

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

THE COVE AT LADY LAKE PARTNERS, LTD,
2004-138S

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

FILED WITH THE CLERK OF THE FLORIDA
HOUSING FINANCE CORPORATION

M. Nelson /DATE. 8/2/04

PETITION FOR INFORMAL ADMINISTRATIVE PROCEEDINGS

Pursuant to Sections 120.569 and 120.57(2), Fla. Stat., and Rules 28-106.301 and 67-48.005(2), Fla. Admin. Code, Petitioner The Cove at Lady Lake Partners, Ltd. ("Cove at Lady Lake") hereby requests an informal administrative proceeding on Florida Housing Finance Corporation's proposed rejection of Cove at Lady Lake's application for a State Apartment Incentive Loan ("SAIL"), Application No. 2004-138S, in the Year 2004 Universal Application cycle. In support of this petition, Cove at Lady Lake states as follows:

Parties

1. The agency affected is the Florida Housing Finance Corporation ("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. FHFC has assigned Application No. 2004-138S to this matter.

2. The Petitioner is The Cove at Lady Lake Partners, Ltd., whose address is 1551 Sandspur Road, Maitland, Florida 32751. For purposes of this proceeding, Cove at Lady Lake's address is that of its undersigned attorney, M. Christopher Bryant, Oertel, Fernandez, Cole &

Bryant, P.A., 301 S. Bronough Street, 5th Floor, Tallahassee, Florida 32301 (P. O. Box 1110, Tallahassee, Florida 32302-1110), Telephone: (850) 521-0700, Facsimile: (850) 521-0720.

Substantial Interests Affected

3. Cove at Lady Lake has proposed the construction of a 176-unit multi-family housing development in the town of Lady Lake, in Lake County, Florida. Cove at Lady Lake has proposed to set aside 100% of the units for low income residents earning at or below 60% of Area Median Income, for a period of 50 years. Cove at Lady Lake has estimated its total development costs to be approximately \$17.1 million. Cove at Lady Lake proposes to finance \$9.8 million of this amount from the proceeds of tax-exempt and taxable bonds to be issued by the Orange County Housing Finance Authority. Cove at Lady Lake applied in FHFC's 2004 Universal Application cycle for a low interest SAIL loan of \$1.5 million to assist in the construction financing and permanent financing of the development.

4. As a condition of receiving a SAIL loan, Cove at Lady Lake has made additional commitments for residential unit amenities and tenant programs that would not be required but for the SAIL loan. In addition, as noted, Cove at Lady Lake has committed to a 50 year "affordability period," and to setting aside 100% of its units for low income residents, neither of which would be required without the SAIL loan. If Cove at Lady Lake does not receive the requested SAIL loan, it will have to obtain more expensive, conventional financing to fill the \$1.5 million financing gap to construct the development. As explained more fully in this Petition, its substantial interests are therefore affected by FHFC's proposed rejection of its application. If not rejected, Cove at Lady Lake's application would have a score of 66 points, and 6.75 "tie breaker" points, and would be eligible to compete for and, potentially, receive the requested SAIL loan.

Background

5. FHFC allocates several forms of financing for affordable housing, including Housing Credits, State Apartment Incentive Loans ("SAIL"), and Multi-Family Mortgage Revenue Bonds ("MMRB"). Applicants compete for the award of these forms of financing, which provide more favorable financial terms than would be available through conventional financing sources. In exchange for the receipt of such financing from FHFC, applicants enter into long-term agreements to set aside all or a portion of the residential units within such developments to low income residents, and depending on the requirements of the particular program, may also be required to limit the rents charged to amounts affordable to low income residents.

6. All three of the above-named forms of financing (Housing Credits, SAIL loans, and MMRB) were combined into a single "Universal Application Cycle" for 2004. Financing for any of these programs is sought through the use of a joint Universal Application form. SAIL and Housing Credit applicants are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code, while MMRB applicants are subject to FHFC Rule Chapter 67-21, Fla. Admin. Code. The Universal Application form is incorporated by reference into FHFC's rules, as are exhibit forms to be used with the applications and a 102-page Universal Application Instruction document, designated "UA1016 (Revised 3/04)."

7. Applicants in the Universal Application Cycle are evaluated to determine if their applications meet "threshold" responsiveness requirements, such as site control, zoning, and infrastructure availability. The applications are also scored on the various components of their applications, such as development features and amenities, greater numbers of units set aside, resident programs, and local government support. Generally, 66 points is the maximum score that can be assigned to a Universal Application; at this time in the scoring process over 110 of

the approximately 130 Universal Applications submitted and still pending this year have a "perfect score" of 66. Due to the likelihood of tie scores, FHFC has designed its scoring and ranking system to include a series of "tie-breakers," for which an applicant can receive up to 7.5 points.

Nature of the Controversy

8. Cove at Lady Lake timely submitted its 2004 SAIL application to FHFC on March 31, 2004. FHFC preliminarily reviewed and scored the 2004 Universal Application Cycle applications, including Cove at Lady Lake's, and advised Cove at Lady Lake on or about April 28, 2004, that its application did not meet certain required "threshold" responsiveness requirements to participate in the SAIL program. FHFC also provided Cove at Lady Lake with a Universal Scoring Summary showing that if Cove at Lady Lake's application were to meet threshold, Cove at Lady Lake's score would be 61 points, and its tie-breaker points would be 6.0 out of a possible 7.5.

9. A copy of the Universal Scoring Summary as posted on the FHFC web site, and dated 4/27/2004, is attached hereto as Exhibit A. The Scoring Summary stated that the Application did not meet threshold requirements for several reasons no longer relevant to this petition. One of the threshold failures, however, designated Item 5T, indicated an alleged failure of Part III, Section C, Subsection 4 of the Application, "Zoning". The explanation for this threshold failure read, in its entirety:

The Applicant failed to provide the required Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form.

