

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

KENSINGTON PLACE PARTNERS, LP

Petitioner,
vs.

FHFC No. 2011-042UC
Application No. 2011-225C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation (“Board”) for consideration and final agency action on September 7, 2012. The matter for consideration before this Board is a Recommended Order issued under section 120.57(2), Florida Statutes. After a review of the record and otherwise being fully advised in these proceedings, this Board finds:

This case involves a protest filed pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rule 28-110.004, Fla. Admin. Code. wherein Petitioner, KENSINGTON PLACE PARTNERS, LP (the “Petitioner” or “Kensington”), challenged Florida Housing’s scoring

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Dellach Harvey / DATE: 9/10/12

decisions regarding a competing Application, No. 2011-234C, filed by Uptown Maitland Partners, Ltd. (“Uptown” or “234C”).

Petitioner timely filed its “Petition for Administrative Hearing,” (the “Petition”) on July 12, 2012. alleging that Florida Housing erred in scoring Uptown’s application in the following respects: by accepting Uptown’s Exhibit 9, disclosing principals of the Developer entity; by accepting Uptown’s Exhibit 32 –“Local Government Verification of Zoning Approval for Multifamily Developments,” and awarding “Ability to Proceed” tiebreaker points; by accepting Uptown’s “Verification of Local Government Contribution – Grant,” on Application Exhibit 36, and by awarding four tie-breaker points for Uptown’s original Exhibit 25, proximity to a medical service.

No dispute of material fact was raised in the Petition. Accordingly, an Informal Hearing was conducted by Florida Housing’s Designated Hearing Officer, Diane D. Tremor, on August 21, 2012, pursuant to Sections 120.569 and 120.57(2), Florida Statutes and Rule 28-106, Florida Administrative Code. At hearing, Petitioner was granted leave to amend its Petition, by adding a count alleging that Florida Housing erred in accepting Uptown’s Equity Commitment Letter. The parties filed Proposed Recommended Orders.

A Recommended Order was filed on September 4, 2012. A true and correct copy of the Recommended Order is attached hereto as "Exhibit A." The Recommended Order recommends that Florida Housing enter a Final Order finding that:

Uptown Maitland's application was correctly scored with respect to identification of the Principals of the Developer (Exhibit 9); zoning (Exhibit 32); local government contribution (Exhibit 36); and the equity commitment letter submitted on behalf of FL Tax Holdings 2010, Ltd. Further, that Uptown Maitland was not entitled to four tie-breaker points for proximity to a medical facility, and that this conclusion places Petitioner's Application No. 2011-225C in the eligible range for available allocation of federal tax credits.

RULING ON THE RECOMMENDED ORDER

The Board finds that the findings of fact and the conclusions of law of the Recommended Order are supported by competent substantial evidence.

ORDER

1. The Findings of Fact of the Recommended Order are adopted as Florida Housing's Findings of Fact and incorporated by reference as though fully set forth in this Order.

2. The conclusions of law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.

IT IS HEREBY **ORDERED** that Petitioner's Application No. 2011-225C, is in the eligible range for available allocation of federal tax credits.

DONE and ORDERED this 7th day of September, 2012.



FLORIDA HOUSING FINANCE CORPORATION

By: _____

Chair

Copies to:

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Diane Tremor, Hearing Officer
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NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

KENSINGTON PLACE PARTNERS, LP

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FHFC Case No. 2012-042UC
Application No. 2011-225C

_____ /

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, and Rule 67-48.005(5), Florida Administrative Code, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in the above captioned proceeding in Tallahassee, Florida on August 21, 2012.

APPEARANCES

For Petitioner:

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For Respondent:

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STATEMENT OF THE ISSUES

There are no disputed issues of material fact. The issues for determination in this proceeding are whether Florida Housing erroneously scored and ranked Application Number 2011-234C (“Uptown Maitland Partners, LTD” or “Uptown Maitland”) in the areas of an appropriate listing of Developer principals, zoning, local government contributions, proximity tie-breaker points, and funding sources.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 10. Petitioner’s Exhibits 1 and 2 were also received into evidence. Joint Exhibit 1 is a Prehearing Stipulation containing stipulated facts primarily describing the application process and the circumstances regarding the scoring of Upland Maitland’s Application Number 2011-234C with regard to the issues in dispute. The Prehearing Stipulation is attached to this Recommended Order as Attachment A, and the facts recited therein are incorporated in this Recommended Order.

