STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PROVIDENCE RESERVE II APARTMENTS,

Petitioner,

v.

FHFC CASE NO.: 2002-0054
App No.: 02-117BS

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

FINAL ORDER

This cause came before the Board of Directors of the Florida Housing Finance Corporation ("Board") for consideration and final agency action on October 10, 2002. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing Finance Corporation ("Florida Housing") to compete for an allocation of housing tax credits and Multi-Family Bond funds. Petitioner timely filed a Petition for Review, pursuant to Sections 120.569 and 120.57(1), Florida Statutes, (the "Petition") challenging Florida Housing's scoring on parts of the Application. Florida Housing reviewed the Petition pursuant to Section 120.569(c), Florida Statutes, and determined that there were no disputed issues of material fact. An informal hearing was held in this case on September 20, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, Christopher H. Bentley. Petitioner and Respondent timely filed Proposed Recommended Orders.

After consideration of the evidence, arguments, testimony presented at hearing, and the Proposed Recommended Orders, the Hearing Officer issued a Recommended Order. A true and

correct copy of the Recommended Order is attached hereto as "Exhibit A." The Hearing Officer recommended Florida Housing enter a Final Order affirming that Petitioner will not be awarded any tie-breaker points for the proximity of its development to a grocery store.

The findings and conclusions of the Recommended Order are supported by competent substantial evidence.

In accordance with the foregoing, it is hereby **ORDERED:**

1. The findings of fact of the Recommended Order are adopted in full as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Final Order.

2. The conclusions of law of the Recommended Order are adopted in full as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Final Order.

3. The Hearing Officer's recommendation that a Final Order be entered affirming that Petitioner will not be awarded any tie-breaker points for the proximity of its development to a grocery store is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner will not be awarded any tie-breaker points for the proximity of its development to a grocery store

DONE and ORDERED this 10th day of October, 2002.

FLORIDA HOUSING FINANCE CORPORATION

By: _____
Chairperson

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA HOUSING FINANCE CORPORATION, 227 NORTH BRONOUGH STREET, SUITE 5000, TALLAHASSEE, FLORIDA 32301-1329, AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 300 MARTIN LUTHER KING, JR., BLVD., TALLAHASSEE, FLORIDA 32399-1850, OR IN THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

Copies to:

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Michael P. Donaldson, Esq.
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

PROVIDENCE RESERVE II APARTMENTS,

Petitioner,

v.

FHFC CASE NO. 2002-0054
Application No. 2002-0117BS

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

_____/

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 20, 2001.

APPEARANCES

For Petitioner, Providence Reserve II Apartments	Michael P. Donaldson, Esq. Carlton Fields P. O. Drawer 190 Tallahassee, FL 32302-0190
For Respondent, Florida Housing Finance Corporation:	Laura J. Cox Assistant General Counsel Florida Housing Finance Corporation 227 North Bronough Street, Suite 5000 Tallahassee, FL 32301-1329

EXHIBIT
A

STATEMENT OF THE ISSUE

There are no disputed issues of material fact. The issue in this case is whether Petitioner is entitled to tie-breaker proximity points based on the proximity of its proposed project to a grocery store.

PRELIMINARY STATEMENT

At the Informal Hearing, the parties stipulated to the admission into evidence of Joint Exhibits 1 through 5. Joint Exhibit 1 is a PREHEARING STIPULATION containing STIPULATED FACTS in paragraphs numbered 1 through 20 to which the parties have agreed. The PREHEARING STIPULATION, Joint Exhibit 1, is attached to this Recommended Order as Attachment A, and the facts recited in paragraphs 1 through 20 therein are herein incorporated in this Recommended Order.

Subsequent to the hearing, the parties timely submitted their 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. STIPULATED FACTS 1 through 20 in the PREHEARING STIPULATION, Joint Exhibit 1, are hereby adopted as FINDINGS OF FACT as though set forth in full herein.

2. At the Final Hearing, held pursuant to Chapter 120.57(2), Florida Statutes, there were no disputed issues of material fact raised by either party.

3. Petitioner is a Florida for-profit limited partnership in the business of providing affordable rental housing units.

4. In its Initial Application, in response to the question found in Part III. A.11.b.(1), page 8, of the Initial Application, Petitioner answered "yes" that the Development would be located within five miles of a grocery store named Winn Dixie located at 3165 U. S. Highway 98 North, Lakeland, Florida, 33805. The address given for the Winn Dixie is not included on Street Atlas USA, Version 9.0.

