

BEFORE THE FLORIDA HOUSING FINANCE CORPORATION

NEWPORT SOUND PARTNERS, LTD.,
2002-130C,

Petitioner,

v.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

PETITION FOR FORMAL ADMINISTRATIVE PROCEEDINGS

Pursuant to Sections 120.569 and 120.57(1), Fla. Stat., and Rules 28-106.201 and 67-48.005(1), Fla. Admin. Code, Petitioner Newport Sound Partners, Ltd. ("Newport Sound") hereby requests a formal administrative proceeding on Florida Housing Finance Corporation's scoring of its application for Low Income Housing Tax Credits ("Housing Credits"), Application No. 2002-130C, in the Year 2002 Universal Application cycle. In support of this petition, Newport Sound states as follows:

Parties

1. The agency affected is the Florida Housing Finance Corporation ("FHFC"), 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329. FHFC has assigned Application No. 2002-130C to this matter.

2. The Petitioner is Newport Sound Partners, Ltd., whose address is 1551 Sandspur Road, Maitland, Florida 32751. For purposes of this proceeding, Newport Sound's address is that of its undersigned attorney M. Christopher Bryant, Oertel, Hoffman, Fernandez & Cole, P.A., 301 S. Bronough Street, 5th Floor, Tallahassee, Florida 32301 (P. O. Box 1110, Tallahassee, Florida 32302-1110), Telephone: (850) 521-0700, Facsimile: (850) 521-0720.

Substantial Interests Affected

3. Newport Sound has proposed the construction of a 192-unit multi-family housing development in Volusia County, Florida. Newport Sound has proposed to set aside all 192 of the units for low income residents. Newport Sound has estimated its total development costs for the development to be \$14,904,171.44, of which \$13,756,242.44 are considered as “eligible” development costs for purposes of the Housing Credit program. Newport Sound applied in FHFC’s 2002 Universal Application cycle for an annual allocation of Housing Credits in the amount of \$1.0 million; Newport Sound proposes to “syndicate,” or sell, this future stream of housing credits to raise \$7.992 million in capital for the construction of the development. Newport Sound proposed to set aside 43% of the units to tenants whose household income is 50% or less of Area Median Income (“AMI”) and the balance of the units to tenants whose household income is 60% or less of AMI.

4. If Newport Sound does not receive the requested allocation of housing credits, it will not be able to construct the development. As explained more fully in this Petition, its substantial interests are therefore affected by FHFC’s scoring of its application in this competitive application process, including the calculation and award of “tie-breaker” points in the event that Newport Sound achieves a score on its application that is tied with other applicants. Currently, Newport Sound’s application has a score of 71 points, which, based on score alone, ties it with over 100 of the approximately 175 “Universal Application” applicants this year. Depending on the final rankings of Universal Applications in this cycle, Newport Sound’s tie-breaker score may be the deciding factor in whether the development is selected for receipt of its requested Housing Credits, and, in turn, whether the development gets constructed at all.

Background

5. FHFC allocates several forms of financing for affordable housing, including Housing Credits, State Apartment Incentive Loans (“SAIL”), and Multi-Family Mortgage Revenue Bonds (“MMRB”). Applicants compete for the award of these forms of financing, which provide more favorable financial terms than would be available through conventional financing sources. In exchange for the receipt of such financing from FHFC, applicants enter into long-term agreements to set aside all or a portion of the residential units within such developments to low income residents, and depending on the requirements of the particular program, may also be required to limit the rents charged to amounts affordable to low income residents.

6. All three of the above-named forms of financing (Housing Credits, SAIL loans, and MMRB) were combined into a single “Universal Application Cycle” for 2002. Financing for any of these programs is sought through the use of a joint Universal Application form. SAIL and Housing Credit applicants are subject to FHFC Rule Chapter 67-48, Fla. Admin. Code, while MMRB applicants are subject to FHFC Rule Chapter 67-21, Fla. Admin. Code. The Universal Application form is incorporated by reference into FHFC’s rules, as are exhibit forms to be used with the applications and a 76-page Universal Application Instruction Booklet, designated UA1016.

7. Applicants in the Universal Application Cycle are scored on the various components of their applications, such as development features and amenities, greater numbers of units set aside, resident programs, and local government support. Generally, 71 points is the maximum score that can be assigned to a Universal Application, except for additional points that can be awarded to applicants proposing participation in one of FHFC’s programs for development in certain named

counties, not applicable here. Because of the potential for so many applicants to achieve a “perfect” score of 71 points (and, as noted, over 100 of the 175 or so Universal Application applicants currently have a “perfect score” of 71), FHFC designed its scoring and ranking system this year to include a series of “tie-breakers.”

8. One of the tie-breakers used by FHFC in this year’s Universal Application Cycle involves the assignment of points based on the proximity of the development to certain off-site services or features. All Universal Application Cycle applicants can receive up to 1.25 tie-breaker points for being within specified distances from a grocery store, and up to 1.25 points for being close to a bus stop. In addition, projects proposed as elderly housing can receive up to 1.25 proximity points for their proximity to medical facilities; and developments proposing to house families can receive up to 1.25 proximity points for location near a public school. Generally, the closer a proposed Development is to these off-site features, the higher its tie-breaker score; Applicants who are farther away lose tie-breaker points incrementally, and at some specified distance receive no tie-breaker points for that feature. For example, an applicant whose proposed development is less than one mile from a grocery store receives 1.25 points; an applicant between one and two miles receives 1.0 points; and further distances yield fewer points until applicants more than 5 miles from a grocery store receive zero grocery store proximity points.

9. In addition, in order for FHFC to avoid concentration of affordable housing in specific areas, and to encourage geographic distribution of affordable housing, all Universal Application Cycle applicants can receive up to 3.75 points for their distance from (rather than proximity to) other FHFC-financed developments serving the same demographic group as the applicant’s proposed development, as identified on an FHFC Development Proximity List. Again, the actual number of

points awarded depends on the applicant's distance from a listed Development. The total number of proximity points available is 7.5 points.

