

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

VILLAGE CENTRE APARTMENTS,
LTD.,

Petitioner,

v.

FHFC CASE NO.: 2003-040
APPLICATION NO. 2003-099C

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, Village Centre Apartments, Ltd. (“Petitioner”) submitted its 2003 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for an allocation of Low Income Housing Tax Credits (“Housing Credits”). On July 30, 2003, Petitioner timely filed its Petition for Review of 2003 Universal Scoring Summary for Village Centre Apartments, 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.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

W. J. Nelson

/DATE:

10/19/03

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 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 meets threshold requirements for evidence of site control and, therefore, satisfies all threshold requirements.

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 meets threshold requirements for evidence of site control and, therefore, satisfies all threshold requirements.

IT IS HEREBY ORDERED that Petitioner's Application shall be scored and ranked as satisfying all threshold requirements.

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

Hugh R. Brown
Assistant 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**

VILLAGE CENTRE APARTMENTS, LTD.,

Petitioner,

v.

**FHFC CASE NO. 2003-040
Application No. 2003-099C**

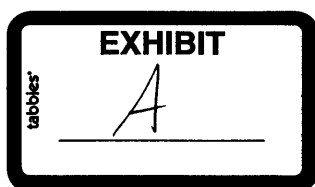
**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

ORDER

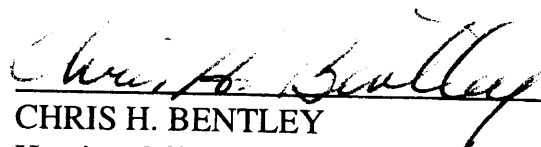
Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, an informal hearing was scheduled before the undersigned Hearing Officer on September 10, 2003. Prior to the hearing, the parties reached an agreement resolving the sole issue in dispute, and submitted to the undersigned Hearing Officer a Joint Proposed Recommended Order, which is attached hereto as Exhibit A. In essence, the parties agreed that Petitioner, VILLAGE CENTRE APARTMENTS, LTD., meets threshold requirements for evidence of site control and, therefore, satisfies all threshold requirements.

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 10th 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:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Hugh R. Brown
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

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

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

VILLAGE CENTRE APARTMENTS, LTD.

Petitioner,

vs.

**Application No. 2003-099C
2003 Universal Cycle**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

JOINT PROPOSED RECOMMENDED ORDER

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

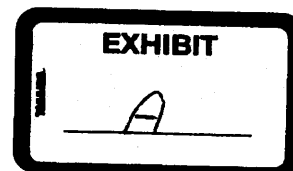
APPEARANCES

For Petitioner:

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

For Respondent:

Hugh Brown
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329



PRELIMINARY STATEMENT

Village Centre timely filed an application with Florida Housing for housing credits in the 2003 Universal Cycle in connection with the development of a “Front Porch Community” apartment complex in West Palm Beach called Village Centre. On July 21, 2003, Village Centre was provided notice through Florida Housing’s Universal Scoring Summary that it did not meet threshold requirements to satisfy evidence of site control. Village Centre timely filed a petition for informal administrative hearing on July 30, 2003, disputing Florida Housing’s determination and seeking a Recommended Order that Village Centre’s application meets all threshold requirements. The parties agree that the new contracts submitted by Village Centre with its “cure” provide evidence of site control and that the Application, therefore, satisfies all threshold requirements.

FINDINGS OF FACT

1. Village Centre timely submitted an Application to Florida Housing for housing credits in the 2003 Universal Cycle in connection with a proposed 84-unit “Front Porch Community” apartment complex in West Palm Beach, 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 is governed by a Board of Directors appointed by the Governor with the Secretary of the Department of Community Affairs sitting ex-officio.

6. Housing credits are allocated by Florida Housing through a competitive application process. Applications for housing credits 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.

7. The Universal Cycle is a single-application process for the housing credit program, the Florida Housing-administered SAIL program under section 420.5087, Florida Statutes, and the Home Investment Partnership Program operated by Florida Housing pursuant to section 420.5089, Florida Statutes, and federal Housing and Urban Development regulations.

8. Florida Housing uses a scoring process for the award of housing credits 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.

9. 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. One of the set-asides in the QAP is for Front Porch Florida Community developments. *See* ¶ 3, 2003 Qualified Allocation Plan.

10. The 2003 Universal Application Package, adopted by rule 67-48.002(111), Florida Administrative Code, 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.

11. 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).

12. 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.

13. Village Centre’s application included contracts for purchase of five separate parcels of land. These contracts were attached to the application as evidence of site control as required by Part III.C.2.a of the Universal Application Instructions. One contract was a direct sale contract between Village Centre and the sellers; the other was between the West Palm

¹ NOPSE stands for Notice of Possible Scoring Error.

Beach Community Redevelopment Agency, as the seller, and Village Centre for three parcels that were to be conveyed through an eminent domain action.

14. Village Centre's application was preliminarily scored by Florida Housing on May 12, 2003, in accordance with the provisions of rule 67-48.004. Pursuant to rule 67-48.004(4), other applicants then submitted NOPSEs concerning the contracts Village Centre submitted. One NOPSE stated in relevant part that one of the land sellers, West Palm Beach Community Redevelopment Agency, appeared not to currently own the property because the contract stated that the seller intended to acquire the land by eminent domain. Noting that Florida Housing requires that development proceed within a certain timeframe, the NOPSE stated that "[t]here can be no assurance that the City of West Palm Beach or West Palm Beach Community Redevelopment Agency will, through its eminent domain efforts, secure title to the subject real estate in time for Applicant to meet the foregoing deadlines."

