

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PINNACLE GROVE, LTD.,

Petitioner,

v.

**FLORIDA HOUSING FINANCE
CORPORATION,**

Respondent.

**FHFC CASE NO. 2002-0033
Application No. 2002-0705H**

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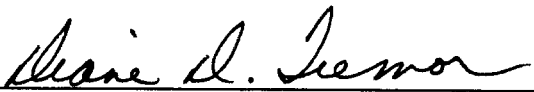
ORDER

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, an informal hearing was held before the undersigned Hearing Officer on September 3, 2002. Subsequent to the hearing, the parties reached an agreement resolving the sole issue in dispute, and submitted to the undersigned Hearing Officer a Joint Proposed Recommended Order, which is attached hereto as Exhibit A. In essence, the parties agreed that Petitioner has provided information, in its initial application and its cure documentation, to substantiate an eligible match contribution pursuant to HUD regulations which complies with the instructions to Part III, section F of the HOME Rental Application, and should be awarded five (5) points in that regard, resulting in a total score of eighty-six (86) points.

Based upon this agreement and the Joint Proposed Recommended Order, there is no need for additional Findings of Fact and/or Conclusions of Law, and the issues

raised in the Petition are moot. Accordingly, no Findings of Fact or Conclusions of Law are made herein. The parties' jointly executed Joint Proposed Recommended Order, is attached.

Respectfully submitted and entered this 26th day of September, 2002.


DIANE D. TREMOR
Hearing Officer for Florida Housing
Finance Corporation
Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555

Copies furnished to:

Wellington H. Meffert II
General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Laura J. Cox
Assistant General Counsel
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, FL 32301-1329

Gary J. Cohen, Esq.
Shutts & Bowen, LLP
1500 Miami Center
201 S. Biscayne Boulevard
Miami, Florida 33131

Wilbur E. Brewton, Esq.
Brewton, Plante & Plante, P.A.
225 South Adams Street, Suite 250
Tallahassee, FL 32301

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PINNACLE GROVE, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2002-0033
App No.: 2002-705H

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

JOINT PROPOSED RECOMMENDED ORDER

PINNACLE GROVE, LTD. ("Petitioner") and FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") hereby present the following Joint Proposed Recommended Order:

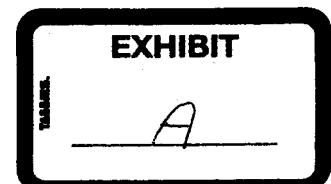
APPEARANCES

The representatives for the parties at the hearing are as follows:

For Petitioner:

Gary J. Cohen, Esq.
Shutts & Bowen, LLP
1500 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131

Wilbur E. Brewton, Esq.
Brewton, Plante & Plante, P.A.
225 South Adams Street, Suite 250
Tallahassee, Florida 32301



For Respondent:

Laura J. Cox, Esq.
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

JOINT EXHIBITS

The following exhibits were admitted into evidence:

- Exhibit 1: Prehearing Stipulation.
- Exhibit 2: Part III, section F of Pinnacle Grove's Application.
- Exhibit 3: Pinnacle Grove's Exhibit 28 to the Home Rental Application.
- Exhibit 4: Pinnacle Grove's initial Exhibit 41 to the Home Rental Application.
- Exhibit 5: Pages 17-18 of the Home Rental Application instructions.
- Exhibit 6: Pinnacle Grove's Cure form for Part III, section F of the Home Rental Application, including Pinnacle Grove's explanation of the cure (6 pages total).
- Exhibit 7: Florida Housing's final 2002 Home Rental Application Scoring Summary for Pinnacle Grove's Application (#2002-705H) dated July 22, 2002.
- Exhibit 8: HUD Regulation 24 CFR Parts 92.219 & 92.220.
- Exhibit 9: Fla. Admin. Code R. 67-48.004.
- Exhibit 10: Fla. Admin. Code R. 67-48.015.
- Exhibit 11: Pages 23-27 of the Home Rental Application instructions.
- Exhibit 12: Pinnacle Grove's Cure form for Part V, sections B and C of the Home Rental Application, including the forms, revised Exhibits 41, 42 and 45, and Pinnacle Grove's explanations of the cure (14 pages total).

