

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

CAMELLIA POINTE, LTD.,

Petitioner,

vs.

Applicant No. 2002-118C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR REVIEW

Pursuant to Section 120.56(4), .569, and .57, *Florida Statutes* ("F.S."), and Rule 67-48.005, *Florida Administrative Code* ("F.A.C."), Petitioner, CAMELLIA POINTE, LTD. ("Camellia"), requests an administrative hearing to review and contest the FLORIDA HOUSING FINANCE CORPORATION's ("FHFC") scoring of Camellia's 2002 Universal Application ("Application"). In support of this Petition, Camellia provides as follows:

1. Camellia is a Florida for-profit limited partnership with its address at 800 Highland Avenue, Suite 200, Orlando, FL 32803-3907. Camellia is in the business of providing affordable rental housing units.
2. FHFC is the state agency delegated the authority and responsibility for administering and awarding the Housing Credit ("HC") program in the State of Florida pursuant to Chapter 420, F.S., and Rule 67-48, F.A.C.
3. The HC program is a federally funded program, which awards project owners a dollar-for-dollar reduction in income tax liability in exchange for the

acquisition and substantial rehabilitation or new construction of low and very low-income rental housing units. FHFC is the designated housing credit agency for the allocation of tax credits in the State of Florida.

4. The award of HC funds is made through a competitive process in which project owners apply using a Universal Application.

5. The 2002 Universal Application is comprised of numerous forms, which request information of each applicant. FHFC has adopted the forms by reference in Rule 67-48.004(1), F.A.C.

6. On April 15, 2002, all applicants, including Camellia, submitted Universal Applications to FHFC for review. Camellia submitted its Application in an attempt to obtain funding to assist in the construction of a 169-unit affordable housing apartment complex in Orange County, Florida.

7. To review and score the applications, FHFC in Rule 67-48.004, F.A.C., has established a multi-step scoring process, which at least initially allows all applicants to point out errors that FHFC may have missed. Additionally, the process allows applicants to correct errors and omissions made during the preparation of the application. The process concludes with the entry of Final Scores.

8. On May 13, 2002, FHFC completed its preliminary review and scoring of Camellia's Application. At that time, Camellia was awarded a preliminary score of 61 points out of a possible 71 points and 7.5 proximity points were awarded.

9. Subsequent to the release of FHFC's preliminary scores, each applicant, pursuant to Rule 67-48.004(4), F.A.C., was allowed to submit to FHFC Notice of

Possible Scoring Errors ("NOPSE"). The purpose of a NOPSE was to point out errors in FHFC's scoring of applications. At least one NOPSE was filed regarding Camellia's application, but none related to the location of the tie-breaker point. Despite the fact that no NOPSE was filed, FHFC revised the tie-breaker score to 0 points.

10. In response to the NOPSE's and FHFC's preliminary review, applicants were allowed 15 days to submit revised documentation to correct any errors in their applications pursuant to Rule 67-48.004(6), F.A.C. All revised documentation was due to FHFC by June 26, 2002. Camellia submitted numerous "cures."

11. Subsequent to the submittal of revised information pursuant to Rule 67-48.004(7), F.A.C., each applicant was allowed the opportunity to provide a Notice of Alleged Deficiency in Scoring ("NOAD") with respect to the revised documentation submitted by other applicants. There were no NOADs submitted regarding Camellia's cures.

12. On July 22, 2002, FHFC finalized its review of the revised documentation and all NOADs and issued Final Scores. Camellia's Final Score was 71 out of a possible 71 points.

13. In addition to the 71 possible points available, the Universal Application allows applicants to earn up to 7.5 tie-breaker points. The tie-breaker points are based upon the proposed project's proximity to specified local services, including grocery stores, public schools, medical facilities, bus or metro rail stops, and other affordable housing developments funded by FHFC. Camellia was initially awarded all available tie-breaker points by FHFC. However, after the NOPSE period, and despite the fact that no

NOPSE was filed challenging the tie-breaker point, FHFC rescinded those tie-breaker points, allegedly because of the filing of a NOPSE.

