

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PINNACLE PARK, LTD.,

FHFC CASE NO.: 2005-008UC
APPLICATION NO. 2005-100C

Petitioner,

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 August 25, 2005. On or before February 16, 2005, Pinnacle Park, Ltd. (“Petitioner”) submitted its 2005 Universal Cycle Application (“Application”) to Florida Housing Finance Corporation (“Florida Housing”) to compete for funding/allocation from the Low Income Housing Tax Credits Program. Petitioner timely filed its Petition Requesting Informal Hearing and Grant of the Relief Requested and its Amended Petition Requesting Informal Hearing and Grant of the Relief Requested, pursuant to Sections 120.569 and 120.57(2), Florida Statutes, (the “Petition”) challenging Florida Housing’s scoring on parts of the Application. An informal hearing was held in this case on July 12, 2005, in Tallahassee, Florida, before Florida Housing’s designated Hearing Officer, David Ramba. Petitioner and Respondent timely filed a Joint Proposed Recommended Order.

After consideration of the evidence, arguments, testimony presented at hearing, and the

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FINANCE CORPORATION

1. Petitioner should have 5 points added to its final score on the 2005 Universal Application, for a total final score of 66;
2. Petitioner should receive 7.5 tie-breaker measurement points; and,
3. Petitioner's 2005 Universal Application should be deemed to have met all threshold requirements.

RULING ON THE RECOMMENDED ORDER

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

ORDER

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

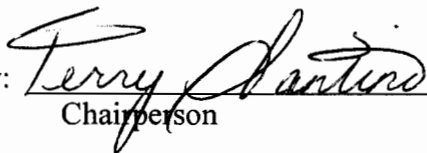
1. The findings of fact of the Recommended Order are adopted as Florida Housing's findings of fact and incorporated by reference as though fully set forth in this Order.
2. The conclusions of law of the Recommended Order are adopted as Florida Housing's conclusions of law and incorporated by reference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

Accordingly, it is found and ordered that Petitioner's Application is scored as follows:

1. Petitioner's Application will receive 5 points added to its final score on the 2005 Universal Application, for a total final score of 66;
2. Petitioner's Application will receive 7.5 tie-breaker measurement points; and
3. Petitioner's Application should be deemed to have met all threshold requirements.

DONE and ORDERED this 25th day of August, 2005.

FLORIDA HOUSING FINANCE
CORPORATION

By: 
Chairperson

Copies to:

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

Stephen P. Auger
Deputy Development Officer
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Gary J. Cohen
Shutts & Bowen
201 S. Biscayne Blvd.
Suite 1508
Miami, FL 33131

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.

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

PINNACLE PARK, LTD.,

FHFC CASE NO.: 2005-008UC
APPLICATION NO. 2005-100C

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to Notice, an informal administrative hearing was scheduled for this case in Tallahassee, Florida, before Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba. In lieu of a hearing, the parties filed a Joint Proposed Recommended Order.

APPEARANCES

For Petitioner:

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

For Respondent:

Hugh R. Brown, Deputy General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street
Suite 5000

STATEMENT OF THE ISSUE

The issue in this case is whether Florida Housing Finance Corporation (“Florida Housing”) erred when it disqualified applicant’s Local Government Contribution.

PRELIMINARY STATEMENT

Pinnacle Park, Ltd., (“Pinnacle Park”) applied for funding during the 2005 Universal Cycle, seeking an allocation of Low Income Housing Tax Credits. Pinnacle Park was notified by Florida Housing Finance Corporation (“Florida Housing”) of its final scores on or about May 25, 2005. On or about June 9, 2005, Pinnacle Park timely filed a Petition for an Informal Administrative Hearing under Sections 120.569 and 120.57, Florida Statutes, disputing the Florida Housing Finance Corporation’s (“Florida Housing”) final scoring of its 2005 Universal Cycle Application for the proposed Pinnacle Park apartment complex. After review of the Petition, Florida Housing granted Pinnacle Park an informal hearing in this matter. Pinnacle Park sought a determination that the Petitioner had demonstrated the validity of a Local Government Contribution. The parties agreed at hearing that Pinnacle Park demonstrated the validity of this contribution.

FINDINGS OF FACT

1. Petitioner, Pinnacle Park, Ltd., is a Florida limited partnership engaged in the business of developing affordable housing in State of Florida.
2. Respondent, Florida Housing Finance Corporation, is a public corporation under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide

submits a single application (the “Universal Cycle Application”) by which projects are evaluated, scored and competitively ranked.

4. The 2005 Universal Cycle Application, adopted as Form UA1016 (Rev. 2-05) by Rules 67-21.002(96) and 67-48.002(111), Fla. Admin. Code, consists of Parts I through V and instructions, 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 as well as “tie-breaker points”; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score.

5. On or before February 16, 2005, Pinnacle Park submitted an application to Florida Housing in which it sought an allocation of competitive 9% tax credits under the Low-Income housing Tax Credit (LIHTC) program in the 2005 Universal Cycle, seeking funding to assist in the development of a 128 unit apartment complex in Miami, Florida.

6. After Pinnacle Park submitted its 2005 Universal Cycle Application, Florida Housing’s staff undertook preliminary scoring of the Application pursuant to Part V, Chapter 420, Florida Statutes, and Rule Chapter 67-48, Florida Administrative Code, completing the scoring process on March 17, 2005.

