

**STATE OF FLORIDA  
FLORIDA HOUSING FINANCE CORPORATION**

MADISON GREEN APARTMENTS, LTD. (2003-119C)  
(PROJECT NAME: MADISON GREEN APARTMENTS)

Petitioner,

vs.

FLORIDA HOUSING Case No.: 2003-045  
APPLICATION NO.: 2003-119C

FLORIDA HOUSING FINANCE CORPORATION,

Respondent.

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**RECOMMENDED ORDER**

An informal hearing on this matter was noticed for September 8, 2003, with an amended notice set for September 11, 2003. MADISON GREEN APARTMENTS, LTD. (2003-119C), ("Petitioner") and FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") submitted a Joint Proposed Recommended Order on August 28, 2003 to the Florida Housing Finance Corporation's appointed Hearing Officer, David E. Ramba.

**APPEARANCES**

**For Petitioner:**

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**For Respondent:**

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## **JOINT EXHIBITS**

There were no joint exhibits submitted with the Joint Proposed Recommended Order.

## **STATEMENT OF THE ISSUE**

The issue in this case is whether Petitioner met the threshold requirement of Site Control when considering the materials in Petitioner's application together with their "cure" materials.

## **PRELIMINARY STATEMENT**

Petitioner applied for funding during the 2003 Universal Cycle, seeking an allocation of Low Income Housing Tax Credits ("Housing Credits"). Petitioner was notified by Florida Housing of its final scores on or about July 18, 2003. On August 12, 2003, Petitioner timely filed a Petition for a Formal Administrative Hearing under Sections 120.569 and 120.57, Florida Statutes, disputing the Florida Housing Finance Corporation's ("Florida Housing") final scoring of its 2003 Universal Cycle Application for the proposed Madison Green Apartments complex. After review of the Petition, the Corporation granted Petitioner an informal hearing in this matter. Petitioner sought a determination that the Petitioner had demonstrated site control sufficient to satisfy the Application's Threshold requirement. The parties agree that the Confirmation Agreement and original Application material adequately demonstrated site control.

## **FINDINGS OF FACT**

1. Respondent, Florida Housing Finance Corporation, ("Florida Housing"), is a public corporation under Chapter 420, Fla. Stat., to administer the financing and refinancing of projects which provide housing affordable to persons and families of low, moderate and middle income in Florida.

2. Florida Housing has established by rule a process (the "Universal Cycle") in which applicants for any of the above-referenced Florida Housing multi-family rental program

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

3. The 2003 Universal Cycle Application, adopted as Form UA1016 (Rev. 4/03) by Rules 67-21.002(96) and 67-48.002(111), Fla. Admin. Code, consists of Parts I through V and instructions, some of which are not applicable to every Applicant. Some of the parts include “threshold” items. Failure to properly include a threshold item or satisfy a threshold requirement results in rejection of the application. Other parts allow applicants to earn points; however, the failure to provide complete, consistent and accurate information as prescribed by the instructions may reduce the Applicant’s overall score.

4. On or before April 8, 2003, Petitioner, Madison Green Apartments, Ltd. (“Madison Green”) submitted an application to Florida Housing in which it sought an allocation of tax credits under the Low-Income housing Tax Credit (HC) program in the 2003 Universal Cycle. Madison Green’s ability to obtain funding is predicated upon the development satisfying the threshold requirements of the application. Site control is one of the application’s threshold requirements.

5. After Petitioner submitted its 2003 Universal Cycle Application, Florida Housing’s staff undertook preliminary scoring of the Application pursuant to Part V, Chapter 420, Florida Statutes, and Rule Chapter 67-48, Florida Administrative Code, completing the scoring process on May 12, 2003.

6. After completing preliminary scoring, Florida Housing’s staff notified Petitioner of the results. Madison Green scored 66 out of a possible 66 total points. In addition, Madison Green was awarded 7.50 out of a possible 7.50 proximity tie-breaker points.

7. However, in the Preliminary Scoring, the Corporation indicated that the Application failed to adequately demonstrate site control and therefore failed to achieve a threshold requirement of the application. In addition, competitors filed Notices of Possible Scoring Error (“NOPSE’s”) questioning whether the Applicant demonstrated site control. The Corporation’s preliminary threshold determination of Madison Green’s application was based, in part, on the conclusion that Madison Green did not demonstrate site control.

8. Madison Green submitted additional documentation, revised forms, and other information that it deemed appropriate to address issues raised in the NOPSE’s, Florida Housing’s position on each NOPSE and preliminary scoring. These documents, revised forms and other information were known as “cures” and were due on or before June 19, 2003 (the “cure period”).