10. Subsequent to the issuance of "preliminary" scores in April, 2004, all applicants were provided the opportunity to notify the FHFC of possible scoring errors in other applications by filing a Notice of Possible Scoring Error ("NOPSE"). No NOPSE's were filed against the Cove at Lady Lake application.

11. Following the submission of NOPSE's, FHFC issued a subsequent Universal Scoring Summary, on or about May 19, 2004. This Scoring Summary was also posted on FHFC's web site, and a copy of the posted Scoring Summary for Cove at Lady Lake, dated 5/19/2004, is attached hereto as Exhibit B. The May 19 Scoring Summary again showed that the application would have received a score of 61.0 but for threshold failure, and also reflected an award of 6.0 total tie-breaker points.

12. Pursuant to Rule 67-48.004(6), Fla. Admin. Code, Cove at Lady Lake took the opportunity to provide additional documentation to FHFC to address Cove at Lady Lake's failure to "meet threshold," as well as to address scoring and tiebreaker point issues. This additional documentation is generally referred to as a "cure," and was submitted by Cove at Lady Lake on June 10, 2004. The documentation submitted by Cove at Lady Lake as a cure on the issue of zoning approval is attached hereto as Exhibit C.

13. On or about Friday, July 9, 2004, FHFC released "final" Universal Scoring Summaries for all applicants. (Although designated "final," the scoring summaries are accompanied by points of entry to request formal or informal administrative hearings.) FHFC's final Universal Scoring Summary for Cove at Lady Lake, dated "07/06/2004," which was received by Cove at Lady Lake via overnight delivery on Monday, July 12, 2004, is attached hereto as Exhibit D.

14. FHFC's final scoring summary for Cove at Lady Lake reflects that the application does not meet FHFC's threshold requirements. The scoring summary rescinded Threshold Failure Item 5T, quoted in paragraph 9 above. But it contained a new Threshold Failure Item 6T, which, as with item 5T, reflects an alleged failure of Part III, Section 9, Subsection 4 of the application, described as "zoning." The explanation provided in the July 8, 2004, scoring summary read as follows:

The Applicant submitted a Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form as a cure for Item 5T, but the cure is deficient. The verification form must certify that the intended use is consistent with current land use regulations and the referenced zoning designation as of Application Deadline. The verification form provided in the cure states that "On or before March 30, 2004, the zoning designation for the referenced site is HC." However, (1) the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form provided in the cure indicates that the zoning designation for the Development site is HC/MF-12 and (2) evidence provided in the NOAD indicates that this site ~~required~~ rezoning from HC (Heavy Commercial/Wholesale Commercial) to MF-12 (Multifamily High Density Low Rise) to allow for this Development. Therefore the cure is deficient because the Applicant has not demonstrated that the Development site was appropriately zoned for the intended use on or before the Application Deadline.

15. The 07/06/2004 scoring summary also showed a final score for the Cove at Lady Lake application of 66 points, reflecting the addition of 5 points to Cove at Lady Lake's score as a result of a cure. Based on score alone, a score of 66 points ties Cove at Lady Lake with about 110 of the approximately 130 Universal Cycle applications submitted and still pending this year. The final scoring summary also reflects a tie-breaker score of 6.25 points, which reflects the addition of 0.25 tiebreaker points as a result of a cure. Cove at Lady Lake does not contest its score of 66 points or its tiebreaker score of 6.25.

Applicable FHFC Rule and Form Provisions

16. FHFC's Universal Application form, which is incorporated by reference into FHFC's Rules, states the following concerning the requirement of Evidence of Appropriate Zoning:

- a. New Construction Developments – Provide a properly completed and executed Local Government Verification That Development is Consistent with Zoning and Land Use Regulations form behind a tab labeled "Exhibit 32."

Page 20 of Universal Application form, Section III.C.4.a. of Application Form, copy attached hereto as Exhibit E.

17. FHFC has also incorporated by reference into agency rules a 102 page Universal Application Instructions document. In regards to completing the "Evidence of Appropriate Zoning" section of the application, the Instructions state, in pertinent part, as follows:

To demonstrate that the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use or that the proposed Development site is legally non-conforming, the Applicant must provide the appropriate verification form behind a tab labeled "Exhibit 32." Evidence of appropriate zoning must be demonstrated for all property locations if the proposed Development has Scattered Sites. The verification must demonstrate that the zoning designation for the Development site was effective on or before the Application Deadline.

Pages 25-26 of the Universal Application Instructions, copy attached hereto as Exhibit F.

18. In addition to adopting the Universal Application Form into its rules, FHFC has also incorporated exhibit forms to be completed and returned as a part of an applicant's application. The prescribed form relating to zoning is entitled "LOCAL GOVERNMENT VERIFICATION THAT DEVELOPMENT IS CONSISTENT WITH ZONING AND LAND USE REGULATIONS," and a copy is attached hereto as Exhibit G. The form is designed to be signed by a specified local government official. In pertinent part, the form states:

On or before _____ (month/day/year), the zoning designation for the referenced Development site is _____.

The intended use is consistent with current land use regulations and the referenced zoning designation ... To the best of my knowledge, there are no additional land use regulation hearings or approvals required to obtain the zoning classification or density described therein ...

19. None of these three sources of instruction regarding zoning prohibit the rezoning of a portion (or even all) of a parcel after the Application Deadline. As long as the zoning designation in effect on or before the Application Deadline allowed multifamily residential use, proper zoning has been established.

