

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

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FLORIDA HOUSING FINANCE CORPORATION

TWIN LAKES AT LAKELAND LLLP

Petitioner,

FHFC No. 2012-005UC
Application No. 2011-107C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____ /

PETITION FOR REVIEW

Pursuant to Section 120.569 and .57, Florida Statutes (F.S.) and Rule 67-48.005(5), Florida Administrative Code (F.A.C.), Petitioner, Twin Lakes at Lakeland LLLP ("Twin Lakes") requests an administrative hearing to challenge FLORIDA HOUSING FINANCE CORPORATION's ("Florida Housing") scoring actions concerning Universal Cycle Application No. 2011-107C. In support of this Petition, Twin Lakes provides as follows:

1. Twin Lakes is a Florida limited liability limited partnership with its address at 430 Hartsell Avenue, Lakeland, Florida 33815 is in the business of providing affordable rental housing units in the State of Florida.

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, Twin Lakes applied to Florida Housing for funding pursuant to the Low Income Housing Tax Credit Program (LIHTC). The purpose of the requested funds was to supplement the construction of an affordable housing apartment complex in Lakeland, Florida, named Twin Lakes of Lakeland.

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.

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 the applicants through the adoption of final orders.

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, in large part, against other applicants in the same county size group, and against other applicants seeking to provide housing to the same demographic group.

9. Based on a review of Florida Housing's Scoring Summary dated March 27, 2012, Twin Lakes received a final score of 79 out of a possible 79 points for its Application. Additionally, Twin Lakes received 6.00 out of 6.00 ability to proceed points and 32.25 out of 37 tie-breaker proximity points. This score should allow Twin Lakes to receive a full award of its funding request.

10. Florida Housing's scoring action in the instant case concerns whether Twin Lakes provided a commitment letter which meets the requirements of the Universal Cycle Application and Rule. As will be explained more fully below, Florida Housing's scoring action in the instant case is erroneous.

Substantial Interests Affected

11. As an applicant for funds allocated by Florida Housing, the substantial interests of Twin Lakes are adversely affected by the scoring decisions here. The final scoring actions of Florida Housing resulted in the Twin Lakes application not achieving threshold. Since the purpose of the loan program in general is to provide funding to developers of apartment projects for low income residents, then Twin Lakes interests are adversely and substantially affected by the loss of funding. Indeed, without the requested funding, Twin Lakes ability to provide much needed affordable housing units will be severely jeopardized.

Scoring of Twin Lakes Application

12. The Universal Application at Part V requests information regarding the financing of the proposed project. Specifically, at Part V(D), the Application requires the Applicant to provide information identifying any non-corporation funding commitments.

13. In its original application, Twin Lakes provided a letter from The Housing Authority of the City of Lakeland, Florida, which reflected an equity commitment in the Twin Lakes project as a source of funding in the amount of \$2,000,000.

14. After conducting its preliminary review of the Application and all NOPSEs, Florida Housing found as follows:

The applicant submitted a loan commitment letter from the Housing Authority of the City of Lakeland, Florida. However, the commitment letter is not signed by the lender. Therefore, the loan could not be considered a source of financing.

(See Attachment A.)

In response to Florida Housing's preliminary scoring decision, Twin Lakes provided cure documents, including a revised commitment letter. (see Attachment B).

15. In response to the Cures, Florida Housing on March 27, 2012, found that Twin Lakes had addressed most scoring issues raised in preliminary scoring and by NOPSEs. However, Florida Housing concluded that Twin Lakes cure

raised a financing letter issue. Specifically, Florida Housing in its Final Scoring Summary concluded as follows:

The Applicant attempted to cure Items 1T and 4T by submitting a signed loan commitment letter from the Housing Authority of the City of Lakeland, Florida. However, the commitment letter is for 144 elderly tax credit units, whereas the Application states the total number of proposed units is 88. Therefore, the loan could not be considered a source of financing.

16. In the instant case, Florida Housing has apparently discovered an “inconsistency” in the commitment letter not based on the amount identified and agreed to by the parties and listed in the corresponding proforma entry of \$2,000,000. Rather, Florida Housing asserts that the number of units referenced in the commitment letter does not match the number in the Application. Accordingly, Florida Housing, based on this “inconsistency,” has determined that Twin Lakes's Application failed threshold.

17. Florida Housing’s scoring decision is erroneous for several reasons. Initially, as a policy matter Florida Housing has historically taken the position that commitments, proposals or letters of intent with conflicting information **may** be determined not to meet threshold depending upon the nature of the inconsistency. This policy acknowledges that inconsistencies may occur in these letters and unless the nature of the inconsistency is fatal, a penalty would not be warranted. This policy statement is certainly applicable here and the inconsistency does not warrant

rejection, especially given that the parties have clearly agreed to a \$2,000,000 commitment.

