

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

ARROWHEAD APARTMENTS, LTD.

Petitioner,

vs.

Case No: \_\_\_\_\_

FLORIDA HOUSING FINANCE  
CORPORATION,

Respondent.

**PETITION FOR  
INFORMAL ADMINISTRATIVE HEARING**

Petitioner, ARROWHEAD APARTMENTS, LTD. ("Arrowhead Apartments"), pursuant to sections 120.569 and 120.57(2), Florida Statutes, and Rules 67-48.005 and 28-106.301, Florida Administrative Code ("F.A.C."), hereby requests an informal administrative hearing to challenge the scoring of its 2002 Universal Application by Respondent, the FLORIDA HOUSING FINANCE CORPORATION ("FHFC"), and states:

1. The name and address of the agency affected by this action are:

Florida Housing Finance Corporation  
City Center Building, Suite 5000  
227 N. Bronough Street  
Tallahassee, Florida 32301-1329

2. The address and telephone number of the Petitioner are:

Arrowhead Apartments, Ltd  
1520-360 Royal Palm Square Boulevard  
Fort Myers, Florida 33919  
Telephone #: (941) 275-8029

3. The name, address, telephone number, and fax number of the Petitioner's

representative, which shall be the address for service purposes during the course of this proceeding, are:

David A. Barrett  
Barrett and Associates, Lawyers  
P.O. Box 930  
Tallahassee, Florida 32302-0930  
Telephone #: 850/222-9000  
Fax #: 850/222-9892

**The Low-Income Housing Tax Credit Program**

To encourage the development of housing for low-income families, the Internal Revenue Code creates federal income tax credits that are allotted annually to each state based upon its population. State agencies then award these tax credits to developers of affordable, multi-family housing. Once awarded to a particular developer for a qualified low-income housing project, these annual tax credits are sold by the developer to generate much of the funding necessary for construction.

1. Pursuant to section 420.5099, Florida Statutes, FHFC is the designated “housing credit agency” for the State of Florida and administers the Low-Income Housing Tax Credit program (“the tax credit program”). Through this program, FHFC allocates Florida’s annual, fixed pool of federal tax credits to developers of affordable housing.

2. To assess the relative merit of proposed projects, FHFC has established a competitive application process pursuant to Chapter 67-48, F.A.C. Specifically, FHFC’s process involves: (a) FHFC’s annual publication and adoption by rule of an application package; (b) the submission of completed applications; (c) FHFC’s preliminary scoring and ranking of applications; (d) an initial administrative challenge in which an applicant may take issue with FHFC’s scoring of another

application by filing a Notice of Possible Scoring Error (“NOPSE”); (e) notice from FHFC to applicants of any resulting point deductions; (f) an opportunity to submit additional materials to “cure” items for which the applicant received less than the maximum available score; (g) a second administrative appeal process whereby an applicant may raise scoring issues arising from another applicant’s cure materials by filing a Notice of Alleged Deficiency (“NOAD”); (h) FHFC’s pre-appeal scoring and ranking of applications; (i) resolution of any remaining alleged scoring errors via informal or formal administrative hearings; and (j) final scores, ranking, and allocation of tax credits established by final order. See Rules 67-48.004 and 67-48.005, F.A.C.

**Arrowhead Apartments’s 2002 Universal Cycle Application**

3. Arrowhead Apartments (Application # 2002-140C) and others submitted applications for Universal credit funding in the 2002 Cycle. Arrowhead Apartments requested approximately \$950,000.00 in low income tax credits to help finance its project, Arrowhead Apartments, a 208-unit project in Collier County, Florida.

4. Following the submissions, FHFC staff evaluated all Universal Application submissions, with preliminary scores awarded to each pursuant to criteria contained in the application package. See Rule 67-48.004(8), F.A.C. (“The Application Package shall be evaluated and preliminarily scored using the factors specified in the Application Package”). Applicants then filed NOPSE’s challenging FHFC’s preliminary scoring of competing applications. On June 10<sup>th</sup>, 2002, after considering all NOPSE’s, FHFC notified applicants of any resulting point deductions, and cure materials were submitted to correct these alleged deficiencies. Applicants were given until July 8<sup>th</sup>, 2002, to file Notice of Alleged Deficiency (“NOAD”) forms against other applicants.

