

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**THE COVE AT LADY LAKE
PARTNERS, LTD.,**

Petitioner,

v.

**FHFC CASE NO. 2004-032-UC
Application No. 2004-138S**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

RECOMMENDED ORDER

The parties have agreed to a Joint Proposed Recommended Order which they request the Hearing Officer enter as his recommended Order. The parties in effect have stipulated and agreed that Petitioner meets all threshold requirements and should receive the score and tie-breaker points as indicated on the July 6, 2004 Scoring Summary.

Therefore, the Hearing Officer hereby enters the Joint Proposed Recommended Order attached hereto as the Recommended Order in this matter.

**THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

THE HOUSING AUTHORITY OF THE CITY
OF KEY WEST, FLORIDA,

Petitioner,

FHFC Case No. 2004-030-UC
FHFC Application No. 2004-019S

v.

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

JOINT PROPOSED RECOMMENDED ORDER

Petitioner, The Housing Authority of the City of Key West, Florida (“Petitioner”) and Respondent, Florida Housing Finance Corporation (“Florida Housing”), by and through their undersigned counsel, hereby present the following Joint Proposed Recommended Order:

Appearances

For Petitioner:

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Ausley Law Firm
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For Respondent:

Matt Sirmans
Assistant General Counsel
Florida Housing Finance Corporation
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Preliminary Statement

On or before March 31, 2004, Petitioner submitted its application to Florida Housing for an award of funds from the SAIL Program. On or about July 9, 2004, Petitioner was provided notice that its application did not meet threshold requirements relating to the definition of "SAIL Development" as set forth in Rule 67-48.002(98), Florida Administrative Code. Petitioner timely filed a Petition for an Informal Hearing on August 2, 2004 seeking a Recommended Order that its application meets all threshold requirements. Upon further research and review, the parties agree that threshold requirements are met.

Findings of Fact

1. Petitioner is a unit of local government organized and existing under Chapter 421, Florida Statutes, who possesses the statutory authority to own and operate housing developments and issue bonds and other debt instruments to finance the projects owned by Petitioner.
2. Florida Housing is a public corporation organized under Chapter 420, Florida Statutes, to provide and promote the public welfare by administering the governmental function of financing of affordable housing 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. The State of Florida provides State Apartment Incentive Loan ("SAIL") financing to encourage the development of low-income housing projects for the state. The SAIL program is administered by Florida Housing pursuant to Section 420.5087, Florida Statutes. Each year, Florida Housing publishes a Notice of Funding Availability announcing the amount of SAIL funding.
4. 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.

5. Florida Housing has established by rule a process (the “Universal Cycle”) in which applicants for the referenced Florida Housing Multi-Family Rental Programs submit a single application (the “Universal Cycle Application”) by which projects are evaluated, scored, and comparatively ranked.

6. The 2004 Universal Application package, adopted by reference in Rule 67-48.004(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 rejection of the application.

7. On or before March 31, 2004, Petitioner timely submitted its application to Florida Housing for an award of funds from the SAIL Program for the development of affordable rental housing in the 2004 Universal Cycle (the “Application”).

8. Florida Housing evaluated all applications and notified applicants of their preliminary scores on April 29, 2004. Applicants were then given an opportunity to file Notice of Possible Scoring Errors (“NOPSEs”) on or before May 7, 2004.

9. After considering all NOPSEs, Florida Housing notified applicants on or about May 28, 2004 of any resulting changes in the scoring of their applications. Applicants were then required to submit, on or before June 10, 2004, “cure” materials to correct any alleged deficiencies in their applications previously identified by Florida Housing.

10. Following the “cure” period, applicants may again contest the scoring of a competing applicant by filing a Notice of Alleged Deficiencies (“NOAD”), identifying

deficiencies arising from the submitted "cure" materials. Applicants were required to file NOADs on the competing applications on or before June 18, 2004.

11. After considering the submitted NOADs, Florida Housing sent "Final" scores and a Notice of Rights to Petitioner, on or about July 9, 2004, informing Petitioner that its application had been rejected due to a failure to satisfy a threshold requirement and that it could contest Florida Housing's actions in accordance with the provisions of Section 120.569 and 120.57, Florida Statutes.

