

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

ARROWHEAD APARTMENTS, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2002-0041
App No.: 2002-140C

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

On September 18, 2002, an informal administrative hearing was held in this case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba.

APPEARANCES

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

For Petitioner:

David A. Barrett
Barrett & Associates
P.O. Box 930
Tallahassee, FL 32302-0930

For Respondent:

Paula C. Reeves
Office of General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, Florida 32301-1329

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EXHIBITS

1. Option to Purchase Real Property
2. Contract for Sale and Purchase (Cure)
3. 2002 Universal Scoring Summary
4. Site Plan Approval

An additional exhibit was proffered by the Respondent that demonstrated the structure of the contracts in this arrangement and was not allowed as evidence in this proceeding.

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioner submitted an application to Florida Housing for housing tax credits 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, Florida Statutes. On August 13, 2002, Petitioner filed its Election of Rights. On August 13, 2002, Petitioner timely filed its Petition for an Informal Administrative Proceeding. An informal hearing was conducted pursuant to Sections 120.569 and 120.57(2), Florida Statutes. There are no disputed issues of material fact.

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner failed to sufficiently demonstrate "site control," as required by Florida Housing over the real property upon which the proposed development is to be built. Specifically, did Petitioner demonstrate sufficient control of the site to ensure that 208 units of multi-family housing be built on the 16 acre site that was selected by Petitioner.

FINDINGS OF FACT

1. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation (“Florida Housing”) for the award of funds in the 2002 Universal Cycle.

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.

3. Pursuant to statutory mandate, Florida Housing has established by rule a competitive application process to evaluate, score and competitively rank all applicants. (See section 420.5089 (2), Fla. Stat. and Fla. Admin. Code R. 67.48 et. al.) Awards for the Universal Cycle are governed by Fla. Admin. Code R. 67.48 et. al.

4. After Petitioner submitted its 2002 Universal Application, Florida Housing’s staff commenced scoring the Applications pursuant to Part V, Chapter 420, Fla. Stat., and Fla. Admin. Code R. 67.48 et. al. Florida Housing completed the scoring process on May 13, 2002.

5. After performing preliminary scoring, Florida Housing’s staff notified Petitioner that Petitioner’s application failed to meet the requirements for site control.

6. Any applicant could question the scoring of Petitioners’ Applications if it believed Florida Housing had made a scoring error, within 10 calendar days after the date the applicant received the preliminary scores by filing a Notice of Possible Scoring Error (“NOPSE”).

7. Florida Housing reviewed each NOPSE that was timely received. Florida Housing sent Petitioners any NOPSE relating to its Application submitted by other applicants and Florida Housing's position on any NOPSE.

8. Petitioners could submit additional documentation, revised forms, and other information that they 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.

9. After Petitioners submitted their cures, all applicants had an opportunity to review Petitioners' cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge the Petitioners' cures. Numerous NOADs were filed on Petitioner's application questioning Petitioner's cures to the site control and zoning documentation.

10. Following this process, Florida Housing on July 22, 2002, sent Pre-Appeal 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.

11. Petitioner timely requested an informal hearing by filing their "Petition for Informal Proceeding in Accordance with sections 120.569 and 120.57(2), Fla. Stat., on August 13, 2002.

12. During preliminary scoring, Florida Housing placed Petitioner on notice of a defect in its option contract pertaining to the development site, to wit: "Applicant

only provided an option to purchase property for the proposed development which is not acceptable to demonstrate site control.”

13. An option contract is a contract to keep an offer open for a period of time, at an agreed upon amount, for which valuable consideration is paid. In the option contract, the parties agreed to, “grant Optionee [Arrowhead Apartments] density rights to construct 208 multi-family apartments at closing.”

14. In Petitioner’s attempt to cure the defect pertaining to specific performance, the parties to the contract changed sellers from “MDG Capital Corporation (Klohn, President)” to “James E. Williams, Jr., Diane Williams and Williams Farmers of Immokalee, Inc.” The buyers, however, remained the same. When there is a change in the parties to the contract for the sale of land, a new contract is created. Therefore, only the last contract is the one that controls the issues before the Hearing Officer.

15. The last contract included the missing provision for specific performance but Petitioner failed to include a clause that granted the density rights to construct 208 multi-family apartments to Petitioner on the 16 acres.

16. The 16 acre tract of land was part of a larger 307 parcel of land that comprised a Planned Unit Development (“PUD”).

17. As reflected in Exhibit 3, page 3, the revised exhibits were insufficient to demonstrate zoning and site approval specifically for the 16 acres, thereby creating a valid risk that another purchaser of another tract of land, within the 307 acres, may have been granted the right to build some or all of the 208 multi-family units.

CONCLUSION OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes and Florida Administrative Code R. 67-47, the Hearing Officer has jurisdiction over the parties to this proceeding.

2. Petitioner's Option Contract submitted with the Application under Exhibit 23 contained the option to purchase 16 acres of a 307 acre Planned Unit Development and at closing, granted Petitioner the density rights to construct 208 of the 900 dwelling units on the 16 acres.

3. Petitioner's Real Estate Contract directly with the landowner submitted as a cure to ensure a closing date until December 31, 2002, did not include a transfer of and density rights on the 16 acres.

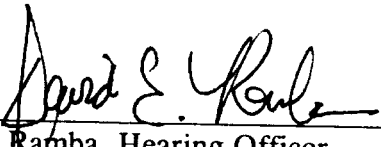
4. As Petitioner's cure did not include density rights, and the Local Government Verification of Status of Site Plan Approval for Multi-family Developments (Exhibit 22) and Local Government Verification that Development is Consistent with Zoning and Land Use Regulations (Exhibit 28) only referred to the total 307 acre project and 900 units for the entire development site, Petitioner did not demonstrate adequate site control.

RECOMMENDED:

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby
RECOMMENDED:

That Florida Housing Finance Corporation enters a final order affirming the rejection of Petitioner's application for failure to provide adequate site control for the subject project.

DATED this 23rd day of September 2002 in Tallahassee, Florida.



David E. Ramba, Hearing Officer

Copies Furnished:

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