

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

STADIUM TOWER, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2005-012-UC
Application No. 2004-017C

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 August 25, 2005. On or before February 16, 2005, Stadium Tower Ltd., (“Petitioner”) submitted its 2005 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for housing credits in the 2005 Universal Application Cycle. Petitioner timely filed its filed its Election of Rights and its Petition for an informal administrative hearing, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the “Petition”) challenging Florida Housing’s scoring on parts of the Application. An informal hearing was held in this case on July 15, 2005, in Tallahassee, Florida, before Florida Housing’s designated Hearing Officer, Diane D. Tremor. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the

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FLORIDA HOUSING FINANCE CORPORATION

meet threshold requirements regarding the consistency of its proposed project with zoning/land use regulations and failed to demonstrate an entitlement to tie-breaker points for proximity to a “public school.”

RULING ON THE RECOMMENDED ORDER

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

ORDER

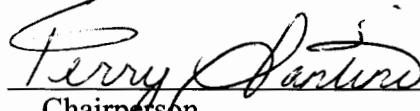
In accordance with the foregoing, it is hereby **ORDERED**:

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 are adopted as Florida Housing’s conclusions of law and incorporated by reference as though fully set forth in this Order.
3. Petitioner’s application failed to meet threshold requirements regarding the consistency of its proposed project with zoning/land use regulations and failed to demonstrate an entitlement to tie-breaker points for proximity to a “public school.”

IT IS HEREBY ORDERED that Petitioner’s Application failed threshold and was not entitled to tie-breaker points, and is scored accordingly.

DONE and ORDERED this 25th day of August, 2005.

FLORIDA HOUSING FINANCE
CORPORATION

By: 
Chairperson

Copies to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Stephen P. Auger
Deputy Development Officer
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Paul Bilton
Corporate Representative
R.S. Development Corp.
5709 NW 158 Street
Miami Lakes, FL 33014

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**

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STADIUM TOWER, LTD.,

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**FHFC CASE NO. 2005-012 -UC
Application No. 2005-017C**

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice and Sections 120.569 and 120.57(2) of the Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Diane D. Tremor, held an informal hearing in Tallahassee, Florida, in the above styled case on July 15, 2005.

APPEARANCES

For Petitioner, Stadium Towers, Ltd.:

Paul Bilton
Corporate Representative
R. S. Development Corp.
5700 NW 158 St

For Respondent, Florida Housing
Finance Corporation:

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

STATEMENT OF THE ISSUES

There are no disputed issues of material fact. The two issues in this proceeding are (1) whether Petitioner's application met the threshold requirement to demonstrate that its proposed development site is appropriately zoned and consistent with local land use regulations regarding density and intended use, and (2) whether Petitioner is entitled to tie-breaker points for proximity to a public school.

PRELIMINARY STATEMENT

At the informal hearing, the parties stipulated to the admission into evidence of Exhibits 1 through 11. Joint Exhibit 1 is a "Joint Stipulation of Facts and Exhibits." That document basically describes the application process, and the circumstances regarding the scoring of Petitioner's application with regard to the

in this Recommended Order with the exception of the first sentence of paragraph 6. The correct reference to the Application should be the 2005 Universal Application, or UA 1016 (Rev. 2-05), adopted by reference in Rule 67-48.004(1)(a), Florida Administrative Code.

Subsequent to the hearing, the parties timely submitted their Proposed Recommended Orders.

FINDINGS OF FACT

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. Along with other competing applicants, Petitioner, Stadium Tower, Ltd., also referred to as Stadium Tower Apartments, submitted Application No. 2005-017C for housing credits in connection with a proposed 70-unit apartment complex in Miami, Dade County, Florida.
2. In its initial filing, Exhibits 32 and 25 were left blank. (Joint Exhibits 2 and
- 3) Exhibit 32 is a form entitled “Local Government Verification that Development is Consistent with Zoning and Land Use Regulations.” Exhibit 25 is a form entitled

3. During the time allowed for applicants to “cure” any items for which less than the maximum score was initially obtained, Petitioner submitted executed Exhibits 32 and 25, as identified above.

Zoning/Land Use Regulations Consistency

4. Exhibit 32, the form entitled “Local Government Verification that Development is Consistent with Zoning and Land Use Regulations” requires the appropriate authority to confirm three matters, set forth in three separate paragraphs.