7. After completing preliminary scoring, Florida Housing’s staff, via a letter dated March 18, 2005, notified Pinnacle Park that its preliminary score was 62 out of a possible 66 total points, with 4.5 proximity tie-breaker points, and that the application had failed to meet the

(a \$1,000,000 loan) submitted as a financing source by Pinnacle Park was invalid, in that a change in the unit mix (a decrease in the number of three-bedroom units) required additional approval from the Miami-Dade Board of County Commissioners, that such approval was a condition of the loan that had not been met, and that the Local Government Contribution could therefore not be considered as a “firm” commitment for financing the development.

9. Based on this information Florida Housing further reduced Pinnacle Park’s score from 62 to 57 as a result of the disqualification of its Local Government Contribution. Pinnacle Park consequently failed to meet threshold requirements due to a permanent financing shortfall resulting from the disqualification of the loan as a source of funding.

10. On or about April 26, 2005, Pinnacle Park submitted “cure” documentation to Florida Housing to address the alleged defects previously identified. Pinnacle Park submitted materials sufficient to cure the threshold failure regarding site control, to cure scored items not related to the Local Government Contribution in question, and to cure the deficiency in proximity tie-breaker points. Pinnacle Park and also submitted additional documentation regarding the Local Government Contribution which contradicted the information presented in the aforementioned NOPSE.

11. On or before May 4, 2005, a competing applicant submitted a Notice of Alleged Deficiencies (NOAD) which challenged Pinnacle Park’s “cure” of the Local Government Contribution issue.

12. On or about May 25, 2005, Florida Housing advised Pinnacle Park that as a result

Local Government Contribution. Florida Housing also determined that Pinnacle Park continued to fail threshold due to the permanent financing shortfall resulting from this disqualification.

13. Per a letter dated June 10, 2005, from George M. Burgess, County Manager of Miami-Dade County, the Pinnacle Park development will require no further approval from the Board of County Commissioners due to the change in unit mix, nor due to an increase in the number of units. A copy of Mr. Burgess' letter is attached hereto as Exhibit A.

14. The Parties now agree that the Local Government Contribution was not subject to further approval by the Miami-Dade Board of County Commissioners, that it should be counted as a firm commitment, that Pinnacle Park should have 5 points added to its application score, and that the Pinnacle Park application should be deemed to have satisfied all threshold requirements.

CONCLUSIONS OF LAW

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

2. Pursuant to Section 420.507(22)(f), Fla. Stat., Florida Housing is authorized to institute a competitive application process, and has done so in accordance with Rule 67-48.004, Fla. Admin. Code.

3. Florida Housing's application form and instructions are adopted as Form UA1016, Rule 67-48.002(111), Fla. Admin. Code.

4. Page 65 of the UA1016 (Rev. 2-05) instructions states, in pertinent part:

Local Government contributions may be verified by Corporation Staff during the scoring and appeals process. The government contact person listed on the

5. In accordance with the above provision, Florida Housing continued to attempt verification of the Local Government Contribution in light the apparent conflict between information provided by Pinnacle Park and that provided via NOPSE by a competing applicant.

6. During the appeals process, on or about July 11, 2005, Florida Housing received official information verifying that Pinnacle Park did not need to obtain further approval from the Miami-Dade Board of County Commissioners as a condition of receiving the loan, and as a result Florida Housing now considers the loan commitment as “firm” and as a valid Local Government Contribution.

7. With the validation of the \$1,000,000 Local Government Contribution, financing sources presented in the Pinnacle Park application exceed uses, and the application passes threshold requirements.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law stated above, it ~~is~~ hereby RECOMMENDED that Florida Housing enter a Final Order finding:

1. Petitioner should have 5 points added to its final score on the 2005 Universal Application, for a total final score of 66;
2. Petitioner should receive 7.5 tie-breaker measurement points; and,
3. Petitioner’s 2005 Universal Application should be deemed to have met all threshold requirements.

Respectfully submitted this 2nd day of August, 2005.

Copies furnished to:

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- Independent Review Panel
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- Juvenile Assessment Center
- Medical Examiner
- Metropolitan Planning Organization
- Park and Recreation
- Planning and Zoning
- Police
- Procurement
- Property Appraiser
- Public Library System
- Public Works

June 10, 2005

Stephen P. Auger
Deputy Development Officer
Florida Housing Finance Corporation
227 North Bronough Street
Suite 5000
Tallahassee, Florida 32301-1329

Re: Pinnacle Park

Dear Mr. Auger:

We understand that certain challenges have been filed to the scoring of the above-referenced application filed with the Florida Housing Finance Corporation, because the unit mix and number of units set forth in the application filed with Florida Housing Finance Corporation differs from that set forth in application for financing funded by Miami-Dade County.

Funding for the above project was approved by the Board of County Commissioners through Resolution #106-05 dated February 1, 2005. Miami-Dade County's commitment of \$1,000,000 to the project is firm. The application with the County was for a total of 115 units, including 35 three bedroom units, 70 two bedroom units and ten one bedroom units. We understand the FHFC application was for a total of 128 units, with 22 one bedroom units, 97 two bedroom units and 9 three bedroom units. Please be advised that this increase in the number of total units from 115 units to 128 units and the change in unit mix does not require further approval of the Board of County Commissioners.

Sincerely,