10. At page 10 of the Universal Application instructions, copy attached as Exhibit A, FHFC has provided the following definition of "grocery store:"

Grocery Store – For purposes of tie-breaker points, 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.

Again, the instructions in which this definition appears are incorporated by reference into FHFC's rules.

Nature of the Controversy

11. Newport Sound timely submitted its 2002 Housing Credit application to FHFC on April 15, 2002. FHFC preliminarily reviewed and scored the 2002 Universal Application Cycle applications, including Newport Sound's, and advised Newport Sound on or about May 15, 2002, that its application met the required "threshold" responsiveness requirements to participate in the Housing Credit program. FHFC also provided Newport Sound with a Universal Scoring Summary showing Newport Sound's score to be 71 points, and its tie-breaker points to total 5.0 (out of a possible 7.5 points).

12. At page 7 of its application, Newport Sound claimed that it was within 1.0 miles of a grocery store, and was thus entitled to 1.25 proximity tie-breaker points for proximity to a grocery store. Newport Sound identified the grocery store that was within 1.0 miles as a Dollar General Store, and provided the address of this grocery store as 1433 S. Dixie Highway, New Smyrna, Florida 32618. A copy of the page (page 7) of Newport Sound's application claiming this grocery store is attached hereto as Exhibit B.

13. As previously noted, on or about May 15, 2002, FHFC provided Newport Sound a Universal Scoring Summary. On or about the same time that the information was provided to the applicant, it was also posted on FHFC's internet web site, at www.florida.org. A copy of that Universal Scoring Summary as posted on the web site, and dated 5/14/2002, is attached hereto as Exhibit C.

14. As shown on Page 2 of Exhibit C, FHFC awarded Newport Sound zero points for its proximity to a grocery store. The reason given by FHFC for assigning zero points for the grocery store is shown on Page 3 of Exhibit C, and reads as follows:

Grocery store address supplied by applicant is not included on Street Atlas USA, Version 9.0, and the applicant did not provide latitude and longitude coordinates.

As addressed in FHFC's rules and instructions, the proximity of the proposed development to a grocery store is determined by entering the street address of the grocery store into a commercially available software program known as Street Atlas USA Version 9.0. If the street address, when entered into the software, does not identify a location for the claimed grocery store, an applicant is authorized to have a licensed Florida surveyor execute a form setting forth latitude and longitude coordinates for the grocery store. In the case of Newport Sound, the claimed grocery store did not appear on the Street Atlas USA Version 9.0 when entered because of a clerical error of transposing two digits in the store's zip code when Newport Sound filled out the form.

15. Subsequent to the issuance of "preliminary" scores in May, 2002, all applicants were provided the opportunity to notify the FHFC of possible scoring errors in other applications. Another applicant filed a Notice of Possible Scoring Error ("NOPSE") against Newport Sound, contending that a Dollar General Store is not a grocery store.

16. Following the submission of NOPSE's, FHFC issued a subsequent Universal Scoring Summary, on or about June 10, 2002. This Scoring Summary was also posted on FHFC's internet web site, and a copy of the posted Scoring Summary for Newport Sound, dated 6/10/2002, is attached hereto as Exhibit D. As shown on Page 3 of Exhibit D, FHFC also cited as a reason for Newport Sound's failure to achieve proximity tie-breaker points for a grocery store that "Dollar General is not a grocery store."

17. Pursuant to Rule 67-48.004(6), Fla. Admin. Code, Newport Sound took the opportunity to provide additional documentation to FHFC to address its failure to achieve full proximity tie-breaker points. This additional documentation is generally referred to as a "cure." The documentation submitted by Newport Sound on June 26, 2002 as a cure on the grocery store issue is attached hereto as Exhibit E.

18. Newport Sound's cure corrected the transposition of digits within the zip code for the Dollar General Store, and also provided an explanation and affidavit to support the fact that a Dollar General Store meets the definition of a grocery store contained in FHFC's rules (via incorporation of the Universal Application Instructions). The affidavit included the following statements of fact, under oath, by an individual employed by an engineering firm in the Daytona Beach area:

- That the store is a self-service retail market;
- That the store consists of in excess of 5,886 square feet of air conditioned space;
- That in excess of 1,000 linear feet of shelf space in the store was devoted to the sale of food and household goods;
- That a variety of food products were offered for sale in the store, including breakfast cereals, cereal bars, bread, peanut butter, canned tuna and meat, jellies, condiments, canned soup, canned fruits and vegetables, canned and

dried beans, apple sauce, noodles and other pastas and pasta sauces, prepared canned pastas, rice and rice mixes, macaroni and cheese mixes, raisins, crackers, coffee and tea, salt, sugar and spices, bottled and canned juices, and powdered drink mixes.

In addition, the affidavit identified a variety of household goods offered for sale in the store, including:

- toilet paper, trash bags, sandwich bags and food storage bags, paper towels, disposable plates and napkins, disposable eating utensils, disposable diapers and wipes, laundry detergents, light bulbs, dishwashing detergents, cleaning supplies, toiletries, over-the-counter medications, and feminine hygiene products.

Furthermore, the affidavit included the statement that the affiant had also visited a Winn Dixie supermarket located approximately 1.8 miles from the Dollar General Store. The affiant stated that the prices posted for the above-identified food and household goods at Dollar General were generally as low or lower than the regular prices for the same types of products at the Winn Dixie supermarket.

