

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

TUSCANY VILLAGE ASSOCIATES,
LTD.,

Petitioner,

FHFC Application
No. 2002-006C

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

PETITION FOR INFORMAL ADMINISTRATIVE PROCEEDING

The Petitioner TUSCANY VILLAGE ASSOCIATES, LTD. (“Tuscany Village Associates”), by and through its undersigned counsel, files this Petition for Informal Administrative Proceeding in accordance with Sections 120.569, 120.57(2), *Florida Statutes*, and Uniform Rule 28-106.301, *Florida Administrative Code*. In support of its Petition, Tuscany Village Associates states:

A. Nature of Proceeding:

1. Tuscany Village Associates is proposing to develop a multi-family housing project known as “Tuscany Village” in the City of Miramar, Florida. Tuscany Village is an affordable housing project. Tuscany Village Associates filed an application for funding assistance with the Respondent, FLORIDA HOUSING FINANCE CORPORATION (“FHFC”). The application deadline was April 15, 2002.

2. 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.

3. 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.

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

5. 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.

6. Through this Petition for Informal Proceeding, Tuscany Village Associates is challenging the determination that Exhibit 27 is not dated within twelve months of the application deadline, and, thus, the Tuscany Village Associates Application meets FHFC threshold requirements and is eligible for funding.

B. Name and Address of Each Agency Affected:

7. The agency affected by this proceeding is the FLORIDA HOUSING FINANCE CORPORATION, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. The agency's file or identification number is 2002-006C.

C. Name, Address, Telephone Number, and Description of Petitioner:

8. The Petitioner is,

TUSCANY VILLAGE ASSOCIATES, LTD.
3225 Aviation Ave, Suite 700.
Miami, Florida 33133
Telephone: 305-860-8188

For the purposes of this proceeding, the address and telephone number of the Housing Trust Group will be the address and telephone number of undersigned counsel.

9. Tuscan Village Associates is an applicant for funding with the FHFC for the application cycle that has an application deadline of April 15, 2002. Tuscan Village Associates is substantially affected by the decision of the FHFC that the Tuscan Village Application does not meet threshold requirements because the determination results in funding being denied even though the scoring of the Tuscan Village Associates Application would result in funding being granted.

D. Statement of Notice:

10. Tuscan Village Associates received notice of the FHFC's decision by notice dated July 24, 2002.

E. Statement of Ultimate Facts Alleged:

11. The FHFC follows a two-step application process. FHFC evaluates applications for funding and issues a preliminary score. Applicants can respond to preliminary scores by submitting “Cures,” containing additional or revised documentation to support the applications.

12. Tuscany Village Associates filed its application in a timely manner for the funding cycle with an application deadline of April 15, 2002. Among the issues that applicants must address is the availability of infrastructure needed to support a proposed project. One component of the infrastructure requirements is roads. Exhibit 27 of the FHFC’s application form is used to convey required information to verify the availability of roads. Tuscany Village Associates filed Exhibit 27 with its application. The representative of the City of Miramar who has the ability to verify the availability of roads did not wish to execute Exhibit 27 because he was uncertain of the ramifications of doing so. Accordingly, Tuscany Village Associates provided the form with its preliminary application even though the form had not been executed.

13. When it issued its preliminary score, the FHFC advised Tuscany Village Associates that proper documentation of the availability of roads had not been provided because Exhibit 27 had not been executed by a representative of the City of Miramar.

14. Mr. Lyon agreed to verify and certify roadways available to serve the proposed Tuscany Village Associates project through a letter. He prepared and signed the letter that is attached to this Petition as “Attachment A.” The Letter was submitted to FHFC by Tuscany Village Associates as part of the Cure Package in lieu of an executed Exhibit 27.

15. The date “April 12, 2001” appears on the letter that was signed by Mr. Lyon. The letter was not, and could not have been executed on that date. There was no proposed project known

as “Tuscany Village” in the City of Miramar until October 2001. Mr. Lyon was not approached regarding the Florida Housing Finance Corporation letter until early in 2002, and did not even draft the letter until March 2002. Furthermore, as set out in the application, Tuscany Village Associates did not obtain site control of the property where the proposed project is located until June 2001, and did not have its preliminary site plan reviewed by the City of Miramar Community Development Department until April 3, 2002. Moreover, Tuscany Village Associates did not exist as an entity until October 15, 2001.

16. Tuscany Village Associates submitted the letter that is appended to this Petition as “Attachment A” as part of its “Cure Form” pertaining to Part III, Section C, Subsection 3.d. of Exhibit No. 27.