Subsequent to the hearing, the parties submitted their Proposed Recommended Orders, which have been fully considered by the undersigned.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, as well as the parties' Prehearing Stipulation, the following relevant facts are found:

1. The Petitioner, Kensington Place Partners, LP, submitted Application Number 2011-042C in Florida Housing's 2011 Universal Cycle. Based upon Florida Housing's Final Ranking dated June 8, 2012, Petitioner would have been in the funding range, but for Florida Housing's scoring of other applications, including Uptown Maitland's Application Number 2011-234 C. (Attachment A)

Principals of the Developer

2. The Universal Cycle Application and Application Instructions, at Part II(A)(3), require an applicant to disclose the Principals for each Developer behind a tab labeled "Exhibit 9." Rule 67-48.002(91), Florida Administrative Code, defines a "Principal" as "any officer, director, shareholder, manager, member, general partner or limited partner of" "any general partner or limited partner," "of any managing partner or member" or "of any shareholder" of a Developer.

3. In its cured Exhibit 9, Uptown Maitland disclosed the following information with regard to its Developer, Atlantic Housing Partners, L.L.L.P., a Florida limited liability limited partnership:

Sole General Partner: Atlantic Housing Partners Managers, LLC, a Florida limited liability company

Managers: Paul M. Missigman
W. Scott Culp

Member: Atlantic Housing Partners Nevada, L.L.C., a
Nevada limited liability company

Member: Paul M. Missigman

Member: Scott Culp

Limited Partner: Florida CIS Housing Advisors, L.P., a Florida limited partnership

General Partner: Florida CIS Housing Advisors, L.L.C., a
Florida limited liability company

Limited Partner: Michael J. Sciarrino Irrevocable Trust

Limited Partner: Suzanne Sciarrino

Limited Partner: Atlantic Housing Group Partners, Ltd., a Florida limited
partnership

General Partner: Atlantic Housing Group Partners, L.L.C., a
Florida limited liability company

Limited Partner: Firenze Housing, L.L.C., a Florida limited
liability company

Limited Partner: Jaks Trust, L.L.C., a Florida limited liability
company

4. Notices of Alleged Deficiencies (“NOADS”) were submitted with regard to Upland Maitland’s revised Exhibit 9, asserting that Upland Maitland failed to identify the Principals of the Sole General Partner and the two Limited Partner entities listed as the Principals of the Developer. More specifically, the NOAD asserted that the Principals of the following entities should have been disclosed: Atlanta Housing Partners Nevada, L.L.C., Florida CIS Housing Advisors, L.L.C., Atlanta Housing Group Partners, L.L.C., Firenze Housing, L.L.C., and Jaks Trust, L.L.C. (Joint Exhibit 9)

5. Florida Housing did not penalize Uptown Maitland for any deficiency regarding its revised Exhibit 9. (Attachment A)

Zoning

6. Applicants are required to demonstrate, as a threshold matter, that the proposed Development Site is appropriately zoned and consistent with local land use regulations regarding density and intended use at the time of the application deadline. (Application Instructions, Part III, Section C(4)) This is to be accomplished by the submission of Exhibit 32, a form entitled “Local Government Verification that Development is Consistent with Zoning and Land Use Regulations” to be executed by the appropriate local government official.

7. If appropriate zoning is initially demonstrated, Applicants are entitled to receive one Ability to Proceed tie-breaker point. If threshold is failed in this area, but the Applicant successfully cures the zoning issue during the cure period, the Applicant is entitled to receive only one-half of a tie-breaker point. (Application Instructions, Section C(3)).

8. Upland Maitland’s initially submitted Exhibit 32, certified by the City Manager of the City of Maitland, identifies the zoning designation for the Development as “General Commercial.” Paragraph 1 of the Exhibit 32 form contains three spaces in which to insert the number of units allowed for the development site. The first space is for the number of units allowed (if restricted),

and is followed by the words “and/or.” The second space is for insertion of the number of units allowed if the development is a PUD. The third space is for the insertion of the number of units allowed if the site is not a PUD but is subject to “existing special use or similar permit.” Upland Maitland inserted its allowable unit numbers (96) only in the first space. (Joint Exhibit 5) There is no requirement on the form that any further documentation be attached to Exhibit 32.

