

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

GREEN GABLES
APARTMENTS II, LTD.,

Petitioner,

v.

FHFC CASE NO.
APPLICATION NO. 2004-105C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Mason /DATE: 7/30/04

PETITION

Green Gables Apartments II, Ltd., by counsel, submits this Petition pursuant to Rule 28-106.201 and Rule 67-48.005 *Florida Administrative Code*.

1. Agency: The name and address of the Agency affected and the Agency's file or identification number are as follows:

Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, FL 32301-1329
Agency's Application Number is 2004-099H

2. Petitioner, Petitioner's Representative and Substantial Interest: The names, addresses and telephone numbers of Petitioner and Petitioner's Representative and an explanation of how the Petitioner's substantial interest will be affected by the

Agency determination is as follows:

i) Petitioner:

Green Gables Apartments II, Ltd.
11635 NW 1 Avenue
Gainesville, FL 32607
Phone: (352) 332-0838
Fax: (352) 332-2926

ii) Petitioner's Representative:

Bryce W. Ackerman
Gray, Ackerman & Haines, P.A.
125 NE 1 Avenue, Ste. 1
Ocala, FL 34470
Phone: (352) 732-8121
Fax: (352) 368-2183

- iii) Green Gables Apartments II, Ltd., is an applicant for funding with FHFC for the 2004 application cycle Green Gables Apartments II, Ltd. is substantially affected by the decision of FHFC for failure to award up to 1.25 proximity tie-breaker points for proximity to a bus stop. Failure to award the tie-breaker points results in Green Gables Apartments II, Ltd., not receiving funding.

3. Notification to Petitioner:

The Petitioner received notification of the Agency's decision by receipt of the Agency's memorandum dated July 9, 2004, which included final scores and notice of rights.

4. Statement of Disputed Facts:

There are no disputed facts related to this appeal.

5. Ultimate Facts:

Green Gables Apartments II, Ltd. filed a timely application for funding for the 2004 cycle. FHFC in its preliminary review found that Green Gables Apartments II, Ltd. failed to qualify for up to a maximum of 1.25 tie-breaker points.

The instructions to the application provide that applicants such as Green Gables Apartments II, Ltd. may select eligible services for proximity points including one of the following:

- i) Medical facility;
- ii) Pharmacy; or
- iii) Bus stop or metro-rail stop.

The instructions applicable to Green Gables Apartments II, Ltd.'s application specifically provided:

Applicants that have not selected the elderly demographic commitment at Part III.D. and are proposing a development in a small or medium county may only select grocery store, public school, and only one of the following: (i) medical facility, (ii) pharmacy, or (iii) bus stop or metro-rail stop.

To obtain the proximity points, the applicant must submit a surveyor certification form. In its initial application, Green Gables Apartments II, Ltd. submitted a surveyor

certification which did not clearly select between a medical facility, pharmacy or bus stop or metro-rail. FHFC took that the position that in the initial application Green Gables Apartments II, Ltd. selected too many services and would not be entitled to the tie-breaker points.

As cure for this issue, Green Gables Apartments II, Ltd. submitted a cure whereby it requested that two pages be inserted into the application in front of the surveyor certification. The first sheet provided as follows:

Attention scorer: Please use the location of the bus stop as shown on the surveyor certification as the service selected for the proximity tie-breaker point. The location of the medical facility and pharmacy were added only to be used in the event that the location of the bus stop did not achieve maximum proximity points for this application.

The second sheet is a letter from the surveyor who performed the original certification confirming that the bus stop was 505 linear feet. These two sheets which constituted the cure clearly selected only the bus stop as the eligible service for use for tie-breaker proximity points. The two sheets constituting the cure were transmitted to FHFC with the required brief statement of explanation regarding application. Although this form made it clear that the applicant was opting to use only the bus stop for tie-breaker proximity points, it did contain an equivocal statement at the end which provided:

In the event that the bus stop does not qualify for maximum

points, please use the pharmacy that was shown on the surveyor certification.

FHFC rejected the cure because the “applicant also included the following language - “in the event that the bus stop does not qualify for maximum points, please use the pharmacy that was shown on the surveyor certification.” FHFC, therefore, determined that Green Gables Apartments II, Ltd. was not decisive.

It is Green Gables Apartments II, Ltd.’s position that the two cure documents inserted into the application in front of the surveyor certification were clear, unequivocal and decisive in communicating the election to use only the bus stop for tie-breaker proximity points. The statement contained in the brief statement of explanation regarding application is not part of the cure nor part of the application and should not form the basis for FHFC’s determination that applicant’s choice was, therefore, not decisive. It is Green Gables Apartments II, Ltd.’s position that the two cure documents inserted into the application decisively select the bus stop as the eligible service. Accordingly, Green Gables Apartments II, Ltd. is entitled to receive the 1.25 proximity tie-breaker points.

6. Rules and Statutes:


The Rules and Statutes which require reversal or modification of the Agency’s proposed action are Part V of §420 *Florida Statutes*, Rule 67-48, *Florida Administrative Code*, the 2004 Application and Instructions.

7. Relief Requested:

Petitioner requests entry of a Recommended Order awarding the appropriate tie-breaker points.

Respectfully submitted:

GRAY, ACKERMAN & HAINES, P.A.

A handwritten signature in black ink, appearing to read 'Bryce W. Ackerman', written over a horizontal line.

Bryce W. Ackerman
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