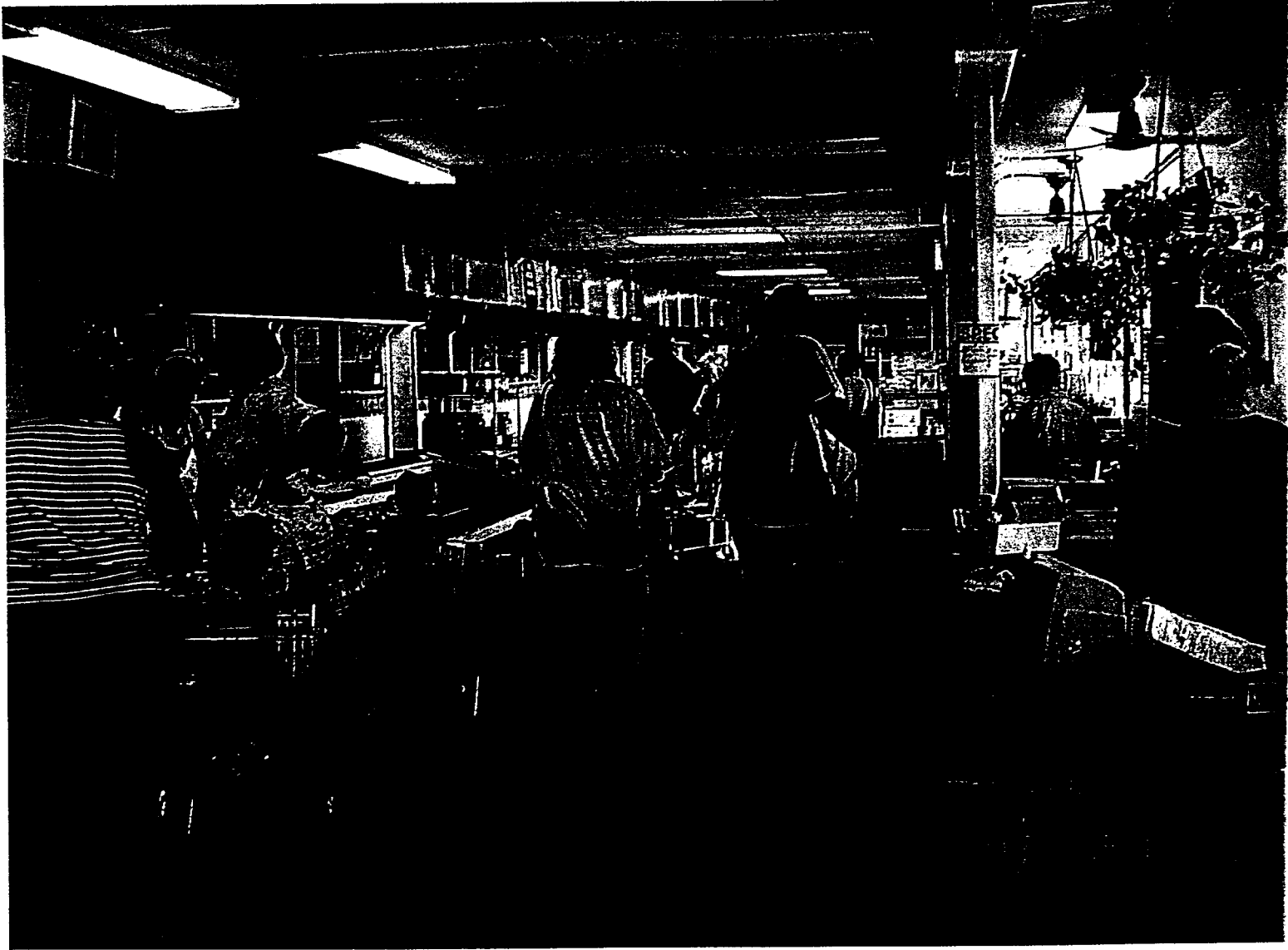
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos  
Famous Amos

AWESOME  
AWESOME  
AWESOME  
AWESOME  
AWESOME  
AWESOME

COFFEE  
COFFEE  
COFFEE  
COFFEE  
COFFEE  
COFFEE











1 FLORIDA HOUSING FINANCE CORPORATION

2 RULE HEARING

3 January 4, 2002 - 9:00 a.m.

4 Leon County Civic Center

5 Tallahassee, Florida

6  
7  
8 BY KEREY CARPENTER: Welcome to the Rule  
9 Hearing for the new universal Application and Rule that  
10 will govern the competitive process for allocation of  
11 funds for Multifamily Bonds, SAILS and Housing credits  
12 for the 2002 year. It's great to see all of you here.  
13 I was a little concerned that we might not have a good  
14 turnout because of the weather and being in Tallahassee  
15 and not connected with a Board Meeting, but we do have a  
16 lot of people here, and I'm glad to see that.

