

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

**BEAR LAKES ACQUISITION, LTD.,  
Renaissance Apartments,**

**Petitioner,**

**v.**

**FHFC CASE NO. 2002-0047  
Application No. 2002-044B**

**FLORIDA HOUSING FINANCE  
CORPORATION,**

**Respondent.**

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**RECOMMENDED ORDER**

Pursuant to notice and Sections 120.569 and 120.57(2), Florida Statutes, the Florida Housing Finance Corporation, by its duly designated Hearing Officer, Chris H. Bentley, held an informal hearing in Tallahassee, Florida, in the above styled case on September 19, 2002.

**APPEARANCES**

For Petitioner, Bear Lakes  
Acquisition, Ltd.:

Steve Pfeiffer, Esquire  
David A. Theriaque, Esquire  
Theriaque & Pfeiffer  
1114 East Park Avenue  
Tallahassee, FL 32301

For Respondent, Florida Housing  
Finance Corporation:

Wellington H. Meffert II  
General Counsel  
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## **STATEMENT OF THE ISSUE**

There are no disputed issues of material fact. The issue in this case is whether Petitioner met the requirements of the rules of Respondent embodied in Part III.C.2.b., of the Universal Application Instructions and Part III.C.2.b. of the Universal Application.

## **PRELIMINARY STATEMENT**

At the informal hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 6. Joint Exhibit 6 is a PREHEARING STIPULATION containing STIPULATED FACTS. Joint Exhibit 6 basically describes the application process, and the circumstances regarding the scoring of Petitioner's Application with regard to the issue in dispute. Joint Exhibit 6 is attached to this Recommended Order as Attachment A, and the STIPULATED FACTS recited therein are incorporated in this Recommended Order as Findings of Fact as those set forth herein.

Subsequent to the hearing, the parties timely submitted Proposed Recommended Orders.

## **FINDINGS OF FACT**

Based upon the undisputed facts and documents received into evidence at the hearing, the following relevant facts are found:

1. The STIPULATED FACTS stipulated to in Joint Exhibit 6 are hereby adopted as findings of fact as those set out in full herein. Joint Exhibit 6 is attached as Exhibit A.

2. In its "Cure Form" for Exhibit 23, Petitioner restated Florida Housing's objection regarding the fact that pages 2 and 3 of Exhibit "A" to the deed were not included, and stated:

The Applicant is submitting page 2 and 3 in Part III, Section 3, Subsection 2, Exhibit 23, although they were intentionally left blank, to satisfy evidence of site control and mete threshold.

3. Petitioner then provided the two pages as it stated, intentionally leaving them blank.

4. As stated at hearing, Respondent does not dispute that Petitioner did not fail to include pages 2 and 3 of Exhibit "A" to the warranty deed in an effort to confuse the issue of site control, but instead did so in an effort to provide accurate, complete, and consistent data regarding site control.

5. Parties stipulate that Petitioner owns the entire site, and nothing in the two pages of the exhibit negates that or relates in any manner to Petitioner's rights to conduct development activities on the total site.

6. At the Final Hearing, the parties stipulated that Petitioner did not provide the entire deed to Respondent behind Exhibit 23 of the Application either in the original Application or in the cure documents.

## CONCLUSIONS OF LAW

7. Pursuant to Sections 120.569 and 120.57(2), Florida Statutes, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner's substantial interests are affected by the proposed action of the Respondent. Therefore, Petitioner has standing to bring this proceeding.

8. Respondent has the statutory responsibility to administer the Multi-Family Mortgage Revenue Bonds ("MMRB") Program under Chapter 420, Part V, Florida Statutes. Petitioner is an agency within the meaning of the Florida Administrative Procedure Act, Section 420.504(2), Florida Statutes, and has authority to conduct informal hearings in proceedings so long as there are no disputed issues of material fact under Sections 120.569 and 120.57(2), Florida Statutes.

9. Respondent has adopted Chapter 67-21, Florida Administrative Code, in order to administer the MMRB Program. Respondent has adopted as a rule the "Universal Application Instructions" that cover applications for funding under the MMRB Program. Respondent has also adopted as a rule its "Universal Application" (See Rule 67-21.002(97) of the Universal Application Instructions) that relates to applications for funding under the MMRB Program as a rule.

10. Part III.C.2.b. states in pertinent part that:

Applicant must demonstrate site control by providing the documentation required in Sections [b.] as indicated below. The required documentation must be provided behind a tab labeled "Exhibit 23". . . .

b. The deed or certificate of title must be recorded in the county in which the property is located.

11. Part III.C.2.b, of the Universal Application, which has been adopted as a rule, provides in pertinent part that:

Applicant must demonstrate site control by providing the following documentation:

b. Provide a recorded deed . . . showing the Applicant as the sole Grantee behind a tab labeled "Exhibit 23".

