

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

NOVA OAKS HOUSING
LIMITED PARTNERSHIP

Petitioner,
vs.

DOAH Case No. 12-1614
FHFC Case No. 2012-004UC
Application No. 2011-135C

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 June 8, 2012. The matter for consideration before this Board is a Consent Agreement under Section 120.57(4), Florida Statutes. After a review of the record and otherwise being fully advised in these proceedings, this Board finds:

On or before December 6, 2011, Nova Oaks Housing Limited Partnership (“Petitioner”), submitted its 2011 Universal Cycle Application No. 2011-135C (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) seeking an allocation of competitive “9%” Tax Credits under the federal Low

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Kella M. Harrill / DATE: 6/8/12

Income Housing Tax Credit program to fund the project known as Magnolia Place Apartments.

Petitioner timely filed its “Petition for Review,” (the “Petition”) challenging Florida Housing’s scoring on its Application. Nova Oaks challenged the decision of Florida Housing to award zero Tie-Breaker Measurement Points for the proximity of its proposed project to a public library. This decision was based upon Florida Housing's finding that the Tie-Breaker Measurement Point selected by Nova was not on the Development Site.

Whether the TBMP was on the development site, a material fact, was in dispute. Accordingly, this matter was referred to the Division of Administrative Hearings (“DOAH”) for further proceedings before an Administrative Law Judge under Section 120.57(1), Florida Statutes.

To resolve this matter, Florida Housing and Nova Oaks reached a Consent Agreement, providing that the TBMP is on the development site, finding that the application meets threshold, and awarding all applicable tie-breaker points to Nova Oaks. A copy of the Consent Agreement is attached as Exhibit “A.”

By Order dated June 4, 2012, DOAH relinquished jurisdiction to Florida Housing for action on the Consent Agreement.

RULING ON THE CONSENT AGREEMENT

The Board finds that the findings of fact and the conclusions of law of the Consent Agreement are supported by competent substantial evidence, and are reasonable and appropriate under the circumstances.

ORDER

1. The Findings of Fact of the Consent Agreement 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 Consent Agreement 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** Petitioner's Application No. 2011-135C, meets threshold requirements and is entitled to 79 total points, 6 ability to proceed tie-breaker points, and 33.25 proximity tie-breaker points.

DONE and ORDERED this 8th day of June, 2012.



FLORIDA HOUSING FINANCE
CORPORATION

By: _____
Chair

Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Kevin Tatreau
Director of Multifamily Development Programs
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
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Michael P. Donaldson, Esq.
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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**

**NOVA OAKS HOUSING,
LIMITED PARTNERSHIP,**

Petitioner,

**FHFC CASE NO.: 2012-004UC
DOAH CASE NO. 12-1614
Application No. 2011-208C
2011 Universal Cycle**

vs.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

CONSENT AGREEMENT

Petitioner, Nova Oaks Housing Limited Partnership, (“Nova Oaks”) and Respondent Florida Housing Finance Corporation (“Florida Housing”), by and through undersigned counsel, hereby present the following Consent Agreement:

APPEARANCES

For Petitioner:

Michael P Donaldson
Florida Bar No. 0802761
Carlton fields, P.A.
215 South Monroe Street, Suite 500
Tallahassee, Florida 32301

For Respondent:

Wellington H. Meffert II
General Counsel
Florida Bar No.: 0765554
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

PRELIMINARY STATEMENT

On or before December 6, 2011, Nova Oaks submitted an Application to Florida Housing for an award of tax credits through the 2011 Universal Cycle. On March 29, 2012, Florida Housing notified Nova Oaks of the results of scoring its Application and provided Nova Oaks with a Notice of Rights pursuant to Sections 120.569 and 120.57, Florida Statutes. Nova Oaks timely filed a Petition for Administrative Hearing (“Petition”) challenging the findings that Nova Oaks was not entitled to proximity tie-breaker points because its tie-breaker measurement point was not on its Development Site. Florida Housing has reviewed the Petition and its scoring decisions and has determined that Nova Oaks is entitled to proximity tie-breaker points. Thus, Nova Oaks receives 79 total points, 6 ability to proceed tie-breaker points, and 33.25 proximity tie-breaker points. Additionally, Nova Oaks has satisfied all threshold requirements.

