

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ARBOR CREST, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2003-035
APPLICATION NO. 2003-093CS

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

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 9, 2003. On or before April 8, 2003, Arbor Crest, Ltd. (“Petitioner”) submitted its 2003 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for an allocation of funds from the State Apartment Incentive Loan Program. On August 8, 2003, Petitioner timely filed its Petition for Review of 2003 Universal Scoring Summary for Arbor Crest, Ltd., 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(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact. An informal hearing was held in this case on September 10, 2003, in Tallahassee, Florida, before Florida Housing’s designated Hearing Officer, Christopher H. Bentley. Petitioner and Respondent timely filed a Joint Proposed Recommended Order.

After consideration of the evidence, arguments, testimony presented at hearing, and the Joint Proposed Recommended Order, the Hearing Officer issued a Recommended Order. A true

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

M. J. S. / /DATE: 10/9/03

and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order finding that Petitioner is entitled to an award of 1.25 proximity tie-breaker points because of its location within one mile of a pharmacy.

RULING ON THE RECOMMENDED ORDER

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

ORDER

In accordance with the foregoing, it is hereby **ORDERED**:

1. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.

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

3. Accordingly, it is found and ordered that Petitioner is entitled to an award of 1.25 proximity tie-breaker points because of its location within one mile of a pharmacy.

IT IS HEREBY ORDERED that Petitioner's Application shall be scored and ranked as having 1.25 proximity tie-breaker points.

DONE and ORDERED this 9th day of October, 2003.

FLORIDA HOUSING FINANCE
CORPORATION

By: 

Chairperson

Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Kerey Carpenter
Deputy Development Officer
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Donna E. Blanton, Esquire
Radey, Thomas, Yon & Clark, P.A.
313 N. Monroe Street, Suite 200
Tallahassee, Florida 32301

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.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ARBOR CREST, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2003-035
Application No. 2003-093CS**

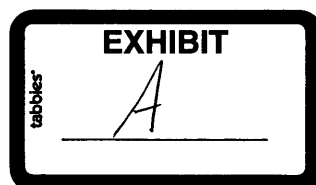
**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, an informal hearing was scheduled before the undersigned Hearing Officer on September 10, 2003. Prior to the hearing, the parties reached an agreement resolving the sole issue in dispute, and submitted to the undersigned Hearing Officer a Joint Proposed Recommended Order, which is attached hereto as Exhibit A. In essence, the parties agreed that Petitioner, ARBOR CREST, LTD., is entitled to an award of 1.25 proximity tie-breaker points because of its location within one mile of a pharmacy.

Based upon this agreement and the Joint Proposed Recommended Order, there is no need for additional Findings of Fact and/or Conclusions of Law, and the issues raised in the Petition are moot. Accordingly, no Findings of Fact or Conclusions of



Law are made herein. The parties jointly executed Joint Proposed Recommended Order is attached as Exhibit A.

Respectfully submitted and entered this 16th day of September, 2003.



CHRIS H. BENTLEY
Hearing Officer for Florida Housing
Finance Corporation
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

Copies furnished to:

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Donna E. Blanton, Esquire
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313 N. Monroe Street, Suite 200
Tallahassee, FL 32301

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

ARBOR CREST, LTD.

Petitioner,

vs.

Application No. 2003-093CS
2003 Universal Cycle

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

JOINT PROPOSED RECOMMENDED ORDER

Petitioner Arbor Crest, Ltd. ("Arbor Crest") and Respondent Florida Housing Finance Corporation ("Florida Housing") present the following Joint Proposed Recommended Order:

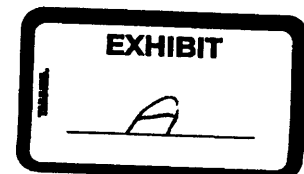
APPEARANCES

For Petitioner:

Donna E. Blanton
Radey Thomas Yon & Clark, P.A.
313 N. Monroe Street, Suite 200
Tallahassee, Florida 32301

For Respondent:

Wellington Meffert
General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329



PRELIMINARY STATEMENT

Arbor Crest timely filed an application with Florida Housing for Housing Credits and a SAIL Loan in the 2003 Universal Cycle in connection with the development of an apartment complex in Quincy, Florida. On July 21, 2003, Arbor Crest was provided notice through Florida Housing's Universal Scoring Summary that its cure relating to tie-breaker points concerning proximity to a pharmacy would not be considered because "the new information was submitted on a previously signed Surveyor Certification Form with no indication that the surveyor certified the additional information." Arbor Crest timely filed a petition for informal administrative hearing on August 8, 2003. The petition disputed Florida Housing's determination that Arbor Crest is entitled to only 0.75 tie-breaker points for its proximity to a pharmacy and sought entry of a Recommended Order finding that Arbor Crest is entitled to 1.25 such tie-breaker points. The parties agree that Arbor Crest has demonstrated that the information in its cure is correct and that Arbor Crest, therefore, is entitled to 1.25 tie-breaker points relating to its proximity to a pharmacy.

FINDINGS OF FACT

1. Arbor Crest timely submitted an Application to Florida Housing for Housing Credits and a SAIL Loan in the 2003 Universal Cycle in connection with a proposed 120-unit apartment complex in Quincy, Florida.