9. In response to the preliminary scoring and NOPSE’s, Madison Green submitted as a “cure” a Confirmation and Reaffirmation as to Purchase and Sale Agreement, as Amended (“Confirmation Agreement”). Exhibit “A” to the Confirmation Agreement contained a legal description for the subject property, which identified a 12.93 acre tract of land. However, this Exhibit was not marked “revised.”

10. The Confirmation Agreement was submitted to clarify the binding effect and scope of the real estate documents that had been submitted as part of the initial Application. In the original submittal, the Applicant provided a copy of a Purchase and Sale Agreement dated May 8, 2001 (the “Purchase Contract”) which covered approximately 20 acres of land in Flagler

County which was described on Exhibit A to the Purchase Contract. That legal description included the east half of a specifically described tract in Flagler County.<sup>1</sup>

11. Also included with the initial Application was a First Amendment to Purchase and Sale Agreement dated April 5, 2002 (the "First Amendment"). In the recitations on the first page of that First Amendment, the complete legal description for the entire 20 acres covered by the original Purchase Contract is set forth. Paragraph 2 of the First Amendment specifically states that the eastern 12.93 acres of the detailed property was to be included in the first phase being acquired by the purchaser. This is the same legal description as set forth in Exhibit A to the Confirmation Agreement.

12. The property that was the subject of the Purchase Contract and the First Amendment can be readily identified without reference to Exhibit A of the Confirmation Agreement. Exhibit A of the Confirmation Agreement contains nothing more than the words "the Easterly 12.93 acres of" inserted before the legal description from the Purchase Contract. Paragraph 2 of the First Amendment identifies the same parcel as that described in Exhibit A of the Confirmation Agreement. In short, the exact legal description of the property covered by the real estate contracts could be discerned from any of a variety of sources that were included with the original Application. The legal description contained in Exhibit A to the Confirmation Agreement was therefore redundant and not necessary to demonstrate site control.

13. The Confirmation Agreement submitted as the Cure unequivocally confirmed that Madison Green has site control over the proposed development site. The seller certified in the

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<sup>1</sup>The initial Application also included a copy of a Second Amendment to the Purchase Contract as well as an assignment of the Purchase Contract to the Applicant.

text of the Confirmation Agreement that the subject property was under the control of Madison Green.

14. In a Notice dated July 21, 2003, Florida Housing released its Final Scores and Notice of Rights of the applications in the 2003 Universal Application Cycle. According to the scoring summary, Madison Green's Application received a final score of 66 points out of a possible 66 points and was awarded 7.50 proximity tie-breaker points. However, the final scoring reflected that, because Madison Green allegedly failed to satisfy an application threshold requirement, its Application would not be entitled to an allocation of tax credits. The Notice of Rights notified Petitioner that it could contest Florida Housing's actions by requesting an informal hearing before a contracted hearing officer.

15. Petitioner timely requested a hearing by filing its Petition for Formal Administrative Hearing on August 12, 2003.

16. After reviewing Madison Green's Petition, Florida Housing agreed that the Madison Green demonstrated site control and that it satisfied the threshold requirements of the application.

#### **CONCLUSIONS OF LAW**

1. Pursuant to Sections 120.569 and 120.57(2), Fla. Stat. and Rule 67-47, Fla. Admin. Code, the Hearing Officer has jurisdiction over the parties to this proceeding.

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

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

4. Madison Green submitted an application for the 2003 Universal Application Cycle to Florida Housing in which it sought an allocation of tax credits under the Low-Income housing Tax Credit (HC) program in the 2003 Universal Cycle.


5. Part III, Section C.2., of the Application requires that the applicant demonstrate site control over the property it intends to develop. The material Madison Green submitted with the original Application included an appropriate legal description of the subject property. The “cure” material submitted by Madison Green was redundant with respect to the legal description. Therefore, failing to stamp “revised” on this exhibit to the cure material was immaterial and was not needed to demonstrate site control. Madison Green therefore satisfied the Application’s threshold requirements.

**RECOMMENDATION**

Based on the Findings of Fact and Conclusions of Law stated above, it is hereby RECOMMENDED:

That a FINAL ORDER be entered by Respondent finding that Madison Green Apartments demonstrated site control and has satisfied the Application’s threshold requirements of Part III, Section C.2., of the 2003 Universal Application and should be scored as having 66 total points and 7.50 proximity tie-breaker points.

DATED this 2<sup>nd</sup> day of September, 2003 in Tallahassee, Florida.

  
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David E. Ramba, Hearing Officer

Copies Furnished to:

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