Upon issuance of a Final Order adopting the terms of this Consent Agreement, Nova Oaks agrees to dismiss its Petition with prejudice. The parties waive all right to appeal this Consent Agreement or the Final Order to be issued in this case, and each party shall bear its own costs and attorney’s fees. This Consent Agreement is subject to the approval of the Board of Directors of Florida Housing (“The Board”). If the Board does not approve this Consent Agreement, no Final Order will be issued and this Consent Agreement shall be null and void as if it were never executed.

STIPULATED FINDINGS OF FACT

1 Nova Oaks is a Florida limited partnership with its address at 4110 Southpoint Boulevard, Suite 206, Jacksonville, Florida 32216 and is in the business of providing affordable rental housing units.

2. Florida Housing is a public corporation that is organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. § 420.504, Fla. Stat., Rule Chapter 67-48, Fla. Admin. Code.

3 The Low Income Housing Tax Credit (“Tax Credit”) program is created within the Internal Revenue Code, and awards a dollar for dollar credit against federal income tax liability in exchange for the acquisition and substantial rehabilitation or new construction of rental housing units targeted at low and very low income population groups. Developers sell, or syndicate, the Tax Credits to generate a substantial portion of the funding necessary for construction of affordable housing development.

4. Florida Housing is the designated “housing credit agency” responsible for the allocation and distribution of Florida’s Tax Credits to applicants for the development of rental housing for low income and very low income families.

5. Florida Housing uses a Qualified Allocation Plan (QAP), the Universal Application and a scoring process for the award of Tax Credits, as outlined in Rule 67-48.004, Florida Administrative Code. The provisions of the QAP are adopted and incorporated by reference in Rule 67-48.002(94), Florida Administrative Code. Pursuant to the QAP, Tax Credits are apportioned among the most populated counties, medium populated counties, and

least populated counties. The QAP also establishes various set-asides and special targeting goals.

6. The 2011 Universal Application Package (or UA1016 (Rev 2-11)) is adopted and incorporated by reference through Rule 67-48.004(1)(a), Florida Administrative Code. It consists of Instructions and forms, some of which are not applicable to every Applicant.

7. Florida Housing's scoring process for 2011, found at Rules 67-48.004-.005, Florida Administrative Code, 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 funding to successful applicants, as well as those who successfully appeal through the adoption of final orders.

8. The 2011 Universal Cycle Application offers a maximum score of 79 application points. In the event of the tie between competing applications, the Universal Cycle Application Instructions provide for a series of tie-breaking procedures to rank such applications for funding priority, including an award of up to six points for a demonstrated ability to proceed and an award of up to 37 points for proximity to certain services, such as transit facilities, a grocery store, a medical facility, a public school, a public park, a community center, a pharmacy, senior center and a public library

9 On or about December 6, 2011, Nova Oaks and others submitted applications for financing in Florida Housing's 2011 funding cycle. Nova Oaks (Application #2011-135C) applied for Tax Credits to help finance the construction of an 80-unit affordable apartment complex in New Port Richey, Florida, called Magnolia Place Apartments.

10. Nova Oaks received notice of Florida Housing's initial scoring of the Application on or about January 19, 2012, at which time Nova Oaks was awarded a preliminary score of 73 points out of a possible 79 points, and 29.25 of 37 possible proximity "tie breaker" points (awarded for geographic proximity to certain services and facilities), and 6 of 6 possible ability to proceed tie-breaker points. Florida Housing also concluded that the Nova Oaks application had passed all threshold requirements.