17. The letter that is appended hereto as “Attachment A” was actually signed on April 12, 2002, and could not have been signed on April 12, 2001. The error is evident from the face of the Tuscany Village Associates Application, and is verified by “Attachments B, and C,” which are appended hereto. One of the individuals who is listed as having been sent a copy of the letter is Donald Waldron. He is listed as “Director of Development.” Mr. Waldron was not appointed to that position until October 1, 2001. The letter would not have been directed to Mr. Waldron as Director of Development on April 12, 2001.

18. The error was made by a person who is not a representative of Tuscany Village Associates, and was simply not discovered by representatives of Tuscany Village Associates. The letter provides accurate, complete information regarding the availability of roads to serve the proposed Tuscany Village development in the City of Miramar, as of April 12, 2002, well within one (1) year of the application deadline.

19. A reading of the complete application submitted by Tuscany Village Associates demonstrates that the date April 12, 2001, is a typographical, clerical or scriveners 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, 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.

20. 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 scrivener's 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 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 April 3, 2002.

21. The FHFC has previously allowed applicants for funding to correct obvious typographical, clerical, or scrivener's errors in applications when the error is evident from the face of the application itself, and has not resulted and could not result in any error in the final scoring of the application.

G. Statement of the Relief Sought by Petitioner:

WHEREFORE, the Petitioner TUSCANY VILLAGE ASSOCIATES, LTD., requests the following relief:

That the Florida Housing Finance Corporation determine that the Petitioner's application for funding meets threshold requirements, score the application in accordance with the "Universal Scoring Summary," rank the Petitioner's application based upon that scoring, and grant the application for funding.

RESPECTFULLY SUBMITTED this 13th day of August, 2002.



STEVE PFEIFFER, ESQUIRE
Florida Bar No. 0124400
DAVID A. THERIAQUE, ESQUIRE
Florida Bar No. 0832332
Theriaque & Pfeiffer
1114 East Park Avenue
Tallahassee, Florida 32301
Telephone: (850) 224-7332
Telecopier: (850) 224-7662

COUNSEL FOR PETITIONER
TUSCANY VILLAGE ASSOCIATES, LTD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via hand delivery to the Corporation Clerk, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, and to Wellington Meffert, General Counsel, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329 this 13th day of August, 2002.



Steven Pfeiffer, Esquire



MML Draft
REVISED

April 12, 2001

City of Miramar

An Equal Opportunity Employer

Mayor

Lori C. Moseley

City Commission

Steven T. Bogert

Marjorie J. Conlan

Fitzroy D. Salesman

Sallie L. Stephens

Mr. Shawn Wilson
Housing Trust Group of Florida, Inc.
120 South Dixie Highway, Suite 204
West Palm Beach, FL 33401

RE: Tuscan Village (FKA Hampton Park) Site

Dear Shawn:

In response to your request relative to the reference project, please note that the City of Miramar confirms the following:

1. Existing paved roads (University Drive, Miramar Boulevard- west of University Drive) provide access to the proposed development.
2. There are no impediments to the proposed development using the roads other than payment of impact fees or providing curb cuts, additional through lanes, medians, turn lanes, bike lanes, signing, pavement markings and signalization
3. To the best of our knowledge, no variance or special hearings, are required for these roads to be available to the proposed development.
4. To the best of our knowledge, there are no moratoriums pertaining to road usage that are applicable to the proposed development.

I hereby certify that the foregoing information is true and correct.

Very truly yours,

Walter W. Lyon, Jr., PE, PSM
City Traffic Engineer

c. Donald Waldron, Director of Development
Jill Spicer, Planner

*"We're at the
Center of Everything"*

Public Works/Utilities Dept.
Engineering Division
6901 Miramar Parkway
Miramar, Florida
33023-6004

Phone (954) 967-1539
T.D.D. (954) 967-1514
FAX (954) 894-2080

ATTACHMENT A



City of Miramar
An Equal Opportunity Employer

Mayor
Lori C. Moseley

City Commission

Steven T. Bogert

Marjorie J. Conlan

Fitzroy D. Salesman

Sallie L. Stephens

August 12, 2002

Mark Kaplan
Executive Director
Florida Housing Finance Corporation
227 N. Bronough Street, Suite 5000
Tallahassee, FL 32301

RE: Tuscany Village

Dear Mr. Kaplan:

On Friday, April 12, 2002, I signed the attached letter. On account of an apparent scrivener error, a "1" was substituted for a "2", which made it appear that the letter was dated one year before the actual correct date. I did not notice the error when I signed the letter.

