

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

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FLORIDA HOUSING
FINANCE CORPORATION

TWC SIXTY-SEVEN, LTD.
(WEXFORD APARTMENTS),

Petitioner,

v.

FHFC CASE NO.: 2002-0040

FLORIDA HOUSING FINANCE
CORPORATION,

APPLICATION NO.: 2002-113BS

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 Multi-Family Revenue Bonds and SAIL funds. Petitioner timely filed a Petition for Formal Administrative Hearing, 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. Petitioner and Respondent timely filed a Joint Proposed Recommended Order.

After consideration of the evidence and the Joint Proposed Recommended Order, 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 finding that Petitioner is located within one mile of Quality Meat Market, a grocery store, and is thus entitled to the award of 1.25 tie-breaker points for that proximity..

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.

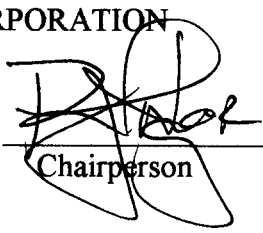
2. The conclusions of law of the Recommended Order are adopted in full as Florida Housing's conclusions of law and incorporated by reference as though fully set forth in this Final Order.

3. The Hearing Officer's recommendation that a Final Order is entitled to the award of 1.25 tie-breaker points for the proximity to Quality Meat Market is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner is entitled to the award of 1.25 tie-breaker points.

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:

Wellington H. Meffert II
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STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TWC SIXTY-SEVEN, LTD. (2002-113BS)
(PROJECT NAME: WEXFORD APARTMENTS)

Petitioner,

vs.

Case No.: 2002-0040

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

RECOMMENDED ORDER

The parties met and jointly agreed to the following Findings of Facts, Conclusions of Law and Recommendations.

APPEARANCES

Michael G. Maida
Rutledge, Ecenia, Purnell & Hoffman, P.A.
215 South Monroe Street, Suite 420
P.O. Box 551
Tallahassee, Florida 32302

Wellington H. Meffert, II
Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329

EXHIBIT

A

STATEMENT OF ISSUE

Did Florida Housing Finance Corporation properly score Applicant as being within one mile of Quality Meat Market, a grocery store, and is Applicant entitled to the award of 1.25 tie-breaker points for that proximity?

FINDINGS OF FACT

1. Respondent, FLORIDA HOUSING FINANCE CORPORATION, (“Florida Housing”), is a public corporation under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.
2. On or before April 15, 2002, Petitioner, TWC SIXTY-SEVEN, LTD., (“Wexford”) submitted an Application to the Florida Housing for the award of funds from the State Apartment Incentive Loan (“SAIL”) and the Multifamily Mortgage Revenue Bonds (“MMRB”) programs in the 2002 Universal Cycle.
3. Florida Housing has established by rule a process (the “Universal Cycle”) in which applicants for any of the above-referenced Florida Housing multi-family rental programs submit a single application (the “Universal Cycle Application”) by which projects are evaluated, scored, and competitively ranked.

4. The 2002 Universal Cycle Application, adopted as Form UA1016 by R. 67-21.002(97) and 67-48.002(116), Fla. Admin. Code, consists of Parts I through VI 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, however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant's overall score.

5. To provide a means of determining which applicant should rank higher when all threshold requirements were met and application scores were identical, Florida Housing awarded "tie-breaker" points for proposed developments which were in close proximity to certain services, including grocery stores. A development located within one mile of a grocery store is eligible to receive 1.25 proximity tie-breaker points.

6. After Petitioner submitted its 2002 Universal Cycle Application, on or before April 15, 2002, 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 May 13, 2002.

7. In its application, Wexford submitted documentation demonstrating that its development was located within one mile of the Quality Meat Market in Tampa, Florida, and Florida Housing in its preliminary scoring awarded Wexford the maximum 1.25 tie-breaker points for its proximity to a grocery store.

8. After completing preliminary scoring, Florida Housing's staff notified Petitioner of the results. Wexford scored 71 out of a possible 71 points, in addition to 7.00 out of a possible 7.5 proximity tie-breaker points.

