

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**THE MERIDIAN HOUSING  
LIMITED PARTNERSHIP,**

**Petitioner,**

**v.**

**FHFC CASE NO. 2002-0027  
Application No. 2002-110S**

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

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**ORDER**

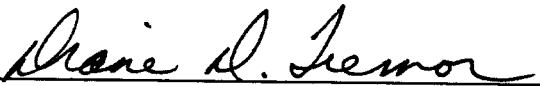
This matter was scheduled for an informal administrative hearing pursuant to Sections 120.569 and 120.57(2), Florida Statutes, before the undersigned Hearing Officer. Prior to convening the hearing, the parties resolved the sole issue raised in the Petition for Hearing, and agreed to a Joint Proposed Recommended Order, which is attached hereto as Exhibit A. In essence, the parties agreed that Petitioner is entitled to the award of 1.25 tie-breaker points for its proximity to a grocery store known as "Just 99 Cents."

Based upon this agreement and the Joint Proposed Recommended Order, there was no need to convene the hearing, and the issues raised in the Petition are moot. Accordingly, no Findings of Fact or Conclusions of Law are made herein. The

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parties' agreement and recommended disposition are set forth in Exhibit A, attached hereto.

Respectfully submitted and entered this 26<sup>th</sup> day of September, 2002.

  
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Hearing Officer for Florida Housing  
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**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

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FHFC CASE NO.: 2002-0027  
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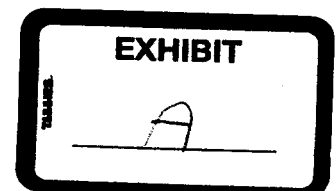
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**JOINT PROPOSED RECOMMENDED ORDER**

The parties jointly submit the following proposed findings of fact, conclusions of law, and recommendations:

1. Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”), is a public corporation organized under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.
  
2. On or before April 15, 2002, Petitioner, THE MERIDIAN HOUSING LIMITED PARTNERSHIP., (“Meridian”) submitted an Application to Florida Housing Finance Corporation (“Florida Housing”) for the award of funds from the State Apartment Incentive Loan (“SAIL”) program in the 2002 Universal Cycle.
  
3. SAIL funds are generated by documentary stamp taxes, and are apportioned among the counties, grouped as most, medium, and the least populated counties, and according to set-asides and special targeting goals set forth in the statute for the elderly, commercial fishing workers and farmworkers and families.



4. Florida Housing has established by rule a process (the “Universal Cycle”) in which applicants for any of the above-referenced Florida Housing multi-family rental programs submit a single application (the “Universal Cycle Application”) by which projects are evaluated, scored, and competitively ranked.

5. The 2002 Universal Cycle Application, adopted as Form UA1016 by R. 67-21.002(97) and 67-48.002(116), Fla.Admin.Code, consists of Parts I through VI and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application. Other parts allow applicants to earn points, however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score.

6. To provide a means of determining which applicant should rank higher when all threshold requirements were met and application scores were identical, Florida Housing awarded “tie-breaker” points for proposed developments which were in close proximity to certain services, including grocery stores. A development located within one mile of a grocery store is eligible to receive 1.25 proximity tie-breaker points.

7. After Petitioner submitted its 2002 Universal Cycle Application, on or before April 15, 2002, Florida Housing’s staff undertook preliminary scoring of the Application pursuant to Part V, Chapter 420, Florida Statutes, and Rule Chapter 67-48, Florida Administrative Code, completing the scoring process on May 13, 2002.

8. In its application, Meridian submitted documentation demonstrating that its development was located within one mile of the BJ’s Wholesale Club in Hollywood, Florida, and

Florida Housing in its preliminary scoring awarded Meridian the maximum 1.25 tie-breaker points for its proximity to a grocery store.

9. After completing preliminary scoring, Florida Housing's staff notified Petitioner of the results. Any applicant could question the scoring of Petitioner's Application if it believed Florida Housing had made a scoring error, by filing a Notice of Possible Scoring Error ("NOPSE") within ten calendar days after the date the applicant received the preliminary scores

10. A NOPSE was filed which stated that Florida Housing erred in awarding the tie-breaker points to Meridian, as BJ's Wholesale Club was not open to the public, but in order to shop required one to purchase a membership.

11. After reviewing each NOPSE that was timely received, on June 10, 2002, Florida Housing sent Petitioner any NOPSE relating to its Application submitted by other applicants, along with Florida Housing's position on any such NOPSE.