9. NOPSEs were filed regarding Upland Maitland’s Exhibit 32. Several NOPSEs pointed out that the General Commercial zoning district prohibits new single, two or multiple-family dwellings. (Joint Exhibit 7) Another NOPSE points out that the maximum density for the proposed development (96 Units) is established by a Developer’s Agreement, which Agreement was attached to the NOPSE. It is alleged that the development site is therefore subject to an existing “special use or similar permit,” and that the permitted number of units (96) should have been indicated on the third line of Paragraph 1 of the form attached as Exhibit 32 of Uptown Maitland’s application. (Joint Exhibit 7)

10. Florida Housing awarded the full one Ability to Proceed tie-breaker point to Upland Maitland for the zoning element.

Local Government Contribution

11. Part IV, Section A of the Universal Application Instructions allows Applicants to receive five points for a local government contribution, including a

grant. Uptown Maitland submitted Exhibit 36, a form entitled “Local Government Verification of Contribution – Grant” certifying that Orange County committed \$100,000 as a grant to Uptown Maitland’s development and identifying “SHIP” as the source of the grant. (Joint Exhibit 6)

12. A NOPSE was filed regarding Uptown Maitland’s Exhibit 36, asserting that the Orange County SHIP Program Local Housing Assistance Plan, at page 13, provides that the maximum SHIP grant which may be awarded by Orange County is \$75,000. (Joint Exhibit 7) The referenced provision of that Plan states: “Maximum award is noted on the Housing Delivery Goals Charts: \$75,000.” (Joint Exhibit 3)

13. The “Housing Delivery Goals Chart” contained within the Local Housing Assistance Plan lists a maximum SHIP award of \$75,000 for “VLI Units,” a \$75,000 maximum SHIP award for “LI Units,” and \$150,000 as “New Construction SHIP Dollars.” (Joint Exhibit 3)

14. Florida Housing accepted Uptown Maitland’s Exhibit 36, awarding 5 points. The \$100,000 local government grant was not counted as a source of financing, but this did not result in any financing shortfalls. (Joint Exhibit 10)

Proximity to Medical Facility

15. Part IV, Section A(10) of the Application Instructions allows Applicants to receive 4 proximity tie-breaker points for the proposed

development's proximity to a medical facility. The Instructions, at page 34, define an eligible "medical facility" as "a hospital, state or county health clinic or walk-in clinic (that does not require a prior appointment) that provides general medical treatment or general surgical services at least five days per week to any physically sick or injured person." Uptown Maitland designated "Doctor's Associates of Orlando" as the medical facility entitling it to four proximity tie-breaker points.

16. A NOPSE was filed alleging that "Doctor's Associates of Orlando" does not satisfy the definition of a "medical facility," and attaching four affidavits to support such assertion. The four affidavits, all dated January 25, 2012, contain numerous allegations, including the following:

a. "Doctor's Associates of Orlando" has no business license in the City of Maitland or Orange County for any business at the address listed in the application. (Joint Exhibit 7)

b. On January 19, 2012, at 12:10 p.m., a visitor to the address listed in the application observed no employees other than the receptionist and no patients. When he advised the receptionist that his daughter was in the car with flu-like symptoms and he wanted her to see the doctor, he was told by the receptionist to come back another time or to make an appointment. This same affiant, as well as another affiant, observed no signage from the street at the front

of the building and no office hours posted near the office on the second floor at the back of the building. (Joint Exhibit 7)

c. Several affiants attempted to call the phone numbers listed on the website. One affiant states that when she reached one of the numbers, she asked if she could just walk in and see the doctor. She was told that she should give three hours notice because the doctor was not always there and that only one doctor worked there. Other affiants who called the website-provided telephone number were answered by a voicemail directing the caller to another number, which was answered only by a voicemail repeating the latter number. None of the voicemail answering services mention “Doctor’s Associates of Orlando” or describe any business. (Joint Exhibit 7)

17. Florida Housing continued to award Uptown Maitland four proximity tie-breaker points for its proximity to Doctor’s Associates of Orlando.