19. On or about Monday, July 22, 2002, FHFC issued “final” scores for the Universal Application Cycle applicants; Newport Sound received its final score on Tuesday, July 23, 2002. (Although designated a “final” score, applicants are afforded the opportunity to challenge their scores through administrative proceedings.) FHFC also posted on its web site a revised scoring summary for each applicant; Newport Sound’s revised scoring summary is attached as Exhibit F. The revised summary reflects a “final” score of 71 points for Newport Sound, with a tiebreaker score of 7.25 points. Although FHFC did accept an alternate grocery store (a Winn Dixie supermarket) located between 1 and 2 miles from the proposed development and thus awarded Newport Sound 1.0 tie-breaker points (out of 1.25) for proximity to a grocery store, FHFC still contends that the claimed

Dollar General Store, which is within one mile of the proposed Development, does not constitute a grocery store.

Notice

20. Newport Sound received notice via Federal Express delivery on Tuesday, July 23, 2002, of FHFC's scoring of the Newport Sound Housing Credit application. On August 13, 2002, Newport Sound filed an Election of Rights form indicating its request for formal administrative proceedings within twenty-one days of its July 23 receipt of notice of the scoring of its application. A copy of the Election of Rights form is attached hereto as Exhibit G. Pursuant to Rule 67-48.005(1), Fla. Admin. Code, this Petition is being filed within twenty-one days of Newport Sound's receipt of the July 22, 2002 memorandum forwarding its "final" score.

Disputed Issues of Material Fact

21. Newport Sound has initially identified the following disputed issues of material fact, which it reserves the right to supplement as additional facts become known to it:

(A) Whether the Dollar General Store identified in the Newport Sound application is a self-service retail market. Newport Sound contends that it is.

(B) Whether the Dollar General Store identified in the Newport Sound application consists of more than 4,500 square feet of air conditioned space. Newport Sound contends that it does.

(C) Whether the Dollar General Store identified in Newport Sound's application sells food. Newport Sound contends that it does.

(D) Whether the Dollar General Store identified in the Newport Sound application sells household goods. Newport Sound contends that it does.

(E) Whether the Dollar General Store fully meets the definition of “grocery store” contained in FHFC’s Universal Application Instructions. Newport Sound contends that it does.

(F) Whether FHFC’s proposed rejection of the Dollar General Store as a grocery store constitutes a de facto revision of its adopted definition of a grocery store to add additional criteria not set out in the adopted definition. Newport Sound contends that it does.

(G) Whether FHFC’s reliance on non-rule criteria to reject as a grocery store a retail establishment which otherwise meets the rule definition of “grocery store” is arbitrary, capricious, and unlawful. Newport Sound contends that it is.

(H) Whether FHFC’s determination that a Dollar General store does not meet its rule definition of “grocery store” had any reasonable basis in law and fact at the time that position was asserted by FHFC. Newport Sound contends that it did not.

(I) Whether FHFC has consistently evaluated and scored (for tie-breaker point purposes) all claimed grocery stores by all applicants in this cycle. Newport Sound contends that it has not.

Concise Statement of Ultimate Facts

22. Newport Sound alleges as ultimate facts that the Dollar General Store identified in its application is a grocery store as defined in FHFC rule; specifically, it is a self-service retail market that sells food and household goods and has at least 4,500 square feet of air conditioned space. FHFC’s proposed rejection of the Dollar General Store as a qualifying grocery store under its rules should be overturned. Newport Sound is entitled to this reversal of FHFC’s position by Chapter 120,

Fla. Stat., including but not limited to Sections 120.569 and 120.57(1); and Rule Chapters 28-106 and 67-48, Fla. Admin. Code, including but not limited to the definition of “grocery store” from page 10 of the Universal Application Instructions, incorporated by reference into FHFC’s rules.

Relief Sought

23. Newport Sound seeks entry of Recommended and Final Orders awarding it 1.25 proximity points for its proximity to a grocery store. Newport Sound specifically requests that this petition be promptly forwarded to the Division of Administrative Hearings within fifteen days of its filing, as required by Section 120.569(2)(a), Fla. Stat., for assignment to an administrative law judge, and the conduct of formal administrative proceedings. Newport Sound reserves the right to enter into a stipulation with FHFC for continuance or abeyance of this proceeding pending the outcome of other hearings and the scoring and final ranking process. Newport Sound also seeks such other relief as is just and proper, including but not limited to the award of attorney’s fees and costs pursuant to Section 57.111, Fla. Stat., in that FHFC’s proposed rejection of the Dollar General Store as a grocery store has no reasonable basis in law and fact and is contrary to the clear and unambiguous definition of “grocery store” contained in its rules.

FILED and SERVED this 13th day of August, 2002.

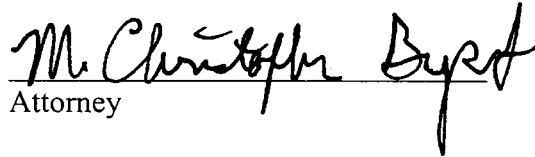

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Attorneys for Petitioner
Newport Sound Partners, Ltd.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing has been filed by HAND-DELIVERY with the Clerk, Florida Housing Finance Corporation, c/o KERRI CARPENTER, Deputy Development Officer, Florida Housing Finance Corporation, 227 North Bronough Street, Suite 5000, Tallahassee, Florida 32301-1329, this 13th day of August, 2002.


Attorney

MCB/dg/2624-1
NewportSoundPetition.Pld

**INDEX OF EXHIBITS TO PETITION OF
NEWPORT SOUND, 2002-130C**

Exhibit A	Page 10 of FHFC's Universal Application Instructions
Exhibit B	Page 7 of Newport Sound's Application, submitted 4/15/2002
Exhibit C	Universal Scoring Summary for Newport Sound, dated 5/14/2002
Exhibit D	Universal Scoring Summary for Newport Sound, dated 6/10/2002
Exhibit E	"Cure" submitted by Newport Sound on Grocery Store Issue, dated 6/26/2002
Exhibit F	"Final" Universal Scoring Summary for Newport Sound dated 7/22/2002
Exhibit G	Election of Rights form

a. Proximity to services (Maximum 3.75 tie-breaker points):

Utilizing Street Atlas USA, version 9.0, published by DeLorme, measure the distance from the Tie-Breaker Measurement Point to the following service(s). If an Address for the service(s) is not included on Street Atlas USA, Version 9.0, the latitude and longitude coordinates must be stated (in degrees and minutes truncated after three decimals) on the Surveyor Certification Form and provided behind a tab labeled "Exhibit 21". The latitude and longitude coordinates must be located at the main entrance used by the general public.

