

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

MARIAN MANOR, INC.,

Petitioner,

v.

**FHFC CASE NO. 2006-019UC
Application No. 2006-079H**

**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, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in the above styled case on June 20, 2006.

APPEARANCES

For Petitioner, Marian
Manor, Inc.,
("Marian Manor"):

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215 S. Monroe St., Ste. 420
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For Respondent, Florida Housing
Finance Corporation
("Florida Housing"):

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STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The sole issue is whether Petitioner's Application should be rejected for failure to meet the threshold requirement for site plan approval pursuant to Part III. Section C.1. of the Universal Application Instructions and the Universal Application. Specifically, the relevant issue is whether the Site Plan Approval Form submitted by Marian Manor in its cure was properly completed as required by the applicable rules.

PRELIMINARY STATEMENT

At the final hearing, the parties submitted a Joint Stipulation of facts and exhibits, which has been admitted as Joint Exhibit 1. Joint Exhibits 2 through 10 were admitted into evidence pursuant to the stipulation embodied in Joint Exhibit 1. In addition, Exhibits 11 through 15 were admitted into evidence. At the request of Florida Housing, official recognition was taken of Chapter 67-48 of the Florida Administrative Code, and the Universal Application Package adopted as a rule and

incorporated by reference therein.

FINDINGS OF FACT

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

1. The facts set forth in the JOINT STIPULATION OF FACTS AND EXHIBITS, Joint Exhibit 1, are hereby adopted and incorporated by reference as though set forth herein as findings of fact.

2. Marian Manor submitted an Application seeking loans through the HOME program in the 2006 Universal Application Cycle. Marian Manor's Application was assigned Application No. 2006-079H. The Universal Application Package has been adopted as a rule.

3. The Universal Application Instructions and the Universal Application (at Part III.C.1.) for the 2006 Universal Application Cycle require as a threshold item for multi-family developments, evidence of local government approval of the site plan for the proposed development.

4. Marian Manor submitted a form entitled LOCAL GOVERNMENT VERIFICATION OF STATUS OF SITE PLAN APPROVAL FOR MULTI-FAMILY DEVELOPMENTS (Site Plan Approval Form) at Exhibit 26 to its original

Application.

5. When Florida Housing issued its preliminary scoring of Marian Manor's Application, it noted the following threshold failure:

The Applicant provided the Local Government Verification of Site Plan Approval for Multi-Family Developments form; however, the form is deficient because the city stated for the Development Location is "Punta Gorda" not "Port Charlotte" as stated elsewhere in the Application.

6. As a cure for this threshold failure, Marian Manor submitted a new Site Plan Approval Form. This new Site Plan Approval Form corrected the name of the city from Punta Gorda to Port Charlotte.

7. The Site Plan Approval Form, which has been adopted as a rule, requires in pertinent part that the applicant set forth on the form the "Zoning Designation" of the site. There is a space on the Site Plan Approval Form for that Zoning Designation to be set forth. On the Site Plan Approval Form presented by Marian Manor as its cure, the space for "Zoning Designation" is blank. The form is not complete. Marian Manor failed to set forth the Zoning Designation as required by the form.

8. The Universal Application Instructions and the Universal Application (at Part III.C.4.) for the Universal Application Cycle requires a as threshold item that developments provide "Evidence of Appropriate Zoning." They further require that an applicant must provide a "properly completed and executed Local Government

Verification That Development Is Consistent With Zoning And Land Use Regulations Form” (“Zoning Form”). Marian Manor provided such a Zoning Form, properly completed, establishing the zoning as “mixed use”.

9. The County Administrator for Charlotte County, who is authorized to execute both the Zoning Form and the Site Plan Approval Form did in fact execute both forms.

10. Marian Manor timely requested a hearing in this matter.

11. The final scoring summary issued by Florida Housing rejected the cure submitted by Marian Manor with regard to the Site Plan Approval Form noting the following:

As a cure for Item 1T, the Applicant submitted a revised Local Government Verification of Site Plan Approval for Multi-Family Developments Form that includes the correct city for the Development Location. However, the new form is incomplete because the Zoning Designation is not stated.

12. Marian Manor is substantially affected by Florida Housing’s final scoring.

CONCLUSIONS OF LAW

13. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, and Rules 28-106.301 and 67-48.005, Florida Administrative Code, the Hearing Officer has

jurisdiction over the parties in the subject matter of this case.