5. Petitioner included Exhibit 21 in its Initial Application in response to the requirements set forth in the Universal Application at Part III.A.11.a. Exhibit 21 to Petitioner's Initial Application is entitled "SURVEYOR CERTIFICATION". Exhibit 21 to Petitioner's Initial Application does not contain either the name of a grocery store nor the location coordinates of any grocery store.

6. The Universal Application Instructions and the Universal Application, both of which have been adopted as rules, require that if a grocery store named in answer to Part III.A.11.b.(1) of the Universal Application is not included on Street Atlas USA, Version 9.0, the SURVEYOR CERTIFICATION, which is Exhibit 21 to the Universal Application, must contain the name of the grocery store along with its latitude and longitude and a certification by a surveyor to that information. As noted

above, Petitioner's Exhibit 21 to its Initial Application did not contain the name of any grocery store nor the latitude and longitude coordinates of any grocery store.

7. When Respondent preliminarily ruled Exhibit 21 deficient because the grocery store address in its Initial Application was not included on Street Atlas USA, Version, 9.0 and Exhibit 21 did not provide latitude and longitude coordinates, the Petitioner submitted a CURE FORM which included a Revised SURVEYOR CERTIFICATION, Exhibit 21 to the Universal Application.

8. The Revised Exhibit 21 submitted by Petitioner as a CURE, names latitude and longitude coordinates for a grocery store named "Publix Super Markets." The Revised Exhibit 21 submitted as a CURE, contains a certification by a surveyor as to the truth and correctness of the statements therein.

9. Petitioner did not submit during the CURE process a revised Page 8 of its Universal Application. Therefore, on page 8 of Petitioner's Application at Part III.A.11.b.(1), Petitioner asserts that the name of the grocery store for which it claims proximity tie-breaker points is "Winn Dixie."

10. There is on the face of Petitioner's Application an inconsistency with regard to Part III.A.11.b.(1) on Page 8 of the Universal Application. Petitioner's Application, as revised in the CURE process, states that the name of the grocery store upon which Petitioner purports to rely for tie-breaker proximity points is named "Winn Dixie." However, Revised Exhibit 21 to Petitioner's Application states that

the "Publix Super Markets" is the grocery store upon which Petitioner relies for tie-breaker proximity points.

CONCLUSIONS OF LAW

11. Pursuant to Sections 120.569 and 120.57(2) Florida Statutes, and Chapter 67-48 and 67-21, Florida Administrative Code, the Hearing Officer has jurisdiction of the parties and the subject matter of this proceeding. The Petitioner's substantial interests are determined by the proposed action of the Respondent. Therefore, Petitioner has standing to bring this proceeding.

12. There being no disputed issues of material fact, this matter is properly conducted as an informal proceeding pursuant to Section 120.569 and 120.57(2), Florida Statutes.

13. The applicable rules for this proceeding are Chapters 67-21 and 67-48, Florida Administrative Code. With regard to the issues involved in this case, the two chapters are essentially identical in their requirements.

14. Petitioner's rules require that:

> Where revised or additional information submitted by the Applicant creates an inconsistency with another item in that Application, the Applicant shall also be required in its submittal to make such other changes as necessary to keep the Application consistent as revised. Sections 67-21.003(6) and 67-48.004(6), F.A.C.

15. Petitioner's rules provide that:

> . . . inconsistencies created by the Applicant as a result of information provided pursuant to Subsection (6) above will still be justification for rejection or reduction of points as appropriate. Section 67-21.003(9) and 67-48.004(9), F.A.C.

16. Based on the foregoing rules and the facts of this case, it is apparent that the Petitioner has created an inconsistency in its Application with regard to the identity of the grocery store for which it seeks tie-breaker proximity points. Therefore, it is reasonable for Respondent to not award any proximity tie-breaker points to Petitioner for the proximity of its development to a grocery store.

RECOMMENDATION

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

Petitioner not be awarded any tie-breaker points for the proximity of its development to a grocery store.

Respectfully submitted and entered this 22nd day of October, 2002.