Town of Lady Lake Zoning Provisions

20. The zoning code for the Town of Lady Lake allows multi-family dwelling units as a permitted use within the HC district. An excerpt of the zoning code, listing permitted uses within the HC district, is attached hereto as Exhibit H. It clearly shows, in Section (1) of the HC district description, that "Multi-family dwelling units" are a permitted use in the HC district, under item RR of Section 1. According to Section (4) of the HC district description, entitled "design standards," densities of up to 12 units per acre are permitted in the HC district if central sewer facilities are available; see Item C of Section 4. Central sewer is available for the Cove at Lady Lake site, so the applicable density is 12 units per acre.

21. Two Notice of Alleged Deficiency (NOADs) were submitted against Cove at Lady Lake. One of them, assigned Tracking No. 404 by FHFC, makes the false statement that the HC district "does not permit multifamily residential development." This is clearly untrue, as evidenced even by the zoning code excerpt that was attached to the NOAD itself, which, again,

identifies "Multifamily dwelling units" as a permitted use in an HC district in the Town of Lady Lake.

22. The other NOAD, assigned tracking number 436, alleges that at least a portion of the property was rezoned to "Multi-Family High Density Low Rise" on June 7, 2004. Even if a portion of the property was rezoned subsequent to the Application Deadline, this does not mean that the property was not properly zoned as of the Application Deadline.

23. Both NOADs also note that Exhibit 26 to the Cove at Lady Lake application, as cured, lists the zoning designation for the parcel as "HC/MF-12." In fact, there is no "HC/MF-12" zoning district; they are two separate districts: HC and MF-12, both of which allow multifamily dwellings as a permitted use. The property was zoned HC as of the Application Deadline, and a portion of it was subsequently rezoned MF-12 prior to the cure deadline. The local government official signing the Site Plan Approval Status form simply wanted to accurately reflect the zoning of the parcel as of the date he signed the form, and to do so he reflected both zonings.

24. FHFC's rules, forms, and instructions do not prohibit subsequent rezoning after the Application Deadline. The NOAD's allege that a portion of the property was rezoned to MF-12 after the Application Deadline. Even so, the zoning that was in effect as of the Application Deadline, HC, allowed for multi-family residential use, as required by FHFC's rules and as established by the Application.

Notice

25. Cove at Lady Lake received notice via Federal Express delivery on Monday, July 12, 2004, of FHFC's "final" threshold determinations for Cove at Lady Lake's SAIL application. This Petition is being accompanied by a completed Election of Rights form indicating its

intention to file a Petition for Formal Administrative Proceedings within twenty-one days of its July 12 receipt of notice of the scoring of its application. A copy of the Election of Rights form is attached hereto as Exhibit I. Pursuant to Rule 67-48.005(1), Fla. Admin. Code, this Petition is being filed within twenty-one days of receipt of the July 9, 2004 memorandum forwarding its score.

Disputed Issues

26. Cove at Lady Lake has initially identified the following disputed issues, which it reserves the right to supplement as any additional issues become known to it. Cove at Lady Lake does not at this time believe these to be disputed factual issues:

a. Whether the HC (Heavy Commercial) zoning district in the Town of Lady Lake allows multi-family housing such as the Cove at Lady Lake development, and did so as of the 2004 FHFC Application Deadline. Cove at Lady Lake contends that it did.

b. Whether the Cove ~~at~~ Lady Lake parcel was zoned HC as of the Application Deadline. Cove at Lady Lake contends that it was.

c. Whether the MF-12 zoning district in the Town of Lady Lake allows multi-family housing such as the Cove at Lady Lake development. Cove at Lady Lake contends that it does.

d. Whether FHFC's rules prohibit the rezoning of a portion of a parcel of property from one zoning classification that allows multi-family housing to another zoning classification that allows multi-family housing after the Application Deadline. Cove at Lady Lake contends that the rules do not.

Concise Statement of Ultimate Facts

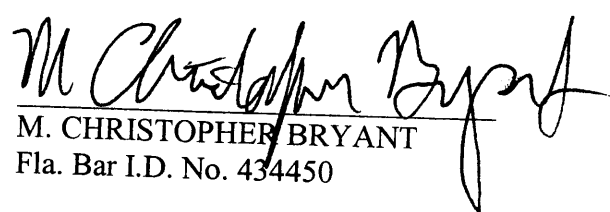
27. Cove at Lady Lake alleges as ultimate facts that the zoning category applicable to the Cove at Lady Lake site allowing the use intended by Cove at Lady Lake was in place as of the Application Deadline, and that the zoning category to which portion of the Cove at Lady Lake

site was rezoned after the Application Deadline, but before the cure deadline, also allows Cove at Lady Lake's intended use. FHFC's proposed rejection of the Cove at Lady Lake application should be overturned. Cove at Lady Lake is entitled to this reversal of FHFC's position by Chapter 120, Fla. Stat., including but not limited to Sections 120.569 and 120.57(1); and Rule Chapters 28-106 and 67-48, Fla. Admin. Code.

Relief Sought

28. Cove at Lady Lake seeks entry of Recommended and Final Orders determining that its application satisfies all applicable threshold requirements. Cove at Lady Lake also seeks such other relief as is just and proper, including but not limited to the award of attorney's fees and costs pursuant to Section 57.111, Fla. Stat., in that FHFC's proposed rejection of Cove at Lady Lake's application has no reasonable basis in law and fact and is contrary to the clear and unambiguous instructions and definitions contained in FHFC's rules.

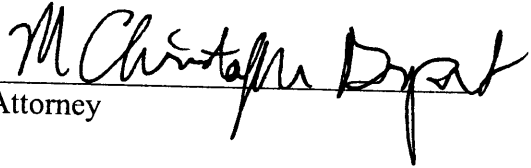
FILED and SERVED this 2nd day of August, 2004.