5. On July 22<sup>nd</sup>, 2002, after FHFC considered all NOAD’s, Arrowhead

Apartments and the other applicants received notice of their final scores. As more fully set forth below, FHFC made several errors in the final scoring of Arrowhead Apartments' application that diminish its chance to receive Low Income Housing Tax Credits. As such, Arrowhead Apartments' substantial interests have been materially and adversely affected by FHFC's actions.

#### **Site Control Documents and Project Size**

6. In its application, Arrowhead Apartments clearly indicated that the contemplated project was a 208 unit development on 16 acres of a 307 acre Planned Unit Development (PUD). Submitted with the application under Exhibits 22 and 28 were the site control documents and zoning information. Under the site control documents, Arrowhead Apartments submitted its Option to purchase the 16 acre parcel of the 307 acre whole parcel. Further, the zoning information for the entire parcel was also submitted with the application.

7. During the initial scoring, FHFC determined that the Option to purchase the 16 acre parcel was not sufficient to show site control. Thus, during the cure period, Arrowhead Apartments submitted a completed land contract on the same 16 acre parcel to show appropriate site control.

8. FHFC, upon the advice of Michael Maida, Esq. (by letter dated July 8, 2002), refused to accept the cure submitted by Arrowhead Apartments alleging that the Applicant had changed the project from a 307 acre project to a 16 acre project and that further, Arrowhead Apartments should have submitted revised zoning information, and therefore the application was inconsistent.

9. A review of Mr. Maida's letter, however, reveals that he failed to include or mention that the Option to purchase the 16 acre parcel (which was the first page of the site control

documents submitted with the application) was included in the application. Further, review of the initial scoring from FHFC shows that the alleged deficiency in the application was that an “Option” was not sufficient site control. Arrowhead submitted a completed contract on the 16 acre parcel to cure that deficiency, which FHFC accepted.

10. The site of the property did not change. Neither did the zoning information for the project. Applicant submitted its original application with a 16 acre site, and did not change the site, but only cured the “type” of site control document it submitted, pursuant to FHFC rules. FHFC accepted Applicant’s original zoning and site plan approval exhibits knowing that Applicant proposed to develop the Property on a 16 acre site, and since Applicant only changed the “type” of site control document for the same site, Applicant was not required to make a consistency change for exhibits 22 and 28. All information on the application was accurate, remains accurate, and has not changed in violation of any of FHFC’s policies. There is no inconsistency in Arrowhead Apartment’s application as alleged.

11. Arrowhead Apartments’ application has been rejected because of this alleged inconsistency.

12. Respectfully, FHFC’s position is in error.

13. Respectfully, for the reasons set forth above, the failure to accept Arrowhead Apartments’ zoning and site plan approval documents as being sufficient on this rationale is unreasonable, unjustified, and unlawful, and FHFC should accept Arrowhead Apartments’ application as being complete.


WHEREFORE, Petitioner, Arrowhead Apartments requests that:

a. FHFC accept Arrowhead Apartments zoning and site plan approval documents as

being consistent and complete;


- b. FHFC conduct an informal hearing on the matters presented in this Petition if there are no disputed issues of material fact to be resolved;
- c. FHFC forward this Petition to DOAH for a formal administrative hearing pursuant to section 120.57(1), Florida Statutes, if there are disputed issues of material to be resolved, or if non-rule policy forms the basis of any FHFC actions complained of herein;
- d. FHFC's designated hearing officer or an Administrative Law Judge, as appropriate, enter a Recommended Order accepting Arrowhead Apartments' application and site control as complete and scoring it accordingly;
- e. FHFC enter a Final Order accepting Arrowhead Apartments' application as complete and scoring it accordingly;
- f. Arrowhead Apartments be granted such other and further relief as may be deemed just and proper.

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

  
DAVID A. BARRETT  
FL BAR No. 0160419  
BARRETT & ASSOCIATES, LAWYERS  
P.O. Box 930  
Tallahassee, Florida 32302-0930  
850/222-9000  
850/222-9892 (Fax)  
Attorneys for Arrowhead Apartments, Ltd.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and a true and correct copy of the foregoing document were served via hand delivery to the **CORPORATION CLERK**, Florida Housing Finance Corporation, 227 N. Bronough Street, City Center Building, Suite 5000, Tallahassee, Florida, 32301-1329, on this 13th day of August, 2002.

  
DAVID A. BARRETT