If an Applicant concludes upon entering an Address for a service (Grocery Store, Public School or Medical Facility) into the Street Atlas USA, Version 9, software that the software fails to identify a location that is on a service site, the Applicant may provide evidence of the inaccuracy, as applicable, at Exhibit 21 of the Universal Application Package or within a Notice of Possible Scoring Error or within a Notice of Alleged Deficiency for consideration by Florida Housing. At a minimum, the evidence must contain a certification from a Florida licensed surveyor, not related to any party of the Applicant, which states: (1) the name of the service in question; (2) that the Street Atlas USA, Version 9, software fails to identify a location that is on the service site upon entering the service's Address; and (3) the correct latitude and longitude coordinates (minutes taken to a minimum of three decimal places) for the respective service. The surveyor's certification must be signed and dated by the surveyor under oath.

To be considered for tie-breaker points in this Application, the grocery store, public school or medical facility, and public bus stop or metro-rail stop must be in existence and available for use by the general public as of the Application Deadline.

- (1) Name and Address as assigned by the United States Postal Service of the closest:
 - (a) Grocery Store - For purposes of tie-breaker points, 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.
 - (b) Public School - For purposes of tie-breaker points, a public school means a public elementary, middle, junior and/or high school, including a charter school, except that a charter school that is not

10. Development Status

a. Has Rehabilitation/Substantial Rehabilitation or New Construction work commenced?

Yes No

(1) If "Yes" and Application is for New Construction, when were the building permits issued?

(2) If "Yes" and Application is for Rehabilitation/Substantial Rehabilitation, when did the work commence?

b. Is the Development complete?

Yes No

If "Yes", when were the certificates of occupancy issued?

If certificates of occupancy were issued on more than one date, provide a listing of the issue-date for each building behind a tab labeled "Exhibit 20".

c. Are any of the units occupied?

Yes No

d. If the proposed Development is not yet complete, what is the anticipated placed-in-service date?

9/30/04

11. Proximity

a. Provide the Surveyor Certification Form and map, including all required information, behind a tab labeled "Exhibit 21".

b. Proximity to Services (Maximum 3.75 Tie-Breaker Points):

(1) Will the proposed Development be located within 5 miles of a grocery store?

Yes (check only ONE applicable distance) No

Proximity of Proposed Development to a grocery store	Proximity Tie-Breaker Points
<input checked="" type="checkbox"/> > 0 and < or equal to 1.0 mile	1.25
<input type="checkbox"/> > 1.0 and < or equal to 2.0 miles	1
<input type="checkbox"/> > 2.0 and < or equal to 3.0 miles	.75
<input type="checkbox"/> > 3.0 and < or equal to 4.0 miles	.5
<input type="checkbox"/> > 4.0 and < or equal to 5.0 miles	.25

Name of grocery store: Dollar General

Address of grocery store:

Street: 1433 S. Dixie Highway

City: New Smyrna State: FL Zip Code: 32618

(2) If the proposed Development will serve any demographic group other than Elderly, i.e., the Applicant selected any Demographic or Area Commitment in this Application other than Elderly, will it be located within 5 miles of a public school?

2002 Universal Scoring Summary

As of: 05/14/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

As of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SAIL as Percentage of Total Development Cost
05 - 14 - 2002	71	Y	5	\$39,062.5	%
Preliminary	71	Y	5	\$39,062.5	%
NOPSE	0	Y	0		0
Final	0	Y	0		0
Post-Appeal	0	Y	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SAIL Application for Development in one of these counties where no SAIL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
Optional Features & Amenities:									
2S	III	B	2.a	New Construction	9	9	0	0	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	0	0	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	0	0	0
Demographic or Area Commitment:									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	5	0	0	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 05/14/2002

Development Name: Newport Sound Apartments - Phase I

File # 2002-130C

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
6S	III	E	2.	Set-Aside Commitment: Commitment to Serve Lower AMI	5	5	0	0	0
7S	III	E	3.	Total Set-Aside Commitment	3	3	0	0	0
8S	III	E	4.	Affordability Period	5	5	0	0	0
Resident Programs:									
9S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	0	0	0
9S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3.	Programs for Elderly	6	0	0	0	0
10S	III	F	4.	Programs for All Developments	8	8	0	0	0
Local Government Support									
11S	IV		a.	Contributions	5	5	0	0	0
12S	IV		b.	Incentives	4	4	0	0	0

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	Applicant did not request SAIL.	Preliminary	
3S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1).	Grocery Store	1.25	0	0	0	0
2P	III	A	11.b.(2).	Public School	1.25	0	0	0	0
2P	III	A	11.b.(3).	Medical Facility	1.25	0	0	0	0
3P	III	A	11.b.(4).	Bus Stop or Metro-Rail Stop	1.25	1.25	0	0	0
4P	III	A	11.c.	Address/Location on FHFC Development Proximity List	3.75	3.75	0	0	0

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of

2002 Universal Scoring Summary

As of: 05/14/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Grocery Store Address supplied by Applicant is not included on Street Atlas USA, Version 9.0, and the Applicant did not provide latitude and longitude coordinates.	Preliminary	
2P	Public School Address supplied by Applicant is not included on Street Atlas USA, Version 9.0, and the Applicant did not provide latitude and longitude coordinates.	Preliminary	

