

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

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FLORIDA HOUSING
FINANCE CORPORATION

JASMINE HOUSING, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2009-063UC
Application No.: 2009-198C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, on January 14, 2010, an informal administrative hearing was held in this case in Tallahassee, Florida, before Florida Housing Finance Corporation's (the "Corporation" or "FHFC") duly designated Hearing Officer, David E. Ramba.

APPEARANCES

For Petitioner:

Michael G. Maida, Esquire
Michael G. Maida, P.A.
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Tallahassee, Florida 32308

For Respondent:

Hugh R. Brown
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Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

PRELIMINARY STATEMENT

The parties entered into a Joint Stipulation of Facts and Exhibits, which was marked as Joint Exhibit 1 in this proceeding. In addition, the following exhibits were offered jointly by the parties and were received into evidence by the Hearing Officer:

Exhibit J-2: Preliminary Scoring Summary dated 9/21/2009.

- Exhibit J-3: NOPSE Scoring Summary dated 10/21/2009.
- Exhibit J-4: NOPSEs filed against The Jasmine regarding the issue of water availability (excerpt).
- Exhibit J-5: Cure materials submitted by The Jasmine regarding the issue of water availability (excerpt).
- Exhibit J-6: A letter dated August 17, 2009, from Michael Suchogorski, New Business Supervisor, regarding water and sewer availability for Petitioner's development, Application No. 2009-198C

The parties submitted the following exhibits that were also admitted into evidence in the instant proceeding. Any objections over Respondent's exhibits 2 and 3 are overruled as the exhibits were part of the application and scoring packages.

Petitioner's Exhibits:

- Exhibit P-1: Contract between Miami Dade County and City of North Miami dated July 26, 2007
- Exhibit P-2: Final Scoring Summary dated 12/2/2009 for Gould's Place Apartments, Application Number 2009-232C.
- Exhibit P-3: Final Scoring Summary dated 12/2/2009 for Grace Wood Senior Apartments, Application Number 2009-189C.

Respondent's Exhibits:

Exhibit R-1: A letter dated May 20, 2009, from Michael Suchogorski, New Business Supervisor, regarding water and sewer availability for the proposed Biscayne Culmer development, Application No. 2009-072C (demonstrative exhibit).

Exhibit R-2: NOADs filed against The Jasmine related to the issue of water availability.

Exhibit R-3: The Jasmine's Final Scoring Summary dated 12/2/2009.

Official recognition (judicial notice) is taken of the Miami-Dade County ordinances, Rule 67-21 and 67-48, Florida Administrative Code, as well as the incorporated Universal Application Package or UA1016 (Rev. 5-09) which includes the forms and instructions.

STATEMENT OF THE ISSUE

The issue in this proceeding is whether Florida Housing correctly scored The Jasmine's 2009 Universal Cycle Application when it determined that Exhibit 29 to The Jasmine's Application failed to meet threshold requirements regarding availability of water service to the Development site.

There are no disputed issues of material fact.

WITNESSES

There were no witnesses for either party.

FINDINGS OF FACT

Based upon the stipulated facts (Joint Exhibit 1) and Exhibits received into evidence at the hearing, the following relevant facts are found:

1. The Jasmine is a Florida limited partnership with its address at 120 Forbes Blvd., Suite 180, Mansfield, MA 02048, and is in the business of providing affordable rental housing units.
2. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in the State of Florida. *See* Section 420.504, Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code.

3. Florida Housing administers various affordable housing programs including the Multifamily Mortgage Revenue Bonds (MMRB) Program pursuant to Section 420.509, Fla. Stat., and Rule Chapter 67-21, Fla. Admin. Code, and the Housing Credit (HC) Program pursuant to Sections 420.507 and 420.5099, Fla. Stat., and Rule Chapter 67-48, Fla. Admin. Code.

4. The 2009 Universal Cycle Application, through which affordable housing developers apply for funding under various affordable housing programs administered by Florida Housing is adopted as the Universal Application Package or UA1016 (Rev. 5-09) by Rules 67-21.003(1)(a) and 67-48.004(1)(a), Fla. Admin. Code, respectively, and consists of Parts I through V with instructions.