12. Rule 67-21.003(13), Florida Administrative Code, provides in pertinent part that:

The corporation shall reject an Application if,  
(b) The Applicant fails to achieve the threshold requirements as detailed in these rules, the applicable Application and Application instructions;  
(c) The Applicant fails to provide all required copies and file all applicable Application pages and exhibits that are provided by the Corporation and adopted under this rule chapter . . . .

13. As set forth above, Rule 67-21.003(13), Florida Administrative Code, requires that Respondent "shall reject an application" if the Applicant fails to achieve the threshold requirements and/or if an Applicant fails to provide all required exhibits required by Respondent in its rules.

14. The Universal Application, which has been adopted as a rule, requires that an applicant such as Respondent provide a recorded deed showing the applicant as the sole grantee in an exhibit called "Exhibit 23." The facts in this case establish that the Petitioner did not provide a recorded deed in "Exhibit 23" to the application

nor in its Cure documents. The Petitioner provided three pages of a five page deed. Providing excerpts from a deed does not meet the requirement in the rules set forth in the Universal Application of providing a “recorded deed.”

The Universal Application Instructions as noted above, require that in “Exhibit 23” to the application an applicant must provide documentation that the deed referenced in the Universal Application is recorded in the county in which the property is located. The facts of this case establish that Exhibit 23 to the application only contained three pages of a five page instrument. The Petitioner did not provide the missing two pages of the five page deed. Instead, the facts show that Petitioner provided two blank pages not identical to the two missing pages. The facts further establish that there is no evidence as to whether the two missing pages of the five page deed are recorded in the Public Records of the county in which the property is located. While the evidence establishes that three pages of a five-page deed were recorded in the proper county, there is no evidence that the deed, which is a five-page instrument is recorded in the proper county. Indeed, the record of this proceeding is devoid of any information whatsoever of a factual nature with regard to the contents of the two missing pages of the deed.

14. Although the parties herein have stipulated and agreed as a matter of fact that Petitioner owns the entire site and that nothing in the missing two pages negates that fact or relates in any manner to the Petitioner’s right to conduct development activities on the total site it is concluded as a matter of law that Rule 67-21.003(13),

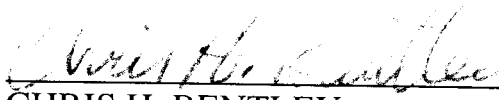
Florida Administrative Code, governs the resolution of this dispute. That Rule unequivocally requires that the Respondent “shall reject” an application if an applicant fails to provide all required pages and exhibits as provided in its rules. As set forth above, the Universal Application and Universal Application Instructions require, in this instance, that a complete recorded deed must be included within “Exhibit 23” of the Application or the Cure documents. Excerpts from a recorded deed do not constitute “a recorded deed” as required by the universal application. Either their documentation showing that excerpts from a deed were recorded in the county in which the property is located demonstrate that the entire deed was recorded in the county in which the property is located. Therefore, the Petitioner has failed to meet the requirements of Rule 67-21.003(13), Florida Administrative Code, as set forth herein.

### **RECOMMENDATION**

Based upon the Findings of Fact and Conclusions of Law recited herein, it is RECOMMENDED that:

Petitioner has failed to meet the threshold requirement set forth in Part III.C. of the Universal Application and of Universal Application Instructions and, therefore, pursuant to Rule 67.21.003(13), Florida Administrative Code, the Respondent should reject Petitioner’s application.

Respectfully submitted and entered this   1   day of October, 2002.

  
CHRIS H. BENTLEY  
Hearing Officer for Florida Housing  
Finance Corporation  
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FHFC Case No. 2002-0047

Application No. 2002-044B

**PREHEARING STIPULATION**

The Parties, Petitioner, BEAR LAKES ACQUISITION, LTD, (“Bear Lakes” or “Petitioner”) and Respondent, FLORIDA HOUSING FINANCE CORPORATION (“Florida Housing”), by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 2:00pm, September 19, 2002, in Tallahassee, Florida, and state as follows:

**STIPULATED FACTS**

The parties have agreed to and stipulate to the following facts:

1. On or before April 15, 2002, Petitioner submitted to Florida Housing a Multifamily Mortgage Revenue Bond (“MMRB”) application for the 2002 funding cycle (“Application”), to obtain below-market interest rate bonds and accompanying non-competitive housing tax credits, to aid in the financing of an apartment complex to be named Renaissance Apartments, located in Palm Beach County, Florida.
2. Petitioner, Bear Lakes Acquisitions, Ltd. (“Bear Lakes Creek”) is a Florida for-profit Limited Partnership with its address at 2121 Ponce deLeon

**ATTACHMENT A**

*Exh. 6*

Boulevard, PH II, Coral Gables, Florida 33134, and is in the business of providing affordable rental housing units.

3. 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.

4. The Multifamily Mortgage Revenue Bond (MMRB) program is administered by Florida Housing, and annually awards affordable housing developers low interest loans and non-competitive tax credits for the purposes of financing the acquisition and rehabilitation of low and very low income rental housing units. To encourage the development of affordable rental housing for low-income families, Florida Housing provides low-interest mortgage loans to developers of qualified multi-family housing project. In exchange for an interest rate lower than conventional market rates, the developer agrees to “set-aside” a specific percentage of the rental units for low-income tenants.