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SALL as Percentage of Total Development Cost
06 - 10 - 2002	71	Y	5	\$39,062.5	%
Preliminary	71	Y	5	\$39,062.5	%
NOPSE	71	Y	5	\$39,062.5	%
Final	0	Y	0		0
Post-Appeal	0	Y	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2.b	If SALL Application for Development in one of these counties where no SALL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
Optional Features & Amenities:									
2S	III	B	2.a	New Construction	9	9	9	0	0
2S	III	B	2.b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2.c	All Developments Except SRO	12	12	12	0	0
3S	III	B	2.d	SRO Developments	12	0	0	0	0
4S	III	B	2.e	Energy Conservation Features	9	9	9	0	0
Demographic or Area Commitment:									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	5	5	0	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
Set-Aside Commitment:									
6S	III	E	2.	Commitment to Serve Lower AMI	5	5	5	0	0
7S	III	E	3.	Total Set-Aside Commitment	3	3	3	0	0
8S	III	E	4.	Affordability Period	5	5	5	0	0
Resident Programs:									
9S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	0	0
9S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3.	Programs for Elderly	6	0	0	0	0
10S	III	F	4.	Programs for All Developments	8	8	8	0	0
Local Government Support									
11S	IV		a.	Contributions	5	5	5	0	0
12S	IV		b.	Incentives	4	4	4	0	0

Reason(s) Scores Not Maxed:

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	Applicant did not request SAIL.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11.b.(1).	Grocery Store	1.25	0	0	0	0
2P	III	A	11.b.(2).	Public School	1.25	0	0	0	0
2P	III	A	11.b.(3).	Medical Facility	1.25	0	0	0	0
3P	III	A	11.b.(4).	Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	0	0
4P	III	A	11.c.	Address/Location on FHFC Development Proximity List	3.75	3.75	3.75	0	0

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of

2002 Universal Scoring Summary

As of: 06/10/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Grocery Store Address supplied by Applicant is not included on Street Atlas USA, Version 9.0, and the Applicant did not provide latitude and longitude coordinates.	Preliminary	
1P	Dollar General is not a grocery store.	NOPSE	
2P	Public School Address supplied by Applicant is not included on Street Atlas USA, Version 9.0, and the Applicant did not provide latitude and longitude coordinates.	Preliminary	

Brief Statement of Explanation for Cure
For Application 2002- 130C

Provide a separate brief statement for each Cure.

The Applicant is submitting Exhibit 51, in regard to Part III, Section A, 11.b.(1) of the 2002 Universal Application for Newport Sound Apartments – Phase I, in order to cure and maximize the Applicant's Proximity Tie-Breaker Points.

The Applicant was not given proximity points (as a result of a NOPSE), for the proposed Development being located within 5 miles of a grocery store, because Florida Housing did not consider the identified grocery store, Dollar General, to be a grocery store.

Exhibit 51 provides an Affidavit which testifies that the grocery store, Dollar General, does in fact meet Florida Housing's definition of a "Grocery Store", as defined on page 10 of the Universal Application Instructions. In addition, colored photographs of the Dollar General Store are included which depict items for sale within the store.

Therefore, the grocery store identified by the Applicant does qualify by definition of Florida Housing and the Applicant will receive maximum Proximity Tie-Breaker Points for the proximity of the proposed Development to a grocery store.

REVISED

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF VOLUSIA

BEFORE ME, the undersigned authority, personally appeared Michael T. McMahan,

personally known to me, who being first duly sworn deposes and says:

1. My name is Michael T. McMahan, and I am employed by Tomoka Engineering, located

at 900 S. Ridgewood Ave., Daytona Beach, Florida.

2. On June 20, 2002, I visited the Dollar General store located at 1433 S. Dixie Hwy., New

Smyrna Beach, Florida. The purpose of my visit to the store was to determine if the store met the

FHFC definition of a grocery store, as set forth on page 10 of the 2002 FHFC Universal Application

Instructions (copy attached). That definition is "a self-service retail market that sells food and

household goods and has at least 4,500 square feet of air conditioned space."

3. The store is a self-service retail market. Customers select items from shelves and present

them at checkout counters at the front of the store for purchase.

4. The store consists of in excess of 5,886 square feet of air conditioned space. I determined

the square footage by measuring the interior dimensions of the store, wall to wall, with a measuring

tape.

5. In excess of 1,000 linear feet of shelf space in the store was dedicated to the sale of food

and household goods.

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6. The food products offered for sale in the store included:

Breakfast Cereal
Cereal Bars and Granola Bars
Pop Tarts
Bread
Peanut Butter
Canned Tuna
Canned Meat
Jellies
Condiments (Ketchup, Mustard, and Mayonnaise)
Canned Soup
Canned Fruits
Canned Vegetables
Canned Beans
Dried Beans
Apple Sauce
Spaghetti Noodles and Other Pastas
Egg Noodles
Spaghetti Sauce
Prepared Canned Pastas
Rice and Rice Mixes
Macaroni and Cheese Mixes
Raisins
Crackers
Cookies
Chips
Microwave Popcorn
Cake Mixes
Coffee and Tea
Salt, Sugar and Spices
Bottled and Canned Juices
Powdered Drink Mixes
Soft Drinks

7. The household goods offered for sale in the store included:

Toilet Paper
Trash Bags
Sandwich Bags and Food Storage Bags
Paper Towels

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- Disposable Plates, Napkins, and Eating Utensils
- Disposable Diapers and Wipes
- Laundry Detergent (Powders and Liquids)
- Light Bulbs
- Powdered and Liquid Dishwashing Detergent
- Cleaning Supplies
- Toiletries (Bath Soap, Shampoo, Toothpaste, Toothbrushes, Shaving Supplies, Etc.)
- Over-The-Counter Medications and Home Medical Supplies (Pain Relievers, Cold and Cough Medicines, Band-Aids, Etc.)
- Feminine Hygiene Products

8. I also visited a Winn Dixie supermarket located at 1835 State Road 44, New Smyrna Beach, Florida approximately 1.80 miles from the Dollar General. The prices posted for the above identified food and household goods at Dollar General were generally as low or lower than the regular prices for the same types of products at the Winn Dixie supermarket.