5. Because the demand for an allocation of Housing Credits and MMRB funding exceeds that which is available under the HC and MMRB Programs, qualified affordable housing developments must compete for this funding. To assess the relative merits of proposed developments, Florida Housing has established a competitive application process known as the Universal Cycle pursuant to Rule Chapters 67-21 and 67-48, Fla. Admin. Code, respectively. Specifically, Florida Housing's Application process for the 2009 Universal Cycle is set forth in Rules 67-21.002-.0035 and 67-48.001-.005, Fla. Admin. Code.

6. Florida Housing scores and competitively ranks the applications to determine which applications will be allocated MMRB funds or an allocation of Housing Credits.

7. Florida Housing's scoring and evaluation process for applications is set forth in Rules 67-21.003 and 67-48.004, Fla. Admin. Code. Under these Rules, the

applications are preliminarily scored based upon factors contained in the application package and Florida Housing's rules. After the preliminary scoring, Florida Housing issues preliminary scores to all applicants.

8. Following release of the preliminary scores, competitors can alert Florida Housing of an alleged scoring error concerning another application by filing a written Notice of Possible Scoring Error ("NOPSE") within a specified time frame. After Florida Housing considers issues raised in a timely filed NOPSE, it notifies the affected applicant of its decision by issuing its NOPSE scoring summary.

9. Applicants then have an opportunity to submit "additional documentation, revised pages and such other information as the Applicant deems appropriate ('cures') to address the issues" raised by preliminary or NOPSE scoring. See Rules 67-21.003 and 67-48.004(6), Fla. Admin. Code. In other words, within parameters established by the rules, applicants may cure certain errors and omissions in their applications pointed out during preliminary scoring or raised by a competitor during the NOPSE process.

10. After affected applicants submit their "cure" documentation, competitors can file a Notice of Alleged Deficiency ("NOAD") challenging the sufficiency of an applicant's cure. Following Florida Housing's consideration of the cure materials and its review of the NOADS, Florida Housing issues final scores for all the applications.

11. Rules 67-21.0035 and 67-48.005, Fla. Admin. Code, establish a procedure through which an applicant can challenge the final scoring of its application. The Notice of Rights that accompanies an applicant's final score advises an adversely affected applicant of its right to appeal Florida Housings scoring decision.

Petitioner's Application

12. The Jasmine timely submitted its application for financing in Florida Housing's 2009 Universal Cycle. Pursuant to Application No. 2009-198C (the "Application"), The Jasmine applied for an allocation of Housing Credits in the annual amount of \$1,403,844 to help finance the construction of a 78-unit affordable housing rental complex in Miami-Dade County to be known as "The Jasmine."

13. As part of its original application, The Jasmine included a letter from Miami-Dade County dated August 17, 2009, which is captioned "Water and Sewer Availability" and stated, *inter alia*, that all "construction charges and connection charges shall be determined once the property owner enters into an agreement for water and/or sewer service." (*Exhibit J-6*).

14. In its Preliminary Scoring Summary dated September 21, 2009, Florida Housing scored The Jasmine's Application as passing threshold with regard to infrastructure availability. (*Exhibit J-2*).

15. During the NOPSE phase of scoring, competitors challenged whether The Jasmine demonstrated infrastructure availability, alleging the "Applicant failed to provide confirmation of water availability service to Applicant's proposed development from the City of North Miami, which is the entity that provides water service to the proposed development." (*Exhibit J-4*).

16. Following the receipt and review of the NOPSEs filed against The Jasmine by competing Applicants, Florida Housing issued its NOPSE Scoring Summary dated October 21, 2009, and scored The Jasmine as failing to achieve threshold with

respect to water availability and further deducted an Ability to Proceed Tie Breaker Point. In its NOPSE Scoring Summary, Florida Housing stated the following reason for its decision:

The August 17, 2009 letter from Miami-Dade County Water and Sewer Department (provided at Exhibit 29 of the Application) stated that the water service will be provided by the City of North Miami. A NOPSE provided copies of letters dated September 28, 2009 (from the City of North Miami) and September 29, 2009 (from the Miami-Dade County Water and Sewer Department) which also state that the City of North Miami is the appropriate entity to confirm availability of water service for the proposed site. Since the appropriate verification form from the City of North Miami has not been provided, availability of water service has not been properly demonstrated.

