

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

PINNACLE PARK, LTD.,

Petitioner,

FHFC CASE NO.: 2005-008UC  
APPLICATION NO. 2005-100C

v.

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

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**RECOMMENDED ORDER**

Pursuant to Notice, an informal administrative hearing was scheduled for this case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba. In lieu of a hearing, the parties filed a Joint Proposed Recommended Order.

**APPEARANCES**

**For Petitioner:**

Gary J. Cohen, Esquire  
Shutts & Bowen LLP  
201 South Biscayne Boulevard  
1500 Miami Center  
Miami, FL 33131

**For Respondent:**

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

**WITNESSES**

There were no witnesses for either party.

### **STATEMENT OF THE ISSUE**

The issue in this case is whether Florida Housing Finance Corporation (“Florida Housing”) erred when it disqualified applicant’s Local Government Contribution.

### **PRELIMINARY STATEMENT**

Pinnacle Park, Ltd., (“Pinnacle Park”) applied for funding during the 2005 Universal Cycle, seeking an allocation of Low Income Housing Tax Credits. Pinnacle Park was notified by Florida Housing Finance Corporation (“Florida Housing”) of its final scores on or about May 25, 2005. On or about June 9, 2005, Pinnacle Park timely filed a Petition for an Informal Administrative Hearing under Sections 120.569 and 120.57, Florida Statutes, disputing the Florida Housing Finance Corporation’s (“Florida Housing”) final scoring of its 2005 Universal Cycle Application for the proposed Pinnacle Park apartment complex. After review of the Petition, Florida Housing granted Pinnacle Park an informal hearing in this matter. Pinnacle Park sought a determination that the Petitioner had demonstrated the validity of a Local Government Contribution. The parties agreed at hearing that Pinnacle Park demonstrated the validity of this contribution.

### **FINDINGS OF FACT**

1. Petitioner, Pinnacle Park, Ltd., is a Florida limited partnership engaged in the business of developing affordable housing in State of Florida.
2. Respondent, Florida Housing Finance Corporation, is a public corporation under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.
3. 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 program

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

4. The 2005 Universal Cycle Application, adopted as Form UA1016 (Rev. 2-05) by Rules 67-21.002(96) and 67-48.002(111), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application. Other parts allow applicants to earn points as well as “tie-breaker points”; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score.

5. On or before February 16, 2005, Pinnacle Park submitted an application to Florida Housing in which it sought an allocation of competitive 9% tax credits under the Low-Income housing Tax Credit (LIHTC) program in the 2005 Universal Cycle, seeking funding to assist in the development of a 128 unit apartment complex in Miami, Florida.

6. After Pinnacle Park submitted its 2005 Universal Cycle Application, Florida Housing’s staff undertook preliminary scoring of the Application pursuant to Part V, Chapter 420, Florida Statutes, and Rule Chapter 67-48, Florida Administrative Code, completing the scoring process on March 17, 2005.

7. After completing preliminary scoring, Florida Housing’s staff, via a letter dated March 18, 2005, notified Pinnacle Park that its preliminary score was 62 out of a possible 66 total points, with 4.5 proximity tie-breaker points, and that the application had failed to meet the threshold requirements regarding site control.

8. Subsequently, a competing applicant filed a Notice of Possible Scoring Error (“NOPSE”) against the Pinnacle Park application alleging that a Local Government Contribution

(a \$1,000,000 loan) submitted as a financing source by Pinnacle Park was invalid, in that a change in the unit mix (a decrease in the number of three-bedroom units) required additional approval from the Miami-Dade Board of County Commissioners, that such approval was a condition of the loan that had not been met, and that the Local Government Contribution could therefore not be considered as a “firm” commitment for financing the development.

9. Based on this information Florida Housing further reduced Pinnacle Park’s score from 62 to 57 as a result of the disqualification of its Local Government Contribution. Pinnacle Park consequently failed to meet threshold requirements due to a permanent financing shortfall resulting from the disqualification of the loan as a source of funding.

10. On or about April 26, 2005, Pinnacle Park submitted “cure” documentation to Florida Housing to address the alleged defects previously identified. Pinnacle Park submitted materials sufficient to cure the threshold failure regarding site control, to cure scored items not related to the Local Government Contribution in question, and to cure the deficiency in proximity tie-breaker points. Pinnacle Park and also submitted additional documentation regarding the Local Government Contribution which contradicted the information presented in the aforementioned NOPSE.

11. On or before May 4, 2005, a competing applicant submitted a Notice of Alleged Deficiencies (NOAD) which challenged Pinnacle Park’s “cure” of the Local Government Contribution issue.

12. On or about May 25, 2005, Florida Housing advised Pinnacle Park that as a result of its “cures”, its application’s score increased from 57 to 61, that the total proximity tie-breaker points increased from 4.5 to the maximum 7.5, and that Pinnacle Park would receive 0 of a possible 5 points for Local Government Contribution due to the continued disqualification of the

Local Government Contribution. Florida Housing also determined that Pinnacle Park continued to fail threshold due to the permanent financing shortfall resulting from this disqualification.