17 We have a couple of preliminary matters that  
18 I'd like to take care of before we get started. One is,  
19 we do need to have a record of everybody who's in  
20 attendance. If you didn't sign in when you got here at  
21 the front table, we are sending around a list, a  
22 notepad, for you to sign in on, and we'd appreciate it  
23 if you would do that, so we will have a record. We have  
24 to turn that in to FAW, I believe.

25 Also, as we receive comments from you on the

Linda Bland, RMR, RPR, CSR, CPE

1 BY DEBRA KOEHLER: Debra Koehler with the  
2 Wilson Company. With grocery store, I know we're  
3 eliminating Seven Elevens. My question now is grocery  
4 products. I mean, you have got 4500 square feet, the  
5 air conditioned space where you have grocery products.  
6 The question is: Does that now bring in the Walgreens,  
7 the Eckerd's? Have you defined grocery products well  
8 enough?

9 BY KEREY CARPENTER: I don't know how to  
10 define that. Do you? Try.

11 BY DEBRA KOEHLER: Right now it looks like  
12 food and household goods.

13 BY KEREY CARPENTER: Yeah, which Walgreens  
14 has. I mean, we have not come up with a way of defining  
15 a grocery store neatly, which is why we came up with the  
16 square footage to try to eliminate things like  
17 convenience stores which we clearly have food products  
18 and grocery products would qualify under some definition  
19 of groceries.

20 BY CINDY MEYER-WEBB: Well, how about how they  
21 declare themselves to the Secretary of State?

22 BY KEREY CARPENTER: I don't know if there is  
23 such a declaration.

24 BY CINDY MEYER-WEBB: Yeah, in corporation  
25 documents or, you know, Publix is a grocery store; Seven



1 Eleven isn't. I mean, don't they define that?

2 BY KEREY CARPENTER: No, I don't think that  
3 can be done.

4 BY CINDY MEYER-WEBB: I think they do.

5 BY JOYCE MARTINEZ: Didn't we try to check  
6 that out?

7 BY KEREY CARPENTER: We did look into whether  
8 or not there was different licensing requirements with  
9 the State, DPPR, for grocery store versus convenience  
10 stores, and we found out that there weren't.

11 BY CINDY MEYER-WEBB: Well, I don't mean  
12 licensing. I mean, yeah, exactly, that your primary  
13 purpose is "X." I mean, I would think, and I don't know  
14 this, because I have never looked at it, but like  
15 Walgreens and Eckerds would be pharmaceutical sales and  
16 drug sales.

17 BY KEREY CARPENTER: And food sales. Which  
18 grocery stores also have pharmaceuticals, and --

19 BY CINDY MEYER-WEBB: Do they all describe  
20 themselves as the same? I mean, is there a difference?

21 BY MARK KAPLAN: I mean, why do we care? I  
22 mean, if there is a 6500 square foot Eckerds that sells  
23 milk, and eggs, and bread, and food and household stuff  
24 shouldn't that -- shouldn't that be good enough? I  
25 mean, shouldn't that be -- Shouldn't that still count?

1 BY DEBRA KOEHLER: I mean, I think what we  
2 were looking for hopefully was something where they  
3 could pay lower -- I mean, obviously, you can go there  
4 and pay a premium. I mean, if it's just getting to  
5 somewhere that sells it, then, yes, that does cover it.  
6 But I just wanted to know for clarification, because  
7 obviously when we're looking at sites, previously to  
8 that we have not included those as qualifying. So that  
9 was really more clarification at this point that that  
10 probably will count.

11 BY KEREY CARPENTER: Yeah, and we were trying  
12 to exclude convenience stores for the very reason that  
13 the price is a premium, and that's certainly not  
14 something that, you know, we want to give points for  
15 that, you know, that the tenants, residents, could  
16 purchase food at a premium at a convenience store.

17 So we were trying to exclude that and trying  
18 to capture true grocery stores. But this definition and  
19 square footage was the closest thing we could come up  
20 with, and have it neat and less subject to challenge by  
21 you all. So, if you have any ideas --

22 BY MARK KAPLAN: I think -- I think the answer  
23 to your question is based on where we are right now,  
24 that something meets the square footage and sells food  
25 and household goods.