14. Camellia's position in the ranking and its ability to be awarded funding is dependent on how FHFC scores its Application. The ability to finance the proposed project will be jeopardized if funding is not obtained; accordingly, Camellia's substantial interests are affected by this proceeding. In the instant appeal, Camellia challenges FHFC's scoring of its ability to proceed (evidence of site plan and zoning) and FHFC's conclusion as to the appropriateness of the location of its Tie-Breaker Measurement Point.

TIE-BREAKER PROXIMITY POINT

15. The Universal Application Instructions at page 9 explain the procedure for how an applicant may obtain tie-breaker points. As the name indicates, these points are to be used to break ties among competing applications. Specifically, to determine proximity an applicant must initially identify a "Tie-Breaker Measurement Point" on the proposed "Development Site" and provide the latitude and longitude coordinates determined in degrees and minutes truncated after three decimals. Neither the Universal Application, Universal Application Instructions, nor Rule 67-48, F.A.C. define "Development Site". One can logically conclude however that it is the site upon which the development will occur.

16. The Universal Application further requires an applicant to include as an application exhibit a Surveyor Certification form, which includes a defined Tie-Breaker Measurement Point and a latitude and longitude for all claimed amenities. As to the

Tie-Breaker Measurement Point, the Surveyor Certification form defines the point as a single point selected by the Applicant on the proposed Development Site that is located "within 100 feet of a residential building existing or to be constructed as part of the proposed development." This same language is found at Rule 67-48.002(113), F.A.C.

17. In response, Camellia submitted a Surveyor Certification signed by a licensed Florida surveyor (see Exhibit A). The Surveyor Certification included a map showing the boundaries of the proposed Development Site and the actual location of the Tie-Breaker Measurement Point on the Development Site. The Universal Application does not require the submittal of a site plan, which shows the location of residential buildings.

18. In its preliminary scoring of the Application, FHFC awarded Camellia 3.75 points for its proximity to a grocery store, public school and bus or metro rail stop. Additionally, 3.75 points were awarded for its proximity to other affordable housing projects. Subsequent to its preliminary scoring, FHFC, on June 10, 2002, revised Camellia's score to rescind all tie-breaker points previously awarded. FHFC's 2002 Universal Scoring Summary dated June 18, 2002, indicated that the revision in score is based on the filing of a NOPSE against Camellia. Specifically, the 2002 Universal Scoring Summary dated June 10, 2002, provided that:

The Tie-breaker Measurement Point cannot be located within 100 feet of a residential building and therefore is not a valid Tie-Breaker Measurement Point. The Tie-Breaker Measurement Point is not located on the true development site; it is located at the end of a long, narrow stretch of land designed for the apparent purpose of gaining points that the applicant would not otherwise be entitled to.

19. In response to FHFC's scoring action, Camellia on June 26, 2002, submitted a cure, which clarified and explained that the Tie-Breaker Measurement Point was indeed to be located within 100 feet of a planned residential unit. Despite this clarification, FHFC in its Final Score failed to award Camellia all available tie-breaker points. Interestingly enough, FHFC's justification for the reduction as expressed in the 2002 Universal Scoring Summary dated July 22, 2002, is based solely on the fact that the Tie-Breaker Measurement Point is not on the "true Development Site". The objection related to being within 100-feet from a residential unit scoring issue was removed, which implies that FHFC concedes that the Tie-Breaker Measurement Point will be within 100 feet of a residential unit. FHFC's scoring decision is erroneous for several reasons.

20. Initially, contrary to FHFC's 2002 Universal Scoring Summary dated June 10, 2002, no NOPSE or NOAD was filed against Camellia which raised the Tie-Breaker Measurement Point location issue. The scoring system established by FHFC at Rule 67-48.004, F.A.C., clearly indicates that point reductions must be based on FHFC's preliminary review, a properly filed NOPSE, a properly filed NOAD, or an inconsistency caused by the submittal of a cure. As indicated previously, FHFC in its preliminary score awarded all available tie-breaker points. Further, no inconsistency resulted from any cure submitted by Camellia. Apparently, FHFC of its own accord rescored Camellia's application based on another NOPSE, which raised other issues with another application. There is no specific authority in Rule 67-48, (F.A.C.) which allows FHFC to take this action.

