

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

CATHOLIC CHARITIES HOUSING INC.,

Petitioner,

v.

FHFC CASE NO.: 2004-019-UC
APPLICATION NO. 2004-026S

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 October 14, 2004. On or before March 31, 2004, Catholic Charities Housing Inc., (“Petitioner”) submitted its 2004 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for an allocation of the SAIL Program. On July 30, 2004, Petitioner timely filed its Petition pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the “Petition”) challenging Florida Housing’s scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(2)(c), Florida Statutes, and determined that the Petition did not raise disputed issues of material fact. An informal hearing was held in this case on September 15, 2004, in Tallahassee, Florida, before Florida Housing’s designated Hearing Officer, David Ramba. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and correct copy of the Recommended Order is attached hereto as “Exhibit A.” The Hearing Officer recommended Florida Housing enter a Final Order finding that Florida Housing properly denied

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

Y. J. Wilson /DATE 10/14/04

Petitioner's Application for competitive SAIL funding because it failed to pass threshold by failing to provide verification of availability of infrastructure, sewer capacity, package treatment or septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.

The Hearing Officer also included a Recommendation “. . . that the Board of Florida Housing review the application for due consideration of a variance under section 120.542, Fla. Stat., given that the uniform applicability of the rule appears to have led to unreasonable, unfair, and unintended result in this particular instance.”

On October 1, 2004, Respondent, Florida Housing filed a Written Argument in Opposition to the Recommended Order. Attached is a true and correct copy marked as Exhibit “B”. Florida Housing took issue with the Hearing Officer's recommendation to the Board to consider a waiver of the rule, as the Hearing Officer lacked the jurisdiction to make such a recommendation, and nothing in the Record supported such a recommendation. Florida Housing agreed with the Hearing Officer's recommendation that Petitioner failed threshold by failing to provide verification of availability of infrastructure, sewer capacity, package treatment or septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.

RULING ON THE RECOMMENDED ORDER

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

ORDER

In accordance with the foregoing, it is hereby **ORDERED:**

1. The findings of fact of the Recommended Order 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 Recommended Order as it pertains to the determination that Petitioner failed threshold is adopted as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Order.


3. The Recommend Order is rejected to the extent it recommends that the Board of Florida Housing consider a granting a waiver in this case. The Hearing Officer has no authority to recommend relief based upon Petitioner's appeal in the instant case. Such recommendation is not within the jurisdiction of the Hearing Officer in this matter, and there is no foundation in the Record to support this recommendation.

Accordingly, it is found and ordered that Florida Housing properly denied Petitioner's Application for competitive SAIL funding because it failed to pass threshold by failing to provide verification of availability of infrastructure, sewer capacity, package treatment or septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.

IT IS HEREBY ORDERED that Petitioner's Application is rejected.

DONE and ORDERED this 14th day of October, 2004.

FLORIDA HOUSING FINANCE
CORPORATION

By: 
Chairperson

Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
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Tallahassee, FL 32301

Steve Auger
Deputy Development Officer
Florida Housing Finance Corporation
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Tallahassee, FL 32301

Arnold Andrews
Catholic Housing Charities, Inc
1213 16th Street North
St. Petersburg, FL 33705
Telephone: (727) 893-1313
Direct Fax: (727) 893-1307

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

CATHOLIC CHARITIES HOUSING INC.,

Petitioner,

v.

FHFC CASE NO. 2004-019-UC
Application No. 2004-026S

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

RECOMMENDED ORDER

Pursuant to notice, an informal administrative hearing was held in the above-styled case on September 15, 2004, at Tallahassee, Florida, before the Florida Housing Finance Corporation's appointed Hearing Officer David Ramba.

For the Petitioner:

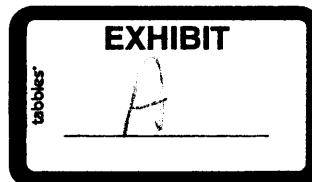
Arnold Andrews
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Deborah A. Zomermaand
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For the Respondent:

Matthew Sirmans
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
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HEARING OFFICER
STATE OF FLORIDA



JOINT EXHIBITS

The following exhibits were offered and accepted into evidence:

<u>Exhibit</u>	<u>Description</u>
Exh. 1.	Joint Stipulation.
Exh. 2.	Exhibit 30 to Application (Item 6T)
Exh. 3.	Exhibit 30 to Application (Cure Item 6T Part III, Section C of the Cure)
Exh. 4.	Preliminary Scoring Summary for Catholic Charities dated April 28, 2004.
Exh. 5.	NOPSE Scoring Summary for Catholic Charities dated May 25, 2004.
Exh. 6.	Final Scoring Summary for the Catholic Charities dated July 8, 2004.
Exh. 7.	Excerpts from the 2004 Universal Cycle Application, Instructions, and Rules
Exh. 8	Exhibit 25 to the Application (Item 2P).
Exh. 9	Exhibit 25 to the Application (Cure Item 2P, Part III to the Cure)
Pet. Exh. 1	Exhibit 24 to the Application.
Pet. Exh. 2	Page 8 of 26 of Petitioner's Application

WITNESSES

No witnesses testified for either party.

