

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**MARION MANOR, INC. (2006-079H)  
(PROJECT NAME: MARION MANOR)**

**Petitioner,**

vs.

Case No.: 2006-019UC

**FLORIDA HOUSING FINANCE CORPORATION,**

**Respondent.**

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**PETITION FOR INFORMAL  
ADMINISTRATIVE HEARING**

Petitioner, Marion Manor, Inc., ("Marion Manor"), by and through its undersigned attorneys and pursuant to Sections 120.569 and 120.57(2), Florida Statutes (2005), and Rules 28-106.301 and 67-48.005, Florida Administrative Code ("F.A.C."), hereby files its petition for an informal administrative hearing and formal written request to review the scoring of the following application/project which was submitted to the Florida Housing Finance Corporation ("FHFC" or "Corporation") seeking an allocation of Home Investment Partnerships Rental Program ("HOME") loans from the 2006 Universal Application Cycle funding batch:

1. The name and address of Petitioner are:

Marion Manor, Inc.  
1000 Pinebrook Road  
Venice, FL 34285

2. For purposes of this proceeding, notices and pleadings directed to Petitioner should be sent to undersigned counsel for Marion Manor as follows:

Michael G. Maida, Esq.  
J. Stephen Menton, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 S. Monroe Street, Ste. 420  
Tallahassee, Florida 32302  
(850) 681-6788 (telephone)  
(850) 681-6515 (telecopier)

3. The name and address of the affected agency are:

Florida Housing Finance Corporation  
227 N. Bronough Street  
City Centre Building, Room 5000  
Tallahassee, Florida 32399

4. FHFC is a public corporation organized pursuant to Section 420.504, Fla. Stat., to provide and promote the public welfare by administering the governmental function of financing and refinancing affordable housing and related facilities in Florida. FHFC is governed by a Board of Directors (the "Board"), appointed by the Governor with the Secretary of the Department of Community Affairs sitting ex-officio. FHFC is an agency as defined in Section 120.52, Fla. Stat., and, therefore, is subject to the provisions of Chapter 120, Fla. Stat.

5. The FHFC administers the Home Investment Partnerships Rental Program ("HOME"), as provided in Sections 420.5089, Florida Statutes (2005). The HOME program loans funds to entities constructing or rehabilitating affordable residential rental units for low income and/or very low income persons. These HOME funds are allocated through a competitive application process in accordance with Rule 67-48.004, F.A.C. The applications are competitively ranked and compete for a limited amount of funds during a given cycle.

6. Marion Manor submitted an application seeking loans through the HOME Program from the 2006 Universal Application Cycle. Marion Manor's application was assigned Application Scoring No. 2006-079H.

**THE SCORING PROCESS**

7. Rule 67-48.004, Fla. Admin. Code, is entitled “Application and Selection Procedures for Developments.” This rule establishes a multistage process for scoring by FHFC of the applications submitted in the Universal Application Cycle.

8. Pursuant to Rule 67-48.004(3), Fla. Admin. Code, applications are evaluated and preliminarily scored by FHFC following which the scores are transmitted to all applicants.

9. Rule 67-48.004(4), Fla. Admin. Code, provides a mechanism through which an applicant could challenge the preliminary score of another applicant through a written submission to the Corporation. Such a submission is referred to as a Notice of Possible Scoring Error or “NOPSE.” Once a NOPSE is filed, the Corporation reviews the challenge and transmits to each affected Applicant the NOPSE as well as the Corporation’s position with respect to the challenge. See, Rule 67-48.004(5), Fla. Admin. Code.

10. Under Rule 67-48.004(6), Fla. Admin. Code, an applicant is allowed to cure alleged deficiencies in its application raised as a result of the preliminary scoring or the Corporation’s position regarding a NOPSE. In curing an alleged deficiency, an applicant is permitted to submit “additional documentation, revised pages and such other information as the Applicant deems appropriate to address the issues . . . ” raised by the preliminary scoring or NOPSE. Additional information submitted under this provision is referred to as a “Cure.”

