

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING FINANCE CORPORATION

BETHEL ROAD APARTMENTS, LTD.,
as Applicant for SWEETWATER
APARTMENTS-Application No.
2008-061BS and BOOKER CREEK
APARTMENTS, LTD. as Applicant for
BOOKER CREEK APARTMENTS,
Application No. 2008-036BS,

CASE NO.: 2008-099UC-Ranking

Petitioners,

Application Nos. 2008-061BS
2008-036BS

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

**PETITION CHALLENGING FINAL ACTION OF
THE FLORIDA HOUSING FINANCE CORPORATION,
PURSUANT TO FLORIDA ADMINISTRATIVE CODE
§§ 28-106.201, ET SEQ. AND §§ 28-106.301, ET SEQ.**

Petitioners, BETHEL ROAD APARTMENTS, LTD. as applicant for
SWEETWATER APARTMENTS – Application No. 200-061BS and BOOKER
CREEK APARTMENTS, LTD. as applicant for BOOKER CREEK
APARTMENTS - Application No. 2008-036BS (“Petitioners”), pursuant to §§
120.57(1), Florida Statutes and Florida Administrative Code §§ 28-106.201, et seq.
and §§ 28-106.301, *et seq.* hereby challenges the final scoring given to FAIRWAY

POINTE, LTD. as applicant for FAIRWAY POINTE APARTMENTS – Application No. 2008-254B, STIRLING COVE, LTD as applicant for STIRLING COVE APARTMENTS – Application No. 2008-225B, CORAL KEYS, LTD. as applicant for CORAL KEYS– Application No. 2008-232BS, and URBAN POINTE, LTD. as applicant for URBAN POINTE – Application No. 2008-226BS, (the “Challenged Applications”) by the Respondent, FLORIDA HOUSING FINANCE CORPORATION. The grounds for this Petition are as follows:

INTRODUCTION

Parties

1. The agency affected is the Florida Housing Finance Corporation (hereafter the “Corporation”), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329.

2. Petitioner, BETHEL ROAD APARTMENTS, LTD. is located at 580 Village Boulevard, Suite 360, West Palm Beach, FL 33409 and Petitioner, BOOKER CREEK APARTMENTS, LTD. is located at 580 Village Boulevard, Suite 360, West Palm Beach, FL 33409. For purposes of this proceeding, Petitioners’ address is that of its undersigned attorneys, Robert W. Turken, BILZIN SUMBERG BAENA PRICE & AXELROD, LLP, 200 South Biscayne

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3. The other parties interested in this proceeding are the applicants that submitted the Challenged Applications, FAIRWAY POINTE, LTD., STIRLING COVE, LTD., CORAL KEYS, LTD. and URBAN POINTE, LTD. all of whom are located at 329 N. Park Avenue, Suite 300, Winter Park, Florida 32789.

Procedural History and Notice of Agency Decision

4. On or before April 7, 2008, Petitioners submitted Application No. 2008-061BS and Application No. 2008-036BS for funding under the State of Florida's Multifamily Mortgage Revenue Bonds Program (the "MMRB Program") and State Apartment Incentive Loan Program (the "SAIL Program") for large counties.

5. Also on or before April 7, 2008, FAIRWAY POINTE, LTD., STIRLING COVE, LTD., CORAL KEYS, LTD. and URBAN POINTE, LTD. (the "Competing Applicants") submitted the Challenged Applications. Applications 2008-254B and 2008-225B sought funding under the MMRB Program, and Applications 2008-232BS and 2008-226BS sought funding under the MMRB Program and SAIL Program.

6. On or about May 25, 2008, Petitioners and other applicants submitted Notices of Potential Scoring Errors (the “NOPSES”) in respect of the Challenged Applications. The NOPSES identified certain threshold deficiencies contained in the Challenged Applications, including the threshold deficiencies set forth in the Basis for Relief, *infra*.

7. On June 5, 2008, the Corporation issued its NOPSE scoring, and on July 16, 2008, the Corporation promulgated its final scores.

8. The scoring reflected that the Corporation did not disqualify the Challenged Applications despite their clear violations of the Threshold Requirements identified in the NOPSES. As a consequence of the improper failure of the Corporation to disqualify the Challenged Applications, Petitioners’ applications were excluded from funding under the MMRB Program and SAIL Program.