STATEMENT OF THE ISSUE

The issue to be resolved is whether Florida Housing erred when it determined that Petitioner failed to meet the threshold requirement under Part III, Section C, subsection 3, of the Universal Application Instructions, demonstrating verification of availability of

infrastructure for sewer capacity, package treatment, or septic tank, on or before the Application Deadline of March 31, 2004.

PRELIMINARY STATEMENT

On or before March 31, 2004, Catholic Charities Housing Inc., ("Petitioner ") submitted an application for its San Jose Mission development to Florida Housing for funding under the State Apartment Incentive Loan (SAIL) in the 2004 Universal Cycle program. On July 9, 2004, Florida Housing notified the Petitioner of the results of the scoring of the application and provided the Petitioner with a Notice of Rights pursuant to §§ 120.569 and 120.57, Fla. Stat. Petitioner timely filed its Election of Rights and its Petition for an informal hearing. Florida Housing filed a motion to strike portions of the Petition that requested a variance under section 120.542, Fla. Stat., and said motion was granted on August 17, 2004. An informal hearing was conducted September 15, 2004, pursuant to §§120.569 and 120.57(2), Fla. Stat. There are no disputed issues of material fact.

FINDINGS OF FACT

1. On or before March 31, 2004, Petitioner submitted an Application to Florida Housing Finance Corporation ("Florida Housing") for the award of funds from the State Apartment Incentive Loan ("SAIL") program for the development of San Jose Mission, an affordable rental housing development in the 2004 Universal Cycle.

2. Florida Housing is a public corporation organized under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.

3. Florida Housing receives its funds for the SAIL program from an allocation of documentary stamp tax revenue and publishes a Notice of Funding Availability announcing the amount of SAIL funding, which in the 2004 Universal Cycle was approximately \$55,000,000. Florida Housing received requests from all applicants for SAIL loans in the 2004 Universal Cycle.

4. SAIL funds are apportioned among the counties, grouped as most, medium, and the least populated counties, and according to set-asides and special targeting goals set forth in the statute for the elderly, commercial fishing workers and farm workers and families. See Section 420.5087 (3), Fla. Stat.

5. Florida Housing has established by rule a process (the "Universal Cycle") in which applicants for any of the above-referenced Florida Housing multi-family rental programs submit a single application (the "Universal Cycle Application") by which projects are evaluated, scored, and competitively ranked. See Section 420.507 (22)(f), Fla. Stat. and Fla. Admin. Code R. Chapter 67.48.

6. The 2004 Universal Cycle Application, adopted as Form UA1016 (Rev. 3-04) by Fla. Admin. Code R. 67-48.002 (111), consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include "threshold" items.

7. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application. Other parts allow applicants to earn points, which are different from threshold items.

8. After Petitioner submitted its 2004 Universal Cycle Application, on or before March 31, 2004, Florida Housing's staff commenced scoring the Application

pursuant to Part V, Chapter 420, Fla. Stat. and Fla. Admin. Code R. Chapter 67-48. Florida Housing completed the scoring process on April 28, 2004.

9. After performing preliminary scoring, Florida Housing's staff notified Petitioner of the results. Any applicant could question the scoring of Petitioner's Application if it believed Florida Housing had made a scoring error, within 10 calendar days after the date the applicant received the preliminary scores by filing a Notice of Possible Scoring Error ("NOPSE").

10. Florida Housing reviewed each NOPSE that was timely received. On May 28, 2004, Florida Housing sent Petitioner any NOPSE relating to its Application submitted by other applicants and Florida Housing's position on any NOPSE.

11. Petitioner could submit additional documentation, revised forms, and other information that it deemed appropriate to address any issue raised in any NOPSE, Florida Housing's position on each NOPSE and preliminary scoring. These documents, revised forms and other information were known as "cures" and were due on or before June 10, 2004 (the "cure period").