2. To encourage the development of low-income housing for families, Congress in 1987 created federal income Tax Credits that are allotted to each state, including Florida. Section 42 of the Internal Revenue Code governs this program. The Tax Credits equate to a dollar-for-dollar reduction of the holder's federal tax liability, which can be taken for up to ten years if the project satisfies the Internal Revenue Code's requirements each year. The developer

sells, or syndicates, the Tax Credits to generate a substantial portion of the funding necessary for the construction of the development.

3. Florida Housing is a public corporation organized pursuant to section 420.504, Florida Statutes, to provide and promote financing of affordable housing and related facilities in Florida. Florida Housing is an agency as defined in section 120.52, Florida Statutes, and, therefore, is subject to the provisions of Chapter 120, Florida Statutes.

4. Florida Housing is the statutorily created “housing credit agency” responsible for the allocation and distribution of low-income Tax Credits (also known as Housing Credits) in Florida. *See* § 420.5099, Fla. Stat. In this capacity, Florida Housing determines which entities will receive Housing Credits for financing the construction or rehabilitation of low-income housing.

5. Florida Housing administers the State Apartment Incentive Loan Program (SAIL) pursuant to section 420.5087, Florida Statutes.

6. Florida Housing is governed by a Board of Directors appointed by the Governor with the Secretary of the Department of Community Affairs sitting *ex-officio*.

7. Housing Credits and SAIL Loans are allocated by Florida Housing through a competitive application process. Applications are submitted to Florida Housing through a once-a-year process referred to as the Universal Cycle, which is governed by chapter 67-48, Florida Administrative Code.

8. The Universal Cycle is a single-application process for the Housing Credit program, the SAIL program, and the Home Investment Partnership Program operated by Florida Housing pursuant to section 420.5089, Florida Statutes, and federal Housing and Urban Development regulations.

9. Florida Housing uses a scoring process outlined in rule 67-48.004, Florida Administrative Code, and a Qualified Allocation Plan (QAP). The provisions of the QAP are adopted and incorporated by reference in rule 67-48.025, Florida Administrative Code. Pursuant to the QAP, Housing Credits are apportioned among the most populated counties, medium populated counties, and least populated counties. The QAP also establishes various set-asides and special targeting goals.

10. The 2003 Universal Application Package, adopted by rule 67-48.002(111), Florida Administrative Code, includes forms and instructions for applicants.

11. Some application requirements are “threshold” items, and failure to properly include a threshold item or satisfy a threshold requirement results in a rejection of the application. To provide a means of determining which applicants should rank higher when all threshold requirements are met and scores are identical, Florida Housing awards “tie-breaker” points for proposed developments that are in close proximity to certain services, such as a grocery store, school, pharmacy, or bus stop. *See* Universal Application at Part III.A.11.b. A maximum of 3.75 proximity tie-breaker points may be awarded.

12. Preliminary scores for all applicants were released by Florida Housing on May 12, 2003. Following consideration of comments submitted by other Applicants and further review of applications pursuant to rule 67-48.004(4) and (5), Florida Housing released NOPSE¹ scores on June 9, 2003. Applicants then were permitted to submit “cures” to problems identified in the NOPSE scores. *See* r. 67-48.004(6). Applicants also were allowed to comment on the “cures” submitted by competitors by filing Notices of Alleged Deficiencies (NOADs). *See* r. 67-48.004(7).

¹ NOPSE stands for Notice of Possible Scoring Error.

13. After review of NOADs, final scores were released by Florida Housing through a Universal Scoring Summary dated July 18, 2003. Each applicant received its own Universal Scoring Summary.

14. In its Application, Arbor Crest stated that it was located within one mile or less of a pharmacy, which would entitle the development to 1.25 tie-breaker points.

15. When preliminary scores were released by Florida Housing on May 12, 2003, Arbor Crest was awarded only 0.75 points for its proximity to a pharmacy. *See* Item # 4P.III.A.11.b.(4) of Florida Housing's Preliminary Scoring Summary for Arbor Crest. In its explanation for the scoring, Florida Housing stated that the "[a]ddress provided for the Pharmacy plots between 2 and 3 miles of the Tie-Breaker Measurement Point." *Id.* at Item # 4P.

16. In response to the Preliminary Scoring Summary, Arbor Crest submitted two cures relating to the pharmacy. Both cures included a signed Surveyor Certification Form stamped "Revised." Listed on the revised form was new information about the location of a Winn-Dixie pharmacy that is within one mile of the proposed development's tie-breaker measurement point.

17. When final scores were released in Arbor Crest's Universal Scoring Summary, Florida Housing again awarded Arbor Crest only 0.75 proximity tie-breaker points for its proximity to the pharmacy. In explanation, Florida Housing stated:

Applicant attempted to cure Item 4P, but the cure was not accepted because the new information was submitted on a previously signed Surveyor Certification Form with no indication that the surveyor certified the additional information.

See Universal Scoring Summary at Item # 1C.III.A.11.

