

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

AUBURN WOODS, LTD.

Petitioner,

vs.

Case No: _____

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION FOR
INFORMAL ADMINISTRATIVE HEARING**

Petitioner, AUBURN WOODS, LTD. ("Auburn Woods"), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and Rules 67-48.005 and 28-106.301, Florida Administrative Code ("F.A.C."), hereby requests an informal administrative hearing to challenge the scoring of its 2002 Home Rental application by Respondent, the FLORIDA HOUSING FINANCE CORPORATION ("FHFC"), and states:

1. The name and address of the agency affected by this action are:

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

2. The address and telephone number of the Petitioner are:

Auburn Woods, Ltd
1520-360 Royal Palm Square Boulevard
Fort Myers, Florida 33919
Telephone #: (941) 275-8029

3. The name, address, telephone number, and fax number of the Petitioner's

representative, which shall be the address for service purposes during the course of this proceeding, are:

David A. Barrett
Barrett and Associates, Lawyers
P.O. Box 930
Tallahassee, Florida 32302-0930
Telephone #: 850/222-9000
Fax #: 850/222-9892

The Low-Income Housing Tax Credit Program/ HOME Rental Programs

1. To encourage the development of housing for low-income families, state agencies award low interest loans to developers of affordable, multi-family housing. Once awarded to a particular developer for a qualified housing project, these low interest loans are used by the developer for much of the funding necessary for construction.
2. Pursuant to section 420.5099, Florida Statutes, FHFC is the designated “housing credit agency” for the State of Florida and administers the HOME Rental low interest loan program (“the HOME Rental program”). Through this program, FHFC awards low interest rate loans to developers of affordable housing.
3. To assess the relative merit of proposed projects, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. Specifically, FHFC’s process involves: (a) FHFC’s annual publication and adoption by rule of an application package; (b) the submission of completed applications; (c) FHFC’s preliminary scoring and ranking of applications; (d) an initial administrative challenge in which an applicant may take issue with FHFC’s scoring of another application by filing a Notice of Possible Scoring Error (“NOPSE”); (e) notice from FHFC to applicants of any resulting point deductions; (f) an opportunity to submit additional materials to

“cure” items for which the applicant received less than the maximum available score; (g) a second administrative appeal process whereby an applicant may raise scoring issues arising from another applicant’s cure materials by filing a Notice of Alleged Deficiency (“NOAD”); (h) FHFC’s pre-appeal scoring and ranking of applications; (i) resolution of any remaining alleged scoring errors via informal or formal administrative hearings; and (j) final scores, ranking, and allocation of tax credits established by final order. See Rules 67-48.004 and 67-48.005, F.A.C.

Auburn Woods’ 2002 HOME Rental Application

4. On or about April 12, 2002, Auburn Woods (FHFC # 2002-704H) and others submitted applications for HOME Rental credit funding in the 2002 Cycle. Auburn Woods requested approximately \$4,300,000.00 in low interest rate loans to help finance its project, Auburn Woods, a 72-unit project in Baker County, Florida.

5. Following the submissions, FHFC staff evaluated all HOME Rental applications, with preliminary scores awarded to each pursuant to criteria contained in the application package. See Rule 67-48.004(8), F.A.C. (“The Application Package shall be evaluated and preliminarily scored using the factors specified in the Application Package”). Applicants then filed NOPSE’s challenging FHFC’s preliminary scoring of competing applications. After considering all NOPSE’s, FHFC notified applicants of any resulting point deductions, and cure materials were submitted to correct these alleged deficiencies. Applicants were given until July 8th, 2002 to file Notice of Alleged Deficiency (“NOAD”) forms challenging other applicants’ cures.

6. On July 22nd, 2002, after FHFC considered all NOAD’s, Auburn Woods and the other applicants received notice of their final scores. As more fully set forth below, FHFC made several errors in the final scoring of Auburn Woods’ application that diminish its chance to receive

HOME Rental low interest rate funding. As such, Auburn Woods' substantial interests have been materially and adversely affected by FHFC's actions.