M. CHRISTOPHER BRYANT
Fla. Bar I.D. No. 434450

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Tallahassee, FL 32302-1110
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Facsimile: (850) 521-0720
Attorneys for Petitioner
Cove at Lady Lake Partners, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by HAND-DELIVERY with the Clerk, Florida Housing Finance Corporation, c/o STEVEN AUGER, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, this 2nd day of August, 2004.


Attorney

**INDEX OF EXHIBITS TO PETITION OF
Cove at Lady Lake , 2004-138S**

- Exhibit A Universal Scoring Summary for Cove at Lady Lake, dated 4/27/2004
- Exhibit B Universal Scoring Summary for Cove at Lady Lake, dated 5/19/2004
- Exhibit C "Cure" submitted by Cove at Lady Lake on zoning issue on June 10, 2004
- Exhibit D "Final" Universal Scoring Summary for Cove at Lady Lake, dated 7/06/2004
- Exhibit E Page 20 of FHFC's Universal Application Form
- Exhibit F Pages 25-26 of FHFC's Universal Application Instructions
- Exhibit G FHFC's "Local Government Verification of Zoning" Form
- Exhibit H Town of Lady Lake Zoning Ordinance description of HC District
- Exhibit I Cove at Lady Lake's Election of Rights Form

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As of: 04/27/2004

2004 MMRB, SAIL & HC Scoring Summary

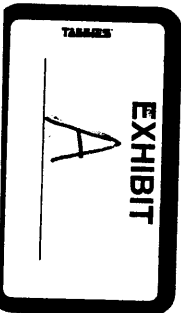
File # 2004-138S

Development Name: The Cove at Lady Lake Apartments

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
04 - 27 - 2004	61	N	6	\$64,204.55	10.93%	N
Preliminary	61	N	6	\$64,204.55	10.93%	N
NOPSE	0	N	0		0	
Final	0	N	0		0	
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
Optional Features & Amenities									
1S	III	B	2.a.	New Construction	9	9	0	0	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	0	0	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	9	9	0	0	0
Set-Aside Commitments									
4S	III	E	1.b.	Total Set-Aside Percentage	3	3	0	0	0
	III	E	1.c.	Set-Aside Breakdown Chart	5	5	0	0	0
	III	E	3.	Affordability Period	5	5	0	0	0
Resident Programs									
7S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	0	0	0
7S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
7S	III	F	3.	Programs for Elderly	6	0	0	0	0
8S	III	F	4.	Programs for All Applicants	8	8	0	0	0
Local Government Support									
9S	IV		a.	Contributions	5	0	0	0	0
10S	IV		b.	Incentives	4	4	0	0	0



As of: 04/27/2004
 File # 2004-1385

2004 MMRB, SAIL & HC Scoring Summary

Development Name: The Cove at Lady Lake Apartments

Reason(s) Scores Not Maxed:

Reason(s)

9S The Applicant did not provide a firm commitment for funding of Local Government tax-exempt bonds and therefore, the Application could not receive an automatic 5 points for Local Government contributions.

Threshold(s) Failed:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1.	Site Plan Approval	Preliminary	
2T	III	C	3.b.	Availability of Water	Preliminary	
3T	III	C	3.c.	Availability of Sewer Capacity	Preliminary	
4T	III	C	3.d.	Availability of Roads	Preliminary	
5T	III	C	4.	Zoning	Preliminary	
6T	V	B		Orange County Commitment	Preliminary	
7T	V	B		Construction Financing Shortfall	Preliminary	
8T	V	B		Permanent Financing Shortfall	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final Ranking
1B	III	A	10.a.(2)(e)	Grocery Store	1.25	0.5	0	0
3P	III	A	10.a.(2)(b)	Public School	1.25	0.75	0	0
4P	III	A	10.a.(2)(c)	Medical Facility	1.25	0	0	0
5P	III	A	10.a.(2)(d)	Pharmacy	1.25	1	0	0
6P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop	1.25	0	0	0
GP	III	A	10.b.	Proximity to Developments on FHFC Development Proximity List	3.75	3.75	0	0

2004 MMRB, SAIL & HC Scoring Summary

As of: 05/19/2004

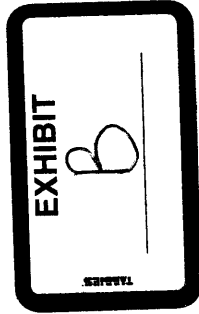
File # 2004-138S

Development Name: The Cove at Lady Lake Apartments

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
05 - 19 - 2004	61	N	6	\$64,204.55	10.93%	N
Preliminary	61	N	6	\$64,204.55	10.93%	N
NOPSE	61	N	6	\$64,204.55	0	
Final	0	N	0		0	
Final-Ranking	0	N	0		0	

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final Ranking
1S	III	B	2.a.	Optional Features & Amenities	9	9	9	9	0
1S	III	B	2.b.	New Construction	9	9	0	0	0
2S	III	B	2.c.	Rehabilitation/Substantial Rehabilitation	12	12	12	12	0
2S	III	B	2.d.	All Developments Except SRO	12	12	0	0	0
3S	III	B	2.e.	SRO Developments	9	9	9	9	0
4S	III	E	1.b.	Energy Conservation Features	3	3	3	3	0
4S	III	E	1.c.	Set-Aside Commitments	5	5	5	5	0
4S	III	E	3.	Total Set-Aside Percentage	5	5	5	5	0
5S	III	E	3.	Set-Aside Breakdown Chart	6	6	6	6	0
6S	III	E	3.	Affordability Period	6	6	0	0	0
7S	III	F	1.	Resident Programs	6	6	0	0	0
7S	III	F	2.	Programs for Non-Elderly & Non-Homeless	6	6	0	0	0
7S	III	F	3.	Programs for Homeless (SRO & Non-SRO)	6	6	0	0	0
8S	III	F	4.	Programs for Elderly	8	8	8	8	0
9S	IV		a.	Programs for All Applicants	5	5	0	0	0
10S	IV		b.	Local Government Support	4	4	4	4	0
				Contributions					
				Incentives					



