

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

MBCDC: VILLA MARIA LLC,

Petitioner,

vs.

FHFC Case No: 2005- 005VC
Application No. 2005-089S

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**PETITION FOR INFORMAL
ADMINISTRATIVE PROCEEDING**

Petitioner, MBCDC: VILLA MARIA LLC (“Villa Maria”), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and Rules 67-48.005 and 28-106.301, Florida Administrative Code (“F.A.C.”), hereby requests an informal administrative proceeding to challenge the scoring of its Application for 2005 SAIL funding by Respondent, the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”), and states:

1. The name and address of the agency affected by this action are:

Florida Housing Finance Corporation
City Center Building, Suite 5000
227 N. Bronough Street
Tallahassee, Florida 32301-1329

2. The address and telephone number of the Petitioner are:

MBCDC: Villa Maria LLC
945 Pennsylvania Avenue
Miami Beach, Florida 33139
Telephone No. (305) 538-0090

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TALLAHASSEE, FLORIDA
CLERK OF THE COURT

3. The name, address, telephone number, and fax number of the Petitioner's representative, which shall be the Petitioner's address for service purposes during the course of this proceeding, are:

Warren H. Husband
Metz, Hauser, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
Telephone No. (850) 205-9000
Facsimile No. (850) 205-9001

The State Apartment Incentive Loan Program

4. The State of Florida provides financing through its State Apartment Incentive Loan ("SAIL") program to encourage private developers to build and operate affordable rental housing for low-income Florida residents. Pursuant to section 420.5087, Florida Statutes, the SAIL program is administered by FHFC.

5. The source of funds for loans through the SAIL program is an annual allocation of documentary stamp tax revenue. These funds are the source of below-market-rate loans to applicants that reduce the amount of income required for debt service on the development, making it possible to operate the project at rents that are affordable to low-income tenants.

6. Because FHFC's available pool of SAIL funds each year is limited, qualified projects must compete for this funding. To assess the relative merits of proposed projects, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. Specifically, FHFC's application process for 2005, as set forth in Rules 67-48.002-.005, F.A.C., involves the following:

- a. the publication and adoption by rule of an application package;
- b. the completion and submission of applications by developers;
- c. FHFC's preliminary scoring of applications;
- d. an initial round of administrative challenges in which an applicant may take issue with FHFC's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");
- e. FHFC's consideration of the NOPSE's submitted, with notice to applicants of any resulting change in their preliminary scores;
- f. an opportunity for the applicant to submit additional materials to FHFC to "cure" any items for which the applicant received less than the maximum score;
- g. a second round of administrative challenges whereby an applicant may raise scoring issues arising from another applicant's cure materials by filing a Notice of Alleged Deficiency ("NOAD");
- h. FHFC's consideration of the NOAD's submitted, with notice to applicants of any resulting change in their scores;
- i. an opportunity for applicants to challenge, via informal or formal administrative proceedings, FHFC's evaluation of any item for which the applicant received less than the maximum score; and
- j. final scores, ranking, and allocation of tax credit funding to applicants through the adoption of final orders.

Issue Presented

7. At the conclusion of the NOPSE and NOAD processes, FHFC awarded the Villa Maria Application the maximum score of 66 points, as well as the 7.25 tiebreaker proximity points to which it was entitled. At the same time, however, FHFC rejected the Villa Maria Application for an alleged financing shortfall during the "permanent," i.e., post-construction, phase of the project. In doing so, FHFC stated its specific grounds for

the rejection as follows:

The Applicant listed as a permanent financing source a \$820,000 loan from Plus International Bank. The commitment for the loan though states: "...shall be used solely [sic] by the Borrower to finance the rehab of the 34-unit property..." and further states that the term is for 18 months with an option to extend for an additional twelve months. As such, the commitment was only counted as a construction financing source and not a permanent financing source.

FHFC Scoring Summary for Villa Maria, p.5 (Item #5C).

8. Villa Maria's substantial interests in competing for 2005 SAIL funding have therefore been adversely affected.

9. As more fully set forth below, FHFC's rejection of the Villa Maria Application is incorrect and must be reversed.

Villa Maria's 2005 SAIL Application

10. On or about February 16, 2005, Villa Maria and others submitted applications for financing in FHFC's 2005 funding cycle. Villa Maria (FHFC Applic. #2005-089S) applied for a \$900,000 SAIL loan to help finance its project, the acquisition and rehabilitation of a 34-unit garden-style apartment building in Miami Beach, Florida. All of these units are dedicated to housing families earning 60% or less of the area median income.

