STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TUSCANY VILLAGE ASSOCIATES, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2002-0048

FLORIDA HOUSING FINANCE CORPORATION,

APPLICATION NO.: 2002-006C

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. Petitioner timely filed a Petition for Informal Administrative Proceeding, pursuant to Sections 120.569 and 120.57(2), 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. An informal hearing was held in this case on September 20, 2002, in Tallahassee, Florida, before Florida Housing appointed Hearing Officer, David E. Ramba. 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 denying the rejection of Exhibit 27 of

Petitioner's Application, finding that Petitioner did satisfy the threshold requirement of Part III, Section C, Subsection 3.d ("Roads availability letter"), and scoring and ranking the Petitioner's application in accordance with the final score.

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 denying the rejection of Exhibit 27 of Petitioner's Application, finding that Petitioner did satisfy the threshold requirement of Part III, Section C, Subsection 3.d ("Roads availability letter"), and scoring and ranking the Petitioner's application in accordance with the final score is approved and accepted as the appropriate disposition of this case. Accordingly, Petitioner did satisfy the threshold requirement of Part III, Section C, Subsection 3.d ("Roads availability letter"), and Petitioners Application is scored, and ranked in accordance with the final score.

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
General Counsel
Florida Housing Finance Corporation
337 North Bronough Street, Suite 5000
Tallahassee, FL 32301

Steve Pfeiffer, Esq.
David A. Theriaque, Esq.
Theriaque & Pfeiffer
1114 E. Park Avenue
Tallahassee, Florida 32301

STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION

TUSCANY VILLAGE ASSOCIATES, LTD.,

Petitioner,

v.

FHFC CASE NO.: 2002-0048
App No.: 02-006C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, on September 13, 2002, an informal administrative hearing was held in this case in Tallahassee, Florida, before for the 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:

Steve Pfeiffer, Esquire
Theriaque & Pfeiffer
1114 East Park Avenue
Tallahassee, Florida 32301

For Respondent:

Wellington H. Meffert II, General Counsel
Florida Housing Finance Corporation
227 N. Bronough Street, Ste. 5000
Tallahassee, Florida 32301-1329

EXHIBIT
"A"

EXHIBITS

The following exhibits were offered jointly by the parties and were received by the Hearing Officer:

Exhibit 1: Petitioner's Application filed with the Florida Housing Finance Corporation.

Exhibit 2: The "Cure Package" filed by the Petitioner.

Exhibit 3: Florida Housing Finance Corporation's score sheet for Petitioner's Application.

PRELIMINARY STATEMENT

On or before April 15, 2002, Petitioner submitted an application to Florida Housing for Federal Low Income 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 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 the Florida Housing Finance Corporation ("Florida Housing") erred when it scored the application of Tuscany Village Associates, Ltd. ("Petitioner" or "Tuscany Village Associates") for Federal Low Income Housing Tax Credits in the 2002 Universal Cycle program. Specifically, the issue is whether the

Petitioner failed to meet a threshold requirement by not including in its application a letter from the City of Miramar verifying local road capacity which was dated less than twelve months prior to the application deadline date.

At the informal administrative hearing, the parties submitted a Joint Proposed Recommended Order in which the parties agreed that there are no issues of fact and no issues of law as set out below.

FINDINGS OF FACT

1. Florida Housing is a public corporation, organized to provide and promote the public welfare by administering the governmental function of financing and refinancing housing and related facilities in Florida. (Section 420.504, Florida Statutes.)

2. Congress has created a program, governed by Section 42 of the Internal Revenue Code ("IRC") by which federal income Tax Credits are allotted to each state, primarily on a per capita basis, to be used to encourage the development of low-income housing for families. The Tax Credits equate to a dollar for dollar reduction of the holder's federal tax liability which can be taken for up to ten years, if the project satisfies the Internal Revenue Code's requirements each year. The developer may sell or syndicate the Tax Credits to generate a substantial portion of the funding necessary for the construction of the development.

3. Florida Housing is the state "housing credit agency" responsible for the allocation and distribution of Florida's Tax Credits to applicants for the development of rental housing for low income and very low-income families. (See Section 420.5099, Florida Statutes.)

4. Florida Housing allocates the Tax Credits pursuant to a Qualified Allocation Plan ("QAP"), as required by the IRC, apportioning credits among the most populated counties, medium populated counties and least populated counties. There are also various other set-asides and special targeting goals set forth in the QAP. The provisions of the QAP are adopted and incorporated by reference in Rule 67-48.025, Florida Administrative Code.