18. Cures are governed by rule 67-48.004(6), which provides in relevant part:

Within 9 Calendar Days of receipt of the notice set forth in subsection (5) above, each Applicant shall be allowed to cure its Application by submitting additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues raised Where specific pages of the Application are revised, changed or added, each new page(s) must be marked as “revised,” and submitted. Failure to mark each new page(s) “revised” will result in the Corporation not considering the revisions, changes or additions to that new page. Pages of the Application that are not revised or otherwise changed may not be resubmitted, except that documents executed by third parties must be submitted in their entirety even if only a portion of the original document was revised.

18. Arbor Crest resubmitted the entire Surveyor Certification Form in its cure with new information concerning the location of the pharmacy. The rest of the form was identical to the form originally submitted with the Application. As required by rule 67-48.004(6), the word “REVISED” was typed at the top of the form.

19. Page 12 of the Universal Application Instructions states that, “To be considered for tie-breaker points in this Application, the . . . Pharmacy . . . must be in existence and available for use by the general public as of the Application Deadline.” By not re-dating the certification form to a date after the Application Deadline, the surveyor made it clear that not only was the pharmacy at the point indicated on the form, but that it was there before the deadline established by Florida Housing.

20. Florida Housing apparently was concerned that the surveyor did not re-date or re-sign the form when he added the additional information about the pharmacy. However, nothing in rule 67-48.004(6) requires a form included in a cure to be re-dated or re-signed. Rather, the rule contemplates that a cure will include new information, it must be stamped as “REVISED,” and that documents executed by third parties must be submitted in their entirety. All of the rule’s requirements were satisfied by Arbor Crest.

21. Nonetheless, to alleviate any concerns about the legitimacy of the information in the cure, the surveyor has provided Florida Housing with both a letter and a sworn affidavit certifying the cure's accuracy. Florida Housing has accepted as correct the information provided in those documents.

22. Arbor Crest should have been awarded 1.25 points for proximity to a pharmacy because the Winn-Dixie pharmacy identified in the cure is located within a mile of the proposed development. The letter and sworn affidavit from the surveyor remove any doubt about whether the information in the cure is accurate.

CONCLUSIONS OF LAW

1. Pursuant to sections 120.569 and 120.57(2), Florida Statutes, and rules 28-106.301 and 67-48.005, Florida Administrative Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Florida Housing is authorized to institute a competitive application process pursuant to section 420.507(22)(f), Florida Statutes, and has done so through rule 67-48.004, Florida Administrative Code.

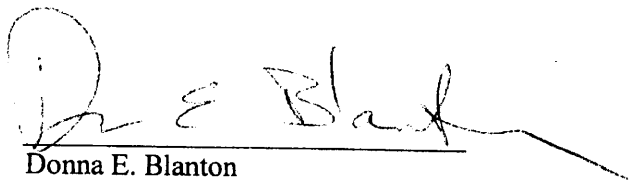
3. The 2003 Universal Application and accompanying instructions are incorporated by reference into rule 67-48.002(111), Florida Administrative Code.

4. Petitioner has provided information in its cure that satisfies the requirements for the award of 1.25 proximity tie-breaker points because of its location within one mile of a pharmacy. Accordingly, Petitioner is entitled to those points.

RECOMMENDATION

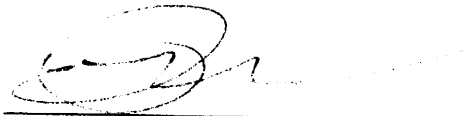
Based on the Findings of Fact and Conclusions to Law stated above, the parties recommend that the Hearing Officer enter a Recommended Order determining that Arbor Crest is entitled to 1.25 tie-breaker points because of its proximity to a pharmacy.

Respectfully submitted this 3rd day of September, 2003,



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Attorney for Florida Housing Finance Corporation

Affidavit of Richard W. Phillips

The affiant appeared before the undersigned Notary Public and being duly sworn states:

1. My name is Richard Wayne Phillips. I am the President of Cornerstone Land Surveying, Inc. in Tallahassee, Florida. I am a Florida licensed surveyor. My Surveyor and Mappers license is current and active with the Florida Department of Business and Professional Regulation and is number 5557.
2. I completed and attested to a Surveyor Certification dated March 10, 2003, that was filed with the Florida Housing Finance Corporation in connection with the application of Arbor Crest in Gadsden County.
3. I updated that Surveyor Certification as submitted to Florida Housing on June 19, 2003, to reflect the location of the Winn Dixie Pharmacy. A copy of that revised Surveyor Certification is attached as Exhibit A.
4. The Winn Dixie Pharmacy is located at the coordinates that I listed on that revised Surveyor Certification.

Sworn to and subscribed before me this 25th day of August, 2003, by Richard Wayne Phillips, who is personally known to me or has produced _____ as identification.

WITNESS my hand and official seal, this 25th day of August, 2003.



Carolyn S. Rayboun
MY COMMISSION # CC959731 EXPIRES
August 9, 2004
BONDED THRU TROY FAW INSURANCE, INC.

Carolyn S. Rayboun
Notary Public
State of Florida
My commission expires: 8/9/2004

(AFFIX SEAL)

SINCERELY,

Richard W. Phillips