

BEFORE THE STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION

RECEIVED  
MAY 13 11:20 AM  
STATE OF FLORIDA  
HOUSING FINANCE CORPORATION

GARFIELD PLACE APARTMENTS, LTD.

Petitioner,

v.

Direct Appeal  
No. 2002-065 B

FLORIDA HOUSING FINANCE CORPORATION,

Respondent,

\_\_\_\_\_ /

**PETITION REQUESTING REVIEW OF FLORIDA HOUSING  
FINANCE CORPORATION'S SCORING OF  
APPLICATION NO. 2002-065B  
GARFIELD PLACE APARTMENTS**

Pursuant to Section 120.57, Florida Statutes (F.S.), and Rule 67-48.0053(3), Florida Administrative Code (F.A.C.) Petitioner, Garfield Place Apartments, LTD., (“Garfield Place”) requests the FLORIDA HOUSING FINANCE CORPORATION (“FHFC”) to review FHFC’s application of penalties to scoring of Part III, Section D, and Subsections 7. and 8. (dealing with Demographic Special Set-Asides) and Part V, Section B (Exhibit 45 “Commitment to Defer Developer Fee”) of the Universal Cycle application number 2002-065B. In support of this petition Garfield Place provides as follows:

**PROCEDURAL HISTORY**

1. On or about July 22, 2002, the Florida Housing Finance Corporation (hereinafter the “FHFC”) issued its 2002 Universal Scoring Summary for the 2002 Universal Cycle. On July 23<sup>rd</sup>, 2002 Garfield Place Apartments, LTD. (“Garfield Place”) is a Florida for-profit limited

partnership with its address at 730 Bonnie Brea Street, Winter Park, Florida 32789. Garfield Place is in the business of providing affordable rental housing units.

2. FHFC is the State Agency delegated the authority and responsibility for administering the Multifamily Mortgage Revenue Bond Program in the State of Florida pursuant to Chapter 420, F. S., and Rule 48, F.A.C.

3. The Multifamily Mortgage Revenue Bonds (“bond”) program is administered by FHFC which awards developers a below-market interest rate loan and non-competitive tax credits in exchange for the acquisition and substantial rehabilitation or new construction of low and very low income rental housing units.

4. A bond application is comprised of numerous forms which request information of each applicant. FHFC has adopted the forms by reference in Rule 67-21.002, F.A.C.

5. On or before the application deadline of April 15, 2002, Garfield Place submitted to FHFC a Multifamily Mortgage Revenue bond application in the medium county Set-Aside for the 2002 Funding Cycle. The below-market interest rate bonds and accompanying non-competitive housing (tax) credits, hereinafter be referred to as bonds, were requested to aide in the financing of an apartment complex to be named Garfield Place Apartments, to be located in DeLand, Volusia County, Florida.

6. The application was scored by FHFC in accordance with the provisions of Section 420.5087, F.S., and Rule 67-21, F.A.C. By letter, FHFC advised Garfield Place that its preliminary score was 65 out of a possible 71 points. Furthermore, by that same, as well as subsequent, notice(s), Garfield Place was notified that the application failed to achieve “Threshold”.

7. Garfield Place's position in the rankings is predicated first on attaining "Threshold" and, thereafter, its ability to be awarded bonds is dependent not only on its own score but also scores that of other applicant's as well. The ability to finance the proposed project will be jeopardized if the bonds are not obtained. Accordingly Garfield Place's interests are affected by this proceeding.

8. While Garfield Place successfully gained one point in the "cured" (addition) of a properly executed Exhibit 38, Garfield Place achieved a score of zero (0) points out of a possible five (5) points on part III.D (Demographic or area Commitment) of its Application. Using the on-line application, a new method of filing which Corporation staff pleaded for the development community (potential applicants) to utilize, the Applicant selected "Urban In-Fill Development" and "Large Family Development" out of the seven choices provided. The FHFC issued its Preliminary and Final Scores and did not award points to the Applicant for the Demographic or Area Commitment category.

The Applicant's failure to follow instructions should not be considered a failure to include certain information required to be provided by the Application Deadline which is not curable and results in rejection of an Application.

The Rule dictates whether information set forth in an Application may be cured during the cure period granted under Rule chapter 67-48, F.A.C. The Rule states that there are "certain items that must be included in the Application and cannot be revised, corrected or supplemented after the Application Deadline. Failure to submit these items in the Application at the time of the Application Deadline shall result in rejection of the Application without opportunity to submit additional information. Any attempted changes to these items will not be accepted."

One such item enumerated in the Rule as non-curable is the Demographic or Area Commitment.

The Instructions provide, under the Demographic or Area Commitment heading, that the applicant may select only one of the choices enumerated for the Demographic or Area Commitment. Both “Urban In-Fill Development” and “Large Family Development” are possible choices. In the event “Urban In-Fill Development” is selected, an applicant is required to provide a properly completed and executed Local Government Verification of Qualification as Urban In-Fill Development Form. Unlike the Instructions, the Application does not indicate in Part III.D. (Demographic or Area Commitment) that only one of the choices provided can be selected by an applicant. However, the Application does require that if an applicant selects “Urban In-Fill Development”, the applicant must provide the properly completed and executed Local Government Verification of Qualification as Urban In-Fill Development Form (the “Form”). The Applicant included the requisite Form in its Application.