2004 MMRB, SAIL & HC Scoring Summary

As of: 05/19/2004

File # 2004-138S

Development Name: The Cove at Lady Lake Apartments

Reason(s) Scores Not Maxed:

Reason(s)

Created As Result
Preliminary

Rescinded as Result

Item #	Reason(s)	Created As Result of	Rescinded as Result of
9S	The Applicant did not provide a firm commitment for funding of Local Government tax-exempt bonds and therefore, the Application could not receive an automatic 5 points for Local Government contributions.	Preliminary	

Threshold(s) Failed:

Item #	Part Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1. Site Plan Approval	The Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form.	Preliminary	
2T	III	C	3.b. Availability of Water	The Applicant failed to provide the required evidence of the availability of water.	Preliminary	
3T	III	C	3.c. Availability of Sewer Capacity	The Applicant failed to provide the required evidence of the availability of sewer, package treatment or septic tank.	Preliminary	
4T	III	C	3.d. Availability of Roads	The Applicant failed to provide the required evidence of the availability of roads.	Preliminary	
5T	III	C	4. Zoning	The Applicant failed to provide the required Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form.	Preliminary	
6T	V	B	Orange County Commitment	Commitment letter from Orange County HFA is not executed and therefore could not be scored as a firm commitment or considered as a source of financing.	Preliminary	
7T	V	B	Construction Financing Shortfall	There is a construction financing shortfall of \$8,062,185.	Preliminary	
8T	V	B	Permanent Financing Shortfall	There is a permanent financing shortfall of \$7,499,521.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part Section	Subsection	Description	Available	Preliminary	NOPSE Final	Final Ranking
1P	III	A	10.a.(2)(a) Grocery Store	1.25	0.5	0.5	0
2P	III	A	10.a.(2)(b) Public School	1.25	0.75	0.75	0
3P	III	A	10.a.(2)(c) Medical Facility	1.25	0	0	0
4P	III	A	10.a.(2)(d) Pharmacy	1.25	1	1	0
5P	III	A	10.a.(2)(e) Public Bus Stop or Metro-Rail Stop	1.25	0	0	0
6P	III	A	10.b. Proximity to Developments on FHFC Development Proximity List	3.75	3.75	3.75	0

2004 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection and Exhibit)

This Cure Form is being submitted with regard to **Application No. 2004-138S** and pertains to:

Part III Section C Subsection 4 Exhibit No 32 (if applicable)

The attached information is submitted in response to the 2004 Universal Scoring Summary Report because:

- I. Preliminary Scoring and/or NOPSE scoring resulted in the imposition of a failure to achieve maximum points, a failure to achieve threshold, and/or a failure to achieve maximum proximity points relative to the Part, Section, Subsection, and/or Exhibit stated above. Check applicable item(s) below:

	2004 Universal Scoring Summary Report	Created by:	
		Preliminary Scoring	NOPSE Scoring
<input type="checkbox"/> Reason Score Not Maxed	Item No. ____ S	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason Failed Threshold	Item No. <u>5</u> T	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Proximity Points Not Maxed (MMRB/SAIL/HC Applications Only)	Item No. ____ P	<input type="checkbox"/>	<input type="checkbox"/>

OR

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a Cure to Part ____ Section ____ Subsection ____ Exhibit ____ (if applicable).



Brief Statement of Explanation regarding
Application 2004 – 138S

Provide a separate brief statement for each Cure or NOAD

In the 2004 MMRB, SAIL & HC Scoring Summary dated 05/19/2004 for this Application, Florida Housing indicated a Threshold Failure, designated item 5T, Part III, Section C., Subsection 4.a., Zoning. The reason stated by Florida Housing is as follows:

"Applicant failed to provide the required Local Government Verification that Development is Consistent with Zoning and Land use Regulations form."

As the submission for the Cure, attached is Exhibit 32, Local Government Verification that Development is Consistent with Zoning and Land use Regulations form.

Evidence of Zoning should then be acceptable and the Application should be deemed to have met threshold for this issue.

LOCAL GOVERNMENT VERIFICATION THAT DEVELOPMENT IS CONSISTENT WITH ZONING AND LAND USE REGULATIONS

Name of Development: The Cove at Lady Lake Apartments

Address of Development Site: East side of U. S. Highway 27, southeast corner of the intersection of U. S. Highway 27 and Edwards Road, Lady Lake, Florida 32159

Number of units (not buildings) permitted for this development site (if restricted): 12 / ACRE

and/or if a PUD, the number of units (not buildings) permitted per development site: _____

or if not a PUD and development site is subject to existing special use or similar permit, number of units permitted for this development site: _____

On or before 03/30/04 (month/day/year), the zoning designation for the referenced Development site is HO.

The intended use is consistent with current land use regulations and the referenced zoning designation or, if the Development consists of rehabilitation, the intended use is permitted as a legally non-conforming use. To the best of my knowledge, there are no additional land use regulation hearings or approvals required to obtain the zoning classification or density described herein. Assuming compliance with the applicable land use regulations, there are no known conditions which would preclude construction or rehabilitation (as the case may be) of the referenced Development on the proposed site.