12. After Petitioner submitted its cures, all applicants had an opportunity to review Petitioner's cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge the Petitioner's cures. Florida Housing then reviewed each NOAD and made a determination on each NOAD.

13. Following this process, on July 9, 2004, Florida Housing sent Pre-Appeal Scores and a Notice of Rights to Petitioner. The Notice of Rights notified Petitioner that it could contest Florida Housing's actions by requesting an informal hearing before a contracted hearing officer.

14. Petitioner timely requested a hearing on July 30, 2004, when it submitted its Petition on July 30, 2004.

15. Florida Housing determined that Catholic Charities failed threshold because the Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form submitted by Catholic Charities on or before March 31, 2004, failed to reference whether sewer capacity, package treatment or septic tank was available to the development site prior to the application deadline of March 31, 2004. (Exhibits 2 and 4)

16. Catholic Charities timely submitted a cure for Exhibit 30, Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank.

17. Florida Housing determined that Catholic Charities again failed threshold because the Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form submitted by Catholic Charities on or before June 10, 2004, failed to reference whether sewer capacity, package treatment or septic tank was available to the development site prior to the application deadline of March 31, 2004. The date on the form read "5/7/04." (Exhibits 3 and 6).

18. Catholic Charities conceded on the issue of proximity tie breaker points contained in their petition.

19. Florida Housing conceded on the issue of whether Catholic Charities met the definition of SAIL eligibility.

CONCLUSIONS OF LAW

20. The Universal Application Instructions, incorporated by reference in Rule 67-48.002(111), F.A.C., constitute a rule under Section 120.52(15), Fla. Statutes. The

Corporation's rules have the force and effect of law. See generally State of Florida v. Jenkins, 469 So.2d 733 (Fla. 1985).

21. The threshold requirements as set forth in the Universal Application Instructions state that "Requirements to meet Threshold include...Ability to proceed must be demonstrated by submission of the required certifications or documentation...of infrastructure..." (Exhibit 7(b)).

22. The Universal Application Instructions further state, "Verification of the availability of each type of infrastructure on or before the Application Deadline must be provided." "Each Verification of Availability of Infrastructure Form...must demonstrate availability on or before the Application Deadline." "Evidence of availability of sewer, package treatment or septic tank must be provided behind a tab labeled "Exhibit 30." (Exhibit 7(a)).

23. Petitioner submitted its Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form on or before the Application Deadline of March 31, 2004, without a date on the form. (Exhibit 2). Accordingly, Florida Housing could not determine if the infrastructure was available on or before the Application Deadline.

24. Petitioner submitted a revised Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form as a cure on or before June 10, 2004. This form contained the date "5/7/04." (Exhibit 3). This date is after the Application Deadline of March 31, 2004. At hearing, Petitioner admitted that this date was a scrivener's error, but argued that although this revised date is after the Application

Deadline date of March 31, 2004, the "5/7/04" date should be ignored due to other information submitted in Petitioner's Application.

25. At the time Petitioner submitted its Application for SAIL funding, it had completed construction and received its certificates of occupancy for San Jose Mission. Petitioner stated in its Application that certificates of occupancy were issued on April 4, 2003. Petitioner also submitted a list of certificates of occupancy issue dates for each building within the San Jose Mission development at Exhibit 24 of its Application. (Petitioner's Exhibit 1 and 2).

26. At hearing, Petitioner argued that Florida Housing should ignore the scrivener's error because by 'common standards,' all of the services must have been in place by the date the certificates of occupancy were issued.

27. Florida Housing could not ignore the revised date in light of this additional information. Assuming that the certificates of occupancy were issued on April 4, 2003, Petitioner's revised Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form's date of May 7, 2004, created an inconsistency within the four corners of the Application. These two dates are thirteen months apart and were not reconciled within the Application or by the cures submitted by Petitioner. If Petitioner did in fact have the requisite sewer infrastructure in place on April 4, 2003, it needed to properly document this date on the Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form. Petitioner failed to do so. Instead, Petitioner put the May 7, 2004, date on the form.

28. The inconsistent dates created confusion as to what was the actual date of service. Florida Housing was not able to determine if there was a problem with the

availability of infrastructure or just a scrivener's error. The rules that govern the scoring process require Florida Housing to strictly determine if Petitioner has met the threshold requirement.

29. Rule 67-48.004(9), Florida Administrative Code, clearly states that in determining final scores, "[I]nconsistencies created by the Applicant as a result of information provided pursuant to subsections (6) (*cures*) and (7) (*NOADS*) above will still be justification for rejection or reduction of points, as appropriate." (emphasis added for clarification) (Exhibit 7(c)).

