

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

AUBURN WOODS, LTD.,

FHFC CASE NO.: 2002-0043
APPLICATION NO. 2002-704H

and

CYPRESS POINTE,
Petitioners,

FHFC CASE NO.: 2002-0042
APPLICATION NO. 2002-703H

v.

FLORIDA HOUSING FINANCE
CORPORATION,
Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, on September 18, 2002, an informal administrative hearing was held in this 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:

David A. Barrett
Barrett and Associates, Lawyers
P.O. Box 930
Tallahassee, Florida 32302-0930

For Respondent:

Laura J. Cox, Assistant General Counsel
Florida Housing Finance Corporation
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EXHIBITS

Exhibit A: Portion of Petitioner's Cure for Part III, section F of the HOME Rental Application # 2002- 704H consisting of letter from property appraiser.

Exhibit B: Portion of Petitioner's Cure for Part III, section F of the HOME Rental Application # 2002- 703H consisting of letter from property appraiser.

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioners submitted an application to Florida Housing for HOME Rental Program funds in the 2002 Universal Cycle. On July 22, 2002, Florida Housing notified Petitioners of the results of the scoring of Petitioners' Applications and provided Petitioners with a Notice of Rights pursuant to Sections 120.569 and 120.57, Fla. Stat. On August 13, 2002 Petitioners timely filed their Petitions for informal hearings. On September 18, 2002 a motion was granted to consolidate Petitioners' hearings. An informal hearing was conducted pursuant to Sections 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 Petitioners' Applications for a HOME program loan in the 2002 Universal Cycle. Specifically, whether Petitioners failed to qualify for the exemption of ad valorem taxes as a source of match funds to achieve the maximum of five (5) match points.

FINDINGS OF FACT

1. On or before April 15, 2002, Petitioners submitted Applications to Florida Housing for the award of funds from the HOME program for the development of affordable rental housing in the 2002 Universal Cycle.

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.

3. Florida Housing receives its funds for the HOME program from an allocation from the HOME federal grant administered by the U.S. Department of Housing & Urban Development (HUD). Pursuant to the Notice of Fund Availability published in Florida Administrative Weekly on January 18, 2002, there was \$21,320,100 available to fund HOME applications in the 2002 Universal Cycle.

4. Pursuant to statutory mandate, Florida Housing has established by rule a competitive application process to evaluate, score and competitively rank all applicants. (See Section 420.5089 (2), Fla. Stat. and Fla. Admin. Code R. 67-48 *et. al.*). Awards for the HOME Investment Partnership program are included in a single application process (the "Universal Cycle") governed by Fla. Admin. Code R. 67-48 *et. al.*

5. The 2002 HOME Application, and instructions for completion, adopted as Form HOMER1015 by Fla. Admin. Code R. 67-48.002(61), contains parts I through VI, some of

which are not applicable to every Applicant. 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. 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.

6. After Petitioners submitted their 2002 HOME Applications, on or before April 15, 2002, Florida Housing’s staff commenced scoring the Applications pursuant to Part V, Chapter 420, Fla. Stat., and Fla. Admin. Code R. 67-48 *et. al.* Florida Housing completed the scoring process on May 13, 2002. After performing preliminary scoring, Florida Housing’s staff notified Petitioners of the results.

7. Any applicant could question the scoring of Petitioners’ Applications if it believed Florida Housing had made a scoring error, within ten calendar days after the date the Applicants received the preliminary scores by filing a Notice of Possible Scoring Error (“NOPSE”).

8. Florida Housing reviewed each NOPSE that was timely received. On June 10, 2002, Florida Housing sent Petitioners any NOPSE relating to its Application submitted by other applicants and Florida Housing’s position on any NOPSE.

9. Petitioners could submit additional documentation, revised forms, and other information that they 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”).