The first reads as follows:

(1) The number of units (not buildings) allowed for this development site (if restricted) is: _____
and/or
if a PUD, the number of units (not buildings) allowed per development site is: _____
or
if not a PUD and development site is subject to existing special use or similar permit, number of units allowed for this development site is: _____

The second paragraph on this form requires a designation of the zoning classification for the referenced development site. And the third paragraph requires confirmation that the intended use is consistent with current land use regulations and the referenced zoning designation. As pertinent herein, that paragraph also requires confirmation

to the three confirmations described above, the form (Exhibit 32) also requires a certification that the city or county has vested in the signatory the authority to verify consistency with local land use regulations and the zoning designation specified. Here, the Zoning Administrator confirmed, on Exhibit 32, that the zoning designation is R-3, but left blank the information requested in Paragraph 1, as quoted above. He further certified that the City of Miami had vested in him the authority to verify the required information on the form. (Joint Exhibit 4)

5. Along with its Exhibit 32, Petitioner also submitted as a part of its “cure” a letter on City of Miami, Department of Planning & Zoning letterhead, purportedly signed by the Chief Zoning Inspector, stating that the current zoning designation of the site is R-3 (Multifamily Medium-Density Residential) and that said zoning allows single-family, duplex and multifamily structures up to and including low-rise apartment structures with a maximum density of sixty-five (65) units per net acre. (Joint Exhibit 4)

6. Petitioner also submitted as a part of its “cure” an Exhibit 26, entitled “Local Government Verification of Status of Site Plan Approval for Multifamily Developments.” On this form, the Zoning Administrator confirmed that Petitioner’s

approval had not yet been issued. (Joint Exhibit 11)

7. In its final scoring of Petitioner's application, Respondent determined that Petitioner failed to meet threshold requirements regarding zoning for the following reason:

In its attempt to cure Item 3T, the Applicant submitted a Local Government Verification that Development is Consistent with Zoning and Land Use Regulations form. A NOAD provided evidence that the R-3 zoning designation, which is the zoning designation stated on the verification form, has a unit density restriction of 65 units per acre. The verification form provided by the Applicant is incomplete because it fails to address the number of units allowed for the Development site at Item (1) of the form.

(Joint Exhibit 9)

8. Along with the requirements on the form known as Exhibit 32 described above, the Universal Application Instructions (UA 1016 (Rev. 2-05)), pages 26 and 27, require, as a threshold matter, a demonstration that "the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use." In addition, the Threshold Requirements listed in the Universal Application Instructions, at page 82, include the requirements that "all applicable pages and exhibit forms of the Application must be completed," that "ability to proceed must be demonstrated by submission of the required certifications

must be in place as of the date that signifies the end of the cure period . . .”(Joint Exhibit 10)

9. The General Instructions contained within the Universal Application Instructions provide, on page 2:

Each page and applicable exhibit of the Application must be accurately completed, and Applicants must provide all requested information. Failure to provide the requested information and documentation shall result in failure to meet threshold items and/or failure to achieve maximum points for point items.

10. Rule 67-48.004(13), Florida Administrative Code, requires Respondent to reject an application if, following submission of “cure” documents:

...
(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application instructions;

(c) The Applicant fails to file all applicable Application pages and exhibits which are provided by the Corporation and adopted under this rule chapter;
...

Proximity Tie-Breaker Points

11. The Universal Application Instructions, UA 1016 (Rev. 2-05)), allow an applicant to be awarded proximity tie-breaker points for proximity of the proposed development to “eligible services.” (Instructions, page 12) In order to receive such

a sketch depicting the location of the exterior public entrance used for the latitude and longitude coordinates for each eligible service. The eligible services include grocery stores, public schools, medical facilities, pharmacies and public bus stops or metro-rail stops. A definition is provided in the Instructions for each of these eligible services. (Instructions, pages 12-15).