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioner submitted an Application to Florida Housing for a loan of \$3,000,000.00 through the Home Investment Partnership Program

(HOME) in the 2002 Universal Cycle program. On July 22, 2002, Florida Housing notified Petitioner of the results of the scoring of Petitioner's Application and provided Petitioner with a Notice of Rights pursuant to sections 120.569 and 120.57, Fla. Stat. On August 12, 2002, Petitioner filed its Election of Rights. On August 13, 2002, Petitioner timely appealed the score and seeks an award of five (5) points. The parties agree that Petitioner should have been awarded five (5) points for Part III, Section F and Exhibit 28 of the Application.

FINDINGS OF FACT

1. On or before April 15, 2002, Petitioner submitted an Application to Florida Housing for an award of funds from HOME for the development of affordable rental housing in the 2002 Universal Cycle. (Exhibit 1).
2. Florida Housing is a public corporation organized under Chapter 420, Fla. Stat., to provide and promote the public welfare by administering the governmental function of financing and refinancing houses and related facilities in Florida in order to provide decent, safe and sanitary housing to persons and families of low, moderate and middle income. (Section 420.504 Fla. Stat., Exhibit 1).
3. Florida Housing receives its funds for the HOME program from an allocation from the HOME federal grant administered by the U.S. Department of Housing & Urban Development (HUD). Pursuant to the Notice of Fund Availability published in Florida Administrative Weekly on January 18, 2002, there was \$21,320,100 available to fund HOME Applications in the 2002 Universal Cycle. (Exhibit 1).

4. Pursuant to statutory mandate, Florida Housing has established by rule a competitive application process to evaluate, score and competitively rank all applicants. (Section 420.5089 (2), Fla. Stat. and Fla. Admin. Code R. 67.48 *et. al.*) Awards for HOME are included in a single application process (the “Universal Cycle”) governed by Fla. Admin. Code R. 67-48 *et. al.* (Exhibit 1).

5. The 2002 HOME Application, and instructions for completion, adopted as Form HOMER1015 by Fla. Admin. Code R. 67-48.002(61), contains Parts I through VI, 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. (Exhibit 1).

6. After Petitioner submitted its 2002 HOME Application, on or before April 15, 2002, Florida Housing’s staff commenced scoring the Application pursuant to Part V, Chapter 420, Fla. Stat., and Fla. Admin. Code R. 67-48 *et. al.* Florida Housing completed the preliminary scoring process on May 13, 2002. (Exhibit 1).

7. After performing preliminary scoring, Florida Housing’s staff notified Petitioner of the results. Petitioner’s Application failed to meet the requirements for two threshold items, each of which Petitioner remedied prior to final scoring. (Exhibit 1).

8. Any applicant could question the scoring of Petitioner’s Application, if it believed Florida Housing had made a scoring error, within ten calendar days after the

date the applicant received the preliminary scores by filing a Notice of Possible Scoring Error (“NOPSE”). (Exhibit 1).

9. Several NOPSEs were filed on or before May 24, 2002, questioning whether Petitioner provided documentation for its source of match funding as required. Florida Housing reviewed each NOPSE that was timely received. (Exhibit 1).

10. On June 10, 2002, Florida Housing sent Petitioner any NOPSE relating to its Application submitted by other applicants and Florida Housing’s position on any NOPSE. Florida Housing deducted the five (5) points previously awarded for match in the item designated as 9S on the 2002 HOME Rental Application Summary. (Exhibits 1 and 7).

11. Petitioner could submit additional documentation, revised forms, and other information that it deemed appropriate to address any curable 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”). (Exhibit 1).

12. After Petitioner submitted its cures, all applicants had an opportunity to review Petitioner’s cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies (“NOAD”) to challenge the Petitioner’s cures. Several NOAD were filed on Petitioner’s Application. (Exhibit 1).

13. Following this process, Florida Housing on July 22, 2002, sent Final Scores and a Notice of Rights to Petitioner, informing Petitioner that it could contest

Florida Housing's actions in accordance with the provisions of sections 120.569 and 120.57, Fla. Stat. (Exhibit 1).

14. Petitioner timely requested an informal hearing by filing its "Petition for Informal Proceeding in Accordance with sections 120.569 and 120.57(2), Florida Statutes", on August 13, 2002. (Exhibit 1).