CHRIS H. BENTLEY
Hearing Officer for Florida Housing Finance Corporation
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PREHEARING STIPULATION

The Parties, by and through undersigned counsel, submit this Prehearing Stipulation for purposes of expediting the informal hearing scheduled for 2:00pm, September 20, 2002, in Tallahassee, Florida, and state as follows:

STIPULATED FACTS

The parties, PROVIDENCE RESERVE II APARTMENTS ("Petitioner"), and FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing"), hereby stipulate and agree to the following facts:

1. On or before April 15, 2002, Petitioner submitted its Application to Florida Housing for an award of funds from the Multi-Family Mortgage Revenue Bond (MMRB) program and an award from the State Apartment Incentive Loan ("SAIL") program 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

ATTACHMENT A

EXHIBIT
tabbies
1

and refinancing houses and related facilities in Florida in order to provide decent, safe and affordable housing to persons and families of low, moderate and middle income.

3. 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 projects. 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.

4. Through its MMRB program, Florida Housing funds these mortgage loans through the sale of tax-exempt and taxable bonds. Applicants then repay the loans from the revenues generated by their respective projects.

5. Through the SAIL program, Florida Housing funds low-interest mortgage loans to developers from various sources of state revenue, which are generally secured by second mortgages on the property.

6. Because Florida Housing's available pool of tax-exempt bond financing and SAIL funds 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.

7. Pursuant to statutory mandate, Florida Housing has established by rule an application process to evaluate, score and competitively rank all applicants. (See Section 420.507 (22) (f) Fla. Stat., Fla. Admin. Code R. 67-21 *et. al.* and 67-48 *et. al.*) Awards for the

MMRB and SAIL programs are included in a single application process (the "Universal Application") governed by Fla. Admin. Code R. 67-21 *et. al.* and 67-48 *et. al.*

8. The 2002 Universal Application, parts I through VI, and accompanying instructions are incorporated as form "UA1016" by reference into Fla. Admin. Code R. 67-21.002(97), and 67-48.002(116). 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, regardless of numeric score. 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.

9. Florida Housing's staff commenced scoring the Petitioner's Application pursuant to Chapter 420, Fla. Stat. Fla. Admin. Code R. 67-21 *et. al.* and 67-48 *et. al.* Florida Housing completed the scoring process on May 13, 2002.

10. After performing preliminary scoring, Florida Housing's staff notified Petitioner of the results by letter that its preliminary score was 66 out of a possible 71, and had earned 3.75 proximity tie-breaker points. 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").

11. 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.

12. 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").

13. 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.

14. 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 Section 120.569 and 120.57 Fla. Stat.

15. 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.

16. Due to the possibility of applicants receiving a perfect score of 71 in this highly competitive arena, Florida Housing created a number of tie-breaker points. One of the tie-breaker points pertains to how close a grocery store is located to the proposed housing development.

17. Generally, the closer the grocery store is to the proposed development, the higher the points, or fraction of a point. If the grocery store is within a mile, the proximity tie-breaker point awarded would be 1.25; within one to two miles, the proximity tie-breaker point would be

1; within two to three miles, the proximity tie-breaker point would be .75; within three to four miles, the tie-breaker point would be .5; and within four to five miles, the tie-breaker point would be .25.

18. In its initial scoring, Florida Housing did not award any proximity tie-breaker points to Petitioner for a grocery store.

19. In response to the preliminary scoring, Petitioner submitted cure materials including a revised Surveyor Certification to indicate a Publix Supermarket was located within 1 mile. However, the information in the cure materials differed from the original Application. As Petitioner submitted the Publix Supermarket in its cure, there was no opportunity to correct any mistakes or inconsistencies in the cure itself.

20. In response to a NOAD filed by a competing applicant, Florida Housing determined that Petitioner was ineligible for proximity tie-breaker points for the grocery store because the "Grocery store listed in Application does not match grocery store listed on Surveyor Certification."

JOINT EXHIBITS

The parties proffer the following joint exhibits:

Exhibit 1: Prehearing Stipulation.

Exhibit 2: Part III, Section A.11 (b) (1) on page 8 of Petitioner's initial Application (#2002-117BS).

Exhibit 3: Exhibit 21 of Petitioner's initial Application. (3 pages total).

Exhibit 4: Cure materials filed by Petitioner pertaining to Part III, Section A.11 (b) (1) and Exhibit 21 of the Application. (4 pages total).

Exhibit 5: 2002 Universal Scoring Summary for Petitioner's Application dated July 22, 2002.

Respectfully submitted this 20th 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.