14. Marian Manor's substantial interests are affected by the proposed action of Florida Housing. Therefore, Marian Manor has standing to bring this proceeding.

15. The 2006 Universal Application Package including instructions, exhibit forms and an uncompleted Application are incorporated as a rule by reference by Rule 67-48.004(1)(a), F.A.C.

16. Part III.C.1. of the Universal Application requires in relevant part with regard to the status of Site Plan Approval that:

All Applications must include one of the following: a. Multi-Family Developments must provide a properly completed and executed Local Government Verification of Status of Site Plan Approval for Multi-Family Developments Form behind a tab labeled "Exhibit 26".

17. Part III.C.1. of the Universal Application Instructions with regard to the status of site plan approval requires in pertinent part that "to achieve threshold, Applicant must provide the applicable Local Government verification form behind a tab labeled 'Exhibit 26'".

18. The GENERAL INSTRUCTIONS, at page 2, in the Universal Application Instructions provides in pertinent part that:

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 for threshold items and/or failure to

achieve maximum points for point items.

19. The Site Plan Approval Form presented by Marian Manor in its cure is not accurately completed and does not provide all requested information as required by the GENERAL INSTRUCTIONS. Neither is it “properly completed” as required by Part III.C.1. of Universal Application.

20 The failure of Marian Manor to provide the requested information on the Site Plan Approval Form constitutes a failure to meet a threshold item.

21. Marian Manor argues that the only missing information on the Site Plan Approval Form is the development’s “Zoning Designation” which is properly identified elsewhere in the Application. While that may be so, it cannot trump the requirement in the rules of Florida Housing that an applicant must provide a “properly completed” form as required in Part III.C.1. of the Universal Application. Neither can it trump the requirement in the GENERAL INSTRUCTIONS of the Universal Application Instructions that “each page and applicable exhibit of the Application must be accurately completed, and Applicants must provide all requested information.”

22. Marian Manor also argues that any alleged irregularity on the Site Plan Approval Form was immaterial and did not affect the underlying purpose of the Site Plan Approval Form. Such an argument again ignores the specific requirements of

Florida Housing's rules which requirements Florida Housing cannot ignore.

23. Marian Manor cites two cases, *Madison Green v. Florida Housing Finance Corporation*, FHFC, Case No. 2003-045 and *Blichton Station Limited v. Florida Housing Finance Corporation*, FHFC Case No. 2004-026-UC as precedent for Florida Housing to ignore the failure of Marian Manor to accurately complete the Site Plan Approval Form. Neither of those cases can be read for the proposition that Florida Housing is required to ignore its clear and unambiguous rules. Perhaps most importantly, neither *Madison Green* nor *Blichton Station* are applicable here as precedent because the rules under which they were decided are no longer in effect. Florida Housing has specifically amended those rules relative to "Evidence of Site Control (Part III.C.2.)" to now make clear that any attachments or exhibits referenced in any document must be attached to that document regardless of whether it is included elsewhere in the application or was previously provided. The import of these amendments to Florida Housing's rules with regard to the *Madison Green* and *Blichton Station* cases is that under the current rules Florida Housing would have been compelled to decide those cases differently.

24. Rule 67-48.004(1)(b), F.A.C., provides, in pertinent part, that "all applications must be complete..." and also prohibits Florida Housing from assisting an applicant with its application.

25. Rule 67-48.004(1)(c), F.A.C., provides in pertinent part that “Failure to submit an Application completed in accordance with the Application Instructions and these rules will result in the failure to meet threshold, rejection of the application... .”

26. Rule 67-48.004(13)(b), F.A.C., provides in pertinent part that Florida Housing “...shall reject an Application if, following the submission of...”cure materials “the Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application, and Application Instructions.”

27. Marian Manor has failed to meet a threshold requirement by failing to submit in the cure process an accurately completed Site Plan Approval Form as required by Florida Housing’s rules.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law stated herein, it is RECOMMENDED:

1. That a Final Order be entered determining that Petitioner, Marian Manor, Inc., has failed to achieve the threshold requirements with regard to the LOCAL GOVERNMENT VERIFICATION OF STATUS OF SITE PLAN APPROVAL FOR MULTI-FAMILY DEVELOPMENTS form submitted as a cure and the Application

should be rejected pursuant to Rule 67-48.004(13), Florida Administrative Code.

Respectfully submitted and entered this 14th day of July, 2006.