12. Petitioner timely requested an informal hearing in accordance with the applicable rules on August 2, 2004.

13. Petitioner obtained initial financing for its project through the issuance by Petitioner of two series of bonds, namely, The Housing Authority of the City of Key West, Florida Multi-Family Housing Revenue Notes, Series 2002 (Roosevelt Gardens project) issued in the initial principal amount of \$9,850,000 and The Housing Authority of the City of Key West, Florida, Multi-Family Housing Revenue Note, Series 2003 (Roosevelt Gardens project) issued in the principal amount of \$2,000,000 (collectively, the "Authority Bonds").

14. The Authority Bonds were issued pursuant to the authority of Chapter 421, Florida Statutes. Closing on the sale of each series of the Authority Bonds occurred on or about December 19, 2002 and February 26, 2003, respectively.

15. Rule 67-48.002(98), Florida Administrative Code provides as follows:

(98) "SAIL Development" means a residential development comprised of one or more residential buildings, each containing five or more dwelling units and functionally related facilities, proposed to be constructed with SAIL funds for Eligible Persons or Eligible Households or a residential development comprised of one or more buildings containing dwelling units and functionally related facilities proposed to be substantially rehabilitated with SAIL funds for Eligible Persons or Eligible Households. If a Development has received a tentative allocation or tentative funding commitment and is proposed to be constructed or

substantially rehabilitated, is under construction, in the process of substantial rehabilitation, or has been completed, it may be considered for the SAIL Program funding only if:

- (a) The pro forma in the prior Housing Credit or Multifamily Mortgage Revenue Bonds Application submitted for the Development reflected SAIL funding, unless otherwise specified in the Universal Application Package; and
- (b) Permanent financing of the costs associated with construction or rehabilitation of the Development, including tax-exempt bonds with conversion clauses, has not closed as of the Application Deadline, or if financed with Multifamily Mortgage Revenue Bonds or Local Government-issued tax-exempt bonds, the bonds did not close prior to January 1, 2003, or if the Development received an allocation of Housing Credits, the IRS Forms 8609 have not been issued, unless otherwise specified in the Universal Application Package; and
- (c) The Development has not already received funding through the SAIL Program."

Notwithstanding the above, Developments that have extraordinary conditions such as acts of God, restrictions of any Governmental Authority, enemy action, civil disturbance, fire, or any other act beyond the reasonable control of the Developer will need to obtain permission from the Board to process an Application through SAIL for additional funding.

16. It was originally determined that Petitioner's application failed to satisfy threshold requirements because the Authority Bonds were considered by Florida Housing to be "permanent financing" that closed as referenced in Rule 67-48.002(98)(b), Florida Administrative Code.

17. It is clear that the limitations in the second sentence of Rule 67-48.002(98) are only triggered if a development has "received a tentative allocation or tentative funding commitment."

18. Upon further review, the Petitioner had not received a tentative allocation or tentative funding commitment within the meaning of said rule.

19. For this reason, Petitioner has satisfied the threshold requirement. Accordingly, the contrary determination in the 2004 Final Score should be rescinded.

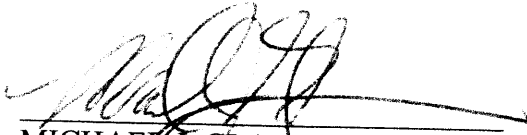
Conclusions of Law

1. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes and Chapters 28-106 and 67-48, 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 for the SAIL Program pursuant to Section 420.507(22)(f), Florida Statutes and has done so through Rule 67-48.004, Florida Administrative Code.
3. Florida Housing's application form and instructions are adopted and incorporated by reference in Rule 67-48.002(111), Florida Administrative Code.
4. An Agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation, Legal Environmental Assistance Fund, Inc. v. Board of County Commissioners of Brevard County, 642 So.2d 1081 (Fla. 1994); Miles v. Florida A & M University, 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. Gulf Crest Nursing Home v. Agency for Health Care Administration, 662 So.2d 1330 (Fla. 1st DCA 1995).
5. Petitioner has satisfied threshold requirements. The contrary determination in the 2004 Final Score should be rescinded.

Recommendation

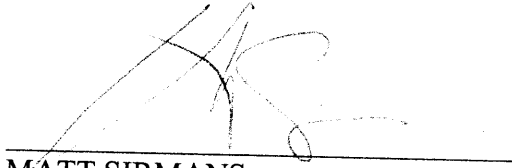
Based on the Findings of Fact and Conclusions of Law stated above, Florida Housing recommends that the Hearing Officer enter a Recommended Order determining that the Housing Authority of the City of Key West, Florida's application meets threshold requirements.

DATED this 31 day of August, 2004.



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