

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

SP SEMINOLE GARDENS LP,

File No. 2011-144C
FHFC File No.: 025UC

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION

Respondent.

_____,'

AMENDED PETITION FOR INFORMAL HEARING

Petitioner, SP SEMINOLE GARDENS LP ("SP"), pursuant to Rules 28-106.301 and 67-48.005, Florida Administrative Code, requests an informal administrative hearing to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes (2011), to contest the scoring decision with respect to SP's application for the Seminole Garden Apartments development. In support thereof, SP states:

Identification of Agency Affected

1. The name, address and telephone number of the agency affected is:

Florida Housing Finance Corporation, Inc. ("FHFC")
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329
(850) 488-4197
The agency's file or identification number is 2011-144C.

Identification of Petitioner and Petitioner's Representative

2. The name, address and telephone number of SP is:

SP Seminole Gardens LP
2430 Estancia Blvd., Suite 101
Clearwater, FL 33761
(727) 669-3660

3. The names, addresses and telephone numbers of SP's representatives, which shall be the addresses for service purposes during the course of these proceedings, are:

Lawrence E. Sellers, Jr.
HOLLAND & KNIGHT, LLP
315 South Calhoun Street. Suite 600
Tallahassee, FL 32301
(850) 425-5670

Andrea Becker
HOLLAND & KNIGHT, LLP
100 North Tampa Street, Suite 4100
Tampa, FL 33602
(813) 227-348

Background

4. FHFC is a public corporation, 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.

5. 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.

6. FHFC 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.

7. FHFC 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 ("Competitive HC Program"). 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

8. The 2011 Universal Cycle Application is adopted as Form UA1016 (Rev. 2-11) by Rule 67-48.004(1)(a), Florida Administrative Code, and consists of Parts I through V and Instructions, some of which are not applicable to every Applicant.

9. FHFC'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) FHFC'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) FHFC'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 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 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, FHFC'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.

10. The 2011 Universal Cycle Application offers a maximum score of 79 points. In the event of a tie between competing applications, the Application Instructions provide for a series of tie-breaking procedures to rank such applications for funding priority including the use of lottery numbers (randomly assigned during the application process).

11. On December 6, 2011, SP submitted an application for competitive 9% low income housing tax credits in Florida Housing's 2011 funding cycle for its proposed Seminole Garden Apartments development ("the Application"). The proposed development involves acquisition and preservation of an existing rental facility. The proposed development is a multi-family rental facility located in Sanford, Florida, consisting of 108 units of garden style apartments.

12. Among other things, Part IV of the Application Instructions provides for the award of points for Local Government Incentives. Application Instructions, IV.B. at 97. Of these Local Government planning efforts, 1 point is available for a Local Government Expedited Permitting Process. Application Instructions, IV.B. at 97.

13. To be eligible for the point for Expedited Permitting, Applicants are required to submit the Local Government Verification of Affordable Housing Incentives – Expedited Permitting Process for Affordable Housing form ("Ex. 40 form"). Application Instructions, IV.B. at 97.

14. Pursuant to Rule 67-48.004(6), Florida Administrative Code, SP provided the required Ex. 40 form on or around February 29, 2012. See Cure Re: Application No. 2011-144C at 45. The Ex. 40 form was filled out and signed by Norton N. Bonaparte, Jr., the Sanford City Manager. The Ex. 40 form verified that the City of Sanford administers an expedited permitting process for affordable housing, enacted by Ordinance No. 4221, adopted December 13, 2010.¹

15. On or around March 6, 2012, Applicant No. 2011-129C filed a NOAD regarding the Application, alleging that the ordinance cited in the Ex. 40 form does not address an expedited permitting process for affordable housing.

16. By its scoring summary dated March 27, 2012 (Exhibit A), FHFC determined that SP failed to achieve the point for Expedited Permitting. Specifically, the scoring summary provides the following reason for this determination:

As a cure for Item 12S, the Applicant provided all 4 of the Local Government Incentives forms (Ex. 40, 41, 42 and 43). Information provided in a NOAD indicates that

¹ The Sanford City Manager independently, without input from SP, determined that the City of Sanford administers an expedited permitting process for affordable housing and selected Ordinance No. 4221 as the correct ordinance to reference in the form.

the ordinance number cited on the Expedited Permitting form (Ex. 40) does not pertain to establishing an expedited permitting process for affordable housing. Therefore, the Application was not eligible for 1 point for the Expedited Permitting incentive.

17. Norton N. Bonaparte, Jr., the Sanford City Manager provided SP with a letter dated April 19, 2012, providing an explanation of the reason Ordinance No. 4221 was the proper ordinance to cite in the Ex. 40 form. (Exhibit B). The City of Sanford, in furtherance of and pursuant to its Comprehensive Plan, administers an expedited permitting process for affordable housing. The City of Sanford's practice of supporting affordable housing by expediting the permitting process is undertaken to comply with the goals and policies provided in the Comprehensive Plan.² No independent citation exists for the City of Sanford's Comprehensive Plan. Ordinance No. 4221 is the most recent amendment to the Comprehensive Plan, and as such, incorporates by reference the entire Comprehensive Plan.³ Accordingly, given the blank space provided on the Ex. 40 form seeking a specific citation, Ordinance 4221 was the proper reference to the City of Sanford's expedited permitting process for affordable housing.