12. In its initially filed application, Petitioner's Surveyor Certification form (Exhibit 25) was left blank and no sketches were provided. Accordingly, no proximity tie-breaker points were awarded Petitioner during initial scoring. (Joint Exhibits 3 and 8)

13. During the time allowed for "cures," Petitioner submitted a Surveyor Certification form listing, in part, a public school named Lindsey Hopkins, and a sketch entitled Lindsey Hopkins Technical Education Center. (Joint Exhibit 5)

14. The Universal Application Instructions, at pages 13 and 14, define a "public school" for purposes of proximity tie-breaker points as:

a public elementary, middle, junior and/or high school, where the principle admission criterion is the geographic proximity to the school, including a charter school, except for a charter school that is not generally available to appropriately aged children in the radius area. . .

proximity tie-breaker points for a public school because the school chosen by Petitioner does not qualify as a public school. Attached to that NOAD were excerpts from the School Catalog (2004-2005) for the Lindsey Hopkins Technical Education Center. Among those excerpts is a statement regarding admissions, which provides:

Any person 16 years of age or older, officially withdrawn from the K-12 program in Miami-Dade County Public Schools, may enroll in most programs offered through Lindsey Hopkins Technical Education Center.

(Joint Exhibit 7)

16. In its final scoring of Petitioner's application, Respondent declined to award Petitioner proximity tie-breaker points for the "public school" service, stating as grounds therefore:

The Public School listed on the revised Surveyor Certification Form, Lindsey Hopkins Technical Education Center, does not meet the FHFC definition of a Public School. Technical Education Centers are not elementary, middle, junior and/or high schools where the principle admission criterion is the geographic proximity to the school. The admission for the Public School listed is limited to those at least 16 years of age and that have officially withdrawn from the K-12 program in Miami-Dade schools.

(Joint Exhibit 9)

48, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner's substantial interests are affected by the proposed action of the Respondent Corporation. Therefore, Petitioner has standing to bring this proceeding.

There are two issues in this proceeding. The first is whether Petitioner's application met threshold requirements regarding the consistency of its proposed project with the applicable zoning and land use regulations. More specifically, this issue is whether the failure to complete paragraph 1 of Exhibit 32 constitutes a failure to meet this threshold requirement. The second issue is whether Petitioner is entitled to tie-breaker points for its proximity to a public school. More specifically, this issue is whether the school identified in Petitioner's application constitutes a "public school" as defined by the rules which govern this proceeding.

The Universal Application Package, or UA 1016 (Rev. 2-05), which includes both its instructions and its forms, is adopted as a rule. See Rule 67-48.004(1)(a), Florida Administrative Code. Accordingly, both the Petitioner and the Respondent are bound by its terms.

2 of the form, the zoning classification of the proposed development site, and identify, at paragraph 1 of the form, the density, or number of units allowed for the development site (if restricted). These requirements are consistent with the verification required by paragraph 3 of Exhibit 32, to the effect that there are no additional land use regulation hearings or approvals required to obtain the “zoning classification or **density described herein.**” (Emphasis supplied) The completion of Paragraph 1 of Exhibit 32 is also necessary to meet the threshold requirement, as explained on page 26 of the Universal Application Instructions, that the proposed development site is appropriately zoned and consistent with local land use regulations “regarding **density** and intended use.” (Emphasis supplied)

Petitioner offers three arguments in support of its position that the failure to complete Paragraph 1 of Exhibit 32 is not fatal to its ability to meet threshold requirements regarding zoning/land use consistency. Petitioner first argues that since “zoning and land use restrictions ALWAYS apply to ALL properties,” paragraph 1 is referring to restrictions other than density, such as a restrictive covenant. This argument is untenable. Due to the requirements for verification required by Paragraph 3 of Exhibit 32, as well as the application instructions that the proposed

1 relates to “density,” or, as stated therein, the number of units allowed for the development site.

Petitioner next argues that since there is no finally approved site plan for its proposed project, the number of units allowed had not yet been determined and could not be determined at the time of the submittal of its Exhibit 32. This argument also fails. The form simply requires the number of units allowed for the “development site” as of a certain date, and does not require an identification of the number which is determined after final site plan approval. Indeed, that number could not exceed the maximum units allowed for that zoning classification. The zoning classification R-3 has a maximum density of sixty-five (65) units per net acre, as demonstrated by the letter which Petitioner also submitted as a part of its “cure.” This constitutes a restriction upon density, and paragraph 1 of Exhibit 32 should have been completed so as to relate or extrapolate that maximum density restriction to the specifics of Petitioner’s proposed project (i.e., the extent of the acreage involved). While Petitioner argues that its site would sustain a maximum or theoretical density of 97 units, this “fact” was neither proven nor was it the subject of the Stipulation of Facts and Exhibits entered into by the parties. Most importantly, however, is the fact that

designated official to verify the density allowances for the proposed development site. Exhibit 32 fails to fulfill this requirement. The additional letter from the Chief Zoning Inspector does not contain the required certification that the signatory is authorized to provide this information, nor does it contain any information beyond the fact that the area has a maximum density of 65 units per net acre. Even assuming the accuracy of the facts stated in that letter and the authority of that official to provide such information, the letter does not divulge the “number of units (not buildings) allowed for this development site,” which is the information required by paragraph 1 of Exhibit 32.