11 On or about January 25 2012, Florida Housing received a NOPSE in connection with Nova Oaks's application. On or about February 23, 2012, Florida Housing sent Nova Oaks the NOPSE scores relating to its application submitted by a competing applicant, Florida Housing's position on the NOPSE, and the effect the NOPSE had on the applicant's score.

12. On or before February 29, 2012, Nova Oaks timely submitted its cure materials to Florida Housing.

13. On or about March 6, 2012, Florida Housing received a NOAD in connection with Nova Oaks's application. Florida Housing issued its final scores on March 28, 2012, which were formally received by Nova Oaks a day later.

14. At the conclusion of the NOPSE, cure review, and NOAD processes, Florida Housing determined that Nova Oaks met all threshold requirements and awarded the Nova Oaks Application a score of 79 out of a possible 79 and 10 out of 37 "tie-breaker" points and 6 out of 6 Ability to Proceed Points.

15. Florida Housing determined when final scores were released that the Nova Oaks Application was entitled to no proximity tie-breaker points because its tie-breaker measurement point was not on the Development Site as alleged by a NOAD. Specifically the Final Scoring Summary provides as follows:

Item #	Reason	Created as Result	Rescinded as Result
IP-8P	In an attempt to achieve additional proximity tie-breaker points, the Applicant provided a revised Surveyor for Competitive HC Applications form and a new Tie-Breaker Measurement Point. Evidence provided in a NOAD demonstrates that the revised Tie-Breaker Measurement Point is not a single point on the proposed Development site. Because of this, the form was not considered and the Applicant did not receive any proximity tie-breaker points for any Transit, Tier 1 or Tier 2 Services.	Final	

16. On April 12, 2012, Nova Oaks submitted a Petition for Review pursuant to Sections 120.569 and 120.57(2), Florida Statutes.

17. The issue raised in the petition was: whether Florida Housing incorrectly determined that Nova Oaks was entitled to no proximity tie-breaker points because its "tie-breaker measurement point" was not located on the Development Site.

18. Florida Housing has determined that the "tie-breaker measurement point" is located on the Development site and accordingly Nova Oaks is entitled to 33.25 tie-breaker proximity points.

STIPULATED CONCLUSIONS OF LAW

19. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Florida Administrative Code Chapter 67-48, the Florida Housing Board of Directors has jurisdiction over the parties to this proceeding.

20. Florida Housing is statutorily authorized to institute a competitive application process for the allocation of Tax Credits, Section 420.5099 (2), Florida Statutes, and has done so through Rules 67-48.004 and 67-48.005, Florida Administrative Code.

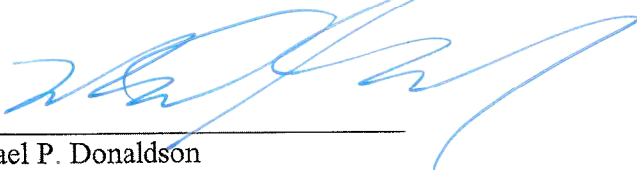
21. Nova Oaks is entitled to 79 Application points, 6 Ability to Proceed tie-breaker points, and 33.25 Proximity tie-breaker points.

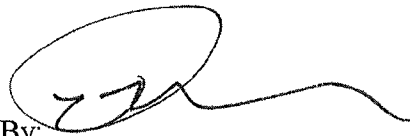
22. An agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation. *Legal Envtl. Assistance Found., Inc., v. Board of County Comm'rs of Brevard County*, 642 So. 2d 1081 (Fla 1994); *Miles v. Florida A and M Univ.*, 813 So. 2d 242 (Fla. 1st DCA 2002). This is so even if the agency's interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. *Golfcrest Nursing Home v. Agency for Health Care Admin.*, 662 So. 2d 1330 (Fla. 1st DCA 1995).

STIPULATED DISPOSITION

Nova Oaks has met all threshold requirements and is entitled to 79 application points, 6 ability to proceed tie-breaker points, and 33.25 proximity tie-breaker points.

Respectfully submitted this 4th day of June, 2012.

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