

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CHARLOTTE CROSSING, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2003-037
Application No. 2003-095S**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

HERON POND APARTMENTS II, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2003-036
Application No. 2003-091CS**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

MERIDIAN WEST, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2003-039
Application No. 2003-097S**

**FLORIDA HOUSING FINANCE
CORPORATION,**

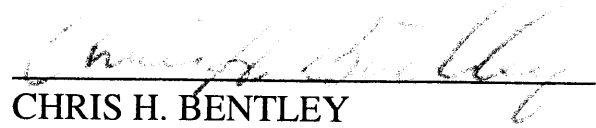
Respondent.

ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, informal hearings in the three captioned proceedings were scheduled before the undersigned Hearing Officer on September 10, 2003. Prior to the hearings, the parties submitted a Joint Motion to Consolidate, and that Motion is hereby GRANTED. The parties also reached an agreement resolving the issues in dispute. A Joint Proposed Recommended Order, which is attached hereto as Exhibit A, was submitted. In essence, the parties agreed that each of the Petitioners satisfied threshold requirements for their equity commitment letters; that the Petitioner CHARLOTTE CROSSING, LTD., correctly received three points for incentives through local government support; and that there was no requirement for Petitioner, MERIDIAN WEST, LTD., to demonstrate the ability to fund a bridge loan.

Based upon these agreements 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 Petitions 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 17 day of September, 2003.



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**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CHARLOTTE CROSSING, LTD.,

**CASE NO.: 2003-037
App. No.: 2003-095S**

HERON POND APARTMENTS II, LTD.,

**CASE NO.: 2003-036
App. No.: 2003-091CS**

and

MERIDIAN WEST, LTD.,

**CASE NO.: 2003-039
App. No.: 2003-097S**

Petitioners,

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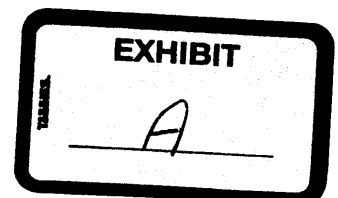
**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

JOINT PROPOSED RECOMMENDED ORDER

Petitioners, Charlotte Crossing, Ltd., Heron Pond Apartments II, Ltd., and Meridian West, Ltd. ("Petitioners") and Respondent, Florida Housing Finance Corporation ("Florida Housing") by and through undersigned counsel, hereby present the following Joint Proposed Recommended Order:



APPEARANCES

The representatives for the parties at the hearing are as follows:

For Petitioner:

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For Respondent:

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PRELIMINARY STATEMENT

On or before April 8, 2003, Petitioners submitted their Applications to Florida Housing for an award of funds from the SAIL program, and one Petitioner, Heron Pond Apartments II, Ltd., also applied for an allocation of housing credits for the development of affordable rental housing. On July 18, 2003, 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 July 30, 2003, August 7, 2003, and August 11, 2003, Petitioners timely filed their Petitions for Review of 2003 Universal Scoring Summary challenging the finding that the "equity commitment" letters failed to satisfy threshold requirements. In addition, Petitioner Meridian West, Ltd. challenged the finding that the funding commitment for the "bridge loan" failed to satisfy threshold requirements; and Petitioner

Charlotte Crossing, Ltd. challenged its score for local government incentives. The parties agree that Charlotte County does not modify fees for affordable housing developments and the form signed by the Charlotte County Administrator was executed in error. As a result, Petitioner Charlotte Crossing did not achieve maximum points for incentives through local government support and the three (3) points awarded to Petitioner Charlotte Crossing for incentives through local government support is correct. The parties also agree that Petitioner Meridian West, Ltd.'s original funding commitment for the "bridge loan" was contained within a syndication commitment, therefore, a demonstration of the ability to fund is not required for the bridge loan in order for the syndication commitment to be scored firm. Upon further research and review, the parties further agree that the proper resolution is that the equity commitment letters provided by Petitioners should be scored as firm.

FINDINGS OF FACT

General Facts as to all three (3) Petitioners

1. Petitioners are Florida limited partnerships with their address at 2950 SW 27th Avenue, Suite 200, Miami, Florida 33133, and are in the business of providing affordable housing units.
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 affordable housing to persons and families of low, moderate, and middle income.
3. To encourage the development of low-income housing for families, in 1987 Congress created federal income Tax Credits (also known as housing 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.

4. Each state receives an annual allotment of Tax Credits allocated to the state, primarily on a per capita basis. Florida Housing is the statutorily created "housing credit agency" responsible for the allocation and distribution of Florida's Tax Credits to applicants for the development of rental housing for low income and very low-income families.