Finally, Petitioner argues that since the Zoning Administrator completed paragraph 2 (the zoning designation) and “signed off” on paragraph 3, Petitioner met the threshold requirement regarding the consistency of its project with zoning and land use regulations. This argument ignores two important rules, as set forth in the general instructions of the Universal Application Package. First is the requirement on page two that “each page and applicable exhibit of the Application must be accurately completed, and Applicants must provide all requested information.” And second, on the same page, is the instruction that “all information contained in an

the Respondent would be unable to independently review, analyze or verify the substance of the “verification” contained within Paragraph 3 of that Exhibit. Moreover, acceptance of Petitioner’s argument would render meaningless Paragraph 1 of Exhibit 32, and would render incomplete the information divulged in paragraph 2 of Exhibit 32.

Proximity Tie-Breaker Points for Public School

Lindsey Hopkins Technical Education Center, the school designated by Petitioner for proximity tie-breaker points is not a “public school” as defined in the Application Instructions. It is not an elementary, middle, junior and/or high school where the principle admission criterion is the geographic proximity to the school. Instead, the admission requirement for Lindsey Hopkins is that admission is limited to those at least 16 years of age who have officially withdrawn from the K-12 program in Miami-Dade public schools.

Petitioner stipulated at the hearing that Lindsey Hopkins does not meet the definition of “public school” contained within the Application Instructions. Nevertheless, Petitioner argues that its application submitted to Respondent last year

forth in the Application Instructions. Petitioner asserts that there are multiple public schools within one mile of its proposed project and that, in choosing the Lindsey Hopkins school, it justifiably relied to its detriment upon its award of points last year for that same school.

There are several fallacies in this argument. In the first place, there is no evidence in this proceeding, nor is there any stipulation of fact, regarding Petitioner's last year's application, the action taken on that application by the Respondent, last year's application instructions regarding a definition of "public school," or that there are multiple public schools within one mile of Petitioner's proposed project. However, even if such evidence did exist, Respondent has chosen to adopt its application forms and instructions as rules, which include the definition of a "public school," and both applicants and the Respondent are bound by such rules. Accordingly, even if last year's definition of "public school" read identical to this year's definition, Respondent could not lawfully "expand" its rule definition of "public school" absent a change made through the rulemaking process. Cleveland Clinic Florida Hospital v. Agency for Health Care Administration, 679 So.2d 1237 (Fla. 1st DCA 1996), rev. denied, 695 So.2d 701 (Fla. 1997). Thus, if Respondent

such a mistake in the past, it cannot justifiably rely upon that mistake on the part of the Respondent as a basis for an award of proximity tie-breaker points this year.

The purpose of tie-breaker points is to provide a means of determining which applicant should rank higher when all threshold requirements are met and application scores are identical. Given the very competitive nature of the housing credit award process, it is reasonable and appropriate for Respondent to very strictly construe and apply the terms and conditions for an award of tie-breaker points. While there may be some room for interpretation in many of the requirements set forth in the forms and instructions which constitute the Universal Application Package, the definition of “public school” is clear and specific, particularly with regard to admission requirements. That definition can not be expanded in the manner or on the grounds urged by Petitioner.

Petitioner was responsible for the contents of its application in compliance with the Respondent’s rules governing such application. The Respondent was responsible for scoring Petitioner’s application in accordance with its rules. Respondent reasonably and properly concluded that Lindsey Hopkins is not a “public school” falling within its definition of “public school,” which definition is adopted by rule.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that a Final Order be entered determining that Petitioner's application failed to meet threshold requirements regarding the consistency of its proposed project with zoning/land use regulations and failed to demonstrate an entitlement to tie-breaker points for proximity to a "public school."

Respectfully submitted and entered this 9th day of August, 2005.