11. Pursuant to Rule 67-48.004(7), Fla. Admin. Code, challengers can submit to the Corporation a Notice of Alleged Deficiency (“NOAD”) contesting a Cure filed by an applicant. A NOAD is “limited only to the issues created by document revision additions or both by the Applicant submitting the Application pursuant to subsection (6) [of the Rule].”

12. Following receipt and review by FHFC of the documentation contained in the NOPSEs, the Cures and the NOADs for the 2006 Universal Application Cycle, FHFC prepared “Final Scores and Notice of Rights” dated May 4, 2006 and received via overnight delivery on or about May 5, 2006. A copy of Marion Manor’s 2006 HOME Scoring Summary is attached as Exhibit “A.”

13. Rule 67-48.005, Fla. Admin. Code, establishes a procedure through which an applicant can challenge the final score of its application. FHFC will conduct informal proceedings through which an applicant can challenge its own score. In addition, each applicant may petition the Corporation for a formal hearing if the appeal involves disputed issues of material fact.

14. While the final score indicates that Marion Manor is not entitled to an allocation of funds through the HOME program in the 2006 Universal Cycle, Marion Manor will be entitled to funding if it successfully challenge the scoring of its Application. Consequently, Marion Manor's substantial interests are subject to determination in this proceeding.

## FACTS ALLEGED

The specific facts that Petitioner contends warrant a reversal of FHFC's action with respect to its Application, are as follows:

### Part III, Section C, Subsection 1 Site Plan Approval

15. In order to demonstrate that it is able to proceed with its development, an applicant is required to include within the application an executed site plan approval form. As part of its cure material, Marion Manor submitted an executed Local Government Verification of Status of Site Plan Approval for Multifamily Developments. (“Site Plan Form”) (See attached Exhibit “B”). The Site Plan Form was executed by Bruce D. Loucks, who is the County Administrator for Charlotte County. In scoring the Application, FHFC found an alleged deficiency in the Site Plan Form because the “zoning designation” was not identified on the form. As a result of this alleged error, the FHFC scored the Application as failing to achieve threshold. The alleged failure to disclose this information is the only claimed defect in the Application that would affect Marion Manor’s ability to obtain an allocation of funds through the HOME Program.

16. Information regarding a development’s zoning is requested in other portions of the Application. In fact, there is a “Zoning” form found at Exhibit 32 of Marion Manor’s Application. (See attached Exhibit “E”: Local Government Verification that Development is Consistent with Zoning and Land Use Regulations) As reflected in item two of this form: “**The zoning designation for the referenced Development site is Mixed Use.**”(Emphasis added). This form was included in Marion Manor’s original Application and was also executed by Bruce D. Loucks, County

Administrator for Charlotte County. This properly executed form unequivocally confirms the zoning designation for the development site.

17. It is clear that the Application accurately identifies the development's zoning designation. The requested information is located within the "four corners" of the Application and extraneous information is not required to ascertain the development's zoning designation. There can be no competitive advantage gained by having accurately provided the requested information on one form of the Application and inadvertently omitting a request for the same information on another form. This is especially true where the requested information was being provided by the same government official. Any purported error was inconsequential. As such, the Application should be scored as achieving threshold.

18. Marion Manor reserves its right to demand a formal administrative hearing pursuant to Section 120.57(1), Florida Statutes (2005) in the event that any issues of material fact are raised by its petition.

### **ULTIMATE FACTS AND LAW**

19. As a matter of ultimate fact and law, Marion Manor states that its Application should have been scored as having met threshold.

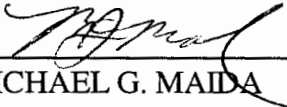
### **RELEVANT RULES AND STATUTES**

20. The statutes and rules at issue in this proceeding include, but are not limited to: Section 420.5089 Florida Statute (2005); Rule 28-106.301 Florida Administrative Code; Rule 67-48.004 Florida Administrative Code; and, Rule 67-48.005 Florida Administrative Code.