18. Indeed the letter on its face confirms the terms of the commitment from the Housing Authority of the City of Lakeland Florida for the Twin Lakes project. Additionally the letter illustrates the relationship between Twin Lakes and the Housing Authority as reflected by the fact that John Calcagni is an officer of both. The Housing Authority continues to stand behind and confirm its commitment. (See Attachment C)

19. As a factual matter, despite any perceived inconsistency, the commitment letter meets all the listed requirements of the Universal Application Instructions. Indeed, the letter includes:

- Terms.
- Proposed interest rate of the construction loan (a published variable index will be acceptable).
- Proposed interest rate of the permanent loan (a published variable index will be acceptable).
- Signature of all parties, including acceptance by the Applicant.
- A statement that states the commitment, proposal or letter of intent does not expire before December 31, 2012.

20. Accordingly, the letter meets the requirements of the Universal Cycle Application process. This result is not changed by the inconsistency referenced

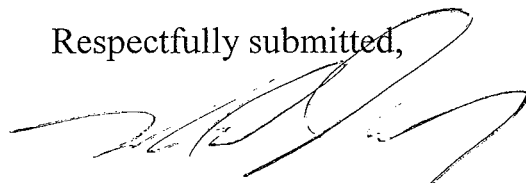
above. In fact, the information which causes the alleged inconsistency is not even required by the Application Section.

21. Moreover, the letter on its face specifically refers a reader or reviewer back to the "FHFC 2011 Universal Application" (the "Project") Obviously to the extent there was an inconsistency in the letter and the number of units in the Application, the Application would control.

22. Additionally it is clear that the Applicant was not and could not change the number of units in its Application by increasing the number of units in a Commitment Letter.

WHEREFORE, Twin Lakes requests that it be granted an administrative proceeding to contest Florida Housing's erroneous scoring decisions. To the extent there are disputed issues of fact, this matter should be forwarded to the Division of Administrative Hearings. Ultimately, Twin Lakes requests the entry of a Recommended and Final Order which finds that it has met threshold and awards Twin Lakes all applicable points.

Respectfully submitted,



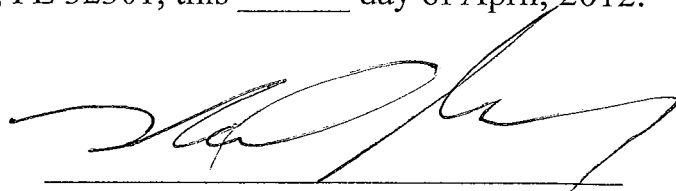
Michael P. Donaldson
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Tallahassee, FL 32302

Telephone: (850) 224-1585
Facsimile: (850) 222-0398

Counsel for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by Hand Delivery with the Agency Clerk, Florida Housing Finance Corporation, 227 N. Bronough Street, Suite 5000, Tallahassee, FL 32301; and a copy furnished to Wellington H. Meffert, II, Esq., Florida Housing Finance Corporation, 227 N. Bronough St., Suite 5000, Tallahassee, FL 32301, this 18th day of April, 2012.



MICHAEL P. DONALDSON

ELECTION OF RIGHTS

Application Number: 2011- 107C Development Name: Twin Lakes at Lakeland

- 1. I do not desire a proceeding.
- 2. I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):
 - submit a written statement and documentary evidence; or
 - attend an informal hearing to be held in Tallahassee.

Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

- 3. I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

Following are my top four preferences, in order from 1-4 (with 1 being my first choice, etc.) for scheduling my informal hearing. All formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	A.M.	P.M.
May 7, 2012		
May 8, 2012		
May 9, 2012		

Hearing Dates:	A.M.	P.M.
May 10, 2012	1	2
May 11, 2012	3	4

Matters heard after these dates will likely not be funded in the current Application Cycle.

Please provide a Hearing Schedule to me via e-mail or fax at:

sginn@lakelandhousing.org or 863-413-2976
(E-Mail Address) (Fax Number - include Area Code)

Date: 4-4-12

John Calcagni
Signature of Petitioner
Name: John Calcagni

Address: 430 Hartsell Ave.
Lakeland, FL 33815

Phone: 863-697-2911 ext 216 or 234
(include Area Code)

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN TWENTY-ONE (21) CALENDAR DAYS OF RECEIPT OF THIS NOTICE. THE FORM MUST BE RETURNED TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.