1 BY DEBRA KOEHLER: That it will count?

2 BY MARK KAPLAN: That it will count.

3 BY DEBRA KOEHLER: Okay, well that's -- I  
4 just really wanted to clarify that.

5 BY MARK KAPLAN: Right.

6 BY DEBRA KOEHLER: This other one I have is on  
7 timing. I think I have discussed this before on Bonds  
8 transactions. You know, they just take a long time to  
9 do, unlike a Housing Credit deal, where once you get the  
10 credits, you're pretty much on your own to close.

11 So one of my suggestions based on what I see  
12 is that we will not know until October whether a Bond  
13 transaction has been funded or not to allow at a  
14 developer's risk to enter into credit underwriting.  
15 Because I think if not, it will be pretty impossible to  
16 close any of your 2002 allocation in 2002, unless you do  
17 let developers enter at their own risk for credit  
18 underwriting. So I would just like to request that.

19 BY TOM LAWLER: Tom Lawler, LCA, reading right  
20 here, and just for more clarification on the grocery  
21 stores, this Page 10 of the handout, I don't know where  
22 it came from. Forty-five hundred square feet of air  
23 conditioned space dedicated to grocery products. I  
24 foresee a big fight. Walgreens, that the drugstore is  
25 this doesn't count over here, and this doesn't count

1 over there, so I -- I think that you might want to  
2 revisit that, because, Cindy, you know we'll fight about  
3 anything.

4 BY KEREY CARPENTER: Tell me what the  
5 ambiguity is that you're looking at?

6 BY TOM LAWLER: Say 4500 square feet of air  
7 conditioned space dedicated to grocery products. So if  
8 I go to a Walgreens, I'm going to say that all the  
9 beauty supplies on this aisle don't count. The cards  
10 over here don't count, and if it's between my getting  
11 funded and somebody else, I'll be up here. I guarantee  
12 you, you know, and so will everyone else. So I don't  
13 know how to raise that, but --

14 BY KEREY CARPENTER: If you could, anybody,  
15 could offer tighter definitions, please send them to us.  
16 We want to hear them. We want this to be as tight as  
17 possible.

18 BY TOM LAWLER: Also, I wanted to make a  
19 comment on the SAIL going with the Local Bonds. I think  
20 the opposite. I kind of go with Mark, what Mark said.  
21 If you don't need the SAIL, you shouldn't be in there.  
22 If you do need it, I think it should count, because  
23 there is -- you still have to compete. And, you know, a  
24 lot of people come up and say this -- this, and they're  
25 all good ideas. But we have already pointed out that

1 very few Family deals might get funded under the 9  
2 percent. And every single thing that you do to help  
3 some deal because of some perceived unfairness, which  
4 may actually be there, just keeps limiting what you have  
5 for a general competition.

6 So if you take highrises and exclude them from  
7 Group A, I'm not saying it's a bad idea, but it causes  
8 another consequence. If you don't count the SAIL, it  
9 causes another consequence, and pretty soon what do you  
10 get out of the general pool, everybody has their own  
11 difficulty. Maybe we should do developers' set-asides,  
12 and we'll leave you alone.

13 BY BARRY GOLDMEIER: Barry Goldmeier, a  
14 comment on the grocery stores. I think you're not  
15 considering certain rural and ethnic communities, and  
16 through their shopping habits individuals do want to  
17 shop at things other than supermarkets, because they  
18 offer the foods and the tastes that people become  
19 familiar with. People from Caribbean and Latin American  
20 countries and locations I know about do not have, they  
21 have a Wal-Mart with a supermarket, but the population  
22 and income population are served totally by small ethnic  
23 local grocery stores, and they are not 4500 square feet  
24 of air conditioned space.

25 BY KEREY CARPENTER: How large are they?

1 BY BARRY GOLDMEIER: They are converted homes  
2 really. If you have been to these neighborhoods, and  
3 I'm sure many of you have, these are local ethnic, you  
4 know the different ethnic groups shop at different  
5 little groceries carrying the products from their home  
6 country, and that is where they shop.

7 BY KEREY CARPENTER: Okay.

8 BY BARRY GOLDMEIER: And you're basically  
9 eliminating projects which would serve that community  
10 and that is the community you basically would like to  
11 house to --

12 BY CINDY MEYER-WEBB: Yeah, we're not going to  
13 target particular ethnicities, and that we haven't done.

14 BY BARRY GOLDMIER: You would by doing that.  
15 That is, people are served by a chain, you could easily  
16 have 4500 square feet, but one on each corner literally.