15. Pursuant to rule 67-48.004(5), Florida Housing transmitted the NOPSEs to Village Centre and concurred that Village Centre failed to meet threshold requirements because the contracts submitted were not sufficient to demonstrate site control. In its NOPSE Scoring Summary issued on June 9, 2003, Florida Housing stated:

It has not been demonstrated that the Seller has ownership of the property and has the ability to convey the property to the Purchaser (the Applicant). The March 26, 2003 Agreement of Purchase and Sale indicates that the Seller intends to file an eminent domain action in the Circuit Court in and for Palm Beach County to acquire the parcels of land and a condition for closing, as stated at Article 5.2(i) of the Agreement, is that the Seller is able to obtain title to the property by purchase or eminent domain.

16. Pursuant to rule 67-48.004(6), Village Centre submitted a cure in response to the NOPSE scoring. In the Statement of Explanation accompanying the cure, Village Centre stated:

Florida Housing rejected the Application because the documentation submitted was not sufficient to demonstrate site control. Applicant is providing qualified Purchase and Sale contracts valid through 12/31/03 for the parcels that were previously subject to an eminent domain action.

Applicant requests that Florida Housing accept this revised information as satisfying the threshold requirement for Site Control.

17. In its Universal Scoring Summary, Florida Housing rejected the cure, again finding that Village Centre failed to meet threshold requirements for site control, despite the submission of the three new contracts. Florida Housing stated:

Applicant attempted to cure Item 3T by providing three new contracts for purchase and sale, all dated 6/17/03, in place of the 3/26/03 Agreement of Purchase and Sale. This cure is deficient because the contracts and site control by the Applicant are contingent upon the result of pending eminent domain suit(s) regarding portions of the proposed development site and none of the material submitted by the Applicant indicates the current status of this litigation.

18. The Universal Scoring Summary, along with a Notice of Rights, was conveyed to Village Centre on July 21, 2003. Village Centre timely requested an informal administrative hearing in accordance with sections 120.569 and 120.57(2), Florida Statutes, and rules 28-106.301 and 67-48.005, Florida Administrative Code.

19. All other scoring deficiencies in Village Centre's application were rescinded as a result of the Universal Scoring Summary. Thus, the only issue preventing Village Centre from meeting threshold requirements is the site control issue relating to the cure.

20. Village Centre submitted three new contracts with its cure that were direct purchase agreements between Village Centre and three separate landowners. These contracts do not involve an eminent domain action. They serve as substitutes for the contract between the West Palm Beach Community Redevelopment Agency and Village Centre originally submitted with the application that was dependent upon the eminent domain action.

21. The contracts submitted with Village Centre's cure to satisfy site control requirements are not contingent upon any pending eminent domain suits. Rather, the eminent domain suits are contingent upon the contracts, ensuring that the subject properties will be conveyed to Village Centre in the event that closings on the contracts do not occur within the timeframe specified by the Application Instructions and Florida Housing's rules. The eminent domain actions have no effect on the contracts attached to the cure, and the eminent domain actions will become moot upon the closing of the contracts. The contracts submitted with Village Centre's cure meet the definition of "qualified contracts" as provided in the Application Instructions and adequately demonstrate site control.

22. For this reason, the three new contracts submitted by Village Centre with its cure provide evidence of site control. Thus, Village Centre has satisfied the threshold requirement for site control under Part III.C.2 of the Universal Application Instructions. Accordingly, the determination in the 2003 Universal Scoring Summary regarding Item 3T should be rescinded.

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.

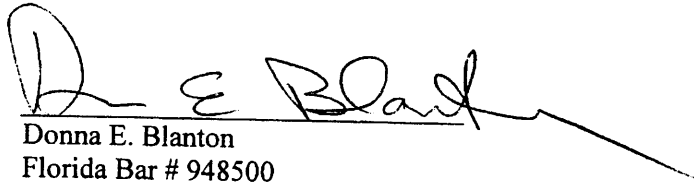
3. The 2003 Universal Application and accompanying instructions are incorporated by reference into rule 67-48.002(111), Florida Administrative Code.

4. Petitioner has provided information in its cure that satisfies the requirements for evidence of site control, as described in Part III.C.2. of the Universal Application Instructions. Accordingly, Petitioner meets the threshold requirements for Part III.C.2.

RECOMMENDATION

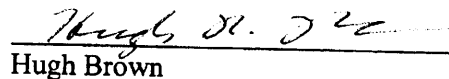
Based on the Findings of Fact and Conclusions to Law stated above, the parties recommend that the Hearing Officer enter a Recommended Order determining that Village Centre's application meets threshold requirements for evidence of site control, and the Village Centre application, therefore, satisfies all of Florida Housing's threshold requirements.

Respectfully submitted,



Donna E. Blanton
Florida Bar # 948500
Radey Thomas Yon & Clark, P.A.
313 N. Monroe Street, Suite 200
Tallahassee, Florida 32301
850-425-6654 (phone)
850-425-6694 (facsimile)

Attorney for Village Centre Apartments, Ltd.



Hugh Brown
Florida Bar # 0003484
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
850-488-4197 (phone)
850-488-8113 (facsimile)

Attorney for Florida Housing Finance Corporation