15. One of Florida Housing's criteria for selecting HOME Developments is an applicant's ability to obtain a non-federal local match source pursuant to HUD Regulations. Pages 17-18 of the Home Rental Application instructions direct applicants to HUD Regulation 24 CFR Part 92.220 for information on eligible forms of matching contribution and how to calculate match. Florida Housing awards five (5) points to those applicants providing a narrative and documented evidence for eligible match sources. (Exhibits 5, 8 and 10).

CONCLUSIONS OF LAW

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

2. Florida Housing is authorized to institute a competitive application process pursuant to section 420.507 (22)(f), Fla. Stat., and has done so at Fla. Admin. Code R. 67-48.004.

3. Pursuant to Fla. Admin. Code R. 67-48.014 (7), in order for a Development to qualify for HOME funds, it shall, at a minimum, meet or comply with all applicable provisions of 24 CFR Part 92.

4. Section 220 of the National Affordable Housing Act of 1990 (NAHA), established the requirement that each HOME Participating Jurisdiction (“PJ”) ensure that non-federal contributions to its HOME-assisted developments equal 25% of the HOME funds drawn down during each fiscal year.

5. Pursuant to Fla. Admin. Code R. 67-48.015, Florida Housing is required by HUD to match non-federal funds to the HOME allocation as specified in the HUD Regulations. Florida Housing encourages contributions to all HOME assisted developments and awards points based on the percentage of non-federal local match source an Applicant is able to provide, pursuant to HUD Regulations, that will assist Florida Housing meet its match obligation to HUD.

6. Florida Housing has procedures and is required by section 420.5089(11) Fla. Stat. to monitor all projects funded under Florida Housing’s allocation of HOME program funds to ensure compliance with federal and state requirements. As a Participating Jurisdiction, Florida Housing must have the ability to ensure continued compliance with HUD regulations for housing that is not HOME-assisted but meets the HOME affordability requirements pursuant to 24 CFR Part 92.219.

7. The 2002 HOME Rental Application, Parts I through VI, and accompanying instructions are incorporated by reference into Fla. Admin. Code R. 67-48.002(61).

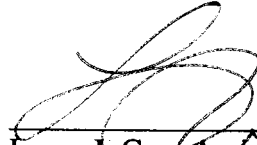
8. The instructions to Part III, section F of the HOME Rental Application require a narrative and documented evidence of each eligible match source as identified in HUD Regulations at 24 CFR Part 92.220. (Exhibit 5).

9. Petitioner has provided information, in its initial application and its cure documentation, for an eligible match contribution pursuant to HUD regulation 24 CFR Part 92.220 (a) (5), which complies with the instructions to Part III, section F of the HOME Rental Application. Florida Housing has the ability to monitor and control the housing to ensure continued compliance with HUD regulations for housing because Florida Housing is the issuer for the tentative allocation of tax-exempt bonds for this HOME match eligible housing.

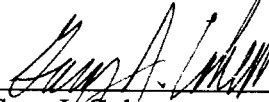
RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, Petitioner and Florida Housing recommend the Hearing Officer enter a Recommended Order affirming that Petitioner has satisfied the requirements of Part III, Section F of the HOME Rental Application and awarding five (5) points to Petitioner's score, resulting in a total score of 86 points.

Respectfully submitted this 20th day of September, 2002.



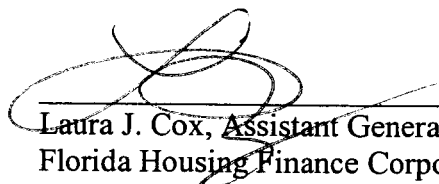
Laura J. Cox, Assistant General Counsel
Florida Bar No.: 0186170
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Telephone: (850) 488-4197
Facsimile: (850) 488-8113



Gary J. Cohen
Florida Bar No. 0353302
Attorney for Petitioner
Shutts & Bowen LLP
201 South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 347-7308
Facsimile: (305)347-7808

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Regular U. S. Mail to Gary J. Cohen, Shutts & Bowen, LLP, 201 South Biscayne Boulevard, 1500 Miami Center, Miami, Fl 33131; Wilbur E. Brewton, Brewton, Plante & Plante, P.A., 225 South Adams Street, Suite 250, Tallahassee, Florida 32301; and, via hand delivery to Diane Tremor, Hearing Officer, this 20th of September, 2002.



Laura J. Cox, Assistant General Counsel
Florida Housing Finance Corporation

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.