

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

LEGACY LAKES OF STUART, LTD,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC CASE NO.: 2002-0053

APPLICATION NO.: 2002-092B

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FLORIDA HOUSING FINANCE CORPORATION

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 Multi-Family Mortgage Revenue Bonds. Petitioner timely filed a Petition for Review, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the “Petition”) 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 20, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, Christopher H. Bentley. 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 for failure to meet the threshold requirements set forth in Part III.C.4 of the Universal Application.

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.

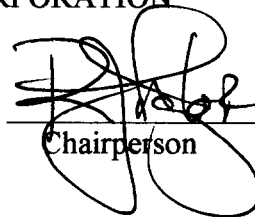
2. The conclusions of law of the Recommended Order are adopted in full as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Final Order.

3. The Hearing Officer's recommendation that a Final Order be entered affirming the rejection of Petitioner's Application for failure to meet the threshold requirements set forth in Part III.C.4 of the Universal Application is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner's Application is rejected for failure to meet the threshold requirements set forth in Part III.C.4 of the Universal Application

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:

Paula C. Reeves
Authorized Representative
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Michael P. Donaldson, Esq.
Carlton Fields, PA
P.O. Drawer 190
Tallahassee, FL 32302

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

LEGACY LAKES OF STUART, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2002-0053
Application No. 2002-092B**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in the above styled case on September 20, 2002.

APPEARANCES

For Petitioner, Legacy Lakes
of Stuart, Ltd.:

Michael P. Donaldson, Esq.
Carlton Fields
P. O. Drawer 190
Tallahassee, FL 32302-0190

For Respondent, Florida Housing
Finance Corporation:

Paula C. Reeves
Office of the General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

EXHIBIT

A

STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The issue in this proceeding is whether the Petitioner has met the threshold requirement with regard to evidence of appropriate zoning in light of Petitioner's failure to include in either its initial Application or its cure documents, an Exhibit 28 executed by the appropriate local government official.

PRELIMINARY STATEMENT

At the commencement of the hearing the parties stipulated into evidence Joint Exhibits 1 through 6. At the outset of the informal hearing, a REQUEST FOR APPROVAL AS QUALIFIED REPRESENTATIVE on behalf of Paula C. Reeves, as a Qualified Representative for Respondent was considered and without objection the undersigned orally granted that request. Subsequent to the hearing, the parties timely submitted Proposed Recommended Orders.

FINDINGS OF FACT

1. Petitioner is a Florida for-profit partnership. Petitioner is in the business of providing affordable rental housing units.
2. Respondent is the state agency delegated the authority and responsibility for administering affordable housing programs in the State of Florida pursuant to

Chapter 420, F.S., and Rule 67-48, F.A.C., including the Multi-Family Revenue Bond Program (“Bond”).

3. The Bond program uses both taxable and tax-exempt bonds to provide below market rate loans to developers who agree to set aside a certain percentage of their apartment units for low-income residents.

4. As Respondent’s available pool of tax-exempt bond financing is limited, projects seeking such financing must compete for funding. Respondent has established a competitive application process to assess the relative merits of proposed projects.

5. The 2002 Universal Application and the Universal Application Instructions have been adopted as rules. Sections 67-48.002 and 67-21.002, F.A.C. The 2002 Universal Application is comprised of numerous parts. Some of those parts include “threshold items.” Failure to properly include a threshold item, or satisfy a threshold requirement, requires rejection of the Application. There is no dispute in this proceeding that the issue which is the subject to this proceeding involves a threshold item.

6. On or before April 15, 2002, Petitioner submitted to Respondent a MMRB Application for the 2002 funding cycle, to obtain below-market interest rate bonds and accompanying non-competitive housing tax credits, to aid in the proposed financing of Petitioner’s development.

7. On May 13, 2002, Respondent completed its preliminary review and scoring of Petitioner's Application. At that time, Petitioner was awarded a preliminary score of 67 points out of a possible 71 points.

8. Subsequent to the release of Respondent's preliminary scores, each applicant, pursuant to Rule 67-48.004(9), F.A.C., was allowed to submit to Respondent a Notice of Possible Errors ("NOPSE"). The purpose of the NOPSE was to point out errors in Respondent's scoring of applications. Several NOPSEs were filed regarding the scoring of Petitioner's Application.

9. Petitioner timely submitted numerous "CURES" in response to the NOPSEs in an attempt to receive maximum points.

10. The Universal Application Instructions, in Part III.C.4, entitled "Evidence of Appropriate Zoning (Threshold)," states in pertinent part that:

To demonstrate that the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use or that the proposed Development site is legally non-conforming, the Applicant must provide the appropriate verification form behind a tab labeled Exhibit 28.

11. A form for Exhibit 28 is provided by rule in the Universal Application. That form is entitled "LOCAL GOVERNMENT VERIFICATION THAT DEVELOPMENT IS CONSISTENT WITH ZONING AND LAND USE

REGULATIONS.” Exhibit 28 requires that the appropriate local government official certify that it is “true and correct” that:

The intended use is consistent with current land use regulations and the referenced zoning designation or, if the Development consists of rehabilitation, the intended use is permitted as a legally non-conforming use. To the best of my knowledge, there are no additional land use regulation hearings or approvals required to obtain the zoning classification or density described herein. Assuming compliance with the applicable land use regulations, there are no known conditions which would preclude construction or rehabilitation (as the case may be) of the referenced Development.

