

EASTWIND DEVELOPMENT, LLC

5604 PGA Boulevard, Suite 109
Palm Beach Gardens, FL 33418
(PH) (561) 370-6600 (Fax) (561) 370-6601

March 3, 2014

Mr. Steve Auger
Executive Director
Florida Housing Finance Corporation
227 No. Bronough Street, Suite 5000
Tallahassee, FL 32301

Re: Board Strategic Retreat Comment Letter Regarding Competitive Housing Tax Credit
Allocation Process

Dear Mr. Auger:

This letter is intended to outline and elaborate on the comments that I made during the Public Comments section of the FHFC Board strategic retreat on January 30, 2014 in St. Augustine, Florida with regard to the allocation of competitive housing tax credits for multifamily rental housing.

Problem and Past Approaches

Florida Housing has long struggled with the problem of differentiating tax credit applications so as to fund the “best” projects when applications in the traditional annual Universal Cycle for 9% housing tax credits have historically outnumbered allocations by a factor of 5:1 or more. In 2002, Florida Housing moved to a model involving a cure period, in which applications could be corrected after the initial submission, ending an earlier emphasis on minor technical application errors as a way of differentiating project applications. As result, while factors such as local government support, ability to proceed and leverage played minor roles in differentiating applications, the de facto tie breaker became the lottery system.

One consequence of this evolution was that larger and financially stronger developers were encouraged to submit an ever greater number of applications in order to obtain more lottery numbers in the tax credit allocation process. Accompanying this development was the submission of greater numbers of “shell” applications, so that maximum lottery numbers could be obtained for the least effort. Once the lottery numbers were known after initial application submission, those applications with high numbers were discarded, while those applications with lower numbers that otherwise appeared to have a reasonable chance to be funded were completed in the cure period. Consequently, Florida Housing staff spent a large amount of time scoring applications that their sponsors had no intention of proceeding with or completing during the cure period. And obviously, there was no correlation between those applications that received favorable lottery numbers, and those applications that developers might regard as their best or

most desirable projects. This approach culminated in the 2008 Universal Cycle, in which one large developer submitted 49 tax credit applications, and a number of other developers submitted in excess of 20 applications.

In attempt to address this problem, Florida Housing moved to a new system in the 2009 Universal Cycle, limiting developer groups to three “Priority I” applications, plus an additional three Priority I applications if a for-profit developer partnered with a nonprofit entity. Any application submitted by a single developer group beyond the six designated as Priority I applications would be a “Priority II” application, and as all Priority I applications that passed threshold with a maximum score were required to be funded before any Priority II applications were funded, this constituted a de facto cap on the number of applications. After a large developer filed an administrative protest, temporarily halting the 2009 Universal Cycle, this de facto limit on the number of applications was upheld by an administrative law judge as a valid exercise of Florida Housing’s authority.

The 2009 Priority system reduced the number of applications by 40%, and also significantly reduced the number of shell applications; with fewer precious lottery numbers, developers were less likely to spend them on shell applications. There was one situation in which Florida Housing and a credit underwriter found that a large developer group had set up a separate operation staffed by stand-ins to submit a second group of six Priority I applications, in effect doubling its odds relative to other applicants. After an administrative hearing process, this development group prevailed in having its funding allocation reinstated for a project in this second group in an ALJ decision many believe to have been flawed and erroneous.

Florida Housing’s conclusion from the 2009 experience may have been that enforcement of application limits presented too many headaches. In the cycle that ultimately became the 2011 Universal Cycle, Florida Housing opted for a different approach, installing a new more refined proximity system as a tie-breaker, with eight separate factors in positive proximity, as well as smaller distance increments, designed to draw fine distinctions and differentiate applications before ever reaching the ultimate lottery tie-breaker. This new system did in fact serve as a de facto tie-breaker, but one consequence of this system was that development sites with the highest proximity scores, especially in Miami-Dade County, were bid up to staggering levels – i.e. as much as \$40,000 to \$50,000 per unit, based on the near certainty that these sites would receive a funding allocation. The number of applications and shell applications also increased.

With the institution of the 2013 RFA process, Florida Housing lowered the proximity bar so that most applications submitted were able to clear this tie-breaker, reinstalling the lottery as the de facto tie-breaker. Unsurprisingly, the number of applications soared, with the ratio of applications to available awards exceeding a ratio of 10:1 in some RFAs, and large development groups submitting 20 or more applications across multiple RFAs. Once again, projects with the lowest lottery numbers, rather than those that developers deemed to be their best projects, were the ones that received funding allocations.