30. Here, the two dates provided by Petitioner were inconsistent and as such, the rule mandates that Florida Housing could not ignore the scrivener's error and could not tell if the threshold requirement that verification of availability of infrastructure, sewer capacity, package treatment or septic tank had been demonstrated on or before the Application Deadline.

31. The Universal Cycle is a highly competitive application process, one that is both commented on by competing applicants and scored by Florida Housing staff. Florida Housing cannot ignore scrivener's errors because to do so would be unfair and put all other competing applicants at a disadvantage.

32. An agency's interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation. Legal Environmental Assistance Foundation, Inc. v. Board of County Commissioners of Brevard County, 642 So.2d 1081 (Fla. 1994); Miles v. Florida A&M University, 813 So.2d 242 (Fla. 1st DCA 2002). The agency's interpretation will be upheld 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 Administration, 662 So. 2^d 1330 (1995).

33. Florida Housing reasonably interpreted its rules and did not err when it determined that Petitioner failed to meet this threshold requirement when awarding Petitioner its final score.

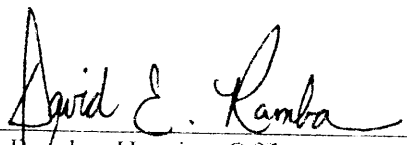
RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law it is hereby RECOMMENDED that Florida Housing enter a final order determining that:

Florida Housing properly denied the Petitioner's Application for competitive SAIL funding because it failed to pass threshold by failing to provide verification of availability of infrastructure, sewer capacity, package treatment or septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.

It is also recommended that the Board of Florida Housing review the application for due consideration of a variance under section 120.542, Fla. Stat., given that the uniform applicability of the rule appears to have led to unreasonable, unfair, and unintended result in this particular instance.

Respectfully submitted and entered this 21st day of September 2004.



David Ramba, Hearing Officer

Copies furnished:

Arnold Andrews
Catholic Housing Charities, Inc.
1213 16th Street North
St. Petersburg FL 33705

Matthew Sirmans
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

FLORIDA HOUSING FINANCE CORPORATION

SAN JOSE MISSION,
CATHOLIC CHARITIES HOUSING, INC.
Petitioner,

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FHFC CASE NO.: 2004-019UC
App No.: 2004-026S

FLORIDA HOUSING FINANCE
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**ARGUMENT IN OPPOSITION
TO RECOMENDATION**

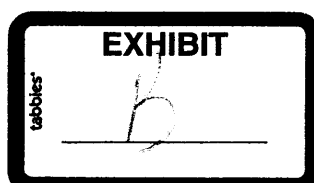
COMES NOW THE RESPONDENT, Florida Housing Finance Corporation, ("Florida Housing") by and through the undersigned counsel, pursuant to Section 120.57(2), and 420.507(22), Fla. Stat., and R. 67-48.005(3), Fla.Admin.Code, and files this written argument in opposition to the Recommended Order and says:

1. On September 15, 2004, an informal hearing was conducted pursuant to sec. 120.569 and 120.57(2), Fla. Stat. There were no disputed issues of material fact.
2. On September 21, 2004, Hearing Officer David Ramba filed a Recommended Order with Florida Housing, containing two recommendations for a final order as follows:

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law it is hereby RECOMMENDED that Florida Housing enter a final order determining that:

Florida Housing properly denied the Petitioner's Application for competitive SAIL funding because it failed to pass threshold by failing to provide verification of availability of infrastructure, sewer capacity, package treatment or



septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.”

It is also recommended that the Board of Florida Housing review the application for due consideration of a variance under section 120.542, Fla. Stat., given that the uniform applicability of the rule appears to have led to unreasonable, unfair, and unintended results in this particular instance.

3. Florida Housing takes issue with the second part of the Hearing Officer’s Recommendation; that Florida Housing review the application for a variance under section 120.542, Fla. Stat. Florida Housing urges that such recommendation is not within the jurisdiction of the Hearing Officer in this matter, and that there is no foundation in the Record to support this recommendation. The Hearing Officer has no authority to recommend equitable relief based upon Petitioner’s appeal in the instant case. See Sections 120.569, 120.57, and 120.542(5),(8), Fla.Stat.