**WHEREFORE**, Petitioner respectfully requests that:

- a. An informal hearing be conducted pursuant to Section 120.57(2), Florida Statutes (2005), to review the FHFC's determination regarding the Marion Manor Application's compliance with threshold requirements<sup>1</sup>;
- b. Recommended and Final Orders be issued determining that Marion Manor satisfied the application's threshold requirements;
- c. That FHFC grant such further relief as may be deemed appropriate.

**RESPECTFULLY SUBMITTED** this 24th day of May 2006.

  
\_\_\_\_\_  
MICHAEL G. MAIDA  
FL BAR No.: 0435945  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 S. Monroe Street, Ste. 420  
P.O. Box 551  
Tallahassee, FL 32302  
904/681-6788

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that an original and one copy of the foregoing have been filed with Florida Housing Financing Corporation, Attention: Corporation Clerk, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301 on this 24th day of May 2006.

  
\_\_\_\_\_  
MICHAEL G. MAIDA

<sup>1</sup>Marion Manor reserves the right to request that 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 fact to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein

## 2006 HOME Scoring Summary

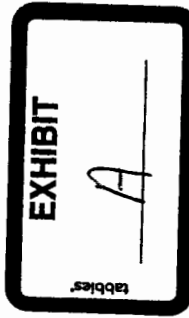
As of: 05/03/2006

File # 2006-079H Development Name: Marian Manor

As Of:	Total Points	Met Threshold?	Small County?	100% Non-Profit Applicant and Developer?	Match as Percentage of HOME Request Amount	HOME Request Amount as a Percentage of Total Development Cost
05 - 03 - 2006	66	N	N	Y	21.54%	59.86%
Preliminary	58	N	N	Y	21.54%	59.86%
NOPSE	58	N	N	Y	21.54%	59.86%
Final	66	N	N	Y	21.54%	59.86%
Final-Ranking	0	N				

**Scores:**

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1S	III	B	2.a.	Optional Features & Amenities	9	9	9	9	0
1S	III	B	2.b.	New Construction	9	0	0	0	0
2S	III	B	2.c.	Rehabilitation/Substantial Rehabilitation	12	12	12	12	0
2S	III	B	2.d.	All Developments Except SRO	12	0	0	0	0
3S	III	B	2.e.	SRO Developments	9	9	9	9	0
				Energy Conservation Features					
4S	III	E	2.b.	Set-Aside Commitments	8	8	8	8	0
5S	III	E	3	Commitment to Set-Aside Units Beyond the Minimum Affordability Period	5	5	5	5	0
6S	III	F	1	Resident Programs	6	3	3	6	0
6S	III	F	2	Programs for Non-Elderly & Non-Homeless	6	0	0	0	0
6S	III	F	3	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	4	Programs for Elderly	8	4	4	8	0
				Programs for All Applicants					
8S	IV	a		Local Government Support	5	5	5	5	0
9S	IV	b		Contributions	4	3	3	4	0
				Incentives					





## 2006 HOME Scoring Summary

**As of:** 05/03/2006

**File #** 2006-079H      **Development Name:** Marian Manor

**Reason(s) Scores Not Maxed:**

Item #	Reason(s)	Created As Result	Rescinded as Result
6S	The Applicant failed to achieve maximum points because it did not select sufficient Qualified Resident Programs for Non-Elderly/Non-Homeless Developments.	Preliminary	Final
7S	The Applicant failed to achieve maximum points because it did not select sufficient Qualified Resident Programs for All Developments.	Preliminary	Final
9S	The Applicant submitted a Local Government Verification of Affordable Housing Incentives - Expedited Permitting Process for Affordable Housing form listing the Development Location as "Punta Gorda" rather than "Port Charlotte" as stated elsewhere in the Application.	Preliminary	Final

