

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

HERITAGE VILLAGE COMMONS, LTD.,

Petitioner,

vs.

Case No: 2012-037UC
FHFC Applic. #2011-055C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

RECEIVED
12 JUL -2 PM 3:31
FLORIDA HOUSING
FINANCE CORPORATION

**PETITION FOR INFORMAL
ADMINISTRATIVE PROCEEDING**

Petitioner, HERITAGE VILLAGE COMMONS, LTD. (“Heritage Village”), pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rules 28-106.301 and 67-48.005(5), Florida Administrative Code (“F.A.C.”), hereby requests an informal administrative proceeding to challenge the incorrect ranking by Respondent, the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”), of competing applications for funding in the 2011 Universal Cycle. The challenged actions resulted in FHFC denying Heritage Village its requested tax credit funding, thereby materially and adversely affecting its substantial interests. In support of its Petition, Heritage Village states as follows:

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:

Heritage Village Commons, Ltd.
1105 Kensington Park Drive, Suite 200
Altamonte Springs, FL 32714
Telephone No. (407) 333-3233

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

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

The Low-Income Housing Tax Credit Program

4. The United States Congress has created a program, governed by Section 42 of the Internal Revenue Code ("IRC"), by which federal income tax credits are allotted annually to each state on a per capita basis to help facilitate private development of affordable low-income housing for families. These tax credits entitle the holder to a dollar-for-dollar reduction in the holder's federal tax

liability, which can be taken for up to ten years if the project continues to satisfy all IRC requirements.

5. The tax credits allocated annually to each state are awarded by state “housing credit agencies” to single-purpose applicant entities created by real estate developers to construct and operate specific multi-family housing projects. The applicant entity then sells this ten-year stream of tax credits, typically to a “syndicator,” with the sale proceeds generating much of the funding necessary for development and construction of the project. The equity produced by this sale of tax credits in turn reduces the amount of long-term debt required for the project, making it possible to operate the project at below-market-rate rents that are affordable to low-income and very-low-income tenants.

6. Pursuant to section 420.5099, Florida Statutes, FHFC is the designated “housing credit agency” for the State of Florida and administers Florida’s low-income housing tax credit program. Through this program, FHFC allocates Florida’s annual fixed pool of federal tax credits to developers of affordable housing.¹

¹ FHFC is a public corporation created by law in section 420.504, Florida Statutes, to provide and promote the financing of affordable housing and related facilities in Florida. FHFC is an “agency” as defined in section 120.52(1), Florida Statutes, and is therefore subject to the provisions of Chapter 120, Florida Statutes.

The 2011 Universal Application Cycle

7. Because FHFC's available pool of funding each year is limited, proposed affordable housing projects must compete for this financing. To assess the relative merits of proposed developments, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. As set forth in Rules 67-48.002-.005, F.A.C., FHFC's application process for 2011 consisted of the following:

- a. the publication and adoption by rule of a "Universal Application Package," which applicants use to apply for a variety of FHFC-administered funding programs, including federal tax credits and SAIL loans;
- 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 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 an applicant to challenge, via informal or formal administrative proceedings, FHFC's evaluation of any item in their own application for which the applicant received less than the maximum score;
- j. final scores, ranking, and allocation of tax credit funding to applicants, adopted through final orders; and
- k. an opportunity for applicants to challenge, via informal or formal administrative proceedings, FHFC's final scoring and ranking of competing applications where such scoring and ranking resulted in a denial of FHFC funding to the challenger.²

8. On or about December 6, 2011, numerous applications were submitted to FHFC seeking tax credit funding. Heritage Village (FHFC Applic. #2011-055C) applied for \$1,510,000 in annual tax credits to help finance the development of its project, a 120-unit apartment complex for seniors in Longwood, Seminole County, Florida. Heritage Village committed 90% of its project to serving elderly residents earning 60% or less of the area median income ("AMI"), with the remaining 10% dedicated to elderly residents earning 33% or less of AMI.

9. Heritage Village competed for funding among those projects qualifying as a "TOD Development" (a Transit-Oriented Development). To earn

² This Petition initiates such a challenge. Notably, if successful in such a challenge, the previously awarded tax credits are not taken away from the competing applicant who was scored or ranked in error and given to the challenger. Instead, the competing applicant keeps its tax credits, and the challenger receives its requested funding "off-the-top" from the next pool of tax credits made available to FHFC for allocation. *Rule 67-48.005(7)*, F.A.C.

this designation, which was one newly introduced in the 2011 Universal Cycle, an applicant had to make the appropriate selection in the application and submit an FHFC form signed by the relevant local government. *Applic. Instr.*, pp. 10.