21. Additionally, FHFC in its Universal Scoring Summary dated July 22, 2002, indicates that the Tie-Breaker Measurement Point selected by Camellia is not on the "true Development Site." Neither the Universal Application, the Universal Application Instructions, nor Rule 67-48, F.A.C., requires that the proximity point be on the "true Development Site." Ironically, "true Development Site" is neither defined nor even mentioned in the Universal Application Instructions, the Universal Application or Rule 67-48, F.A.C. In response to a public records request, FHFC concedes that no memos or correspondence exist which define "true Development Site".

22. Apparently, this agency statement "true Development Site" has generally been applied during this year's funding cycle, and imposes a requirement not specifically found in the Universal Application or Rule 67-48, F.A.C. FHFC has not adopted this agency statement as required by Chapter 120, F.S.

23. The Universal Application and Rule 67-48, F.A.C., only require that the selected Tie-Breaker Measurement Point be located on the "Development Site" no more than 100 feet from a residential unit. FHFC, by revising its various Universal Scoring Summaries, has conceded at least that Camellia's point is within 100 feet of a residential unit. In the instant case, Camellia has selected a Tie-Breaker Measurement Point that is within 100 feet of a residential unit. The site plan for the development makes this conclusion clear. Contrary to FHFC's conclusion that the long, narrow stretch of land was designed to obtain points, the land actually provides the access to and from the property. In essence, what FHFC fails to recognize is that the strip of land

in question is the driveway for the project and will include at least one 2-bedroom residential unit at the entrance.

24. Challenges to other Applications were made solely on FHFC's Universal Application Rule requirement that the tie-breaker point be located within 100 feet of a building, not on the cleverness of the location of the tie-breaker measurement point. FHFC is apparently offended that Camellia chose the most advantageous point on the property for the Tie-Breaker Measurement Point. Because FHFC gave each applicant the right to make the decision as to the location of the Tie-Breaker Measurement Point (within the 100-foot on-site limit), one can only assume that every applicant selected the Tie-Breaker Measurement Point that generated the most points. That this is proper and obvious to all applicants is illustrated by the fact that no competitor filed either a NOPSE or NOAD challenging Camellia's Tie-Breaker Measurement Point, including the competitor who lost Tie-Breaker Measurement Points due to NOPSE's related to the location of the tie-breaker point on a narrow strip of land where the point could not be located within 100 feet of a building. FHFC should award 7.5 tie-breaker points to Camellia.

LOCAL GOVERNMENT VERIFICATION

25. The application at Part III(c) requires an applicant to submit an executed Local Government Verification of Status of Site Plan Approval. In response to this requirement, Camellia on April 15, 2002, submitted a fully executed Verification signed by John Smogor, Assistant Planning Manager.

26. The verification clearly indicates the proposed development conceptual site plan was approved by action of the Orange County Planning Department. In response to this verification, FHFC, as a result of its preliminary scoring, found that Camellia satisfied the threshold requirement. On July 22, 2002, FHFC issued Final Scores, which found that Camellia had satisfied the requirement.

27. On July 26, 2002, FHFC issued a revised 2002 Universal Scoring Summary, which concluded that Camellia failed to comply with a threshold criterion because "FHFC received notice from the Orange County Planning Division stating that it had retracted its signature on the Local Government Verification of Status of Site Plan." Apparently, FHFC received a letter dated June 7, 2002, sometime between June 7, 2002 and July 26, 2002. A faxed copy of the letter from FHFC's file indicates a faxed date of July 11, 2002. FHFC's rescoring of Camellia's Application is erroneous for several reasons.

28. Initially, FHFC lacks the authority to revise a Final Score after it has been issued. While the Universal Application provides that Florida Housing staff may verify site plan approval or plat approval during "the scoring process." That scoring process necessarily ended with the issuance of Final Scores. Any remaining issues regarding zoning are to be addressed at the underwriting stage pursuant to Rule 67-48.026, F.A.C.

29. Additionally, FHFC apparently received the letter sometime prior to July 22, 2002, but refrained from making a scoring decision until July 26, 2002. Indeed, Camellia believes that the June 7, 2002, letter was written in error; however, FHFC apparently did not communicate with the County or Camellia to ascertain the

significance of the letter. At the time of filing of this Petition, Camellia and the County are working to resolve the verification issue.