(Exhibit J-3).

17. In response to Florida Housing's NOPSE Scoring Summary, The Jasmine submitted a brief statement and cure (*Exhibit J-5*) in the form of a letter re-confirming that the proposed development site is located within the designated water service area of the City of North Miami, and that the proposed development is required to pay Miami-Dade County's Water and Sewer connection charges. The letter further stated that the City of North Miami is prohibited from rendering water service to the development site until a written receipt from the Miami-Dade Water and Sewer Department is provided. The cure did not create any inconsistency with other portions of the Application.

18. Following the submission of the cure materials from The Jasmine, Florida Housing received NOADs from competitor developments regarding the issue of water availability to the development site.

19. Following the receipt and review of the NOADs described above, Florida Housing issued its Final Scoring Summary dated December 2, 2009, and scored The

Jasmine as failing to achieve threshold with respect to water availability and further deducted an Ability to Proceed Tie Breaker Point.

20. Upon further review of the relevant ordinances and contractual agreement between the City of North Miami and Miami-Dade County, the parties stipulated and agreed that Miami-Dade County is a water service provider with respect to The Jasmine's Development. The parties further stipulated and agreed that Miami-Dade County is an appropriate entity to attest to water availability with respect The Jasmine's Development.

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and R. 67-21 and 67-48, Fla. Admin. Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Florida Housing is authorized to institute a competitive application process, for the MMRB and HC programs, Sec. 420.507 (22)(f), Fla. Stat., and has done so, R. 67-48.004, Fla. Admin. Code

3. Petitioner's substantial interests are affected by Florida Housing's actions, thus, Petitioner has standing to initiate this action.

4. Florida Housing's application form and instructions are adopted as a Rule, Universal Application Package UA1016 (Rev. 3-08). R. 67-48.004(1)(a), Fla. Admin. Code.

5. The requirements that water availability to the proposed development site must be demonstrated by Applicant by either completing the form provided by Florida

Housing, or they may submit a letter from the local government responsible for demonstrating availability of water as an exhibit to their application attesting to water availability.

6. The Jasmine, in their exhibit to their application to meet the above requirements, submitted a letter dated August 17, 2009, from Michael Suchogorski, New Business Supervisor, regarding the availability of sewer service to the proposed development site, but stated that the water service area of the property was in the service area of the City of North Miami. (Exhibit J-6)

7. The original submittal by the applicant, although scored as receiving full credit by Florida Housing, had no information as to the availability of water to the proposed development site.

8. Competing applications for competitive funding pointed out, by filing NOPSEs against The Jasmine, of the failure of the Applicant to have water availability directly addressed by the proper governmental entity. (Exhibit R-2)

9. While the four corners of the Application did not clarify whether the proper government provider for water availability was the City of North Miami or Miami-Dade County, and letters from the City and the County provided in NOPSEs indicated the opposite, the Housing Corporation stipulated at hearing that Miami-Dade County was the proper entity to verify water availability.

10. Florida Housing's NOPSE Scoring Summary recognizes that not only was there confusion as to which governmental entity was to provide the Exhibit 29, and

provided disputing letters on the proper government entity to provide water availability verification, once the proper entity was determined then that entity, whomever it was, had to provide the verification that water services were available.


11. The issue raised by the NOPSEs was not only who was the proper service provider, but that the original Exhibit 29 did not demonstrate whether water was available to the proposed development site.

12. Regardless of which entity was eventually determined to be the appropriate government entity responsible to demonstrate availability of water services, in the original Exhibit 29 submitted with the application and the cure material submitted in a letter dated October 30, 2009 from John Renfrow, Director of the Miami-Dade Water and Sewer Department, the Applicant fails to provide to Florida Housing any information as to whether water service would actually be available to the site. (Exhibit J-5)

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, it is hereby RECOMMENDED that Florida Housing enter a Final Order finding that Petitioner did not meet the requirements of water availability for the proposed development and affirming Florida Housing's final scoring of Petitioner's application.

Respectfully submitted this 2nd day of February, 2010.



David E. Ramba, Hearing Officer

Copies furnished to:

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