10. In this form, the local government certifies that the project is in one of the locations specified on the form by FHFC, each of which is associated with a commuter rail station, and that the project's location has been designated by the local government as a recognized rapid transit zone or district. *Applic.*, Exh. 20. Notably, only four counties could qualify for TOD Developments, with Miami-Dade County having the most qualifying locations: Miami-Dade County (20); Broward County (2); Palm Beach County (1), and Seminole County (1).

11. Armed with this form, if the project met several other criteria, including close proximity to the indicated rail station, the project would qualify as a TOD Development. *Applic. Instr.*, pp.18-19, 123.

12. In light of the benefits of commuter rail, both in enhancing resident mobility and in promoting mass transit for the community at large, FHFC established a first-time goal in the 2011 Universal Cycle to fund three TOD Developments from Florida's limited supply of tax credits (the "TOD Goal"). *Applic. Instr.*, pp. 122, 125-26.

The 2011 Rankings

13. On June 8, 2012, FHFC's Board adopted final scores and rankings.³ The Heritage Village project met all of FHFC's threshold application requirements, received the maximum application score of 79 points, the maximum "ability-to-proceed" tie-breaker score of 6.0 points, and a proximity tie-breaker score of 29.75 points out of a possible 36. Notably, 37 of the 38 TOD Developments that passed threshold and received the maximum application score and "ability-to-proceed" tie-breaker score were located in Miami-Dade County - the Heritage Village project was the only one located outside of Miami-Dade County (in Seminole County).

14. As expressed by FHFC in its "Qualified Allocation Plan," which is submitted to the Internal Revenue Service and which governs FHFC's distribution of these federal tax credits, "FHFC's goal is to have a diversified rental housing portfolio." *QAP*, §6. In service of this goal, FHFC's application and ranking process for the 2011 Universal Cycle was specifically designed to distribute tax credit funding to different types of projects, including at least three TOD

³ On or about June 11, 2011, Heritage Village received formal notice from FHFC of the final scores and rankings, along with notice of its rights under Chapter 120 to challenge them. This Petition is timely filed in response to that notice.

Developments,⁴ and to distribute this funding geographically to help house low-income families throughout the state.

15. Despite the acknowledged goals of FHFC's program, all three of the projects funded by FHFC to fulfill its TOD Goal were located in Miami-Dade County, representing \$6,735,597 of the state's available annual tax credits. Indeed, outside of the TOD Goal, FHFC funded seven additional TOD Developments in Miami-Dade County, for a total of \$12,818,057 in annual tax credits.

16. In sum, FHFC funded ten TOD Developments in Miami-Dade County, using up \$19,553,654 (or 32.6%) of the state's available \$60 million in tax credits. By contrast, FHFC funded no TOD Developments outside of Miami-Dade County.⁵

17. In the context of the TOD Goal, this skewed result stems from FHFC's flawed interpretation of a portion of the ranking methodology set forth in its Application Instructions. On page 125, the following provision appears with respect to the TOD Goal:

⁴ Beyond the three targeted TOD Developments, FHFC also targeted for funding: one Elderly Development, two Florida Keys Area Developments, one RD Preservation Development, one Homeless Development, and one Public Housing Revitalization Development. *QAP*, §6.

⁵ Across all of FHFC's targeting goals and set-asides, only 3.5% of Florida's available tax credits went to projects located in Small Counties (grouped by population) and only 26% went to Medium Counties, like Seminole County.

Notwithstanding Section 4.c. above, when selecting eligible unfunded Applications to meet the Goal of funding 3 TOD Developments, a lower ranked Application will be selected for tentative funding prior to a higher ranked Application if the higher ranked Application is located in a designated TOD area where an Application has already been tentatively selected for funding, even if the higher ranked Application is in Group 1 and the lower ranked Application is in Group 2. Designated TOD areas are listed in Part III.A.2.h. of the Instructions. Once this Goal has been met, this provision will no longer apply.⁶

18. The practical application of this provision turns on what is meant by a “designated TOD area.” Under one reading, “designated TOD area” would refer collectively to a particular county served by commuter rail (Broward, Miami-Dade, Palm Beach, or Seminole) and all the specified stations therein – this reading would promote the geographic diversity of FHFC’s portfolio and lead to fair and open competition for tax credits among the four Florida counties served by commuter rail. If this reading had been applied in the 2011 rankings, Miami-Dade County would have received two TOD Developments (ranked first and third) and Seminole County would have received one (Heritage Village, ranked second).