17 BY KEREY CARPENTER: We have to strive here  
18 for some kind of definition that will withstand massive  
19 litigation, and what you're proposing is something we  
20 thought about. We certainly have. But we haven't --  
21 haven't come up with a way of defining it that would  
22 capture that, that would -- There's no way to define a  
23 grocery store in a sense without coming up with some  
24 square footage.

25 BY BARRY GOLDMEIER: They all have

1 occupational licenses, and they carry certain food  
2 products, and they have health inspections and other  
3 things which are required.

4 BY KEREY CARPENTER: Okay, thanks.

5 BY PAULA RYAN: Hi, Paula Ryan, White Oak.  
6 Why not instead of trying to define the grocery store  
7 where you have all kinds of openings for attack and  
8 definition and you're not necessarily targeting an  
9 ethnic community, but you would be excluding that group,  
10 why not specifically say: not including convenience  
11 stores, or, you know, some particular type of food  
12 distribution center that you're opposed to as being  
13 defined as a grocery store?

14 BY KEREY CARPENTER: How do you define that?

15 BY CINDY MEYER-WEBB: How do you define  
16 convenience store?

17 BY PAULA RYAN: I think you can easily --  
18 more easily define a convenience store than you can a  
19 grocery store. I mean, in West Palm Beach we have been  
20 trying to get a grocery store downtown in an urban  
21 in-fill area, and grocery stores will not come into  
22 certain communities, because they don't have the  
23 rooftops. They don't have the traffic. But Publix has  
24 finally agreed to downsize their typical grocery store,  
25 and they brought in a grocery store into downtown West

1 Palm. And I can tell you, I'm not sure it's going to  
2 meet -- Anyway, just to finish what I was saying. Can  
3 everybody hear?

4 But anyway, it's a Publix. It's downtown. It  
5 took us five years to get one, and I swear to you, I  
6 don't think it's 4500 square feet. So I mean, trying to  
7 define it or --

8 BY CINDY MEYER-WEBB: Well, one of the ways we  
9 came up with 4500 square feet was discussions  
10 specifically with Publix.

11 BY PAULA RYAN: Right.

12 BY CINDY MEYER-WEBB: And they said their  
13 smallest new prototype was 4500 square feet, and that  
14 their competitor, Winn Dixie, and several others that  
15 were doing some of the small prototype stores, that was  
16 their -- their minimum square footage. So that was one  
17 of the ways we got to that number, and we didn't want to  
18 go below it was because of that, so --

19 BY PAULA RYAN: So I mean, do you get a  
20 certificate from the Publix or the grocery store that  
21 says we're 4500 square feet? It's in a two-story  
22 building that actually looks like a townhouse. And, you  
23 know, I will go over and ask them, but I can understand  
24 what everybody's concern is, is: How do you define  
25 what's a grocery store, because certain communities,



1 they take what they can get. And you can't get a chain  
2 to come in. And like you said, 4500 square feet is  
3 their minimum prototype. So it provides an opportunity  
4 for other smaller grocery stores or food stores or mom  
5 and pop operations to meet that void.

6 BY KEREY CARPENTER: Yeah, and if you could  
7 get us information on the size of these stores and where  
8 they are and phone numbers, so we can -- One of the  
9 things we did was kind of research this issue.

10 BY CINDY MEYER-WEBB: A lot. What about tying  
11 the square footage of grocery stores to the number of  
12 units in the development?

13 BY PAULA RYAN: I mean, the grocery store  
14 issue is for a tie breaker, right?

15 BY KEREY CARPENTER: It is. And there are  
16 many other proximity points that one can get, so -- so  
17 perhaps if you're not near a grocery store, you're near  
18 a bus stop, or near a medical facility, or a school. So  
19 I mean, this is -- Not everybody's going to get maximum  
20 points on these proximity tie breaker points. It's  
21 designed that way. It's designed so that the  
22 development that gets the most points in that section  
23 cumulatively will break a tie. So keep in mind that  
24 it's not, obviously, not perfect, and it's not something  
25 that every development is going to max out on.

1 BY PAULA BRYAN: Can I just ask a question? I  
2 can understand the -- And I -- And I think I understand,  
3 but I just want to hear what your position is. The idea  
4 of using the grocery store as a tie breaker, you know,  
5 the bus line, and transportation and all makes -- that's  
6 easily identifiable, but what's your goal with the  
7 grocery store?

8 BY KEREY CARPENTER: It's a service that --  
9 that we think as a matter of policy is good to have near  
10 the -- the development.