10. After Petitioners submitted their cures, all applicants had an opportunity to review Petitioners’ cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies (“NOAD”) to challenge the Petitioners’ cures. Numerous NOADs were filed on Petitioners’ Applications questioning Petitioners’ cures to Part III, Section F, Match and Exhibit 28. Specifically, whether Petitioners are entitled to ad valorem tax exemptions under the applicable Florida Statutes, including the Affordable Housing Property Exemption in Section 196.1978 Fla. Stat.

11. The property appraisers’ letters provided in the Petitioners’ cures stated, “This is not a grant of exemption.” The letters provide the exempt status will be a determination made after reviewing the required applications and the applicants’ status as a charitable non-profit 501 (c)(3) corporation as provided by statute. (Exhibits A and B).

12. The properties that are the subject of the waiver of ad valorem taxes are owned by a limited partnership, whose partners are: 1) a 501(c)(3) corporation Limited Partner with 99.90% ownership, and 2) a 501 (c)(3) corporation General Partner with .051% ownership and a for-profit corporation General Partner with .049% ownership, whose sole shareholder is a 501(c)(3) corporation. (Transcript)

13. Florida Housing found that Petitioners’ cures for items 9S did not “qualify for the waiver of ad valorem taxes.” (Transcript).

14. Following this process, Florida Housing on July 22, 2002, sent Pre-Appeal Scores and a Notice of Rights to Petitioners, informing Petitioners that they could contest Florida Housing's actions in accordance with the provisions of Sections 120.569 and 120.57, Fla. Stat.

15. Petitioners timely requested an informal hearing by filing their "Petition for Informal Proceeding in Accordance with Sections 120.569 and 120.57(2), Florida Statutes," on August 13, 2002.

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and Fla. Admin. Code R. 67-47 *et. al.*, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. In evaluating and scoring the property appraiser letters, Florida Housing made the reasonable determinations that the letters were not a grant of exemption but predicated upon the status of the applicants as provided by the governing statutes applicable to exemption of ad valorem taxes.

3. Section 196.1978 Fla. Stat. provides:

Property used to provide affordable housing serving eligible persons as defined by s. 159.603(7) and persons meeting income limits specified in s. 420.0004(9), (10), and (14), which property is owned entirely by a nonprofit entity which is qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and which complies with Rev. Proc. 96-32, 1996-1 C.B. 717, shall be considered property owned by an exempt entity and used for a charitable purpose, and those portions of the affordable housing property which provide housing to individuals with incomes as defined in s. 420.0004(9) and (14) shall be exempt from ad valorem taxation to the extent authorized in s. 196.196. All property

identified in this section shall comply with the criteria for determination of exempt status to be applied by property appraisers on an annual basis as defined in s. 196.195. The Legislature intends that any property owned by a limited liability company which is disregarded as an entity for federal income tax purposes pursuant to Treasury Regulation 301.7701-3(b)(1)(ii) shall be treated as owned by its sole member.

4. Florida Housing reasonably determined Petitioners' properties which are owned by a limited partnership, whose partners are: 1) a 501(c)(3) corporation Limited Partner with 99.90% ownership; 2) a 501 (c)(3) corporation General Partner with .051% ownership; and a for-profit corporation General Partner, with .049% ownership, whose sole shareholder is a 501(c)(3) corporation are not properties owned by exempt entities as required in Section 196.1978 Fla. Stat.

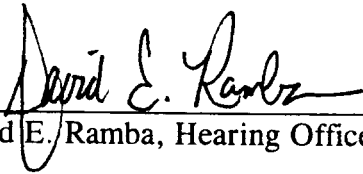
5. Florida Housing's determination that Petitioners failed to qualify for the exemption of ad valorem taxes as a source of match funds therefore failing to achieve maximum match points is neither clearly erroneous nor unreasonable.

RECOMMENDED

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

That Florida Housing Finance Corporation enters a final order affirming Florida Housing's scoring of Petitioner's Applications on Part III, Sec. F, of the HOME Rental Application, finding that Petitioners failed to qualify for the exemption of ad valorem taxes as a source of match funds.

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



David E. Ramba, Hearing Officer

Copies Furnished:

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