In its initial Application, Petitioner included Exhibit 28, but that exhibit is uncertified. It did not contain the signature and certification of the appropriate local official as required by the instructions on Exhibit 28.

12. During the CURE period, Petitioner submitted a Revised Exhibit 28. The Revised Exhibit 28 suffers from the same deficiency as the original Exhibit 28 in the initial Application. The Revised Exhibit 28 does not contain the signature of any appropriate local government official certifying to the truth and correctness of the statements set forth in Revised Exhibit 29.

13. The CURE document with regard to Revised Exhibit 28 contained what appears to be the argument of Petitioner with regard to why it should not have to comply with the requirement that Exhibit 28 be certified by the appropriate local

government official. The CURE with regard to Revised Exhibit 28 also contains a letter dated June 21, 2002, to Davis Heritage Ltd. from Monica Graziani, City Development Department, City of Stuart, Florida. That letter states in pertinent part:

The City is in receipt of your development application to build 217 multi-family units on 17.33 acres located on Central Parkway. (The City's records indicate that the subject property is zoned RPUD and CPUD and the proposal will require a rezoning Major PUD Amendment). As with any rezoning, the Major PUD amendment process requires public hearings before the LPA/PAB and the City Commission with prior notice to the neighboring property owners.

At this time, the form you have requested of the City "Local Government Verification that Development is Consistent with Zoning and Land Use Regulations" cannot be executed. With the advice of City Attorney Coffin, I have declined to sign the form. A rezoning "approved" by the City Commission is required to approve the proposed project.

14. It is undisputed by the parties that the property proposed to be developed is zoned RPUD and CPUD. It is undisputed that under the applicable ordinances and regulations of the City of Stuart, Petitioner's proposed development will require a rezoning in the nature of a Major PUD Amendment. It is undisputed by the parties that the Petitioner will have to file a rezoning application with the City. It is undisputed by the parties that with regard to such a rezoning application, the pertinent City ordinances/regulations provide that:

The City Commission may decide to deny the Application. When an Application is disapproved, the City Commission shall state the reasons for disapproval and indicate what further modifications to the master development plan or other submitted documents must be made for approval.

15. The Universal Application Instructions provide in Part III.C.1, entitled “Status of Site Plan Approval or Plat Approval (Threshold),” that “to achieve threshold, Applicant must provide the applicable Local Government verification form behind a tab labeled “Exhibit 22”.”

16. The Universal Application contains a form, adopted as a rule, which is Exhibit 22 to the Application and is entitled “LOCAL GOVERNMENT VERIFICATION OF STATUS OF PLAT APPROVAL FOR SINGLE-FAMILY DEVELOPMENTS.” The actual Exhibit 22 provided by Petitioner with its Application was not offered into evidence by either party and is not part of the record of this proceeding. No evidence has been offered in this proceeding with regards to the contents of Exhibit 22 filed by Petitioner with its initial Application.

CONCLUSIONS OF LAW

17. Pursuant to Sections 120.569 and 120.57(2) Florida Statutes, and Chapters 67-48 and 67-21, F.A.C., the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner’s substantial interests are

affected by the proposed action of the Respondent. Therefore, Petitioner has standing to bring this proceeding.

18. There is no dispute by the parties that the issue herein involving Exhibit 28 is a threshold issue.

19. Universal Application and Universal Application Instructions have been adopted as rules by Respondent. Sections 67-48.002 and 67-21.002, F.A.C.

20. The demonstration that the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use or that the proposed Development site is legally nonconforming by the submission of the appropriate verification of the local government as embodied in Exhibit 28 to the Application is a threshold item. Part III.C.4, Universal Application Instructions.

21. Rules 67-21.003(13) and 67-48.004(13), F.A.C., provide:

(13) The Corporation shall reject an Application if, following the submission of the additional documentation, revised pages and other information as the Applicant deems appropriate as described in subsection (6) above:

...

(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application Instructions....

...

22. The certifications required by Exhibit 22 and Exhibit 28 to the Universal Application are separate and distinctly different certifications. One cannot be substituted for the other. Thus, even if Petitioner has provided the certification required in Exhibit 22, it must nevertheless provide the certification required in Exhibit 28. Not only has Petitioner failed to provide the certification required in Exhibit 28, it has submitted undisputed documentation during the CURE process that the City of Stuart believes that under its requirements the proposed development will require a rezoning and that such rezoning will require public hearings. Further, it is undisputed that the City Commission of the City of Stuart may decide to deny the Application for rezoning.

23. For the foregoing reasons, Petitioner has failed to meet the threshold requirements set out in Part III.C.4 of the Universal Application.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that:

1. The Respondent should reject Petitioner's Application for failure to meet the threshold requirement set forth in Part III.C.4 of the Universal Application.

Respectfully submitted and entered this 22 day of October, 2002.

CHRIS H. BENTLEY
Hearing Officer for Florida Housing
Finance Corporation
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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing's Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on Monday, October 7, 2002. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.