11 BY PAULA BRYAN: And you don't want that to be  
12 included in things like a Hess gas station or --

13 BY CINDY MEYER-WEBB: Affordability.

14 BY PAULA BRYAN: Right. So that's what I'm  
15 saying. I think that that would be easier to define as  
16 opposed to not include, you know, this type of store,  
17 but in any event, I know it's complicated.

18 BY KEREY CARPENTER: Thanks.

19 BY DAVID DEUTCH: Just because I think the  
20 grocery store is difficult and it is fraught with  
21 problems in terms of us all going and checking each  
22 other out and determining definitions and all that,  
23 maybe and I -- just sitting here I'm thinking, what else  
24 might there, in lieu of a grocery store -- I know that's  
25 a good thing to have, but in lieu of that, maybe we do

1 something like proximity. See, with the bus stop, it's  
2 either there or it's not; a public school, it's either  
3 there or not. Grocery store we're having to figure out  
4 what the heck is a grocery store and if it meets the  
5 parameters.

6 BY CINDY MEYER-WEBB: I think this Committee  
7 is trying to figure out --

8 BY DAVID DEUTCH: Yeah. Well, we're nuts.  
9 We're being completely honest. I mean, there's no  
10 question, but we know that. But maybe there are some  
11 other things, and I'm sitting down thinking: What else  
12 would be really nice things to have and maybe say in  
13 large counties it's proximity to the downtown employment  
14 center, and we define that. I'm just throwing out. How  
15 about to university, or community college, again, well  
16 defined in like medium counties.

17 I'm trying to think of something that is less  
18 fraught with controversy as to what fits the definition.  
19 Is a community college is a community college. A  
20 technical institute for higher education, because we all  
21 want that. I don't know. I'm brainstorming, but I  
22 think if we get out of grocery store and find something  
23 that's a little bit more permanent and well defined we  
24 might get away from --

25 BY CINDY MEYER-WEBB: Here -- Here's the risk.

1 The risk is that -- that a member of the development  
2 community decides that there is a 4500 square foot  
3 something that -- that Florida Housing or its  
4 underwriter decides is not a grocery store, and you  
5 don't get points for it.

6 BY DAVID DEUTCH: Right.

7 BY CINDY MEYER-WEBB: So, frankly, the risk is  
8 the developer that tries to game the system with calling  
9 a, you know, Seven Eleven a grocery store, I mean, I  
10 think when it finally comes down to it, that if someone  
11 were to end up at -- at a hearing with an ALJ and tried  
12 to make the argument of the grocery store being, you  
13 know, a car repair shop that had, you know, what do you  
14 call it, vending machines outside, that -- that at some  
15 point they are going to say, no, that's ridiculous. A  
16 grocery store is a grocery store.

17 BY DAVID DEUTCH: But I think it's going to  
18 be -- I agree with you. Okay? When you talk about an  
19 auto repair versus -- But I think it's going to be --  
20 it's going to be a lot rarer and a lot finer than that  
21 when it's the difference between your deal getting  
22 funded and the guy above you scored higher and his --  
23 You know, it's going to be that nuance. It's not going  
24 to be as dramatic as what you just described, and that  
25 4500 square foot thing is subjective. It's not

1 objective. It's not.

2 BY KEREY CARPENTER: Well, if we explain  
3 exactly 4500 square feet of instead of dedicated grocery  
4 products, but we just say 4500 square feet of interior  
5 space, and make it very finite, I don't think that  
6 that's so subjective. I think it's going to matter. I  
7 guess when somebody has submitted, who's going to  
8 measure? Whoever calls will probably be out there  
9 measuring. I don't know.

10 BY DAVID DEUTCH: Maybe education, maybe  
11 employment. I don't know. I'm brainstorming. That's  
12 just something -- That's all I can think of right now.

13 BY MARK HENDRICKSON: I want to talk about  
14 Local Bonds instead of grocery stores, but a lot of the  
15 exceptions that people are talking about, that's why you  
16 created the urban in-fill set-aside.

17 BY KEREY CARPENTER: That's right.

18 BY MARK HENDRICKSON: They, you know, they  
19 have limitations and you recognize that are in-fill  
20 deals that they can't do. That's why you have the  
21 highrise set-aside. So if we're going to give them a  
22 pass on everything else and get rid of the set-asides,  
23 you know, they won't need it anymore. So you -- you  
24 don't have to make your scoring system neutral to the  
25 ones that you create set-asides. That's why you did it.