CERTIFICATION

I certify that the City/County of TOWN OF LADY LAKE (Name of City/County) has vested in me the

authority to verify consistency with local land use regulations and the zoning designation specified above or, if the Development consists of rehabilitation, the intended use is permitted as a "legally non-conforming use" and I further certify that the information above is true and correct. In addition, if the proposed Development site is in the Florida Keys Area as defined in Rule-Chapters 67-21 and 67-48, F.A.C., I further certify that the Applicant has obtained the necessary Rate of Growth Ordinance (ROGO) allocations from the local government.

Sunny Harber
Signature

5/26/04
Date

LANNY HARBER
Print or Type Name

COMMUNITY DEVELOPMENT DIRECTOR
Print or Type Title

This certification must be signed by the applicable City's or County's Director of Planning and Zoning, chief appointed official (staff) responsible for determination of issues related to comprehensive planning and zoning, City Manager, or County Manager/Administrator/Coordinator. Signatures from local elected officials are not acceptable, nor are other signatories. If the certification is applicable to this Development and it is inappropriately signed, the Application will fail threshold.

If this certification contains corrections or 'white-out', or if it is scanned, imaged, altered, or retyped, the Application will fail to meet threshold and will be rejected. The certification may be photocopied.

2004 MMRB, SAIL & HC Scoring Summary

of: 07/06/2004

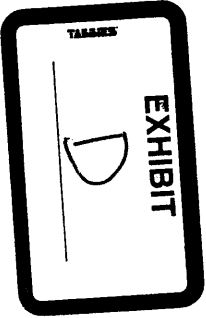
e #: 2004-138S

Development Name: The Cove at Lady Lake Apartments

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit	SAIL Request Amount as Percentage of Development Cost	Is SAIL Request Amount Equal to or Greater than 10% of Total Development Cost?
07 - 06 - 2004	66	N	6.25	\$64,204.55	10.93%	N
Preliminary	61	N	6	\$64,204.55	10.93%	N
NOPSE	61	N	6.25	\$64,204.55	10.93%	N
Final	66	N	0		0	
Final-Ranking	0	N	0			

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Final	Final Ranking
Optional Features & Amenities										
1S	III	B	2.a.	New Construction	9	9	9	9	9	0
1S	III	B	2.b.	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0	0
2S	III	B	2.c.	All Developments Except SRO	12	12	12	12	12	0
2S	III	B	2.d.	SRO Developments	12	0	0	0	0	0
3S	III	B	2.e.	Energy Conservation Features	3	3	3	3	3	0
Set-Aside Commitments										
Total Set-Aside Percentage					5	5	5	5	5	0
Set-Aside Breakdown Chart										
4S	III	E	1.b.	Resident Programs	6	6	6	6	6	0
5S	III	E	1.c.	Affordability Period	6	0	0	0	0	0
6S	III	E	3.	Programs for Non-Elderly & Non-Homeless (SRO & Non-SRO)	6	0	0	0	0	0
7S	III	F	1.	Programs for Elderly	8	8	8	8	8	0
7S	III	F	2.	Programs for All Applicants	5	0	0	0	0	0
7S	III	F	3.	Local Government Support	4	4	4	4	4	0
8S	III	F	4.	Contributions	4	4	4	4	4	0
9S	IV		a.	Incentives	1					
10S	IV		b.							



As of: 07/06/2004

File # 2004-138S

2004 MMRB, SAIL & HC Scoring Summary

Development Name: The Cove at Lady Lake Apartments

Reason(s) Scores Not Maxed:

Reason(s)

Item #	Reason(s)	Created As Result of	Rescinded as Result of
9S	The Applicant did not provide a firm commitment for funding of Local Government tax-exempt bonds and therefore, the Application could not receive an automatic 5 points for Local Government contributions.	Preliminary	Final

Threshold(s) Failed:

Item #	Part	Section	Subsection	Description	Reason(s)	Created As Result of	Rescinded as Result of
1T	III	C	1.	Site Plan Approval	The Applicant failed to provide the required Local Government Verification of Status of Site Plan Approval for Multifamily Developments form.	Preliminary	Final
2T	III	C	3.b.	Availability of Water	The Applicant failed to provide the required evidence of the availability of water.	Preliminary	Final
3T	III	C	3.c.	Availability of Sewer Capacity	The Applicant failed to provide the required evidence of the availability of sewer package treatment or septic tank.	Preliminary	Final
4T	III	C	3.d.	Availability of Roads	The Applicant failed to provide the required evidence of the availability of roads.	Preliminary	Final
5T	III	C	4.	Zoning	The Applicant failed to provide the required Local Government Verification of Status of Multifamily Developments form provided in the cure indicates that the zoning designation for the Development site is HC. *	Preliminary	Final
6T	V	B		Orange County Commitment	Commitment letter from Orange County HFA is not executed and therefore could not be scored as a firm commitment or considered as a source of financing.	Preliminary	Final
7T	V	B		Construction Financing Shortfall	There is a construction financing shortfall of \$8,062,185.	Preliminary	Final
8T	V	B		Permanent Financing Shortfall	There is a permanent financing shortfall of \$7,499,521.	Preliminary	Final
9T	III	C	4	Zoning	The Applicant submitted a Local Government Verification that Development is consistent with Zoning and Land Use Regulations form as a cure for Item 5T, but the cure is deficient. The verification form must certify that the intended use is consistent with current land use regulations and the referenced zoning designation as of Application Deadline. The verification form provided in the cure states that "On or before March 30, 2004, the zoning designation for the referenced site is HC. * However, (1) the Local Government Verification of Status of Site Plan Approval for Multifamily Developments form provided in the cure indicates that the zoning designation for the Development site is HC/MF-12 and (2) evidence provided in the NOAD indicates that this site required rezoning from HC (Heavy Commercial/Wholesale Commercial) to MF-12 (Multifamily High Density Low Rise) to allow for this Development. Therefore, the cure is deficient because the Applicant has not demonstrated that the Development site was appropriately zoned for the intended use on or before the Application Deadline.	Preliminary	Final