Equity Commitment Letter

18. In order to satisfy Part V, Section D(3) of the Application Instructions, Uptown Maitland provided an equity commitment letter from FL Tax Holdings 2010, Ltd., signed by Paul Missigman, as the manager of the general partner of FL Tax Holdings 2010, Ltd. (Petitioner’s Exhibit 2) Paul Missigman is also a member of the sole general partner of the Developer, Atlanta Housing Partners. L.L.L.P. (Joint Exhibit 2) FL Tax Holdings 2010, Ltd., is not identified

as a Principal of the Applicant or the Developer on Uptown Maitland's Exhibit 9. (Joint Exhibit 2)

19. A NOPSE was filed asserting that the equity commitment letter provided by FL Tax Holdings 2010, Ltd., should be treated as an owner's commitment to provide equity and the Application Instructions require that "if not syndicating/selling the Housing Credits, evidence of ability to fund must be provided as an Exhibit to the Application." The NOPSE contends that since no financial statements or other evidence of ability to fund by FL Tax Holdings, 2010, Ltd., were provided, Uptown Maitland should not have passed threshold on this issue. (Petitioner's Exhibit 2) In essence, it was alleged that a "sale" to an affiliate is not a syndicating or sale of tax credits, thus evidence of ability to fund should have been required. Florida Housing did not accept this NOPSE. (Joint Exhibit 10)

CONCLUSIONS OF LAW

Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Chapter 67-48, Florida Administrative Code, the Informal Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. Because Florida Housing determined that Petitioner was ineligible for funding due to its scoring of Uptown Maitland's application, Petitioner has standing to bring the instant proceeding. Rule 67-48.005(5), Florida Administrative Code. If the application submitted by

Uptown Maitland had been scored as alleged by Petitioner, Petitioner would have been deemed eligible for funding.

The issues for determination in this proceeding are whether Florida Housing properly scored the application submitted by Uptown Maitland in five areas: the disclosure of the Principals of the Developer, zoning, local government contribution, proximity to a medical facility and an equity commitment letter. With respect to each of these issues, the Petitioner, Kensington Place Partners, LP, bears the burden of proof by a preponderance of the evidence.

Principals of the Developer

Florida Housing's rules, which include the Application Instructions and forms, require applicants to disclose the Principals of the Developer of the proposed project. Here, as set forth in Paragraph 3 of the above Findings of Fact, Upland Maitland's revised Exhibit 9 disclosed the Principals of the Developer as consisting of a sole general partner and two limited partners. For each of these entities, the managers, members, general partners and limited partners were identified.

Petitioner contends that this listing is incomplete because Uptown Maitland failed to identify the Principals of the Principals identified in revised Exhibit 9 (i.e., the Principals of one of the members of the sole general partner, the Principals of the general partner of one of the limited partners and the Principals of

the general partner and limited partners of the other limited partner). There simply is no provision in Florida Housing's rules that require an applicant to go deeper than a listing of the Developer's Principals, as defined by Rule 67-48.002(91), Florida Administrative Code. Uptown Maitland was not required to list entities within the Developer entity beyond those listed on revised Exhibit 9. To hold otherwise would be to read a requirement into Respondent's rules which does not exist. Accordingly, it has not been demonstrated that Florida Housing erred in scoring Uptown Maitland's revised Exhibit 9.

Zoning

Petitioner has failed to demonstrate that Florida Housing's scoring of Uptown Maitland's Exhibit 32 was incorrect. Exhibit 32, if properly completed and certified by the appropriate local government official, constitutes proof that the intended use is consistent with current land use regulations and the referenced zoning designation. Petitioner does not contest the correctness of the zoning designation of "General Commercial" contained on the form, nor does Petitioner contest the correctness of the number of units (96) allowed for the development site, as expressed on the form.

Instead, the Petitioner asserts that since the designated zoning for the site prohibits new single, two or multi-family dwellings, Uptown Maitland did not demonstrate it has zoning approval for its development. Petitioner urges that

Florida Housing could not consider the Developer's Agreement provided in a NOPSE because that Agreement was not provided by Uptown Maitland in its application. Further, Petitioner argues that because the maximum number of units (96) for the development was established by means of the Developer's Agreement, the development is subject to an "existing special use or similar permit," and, therefore, the number of units should have been indicated on the third line under paragraph 1 of Exhibit 32.