13. Per a letter dated June 10, 2005, from George M. Burgess, County Manager of Miami-Dade County, the Pinnacle Park development will require no further approval from the Board of County Commissioners due to the change in unit mix, nor due to an increase in the number of units. A copy of Mr. Burgess' letter is attached hereto as Exhibit A.

14. The Parties now agree that the Local Government Contribution was not subject to further approval by the Miami-Dade Board of County Commissioners, that it should be counted as a firm commitment, that Pinnacle Park should have 5 points added to its application score, and that the Pinnacle Park application should be deemed to have satisfied all threshold requirements.

#### **CONCLUSIONS OF LAW**

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

2. Pursuant to Section 420.507(22)(f), Fla. Stat., Florida Housing is authorized to institute a competitive application process, and has done so in accordance with Rule 67-48.004, Fla. Admin. Code.

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

4. Page 65 of the UA1016 (Rev. 2-05) instructions states, in pertinent part:

Local Government contributions may be verified by Corporation Staff during the scoring and appeals process. The government contact person listed on the Verification of Local Government Contribution Form(s) may be contacted to verify the nature and the amount of the contribution.

5. In accordance with the above provision, Florida Housing continued to attempt verification of the Local Government Contribution in light the apparent conflict between information provided by Pinnacle Park and that provided via NOPSE by a competing applicant.

6. During the appeals process, on or about July 11, 2005, Florida Housing received official information verifying that Pinnacle Park did not need to obtain further approval from the Miami-Dade Board of County Commissioners as a condition of receiving the loan, and as a result Florida Housing now considers the loan commitment as "firm" and as a valid Local Government Contribution.

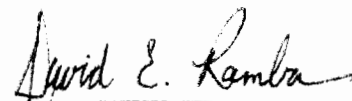
7. With the validation of the \$1,000,000 Local Government Contribution, financing sources presented in the Pinnacle Park application exceed uses, and the application passes threshold requirements.

### **RECOMMENDATION**

Based on the Findings of Fact and Conclusions of Law stated above, it is hereby RECOMMENDED that Florida Housing enter a Final Order finding:

1. Petitioner should have 5 points added to its final score on the 2005 Universal Application, for a total final score of 66;
2. Petitioner should receive 7.5 tie-breaker measurement points; and,
3. Petitioner's 2005 Universal Application should be deemed to have met all threshold requirements.

Respectfully submitted this 2nd day of August, 2005.



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David E. Ramba, Hearing Officer

Copies furnished to:

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- Seaport
- Solid Waste Management
- Strategic Business Management
- Team Metro
- Transit
- Urban Revitalization Task Force
- Vizcaya Museum and Gardens
- Water and Sewer

June 10, 2005

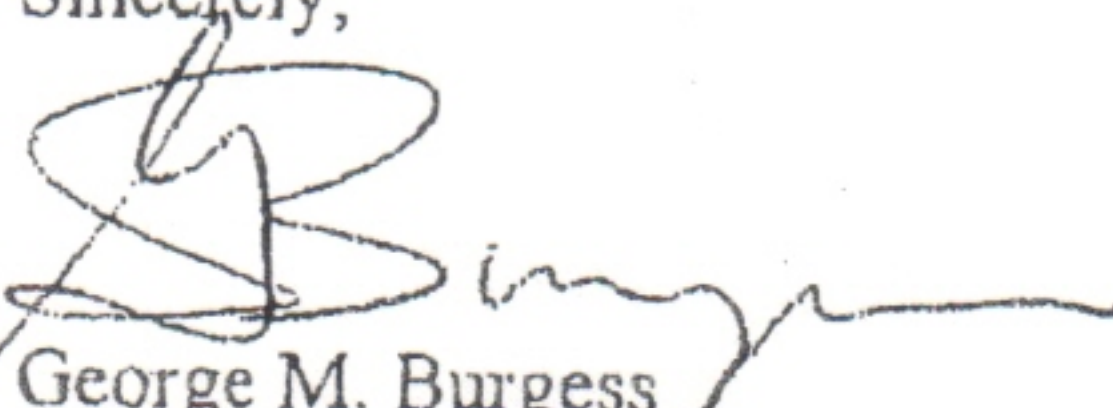
Stephen P. Auger  
Deputy Development Officer  
Florida Housing Finance Corporation  
227 North Bronough Street  
Suite 5000  
Tallahassee, Florida 32301-1329

Re: Pinnacle Park

Dear Mr. Auger:

We understand that certain challenges have been filed to the scoring of the above-referenced application filed with the Florida Housing Finance Corporation, because the unit mix and number of units set forth in the application filed with Florida Housing Finance Corporation differs from that set forth in application for financing funded by Miami-Dade County.

Funding for the above project was approved by the Board of County Commissioners through Resolution #106-05 dated February 1, 2005. Miami-Dade County's commitment of \$1,000,000 to the project is firm. The application with the County was for a total of 115 units, including 35 three bedroom units, 70 two bedroom units and ten one bedroom units. We understand the FHFC application was for a total of 128 units, with 22 one bedroom units, 97 two bedroom units and 9 three bedroom units. Please be advised that this increase in the number of total units from 115 units to 128 units and the change in unit mix does not require further approval of the Board of County Commissioners.

Sincerely,  
  
George M. Burgess  
County Manager

*Delivering Excellence Every Day*