Further Affiant sayeth naught.

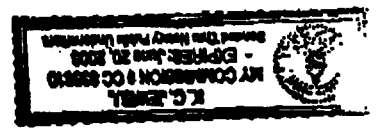
[Handwritten Signature]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 20th day of June, 2002, by Michael T. McMahon who is personally known to me or who produce Drivers License No. M255-558-52-2040 as identification, and who took an oath.

[Handwritten Signature]
Notary Public

My commission expires: 6-20-05



REVISED

Proximity to services (Maximum 3.75 tie-breaker points):

Utilizing Street Atlas USA, version 9.0, published by Delorme, measure the distance from the Tie-Breaker Measurement Point to the following service(s). If an Address for the service(s) is not included on Street Atlas USA, Version 9.0, the latitude and longitude coordinates must be stated (in degrees and minutes truncated after three decimals) on the Surveyor Certification Form and provided behind a tab labeled "Exhibit 21". The latitude and longitude coordinates must be located at the main entrance used by the general public.

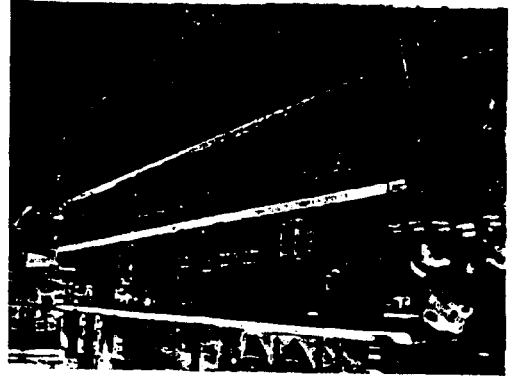
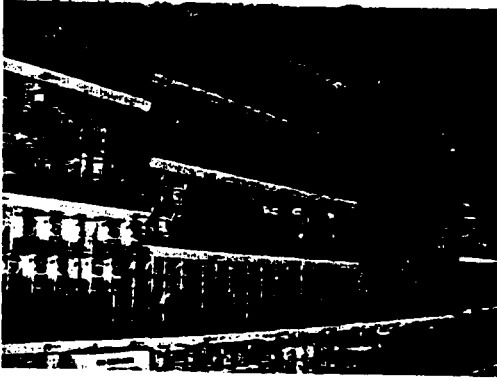
If an Applicant concludes upon entering an Address for a service (Grocery Store, Public School or Medical Facility) into the Street Atlas USA, Version 9, software that the software fails to identify a location that is on a service site, the Applicant may provide evidence of the inaccuracy, as applicable, at Exhibit 21 of the Universal Application Package or within a Notice of Possible Scoring Error or within a Notice of Alleged Deficiency for consideration by Florida Housing. At a minimum, the evidence must contain a certification from a Florida licensed surveyor, not related to any party of the Applicant, which states: (1) the name of the service in question; (2) that the Street Atlas USA, Version 9, software fails to identify a location that is on the service site upon entering the service's Address; and (3) the correct latitude and longitude coordinates (minutes taken to a minimum of three decimal places) for the respective service. The surveyor's certification must be signed and dated by the surveyor under oath. To be considered for tie-breaker points in this Application, the grocery store, public school or medical facility, and public bus stop or metro-rail stop must be in existence and available for use by the general public as of the Application Deadline.

(1) Name and Address as assigned by the United States Postal Service of the closest:

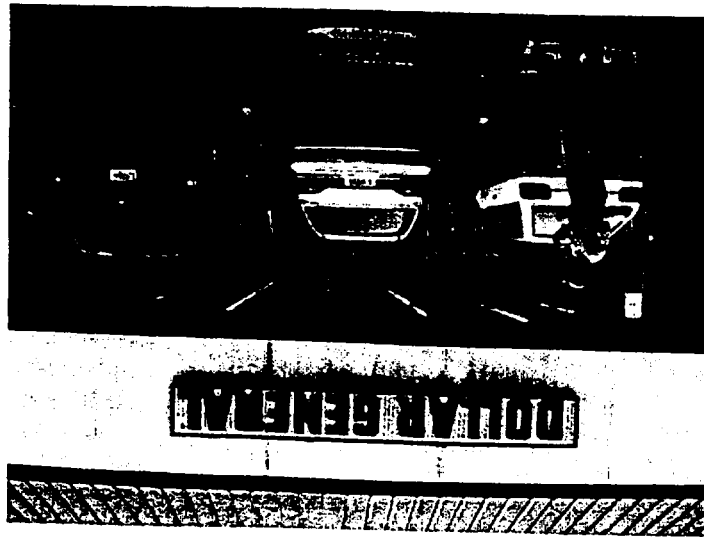
(a) Grocery Store - For purposes of tie-breaker points, a grocery store means a self-service retail market that sells food and household goods and has at least 4,500 square feet of air conditioned space.

(b) Public School - For purposes of tie-breaker points, a public school means a public elementary, middle, junior and/or high school, including a charter school, except that a charter school that is not

Groceries Inside the Dollar General



Outside the Dollar General



Photographs of the Dollar General
Newport Sound Apartments

REVISED

2002 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection and Exhibit)

This cure form is being submitted with regard to Application No. 2002-130C and pertains to:

Part III Section A Subsection 1.b.(1), Exhibit No. _____ (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

- I. Preliminary Scoring and/or a NOPSE resulted in the imposition of a failure to achieve to maximum points, a failure to achieve tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

2002 Universal or HOME Rental Scoring Summary	Preliminary Scoring	NOPSE	
Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>	<input type="checkbox"/>
Reason Threshold Failed	Item No. _____ T	<input type="checkbox"/>	<input type="checkbox"/>
Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____ IP	<input checked="" type="checkbox"/>	<input type="checkbox"/>

OR

- II. Other changes are necessary to keep the Application consistent: _____
- This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part _____ Section _____ Subsection _____ Exhibit _____, as applicable).