5. Florida Housing uses a scoring process for the allocation of housing credits pursuant to Fla. Admin. Code R. 67-48 *et al.*, and a Qualified Allocation Plan ("QAP"). The provisions of the QAP are adopted and incorporated by reference in Fla. Admin. Code R. 67-48.025. The Internal Revenue Code requires Florida Housing to develop the QAP.

6. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties and least populated counties. The QAP also establishes set-asides and special targeting goals.

7. In addition to allocating its share of Tax Credits among applicants, the State of Florida provides State Apartment Incentive Loan ("SAIL") financing to encourage the development of certain low-income housing projects in the State. The SAIL program is administered by Florida Housing under Section 420.5087 Fla. Stat. Florida Housing publishes a Notice of Funding Availability announcing the amount of SAIL funding, which in the 2003 Universal Cycle was anticipated at approximately \$66,000,000.00.

8. Florida Housing receives its funds for the SAIL program from an allocation of documentary stamp tax revenue and apportions among the counties, grouped as most, medium, and the least populated counties, and according to set-asides and special targeting goals set forth in the statute for the elderly, commercial fishing workers and farm workers and families.

9. Florida Housing has established by rule a process (the "Universal Cycle") in which applicants for any of the above-referenced Florida Housing multi-family rental programs

submit a single application (the “Universal Cycle Application”) by which projects are evaluated, scored, and competitively ranked.

10. The 2003 Universal Application Package (UA1016), adopted by Fla. Admin. Code R. 67-48.002(111), includes forms and instructions for applicants. 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. 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.

11. On or before April 8, 2003, Petitioners submitted their timely applications to Florida Housing for an award of funds from the SAIL program for the development of affordable rental housing in the 2003 Universal Cycle (the “Application”).

12. Florida Housing evaluated all applications and notified applicants of their preliminary scores on or before May 12, 2003. Applicants were then given an opportunity to file NOPSEs on or before May 20, 2003.

13. After considering all NOPSEs, Florida Housing notified applicants by overnight mail on or about June 9, 2003, of any resulting changes in the scoring of their applications (the “NOPSE scores”). Applicants were then required to submit, on or before June 19, 2003, “cure” materials to correct any alleged deficiencies in their applications previously identified by Florida Housing.

14. Following the issuance of NOPSE scores, Florida Housing provides an opportunity for applicants to submit additional materials to “cure” any items for which the applicant received less than the maximum score, or for which the application may have been rejected for failure to achieve “threshold.”

15. Following the “cure” period, applicants may again contest the scoring of a competing application by filing a Notice of Alleged Deficiencies (“NOAD”), identifying deficiencies arising from the submitted “cure” materials. Applicants were required to file NOADs on competing applications on or before June 27, 2003. After considering the submitted

NOADs, Florida Housing sent “Final” Scores and a Notice of Rights to Petitioner, on or about July 21, 2003, informing Petitioners that their applications had been rejected due to failure to achieve threshold requirements and that they could contest Florida Housing’s actions in accordance with the provisions of Sec. 120.569 and 120.57 Fla. Stat.

16. Petitioners timely requested informal hearings by filing their separate “Petition[s] for Review of 2003 Universal Scoring Summary” in accordance with sections 120.569 and 120.57(2), Florida Statutes”, on July 30, 2003, August 7, 2003, and August 11, 2003.

17. The parties filed a Joint Motion to Consolidate all three petitions on September 8, 2003.

18. One of Florida Housing’s primary considerations in evaluating applications for funding is whether applicants can demonstrate that they are ready to proceed with development and construction of their proposed projects. As part of this demonstration, Florida Housing’s application requires all applicants to document that they have firm commitments for construction and permanent funding for the proposed projects. Applicants submit documentation of funding commitments beginning at Exhibit 56 to the Universal Application.

19. Following consideration of comments submitted by other Applicants and further review of applications pursuant to Fla. Admin. Code R. 67-48.004(4) and (5), Florida Housing released NOPSE scores on June 9, 2003.

20. In response to preliminary scoring, Petitioners submitted cure materials including revised commitment letters.

21. Florida Housing advised Petitioners by notice that their applications had been rejected due to failure to achieve threshold requirements and that they could contest Florida Housing’s actions in accordance with the provisions of Sec. 120.569 and 120.57 Fla. Stat.

22. Other deficiencies relating to financing shortfalls were identified on the Universal Scoring Summary for each Applicant. Each of these identified deficiencies relates to the scoring

of the equity commitment letter, and these financing shortfalls would cease to exist if the equity commitment letter in each Application was scored as firm.

23. Upon further research and review, the parties agree that the proper resolution is that the equity commitment letters provided by Petitioners should be scored as firm.