As of: 07/06/2004

File # 2004-1385

2004 MMRB, SAIL & HC Scoring Summary

Proximity Tie-Breaker Points:

Development Name: The Cove at Lady Lake Apartments

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Final	Final	Final	Final	Final	Final	Final	Final	Final	Final	Final	
1P	III	A	10.a.(2)(a)	Grocery Store																
2P	III	A	10.a.(2)(b)	Public School																
3P	III	A	10.a.(2)(c)	Medical Facility																
4P	III	A	10.a.(2)(d)	Pharmacy																
5P	III	A	10.a.(2)(e)	Public Bus Stop or Metro-Rail Stop																
6P	III	A	10.b.	Proximity to Developments on FHFC Development Proximity List																
					1.25	0.5	0.5	0.5	0.5											0
					1.25	0.75	0.75	0.75	0.75											0
					1.25	0	0	0	0											0
					1.25	1	1	1	1.25											0
					1.25	0	0	0	0											0
					3.75	3.75	3.75	3.75	3.75											0

- a. Provide a fully executed qualified contract for purchase and sale for the subject property behind a tab labeled **"Exhibit 27"**.

OR

- b. Provide a recorded deed or recorded certificate of title behind a tab labeled **"Exhibit 27"**.

OR

- c. Provide a copy of the fully executed long-term lease behind a tab labeled **"Exhibit 27"**.

3. Evidence of Infrastructure Availability:

- a. Electricity – Provide a letter from the provider or the Verification of Availability of Infrastructure – Electricity Form behind a tab labeled **"Exhibit 28"**.
- b. Water – Provide a letter from the provider or the Verification of Availability of Infrastructure – Water Form behind a tab labeled **"Exhibit 29"**.
- c. Sewer, Package Treatment or Septic Tank – Provide a letter from the provider or the Verification of Availability of Infrastructure – Sewer Capacity, Package Treatment, or Septic Tank Form behind a tab labeled **"Exhibit 30"**.
- d. Roads – Provide a letter from the appropriate Local Government or the Verification of Availability of Infrastructure – Roads Form behind a tab labeled **"Exhibit 31"**.

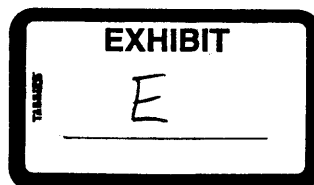
4. Evidence of Appropriate Zoning:

- a. New Construction Developments - Provide a properly completed and executed Local Government Verification That Development Is Consistent With Zoning And Land Use Regulations Form behind a tab labeled **"Exhibit 32"**.

OR

- b. Rehabilitation/Substantial Rehabilitation Developments – Provide a properly completed and executed Local Government Verification That Development Is Consistent With Zoning And Land Use Regulations Form or a properly completed and executed Local Government Verification That Permits Are Not Required For This Development Form behind a tab labeled **"Exhibit 32"**.

5. Environmental Site Assessment (ESA):



- b. Provide a Deed or Certificate of Title – The deed or certificate of title (in the event the property was acquired through foreclosure) must be recorded in the county in which the property is located and show the Applicant as the sole Grantee.

OR

- c. Provide a Lease - The lease must have an unexpired term of at least 50 years from the Application Deadline and the lessee must be the Applicant. The lease may be contingent only upon receipt of MMRB, SAIL, HOME and/or HC funding.

3. Evidence of Infrastructure Availability (Threshold)

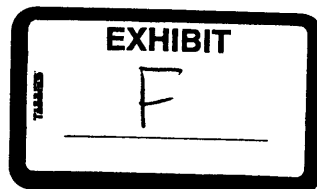
Verification of the availability of each type of infrastructure on or before the Application Deadline must be provided. Infrastructure is considered available if there are no impediments to obtaining service other than the conditions expressed in the Verification of Availability of Infrastructure forms as provided in this Application Package. Should any variance or local hearing be required, or if there is a moratorium pertaining to any of the utilities or roads for this Development, the infrastructure is not available.

Applicant may submit the properly completed and executed Verification of Availability of Infrastructure Forms included within the Application Package or submit a letter from the entity providing the service (electricity, water, and wastewater) or Local Government (roads) verifying availability of the infrastructure for the proposed Development. Each Verification of Availability of Infrastructure Form or letter confirming infrastructure availability must demonstrate availability on or before the Application Deadline. Letters must be Development-specific and dated within 12 months of the Application Deadline. The verifications may not be signed by the Applicant, by any related parties of the Applicant, or by any Principals or Financial Beneficiaries of the Applicant.

Evidence of availability of electricity must be provided behind a tab labeled "Exhibit 28". Evidence of availability of water must be provided behind a tab labeled "Exhibit 29". Evidence of availability of sewer, package treatment or septic tank must be provided behind a tab labeled "Exhibit 30". Evidence of availability of roads must be provided behind a tab labeled "Exhibit 31".

4. Evidence of Appropriate Zoning (Threshold)

To demonstrate that the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use or that the proposed Development site is legally non-conforming, the Applicant must provide the appropriate verification form behind a tab labeled "Exhibit 32". Evidence of appropriate zoning must be demonstrated for all property locations if



the proposed Development has Scattered Sites. The verification must demonstrate that the zoning designation for the Development site was effective on or before the Application Deadline.

If the proposed Development is in the Florida Keys Area, proper execution of the Local Government Verification That Development Is Consistent with Zoning and Land Use Regulations Form or the Local Government Verification That Permits Are Not Required For This Development Form will constitute the Local Government's certification that the Applicant has obtained the necessary Rate of Growth Ordinance (ROGO) allocations from the Local Government.