- A. The Rule requires that an applicant include the Demographic or Area Commitment item in its Application at the time of the Application Deadline. The Applicant included its Demographic or Area Commitment at the time of the Application Deadline. The Applicant, by virtue of definition, accurately described its development as an “Urban In-Fill Development” and a “Large Family Development”. Neither of the selected items needs to be revised, corrected or supplemented. In terms of the Demographic or Area Commitment, the Applicant is only able to score/compete under one of the commitments

selected (Large Family). While Page 22 of the Instructions seemingly offers the Urban In-fill geographic set-aside to applicants for Competitive Housing Credits, SAIL and MMRB, upon closer inspection one can reasonably conclude that a demographic set aside of Urban In-Fill effectively does not apply to MMRB projects. Pages 68 and 69 of the 2002 Universal Cycle Instructions describe the Urban In-fill Special Set-Aside of 3 projects (including one high-rise) only under the Competitive HC Set-Aside category. On page 69 there is a Hope IV (a site which qualifies which would potentially qualify under the Urban In-Fill definition) MMRB set-aside. However, the applicant's project doesn't qualify as an Urban In-Fill location by the Hope IV definition, it qualifies (by definition) due to its inclusion in a QCT/CDBG area. Other than the Hope IV set-aside (which doesn't mentioned Urban In-Fill), the Urban In-Fill set-aside is not applicable to bonds. Accordingly, rather than reject the Application for failing to include the requisite information, the Corporation should select the only Demographic or Area Commitment category the Applicant's project is qualified to compete.

- B. The Rule does not prohibit a cure where the Applicant merely fails to follow the instructions provided in the instructions. The Rule was implemented to prohibit Applicants from changing certain information that the Corporation deemed vital at the initial Application Deadline state. Because the Applicant provided the vital information required by the Corporation, the Applicant does not have any information to cure in the Demographic or Area Commitment category. Rather,

the Applicant provided more information than the Corporation required.

Furthermore, to the extent that the additional information did not apply, the remaining (applicable) information satisfies the spirit of the Instructions.

Accordingly, the Corporation should select the lowest priority (or the ONLY applicable) Demographic Area Commitment in which category the Applicant must compete.

- C. Although the Instructions provide that an applicant can select only one of the seven Demographic or Area Commitment categories enumerated in the Application, the Application itself does not clearly state that an applicant can choose only one of the seven categories. Other areas of the Application clearly indicate whether an applicant may select only one of the choices provided. For example, the Proximity section of the Application clearly states, and in bold font, that an applicant can check only one applicable distance. In the Construction Features and Amenities section of the Application, the Application clearly states for certain items that an applicant may select **only one** of certain items enumerated. The section immediately following the Demographic or Area Commitment section also clearly states that an applicant must select one of the following choices provided. The other sections of the Application that provide an applicant with choices also provide guidance to the applicant as to how many choices to select, but in the form of maximum points, rather than number of choices available for selection. Accordingly, the Applicant should not be penalized for failing to follow instructions that were set forth in the Instructions

but that were not clearly provided in the Application. The Applicant should be permitted to correct its error by withdrawing one of the two choices selected. Accordingly, the corporation should select the lowest priority Demographic or area Commitment in which category the Applicant must complete.

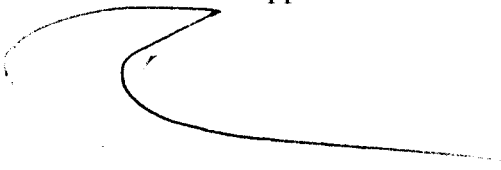
- D. It should also be noted that on the on-line version of the Application, the Demographic or Area Set-Aside part allowed the applicant to check more than one box. At a later time it was learned that this part of the on-line application also allowed you to uncheck boxes. In another section, dealing with the Non-Profit Set-Aside, for which the Applicant for Garfield Place does not qualify (thus rendering this section "not applicable"), the Applicant for Garfield Place had gotten ahead of himself and was answering non-applicable questions. Upon realizing the error he tried unsuccessfully to uncheck his answers, which remain as evidence of this fact. In other words, the on-line form did not allow the Applicant to uncheck those answers.
9. The second (Threshold) issue was created as a result of submitting "Cures" for Garfield Place. The Applicant had originally left blank (on the Deferred Developer Fee - Exhibit 45) the number of years the Applicant/Developer was willing to defer the Developer Fee. In curing that form, the Applicant (using the on-line method vs. having originally completed exhibits vis-à-vis a hard form and a typewriter) mistakenly entered the name of the Applicant (Garfield Place Apartments, Ltd.) with the name of the Developer (P.A.C. Land Development Corporation), both of whom are the same **sole** principal shareholder and signatory, causing staff to render the form

(and the source of financing it represented) invalid, thus creating a gap in financing and failing Threshold.

A. Exhibit 45 originally (pre-cure) contained the proper names and signature. In the Cure of the omission of the number of years the Applicant and Developer (one and the same) inadvertently confused the entities, perhaps qualifying as a scrivener's error.

Whatever the label given to the substitution, there was likely no doubt in the minds of those scoring for FHFC who the commitment to defer was backed by as the signatory was the sole beneficiary for both the Applicant and the Developer. Prior to the scoring of the application, the Applicant had been given cause to believe that such trivialness was a thing of the past.

Garfield Place ultimately requests that a Recommended Order and Final Order be entered which increases the ultimate score of Application 2002-065B to 71 and causes the Application to satisfy Threshold requirements.



---

Thomas L. Cavanaugh