Scoring Summary Report

File #: 2011-107C Development Name: Twin Lakes at Lakeland

As of: 03/27/2012

	Maximum Points/Eligibility	Preliminary	NOPSE	Final	Final Ranking
Met Threshold	Y/N	N	N	N	
Total Points	79	76.00	76.00	79.00	
Ability to Proceed Tie-Breaker Points	6	6.00	6.00	6.00	
Proximity Tie-Breaker Points	37	0.00	0.00	32.25	
Eligible for 1/8th Mile Ranking Preference	Y/N	N	N	N	
Eligible for Age of Development Tie-Breaker Ranking Preference	Y/N	N	N	N	
Eligible for Concrete Construction Tie-Breaker Ranking Preference	Y/N	N	N	N	
Eligible for Florida General Contractor Tie-Breaker Ranking Preference	Y/N	Y	Y	Y	
RA Level Classification (preference given to the lowest RA Level Classification)	1 - 6	6	6	6	

Scores:

Item #	Part	Section	Subsection	Description	Maximum Available Points	Preliminary	NOPSE	Final	Final Ranking
Developer									
1S	II.	B.	1.c.	Housing Credit Development Experience	3.00	0.00	0.00	3.00	
Construction Features and Amenities									
2S	III.	B.	3.a.	Optional - NC & Rehab. Units	9.00	9.00	9.00	9.00	
3S	III.	B.	3.b.	Optional - All Developments Except SRO	12.00	12.00	12.00	12.00	
3S	III.	B.	3.c.	Optional - SRO Developments	12.00	0.00	0.00	0.00	
4S	III.	B.	3.d.	Optional - Universal Design & Visitability	10.00	10.00	10.00	10.00	
5S	III.	B.	5.a.(1)	Green Building Features (NC & Redev.)	7.00	0.00	0.00	0.00	
5S	III.	B.	5.a.(2)	Green Building Certification (NC & Redev.)	10.00	10.00	10.00	10.00	
5S	III.	B.	5.b.	Green Building Features (Rehab. & Preserv.)	10.00	0.00	0.00	0.00	
Set-Aside Commitments									
6S	III.	E.	1.b.(2)	Special Needs Households	4.00	4.00	4.00	4.00	
7S	III.	E.	1.b.(3)	Total Set-Aside Commitment	3.00	3.00	3.00	3.00	
8S	III.	E.	3.	Affordability Period	5.00	5.00	5.00	5.00	
Resident Programs									
9S	III.	F.	1.	Programs for Non-Elderly & Non-Homeless	6.00	0.00	0.00	0.00	
9S	III.	F.	2.	Programs for Homeless (SRO & Non-SRO)	6.00	0.00	0.00	0.00	
9S	III.	F.	3.	Programs for Elderly	6.00	6.00	6.00	6.00	
10S	III.	F.	4.	Programs for All Applicants	8.00	8.00	8.00	8.00	
Local Government Contributions									
11S	IV.	A.		Contributions	5.00	5.00	5.00	5.00	
Local Government Incentives									
12S	IV.	B.		Incentives	4.00	4.00	4.00	4.00	

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
1S	The Applicant was awarded zero points for Housing Credit Development Experience because the Principal listed on the Housing Credit Development Experience chart (Lakeland Housing Authority) is not identified as a Principal of the Developer (Polk County Housing Developers, Inc.) at Exhibit 9 of the Application.	Preliminary	Final

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	V.	D.	1.	Non-Corporation Funding	The Applicant submitted a loan commitment letter from the Housing Authority of the City of Lakeland, Florida. However, the commitment letter is not signed by the lender. Therefore, the loan could not be considered a source of financing.	Preliminary	Final
2T	V.	B.		Permanent Analysis	The Applicant has a permanent financing shortfall of \$218,054.	Preliminary	NOPSE
3T	II.	A.	2.a.	Applicant	The Applicant provided a Certification of Limited Partnership. However, it failed to provide a valid Certificate of Good Standing from the Florida Secretary of State as required by the Application Instructions.	Preliminary	Final
4T	V.	B.		Permanent Analysis	The Applicant has a permanent financing shortfall of \$168,554.	NOPSE	
5T	V.	D.	1.	Non-Corporation Funding	The Applicant attempted to cure Items 1T and 4T by submitting a signed loan commitment letter from the Housing Authority of the City of Lakeland, Florida. However, the commitment letter is for 144 elderly tax credit units, whereas the Application states the total number of proposed units is 88. Therefore, the loan could not be considered a source of financing.	Final	