5. Florida Housing attempts to insure through its competitive application process the most effective use of available Tax Credits. Awards for the Low Income Housing Tax Credit and other programs are included in a single application process (the "Universal Cycle"), in which applicants submit a single application (the "Universal Cycle Application") for any program or combination of programs.

6. The 2002 Universal Cycle Application, adopted by Rule 67-48.002(116), F.A.C., consists of 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.

7. On or before April 15, 2002, Petitioner filed an application with Florida Housing to obtain an allocation of Tax Credits to assist in funding development of a multi-family housing project in the city of Miramar, Florida.

8. Florida Housing scored the application pursuant to Part V, Chapter 420, Florida Statutes and Rule 67-48, Florida Administrative Code.

9. After Florida Housing scored all applications, Florida Housing advised Petitioner by a letter dated May 13, 2002, of the results of the scoring of Petitioner's application.

10. The FHFC evaluated the application and issued a preliminary score and a threshold report. The FHFC determined, among other things, that Tuscany Village Associates had failed to provide the proper documentation to evidence the availability of roads. Specifically, Exhibit 27 to the FHFC application form had been filled out by Tuscany Village Associates, but had not been executed by a representative of the City of Miramar.

11. In response, Tuscany Village Associates prepared and filed a "Cure Package" which included a "Cure Form" pertaining to Part III, Section C, Subsection 3.d. of Exhibit No. 27, and provided additional documentation, including a letter from the City of Miramar's traffic engineer, Walter W. Lyon, Jr., that contained the information required on Exhibit 27 regarding the availability of roads.

12. No "Notice of Alleged Deficiency" or "NOAD" was filed by any other applicant with regard to the Tuscany Village Associates Cure Package.

13. The FHFC staff then evaluated the Tuscany Village Associates Application as modified by the Cure Package. On or about July 24, 2002, the FHFC determined that the letter regarding the availability of roads was acceptable as to content, but was not acceptable because the date April 12, 2001, appeared on the letter. This date was not within twelve months of the application deadline date. Because of the date, the FHFC determined the

Tuscany Village Associates Application to not "meet threshold requirements" and therefore to not be eligible for funding.

14. Tuscany Village Associates filed a petition for informal proceeding in a timely manner, challenging the determination that Exhibit No. 27 was not dated within twelve months of the application deadline date. Tuscany Village Associates asserted, among other things, that the date on the letter from Mr. Lyon was a typographical error, and the letter was actually signed on April 12, 2002.

15. A reading of the complete application submitted by Tuscany Village Associates demonstrates that the date April 12, 2001, is a typographical, clerical or scrivener's error. Every other piece of documentation in the application is dated well after April 12, 2001, including documentation that establishes site control of the property where the proposed Tuscany Village project would be located, and documentation that creates the applicant partnership. These dated documents include the following:

> The Application Certification and Acknowledgment Form, executed by a representative of the applicant, which is dated April 14, 2002.
>
> The certifications from the Florida Department of State regarding the applicant demonstrates that the applicant filed its limited partnership organization papers with the Department of State on October 15, 2001. The certifications also demonstrate that the applicant changed its name on February 18, 2002.
>
> The Management Agent Certification is dated March 25, 2002.
>
> The General Contractor Certification is dated March 21, 2002.

The Architect or Engineer Certification is dated March 21, 2002.

The Attorney Certification is dated March 25, 2002.

The Accountant Certification is dated March 21, 2002.

The Surveyor Certification is dated April 11, 2002.

The Local Government Verification of Status of Site Plan Approval Form, executed by a representative of the City of Miramar, is dated April 4, 2002, and reflects that the preliminary or conceptual site plan was reviewed by the City of Miramar Community Development Department on April 3, 2002.

The Option to Purchase that was obtained by Housing Trust Group of Florida, L.L.C., from National General Corp. was executed by the purchaser on June 18, 2001, and by the seller on June 19, 2001.

The Capacity for Electric Service letter, executed by a representative of Florida Power & Light Company, is dated April 9, 2002.

The certification for water and sewer service, executed by the City Engineer for the City of Miramar, is dated March 28, 2002.

The Verification that Development is Consistent with Zoning and Land Use Regulations form, executed by a representative of the City of Miramar, is dated April 3, 2002.

The Verification of Environmental Safety Assessment Form, executed by a representative of Andaman & Associates, was signed on March 26, 2002, and relates to an environmental assessment conducted on July 6, 2001.

The Local Government Verification of Affordable Housing Incentives Expedited Permitting Process for Affordable Housing exhibit was executed by the County Administrator of Broward County on April 5, 2002.