There is no dispute in this case that the designated zoning for the site is General Commercial and that the maximum number of units allowed pursuant to the Development Agreement is 96. To that extent, those designations on Exhibit 32 are correct. The issues are whether Uptown Maitland, or the person who executed Exhibit 32 (the City Manager of the City of Maitland) was required to attach the Development Agreement to Exhibit 32, whether Florida Housing could consider the Development Agreement submitted as part of a NOPSE, and whether the number of units was required to be placed in the third space provided for a development "[i]f not a PUD and development site is subject to existing special use or permit."

There is no requirement in the Application Instructions or on the form which constitutes Exhibit 32 that any documents be attached to that form. Through the requirement that Exhibit 32 be utilized to demonstrate consistency with local

government zoning and land use regulations, Florida Housing has indicated its intent to rely upon the appropriate local government official to verify such consistency. If documentation were provided, either by the applicant or by a competing applicant through a NOPSE, that the information on the form is incorrect, Florida Housing would be required to address that error. However, in this case, the documentation submitted in a NOPSE (the Developer's Agreement) demonstrated no error in the information provided on Exhibit 32. The correct zoning designation and the correct number of units allowed were provided on Exhibit 32. While a NOPSE pointed out that the zoning classification designated on the form did not permit multi-family dwellings, another NOPSE provided documentation that the development site was the subject of a Developer's Agreement which allowed up to 96 multi-family residential townhouses. The assertion that the Developer's Agreement provided in a NOPSE could not be considered by Florida Housing ignores the application process set forth in Florida Housing's Rule 67-48.004, Florida Administrative Code. It also ignores the fact that neither the applicant nor the local government official who provides the certification on Exhibit 32 is required to attach supporting documentation to that Exhibit.

Finally, there is no support for Petitioner's assertion that the allowed unit number should have been provided on the third space indicated on paragraph 1 of

Exhibit 32. That space is to be completed for development sites subject to “existing special use or similar permit.” Petitioner failed to present any evidence or convincing legal argument that the Developer’s Agreement which allows the construction of 96 units constitutes an “existing special use or similar permit.” Accordingly, the identification of the number of units on the first space provided in paragraph 1 of Exhibit 32 was not shown to be erroneous.

Local Government Contribution

Exhibit 36 (Joint Exhibit 6) is a certification that Orange County committed \$100,000 as a SHIP grant to Upland Maitland’s proposed project. A NOPSE claimed that the maximum SHIP grant which could be awarded is \$75,000, relying on page 13 of the Orange County SHIP Program’s Local Housing Assistance Plan, which provides: “Maximum award is noted on the Housing Delivery Goals Charts: \$75,000.” At the hearing, Respondent Florida Housing pointed to the Housing Delivery Goals Charts in that same document, which lists a maximum SHIP award of \$75,000 for “VLI Units,” a \$75,000 maximum SHIP award for “LI Units,” and \$150,000 as “New Construction SHIP Dollars.” Florida Housing’s rationale, offered at hearing, that the two “75,000” categories could be combined for a total available maximum grant of \$150,000 appears to be a reasonable interpretation of that chart. The prior language (at page 13) stating a \$75,000 maximum award is qualified by the words that the “Maximum award is noted on

the Housing Delivery Goals Charts.” Absent further evidence or convincing legal argument to the contrary, Petitioner has failed to prove that Florida Housing erroneously scored Uptown Maitland’s Exhibit 36.