DIANE D. TREMOR
Hearing Officer for Florida Housing
Finance Corporation
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Copies furnished to:

Maelene Tyson, Clerk
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227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Paul Bilton
Corporate Representative

NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

All parties have the right to submit written arguments in response to a Recommended Order for consideration by the Board. Any written argument should be typed, double-spaced with margins no less than one (1) inch, in either Times New Roman 14-point or Courier New 12-point font, and may not exceed five (5) pages. Written arguments must be filed with Florida Housing Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on August 16, 2005. Submission by facsimile will not be accepted. Failure to timely file a written argument shall constitute a waiver of the right to have a written argument considered by the Board. Parties will not be permitted to make oral presentations to the Board in response to Recommended Orders.

STATE OF FLORIDA

FLORIDA HOUSING FINANCE CORPORATION

STADIUM TOWER, LTD.,

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FHFC CASE NO.: 2004-012-UC
Application No. 2004-17C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

**JOINT STIPULATION
OF FACTS AND EXHIBITS**

The parties, STADIUM TOWER, LTD., (“Stadium Tower”), and FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”), hereby stipulate for purposes of expediting the informal hearing scheduled for 2:00 p.m., July 15, 2005, in Tallahassee, Florida, and agree to the following facts and exhibits:

1. Stadium Tower timely submitted an Application to Florida Housing for housing credits in the 2005 Universal Cycle in connection with a proposed 70-unit apartment complex in Miami-Dade County, Florida.

2. To encourage the development of low-income housing for families, Congress in 1987 created federal income Tax Credits that are allotted to each state,

requirements for each year. The developer sells, or syndicates, the Tax Credits to generate a substantial portion of the funding necessary for construction of the development.

3. Florida Housing is a public corporation organized pursuant to section 420.504, Florida Statutes, to provide and promote financing of affordable housing and related facilities in Florida. Florida Housing is an agency as defined in section 120.52, Florida Statutes, and, therefore, is subject to the provisions of Chapter 120, Florida Statutes.

4. Florida Housing is the statutorily created “housing credit agency” responsible for the allocation and distribution of low-income Tax Credits (also known as housing credits) in Florida. See section 420.5099, Florida Statutes. In this capacity, Florida Housing determines which entities will receive housing credits for financing the construction or rehabilitation of low-income housing.

5. Housing credits are allocated by Florida Housing through a competitive application process. Applications for housing credits are submitted to Florida Housing through a once-a-year process referred to as the Universal Cycle, which is governed by chapter 67-48, Florida Administrative Code.

6. The 2004 Universal Cycle Application, adopted as Form UA1016 (Rev. 3-04) by rule 67-48.002(111), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items. Failure to meet a threshold item will disqualify an Applicant.

information as prescribed by the instructions may reduce the Applicant's overall score. Evidence of Site Control is a threshold item.

7. To provide a means of determining which applicant should rank higher when all threshold requirements are met and application scores are identical, Florida Housing awards "tie-breaker" points for proposed developments which are in close proximity to certain services, such as a Medical Facility, Public School, Pharmacy, or Bus Stop or Metro-Rail Stop.

8. Preliminary scores for all applicants were released by Florida Housing on March 17, 2005. Following consideration of comments submitted by other applicants and further review of applications pursuant to rule 67-48.004(4) and (5), Florida Administrative Code, Florida Housing released Notices of Possible Scoring Error (NOPSE) scores on April 12, 2005. Applicants were then permitted to submit "cures" to problems identified in the preliminary and NOPSE scores. See rule 67-48.004(6), Florida Administrative Code. Applicants also were allowed to comment on the "cures" submitted by competitor applicants by filing Notices of Alleged Deficiencies (NOADs). See rule 67-48.004(7).

9. After review of NOADs, final scores were released by Florida Housing on May 24, 2005, through a final scoring summary. Each applicant received its own Final Scoring Summary.

appropriately zoned and consistent with local land use regulations regarding density and intended use or that the proposed Development site is legally non-conforming.

11. In response to this requirement, Stadium Tower, in its initial application submitted (at Exhibit 32 to the application), a Local Government Verification That Development Is Consistent With Zoning And Land Use Regulations form that was incomplete.

12. After conducting its preliminary review, Florida Housing concluded in its initial scoring summary that Stadium Tower failed to meet threshold requirements for site control, giving the following explanation in the Scoring Summary dated March 17, 2005: “The Applicant failed to provide a completed and executed Local Government Verification That Development Is Consistent With Zoning And Land Use Regulations form.”