The Local Government Verification of Affordable Housing Incentives Contributions to Affordable Housing Properties or Developments exhibit was executed by the County Administrator of Broward County on April 5, 2002.

The Local Government Verification of Affordable Housing Incentives Modification of Fee Requirements for Affordable Housing Properties or Developments exhibit was executed by the County Administrator of Broward County on April 5, 2002.

The Local Government Verification of Affordable Housing Incentives Impact of Policies, Ordinances, Regulations, or Plan Provisions on Cost of Affordable Housing Properties or Developments exhibit was executed by the County Administrator of Broward County on April 5, 2002.

The Commitment to Defer Developer Fee exhibit was executed by a representative of Housing Trust Group, L.L.C., on April 11, 2002.

The Evidence that Housing Credit Syndicator Meets the Requirements of Rule 67-48.002(68) exhibit, executed by a representative of Golden II Associates, Ltd., is dated March 20, 2002.

The Firm Commitment Letter, executed by a representative of Lend Lease Real Estate Investments, is dated April 9, 2002.

The Letter of Receipt and Acceptance, executed by a representative of Lend Lease Real Estate Investments, is dated April 3, 2002.

16. Documentation supporting "Cure Forms" provided by the applicant in response to the FHFC's initial scoring of the Tuscany Village Associates Application also demonstrates that the date April 12, 2001, is a typographical, clerical or scriveners error. Every other piece of documentation is dated well after April 12, 2001, including

documentation that establishes site control of the property. These dated documents include the following:

> The Local Government Verification of Contribution Fee Waiver document, signed by the County Administrator of Broward County, Florida, that was provided in support of the Cure Form pertaining to Part IV, Section A, Subsection 1(a)(2), Exhibit 33, is dated June 18, 2002.
>
> The Commitment to Defer Developer Fee document, signed by a representative of the applicant, that was provided in support of the Cure Form pertaining to Part V, Section B, Exhibit 45, is dated June 10, 2002.
>
> The assignment of rights in the Agreement for the Option to Purchase the property, executed by a representative of the purchaser and assignee, that was provided in support of the Cure Form pertaining to Part III, Section C, Subsection 2.a., Exhibit 23, is dated June 24, 2002.
>
> The updated funding commitment, signed by a representative of Lend Lease Real Estate Investments, that was provided in support of the Cure Form pertaining to Part III, Section C, Subsection 3.d., Exhibit 27, and the Cure Form pertaining to Part V, Section E, Exhibit 50, is dated June 12, 2002.
>
> The Letter of Receipt and Acceptance, signed by representative of Lend Lease Real Estate Investments, that was provided in support the Cure Form Pertaining to Part III, Section C, Subsection 3.d., Exhibit 27, and the Cure Form pertaining to Part V, Section E, Exhibit 50, is dated April 3, 2002.

17. When the entire application submitted by Tuscany Village Associates is considered, it is apparent that the date April 12, 2001, on the letter from Mr. Lyons is a scriveners error, and that the letter was signed within twelve months of the application deadline date. Most telling are the facts that the applicant did not enter into a contract to

purchase the property until well after April 12, 2001, and that all of the other local approvals were dated in March and April, 2002.

CONCLUSION OF LAW

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

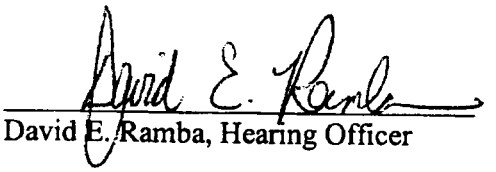
2. There is no issue of fact that the date on the letter submitted Mr. Lyons of the City of Miramar was a scrivener's error and that the letter was signed within twelve months of the application deadline date in accordance with the rules of Florida Housing.

3. The application filed by Tuscany Village Associates meets the threshold requirements of the Rules of the Florida Housing Finance Corporation and the application should be scored and ranked in accordance with the final score assessed by the staff of the Agency.

RECOMMENDATION

Based on the Findings of Fact and Conclusions of Law set out above, it is hereby recommended that the Florida Housing Finance Corporation enter a Final Order denying the rejection of Exhibit 27 to Petitioner's application, finding that Petitioner did satisfy the threshold requirement of Part III, Section C, Subsection 3.d ("roads availability letter"), and scoring and ranking the Petitioner's application in accordance with the final score.

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



David E. Ramba, Hearing Officer

Copies furnished to:

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

STEVE PFEIFFER
Theriaque & Pfeiffer
1114 East Park Avenue
Tallahassee, Florida 32301