Proximity to Medical Facility

Florida Housing accepted Uptown Maitland’s designation of “Doctor’s Associates of Orlando” as a medical facility eligible for four proximity tie-breaker points. It did so in spite of overwhelming evidence in the form of affidavits submitted in a NOPSE (the facts of which are deemed admitted by Florida Housing in this informal proceeding) that said “medical facility” had no business license, had no medical personnel or other patients on site, had no signage, had no posted office hours and either could not be reached by telephone or, if a person at the facility were reached by telephone, the caller was told to give three hours’ notice before coming in because the doctor was not always there and that only one doctor worked there. A person presenting himself at the site was told to come back another time or to make an appointment. (Joint Exhibit 7)

Respondent Florida Housing urges that there are no specific rule requirements regarding telephone numbers, voicemail, messages, signage, posting of office hours, whether a physician must be present at all times, or whether wait times disqualify a facility as a “medical facility.” That is technically correct. However, the definition of a “medical facility” contained within the Application

Instructions clearly states that the facility, such as a walk-in clinic, must not require a prior appointment and must provide general medical treatment or general surgical services at least five days per week to any physically sick or injured person. The gist of the rule is that a person be able to receive medical attention five days a week without a prior appointment. The affidavits demonstrate that one cannot walk in and receive medical attention as required by the Universal Application Instructions. In that regard, Petitioner has satisfied its burden of demonstrating that Florida Housing erred in awarding Uptown Maitland four tie-breaker proximity points for the “medical facility” identified in its application.

Equity Commitment Letter

In support of its position that the equity commitment letter submitted by FL Tax Holdings 2010, Ltd., required further documentation of that entity’s ability to fund, Petitioner relies upon language in the Application Instructions which states: “Important! If not syndicating/selling the Housing Credits, evidence of ability to fund must be provided as an exhibit to the Application.” (Application Instructions, page 107) Petitioner argues that FL Tax Holdings 2010, Ltd., is an affiliate and that a “sale” to an affiliate is not a syndicating or sale of tax credits. Petitioner appears to rely on the fact that Paul Missigman, the Manager of the General Partner of FL Tax Holdings 2010 LTD., who signed the equity commitment letter, is also a manager and member of the sole general partner of a Principal of the

Developer, as indicated on Midtown Maitland's Exhibit 9. Respondent correctly argues that there is nothing in Florida Housing's rules which distinguishes such a transaction or imposes any additional requirement regarding evidence of ability to fund.

Petitioner has failed in its burden of proof to demonstrate its claim that a sale to an affiliate (indeed, it is not clear that FL Tax Holdings is an "affiliate" to the Applicant or the Developer) is not a syndicating or sale of tax credits, so as to require additional evidence of ability to fund. Accordingly, it cannot be concluded that Florida Housing incorrectly scored Uptown Maitland's application in this regard.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated herein, it is RECOMMENDED that Florida Housing enter a Final Order holding that Uptown Maitland's application was correctly scored with respect to the identification of the Principals of the Developer (Exhibit 9); zoning (Exhibit 32), local government contribution (Exhibit 36) and the equity commitment letter submitted on behalf of FL Tax Holdings 2010, Ltd. It is further RECOMMENDED that Florida Housing enter a Final Order concluding that Uptown Maitland was not entitled to receive four proximity tie-breaker points for proximity to a medical facility, and that this

conclusion places Petitioner's Application Number 2011-225C in the eligible range for the next available allocation of federal tax credits.

Respectfully submitted this 4th day of September, 2012.



DIANE D. TREMOR
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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(6), Florida Administrative Code, Applicants have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages, excluding the caption and certificate of service. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, no later than 5:00 p.m. five (5) calendar days from the date of issuance of the Recommended Order. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.

**BEFORE THE STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

KENSINGTON PLACE PARTNERS, LP

Petitioner,
vs.

FHFC No. 2011-042UC
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FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.
_____ /

PREHEARING STIPULATION

Petitioner, Kensington Place Partners, LP (“Petitioner” or “Kensington”), and Respondent, Florida Housing Finance Corporation (“Respondent” or “Florida Housing”), submit this stipulation for purposes of expediting the informal hearing scheduled for August 21, 2012, in Tallahassee, Florida, and agree to the findings of fact and to the admission of the exhibits described below.

The Parties

1. Kensington is a Florida limited partnership with its address at 5604 PGA Boulevard, Suite 109, Palm Beach Gardens, Florida 33418 Kensington is in the business of providing affordable rental housing units.
2. Florida Housing is the state agency delegated the authority and responsibility for administering and awarding funds pursuant to Chapter 420, F.S., and Rules 67-21 and 67-48, F.A.C.