19. Under the reading apparently adopted by FHFC, however, “designated TOD area” would refer individually to each of the specified rail stations. This reading led to the funding of TOD Developments exclusively in Miami-Dade

⁶ All emphasis in quoted material is supplied by the undersigned unless otherwise indicated.

County, driven in large part by the numerous qualifying locations in Miami-Dade County – twenty, compared to just four for all other eligible counties combined.

20. Respectfully, as explained above, this reading of “designated TOD area” adopted by FHFC in its ranking of TOD Developments is unreasonable and contrary to FHFC’s funding goals and objectives, as expressed in its Qualified Allocation Plan.

21. Further, FHFC’s reading of the phrase “designated TOD area” to refer to individual rail stations, as opposed to referring collectively to a particular county served by commuter rail and all the specified stations therein, is not supported by the text of the Application. Notably, the phrase “designated TOD area” as used in the above-quoted TOD ranking provision is a term new to the 2011 Universal Cycle. It is not a defined term, nor is it a capitalized term for which FHFC has prescribed a particular meaning. *See Applic. Instr.*, p.1 (“Unless otherwise provided in these Instructions and the Application, capitalized terms are as defined in the rule chapters.”).

22. Rather, on page 19 of the Application Instructions (Part III.A.2.h.), individual rail stations are listed under each of the four eligible counties as “Designated Areas,” e.g., “Designated Areas in Broward County,” “Designated Areas in Miami-Dade County,” etc. Collectively, these listings grouped by county are introduced as “designated TOD areas,” as set forth below:

For purposes of the 2011 Universal Application Cycle, the designated TOD areas are:

- Designated Areas in Broward County: Deerfield Beach TOD and Sheridan Station TOD;
- Designated Areas in Miami-Dade County: Allapattah Station, Brickell Station, Brownsville Station, Civic Center Station, Coconut Grove Station, Culmer Station, Dadeland North Metrorail, Dadeland South Metrorail, Douglas Rd. Station, Dr. Martin Luther King, Jr. Station, Earlington Heights Station, Government Center Station, Northside Station, Okeechobee Metrorail Station, Overtown Arena Station, Santa Clara Station, South Miami Station, Tri-Rail MetroRail Station, University Station, and Vizcaya Station;
- Designated Area in Palm Beach County: West Palm Beach Station/ Seaboard Station; and
- Designated Area in Seminole County: City of Longwood Transit Village.

Applic. Instr., p. 19.

23. Thus, FHFC has used the capitalized term “Designated Areas” to refer to individual rail stations. In using the distinct term “designated TOD area,” it must be presumed that FHFC intended to refer to something other than individual rail stations – instead referring collectively to a particular county served by commuter rail and all the specified stations therein.

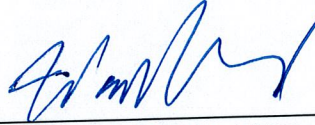
24. If FHFC had appropriately interpreted its TOD ranking provision as suggested above, Heritage Village would have received its requested tax credit

funding. The substantial interests of Heritage Village are therefore materially and adversely affected by FHFC's improper actions, and Heritage Village has standing to challenge those actions in this proceeding.

WHEREFORE, Petitioner, Heritage Village Commons, Ltd., requests that:

- a. FHFC award Heritage Village its requested tax credit funding;
- 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 the Florida Division of Administrative Hearings 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;
- d. FHFC's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order directing FHFC to award Heritage Village its requested tax credit funding;
- e. FHFC enter a Final Order awarding Heritage Village its requested tax credit funding; and
- f. Heritage Village be granted such other and further relief as may be deemed just and proper.

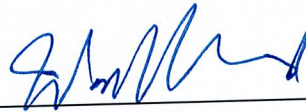
Respectfully submitted on this 2nd day of July, 2012.



WARREN HUSBAND
FL BAR No. 0979899
Metz, Husband & Daughton, P.A.
P.O. Box 10909
Tallahassee, Florida 32302-2909
850/205-9000
850/205-9001 (Fax)
Attorney 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 2nd day of July, 2012.



Attorney