**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1	Site Plan Approval	The Applicant provided the Local Government Verification of Site Plan Approval for Multifamily Developments form; however, the form is deficient because the city stated for the Development Location is "Punta Gorda" not "Port Charlotte" as stated elsewhere in the Application.	Preliminary	Final
2T	III	C	3.c.	Availability of Sewer	The Applicant provided the Verification of Availability of Infrastructure - Sewer Capacity, Package Treatment or Septic Tank form; however, the form is deficient because the city stated for the Development Location is "Punta Gorda", not "Port Charlotte" as stated elsewhere in the Application.	Preliminary	Final
3T	III	C	2	Site Control	The Applicant provided an incomplete copy of a Warranty Deed as evidence of site control. Exhibit A, referenced in the Deed and recorded as page two of the Deed, was not provided.	Preliminary	Final
4T	II	B	1.c	Developer Prior Experience Chart	The Developer Prior Experience Chart provided did not include name of the Developer or principal of Developer, the total number of units and the names of at least two (2) completed affordable rental housing developments.	Preliminary	Final
5T	II	B	3.b	General Contractor Prior Experience Chart	The General Contractor Prior Experience Chart provided did not include the names of at least two (2) completed housing Developments of similar Development Category Type, and Development Type for each.	Preliminary	Final
6T	V	B		Deferred Developer Fee	Part II.B.1.a., Exhibit 9, and Exhibit 11 of the Application list the Developer as "Catholic Charities Housing, Diocese of Venice, Inc." However, "Catholic Charities Housing, Inc." is listed as the Developer on the Commitment To Defer Developer Fee form at Exhibit 54. Because of this inconsistency, the deferred Developer fee cannot be counted as a source of financing.	Preliminary	Final
7T	V	B		Construction Financing Shortfall	There is a construction financing shortfall of \$587,917.	Preliminary	Final
8T	V	B		Permanent Financing Shortfall	There is a permanent financing shortfall of \$587,917.	Preliminary	Final
9T	II	B	1.b.	Developer	The Applicant listed the name of the Developer as "Catholic Charities Housing,	Preliminary	Final

## 2006 HOME Scoring Summary

As of: 05/03/2006

File # 2006-079H Development Name: Marian Manor

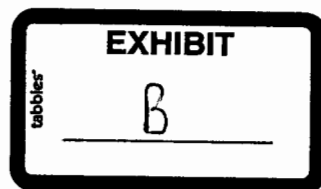
**Threshold(s) Failed:**

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
10T	III	C	1	Site Plan Approval	<p>Diocese of Venice, Inc." at Part II.B.1.a of the Application, and on Exhibit 9 and Exhibit 11. On Exhibit 54, the Developer Name is listed as "Catholic Charities Housing, Inc." Because of this inconsistency in the name of the Developer, the Developer or Principal of Developer Certification form provided cannot be accepted.</p> <p>As a cure for Item 1T, the Applicant submitted a revised Local Government Verification of Site Plan Approval for Multifamily Developments form that includes the correct city for the Development Location. However, the new form is incomplete because the Zoning Designation is not stated.</p>	Final	

Brief Statement of Explanation regarding  
Application 2006 – 079H

Provide a separate brief statement for each Cure

The Applicant Submitted a Local Government Verification of Site Plan Approval for Multifamily Developments form listing the Development location as "Punta Gorda" rather than "Port Charlotte" as stated elsewhere in the Application. Attached at Exhibit 26 is the Corrected Form stating the location as "Port Charlotte".