Findings of Fact Specific to Petitioner Charlotte Crossing, Ltd.

24. In its initial scoring, Florida Housing determined that the documents submitted by Petitioner Charlotte Crossing in Exhibit 56 to the Universal Application did not meet threshold requirements in that the equity commitment did not meet the definition of “firm commitments” under Florida Housing’s rules.

25. Also, in its initial scoring of Petitioner Charlotte Crossing’s application, Florida Housing determined that Charlotte County does not modify fees for affordable housing developments and that the form signed by the Charlotte County Administrator was executed in error. Therefore, Petitioner Charlotte Crossing did not achieve maximum points for incentives through local government support.

26. The parties agree that Charlotte County does not modify fees for affordable housing developments and the form signed by the Charlotte County Administrator was executed in error. As a result, Petitioner Charlotte Crossing did not achieve maximum points for incentives through local government support and the three (3) points awarded to Petitioner Charlotte Crossing for incentives through local government support is correct.

Findings of Fact Specific to Petitioner Heron Pond Apartments II, Ltd.

27. On or before April 8, 2003, Petitioner Heron Pond Apartments II, Ltd. submitted its timely application to Florida Housing for an award of funds from the SAIL program, and for an allocation of housing credits for the development of affordable rental housing in the 2003 Universal Cycle (the “Application”).

28. In its initial scoring, Florida Housing determined that the documents submitted by Petitioner Heron Pond in Exhibit 56 to the Universal Application did not meet threshold requirements in that the equity commitments did not meet the definition of “firm commitments” under Florida Housing’s rules

Findings of Fact Specific to Petitioner Meridian West, Ltd.

29. A competing applicant filed a NOPSE against Petitioner Meridian West alleging that the commitment letter from Related Capital Companies, the Petitioner’s Housing Credit Syndicator, should not be scored firm. Florida Housing rejected Petitioner Meridian West’s application when it determined that the documents submitted in Exhibit 56 to the Universal Application failed to meet threshold requirements in that the commitment letter did not meet the definition of “firm commitments” under Florida Housing’s rules.

30. In response to preliminary scoring, and to the NOPSE filed by a competing applicant, Petitioner Meridian West submitted cure materials including a revised commitment letter. Petitioner Meridian West also submitted cure materials relating to the “Bridge Loan”, however it failed to mark the new page “revised”. In accordance with Fla. Admin. Code R. 67-

48.004(6), Florida Housing was prohibited from considering the revisions, changes or additions to that new page.

31. The parties agree that Petitioner Meridian West's original funding commitment for the "bridge loan" was contained within a syndication commitment, therefore, a demonstration of the ability to fund was not required for the bridge loan in order for the syndication commitment to be scored firm

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and Fla. Admin. Code R. 67-48 *et al.*, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Florida Housing is authorized to institute a competitive application process, for the SAIL program and for the allocation of housing credits, Sec. 420.507 (22)(f), Fla. Stat., and has done so at Fla. Admin. Code R. 67-48.004.

3. Florida Housing's application form and instructions are adopted as Form, UA1016 and incorporated by reference into Fla. Admin. Code R. 67-48.002(111).

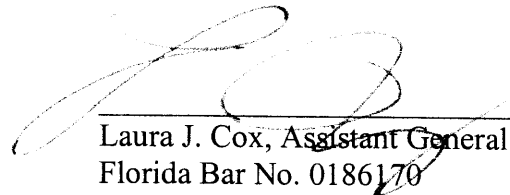
4. An agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation, Legal Env'tl. Assistance Found., Inc., v. Board of County Comm'r of Brevard County, 642 So.2d 1081 (Fla. 1994); Miles v. Florida A and M Univ., 813 So.2d 242 (Fla. 1st DCA 2002), even if the agency's interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable

interpretation. Golfcrest Nursing Home v. Agency for Health Care Admin., 662 So.2d 1330 (Fla. 1st DCA 1995).

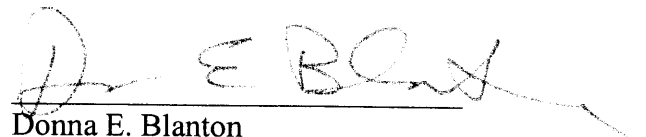
RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, Florida Housing recommends the Hearing Officer enter a Recommended Order finding that the three (3) points awarded to Petitioner Charlotte Crossing, Ltd. for incentives through local government support should be affirmed; that a demonstration of the ability to fund was not required for Petitioner Meridian West, Ltd.'s original funding commitment for a bridge loan; and that Petitioners' applications should be scored as satisfying threshold requirements for their equity commitment letters.

DATED this 10th day of September, 2003 in Tallahassee, Florida.



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