² See Policies 3-1.7.5, 3-1.2.1, 3-1.2.2, among others, of the City of Sanford Comprehensive Plan (as amended by Ordinance 4221).

³ Sections 4 and 7, Ordinance 4221.

SP's Substantial Interests

18. As an applicant for funds allocated by FHFC, SP's substantial interests are adversely affected by FHFC's scoring decisions. SP believes that a determination that its Application has achieved the point for the Expedited Permitting incentive would increase its likelihood of receiving housing credits through the Competitive HC Program. Accordingly, SP is a named party and its substantial interests will be affected by FHFC's determination.

Receipt of Notice of Agency Decision

19. On March 28, 2012, SP received notice of FHFC's decision as to the scoring of its Application as reflected in the attached scoring summary. (Exhibit A).

Statement of Ultimate Facts

20. SP provided the FHFC with the Ex. 40 form, properly completed and executed, providing verification from the Sanford City Manager that the City of Sanford administers an expedited permitting process for affordable housing. See Cure Re: Application No. 2011-144C at 45.

21. As explained in the letter from the Sanford City Manger (Exhibit B), Ordinance 4221 was the proper citation to the City of Sanford's expedited permitting process for affordable housing. No independent citation exists for the

City of Sanford's Comprehensive Plan. As the most recent amendment to the Comprehensive Plan, the ordinance is the correct citation to the Comprehensive Plan, which contains the policies pursuant to which the City of Sanford administers an expedited permitting process for affordable housing.

22. FHFC addressed a similar issue in its scoring of Application No. 2011-135C. In that instance, the appropriateness of the expedited permitting citation was also at issue. The applicant provided as a cure a letter from the appropriate city official explaining why the citation was accurate. The applicant argued that since FHFC requires an applicant to provide and rely upon the local government certification, FHFC should not ignore the local government's interpretation of its own policies. FHFC awarded the applicant the point for the Expedited Permitting incentive in its Final Scoring Summary. Similarly, the Ex. 40 form SP submitted contained the accurate citation, as explained by the letter from the City Manager. (Exhibit B). Here, too, FHFC should defer to the local government's interpretation of its own policies. To achieve a consistent result, SP should be awarded the point for the Expedited Permitting incentive.

23. Accordingly, FHFC erred in determining that SP was not eligible to receive the 1 point for the Expedited Permitting incentive.

Specific Rules that Require Reversal or Modification

24. SP is entitled to a determination that its Application should receive 1 point for the Expedited Permitting incentive, and thus a reversal or modification of agency action, by the following statutes and rules: Chapter 120, including Sections 120.569 and 120.57(2), Florida Statutes (2011), and Chapter 67-48, including Rules 67-48.004 and 67-48.005, Florida Administrative Code. Specifically, FHFC's requirements for the Ex. 40 form in Application Instructions, IV.B. at 97, were applied in error to SP, resulting in an erroneous determination that SP was not eligible for 1 point for the Expedited Permitting incentive.


No Material Facts Are in Dispute

25. SP is currently unaware of any disputed issues of material fact. However, SP reserves the right to request a formal hearing if FHFC or any other party disputes any of the material facts set out in this petition or otherwise relevant to SP's statement of ultimate facts or its requested relief.

Requested Relief

26. SP requests that it be granted an administrative proceeding to contest FHFC's erroneous scoring decision. SP requests the entry of recommended and final orders determining: (1) that SP provided the information required to achieve 1 point for the Expedited Permitting incentive; and (2) 1 point be added to the scoring of SP's application.

Respectfully submitted,

 Andrea Becker FOR

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Attorneys for Petitioner
SP Seminole Gardens LP

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and one copy of the foregoing has been delivered by hand to Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329; and that a true and correct copy has been provided by electronic mail to Wellington H. Meffert, General Counsel, 227 North Bronough Street, Suite 5000, Tallahassee, FL 32301-1329; all on this 24th day of April, 2012.


Lawrence E. Sellers, Jr.

EXHIBIT

A

Scoring Summary Report

File #: 2011-144C Development Name: Seminole Garden Apartments

As of: 03/27/2012

	Maximum Points/Eligibility	Preliminary	NOPSE	Final	Final Ranking
Met Threshold	Y/N	N	N	Y	
Total Points	79	72.00	72.00	78.00	
Ability to Proceed Tie-Breaker Points	6	6.00	6.00	6.00	
Proximity Tie-Breaker Points	37	10.00	10.00	30.00	
Eligible for 1/8th Mile Ranking Preference	Y/N	N	N	N	
Eligible for Age of Development Tie-Breaker Ranking Preference	Y/N	Y	Y	Y	
Eligible for Concrete Construction Tie-Breaker Ranking Preference	Y/N	Y	Y	Y	
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	1	1	1	