Nature of the Controversy

3. On December 6, 2011, Kensington applied to Florida Housing for funding pursuant to the Low Income Housing Tax Credit Program (LIHTC). The purpose of the requested funds was



Attachment A

to supplement the construction of a 105 unit affordable housing apartment complex in Winter Park, Florida, named Kensington Place.

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

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 develop specific multi-family housing projects. An applicant entity will then sell 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 rents that are affordable to low-income and very-low-income tenants.

6. 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 encourage private developers to build and operate 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.

The 2011 Universal Application Cycle

7. Because Florida Housing’s available pool of federal tax credits each year is limited, qualified projects must compete for this funding. To assess the relative merits of proposed projects, Florida Housing has established a competitive application process pursuant to Chapter 67-48,

F.A.C. Specifically, Florida Housing's application process for 2011, 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) Florida Housing's preliminary scoring of applications;
- (d) An initial round of administrative challenges in which an applicant may take issue with Florida Housing's scoring of another application by filing a Notice of Possible Scoring Error ("NOPSE");
- (e) Florida Housing's consideration of the NOPSEs submitted, with notice to applicants of any resulting change in their preliminary scores;
- (f) An opportunity for the applicant to submit additional materials to Florida Housing 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) Florida Housing's consideration of the NOADs 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, Florida Housing'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.
- (k) A final appeals process through which applicants may be allocated award funding from future credits by making the case that "but for" specific scoring errors by Florida Housing on other applications, their application would have been funded

8. At the completion of this process a Final Score is assigned to each Application. Based on these Final Scores, and a series of Tie Breakers, Applications are then ranked. Funds are awarded to applicants starting with applicable preferences and set asides and the highest

scoring applicants, until the available funds are exhausted. Applicants compete for funds, against other applicants.

Kensington's Application

9. Based on a review of Florida Housing's Final Ranking dated June 8, 2012 Kensington received a final score of 79 out of a possible 79 points for its Application. Kensington received 6 out of 6 a possible Ability-To-Proceed and 33.5 out of a possible 37 Proximity Tie-Breaker points, and was deemed to have passed threshold. This score would place Kensington in the funding range, "but for" Florida Housings scoring of other Applications. Florida Housing's scoring actions concern whether the Application 2011-234C was correctly scored and ranked.

Substantial Interests Affected

10. As an applicant for funds allocated by Florida Housing, Kensington substantial interests are adversely affected by the scoring decisions here. The final scoring actions of Florida Housing resulted in Kensington's application being displaced from the funding range for County Developments. Since the purpose of the tax credit program in general is to provide funding to developers of apartment projects for low income residents, then Kensington's interests are adversely and substantially affected by the loss of funding. Indeed, without the requested funding, Kensington's ability to provide much needed affordable housing units will be severely jeopardized.

Principals, Financial Beneficiaries

11. The Universal Application at Part II requires an applicant to provide information about the Applicant and the Development Team. Specifically at Exhibit 9 an applicant must disclose the Principals for the Applicant and for each Developer.

12. Rule 67-48.002 (50) F.A.C. defines 'Financial Beneficiary' as any principal of the Developer or Applicant entity who receives or will receive any direct or indirect financial benefit from a Developer except as further described in Rule 67-48.0075, F.A.C. Rule 67-48.002 – (91) F.A.C. goes on to define "'Principal' as any officer, director, shareholder, manager, member, general partner or limited partner of any general partner or liability partner of an Applicant or Developer..." and "(iv) any officer, director, shareholder, manager, member, general partner or limited partner of any shareolder [sic] of an Applicant or Developer."

13. The Application Instructions require that for each type of entity involved with the Applicant and Developer Entities, all Principals and Financial Beneficiaries be identified in accordance with Rule 67-48.002, (50) and (91). In response to a NOPSE, Uptown Maitland submitted a revised Exhibit 9.

14. With respect to the Developer Entity – Atlantic Housing Partners, L.L.L.P., Uptown Maitland did not identify the Principals/Financials Beneficiaries (i.e. members) of the General Partner and the Limited Partner Entities of the Developer Entity.