I had no knowledge whatsoever of any proposed development called "Tuscany Village" until sometime in September 2001, when I had preliminary discussions with Housing Trust Group of Florida, L.C.C. It is not possible that I would have signed the letter on April 12, 2001 because the developer did not submit anything for that project to the City of Miramar until the end of 2001. Furthermore, Donald Waldron was not the Director of Development in April 2001, as he was promoted to that position in October 2001. Therefore, I would not have copied a letter to him with that title until October 2001.

Please feel free to contact me with any questions relative to this matter.

Very truly yours,

Walter W. Lyon, Jr., PE, PSM
City Traffic Engineer

*"We're at the
Center of Everything"*
Department of
Operational Services
Engineering
(Development) Division
6901 Miramar Parkway
Miramar, Florida
33023-4897

Phone (954) 967-1596
T.D.D. (954) 967-1614
FAX (954) 967-1596

ATTACHMENT B

AFFIDAVIT OF SHAWN WILSON

STATE OF FLORIDA)

COUNTY OF _____)

BEFORE ME, this 12 day of August, 2002, personally appeared SHAWN WILSON, who after being duly sworn, deposes and says:

1. I am employed by Housing Trust Group of Florida, L.L.C. as executive vice-president.
2. I am the designated project director of a multi-family housing project called "Tuscany Village" that Housing Trust Group of Florida, L.L.C. and Tuscany Village Associates L.T.D. is proposing to develop within the City of Miramar, Florida. Tuscany Village is a proposed "affordable housing" project. Housing Trust Group of Florida, L.L.C. is seeking funding support through the Florida Housing Finance Corporation. I am responsible for completing funding applications with the Florida Housing Finance Corporation on behalf of Housing Trust Group of Florida, L.L.C.
3. The Florida Housing Finance Corporation requires that an applicant for funding verify that infrastructure needed to support a proposed project is available. Roadway infrastructure is a component of that requirement. The Florida Housing Finance Corporation has adopted an exhibit form that is part of its funding application form to verify the availability of road infrastructure. The form is designated as "Exhibit 27" to the application form.
4. I approached representatives of the City of Miramar with regard to the form, and was advised that Walter W. Lyon, Jr., the City's Traffic Engineer, was the appropriate person to execute the form on behalf of the City of Miramar.

5. I contacted Mr. Lyon with regard to the form on or about March 15, 2002. Mr. Lyon advised me that because he did not know all of the ramifications of executing the form that he was not comfortable doing so. I therefore submitted our application for funding to the Florida Housing Finance Corporation with the form filled out but not executed.

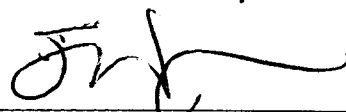
6. The Florida Housing Finance Corporation advised us in response to our application that an executed copy of the form, or some other verification from a representative of the City of Miramar regarding roadway availability would be required. Accordingly, on or about March 20, 2002, I contacted Mr. Lyon again and asked him to verify the information regarding roadway availability for the proposed project.

7. Mr. Lyon agreed to verify and certify roadways available to serve the proposed Tuscany Village project through a letter. He prepared and signed the letter that is attached to this affidavit as "Exhibit 1."

8. The date "April 12, 2001" is set out on the letter that was signed by Mr. Lyon. The letter could not, however, have been executed on April 12, 2001. There was no proposed project known as "Tuscany Village" in the City of Miramar until October 2001. Housing Trust Group of Florida, L.L.C. and Tuscany Village Associates L.T.D. did not obtain site control to the property where the proposed project is located until June 2001. Mr. Lyon was not approached regarding the Florida Housing Finance Corporation letter until March, 2002.

9. I did not notice the erroneous date on Exhibit 1 when I provided the letter to the Florida Housing Finance Corporation. It is clear that the date on the letter is an error, and that the letter was actually executed on April 12, 2002.

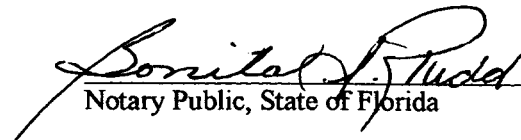
10. Further Affiant sayeth naught.


SHAWN WILSON

The foregoing instrument was acknowledged before me on this 12 day of ^{aug}~~July~~, 2002, by SHAWN WILSON, who is personally known to me, or produced _____ as identification.



Bonita J. Rudd
MY COMMISSION # DD031184 EXPIRES
June 4, 2005
BONDED THRU TROY FAIR INSURANCE, INC.


Notary Public, State of Florida