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	0.00	0.00	0.00	
5S	III.	B.	5.b.	Green Building Features (Rehab. & Preserv.)	10.00	10.00	10.00	10.00	
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	6.00	6.00	6.00	
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	0.00	0.00	0.00	
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	0.00	0.00	3.00	

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded As Result
1S	The Applicant indicated that the Principal of the Developer completed at least 3 Housing Credit Developments since January 1, 2007. However, the Applicant was awarded zero points for Housing Credit Development Experience because, rather than listing the name of a Principal of the Developer on the Housing Credit Development Experience chart as required by the Application Instructions, the Applicant listed the name of the Developer (Southport Financial Services, Inc.).	Preliminary	Final
12S	The Applicant did not submit any of the Local Government Verification of Affordable Housing Incentives forms. Therefore, zero points were awarded.	Preliminary	Final
12S	As a cure for Item 12S, the Applicant provided all 4 of the Local Government Incentives forms (Ex. 40, 41, 42 and 43). Information provided in a NOAD indicates that the ordinance number cited on the Expedited Permitting form (Ex. 40) does not pertain to establishing an expedited permitting process for affordable housing. Therefore, the Application was not eligible for 1 point for the Expedited Permitting incentive.	Final	

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created as Result of	Rescinded as Result of
1T	III.	C.	5.	Environmental Site Assessment	The Applicant failed to provide the required Verification of Environmental Safety- Phase 1 Environmental Site Assessment form and, if applicable, the Verification of Environmental Safety- Phase 2 Environmental Site Assessment form.	Preliminary	Final
2T	V.	D.	1.	Non-Corporation Funding	Although the Applicant listed first mortgage financing in the amount of \$5,850,000 for construction financing, no commitment for this loan has been provided. Therefore, the loan amount cannot be counted as a source of construction financing.	Preliminary	Final
3T	V.	D.	1.	Non-Corporation Funding	Although the Applicant listed first mortgage financing in the amount of \$5,850,000 for permanent financing, no commitment for this loan has been provided. Therefore the loan amount cannot be counted as a source of permanent financing.	Preliminary	Final
4T	V.	B.		Construction/Rehab. Analysis	The Applicant has a construction financing shortfall of \$5,633,984.	Preliminary	Final
5T	V.	B.		Permanent Analysis	The Applicant has a permanent financing shortfall of \$3,830,164.	Preliminary	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	0.00	
1P	III.	A.	10.a	Public Rail Station	7.00	0.00	0.00	5.50	
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	2.00	
3P	III.	A.	10.a	Senior Center	4.00	0.00	0.00	0.00	
4P	III.	A.	10.a	Medical Facility	4.00	0.00	0.00	3.50	
Eligible for Tier 1 Service Score Boost (Yes/No)						N	N	N	
Total Tier 1 Service Score					12.00	0.00	0.00	8.00	
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	1.75	
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	10.00	10.00	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 Applicant did not receive any proximity tie-breaker points for Transit, Tier 1 or Tier 2 Services because the Applicant did not submit the Surveyor Certification for Competitive HC Applications form.	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 Applicant listed 6 month operating reserves totaling \$150,000. However, No. 5 on the Development Cost Pro Forma Notes states "For purposes of the Development Cost calculation in this Application, the only reserves allowed are contingency reserves for rehabilitation and construction..." Therefore, the Total Development Cost was reduced by \$150,000.	Preliminary	
2C	III.	A.	2.d.	Urban In-Fill	The Applicant indicated that the proposed Development qualifies as an Urban In-fill Development, but failed to provide the Local Government Verification of Qualification as Urban In-fill Development form.	Preliminary	Final
3C	III.	A.	10.b.	Proximity to Developments on FHFC Development Proximity List	The Application qualifies for 10 automatic proximity points at Part III.A.10.b.(6) of the Application.	Preliminary	

EXHIBIT

B



www.sanfordfl.gov

OFFICE OF THE CITY MANAGER

April 19, 2012

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NORTON N. BONAPARTE, JR.
CITY MANAGER

SP Seminole Gardens LP
2430 Estancia Blvd., Suite 101
Clearwater, FL 33761
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To Whom It May Concern:

I am writing to confirm that Ordinance No. 4221, which I cited in the Local Government Verification of Affordable Housing Incentives Expedited Permitting Process for Affordable Housing Form (form) for the Seminole Garden Apartments proposed development (Application #: 144C), pertains to the City of Sanford's expedited permitting process for affordable housing. The City of Sanford, in furtherance of and pursuant to Policy 3-1 7.5 of its Comprehensive Plan, administers an expedited permitting process for affordable housing. The City of Sanford's practice of supporting affordable housing by expediting the permitting process is undertaken to comply with the goals and policies provided in the Comprehensive Plan.

There is no independent citation for the City of Sanford's Comprehensive Plan. Ordinance No. 4221 is the most recent amendment to the comprehensive plan. Accordingly, given the blank space provided on the form seeking a specific citation, Ordinance 4221 was the proper reference to the City of Sanford's expedited permitting process for affordable housing.

Sincerely,

Norton N. Bonaparte, Jr.
City Manager

cc:

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Tallahassee, FL 32301-1329
(850) 488-4197