15. This issue was timely raised in a NOPSE and NOAD, however, Florida Housing did not penalize Uptown

Zoning

16. The Universal Application at Part III, Section (C.)(4.) requires an applicant to provide information to demonstrate that the appropriate zoning is in place for the proposed

development. The Universal Application Instructions also generally provide that an applicant must provide complete and accurate information in all completed forms and exhibits. Specifically the applicant must provide behind Exhibit 32 a properly executed form from the applicable local government. The verification form pursuant to the Universal Application Instructions must demonstrate as of the date of the Application Deadline that appropriate zoning consistent with the local land use regulations is in place for the proposed development.

17. In response to the Universal Application requirements Uptown Maitland provided a zoning verification form at Exhibit 32. The zoning verification form was signed by James Williams, City Manager and confirms that the proposed Development is in the "General Commercial" zoning designation. Pursuant to Sec. 21-18(IV)(b) of Chapter 21 of the City of Maitland Code of Ordinances, GC, general commercial district, prohibits "new single, two or multi-family dwellings". This issue of appropriate zoning was properly raised in a NOPSE and a NOAD, however, Florida Housing did not accept this challenge.

18. At Exhibit 32, the maximum density for the proposed development site (96 units) was indicated on the first line of Subjection (1) of such form. However, the maximum density for the subject development is established by reason of the Developer's agreement between the current owner of the property and the City of Maitland. . Whether the development site is subject to an existing "special use or similar permit" by virtue of the Developer's Agreement, and should have received zero Ability To Proceed Tie Breaker Points for Exhibit 32 and should have been found to have failed this Threshold requirement because the permitted number of units (96) should have been indicated on the first line under Subsection (1) rather than on the third line was raised at the NOPSE and NOAD phase, however, Florida Housing failed to accept the challenges.

Local Government Contribution

19. At Part IV the Universal Application requests information concerning local government support for the proposed project. At Exhibit 36, Uptown Maitland submitted evidence of a \$100,000 SHIP grant from Orange County. A NOPSE pointed out that the award was inconsistent with the Orange County SHIP Plan. Florida Housing did not accept the NOPSE.

Proximity Tie Breaker Points

20. The Universal Application at Part III (A.)(10.) allows an applicant to obtain Proximity Tie-Breaker Points for the proposed developments proximity to selected services. Maitland designated "Doctor's Associates of Orlando as its Medical Facility for one of the services for proximity tie breaker points. A NOPSE alleged that "Doctor's Associates of Orlando" does not satisfy the definition for "Medical Facility" found in the 2011 Universal Application Instructions. Florida Housing did not accept the NOPSE.

OFFICIAL RECOGNITION OF RULES

6. The parties request the Honorable Hearing Officer take official recognition (judicial notice) of Rule Chapter 67-48, Fla. Admin. Code, as well as the incorporated Universal Application Package or UA1016 (Rev. 2-11), which includes the forms and instructions.


7. The parties stipulate, subject to arguments on the grounds of relevance, to the official recognition of any Final Orders of the Florida Housing Finance Corporation and to any Rules promulgated by the Florida Housing Finance Corporation, including past and present versions of the Universal Cycle Application, Instructions, and any forms and exhibits attached thereto or incorporated by reference therein.


EXHIBITS

The parties offer the following joint exhibits into evidence and stipulate to their authenticity, admissibility and relevance in the instant proceedings, except as noted below:

- Exhibit J-1: This Joint Stipulation of Facts and Exhibits.
- Exhibit J-2: Exhibit 9 to original Application 2011-234C
- Exhibit J-3: Orange County Local Housing Assistance Plan 2009-2012.
- Exhibit J-4: Exhibit 26 to original Application 2011-234C (Site Plan Approval)
- Exhibit J-5: Exhibit 32, (Zoning Verification) filed with Application 2011-234C.
- Exhibit J-6: Exhibit 36, (Local Government Verification of Contribution-Grant) filed with Application 2011-234C.
- Exhibit J-7: Notices of Possible Scoring Error (NOPSE's) filed on Application No. 2011-234C
- Exhibit J-8: Cure No. 725 filed on Application No. 2011-234C
- Exhibit J-9: Notice of Alleged Deficiency (NOAD's) filed against application 2011-234C
- Exhibit J-10: 2011 Universal Cycle Scoring and Ranking Summary Report on Application No. 2011-234C (Final) dated June 8, 2012.

Respectfully submitted this 21st day of August, 2012.

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