12. In response to the NOPSE, Florida Housing deducted the 1.25 tie-breaker points awarded to Meridian.

13. Petitioner could submit additional documentation, revised forms, and other information that it deemed appropriate to address any issue raised in any NOPSE, Florida Housing's position on each NOPSE and preliminary scoring. These documents, revised forms and other information were known as "cures" and were due on or before June 26, 2002 (the "cure period").

14. As its cure, MERIDIAN submitted information regarding another store, Just 99 Cents, which was also within one mile of its development.

15. All applicants had an opportunity to review cures submitted by Petitioner, and any applicant could submit to Florida Housing a Notice of Alleged Deficiencies (“NOAD”) challenging the Petitioner’s cures. No NOADs were filed regarding Meridian’s cure.

16. Florida Housing did not accept the Just 99 Cents as a grocery store, and did not award any tie-breaker proximity points to Meridian on that basis.

17. Following this process, Florida Housing on July 22, 2002, sent Pre-Appeal Scores and a Notice of Rights to Petitioner. The Notice of Rights notified Petitioner that it could contest Florida Housing’s actions by requesting an informal hearing before a contracted hearing officer.

18. Petitioner timely requested an informal hearing by filing its Petition for Informal Administrative Hearing on August 9, 2002.

19. After review of Meridian’s Petition, Florida Housing agreed that Just 99 Cents is a grocery store within the meaning and intent of Florida Housing’s criteria, consisting of over 4,500 square feet of air conditioned space devoted to retail self service sales of food and household goods.

### **CONCLUSIONS OF LAW**

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and R. 67-47, 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, Sec. 420.507 (22)(f), Fla. Stat., and has done so, Rule 67-48.004, Fla. Admin. Code.

3. Florida Housing’s application form and instructions, are adopted as a form, UA1016, by Rule 67-48.002(116), Fla. Admin. Code. Part III, Section A, subsection 11, paragraph (1), subparagraph (b), provides that a proposed development located within one mile of a grocery store will receive 1.25 tie-breaker points.

4. The application instructions at page 10 of UA1016 provide “[A] grocery store means a self-service retail market that sells food and household goods and has at least 4,500 square feet of air-conditioned space. Webster’s New Collegiate Dictionary defines “grocery” as “[C]ommodities sold by a grocer; a grocer’s store;” and defines “grocer,” as “[A] dealer in staple foodstuffs, eats produce, and dairy products and usually household supplies.”

5. Florida Housing interprets its definition to contain the ordinary meaning of “grocery” within its definition, and construes the term “grocery store,” to include the proposition that a grocery store will sell “. . . staple foodstuffs, eats produce, and dairy products and usually household supplies.” Just 99 Cents fully complies with Florida Housing’s construction of its application instructions.


6. An agency’s interpretation of its own rules will be upheld unless it is clearly erroneous, or amounts to an unreasonable interpretation, Legal Environmental Assistance Foundation, Inc., v. Board of County Commissioners of Brevard County, 642 So.2d 1081 Fla. 1994); Miles v. Florida A and M University, 813 So.2d 242 (Fla. 1<sup>st</sup> DCA 2002), even if the agency’s interpretation is not the sole possible interpretation, the most logical interpretation, or even the most desirable interpretation. Golfcrest Nursing Home v. Agency for Health care Administration, 662 So.2d 1330.

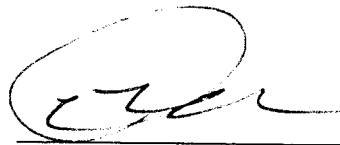
7. Florida Housing's interpretation of the term "grocery store," as applied to the Just 99 Cents store, supplied by Petitioner for purposes of awarding proximity tie-breaker points, is neither clearly erroneous nor unreasonable.

**Recommendation**

Based on the Findings of Fact and Conclusions of Law stated above, the parties recommend the Hearing Officer enter a Recommended Order finding that Petitioner, The Meridian is located within one mile of Just 99 Cents, a grocery store, and is thus entitled to the award of 1.25 tie-breaker points for that proximity.

Respectfully submitted this 13<sup>th</sup> day of September, 2002.

  
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## **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's Finance Corporation's Clerk at 227 North Bronough Street, Suite 5000, Tallahassee, Florida, 32301-1329, no later than 5:00 p.m. on Monday, October 7, 2002. 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.