13. In response to Florida Housing’s initial review and the specific comments found in the Scoring Summary, Stadium Tower submitted as a cure a 2005 Cure Form, Brief Explanation form, Local Government Verification That Development Is Consistent With Zoning And Land Use Regulations form and a letter dated 2/25/2005 from Aldo Reyes.

14. A NOAD was filed by a competing applicant which alleged that the “cure” submitted by Stadium Tower should be rejected.

15. On May 24, 2005, Florida Housing issued its Final Scoring Summary which again concluded that Stadium Choice had failed to meet the minimum requirements

And Land Use Regulations form. A NOAD provided evidence that the R-3 zoning designation, which is the zoning designation stated on the verification form, has a unit density restriction of 65 units per acre. The verification form provided by the Applicant is incomplete because it fails to address the number of units allowed for the Development site at Item (1) of the form.

THE PROXIMITY TIE-BREAKER POINTS ISSUE

16. The Universal Application Instructions at Part III, A, 10, starting at page 12, states that proximity tie-breaker points may be awarded to an Application for the proximity of its Development's Tie-Breaker Measurement Point to an eligible service.

17. The Universal Application at Part III, A, 10, that an Applicant provide the Surveyor Certification Form behind a tab labeled, "Exhibit 25," and indicate the service that the Applicant is seeking proximity tie-breaker points for.

18. In response to this requirement, Stadium Tower, in its initial application submitted (at Exhibit 25 to the application), a Surveyor Certification form that was incomplete.

19. When preliminary scores were released by Florida Housing on March 17, 2005, Stadium Tower was awarded no proximity tie-breaker points out of a possible 1.25 tie-breaker points for its proximity to a Public School. In its explanation for the scoring, Florida Housing stated that "Applicant submitted a blank Surveyor Certification form. Applicant did not provide required sketches."

20. In response to the Preliminary Scoring Summary, Stadium Tower submitted "cure" materials relating to the proximity tie-breaker points consisting of the

21. A NOAD was filed by a competing applicant which alleged that the “cure” submitted by Stadium Tower should be rejected.

22. When final scores were released in Stadium Tower’s Final Scoring Summary, Florida Housing again awarded Stadium Tower no proximity tie breaker points for its proximity to a Public School. In explanation, Florida Housing stated:

The Public School listed on the revised Surveyor Certification Form, Lindsey Hopkins Technical Education Center, does not meet the FHFC definition of a Public School. Technical Education Centers are not elementary, middle, junior and/or high schools where the principle admission criterion is the geographic proximity to the school. The admission for the Public School listed is limited to those at least 16 years of age and that have officially withdrawn from the K-12 program in Miami-Dade public schools.

23. In a Notice dated May 24, 2005, Florida Housing released its Final Scores and Notice of Rights to Stadium Tower, informing Stadium Tower that it could contest Florida Housing’s actions by requesting an informal hearing before a contracted hearing officer.

24. Stadium Tower timely requested a hearing by filing its Petition for an informal Administrative Hearing on June 15, 2005.

The parties offer the following JOINT EXHIBITS into evidence:

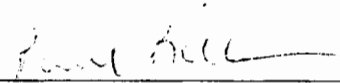
Exh. 1. Joint Stipulation.

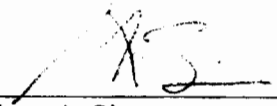
Exh. 2. Exhibit “32” to Stadium Tower’s application: Local Government Verification That Development Is Consistent With Zoning And Land Use Regulations form.

Exh. 3. Exhibit “25” to Stadium Tower’s application: Summary

- Exh. 5. The "cure" documentation submitted by Stadium Tower with respect to the surveyor certification.
- Exh. 6. NOAD filed against Stadium Tower's application pertaining to zoning.
- Exh. 7. NOAD filed against Stadium Tower's application pertaining to surveyor certification.
- Exh. 8. Preliminary Scoring Summary for the Stadium Tower application dated March 17, 2005.
- Exh. 9. Final Scoring Summary for the Stadium Tower application dated May 24, 2005.
- Exh. 10. Excerpts from the 2005 Universal Cycle Application and Instructions.

Respectfully submitted this 15th day of July, 2005.

By: 
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