Explanation of Property Tax Exemption Matching Points

7. In an effort to encourage non-profit low income housing, FHFC provides match points which correspond with the percentage of local government or other contributions that can be shown by the applicant toward the construction of their particular project. These contributions can be cash contributions or other in kind contributions, such as property tax exemptions. Applicants receive points for the percentage of match contribution the project is to receive, up to a maximum of 5 points if the Applicant secures match contributions exceeding 25% of the requested HOME loan.

8. To maximize their match points, many of the applicants for the 2002 Cycle submitted letters from the property tax appraisers for the county in which the applicants planned on constructing their projects wherein they were awarded a property tax exemption over the next 50 years based upon the project being owned entirely by a non-profit entity pursuant to section 196.1978, Florida Statutes. See section 196.1978, Fla. Stat. (2001). The tax exemption was then reduced to a present value and if that present value, coupled with other project contributions, if any, allowed the match contributions to meet or exceed 25% of the requested funding, then FHFC would award full match points of 5 to the applicant's application.

9. Auburn Woods only received partial match points prior to the cure period.

10. Auburn Woods' ownership was comprised as follows: 99.9% to the Limited Partner Lee County Housing Development Corp. (a non-profit entity); 0.051% to the General Partner Lee County Housing Development Corp. (a non-profit entity); and 0.049% to the General Partner

Auburn Woods, Inc. (a for profit entity with two shareholders). During the cure period, the two shareholders of Auburn Woods, Inc. transferred all of their shares and interest to Lee County Housing Development Corp. and therefore the entire ownership of the property was and is now vested in the non-profit entity of Lee County Housing Development Corp.

11. Auburn Woods provided FHFC with copies of all the relevant documentation of the share transfer showing that the ownership was vested entirely in the non-profit entity of Lee County Housing Development Corp. Auburn Woods further provided FHFC with a copy of the letter from the Baker County property tax appraiser showing that the property would be exempt from property taxes for the next 50 years, which was then reduced to a present value. The Baker County property tax appraiser's letter was in the exact form as the letters from other property tax appraisers submitted by other applicants and accepted by FHFC.

12. FHFC, however, failed to accept the letter and award the match points alleging that because Auburn Woods, Inc. was not formed as a non-profit entity, that the ownership of the property was not appropriate for the property tax exemption pursuant to the statute.

13. The ownership of the project clearly falls within the definition of section 195.1975, Florida Statutes, and the property tax appraiser accepts the same as being exempt.

14. On its cure forms, Auburn Woods explained the ownership transfer and that no part of the project was owned or controlled by any for profit entity. The two shareholders of Auburn Woods, Inc. transferred their entire interest to the non-profit entity Lee County Housing Development Corp., which also is the limited partner and other general partner in the project. Thus, the property is owned entirely by a non-profit entity and FHFC should accept it as such.


15. Respectfully, FHFC's position is in error.

16. Respectfully, for the reasons set forth above, the failure to award full match points to Auburn Woods on this rationale is unreasonable, unjustified, and unlawful, and FHFC should award full match points to Auburn Woods' final score.

WHEREFORE, Petitioner, Auburn Woods requests that:

- a. FHFC increase Auburn Woods final score by the full amount of match points;
- b. FHFC conduct an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;
- c. FHFC forward this Petition to DOAH for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein;
- d. FHFC's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order increasing Auburn Woods' score by 4.95 points, (to the full award of match points);
- e. FHFC enter a Final Order increasing Auburn Woods' score by 4.95 points, (to the full award of match points); and
- f. Auburn Woods be granted such other and further relief as may be deemed just and proper.

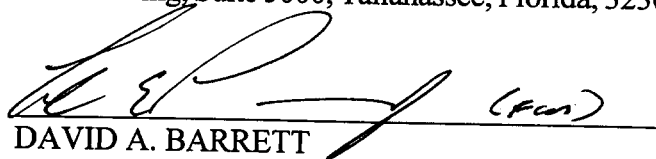
Respectfully submitted on this 13th day of August, 2002.


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850/222-9892 (Fax)
Attorneys for Auburn Woods, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing document were served via hand delivery to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 13th day of August, 2002.


DAVID A. BARRETT