11. Villa Maria received notice of FHFC's initial scoring of the Application on March 21, 2005.

12. After the conclusion of the NOPSE process, Villa Maria submitted its cure materials to FHFC on April 26, 2005. In these cure materials, Villa Maria included a loan

commitment letter from Plus International Bank (“Plus Bank”), dated April 26, 2005, in the principal amount of \$820,000. Villa Maria also submitted a revised Pro Forma for the Application, which details the total cost of the project and the sources of financing to fund those costs. This second-mortgage loan from Plus Bank was included in Villa Maria’s revised Pro Forma as a source of funds during both the construction phase of the project and the “permanent,” or post-construction, phase of the project.

13. Importantly, section 3 (page 1) of the Plus Bank loan commitment states a term for the loan of 18 months, with an optional extension of 12 months, for a total term of 30 months. Using the closing date of December 31, 2005, as specified in section 17(b) of the commitment (page 6), the loan would therefore extend to June 30, 2008.

14. As stated in the original Application, the anticipated “placed-in-service” date by which the construction of the Villa Maria project is expected to be complete and by which it will be ready for occupancy is June 30, 2007. The Plus Bank loan, which extends to June 30, 2008, would therefore extend beyond the construction phase and at least a full year into the “permanent,” or post-construction, phase of the development.

15. Per section 5 of the Plus Bank loan commitment, the 12-month extension is conditioned upon payment of an additional “Renewal Fee” of \$8,200. This \$8,200 fee is correctly reflected in Villa Maria’s revised Pro Forma on the line labeled “Permanent Loan Origination Fee.”

16. Thus, contrary to FHFC’s scoring determination, the Plus Bank loan commitment is clearly one that provides a source of financing that extends beyond the

construction phase and into the “permanent,” or post-construction, phase of the project.

17. Moreover, in its cure materials, Villa Maria also documented a closed source of financing consisting of a recorded Mortgage and Security Agreement and a Promissory Note from the seller of the Villa Maria property, in the amount of \$1.4 million. This first-mortgage loan was included in Villa Maria’s revised Pro Forma as a source of funds during both the construction phase of the project and the “permanent,” or post-construction, phase of the project. Per the first page of both the recorded Mortgage and the Promissory Note, the term of this loan ends and the loan reaches maturity on March 17, 2007. Even though this date is prior to the placed-in-service date stated in the Application (June 30, 2007), FHFC deemed it a firm source of financing during both the construction and permanent phases of the development. Certainly, if FHFC deemed this loan as a source of permanent financing, then FHFC must also consider the Plus Bank loan commitment as a source of permanent financing.

18. For the reasons stated above, the Plus Bank loan commitment must be considered a source of both construction and permanent financing for the Villa Maria project, and FHFC’s contrary scoring decision must be reversed.

WHEREFORE, Petitioner, MBCDC: Villa Maria LLC , requests that:

a. FHFC revise its scoring to reflect that Villa Maria has satisfied all threshold requirements, including demonstration of financing commitments sufficient to cover its project cost in both the construction and permanent phases of the project;

b. FHFC conduct an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;

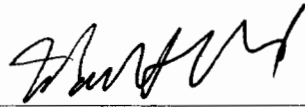
c. FHFC forward this Petition to DOAH for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein;

d. FHFC's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order directing FHFC to revise its scoring to reflect that Villa Maria has satisfied all threshold requirements, including demonstration of financing commitments sufficient to cover its project cost in both the construction and permanent phases of the project;

e. FHFC enter a Final Order revising its scoring to reflect that Villa Maria has satisfied all threshold requirements, including demonstration of financing commitments sufficient to cover its project cost in both the construction and permanent phases of the project; and

f. Villa Maria be granted such other and further relief as may be deemed just and proper.

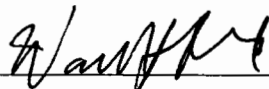
Respectfully submitted on this 16th day of June, 2005.



WARREN H. HUSBAND
FL BAR No. 0979899
Metz, Hauser & Husband, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
850/205-9000
850/205-9001 (Fax)
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing document were served via hand delivery to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 16th day of June, 2005.



Attorney