CHRIS H. BENTLEY

Hearing Officer for Florida Housing
Finance Corporation
Rose, Sundstrom & Bentley, LLP
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Copies furnished to:

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NOTICE OF RIGHT TO SUBMIT WRITTEN ARGUMENT

In accordance with Rule 67-48.005(3), Florida Administrative Code, 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 July 21, 2006. 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.

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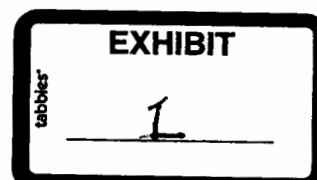
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JOINT STIPULATION
OF FACTS AND EXHIBITS

The parties, MARIAN MANOR, INC., (“Marian Manor”), and FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”), hereby stipulate for purposes of expediting the informal hearing scheduled for 9:00 a.m., June 20, 2006, in Tallahassee, Florida, and agree to the following facts and exhibits:

GENERAL

1. Florida Housing is a public corporation organized pursuant to Section 420.504, Florida Statutes, to provide and promote the public welfare by administering the governmental function of financing and refinancing affordable housing and related facilities in Florida. Florida Housing is governed by a Board of Directors (the “Board”), appointed by the Governor with Secretary of the Department of Community Affairs sitting ex-officio. 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.



2. Florida Housing administers the HOME Investment Partnerships (“HOME”) Program, as provided in Section 420.5089, Florida Statutes. The HOME program loans funds to entities constructing or rehabilitating affordable rental units for low income and/or very low income persons. These HOME funds are allocated through a competitive application process known as the Universal Application Cycle in accordance with Rule Chapter 67-48, F.A.C. The applications are competitively ranked and compete for a limited amount of funds during a given cycle.

3. Rule 67-48.004, F.A.C., is entitled “Application and Selection Procedures for Developments.” This rule establishes a multistage process for scoring by Florida Housing of the applications submitted in the Universal Application Cycle.

4. Pursuant to Rule 67-48.004(3), F.A.C., applications are evaluated and preliminarily scored by Florida Housing following which the scores are transmitted to all applicants.

5. Rule 67-48.004(4), F.A.C., provides a mechanism through which an applicant may challenge the preliminary score of another applicant through written submission to Florida Housing. Such a submission is referred to as a Notice of Possible Scoring Error or “NOPSE.” Once a NOPSE is filed, Florida Housing reviews the challenge and transmits to each affected applicant the NOPSE as well as Florida Housing’s position with respect to the challenge. *See*, Rule 67-48.004(5), F.A.C.

6. Under Rule 67-48.004(6), F.A.C., an applicant is allowed to cure alleged deficiencies in its application raised as a result of the preliminary scoring or Florida Housing’s position regarding a NOPSE. In curing an alleged deficiency, an applicant is permitted to submit “additional documentation, revised pages and such other information

as the Applicant deems appropriate to address the issues ...” raised by the preliminary scoring or NOPSE. Additional information submitted under this provision is referred to as a “cure.”

7. Pursuant to Rule 67-48.004(7), F.A.C., applicants may submit to Florida Housing a Notice of Alleged Deficiency (“NOAD”) contesting a cure filed by another applicant. A NOAD is “limited only to the issues created by document revisions, additions, or both, by the Applicant submitting the Application pursuant to subsection (6) [of the Rule].”

8. Following the receipt and review of NOPSEs, cures and NOADs, Florida Housing prepares, and transmits to all applicants, final scores. *See*, Rule 67-48.004(9), F.A.C.

9. An applicant may contest its final score by filing a petition with Florida Housing. If the petition does not raise a disputed issue of material fact, an informal hearing will be conducted; if the petition raises one or more disputed issues of material fact, a formal hearing will be conducted. *See*, Rule 67-48.005, F.A.C.

MARIAN MANOR APPLICATION

10. Marian Manor submitted an application seeking loans through the HOME program from the 2006 Universal Application Cycle. Marian Manor’s application was assigned Application No. 2006-079H.

11. The Universal Application Package, or UA 1016 (Rev. 1-06), which includes both its forms and instructions, is adopted as a rule. *See*, Rule 67-48.004(1)(a), F.A.C.

12. The Universal Application Instructions (at Part III.C.1.) and the Universal Application (at Part III.C.1.) for the 2006 Universal Application Cycle require as a threshold item for multifamily developments evidence of local government approval of the site plan for the proposed development. To that end, an applicant must provide at Exhibit 26 to its application "... a properly completed and executed Local Government Verification of Status of Site Plan Approval for Multifamily Developments Form ..." (the "Site Plan Approval Form"). *See*, Joint Exhibits 2 and 3.