9. Any applicant could question the scoring of Petitioner's Application if it believed Florida Housing had made a scoring error, by filing a Notice of Possible Scoring Error ("NOPSE") within ten calendar days after the date the applicant received the preliminary scores.

10. A NOPSE was filed which stated that Florida Housing erred in awarding the tie-breaker points to Wexford, as the Quality Meat Market was not a grocery store. The only issue raised in the NOPSE was whether Quality Meat Market was in fact greater than 4,500 square feet of air conditioned space.

11. After reviewing each NOPSE that was timely received, on June 10, 2002, Florida Housing sent Petitioner any NOPSE relating to its Application submitted by other applicants, along with Florida Housing's position on any such NOPSE.

12. In response to the NOPSE, Florida Housing deducted the 1.25 tie-breaker points awarded to Wexford.

13. 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 "cures" and were due on or before June 26, 2002 (the "cure period").

14. As its cure, Wexford submitted information which demonstrated that the Quality Meat Market was in fact a grocery store and exceed 4,500 square feet of air conditioned space.

15. All applicants had an opportunity to review cures submitted by Petitioner, and any applicant could submit to Florida Housing a Notice of Alleged Deficiencies (“NOAD”) challenging the Petitioner’s cures. No NOADs were filed regarding Wexford’s cure.

16. Florida Housing accepted the fact that the Quality Meat Market exceeded 4,500 square feet of air conditioned space. However, Florida Housing did not accept the Quality Meat Market as a qualifying grocery store, and therefore did not award any tie-breaker proximity points to Wexford’s application with respect to this issue.

17. Following this process, Florida Housing on July 22, 2002, sent Pre-Appeal Scores and a Notice of Rights to Petitioner. The Notice of Rights notified Petitioner that it could contest Florida Housing’s actions by requesting an informal hearing before a contracted hearing officer.

18. Petitioner timely requested a hearing by filing its Petition for Formal Administrative Hearing on August 9, 2002.

19. After review of Wexford’s Petition, Florida Housing agreed that the Quality Meat Market is a grocery store within the meaning and intent of Florida Housing’s criteria, consisting of over 4,500 square feet of air conditioned space devoted to retail self service sales of food and household goods.

CONCLUSIONS OF LAW

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. And R. 67-47, Fla. Admin. Code, the Hearing Officer has jurisdiction over the parties to this proceeding.
2. Florida Housing is authorized to institute a competitive application process, Sec. 420.507(22)(f), Fla. Stat., and has done so, Rule 67-48.004, Fla. Admin. Code.
3. Florida Housing's application form and instructions, are adopted as a form, UA1016, Rule 67-48.002(116), Fla. Admin. Code. Part III, Section A, subsection 11, paragraph (1), subparagraph (b), provides that a proposed development located within one mile of a grocery store will receive 1.25 tie-breaker points.
4. The application instructions at page 10 of UA1016 provide "[A] grocery store means a self-service retail market that sells food and household goods and has at least 4,500 square feet of air-conditioned space. Webster's New Collegiate Dictionary defines "grocery" as "[C]ommodities sold by a grocer; a grocer's store," and defines "grocer," as "[A] dealer in staple foodstuffs, meats produce, and dairy products and usually household supplies."
5. Florida Housing interprets its definition to contain the ordinary meaning of "grocery" within its definition, and construes the term "grocery stores," to include the proposition that a grocery store will sell "...staple foodstuffs, meats produce, and dairy products and usually household supplies." Based upon the information submitted by Petitioner in its application, cure and petition, Quality Meat Market fully complies with Florida Housing's construction of its application instructions.

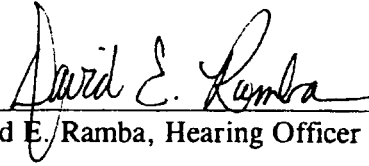
RECOMMENDED

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

RECOMMENDED:

That Petitioner, TWC Sixty-Seven, Ltd., Wexford Apartments, is located within one mile of Quality Meat Market, a grocery store, and is thus entitled to the award of 1.25 tie-breaker points for that proximity.

DATED this 25th day of September, 2002 in Tallahassee, Florida.



David E. Ramba, Hearing Officer

Copies Furnished:

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