Brief Statement of Explanation for Cure
For Application 2002- 130C

Provide a separate brief statement for each Cure.

The Applicant is submitting Exhibit S1, in regard to Part III, Section A, 11(b)(1) of the 2002 Universal Application for Newport Sound Apartments – Phase I, in order to cure and maximize the Applicants Tie-Breaker Proximity Points

The Applicant was not given proximity points (as a result of a NOPSE,) for the proposed Development being located within 5 miles of a grocery store, because Florida Housing did not consider the identified grocery store, Dollar General, to be a grocery store.

Exhibit S1 provides an Affidavit which testifies that the grocery store, Dollar General, does in fact meet Florida Housing's definition of a "Grocery Store", as defined on page 10 of the Universal Application Instructions. In addition, colored photographs of the Dollar General Store are included which depict items for sale within the store.

Therefore, the grocery store identified by the Applicant does qualify by definition of Florida Housing and the Applicant will receive maximum Proximity Tie-Breaker Points for the proximity of the proposed Development to a grocery store.

Furthermore, if it is determined that the Grocery Store Proximity Tie-Breaker Points Are based on some other, non-rule definition of what a "Grocery Store" is (i.e. typical Supermarkets such as: Publix, Winn Dixie, Albertsons, etc.) outside the definition Provided on page 10 1(a) of the Universal Application Instructions, then the Winn Dixie Supermarket located at 1835 SR 44, New Smyrna Beach, Florida 32168, within 1-2 miles Of the proposed Development, should be utilized to permit the Applicant to maximize the Applicant's score.

10. Development Status

a. Has Rehabilitation/Substantial Rehabilitation or New Construction work commenced? Yes No

(1) If "Yes" and Application is for New Construction, when were the building permits issued?

(2) If "Yes" and Application is for Rehabilitation/Substantial Rehabilitation, when did the work commence?

b. Is the Development complete? Yes No

If "Yes", when were the certificates of occupancy issued?

If certificates of occupancy were issued on more than one date, provide a listing of the issue-date for each building behind a tab labeled "Exhibit 20".

c. Are any of the units occupied? Yes No

d. If the proposed Development is not yet complete, what is the anticipated placed-in-service date? 9/30/04

11. Proximity

a. Provide the Surveyor Certification Form and map, including all required information, behind a tab labeled "Exhibit 21".

b. Proximity to Services (Maximum 3.75 Tie-Breaker Points):

(1) Will the proposed Development be located within 5 miles of a grocery store? Yes (check only ONE applicable distance) No

Proximity of Proposed Development to a grocery store

> 0 and < or equal to 1.0 mile

> 1.0 and < or equal to 2.0 miles

> 2.0 and < or equal to 3.0 miles

> 3.0 and < or equal to 4.0 miles

> 4.0 and < or equal to 5.0 miles

1.25
1
.75
.5
.25

Name of grocery store: Dollar General *

Address of grocery store:

Street: 1433 South Dixie Freeway

City: New Smyrna Beach

State: FL

Zip Code: 32168

* Please see Exhibit 51 for information as to why the Dollar General meets Florida Housing's definition of "Grocery Store".

(2) If the proposed Development will serve any demographic group other than Elderly, i.e., the Applicant selected any Demographic or Area Commitment in this Application other than Elderly, will it be located within 5 miles of a public school?

REVISED

2002 CURE FORM

(Submit a SEPARATE form for EACH reason relative to EACH Application Part, Section, Subsection and Exhibit)

This cure form is being submitted with regard to Application No. 2002-130C and pertains to:

Part III Section A Subsection 1.b.(1), Exhibit No. _____ (if applicable)

The attached information is submitted in response to the 2002 Universal Scoring Summary or Home Rental Scoring Summary because:

- I. Preliminary Scoring and/or a NOPSE resulted in the imposition of a failure to achieve maximum points, a failure to achieve tie-breaker points selected, and/or failure to achieve threshold relative to this form. Check applicable item(s) below:

2002 Universal or HOME Rental Scoring Summary		Created by: _____	
<input type="checkbox"/> Reason Score Not Maxed	Item No. _____ S	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Reason Threshold Failed	Item No. _____ T	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/> Reason for Failure to Achieve Proximity Tie-Breaker Points Selected (Universal Application Only)	Item No. _____ IP	<input type="checkbox"/>	<input checked="" type="checkbox"/>

OR

- II. Other changes are necessary to keep the Application consistent:

This revision or additional documentation is submitted to address an issue resulting from a "cure" to Part _____ Section _____ Subsection _____ Exhibit _____, as applicable).

2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

As Of:	Total Points	Met Threshold?	Proximity Tie-Breaker Points	Corporation Funding per Set-Aside Unit *	SALL as Percentage of Total Development Cost
07 - 22 - 2002	71	Y	7.25	\$39,062.5	%
Preliminary	71	Y	5	\$39,062.5	%
NOPSE	71	Y	5	\$39,062.5	%
Final	71	Y	7.25	\$39,062.5	%
Post-Appeal	0	Y	0		0