Summary of Grounds for Petition

9. The Corporation should have disqualified the Challenged Applications and excluded them from the final scoring and ranking because the proposed developments do not meet the Project Feasibility and Economic Viability requirements of Florida Statutes §§ 420.5087(c)(9) and (10), and Part V.B. of the 2007 Universal Application Instructions. Using even the most favorable

assumptions and financial terms available, the Competing Applicants' projects could not possibly support the debt service for the financing identified on the Challenged Applicants' development pro-formas necessary to fund the projects' total development costs. Thus, the Competing Applicants' certifications pursuant to Part I of the Specific Instructions and Exhibit 1 to the Challenged Applications that "the proposed Development can be completed and operating within the development schedule and budget submitted to the Corporation" were demonstrably false.

Explanation of Substantial Interests Affected

10. As a result of the Corporation's improper failure to reject the Challenged Applications for violation of the Threshold Requirements discussed above, the projects that are the subject of Petitioners' applications have been excluded from funding under the MMRB Program and the SAIL Program. If the Corporation's errors were corrected and the Challenged Applications had been disqualified based on their violations of the Threshold Requirements, Petitioners' projects would have been elevated within the funding range.

**STATEMENT OF ULTIMATE FACTS WARRANTING
MODIFICATION OF AGENCY ACTION**

BASIS FOR RELIEF:

The Challenged Applications are deficient pursuant to § 420.5087(c)(9) and (10), Fla. Stat. Part I, Exhibit I and Part V.B. of the 2007 Universal Application Instructions, because the projects depicted in the Challenged Applications are not feasible or economically viable.

11. The Challenged Applications should have been disqualified because the projects could not possibly meet the feasibility and economic viability requirements of Florida Statutes Sections 420.5087(c)(9) and (10), Part I, Exhibit I and Part V.B. of the 2007 Universal Application Instructions.

12. Pursuant to Part I of the Specific Instructions and Exhibit 1 to the Challenged Applications, the Applicants were required to certify “that the proposed Development can be completed and operating within the development schedule and budget submitted to the Corporation.” The Applicants were further required to certify under penalties of perjury that “the information [contained in this application] is true, correct and complete.”

13. These requirements emanate from the express provisions of Florida Statutes Sections 420.5087(c)(9) and (10), which state:

The Corporation shall provide by rule for the establishment of a review committee composed of the department and corporation staff and shall establish by

rule a scoring system for evaluation and competitive ranking of applications submitted in this program, including, but not limited to, the following criteria:

9. Project feasibility.
10. Economic viability of the project.

14. The Applicants' pro-formas describe projects that fail both the tests of project feasibility and economic viability from an operational and funding perspective.

15. Even with favorable assumptions (including the most favorable bond rate interest and other financial terms available, minimum non-debt operating costs, and an occupancy rate of 94%), the projects could not possibly support the debt service for the financing identified on the Challenged Applications development pro-formas.

16. The financing commitments submitted in conjunction with the Challenged Applications each require a debt service coverage ratio of 1.20. At this rate, the funding shortfall for each of the proposed projects (the difference between the financing stated in the Challenged Applications' pro-formas and the amount of debt that could be supported by the proposed projects) are as follows:

- (a) FAIRWAY POINTE APARTMENTS ----- \$ 3,950,000.00;

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- (b) STIRLING COVE APARTMENTS ----- \$11,070,000.00;
- (c) CORAL KEYS ----- \$10,310,000.00;
- (d) URBAN POINTE APARTMENTS ----- \$10,940,000.00.

17. The discrepancy between the debt listed on the pro-formas and the amount of debt that could be serviced is so great that it cannot reasonably be anticipated that the Applicants actually intend to develop the projects at the development costs submitted in the Challenged Applications. For this reason alone, the Applicants' certifications that "the development can be completed and operating within the development schedule and budget submitted to the Corporation" and that "the information [contained in this application] is true, correct and complete" were clearly false, and the Challenged Applications should have been disqualified.

For these reasons, the Corporation should:

- (1) Reject the Challenged Applications;
- (2) Re-Order the final rankings without the Challenged Applications, thus placing Petitioner's projects within the funding range;
- (3) Award Petitioner its requested funding; and
- (4) Award such other relief as is deemed just and proper.

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Dated this 11/11 day of October, 2008.


Respectfully submitted,

BETHEL ROAD APARTMENTS, LTD.
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- by -

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