4. Petitioner filed an appeal to review its score awarded during the Universal Application Cycle, pursuant to R. 67-48.005, Fla. Admin. Code. This petition is part of an administrative adjudicatory proceeding, heard by a Hearing Officer delegated specific authority to hear such matters by contract with Florida Housing, and which is conducted pursuant to sec. 120.569 and 120.57, Fla.Stat. In these scoring cases, the Hearing Officer is charged to determine, by applying the facts presented to the governing law, whether Florida Housing correctly applied its rules to the application presented to it.

5. In contrast, a petition for a variance or waiver is a request for equitable relief where the correct application of an applicable rule yields a result which is unreasonable, unfair, and unintended. The agency must adhere to distinct procedural requirements that differ greatly from a hearing where the substantial interests of a party

have been determined by an agency. Compare, sec. 120.542, Fla. Stat., and Ch. 28-104.002, Fla. Admin. Code, with sec. 120.569, and 120.57, Fla. Stat, and Ch. 28-106, Fla. Admin. Code.

6. After Petitioner submits its petition for waiver or variance, notice must be published to allow public comment on the request. Petitioner must demonstrate that the application of the rules governing the Universal Application creates a substantial hardship or violates the principles of fairness and that the purpose of the underlying statute will be or has been achieved by other means, to the Board. These statutory procedures occur prior to any decision by the Board of Directors to grant the petition.

7. In this case, the Petition for relief filed in that matter contained elements of both the waiver and variance and the adjudicatory proceedings. Florida Housing filed a Motion to Strike on August 17, 2004, to prevent any discussion at hearing concerning variances or waivers. The Hearing Officer granted this motion on August 17, 2004, and further admonished Petitioner at hearing not to discuss variances or waivers. Accordingly, there was no evidence, testimony, or argument at the hearing regarding a variance or waiver.

8. All conclusions of law and recommendations contained in a recommended order must be based upon findings of fact supported by evidence presented during the informal hearing. Sec. 120.569 and 120.57, Fla. Stat. Here, the parties stipulated to the facts: that Petitioner submitted a Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form with its application and that Florida Housing determined that this form failed to meet the threshold requirement

demonstrating infrastructure availability on or before the application deadline of March 31, 2004.

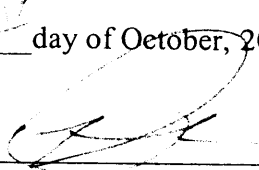
9. There were no facts stipulated or presented at hearing that provide any basis for a finding of fact on which the Hearing Officer could make a conclusion of law that a waiver or variance should be considered by Florida Housing. Nothing in the Record of this proceeding supports the statement in the Hearing Officer's recommendation that the application of the rules to Petitioner was unreasonable, unfair, or achieved an unintended result.

10. If the Petitioner wishes to seek a waiver or variance from the rules applicable in these circumstances, it should file a petition for such relief under the procedures set forth in sec. 120.542, Fla. Stat., and Ch. 28-104, Fla. Admin. Code.

WHEREFORE, Respondent requests that the Board of Directors enter a final order that finds Florida Housing properly denied the Petitioner's Application for competitive SAIL funding because it failed to pass threshold by failing to provide verification of availability of infrastructure, sewer capacity, package treatment or septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.

Respondent further requests that the Board of Directors refuse to include within its Final Order the recommendation that the Board of Florida Housing review the application for due consideration of a variance under section 120.542, Fla. Stat.

Respectfully submitted this 14 day of October, 2004.



Wellington H. Meffert II
General Counsel
Matthew Sirmans
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Telephone: (850) 488-4197

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and by U.S. mail, to Arnold Andrews, Catholic Housing Charities, Inc., 1213 16th Street North, St. Petersburg, FL 33705 and *via* electronic transmission and U.S. mail, to David E. Ramba, Hearing Officer, Lewis, Longman & Walker, 125 S. Gadsden Street, Tallahassee, Florida 32301, this 14 day of October, 2004.



Wellington H. Meffert II

FLORIDA HOUSING FINANCE CORPORATION

SAN JOSE MISSION,
CATHOLIC CHARITIES HOUSING, INC.

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**ARGUMENT IN OPPOSITION
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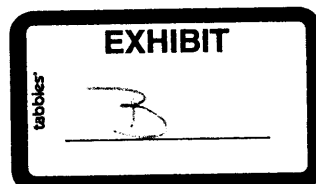
COMES NOW THE RESPONDENT, Florida Housing Finance Corporation, ("Florida Housing") by and through the undersigned counsel, pursuant to Section 120.57(2), and 420.507(22), Fla. Stat., and R. 67-48.005(3), Fla.Admin.Code, and files this written argument in opposition to the Recommended Order and says:

1. On September 15, 2004, an informal hearing was conducted pursuant to sec. 120.569 and 120.57(2), Fla. Stat. There were no disputed issues of material fact.
2. On September 21, 2004, Hearing Officer David Ramba filed a Recommended Order with Florida Housing, containing two recommendations for a final order as follows:

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law it is hereby RECOMMENDED that Florida Housing enter a final order determining that:

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septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.”