Ability To Proceed Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Maximum Available Points	Preliminary	NOPSE	Final	Final Ranking
1A	III.	C.	1.	Site Plan/Plat Approval	1.00	1.00	1.00	1.00	
2A	III.	C.	3.a.	Availability of Electricity	1.00	1.00	1.00	1.00	
3A	III.	C.	3.b.	Availability of Water	1.00	1.00	1.00	1.00	
4A	III.	C.	3.c.	Availability of Sewer	1.00	1.00	1.00	1.00	
5A	III.	C.	3.d.	Availability of Roads	1.00	1.00	1.00	1.00	
6A	III.	C.	4.	Appropriately Zoned	1.00	1.00	1.00	1.00	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Maximum Available Points	Preliminary	NOPSE	Final	Final Ranking
Transit Services									
1P	III.	A.	10.a	Public Bus Stop	2.00	0.00	0.00	0.00	
1P	III.	A.	10.a	Public Bus Transfer Stop or Public Bus Transit Stop	6.00	0.00	0.00	4.50	
1P	III.	A.	10.a	Public Rail Station	7.00	0.00	0.00	0.00	
Tier 1 Services									
2P	III.	A.	10.a	Grocery Store	4.00	0.00	0.00	2.50	
3P	III.	A.	10.a	Public School	4.00	0.00	0.00	0.00	
3P	III.	A.	10.a	Senior Center	4.00	0.00	0.00	3.00	
4P	III.	A.	10.a	Medical Facility	4.00	0.00	0.00	2.50	
Eligible for Tier 1 Service Score Boost (Yes/No)						Y		Y	
Total Tier 1 Service Score					12.00	0.00	0.00	12.00	
Tier 2 Services									
5P	III.	A.	10.a	Public Park	2.00	0.00	0.00	2.00	
6P	III.	A.	10.a	Community Center	2.00	0.00	0.00	1.00	
7P	III.	A.	10.a	Pharmacy	2.00	0.00	0.00	1.75	
8P	III.	A.	10.a	Public Library	2.00	0.00	0.00	1.00	
FHFC Proximity List									
9P	III.	A.	10.b	Proximity to Developments on FHFC Development Proximity List	10.00	0.00	0.00	10.00	

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result	Rescinded As Result
1P-8P	The Yes/No box on the Surveyor Certification for Competitive HC Applications form certifying that part of the boundary of each Scattered Site is located within 1/2 mile of the site with the most units was not checked. Because of this, the form could not be considered, and the proposed Development is not eligible for proximity tie-breaker points for any Transit, Tier 1 or Tier 2 Services.	Preliminary	Final
9P	The proposed Development was not eligible for proximity tie-breaker points based on its location because the Surveyor Certification for Competitive HC Applications form was not considered (see Item 1P - 8P).	Preliminary	Final

Additional Application Comments:

Item #	Part	Section	Subsection	Description	Comment(s)	Created as Result of	Rescinded as Result of
1C	V.	B.		Pro Forma	The loan commitment provided states a loan commitment fee of 1% of the construction loan amount. However, the amounts listed on the proforma for loan origination fees exceed this amount. Therefore, the Total Development Cost was reduced by \$49,500.	NOPSE	

Brief Statement of Explanation regarding
Application 2011 – 107C

Provide a separate brief statement for each Cure

Item # 1T Part V. Section D. Subsection 1. Exhibit 49

ITEM # 1T:

The Applicant submitted a loan commitment letter from The Housing Authority of the City of Lakeland, Florida. However, the commitment letter was not signed by the lender. Therefore, the loan could not be considered a source of financing.

Attached is a revised, properly completed and executed loan commitment letter (Exhibit 49) from The Housing Authority of the City of Lakeland, Florida, therefore the applicable loan should be considered a source of financing. The Applicant should pass Threshold.



The Housing Authority of the City of Lakeland, Florida

February 22, 2011

Twin Lakes at Lakeland, LLLP
c/o Lakeland-Polk Housing Corporation
430 Hartsell Avenue
Lakeland, Florida 33815
Attn: John Calcagni, Secretary

Re: Commitment of Funds to Twin Lakes at Lakeland

Dear Sir:

This letter is to confirm the terms of the loan from the The Housing Authority of the City of Lakeland, Florida (the "Housing Authority") to Twin Lakes at Lakeland, LLLP (the "Partnership"), using replacement housing factor funds for purposes of completing credit underwriting with Florida Housing Finance Corporation ("FHFC") for competitive 9% Housing Credits, to develop 144 elderly tax credit units as further described in the Partnership's FHFC 2011 Universal Application (the "Project"). The terms of the Housing Authority's firm commitment to the Partnership for construction and permanent financing of the Project are as follows:

Maximum Loan Amount:	\$2,000,000
Interest Rate:	0% during construction period; 1% permanent
Period:	30 years
Debt Service:	Annual payments of interest only to the extent of available cash flow, if any
Repayment:	Principal balance and any unpaid, accrued interest will be payable at maturity

This commitment does not expire before December 31, 2012.

Please sign below to acknowledge your acceptance of this loan commitment.

Sincerely,

John Calcagni
Interim Executive Director
The Housing Authority of the City of Lakeland, Florida

TWIN LAKES AT LAKELAND, LLLP,
a Florida limited liability limited partnership

By: Lakeland-Polk Housing Corporation,
a Florida not-for-profit corporation,
its General Partner

By:
John Calcagni, Secretary

430 South Hartsell Avenue, Lakeland, Florida 33815
(863) 687-2911 Fax (863) 413-2976

ATTACHMENT B - NO. 2011-107C