LOCAL GOVERNMENT VERIFICATION OF STATUS OF SITE PLAN APPROVAL FOR MULTIFAMILY DEVELOPMENTS

Name of Development: Mission Manor
22278 Vick St., Port Charlotte, FL

Development Location:
(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection, and city)

Zoning Designation:

Mark the applicable statement:

- 1. The above-referenced Development is new construction or rehabilitation with new construction and the final site plan was approved by action of the ... on ...
2. The above-referenced Development is new construction or rehabilitation with new construction and this jurisdiction provides either preliminary site plan approval or conceptual site plan approval. The preliminary or conceptual site plan was approved by action of the Development Review Commit on 12/22/2005 ...
3. The above-referenced Development is new construction or rehabilitation with new construction and requires site plan approval for the new construction work. However, this jurisdiction provides neither preliminary site plan approval nor conceptual site plan approval, nor is any other similar process provided prior to issuing final site plan approval. Although there is no preliminary or conceptual site plan approval process and the final site plan approval has not yet been issued, the site plan was reviewed by ... on ...
4. The above-referenced Development is rehabilitation without any new construction and does not require additional site plan approval or similar process.

\* "Legally Authorized Body" is not an individual. Applicant must state the name of the City Council, County Commission, Board, Department, Division, etc., with authority over such matters

CERTIFICATION

I certify that the City/County of Charlotte has vested in me the authority to verify status of site plan approval as specified above and I further certify that the information stated above is true and correct.

Signature: Bruce D. Loucks
Date (mm/dd/yyyy): 01/12/2006

Print or Type Name: Bruce D. Loucks
County Administrator
Print or Type Title

This certification must be signed by the applicable City's or County's Director of Planning and Zoning, chief appointed official (staff) responsible for determination of issues related to site plan approval, City Manager, or County Manager/Administrator/Coordinator. Signatures from local elected officials are not acceptable, nor are other signatories. If this certification is applicable to this Development and it is inappropriately signed, the Application will fail threshold.

If this certification contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold and will be rejected. The certification may be photocopied.

LOCAL GOVERNMENT VERIFICATION THAT DEVELOPMENT IS CONSISTENT WITH ZONING AND LAND USE REGULATIONS

Name of Development: Marion Manor

Development Location: 22278 Vick Street, Port Charlotte, FL

(At a minimum, provide the address assigned by the United States Postal Service, including the address number, street name and city, or if the address has not yet been assigned, provide the street name, closest designated intersection and city)

The undersigned local government official confirms that on or before 12/19/2005:  
Date (mm/dd/yyyy)

- (1) The number of units (not buildings) allowed for this development site (if restricted) is: 31 and/or if a PUD, the number of units (not buildings) allowed per development site is: \_\_\_\_\_ or if not a PUD and development site is subject to existing special use or similar permit, number of units allowed for this development site is: \_\_\_\_\_; and
- (2) The zoning designation for the referenced Development site is Mixed Use; and
- (3) The intended use is consistent with current land use regulations and the referenced zoning designation or, if the Development consists of rehabilitation, the intended use is allowed as a legally non-conforming use. To the best of my knowledge, there are no additional land use regulation hearings or approvals required to obtain the zoning classification or density described herein. Assuming compliance with the applicable land use regulations, there are no known conditions which would preclude construction or rehabilitation (as the case may be) of the referenced Development on the proposed site.

CERTIFICATION

I certify that the City/County of CHARLOTTE COUNTY (Name of City/County) has vested in me the authority to verify consistency with local land use regulations and the zoning designation specified above or, if the Development consists of rehabilitation, the intended use is allowed as a "legally non-conforming use" and I further certify that the foregoing information is true and correct. In addition, if the proposed Development site is in the Florida Keys Area as defined in Rule Chapters 67-21 and 67-48, F.A.C., I further certify that the Applicant has obtained the necessary Rate of Growth Ordinance (ROGO) allocations from the local government.

Bruce D. Loucks 12/19/05 Bruce D. Loucks  
Signature Date (mm/dd/yyyy) Print or Type Name  
County Administrator  
Print or Type Title

This certification must be signed by the applicable City's or County's Director of Planning and Zoning, chief appointed official (staff) responsible for determination of issues related to comprehensive planning and zoning, City Manager, or County Manager/Administrator/Coordinator. Signatures from local elected officials are not acceptable, nor are other signatories. If the certification is applicable to this Development and it is inappropriately signed, the Application will fail threshold.

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