*Corporation funding includes Local Government-issued tax-exempt bond financing

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
1S	III	A	2b	If SALL Application for Development in one of these counties where no SALL Application has ever been funded: Bay, Citrus, Leon, Nassau, Okaloosa, Okeechobee, St. Lucie or Santa Rosa	2	0	0	0	0
Optional Features & Amenities:									
2S	III	B	2a	New Construction	9	9	9	9	0
2S	III	B	2b	Rehabilitation/Substantial Rehabilitation	9	0	0	0	0
3S	III	B	2c	All Developments Except SRO	12	12	12	12	0
3S	III	B	2d	SRO Developments	12	0	0	0	0
4S	III	B	2e	Energy Conservation Features	9	9	9	9	0
Demographic or Area Commitment:									
5S	III	D	1.	Florida Keys Area	7	0	0	0	0
5S	III	D	2.	RD 515 or RD 514/516	5	0	0	0	0
5S	III	D	3.	Elderly	5	0	0	0	0
5S	III	D	4.	Farmerworker/Commercial Fishing Worker	5	0	0	0	0
5S	III	D	5.	Homeless	5	0	0	0	0
5S	III	D	6.	Urban In-Fill	5	0	0	0	0
5S	III	D	7.	Large Family	5	5	5	5	0
5S	III	D	8.	HOPE VI	5	0	0	0	0
5S	III	D	9.	Front Porch Florida	5	0	0	0	0

2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

Scores:

Item #	Part	Section	Subsection	Description	Available Points	Preliminary	NOPSE	Final	Post-Appeal
Set-Aside Commitment:									
6S	III	E	2.	Commitment to Serve Lower AMI	5	5	5	5	0
7S	III	E	3.	Total Set-Aside Commitment	3	3	3	3	0
8S	III	E	4.	Affordability Period	5	5	5	5	0
Resident Programs:									
9S	III	F	1.	Programs for Non-Elderly & Non-Homeless	6	6	6	6	0
9S	III	F	2.	Programs for Homeless (SRO & Non-SRO)	6	0	0	0	0
9S	III	F	3.	Programs for Elderly	6	0	0	0	0
10S	III	F	4.	Programs for All Developments	8	8	8	8	0
Local Government Support									
11S	IV		a.	Contributions	5	5	5	5	0
12S	IV		b.	Incentives	4	4	4	4	0

Reason(s) Scores Not Maxed:

Reason(s)

Item #	Reason(s)	Created As Result	Rescinded as Result
1S	Applicant did not request SAIL.	Preliminary	
5S	The proposed Development is not located in the Florida Keys Area.	Preliminary	

Proximity Tie-Breaker Points:

Item #	Part	Section	Subsection	Description	Available	Preliminary	NOPSE	Final	Post-Appeal
1P	III	A	11 b.(1).	Grocery Store	1.25	0	0	1	0
2P	III	A	11 b.(2).	Public School	1.25	0	0	1.25	0
2P	III	A	11 b.(3).	Medical Facility	1.25	0	0	0	0
3P	III	A	11 b.(4).	Bus Stop or Metro-Rail Stop	1.25	1.25	1.25	1.25	0
4P	III	A	11.c.	Address/location on FHFC Development Proximity List	3.75	3.75	3.75	3.75	0

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Reason(s)

Item #	Reason(s)	Created As Result of	Rescinded as Result of

2002 Universal Scoring Summary

As of: 07/22/2002

File # 2002-130C

Development Name: Newport Sound Apartments - Phase I

Reason(s) for Failure to Achieve Selected Proximity Tie-Breaker Points:

Item #	Reason(s)	Created As Result of	Rescinded as Result of
1P	Grocery Store Address supplied by Applicant is not included on Street Atlas USA, Version 9.0, and the Applicant did not provide latitude and longitude coordinates.	Preliminary	Final
1P	Dollar General is not a grocery store.	NOPSE	Final
2P	Public School Address supplied by Applicant is not included on Street Atlas USA, Version 9.0, and the Applicant did not provide latitude and longitude coordinates.	Preliminary	Final

ELECTION OF RIGHTS

Application Number: 2002-130C Development Name: Newport Sound

1. [] I do not desire a proceeding.

2. [] I elect an informal proceeding to be conducted in accordance with Sections 120.569 and 120.57(2), Florida Statutes. In this regard I desire to (Choose one):

[] submit a written statement and documentary evidence; or

[] attend an informal hearing to be held in Tallahassee.

Note: Rule 28-106.301, Florida Administrative Code, requires Applicant to submit a petition in a prescribed format. (attached)

3. [X] I elect a formal proceeding at the Division of Administrative Hearings. This option is available only if there are disputed issues of material fact.

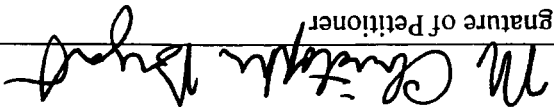
Note: Applicant must submit an appropriate petition in accordance with Rule 28-106.201, Florida Administrative Code. (attached)

Following are my top eight preferences, in order from 1-8 (with 1 being my first choice, etc.) for scheduling my informal hearing. Formal hearings will be scheduled by the Division of Administrative Hearings.

Hearing Dates:	A.M.	P.M.	Hearing Dates:	A.M.	P.M.
August 29, 2002			September 9, 2002		
September 3, 2002			September 10, 2002		
September 4, 2002			September 11, 2002		
September 5, 2002			September 12, 2002		
September 6, 2002			September 13, 2002		
			September 16, 2002		
			September 17, 2002		
			September 18, 2002		
			September 19, 2002		
			September 20, 2002		

Please fax a Hearing Schedule to me at this fax number: ()

DATE: August 13, 2002

Signature of Petitioner


Name: M. Christopher Bryant

Oertel, Hofman, Fernandez & Cole, P.A.

Address: 301 S. Bronough St., Fifth Floor

P. O. Box 1110

Tallahassee, FL 32302-1110

Phone: (850) 521-0700

Fax: (850) 521-0720

TO PRESERVE YOUR RIGHT TO A PROCEEDING, YOU MUST RETURN THIS FORM WITHIN (21) DAYS OF RECEIPT OF THIS NOTICE TO THE FLORIDA HOUSING FINANCE CORPORATION AT THE ADDRESS INDICATED IN THE NOTICE OF RIGHTS. TO FACILITATE THE SCHEDULING OF HEARINGS, THIS FORM MAY BE SUBMITTED PRIOR TO FILING A PETITION.