13. Marian Manor submitted a Site Plan Approval Form at Exhibit 26 to its original application. (*See*, Joint Exhibit 4).

14. Florida Housing issued its preliminary scoring of Marian Manor's application by 2006 HOME Scoring Summary dated as of 03/01/2006. (*See*, Joint Exhibit

5). The preliminary scoring summary noted the following threshold failure:

The Applicant provided the Local Government Verification of Site Plan Approval for Multifamily Developments form; however, the form is deficient because the city stated for the Development Location is "Punta Gorda" not "Port Charlotte" as stated elsewhere in the Application.

(*See*, Item # 1T of Joint Exhibit 5)

15. As a cure for this threshold failure, Marian Manor submitted a new Site Plan Approval Form. (*See*, Joint Exhibit 6)

16. Florida Housing issued its final scoring of Marian Manor's application by 2006 HOME Scoring Summary dated as of 05/03/2006. (*See*, Joint Exhibit 7). The final scoring summary rejected the cure submitted by Marian Manor and noted the following:

As a cure for Item 1T, the Applicant submitted a revised Local Government Verification of Site Plan Approval for Multifamily Developments form that includes

the correct city for the Development Location. However, the new form is incomplete because the Zoning Designation is not stated.

(*See*, Item # 10T of Joint Exhibit 7)

17. Part III.C.4.of the Universal Application Instructions is entitled Evidence of Appropriate Zoning. This section of the application seeks information demonstrating that “the proposed Development site is appropriately zoned and consistent with local land use regulations regarding density and intended use...” [T]he applicant must provide the appropriate verification form behind a tab labeled ‘Exhibit 32’.” *See*, Joint Exhibits 8 and 9.

18. Exhibit 32 to Marian Manor’s application is entitled “Local Government Verification that Development is Consistent With Zoning and Land Use Regulations” (“Zoning Form”). *See*, Joint Exhibit 10.

19. Item Number 2 of the Zoning Form requires an applicant to state the “zoning designation for the Development site.” The Zoning Form submitted by Marian Manner in its application identified “Mixed Use” as the zoning designation.

20. The Zoning Form was completed and executed in accordance with the applicable Universal Application Instructions and rules.

21. The County Administrator for Charlotte County, who is authorized to execute both forms, executed the Zoning Form and the Site Plan Approval Form.

22. Although the parties stipulate to the matters and exhibits as set forth in paragraphs 10 through 21 above, either party reserves the right to argue the relevancy of said matters and exhibits to this proceeding.

23. As the result of final scoring, Marian Manor's application was scored as failing to achieve threshold.

24. Along with the final scoring summary Florida Housing provided Marian Manor a Notice of Rights, informing Marian Manor that it could contest Florida Housing's actions by requesting a hearing.

25. Marian Manor timely requested a hearing by filing its Petition for Informal Administrative Hearing on May 24, 2006.

The parties offer the following JOINT EXHIBITS into evidence:

Joint Exhibit 1: This Joint Stipulation.

Joint Exhibit 2: Part III.C.1. (Page 25) of the Universal Application Instructions.

Joint Exhibit 3: Part III.C.1. (Page 19) of the Universal Application.

Joint Exhibit 4: Local Government Verification of Status of Site Plan Approval for Multifamily Developments submitted as Exhibit 26 to Marian Manor's original application.

Joint Exhibit 5: Preliminary 2006 HOME Scoring Summary for Marian Manor dated as of 03/01/2006.

Joint Exhibit 6: Cure submitted by Marian Manor in response to Threshold failure Item # 1T noted on the preliminary scoring summary.

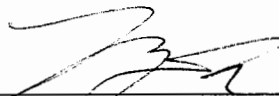
Joint Exhibit 7: Final 2006 HOME Scoring Summary for Marian Manor dated as of 05/03/2006.


Joint Exhibit 8: Part III.C.4. (Pages 27 and 28) of the Universal Application Instructions.

Joint Exhibit 9: Part III.C.4. (Page 20) of the Universal Application.

Joint Exhibit 10: Local Government Verification That Development is Consistent with Zoning and Land Use Regulations Form submitted as Exhibit 32 to Marian Manor's application.

Respectfully submitted this 27th day of June, 2006.

By: 
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