It is also recommended that the Board of Florida Housing review the application for due consideration of a variance under section 120.542, Fla. Stat., given that the uniform applicability of the rule appears to have led to unreasonable, unfair, and unintended results in this particular instance.

3. Florida Housing takes issue with the second part of the Hearing Officer’s Recommendation; that Florida Housing review the application for a variance under section 120.542, Fla. Stat. Florida Housing urges that such recommendation is not within the jurisdiction of the Hearing Officer in this matter, and that there is no foundation in the Record to support this recommendation. The Hearing Officer has no authority to recommend equitable relief based upon Petitioner’s appeal in the instant case. See Sections 120.569, 120.57, and 120.542(5),(8), Fla.Stat.

4. Petitioner filed an appeal to review its score awarded during the Universal Application Cycle, pursuant to R. 67-48.005, Fla. Admin. Code. This petition is part of an administrative adjudicatory proceeding, heard by a Hearing Officer delegated specific authority to hear such matters by contract with Florida Housing, and which is conducted pursuant to sec. 120.569 and 120.57, Fla.Stat. In these scoring cases, the Hearing Officer is charged to determine, by applying the facts presented to the governing law, whether Florida Housing correctly applied its rules to the application presented to it.

5. In contrast, a petition for a variance or waiver is a request for equitable relief where the correct application of an applicable rule yields a result which is unreasonable, unfair, and unintended. The agency must adhere to distinct procedural requirements that differ greatly from a hearing where the substantial interests of a party

have been determined by an agency. Compare, sec. 120.542, Fla. Stat., and Ch. 28-104.002, Fla. Admin. Code, with sec. 120.569, and 120.57, Fla. Stat, and Ch. 28-106, Fla. Admin. Code.

6. After Petitioner submits its petition for waiver or variance, notice must be published to allow public comment on the request. Petitioner must demonstrate that the application of the rules governing the Universal Application creates a substantial hardship or violates the principles of fairness and that the purpose of the underlying statute will be or has been achieved by other means, to the Board. These statutory procedures occur prior to any decision by the Board of Directors to grant the petition.

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8. All conclusions of law and recommendations contained in a recommended order must be based upon findings of fact supported by evidence presented during the informal hearing. Sec. 120.569 and 120.57, Fla. Stat. Here, the parties stipulated to the facts: that Petitioner submitted a Verification of Availability of Infrastructure Sewer Capacity, Package Treatment or Septic Tank form with its application and that Florida Housing determined that this form failed to meet the threshold requirement

demonstrating infrastructure availability on or before the application deadline of March 31, 2004.


9. There were no facts stipulated or presented at hearing that provide any basis for a finding of fact on which the Hearing Officer could make a conclusion of law that a waiver or variance should be considered by Florida Housing. Nothing in the Record of this proceeding supports the statement in the Hearing Officer's recommendation that the application of the rules to Petitioner was unreasonable, unfair, or achieved an unintended result.

10. If the Petitioner wishes to seek a waiver or variance from the rules applicable in these circumstances, it should file a petition for such relief under the procedures set forth in sec. 120.542, Fla. Stat., and Ch. 28-104, Fla. Admin. Code.

WHEREFORE, Respondent requests that the Board of Directors enter a final order that finds Florida Housing properly denied the Petitioner's Application for competitive SAIL funding because it failed to pass threshold by failing to provide verification of availability of infrastructure, sewer capacity, package treatment or septic tank as being in place for San Jose Mission, by the Application Deadline of March 31, 2004.

Respondent further requests that the Board of Directors refuse to include within its Final Order the recommendation that the Board of Florida Housing review the application for due consideration of a variance under section 120.542, Fla. Stat.


Respectfully submitted this 11 day of October, 2004.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and by U.S. mail, to Arnold Andrews, Catholic Housing Charities, Inc., 1213 16th Street North, St. Petersburg, FL 33705 and *via* electronic transmission and U.S. mail, to David E. Ramba, Hearing Officer, Lewis, Longman & Walker, 125 S. Gadsden Street, Tallahassee, Florida 32301, this 11 day of October, 2004.



Wellington H. Meffert II