5. Because Florida Housing’s available pool of tax-exempt bond financing is limited, qualified projects must compete for this funding. To determine which proposed projects will put the available funds to best use, Florida Housing has established a competitive application process to assess the relative merits of proposed projects.

6. Florida Housing’s competitive application process for MMRB financing is included with other financing programs within a single application process (the

“Universal Application”) governed by rule Chapters 67-21 and 67-48, Florida Administrative Code.

7. The 2002 Universal Application, and instructions for completion, adopted as Form UA1016 by R. 67-48.002(61) and 67-21.002(116), Fla. Admin. Code, 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.

8. For the 2002 Universal Application cycle, applicants who complete and submit form UA1016 with attachments are given a preliminary score by Florida Housing.

9. After Petitioner submitted its 2002 MMRB Application, Florida Housing's staff commenced scoring the Application pursuant to Part V, Chapter 420, Fla. Stat., and Rule Chapters 67-21 and 67-48, Fla. Admin. Code. Florida Housing completed the scoring process on May 13, 2002. After performing preliminary scoring, Florida Housing's staff advised Bear Lakes by letter that its preliminary score was 65 of a possible 71 points, but that the Application had failed to meet threshold site control requirements.

10. The instructions for the universal application UA1016 at page 17, advise applicants *inter alia*, that in order to demonstrate that they meet the threshold requirement for site control of III.C.2., “The deed or certificate of title must be recorded in the county in which the property is located.”

11. 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").

12. Florida Housing reviewed each NOPSE that was timely received. 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.

13. A NOPSE filed on May 24, 2002, noted that "Attachment 'A'," to the warranty deed, marked as "Page 1 of 3," consisted of only one page. The NOPSE was sent to Petitioner on June 10, 2002. (The item is designated as 1T on Florida Housing score sheets.)

14. Petitioner included a copy of a warranty deed as Exhibit 23 to the application, which consisted of three pages, each bearing the recondition imprint of the Palm Beach County Clerk's office, to wit: ORB 12320 Pg. 170, 171, and 172. The page marked ORB 12320 Pg. 172 consisted of a one page property description captioned "Exhibit 'A'" and marked "Page 1 of 3."

15. Florida Housing determined that the NOPSE correctly observed that Petitioner's application failed to meet the threshold requirements for demonstrating site control at Part III, Section 3, Subsection 2, as pages 2 of 3 and 3 of 3 to Exhibit "A," the recorded legal description of the subject parcel, were missing.

16. 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 Acres" and were due

on or before June 26, 2002 (the Acre period"). Any Applicant could submit to Florida Housing of a NOPSE.

17. Petitioner timely filed its cure for Part III, Section C, Subsection 2, which consisted of its cure form, along with two pages, marked "Exhibit A Page 2 of 3," and "Exhibit A Page 3 of 3." Both pages bore the statement, "This Page Intentionally Left Blank." Neither page bore evidence of recondition in the Official Records of Palm Beach County. (Ech. )

18. Florida Housing determined, based on Exhibit 23 to Petitioner's application, and on the cure submitted, that Petitioner's submission was incomplete, as Florida Housing interpreted its requirement that the deed be recorded to require that pages of the deed, be provided including the entire exhibit.

19. After Petitioner submitted its cures, all applicants had an opportunity to review the cures. Any applicant could submit to Florida Housing a Notice of Alleged Deficiencies ("NOAD") to challenge the Petitioner's cures. There were no NOADs filed regarding Petitioner's application.

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

JOINT EXHIBITS

The parties agree to the admission of the following joint exhibits at hearing:

Exh. 1: Page 17 of Instructions to Universal Application, Form US 1016;

Exh. 2: Exhibit 23 to Petitioner's Application (3 pages)

Exh. 3: Cure form for item III.C.3 (4 pages)

Exh. 4: Florida Housing score sheet for Petitioner's Application

Exh. 5: NOPSE filed on item III.C.3 (4 pages)

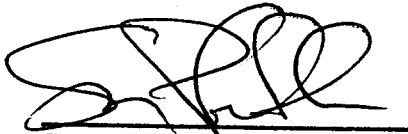
Exh. 6: Prehearing Stipulation

PETITIONER'S EXHIBITS

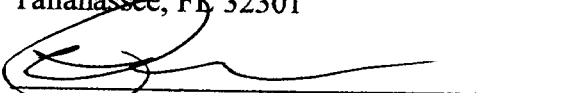
Exh. 7: Application materials from Florida Housing Application File 2002-166BS.

Exh. 8: The Petition for Informal Administrative Proceeding.

Respectfully submitted this 19<sup>th</sup> day of September, 2002.



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Wellington H. Meffert II, General Counsel  
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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.