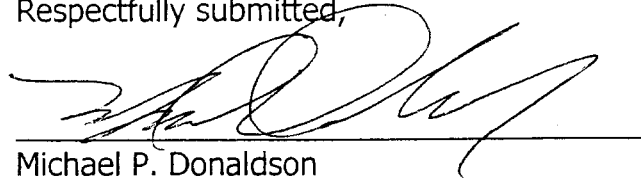
30. The material issues of fact and conclusions of law in the instant proceeding are as follows:

- a. Whether FHFC erred in scoring and awarding Camellia's tie-breaker proximity points.
- b. Whether the Tie-Breaker Measurement Point submitted by Camellia is on the Development Site within 100 feet of a residential unit.
- c. Whether the Universal Application or Rule 67-48 F.A.C. requires that a Tie-Breaker Measurement Point be located on the "true Development Site."
- d. Whether FHFC has properly adopted the agency statement "true Development Site."
- e. Whether Rule 67-48, F.A.C. allows FHFC after its preliminary scoring to revise a score of an application where no NOPSE or NOAD has been filed against a specific application.
- f. Whether FHFC has the authority to revise an application score after the Final Scores were issued on July 22, 2002.
- g. Whether Camellia's application has satisfied threshold requirements.

WHEREFORE, based on the foregoing, Camellia respectfully requests, to the extent the facts are undisputed, a recommended order be entered which finds that the Application has met threshold and further awards 7.50 tie-breaker points. To the

extent facts are in dispute, Camellia requests a formal administrative hearing to contest those disputed facts.

Respectfully submitted,

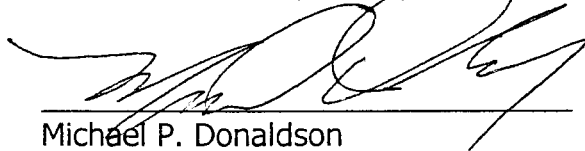


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Attorneys for Petitioner,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301, and a copy furnished by Hand Delivery to Wellington H. Meffert, II, General Counsel, Florida Housing Finance Corporation, 227 N. Bronough St., Suite 5000, Tallahassee, FL 32301, this 13th day of August, 2002.



Michael P. Donaldson

ELECTION OF RIGHTS

Application Number: 2002-118C

Development Name: Camellia Pointe, Ltd.

1. [] I do not desire a proceeding.

2. [] I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):

[] submit a written statement and documentary evidence; or

[] attend an informal hearing to be held in Tallahassee.

Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

3. [X] I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

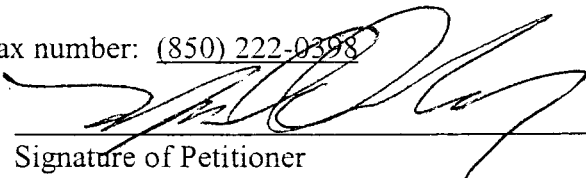
Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. Formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	<u>A.M.</u>	<u>P.M.</u>	Hearing Dates:	<u>A.M.</u>	<u>P.M.</u>	Hearing Dates:	<u>A.M.</u>	<u>P.M.</u>
August 29, 2002	___	___	September 9, 2002	___	___	September 17, 2002	<u>8</u>	<u>7</u>
August 30, 2002	___	___	September 10, 2002	___	___	September 18, 2002	<u>6</u>	<u>5</u>
September 3, 2002	___	___	September 11, 2002	___	___	September 19, 2002	<u>4</u>	<u>3</u>
September 4, 2002	___	___	September 12, 2002	___	___	September 20, 2002	<u>2</u>	<u>1</u>
September 5, 2002	___	___	September 13, 2002	___	___			
September 6, 2002	___	___	September 16, 2002	___	___			

Please fax a Hearing Schedule to me at this fax number: (850) 222-0398

DATE: August 13, 2002



Signature of Petitioner

Michael P. Donaldson

Name: _____ For: Camellia Pointe, Ltd.

Address: P.O. Drawer 190

Tallahassee, FL 32302

Phone: (850) 224-1585

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN (21) DAYS OF RECEIPT OF THIS NOTICE TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.