5. Environmental Site Assessment (Threshold)

- a. Applicant must demonstrate that a Phase I Environmental Site Assessment (ESA) has been performed. The firm performing the ESA must certify that the review was performed in accordance with ASTM Practice #E1527-00. The properly completed and executed Verification of Environmental Safety – Phase I Site Assessment Form must be provided behind a tab labeled “**Exhibit 33**”.
- b. If the Phase I ESA disclosed potential problems on the proposed site and required or recommended a Phase II ESA, the firm that performed the Phase II ESA, even if it is the same firm that performed the Phase I ESA, must certify that the Phase II ESA has been performed in accordance with ASTM Practice #E1527-00. The properly completed and executed Verification of Environmental Safety – Phase II Site Assessment Form must be provided behind a tab labeled “**Exhibit 34**”.

Note: If the Phase I ESA and/or the Phase II ESA disclosed environmental problems requiring remediation, a plan, including time frame and cost, for the remediation is required. By answering the applicable questions and executing the Phase I and/or Phase II verification(s), the environmental provider is certifying that such plan has been prepared. In addition, by executing the Applicant Certification and Acknowledgement Form, the Applicant certifies that the plan has been prepared and the costs associated with such remediation have been included in the Development Cost Pro Forma submitted in this Application.

D. Demographic Commitment (Threshold)

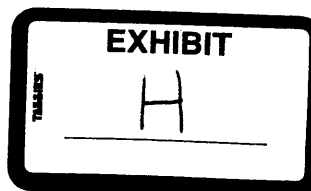
Selection of the Elderly, Farmworker/Commercial Fishing Worker, or Homeless Demographic Commitment will be included in the Land Use Restriction Agreement(s) and/or Extended Use Agreement and must be maintained in order for the Development to remain in compliance, unless the Board approves a change.

k) HC "Heavy Commercial/Wholesale Commercial"

This district is established to implement comprehensive plan policies for managing commercial development. This district is designed to accommodate general retail sales and services and wholesale services.

l) Permitted Uses

- A) Adult/Vocational Education.
- B) Appliance/Electronic Repair Shops.
- C) Athletic/Sports Facility.
- D) Auction Houses.
- E) Banks.
- F) Bars, Lounges, and Night Clubs. (It shall be unlawful to operate a bar, lounge or night club within 200 feet of property owned or used by a church or school. Measurement shall be from the structure of the establishment to the nearest property line of the church or school.)
- G) Boat Sales.
- H) Business Services.
- I) Commercial/Industrial Equipment and Supplies.
- J) Convenience Stores with or without Fuel Operations.
- K) Day Care Centers.
- L) Equipment Rental.
- M) Financial Services.
- N) Furniture and Appliance Stores.
- O) Commercial Recreational Facilities.
- P) Health/Exercise Clubs.
- Q) Hotels/Motels.
- R) Kennels: boarding.
- S) Contractors office.
- T) Contractors office with enclosed storage areas.
- U) Medical Office/Clinic.
- V) Mini-storage warehouses.
- W) Mobile Home Sales.



- X) Motor Vehicle, R.V. and Boat Storage Facilities.
- Y) Motor Vehicle Dealer Sales.
- Z) Motor Vehicle Sales.
- AA) Motor Vehicle Service Centers.
- BB) Motor Vehicle Service Stations.
- CC) Offices.
- DD) Office Complex.
- EE) Office Supplies.
- FF) Personal Services.
- GG) Restaurants.
- HH) Retail Home Building Materials.
- II) Retail Sales and Services.
- JJ) Shopping Center.
- KK) Theaters.
- LL) Transportation Service.
- MM) Wholesales and Distributors.
- NN) Veterinary Clinic.
- OO) (Licensed) Community Residential Homes with more than six (6) residents.
- PP) One single family dwelling unit for owners/caretakers residence.
- QQ) Offset Printing.
- RR) Multi-family dwelling units.
- SS) Taxidermy.
- TT) Plumbing contractors.
- UU) Agriculture. A minimum of five (5) acres is required for use as pasture.
- VV) Agriculture: Processing (except for packing and slaughter houses).

2) Uses Permitted as a Special Exception Use Upon Approval

- A) Gun & Archery Range.

- B) Accessory structures and uses incidental to agricultural activities.
- C) Trucking Terminal.
- D) Farmers markets.
- E) Motor Vehicle Repair Facility.
- F) Motor Vehicle Towing & Impoundment Facility.
- G) Games - Video Arcade.

3) Uses Expressly Prohibited

- A) Industrial uses.
- B) Adult Entertainment.
- C) RV Parks.
- D) Flea Markets.
- E) Agriculture: Processing - packing and slaughter houses.
- F) Pawn Shop.
- G) Uses prohibited by Town, State and Federal law.

4) Design Standards

- A) The maximum impervious surface ratio (which includes building coverage) shall be limited to eighty (80) percent.
- B) Maximum building height of thirty-five (35) feet unless adequate fire protection measures are provided.
- C) Density is limited to four (4) units per acre unless central sewer facilities are available at which time densities shall not exceed twelve (12) units per acre.
- D) No minimum lot size is required.
- E) No minimum lot width is required.
- F) Setback Requirements.

1. Front Yard Setback

- a. Local Roadway - Twenty-five (25) feet.
- b. Collector Roadway - Thirty-five (35) feet.
- c. Arterial Roadway - Fifty (50) feet.

2. Rear Yard Setback: Fifteen (15) feet.
3. Side Yard Setback When Adjoining
 - a. Another lot - 5 feet.
 - b. Local Roadway - Twenty-five (25) feet.
 - c. Collector Roadway - Thirty-five (35) feet.
 - d. Arterial Roadway - Fifty (50) feet.