

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

In Re: IMF DORAL, LLC.

FHFC Case No.: 2024-037GA

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

THIS CAUSE came for consideration and final action before the Board of Directors of Florida Housing Finance Corporation on August 23, 2024, pursuant to a Petition for Declaratory Statement. Florida Housing Finance Corporation (“Florida Housing”) received the Petition on or about June 17, 2024, from IMF Doral, LLC (“Petitioner”). On June 18, 2024, the Notice of Petition was published in Volume 50, Number 122, of the Florida Administrative Weekly. After careful review of the Petition and being otherwise fully advised in the premises, the Board of Directors (the “Board”) of Florida Housing hereby finds:

1. The Board is empowered to issue Declaratory Statements pursuant to §§420.504(2) and §120.565, Florida Statutes.

2. §420.504(2), Florida Statutes (2023), provides, in pertinent part:

The corporation is constituted as a public instrumentality, and the exercise by the corporation of the power conferred by this act is considered to be the performance of an essential public function. The corporation is an agency for the purposes of s. 120.52 and is a state agency for purposes of s. 159.807(4).

3. §120.565, Florida Statutes (2023), provides, in pertinent part:

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HOUSING FINANCE CORPORATION

Thomas M. Lamoreaux / DATE: 8/26/2024

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

4. The Petition includes the following question, as stated by Petitioner:

Does a development that may qualify as "newly constructed" within the meaning of §196.1978, Florida Statutes entitle the project's developer to the statutory ad valorem tax exception set forth therein?

5. The purpose of declaratory statements issued under §120.565, Florida Statutes is to address the applicability of a statutory provision or order or rule of a state agency in a particular set of circumstances. Chiles v. Department of State, Division of Elections, 711 So.2d 151 (Fla. 1st DCA 1998). The particular set of circumstances need not apply to the individual Petitioner only but must apply to a certain set of circumstances and not to an entire class of persons. Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach, 747 So.2d 374 (Fla. 1999); Regal Kitchens Inc., v. Department of Revenue, 641 So.2d 158 (Fla. 1st DCA 1994).

6. Petitioner is a developer in the process of converting a hotel into a multifamily affordable housing complex in Miami-Dade County, Florida.

7. §196.1978(1)(a), Florida Statutes (2023), provides:

Property used to provide affordable housing to eligible persons as defined by s. 159.603 and natural persons or families meeting the extremely-low-income, very-low-income, low-income, or moderate-income limits specified in s. 420.0004, which is owned entirely by a nonprofit entity that is a corporation not for profit, qualified as charitable under s. 501(c)(3) of the Internal Revenue Code and in compliance with Rev. Proc. 96-32, 1996-1 C.B. 717, is considered property owned by an exempt entity and used for a charitable purpose, and those portions of the affordable housing property that provide housing to natural persons or families classified as extremely low income, very low income, low income, or moderate income under s. 420.0004 are exempt from ad valorem taxation to the extent authorized under s. 196.196.

8. §196.1978(2)(c), Florida Statutes (2023), provides “To receive the exemption under paragraph (a), a qualified applicant must submit an application to the county property appraiser by March 1.”

9. §196.1978(3)(e), Florida Statutes (2023), states “To receive an exemption under this subsection, a property owner must submit an application on a form prescribed by the department by March 1 for the exemption, accompanied by a certification notice from the corporation to the property appraiser.”

10. §196.1978(3)(f), Florida Statutes (2023), provides:

To receive a certification notice, a property owner must submit a request to the corporation for certification on a form provided by the corporation which includes all of the following:

1. The most recently completed rental market study meeting the requirements of paragraph (m).

2. A list of the units for which the property owner seeks an exemption.

3. The rent amount received by the property owner for each unit for which the property owner seeks an exemption. If a unit is vacant and qualifies for an exemption under paragraph (c), the property owner must provide evidence of the published rent amount for each vacant unit.

4. A sworn statement, under penalty of perjury, from the applicant restricting the property for a period of not less than 3 years to housing persons or families who meet the income limitations under this subsection.

11. The Petition's question fails to state a particular set of circumstances in which Florida Housing may address the applicability of any statutory provision, rule or order of Florida Housing, or the circumstances stated apply to entire classes of persons. Therefore, it would be inappropriate for Florida Housing to issue a Declaratory Statement in response to Petitioner's question. §120.565(1), Florida Statutes.

12. The process to determine ad valorem tax exemption consist of submitting the Ad Valorem Tax Exemption Application and Return for Multifamily Project and Affordable Housing Project form to the county property appraiser where the development is located. In this instance, Miami-Dade County. The Miami-Dade County Property Appraiser is responsible for determining ad valorum tax exemption eligibility.

13. The certification process described in §196.1978(3)(f), Florida Statutes, does not include the interpretation of eligibility requirements for ad

valorum tax exceptions. Florida Housing is not responsible for interpreting the application of “newly constructed” in §196.1978, Florida Statutes. “Newly constructed” is an eligibility requirement for the exemption. An eligibility analysis is not conducted for the Certification process that Florida Housing conducts.


14. The Petition’s question requires a determination that is beyond the scope of Florida Housing’s expertise or authority. Florida Housing cannot address or respond to the question in a Declaratory Statement. §120.565(2), Florida Statutes.

WHEREFORE, for the grounds stated above, the Petition for Declaratory Statement is **DENIED**.

DONE and ORDERED this 23rd day of August, 2024.



Florida Housing Finance Corporation

By:  _____
Chairperson

Copies furnished to:

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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., BOULEVARD, 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.