Program Recommendations

In order to address these continuing problems, we suggest the following remedies:

1) Limit Number of Applications Submitted by Any One Development Group (and Principals Thereof) In Any Calendar Year

This may be harder to administer now that there is not a single universal cycle, but the concept should be able to be applied across multiple RFAs issued during a given period, such as a calendar year. The limitation might also be applied for a particular RFP, so that no one applicant could submit more than three applications in a particular RFP.

There were several flaws in the approach employed during the 2009 Universal Cycle. One was that the number of applications was set at a low level of six, which created greater incentives for certain development groups to seek ways to circumvent it. The appropriate number of permitted applications across all RFPs issued in a given calendar year might instead be 10-12. Secondly, the number of applications was further limited by requiring half (three applications) to be nonprofit applications, in which there was a nonprofit GP and the developer fee was shared. While promoting the role of nonprofits in the application process beyond the existing nonprofit set aside may be a worthy objective for Florida Housing, we would suggest that this ancillary limit muddied the waters with respect to the main application limitation, and made the proposed policy change even more disagreeable to larger development groups. We would not recommend including this feature in any future application limitation proposal.

Finally, despite the attempts at circumvention and the ensuing legal battles, this approach did succeed in its primary objective of significantly limiting the number of applications.

2) Require More Complete Applications

The problem of shell applications should be reduced with a limitation on the number of applications. However, Florida Housing would still be faced with the problem of scoring applications that might not be in a position to proceed. We would recommend that Florida Housing require each submitted application to include (a) fully executed purchase agreement, (b) evidence of satisfactory environmental review in a form signed by an environmental consultant, (c) survey and proximity information, and (d) evidence of preliminary site plan approval and zoning.

An alternative approach would be to introduce a tiered system of application fees, in which the first three applications submitted by a developer group might be \$3,000 each, with the next application increasing to \$6,000, then \$10,000 for the next one, and so on. This would help ensure that only serious applications are submitted.

3) Keep Proximity as the Primary Tie-Breaker

In counties other than Miami-Dade County, Florida Housing may want to raise the proximity bar again as it did in the 2011 Universal Cycle, with the highest proximity

score serving as the de facto tie breaker. While not perfect, a high score under Florida Housing's proximity criteria is a fairly decent proxy for project quality.

4) Miami-Dade County Rules

Any realistic allocation plan needs to recognize that Miami-Dade County has certain characteristics that make the competitive environment there unlike any other parts of the state. The large number of local companies that will submit applications, the very strong demand for affordable housing units and the presence of independent gap financing through the surtax insure that Miami-Dade County will always have a high number of tax credit applications; in the 2013 Large County-Southeast Florida RFA, there were 90 applications for two projected funding allocations. In the face of this situation, we do not think it is advisable to push to make the same rules that apply in Miami-Dade County try to work in the rest of the state. In the face of such an overwhelming volume of applications, there is simply no way to make meaningful distinctions in project quality based on razor thin proximity differences, and it seems inescapable that the lottery may have to play a leading role in this one particular county, while its role can still be diminished in the rest of the state.

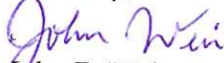
5) Limit the Number of Funding Awards

Finally, we would recommend limiting the number of funding awards to three per developer group in any particular calendar year, or perhaps one or two for a particular RFA, depending upon the amount of the allocation being awarded in that RFA. Florida is really one of the last holdouts in this regard, as the vast majority of HFAs in other states limit the amount of awards given to single developer groups in a particular funding round. The reasons are obvious: (a) they wish to limit financial risk by having too great a concentration of projects in the hands of one or a small number of developer groups, (b) they wish to limit political risk by the creation of powerful client developer groups that may, in advancing their own interests, work at cross purposes with the policy positions being advocated by the state housing agency, and (c) they wish to preserve a relatively level playing field, so that smaller and innovative groups with highly desirable and economically feasible projects are not crowded out of the process by a funding allocation system that prizes quantity over quality.

Conclusion

Florida can continue to drift down a path of ever greater concentration among its developer community, or it can seize control of its funding allocation process in a way that levels the playing field and allows developers submitting a small number of high-quality applications to have a reasonable likelihood of success in receiving a funding allocation.

Sincerely,


John F. Weir